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# Item 13

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July 11, 2013

Senator Mo Denis  
3204 Osage Avenue  
Las Vegas, NV 89101-1838

Dear Senator Denis:

You have asked this office whether section 3 of Assembly Bill No. 65 of the 2013 Legislative Session (A.B. 65) prohibits the Clark County District Board of Health from appointing alternates to serve in place of members who are unavailable to attend a meeting of the Board. A.B. 65, which makes various changes to provisions relating to public meetings and public bodies, was passed by both Houses of the Nevada Legislature and approved by the Governor. The bill became effective on July 1, 2013.

Section 3 of A.B. 65 adds a new section to Chapter 241 of NRS governing meetings of state and local agencies. Specifically, section 3 provides:

***1. A member of a public body may not designate a person to attend a meeting of the public body in the place of the member unless such designation is expressly authorized by the legal authority pursuant to which the public body was created. Any such designation must be made in writing or made on the record at a meeting of the public body.***

***2. A person designated pursuant to subsection 1:***

***(a) Shall be deemed to be a member of the public body for the purposes of determining a quorum at the meeting; and***

***(b) Is entitled to exercise the same powers as the regular members of the public body at the meeting.***

As a general rule of statutory construction, a court presumes that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language

and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995).

Section 3 of A.B. 65 specifically prohibits a member of a public body from designating an alternate person to attend a meeting in place of the member unless such a designation is specifically authorized by law. The term "member" is not defined for purposes of section 3; however, the Nevada Supreme Court does not require a specific definition for a word used in a statute if the word has "a well-settled and ordinarily understood meaning." State v. Hughes, 127 Nev. Adv. Op. 56, 261 P.3d 1067, 1069 (2011). Such a meaning may be established by reference to a dictionary definition. The Merriam-Webster Dictionary defines "member" as "one of the individuals composing a group." Merriam-Webster's Collegiate Dictionary 724 (10th ed. 1997). Thus, the plain meaning of the term "member" includes a person who is appointed or elected to serve as a member of a public body. Section 3 is silent, however, regarding whether the public body itself is similarly limited in appointing an alternate person to attend a meeting in place of a member who is not able to attend a meeting of the public body.

In addition to the plain meaning rule discussed above, it is also a well-established principle of statutory construction that the Legislature is not presumed to intend that which the Legislature could have easily included within a statute, but chose not to include within the statute. *See, e.g., Palmer v. Del Webb's High Sierra*, 108 Nev. 673, 680 (1992) (Young, J., concurring) (explaining that the Legislature could have easily provided a definition of occupational disease had it chosen to do so); Joseph F. Sanson Inv. Co. v. 268 Ltd., 106 Nev. 429, 432-33 (1990) (quoting In re 268 Ltd., 75 B.R. 37 (Bankr. D. Nev. 1987)) (explaining that the Legislature could have easily worded a statute so as to make attorney's fees in addition to, instead of included within, the expenses of a trust). It would have been a simple matter for the Legislature to have made the prohibition on designating a person to serve in place of a member of a public body in A.B. 65 applicable to any such designation. Instead, the provision specifically prohibits such a designation only by a member of the public body. This may have been because the issues raised by a member making such a designation are different than those raised when a public body makes such a designation. For example, public bodies generally have authority to establish the manner in which to carry out their duties. NRS 439.364 sets forth that authority for the Clark County District Board of Health. It provides:

1. The district board of health may meet at such times and in such locations as the board determines by resolution.
2. Special meetings may be held upon notice to each member of the district board of health as often as and in such places within the county as the needs of the board require.
3. A majority of the members of the district board of health constitutes a quorum.

4. The district board of health shall adopt written policies and procedures for administering the board and maintaining its programs, projects and activities.

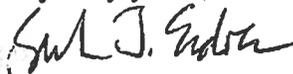
Therefore, the district board of health is directed to adopt written policies and procedures for its own governance, subject to any limitations provided by law. Because section 3 of A.B. 65 prohibits a member of a public body from designating another person to attend a meeting of a public body in place of that member, it is the opinion of this office that the policies and procedures of the Clark County District Board of Health may not authorize such a practice.

During the hearing on A.B. 65 before the Assembly Committee on Government Affairs, the proponents noted that there has been little guidance regarding the appointment of designees to serve at meetings of public bodies. Proponents stated that it would be easier to just prohibit designees altogether; however, they acknowledged that because public bodies need to have a quorum present to conduct business, public bodies may need to appoint alternates in order to carry out important business. The proponents noted that the current law did not provide guidance regarding when a member of a public body may appoint a designee to take his or her place on the public body. Therefore, they stated that section 3 was included in A.B. 65 to provide such clarification. Minutes of the Assembly Committee on Government Affairs, February 7, 2013, at p. 47. Notably, the issue of alternates appointed by a public body or the entity that makes the initial appointment was not discussed. Instead, the focus was on instances when members designate a person to serve when they cannot attend meetings. Therefore, section 3 of A.B. 65 clarified the issue regarding appointments by members. The issue regarding appointments by public bodies or appointing authorities or anyone other than a member instead was left for the public body to determine.

Because the plain meaning of section 3 of A.B. 65 limits its provisions to appointments by members and because the provision could easily have been drafted instead to include appointments by the public bodies and others, it is the opinion of this office that section 3 of A.B. 65 does not limit a public body such as the Clark County District Board of Health from appointing alternates to serve at meetings. Rather, the Board may provide for such appointments in the written policies and procedures adopted pursuant to NRS 439.364.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,



Brenda J. Erdoes  
Legislative Counsel

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Chief Deputy Legislative Counsel