



OFFICE OF THE DISTRICT ATTORNEY

CIVIL DIVISION

DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

LISA V LOGSDON
Deputy District Attorney

August 18, 2009

The Honorable Catherine Cortez Masto
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701-4717

Re: Clark County District Attorney Research and Analysis in Response to the Department of Health and Human Services Request Regarding an Attorney General's Opinion on the Interpretation of Section 54 of the 2009 Appropriations Bill (AB 562).

Dear Attorney General Masto:

The Clark County District Attorney has been asked to submit their research and analysis in response to the Department of Health and Human Services request for an Attorney General's Opinion regarding the interpretation of Section 54 of the 2009 Appropriations Bill (AB 562). Please find our analysis below and enclosed research:

QUESTIONS PRESENTED

I. Section 54 of the 2009 Appropriations Bill (AB 562), provides that County receipt of child welfare funding is contingent upon funds "being used in a manner such that the child welfare agencies are the sole client of the district attorneys in each case in which the District Attorney or Deputy District Attorney is serving as the attorney for a child welfare agency." Does this provision prohibit the State Division of Child and Family Services from passing funds through to Clark County when the District Attorney also performs the statutory duty, required by NRS 432B.510, to "represent the interest of the public all [432B.510] proceedings"?

II. What effect, if any, does the failure of the 2009 Legislature to pass SB 293 have in interpreting Section 54 of the 2009 Appropriations Bill (AB562)?

III. Is the Interlocal Agreement (“Interlocal”) between Clark County and the State terminable in the event the Attorney General interprets Section 54 of the 2009 Appropriations Bill (AB 562) to prohibit the State Division of Child and Family Services from passing funds through to Clark County?

BRIEF ANSWERS

I. No. The rules of statutory construction, as well as previous Attorney General Opinions, make it clear that Appropriation Bills are not to be interpreted in a manner that change the substantive or general laws of the State and must be read in harmony with existing statutory obligations.

II. The Legislature’s failure to adopt SB 293, along with its approval of Appropriations Bill (AB 562), indicates that the Legislature intended for the District Attorney to represent the interests of the public in 432B.510 proceedings, as well as to serve as the attorney for the child welfare agency. The Legislative acts must be read in harmony with one another so as to effectuate to both.

III. Yes, Pursuant to Section 4 of the Interlocal, the Interlocal immediately terminates upon any cessation or reduction in funding. After the termination, the Interlocal provides that the parties have up to 180 days to develop an alternative child welfare services delivery plan that insures the fiscal and programmatic responsibility of the State and Clark County be proportional to the level of responsibility of each entity prior to the integration of child welfare services.

DISCUSSION

I. Statutory Interpretation of AB 562 and NRS 432B.510

A. Appropriations Bills are not legislative acts changing substantive or general laws of the State.

In 2000, the Nevada Attorney General opined that Appropriations Bills are not Legislative acts that can change substantive or general State law.¹ The Opinion was based upon a factual situation quite similar to the facts underpinning the present situation, i.e., a perceived discrepancy or ambiguity between a budgetary act (the Appropriations Bill herein) and the statutory scheme (NRS 432B.510 herein.) In both situations, the determination is the same, i.e., that the Legislature cannot change substantive or general laws of the State in an Appropriations Bill.

¹ 2000 Nev. Op. Atty. Gen. No 35

Specifically, in 2000 the Nevada Attorney General was asked to clarify to whom the Nevada Indian Commission (“NIC”) was required to report.² The confusion arose after a 1993 bill attempted and failed to reorganize State government by merging the NIC with the Nevada Department of Human Services (NDHS). Subsequently, the 1995 Executive Budget required the NIC to obtain funding through the NDHS and depicted the NIC as an agency of NDHS. The Attorney General, in analyzing whether the Executive Budget could alter the statutory scheme and make the NIC an agency of the NDHS, determined that the budgetary appropriation could not alter the statutory organization of State government. In reaching this conclusion, the Attorney General reviewed the legislative history of AB 782 and opined that since AB 782 did not provide the Director of NDHS with administrative authority over the NIC, then the Legislature had rejected the proposition that the NIC was an agency of the NDHS. NIC instead remained a stand-alone body.

