

STATE OF NEVADA



OFFICE OF SECRETARY OF STATE ROSS MILLER

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SECRETARY OF STATE INTERPRETATION

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QUESTION: For the purpose of the 2012 election, when District Judge offices are vacated after the close of judicial candidate filing, does the vacant seat go on the proceeding general election ballot and, if so, how is the nomination process executed when the vacancy occurs:

1. Before the second Tuesday in April (April 10, 2012)?
2. Between the second Tuesday in April and the fourth Friday in June (April 10 – June 22, 2012)?
3. Following the fourth Friday in June (June 22, 2012)?

ANSWER:

1. The vacancy will appear on the proceeding general election ballot and candidates are nominated via nominating petitions. NRS 293.165(2).
2. The vacancy will appear on the proceeding general election ballot and the Secretary of State may promulgate emergency regulations to set forth the procedures for candidates to be nominated.
3. The vacancy will not appear on the proceeding general election ballot because the vacancy occurs after the deadline to alter the ballot. NRS 293.165(4).

ANALYSIS: The filing period for judicial candidates begins the “first Monday in January of the year in which the election is to be held” and ends the “second Friday after the first Monday in January . . .” NRS 293.177. With regard to the 2012 election cycle, this judicial filing period occurred January 3 – 13, 2012.

The purpose of this interpretation is to clarify, based on the timing of such vacancies, whether that particular vacated office will appear on the 2012 general election ballot and how candidates will be nominated and placed on the ballot. This interpretation is necessary to clarify the direction of NRS 293.165 and the implications of the Supreme Court’s ruling on this issue in Lueck v. Teuton, 125 Nev. 674, 219 P.3d 895 (2009).

Vacancy After Filing and April 10th:

NRS 293.165(2) controls when a vacancy occurs in a “nonpartisan nomination after the close of filing and on or before 5 p.m. of the second Tuesday in April . . .” For the 2012 election cycle, the statute applies to any vacancy in a District Court seat that occurs up to and including April 10, 2012. According to subsection (2), the nomination vacancy is filled by a nominating petition process as set forth in NRS 293.165(2). The nominating petitions must contain signatures of registered voters totaling no less than 1 percent of the number of persons who voted for the office in question in the district at the last preceding general election. Id. The petition must be filed with the appropriate filing officer not earlier than the first Monday in March (March 6, 2012) and not later than the fourth Tuesday in April (April 24, 2012). Id.

Furthermore, the statute is explicit that a candidate nominated pursuant to that provision may only be elected at a general election and his or her name “must not appear on the ballot for a primary election.” NRS 293.165(2)(b). Because District Court judges hold nonpartisan offices and a vacancy in the office occurring after the filing period creates a vacancy in the nomination, NRS 293.165(2) controls and candidates may only be nominated as set forth in the nomination petition process prescribed in NRS 293.165(2).

Vacancy After April 10th and Before June 22nd:

NRS 293.165(3) applies to vacancies that occur in a nonpartisan nomination “after 5:00 p.m. of the second Tuesday in April” (April 10, 2012) and before the “fourth Friday in June,” (June 22, 2012). A vacancy during this time period is analogous to the Teuton situation, and it is the Secretary of State’s interpretation that the Supreme Court in Teuton provided direction that a vacancy during this time period must be placed on the ballot at the proceeding general election. Thus, vacancies that arise during this time period will appear on the 2012 general election ballot (but not the June 12, 2012 primary election).

With respect to vacancies occurring during this time period, Title 24 fails to provide direction or set forth any process for the nomination of candidates when no primary election has been held.¹ Faced with this gap in Nevada law, the Secretary of State, if a vacancy does in fact occur, may prescribe, by regulation, the process by which candidates for the vacancy will be nominated.

Vacancy After June 22nd:

NRS 293.165(4) clearly dictates, “[n]o change may be made on the ballot for the general election after 5:00 p.m. on the fourth Friday in June,” (Emphasis added). This date for the upcoming election cycle is 5:00 p.m. on Friday, June 22, 2012. Pursuant to this clear direction from the Legislature, a vacancy in a District Court office that occurs after this deadline shall not be placed on the proceeding general election ballot. While Teuton primarily addresses the appointment authority of the Governor when a vacancy occurs before the “next general election,”

¹ NRS 293.165(3) provides for filling a vacancy in the nomination during the time period set forth therein, but only in the situation where a primary election has been held for the office in question. Therefore, the statute only applies when the office would ordinarily appear on the upcoming general election ballot.

the case does not address the issue of whether an office must be placed on the ballot when a vacancy occurs after the NRS 293.165(4) deadline.

In Teuton, the vacancy occurred before the ballot altering deadline and NRS 293.165(4) was not implicated. 219 P.3d at 902 [“Even though the statutory deadline for altering the general election ballot was not until August 19, 2008, NRS 293.165(4), after the office became vacant, no candidate's name appeared on the general election ballot.”]. The Teuton Court did not direct that the vacancy would have to be placed on the ballot if the vacancy occurred following the subsection (4) deadline.

Second, the subsection (4) deadline is a clear dividing point established by the legislature as to when seats may be and may not be included on the proceeding general election ballot. The deadline takes into consideration the complexities of the administration of an election and preparation of ballots prior to a large statewide general election. Changes to the ballot after this deadline would jeopardize the Secretary of State and the counties’ ability to run an error-free election. Furthermore, if changes were to be allowed to the ballot after this date, it would make it difficult for Nevada and its counties to satisfy the MOVE ACT requirements for delivering ballots to our military and overseas voters forty-five (45) days prior to an election, i.e., it would risk a potential federal violation by the State of Nevada should changes to the ballot be allowed after the deadline.

In conclusion, due to the clear legislative directive in NRS 293.165(4) and lack of conflicting case law direction, vacancies that occur after 5:00 p.m. on the fourth Friday in June will not be placed on the following general election ballot.