

Section 278.480 contains a legislative scheme related to the subject of municipal government procedures for the abandonment of streets and alleys. The scope of this statutory scheme is detailed and specific which demonstrates a legislative objective to prohibit municipalities from promulgating or enforcing procedures inconsistent with those delineated by state statute.

Our analysis of the legal issues discussed above convinces the attorney general that the July 10, 1986, opinion of your office correctly advised your client that Nevada law did not authorize the act of the city in requiring compensation for the total abandonment of an alley to an abutting property owner where the alley was obtained by dedication. We trust that this opinion will assist your office in representing the legal interests of the city of Reno.

Sincerely,

BRIAN MCKAY, *Attorney General*

By Dan R. Reaser, *Chief Deputy Attorney General,*
Transportation Division

OPINION NO. 86-19 ELECTIONS; VOTING: [NRS 293.463](#) should be interpreted and applied in a liberal manner in order to achieve its purpose of ensuring that employees have the opportunity to vote. An employee who meets the statute's qualifications, including the impracticability of the employee voting before or after the workday, is entitled to a specified amount of time away from the workplace in which to vote.

CARSON CITY, October 21, 1986

WILLIAM D. SWACKHAMER, *Secretary of State*, Capitol Building, Carson City, Nevada 89710

DEAR MR. SWACKHAMER:

As in the past election years, we have again recently received numerous inquires concerning the interpretation and application of [NRS 293.463](#). In order to provide appropriate guidance on these issues, we are taking this opportunity to provide your office with this opinion.

QUESTION

What is the proper interpretation and application of [NRS 293.463](#)?

ANALYSIS

[NRS 293.463](#) was adopted in 1960 and has never been amended. 1960 Nev. Stat. ch. 157 § 171. The statute states:

1. Any registered voter may absent himself from his place of employment at a time to be designated by the employer for a sufficient time to vote, if it is impracticable for him to vote before or after his hours of employment. A sufficient time to vote shall be determined as follows:
 - (a) If the distance between the place of such voter's employment and the polling place where such person votes is 2 miles or less, 1 hour.
 - (b) If the distance is more than 2 miles but not more than 10 miles, 2 hours.
 - (c) If the distance is more than 10 miles, 3 hours.
2. Such voter may not, because of such absence, be discharged, disciplined or penalized, nor shall any deduction be made from his usual salary or wages by reason of such absence.
3. Application for leave of absence to vote shall be made to the employer or person authorized to grant such leave prior to the day of the election.

4. Any employer or person authorized to grant the leave of absence provided for in subsection 1, who denies any registered voter any right granted under this section, or who otherwise violates the provisions of this section, is guilty of a misdemeanor.

The six qualifying provisions contained in [NRS 293.463](#)(1) and (3) are clearly spelled out. First, only registered voters are affected by the statute. Second, a registered voter must be in a position where “it is impracticable for him to vote before or after his hours of employment.” That is, if the voter cannot complete the act of voting in the time before the workday begins or after the workday ends, it is impracticable for the voter to vote. Third, if it is impracticable for the registered voter to vote, the voter may be absent from the place of employment. Fourth, the voter may be absent from the place of employment for a “sufficient time to vote.” A sufficient time to vote is categorically stated. It is determined by the distance between the place of employment and the polling place. If the distance is (a) two miles or less, the voter is entitled to be absent from the place of employment for one hour, (b) between two and ten miles, the voter is entitled to be absent for two hours, or (c) more than ten miles, the voter is entitled to be absent for three hours. Fifth, the employer may designate the appropriate period of sufficient time during which the voter may be absent from the place of employment. Finally, the voter must request the leave of absence “prior to the day of the election.”

These qualifying provisions are plain, unambiguous, and not subject to construction. *National Tow & Road Service, Inc. v. Integrity Ins. Co.*, 102 Nev. _____, 717 P.2d 581, 583 (1986). Moreover, any construction of [NRS 293.463](#) would be controlled by the intent of the statute. *Thompson v. District Court*, [100 Nev. 352](#), 354, 683 P.2d 17 (1984). The legislature has stated its intent with respect to election laws in [NRS 297.127](#): “This Title shall be liberally construed to the end that all electors shall have an opportunity to participate in elections. . . .” This broadly stated intent encompasses the protective purpose of providing citizens with the opportunity to vote, which purpose must, of course, be imported into [NRS 293.463](#). *Colello v. Administrator, Real Estate Div.*, [100 Nev. 344](#), 347, 683 P.2d 15 (1984).