The NIC Attorney General opinion relied in large part on *Nevada ex rel. Abel v. Eggers*³ which held that:

“uncodified ‘appropriations bills . . . are not legislative acts changing substantive or general laws of the state . . . It is not expected that changes and amendments in the general laws of the state will be made in general appropriations bills, and the life of such acts is only two years.’”

The Attorney General’s Opinion states that, “the legislature cannot abolish a statutory office through an appropriations act which amends or nullifies substantive law.”⁴ Significantly, the Opinion also concluded that there is no legal significance to subsequent unrestricted descriptions of Department authority contained in later Executive Budgets, even though the Budget was enacted into law.

As such, the State’s position with regard to the immediate question, i.e. that the Nevada Division of Child and Family Welfare cannot release funds to Clark County because an Appropriations Bill may be at odds with a statutory duty, is not well founded. An Appropriations Bill cannot alter District Attorney statutory obligations any more than it could alter responsibilities of the State Departments.

B. Rules of statutory construction require the Appropriations Bill to be read in harmony with NRS 432B.510 to give effect to the legislative intent of the statute.

When a court is faced with arguably inconsistent statutory provisions, the court turns to the rules of statutory construction.⁵ The goal of statutory interpretation is to effectuate the Legislature’s intent.⁶ When statutory language is not ambiguous, a court

² *Id.*

³ *Nevada ex rel. Abel v. Eggers*, 136 P. 100, 101 (Nev. 1913)

⁴ *2000 Nev. Op. Atty. Gen. No 35*

⁵ *Williams v. Clark County Dist. Atty.*, 50 P.3d 536, 543 (Nev. 2002)

⁶ *Karcher Firestopping v. Meadow Valley Contractors, Inc.*, 204 P.3d 1262, 1263 (Nev. 2009) *citing Savage v. Dist. Ct.*, 200 P.3d 77, 82 (Nev. 2009)

will interpret a statute according to its ordinary meaning.⁷ But, when a statute is ambiguous, meaning that it is amenable to more than one reasonable interpretation, a court will look for an interpretation that will best give effect to the legislative intent of the statute.⁸

Statutes are to be read in the context of the act and the subject matter as a whole. A court may also consider the policy behind the statute, as an interpretive aid.⁹ When separate statutes are potentially in conflict, the court will interpret the statutes in harmony so as not to conflict with other rules and statutes.¹⁰ In interpreting statutes, courts presume that the Legislature is aware of other related statutes, “when the legislature enacts a statute, this court presumes that it does so ‘with full knowledge of existing statutes relating to the same subject.’”¹¹

Furthermore, courts will also avoid any statutory interpretation that would render the language of a statute meaningless or superfluous.¹² Similarly, courts interpret statutes to avoid absurd results.¹³ Courts also construe any doubt as to the Legislature’s intent in favor of what is reasonable.¹⁴ A court will not construe a statute to produce an unreasonable result when another construction will produce a reasonable result.¹⁵

1. Legislative Intent:

Implementation of Legislative intent is the primary goal of statutory construction. In order to determine the Legislative intent of a statute that may be in conflict with another statute, you must look to the Legislative history.

a. NRS 432B.510 – the District Attorney’s duty to represent the public:

In 1997, AB 356 made significant changes to Child Welfare Services, which included clarifying the District Attorney duties under NRS 432B.510. The Legislative history of AB 356 states that the District Attorney represents the “interest of the public” when representing a petition brought pursuant to NRS 432B.510, as opposed to the interests of any specific party or agency involved in the action.¹⁶ The history clearly draws a distinction between the public duty and

⁷ *California Commercial v. Amedeo Vegas I*, 67 P.3d 328, 330 (Nev. 2003)

⁸ *Washoe Med. Ctr. v. Dist. Ct.*, 148 P.3d 790, 793 (Nev. 2006) (citing *Potter v. Potter*, 119 P.3d 1246, 1248 (Nev. 2005)).

⁹ *McKay v. Bd. of Supervisors*, 730 P.2d 438, 443 (Nev. 1986)

¹⁰ *Id.*

¹¹ *State, Div. of Insurance v. State Farm*, 995 P.2d 482, 486 (Nev. 2000) (quoting *City of Boulder v. General Sales Drivers*, 694 P.2d 498, 500 (Nev. 1985)).

