



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Requests
For Opinion Concerning the Conduct of
CHRIS GARVEY, Member,
Clark County School District Board
of Trustees, District B, State of Nevada,

Requests for Opinion Nos. 14-01C
and 14-06C (Consolidated)

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves the Consolidated Third-Party Requests for Opinion (“RFOs”) Nos. 14-01C and 14-06C before the Nevada Commission on Ethics (“Commission”) concerning Chris Garvey (“Garvey”), Member, District B, Board of Trustees (“Board”) for the Clark County School District (“CCSD”) in Las Vegas, Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Garvey was a public officer, as defined in NRS 281A.160, elected to the Clark County School District Board of Trustees. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. *See* NRS 281A.280. Accordingly, the Commission has jurisdiction over Garvey in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about January 7, 2014, Garvey filed a Third-Party RFO (14-01C) regarding her own conduct, requesting a Commission opinion concerning whether an email sent at her direction by her CCSD secretary to the constituents within her district

- had caused the CCSD, a governmental entity, to incur an expense in support of a ballot question (NRS 281A.520).
- b. On or about January 21, 2014, the Commission received a Third-Party RFO (14-06C) from a private citizen alleging that Garvey, by instructing a CCSD secretary to send an email on Garvey's behalf: 1) caused the CCSD, a governmental entity, to incur an expense in support of a ballot question (NRS 281A.520); 2) improperly used government resources (NRS 281A.400(7)); and 3) influenced a subordinate to benefit a personal interest (NRS 281A.400(9)).
 - c. Garvey waived her rights to a notice and an opportunity to respond to the RFOs pursuant to NRS 281A.440 and NAC 281A.410.
 - d. Garvey waived her right to a panel determination pursuant to NRS 281A.440 and acknowledges that credible evidence establishes just and sufficient cause to forward the allegations implicating NRS 281A.520 to the Commission for hearing and opinion. The allegations pertaining to violations of NRS 281A.400(7) and (9) lack sufficient evidence to support a violation by a preponderance of evidence and are therefore dismissed through this Stipulated Agreement.
 - e. In lieu of a panel determination and hearing, Garvey now enters into this Stipulated Agreement acknowledging her duty as a public officer to commit herself to protect the public trust and conform her conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:**

The following events are relevant to this matter:

- a. Chris Garvey, a CCSD Trustee, is a public officer as defined in NRS 281A.160.
- b. CCSD is a political subdivision as defined in NRS 281A.145.
- c. Carlos McDade, Esq. is a licensed Nevada attorney and is employed as General Counsel for Clark County School District.

- d. Cindy Krohn is employed as a CCSD Administrative Secretary II for the Board, serves as secretary to Trustee Garvey, and is a public employee under NRS 281A.150.
- e. At a special meeting of the Board, the Board discussed the substance of a potential ballot question, and voted unanimously on Friday, June 8, 2012 to place a capital projects tax question on the Clark County ballot in the November 6, 2012 election.
- f. Nevada Revised Statutes state that a local school board of trustees “may build, purchase or rent schoolhouses and other school buildings,” (NRS 393.080(1) (a)) and that it “shall keep the public school buildings . . . in such repair as is necessary for the comfort and health of pupils and teachers.” (NRS 393.100) The Board voted to approve the formation of a ballot question which sought voter support for additional taxes or the issuance of bonds to construct and maintain adequate school facilities.
- g. Later known as “Ballot Question 2” the question proposed to permit the CCSD to levy an additional property tax rate not to exceed 21.2 cents (per \$100 of assessed valuation) to finance capital projects for schools, including constructing and equipping school improvements and replacements and acquiring school sites.
- h. Various members of the Board reached out to community supporters to increase awareness and support for Ballot Question 2, and partnered with the School Improvement Committee, a political action committee (hereafter referred to as the “PAC”), to promote its passage.
- i. Throughout the campaign, the PAC, Trustees and CCSD made careful efforts to separate activities to ensure that any persuasive materials, activities, and communications related to Ballot Question 2 were paid for by the PAC rather than the school district.

