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RECENT NEVADA CASES
EXCERPTED FOR LEGISLATIVE INTENT AND HISTORY

The following cases relating to Nevada law are not exhaustive on the issue of legislative intent and history. These are a few examples of recent court decisions excerpted for this topic in the state. ***You must review the entire court opinion to determine its applicability to your case.***

IN RE ORPHEUS TRUST
179 P.3D 562
NEV., 2008. MARCH 27, 2008

"Statutory interpretation is a question of law which this court reviews de novo." [FN3] When the language of a statute is unambiguous, courts are not permitted to look beyond the statute itself when determining its meaning.[FN4] However, when "the [L]egislature has failed to address a matter or ... addressed it with imperfect clarity, [it becomes the responsibility of this court] to discern the law." [FN5] Similarly, when a statute is susceptible to more than one reasonable but inconsistent interpretation, the statute is ambiguous, and this court will resort to statutory interpretation in order to discern the intent of the Legislature. [FN6]

FN3. *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006).

FN4. *Erwin v. State of Nevada*, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995).

FN5. *Baron v. District Court*, 95 Nev. 646, 648, 600 P.2d 1192, 1193-94 (1979).

FN6. *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998).

"When construing an ambiguous statute, legislative intent is controlling, and we look to **legislative history** for guidance." [FN7] In addition, this court will consider a statute's multiple legislative provisions as a whole and may use the general subject matter and policy of the act as an interpretative aid.[FN8] This court must also interpret the statute "in light of the policy and spirit of the law, and the interpretation should avoid absurd results." [FN9] Finally, this court will resolve any doubt as to the Legislature's intent in favor of what is reasonable.[FN10]

FN7. *Washoe Med. Ctr. v. Dist. Ct.*, 122 Nev. 1298, ----, 148 P.3d 790, 793 (2006).

FN8. *Leven v. Frey*, 123 Nev. ----, ----, 168 P.3d 712, 716 (2007).

FN9. *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995).

FN10. *See id.*

…

The comments to the Principal and Income Act establish that the primary purpose of this adjustment provision is to free trustees from the traditional obligation to invest in a minimum threshold of income-producing assets and to "enable a trustee to select investments using the standards of a prudent investor without having to realize a particular portion of the portfolio's total return in the form of traditional trust accounting income, such as interest, dividends and rents." FN18 This purpose was reiterated by Frank Daykin, a Commissioner from the National Conference of Commissioners on Uniform State Laws, who testified before the Assembly Committee on Commerce and Labor that

FN18. Unif. Principal and Income Act § 104 cmt. (amended 1997), 7A U.L.A. 435-36 (2006).

[the purpose of NRS 164.795] is to permit adjustments between principal and income in order to take advantage of investments which may yield a substantial appreciation of principal while yielding relatively little income in the conventional sense, or, conversely, an investment which yields a relatively high conventional income might yield a disproportionately low possibility of appreciation principal. The trustee may take those factors into account. He may make the adjustment between principal and income so that each class, the income beneficiary***567*** and the remainder beneficiary, ... are fairly treated.FN19

FN19. Hearing on S.B. 196 Before Assembly Committee on Commerce and Labor, 72d Leg. (Nev., May 14, 2003) (Testimony of Frank Daykin).

…

Although NRS 164.795 allows for adjustment by a special trustee, it is not clear whether a special trustee's power to adjust is prospective only or may be exercised retroactively. Thus, this portion of NRS 164.795 is ambiguous. Consequently, we look to our rules of statutory construction and to **legislative history** to interpret the extent of a special trustee's statutory power to adjust.

…

Comments by the drafters of the Principal and Income Act further suggest that the drafters anticipated that actions taken by a prudent investor may require a corrective adjustment. For example, the drafters stated that "[the power to adjust] authorizes the trustee to make adjustments between principal and income that may be necessary if the income component of a portfolio's total return is too small or too large because of investment decisions made by the trustee under the prudent investor rule." FN21 This language clearly indicates that the power to adjust may be exercised correctively, after the trustee has an opportunity to review trust data and trustee investment decisions for the immediately preceding year.FN22 Although***568*** a special trustee must be appointed to make an adjustment when all trustees are also interested trust beneficiaries, the special trustee is simply a neutral party who "stands in the shoes" of the interested trustees to make any adjustment that a disinterested trustee would deem necessary at the close of the year.