¹² *Southern Nev. Homebuilders v Clark County*, 117 P.3d 171, 173 (Nev. 2005)

¹³ *In re Orpheus Trust v. Getty*, 179 P.3d 562, 565 (Nev. 2008) citing *Hunt v. Warden*, 903 P.2d 826, 827 (Nev. 1995)

¹⁴ *Id.*

¹⁵ *Breen v Caesars Palace*, 715 P.2d 1070, 1072 (Nev. 1986)

¹⁶ History of AB 356 pg 64-67 of 138 <http://www.leg.state.nv.us/lcb/research/library/1997/AB356.1997.pdf>

the agency/party duty, and specifically enacts the public interest representation as the statutory obligation of the District Attorney under NRS 432B.510.

b. 2009 AB562 – the District Attorney’s duty to serve as the attorney for the child welfare agency:

There is no recorded Legislative history for the 2009 Appropriations Bill (AB562) from which to derive the Legislative intent when stating therein that the child welfare agency must be the sole client of the District attorney in cases wherein the District Attorney is serving as the attorney for a child welfare agency. But, in *State ex rel Abel v. Eggers*, the court interpreted appropriation language and found that:

[I]n general appropriation bill appropriations are made in concise language, usually intended to be supplemented by more definite, existing statutes, and for the purpose of meeting the expenses of the state government in accordance therewith.¹⁷

The court further stated that when interpreting appropriations bills, they are to be considered in connection with the general provisions of the laws which they regulate, and unless there is a manifestation that leaves no room for reasonable construction, they are to be construed so as to carry out the provisions of the general law.¹⁸

Based upon the foregoing, it is clear from the Legislative intent that the Legislature intended the District Attorney to represent the interest of the public when bringing forth a petition pursuant to NRS 432B.510. Also, since appropriations bills cannot change substantive or general laws, it would be inconsistent with existing law to interpret AB 562 as changing the statutory representation requirement under NRS 432B.510.

2. Reading the statute as a whole and in harmony with other rules and statutes:

Since the perceived inconsistency between NRS 432B.510 and the 2009 Appropriations Bill (AB 562) surrounds the duties of the District Attorney’s Office, the statutory scheme setting forth the duties of the District Attorney is significant.

The Nevada Constitution states that “the Legislature shall have power to increase, diminish, consolidate or abolish the following county officers: County Clerks, County Recorders, Auditors, Sheriffs, District Attorneys and Public Administrators. The Legislature shall provide for their election by the people, and fix by law their duties and compensation.”¹⁹

¹⁷ *Abel*, 136 P. 100, 102 (Nev. 1913)

¹⁸ *Id.*

¹⁹ NV Const. art IV § 32 (*emphasis added*)

Under Nevada law, the District Attorney's duties and powers are prescribed by legislature and are statutorily defined.²⁰ The District Attorney possesses all powers given him by statute.²¹ The District Attorney's legislated duties include: Criminal Prosecutor, Civil Defense Attorney, and advisor on collection of unpaid child support.²² Pursuant to NRS 252.160, the District Attorney is also required to give his legal opinion to any assessor, collector, auditor or county treasurer, and to all other county, township or district officers within his county, in any matter relating to the duties of their respective offices.

To meet the various duties required by the Legislature the Clark County District Attorney's office is structured into four separate divisions: Criminal, Civil, Family Support and Juvenile. Within each division there are separate categories and duties. The Criminal Division prosecutes the crimes committed in Clark County. The Civil Division provides agency advice and civil litigation representation to all county departments, including the Department of Family Services. The Family Support Division handles child support issues. The Juvenile Division is divided into two units, one which prosecutes juvenile offenders, and the other which prosecutes NRS 432B child welfare petitions.

With regard to the issue at hand, the District Attorney Juvenile Division, Child Welfare Unit deputies are assigned to prosecute NRS 432B petitions. The representation of the child welfare agency is provided by the Civil Division of the office. At this time, there are three civil deputies assigned to the provision of legal advice and representation to the County's Department of Family Services. These deputies have no other assigned duties. They report to a supervisor in the Civil Division, and considerable time is expended by that supervisor and other deputies to assist these deputies in their duties and to provide additional representation of the Department of Family Services and its employees in litigation filed against them.

The Appropriations Bill (AB 562) and NRS 432B.510 must be read as a whole and in harmony with other rules and statutes related to the varying duties of the District Attorney. The Appropriations Bill requires that in each case where the District Attorney is **servicing** as the attorney for a child welfare agency, the child welfare agency shall be the sole client, i.e., that deputy cannot represent the interests of the public and the agency at the same time. The Civil Division of the office provides this independent child welfare agency representation.

