



OCCASIONALLY LADY LUCK DECIDES ELECTIONS IN NEVADA

BY PATRICIA D. CAFFERATA, ESQ.

In tie elections, the voters do not decide the winner. The Nevada Constitution, Art.5, § 4 provides the procedure for determining the winner in a tie election for members of the U.S. Senate and Congress, and for district and state officers. If two or more candidates have an equal, highest number of votes for the same office, the Legislature, by joint vote of both houses, elects one of the candidates to fill the office.

Since statehood in 1864, this provision of the constitution has never been used to decide an election. The closest election for federal office in Nevada occurred in 1914. This election was the first time the voters directly elected the state's U.S. Senator. Democrat Francis Newlands beat Republican Samuel Platt by 40 votes, and Socialist Grant Miller by 2,613 votes to win the senate seat.

The closest statewide elections were separated by 11 votes. In 1902, Republican Orvis Ring beat Silver-Democrat J. E. Bray for Superintendent of Public Instruction, by 11 votes to win reelection. And, in 1910, Democrat Joe Josephs beat Republican J. W. Legate for Supreme Court Clerk, by 11 votes but, after Legate filed a lawsuit, the Nevada Supreme Court held Josephs won the clerk's position by 41 votes.

In addition to the constitution, Nevada Revised Statute (NRS) 293.400 sets forth the process for deciding tie elections for the different types of offices. Among other things, this statute provides that when there are tie results in a primary election for a United States Senator, member of Congress, state officer elected statewide or by district, district judge or district officer whose district includes area in more than one county, the Secretary of State instructs the candidates who have received the tie votes to appear at a certain time and place, to determine the nominee by lot. If the tie vote is for the office of Secretary of State, the Governor performs these duties. This method for selecting a primary nominee has also never been used in Nevada.

On the other hand, tie elections do occur in jurisdictions with a small number of voters who cast a low number of votes. With a few exceptions, in a tie election for a county or local office, the county clerk requests the candidates who have received the tie votes to appear at a certain time and place, to determine

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the winner by lot. Then, the candidate's political future is decided by the luck of the draw, roll of a die or flip of a coin. State law also allows for the drawing of straws, but apparently no candidates have selected this method for determining the winner. If the tie vote is for the office of county clerk, the board of county commissioners performs these duties.

History of Tie Elections

Some of the most interesting tie elections in Nevada include the following:

Coin Flip

In 1972, incumbent Dorothy Wilson was reelected justice of the peace in Gabbs by the flip of a coin. On Election Day, Wilson and Billy Weyer both received 146 votes for the seat on the bench. Amazingly, they both received 133 votes in Gabbs and 13 votes in Ione, the two towns in the district.

The Nye County Clerk Rena Bailey requested the candidates appear at the courthouse in Tonopah to determine who would win. A toss of a coin was the method selected to determine who would be the justice of the peace. Bailey flipped an 1881, Carson City silver dollar in the air; Wilson successfully called "heads" and was reelected.

Dice Roll

In 1978, in Storey County, Marshall Bouvier, Sam Bull, Dave Horton, Leonard Howard and Pete Sferrazza campaigned in the Democratic primary for district attorney. The top two vote-getting lawyers tied for the nomination. On Election Day, Bouvier beat Howard by two votes. Howard demanded a recount that resulted in Bouvier winning the nomination by five votes, but Howard appealed to district court.

District Court Judge Mike Fondi threw out suspicious votes for Bouvier, cast in the River District, where Joe Conforte's Mustang Ranch brothel was located. The court decision tied the race, and the candidates agreed to roll a die. Howard won by rolling a six to Bouvier's five. Even though Howard won the primary nomination, he lost to Republican Jack Christensen in the general election.

Cutting Cards

Another tie election happened in the Democrat primary for county clerk of Eureka County in 1982. On Election Day, Charlotte Crutchley collected 109 votes to Dorothy Moyle's

108. After a recount, the candidates were tied because the recount board saw a chad that had not dropped out of one of Moyle's ballots. Given the choice between cutting cards and flipping a coin, the contenders decided on the cards.

On the first draw, both candidates turned over an eight. (Apparently, they were not familiar with the ranking of suits with spades being the highest, followed by hearts, then diamonds and clubs being the lowest). They cut cards again, and Moyle drew a seven of hearts to Crutchley's ace of spades. Crutchley was declared the Democrat nominee, but she lost in the general election to Republican incumbent Joan Shangle.

