

Under this statute the deputy is authorized to act for and in the place of the sheriff. *See Allen v. Ingalls*, [33 Nev. 281](#), 111 P. 416 (1910); Eugene McQuillin, *Municipal Corporations* § 12.33 (3d ed. 1990). In making the sheriff a member of the liquor board we must assume that the legislature was also cognizant of its other enactment allowing for deputies to exercise *all* of the duties of the sheriff. Thus we believe that the undersheriff, as one of the sheriff's deputies, has the authority to attend, participate and vote in the sheriff's stead at liquor board meetings. *See, e.g., Policemen's Pension Fund Bd. v. Frey*, 113 A.2d 232 (Pa. 1955) (deputy controller could perform duties and functions of city controller with respect to controller's membership on pension board).

CONCLUSION

The undersheriff, upon assignment by the sheriff, may attend, participate and vote in the sheriff's membership position at county liquor board meetings.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ROBERT L. AUER
Deputy Attorney General

OPINION NO. 93-12 MARRIAGE; VOTING; CLERKS: A woman's surname does not automatically change upon marriage thus requiring a reregistration to vote.

Carson City, May 26, 1993

The Honorable William E. Schaeffer, Eureka County District Attorney, Post Office Box 190, Eureka, Nevada 89316

Dear Mr. Schaeffer:

You have posed the following question regarding the county clerk's attempt to preclude a married woman from voting under her maiden surname.

QUESTION

Does a woman's surname, upon marriage, change by operation of law thus requiring her to reregister to vote under her "married" name?

ANALYSIS

You have provided us with the following set of facts.

Christine Smith has married Mr. Brown. Christine has retained her birth surname of Smith. She consistently uses her maiden surname and is still known as Christine Smith.

The county clerk has stated an intent to remove Christine Smith's name from the voter registration rolls. The clerk asserts a belief that, pursuant to [NRS 293.517](#) and Op. Nev. Att'y Gen. No. 311 (March 15, 1966), Christine Smith must change her surname to Brown and must reregister to vote under that surname.

You have concluded that Christine Smith has a legal right to retain her maiden surname and to vote under her current registration. We agree with that conclusion.

Nevada's marriage laws are contained in [NRS chapter 122](#) and there is no statute contained within that chapter which would require a woman to change her surname upon marriage.

In Nevada's divorce laws, [NRS 125.130\(3\)](#) sets forth in part that: "the court may, for just and reasonable cause and by an appropriate order embodied in its decree, change the name of the wife to any former name which she has legally borne." This provision does not mandate that the marriage automatically change the wife's surname. On the contrary, it illustrates Nevada's policy of recognizing an adult person's right to the surname of choice.

With no reservations or restrictions as to gender, [NRS 41.270-.290](#) provide that any person may apply for a change of name by petitioning the district court. Once the petitioner demonstrates to the court that there are satisfactory reasons for the change of name, the court may so order the change.

There is no language contained within [NRS 41.270-.290](#) making those provisions the exclusive method for effecting name changes in Nevada; nor are there situations listed, such as marriage, which would demand a name change.

Under principles of common law a man may change his name at will, by usage, and may sue or be sued in any name by which he is known and recognized. *See Emery v. Kipp*, 97 P. 17, 19 (Cal. 1908). We conclude that this common law right, which allows a person to use any name that he or she sees fit as long as it is not done for any fraudulent purpose, applies to the surnames of married women as well. *See Malone v. Sullivan*, 605 P.2d 447 (Ariz. 1980); *Doe v. Dunning*, 549 P.2d 1 (Wash. 1976).

As pointed out in the *Malone* case, it was a historical *custom* for a woman, upon her marriage, to take her husband's surname. The woman was not required by common law, statute or rule to so change her name. *Malone*, 605 P.2d at 450.

Turning now to our election statutes, we note that [NRS 293.517\(1\)](#) states:

1. Any elector residing within the county may register:
 - (a) By appearing before the county clerk or deputy registrar, completing the affidavit of registration and giving true and satisfactory answers to all questions relevant to his identity and right to vote;
 - (b) By completing and mailing or personally delivering to the county clerk, an application to register to vote pursuant to [NRS 293.5235](#); or
 - (c) Pursuant to the provisions of [NRS 293.524](#) . . . [motor-voter registration].

Pursuant to [NRS 293.517\(2\)](#), the elector verifies his or her identity under penalty of perjury.

Under [NRS 293.517\(4\)](#), any person who is registered and changes his name must register under the new name. There is absolutely no language contained within this subsection of the statute which suggests that marriage automatically effects a change of surname for a married woman.

At the time that Op. Nev. Att'y Gen. No. 311 was written, there was language in the statute which suggested the possibility that marriage could be a condition which might result in a surname change. As stated in that opinion, [NRS 293.517\(4\)](#) read in part:

Any elector who changes his or her name by marriage, or otherwise, shall not be eligible to vote unless he or she reregisters

By legislative amendment in 1991, the phrase "by marriage or otherwise" was deleted from [NRS 293.517\(4\)](#).

In the present case, Christine Smith has not, by statutory procedure or by common usage, changed her surname. The affidavit she filed with the registrar in order to vote contains her correct legal identity. Thus the provision within [NRS 293.517\(4\)](#) requiring a reregistration upon a name change does not apply to Christine Smith. See *Stuart v. Board of Supervisors of Elections*, 295 A.2d 223 (Md. Ct. App. 1972).

CONCLUSION

Christine Smith's surname did not automatically change by operation of law upon her marriage. She had a legal right to retain her maiden name.

The reregistration voting provision contained within [NRS 293.517\(4\)](#) does not apply in the present case. Here, Christine Smith's surname for voting purposes prior to marriage and after marriage has remained the same. Since she has not chosen to change her surname, there is no need for her to reregister.

To the extent that Op. Nev. Att'y Gen. No. 311 is inconsistent with this opinion, it is hereby rescinded.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ROBERT L. AUER
Deputy Attorney General

OPINION NO. 93-13 NOTARIES PUBLIC: A notary public's surety bond can be canceled after it has been filed with the county clerk, in which case the public is no longer protected against a notary's misconduct. If a notary unknowingly notarizes a document that has been forged or in which the signature is forged, he has not committed a crime. A notary can refuse to notarize a signature if he knows the transaction is unlawful, if the person who requests the act does not produce satisfactory evidence of identification, or if the person requesting the act refuses to tender the appropriate fee.

Carson City, June 21, 1993

The Honorable Cheryl A. Lau, Secretary of State, Capitol Building, Carson City, Nevada 89710

Dear Secretary Lau:

This letter is in response to some recurring issues regarding notaries public.

QUESTION ONE

Can a surety bond be canceled after it has been filed with the county clerk and, if so, what is the effect of such a cancellation?

ANALYSIS