

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA EX REL.
CATHERINE CORTEZ MASTO,
ATTORNEY GENERAL OF NEVADA,
Appellant,
vs.
MICHAEL R. MONTERO, AN
INDIVIDUAL,
Respondent.

No. 51538

FILED

JUN 13 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment in an election law matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

The relevant facts in this case are undisputed. On January 16, 2008, respondent Michael R. Montero filed a declaration of candidacy with the Secretary of State for the office of district court judge for the Sixth Judicial District Court, Department 2. In his declaration of candidacy, Montero stated that he resides in Reno, Nevada.

Subsequently, a written challenge was filed by a Humboldt County citizen with the Secretary of State's Office, challenging Montero's qualification as a candidate for district court judge based solely upon his residency outside of the Sixth Judicial District. Thereafter, the Attorney General petitioned the district court for an order to show cause regarding the validity of Montero's candidacy. In the petition, the Attorney General argued that NRS 293.1755(1) prohibited Montero from running for district court judge in the Sixth Judicial District because he never resided in that judicial district and the statute required a candidate to reside in the

district “to which the office pertains” for at least 30 days immediately preceding the closing date for filing a declaration of candidacy.¹

The district court entered a written order denying the Attorney General’s show cause petition and directing the Secretary of State to place Montero on the primary election ballot as a candidate for district court judge in the Sixth Judicial District. The district court determined that there was no constitutional or statutory requirement that Montero, or any other candidate for district court judge, maintain his physical residence within the judicial district in which he was seeking office. The court reasoned that for residency purposes, under NRS 293.1755(1), the office of district court judge was a “state office,” requiring residency only in Nevada because (1) NRS 293.109(12) designates a district court judge as a “state officer,” (2) the jurisdiction of district court judges in Nevada was unlimited and 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). This appeal followed.

On appeal, the Attorney General essentially argues that NRS 293.1755(1) requires that district court judge candidates reside in the district in which they are seeking office.

We review issues of statutory construction de novo.² It is well established that when “the language of a statute is plain and

¹There is no dispute that Montero resided in Reno for at least 30 days immediately preceding the closing date for declaration of candidacy.

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

unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.”³ When a statute is ambiguous, however, meaning that it “is capable of being understood in two or more senses by reasonably informed persons,”⁴ the meaning of the statute’s words “may be determined by examining the context and the spirit of the law or the causes which induced the legislature to enact it.”⁵

NRS 293.1755(1) states:

In addition to any other requirement provided by law, no person may be a candidate for any office unless, for at least the 30 days immediately preceding the date of the close of filing of declarations of candidacy or acceptances of candidacy for the office which he seeks, he has, in accordance with NRS 281.050, actually, as opposed to constructively, resided in the State, district, county, township or other area prescribed by law to which the office pertains and, if elected, over which he will have jurisdiction or which he will represent.

Under this statute, a candidate must “actually” reside “in the State, district, county, township or other area prescribed by law to which the

³Id. at 293, 995 P.2d at 485 (quotations omitted).

⁴McKay v. Bd. of Supervisors, 102 Nev. 644, 649, 730 P.2d 438, 442 (1986).

⁵McKay, 102 Nev. at 650-51, 730 P.2d at 443; see also Executive Mgmt. v. Tigor Title Ins. Co., 118 Nev. 46, 50-51, 38 P.3d 872, 875 (2002).

office pertains and, if elected, over which he will have jurisdiction or which he will represent.”⁶

We conclude that NRS 293.1577(1) designates a state residency requirement for district court judges and reject the opposing view that there is a district residency requirement. Nevada law provides that district court judges are “state officers,”⁷ and that they enjoy statewide jurisdiction.⁸ Accordingly, it follows that the office of a district court judge is a “state office.”⁹ Because the district court judge position is a “state office,” Montero has met NRS 293.1755(1)’s residency requirement for his candidacy because (1) Montero resides in the State of Nevada, to which the office of a Sixth Judicial District Judge “pertains”; and (2) if elected, he will have jurisdiction to hear cases in other judicial districts, as well as in the Sixth Judicial District.

