

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In The Matter of the Opinion Requests of  
DIANE CORNWALL, GENE McDOWELL, and TINA LEIGHTON  
Members, Washoe County Commission**

This opinion is in response to the request of Washoe County Commissioners, Diane Cornwall, Gene McDowell and Tina Leighton. Each of the county commissioners has some type of personal or business relationship with either Washoe Health System Inc., the parent corporation, with Washoe Medical Center, Inc., a hospital in Washoe County, or with Washoe Medical Foundation, Inc., the latter of which are subsidiary corporations of the parent corporation. There are several questions posed by the opinion request and each will be addressed in separate sections of this opinion.

The confidentiality of this opinion was waived by all three county commissioners. The confidentiality of the hearing of this matter by this commission, however, was not waived by the county commissioners and, therefore, remained closed as required by NRS 281.511(1), (4), and (9). Subsequently, all three county commissioners waived the confidentiality of the proceedings and authorized the release of the transcript of all proceedings, effective upon issuance of this opinion.

This matter came before the Ethics Commission, sitting in executive session, in Reno, Nevada on October 28, 1991, at which time the Ethics Commission heard testimony from the three county commissioners themselves as well as legal counsel for Washoe Health System, Inc. and its subsidiary corporations. The Ethics Commission thereafter deliberated in executive session that day. Based upon the foregoing, the Commission makes these Findings of Fact and issues the opinion that follows.<sup>[1]</sup>

**FINDINGS OF FACT**

1. Commissioners Cornwall, McDowell and Leighton are members of the Board of the Washoe County Commission. Commissioner Cornwall was elected in 1986 and thereafter commenced her term of office on January 5, 1987, and has served continuously since that time. Commissioner McDowell was elected in 1982 and thereafter commenced his term of office on January 3, 1983, and has served continuously since that time. Commissioner Leighton was appointed to the Washoe County Commission by the Governor on May 21, 1991, and has served continuously since that time.
2. In their capacities as county commissioners, Diane Cornwall, Gene McDowell and Tina Leighton each receive a salary of \$33,000. They are also provided with a health benefit plan, life insurance and a car allowance by the county.
3. Washoe Health System, Inc., is the nonprofit holding corporation which is the parent of seven subsidiary corporations. The subsidiaries are: Washoe Medical Center, Inc. (non-profit); Washoe Pregnancy Center, Inc. (non-profit); Washoe Medical Foundation, Inc. (non-profit); Washoe Professional Center (for profit); Hospital Health Plan, Inc. (non-profit); HHP Management Corporation, (for profit); and WHS Enterprises, Inc. (for profit). WHS Enterprises, Inc., moreover, is the parent corporation, shareholder, or partner of several other for-profit entities: Sierra Nevada Laboratories, Inc., Sierra Management Services, Inc., Western Medical Supply, Washoe-MRI Limited Partnership, Physician Office Services (dba), and WPC Businesses (dba). (Attached hereto and incorporated by this reference is a diagram of the corporate structure of Washoe Health System, Inc., as described in this paragraph).

