

ATTORNEY GENERAL OPINION
NEVADA COMMISSION FOR THE PRESERVATION OF WILD HORSES
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AGO 98-16 ANIMALS; CONSERVATION & NATURAL RESOURCES; WILD HORSES:
Amendment to Wild Horse Commission's primary duties should be interpreted to mean the Commission should focus on the preservation of wild horses on federally designated wild horse management areas.

Carson City, June 1, 1998

Mr. Peter G. Morros, Director, Department of Conservation and Natural Resources, Capitol Complex, Carson City, Nevada 89710

Dear Mr. Morros:

This opinion is in response to your question regarding an amendment to [NRS 504.470](#) on the Wild Horse Commission.

QUESTION

How does the 1997 amendment to [NRS 504.470](#), declaring a primary duty of the Commission for the Preservation of Wild Horses (Commission) to preserve viable herds of wild horses on lands federally designated as *sanctuaries*, affect the authority of the commission?

ANALYSIS

The Commission was established after the Governor's Wild Horse Committee issued its report on November 26, 1984. Governor's Wild Horse Committee, Report to the Governor, November 26, 1984, at 1 (Governor's Committee Report). The purpose of the Governor's committee was to determine how funds from the will of Leo Heil should be spent to preserve wild horses in Nevada.²⁹ *Id.* The committee recommended that a Heil Trust (Trust) be created, but the Trust should not be expended rapidly and should be spent only in Nevada. *Id.* at 1-7. The committee recommended the governor appoint a 3-member committee to oversee the activities of a director. *Id.* at 7-13.

In 1985, the Legislature directed the governor to appoint a three person commission based on the recommendations of the Governor's committee.³⁰ Act of June 10, 1985, ch. 594, § 3, 1985 Nev. Stat. 1887. The Legislature created a trust fund for proceeds from the Heil will and other sources of funds for wild horses, and authorized the Commission to administer the fund.³¹ The primary duty of the Commission was to preserve the herds of wild horses. Eleven directives were drawn from the Governor's committee to direct the Commission on how to accomplish its primary duty. Act of June 10, 1985, ch. 594, §§ 6-8, 1985 Nev. Stat. 1888. The Commission was also empowered to make grants, adopt regulations necessary to further its directives, and enter into agreements with the federal government to conduct research, create a preserve, finance improvements, and apprehend violators of laws regarding wild horses. *Id.*

In 1991, statutes pertaining to the Commission were amended. Act of June 14, 1991, ch. 350, § 1-11, 1991 Nev. Stat. 910-14. The Legislature required state agencies which consult with the Secretary of Interior pursuant to 16 U.S.C.S. 1333(b)(1) (1997) regarding wild horses, to confer with the Commission prior to those consultations. The Legislature augmented the Commission's primary duty by stating the Commission must also "identify programs to maintain the herds in a thriving ecological balance." *Id.*

In 1997, statutes relating to the Commission were amended through S.B. 211. The Commission was placed within the Department of Conservation and Natural Resources (DCNR) and the ability of the Commission's administrator to file grazing appeals was restricted.³² Act of July 16, 1997, ch. 537, §§ 3-5, 1997 Nev. Stat. 2533. The focus of this opinion is on the amendment which states the Commission's primary duties are "to preserve viable herds of wild horses on public lands *designated by the Secretary of Interior as sanctuaries for the protection of wild horses and burros pursuant to 16 U.S.C.S. 1333(a).*" *Id.* at § 6, 1997 Nev. Stat. at 2534-35 (emphasis added). The Commission is directed to do this "within the limitations of the natural resources of those lands and the use of those lands for multiple purposes, and to identify programs for the maintenance of those herds." *Id.* The Commission was also directed to prepare a statewide plan for submission to the Legislature in 1999, describing how it will carry out its statutory obligations and spend the Trust. *Id.* at § 9-11, 1997 Nev. Stat. at 2537. To prepare the plan, the Commission was given \$75,000 and directed to conduct public meetings. *Id.*

A. The Plain Meaning of [NRS 504.470](#).

If the language of a statute is plain and unambiguous, there is no room for construction of its meaning. *Nevada Power Co. v. Public Serv. Comm'n*, 102 Nev. 1, 4, 711 P.2d 867, 869 (1986). The words in a statute should be given their plain meaning unless the spirit of the act is violated. *Rodgers v. Rodgers*, 110 Nev. 1370, 1373, 887 P.2d 269, 271 (1994).

