

Brian McKay—Republican (Elected)
28th Nevada Attorney General
Term 1: January 3, 1983–January 5, 1987
Term 2: January 5, 1987–January 7, 1991

Biography

Brian McKay, the oldest of three boys, was born in Billings, Montana, in 1945. After graduating from high school, McKay enlisted in the U. S. Air Force and served from 1966-1969 in North Carolina and South Korea. In 1967, he married Karen Leslie in New York State. After the service, he signed up for college and graduated from Colgate University with a B. A. degree in 1971. Then, he enrolled in law school, and in 1974, he graduated from Union University, Albany Law School with a J.D. degree.

After he passed the Nevada State Bar and prior to becoming Nevada Attorney General, McKay worked for Attorney General Robert List as a Deputy Attorney General from 1975-1979. He represented the state in water and energy issues for the Colorado River Commission; he served as Chief Legal Counsel to the Nevada Equal Rights Commission; and was special counsel for the University of Nevada.

In 1975, McKay was admitted to practice before the U.S. District Court, District of Nevada and U.S. Court of Appeals, Ninth Circuit and later in 1979, he was admitted to practice before the U.S. Supreme Court.

During his time as Attorney General, McKay's memberships included the Washoe County Bar Association, State Bar Nevada, the National Association of Attorneys General (NAAG), and the American Bar Association. In 1987, he chaired the Conference of Western Attorneys General. McKay coordinated Nevada's efforts and the NAAG during the creation of the Indian Gaming Regulatory Act (IRGA). Subsequently, he assisted various states and the National Indian Gaming Commission in establishing appropriate regulations for the administration of the IGRA. Additionally, he served on the FBI's National Crime Information Center Advisory Policy Board and "assisted in overseeing operations of the computerized system which allows law enforcement agencies nationwide to exchange criminal justice information."¹

After his two terms as Attorney General, he served as a member of the Federal Trade Commission working group and as the chair of the Nevada Republican Party from 1992-1995. He also was a member of the Board of Trustees of the International Association of Gaming Attorneys (1992-2002), and was the chair of the Nuclear Waste Committee and the Commission on Nuclear Projects for Nevada (1994-2005).

In "retirement," McKay held several important positions. In 1990, McKay was a partner in Lionel Sawyer & Collins of Reno and Las Vegas, Nevada, in the administrative law and litigation departments. From 1993-2005, McKay served as a trustee of the Hotel Employees and Restaurant Employees International Union Health and Welfare Fund

¹ Our Campaigns. <https://ourcampaigns.com/CandidateDetail.html?CandidateID=39889>. Accessed November 1, 2018.

Trust. He also served as a member of the Board of Directors of the National Center for Responsible Gaming.

In 1994, McKay became the Senior Vice President and General Counsel of International Game Technology (IGT) and was responsible for all legal, compliance, and regulatory matters worldwide. McKay retired from IGT on October 31, 1999.

In December 2005, McKay and his wife Karen became residents of Savannah, Georgia, having spent their professional careers in Nevada.

During his time as Attorney General, McKay filed several lawsuits on behalf of the state. One of the major cases McKay filed was against the federal government's imposition of the 55 mph speed limit on Nevada's highways. The following article about the lawsuit appeared in *The Christian Science Monitor*:

**Bucking the 55 m.p.h. speed limit. Nevada takes its case
for faster-paced driving to court**

July 7, 1986

By Cheryl Sullivan - Staff writer of *The Christian Science Monitor* (San Francisco).

Nevada is going like 60 to challenge the federal speed-limit law -- well, make that 55. The state is the first to fight the 55-mile-per-hour speed law in court, arguing that the federal government has no right to impose such a limit. Nevada says that power is constitutionally reserved for the states.

The lawsuit, filed last week in federal district court in Reno, comes at a time when a number of states face the loss of federal highway money because of noncompliance with the speed law.

Nevada, too, is perilously close to noncompliance. Last year, state and federal road checks showed 49.9 percent of motorists were driving faster than 55 m.p.h. on Nevada highways. If 50 percent of motorists are driving too fast, the US Department of Transportation (DOT) will declare a state in noncompliance and threaten to cut its federal highway dollars.

To Nevada Attorney General Brian McKay, "the federal government's actions are best described as pure coercion." He says the DOT is using "the power of the purse" to force states to comply with an unconstitutional law.

Last week, Nevada very gingerly tested its own power -- by establishing a 70-m.p.h. speed limit on a 33-mile section of Interstate 80.

But before motorists could put pedal to the metal, the DOT notified Nevada it would cut the state's \$66 million for road construction. Under terms of the law approved by the 1985 state legislature, the limit would be automatically reduced to 55 m.p.h. if the DOT acted.

