



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

MINUTES
of the meeting of the
COMMISSION ON ETHICS
September 10, 2009

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics.
A certified court reporter transcribed the meeting and transcripts are available for purchase from
Sunshine Litigation Services.

The Commission on Ethics held a public meeting on Thursday, September 10, 2009, beginning at 9:00 a.m. at the following locations via video-conference:

Nevada Legislative Building
401 South Carson Street, Room 3143
Carson City, Nevada

Legislative Counsel Bureau
555 E. Washington Avenue, Room 4401
Las Vegas, Nevada

Call to Order, Roll Call.

In Carson City, Chairman George Keele called the meeting to order and called the roll at 9:00 a.m., Thursday, September 10, 2009. Present in Carson City were Commissioners George M. Keele, Esq., Erik Beyer, P.E., Paul H. Lamboley, Esq., John W. Marvel, and James M. Shaw. Also present in Carson City were Caren Jenkins, Esq., Executive Director, Dennis Belcourt, Esq., Deputy Attorney General, and Michelle A. Ené, Executive Assistant.

Commissioners Mark Hutchison, Esq., John T. Moran, III, Esq. and Gregory Gale, C.P.A. were present in Las Vegas via video. Also present in Las Vegas were Tami DeVries, Legal Research Analyst, and Mike Vavra, Investigator.

Members of the public were asked to sign in, and the sign-in sheets are attached to the original minutes as Exhibit A.

1. Open Session for discussion and possible action on requesting that the Attorney General appoint a deputy to act in the place of the Commission Counsel, pursuant to NRS 281A.260(3)(a).

Chairman Keele welcomed the newly appointed Executive Director of the Nevada Commission on Ethics, Caren Jenkins, Esq., to her position. Chairman Keele asked Ms. Jenkins

to give an overview of the options that are available to the Commission for selecting the new General Counsel for the Commission. Ms. Jenkins stated that there are two options available: (1) to ask the State's Attorney General to appoint a Deputy Attorney General to serve the Commission; or (2) to employ outside counsel. Ms. Jenkins stated that former General Counsel, Adriana Fralick, contacted the Attorney General's Office and asked for assistance for the Commission without first talking to the Commission, due to the very short time between her departure and the next Commission meeting. Ms. Jenkins stated that this agenda item is an opportunity for the Commission to ratify Ms. Fralick's action in asking the Attorney General's Office to provide the Commission with assistance, which they have done so quickly and effectively in providing Deputy Attorney General Dennis Belcourt for today's meeting.

Commissioner Lamboley moved that the Commission confirm and accept the Attorney General's appointment of Deputy Attorney General Dennis Belcourt to assist as counsel to the Commission for this meeting until the position of General Counsel is filled. Commissioner Moran seconded the motion. Keele asked for an amendment to the motion. The amendment clarified that the Commission has the ability to ask the Attorney General if the Commission may use a deputy attorney general on an as-needed basis rather than pay for the provisional deputy attorney's full-time services as Commission Counsel. Commissioner Lamboley amended his motion and Commissioner Moran seconded the amended motion. The motion passed unanimously.

2. Closed session pursuant to NRS 281A.440(13), to hear testimony, receive evidence, deliberate, and render an opinion relating to confidential *Advisory Opinion Request No. 09-58A* submitted pursuant to NRS 281A.440(1).

This matter is confidential and thus, was held in closed session.

3. Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to *Advisory Opinion Request No. 09-61A* submitted pursuant to NRS 281A.440(1) by Thomas Riggins, Member of the Churchill County School Board of Trustees.

Following testimony and deliberations, Commissioner Hutchison moved that the Nevada Commission on Ethics find that, when matters concerning the local newspaper come before Mr. Riggins and the Churchill County School Board, he is required to disclose his private relationship with the newspaper. Additionally, Mr. Riggins would be required to abstain from acting in clear cases where the independence of judgment of a reasonable person in his situation would be materially affected by his relationship with the newspaper.

Mr. Riggins would be prohibited from using his official position with the School District to secure any unwarranted benefit from the newspaper. Mr. Riggins may be required to disclose the newspaper as a source of income on his financial disclosure statements. Vice Chairman Moran seconded the motion. The motion passed unanimously.

Chairman Keele advised Mr. Riggins that, although a written opinion would be issued, the advisory opinion rendered today is binding upon him as to his future conduct, in accordance with subsection (1) of NRS 281A.440.

A lunch recess was taken at 11:52 a.m. The meeting reconvened at 1:00 p.m.

4. Open session for discussion and possible action to appoint an acting chairman to preside over Agenda Item No. 4 herein and to preside over the hearing on October 8, 2009 concerning Soon Kim, Trustee, Humboldt General Hospital District (RFO No. 09-11C). The current Chair and Vice Chair served on the investigatory panel proceeding and, therefore, are excluded from participating in the hearing.

Chairman Keele and Vice Chairman Moran were precluded from participating in this matter since they served on the panel. Chairman Keele appointed Commissioner Lamboley as acting Chairman and Commissioner Gale as acting Vice Chairman. Commissioners Lamboley and Gale both accepted those appointments.

5. Open session to consider a *Motion to Dismiss Request for Opinion No. 09-11C*, pursuant to NAC 281A.265, regarding Soon Kim, Trustee, Humboldt General Hospital District.