WE PEOPLE NEVADA EX REL. ANGLE V. MILLER
192 P.3D 1166
NEV., 2008. SEPTEMBER 25, 2008

When Section 2(4) is read in conjunction with Section 3(2), Section 2(4)'s language is rendered ambiguous because there appears to be more than one reasonable interpretation of Section 2(4)'s language. One reasonable interpretation of Section 2(4) creates a fixed filing deadline, but a second equally reasonable interpretation allows for a flexible filing deadline. Since the constitutional provision's language is ambiguous, we review the **legislative history** of each constitutional provision and the statutory provision at issue, as well as Article 19's constitutional scheme, in an effort to harmonize Sections 2(4) and 3(2) to give Section 2(4)'s language its proper interpretation and effect.

In light of the **legislative history** and considering Article 19's constitutional scheme as a whole, we determine that Section 2(4)'s language establishes a fixed filing deadline. Thus, the time period

stated in Section 3(2) may be added to the fixed filing deadline under Section 2(4) to give the Legislature a specific block of time within which it may ***1169*** establish a submission deadline for signature verification.

…

DISCUSSION

In resolving this writ petition, we first address whether writ relief is available. After concluding that our extraordinary intervention is warranted, we consider the provision's constitutionality in light of Article 19, Sections 2(4) and 3(2). In doing so, we first review each constitutional provision's plain language to determine whether the provisions can be applied in accordance with their plain meaning. Because, however, there is more than one reasonable interpretation of Section 2(4)'s language and the application of each interpretation renders inconsistent results, we turn to the **legislative history** of each constitutional provision and the statutory***1170*** provision at issue and consider Article 19's constitutional scheme to give Section 2(4)'s language its proper interpretation and effect. Considering the **legislative history** and constitutional scheme, we conclude that NRS 295.056(3) is unconstitutional because it establishes a submission deadline earlier than what is otherwise allowed by Article 19, Sections 2(4) and 3(2) of Nevada's Constitution.

…

Principles of constitutional and statutory interpretation

Resolution of this petition depends upon the interpretation of NRS 295.056(3) and two constitutional provisions, Article 19, Sections 2(4) and 3(2). In discerning their meaning, we rely on well-established precepts of statutory and constitutional construction. In the context of a writ petition, a statute's interpretation is reviewed de novo.[FN12] The rules of statutory construction apply to the interpretation of a constitutional provision.[FN13] Unless ambiguous, a statute's language is applied in accordance with its plain meaning.[FN14] When the Legislature's intent is ***1171*** clear from the plain language, this court will give effect to such intention and construe the statute's language to effectuate rather than nullify its manifest purpose.[FN15] This court has recognized that "[t]he Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision." [FN16] Thus, when possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results. [FN17] Conversely, if a constitutional provision's language is subject to more than one reasonable, although inconsistent, interpretation,[FN18] the court may look to the provision's **legislative history** and the constitutional scheme as a whole to determine what the Nevada Constitution's framers intended. [FN19]

…

Article 19, Section 2(4)'s language is ambiguous

Under Article 19, Section 2(4), once an initiative has been circulated for signatures it must be filed with the Secretary of State not less than 90 days before the general election and the initiative's circulation must cease:

…

Legislative history *of Section 2(4) and NRS 295.056(3)*

We the People argues that the **legislative history** of Section 2(4) contradicts the Legislature's argument that "not less than 90 days" is a flexible filing date. Specifically, the **legislative history** shows that Article 19, Section 2(4) was amended twice to move the filing deadline back to 90 days before the general election. Additionally, the amendments to NRS 295.056(3) demonstrate that the Legislature understood Section 2(4)'s language to create a fixed filing deadline and that the submission deadline could not occur ***1173*** more than 65 days before the 90-day filing deadline.