4. Diane Cornwall is employed by Washoe Health System, Inc., as the executive director of Washoe Health Foundation, a non-profit subsidiary of Washoe Health system, Inc. She was hired by and serves at the pleasure of the chief executive officer of Washoe Health System, Inc. Her salary is approximately \$66,000 per year. As executive director of Washoe Health Foundation, Inc., her chief responsibility is to raise funds to aid the charitable works of the non-profit subsidiaries of Washoe Health System, Inc., the principal beneficiary of which is the hospital, Washoe Medical Center," Inc.
  5. Gene McDowell is a member of the Membership Group composed presently of 46 members which elect the Board of Directors of the holding corporation, Washoe Health System, Inc. He is also a member of the Board of Governors of Washoe Medical Center, Inc., the hospital subsidiary of Washoe Health System, Inc. His service on the Board of Governors of the hospital began before its transfer from Washoe County to the holding corporation, Washoe Health System, Inc. The transfer was accomplished in 1985. He also serves on the Board of Directors of Washoe Health Foundation, Inc.
  6. Tina Leighton is a member of the Membership Group, which elects the Board of Directors of Washoe Health Services, Inc.
  7. A nominating committee composed of the chairman of the Board of Directors of Washoe Health System, Inc., the parent corporation, the chairman of the Board of Governors of Washoe Medical Center, Inc., the hospital, and two other persons nominate individuals for election to both the Membership Group and the Board of Directors of Washoe Health System, Inc. From those nominated, the Directors of Washoe Health System, Inc. elect members of the Membership Group; and the members of the Membership Group elect directors of Washoe Health System, Inc., the parent corporation.
  8. In 1985, the trustees of Washoe Medical Center, then the Washoe County owned public hospital, conveyed the hospital and all of its assets to a non-profit corporation, Washoe Medical Center, Inc. As part of the transfer, Washoe Medical Center, Inc. had to assume all of the liabilities of the hospital and agree to enter into a contract for the care of all indigent patients in Washoe County. This transfer was done pursuant to NRS 450.500.
- Thereafter, the present corporate structure was formed creating a parent corporation, Washoe Health System, Inc., of which Washoe Medical Center, Inc. become a subsidiary along with the other corporate entities named above. Because of the nonprofit nature of Washoe Health Systems, Inc. and the requirements of NRS 450, the new corporate structure also included a Membership Group of a broadly based membership intended to be representative of the population of Washoe County. The membership included representative residents of the unincorporated regions of the County as well as residents of the incorporated cities of Reno and Sparks.
9. By statute and the agreement for the transition, the original Board of Governors of the nonprofit corporation, Washoe Medical Center, Inc., initially consisted of the incumbent members of the Washoe County Hospital Board of Trustees, three of whom were Washoe County commissioners appointed because of their membership on the Board of County Commissioners. Gene McDowell was appointed to the Board of Governors because of that requirement. He retained his membership on the Board of Governors of the hospital after his initial term and is in his third term as a member of the Board. There are currently nine (9) members of the Board of Governors of Washoe Medical Center, Inc.; the bylaws provide for up to fifteen (15) members.

## **I. INDIGENT CARE**

10. The Transfer and Assumption Agreement between Washoe County and Washoe Medical Center, Inc., dated November 12, 1985, (the "Transfer Agreement") conveyed of all the assets and liabilities of the county hospital to Washoe Medical Center, Inc. The Transfer Agreement and the provisions of NRS 428.030(2) require the County and the hospital to provide indigent patient care to the residents of Washoe County, whether living in the unincorporated

areas of the County or within the incorporated cities of the County. Washoe County is required to pay Washoe Medical Center, Inc. for such indigent patient care. The amount of such payment or "the charge to Washoe County" for indigent patient care may "not exceed the actual cost of providing that care." See Article IV, section 4.3 and Article VI, section 6.2 of the Transfer Agreement.

The Transfer Agreement between Washoe county and Washoe Medical Center, Inc. at Schedule 6.3 provides that "The County will reimburse the hospital monthly for approved [indigent] patient's based on actual cost of care. The reimbursement rate for inpatients will be 95% of billed charges and 87% of billed charges for outpatients..." (Emphasis added). Washoe Medical Center, Inc. determines its "billed charges" by a review of its financial statements for the preceding year. A schedule of such billed charges is then filed with the Department of Human Resources of the State of Nevada. The law provides, however, that regardless of the hospital's schedule of billed charges, payment by Washoe County for indigent patient care may never exceed the actual cost incurred by Washoe Medical Center, Inc.

11. According to legislative finding and declaration (NRS 4398.300), Nevada counties with more than one hospital may lack available resources to compensate for all indigent patient care provided at their hospitals. Therefore, hospitals are required by NRS Chapter 4398 to provide a designated amount of uncompensated care for indigent patients. A hospital must provide without charge, in each fiscal year, care for indigent inpatients in an amount which represents 0.6 percent of its net revenue for that hospital's preceding fiscal year, pursuant to NRS 4398.320. The Division for Review of Health Resources and Costs of the Department of Human Resources computes the amount of that percent of net revenue and advises the board of county commissioners of the county where the hospital is located.

