

Attorney General

By: William E. Isaeff
Chief Deputy Attorney General

OPINION NO. 87-13 JUSTICES OF THE PEACE; ELECTIONS; NEV. CONST. ART. 2 § 1; NRS 4.010; 281.050 AND 293.1755: A justice of the peace must meet the qualifications of an elector as set forth in Nev. Const. art. 2 § 1. An applicant for appointment to the office of justice of the peace need not be a resident of the township to which the office pertains, but a candidate for election to that office must be a resident of the township for at least 30 days prior to the close of filing declarations of candidacy.

Carson City, July 30, 1987

The Honorable Mills Lane, Washoe County District Attorney, Washoe County Courthouse, Post Office Box 11130, Reno, Nevada 89520

Attention: William A. Baker, Deputy District Attorney

Dear Mr. Baker:

You have requested advice from this office regarding the following:

QUESTION

Must an applicant for appointment or a candidate for election to the office of justice of the peace reside within the township to which the office pertains?

ANALYSIS

In general, every holder of a public office must be a qualified elector under the Nevada Constitution. Nev. Const., art. 15, § 3. The qualifications of an elector are set forth in Nev. Const. art. 2, § 1 as follows:

1. U.S. citizen;
2. 18 years of age or older;
3. active, as opposed to constructive, residence within the state six months, and in the district or county thirty days next preceding any election;¹
4. not convicted of treason or a felony in any state or territory of the United States, unless restored to civil rights; and
5. not an idiot or an insane person.

More specifically, as to the qualifications for the office of justice of the peace, Nev. Const. art. 6, § 8 grants to the legislature the power to determine the number of justices of the peace to be elected in each city and township of the state, and to fix by law their qualifications. Pursuant to this power, the legislature enacted NRS 4.010 which prescribes that a justice of the peace must meet the general qualifications for public office as set forth in the Nev. Const. art. 2, § 1.

In the case of Schur ex rel. v. Payne, [57 Nev. 286](#), 62 P.2d 921 (1937), the Nevada

¹ The six month residency requirement within the state, as set forth in Nev. [Const. art. 2, § 1](#), is no longer enforced as a requirement to be qualified as an elector as it has been held to be in violation of the 14th Amendment to the United States Constitution. Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). See also Nev. Op. Att’y Gen. No. 85 (June 19, 1972).

Supreme Court decided the issue of whether a candidate for the office of justice of the peace must be a resident of the township to which the office pertains. A resident of Las Vegas Township filed a declaration of candidacy for the office of justice of the peace of Nelson Township. The court reviewed the applicable constitutional and statutory provisions set forth in Nev. [Const. art. 2, § 1](#); art. 15, § 3; and 4766 N.C.L., (now cited as [NRS 281.040](#)) and held that, in the absence of a constitutional or statutory provision requiring it, residence within the township over which jurisdiction of the justice of the peace extends is unnecessary to eligibility for the office. Id. at 291 and 300.

Subsequent to the Payne decision in 1937, however, the legislature enacted [NRS 293.1755](#)(1) and 281.050(2), two statutory provisions which would apply to a candidate for election to the office of justice of the peace. [NRS 293.1755](#)(1) provides:

In addition to any other requirement provided by law, no person may be a candidate for any office unless, for at least 30 days before the close of filing of declarations of candidacy for the office which he seeks, he has been a legal resident of the state, district, county, township, city or other area prescribed by law to which the office pertains, and, if elected, over which he will have jurisdiction or which he will represent.

We recognize that a justice of the peace has limited statutory powers that extend outside the township from which he is elected. [NRS 4.310](#) and [4.370](#). However, we are of the opinion that, since a justice of the peace is to be elected in each township of the state by the qualified electors of the township to serve the township, the office of justice of the peace pertains to the township and comes within the definition of a “township officer” pursuant to [NRS 293.117](#). Nev. [Const. art. 6, § 8](#), [NRS 4.020](#) and [4.170](#). Therefore, for the purposes of chapter 293 of the Nevada Revised Statutes, a justice of the peace is considered to be a township officer. See also [NRS 293.193](#)(1).

Clearly, as a result of the legislative enactment of [NRS 293.1755](#)(1), an additional qualification to those set forth in Nev. [Const. art. 2, § 1](#), is required of a candidate for the office of justice of the peace. A candidate for the office of justice of the peace must be a legal resident of the particular township to which the office pertains for at least 30 days before the close of filing of declarations of candidacy for that office. If the candidate moves from the township subsequent to filing his declaration of candidacy, a vacancy is created. [NRS 281.050](#)(2).

When a vacancy occurs in the office of justice of the peace, the board of county commissioners has the option of:

- (a) Appoint[ing] some suitable person to fill the vacancy until the ensuing biennial election; or
- (b) Provid[ing] by resolution for an election procedure to fill the vacancy for the remainder of the unexpired term.

[NRS 4.150](#)(1)(a) and (b).

If the board of county commissioners chooses to fill the vacancy by appointment rather than election, the residency restriction set forth in [NRS 293.1755](#)(1) and 281.050(2), by their own terms, do not apply to applicants for appointment, but only to candidates for election. The board of county commissioners need only appoint a “suitable person.” [NRS 4.150](#) and [245.170](#). A “suitable person” is one who is a qualified elector, meeting the qualifications as set forth in Nev. [Const. art. 2, § 1](#). See [NRS 4.010](#).

Unlike a person appointed to the office of public administrator, a person appointed to the office of the justice of the peace need not qualify in the same manner as if elected to that office. Cf. [NRS 253.030](#)(2). Absent a constitutional or statutory provision requiring it, residence within the township over which jurisdiction of the justice of the peace extends is unnecessary to eligibility for appointment to that office. See *Schur ex rel. v. Payne*, [57 Nev. 286](#), 291, 300, 62 P.2d 921 (1937). Cf. Nev. Op. Att’y Gen. No. 674 (July 14, 1970).

CONCLUSION

A candidate for election to the office of justice of the peace, in addition to the qualifications set forth in Nev. [Const. art. 2, § 1](#), must be a resident of the township to which the office pertains for at least 30 days before the close of filing declarations of candidacy.

An applicant for appointment to the office of justice of the peace need not be a resident of the township to which the office pertains, but must be a “suitable person” for that office and must meet the qualifications set forth in Nev. [Const. art. 2, § 1](#).

Sincerely,

BRIAN McKAY
Attorney General

By: Jennifer Stern
Deputy Attorney General

OPINION NO. 87-14 BOARDS AND COMMISSIONS; BUDGET; INDEPENDENT CONTRACT: The provisions of [NRS 353.150](#) to [NRS 353.246](#) (the State Budget Act) and [NRS 284.173](#) (regarding independent contracts) apply to occupational and professional licensing boards.

Carson City, September 3, 1987

Mr. William A. Bible, Director
Department of Administration
Blasdel Building, Capitol Complex
Carson City, Nevada 89710