Article 19, Section 2(4)'s prior amendments

Before 1961, Article 19 required initiatives to be filed with the Secretary of State not less than 30 days before the election.[FN26] In 1960 and 1961, the Legislature proposed amending Article 19 to extend the deadline to 60 days before an election.[FN27] This amendment became effective in 1962.

FN28 Then, in 1969 and 1971, the Legislature again proposed amending Article 19, Section 2(4)'s language, this time to extend the deadline to 90 days, to give the Secretary of State additional time to prepare ballots. FN29 This amendment took effect in 1972.FN30

FN26. *See* 1960 Nev. Stat., at 513; 1961 Nev. Stat., at 814.

FN27. 1960 Nev. Stat., at 516; 1961 Nev. Stat., at 816.

FN28. Nev. Const. art. 19, § 2(4) (amended 1962).

FN29. *See* Hearing on S.J.R. 7 Before the Senate Judiciary Comm., 55th Leg. (Nev., February 12, 1969); 1971 Nev. Stat., at 2231.

PICETTI V. STATE
192 P.3D 704
NEV., 2008. SEPTEMBER 11, 2008

NRS 484.37941 and legislative intent

Picetti contends that the **legislative history** supports his assertion that the Legislature intended NRS 484.37941 to apply retroactively to cases not finalized by July 1, 2007. He contends that, because the main purpose of the statute is to provide for treatment of felony DUI offenders who repeatedly make the decision to drive while intoxicated, presenting a severe risk to society, the Legislature intended the statute to apply at the earliest date possible. We disagree. We acknowledge that the **legislative history** reveals that the Legislature was well aware that the pilot program, upon which the treatment program established in NRS 484.37941 is based, was extraordinarily successful in Clark County, achieving low rates of recidivism among program participants.FN24 Nevertheless, we conclude that the Legislature did not clearly evince its intent to apply NRS 484.37941 retroactively to those cases not finalized by July 1, 2007. Had the Legislature wished to make the statute retroactive, it certainly could have expressed that desire; instead, the Legislature clearly stated that the effective date of the statute was July 1, 2007.FN25

FN24. Hearing on S.B. 277 Before the Assembly Comm. on the Judiciary, 74th Leg. (Nev., May 8, 2007).

FN25. 2007 Nev. Stat., ch. 288, § 6, at 1064.

LAS VEGAS CONVENTION AND VISITORS AUTHORITY V. MILLER
191 P.3D 1138
NEV., 2008. SEPTEMBER 04, 2008

The proponents also rely on the **legislative history** of NRS 295.0575, which was passed as part of A.B. 604, to argue that striking the signatures was not the proper remedy. In particular, the proponents point to statements by Assemblyman Marcus Conklin expressing concern with the idea of wholesale signature-striking.FN61 But Assemblyman Conklin's comments related to a provision contained in a companion bill, A.B. 606, not A.B. 604.FN62 Moreover, later statements by Assemblyman Conklin indicate that he approved the language; FN63 this language was not included when portions of A.B. 606 were incorporated into A.B. 604 and A.B. 606, as a separate bill, was abandoned.FN64 This isolated and equivocal **legislative history** does not mandate that this court reverse its decades-long practice, followed in other states as well, of striking signatures based on invalid circulator affidavits. FN65

FN61. Hearing on A.B. 604 Before the Assembly Comm. on Elections, Procedures, Ethics, and Constitutional Amendments, 74th Leg. (Nev., April 5, 2007) (discussing with former District Judge Michael Griffin possible remedies for when fraud in signature-gathering is shown).

…

As for the State's interest, according to the statute's **legislative history**, the affidavit requirement, among other amendments passed by the 2007 Legislature, was primarily intended to prevent fraud in the signature-gathering process.[FN88] Several individuals testified***1155*** regarding this issue; specific to Nevada, one witness read a sworn affidavit into the record describing a "signature party" held at a Lake Mead picnic area, attended by over 100 people, at which circulators were tracing signatures from one initiative petition to another.[FN89] Another witness identified an emergent "initiative industrial complex," in which a great deal of money is made by companies that bring in out-of-state circulators who are paid on a per-signature basis.[FN90] Also, some concern was expressed that signers be aware of what measures they were supporting.[FN91] The specific items in the affidavit were calculated to address these concerns.