Alongside the broader proposition is the repeatedly recognized specific intent of statutes such as [NRS 293.463](#) to encourage worker participation in elections. *Day-Brite Lighting, Inc. v. State of Missouri*, 342 U.S. 421, 424, 72 S.Ct. 405, 407, 96 L.Ed. 469, 472 (1952) (“[T]o safeguard the right of suffrage by taking from employers the incentive and power to use their leverage over employees to influence the vote.”); *Benane v. International Harvester Co.*, 299 P.2d 750, 753 (Cal.App.Dep’tSuper.Ct. 1956) (“[A]n increase in election participation and the free exercise of the right to vote.”); *State v. International Harvester Co.*, 63 N.W.2d 547, 553 (Minn. 1954) (“[T]o protect the right of suffrage and guard and promote the general welfare.”); *State v. Day-Brite Lighting, Inc.*, 220 S.W.2d 782, 785 (Mo.Ct.App. 1949) (“That every citizen should be given both the right and the opportunity to vote is a matter of public interest . . . And the purpose or legislative intent was not to financially enrich the voter or to place an unnecessary or unreasonable burden on the employer.”); *Williams v. Aircooled Motors, Inc.*, 127 N.Y.S.2d 135, 137 (N.Y.App.Div. 1954) (“The purpose of the statute is clearly to encourage voting, to make it financially immaterial to a voter whether he works or takes time off.”); Note, *Pay While Voting*, 47 Colum.L.Rev. 135, 137 (1947) (“[T]o stimulate the exercise of the franchise by eliminating the deterrent effect which a loss of income might have on employees.”)

Notably, courts have given little consideration to employer complaints of the economic burdens of lost wages and lost production when those concerns are balanced against the purpose of exercising the fundamental right to vote as well as the acknowledged infrequency of elections. See *State v. Day-Brite Lighting, Inc.*, 240 S.W.2d 886, 892 (Mo. 1951). They have also held that the terms of the statute are a part of the employment contract. *Ballarini v. Schlage Lock Co.*, 226 P.2d 771, 773 (Cal.App.Dep’tSuper.Ct. 1950); *State v. International Harvester Co.*, 63 N.W.2d at 551.

The proper interpretation of [NRS 293.463](#) is to treat it liberally, broadly, in a manner that will ensure working voters have, as is their right under the terms of the statute, the unconstrained

opportunity to exercise the right to vote. The proper application of [NRS 293.463](#) is directly premised on that interpretation. Other factors in the application include the 7 a.m. to 7 p.m. duration of polling under [NRS 293.273](#)(1), the length of a working day, and the distance from the place of work to the polling place. All of these factors are necessarily involved in evaluating whether or not it is impracticable for a particular worker to vote before or after the workday.

For example, an employee working a 12 a.m. to 8 a.m. shift would not find it impracticable to vote after the shift was completed. If, for another example, an employee's workday ends at 4:30 p.m. and the employee, because of the distance from the workplace to the polling place, needs to leave the workplace before that time in order to reach the polling place before 7 p.m., the employee, if the employer should designate time at the end of the shift, is entitled to one, two, or three hours of time absent from the workplace, depending on the distance from the workplace to polling place. Thus, if the workplace is more than ten miles from the polling place, the employee is entitled to leave the workplace at 1:30 p.m. The employer, under the plain language of the statute, may not allow the employee to leave at 4 p.m. and assert that the three-hour period between 4 p.m. and 7 p.m. fulfills the requirements of the statute:

The statute is plain. It says that any person entitled to vote shall *** "be entitled to absent himself from any services in which he is then employed***" How can the employee absent himself from services in which he is employed unless he does so during working hours; during the time in which he is employed? How can the employer "designate" the two hours [in] which the employee may absent himself unless these hours are within the working period? The employer has no control over the employee's hours outside his regular working time. In the case at bar the employer attempted to say to the workmen, "You have ample time to vote after your work shift ends; I designate the three and one-half hours from 4:30 to eight o'clock, the time of the closing of the polls, as the period when you can vote." To hold with this construction would abrogate the statute. The designated time must be two hours when the employee is rendering services to the employer and between the opening and closing of the polls. Both of these requirements must be met, under the plain terms of the statute; and the employee must not be penalized by deduction from his salary or wages because of such absence.

The language of the statute is so plain that we shall not further labor the obvious by discussing it.

Lorentzen v. Deere Manufacturing Co., 66 N.W.2d 499, 501 (Iowa 1954); *cf.* Iowa Code Ann. § 49.109 (West 1973) ("[S]hall be entitled to such time off from his work time to vote as will in addition to his non-working time total three consecutive hours during the time the polls are open"; as amended by 1955 Iowa Acts ch. 69) and Iowa Op. Att'y Gen. No. 190 (October 31, 1950) (showing of necessity for time off required); *accord Benane v. International Harvester Co.*, 299 P.2d at 752 and Cal. Op. Att'y Gen. No. 52-185 (October 18, 1952); *cf.* Cal. Elec. Code § 14350 (West 1977) ("[V]oter may . . . take off enough working time which when added to the voting time available outside of working hours will enable the voter to vote"; as amended by 1976 Cl. Stat. ch. 220).

Although application of the statute to individual fact situations naturally requires an individual assessment of the facts involved, the general principles underlying [NRS 293.463](#) are certain. The statute favors the provision to employees of time away from the workplace in order to exercise the right to vote. That purpose should be the goal borne in mind when particular questions regarding the application of the statute arise.

CONCLUSION

[NRS 293.463](#) is a statute which should be interpreted and applied in a liberal manner in order to achieve its salutary purpose of ensuring that employees have the unfettered opportunity to vote during an election. If it is impracticable for an employee to vote before or after the workday and the employee meets the other qualifying terms of the provision, the plain language of the statute affords the employee a specified amount of time absent from the workplace in which to vote.

Sincerely,

BRIAN MCKAY, *Attorney General*
By BRIAN CHALLY, *Deputy Attorney General*

OPINION NO. 86-20 COURTS; PURCHASING PROCEDURES: Justice and municipal courts not subject to requirements of [NRS ch. 332](#), Local Government Purchasing Act.

CARSON CITY, December 2, 1986

THE HONORABLE NOEL S. WATERS, *Carson City District Attorney*, 208 North Carson Street, Carson City, Nevada 89701-4298

DEAR MR. WATERS:

You have requested an opinion concerning the applicability of the Local Government Purchasing Act ([NRS ch. 332](#)) to the Carson City justice court and municipal court.

QUESTION

Is the purchase of a computer system by the justice and municipal courts subject to the requirements of [NRS ch. 332](#), the Local Government Purchasing Act?

ANALYSIS

[NRS 332.015](#) provides:

For the purpose of this chapter "local government" means:

1. Every political subdivision or other entity which has the right to levy or receive moneys from ad valorem taxes or other taxes or from any mandatory assessments, including counties, cities, towns, school districts and other districts organized pursuant to chapters 244, 309, 318, 379, 450, 473, 474, 539, 541, 543 and 555 of NRS.
2. The Las Vegas Valley Water District created pursuant to the provisions of chapter 167, Statutes of Nevada 1947, as amended.
3. County fair and recreation boards and convention authorities created pursuant to the provisions of [NRS 244A.597](#) to [244A.667](#), inclusive.
4. District boards of health created pursuant to the provisions of [NRS 439.370](#) to [439.410](#), inclusive.

In determining whether or not the justice and municipal courts fall within this provision, the status of both courts must be kept in mind. Justice courts are constitutionally established members of the coequal judicial branch of government. Nev. [Const. art. 6, § 1](#). Municipal courts are also members of the judicial branch:

It is, of course, true that our Constitution does not itself establish municipal courts. It authorized the Legislature to do so. However, once municipal courts