By contrast, NRS 432B.510 requires the District Attorney to countersign abuse and neglect petitions and "shall represent the interests of the public" in those proceedings. When a Deputy District Attorney countersigns the petition the deputy is **not servicing** as the attorney for a child welfare agency, but rather **servicing** as the attorney for the public as required by statute. The Office of the Attorney General has already opined that this

²⁰ NRS 252.110, *Duval Ranching Co. v. Glickman*, 930 F.Supp. 467 (Nev. 1996).

²¹ *Brimmage v. State*, 567 P.2d 54, 57 (1977)

²² NRS 252.110; NRS 252.160; NRS 125B.150; NRS 126.101

delineation of the District Attorney's responsibilities under NRS Chapter 432B is compatible with the general statutory duties of a district attorney:

There is no inherent conflict between separating the functions that a district attorney performs while representing the interests of the public under NRS Chapter 432B, from those the office would perform in representing the child welfare agency itself. The dual nature of the representation that is to be provided is inherent in the nature of dealing with legal issues that arise in the representation of an agency.²³

3. The Legislature is deemed to have Knowledge of Other Legislative Acts

When the Legislature enacts a statute, the court presumes that it does so with full knowledge of existing statutes relating to the same subject. When the Legislature enacted the Appropriations Bill (AB 562) it did so with presumed knowledge of the District Attorney's NRS 432B.510 obligation to represent the public and presumed intent to act consistently therewith.

4. Statutory interpretation should not render statutory language meaningless and should avoid an absurd result.

To read section 54 of the 2009 Appropriations Bill (AB562) in isolation and not as whole with respect to other statutes relating to the District Attorney duties, as required by statutory construction, would result in an interpretation rendering several statutes meaningless. If the State interprets NRS 432B.510 to be in conflict with Section 54 of the Appropriations Bill it would result in the unreasonable and absurd result of allowing the State to withhold millions of dollars in funding for the child welfare agency. This result would only be avoided if the District Attorney failed to meet its NRS 432B.510 obligation to represent the public. To assert that funding of the agency is tied to a publicly elected official's willingness to forego a specific statutory obligation is absurd.

II. Effect of Legislature's Failure to Enact Senate Bill (SB 293)

The State's Memorandum requesting an Attorney General Opinion on this issue, seems to indicate that the attempt to amend NRS 432B.510 in SB 293 by replacing the language that the District Attorney shall represent the interest of the public with "shall represent the interest of the child welfare agency" has some bearing on the current interpretation. The County agrees that the legislative action with regard to SB 293 is significant, but that it is significant in its *failure* to be enacted.

If the Legislature wanted the District Attorney to cease representing the public interest, and instead to solely represent the child welfare agency in NRS 432B.510 proceedings, it would have amended the statute as proposed by SB 293. SB 293 proposed changes to NRS 432B.510 in pertinent part as follows:

²³ October 29, 2007, Attorney General Opinion provided to David Roger, Clark County District Attorney

2. **An agency which provides child welfare services shall represent the best interest of the child in all proceedings.** The district attorney shall countersign every petition alleging need of protection, and shall represent the interests of the [public] child welfare agency in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the Attorney General. If the Attorney General determines that a petition should be filed, he shall countersign the petition and shall represent the interests of the [public] child welfare agency in all subsequent proceedings.

The **failure** of the Legislature to pass SB 293 demonstrates that the Legislature did not want the District Attorney to forego representation of the public interest in NRS 432B.510 proceedings.

III. In the event the AG interprets Section 54 of the Appropriation Bill (AB 562) to prohibit the State from releasing funds to Clark County, then, the Interlocal immediately terminates and Section 4 of the Interlocal requires the State and Clark County to develop an alternative child welfare services delivery plan within 180 days that insures that the fiscal and programmatic responsibility of each entity be proportional to the level of responsibility prior to the integration of child welfare services.

The State and Clark County entered into an Interlocal effective July 1, 2007 through September 30, 2009. The first question encountered is whether the Interlocal applies to the disbursement of July 1, 2009 funds? The answer appears to be yes in that the Interlocal provides for its automatically renewal upon the Legislature passing a budget that provides for continued funding of the Clark County services.