FN88. Hearing on A.B. 604 Before the Assembly Comm. on Elections, Procedures, Ethics, and Constitutional Amendments, 74th Leg. (Nev., April 5, 2007).

STATE V. SECOND JUDICIAL DIST. COURT EX REL. COUNTY OF WASHOE
188 P.3D 1079
NEV., 2008. JULY 24, 2008

The ameliorative amendments to NRS 193.165

[5] On June 14, 2007, the Legislature enacted A.B. 510,[FN7] which amended several ***1081*** statutes, including NRS 193.165. Specifically, A.B. 510 amended NRS 193.165 to give district court judges broader discretion in determining sentences for violations of that statute by allowing them to impose a consecutive sentence with a minimum term of not less than one year and a maximum term of not more than 20 years.[FN8] Prior to these amendments, NRS 193.165 mandated that a defendant serve an equal and consecutive sentence for the use of a deadly weapon in the commission of the primary offense.[FN9] Significantly, the Legislature listed the effective date of the amendment as July 1, 2007, but failed to indicate whether the amendment would apply retroactively.[FN10] A review of the **legislative history** similarly reveals no indication that the Legislature intended the amendments to apply retroactively. Rather, it reveals that the issue of retroactivity was only briefly mentioned once during the entirety of the **legislative history**.[FN11]

FN7. These amendments were initially set forth in A.B. 63, which did not pass in the State Senate; instead, A.B. 63 was included in A.B. 510 as section 13. *See* Hearing on A.B. 63 Before the Senate Comm. on the Judiciary, 74th Leg. (Nev., May 28, 2007).

FN8. *See* Hearing on A.B. 63 Before the Assembly Comm. on the Judiciary, 74th Leg. (Nev., March 9, 2007); *see also* Hearing on A.B. 63 Before the Senate Comm. on the Judiciary, 74th Leg. (Nev., May 28, 2007).

FN9. 1995 Nev. Stat., ch. 455, § 1, at 1431.

FN10. 2007 Nev. Stat., ch. 525, § 22, at 3196.

FN11. *See* Hearing on A.B. 510 Before the Senate Comm. on the Judiciary, 74th Leg. (Nev., May 28, 2007).

HANEY V. STATE
185 P.3D 350
NEV., 2008. JUNE 12, 2008

This court will review the interpretation of a statute de novo.[FN6] When interpreting a statute, this court will give the statute its plain meaning and will examine the statute as a whole without rendering words or phrases superfluous or rendering a provision nugatory. [FN7] This court will award meaning to all words, phrases, and provisions of a statute.[FN8] If the statute is ambiguous, then this

court will look beyond the statutory language itself to determine the legislative intent of the statute.[FN9] Finally, the rule of lenity demands that ambiguities in criminal statutes be liberally interpreted in favor of the accused.[FN10]

…

The Legislature once again modified credits to be earned by inmates with the passage of A.B. 510 in 2007. Among other provisions, A.B. 510 retroactively increased the amount of credits that certain inmates can earn.[FN20] It is clear, based on the **legislative histories** of Assembly Bills 68 and 510, that the Legislature intends for inmates to earn credit toward early release based on behavior and that the Legislature considered judicial authority when it authorized the sheriff to grant good time credits. Therefore, it is clear that the Legislature did not intend for the district courts to have any authority to restrict the sheriff's ability to award good time credits but did intend to grant district courts the authority to award credit for time served.

DOUGLAS V. STATE
184 P.3D 1037
NEV., 2008. JUNE 05, 2008

We disagree with the State, and we conclude that such a broad reading of NRS 213.1214 is untenable because it would produce absurd results. [FN10] For example, if NRS 213.1214 was interpreted to allow Psych Panel certification for any offender previously convicted of a sex offense, the State could require a prisoner convicted of a sex offense years earlier, who had fully discharged his sentence on the sex offense, to obtain Psych Panel certification on a present conviction involving a nonsexual crime. There is simply no support in the **legislative history** for such an expansive reading of NRS 213.1214. To the contrary, the Legislature grappled with the question of whether it should expand the list of offenses set forth in NRS 213.1214(5) because it was concerned with the added expense of providing Psych Panel review for the additional offenses.[FN11] Therefore, it is unlikely that the Legislature intended to require sex offenders to be continuously certified when an offender subsequently commits a nonsexual offense long after the sex offense has been discharged.

