



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion
Concerning the Conduct of KATE MARSHALL,
Treasurer,
State of Nevada,**

Request for Opinion No.: 10-24C

Subject. /

**EXECUTIVE DIRECTOR'S REPORT
AND RECOMMENDATION TO INVESTIGATORY PANEL**

The following is the Executive Director's report and recommendation based on consideration and investigation of the Ethics Complaint filed against Nevada Treasurer KATE MARSHALL ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached to the Investigator's Report. That Report is approved and is attached for the consideration of the two-commissioner investigatory panel.

Allegations:

The main allegation is that Treasurer Marshall listed her government office telephone number on various forms related to her campaign for re-election, which caused State equipment, State employees and a State website to benefit her private interest in being re-elected and was a means to secure an unwarranted privilege or advantage.

Facts:

The parties involved are Treasurer Kate Marshall, the individual in the Treasurer's office who answered a telephone call from a Mr. Sanson regarding Treasurer Marshall's campaign for re-election, and Deputy Secretary of State for Elections Matt Griffin.

Nevada Revised Statutes (NRS) and case law:

The applicable statutes are NRS 281A.400(2) – using public position to secure an unwarranted benefit; NRS 281A.400(7) – using government resources to further a personal interest.

Allegations related to telephone number and use of State resources:

After reviewing the evidence and NRS 281A.400(2) and (7), I recommend that the Investigatory Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the allegations that Treasurer Marshall used her position in government to secure an unwarranted benefit or used government staff, equipment or a website to further her personal interest by listing her government office telephone number on the forms related to filing her candidacy for re-election.

The telephone call Marshall's office received about her campaign for re-election may or may not have been linked to the phone number she listed on those forms, as the caller may have obtained the Treasurer's office telephone number from a wide variety of sources. No evidence was presented that any caller obtained the number from the candidacy-related forms or from the State's Elections website. Therefore, pursuant to NAC 281A.435, the available **evidence is insufficient** to form a reasonable belief that the matter should proceed to hearing.

Treasurer Marshall had no influence over the Secretary of State's listing of her office contact number on the Elections website rather than her campaign telephone number. Certainly the Secretary of State's office was aware that the voluntarily completed media form specifically requested campaign contact information. Yet when the office compiled and posted public information for the filed candidates on its website, it used the data collected from the Declaration of Candidacy forms and not from the media information forms. However, this mis-step affected all candidates, and did not specifically provide Treasurer Marshall any benefit or advantage.

The report of Investigator Vavra, the Subject's thorough Response and the materials filed with the Complaint support this recommendation.

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 complaint **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 complaint 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.

Therefore, I recommend that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on whether State Treasurer KATE MARSHALL violated NRS 281A.400(2) or (7) for the reasons stated above.

I hereby approve the attached Investigator's Report and provide my recommendation to this honorable investigatory panel.


Caren Jenkins, Esq.
Executive Director

Date: June 3, 2010