



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Advisory Opinion by **ROBERT GRONAUER**,
Constable, Las Vegas Township,
Clark County,
State of Nevada,

Advisory Opinion No. 10-35A

Public Officer.

CONFIDENTIAL OPINION

Public officer, Robert Gronauer (Gronauer), requested this confidential advisory opinion (Advisory Opinion) from the Nevada Commission on Ethics (Commission) pursuant to NRS 281A.440(1). A quorum¹ of the Commission heard this matter on June 10, 2010. Gronauer appeared in person and provided sworn testimony.

Gronauer sought an advisory opinion from the Commission on the propriety of his future conduct as it relates to the Ethics in Government Law (Ethics Law) set forth in chapter 281A of the Nevada Revised Statutes (NRS).

Gronauer, the Constable for the Las Vegas Township, is charged with service of process and other papers, as designated by various courts and judicial officers.

¹ The following Commissioners participated in this opinion: Vice Chairman Beyer and Commissioners, Gale, Groover, Lamboley, Marvel and Shaw.

Gronauer questions whether hiring his sister-in-law as a process server for his office would violate the Ethics Law.

After fully considering Gronauer's request and analyzing the facts, circumstances and testimony presented, the Commission deliberated and orally advised Gronauer of its decision. The Commission now renders this written Opinion.

The facts in this matter were provided by Gronauer. Facts and circumstances that differ from those considered by the Commission in this Advisory Opinion may result in a different opinion.

I. FINDINGS OF FACT

1. Gronauer is the Clark County Constable for the Las Vegas Township in the State of Nevada.

2. As Constable, Gronauer is a designated peace officer charged to serve process, writs or warrants of courts of justice, judicial officers and coroners pursuant to chapter 258 of NRS.
3. The Clark County Board of Commissioners (“Board”) fixes Gronauer’s compensation pursuant to NRS 258.040. Gronauer also retains the fees paid for services provided by his office, as authorized by NRS 258.125, which are used to pay for the operation and expenses of the Constable’s office.
4. Pursuant to NRS 258.065, the Board appointed approximately fifteen county employees to serve the Constable’s office in various clerical positions.
5. In addition to supervising the county employees, Gronauer hires deputy constables to carry out the duties of his office. Gronauer’s office pays these deputies through the fees generated by providing services. The deputies include individuals certified by Peace Officer’s Standards and Training (“POST”) for service which may require peace officer qualifications, and other process servers. The deputies are not employed by Clark County. Rather, Gronauer has sole discretion to hire, discipline and terminate these non-county employees.
6. The county employees administer all the demands and papers assigned for service and processing by the Constable’s office. The county staff separates the documents to be served by zip code and type of service. Gronauer’s office serves approximately 20,000 documents per month.
7. Gronauer developed an internal policy whereby once each year deputies may bid

on which zip code they would prefer to be assigned for service. The deputies enter their bids based on seniority.

8. The compensation for each deputy process server is based strictly and solely upon the number of documents the deputy serves during a given pay period. A deputy may have more documents to serve than another deputy based on the assigned zip code, which may result in a higher income.
9. Gronauer’s sister-in-law (his wife’s sister), Terry Siyavus, is seeking a position as a process server in Gronauer’s office. Siyavus would be required to perform her job duties in the same manner and be held to the same standards as all other members of the office, including bidding on a zip code and being available and accountable to serve the documents assigned to that zip code.

II. DISCUSSION

The Commission considers whether Gronauer would have a conflict of interest or create an appearance of impropriety if he hired his sister-in-law. Specifically, the Commission determines whether Gronauer would provide an unwarranted privilege, preference or advantage to his sister-in-law, a person to whom he has a commitment in a private capacity, by hiring her to work as a deputy in his office for compensation.

The Commission is mindful of the provisions outside of its jurisdiction which prohibit public officers from employing, in any capacity on behalf of the public entity served by the public officer, any person related to that officer. Thus, the Commission cautions Gronauer to consider the interpretation and effect of any anti-nepotism statute on his circumstances.

A. Public Policy

NRS 281A.020(1), provides the relevant public policy of the Ethics Law as follows:

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.

Based on the literal language of the statute, Gronauer would violate the provisions of NRS 281A.020(1)(b) if he hired his sister-in-law, Siyavus, because it would constitute a conflict of interest between his private interests in securing employment and income for a person to whom he has a commitment in a private capacity, and the interests of the general public for whom Constable Gronauer has been elected to serve. Therefore, under the provisions of this statute, the Commission advises Gronauer not to hire Siyavus.

B. Unwarranted Preferences/Privileges

NRS 281A.400(2) provides:

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. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

1. Commitment in Private Capacity

Pursuant to NRS 281A.420(8), a public officer has a per se commitment in a private capacity to the interests of a person to whom he is related within the third degree of consanguinity or affinity. To be related by affinity means to be related through a legal relationship such as marriage. Siyavus is the sister of Gronauer's wife and therefore is related to Gronauer through marriage.

