
OPINION NO. 94-18 CANDIDATES: A 17-year-old who will be 18 before the next election can file for office and specifically for school board.

Carson City, March 9, 1994

Mr. S. Mahlon Edwards, County Counsel, Clark County District Attorney's Office, Post Office Box 552215, Las Vegas, Nevada 89155-2215

Dear Mr. Edwards:

You have requested an opinion from this office regarding filing of declaration of candidacy by a 17-year-old and his running for the office of trustee of a school district.

Your questions are based upon the following set of facts. A 17-year-old in Clark County, who will be 18 on August 30, 1994, attempted to file for the office of trustee of the Clark County School District. His declaration of candidacy was not accepted by the Clark County Registrar of Voters for the reason that he is currently 17 years old.

QUESTION ONE

May an individual who has not yet attained the age of 18 years declare his candidacy for the office of trustee of a school district?

ANALYSIS

For an individual to declare his candidacy for the office of trustee of a school district, the individual must file with the filing officer a declaration of candidacy pursuant to [NRS 293.177](#). Until such filing has been completed, the individual is not a candidate. [NRS 294A.005\(1\)](#) defines a candidate as "any person who files a declaration of candidacy." So up to the time when a declaration of candidacy has been filed, an individual is not a candidate.

It is important to distinguish between being eligible to file for an elected position, being eligible to run for that position, and being eligible to hold that position if elected. The criteria may be different for each of these stages and the authority to determine eligibility may reside with different public officials.

It has been the rule in Nevada since 1920 that a ministerial filing officer does not have the authority to determine the validity of a filing beyond compliance on the face of the form, facial validity. The Nevada Supreme Court stated in *State v. Glass*, [44 Nev. 235](#), 241, 192 P. 263 (1920) that:

Ministerial officers are by the law required to receive and file such instruments as are duly executed, provided such instruments purport upon their face to be of the nature of instruments entitled to be filed or recorded, as the case may be. Such officer has the right to exercise discretion as to matters of form, but not to exercise judicial discretion.

See also *State ex rel. Security Savings and Loan Association v. Brodigan*, [44 Nev. 212](#), 215, 192 P. 263 (1920), where the court opined:

The duties of secretary of state, with respect to filing certificates of incorporation and papers relative to corporations, are ministerial The discretion to be exercised by the

secretary of state does not extend to the merits of an application for incorporation, although it may be exercised as to matters of form.

Filing officers are ministerial officers and have a duty to examine instruments presented for filing for facial validity. For example, if an individual presented a declaration of candidacy to a filing officer and the individual stated that he or she did not meet the legal requirements for the office, the filing officer would have a duty to refuse to accept the filing. However, if, in the declaration of candidacy, the individual states that he or she will meet the legal requirements for the office (and other requirements, such as payment of the filing fee, have been met), then the filing officer must accept and file the declaration.

In Nevada a 17-year-old is legally permitted to register to vote if he or she will be 18 on or before the next election and he or she is otherwise eligible. [NRS 293.485](#). The fact that an individual is not 18 at the time of filing in and of itself is insufficient to reject a declaration of candidacy. In fact that part of the declaration of candidacy which deals with qualifying is worded in the future tense and states in pertinent part "I *will* qualify for the office if elected thereto." [NRS 293.177\(2\)](#) (emphasis added).

Acceptance and filing a declaration of candidacy does not automatically mean that the candidate is eligible to run for or hold that office. Nevada law provides for a means to challenge a candidate once he or she has filed a declaration of candidacy, although that procedure is not specifically stated in the election laws. The district attorney can petition the court for a writ of mandamus to compel the filing officer to remove a candidate's name from the ballot. A private citizen can do the same. See *Nevada ex rel. Piper v. Gracey*, [11 Nev. 223](#), 230 (1876).

CONCLUSION TO QUESTION ONE

A filing officer must accept and file a declaration of candidacy submitted by a 17-year-old who will be 18 on or before the next election if the declaration of candidacy is valid as to form and other statutory requirements, such as payment of filing fees, have been met.

