



MARQUIS AURBACH COFFING

DIRECT LINE: (702) 207-6072
DIRECT FAX: (702) 856-8972
EMAIL: MMAUPIN@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
DALE A. HAYES
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
JASON M. GERBER
MICAH S. ECHOLS
ERIK W. FOX
BRIAN R. HARDY
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA
DAVID G. ALLEMAN

CODY S. MOUNTEER
CHAD F. CLEMENT
BENJAMIN T. AUTEN
KRISTIN L. GIFFORD
CHRISTIAN T. BALDUCCI
VINCENT J. VITATOE
JIMMY T. LEE
BRIANNA SMITH
JAMES J. RUGGEROLI
NIKITA R. PIERCE
JARED M. MOSER
JONATHAN B. LEE
ADELE V. KAROUM
MICHAEL D. MAUPIN

JOHN M. SACCO
OF COUNSEL

November 13, 2015

Via Email (kathynjus@gmail.com) and Regular Mail

Nevada Republican Party
500 S. Rancho Drive, Suite 7
Las Vegas, Nevada 89106

Re: **NRS 293.160**
Our File No. 14221-010

Dear Kathryn:

Please accept this response to your request dated November 10, 2015 wherein you requested that our firm compose an opinion letter regarding the election of officers to the State's Central Committee. As you are aware, the statutes that govern the election of officers to the State's Central Committee are NRS 293.137 through NRS 293.160. The procedure for electing delegates and committee members is as follows.

Delegates to the county conventions are chosen at precinct meetings pursuant to NRS 293.137.¹ The counties' central committees are chosen at the county conventions pursuant to NRS 293.143. The county conventions choose delegates to the State conventions pursuant to NRS 293.145. It is at the State conventions where State Central Committee members are chosen pursuant to NRS 293.153. The Central Committee elects an executive committee from its members pursuant to NRS 293.160. The State's Central Committee also elects its officers by ballot under the same section.

The issue of contention for which this letter was requested is with regard to whether or not executive committee members and officers must be elected from the members of the Central Committee. The statute at issue reads as follows:

.....
.....
.....

¹ NRS 293.137 calls for participation at the precinct meetings to be restricted to registered voters of the party.

NRS293.160 State and county central committees: Election of officers and executive committee; other powers.

1. Each State central committee and each county central committee may **ELECT FROM ITS MEMBERSHIP** an executive committee and shall, except as otherwise provided in this chapter, choose its officers by ballot.

(Emphasis added.)

The first part of NRS 293.160 addresses the election of the executive committee from the membership of the State Central Committee. This portion of the statute provides that the State Central Committee "may elect" from its membership an executive committee. Though the language of this portion of the statute uses the permissive "may" as opposed to the mandatory "shall", logically the wording of this portion of the statute does not permit the electing of executive committee members from outside the membership of the Central Committee. If that were the intended meaning there would be no purpose to include the phrase, "from its membership," in the language. The inclusion of "from its membership" would be reduced to a statutory suggestion. As statutes are not often constructed as mere suggestions, it is logical to interpret this language as a mandate. The inclusion of the permissive "may" then indicates that what is permissive is whether or not to elect an executive committee. Like corporate governance, a company may either be governed by a board of directors or through direct vote on all decisions by the shareholders themselves. Because that is an inefficient mode of governance, a smaller dedicated body is characteristically empowered to do the work of governing. Such is the case here. The State Central Committee could have chosen to govern the party directly. However, when the party made the determination to utilize an executive committee it accepted that the members of that committee would be elected from its membership.

