It is concluded by this office that additional rules and regulations are not needed.

CONCLUSION

Persons in the employ of a person who is registered with the United States Securities and Exchange commission or who is a member of the National Association of Securities Dealers, Inc., need not be registered pursuant to NRS Chapter 90.

No distinction is to be made between "agents" who are registered representatives of the National Association of Securities Dealers, Inc., and those who are not.

The Secretary of State as administrator of Chapter 90 of NRS has discretion in determining the detail of rules and regulations to be adopted pursuant to the Nevada Administrative Procedures Act, Chapter 362, Statutes of Nevada 1965.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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333 Irrigation Districts; Election Resulting in a Tie—In the event of a tie vote resulting from the election held for the purpose of electing a director to the board of directors of an irrigation district which is located in three counties, the Legislature shall elect one of such persons receiving the highest and equal number of votes to fill the office pursuant to Chapter 286, Statutes of Nevada 1965.

Carson City, April 28, 1966

Honorable Grant Davis, *District Attorney, Churchill County, Fallon, Nevada*

STATEMENTS OF FACTS

Dear Mr. Davis: You request from this office an opinion as to the proper course of action that should be taken by the Board of Directors of the Truckee-Carson Irrigation District following a recent election in which two nominees tied for the office of director. The election was held pursuant to NRS 539.115 through NRS 539.157.

ANALYSIS

Prior to April 3, 1965, the only laws in the State of Nevada relating to tie votes were found in Article 5, Section 4, of the constitution of the State of Nevada and NRS 293.400. Neither of these provisions, as they then stood, supplied an answer to your question. On the aforementioned date, Chapter 286, Statutes of Nevada 1965, was approved and sheds some light on our present inquiry. It reads:

Section 1. NRS 293.400 is hereby amended to read as follows:

293.400 1. If, after the completion of the canvass of the returns of any election, two or more persons receive an equal and the highest number of votes, the winner shall be determined as follows:

(a) For United States Senator, member of Congress, district or state office, the legislature shall, by joint vote of both houses, elect one of such

(b) For any office of a county, township, incorporated city, city organized under a special charter where such charter is silent as to determination of a tie vote, or district which is wholly located within one county, the county clerk shall summon the candidates who have received the tie votes to appear before him at a time and place designated by him and determine the tie by lot. If the tie vote is for the office of county clerk, the board of county commissioners shall perform the above duties.

2. The summons mentioned in this section shall in every case be mailed to the address of the candidate as it appears upon his affidavit of registration at least 5 days before the day fixed for the determination of the tie vote and shall contain the time and place where such determination will take place.

3. The right to a recount provided in NRS 293.403 shall extend to both candidates in case of a tie.

Sec. 2. This act shall become effective upon passage and approval.

Section 1(b) defines specific procedure to be followed in the event of a tie vote in certain geographic areas. It must be noted, however, that the Truckee-Carson Irrigation District is located in three counties—Churchill, Lyon, and Storey. For this reason, we must resort to an interpretation of this statute. Preceding this, however, we shall see how sister states have resolved similar questions.

There are relatively few cases to be found in point but the rules enunciated by them are:

If there is a statutory remedy governing tie votes in elections, no alternative course may be taken, and if the statutory remedy is by "lot" this is proper. *Heitzman v. Voiers*, 159 S.W. 625 (Ky. 1913); *Omar v. West*, 188 So. 917 (Miss. 1939).

If there are no statutory remedies or if those available do not apply, a tie vote has been held the equivalent to no election and the incumbent of the office holds over until a successor is later elected by a majority. *Thomas v. Wagoner*, 175 P.2d 231 (Okla. 1946).

In Brower v Gray, 68 A.2d 553 (N.J. 1949), it was held that the Republican County Committee was free to nominate any person it so desired as a candidate for Township Committeeman after the primary election resulted in a tie.

A similar result was reached in *Nutwell v. Board of Supervisors of Elections*, 108 A.2d 149 (Md. 1954). It was there held that when the statute providing for the primary election made no provision for a runoff election between two candidates, and there was in fact a tie, the Democratic State Central Committee was to designate one candidate as Democratic nominee.

In *Immel v. Longley*, 338 P.2d 385 (Calif. 1959), it was held that if a tie resulted in the primary election, the names of both candidates are to appear on the ballot at the general election. This case was cited with approval and followed in *Kincaid v. Berg*, 339 P.2d 153 (Calif. 1959).