QUESTION TWO

Does Nevada law permit a 17-year-old, who will be 18 before the general election, to be a candidate for the office of trustee of a school district?

ANALYSIS

This question involves proper construction of the applicable provision of the Nevada Constitution, Nevada election law, and the statutory provision defining the qualifications and eligibility of candidates for the office of trustee of a school district.

The Nevada Legislature has declared that Nevada election laws "shall be liberally construed to the end that all electors shall have an opportunity to participate in elections and that the real will of the electors may not be defeated . . ." [NRS 293.127](#). [NRS 293.485\(2\)](#) permits an eligible person whose 18th birthday occurs on or before the next election to register to vote. Article 2, section 1 of the Nevada Constitution sets forth the qualifications to be an elector and one of the qualifications is that a person be 18 years of age.³³ [NRS 386.240\(1\)](#) states that one of the qualifications to be a candidate for school board trustee is that one is a qualified elector. Article 15, section 3 of the Nevada Constitution states that "[n]o person shall be eligible to any office who is not a qualified elector under this constitution."

³³ Qualified elector is defined for purposes of voting, not for running for office, and voting occurs at the election.

The Nevada Constitution in article 15, section 3 fixes the time of eligibility for public office as at the time of the general election with the phrase "eligible to any office."

The Supreme Court of Oklahoma in *Findley* concluded that similar wording in the Oklahoma Constitution meant that a candidate must meet the qualifications when elected at the general election. *Findley v. State Election Board of Oklahoma*, 325 P.2d 1037 (Okla. 1958). Article VI, section 3 of the Oklahoma Constitution stated in pertinent part "[n]o person shall be eligible to the office of . . . Attorney General . . ." and then listed the qualifications. The court concluded that:

[T]he eligible qualifications provided therein mean that a candidate must meet these qualifications when elected at the General Election, and not at a primary election whereby a candidate may only be nominated as a candidate for election at the General Election.

Id. at 1040.

The Supreme Court of Arizona, when faced with the issue of when to determine the qualification of a candidate, prior to the primary election or after the candidate has been declared nominated at the primary election, held that challenging the qualification of a candidate prior to the primary election was premature. *Nicol v. Superior Court*, 106 Ariz. 208, 473 P.2d 455, 459 (1970). Although not deciding the issue, the court indicated that only if the potential candidate cannot, in any way, qualify by the time of the general election should the name be excluded from the primary ballot.

To read the above referenced constitutional and statutory provisions to mean that a candidate for school district trustee must be a qualified elector (18 years of age) to run for the office, excludes 17-year-olds who will be qualified electors at the time of the general election. These 17-year-olds would be qualified electors when elected to office and therefore meet the constitutional requirement in article 15, section 3, but would be prohibited from running for the office for the reason that they were not 18 at the time of filing. This reading of these provisions results in an absurd and unreasonable result which the court in Nevada disfavors. See *Las Vegas Sun v. District Court*, [104 Nev. 508](#), 511, 761 P.2d 849 (1988) and *McCrackin v. Elko County School Dist.*, [103 Nev. 655](#), 658, 747 P.2d 1373 (1987).

Age can be distinguished from other qualifications since aging happens automatically while other qualifying requirements, such as residence or licensure, do not. With the passage of time one will meet the age requirement. With other requirements intervening acts may prevent one from qualifying.

The term "qualified elector" found in [NRS 386.240](#) and defined in article 2, section 1 of the Nevada Constitution must include 17-year-olds who meet the qualification to register to vote in [NRS 293.485\(2\)](#). Any other reading of these provisions could result in a person who would be qualified to hold office at the time of the general election not being allowed to run for that office.

CONCLUSION TO QUESTION TWO

Nevada law permits a 17-year-old who will be 18 before the general election to be a candidate for the office of trustee of a school district.

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