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OPINION NO. 2016-04

<u>DISTRICT ATTORNEYS; CITIES AND TOWNS; LEGAL SERVICES:</u> If the town board chooses to appoint a town attorney, the district attorney is relieved of duties to the town board. The duties of a district attorney to an unincorporated town operating under the Unincorporated Town Government Law parallel the duties owed to the county commissioners. The district attorney owes those duties specified in NRS 269.145(1) and NRS 269.145(2) to the board of county commissioners. The county is prohibited from receiving any compensation from the town for the performance of the district attorney's duties.

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

Dear Ms. Bello:

By letter dated March 22, 2016, you requested an opinion from the Office of the Attorney General regarding the duties owed by a district attorney to unincorporated towns in Nevada, and whether the district attorney may charge for services performed on behalf of an unincorporated town.

QUESTION ONE

What duties does a district attorney owe to a town board that is governed pursuant to the elected town board form of government?

SUMMARY CONCLUSION TO QUESTION ONE

If the town board chooses to appoint a town attorney, then the district attorney is relieved of any duties to the town board. In the absence of a town attorney, however, the district attorney owes those duties established by NRS 269.145 to the town board.

ANALYSIS

Unincorporated towns in Nevada have the option of being governed by the board of county commissioners or by an elected town board. If a town chooses not to elect a town board for its governance (or chooses to dissolve such a board), then the board of county commissioners is the governing body for the town.

An unincorporated town may choose to govern itself via an elected town board pursuant to NRS 269.016 through NRS 269.022. As you correctly note in your request, a town officer is not a "county, township or district officer" for purposes of NRS 252.160, which defines the duties of the district attorney to the county. The demarcation between unincorporated towns, incorporated towns, and townships is clear under any reasonable reading of the Nevada Revised Statutes. Absent further revision of the NRS by the legislature, it is clear that the term "county, township or district officer" does not apply to members of elected town boards, and hence the district attorney owes no duties to such town board members under NRS 252.160.

The duties of the district attorney to an unincorporated town are specified in NRS 269.145. That statute contains three subsections. The first subsection provides, in relevant part, as follows: "All prosecutions arising under the provisions of this chapter shall be conducted by the district attorney of the county. . . ." NRS 269.145(1). This section is unambiguous and hence requires no additional discussion.

The second subsection provides: "The district attorney shall also prosecute and defend all suits brought by or against the town board or board of county commissioners under the provisions of this chapter." NRS 269.145(2). The inclusion of both "town board" and "board of county commissioners" in the statute suggests that the intent of the law is for the district attorney to act on behalf of the governing body of the town. Where the town is governed by a town board, the district attorney's duty is to "prosecute and defend all suits brought by or against the town board. . . ." *Id.* Where a town is instead governed by the board of county commissioners, the duty is owed to the commission.

The third subsection reinforces this interpretation. It provides: "The town board may appoint a town attorney to act in lieu of the district attorney, in which case the town attorney shall act exclusively in behalf of the town in all civil matters." NRS 269.145(3). *See also* 40 Mont. Op. Atty. Gen. 104 (1983) (the district attorney is not required to represent rural improvement districts where that duty is not specified by statute) and 43 Mont. Op. Atty. Gen. 46 (1989) (likewise with respect to hospital districts).

QUESTION TWO

What duties does a district attorney owe to an unincorporated town that operates under the Unincorporated Town Government Law (UTGL)?

SUMMARY CONCLUSION TO QUESTION TWO

The duties of a district attorney to an unincorporated town operating under the UTGL parallel the duties owed to the county commissioners.

ANALYSIS

As you correctly note in your request, the duties of the district attorney to the county are specified in chapter 252 of NRS. In addition to his or her role as a public prosecutor, the district attorney must defend civil lawsuits brought against the county; prosecute "all recognizances forfeited in the district court" and all actions for recovery of funds from debts, fines, penalties, and forfeitures in the county; provide advice and draw the necessary legal documents regarding the school district, if the school district has not outsourced private counsel for that purpose; represent the county in nuisance actions; and any other duties required by law. NRS 252.110.

The Nevada legislature has codified additional duties owed by district attorneys at NRS 252.160 and NRS 252.170. In addition to the requirements of NRS 252.110, the district attorney must "give his or her legal opinion to any assessor, collector, auditor or county treasurer, and to all other county, township or district officers within his or her county, in any matter relating to the duties of their respective offices." NRS 252.160(1).