Last week's episode leaves Nevada transportation director Garth Dull with 'a couple of souvenirs' – two road signs reading 'Speed Limit 70 m.p.h.' But it also set the stage for the lawsuit, he says.

'There are an awful lot of people in Nevada and the rest of the nation who feel 55 is just too slow,' Mr. Dull says. His department's study showed the 33-mile desert stretch on I-80 'is straight, flat, and quite capable of handling speeds up to 70 m.p.h.,' he adds.

Before Nevada lawmakers enacted the 55 m.p.h. speed law in 1975, the state had no posted speed limits on rural highways. But the first pinch of the energy crisis was being felt, and the federal government urged states to reduce speed limits to conserve gasoline.

Now, with the price of gasoline under \$1 a gallon in most of the country, the prevailing arguments have shifted from conservation to safety.

'When you're talking about safety, regardless of what people say, speed kills,' says Tony Horner, division administrator of the Federal Highway Administration in Nevada. 'It doesn't matter what kind of road you're driving on.'

He cites a National Science Foundation study that indicates an additional 500 people would be killed in traffic accidents each year if the national speed limit were raised from 55 to 65 m.p.h. Of 248 traffic-related deaths in Nevada last year, half were single-car accidents 'where people just lost control and went off the road,' Mr. Horner says.

Still, the 55 m.p.h. speed law remains generally unpopular among motorists, especially in the rural West where roads are wide, uncongested, and designed to safely accommodate traffic traveling 70 or 80 m.p.h. The attorney general's office in Nevada reports receiving phone calls from citizens in Oklahoma, Texas, Arizona, and California, supporting the challenge.

Two states, Arizona and Vermont, are particularly glad to see Nevada take legal action against the DOT. They are the first states ever to be found in noncompliance with the 55 m.p.h. speed law – and are close to losing millions of federal dollars for road construction and maintenance.

'We think it's illogical to take away money for programs that are designed to improve highway safety,' says Paul McGonigle, spokesman for the Arizona Department of Transportation.

Arizona could lose up to \$5 million, or 10 percent of its budget for improvement of primary, secondary, and urban roads.

'Ultimately, the dispute comes back to the age-old question of states' rights vs. federal authority. States, not the federal government, are best able to determine safe speeds on highways within their jurisdictions,' says Kay Serrano of the Nevada attorney general's office.

It's a constitutional question, officials say, which is likely to be finally decided by no lower authority than the US Supreme Court.²

In October 1990, McKay filed a lawsuit against Department of Energy Secretary James D. Watkins regarding Yucca Mountain:

State officials have blasted the federal Department of Energy for a maneuver to change a law that has been used by the state to slow the DOE's research for a nuclear dump at Yucca Mountain, Nevada.

Gov. Bob Miller and Attorney General Brian McKay released copies of a letter from Energy Secretary James Watkins.

Miller stated, 'This letter is proof that the DOE wants to circumvent the court system and also the right that Nevada has to fight a high-level nuclear waste facility that would be a hazard to the citizens of this state.'

McKay said Watkins' letter . . . 'is typical of the way the federal government has treated Nevada since the very beginning of its search for a high-level nuclear waste repository.'

² *The Christian Science Monitor*. <https://www.csmonitor.com/1986/0707/aspeed.html> Cheryl Sullivan. July 7, 1986. Accessed October 27, 2018.

'The federal government has determined that it can't live by the law that currently exists, so it has decided that it will try to change the law so that it can carry out its desire to jam the repository down our throat.'

'This is federal government action at its worst,' McKay said, 'and those folks in Washington, D.C., should hang their heads in shame.'

McKay already has announced plans for a U.S. Supreme Court appeal and a bid for a stay of a Sept. 19 [1990] ruling by the 9th Circuit Court of Appeals that exempted the federal government from a state law barring the dump.

The case involves Nevada's refusal to issue three environmental permits for DOE studies at Yucca Mountain. The state contends no further work at the site is authorized because of the 1989 state legislative action and Congress' failure to respond.

A 1987 federal law allows a state to disapprove a nuclear dump site subject to a congressional override. But the 9th Circuit said Nevada's legislative action was premature because no final selection has been made.

Nevada argued it was entitled to object now because Yucca Mountain, 100 miles northwest of Las Vegas, was the only site named for consideration by Congress in the 1987 law.³

Primary Election of 1982

On September 14, 1982, Brian McKay won the Republican Primary by 25,745 votes. Of the 68,255 votes cast, Brian McKay received 41,909 (61%) votes to "None of these Candidates" 16,164 (24%) votes, and Marc Risman's 10,182 (15%) votes.⁴

General Election of 1982

On November 2, 1982, Brian McKay was elected as Nevada's 28th Attorney General by 28,823 votes. Of the 237,283 votes cast, McKay (Republican) received 130,033 (55%) votes to Mahlon Brown's (Democrat) 101,210 (43%) votes, and "None of these Candidates" 6,070 (2%) votes.⁵

³ *Deseret News*. "Nevada Blasts DOE Over -N-Dump Site." October 16, 1990. <https://www.deseretnews.com/article/127324/NEVADA-BLASTS-DOE-OVER-N-DUMP-SITE-MANEUVER.html>. Accessed October 27, 2018.

