STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of SHARON McNAIR, Former Treasurer, Beacon Academy of Nevada Governing Body, State of Nevada	**Requests for Opinion Nos.: 10-105C 10-106C 10-108C 10-109C 10-115C**

Subject. /

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The Executive Director bases the following report and recommendation on the staff's consideration and investigation of the Ethics Request for Opinion ("RFO") filed regarding the conduct of Sharon McNair, a public officer, and on her two written responses to the RFO, attached as exhibits to this report and recommendation, and the other materials attached hereto. The Executive Director provides her Report and Recommendation and its exhibits for the consideration of the two-commissioner investigatory panel ("Panel"), pursuant to the requirements of NRS 281A.240.

Facts:

The main party is Sharon McNair, a CPA who owns and operates McNair & Associates accounting firm in Las Vegas, Nevada. Ms. McNair served as a member of the Board of Directors of the Beacon Academy of Nevada, a Nevada public charter school, since 2008, functioning as the Board Treasurer. (This report may refer to Beacon Academy of Nevada in a variety of ways, including "Beacon Academy", "BANV" or simply "the charter school".) We are informed that Ms. McNair resigned from the BANV Board of Directors after the Commission's investigation of the RFO began in spring 2011.

Other involved individuals include:
Amy Billey, an employee of McNair and Associates who worked on BANV accounting;
John Matsis, a compliance officer employed by the charter school;
Kimberly McNair-Styles, Sharon McNair's daughter, and a teacher at Beacon Academy;
Michael Opp, Principal of BANV; and
Gary Waters, Executive Director of BANV.

Allegations:

The allegations center on several instances of McNair's conduct:

CONDUCT SCENARIO 1. Ms. McNair, a member of the charter school's Board of Directors, approached BANV Principal Michael Opp in or around August 2009 and encouraged him to hire her daughter, Kimberly McNair Styles, as a part-time math teacher at Beacon Academy. Despite Ms. McNair-Styles' lack of prior virtual-classroom experience, and despite Principal Opp's concern about hiring a family member of a board member, he offered Ms. McNair-Styles the part-time math teaching position because she was an experienced math teacher, and also because he did not feel comfortable denying a board member's direct request. (Exhibit 11).

On or around September 22, 2010, for cause, Beacon Academy Principal Opp reassigned a number of Kimberly McNair-Styles' students to other math teachers, which effectively diminished Ms. McNair-Styles' status and pay. Two days later, an irate Sharon McNair telephoned BANV's Executive Director Gary Waters, demanding an explanation of the diminution of her daughter's teaching role at BANV and complaining about Principal Opp's actions. Approximately one week later, she asked the school's compliance officer to come into her office, and launched into a recitation of negative points about Mr. Opp's character, appearance, manners and performance, admitting that her perceptions were based upon his actions toward Ms. McNair-Styles. (Exhibit 11), (RFO 10-106C pp. 3-4).

Approximately one month later, in a meeting to discuss the renewal of his employment contract, Ms. McNair again complained to Mr. Waters about Principal Opp, expressing her desire to see him leave the employment of BANV.

CONDUCT SCENARIO 2. A bit over one year after she joined the BANV board as the Treasurer, in or about August 2009, McNair approached Executive Director Gary Waters to inquire whether she could bill and be paid for the accounting services that she and her firm provided to the charter school. About two months prior, BANV had terminated the management organization that had started the charter school, and suddenly the organization needed to do its own bookkeeping and accounting. Without a doubt, McNair's duties had increased dramatically. In the next month or so, McNair and Waters exchanged several emails about McNair billing for her services, and they agreed that she would submit monthly invoices for the charter school's accounting services.
(Tab C, Response from Flangas McMillan p. 18), (RFO 10-105C, pp. 4-35), (Exhibits 5, 7 and 8).

At the end of September 2009, Beacon Academy received McNair's first invoice, and paid the balance within two weeks. The invoice included a 2.5 hour (@ $225.00 per hour) entry for attending the August 20, 2009 Board meeting, despite the fact that the meeting lasted only 1.75 hours, and that McNair served as a member of the Board. McNair's October invoice included a 2.5 hour entry for a meeting lasting less than 1.5 hours. McNair then seemed to discontinue billing for her attendance at board meetings. After all, as a Board Member or as Treasurer, one would not be entitled to payment of any sort. But almost one year later, in August 2010, she billed 2.5 hours for attending the August 4, 2010 board meeting. (Tab A, RFO 10-105C pp. 6, 9 and 26), (Exhibit 5, time: 1hr 58 min), (Exhibit 8).