Also of significance to this question is NRS 252.170(2)(e). This section includes "[d]rawing all legal papers on behalf of the board of county commissioners . . ." among the additional duties of the district attorney. *Id.* The remaining subsections of NRS 252.170 require the district attorney to attend meetings of the county commission; review contracts being considered by the county; provide legal advice to the county on the impact of ordinances, state law, and federal law on the county; and give advice to the county commissioners upon matters relating to their duties. *Id.*

To provide uniformity across the state to towns without elected boards, the Nevada legislature enacted the Unincorporated Town Government Law. Counties

adopting the UTGL, or counties in which the UTGL automatically applies, govern unincorporated towns through the county board. The UTGL is codified in Nevada law at NRS 269.500 to 269.625. The legislature was clear that "the purposes of the Unincorporated Town Government Law are to provide for the formation of unincorporated towns and their government according to a uniform plan within the framework of county administration of the unincorporated town." NRS 269.525(5). Significantly, the legislature also specifically declared that "unincorporated town government is an adjunct of county government." NRS 269.525(3).

The UTGL does not specifically reference the district attorney. *See* NRS 269.500 *et seq.* It is clear, however, that the board of county commissioners is the governing body of any town operating under the UTGL. Because any such town is run by the board of county commissioners, the duties of the district attorney to the county commissioners when acting for the town pursuant to the UTGL parallel the duties of the district attorney to the county and its officials as specified in Chapter 252 of NRS.

QUESTION THREE

What duties does a district attorney owe to an unincorporated town that has dissolved its elected town board and has not adopted the UTGL?[1]

SUMMARY CONCLUSION TO QUESTION THREE

The district attorney owes those duties specified in NRS 269.145(1) and NRS 269.145(2) to the board of county commissioners, in addition to the duties specified in chapter 252 of the NRS.

ANALYSIS

Chapter 269 of the NRS is not clear on this specific issue, but when read as a whole, Chapter 269 provides for only two forms of unincorporated town government: town board or county board. By dissolving their elected town board, the people of Pahrump rejected the elected town board form of government. Because Pahrump claims to be an unincorporated town, the only form of government available upon rejection of the elected town board is government by the board of county commissioners.

As discussed in response to your second question, because Pahrump is governed by the board of county commissioners, the district attorney's duties to the commissioners when acting for the town parallel the duties to the commissioners when acting for the county. That the board of county commissioners enacted an ordinance

[1] We take no position as to whether the town board form of government survived the dissolution of the elected town board, or whether the UTGL is applicable to the facts as you have represented them.

purporting to exempt the town from the UTGL does not change the analysis. As you correctly note, the district attorney also owes duties to the town pursuant to NRS 269.145. Since there is no longer a town board, a town attorney cannot be appointed, and the provisions of NRS 269.145(3) do not apply.

QUESTION FOUR

May the county charge an unincorporated town for services rendered by the district attorney, when such services benefit only the unincorporated town?

SUMMARY CONCLUSION TO QUESTION FOUR

Where, as here, the district attorney performs duties owed to the county commission, the county is prohibited from receiving any compensation from the town for the performance of the district attorney's duties under Chapter 269 of NRS.

ANALYSIS

As noted above, the circumstances here indicate that the district attorney's duties are owed to the county commission. It is of course accurate that NRS 269.105 provides that the "salaries of officers" and "expenses incurred in carrying on any government herein provided for" are to be paid from "the general fund of the town or city, to the affairs of which the government relates." NRS 269.105(1). Your question asks, essentially, whether NRS 269.105(1) authorizes the district attorney to charge unincorporated towns for such salaries and expenses.[2]

Where, as here, the district attorney's duties are owed to the county commission overseeing the unincorporated town, the appropriate statute to resolve this question is NRS 269.040. That statute contains three subsections. The first provides that "[t]he district attorney [and other county officers] . . . shall perform the duties required or authorized to be performed by them, under and by virtue of the provisions of this chapter, and shall be held liable . . . for the faithful performance thereof." No mention is made in the statute of legal fees or other compensation. Under circumstances in which Chapter 269 applies, then, the district attorney must perform his or her duties to the county commission without additional compensation, just as the district attorney provides other services to the county commission without additional compensation.

Furthermore, NRS 269.040(2) states that "[a]ll such officers shall pay all fees or moneys by them received, under any law or ordinance touching the provisions of this chapter, in the time and manner as provided by general law, to the county treasurer of their respective counties, to be distributed to the fund of the proper town or city." *Id.*

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[2] Your question acknowledges that the district attorney may not be compensated personally. *State ex rel. Norcross v. Shearer* 23 Nev. 76, 42 P. 582 (1895).

Even assuming *arguendo* that NRS 269.105(1) allows for the collection of funds from the town for legal services, NRS 269.040(2) mandates that any such funds must be turned over to the county treasurer, before being "distributed" back to the town.

Finally, the third subsection of NRS 269.040 states that "[n]o officer performing any duty under this chapter . . . shall demand or receive any compensation therefor." NRS 269.040(3). As discussed above, the circumstances here indicate that when it is governed by a county board, an unincorporated town is entitled to be represented by the district attorney in the same manner as is the county, and without any additional cost or charge to the town.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: _____
DANIEL WESTMEYER
Senior Deputy Attorney General

DEW/LJA