



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
RICHARD "DICK" GAMMICK,
District Attorney, Washoe County,
State of Nevada,

Request for Opinion No. 10-71C

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Pursuant to NRS 281A.440(2)(b), a Third-Party Request for Opinion ("RFO") was filed with the Nevada Commission on Ethics ("Commission"), alleging that during his 2010 campaign for re-election, Washoe County District Attorney Richard "Dick" Gammick violated the Ethics in Government Law ("Ethics Law") as set forth in Chapter 281A of the Nevada Revised Statutes. As provided in NRS 281A.440, the Commission staff conducted an investigation. Thereafter, an Investigatory Panel¹ of two commissioners determined that just and sufficient cause existed for the Commission to hold a hearing and

render an opinion regarding the allegations.

The matter then came before a quorum of the Commission for a public hearing on February 10, 2011.² Gammick attended the hearing and provided sworn testimony. He was represented during the Commission proceedings by attorney Rew R. Goodenow, Esq., of the law firm of Parsons, Behle & Latimer.

At the conclusion of the hearing, and after fully considering the facts and circumstances disclosed by the evidence, including witness testimony and documents, the Commission deliberated on the record and orally announced its decision that a

¹ Commissioners Magdalena M. Groover and James Shaw served on the Investigatory Panel. Pursuant to NRS 281A.220(4), they did not thereafter participate in any proceedings of the Commission relating to the matter.

² The quorum consisted of Chairman J.T. Moran III, Esq. and Commissioners Erik Beyer, Paul H. Lamboley, Esq., George M. Keele, John W. Marvel and Gregory Gale.

preponderance of the substantive and probative evidence did not support the allegations before the Commission. Accordingly, the Commission dismissed the allegations.³ The Commission now renders this written Opinion setting forth its formal findings of fact and conclusions of law.

II. PROCEDURAL HISTORY

On October 6, 2010, the Commission received an RFO from Chris Wedge, the campaign manager for Gammick's opponent in the 2010 election campaign for Washoe County District Attorney. The RFO alleged that Gammick had committed numerous ethical violations during his 2010 campaign for re-election. After an investigation by Commission staff, the Commission's Executive Director recommended that the Panel consider the following four specific alleged actions by Gammick:

1. An August 19, 2010, campaign related e-mail that Gammick sent during working hours from his county e-mail address;
2. An August 30, 2010, speech that Gammick made to the Republican Jewish Coalition event in Reno, when Gammick drove his county-issued vehicle to the event, county-purchased pens bearing Gammick's name were available to the public, a county employee assisted Gammick in operating a county-owned laptop computer and PowerPoint presentation developed by the district attorney's office, another county employee brought yard signs promoting Gammick's candidacy, a

campaign sign promoting Gammick's re-election was prominently displayed, and Gammick asked those in attendance for their vote and invited them to take home campaign signs;

3. A September 17, 2010, tailgating event at the University of Nevada stadium parking lot in Reno, where Gammick drove his county-owned vehicle containing campaign materials to the event and parked it behind a table staffed by a county employee displaying campaign literature encouraging passersby to vote for Gammick;
4. A September 26, 2010, event attended by a county employee, who gave his county business card to an individual and suggested that he could be contacted at that number regarding the campaign; however, the investigation disclosed no evidence that Gammick had anything to do with the county employee's invitation to respond to campaign questions at his county office.

The Executive Director further advised the Panel that Gammick's alleged actions on these four occasions raised the following six concerns under NRS chapter 281A:

1. By using government resources to further his interest in being reelected, Gammick may have violated NRS 281A.020, declaring that public officers must commit themselves to avoid conflicts between their public and private interests;

³ Commissioners Gale and Lambolely voted against dismissal of certain allegations.

2. By using his position to benefit his reelection campaign, Gammick may have violated NRS 281A.400(2), which prohibits a public officer from using his position in government to secure unwarranted privileges, preferences, exemptions or advantages for himself;
3. By using his public office to acquire information generally not available to the public to benefit his reelection campaign, Gammick may have violated NRS 281A.400(5), which prohibits such action;
4. By using government resources to benefit his personal or financial interest, Gammick may have violated NRS 281A.400(7), which prohibits such action;
5. By attempting to influence his subordinates to benefit his personal or financial interest, Gammick may have violated NRS 281A.400(9), which prohibits such action;
6. By causing a governmental entity to incur an expense or make expenditures to support his candidacy, Gammick may have violated NRS 281A.520, which prohibits such action.

