

## Hypothetical Advisory Opinion No. 88-6

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### FACTS

A local law enforcement officer wrote the words to a song. The theme of this song is to discourage drug abuse. Two other law enforcement officers commissioned an individual to write music for the words.

Soon after the song was composed, a local television station requested of the law enforcement agency that a film crew be allowed to ride along during a drug raid, to film. This request was granted by the agency. The officers who commissioned the song played the song for the station representatives and the station took an interest in promoting the message in the song. After the song was professionally produced, the television station developed public service announcements (PSA's) in which the film taken during the drug raids was shown with the song commissioned by the officers played in the background. A voice over the PSA directed children to avoid the consequences of using illegal drugs. The officers who commissioned the song developed the idea of establishing a business for the purposes of producing and distributing audio tapes of the song, T-shirts, and other anti-drug materials to young people.

The law enforcement agency for which the officers work, permits the officers, while on duty, to participate in PSA's, which are educational in nature, to discourage the use of drugs. The agency does not allow officers to devote any time to this private enterprise while on duty. To do so would be grounds for discipline within the agency. The concern of the requester, legal adviser to the agency, is that the private enterprise is so closely related to the official duties of the officers, that it may violate NRS 281.481(1) and (2) for them to conduct the business at all.

#### QUESTION

May a law enforcement officer engage in private enterprise related in fact to the official duties of the officer.

#### ANALYSIS AND OPINION

Two questions must be addressed in analyzing the ethical concerns raised by this factual situation. First, does the promotion of the private enterprise rise to the level of an economic opportunity which would tend improperly to influence the officers to depart from the faithful and impartial discharge of their duties. If so, a violation of this ethical standard has occurred.

The nature of the proposed business compliments the work of the officers. It is designed as a business to promote public awareness of the wrongs of illegal drug use. The officers do not use any official time in the promotion of this business. Were there such use, the promotion would be deemed to be a departure from the faithful and impartial discharge of the officers' duties, as personal pecuniary gain would be interfering with police work.

The second question important to a determination of whether this activity violates NRS 281.481, is whether the police officers are using their positions as officers to secure unwarranted privileges for themselves or the business they hope to establish. Because of the specialized nature of the work, as part of their official duties, the officers represent the law enforcement agency in public service work such as drug presentations at local schools. During these presentations, the theme discussed by the officers is that of the dire consequences of illegal drug use. These presentations would be the perfect forum in which to market the products of the officers' private enterprise, however, the officers may not use the public service presentations as promotions for their own business. To do so would be using their positions as police officers for private pecuniary gain. The officers may never attempt to promote their business, in any manner, giving the appearance of representing the law enforcement agency. The officers must take

great care in keeping the private enterprise distinct in all manners from their work as police officers. When any inquiries are made by the public concerning the products of the business, the officers must disclose the private nature of this business. The officers may never allow a member of the public to believe the business is associated with the law enforcement agency.

### **CONCLUSION**

While no clear violation of NRS 281.481 is shown by the facts presented by the requester, it is important that law enforcement officers take great care in keeping their private enterprises distinct from their official duties, lest it interfere with the impartial discharge of those duties.

This advisory opinion is rendered based upon the facts presented. Given other facts, the opinion of the commission may differ.

DATED: January \_\_\_\_, 1989.

COMMISSION ON ETHICS

By: CARL DODGE, Chairman