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Lueck v. Teuton, 125 Nev. Adv. Op. No. 16 (Nov. 12, 2009)¹

ELECTION LAW – JUDICIAL VACANCY AND APPOINTMENT EXPIRATION

Summary

Consideration of (1) whether private citizens have standing to pursue quo warranto proceedings to challenge an individual's right to hold office and (2) whether Nevada Constitution Article 6, Section 20(2) compels expiration of the term of office of any justice appointed by the Governor to fill a judicial vacancy at the time of the next general election most immediately following appointment, rather than the next general election at which Nevada's election deadlines can be carried out.

Disposition/Outcome

The Court concluded that absent participation of the attorney general and leave of court, private citizens with only a general interest in the outcome lack standing to pursue quo warranto proceedings on behalf of the state to remove a person from public office. The Court's majority held that Nevada Constitution Article 6, Section 20(2) requires terms of office for justices appointed by the Governor to fill vacancies to end at the time of the next general election most immediately following the appointment.

Factual and Procedural History

Article 6, Section 20(2) of the Nevada Constitution provides that the term of office for a judge appointed by the Governor to fill a vacancy "expires on the first Monday of January following the next general election."²

In July 2008, Governor Jim Gibbons appointed Judge Robert W. Teuton to fill a vacancy created by the resignation of a district judge serving the Family Court Division of the Eighth Judicial District Court. Judge Teuton's written commission was designated to expire on the first Monday in January, 2011. The district judge office was not included on the ballot for the November, 2008 general election.

Robert Lueck, arguing that "next general election" under Section 20(2) meant the November, 2008 general election, proposed that Judge Teuton's commission was invalid beyond January 5, 2009. The attorney general denied written requests from Mr. Lueck to institute quo warranto proceedings. Mr. Lueck, as a private citizen of Nevada, subsequently moved the Nevada Supreme Court for leave to seek a writ of quo warranto to remove Judge Teuton from office.

In opposition to Mr. Lueck's motion, Judge Teuton argued that Mr. Lueck lacked standing to file a petition for a writ of quo warranto because he had only a general "private citizen" interest in obtaining the relief sought.

Recognizing Mr. Lueck's possible lack of standing, the court nevertheless concluded that Mr. Lueck's motion raised concerns regarding Judge Teuton's continued service as a district

¹ By David Krawczyk

² NEV. CONST. art. VI, §20(2).

court judge which were “of statewide importance,” warranting further inquiry based on the Court’s responsibility and authority to oversee the judiciary.³ The Court issued an order directing Governor Gibbons and Judge Teuton to show cause why Judge Teuton’s commission should not be declared invalid as of January 5, 2009 pursuant to Section 20(2), and why the Court should not issue a writ of mandamus directing the Governor to declare Judge Teuton’s office vacant. In response to the Court’s order to show cause, Governor Gibbons, Judge Teuton, and the Family Law Section⁴ argued that Judge Teuton should hold office until after the next general election in 2010 because placement of the district court judge office on the November, 2008 general election ballot would have been unworkable under Nevada’s election laws and such a mandate should not be interpreted under Section 20(2).

Discussion

Two questions were for consideration before the Court: First, did Robert Lueck have standing to pursue quo warranto proceedings and, if so, should leave to file the petition be granted? Second, what is the meaning of “next general election” under Section 20(2) and what is the effect of the provision on the validity of Judge Teuton’s continuing service as a district court judge?

Standing

Quo warranto relief is available to challenge a person’s right to hold office and oust that individual from office if his or her claim to it is invalid.⁵ Under Article 6, Section 4, of the Nevada Constitution, the Nevada Supreme Court is vested with original “power to issue writs of...quo warranto.”⁶ Only persons claiming entitlement to a public office,⁷ or alternatively through action of the attorney general and “on leave of the court”⁸ may seek quo warranto relief. Individuals with only a general interest in seeing Nevada’s laws upheld are not authorized to file quo warranto petitions.

Mr. Lueck did not claim a right to Judge Teuton’s office. Additionally, the attorney general declined to initiate quo warranto proceedings at Mr. Lueck’s urging. Accordingly, Mr. Lueck’s petition was denied by the Court because he lacked standing under either of Nevada’s statutory provisions governing quo warranto relief.⁹ Notwithstanding Mr. Lueck’s lack of standing to proceed with a quo warranto petition, the Court determined that the issue of Judge Teuton’s continuing service deserved its attention.

The meaning of Section 20(2)

The Court reasoned that the “next general election” directive under Section 20(2) was ambiguous and could reasonably be interpreted as referring to either the next general election

³ NEV. CONST. art. VI, §19; *Hardcastle v. Halverson*, 123 Nev. 245, 261-266, 163 P.3d 428, 440-443 (Nev. 2007); *Goldman v. Bryan*, 104 Nev. 644, 654, 764 P.2d 1296, 1302 (Nev. 1988).

⁴ Upon the Court’s invitation, the State Bar of Nevada, Family Law Section, filed an amicus curiae brief.