On December 9, 2010, the Panel formally considered the matter and determined that just and sufficient cause existed to forward four of these six allegations to the Commission for a hearing and issuance of an opinion. Specifically, the Panel found "that just and sufficient cause exists for the Commission to render an opinion on allegations that Gammick failed to properly separate his private and public

interests at the Republican Jewish Coalition event on August 30, 2010, and at the tailgating event on September 17, 2010, potentially implicating NRS 281A.020, NRS 281A.400(2), NRS 281A.400(7) and NRS 281A.520."

The Panel also found, however, "that just and sufficient cause did not exist to forward to the Commission those allegations related to using information not generally available to the public (NRS 281A.400(5)) or the influencing of a subordinate (NRS 281A.400(9)) to benefit his personal interest in achieving reelection." The Panel noted that "the employees stated that they had volunteered for the campaign related work, and no public information that should not have been disclosed was actually disclosed, so far as the investigator was able to determine."

III. FINDINGS OF FACT⁴

1. Gammick is the duly elected Washoe County District Attorney and was seeking reelection to that office when the alleged violations under consideration occurred in 2010.
2. Gammick attended the Republican Jewish Coalition event on August 30, 2010, and made a speech at the invitation of that organization. He utilized in his speech a laptop owned by Washoe County and a PowerPoint presentation developed by Gammick as a visual aid. The PowerPoint slides describe the

⁴ Findings of Fact numbered 2 - 8, were included in a stipulated agreement between Gammick and the Commission; they were unanimously adopted and approved by the Commission at the hearing.

- history and functions of the district attorney's office.
3. Washoe County incurred no additional costs for Gammick's use of the laptop or software at the Republican Jewish Coalition event.
 4. The Commission exhibit of a video recording of the Republican Jewish Coalition event constitutes an accurate copy of what it purports to be, a video of Gammick's speech recorded at the time and place the speech was given.
 5. The Commission exhibit of a photograph of a ballpoint pen given out by Gammick at the Republican Jewish Coalition event constitutes an accurate representation of the item.
 6. The Commission exhibits of photographs of the September 17, 2010, tailgate event constitute an accurate representation taken contemporaneously with the event.
 7. Washoe County Code Section 5.389 authorizes Gammick's use of his vehicle under the conditions stated therein. Washoe County Code Section 5.340 subparagraph (2) permits use of county property for personal purposes if its use does not interfere with the county officer's public duties, its cost or value is nominal, and its use does not create an appearance of impropriety. Washoe County Internet and Intranet Acceptable Use Policy Section 5.340, subsection (2) is admissible in this case.
 8. Washoe County Code Section 5.341 permits Gammick to engage in political activities after business hours. Whether they were or were not political in nature, the Republican Jewish Coalition and tailgate events both occurred after business hours.
 9. A county employee, Gammick's Law Office Manager, assisted Gammick's reelection campaign as an unpaid volunteer on his own time after working hours by distributing Gammick's campaign signs. He attended the Republican Jewish Coalition event on his own time and on his own volition. He took campaign signs into the event, put one sign up on a wall in the room where the event was held, and placed some on a table for the public. Gammick did not request, influence or direct him to attend the event or to bring the signs.
 10. A county employee, the administrative assistant in the district attorney's office, voluntarily attended the Republican Jewish Coalition event on her own time and without compensation. She also attended the tailgating event as an unpaid volunteer for Gammick's reelection campaign and on her own time after work hours. At the Republican Jewish Coalition event she assisted Gammick in his speech by operating a PowerPoint presentation using Gammick's county-owned laptop computer. At the tailgating event she assisted the Gammick campaign by staffing a table displaying campaign literature that was set up in a parking space

behind Gammick's county-owned vehicle.

11. Gammick drove his county-owned vehicle to the Republican Jewish Coalition event and the tailgating event. During the Republican Jewish Coalition speech Gammick stated that he was going to ask the members of the audience for their vote and later encouraged those present to take a campaign sign. The major part of his presentation, however, was devoted to the history and duties of the district attorney's office.
12. As the district attorney, Gammick is on call 24 hours a day and seven days a week. On the date of the tailgating event, he drove his county-owned vehicle to the scene of a murder investigation prior to taking that same vehicle to the tailgating function. He transported a folding table and campaign literature to the event in the vehicle.
13. At the tailgating event, although the tailgate on Gammick's county-owned vehicle was left open and some emergency lights were visible, he did not otherwise seek to draw attention to any special features of the vehicle.

