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Summary of Attorney General v. Montero, 124 Nev. Adv. Op. No. 55

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STATUTORY INTERPRETATION – RESIDENCY REQUIREMENT FOR DISTRICT COURT JUDICIAL CANDIDATES

Summary

On appeal from the district court, the Nevada Supreme Court considers whether a candidate for district judge must reside within the judicial district in which he or she is seeking office.

Disposition/Outcome

Affirmed. The Nevada Supreme Court first concluded that district judges are recognized as “state officers” under NRS 293.109. Subsequently, the Court held that a candidate who satisfies the NRS 3.060 mandate requiring a district court judicial candidate to have been a Nevada state resident for at least two years preceding the election is eligible for election under NRS 293.1755(1)’s “state” residency requirement.

Factual and Procedural History

Respondent Michael R. Montero filed a declaration of candidacy with the Secretary of State for the office of district judge in the Sixth Judicial District Court, Department 2, which is comprised of Humboldt, Lander, and Pershing counties. In his declaration, he stated that he resides in Reno, Nevada, which is located in Washoe County.

A Humboldt County citizen contested Montero’s qualifications to run for the district judgeship based on his residency outside the Sixth Judicial District. The Nevada Attorney General petitioned the district court for an order to show cause regarding the validity of Montero’s candidacy. The Attorney General argued that Montero’s residency in Washoe County prohibited him running for district judge in the Sixth Judicial District because he never resided in that district. The Attorney General argued that NRS 293.1755(1) established the law that a district judicial candidate required a candidate to reside in the district for which he sought office for at least 30 days prior to filing for candidacy. The Attorney General further argued that the district judgeship pertains to specific judicial districts, which thereby required a district judge candidate to reside in the district for which he sought election.

In response, Montero argued to the contrary that NRS 293.1755(1) applied to every candidate and did not specify where residence was required for any specific office. He further argued that NRS 293.1755 set forth a state residency requirement as opposed to the district residency requirement asserted by the Attorney General. Montero noted that NRS 3.060, which sets forth the necessary qualifications for a district judge did not include a district residency requirement and that district judges enjoyed statewide jurisdiction. Thus, Montero argued that as a Nevada resident he fulfilled NRS 293.1755(1)’s state residency requirement.

In reply, the Attorney General maintained that because NRS 293.1755(1) imposed a residency requirement, in addition to any other requirement, a district judge candidate had to reside in the district to which the office pertains. The Attorney General further contested

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Montero's assertion of statewide jurisdiction arguing that the requirement of the Nevada Supreme Court to adhere to certain procedural requirements before permitting a judge to hear a matter in another district demonstrates district judges' limited jurisdiction.

After a hearing, the district court denied the Attorney General's petition and directed the Secretary of State to include Montero as a candidate for district judge in the Sixth Judicial District in the primary election ballot. The district court determined the office of district judge to be a "state office requiring residency only in Nevada because (1) NRS 293.109(12) designated a district judge as a "state officer," (2) the jurisdiction of district judge was statewide under NRS 3.220, and (3) the Chief Justice of the Nevada Supreme Court may assign one judicial district court judge to conduct business in another district court under NRS 3.040(2).

The Attorney General appealed the district court's order arguing that NRS 293.1755(1) requires that district court judicial candidates reside in the district in which they are seeking office.

Discussion

The Nevada Supreme Court reviews issues of statutory construction *de novo*.² In the case of an ambiguous statute, the Court may interpret the meaning of the statute's words by examining the context and the spirit of the law.³

NRS 293.1755(1) requires candidates for all offices to reside in the area to which the office pertains. The Court concludes that NRS 293.1755(1) imposes a state residency requirement for district judges. The Court found that district judges are "state officers"⁴ that possess statewide jurisdiction.⁵ The Court reasoned that because district judges are state officers, Montero has met NRS 293.1755(1)'s residency requirement for his candidacy because (1) Montero is a Nevada resident; and (2) if elected, he will have jurisdiction to hear cases in other judicial districts, as well as in the Sixth Judicial District.

The Court explained that its interpretation of NRS 293.1755(1) comports with other Nevada statutes governing residency requirements. Based on the construction of other statutory residency requirements, namely NRS 293.109, the Court deemed that, if the legislature intended to require district court judicial candidates to be resident of a particular district, it would have specifically imposed such a requirement in NRS 3.060.

However, the Court agreed with the Attorney General and found that a district judge candidate is still required to meet NRS 293.1755(1)'s residency requirement. Thus, because Montero has resided in Nevada for at least 30 days immediately preceding the closing date for filing his declaration of candidacy, he has met that residency requirement for district judge candidates. Accordingly, the Court concluded that Montero is eligible to run for district judge.

Conclusion

² *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 484 (2000).

³ *McKay v. Bd. of Supervisors*, 102 Nev. 644, 649-651, 730 P.2d 438, 442-43 (1986).

⁴ NRS 293.109(12).

⁵ NRS 3.220 ("The district judges shall possess equal coextensive and concurrent jurisdiction and power. They each shall have power to hold court in any county of this State."); *see also* NRS 3.040(2) (recognizing that the Chief Justice of the Nevada Supreme Court may assign a district judge from one judicial district to another in certain circumstances).

Because district judges are state officers, who are required to reside in Nevada for at least two years before the election and, furthermore, required to satisfy the 30-day “state” residency requirement for district court judicial candidates, Montero’s residence in the state of Nevada which exceeds two year prior to the date of filing his declaration for candidacy meets the residency requirements, and thereby makes him eligible for candidacy as a district court judicial candidate. Accordingly, the Court affirmed the district court’s decision denying the Attorney General’s petition for an order to show cause.