The bills from the accounting firm to Beacon Academy grew in each of the 15 months, and in October 2010 the monthly fee exceeded $10,000. After numerous suggestions from various individuals and input from the Board's attorneys, McNair returned $10,207 which she received for her October 2010 accounting services. After that time, BANV received no further invoices from McNair. (Exhibits 7 and 8).

CONDUCT SCENARIO 3. John Matsis joined the charter school as a Board member approximately 3 months after the Department of Education granted its charter. Just 5 months later, he was elected President of the Board. After serving only 8 months on the Board, Matsis resigned his board position to accept employment with Beacon Academy as its Compliance Director in August 2009. A portion of the Compliance Director's role is to work closely with the Treasurer to ensure that the State Department of Education's criteria are met, and to preserve the school's status. Matsis worked closely with McNair both as a Board member and then as an employee of BANV for over two years. (Exhibit 4, pp. 7, 22-23 and 42-43 of 151).

However, in November 2010, just after returning over $10,000 in fees to BANV, McNair informed Executive Director Waters of her opinion that Matsis was incompetent, and suggested that BANV instead engage Amy Billey, an employee of her accounting firm, so the school could handle its own accounting functions. (Tab A, RFO 10-108C pp. 5-10), (Exhibit 4, p. 126), (Tab A, RFO No. 10-115C p. 8).

E.D. Waters shared some of McNair's feedback with Matsis. A week later, Mr. Waters attended a meeting in McNair's office in which she again suggested BANV hire Ms. Billey and pay her directly, but McNair then suggested that the charter school make her pay retroactive to the last McNair & Associates' billing. Several days later, Ms. Billey telephoned Mr. Matsis to inquire where her new office would be at Beacon Academy. Matsis was completely unaware of the discussions regarding Ms. Billey, and informed her that the matter had never been discussed or considered by the Board. Ms. Billey then contacted Ms. McNair, who immediately began to make plans for a board decision. McNair engaged the Board President to call a special meeting and intentionally arranged to by-pass any involvement by Matsis, who typically issued and posted BANV Board agendas in compliance with Nevada's Open Meeting Law. Matsis, who began to feel that his continued employment and the future of BANV were being threatened, filed several complaints about Ms. McNair's conduct with the Nevada Commission on Ethics. (Tab A, RFO 10-108C p. 9).

Relevant Nevada Revised Statutes (NRS):

NRS 281A.020 Legislative findings and declarations.

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:

(a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and

(b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

(1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(2) The expenditure of public money; and

(3) The administration of laws and rules of the State or any county, city or other political subdivision.

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee.

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.

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7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

9. A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

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3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of others.

NRS 281A.430 Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

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4. A public officer or employee, other than a public officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if:

(a) The contracting process is controlled by the rules of open competitive bidding or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;

(b) The sources of supply are limited;

(c) The public officer or employee has not taken part in developing the contract plans or specifications; and

(d) The public officer or employee will not be personally involved in opening, considering or accepting offers.

If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281A.420, shall disclose the public officer's interest in the contract and shall not vote on or advocate the approval of the contract.

Analysis:

Conduct Scenario 1 regarding McNair's alleged attempts to have Beacon Academy hire and retain her daughter may implicate the following statutes:

- NRS 281A.020 - failure to commit to avoid conflicts between public duties and private interests. Intertwining authority and influence as a Board member with personal interest in daughter's employment.
- NRS 281A.400(1) - seeking favors which would tend to improperly influence a public officer to depart from public duties. Asking Opp to hire daughter despite her lack of virtual classroom experience.
- NRS 281A.400(2) - using her position in government to secure an unwarranted advantage. Manipulating Opp to consider hiring her daughter. Using Board position to advocate with Waters against Opp's continued employment and for daughter's retention of students and status following Opp's actions.
- NRS 281A.400(5) - using non-public information to further the pecuniary interest of another. ***No evidence was presented or found*** to support the concept that the open math teacher position was not publicly known or that Opp's actions were done in secret.
- NRS 281A.400(9) - influencing a subordinate to benefit a personal interest. Allegations that McNair influenced Opp to consider hiring McNair-Styles, McNair influenced Opp and Waters after McNair Styles' classes were reduced, and McNair suggested to Waters that Opp be terminated due to his actions toward McNair-Styles.