IV. STATEMENT OF ISSUES

The issues in this matter arise from the three above-noted events: (1) an e-mail that Gammick sent on August 19, 2010; (2) the presentation that Gammick made to the Republican Jewish Coalition on August 30, 2010; and (3) the tailgating event at the University of Nevada Reno parking lot on September

17, 2010. In the context of these events, the Commission considered whether Gammick violated: NRS 281A.020 (failing to separate his public and private interests by using government resources to further reelection campaign); NRS 281A.400(2) (using his position in government to secure unwarranted privileges, preferences, exemptions or advantages to benefit his reelection campaign); NRS 281A.400(7) (using government resources to benefit his personal or financial interest); and NRS 281A.520 (causing a governmental entity to incur an expense or make expenditures to support his candidacy).

At the beginning of the Commission proceedings of February 10, 2011, Chairman Moran moved to dismiss the allegation concerning the e-mail that Gammick sent on August 19, 2010. The Commission unanimously approved the motion. Specifically, the Commission found that the Investigatory Panel had not specifically addressed that e-mail allegation in its proceedings, and therefore, the Panel had not properly provided Gammick with notice that the e-mail allegation would be considered at the Commission hearing. The Commission further found that, even if it were to address that allegation on the merits, Washoe County's Internet and Intranet Acceptable Use Policy clearly and unambiguously permitted the limited personal e-mail use at issue and that the county did not incur any specific expense related to that use.⁵

⁵ The Washoe County policy references Washoe County Code Section 5.340 and former NRS 281.481(7), which has been replaced by NRS 281A.400(7). These statutory and county code provisions permit limited personal use of

During the hearing, the Commission deliberated on the remaining allegations. In accordance with NRS 281A.480(9), which requires Commission findings of ethical violations by a public officer to be supported by a preponderance of the evidence, the Commission found that none of the remaining allegations before it was supported by sufficient evidence.

V. DISCUSSION OF RELEVANT STATUTES AND ISSUES

A. Public Policy

NRS 281A.020 provides in part:

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.

Gammick moved the Commission to dismiss all charges alleging independent violations of this provision. Gammick's counsel argued that NRS 281A.020 did not constitute an independent basis upon which any violation could be found because it contained merely "aspirational,

government property if an established policy authorizes the limited use, the use does not interfere with the performance of public duties or provision of services, the cost or value related to the use is nominal, and the use does not create an appearance of impropriety.

precatory language" and was not within the Code of Ethical Standards that the Commission is charged with enforcing. In particular, counsel noted that the Code of Ethical Standards setting forth specific rules of ethical conduct begins with NRS 281A.400, whereas NRS 281A.020 was set forth under the statutory heading: "General Provisions."

Under the specific facts and circumstances of this particular case, the Commission voted four to two to dismiss the allegations asserting independent violations of NRS 281A.020.⁶ As Commissioner Keele observed, however, the statute contains exceedingly important language, some of which can be read to be mandatory. Thus, the Commission limited its ruling in this respect to the facts and circumstances of this case. The Commission did not address whether NRS 281A.020 might be used in another case as a predicate for finding violations of this or other provisions of NRS chapter 281A.

B. Causing Governmental Expense or Expenditure to Support Candidacy.

NRS 281A.520(1)(b) provides in part that "a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose . . . a candidate." Under NRS 281A.520(2) and (3) such an expense or expenditure is considered to be in support of a candidate, if it is made "for the creation or dissemination of a pamphlet, brochure, publication,

⁶ Commissioners Gale and Lamboley voted against the motion to dismiss the NRS 281A.020 allegations.

advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office.” In addition, “the pamphlet, brochure, publication, advertisement or television programming” must be “created or disseminated” during the period beginning “when the current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy” and ending “on the date of the general election, general city election or special election for the office for which the current public officer . . . is a candidate.”

Gammick moved the Commission to dismiss the alleged violations of NRS 281A.520. His counsel observed that none of the specific enumerated items, such as pamphlets or brochures, had been shown to be involved in this case, and there was no evidence of public monies having been expended for any such items. Thus, based on its finding that the evidence failed to establish the particular elements of a violation under the statute, the Commission unanimously voted to dismiss the allegations associated with NRS 281A.520.⁷

⁷ A ballpoint pen identifying Gammick as the district attorney and providing the telephone number of the office, was paid for at public expense and available to the public at the Republican Jewish Coalition event, but it was not purchased or created for Gammick’s campaign or during the relevant period of Gammick’s candidacy, it was not an item enumerated in NRS 281A.520(2), and it did not prominently feature any of Gammick’s activities.