To insure compliance with this statutory requirement, the board of county commissioners must maintain a record of discharge forms submitted to it by each hospital, together with the amount accruing to the hospital, NRS 4398.320. Provided, however, that when a hospital is serving a disproportionately large share of low-income patients, if so determined by the board of county commissioners, the county may pay a higher rate to that hospital, or pay the hospital for treatment of indigent inpatients whom the hospital would otherwise be required to treat without receiving compensation from the county, or both, NRS 4398.330. Absent that determination by the board of county commissioners, however, no payment for indigent care may be made to a hospital until the total amount accruing to the hospital exceeds the minimum obligation of the hospital for the fiscal year; a hospital may only receive payment from the county for indigent care provided in excess of its minimum obligation. After a hospital has met its minimum obligation, the county may reimburse the hospital for the cost of care of indigent inpatients at any rate otherwise authorized by law.

Complicating this reimbursement formula in the present set of facts, as stated above, are the contractual and statutory obligations of Washoe Medical Center to care for indigent patients at a charge to Washoe County which does not exceed the actual cost of providing such care, and in accordance with the statutory provisions governing the care of indigent patients outlined above. That amount is additionally limited by the Transfer Agreement at 95% of the "billed charges."

12. Washoe County must pay for such indigent patient care and is authorized by NRS 428.050, 428.185, 428.285 and 450.425 to levy ad valorem taxes to provide and pay for such care, but within the limits of the statutory formula. The amount allocated for indigent patient care in the county's budget must be calculated by multiplying the amount allocated for that purpose for the previous fiscal year by 104.5 percent.

13. Because of the foregoing limitation upon the payment by Washoe County for indigent patient care each fiscal year, Washoe County has never been able to pay the contractual amount of 95% of the billed charges provided by the Transfer Agreement between Washoe County and Washoe Medical Center, Inc. As a practical matter, payments by the County have not been sufficient to pay the contractual amount and provide funds to other hospitals within

Washoe County which also provide indigent patient care in Washoe County as required by statute. It is a decision within the discretion of the Washoe County Commission of how to divide any remaining funds among the hospitals which provide such indigent patient care once the statutory requirement for payment has been satisfied. Whatever the percentage of payment determined, however, it must be the same percentage for all hospitals providing indigent patient care in the County.

## **II. EMPLOYEE HEALTH CARE OPTIONS**

14. Washoe County contracts with another subsidiary of Washoe Health system, Inc. in order to provide an alternative source of health care benefits to County employees as part of the County employee benefit package. Hospital Health Plan, Inc., a federally qualified health maintenance organization, is a subsidiary corporation of Washoe Health system, Inc. and is now providing health care to those employees of the county who chose that alternative for health care benefits. Health benefits are subject to negotiation within the collective bargaining process.

The current two-year collective bargaining agreements for the two bargaining units within the Washoe County employee population carry the dual option health plan. The Washoe County Commission has hired an outside actuarial firm to determine whether funds could be saved if the county only offered one health plan to its employees. If the actuarial firm determines that funds could be saved, the County commission must then determine whether to request that the collectively bargained agreements be reopened so that the issue of a dual option for health care may be renegotiated. At that time the county, subject to negotiation with its employee groups, may determine whether to cancel or continue its contract with Hospital Health Plan, Inc.