This contract is renewable upon a legislatively approved biennial budget which is statutorily authorized in Nevada State Appropriations Act and Authorizations Act of the Nevada Executive Budget each Legislative Session, effective July 1 of each odd-numbered year.²⁴

In the event the State Division of Child and Family Services are prohibited from passing funds through Clark County, the Interlocal will automatically terminate by its own terms.

The parties expressly agree that this Contract shall be terminated immediately, if for any reason Public Agency, State and/or federal funding ability to satisfy this Contract is withdrawn, limited or impaired.²⁵

²⁴ *Interlocal between Department of Health and Human Services Division of Child and Family Services and Clark County Section 3*

²⁵ *Id. Section 4*

Once the agreement terminates, within 180 days, the parties are to develop an alternative child welfare services delivery plan that insures that the fiscal and/or programmatic responsibility for the provision of child welfare services is proportionate to the level of responsibility of each entity prior to the integration of child welfare services.²⁶

The result of the Interlocal providing for its automatic termination in the event of a cessation or reduction in funding appears to be consistent with the Legislative history of the Integration Legislation (2001 AB 1, AB343, AB 512). The Legislative history for the integration statutes makes clear that it was the intent and expectations of the Counties that the integration of child welfare services was an ongoing obligation between the State and Counties.²⁷ For example, in the 2001 minutes of AB 512, Susan Laveway, Assistant Director of the Department of Finance for Clark County, notes that Barbara Buckley, the Assembly Majority Leader, made a presentation to the Clark County Commissioners acknowledging the fact that there would be an ongoing state funding responsibility.²⁸ Similarly, Senator Coffin, who served on the Interim Study Committee for the Integration of State and Local Child Welfare Systems, stated that the general consensus was that there would be a sharing of state and county expenses.²⁹

Further, as far as interpreting Clark County's statutory duties as an "agency which provides child welfares", the Nevada Revised Statutes also specifically authorizes public agencies to contract with one another to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform.³⁰ Since NRS 277.180 authorizes the State and Clark County to enter into an agreement regarding the provision of child welfare services, the terms of the Interlocal legally bind both the State and Clark County with respect to the obligation to provide child welfare services.

CONCLUSION

Appropriations Bills are **not** legislative acts that change substantive or general laws of the State. To withhold child welfare funding from the children of Clark County because the State reads Section 54 of the 2009 Appropriations Bill (AB 562) to be in conflict with NRS 432B.510 is an assertion that the Appropriations Bill either altered the legal obligations of the District Attorney under NRS 432B.510, or an assertion that child welfare funding was contingent upon the District Attorney foregoing one statutory obligation in favor of another. Both interpretations, and the inherent results, would not only be absurd but would clearly violate generally accepted rules governing statutory

²⁶ *Id.*

²⁷ Legislative Counsel Bureau Bulletin No. 01-15 Integration of State and Local Child Welfare Systems January 2001, Minutes of the Meeting of the Assembly Committee on Ways and Means and Senate Committee on Finance Joint Subcommittee on Human Resources, May 16, 2001. (page 53 of 171) http://www.leg.state.nv.us/lcb/research/library/2001/AB343,2001_AB001,2001SSpt2.pdf

²⁸ *Id.* at 55 of 171

²⁹ *Id.* at 56 of 171

³⁰ NRS 277.180

interpretation in Nevada. Where the District Attorney has created separate divisions which provide deputies to represent both the child welfare agency and the public interest under 432B, independent of one another, the intent of both the Appropriations Bill and 432B.510 are met.

Sincerely,

DAVID ROGER
DISTRICT ATTORNEY

By: _____
LISA V. LOGSDON
Deputy District Attorney

Enclosures: AB 562 (2009)
NRS 432B.510
SB 293 (2009)
Nevada ex rel Abel v. Eggers, 136 P. 100 (Nev. 1913)
AB 356 (1997) with Legislative History
Legislative History of AB1 (2001)
Nev. Constitution, Article 4, Section 32
NRS 252.110, 252.160, 125B.150, 126.101, 277.180
Interlocal Agreement between the State and Clark County
State Department of Health and Human Service Memorandum Requesting
Interpretation of Section 54 of the 2009 Appropriations Act (AB 562).

cc: David Roger, District Attorney