

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT B. METZ,
Appellant,
vs.
ALICE A. MOLASKY-ARMAN,
COMMISSIONER OF INSURANCE,
Respondent.

No. 40978

FILED

APR 14 2003

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint seeking respondent's removal from public office. We conclude that the district court did not err, and we affirm its decision.

Robert Metz filed a proper person complaint seeking the removal of Alice Molasky-Arman, Commissioner of Insurance, under NRS 283.440. The Insurance Commissioner is an appointed state officer.¹ NRS 283.440 authorizes the removal of certain public officers upon citizen complaint for refusing or neglecting to perform an official act, or for malpractice or malfeasance in office.

Citing Robison v. District Court,² a 1957 case which holds that a statutory removal action cannot be used to remove a state officer--whether elected or appointed--because the State Constitution, Article VII, provides the only method for removing state officers, the Commissioner moved the district court to dismiss the complaint for lack of subject matter jurisdiction. Metz opposed dismissal on the basis that the Legislature's

¹See NRS 232.805; NRS 232.820; NRS chapter 679B.

²73 Nev. 169, 313 P.2d 436 (1957).


1993 enactment of NRS 293.109, which defines “State officer” but does not include the Insurance Commissioner within the definition, abrogated Robison. Metz argued that NRS 283.440 must now be read to permit the statutory removal of any public officer except those that NRS 293.109 defines as state officers. The district court rejected Metz’s argument, since NRS 293.109 defines only elected state officers, and granted the motion to dismiss. Metz appeals.

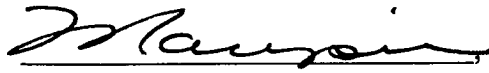
The district court did not err by dismissing Metz’s statutory removal action. Article VII, titled “Impeachment and Removal from Office,” is comprised of four sections. Section one makes the Assembly responsible for impeaching an officer, and the Senate responsible for trying impeachments. Section two specifies the officers subject to impeachment, stating: “[t]he Governor and other State and Judicial Officers, except Justices of the Peace shall be liable to impeachment for Misdemeanor or Malfeasance in Office.” Section three provides for the removal of a supreme court justice or district court judge. Section four, regarding the removal of “other civil officers,” directs that “[p]rovision shall be made by law for the removal from Office of any Civil Officer other than those in this Article previously specified, for Malfeasance, or Nonfeasance in the Performance of his duties.”

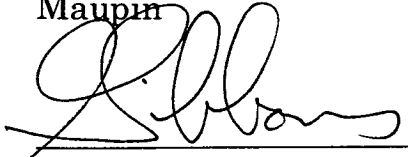
After reviewing that part of the Constitutional Debates devoted to these four sections, the Robison court concluded that elected and appointed state officers may only be removed under the Constitution’s provisions, not under NRS 283.440, which was enacted in compliance with Article VII, Section 4’s directive, and governs the removal of public officers who are not state officers (or supreme court justices or district court judges). Because NRS 293.109 defines who is a “state officer” only as the

term is used in Title 24, Elections,³ it does not affect Robison's holding with regard to appointed state officers, much less abrogate it. And because the Insurance Commissioner is an appointed state officer, Metz could not utilize NRS 283.440 to seek Molasky-Arman's removal. Accordingly, we affirm the district court's order dismissing this action.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Robert B. Metz
Attorney General Brian Sandoval/Carson City
Washoe District Court Clerk

³NRS 293.010.