



In the Matter of the Request for Opinion
Concerning the Conduct of TERRI JANISON,
President, Clark County School Board of
Trustees, Clark County School District,
State of Nevada,

Request for Opinion No. 10-56C

Subject./

**EXECUTIVE DIRECTOR'S RECOMMENDATION
AND APPROVAL OF INVESTIGATOR'S REPORT**

The following is the Executive Director's recommendation based on consideration and investigation of the Request for Opinion filed against TERRI JANISON, a public officer, and on her written response to the request, attached to the Investigator's Report. That approved Report is attached for the consideration of the two-commissioner investigatory panel.

Allegations:

The main allegation is that Ms. Janison's husband's employment as a weatherman for a local television station, which is owned in part by a person who expressed interest in applying for the open Clark County School District (CCSD) Superintendent position, created a conflict of interest requiring Janison to disclose the conflict and abstain from voting or otherwise participating in any CCSD matters related to the Superintendent search.

Facts:

The main parties involved are:

- Terri Janison, President, CCSD Board of Trustees
- James E. "Jim" Rogers, one of several shareholders in Intermountain West Communications, Inc. (formerly Sunbelt Communications), a corporation whose subsidiary, Valley Broadcasting, owns the Channel 3 television station that employs Janison's husband.
- McPherson & Jacobson, a Nebraska executive search firm CCSD hired to conduct the Superintendent search.

The complaint alleges that:

1 - By participating in the CCSD Superintendent search, Janison granted unwarranted preferences to her husband's employer (NRS 281A.400(2)),

2 - Janison acted as an agent of the government in negotiating and executing a contract with a business entity in which she has a significant pecuniary interest by contracting with McPherson & Jacobson as the search firm for the CCSD (NRS 281A.400(3)),

3 - Janison failed to disclose her relationship with her husband's employer during deliberations related to the search for the CCSD Superintendent (NRS 281A.420(1)), and

4 - Janison failed to abstain from voting on items related to the search for the CCSD Superintendent (NRS 281A.420(3)).

Nevada Revised Statutes (NRS) and related analysis:

NRS 281A.400(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.

NRS 281A.400(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.

Obviously, Janison's husband is a person with whom she has a "commitment in a private capacity". In a community property state like Nevada, Janison has a pecuniary interest in matters affecting her husband's employment. But as to her commitment to an owner of the entity that owns the entity that employs her husband (!), the "person" to whom she may have a commitment is Channel 3, which is her husband's employer. However, based on the Commission's determination in a recent confidential advisory opinion, the commitment in a private capacity may extend to Valley Broadcasting or Intermountain West Communications, and potentially to James Rogers, a partial owner of Intermountain West Communications.¹ The evidence found in the investigation and the assumptions and conjecture presented in the request do little to link Janison's actions to secure a Superintendent with any reasonable effect on her commitments in a private capacity or her pecuniary interest, regardless of how narrowly or broadly they are found to apply.

¹ Sunbelt Communications was the entity alleged in the request, but the actual parent of the entity that operates Channel 3 recently changed its name to Intermountain West Communications, Inc.

As to the first two allegations, no evidence was presented to suggest that Janison's actions provided any unwarranted benefit to Kevin Janison, Channel 3, Valley Broadcasting, Intermountain West or James Rogers. In fact, it could be alleged that her actions to make the superintendent search professional and objective worked against her husband's and Mr. Rogers' interests, since rather than voting to accept Rogers' offer to serve as superintendent, she voted to engage the services of a search firm and to conduct a national search. Additionally, the request did not allege that Janison has any pecuniary interest at all in the McPherson & Jacobson search firm, which is the only contract Janison allegedly negotiated and executed on behalf of CCSD. The request for opinion did not identify any other contract or business entity that may implicate this statute.

NAC 281A.435:

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.

NRS 281A.420(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.

NRS 281A.420(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.420(8): As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

- (1) Who is a member of the public officer's or employee's household;
- (2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (3) Who employs the public officer or employee or a member of the public officer's or employee's household;
- (4) With whom the public officer or employee has a substantial and continuing business relationship; or
- (5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

With regard to the allegations that Janison should have disclosed her commitment in a private capacity to the interests of her husband and/or her husband's employer and her pecuniary interest, and should have abstained from voting, Janison acted on the advice of the CCSD attorney and disclosed her husband's employment and its relationship to Mr. Rogers before the vote to accept the list of finalists from the search firm, and abstained from that vote despite the fact that Rogers was not among the finalists winnowed from nearly 50 applicants forwarded for consideration of the Trustees. (I am not certain that the abstention was required, based upon the facts presented.) She did vote to offer the Superintendent position to Dwight D. Jones, one of the three finalists accepted by the Board at a prior meeting. Janison did not disclose any conflict at that meeting, as Mr. Rogers was not among the finalists selected or at issue in that vote.

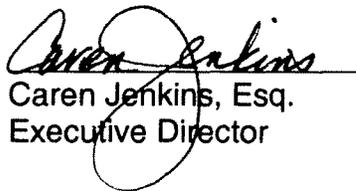
As for Janison's participation in other votes and decisions related to developing the job description, selecting the search firm and scheduling the search, among other things, no evidence was adduced that those votes had any effect on Janison's personal or pecuniary interest or commitments - or on Mr. Rogers' interest for that matter. The statute requires disclosure only in matters "which would reasonably be affected" by the commitment in a private capacity and abstention only when the matter materially affects the independence of judgment of a reasonable person. The minimal level of any reliable and competent form of proof required to show that Janison would reasonably or materially be affected simply was not presented in the request or discovered during the investigation.

Recommendation:

After reviewing the evidence and NRS 281A.400(2) and (3), and the requirements of NRS 281A.420, the Panel should find just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the allegations that Terri Janison, by participating in the CCSD search for a new Superintendent, violated any provision of the Ethics in Government Law, particularly NRS 281A.400(2) and (3), and NRS 281A.420(1) and (3). The investigation revealed **NO** minimal level of any reliable and competent form of proof to support the allegations.

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

November 2, 2010
Date


Caren Jenkins, Esq.
Executive Director