The plain meaning of amended [NRS 504.470](#) is that a primary duty of the Commission is to preserve viable herds on *sanctuaries* that have been designated by the Secretary of Interior. The Wild Free-Roaming Horse and Burro Act (Act), 16 U.S.C. 1331-1340, was enacted by Congress in 1971.³³ The Act gave the Secretary of Interior the authority to designate and maintain specific ranges on public lands as *sanctuaries* for the protection of wild horses and burros. 16 U.S.C.S. 1333(a) (1997). The Act also mandated that the Secretary manage horses in a manner designed to achieve and maintain a thriving ecological balance on public lands. *Id.* The Secretary uses herd management areas and ranges to fulfill his responsibilities under the Act.³⁴ 43 C.F.R. 4700.0-2 (1997). The Secretary of Interior has not promulgated regulations dealing with *sanctuaries*, and has not created *sanctuaries* in Nevada. ³⁵

Since *sanctuaries* do not exist in Nevada, the Commission's duties would be drastically curtailed if the plain meaning on [NRS 504.470](#) were embraced. This office concludes the Legislature could not have intended the plain meaning of [NRS 504.470](#) because the result of the plain meaning would be absurd and would render many other statutes meaningless.

B. Plain Meaning Of NRS 504.470 Leads To Absurd Result

Statutory construction should avoid absurd or unreasonable results. *Alsenz v. Clark Co. School Dist.*, 109 Nev. 1062, 1065, 864 P.2d 285, 286-87 (1993); *McCrackin v. Elko County School Dist.*, 103 Nev. 655, 658, 747 P.2d 1373, 1375 (1987); *State v. Webster*, 102 Nev. 450, 453, 726 P.2d 831, 833 (1986). A statute should not be construed to produce an unreasonable result when another construction will produce a reasonable result. *Breen v. Caesar's Palace*, 102 Nev. 79, 82, 715 P.2d 1070, 1073 (1986).

The Commission was created to oversee the Trust for the purpose of preserving wild horses in Nevada, and it retains significant authority for the preservation of wild horses. Nothing from the legislative history of S.B. 211 indicates the Legislature intended to dramatically strip the Commission of its traditional function. Therefore, interpreting amended NRS 504.470 in a manner that would strip the commission of its authority would be absurd. *See State, Dep't of Motor Vehicles & Public Safety v. Lovett*, 110 Nev. 473, 477, 874 P.2d 1247, 1250 (1994) (statutes are generally construed with view of promoting, rather than defeating, legislative policy behind them); *State, Dep't of Motor Vehicles & Public Safety v. Brown*, 104 Nev. 524, 526, 762 P.2d 882, 884 (1988) (statutes must be given reasonable construction with view to promoting rather than defeating legislative policy).

Further, the Heil Will left money to the state for the preservation of wild horses and a Trust was created in which the state acts as trustee.³⁶ NRS 504.450. The language of the will's residual clause stated expressly that the intent of the bequest was for the preservation of wild horses in Nevada. Since no *sanctuaries* exist in Nevada, a plain meaning interpretation of amended NRS 504.470 would restrict the Commission from taking the action necessary to further the intent of the trust, and the director of DCNR could not administer the Trust for the benefit of wild horses in Nevada. Such restrictions on the state's ability to administer the Trust would subject the state to litigation for failing in its trust obligations.

The plain meaning of amended NRS 504.470 would lead to the absurd result of the Commission being unable to participate in wild horse preservation, and the state being subject to litigation for failing in its trust responsibilities. This office concludes such an interpretation of amended NRS 504.470 is inappropriate because a reasonable interpretation of the amendment is available. *See Las Vegas Sun, Inc. v. Eighth Judicial Dist. Court*, 104 Nev. 508, 511, 761 P.2d 849, 851 (1988) (interpretation of statute should be reasonable and avoid absurd results).