While the question was not clearly answered, the court in *Prather v. Ducker*, 82 So. 2d 897 (Miss. 1955), indicated that in the event of a tie resulting in a primary election, the two candidates receiving the highest popular vote for such office should have their names submitted as candidates in the second primary.

From an examination of these cases, we see that other states have authorized: *first*, the political party designate which of the tying candidates should be nominated; *second*, both candidates to submit to a second primary; *third*, decide the winner by lot; *fourth*, to allow the incumbent to remain in office; and *fifth*, allow the names of both candidates with equal number of votes to appear on the ballot at the general election.

With these rules and cases in mind, we shall now examine Chapter 286, Statutes of Nevada 1965. A preliminary rule with which we are bound is that provisions of statutes governing the conduct of elections, which have the purpose of securing a complete and enlightened vote or preventing fraud, when failure to comply is capable of influencing the outcome of the election, are mandatory. On the other hand, if a deviation from strict compliance cannot affect the result of the election, the statute is generally held to be directory. See: Sutherland, Statutory Construction, 3rd Ed., Vol. 3, Sec. 5820.

Clearly, Chapter 286, Statutes of Nevada 1965, affects the outcome of the election and, hence, the language contained therein is mandatory. This being the case, Section 1(a) must be control since we are here concerned with an election in a "district." Section 1(b) cannot be applied because the "district" with which we are concerned is not "wholly located within one county."

CONCLUSION

The tie vote resulting in the election of a director of the Truckee-Carson Irrigation District must be resolved pursuant to Chapter 286, Statutes of Nevada 1965, Section 1(a).

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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334 City Ordinances; Applicability to State—A duly enacted ordinance providing for a mandatory service charge of $2.50 for services rendered applies to the State, as it is a valid exercise of the municipality's police power.

Carson City, April 29, 1966

Mr. W.O. Wright, *State Highway Engineer, Department of Highways, Carson City, Nevada*

STATEMENT OF FACTS

Dear Mr. Wright: The City of Wells passed an ordinance requiring, inter alia, that all property owners, tenants, occupants, and residents in the City of Wells pay a mandatory service charge for the collection and removal of garbage, and prohibited any such person from hauling or causing to be hauled garbage form such property. The Department of Highways maintains property known as the Wells Maintenance Yard, and the City of Wells has attempted to collect $2.50 per month for the collection and removal of garbage pursuant to the ordinance. It has been the policy of the employees of the Wells Maintenance Yard to collect and dispose of their own garbage, depositing it at the Wells city dump.

QUESTION

Does the City of Wells have the power, through an ordinance, to collect a mandatory garbage fee from the State?

ANALYSIS

It is provided in 39 Am.Jur., Nuisances, Sec. 35, that filth, refuse, and garbage may constitute a nuisance unless disposed of in a suitable manner an that it is within the power of municipal authorities to enact ordinances providing for the collection and disposal of such matter in such a way as to prevent it from becoming a nuisance. It is held that this is a proper exercise of a municipality's police power. This same rule is enunciated in McQuillin on Municipal Corporations, 3rd Edition, Volume 7, Sec. 24.242, wherein it is stated:

> Municipal collection and disposal of waste products or municipal supervision and regulation of private performance of these functions are within the police power.

The rationale enunciated by McQuillin is that such functions are essential to protect against health menaces, danger of fire, and offensive and unwholesome smells. A recent case standing for the same principle is *Matula v. Superior Court*, 3030 P.2d 871 (Calif. 19557). It has been held *Gomez v. City of Las Vegas*, 239 P.2d 984 (N.M. 1956), that a municipality may enact any measures it deems reasonable for the collection and removal of garbage. When enacting ordinances related to the collection of garbage, such ordinance must be reasonable and not oppressive to any class of individuals, Also *see Terenzio v. Devlin*, 65 A.2d 374 (Penn. 1949).

It has long been held that a municipality has the right to regulate the collection and disposal of garbage in many respects. It may designate which receptacles are proper. *See People v. Penas*, 115 N.Y.S.2d 441 (N.Y. 1952). It may prescribe the time and mode of collection and removal. *See Silver v. City of Los Angeles*, 31 Cal.Rptr. 545 (Calif. 1963). A municipal corporation may prohibit the throwing of garbage on public streets. *See Little v. Dist. of Col.*, 62 A.2d 874 (D.C. 1948). It has been held that individuals do not have a right to haul garbage through the public streets. *See Elliot v. City of Eugene*, 294 P. 358 (Ore. 1930). It has been held that garbage wagons