In the 2002 general election, in the Esmeralda County Commission's race for the Goldfield seat, Republican Dee Honeycutt received 107 votes and R.J. Gillum received 105.

Gillum demanded a recount. The election board saw that the optical counting machine had failed to read one of his votes marked in blue ink and another one faintly marked in pencil. These two votes tied the election.

The county clerk decided that the outcome of the election would be determined by cutting cards. She bought two new decks of cards.

Several days later, the contestants met in the courthouse, inspected the unopened decks of cards and selected one deck to decide the election.

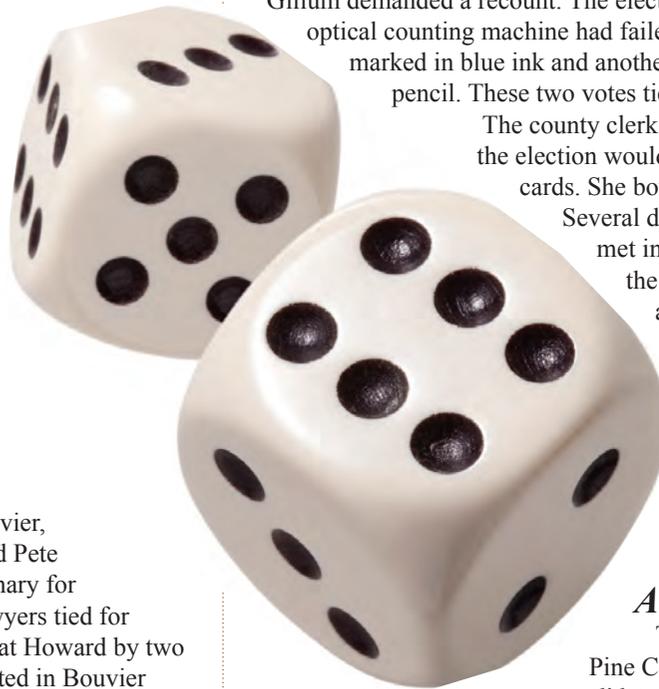
Gillum pulled a jack of spades outranking Honeycutt's jack of diamonds. Gillum was declared the winner of the commission seat.

Additional Ties

Two years later, White Pine County commissioner candidates, Democrat Robert

Swetich and Republican Raymond Urrizaga each received 1,847 votes in the general election. County Clerk Donna Bath offered the candidates the option of tossing a coin, drawing straws or picking a playing card to determine the outcome of the election. The men agreed to cut cards. Deputy District Attorney Kevin Briggs shuffled and fanned out the cards. Urrizaga drew first and turned over the queen of clubs. Swetich pulled the seven of diamonds and promptly congratulated the winner.

For a seat on the Verdi TV District Board in the general election in 2008, two incumbents were tied for the second seat on the board with 1,839 votes each. The men, Chris Sewell and Kim Toulouse, cut cards; Sewell turned over a seven and



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Toulouse a three. Then, the election officials discovered that a precinct with 47 voters had not cast ballots, so the registrar's office mailed these voters absentee ballots, but only eight ballots were returned. Each candidate received two more votes and another candidate received four votes, so the election remained tied. The men cut cards again and Toulouse pulled an ace of clubs and Sewell a 10 of spades, so Toulouse finally won the seat.

In the Nye County Commission Republican primary race in 2010, the incumbent Andrew "Butch" Borasky and Carl Moore, Sr., tied with 381 votes each. The ballots were recounted twice, but the result did not change. The candidates decided to cut cards and met at the courthouse in Pahrump. County Clerk "Sam" Merlino shuffled a new deck of cards, removed the jokers and fanned the cards out. Borasky drew the queen of clubs and Moore drew a 10 of clubs. Borasky went on to win the general election: the only person to win a general election after securing a nomination by the luck of the draw.

That same year, two other tie elections occurred. In Eureka County for the second time in history, the candidates tied for county clerk. In the general election, incumbent and Independent American Party Jackie Berg garnered 376 votes to Republican Carrie Wright's 373. During the count, some concerns arose over the handling of the absentee ballots and the alleged use of whiteout to alter ballots. Wright demanded a recount. During the recount, two of Berg's faxed-in ballots were discounted and Wright picked up a vote, so the candidates were tied with 374 votes each.

The commissioners conducted the card draw starting with four new decks of cards. Each candidate and the commission chair discarded a deck before the draw. With the jokers removed, the deck was shuffled and fanned out on the conference table in the commission chambers. Berg won reelection with the eight of hearts to Wright's three of hearts.

