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100 North Carson Street  
Carson City, Nevada 89701

October 9, 2017

OPINION NO. 2017-09

ELECTIONS; JUSTICE OF THE PEACE:

Elections for Justice of the Peace are open only to certain qualified electors, based on the geographical boundaries encompassing the elected office's jurisdiction or area of representation. Candidates and voters in a current township may not participate in an election for a future Justice of the Peace office in a future, differently constituted township that will not exist until after the election.

Ms. Angela A. Bello  
Nye County District Attorney  
Post Office Box 39  
Pahrump, Nevada 89041

Dear Ms. Bello:

You have requested an opinion from the Office of the Attorney General concerning a township division within Nye County that will result in what is currently one township becoming two separate townships on January 1, 2019. Your question pertains to the manner in which a new office of Justice of the Peace, which will be statutorily created by the creation of the new townships on January 1, 2019, must be filled.

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### QUESTION PRESENTED

May candidates file for, and electors vote in, the 2018 primary and general elections for the Justice of the Peace office that does not currently exist but will be created by the township division on January 1, 2019?

### SUMMARY ANSWER

Candidates and voters in a current township may not participate in an election for a future Justice of the Peace office in a future, differently constituted township that will not exist until after the election.

### DISCUSSION AND ANALYSIS

#### I. Statutory Requirements for Candidacy and Election to Office of Justice of the Peace.

On March 31, 2016, one of the two statutorily required Justices of the Peace in the Pahrump Township of Nye County resigned his office, thus creating a vacancy in one of the two offices within the township as it existed on that date.

Pursuant to NRS 4.150, the Board of County Commissioners (Board) must typically fill such a vacancy by making an appointment in the manner provided by either NRS 245.170(1)(a) (requiring the Board to appoint a temporary Justice of the Peace and place the election for the vacant position on the ballot at the next ensuing biennial election, if the timing of the resignation allows) or NRS 245.170(1)(b) (requiring the Board to appoint a suitable person who is an elector of the county to serve the remainder of the unexpired term). Instead, on May 3, 2016, the Board adopted Resolution 2016-57 merging the Pahrump and Beatty Townships in Nye County into a single Pahrump/Beatty Township, encompassing the area that had been formerly served by the two discrete townships. The merger allowed the sole Justice of the Peace from the former Beatty Township, and the only remaining Justice of the Peace from the Pahrump Township, to serve as the two Justices of the Peace for the new, composite township. See NRS 4.160(1). The new Pahrump/Beatty Township, because of its size, is statutorily authorized to have two Justices of the Peace. See NRS 4.020.

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Resolution 2016-57 includes a sunset clause whereby on midnight on January 1, 2019 the merger of the townships is dissolved and the original township configurations are restored. That change will restore the total number of offices between both townships to three – two in the Pahrump Township and one in Beatty, based on their respective populations. *See* NRS 4.020. This creation of an additional Justice of the Peace office on January 1, 2019 will thus create a new vacancy, and “the vacancy thus produced shall be supplied as in other cases.” NRS 4.160(3).

You have informed the Office of the Attorney General that the Board proposes to allow candidates for this January 1, 2019 vacancy to file for office in January 2018 (as contemplated by NRS 293.177 for existing offices), and to place those candidates for this expected future office on the ballot in the 2018 primary and/or general elections for the Pahrump/Beatty Township. As discussed below, this election plan conflicts with statutory residency requirements applicable to both candidates and voters.

## II. Generally Applicable Election Laws

Candidate qualifications and elector qualifications are established by the Nevada Constitution and related statutory provisions. Article 15, section 3, sub-section 1 of the Nevada Constitution provides that no person shall be eligible for any office who is not a qualified elector. As relevant here, a qualified elector in Nevada is a U.S. citizen, at least eighteen years old, who has resided in the state six months and in the district or county thirty days immediately preceding any election. Nev. Const. Art. 2, § 1.

Some elections, including elections for Justice of the Peace, are open only to certain qualified electors, based on the geographical boundaries encompassing the elected office’s jurisdiction or area of representation. *See* NRS 4.020(1) (requiring Justices of the Peace to be elected by qualified electors of the township wherein the office has jurisdiction); *see also, e.g.*, NRS 5.020 (requiring municipal court judges to be elected by electors of the city where the municipal court is established); NRS 304.050(2) (requiring representatives in the U.S. Congress to be elected by the registered voters in their respective districts); NRS 293C.145(4) (requiring candidates for city council to be voted upon by the electors of their respective wards, if required by the city charter).



