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### Clark County v. Eliason, 136 Nev. Adv. Op. 49 (July 30, 2020)

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## CLARIFICATION OF NRS 258.007 ON THE PROCEDURE TO REMOVE A CONSTABLE

### **Summary**

The Court was asked by the United States District Court for the District of Nevada to clarify the removal process of a constable who forfeited the office under NRS 258.007.<sup>2</sup> The Court held that under NRS 258.007 forfeiture occurs automatically if the officer fails to timely become a certified category II peace officer. Thus, the Court stated that the Clark County Board of Commissioners (Board) has neither the authority nor need to remove a constable and additionally, *quo warranto* action is not warranted for removal under this statute.

### **Background**

NRS 258.007 requires a constable to become certified by the Commission on Peace Officer Standards and Training (POST) as a category II peace officer within one year of the constable taking office.<sup>3</sup> POST can grant an extension for up to six months if good cause is shown.<sup>4</sup> If the constable does not timely comply, then the constable forfeits his or her office.<sup>5</sup>

Robert Eliason was elected to the office of North Las Vegas Constable and took office in January 2015. Eliason did not obtain POST certification within the specified one-year timeline and sought a six-month extension in September 2015. POST approved the requested extension. POST then sent a letter to the Clark County Board of Commissioners stating that Eliason would not be able to meet the NRS 258.007 requirement for certification by the extended deadline and would therefore, forfeit his office.

Eliason sued Clark County and POST in state district court seeking a preliminary injunction to prevent the forfeiture of his office during an upcoming Board meeting. The state district court granted the preliminary injunction, finding that the Board lacked authority to remove Eliason from office and that the correct method was a *quo warranto* action by the attorney general to declare forfeiture.<sup>6</sup>

Clark County then removed the case to federal court because Eliason amended his complaint to add a claim of a violation of the Americans with Disabilities Act. Eliason moved for a declaratory judgment, but the federal district court concluded that this case was a state-law issue of the application and constitutionality of NRS 258.007. The federal district court certified the following question to this Court: “Does NRS 258.007 give the [Board] the power to remove a constable from office, or can a constable be removed only with a *quo warranto* action?”

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<sup>1</sup> By Caitlin Pyatt.

<sup>2</sup> NEV. REV. STAT. § 258.007 (2015).

<sup>3</sup> NEV. REV. STAT. § 258.007(1).

<sup>4</sup> *Id.*

<sup>5</sup> NEV. REV. STAT. § 258.007(2).

<sup>6</sup> Relying in part on *Heller v. Legislature*, 120 Nev. 456, 93 P.3d 746 (2004).

## Discussion

Constables must be qualified to hold office<sup>7</sup> and the legislature may require specific qualifications to hold that office.<sup>8</sup> Forfeiture is defined by *Black's Law Dictionary* as “[t]he loss of right, privilege, or property because of a . . . breach of obligation, or neglect of duty,” where “title is instantaneously transferred to another, such as the government.”<sup>9</sup> At common law, courts are without authority to declare forfeiture of an office because only the constitution or a valid statute can declare forfeiture.<sup>10</sup> However, if a statute requires automatic forfeiture for specific conduct, then a judicial proceeding and declaration may be necessary to establish the facts.<sup>11</sup>

The Court considers issues of statutory interpretation de novo and will not look beyond the plain language of the statute if the statute is unambiguous.<sup>12</sup> NRS 258.007, titled “Certification as category II peace officer required in certain townships; forfeiture of office,” provides (1) each constable to be certified by POST as a category II peace officer within one year of the constable taking office or request an extension of up to an additional six months for good cause; and (2) if a constable does not timely obtain certification then the constable forfeits his or her office.<sup>13</sup>

Both parties agree that NRS 258.007 does not explicitly allow the Board to remove a constable from office, but the parties disagree as to the implementation of the statute. Clark County argues “that the statute creates a self-executing forfeiture” where Clark County is required to fill or abolish the vacancy. Alternatively, Eliason argues that declaring forfeiture is a judicial function and that the statute is not self-executing.

The Court agreed with Clark County and concluded that the plain language of NRS 258.007(2) makes forfeiture self-executing when the constable fails to timely become certified as a category II peace officer. NRS 258.007(1) clearly states that all constables must become certified by POST as a condition of holding that office and NRS 258.007(2) clearly states that the constable will forfeit his or her office by not complying with the certification requirement. The Court explains that the Board does not have to take any action to formalize the forfeiture. Additionally, because the constable did not meet his or her requirements, the constable has no right to retain the office. The forfeiture is automatic if the constable fails to become certified according to the plain language of the statute.<sup>14</sup>

The Court distinguished NRS 258.007 from other statutes<sup>15</sup> that designate events or circumstances that would trigger forfeiture because those statutes would necessitate judicial proceedings to establish the facts that would trigger the forfeiture to provide due process.<sup>16</sup>

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<sup>7</sup> 70 Am. Jur. 2d *Sheriffs, Police, and Constables* § 7 (2016).

<sup>8</sup> *Id.*

<sup>9</sup> *Forfeiture*, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>10</sup> 63C Am. Jur. 2d *Public Officers and Employees* § 164 (2018).

<sup>11</sup> 70 Am. Jur. 2d *Sheriffs, Police, and Constables* § 28 (2016).

<sup>12</sup> *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 609, 427 P.3d 113, 119 (2018).

<sup>13</sup> NEV. REV. STAT. § 258.007 (2015).

<sup>14</sup> *See* NEV. REV. STAT. § 258.007(2) (2015); 70 Am. Jur. 2d *Sheriffs, Police, and Constables* § 7 (2016).

<sup>15</sup> Particularly NEV. REV. STAT. § 35.010(2) and NEV. REV. STAT. § 283.040. NEV. REV. STAT. § 258.007 establishes requirements to hold the office of constable, whereas NEV. REV. STAT. § 35.010 permits a *quo warranto* action to be brought against an official and NEV. REV. STAT. § 283.040 lists grounds for removing a public official from office.

<sup>16</sup> *See* 70 Am. Jur. 2d *Sheriffs, Police, and Constables* § 28 (2016).

## **Conclusion**

The Court held that the plain language of NRS 258.007 provides that a constable will forfeit his or her office for failing to become POST-certified. Thus, under NRS 258.007, the Board does not have nor need the authority to declare forfeiture because forfeiture occurs automatically if the constable fails to timely become certified as a category II peace officer.