C. Plain Meaning of NRS 504.470 Would Render Many Other Statutes Meaningless.

A statute should not be interpreted in a fashion that would render another statute nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided. *Rodgers*, 110 Nev. at 1373, 887 P.2d at 271. Statutory interpretation should avoid a reading which would render part of a statute redundant or meaningless when a substantive interpretation of that part can be given. *Board of County Comm'rs Clark County v. White*, 102 Nev. 587, 590, 729 P.2d 1347, 1350 (1986); *Board of County Comm'rs Clark County v. CMC of Nevada*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983).

The Commission retains directives given to it to carry out its duties, and can adopt regulations to carry out those duties.³⁷ *See* NRS 504.470(1)(a)-(k), NRS 504.470(2)(b). If the Commission's primary duties were limited to *sanctuaries*, the Commission could not fulfill its directives and its authority to promulgate regulations would be meaningless because *sanctuaries* do not exist in Nevada.

S.B. 211 added a procedure for filing protests, petitions, and appeals by the Commission's administrator, and provided \$75,000 for the commission to prepare a plan. *See* [NRS 504.460\(3\)](#); Act of July 16, 1997, ch. 537, § 11, 1997 Nev. Stat. 2534, 36. If the Commission's primary duties were limited to *sanctuaries*, the [NRS 504.460\(3\)](#) appeal procedure would be meaningless because no appeals will arise regarding *sanctuaries*, and the plan would be meaningless because it could only focus on *sanctuaries*.

The Commission retains its authority to enter into agreements with the federal government to conduct research, create a range for studying and viewing wild animals, finance improvements to benefit wild horses, and coordinate efforts to prosecute offenders for wild horse crimes. *See* [NRS 504.480](#). If the Commission's primary duties were limited to *sanctuaries*, the Commission could not enter these agreements, rendering [NRS 504.480](#) meaningless.

The commission retains its right to have other wildlife agencies in the state confer with the commission regarding consultation with the Secretary of Interior when the Secretary prepares wild horse inventories, or determines when removal is necessary, what the appropriate management levels are on public lands, and whether appropriate management levels should be met through removal, destruction, or other control methods. *See* [NRS 504.485](#). If the Commission's primary duties were limited to *sanctuaries*, the [NRS 504.485](#) consultation process would be meaningless because state agencies will never consult with the Secretary regarding *sanctuaries*.

This office concludes a plain meaning interpretation of amended [NRS 504.470](#) is inappropriate because it would render the Commission's retained authority meaningless and a separate substantive interpretation is available. *Bd. of County Comm'rs*, 99 Nev. at 744, 670 P.2d at 105 (a reading of legislation should not render any part thereof meaningless, if that part may be given a separate substantive interpretation).

D. Reasonable Interpretation of Amended [NRS 504.470](#).

Given the inappropriate result of the plain meaning of amended [NRS 504.470](#), it is necessary to look beyond the statute to find a reasonable meaning of the amendment. *Breen*, 102 Nev. at 82, 715 P.2d at 1070 (a statute will not be construed to produce an unreasonable result when another construction will produce a reasonable result). S.B. 211 should be construed to give meaning to all of its parts and language. *State ex rel. List v. AAA Auto Leasing*, 93 Nev. 483, 568 P.2d 1230 (1977); *Nevada State Personnel Division v. Haskins*, 90 Nev. 425, 529 P.2d 795 (1974). Each sentence, phrase, and word should be interpreted to render it meaningful within the context of the purpose of the S.B. 211. *State Gen. Obligation Bond v. Koontz*, 84 Nev. 130, 437 P.2d 72 (1968).

The purposes of S.B. 211 were to bring the Commission into DCNR, require the Commission to prepare a plan, tailor the administrator of the commission's ability to object to grazing decisions, and characterize the meaning of preservation.³⁸

1. Legislative History of Sanctuary Language

The first draft of S.B. 211 contained a proposed definition for “management area,” defining it as “any area in the state in which wild horses are controlled and managed by the Federal Government pursuant to the provisions of the Wild Free-Roaming Horses and Burros Act.” S.B. 211, March 13, 1997, at § 1, pp. 1-2. At the first hearing on S.B. 211, Eureka County proposed amendments to S.B. 211 that included a definition for “management area” as “any area in the state designated by the Secretary of Interior as a *sanctuary* for the protection and preservation of wild horses.” *Hearing on S.B. 211 Before Senate Committee on Natural Resources*, 1997 Legislative Session, Exhibit N (May 7, 1997). This appears to be the origin of the *sanctuary* language.