⁵ *See Secretary of State v. Nevada State Legislature*, 120 Nev. 456, 93 P.3d 746 (2004).

⁶ NEV. CONST. art. VI, §4.

⁷ NEV. REV. STAT. § 35.050 (2007).

⁸ *Id.* § 35.040.

⁹ *Id.* §§ 35.050, 35.040.

immediately following the appointment, or the next general election at which Nevada’s election deadlines could be fully carried out.

Analyzing the legislative history of Section 20(2),¹⁰ the Court concluded the Legislature intended “next general election” to be interpreted as the next general election immediately following the appointment by the Governor to fill the vacancy.

The Court noted tension between the interpretations of Legislative appointment provisions for other government offices. Concerning vacancies of county clerk and treasurer offices, the Court held in *Bridges* that “next general election” in a statute pertaining to vacancies filled by appointment meant the next general election when the office at issue would ordinarily be filled.¹¹ Conversely, the following year, the Court held in *Penrose* that “next general election” referred to “election as soon practicable after the vacancy occurs” without considering when the office would normally be filled by election.¹² Then, the Court concluded in *Brown* that the intent of the language “next general election,” and not the language itself, stands as the interpretive foundation.¹³

Article 6, Section 20(2), adopted in 1976, created a specific process for filling vacancies in judicial offices. Although an early draft of the judicial selection process provisions would have provided for an appointed judge to fulfill the remainder of the term of the office to which he was appointed, the provision was ultimately revised to ensure the appointed judge would not serve beyond the “next general election.”¹⁴ On the basis of this legislative history, the Court concluded that under Article 6, Section 20(2), the appointment of a judicial officer cannot last beyond the first Monday in January following the first general election to take place after the appointment. Accordingly, Judge Teuton’s appointment expired on January 5, 2009, the first Monday after the November 2008 general election.

Conclusion

A private citizen not claiming a right to the challenged office may not pursue quo warranto proceedings under Nevada Revised Statute §35 absent participation by the attorney general and leave of court. Judges appointed to fill vacancies in district court offices shall serve until the “next general election” immediately following appointment pursuant to the Nevada Constitution Article 6, Section 20(2).

Justice Gibbons concurred in part, and dissented in part.

Justice Gibbons concurred with the majority concerning Robert Lueck’s lack of standing to pursue quo warranto relief. However, he dissented concerning the majority’s interpretation of “next general election” under Article 6, Section 20(2). Noting that the “law abhors a vacancy” in

¹⁰ See ANDREW J. MARSH, DEBATES & PROCEEDINGS OF THE NEVADA STATE CONSTITUTIONAL CONVENTION OF 1864, 702 (1866).

¹¹ *Bridges v. Jepson*, 48 Nev. 64, 70, 227 P. 558, 590 (Nev. 1924)(analyzing the “next general election” provision of NEV. CONST. art. XVII, §22 which pertains to the offices of county clerk and treasurer).

¹² *Penrose v. Greathouse*, 48 Nev. 419, 422, 233 P. 527, 528 (Nev. 1925)(analyzing the “next general election” provision of NEV. CONST. art. XVII, §22).

¹³ *Brown v. Georgetta*, 70 Nev. 500, 501-502, 275 P.2d 376, 376-377 (Nev. 1954).

¹⁴ *Hearing on A.J.R. 14 Before the S. Judiciary Comm.*, 57th Leg. (Nev., 1973).

public office,¹⁵ Justice Gibbons concluded that the Court must strongly presume against any intent by the Legislature to draft a constitutional provision which would create a vacancy in public office for any length of time.¹⁶ Judge Teuton's appointment occurred too close to the general election to permit compliance with Nevada's election laws. Concerned with the district court vacancy created, Justice Gibbons concluded that gubernatorial appointments to the judiciary should end after the next general election when the office can validly be filled in accordance with Nevada's election laws rather than the next general election immediately following the appointment. Accordingly, Justice Gibbons would allow Judge Teuton to serve until after the November 2010 general election.

¹⁵ See *State v. Triplett*, 17 N.E.2d 729, 731 (Ohio 1938); see also *State v. Lutz*, 147 So. 429, 432 (Ala. 1933); *Johnson v. Collins*, 464 P.2d 647, 651 (Ariz. Ct. App. 1970); *State Ex Rel. Warder v. Gainer*, 167 S.E.2d 290, 296 (W.Va. 1969); but see *Penrose*, 48 Nev. at 422, 233 P. at 528 (recognizing Nevada's legislative policy "to fill the vacancy for the office of district judge by election as soon as practicable after the vacancy occurs"); *State v. Wells*, 8 Nev. 105, 109 (1872) (noting that a district attorney appointed to fill a vacancy properly served "until the qualification of a successor . . . because the presence of such an officer is necessary to the proper conduct of public business").

¹⁶ See *Warder*, 167 S.E.2d at 296; cf. *Wells*, 8 Nev. at 109.