Conduct Scenario 2 regarding McNair billing BANV for and collecting fees from the charter school for services provided by McNair & Associates, McNair herself, or Amy Billey, an employee of McNair & Associates, may implicate the following statutes:

- NRS 281A.020 - failure to commit to avoid conflicts between public duties and private interests. McNair had a public duty to serve the Board without compensation and accepted the role of Treasurer without compensation; however she billed BANV at least 3 times for attending Board meetings, and her response to being challenged on the practice was that nobody questioned the billing entries. McNair also arranged for her accounting firm to be paid to provide accounting services for the operations of the charter school, and despite her argument that she made little if any profit on the arrangements, it created a conflict in the system of checks and balances between the board treasurer and the hands-on operational systems.
- NRS 281A.400(1) - seeking favors which would tend to improperly influence a public officer to depart from the faithful discharge of public duties. McNair asked Waters if she could be paid for the time she and her firm had voluntarily provided after the previous management servicer was discharged. Waters may have been loathe to decline a request from one of his supervisors. In addition, Waters may have been uncomfortable suggesting to his supervisor that her generosity in the prior months was an improper invasion of the safeguards in place to safeguard the objective analysis of the best interests of the charter school rather than the best interests of a Board Member. The same applies to BANV's consideration of employing Ms. Billey as a BANV accounting person.

- NRS 281A.400(2) - using her position in government to secure an unwarranted advantage. Although McNair & Associates appears to be a capable accounting firm, McNair's ability to have her firm serve the accounting function while she had the Board Treasurer role gave her enormous latitude to manipulate decisions, reporting, and accounting for revenues, expenditures, contracts and the like. Further, by attempting to eliminate Mr. Matsis and replace him with her employee, Amy Billey, McNair would secure an unwarranted advantage over an employee of BANV.
- NRS 281A.400(5) - using non-public information to further a pecuniary interest. The accounting arrangement that McNair & Associates had with BANV was not offered for other accounting providers to submit an application nor was it put out to bid. Only because McNair served on the Board of Directors did she know that accounting services were needed by the charter school. And, despite her claim to the contrary, charging $225 per hour for her own time and $90 per hour for Ms. Billey's time could not credibly have been a "break-even" rate.
- NRS 281A.400(9) - influencing a subordinate to benefit a personal interest. McNair influenced Waters to agree to allow her to bill for the services she and Ms. Billey provided. She also attempted to manipulate BANV to hire Ms. Billey to provide in-house accounting services (part-time?) after she learned that she could no longer bill those services through her practice. Yet if Ms. Billey remained in McNair's employ during those hours she was not committed to BANV, McNair would retain significant influence over her.

Conduct Scenario 3 regarding McNair turning against Matsis in an effort to have BANV hire Ms. Billey, may implicate the following statutes:

- NRS 281A.020 - failure to commit to avoid conflicts between public duties and private interests. McNair had a public duty to serve the Board but actively worked to create a conflict in the system of checks and balances between the board treasurer and the hands-on operational systems.
- NRS 281A.400(1) - seeking favors which would tend to improperly influence a public officer to depart from the faithful discharge of public duties. McNair asked Waters to consider employing Ms. Billey as a BANV accounting person, terminate Mr. Matsis, ramrod a board agenda, and influence the board's decision so that she would have unchecked authority over BANV's financial reporting and accounts.
- NRS 281A.400(2) - using her position in government to secure an unwarranted advantage. By attempting to eliminate Mr. Matsis and replace him with her employee, Amy Billey, McNair would secure an unwarranted advantage over an employee of BANV and secure personal control over the organization's finances and reporting.
- NRS 281A.400(9) - influencing a subordinate to benefit a personal interest. McNair used her position on the Board to influence Waters to to provide in-house accounting services (part-time?) after she learned that she could no longer bill those services through her practice. Yet if Ms. Billey remained in McNair's employ during those hours she was not committed to BANV, McNair would retain significant influence over her, which may promote her personal interest in exercising unchecked authority over BANV books and accounts.

It appears that the evidence does not support any allegation that McNair's conduct violated NRS 281A.400 (7).

NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290**)**

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics RFO **must be based on credible evidence.**
2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics RFO must be unanimous.
3. As used in this section, **"credible evidence" means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

Conclusion and Recommendation:

The conduct of the Subject in this RFO is disturbing, mostly due to her apparent failure to recognize that any of her conduct may have been inappropriate. Numerous documents and significant witness testimony supports the allegations. The Executive Director's recommendation was not based on evidence that produced a "close call," however, I know that the Commission will weigh all of the testimony and evidence at the hearing of this matter and provide a fair and objective evaluation of the facts and the applicable law.

I recommend that the Panel find that **sufficient credible evidence is present** to support a reasonable belief that the Commission should hear this matter and render an opinion regarding Sharon McNair's alleged violations of NRS 281A.020, NRS

281A.400(1), (2), (3), (4), (5), (9) and (10), NRS 281A.420(1) and (3) and NRS 281A.430. However, **just and sufficient cause does not exist** to forward allegations that McNair violated NRS 281A.400(7) to the full Commission.

I respectfully provide my recommendation to this honorable panel.

Caren Jenkins

Caren Jenkins, Esq.
Executive Director

Date: May 4, 2011