15. Hospital Health Plan, Inc., as a federally qualified health maintenance organization, enjoys the protection of certain federal regulations designed to assist the HMO industry in establishing itself as a viable alternative to traditional health care delivery systems. The regulatory scheme provides a federally qualified HMO with the ability to mandate its inclusion in an employer's offering of health care options to employees. Before a mandate may be accomplished, the HMO must satisfy several requirements, including notification of its intent to mandate the employer by a certain time prior to open enrollment for the employees. Hospital Health Plan, Inc. has not utilized the mandate provisions of the federal regulations in its contractual relationship with Washoe County. Therefore, there is no requirement that Washoe County offer Hospital Health Plan, Inc. to its employees, unless it is contained in the collectively bargained agreements between Washoe County and its employees. It therefore is a decision within the discretion of the Washoe county commission whether Washoe County will approach the bargaining units with a request to reopen the health care provisions of the collectively bargained agreements.

16. Commissioners Cornwall and McDowell stated that, with respect to the facts of this Opinion, they have in the past relied upon advice by the Deputy District Attorney assigned to advise the Washoe County Commission that their positions, employment and responsibilities to Washoe Health system, Inc. or its subsidiary corporations have not conflicted with their duties and responsibilities as Washoe county Commissioners, namely as public officers within the meaning of NRS Chapter 281.

## **OPINION**

### **I. Generally**

Based upon the Findings of Fact, the Commission concludes that Cornwall, McDowell and Leighton are public officers in their capacity as Washoe county Commissioners as defined by NRS 281.4365(1).

The Legislative declarations and findings which express the public policy of the Nevada Ethics in Government Law appear at NRS 281.421:

### **281.421 Legislative declaration and findings.**

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 to avoid conflicts between his private interests and those of the general public whom he serves.

2. The legislature finds that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interest.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

Consistent with that policy and the specific provisions of the Code of Ethical Standards (NRS 281.481, 281.511, inclusive), the opinions may include guidance to the public official pursuant to NRS 281.521(1):

1. The commission's opinion may include guidance to a public officer or employee on questions of whether:

(a) A conflict exists between his personal interest and his official duty.

(b) His official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter.

(c) The conflict would materially affect the independence of judgment of a reasonable person in his situation.

(d) He possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision.

(e) it would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal interest or pursue some other designated course of action in the matter.

## **II. Disclosure**

The standards to which public officers and employees must conform their conduct are found at NRS 281.501 (As amended, effective October 1, 1991).

NRS 281.501(3)

....

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting, or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing the full nature and extent of the gift, loan, commitment or interest. Such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If

the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or if he holds an elective office, to the general public in the area from which he is elected.

Whether one may vote or must abstain from voting, disclosure is required as provided above. Disclosure is also required at all times the matter is discussed or considered.

### **III. Abstention**

Additional standards govern the conduct of members of the legislative branch when performing a legislative function. NRS 281.501 states in pertinent part:

1. In addition to the requirements of the Code of Ethical Standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of the matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:
  - (a) His acceptance of a gift or loan;
  - (b) His pecuniary interest; or
  - (c) His commitment in a private capacity to the interest of others.

### **PRINCIPAL ISSUES PRESENTED**

Based upon the Findings of Fact above, there are two specific situations in which future actions of the respective County Commissioners must be examined. Specifically,

1. The county Commission's determination of the amount of county funds to be appropriated for the care of indigent patients to be paid to Washoe Medical Center, Inc., and other hospitals for their care of indigent patients, based upon the actual costs incurred and within other limitations; and
2. The renewal or cancellation of Washoe County's contract for an alternative delivery system of health care with Hospital Health Plan, Inc., a federally qualified health maintenance organization and a subsidiary corporation of Washoe Health System, Inc.

With respect to the above recited issues, the facts pertaining to each County Commissioner will be analyzed separately.