- j. CCSD offered parents and employees objective information related to the needs of the schools and the impact that the successful passage of Ballot Question 2 would have on CCSD.
- k. On October 16, 2012, four days prior to the beginning of early voting in Clark County Nevada, Garvey caused an email to be sent to her District B PAC constituents, which informed the recipients about how to get involved in supporting Ballot Question 2 if they chose to do so.
- l. The email in question had been prepared by Kirsten Searer (a CCSD staff member) and distributed to the Trustees for dissemination to their contacts in the community.
- m. Garvey confirmed that CCSD General Counsel Carlos McDade had approved the email's content and that he had advised that forwarding it to her constituent list was permissible.
- n. Cindy Krohn, a CCSD employee assigned to support Garvey and another Board member in their Trustee duties, maintains Garvey's list of constituents in the schools within her district, and facilitates Garvey's correspondence, in addition to providing other administrative support.
- o. Garvey asked Krohn to forward the October 16 email on Ballot Question 2 to Garvey's District B PAC List on her behalf.
- p. Krohn forwarded the October 16 email as instructed.
- q. Krohn estimates that it took her approximately 30 seconds to forward the email.
- r. The cost CCSD incurred or expended for the use of the CCSD interact email system to send the October 16 email was negligible to the point that it is virtually unmeasurable.
- s. Using Krohn to send the email did not cause CCSD to pay Krohn any sum in excess of her full-time pay.
- t. Garvey understood that Krohn's job description included helping Garvey with communications to her email contact lists. Garvey also understood the advice of

the CCSD General Counsel to be reliable that asking Krohn to send the email, on Garvey's behalf, would not cause an additional expense to be incurred in violation of the Ethics Laws.

5. TERMS / CONCLUSIONS OF LAW: Based on the foregoing, Garvey and the Commission agree as follows:

- a. Each of the findings of fact enumerated in section 4 is deemed to be true and correct.
- b. Garvey is a member of the CCSD Board of Trustees.
- c. In her role as a Trustee, Garvey instructed her secretary Krohn to send an email on Garvey's behalf to her District B PAC List, providing information regarding how to support Ballot Question 2, if the reader chose to do so.
- d. Garvey relied in good faith upon her understanding of CCSD General Counsel's opinion that the conduct was permissible. Garvey did not intend for CCSD to incur a cost by sending the email and did not consider the use of a secretary assigned to assist her to communicate to be an expense to the district. However, the Commission does find the use of CCSD personnel, in this instance, to be an expense in support of a ballot question.
- e. Garvey's conduct under these circumstances constitutes a single violation of NRS 281A.520(1)(a) for causing a government entity, the CCSD, to incur an expense or make an expenditure in support of a ballot question.
- f. The Commission has determined that insufficient evidence supports a finding of a violation of NRS 281A.400(7) or 281A.400(9) which prohibit, respectively, a public officer or employee from improperly using government resources or influencing a subordinate to benefit a personal interest.
- g. Although Garvey's conduct in causing the governmental expenditure would otherwise be deemed intentional and knowing and therefore "willful", NRS 281A.170 obligates the Commission to consider whether mitigating factors set forth in NRS 281A.475 and NRS 281A.480(5)(a) and (b) support a determination

that the violation was not willful and a civil penalty should not be imposed pursuant to NRS 281A.480.

h. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475 and NRS 281A.480(5)(a) and (b), the Commission concludes that Garvey's violation in this case should not be deemed a "willful violation" pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for reasons that follow:

