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August 30, 2013

Scott F. Gilles  
Deputy Secretary for Elections  
Office of the Secretary of State  
101 N. Carson Street, Suite 3  
Carson City, NV 89701-4786

Dear Mr. Gilles:

You have asked our office to share with the Elections Division any formal or informal interpretations of the term "gift" as used in NRS 281.571(1)(e), which prescribes the information regarding gifts that certain candidates for public office and public officers are required to include in their statements of financial disclosure filed pursuant to NRS 281.559 and 281.561.

NRS 281.571(1) provides that a statement of financial disclosure must include, in pertinent part:

(e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:

(1) A gift received from a person who is related to the candidate for public office or public officer within the third degree of consanguinity or affinity.

(2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the legislative, administrative or political action of the candidate for public office or public officer.

The term "gift" is not defined in chapter 281 of NRS and there are no administrative regulations defining or interpreting the term for purposes of the statements of financial disclosure required by NRS 281.559 and 281.561. Additionally, this office has not found any opinion by the Nevada Supreme Court or other court of competent jurisdiction that defines or otherwise discusses the meaning of the term "gift" as used in reference to the requirements for filing a statement of financial disclosure.

Because the term “gift” is not defined for the purposes of NRS 281.559, 281.561 or 281.571, in interpreting the requirements related to statements of financial disclosure, we have turned to the rule of statutory construction that the words in a statute are used in the ordinary sense unless the contrary is indicated. Ex parte Ming, 42 Nev. 472, 492 (1919). Dictionary definitions, which report common usage, are often cited by courts when construing statutes. Sutherland Statutory Construction § 46.02 (5th ed. 1992); *see, e.g., Perrin v. United States*, 100 S. Ct. 311, 314 (1979) (citing Burns v. Alcala, 95 S. Ct. 1180, 1184 (1975)) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”); State, Dep’t of Human Res. v. Ullmer, 120 Nev. 108, 116-17 (2004) (resorting to an examination of the “every day use” of a statutory term which had not been defined). The standard dictionary definition of “gift” is “[a] voluntary transfer of property to another made gratuitously and without consideration.” Black’s Law Dictionary 688 (6th ed. 1990) (emphasis added). Other dictionaries provide similar definitions. *See, e.g., Webster’s Ninth New Collegiate Dictionary* 517 (1990) (“gift [means] . . . something voluntarily transferred by one person to another without compensation.”) (emphasis added). As the preceding definitions make clear, a hallmark of the concept of a “gift” is that whatever is given is given without consideration; that is, it is not given in exchange for the act or promise of another. *See, e.g., NAC 375.030* (defining “consideration” in terms of “the equivalent or return given or suffered by one for the act or promise of another.”). Thus, the giving of something cannot be a “gift” if it involves consideration.

In addition, “where a statute has no plain meaning, a court should consult other sources such as legislative history, legislative intent, and analogous statutory provisions.” State Farm Mut. Auto. Ins. Co. v. Comm’r of Ins., 114 Nev. 535, 540-41 (1998) (citing Moody v. Manny’s Auto Repair, 110 Nev. 320, 325 (1994)) (emphasis added); *see also* University and Cmty. College Sys. of Nev. v. DR Partners, 117 Nev. 195, 199-201 (2001) (concluding that where the Open Meeting Law did not define “public officer,” the definition of “public officer” in NRS 281.005 may be used). Many courts in other jurisdictions have explained further that the meaning of an undefined term may be ascertained by examining other statutes pertaining to the same or similar subject matter. *See, e.g., Laws v. Secretary of State*, 895 S.W.2d 43, 46 (Mo. Ct. App. 1995) (citing State ex rel. County of St. Charles v. Mehan, 854 S.W.2d 531 (Mo. Ct. App. 1993)) (“It is also useful to look at how [undefined words] are defined in statutes relating to similar subject matter, even if those statutes are found in different chapters.”); Petco Insulation Co. v. Crystal, 649 A.2d 790, 795 (Conn. 1994) (citing Vecca v. State, 616 A.2d 823 (Conn. App. Ct. 1992)) (“In construing a statute, the court may look to other statutes relating to the same subject matter for guidance.”). The provisions of NRS 218H.060, relating to certain reporting required of lobbyists, define the term “gift” as follows:

1. “Gift” means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received.

2. "Gift" does not include:
  - (a) A political contribution of money or services related to a political campaign;
  - (b) A commercially reasonable loan made in the ordinary course of business;
  - (c) The cost of entertainment, including the cost of food or beverages; or
  - (d) Anything of value received from:
    - (1) A member of the recipient's immediate family; or
    - (2) A relative of the recipient or relative of the recipient's spouse within the third degree of consanguinity or from the spouse of any such relative.