Amendments to S.B. 211 on June 18, 1997, defined preservation as the perpetuation of viable wild horse herds, within Bureau of Land Management delineated wild horse and burro herd areas, at management levels known to achieve a thriving natural ecological balance between the limits of natural resources and multiple use of the public lands. At the second reading of S.B. 211 in the Senate, the language used to define preservation was moved to the explanation of the primary duties of the commission. *Senate Daily Journal*, June 29, 1997, p. 101.

On July 5, 1997, three days before the end of the legislative session, the second reading of S.B. 211 in the Assembly amended the commission’s primary duties by inserting, “on public lands designated by the Secretary of the Interior as *sanctuaries* for the protection of wild horses and burros pursuant to 16 U.S.C. § 1333(a)” *Assembly Daily Journal*, July 5, 1997, p 55-57. This is the first appearance of the *sanctuary* language in a version of S.B. 211. No testimony or discussions exist in the record to explain why this language was added.³⁹

2. Legislative Intent of Sanctuary Language

It appears the Legislature amended the Commission’s primary duties to refine what preservation means. Given that intent, it is essential to examine the context of the primary duties language.

Absent the *sanctuary* term, amended [NRS 504.470](#) stated the Commission’s primary duty is to preserve viable herds of wild horses on public lands designated by the Secretary of Interior, at levels known to achieve a thriving natural ecological balance within the limitations of natural resources of those lands and the use of those lands for multiple purposes, and identify programs for the maintenance of those herds. The Legislature intended to direct the Commission to focus on preservation of wild horses on federally designated lands, and to focus on management that achieves a thriving ecological balance given multiple uses and demands for public lands. These three concerns were included in all of the drafts of S.B. 211 before the *sanctuary* language appeared.

The Secretary of Interior uses herd management areas and ranges to manage horses to achieve and maintain a thriving ecological balance on public land, and to manage wild horses while managing lands for multiple uses.⁴⁰ 16 U.S.C.S. 1333(a) (1997); 43 C.F.R. 4700.0-2 (1997). Management areas have been adopted pursuant to the authority of 16 U.S.C.S. 1333(a) (1997), and exist in Nevada.

The Legislature's intent to have the Commission's primary duties focus on federally designated areas, management for a thriving ecology, and the balance of multiple uses of public land would be furthered if amended [NRS 504.470](#) were interpreted to mean the Commission's primary duties are to preserve wild horses on federally designated wild horse management areas. This interpretation also furthers the Legislature's desire to articulate the concept of preservation. Accordingly, this office concludes amended [NRS 504.470](#) was intended to change the Commission's primary duties to preserving wild horses on federally designated wild horse management areas. *See Maine v. Thiboutot*, 88 U.S. 1, 14, 100 S. Ct. 2502, 2509 (1980) (statutes are to be construed not only based upon their words, but by considering, as well, the context, the purposes of the law, and the circumstances under which the words were employed).

CONCLUSION

The plain meaning of amended [NRS 504.470](#) is that the primary duty of the Commission is to preserve viable herds on *sanctuaries* that have been designated by the Secretary of Interior. Since no *sanctuaries* exist in Nevada, this interpretation would lead to the absurd result of the Commission being unable to participate in wild horse preservation, the state being subject to litigation for failing in its trust responsibilities, and would render the Commission's retained authorities meaningless. This office concludes such an interpretation of amended [NRS 504.470](#) is inappropriate because a separate, reasonable interpretation is available.

The Legislature intended to refine the concept of preservation and have the Commission's primary duties focus on federally designated areas, management for a thriving ecology, and the balance of multiple uses of public land. That intent is furthered by interpreting S.B. 211 to direct the Commission to focus on federally designated horse management areas. Accordingly, this office concludes amended [NRS 504.470](#) was intended to change the Commission's primary duties to preserving wild horses on federally designated wild horse management areas.

Given the complexity of this question, and the adoption of the contested language during the closing days of the 69th Legislature, this office strongly urges the Commission to consider requesting clarification of the amendment to [NRS 504.470](#).

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By: PAUL G. TAGGART
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29 Leo Heil's holographic will contained a residual clause, leaving the residue of his estate "to the State of Nevada for the preservation of wild horses in Nevada."