- (i) As stated previously, the use of a secretary to send the email resulted in the expenditure of public funds to support a ballot question, which though serious as a principle, is in this instance of such a nature, circumstance, extent or gravity as to be deemed as part of a well-intentioned, good faith effort by Trustee Garvey to fulfill her obligation and duty to further the care and education of the students of Clark County as stated in Nevada Statute that the Board of Trustees "shall keep the public school buildings . . . in such repair as is necessary for the comfort and health of pupils and teachers." (NRS 393.100).
- (ii) Garvey has not previously been the subject of any violation of the Ethics Law.
- (iii) Although the applicable statute does not have a *de minimis* exception, the Commission does not ignore that the presumed total additional cost to the district is nominal. While the amount does not affect the fact that the action occurred, it does indicate that this was an isolated event, consisting of one email, and not an ongoing or substantial harm to the public.
- (iv) Garvey received no personal financial gain as a result of her conduct.
- (v) Garvey relied in good faith upon her understanding of CCSD counsel's conclusion that sending the October 16 email would not violate NRS 281A.520, and that reliance is among the mitigating factors here. NRS 281A.520 attempts to ensure public independence from government

interference or influence during an election. As such public officers have an obligation to ensure that CCSD resources remain neutral during the course of an election so that any question placed upon the ballot will not be supported at public expense. The Commission is satisfied that Garvey did not intend for CCSD to inappropriately incur an expense in violation of NRS 281A.520.

- (vi) Garvey has been diligent to cooperate with and to participate very early in the Commission's process so very few public resources have been or will be expended.
- (vii) The Commission acknowledges the tension Garvey experienced between the Board's role as a public entity to rely on governmental staff, time and resources to help it develop and support a ballot question, as compared to the ethical limitations on their actions as Trustees to use resources or cause governmental expenditures to support the same ballot question after the Board decides to put the matter before the voters. (*See* Section 4(f)). Nevertheless, NRS 281A.520 establishes the Legislative intent and explicitly prohibits public officers from causing a government to incur an expense or make an expenditure in support of or in opposition to a ballot question.
- (viii) The Commission recognizes that the Board of Trustees unanimously approved placing Ballot Question 2 on the ballot.
- i. This agreement depends on and applies only to the specific facts, circumstances and law related to these RFOs now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- j. This agreement is intended to apply to and resolve all matters relating to the transmission of the specific email referenced in these RFOs.

k. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Garvey.

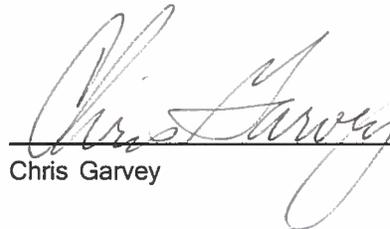
6. **WAIVER:**

a. Garvey knowingly and voluntarily waives her right an Investigatory Panel proceeding, any related hearing before the full Commission on the allegations in these RFOs (Nos. 14-01C and 14-06C), and of any and all rights she may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.

b. Garvey knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on February 12, 2014.

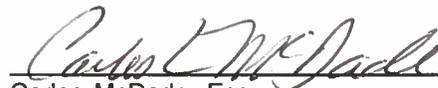
DATED this 21 day of Feb, 2014.


Chris Garvey

The above Stipulated Agreement is approved by:

FOR CHRIS GARVEY, Subject

DATED this 21 day of FEB, 2014.


Carlos McDade, Esq.
Counsel for Subject
General Counsel for CCSD

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FOR CAREN CAFFERATA-JENKINS,
Executive Director, Commission on Ethics

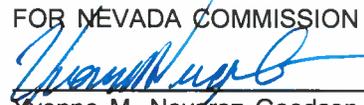
DATED this 25 day of February, 2014.



Jill C. Davis, Esq.
Associate Counsel

FOR NEVADA COMMISSION ON ETHICS

DATED this 25th day of February, 2014.



Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.¹

DATED February 12, 2014.

By: /s/ Paul Lamboley
Paul Lamboley
Chairman

By: /s/ Cheryl Lau
Cheryl Lau
Commissioner

By: /s/ Gale Gregory
Gregory Gale
Vice-Chairman

By: /s/ Keith Weaver
Keith Weaver
Commissioner

By: /s/ John Carpenter
John Carpenter
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Jim Shaw
Jim Shaw
Commissioner

¹ Garvey waived her right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220, however Commissioner Cory was absent from the Commission meeting on February 12, 2014 during which the Commission voted to approve the Stipulated Agreement.