STATE OF NEVADA



OFFICE OF SECRETARY OF STATE ROSS MILLER

March 1, 2012

SECRETARY OF STATE INTERPRETATION NUMBER: 12-13-01

QUESTION: Following the 2011 redistricting process, may a candidate for public office use the term "reelect" or otherwise imply incumbency in a campaign if the candidate was elected to the identical office with same district number in the most recent election to fill that office?

<u>ANSWER</u>: Yes, pursuant to NRS 294A.330 and 294A.340, a candidate seeking election may use the term "reelect" or otherwise imply incumbency in any material, statement or publication supporting the election of a candidate provided that the candidate was elected to the identical office with the same district number in the most recent election for that office.

<u>ANALYSIS</u>: NRS 294A.330 and 294A.340¹ dictate when the term "reelect" may be used and incumbency implied by candidates, respectively.

NRS 294A.330 Use of term "reelect" in campaign. A person shall not use the term "reelect" in any material, statement or publication supporting the election of a candidate unless the candidate:

- 1. Was elected to the <u>identical office with the same district number</u>, if any, in the most recent election to fill that office; and
- 2. Is serving and has served continuously in that office from the beginning of the term to which the candidate was elected. (Emphasis added)

NRS 294A.340 Creating implication that candidate is incumbent. A person shall not use the name of a candidate in a way that implies that the candidate is the incumbent in office in any material, statement or publication supporting the election of a candidate unless:

- 1. The candidate is qualified to use the term "reelect" pursuant to NRS 294A.330; or
- 2. The candidate:
- (a) Was appointed to the <u>identical office with the same district number</u>, if any, after the most recent election to fill that office; and
- (b) Is serving and has served continuously in that office since the date of appointment. (Emphasis added)

NRS 294A.330 and 294A.340 have yet to be interpreted in the context of legislative districts following redistricting because in the two previous post re-districting election cycles, following the enactment of the statutes in 1989, the legislature suspended the operation of the applicable statutes when it adopted the redistricting maps. In 2011, the legislature was unable to pass a re-districting that the Governor would approve. As such, re-districting was accomplished by Court Order, which did not suspend the provisions or provide direction as to their application.

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The pertinent phrase in both of the statutes is "identical office with the same district number." This language is unambiguous and provides clear direction as to how the rule must be applied in any election cycle, including an election cycle following re-districting. The Secretary of State's office is therefore bound to enforce the statutes such that they prohibit previously elected public officials who run for a district with a number that is different than the district they currently represent from using "reelect" or implying incumbency during the 2012 election cycle.

For example, a candidate who was previously elected to State Assembly, District 8 in the 2010 election who files as a candidate for that same district number (State Assembly, District 8) in the 2012 election may use the term "re-elect" or otherwise imply incumbency because the candidate would be running for the identical office with the same district number.

By contrast, a candidate who was previously elected to State Senate, Clark District 7 in the 2010 election who files as a candidate for State Senate, District 21 in the 2014 election may <u>not</u> use the term "reelect" or otherwise imply candidacy during the campaign because the newly created district number is different than the office to which the candidate was previously elected.

Similarly by way of example, a State Senator who was appointed in 2011 to fill the fill unexpired term of State Senate, Washoe District 3 who files for Senate District 15 may not use the term "reelect" or otherwise imply incumbency (including but not limited to use of the terms "retain" or "return") in any material, statement or publication supporting the election of the candidate because the candidate was not previously appointed to the "identical office with the same district number" under NRS 294A.330 or 294A340.

This same candidate may, however, use the title "Senator" in conjunction with the candidate's name in campaign materials relating to candidacy for Senate District 15². Additionally, NAC 294A.130 authorizes the use of the terms "elect" or "for" in any material, statement or publication supporting the election of a candidate without implicating incumbency of the candidate.³

Respectfully,

ROSS MILLER Secretary of State

See, AGO 98-19 "A candidate who holds office as a judge in a court of record and who is seeking election to another judicial office may use the title "Judge" in conjunction with his name in campaign materials."

See also, AGO 98-19