Nevada Administrative Code (NAC) 281A.310 defines and calculates relationships by affinity (marriage) within the third degree. The degree of relationship to the public officer by affinity is the same as the degree of relationship to the public officer's spouse by blood relationship. In this case, the sister of Gronauer's wife is related to his wife within the second degree of consanguinity and is therefore related to Gronauer within the second degree of affinity. Thus, Gronauer has a commitment in a private capacity to the interests of Siyavus.

In the circumstances presented, Siyavus has an interest in obtaining employment as a process server and receiving compensation and benefits for such employment. Due to Gronauer's commitment to Siyavus' interests, Gronauer is prohibited from using

his position as the Constable to secure an unwarranted privilege, preference or exemption for Siyavus.

2. Use of Government Position to Secure Unwarranted Privilege

Gronauer has the authority to hire, discipline and terminate the employment of any process server for his office. While a list of individuals interested in employment as process servers exists, Gronauer alone has full authority to offer that employment. Further, Gronauer establishes and maintains the policies which authorize the manner in which deputies and process servers bid on zip codes, based on the seniority of the process server. Therefore, Gronauer's authority regarding hiring, discipline, termination and internal policies establishes that Gronauer would use his position in government to hire a process server.

Gronauer has offered no facts to justify why his sister-in-law is a more appropriate or reasonable candidate than any other person who has applied for the position. Gronauer would have a direct conflict of interest and would create an appearance of impropriety by hiring his relative.

Due to Gronauer's unilateral authority to set policies governing assignments and to hire, discipline and fire process servers, Gronauer would improperly use his position as Constable to provide an unwarranted privilege to a person to whom he has a commitment in a private capacity. Therefore, Gronauer would be in violation of NRS 281A.400(2) if he hired his sister-in-law.

C. Anti-Nepotism Statute

NRS 281.210 provides, in relevant part:

1. Except as otherwise provided in this section, it is **unlawful for any person acting as a** school trustee, state, **township**, municipal or county **officer**, or as an employing authority of the Nevada System of Higher Education, any school district or of the State, any town, city or county, or for any state or local board, agency or commission, elected or appointed, **to employ in any capacity on behalf of the** State of Nevada, or any county, **township**, municipality or school district thereof, or the Nevada System of Higher Education, **any relative of such a person** or of any member of such a board, agency or commission who is **within the third degree of consanguinity or affinity**. . . .

3. Nothing in this section:

(a) Prevents any officer in this State, employed under a flat salary, from employing any suitable person to assist in any such employment, when the payment for the service is met out of the personal money of the officer.

Nevada law generally prohibits township officers from employing certain relatives to serve the township. While the Commission does not have jurisdiction to interpret or enforce this law, it appears to the Commission that Gronauer's proposed actions of hiring his sister-in-law would implicate the provisions of this anti-nepotism law and the Commission therefore advises Gronauer to seek declaratory relief or legal advice from the appropriate authority regarding the propriety of hiring his sister-in-law pursuant to this statute.

In seeking an opinion from the appropriate authority, the Commission notes that NRS 281.210 formerly fell under the Commission's jurisdiction. During that time, the Commission issued two opinions addressing the anti-nepotism provision in *Abstract Opinion RFO 02-13* and *In re Nevin, RFO 95-58*. The Commission determined that a person who had ultimate hiring authority for a public entity violated NRS 281.210 if he employed a person that fell within the third degree of consanguinity or affinity of that person.

Additionally, in *Attorney General Opinion No. 2000-26* it was observed that the anti-nepotism law was designed by the Legislature in order to avoid "packing of state employment with relatives for those having the appointing power."

The provisions of NRS 281.210 impose criminal sanctions separate and distinct from any administrative sanctions imposed by the Commission for willful violations of the Ethics Law. Consequently, even if the Commission found the proposed action of the Constable hiring his relative to be permissible under the Ethics Law, the Commission is not inclined to authorize conduct pursuant to the Ethics Law which is otherwise prohibited by Nevada law.

III. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Gronauer was a "public officer," as defined by NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. Pursuant to NRS 281A.420(8) and NAC 281A.310, Gronauer has a commitment in a private capacity to the interests of his wife's sister, who is related to him within the third degree of affinity.
4. Gronauer would violate NRS 281A.020(1) if he hired his sister-in-law to be a process server in his office because such employment creates a conflict of interest between Gronauer's private interests in securing employment for his relative and the interests of the public in ensuring public funds are used fairly and impartially.
5. Gronauer would violate NRS 281A.400(2) if he hired his sister-in-law to be a process server in his office because he would be using his position as Constable to provide an unwarranted privilege to a person with whom he has a commitment in a private capacity.

Dated this 15th day of October, 2010.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer, Vice Chairman
Presiding Officer