

ADAM PAUL LAXALT
Attorney General



WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

KETAN D. BHIRUD
General Counsel

April 17, 2017

OPINION NO. 2017-06

CITY COUNCIL; MUNICIPAL JUDGE; CITY OFFICERS; CITIES: A general law city is entitled to adopt its own ordinances necessary for the proper functioning of municipal government and the management of city affairs. The provisions of NRS Chapter 266 and local ordinances adopted as a result of home rule must be read in a manner consistent with NRS Chapter 5 as it pertains to the office of municipal judge.

Charles H. Odgers, Esq.
City Attorney, City of Ely
480 Campton Street
Ely, Nevada 89301

Dear Mr. Odgers:

You have requested an opinion from the Office of the Attorney General, pursuant to Nevada Revised Statute (NRS) 228.150, regarding the requirements governing an appointment to the office of municipal judge of the city of Ely, a general law city.

Since Ely is a general law city with a population of fewer than 5,000 residents, its mayor, with the advice and consent of the city council, may appoint city officers to positions established by the city council.¹ The city council prescribes the powers, duties, and compensation of all officers, except as otherwise provided by law, and enjoys the discretion to require that a city officer reside within city limits as a condition of eligibility for an appointive office.² Among the

¹ NRS 266.055(3); NRS 266.390(1); NRS 266.405(3).

² NRS 266.390(3); NRS 266.400.

city officers who may be appointed by the mayor is the municipal judge.³

On or about December 21, 1999, the Ely city council adopted City Ordinance 539, which is codified at Title 1, Chapter 6, Article G, of the Ely City Code. The ordinance states that the municipal judge shall serve at the pleasure of the mayor and city council, and that the municipal judge has the duties established in NRS 266.550 through 266.590, inclusive. The adopted ordinance does not contain a residency requirement for the position of municipal judge.

There was a vacancy for municipal judge, and the mayor and city council have selected a candidate. The candidate does not reside within the corporate city limits and is not an elector in the city. The candidate, however, is a resident of unincorporated White Pine County.

QUESTION

Must a municipal judge, if appointed pursuant to NRS 266.405(3), meet the residency requirements applicable to an elected municipal court office as set forth at subsection 2 of NRS 5.020?

SUMMARY CONCLUSION

As it relates to the one-year period of residency preceding a municipal judge's term in office, subsection 2(b) of NRS 5.020 applies by its own terms to a judge who is elected and not appointed to the office of municipal judge. Insofar as it may be construed to establish a residency requirement that applies during or at the commencement of the judge's term, subsection 2(c) of NRS 5.020 must be construed in harmony with subsection 1 of NRS 5.020 and NRS 266.400. These provisions authorize the city council of a general law city to dispense with a residency requirement.

ANALYSIS

By its title, NRS 5.020 applies to the election of municipal judges. The statute provides in pertinent part:

1. *Except as provided in subsection 3 and NRS 266.405*, each municipal judge must be chosen by the electors of the city within which the municipal court is established on a day to be fixed by the governing body of that city. The term of office of a municipal judge is the period fixed by:
 - (a) An ordinance adopted by the city if the city is

³ NRS 266.405(1); the powers and obligations of a general law city municipal court are set forth in NRS 266.050-.595.

organized under general law; or

(b) The charter of the city if the city is organized under a special charter.

Before entering upon his or her duties, a municipal judge shall take the constitutional oath of office.

2. *A municipal judge must:*

(a) Be a citizen of the State;

(b) Except as otherwise provided in the charter of a city organized under a special charter, *have been a bona fide resident of the city for not less than 1 year next preceding his or her election;*

(c) *Be a qualified elector in the city;* and

(d) Not have ever been removed or retired from any judicial office by the Commission on Judicial Discipline.

NRS 5.020 (Emphasis added). When statutory language is clear and unambiguous, it will be given its plain meaning.⁴ Section 1 of NRS 5.020 recognizes an exception to the requirement that a municipal judge be elected. This exception authorizes the mayor of a city with a population of fewer than 5,000 residents to appoint a municipal judge to a city office previously established by the city council.⁵ Otherwise, municipal judges must be elected.

Section 2 of NRS 5.020 sets forth two separate residency requirements. Subsection 2(b) states that a candidate for the office of municipal judge must “have been a bona fide resident of the city for not less than 1 year next *preceding his or her election.*” Using the Legislature’s plain language, the residency requirement established by NRS 5.020(2)(b) applies only to elected judges.

In addition to the period of residency that precedes a municipal judge’s election to office, there is a separate period of residency that may apply during or at the commencement of a municipal judge’s term in office. In this regard, subsection 2(c) of NRS 5.020 states that “[a] municipal judge must . . . [b]e a qualified elector in the city.” A statute cannot be construed in isolation as this would defeat the manifest purpose of the statutory scheme as a whole.⁶ Because

⁴ *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 1413, 148 P.3d 717, 724 (2006).

⁵ NRS 266.055(3); NRS 266.390(1); 266.405(3). The creation of appointive offices is, in turn, governed by the provisions of NRS 266.390 to 266.460, inclusive.

⁶ *Southern Nevada Homebuilder’s Association v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (“Further, it is the duty of this court, when possible, to interpret provisions within a common statutory scheme ‘harmoniously with one another in accordance with the general purpose of those statutes’ and to avoid unreasonable or absurd results, thereby giving effect to the Legislature’s intent.”) (internal footnotes omitted).

the rest of the sections in NRS 5.020 concern the requirements of a candidate to be elected to municipal judge, only this single requirement read in isolation could potentially be construed to create a residency requirement for appointed judges. When subsection 2(c) is read together with the remaining provisions, it too applies only to elected municipal judges.

