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Summary of Nevada Commission on Ethics v. Ballard, 120 Nev. Adv. Op. No. 91

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Nevada Commission on Ethics v. Ballard, 120 Nev. Adv. Op. No. 91,
102 P.3d 544 (2004)¹

ADMINISTRATIVE LAW – ELECTIONS

Summary

Appeal from an order of the First Judicial District Court, State of Nevada, concluding that the Nevada Commission on Ethics (“Commission”) lacked the power to determine whether a political candidate’s financial disclosure statement was adequate or seek fines against any of the respondents.

Disposition/Outcome

Reversed. The Commission was authorized to determine the adequacy of financial filing and impose fines against the Respondents as political candidates.² Furthermore, Nevada Revised Statutes 281.561(1),³ 281.571(1)⁴ and 281.581,⁵ collectively the financial disclosure statutes, are not unconstitutionally vague.

¹ By Beth Rosenblum.

² Unless otherwise noted, all statutory references are to the 2001 Nevada Revised Statutes, as they were in place when the relevant events occurred. Effective January 1, 2004, amendments to NRS Chapter 281 transferred many of the Commission’s duties regarding financial disclosure statements to the Secretary of State. 2003 Nev. Stat., ch. 476, §§ 23, 26, 29, at 3020-22.

³ NEV. REV. STAT. 281.561(1) (2001) provided, in pertinent part:

[I]f a candidate for public office . . . is entitled to receive compensation for serving in the office in question, he shall file with the commission . . . a statement of financial disclosure, as follows:

- (a) A candidate for nomination, election or reelection to public office shall file a statement of financial disclosure no later than the 10th day after the last day to qualify as a candidate for the office.

⁴ NEV. REV. STAT. 281.571(1) (2001) provided, in pertinent part:

Statements of financial disclosure . . . must contain the following information concerning the candidate for public office . . .

- (a) His length of residence in the State of Nevada and the district in which he is registered to vote.
- (b) Each source of his income, or that of any member of his household who is 18 years of age or older . . .
- (c) A list of the specific location and particular use of real estate, other than a personal residence:
 - (1) In which he or a member of his household has a legal or beneficial interest;
 - (2) Whose fair market value is \$2,500 or more; and
 - (3) That is located in this state or an adjacent state.
- (d) The name of each creditor to whom he or a member of his household owes \$5,000 or more. . .
- (e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:
 - (1) A gift received from a person who is related to the candidate for public office . . .
 - (2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the

Factual and Procedural History

The Respondents were candidates for public office in Nevada's 2002 general election. Pursuant to NRS 281.561(1), each respondent had to file a financial disclosure statement with the Commission. The statements required the respondents to provide their length of residency, sources of income, real estate holdings, names of creditors, gift information, business holdings and the titles of any public offices held the time.⁶

Instead of filling out the forms, the respondents each filed with the Commission a "Notice in lieu of Statement of Financial Disclosure" and/or wrote on the form "I plead the 5th" or "See Notice." The Notices asserted that the Commission is "violative of unalienable God given rights" and part of a conspiracy to "establish a Civil Religion." The notices also provided various commentary regarding statutorily required information.⁷

The Commission found that the Respondents violated NRS 281.561 and notified the Respondents they were subject to civil penalties under NRS 281.581 for failing to file financial disclosure statements. After a hearing to consider requests to waive or reduce the penalties, the Commission voted to seek a judicial declaration as to whether the Respondents' filings were statutorily sound.

legislative, administrative or political action of the candidate for public office . .

(f) A list of each business entity with which he or a member of his household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1 percent or more of the total outstanding stock or securities issued by the business entity. . .

⁵ NEV. REV. STAT. 281.581 (2001), provided, in pertinent part:

1. A candidate for public office . . . who fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281.561 is subject to a civil penalty and payment of court costs and attorney's fees. Except as otherwise provided in subsection 3, the amount of the civil penalty is:

(a) If the statement is filed not more than 7 days late, \$25 for each day the statement is late.

(b) If the statement is filed more than 7 days late but not more than 15 days late, \$175 for the first 7 days, plus \$50 for each additional day the statement is late.

(c) If the statement is filed more than 15 days late, \$575 for the first 15 days, plus \$100 for each additional day the statement is late.

2. The commission may, for good cause shown, waive or reduce the civil penalty.

3. The civil penalty imposed for a violation of this section must not exceed the annual compensation for the office for which the statement was filed.

4. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the commission in a court of competent jurisdiction and deposited by the commission in the account for credit to the state general fund in the bank designated by the state treasurer.