And, in the Kingsbury General Improvement District, Robert McDowell and Natalie Yanish tied in an 11-way race for the third seat on the board with 373 votes. Cards were the method used to determine the winner. Douglas County Clerk-Treasurer Ted Thran shuffled the deck and spread the cards out for each candidate to pick one. Yanish won the seat with the ace of clubs to McDowell's eight of diamonds.

In April 2011, in the North Las Vegas City Council, Ward 2 primary race, Tanya Flanagan and Linda Meisenheimer tied for the second place with 328 votes. William Robinson, the retiring city councilman presided over the card draw. David Hernandez, director of the College of Southern Nevada's

casino management program, opened a new deck of cards, removed the jokers, shuffled and fanned them out. Flanagan drew first because her name appeared on the ballot first. Meisenheimer won the nomination by drawing the king of diamonds to Flanagan's five of diamonds. In the general election, Meisenheimer lost to Pamela-Goynes-Brown, the first place winner in the primary.

Another important Nevada position was decided by lot. The chief justice of the Nevada Supreme Court is filled by the justices after each general election. The position automatically goes to the justice with the most seniority. Yet, when two or more senior justices are elected in the same year, who will be the chief justice is decided by lot. In 1994, Justices Tom Steffen and Cliff Young tossed a coin; Steffen won the toss and the chief judge's spot. More recently, when justices have been tied for seniority, one justice has either declined the position or the justices have split the term, with each justice serving in the chief's slot for a year. Currently, since three justices were elected at the same election, they split their chief justice's two-year term into three equal parts.

In the Las Vegas Municipal Court, the chief judge position was determined by the luck of the draw. In 2007, the judges decided to elect their chief judge, rather than have the senior judge serve in that capacity. Two years later, the six judges split their votes between Judge Betsy Kolkoski and Judge Cedric Kerns. Kolkoski and Kerns cut cards and tied with the two of hearts and the two of clubs. Not following the ranking of suits, they drew again and Kolkoski pulled the queen of spades and Kerns the six of clubs, making Kolkoski the chief judge.

Conclusion

While Lady Luck always plays a role in determining the winners in Nevada casinos and slot operations, a few political fortunes have also been decided by chance. When the politicians were given the option of cutting cards, rolling a die, flipping a coin and drawing straws, the candidates usually drew cards to establish who would have the good fortune to either be the nominee or office holder. ■

AUTHOR'S BIOGRAPHY ON PAGE 5.



Friday, November 16, 2012
9:00 a.m.
(sign-in starts at 8:30 a.m.)
The Orleans Hotel and Casino

6 Hours of CLE, including 2 Hours
of Ethics and Lunch

2012 GAMING LAW CONFERENCE

★KEYNOTE LUNCHEON SPEAKER★
UNITED STATES SENATOR DEAN HELLER (R-NV)

(1-HOUR) FEDERAL LEGISLATION UPDATE

David O. Stewart, Esq., Ropes & Gray, LLP (Washington, D.C.)

(2-HOURS) ETHICS CONSIDERATIONS IN FEE ARRANGEMENTS, BILLING, CONFLICT WAIVERS AND AN ATTORNEY'S OBLIGATION OF TRUTHFULNESS AND DILIGENCE PURSUANT TO NGC REGULATION 10

Paul A. Bible, Esq., Lewis and Roca, LLP (Reno) - Moderator; Lynda C. Shely, Esq., The Shely Law, PC (Scottsdale, AZ); and John A. Godfrey, Executive Vice President, Secretary & General Counsel, Pinnacle Entertainment, Inc. (Las Vegas)

(1-HOUR) REGULATORS ROUNDTABLE

Peter C. Bernhard, Chairman, Nevada Gaming Commission (Las Vegas);
and Mark A. Lipparelli, Chairman, Nevada State Gaming Control Board (Las Vegas)

(1-HOUR) EMPLOYEE REGISTRATION APPEALS

Scott Scherer, Esq., Holland & Hart, LLP (Carson City) - Moderator; Melanie Kushnir, Esq., Pro Bono Project Director, Legal Aid Center of Southern Nevada (Las Vegas); Richard A. DeGuise, Jr., Hearing Examiner, State Gaming Control Board (Las Vegas); and Shawn Reid, Member, State Gaming Control Board (Carson City)

(1-HOUR) GAMING INDUSTRY, WALL STREET'S VIEW

Bill Lerner, Principal, Union Gaming Group (Las Vegas)



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