While the executive committee is elected from the membership of the State Central Committee, the statute is less clear on the election of the officers which serve as a part of that committee. The term "elect from its membership" applies to the executive committee, but does not directly speak to the election of officers, though there is a clear requirement that the officers be chosen by ballot. A literal reading of the statute potentially leaves open the dual possibilities of allowing for: 1) the election of party officers from among a broader pool of candidates; or 2) restricting candidacy for the election of officers exclusively to the membership. However, this situation is significantly clarified by reading NRS 293.160 in tandem with The Bylaws of the Nevada Republican Central Committee as amended September 28, 2013. In the Bylaws, Article 11(1)(A)(1) identifies, among others, the following officers: Chairman, Vice-Chairman, Secretary, and Treasurer as members of the executive committee. As such, given that NRS 293.160 is clear that the executive committee must be elected from the membership of the Central Committee, it naturally follows that, as members of the executive committee, the officers must likewise be elected from the membership.

An analysis of neighboring state statutes on the election of state central committee officers provides similar results. Among Nevada's neighboring states, Arizona has a similar statutory framework in that there are statutes guiding the basic organization and behavior of the state central committees. Arizona's statute unambiguously requires officers be elected from the membership of the state committee Ariz. Rev. Stat. Ann. § 16-826. The use of the Arizona approach in Nevada is bolstered by the principles of statutory interpretation that direct the reading statutes in harmony with other rules or statutes, and interpreting statutes so as to avoid absurd or unreasonable results. Nevada Power Co. v. Haggerty, 989 P.2d 870, 877 (Nev. 1999). Nevada's primary elections are closed pursuant to NRS 293.257. Among the prominent reasons for having a closed primary is to prevent people from outside the party from improperly influencing a party's choice of nominees. The same principle would logically apply to the selection of State Central Committee officers.

Restricting the election of officers only to committee members is consistent with the principles laid down under NRS 293.137-160. The above mentioned statutory framework sets forward a tiered process for choosing delegates and committee members. Participation at the precinct level is restricted to registered Republicans. Delegates to the county conventions are chosen by those precincts. The county conventions determine participation at the State convention. The State conventions choose the members of the Central Committee. Participation is restricted at each level. Without an unambiguous statutory directive, interpreting the statute as abandoning the principle of tiered participation in party mechanisms would be interpreting the statute in a manner inconsistent with the established statutory framework.

Finally, allowing the State party officers to be chosen from outside the membership of the Central Committee would allow groups of people with tenuous connections and only recently changed voter registration status to obtain the highest offices in the state party mechanism. As the current mechanism for the selection of members of the State Central Committee is mandated by statute and not unduly restrictive, requiring membership on the State Central Committee is a modest and reasonable failsafe consistent with principles of Nevada election law, and with the laws of other states that have similar statutory frameworks. Interpreting this law in such a way as to allow a group of Democrats to change their voter affiliation and almost immediately obtain positions of power as officers and members of the Republican Central Committee would be an unreasonable interpretation given Nevada's long history of allowing our political parties to protect themselves against outside influences and would be an affront to the current two party system.

Based upon the foregoing, it is this firm's opinion that NRS 293.160(1) restricts executive committee membership and candidacy for State Central Committee officers to members of the State Central Committee.

....

....

We recommend that in order to provide internal clarity on this matter the Nevada Republican Party amend its bylaws to lend specificity to an area left ambiguous by statute. It goes without saying that the Bylaws of the Nevada Republican Central Committee may not be written in contradiction to statute, however where the statutes are silent or unclear the Bylaws may be changed to lend greater specificity to the process. The only ironclad mandate in NRS 293.160(1) on how Central Committee officers are to be chosen is that they must be chosen by ballot. If the party so chooses it may amend the Bylaws to establish eligibility criteria for Central Committee officers, so long as those criteria do not violate established principles of law and public policy (e.g. anti-discrimination cases and statutes).

This opinion letter is rendered for the sole benefit of the addressee hereof, and no other person or entity is entitled to rely hereon. This opinion may not be relied upon by any other persons without the expressed written consent of a director of this firm, provided, however, copies of this opinion letter may be furnished to other members of the Nevada Republican Party Central Committee, and to any person to whom disclosure is required to be made by law or court order.

Sincerely,

MARQUIS AURBACH COFFING



Brian R. Hardy, Esq.
Michael D. Maupin, Esq.

Cc: Michael McDonald (Michael@nevadagop.org)
MDM:hab