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The qualifications to run for any given State or local office, including residency requirements, are generally defined by statute. *See Nev. Const. Art. 15, § 10.* A candidate for any office, including the Office of Justice of the Peace, must, for at least the 30 days immediately preceding the date of the close of filing of declarations of candidacy or acceptances for the office which the person seeks, have resided within the State, district, county, township, or other area prescribed by law to which the office pertains and over which he or she will have jurisdiction or will represent. NRS 293.1755(1). Additionally, a candidate for Justice of the Peace must be a qualified elector in that township. NRS 4.010(1). Finally, a Justice of the Peace must be elected by the “qualified electors of the township” where that Justice of the Peace will serve. NRS 4.020(1).

Thus, under Nevada law, to be a candidate for the Office of Justice of the Peace, a person must have resided in the township where he or she will hold office for at least thirty days immediately preceding the deadline by which the person must file for candidacy. In 2018, this period runs between January 7th and 5 p.m. on January 19th, pursuant to NRS 293.177(1)(a). Such a candidate must also be elected by qualified electors of the township to which the candidate seeks election. And as noted, a qualified elector for Justice of the Peace must live in the township in which the elector wishes to vote for at least thirty days prior to the election, pursuant to NRS 4.020(1).

### III. Limitations on the Board’s Authority to Conduct Elections

The Board is vested with limited jurisdiction and authority, as provided by the Nevada Constitution and related legislative enactments. Nev. Const. Art. 4, §§ 25-26. The Board is authorized to create, divide and merge townships as required by the public good. NRS 257.010. It is not, however, authorized to alter the election laws of the State or to disregard the requirements of those laws.

[W]hen a people live under a government which is regulated by written law, in which the powers, duties, and responsibilities of the different officers of the government and of the body of the people are clearly defined, and in which the law attempts to point out how and when citizens may exercise the elective franchise, and for what officers they may vote, we cannot conceive of a case in which the people could

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be entitled to vote for any officer without some provision of law, either express or clearly implied, authorizing such vote to be cast.

*Sawyer v. Haydon*, 1 Nev. 75, 79 (1865).

In light of the statutory residency requirements discussed above, it would be unlawful for Nye County to include on the 2018 ballots in the Pahrump/Beatty Township election an office of the Justice of the Peace that will not exist until January 1, 2019, and then only for one of the future, smaller townships created by the division. That office, once it is created on January 1, 2019, will serve a geographical area that is different and smaller than the area of the currently consolidated township. As a consequence, in accordance with the statutory requirements outlined above, the candidates and voters for that new office must come from the new township's geographical area, not the larger area encompassed by the current consolidated township, whose voters will be voting in the 2018 elections. By holding an election in 2018 in the Pahrump/Beatty Township for an office within a future, smaller township that will not exist until January 1, 2019, the county would effectively alter and disregard the applicable residency requirements for both candidates and voters for that future office.

### CONCLUSION

There is no constitutional or statutory authority for candidates to file for or electors to vote for an office in a township not created until after the election. Moreover, Nevada law clearly imposes residency requirements on both qualified electors and candidates for the office of Justice of the Peace. These residency requirements would be violated by having voters in a current, larger township elect a future Justice of the Peace, the position of which will only be created by the formation of a different, smaller township. Under the circumstances created by the Board's Resolution 2016-57, the third Justice of the Peace office that will be created on January 1, 2019 as a result of splitting the Pahrump/Beatty Township cannot be elected by a pool of voters that do meet the statutory residency requirements applicable to the new township. Nor can candidates for the new vacancy in the future, smaller township that does not yet exist be drawn from the larger Pahrump/Beatty Township that now exists.

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Therefore, in order to fill the Justice of the Peace office that will arise as a result of recreating the Pahrump and Beatty Townships as they will exist on January 1, 2019, the Board must, on or after January 1, 2019, fill the vacancies in the manner prescribed by NRS 245.170. *See* NRS 4.160(3). Alternatively, the Board may amend Resolution 2016-57 so that the effective date of the township division affords candidates and voters ample opportunity to meet the residency requirements applicable to the 2018 election for the new townships.<sup>1</sup>

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: 

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LMS/SAB

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<sup>1</sup> NRS 4.160 would apply if the resolution were amended to establish an effective date in December, 2017. This provision states: "When any justice of the peace, in the formation of a new township, should be brought within the limits thereof, he or she shall be one of the justices of the peace allowed to such township, and shall continue in office until the expiration of the term for which he or she was elected." Consequently, an appropriate amendment to the resolution would not cut any current Justice of the Peace's term short. But as soon as the Board divides the township, it will immediately create an additional Justice of the Peace vacancy, which the Board "shall" fill in accordance with NRS 4.150.