

Clark County's department heads and staff directors are *not* "public officers" under [NRS 281.4365](#) because, like the deputies and assistants discussed in AGO 193, their authority is dependent upon "the will or pleasure of the principal," i.e., the county manager and the county commission. Therefore, Clark County's department heads and staff directors need not file financial disclosure statements according to [NRS 281.561](#).

CONCLUSION

Clark County's department heads and staff directors are not "public officers" under [NRS 281.4365](#) and are not required to file financial disclosure statements according to [NRS 281.561](#).

FRANKIE SUE DEL PAPA
Attorney General

By: LOUIS LING
Deputy Attorney General

OPINION NO. 96-16 COUNTIES; ELECTIONS; SECRETARY OF STATE: Procedures to follow to fill county office if county officer dies.

Carson City, June 25, 1996

Mr. Leon Aberasturi, Deputy District Attorney, Office of the Lander County District Attorney, Post Office Box 187, Battle Mountain, Nevada 89820

Dear Mr. Aberasturi:

You have requested an opinion from this office regarding the procedure for filling a vacancy occurring in the office of the county assessor.

FACTS

The office of Lander County Assessor has recently become vacant due to the death of the assessor. The office of county assessor has not been designated "nonpartisan."

[NRS 245.150](#) requires the clerk of the board of county commissioners to certify to the Secretary of State that a vacancy has occurred in a county office and the county commissioners declare the office vacant. [NRS 245.160](#). The procedure for filling the vacancy is found in [NRS 250.040](#) which provides as follows:

In case of a vacancy in the office of the county assessor . . . the board of county commissioners shall appoint some suitable person possessing the qualifications of an elector, residing within such county, to fill the vacancy. The person thus appointed shall give bond and take the oath of office prescribed by law that is required of county assessors elected by the people, and shall hold his office until the next ensuing biennial election.

The office of county assessor would not normally appear on the ballot in 1996. The official declaration of the vacancy did not occur until after the statutory close of filing, June 4, 1996. [NRS 293.177](#)(1).

QUESTION ONE

May the county commissioners consider the political party of the applicants who apply to fill the position of county assessor?

ANALYSIS

The language in [NRS 250.040](#) is clear as to the qualifications of a suitable person to be appointed as county assessor. The person must be a qualified elector and must reside within the county. A "qualified elector" is defined in article 2, § 1 of the Nevada Constitution and is not synonymous with "qualified voter." *Caton v. Frank*, [56 Nev. 56](#), 71-72, 44 P.2d 521 (1935); *State ex rel. Schur v. Payne*, [57 Nev. 286](#), 291-92, 62 P.2d 921 (1937). Registering to vote is not a criterion to be a qualified elector. *Id.*

Membership in a political party is not a qualification for a person to be appointed as the county assessor.

CONCLUSION TO QUESTION ONE

The county commissioners may not consider the political party of the applicants who apply to fill the position of county assessor.

QUESTION TWO

Must the vacancy be filled in the general election set in November 1996?

ANALYSIS

[NRS 250.040](#) is clear the person appointed county assessor will only hold the position until the next biennial election. The next biennial election is the general election in November 1996. The county commissioners can fill the vacancy by appointment, but the appointee will only hold the position until the general election. As a practical matter, the appointee will hold office until January 6, 1997. [NRS 250.010](#)(2) and 245.170.

The person elected county assessor at the general election in November 1996 will hold office for the remainder of the unexpired term. [NRS 250.010](#)(2); Op. Nev. Att'y Gen. No. 237 (November 9, 1918).

CONCLUSION TO QUESTION TWO

The office of county assessor must be filled by election at the general election in November 1996.

QUESTION THREE

What are the procedures for candidates to use to place their names on the general election ballot?

ANALYSIS

Normally, a candidate files a declaration of candidacy with the appropriate filing officer. The filing deadline for major party candidates to file a declaration of candidacy was June 4, 1996. [NRS 293.177](#)(1). The filing deadline for minor party candidates to file a declaration is July 3, 1996. [NRS 293.1725](#)(3). And the deadline for independent candidates is also July 3, 1996. [NRS 293.200](#)(10).

Since the vacancy was certified after the close of filing for major party candidates, the procedure outlined in [NRS 293.165\(1\)](#) should be followed for major parties to nominate a candidate for this office. The county central committee for the major parties may designate a candidate whose name will appear on the general election ballot. This designation must be made by September 10, 1996. [NRS 293.165\(5\)](#).

Minor parties which are qualified to place names of candidates on the general election ballot pursuant to [NRS 293.1715\(2\)\(a\)](#) or (b) may nominate a candidate by submitting the name of the candidate to the Secretary of State by June 28, 1996. [NRS 293.1725\(1\)\(b\)](#). The candidate must then file a declaration of candidacy by July 3, 1996. [NRS 293.1725\(3\)](#).

Other minor parties not qualified for ballot access may nominate a candidate by submitting the name of the candidate to the Secretary of State by June 28, 1996, and following the petition procedure in [NRS 293.1715](#). The petition for minor party ballot access must be submitted for signature verification by July 11, 1996. [NRS 293.172\(1\)\(c\)](#).

Independent candidates may also file for this office. An independent candidate must file a declaration of candidacy by July 3, 1996, ([NRS 293.200\(10\)](#)) and submit an independent candidate petition for signature verification to the county clerk by July 11, 1996. [NRS 293.200\(2\)](#) and (4); [NRS 293.1276-.1279](#).

CONCLUSION TO QUESTION THREE

The procedures for candidates to use to place their names on the general election ballot are as follows: major party candidates are nominated by the major party county central committee by September 10, 1996; minor party candidates file a declaration of candidacy by July 3, 1996, (if the minor party is not qualified for ballot access, a minor party petition must also be submitted by July 11, 1996); and independent candidates must file a declaration of candidacy by July 3, 1996, and submit an independent candidate petition by July 11, 1996.

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Deputy Attorney General

OPINION NO. 96-17TAXES; LOCAL GOVERNMENT; PUBLIC UTILITIES; FEES: The state and its agencies are immune from paying the franchise taxes or fees imposed by local governments on public utility companies providing services within the county or incorporated city pursuant to [NRS 244.335\(1\)\(b\)](#) and [NRS 268.095\(1\)\(a\)](#) and billed to the state as a customer of the utility in the absence of a specific statutory waiver of that immunity. The state and its agencies are not immune from bearing the economic burden of a franchise fee imposed on a utility under the provisions of [NRS 709.110](#) and [NRS 709.230](#).

Carson City, July 1, 1996

Mr. John P. Comeaux, Director, Department of Administration, Capitol Complex, Carson City, Nevada, 89710

Dear Mr. Comeaux: