

well so distinguish the assessment element of Question 6 from the tax rate element, and implement the one but not the other for fiscal year 1980-81. Such distinction is conceivably consistent with a prospective interpretation and may well be adopted by our courts. If that distinction is made, fiscal year 1980-81 would then be a transition year, with the assessment roll prepared pursuant to the former statutory mandate and the tax rate calculated pursuant to the new constitutional amendment.

## CONCLUSION

Because our Nevada Supreme Court has specifically proscribed the retroactive application of a constitutional amendment in the absence of express intent to the contrary, because Question 6 contains no such express contrary intent, and because the speculative expenditure of public fund to anticipate passage of the initiative and prepare multiple assessment rolls may force an illegal overexpenditure of certain budgeted functions and thereby expose various county officials to possible criminal sanctions, it is the opinion of this office that Question 6 cannot reasonably be given retrospective interpretation and that the county assessors should prepare but a single assessment roll for fiscal year 1980-81 pursuant to existent law.

Respectfully submitted,

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**OPINION NO. 80-17 Recall Petitions**—Under [NRS 306.015](#), subsection 2, a notice of intent to circulate a recall petition must be signed by three currently registered voters who actually voted in the last preceding general election held in the jurisdiction which elects the officer being recalled. To the extent [NRS 306.020](#), subsection 1 is in conflict with the provisions of Article 2, Section 9 of the Nevada Constitution with regard to the question of the number of signatures required on a recall petition, the provisions of Article 2, Section 9 should be followed. Under Article 2, Section 9 of the Nevada Constitution and [NRS 306.020](#), subsection 1 the total number of voters voting in the preceding general election of the State or of the county, district or municipality from which the officer was elected is to be used as the basis for determining the minimum number of signatures needed on recall petition.

Carson City, May 21, 1980

The Honorable Wm. D. Swackhamer, Secretary of State, Capitol Complex, Carson City, Nevada  
89710

Dear Mr. Swackhamer:

You have requested advice concerning an interpretation of [NRS 306.015](#), subsection 2 and 306.020, subsection 1.

### QUESTION ONE

Does [NRS 306.015](#), subsection 2 require the three signers of a notice to circulate a recall petition to have actually voted at the last preceding general election held in the jurisdiction which elects the officer sought to be recalled?

### ANALYSIS—QUESTION ONE

[NRS 306.015](#), subsection 1 requires persons proposing to recall an elected officer to file a notice of intent to circulate a recall petition. [NRS 306.015](#), subsection 2 provides in subparagraph (2) that the notice of intent shall be:

Signed by three registered voters who actually voted in the state or in the county, district or municipality electing such officer at the last preceding general election.

Taking the statute in its component parts, the law first establishes the status of the three signers of the notice of intent. The notice must be signed by three registered voters. In the opinion of this office this means that the signers must be currently registered voters at the time the notice of intent is signed.

Next, the law identifies with particularity who is eligible to sign the notice. The statute requires the notice to be signed by the aforesaid three presently registered voters “who actually voted in the state or in the county, district or municipality electing such officer \* \* \*.”

In Attorney General’s Opinion 80-4, February 26, 1980, this office stated its opinion that under [NRS 306.020](#), subsection 1 it was not necessary for the persons signing a recall petition to have actually voted in the election which elected the recalled officer to his position. This was based upon a reading of the language of the statute which merely required the petition to be signed “by a number of registered voters” equaling at least 25 percent of the number of voters who actually voted in the election which elected the officer sought to be recalled. It was held that all that the statute did was to establish a base number from a particular year from which the requisite percentage of signatures could be determined. The use of the words “by a number of registered voters” implied, and it was so held by this office in its opinion, that any currently registered voter, regardless of whether he or she actually voted in the election in which the recalled officer was elected to his position, was eligible to sign a recall petition. Attorney General’s Opinion 80-4, supra.

However, [NRS 306.015](#), subsection 2 is dissimilar in language from [NRS 306.020](#), subsection 1 in that the words “by a number of registered voters” is absent from [NRS 306.015](#), subsection 2. Instead, this statute requires in unequivocal language that a notice of intent to circulate a recall petition must be signed by “three registered voters who actually voted” in the preceding general election in the jurisdiction electing the officer sought to be recalled. Thus, in the opinion of this office, the signers of the notice of intent must actually have voted in an immediately preceding general election in order to be eligible to sign the notice.

This brings us to a consideration of the third component in [NRS 306.015](#), subsection 2, that of identifying the election in which these persons must first have voted in order to be eligible to sign the notice of intent. First, they must have voted “in the state or in the county, district or municipality electing such officer \* \* \*.” If the officer in question is a state official, the signers of the notice must have voted in the requisite statewide election in Nevada. If the officer in question

is a county officer, the signers of the notice must have voted in the requisite county election in the county where the officer serves and from which he was elected. The same follows with respect to district or municipal officials who are being recalled. Second, the statute identifies the requisite election as the “*last preceding* general election.” (Italics added.)

It is thus apparent that the signers of the notice need not necessarily have voted in the election during which the recalled officer was elected to his position. General elections occur every two years (see [NRS 293.060](#)), but most officers are elected to four-year terms and some, such as judges, are elected to six-year terms. The officer may thus have been elected to his position at a general election prior to the general election last past. However, the statute requires the signers to have voted only at the *last preceding* general election in the appropriate state, county, district or municipal jurisdiction in which the officer serves.

### CONCLUSION—QUESTION ONE

It is the opinion of this office that under [NRS 306.015](#), subsection 2 a notice of intent to circulate a recall petition must be signed by three currently registered voters who actually voted in the last preceding general election held in the jurisdiction which elects the officer being recalled.

### QUESTION TWO

Is [NRS 306.020](#), subsection 1 in conflict with Article 2, Section 9 of the Nevada Constitution?

### ANALYSIS—QUESTION TWO

Article 2, Section 9 of the Nevada Constitution authorizes the recall of public officers. This provision does not merely establish this principle, but actually goes into detail as to how a recall may be accomplished. Thus Article 2, Section 9 provides that a recall shall be initiated by petition, establishes the number of signatures needed on the petition, provides some details of what the petition shall contain, establishes a timetable for a recall election, describes the ballot, provides for other candidates to run for the office and puts limitations on the number of petitions that can be filed against an officer and when petitions can be filed.

Such detailed provisions indicate that Article 2, Section 9 is self-executing.

A constitutional provision may be said to be self-executing if it supplies a sufficient rule, by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced, and it is not self-executing when it merely indicates *principles*, without laying down rules by means of which those principles may be given the force of law. (Author’s emphasis). 1 Cooley on Constitutional Limitations, 167-168 (8th Ed. 1927). See also *State ex rel. Clark v. Harris*, 74 Or. 573, 144 P. 109, 111 (1914).

Nevertheless, not every detail can be provided for or every problem anticipated in a constitution. Legislation is thus proper to fill in additional details and that is the purpose of Chapter 306 of NRS. Thus, some provisions such as [NRS 306.030](#) and [306.070](#) supply additional details as to the form of the petition and the form of the ballot. Other provision provide for problems not anticipated by the constitution, such as providing a means for signatories to remove their names from the petition or regulating the use of punch card ballots. See [NRS 306.040](#) and [306.060](#). Finally, other provisions merely repeat the provision of the constitution, such as [NRS 306.090](#) and [306.100](#) which repeat the constitution’s limitations on when petitions can be filed and how many can be filed against any officer.

One provision of the statute, however, presents the possibility, under certain circumstances, of being in conflict with the constitution. Article 2, Section 9 provides, in pertinent part, that the number of signatures on a recall petition must be:

not less than twenty-five per cent (25%) of the number who actually voted in the state or in the county, district or municipality electing said officer, *at the preceding general election \* \* \**. (Italics added.)

However, [NRS 306.020](#), subsection 1 provides that the number of signatures on a recall petition must be:

not less than 25 percent of the number who actually voted *in the election by which the officer sought to be recalled was elected to his office*. (Italics added.)

In the opinion of this office the term “the preceding general election” refers to the general election immediately preceding the filing of a recall petition. To the extent that the officer sought to be recalled was elected at the general election immediately preceding the filing of a recall petition, the number of signatures on the petition would be calculated from “the election by which the officer sought to be recalled was elected to his office.” Article 2, Section 9 and [NRS 306.020](#), subsection 1 would not be in conflict under this factual assumption.

However, as noted in the analysis to Question one, while general elections occur every two years, most public officers are elected to four-year terms and some, such as judges, are elected to six-year terms. Thus an officer may have been elected at a general election two to four years prior to the general election immediately preceding the filing of a recall petition. Under this factual assumption, the term “election by which the officer sought to be recalled was elected to his office” would not be the same as the term “the preceding general election.” To this extent, then, [NRS 306.020](#), subsection 1 would be in conflict with Article 2, Section 9 of the Nevada Constitution.

The problem presented by the language of [NRS 306.020](#), subsection 1 is resolved by the fact that Article 2, Section 9 is self-executing with regard to the question of determining the number of signatures which should be on a recall petition. Therefore, any filing officer with whom a recall petition is filed should follow the provisions of Article 2, Section 9 of the Nevada Constitution in determining whether a recall petition has the sufficient number of names. In other words, filing officers must determine if a recall petition contains a number of signatures equal to 25 percent of the number of voters who voted at the immediately preceding general election. In this regard, to the extent that [NRS 306.020](#), subsection 1 would conflict with the provisions of the constitution, Article 2, Section 9 should be followed and not the provisions of [NRS 306.020](#), subsection 1.

## CONCLUSION—QUESTION TWO

It is the opinion of this office that to the extent [NRS 306.020](#), subsection 1 is in conflict with the provisions of Article 2, Section 9 of the Nevada Constitution, with regard to the question of the number of signatures required on a recall petition, the provisions of Article 2, Section 9 should be followed.

## QUESTION THREE

In determining the number of required signatures for a recall petition under Article 2, Section 9 of the Nevada Constitution and under [NRS 306.020](#), subsection 1, is it necessary to consider

only the number of voters voting for or against the recalled officer or the total number of voters voting at the preceding general election?

### **ANALYSIS—QUESTION THREE**

Prior to its amendment in 1970, Article 2, Section 9 established the requisite number of signatures for a recall petition as a number not less than 25 percent of those electors who voted in the state, county, district or municipality electing the officer to be recalled at the preceding election for justice of the Supreme Court. Statutes of Nevada 1967, page 1782 and Statutes of Nevada 1969, page 1663.

Thus, the means for determining the requisite number of signatures for a recall petition, prior to 1970, was not tied to the number of voters voting for or against the officer who was to be recalled, but was established by determining the number of voters from the state, county, district or municipality, in which the officer served, who cast votes in the race for Supreme Court justice.

In 1970, the voters approved an amendment to Article 2, Section 9 which removed the words “for justice of the supreme court” and merely referred to the number of voters who voted at the preceding general election. In discussing this proposed amendment on the floor of the Assembly in 1967, Assemblyman Clinton Wooster stated:

The original bill was requested by the Legislative Counsel to clarify the law regarding the recall of public officers in the constitution. When it was introduced in the committee, we suggested two changes which Mr. McDonald agreed would be an improvement upon the bill. The first is to add “general” to the word “election” so that we know which election we’re talking about. The second is to delete the words “justices of the supreme court” so that we are talking about *the total vote cast* in each election. (Italics added.) Remarks of Assemblyman Clinton Wooster on the Assembly floor, February 10, 1967 from a recording currently stored in the Division of State, County and Municipal Archives of the State Library.

This view is consistent with the requirement of Article 2, Section 9 that one should look to the preceding general election in determining the number of signatures required on a recall petition. As has already been noted, the election at which an officer was elected may not necessarily be the same as the “preceding general election.” Thus when a preceding general election is not the same as the election at which an officer was elected it is impossible to fix the number of signatures on a recall petition as 25 percent of the number who voted for or against the officer, since no one would have been able to vote for or against the officer in such a situation. Twenty-five percent of the total vote cast in the preceding general election of the state or of the county, district or municipality from which the officer was elected, as noted by Assemblyman Wooster, is thus the proper criterion for determining the requisite number of signatures on a recall petition.

### **CONCLUSION—QUESTION THREE**

It is the opinion of this office that under Article 2, Section 9 of the Nevada Constitution and [NRS 306.020](#), subsection 1, the total number of voters voting in the preceding general election of the state or of the county, district or municipality from which the officer was elected is to be used as the basis for determining the minimum number of signatures needed on a recall petition.

Respectfully submitted,

RICHARD H. BRYAN