FN10. *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599-600, 959 P.2d 519, 521 (1998) (holding that an interpretation of a statute "should be in line with what reason and public policy would indicate the legislature intended, and should avoid absurd results").

FN11. *See* Hearing on S.B. 5 Before the Assembly Comm. on Ways and Means, 69th Leg. (Nev., June 24, 1997).

LAW OFFICES OF BARRY LEVINSON, P.C. V. MILKO
184 P.3D 378
NEV., 2008. MAY 29, 2008

Although in *MacBride* we referred to our former policy of liberally construing workers' compensation laws in favor of the claimant, our interpretation of "violently" was also based upon the plain meaning of the statutes.[FN20] *MacBride* was decided 25 years ago, and although the Legislature enacted the neutrality rule 10 years after *MacBride*, at no point has it amended the statutory definitions of "accident" or "injury" in a way that alters the *MacBride* interpretations. Therefore, we presume that the Legislature approves of the *MacBride* interpretations,[FN21] and we conclude that the neutrality rule does not require us to overturn 25 years of precedent by redefining "accident" and "injury."

FN20. *See MacBride*, 99 Nev. at 326-27, 661 P.2d at 1303 (considering the language of the statutory definition of "accident").

FN21. *See Northern Nev. Ass'n Injured Workers v. SIIS*, 107 Nev. 108, 112, 807 P.2d 728, 730 (1991) (noting that when the Legislature has had ample opportunity to change statutory law after this court has interpreted that law but does not do so, we presume that the Legislature approves of our construction).

…

[15] One tenet of statutory construction requires statutes to be "construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." FN31 This tenet is based on ***387** the "presumption that every word, phrase and provision in the enactment has meaning." FN32 Applying the plain language of NRS 616C.150(2) would render the presumption therein meaningless because to disprove the presumed fact, the claimant would simply have to prove that his or her injury arose out of and in the course of his or her employment, as is already required under NRS 616C.150(1). This internal conflict renders the statute ambiguous. To resolve this conflict, we look to the **legislative history** and the entire statutory scheme to determine the legislative intent behind the statute.FN33

…

In 1993, the Legislature overhauled Nevada's workers' compensation system. FN34 The main reason for the overhaul was financial: the workers' compensation system was facing bankruptcy.FN35 In presenting the bill that enacted NRS 616C.150, a senator discussed the NRS 616C.150(2) presumption: "It ... has a rebuttable presumption against [the] course and scope of employment." FN36 The language of NRS 616C.150(2), however, establishes a presumption against both the "arising out of employment" requirement and the "in the course of employment" requirement. The senator's statement suggests that the Legislature intended the presumption to address the "in the course of" requirement and the **legislative history** as a whole indicates that the Legislature intended the presumption to further limit entitlement to workers' compensation.FN37 Our construction of the statute must give meaning to both subsections of NRS 616C.150 and abide by the Legislature's intent to limit the payment of workers' compensation claims.

FN34. S.B. 316, 67th Leg. (Nev.1993).

FN35. Hearing Before the Senate Comm. on Commerce and Labor, 67th Leg. (Nev., January 19, 1993) (statement of Senator Randolph J. Townsend, Chair, Senate Comm. on Commerce and Labor).

FN36. Presentation of S.B. 316 to the Senate as Comm. of the Whole, 67th Leg. (Nev., March 24, 1993) (statement of Senator Lori Lipman Brown, Member, Comm. on Commerce and Labor).