5. If the commission waives a civil penalty pursuant to subsection 2, the commission shall:

(a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and

(b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

⁶ NEV. REV. STAT. 281.571(1) (2001).

⁷ For instance, the notices stated that only gold or silver is "income" and asked the Commission to define the symbol "\$."

The Commission petitioned the district court to determine the Commission's authority to require financial disclosure statements and impose fines.⁸ The Respondents opposed the petition. The district court held that the Commission's authority was limited to reviewing filings for timeliness, and the Commission could not impose fines. The Commission appealed.

The Nevada Supreme Court, *per curiam*, reversed and held that the Commission had the statutory authority to determine whether the Respondents' filings qualified as financial disclosure statements and to seek civil penalties against the Respondents.

Discussion

The Nevada Supreme Court reviews issues of statutory construction *de novo*.⁹ The court interprets statutes that comprise ethics laws according to their plain meaning and in the context of the entire statutory scheme.¹⁰ If statutory language is unambiguous, the court will not consider extrinsic evidence.¹¹

Subsection (1) of NRS 281.581 states that “[a] candidate for public office . . . who fails to file his statement of financial disclosure in a timely manner . . . is subject to a civil penalty.”¹² This penalty ranges from \$25 up to the amount of the political office's annual compensation. Subsections (2) and (4) authorize the Commission to waive or reduce the penalty for good cause and require the Commission to recover any penalties through civil action.¹³ If the Commission has power to recover, waive or reduce penalties, it follows that the Commission has the power to determine whether a candidate filed a financial disclosure statement. This conclusion is supported by similar provisions of the Ethics in Government Law as well as the policy rationale for the statutes, which is to promote the integrity and impartiality of public officers through disclosure of potential conflicts of interest.¹⁴

Here, the Respondents' arguments that the financial disclosure statutes are unconstitutionally vague are without merit. There is nothing vague about statutes that require a candidate for public office to file with Commission a financial statement that discloses “length of residence,” “sources of income,” “real estate [interests],” “names of creditors,” “gifts,” “business entity interests” and that imposes civil penalties for a candidate who “fails to file his statement of financial disclosure in a timely manner.” Respondents also offer no evidence to show that the statutes implicate First, Fourth and Fifth Amendment concerns.

In sum, the Respondents' Notices in Lieu of Statement of Financial Disclosure and related filings were so devoid of the necessary information that they could not be considered financial disclosure statements. Because the Commission did not institute a civil action for penalties while it had statutory authority to do so, such action now falls to the Secretary of State.¹⁵

⁸ See NEV. REV. STAT. 43.100 (2005), which provides that “in its discretion the governing body may file or cause to be filed a petition at any time in the district court . . . praying a judicial examination and determination of the validity of any power conferred”

⁹ *Constr. Indus. v. Chalue*, 119 Nev. 348, 351 (2003).

¹⁰ See *Edgington v. Edgington*, 119 Nev. 577, 582-83 (2003).

¹¹ *Rosequist v. Int'l Ass'n of Firefighters*, 118 Nev. 444, 448 (2002).

¹² NEV. REV. STAT. 281.581(1) (2005).

¹³ NEV. REV. STAT. 281.581(2), 281.581(4) (2005).

¹⁴ NEV. REV. STAT. 281.421 (2005).

¹⁵ See *supra* note 2.

Conclusion

Financial disclosure laws similar to Nevada's statutory scheme have been challenged on various constitutional and legal grounds, but these provisions have often survived attempts to contest their validity. Such laws have been held valid against challenges that the requirements violated public officers' rights to privacy,¹⁶ due process,¹⁷ equal protection,¹⁸ or that these laws were unconstitutionally vague¹⁹ or overbroad.²⁰

¹⁶ *E.g.*, *Goldtrap v Askew*, 334 So. 2d 20 (Fla. 1976); *Nakano v Matayoshi*, 706 P.2d 814 (Haw. 1985).

¹⁷ *E.g.*, *Gideon v Ala. State Ethics Comm'n*, 379 So.2d 570 (Ala. 1980); *Snider v Shapp*, 405 A.2d 602 (Pa. 1979)

¹⁸ *E.g.*, *Eisenbud v. Suffolk County*, 841 F.2d 42 (2d Cir. 1988); *Watkins v. New York State Ethics Comm'n*, 554 N.Y.S.2d 955 (1990).

¹⁹ *E.g.*, *Grygas v New York State Ethics Comm'n*, 554 N.Y.S.2d 779 (1990).

²⁰ *E.g.*, *Comer v Mobile*, 337 So.2d 742 (Ala. 1976).