(Emphasis added.) Similar to the dictionary definitions, the definition of "gift" in NRS 218H.060 requires the lack of any "consideration" being given. In addition, similar to the existing exclusions set forth in NRS 281.571(1)(e), the definition of "gift" in NRS 218H.060 exempts gifts from close relatives. Thus, the definition of "gift" that applies in the similar context of financial disclosure by lobbyists is instructive with respect to what constitutes a "gift" for purposes of NRS 281.571(1)(e).

In 2011, the Legislature transferred the duties relating to the enforcement of the provisions governing statements of financial disclosure from the Nevada Commission on Ethics to the Secretary of State. Ch. 309, Statutes of Nevada 2011, at pp. 1728-32. During the course of its enforcement of those provisions, the Nevada Commission on Ethics interpreted the provision that is now NRS 281.571(1)(e) on several occasions. In the opinion In re Carver, Nev. Comm'n on Ethics Op. No. 97-34 (Aug. 18, 1998), the Commission on Ethics found that a public officer violated NRS 281.571(1)(e) by failing to include as a gift on his statement of financial disclosure the use of a constituent's vehicle without charge. In the opinion In re Eastley, Nev. Comm'n on Ethics Op. No. 07-51A (Jan. 25, 2008), the Commission on Ethics opined that a public officer would not be required to report as a gift on her statement of financial disclosure a shawl accepted by the public officer during the course of business negotiations on behalf of a public body if the public officer delivered the gift to the appropriate personnel of the public body and refrained from directing the personnel on how the gift should be used. In the opinion In re Phillips, Nev. Comm'n on Ethics Op. No. 06-23 (June 15, 2007), the Commission determined that a public officer did not have to disclose on his statement of financial disclosure that a private nuclear waste contractor paid for his fact-finding trip to France, explaining that:

The legislature has yet to establish what constitutes a gift for Ethics in Government Law purposes. No evidence exists that the act of accepting an invitation from COGEMA, to visit its nuclear reprocessing facilities in France and traveling to Europe for that purpose, constitutes a gift. The Commission concludes that Mr. Phillips received no gift. Therefore, Mr. Phillips did not violate NRS 281.571(1)(e) by not reporting his trip overseas on his statement of financial disclosure.

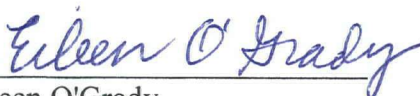
Thus, the Nevada Commission on Ethics has interpreted the term "gift" as used in NRS 281.571(1)(e) to: (1) include the use of a vehicle by a public officer who did not provide consideration; (2) not include a shawl accepted by a public officer who did not provide consideration but who did not keep the shawl or make a recommendation as to its use; and (3) not include travel-related expenses of a public officer paid by a private source for an educational or fact-finding trip. These afore-mentioned opinions of the Nevada Commission on Ethics have provided guidance previously on the interpretation of NRS 281.571(1)(e) by the agency which, at the time the opinions were issued, was charged with enforcing that provision.

On the basis of these rules of statutory construction, which dictate that we consider the common dictionary meaning of the term "gift," as well as an analogous statutory provision defining the term for a similar purpose and the interpretation of the term by an agency previously charged with enforcing the provisions governing statements of financial disclosure, we have consistently interpreted the term "gift" as used in NRS 281.571(1)(e) to have a meaning analogous to the definition of "gift" provided in NRS 218H.060. Accordingly, this office has consistently provided interpretations, both while those provisions were being enforced by the Nevada Commission on Ethics and more recently by the Secretary of State, in conformance with those rules of statutory construction. For example, we have previously opined that payment of health insurance premiums or retirement contributions during a legislative session on behalf of a Legislator without consideration would be a reportable gift, as would acceptance by a Legislator of free annual cellular telephone service, a free flight on a private jet or the gift of jewelry from a visiting dignitary. However, we have opined that the acceptance and use by a Legislator of a free ticket to a charity fundraising dinner, the acceptance and immediate charitable donation by a Legislator of a gift of jewelry from a visiting dignitary and the payment of the travel expenses of a Legislator for a legislative fact-finding trip, symposium or educational conference where the Legislator's time and attention is devoted to the fact-finding trip, symposium or educational conference, are not reportable gifts.

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

Very truly yours,

Brenda J. Erdoes  
Legislative Counsel

By   
Eileen O'Grady  
Chief Deputy Legislative Counsel