C. Using Government Position or Property to Secure Unwarranted Privileges, Preferences, Exemptions or Advantages to Benefit Reelection Campaign and Using Government Resources to Benefit Personal or Financial Interest.

NRS 281A.400(2) prohibits a public officer from using his “position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer”

NRS 281A.400(7)(a) prohibits a public officer from using “government time, property, equipment or other facility to benefit the public officer’s . . . personal or financial interest.” NRS 281A.400(7) 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[.]

1. Use of Computer and PowerPoint Presentation to Benefit Campaign.

Gammick moved to dismiss the alleged violations of NRS 281A.400(2) and (7), involving the use at the Republican Jewish Coalition meeting of the county-owned laptop computer and the PowerPoint presentation. His counsel noted that no evidence was adduced demonstrating an unwarranted public cost associated with that use. The Commission agreed that no evidence supported a finding of a violation of the provisions at issue and voted unanimously to dismiss the allegations under NRS 281A.400(2) and (7) relating to the use of the laptop computer and PowerPoint presentation.

2. Use of Position, County-Owned Vehicle or Other Government Property to Benefit Campaign at Republican Jewish Coalition Event.

The Commission also unanimously found that Gammick's other actions at the Republican Jewish Coalition event did not violate NRS 281A.400(2) or (7). The evidence showed that event evolved over time into what essentially became a public informational presentation. While some campaigning occurred, it appeared to result primarily from the actions of a zealous campaign volunteer, who acted on his own without any request, influence or direction from Gammick. Further, the Commission found that no violations of NRS 281A.400(2) or (7) were implicated by the fact that Gammick drove his county-owned vehicle to the Republican Jewish Coalition event after work hours and before going home for the evening, or

by the distribution of any county-purchased ballpoint pens. The evidence failed to demonstrate that the use of county property under these circumstances was unauthorized, that it interfered with Gammick's performance of public duties in any way, that its cost was anything other than nominal, or that it created an appearance of impropriety.

3. Violation of NRS 281A.400(2) by Use of County-Owned Vehicle at Tailgating Event of September 17, 2010.

The Commission voted five to one to dismiss the allegation that Gammick violated NRS 281A.400(2) by driving his county-owned vehicle to the tailgating event of September 17, 2010.⁸ The evidence before the Commission showed that Gammick is subject to being called to his public duties 24 hours a day, seven days a week, and that Washoe County has made a county-owned vehicle available to him for his use. On the date in question, Gammick had driven his county-owned vehicle to the scene of a murder investigation immediately prior to driving to the tailgating event. Thus, a majority of the Commission found that his use of the vehicle to attend and transport campaign materials to the tailgating event under these circumstances was incidental, warranted and authorized.

⁸ Commissioner Lamboley voted against dismissal of the allegation.

4. Violation of NRS 281A.400(7) by Use of County-Owned Vehicle at Tailgating Event of September 17, 2010.

By a vote of five to one, the Commission voted to dismiss the allegation that Gammick violated NRS 281A.400(7) by using his county-owned vehicle to drive and transport campaign materials to the tailgating event of September 17, 2010.⁹ A majority of the Commission found that there was a policy authorizing Gammick's use of the vehicle under these circumstances, that the use of the vehicle did not interfere in any way with Gammick's performance of his public duties, that there was no evidence that the cost of the use was anything other than nominal, and that based on the fact that he drove directly to the event from a murder investigation, no appearance of impropriety was created.

VI CONCLUSIONS OF LAW

1. At all times relevant to this matter, Gammick was a "public officer" as defined by NRS 281A.160. The Commission has jurisdiction over public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(2)(b) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. Under the facts and circumstances presented in this matter, NRS 281A.020 did not provide an independent basis of a violation.

⁹ Commissioner Lamboley voted against dismissal of this allegation.

4. A preponderance of the evidence before the Commission did not establish that Gammick violated NRS 281A.400(2) by using his position in government to secure unwarranted privileges, preferences, exemptions or advantages to benefit his reelection campaign.
5. A preponderance of the evidence before the Commission did not establish that Gammick violated NRS 281A.400(7) by using government resources to benefit his personal or financial interest.
6. A preponderance of the evidence before the Commission did not establish that Gammick violated NRS 281A.520 by causing a governmental entity to incur an expense or make expenditures to support his candidacy.

Dated this 23rd day of May 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman¹⁰

¹⁰ At the time this written opinion was issued, the presiding officer in this matter, then-Chair Moran, no longer served on the Commission. Therefore, current Chair Beyer signed this opinion on behalf of the participating Commissioners.