⁴ *Political History, 2006*. Page 450.

⁵ *Political History, 2006*, page 403.

General Election of 1986

On November 8, 1986, the voters reelected Brian McKay as Attorney General by 111,234 votes. McKay (Republican) received 181,523 (70%) votes to Roy Woofter's (Democrat) 70,289 (27%) votes, and "None of these Candidates" 6,570 (3%) votes.⁶

Office Administration and Duties

The Nevada Attorney General's operating budgets for the 1983–1985, 1985–1986, 1986–1987, 1987–1988, and 1989–1991 state bi-annual fiscal periods were as follows:

1983-1985 Operating Budget – All funds were appropriated from the State General Fund; Highway Fund; and Insurance Fund

\$1,378,080	1983-84	Support of Office of the Attorney General
\$1,403,366	1984-85	Support of Office of the Attorney General
\$75,000	1983-84	Special Litigation Account of Attorney General
\$75,000	1984-85	Special Litigation Account of Attorney General
\$324,217	1983-84	Attorney General Administrative Fund
\$326,211	1984-85	Attorney General Administrative fund
\$1,427,155	1983-84	Attorney General Administration
\$1,443,152	1984-85	Attorney General Administration
\$50,271	1983-84	Private Detectives' Licensing
\$50,501	1984-85	Private Detectives' Licensing
\$64,325	1983-84	Crime Prevention
\$64,554	1984-85	Crime Prevention
\$502,953	1983-84	Consumers' Advocate
\$512,117	1984-85	Consumers' Advocate

(Statutes of Nevada 1983, Chap. 453 and 580; Sections 1 and 52; Pages 1175, 1185, and 1684).

Employee Salaries

\$62,500	Attorney General
\$39,960 – \$43,617	Chief Deputies
\$28,080 – \$37,800	Deputies
\$27,000	Chief Investigator
\$25,438	Investigators

⁶ *Ibid.*, page 408.

1985-1986 Operating Budget

\$4,853,185 - \$4,895,915	Attorney General Administration
\$2,030,807 - \$2,833,677	Tort Claim Fund
\$2,034,482 - \$1,944,609	Fraud Control Unit for Industrial Insurance
\$757,829 - \$768,462	Medicaid Fraud Unit
\$649,770 - \$683,468	Insurance Fraud Unit
\$2,500 - \$2,500	Crime Prevention & Missing Children Program
\$103,971 - \$103,971	Special Fund
\$47,458 - \$50,814	Office of the Extradition Coordinator
\$316,969 - \$248,352	Private Investigators' Licensing Board
\$1,421,144 - \$1,505,121	Consumer's Advocate

1986-1987 Operating Budget

\$4,059,833 - \$4,358,572	Attorney General Administration
\$3,287,241 - \$3,291,897	Tort Claim Fund
\$1,610,056 - \$1,372,774	Workers Compensation-Fraud Unit
\$151,000	Special Fund
\$55,000 - \$55,000	Office of the Extradition Coordinator
\$216,499 - \$510,630	Private Investigators' Licensing
\$1,220,373 - \$1,225,750	Consumer's Advocate

1987-1988 Operating Budget

\$5,098,718 - \$4,905,089	Attorney General Administration
\$4,621,439 - \$5,321,143	Tort Claim Fund
\$1,819,863 - \$1,832,813	Fraud Control Unit for Industrial Insurance
\$861,869 - \$830,692	Medicaid Fraud Unit
\$829,261 - \$810,481	Insurance Fraud Unit
\$13,336 - \$13,365	Special Fund
\$77,300 - \$77,300	Office of the Extradition Coordinator
\$392,339 - \$412,279	Private Investigators' Licensing
\$1,945,162 - \$1,849,688	Consumer's Advocate

1989-1991 Operating Budget

Employee Salaries

\$62,500	1989 Attorney General Salary - until first Monday in January 1990.
\$85,000	1990 Attorney General Salary until first Monday in January 1991.
\$45,500 - \$66,800	1989-1990 Deputies' Salary
\$27,700 - \$39,200	1989-1990 Investigators Salary

(Statutes of Nevada 1989, Chapter 612, Section 1, Page 1360, and Statutes of Nevada 1989, Chapter 796, Section 9, Page 1898).

Employee salaries

\$77,463	Assistant Attorney General
\$71,267 - \$74,365	Chief Deputies
\$64,755	Senior Deputy Attorney General
\$57,439	Deputy Attorneys General
\$43,500	Chief Investigator
\$38,657	Investigators

(Statutes of Nevada 1991, Chapter 495, Section 1, Page 1507).