#### **Commissioner Diane Cornwall**

##### **A. Disclosure.**

Commissioner Cornwall's principal source of income is her employment as the Executive Director of the Washoe Health Foundation, Inc., previously described as the non profit fund raising subsidiary corporation of Washoe Health system, Inc. She was selected for the position of Executive Director of the Foundation by the chief operating officer of Washoe Health System, Inc. She is responsible directly to him and to the Board of Directors of the Foundation, of which Commissioner McDowell is a member. Due to her employment by the Foundation and its relationship to the parent corporation, Washoe Health System, Inc., and to Washoe Medical Center, Inc., it is reasonable to conclude that she is committed in her private capacity to the interests of another, namely her employer, Washoe Health Foundation, Inc., to Washoe Health System, Inc., its parent corporation, and Washoe Medical Center, Inc. Her

employment by the Foundation also creates a pecuniary interest in matters which may materially affect her employer, the Foundation, its parent corporation, Washoe Health System, Inc., and Washoe Medical Center, Inc. Both the full nature and extent of the commitment in her private capacity and her pecuniary interest must be disclosed in public to the chairman of the County Commission and any members of the Commission at the time she is to consider the matter before the Washoe County Commission. Full and complete disclosure require disclosure of the following:

1. Her duties as executive director of Washoe Health Foundation, Inc.;
2. Its relationship to Washoe Health system, Inc., and its subsidiary corporations; and
3. The effect of the matter upon and the interest in the matter of Washoe Health System, Inc., Washoe Medical Center, Inc., Washoe Medical Foundation, Inc. and any other subsidiary corporation so affected or interested,
4. The compensation she derives from her position.

## **B. Abstention.**

As the Executive Director of Washoe Health Foundation, Inc., Commissioner Cornwall is committed in her private capacity to the interests of Washoe Health Foundation, its parent corporation, Washoe Health System, Inc., and Washoe Medical Center, Inc. also a subsidiary corporation. Her principal source of income is her employment as Executive Director of the Foundation.

It is reasonable to conclude that the independence of judgment of a reasonable person in Commissioner Cornwall's position as a public officer would be materially affected by her conflicting commitment in her private capacity as well as her pecuniary interest in Washoe Health System, Inc. and its subsidiary corporations. Accordingly, Commissioner Cornwall must abstain from voting on those matters discussed in this opinion affecting Washoe Health System, Inc., or any of its subsidiary corporations.

## **Commissioner Gene McDowell**

### **I. Disclosure.**

Commissioner McDowell serves Washoe Health System, Inc. as a member of the Membership Group, as a member of the Board of Governors of Washoe Medical Center, Inc., and as a member of the Board of Directors of Washoe Health Foundation, Inc. In view of the foregoing facts, it is reasonable to conclude that Commissioner McDowell is committed in a private capacity to the interest of another, namely Washoe Health System, Inc., Washoe Medical Center, Inc., and Washoe Health Foundation, Inc., its subsidiary corporations, and therefore must disclose the full nature and extent of his relationship with and duty to Washoe Health System, Inc. and its subsidiary corporations. Disclosure must be made in public at the time he is to consider the matter before the Washoe County Commission to the chairman of the Commission and other members of the Commission. Full and complete disclosure requires disclose of the following:

1. His membership on all boards of directors or governors of Washoe Health System, Inc., and its subsidiary corporations,
2. A description of his duties involved in each position he holds,
3. The effect of the matter upon and the interest in the matter of Washoe Health System, Inc., Washoe Medical Center, Inc., Washoe Medical Foundation, Inc. and any other subsidiary corporation so affected or interested,

4. A description of compensation he receives for holding these positions with Washoe Health System, Inc.

## **B. Abstention.**

As discussed above, Commissioner McDowell is committed in his private capacity to the interests of another due to the responsibilities and duties of his positions with Washoe Health Systems, Inc. and certain subsidiary corporations, within the meaning of chapter 281 of the NRS. Whether this commitment would materially affect the independence of judgment of a reasonable person in Commissioner McDowell's position depends upon the facts as found above. Commissioner McDowell is a member of the Membership Group of Washoe Health system, Inc., the Board of Governors of Washoe Medical Center, Inc., the hospital subsidiary corporation of Washoe Health System, Inc. and the Board of Directors of the Washoe Health Foundation, Inc. Each position imposes upon him a fiduciary responsibility to Washoe Medical Center, Inc. and the specific subsidiary corporation. The fiduciary responsibility of each position requires him to act in the best interest of the corporation he serves. Those obligations and duties conflict with the discharge of his obligations as a public officer when matters affecting Washoe Health system, Inc., and its subsidiary corporations come before him as a member of the Board of Washoe County Commissioners.

