



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Consolidated Requests for Opinion Concerning the Conduct of SHARON McNAIR, Former Treasurer and Governing Board Member, Beacon Academy of Nevada, a public charter school, State of Nevada,

Requests for Opinion Nos.: 10-105C
10-106C
10-108C
10-109C
10-115C

Subject. /

PANEL DETERMINATION

NRS 281A.440(5); NAC 281A.440

Facts and Jurisdiction

The Nevada Commission on Ethics received several Third-Party Requests for Opinion regarding the conduct of SHARON McNAIR, former Treasurer and Board Member, Beacon Academy of Nevada¹, State of Nevada, alleging certain violations of the Ethics in Government Law set forth in Chapter 281A of NRS.

At the time of the alleged conduct, McNair was a member and/or an officer of the Board of Directors of the Beacon Academy of Nevada, a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers pursuant to NRS 281A.280. Therefore, the Commission has jurisdiction in this matter.

Panel Proceeding

On May 9, 2011, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners John Marvel and James Shaw reviewed the following: 1) Five Third-party Requests for Opinion; 2) Ms. McNair's counsels' responses to the Ethics Requests for Opinion, and 3) the Executive Director's Report and Recommendation.

The main allegations in the Requests for Opinion are that Ms. McNair used her position on the Board to further her personal or pecuniary interests by attempting to

¹ Beacon Academy of Nevada may be referred to herein as BANV, Beacon Academy, or the charter school.

influence a subordinate to hire her daughter as a part-time teacher, using her position on the Board to manipulate her daughter's continued employment one-year later, and engaging her own accounting firm to provide contract financial services to the school.

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

CONDUCT SCENARIO 1 - Daughter as Employee.

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.

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.

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 - Contract Accounting Services.

More than 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 Treasurer 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.

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. 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.

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.

CONDUCT SCENARIO 3 - Influencing Personnel Decisions.

John Matsis joined the charter school as a Board member 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.

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.

Mr. 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. McNair also 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 Board had never discussed or considered the matter. 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.

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 Principal 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 Principal 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 preserve 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.
 - NRS 281A.420(1) and (3) - failing to disclose and/or abstain from voting as a Board member on matters related to the provision of, payment for and approval of accounting, budget, and other financial reports involving McNair & Associates.
 - NRS 281A.430 - engaging in a contract with a public agency. While McNair did not have a written contract, she and BANV had an oral agreement to pay for the services that McNair & Associates provided to the charter school.

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, push through items on 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 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.

No evidence supports the allegation that McNair's conduct violated NRS 281A.400(7). Therefore, due to the lack of just and sufficient cause for the Commission to review this matter, the Investigatory Panel will not refer this allegation to the Commission for a hearing and the rendering of an opinion.

However, the Panel finds that sufficient credible evidence is present to support a reasonable belief that the Commission should hear this matter and render an opinion regarding allegations that Sharon McNair violated **NRS 281A.020, NRS 281A.400(1), (2), (3), (4), (5), (9) and (10), NRS 281A.420(1) and (3), and NRS 281A.430**. Therefore, this Investigatory Panel hereby refers those matters to the Commission for consideration and determination.

Dated: _____

May 10, 2011

Caren Jenkins

Caren Jenkins, Esq.
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I placed a true and correct copy of the **PANEL DETERMINATION in Request for Opinion Nos. 10-105C, 10-106C, 10-108C, 10-109C and 10-115C**, in an envelope and caused same to be mailed via certified mail, return receipt requested, through the State of Nevada Mailroom to Sharon McNair's counsel, Chara Allen, Esq., and a true and correct copy of the **PANEL DETERMINATION in Request for Opinion Nos. 10-105C, 10-106C, 10-108C, 10-109C and 10-115C** to Sharon McNair, and the Requester, John Matsis, via regular mail through the State of Nevada Mailroom addressed as follows:

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DATED: 5/10/2011


An employee, Nevada Commission on Ethics