While NRS 5.020 governs the qualifications of candidates for the elected position of municipal judge, the Legislature has explicitly authorized general law cities to appoint their municipal judges. This authorization is recognized in the language of section 1 of NRS 5.020, which creates an exception to the general rule that municipal judges must be elected. The exception refers to NRS 266.405 authorizing city officials to make appointments pursuant to the powers of home rule that have been granted to general law cities.⁷ According to principles of home rule, cities incorporated pursuant to NRS Chapter 266 have the right of self-government with respect to the functions of city government and management of city affairs.⁸ The city council of a general law city may make and pass all ordinances, resolutions, and orders, not repugnant to the Constitutions of the United States or the State of Nevada or to the provisions of Chapter 266, that are necessary for the municipal government and the management of city affairs, for the execution of all powers vested in the city, and for making effective the provisions of NRS Chapter 266.⁹

Consistent with the grant of authority in NRS 266.105, the city council may create any office deemed necessary for the city.¹⁰ Among these is the office of municipal judge.¹¹ The city council has the discretion to require, as a qualification for appointive office, that the appointee reside within the city limits.¹²

Ely is a general law city established and operated under the provisions of NRS Chapter 266, and Ely has not adopted a charter form of government.¹³ Ely's Ordinance 539 is directly

⁷ See NRS 266.010 ("Subject to the right of the Legislature to create or alter the form of municipal organization by special act or charter, the right of home rule and self-government is hereby granted to the people of any city incorporated under the provisions of this chapter.").

⁸ See generally Louis Csoka, *the Dream of Greater Municipal Autonomy, Should the Legislature or the Courts Modify Dillon's Rule, a Common Law Restraint on Municipal Power?*, 29 N.C. Cent. L.J. 194 (2007).

⁹ NRS 266.105(1).

¹⁰ NRS 266.390(1).

¹¹ See NRS 266.405(1) for a list of officers; NRS 266.550 through NRS 266.595, inclusive, for the powers and jurisdiction of a municipal judge.

¹² NRS 266.400. This statute was revised in 1997, abolishing a mandatory residency requirement for all city officers except the office of city attorney, and providing for discretionary power of the city council to require residency as a condition of appointment. See Act of June 6, 1997, ch. 126, 1997 Nev. Stat. 273.

¹³ See NRS Chapter 266 Reviser's Notes.

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within the authority granted by statute to general law cities. The ordinance is a valid use of the city's powers to create the office of municipal judge and to allow the mayor to appoint a municipal judge. That the ordinance imposes no residency requirement demonstrates that the city council declined to adopt one pursuant to its authority in NRS 266.400.¹⁴

There is no need to reconcile the residency requirements stated in NRS 5.020 and the absence of a residency requirement in the Ely ordinance. In this case, where one statute applies to elected municipal judges and the other to appointed municipal judges, there is no overlap between statutory provisions. If the city council establishes an appointive office, including the office of municipal judge, it has the discretion under NRS 266.400 to adopt or dispense with a residency requirement for the office as the council deems appropriate. The city council's ordinance on the subject, in this case City Ordinance 539, governs the conditions of eligibility for an appointment to the office of municipal judge. By its own terms, subsection 2(b) of NRS 5.020 is inapplicable because it considers the residency of the candidate prior to election.

If NRS 5.020(2)(c) is read as a mandatory residency requirement for all municipal judges and not just those who are elected, it would nullify the discretion given to the city council of general law cities to adopt their own requirements for appointed officers, thereby abrogating home rule. As the governing body of a general law city, the city council of Ely had the discretion to enact City Ordinance 539 with or without a residency requirement. Because the statutory provisions should be read in harmony, and in a manner that gives both meaning, there is no conflict between NRS 5.020 and the city council's exercise of its authority under NRS 266.400 to dispense with a residency requirement. In summary, subsection 2(c) of NRS 5.020 is properly construed to have no application to appointive offices established pursuant to the principles of home rule as codified in NRS Chapter 266.

CONCLUSION

As a matter of home rule, a general law city is entitled to adopt its own ordinances necessary for the proper functioning of municipal government and the management of city affairs. The provisions of NRS Chapter 266 and local ordinances adopted as a result of home rule must be read in a manner consistent with NRS Chapter 5 as it pertains to the office of municipal judge. Considering the plain language of the statutes, and applying well-established principles of statutory construction, NRS 5.020 and NRS 266.405(3) are properly construed to operate independently of one another. By this reading of the statutes, there is no overlap between the requirements of NRS 5.020, concerning the election of municipal judges, and NRS 266.405

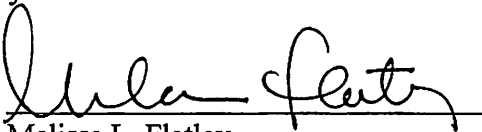
¹⁴ See *McKay v. Board of County Commissioners of Douglas County*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987) (“[It] is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.”); see also *Red Arrow Garage & Auto Co. v. Carson City*, 47 Nev. 473, 484, 225 P. 487, 490 (1924) (the rules for the construction of ordinances are the same as for the construction of statutes.).

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providing for the appointment of municipal judges in general law cities. In summary, the statutes must be interpreted to establish different residency requirements depending upon the method by which the municipal judge attains his or her office. When a municipal judge is appointed to an office established by the ordinance of a general law city, there is no residency requirement unless the city council adopts an ordinance requiring it.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
Melissa L. Flatley
Deputy Attorney General
Business and Taxation Division

MLF/JLC