It is reasonable to conclude that the independence of judgment of a reasonable person in Commissioner McDowell's position as a public officer would be materially affected by his conflicting duties and obligations and, therefore, his commitment to Washoe Health System, Inc., Washoe Medical Center, Inc., and Washoe Health Foundation, Inc. Commissioner McDowell must therefore abstain from voting on those matters discussed in this opinion affecting Washoe Health System, Inc. and its subsidiary corporations.

## **Commissioner Tina Leighton**

### **1. Disclosure.**

The Ethics in Government law requires disclosure by a public officer or employee in three situations: 1) If the officer or employee has a pecuniary interest in the matter, 2) If the officer or employee has accepted a gift or loan with respect to the matter, and 3) If the officer or employee is committed in a private capacity to the interest of another with respect to the matter. Commissioner Leighton is a member of the Membership Group of Washoe Health System, Inc., a body which selects members of the Board of Directors of Washoe Health System, Inc. Currently there are 46 members of this group. The foregoing is the only association Commissioner Leighton has with Washoe Health System, Inc. or its subsidiary corporations.

As a member of the Membership Group, Commissioner Leighton is committed in her private capacity to the interest of another, namely Washoe Health System, Inc., and its subsidiary corporations. When issues come before the County Commission, such as those described in this opinion regarding indigent patient care and health care for County employees, which directly affect Washoe Health System, Inc., she must disclose the full nature and extent of her relationship with and duty to Washoe Health system, Inc. Disclosure must be made in public at the time she is to consider the matter before the Washoe County Commission to the Chairman of the county commission and her other members of the Commission. Full and complete disclosure requires disclosure of the following:

1. Her membership in the Membership Group,
2. The duties of that body,
3. Any compensation she receives,
4. The effect of the matter upon and the interest in the matter of Washoe Health System, Inc., Washoe Medical



Center, Inc. and any other subsidiary corporation so affected or interested.

## **2. Abstention.**

As a member of the Membership Group, Commissioner Leighton meets once a year to elect, along with 46 other members, the persons who will fill the vacancies on the Board of Directors of the Washoe Health System, Inc. This is her only responsibility as a member of the Membership Group of Washoe Health System, Inc. It is reasonable to conclude that this limited association with Washoe Health System, Inc. would not materially affect the independence of judgment of a reasonable person in Commissioner Leighton's position as a public officer, and therefore prohibit her from voting on those matters discussed in this opinion.

## **AN ADDITIONAL ISSUE PRESENTED**

The opinion request also asks, "What standards should be set for use of County equipment." The question is general in nature, rather than based upon specific facts and circumstances. The general standard provided by State statute is as follows:

NRS 281.481 provides:

A code of ethical standards is hereby established to govern the conduct of public officers and employees:

....

7. A public officer or employee, other than a member of the legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest.

The particular facts and circumstances should be evaluated pursuant to the foregoing.

## **CONCLUSION**

As stated earlier, this opinion was requested and is therefore issued to provide guidance for future action with respect to the facts, circumstances and issues discussed herein.<sup>[2]</sup> The opinion is limited to the facts expressed in the Findings of Fact.

DATED: December 19, 1991.

NEVADA COMMISSION ON ETHICS

By: /s/ THOMAS R.C. WILSON, Chairman

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<sup>[1]</sup> This opinion is limited to the facts presented. Given other facts, the opinion of the Commission could differ.

<sup>[2]</sup> NRS Chapter 281, the Nevada Ethics in Government Law, was amended by the Nevada Legislature, effective October 1, 1991. Opinions of the Ethics Commission are now binding, not advisory, and are subject to judicial review.