30 A Research Analyst for the Legislative Counsel Bureau, stated "this bill is a result of the recommendations of a committee appointed by Governor Bryan in November, 1984." *Hearing on S.B. 485 before Senate Committee on Natural Resources*, 1985 Legislative Session, 2 (May 30, 1985).

31 The Commission was not authorized to expend funds if the trust principal would go below \$900,000. The Commission was authorized to appoint a director with expertise in issues confronting wild horses and whose duty it was to carry out the policies of the Commission. Act of June 10, 1985, ch. 594, §§ 4-5, 1985 Nev. Stat. 1887-88.

32 The Legislature made the director of the Commission an administrator under the director of DCNR and provided the director of DCNR, not the Commission, with the authority to appoint the commission's administrator and administer the Heil Trust. Act of July 16, 1997, ch. 537, §§ 3-5, 1997 Nev. Stat. 2533. As for appeals, before they can be filed, the director of DCNR must provide his approval and a copy of the protest, petition or appeal must be provided to 1) any person authorized to graze livestock on public land subject to the protest, petition or appeal, 2) the chairman of the county commission in each county containing public land subject to the protest, petition or appeal, and 3) each member of the commission. *Id.*

33 Congress found free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West and they should be protected from capture and considered an integral part of the public lands. 16 U.S.C.S. 1331 (1997).

34 Herd management *areas* are established for the maintenance of wild horse and burro herds, by managing herds in those areas with consideration given to the habitat requirements of the herds, the relationship between the herd and other uses of the public and adjacent private lands, and limiting the animals' distribution to herd areas. 43 C.F.R. 4710.3-4710.4 (1997). Wild horse and burro *ranges* may be designated where the range should be managed principally, but not necessarily exclusively, for wild horse and burro herds. *Id.*

35 While the Bureau of Land Management ("BLM") has established a number of *sanctuaries* in the United States, those *sanctuaries* are established on private land, through contract, with the exclusive use of the sanctuary being horse and burro use. These sanctuaries were not established pursuant to the Secretary's authority from the Act.

36 The Commission is responsible for taking any action necessary to further the intent of the trust, and the director of DCNR is responsible for administering the trust. *Id.*; NRS 504.470(1)(k).

37 Those directives include 1) promoting the management and protection of wild horses; 2) acting as liaison between the state, the general public and horse protection groups; 3) advising the governor on issues involving wild horses; 4) soliciting and accepting contributions for the trust fund; 5) recommending legislation consistent with federal law; 6) developing and managing programs to study wild horses and their habitat; 7) monitoring the activities of federal, state and military agencies which affect wild horses; 8) participating in programs designed to protect wild horses; 9) developing a plan to educate the public about the activities of the Commission; 10) reporting biannually to the Legislature; and 11) taking any action necessary to fulfill the intent of the Heil bequest. NRS 504.470(1)(a)-(k).

38 The legislature was clearly concerned with defining preservation. Senate Committee Chairman Dean Rhoads asked Eureka County lobbyist Mike Baughman and Commission Chairman Jackson to define preservation. *Hearing on S.B. 211 Before Senate Committee on Natural Resources*, 1997 Legislative Session, 10, 13 (May 7, 1997). Mr. Baughman and Chairman Jackson agreed to report back to the Committee with definitions of preservation. *Id.* At an Assembly committee hearing on A.B. 645, the committee discussed S.B. 211 and the definition of preservation. *Hearing on A.B. 645 Before Assembly Committee on Natural Resources, Agriculture and Mining*, 1997 Legislative Session, 8-9 (June 26, 1997).

Stephanie Licht, representing the Nevada Farm Bureau, urged the Committee to develop a definition of preservation that would provide direction. *Id.*

39 On July 6, 1997, the Assembly amendments were read in the Senate, including the change involving *sanctuaries*. Senate Daily Journal, July 5, 1997, p 38-41. After the reading of the amendments, Senator Rhoads made a motion for the Senate to concur in the Assembly amendments. His motion passed, and S.B. 211 was ordered enrolled. *Id.* On July 7, 1997, the legislature adjourned.

40 Management areas are used to manage wild horses as an integral *part* of the public lands to keep horse populations *in balance with other uses and the productive capacity of their habitat*. 43 C.F.R. 4700.0-2; 43 C.F.R. 4700.0-6(a) (1997).