JOHANSON V. EIGHTH JUDICIAL DIST. COURT OF STATE OF NEV. EX REL. COUNTY OF CLARK
182 P.3D 94
NEV., 2008. MAY 01, 2008

NRS 125.110 must be strictly construed,FN13 and "[w]hen a statute is clear on its face, we will not look beyond the statute's plain language." FN14 NRS 125.110 plainly states that certain documents in divorce proceedings "shall" remain open to the public. " '[S]hall' is mandatory and does not denote judicial discretion." FN15 Accordingly, we conclude that, under NRS 125.110, the district court has no discretion in divorce cases to seal pleadings,FN16 court findings, orders that resolve motions, or judgments.FN17

…

Lueck contends, however, that the district court's inherent power to completely seal divorce cases extends beyond NRS 125.110.FN18 We are not persuaded by this argument. Even if the district court retains inherent ***98** authority to seal the record in divorce cases, here, Lueck has failed to

demonstrate that the district court's order sealing the entire case file was a necessary exercise of that power to protect his or any other person's rights or to otherwise administer justice.[FN19] Therefore, we need not further address this issue.

…

FN19. We note that Lueck's contentions are not supported by **legislative history** or case authority in Nevada regarding the use of inherent power.

CHANOS V. NEVADA TAX COM'N
181 P.3D 675
NEV., 2008. APRIL 24, 2008

Generally, when "'the language of a statute is plain and 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.' " [FN18] A statute is ambiguous when it "is capable of being understood in two or more senses by reasonably informed persons" [FN19] or it does not otherwise speak to ***681** the issue before the court.[FN20] An ambiguous statute may be examined through **legislative history**, reason, and considerations of public policy to determine the Legislature's intent.[FN21] We look first to the language of former NRS 360.247 to determine whether it is ambiguous.

…

Former NRS 360.247 used two different terms to refer to Tax Commission proceedings: "session" and "hearing." It provided that all "sessions" must be open but that "hearings" could be closed. Additionally, the Open Meeting Law requires all "meetings" to be open. While "meeting" is a defined term in the Open Meeting Law, the Legislature failed to make a distinction between the terms "meeting," "session" and "hearing." The Attorney General argues that a "hearing" encompasses only the receipt of evidence; the Tax Commission and Edison argue that a "hearing" includes taking evidence, deliberating, and voting.

To support their arguments, the parties cite different dictionary definitions of "hearing." The Tax Commission argues in favor of the definition of "hearing" contained in *Black's Law Dictionary:*

A proceeding of relative formality (though generally less formal than a trial), generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented. It is a proceeding where evidence is taken to determine issue[s] of fact and to render decision on basis of that evidence.[FN22]

FN22. *Black's Law Dictionary* 721 (6th ed.1990).

…

Because NRS 360.247 is susceptible to at least two reasonable, but incompatible, interpretations by applying different definitions of "hearing," former NRS 360.247 is ambiguous.[FN25] To resolve this ambiguity, we look to ***682** the **legislative history** of the statute to determine the Legislature's intent.

FN25. We note that NRS 360.247 is also ambiguous because after granting the Tax Commission discretion to close a hearing, by using the word "may," it fails to establish guidelines for the use of that discretion. In the absence of guidance, the Tax Commission treated the closure of a hearing as mandatory at a taxpayer's request. Thus, a case never arose where a taxpayer challenged a Tax Commission decision not to close a hearing.

The history of NRS 360.247 suggests that the Legislature intended the Tax Commission to receive confidential information in a closed hearing, but to deliberate and vote on taxpayer appeals in open session. In 1979, before the Legislature enacted NRS 360.247, the Attorney General opined that NRS 372.750, which criminalized the disclosure by the Tax Commission of certain taxpayer information, was intended to protect taxpayers' privacy when the Tax Commission obtained confidential information in the course of enforcing taxes. [FN26] Despite the advice of the Attorney General that the Tax Commission could only close its meeting to receive and discuss information that NRS 372.750 made confidential, the Tax Commission consistently closed entire taxpayer appeal hearings. In 1983, the Department and the Tax Commission sought clarification from the Legislature. Patrick Pine, Executive Director of the Department of Taxation, sent a memorandum to the Assembly Taxation Committee concerning the proposed legislation.[FN27]

FN26. *See* Hearing on A.B. 198 Before the Senate Committee on Taxation, 62d Leg. (Nev., March 8, 1983), Exhibit F.

FN27. Hearing on A.B. 198 Before the Assembly Committee on Taxation, 62d Leg. (Nev., February 23, 1983), Exhibit D.