Commissioner Lamboley invited Bob Dolan, Esq., Dr. Soon Kim's attorney, to make an opening statement. Commissioner Lamboley asked Mr. Dolan if he wanted his motion to be considered a motion to dismiss or a motion for summary judgment. Mr. Dolan stated that he did not see a distinction between the two. Commissioner Lamboley stated that the fundamental question that the motion to dismiss raises is a matter of law not a matter of fact. Commissioner Lamboley stated that the Commission has no facts of record before it.

Commissioner Lamboley stated that the charging allegations should go to a hearing on the merits, whether there has been a violation of 281A.420(2), which deals with abstention, and a violation of 281.420(4), which deals with disclosure.

Commissioner Lamboley stated that Mr. Dolan has conceded that, were the Commission to convert the motion to dismiss to a motion for summary judgment, facts are in dispute.

Commissioner Lamboley stated that the fundamental question as a matter of law that Mr. Dolan presented, even if the Commission took all the facts as true for purpose of argument, is whether the case should be dismissed because the legal standard is not met and the legal standard that is offered in this case is one of willful violation. Commissioner Lamboley stated this is not the allegation. Commissioner Lamboley moved to deny Mr. Dolan's motion to dismiss. Commissioner Shaw seconded the motion. The motion passed unanimously. Commissioner Lamboley stated that the proceeding would be set on the agenda of the October 8, 2009 Commission meeting.

6. Open session for discussion and possible action regarding the vacancy in the Commission Counsel position, including possible appointment of a Commission Counsel.

Ms. Jenkins discussed the three options available for filling the Commission Counsel position: (1) to immediately post an agenda so the Commission can deliberate on which of the already interviewed individuals from the Executive Director pool should be offered the Commission Counsel position; (2) re-interview those candidates from the Executive Director

pool qualified for the Commission Counsel position; or (3) open the position for a competitive application process through State Personnel.

A discussion ensued regarding the three options, the open period for accepting resumes, the process of filling the vacancy, and appointing a subcommittee to review the applications and narrow the interview pool.

Commissioner Marvel moved to confine the field to the two individuals interviewed for the Executive Director position who are licensed to practice law in Nevada. Commissioner Marvel amended his motion to read that there are three attorneys in the pool of people potentially to be invited to be interviewed for the Commission Counsel position.

Chairman Keele seconded the motion. The motion passed five to three, with Commissioners Beyer, Lamboley and Shaw voting no. Chairman Keele asked Ms. Jenkins to arrange the interviews as soon as possible.

There was an additional discussion regarding the application period for the Commission Counsel position. Commissioner Lamboley stated that additional people have indicated an interest in and/or filed applications for the Commission Counsel position and he suggested they be considered. Commissioner Hutchison moved that the position be opened to accept applications for the Commission Counsel position and that Ms. Jenkins be given the authority to evaluate and screen the applicants based on the information on their applications. Commissioner Moran seconded the motion. The motion passed unanimously.

Interviews will be arranged for September 29 or September 30, 2009, depending on the availability of Commissioners. Ms. Jenkins will schedule and coordinate interviews.

7. Open session to approve the minutes of the May, June and July 2009 Commission meetings.

Commissioner Marvel moved for the approval of the minutes of the May 7 and 14, 2009, June 11, 2009 and July 9, 2009 Commission meetings. Commissioner Shaw seconded the motion. Commissioner Lamboley abstained from voting on the June 11, 2009 meeting from which he was absent. Commissioner Beyer abstained from voting on the July 7, 2009 meeting, from which he was absent. The motions passed unanimously.

8. Open session for Commissioner comments. Commissioners may make comments on future agenda items, upcoming meeting dates and meeting procedures.

The meeting for interviews for the Commission Counsel position was scheduled for September 21, 2009 at 8:00 a.m. at the Carson City Commission Office.

Chairman Keele asked Ms. Jenkins to prepare a presentation for the Commission on items that she believes need fine-tuning in Chapter 281A.

Chairman Keele asked DAG Belcourt to advise the Commission if there is anything in Chapter 281A of NRS or NAC, together with Chapters 233B that would apply to all state agencies similarly situated in which the Commission can adopt rules of procedure short of going

to full rulemaking. Specifically, this research will focus on the Executive Director of the Commission and her responsibility under state law to screen matters that come before the Commission that essentially should not be before them. Belcourt stated that the Executive Director, under Chapter 281A, has the authority to decide if a matter meets the minimum statutory criteria or regulatory criteria to bring a matter to the Commission.

Commissioner Beyer stated that he would not be available next month to discuss the Dr. Kim issue. Commissioner Beyer also stated that he was somewhat concerned that no one had talked to Dr. Kim about her ethical responsibilities; her counsel did not nor did the Hospital Board. Beyer suggested that, after each election which is held in the even years, those who are elected to boards or commissions should be invited/required to attend a workshop sponsored by the Commission to help them understand the ethics laws and what is and is not appropriate.

9. Open session for public comment.

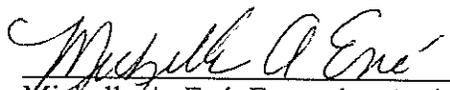
No public comment was made.

10. Closed session pursuant to NRS 281A.440(13), to hear testimony, receive evidence, deliberate, and render an opinion relating to confidential *Advisory Opinion Request No. 09-65A* submitted pursuant to NRS 281A.440(1).

This matter is confidential and was held in closed session.

Chairman Keele adjourned the meeting at 4:53 p.m.

Minutes prepared by:


Michelle A. Ené, Executive Assistant

Minutes approved April 8, 2010:


George Keele, Chairman