⁶NRS 293.1755; see also NRS 281.050(1) (explaining that the “residence of a person with reference to his eligibility to office is his actual residence within the state or county or district, as the case may be, during all the period for which residence is claimed by him”).

⁷NRS 293.109.

⁸NRS 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) (providing that the Chief Justice of the Supreme Court, in an effort to expedite judicial business, may assign a district judge from one judicial district to another).

⁹Indeed, several provisions in the Nevada Revised Statutes refer to “state office” in the title and mention “state officer” in the text when explaining the provision. See, e.g., NRS 281.110; NRS 283.060; NRS 283.110.


Our interpretation of NRS 293.1755(1) comports with other Nevada statutes governing residency requirements. In particular, when a state officer is required to reside in the district in which he or she is running for election, the Legislature has specifically mandated such requirement by statute. For example, in addition to defining district court judges as state officers, NRS 293.109 also defines state senators, state assembly members, and regents of the University of Nevada as state officers. But the statutes that define the qualifications for these state officers all call for residency in the districts that they represent.¹⁰ NRS 3.060, however, which defines a district court judge's qualifications, requires only that a district court judge must be "a bona fide resident of this State for 2 years next preceding the election or appointment." We conclude that if the Legislature intended to require district court judge candidates to be residents of a particular district, it would have so provided specifically under NRS 3.060. Instead the Legislature specifically mandated only a two-year state residency requirement.¹¹

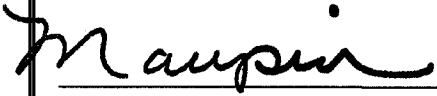
¹⁰See NRS 218.055(3) ("Each Senator and Assemblyman must be elected from within the district wherein he resides by the registered voters residing in that district."); NRS 396.040(3) ("Each member of the board of regents must be a resident of the district from which he is elected.").

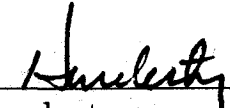
¹¹Any potential ambiguity as to whether NRS 293.1755(1) has a state or district residency requirement is clarified by the classification of a district court judge as a state officer under NRS 293.109, and the two-year state residency requirement for district court judges under NRS 3.060. Mandating a district residency requirement would be contrary to the "spirit of the law," which reveals only a requirement that a district court judicial candidate reside in the state of Nevada for two years preceding the election. See McKay, 102 Nev. at 650-51, 730 P.2d at 443.

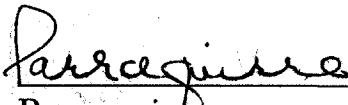
Although NRS 3.060 does not have a district residency requirement, we agree with the Attorney General that a district court judge candidate still has to meet NRS 293.1755(1)'s residency requirement. As discussed above, however, Montero has met NRS 293.1755(1)'s residency requirement for district court judge candidates because he has undisputedly resided within the state of Nevada for at least 30 days immediately preceding the closing date for filing his declaration of candidacy. Accordingly, we


ORDER the judgment of the district court AFFIRMED.¹²

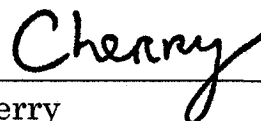

Gibbons, C.J.

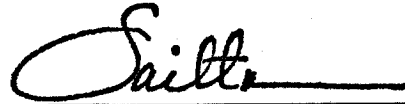

Maupin, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.


Saitta, J.

¹²As this matter warranted our expedited consideration and decision, this order is being entered for the purposes of providing the parties immediate resolution. Because this issue has statewide implications, however, an opinion in this matter will be forthcoming.

cc: Hon. Patrick Flanagan, District Judge
Attorney General Catherine Cortez Masto/Carson City
Lemons Grundy & Eisenberg
Washoe District Court Clerk