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\$4,621,439 - \$5,321,143	Tort Claim Fund
\$1,819,863 - \$1,832,813	Fraud Control Unit for Industrial Insurance
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(Statutes of Nevada 1989, Chapters 608 and 611; Sections 1, 4, and 49; Pages 1347, 1321, and 1355).

The 1983 Legislature, in its 62nd Session, added these duties to the Nevada Attorney General's Office:

- The Attorney General shall be the attorney for the California-Nevada Interstate Compact Commission of the State of Nevada.
- The Attorney General shall designate one of his deputies to be counsel and attorney for the Department of Conservation and Natural Resources. (Statutes of Nevada 1983, Chapter 307, Section 1, Page 748).

The 1985 Legislature, in its 63rd Session, added these duties to the Nevada Attorney General's Office:

- The Attorney General may prepare quarterly a bulletin containing information obtained from the investigation division of the Department of Motor Vehicles concerning missing children in this state. The bulletin must contain the name and last known address of the missing child and any other information that the Attorney General considers necessary. The Attorney General may distribute a copy of the bulletin, free of charge, to each law enforcement agency in this state, the Department of Education, each school district, and every private elementary or secondary school. He may, for a reasonable fee, provide a copy of the bulletin to any other person or governmental agency;
- The Attorney General shall establish a program to coordinate activities and information in this state concerning missing children and assist any public or

private school in establishing a program of information about missing children by providing materials, publications and instructional aids; and

- The Attorney General shall, on or before January 31 of each year, prepare and submit a report to the governor and the director of the Legislative Counsel Bureau concerning programs of information about missing children in this state and the identification and investigation of cases involving missing children. The director of the Legislative Counsel Bureau shall make the report available to each senator and assemblyman. (Statutes of Nevada 1985, Chapter 658, Sections, 3, 4, and 5; Pages 2165 and 2166).
- The Attorney General shall act as the attorney of the Division of Mortgage Lending of the Department of Business and Industry in all actions and proceedings brought against or by the division. (Statutes of Nevada 1985, Chapter 576, Section 2, Page 1807).
- The Attorney General shall use the money in the revolving special revenue fund to pay the expenses involved in the investigation of racketeering activity and any civil action or criminal prosecution related thereto. He may distribute money in the fund to other law enforcement agencies in this state for similar use. (Statutes of Nevada 1985, Chapter 338, Section 1, Page 973).
- Upon payment of the license fees authorized by law, the Department of Motor Vehicles shall furnish to the secretary of state, the state treasurer, the state controller and the attorney general special license plates ... The department shall issue such number of license plates as may be necessary for all private cars owned by these public officers. (Statutes of Nevada 1985, Chapter 319, Section 1, Page 933).

The 1987 Legislature, in its 64th Session, added these duties to the Nevada Attorney General's Office:

- The state registrar shall not, without a court order to do so, issue to any person or governmental entity an original or copy of the certificate of birth of a child who is listed as missing in the bulletin prepared by the Attorney General. The state registrar shall inform the Attorney General or the investigation division of the Department of Motor Vehicles and Public Safety of the name and identifying information, dates, and circumstances of any person or governmental entity requesting the certificate of birth of such a child without a court order and any other information, which might be helpful. (Statutes of Nevada 1987, Chapter 639, Section 1, Page 1495).

The 1989 Legislature, in its 65th Session, added these duties to the Nevada Attorney General's Office:

- The Attorney General may appear before a grand jury, when, in his opinion, it is necessary to present evidence of the commission of a crime or violation of any law of this state; examine witnesses before a grand jury; and thereafter conduct proceedings.

- At the direction of the governor, or when, in the opinion of the Attorney General, it is necessary [to protect and secure the interests] of the state, the Attorney General shall investigate and prosecute any crime committed by a person:
 - confined in or committed to an institution or facility of the department of prisons;
 - acting in concert with, whether as a principal or accessory, any person confined in or committed to an institution or facility of the department of prisons; or
 - if the crime involves an institution or facility of the department of prisons or a person confined in or committed to such an institution or facility. (Statutes of Nevada 1989, Chapter 60, Section 1, Page 162).
- The Attorney General shall act as attorney for the Division of Real Estate, Department of Commerce, in all actions and proceedings brought against or by the division. (Statutes of Nevada 1989, Chapter 392, Section 22, Page 825).
- The Attorney General is an ex officio nonvoting member of the Commission on Substance Abuse Education, Prevention, Enforcement, and Treatment. (Statutes of Nevada 1989, Chapter 860, Section 3, Page 2069).
- The Department of Transportation is created and administered by a seven-member board, including the Attorney General. (Statutes of Nevada 1989, Chapter 603, Section 3, Page 1296).