

ASSEMBLY BILL NO. 648—COMMITTEE ON JUDICIARY

(ON BEHALF OF ADMINISTRATIVE OFFICE OF THE COURTS)

MARCH 22, 1999

Referred to Committee on Judiciary

SUMMARY—Authorizes attorney general to represent justice of the peace or municipal judge under certain circumstances. (BDR 3-847)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to actions concerning persons; authorizing the attorney general to represent a justice of the peace or municipal judge under certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 41 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2, 3 and 4 of this act.
- 3 **Sec. 2.** *The attorney general may provide for the defense, including,*
4 *without limitation, the defense of cross-claims and counterclaims, of any*
5 *present or former justice of the peace or municipal judge in any civil*
6 *action brought against that person based on an alleged act or omission*
7 *relating to his public duties or employment if:*
- 8 1. *The justice of the peace or municipal judge has requested*
9 *representation by the official attorney of the political subdivision*
10 *pursuant to NRS 41.0339;*
- 11 2. *The official attorney has:*
- 12 (a) *Failed to determine whether to tender the defense pursuant to NRS*
13 *41.03415, and an answer or other responsive pleading must be filed*
14 *within 10 days;*
- 15 (b) *Determined not to tender the defense pursuant to NRS 41.03415;*
16 or

1 (c) *Determined that it is impracticable or could constitute a conflict of*
2 *interest for the legal services to be rendered by the official attorney, but*
3 *the official attorney has not:*

4 (1) *Employed special counsel pursuant to NRS 41.0344;*

5 (2) *Tendered the defense to an insurer who is authorized to defend*
6 *the action pursuant to a contract of insurance, pursuant to NRS 41.0345;*
7 *or*

8 (3) *Requested the attorney general to provide the defense pursuant*
9 *to this section;*

10 3. *The justice of the peace or municipal judge submits a written*
11 *request for defense to the attorney general and a copy of the request to*
12 *the office of the court administrator, or the official attorney, after*
13 *determining that it is impracticable or could constitute a conflict of*
14 *interest for the legal services to be rendered by the official attorney,*
15 *submits a written request for defense to the attorney general and a copy*
16 *of the request to the office of the court administrator; and*

17 4. *The attorney general determines that the act or omission on which*
18 *the action is based appears to be within the course and scope of the*
19 *public duty or employment of the justice of the peace or municipal judge*
20 *and appears to have been performed or omitted in good faith.*

21 **Sec. 3.** *If the attorney general defends an action pursuant to section*
22 *2 of this act, the political subdivision that employed the justice of the*
23 *peace or municipal judge at the time the act or omission on which the*
24 *action is based occurred shall pay the cost of legal representation*
25 *provided by the attorney general.*

26 **Sec. 4. 1.** *If a request for the defense of a justice of the peace or*
27 *municipal judge is submitted to the attorney general pursuant to section*
28 *2 of this act, the attorney general shall determine as promptly as possible*
29 *whether to tender the defense of the justice of the peace or municipal*
30 *judge. Until the attorney general makes the determination, he shall take*
31 *appropriate action to defend or otherwise protect the time of the justice of*
32 *the peace or municipal judge to file a responsive pleading.*

33 2. *After determining whether to tender the defense of the justice of*
34 *the peace or municipal judge, the attorney general shall, as promptly as*
35 *possible, give written notice of the determination to the justice of the*
36 *peace or municipal judge and the political subdivision that employed that*
37 *person at the time the act or omission on which the action is based*
38 *occurred.*

39 **Sec. 5.** NRS 41.0338 is hereby amended to read as follows:

40 41.0338 As used in NRS 41.0339 to 41.0349, inclusive, **and sections**
41 **2, 3 and 4 of this act,** “official attorney” means:

1 1. The attorney general, in an action which involves a present or
2 former legislator, officer or employee of this state, immune contractor or
3 member of a state board or commission.

4 2. The chief legal officer or other authorized legal representative of a
5 political subdivision, in an action which involves a present or former
6 officer or employee of that political subdivision or a present or former
7 member of a local board or commission.

8 **Sec. 6.** NRS 41.0345 is hereby amended to read as follows:

9 41.0345 The *attorney general if he is defending an action pursuant*
10 *to section 2 of this act or the* official attorney may provide for the defense
11 of any person who is entitled to a defense from the state or political
12 subdivision by tendering the defense to an insurer who, pursuant to a
13 contract of insurance, is authorized to defend the action.

14 **Sec. 7.** NRS 41.0346 is hereby amended to read as follows:

15 41.0346 1. At any time after the *attorney general, if he is defending*
16 *an action pursuant to section 2 of this act, or the* official attorney has
17 appeared in any civil action and commenced to defend any person sued as a
18 public officer, employee, immune contractor, member of a board or
19 commission, or legislator, the *attorney general or* official attorney may
20 apply to any court to withdraw as the attorney of record for that person
21 based upon:

22 (a) Discovery of any new material fact which was not known at the time
23 the defense was tendered and which would have altered the decision to
24 tender the defense;

25 (b) Misrepresentation of any material fact by the person requesting the
26 defense, if that fact would have altered the decision to tender the defense if
27 the misrepresentation had not occurred;

28 (c) Discovery of any mistake of fact which was material to the decision
29 to tender the defense and which would have altered the decision but for the
30 mistake;

31 (d) Discovery of any fact which indicates that the act or omission on
32 which the civil action is based was not within the course and scope of
33 public duty or employment or was wanton or malicious;

34 (e) Failure of the defendant to cooperate in good faith with the defense
35 of the case; or

36 (f) If the action has been brought in a court of competent jurisdiction of
37 this state, failure to name the state or political subdivision as a party
38 defendant, if there is sufficient evidence to establish that the civil action is
39 clearly not based on any act or omission relating to the defendant's public
40 duty or employment.

41 2. If any court grants a motion to withdraw on any of the grounds set
42 forth in subsection 1 brought by the *attorney general or* official attorney,

1 the state or political subdivision has no duty to continue to defend any
2 person who is the subject of the motion to withdraw.
3 **Sec. 8.** This act becomes effective on July 1, 1999 and expires by
4 limitation on June 30, 2001.

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