June 8, 2012

Senator John Lee
Chairman, Senate Committee on Government Affairs
3216 Villa Pisani Court
North Las Vegas, NV 89031-7267

Dear Chairman Lee:

      In your capacity as Chairman of the Senate Committee on Government Affairs, you have asked this office a question concerning the territorial jurisdiction of the constables of the various townships of this State. Specifically, you have asked whether the constable of a township may serve or execute certain legal papers outside the boundaries of the township in which the constable was elected. To answer your question, we will examine the provisions of NRS governing the duties and territorial jurisdiction of constables, review the opinion of the Attorney General of Nevada and consider the applicable rules of statutory construction adopted by the Nevada Supreme Court.

BACKGROUND

      The powers and duties of a constable with respect to the service and execution of certain legal papers are set forth in chapter 258 of NRS. Subsection 1 of NRS 258.070 states:

      1. Each constable shall:

    (a) Be a peace officer in his or her township.

    (b) <u>Serve all mesne and final process issued by a court of competent jurisdiction.</u>

    (c) <u>Execute the process, writs or warrants that the constable is authorized to receive pursuant to NRS 248.100.</u>

    (d) Discharge such other duties as are or may be prescribed by law.

NRS 258.070(1) (emphasis added).

DISCUSSION

In interpreting the statutory provisions relating to whether the constable of a township may serve or execute certain legal papers outside the boundaries of the township of which the constable was elected, we must follow the rules of statutory construction adopted by the Nevada Supreme Court. As a general rule of statutory construction, a court presumes that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995).

Pursuant to subsection 1 of NRS 258.070, a constable "shall be a peace officer in his or her township." In addition, pursuant to subsection 1 of NRS 258.010, constables are "elected by the qualified electors of their respective townships." Based on the principle that a constable is a peace officer in his or her township who is elected by the voters of that township, the Attorney General of Nevada described the basic rule governing the territorial jurisdiction of constables, stating that "[i]t is fundamental that a Constable is confined to his township, in his official acts, except as the Legislature may have permitted him to act outside of his township." Nev. Att'y. Gen. Op. 1900-11 (emphasis added). Thus, in determining whether a constable may serve or execute legal papers outside the boundaries of his or her township, we must begin our inquiry with the basic rule set forth by the Attorney General that a constable is confined to performing official acts in his or her township unless the Legislature has authorized the constable to perform any acts outside the township.

As described previously, the duties of a constable relating to the service and execution of legal papers are set forth in subsection 1 of NRS 258.070. Pursuant to subsection 1 of NRS 258.070, a constable has the duties: (1) to serve all mesne and final process issued by a court of competent jurisdiction and properly brought to the constable for service; and (2) to execute the process, writs or warrants that the constable receives pursuant to NRS 248.100. Pursuant to subsection 2 of NRS 248.100, the sheriff of a county "may authorize the constable of the appropriate township to receive and execute the process, writs or warrants of courts of justice, judicial officers and coroners." (emphasis added).

With respect to the territorial jurisdiction in which a constable may perform the duty pursuant to paragraph (b) of subsection 1 of NRS 258.070 to serve "mesne and final process issued by a court of competent jurisdiction," the plain language of this provision does not contain any authority for the constable to serve such process outside the boundaries of his township. Thus, the Legislature has not authorized the constable of a township to serve mesne and final process issued by a court of competent jurisdiction pursuant to paragraph (b) of subsection 1 of NRS 258.070 outside the boundaries of his or her township.

With respect to the territorial jurisdiction in which a constable may perform the duty pursuant to paragraph (c) of subsection 1 of NRS 258.070 to execute or serve process, writs or warrants that the constable is authorized to receive and execute pursuant to NRS 248.100, the plain language of subsection 2 of NRS 248.100 allows a sheriff to authorize "the constable of the appropriate township" to receive and execute the process, writs or warrants. The plain language of this provision does not provide that the sheriff may authorize any constable in the county to receive and execute the process, writs and warrants, but rather the plain language provides that the sheriff may authorize "the constable of the appropriate township" to do so. The use of the phrase "the constable of the appropriate township" may only be reasonably interpreted as providing that the sheriff may authorize only the constable of a township to carry out the required duties within his or her township. Consequently, the Legislature has not authorized the constable of a township to receive and execute the process, writs or warrant described in paragraph (c) of subsection 1 of NRS 258.070 outside the boundaries of his or her township.

Thus, the plain language of NRS 258.070 does not authorize a constable to serve or execute legal papers outside the boundaries of his or her township. As stated previously, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language and will not search for any meaning beyond the language of the statute itself. Erwin, 111 Nev. at 1538-39. However, even if we assume, for the purposes of argument, that the applicable provisions of NRS pertaining to constables are ambiguous or do not address the territorial jurisdiction of constables with respect to the service and execution of legal papers, the most reasonable interpretation of the applicable statutes is that a constable is authorized serve or execute legal papers only in his or her township. See, Clark County v. Sun State Props., 119 Nev. 329, 334 (2003) (stating that if there is ambiguity in a statutory provision or the statutory provision fails to address a specific situation, then the statute should be construed in accordance with what reason and public policy would indicate the Legislature intended).

An interpretation of NRS which did not limit a constable to serving legal papers only in his or her township would authorize constables to serve legal papers without any territorial limitations. Such an interpretation would allow any constable in this State to serve legal papers in any part of the State. In such a circumstance, a constable acting outside of his or her township would be wholly unaccountable to the voters of that area because, pursuant to NRS 258.010, the constable is elected only by the voters of his or her township. Moreover, because NRS 258.070 clearly provides that a constable is a peace officer only in his or her township, confusion might arise concerning the legitimate powers and authority of a constable who is serving legal papers outside of his or her township. Thus, reason and public policy would suggest that the applicable statutory provisions should not be construed in a manner that would create a lack of accountability to the voters of a township and confusion regarding the legitimate authority of constables outside their townships. For this reason, we believe that reason and public policy would

indicate that the statutory provisions should be construed as providing that the constable of a township is not authorized to serve or execute legal papers outside the boundaries of his or her township.

In conclusion, the basic rule set forth by the Attorney General is that the constable of a township is confined to performing official acts within the boundaries of his or her township unless authorized to act outside the township by the Legislature. Because the Legislature has not authorized the constable of a township to execute or serve legal papers as required pursuant to paragraph (b) or (c) of subsection 1 of NRS 258.070 outside the boundaries of his or her township and because reason and public policy indicate that the statutory provisions should be construed as providing that the constable of a township is not authorized to serve or execute legal papers outside the boundaries of his or her township, it is the opinion of this office that a constable is not authorized to serve or execute legal papers outside the boundaries of the township of which the constable was elected.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

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BAW:dtm
Encl.
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