

Abstract of Opinion No. 91-13

BEFORE THE NEVADA COMMISSION ON ETHICS

The issue for this opinion is whether a public officer (NRS 281.4365) violated the Nevada Ethics in Government Law, NRS 281.411 through 281.581, inclusive, when he allowed a letter to be sent to businesses regulated by the public officer's government agency, requesting contributions for door prizes for a private employee social function.

At a hearing on the merits of the Opinion Request, the public officer appeared before the Commission and presented testimony and evidence. The Commission also received evidence and testimony from other witnesses. The hearing was confidential pursuant to the provisions of NRS 281.511(4) and (9) and, therefore, not open to the public.

The Commission met for deliberations in closed session on that same day. Based upon the foregoing, the Commission makes the following Findings of Fact and issues the hypothetical opinion that follows.

BACKGROUND INFORMATION

The agency for whom the subject of this opinion request works holds an annual employee social event. The event is not an agency sponsored function. It is organized by and for the employees and supported by management. A committee of employees organizes the party and asks businesses for donations to offset the costs.

The committee did a mass mailing of letters to solicit donations. The subject of the opinion request was aware that a solicitation letter was being prepared since he had seen it and edited it. The subject's name was on the signature block of the letter although he did not sign the letter. The letter was sent on agency letterhead.

Approximately 260 letters were sent to various businesses including businesses regulated by the agency. Approximately 15 businesses responded by sending donations. A second letter was sent indicating no further donations were to be sent to the agency and all received donations were returned to the donors.

The agency has a policy in place regarding receipt of gifts and gratuities. The purpose of the policy is to closely and strictly regulate agency receipt and acceptance of gifts.

FINDINGS OF FACT

1. A letter soliciting donations for a private employee social function was sent to businesses regulated by the state agency. This letter was on state letterhead and utilized state mailing services.
2. The public officer was aware that the letter was being developed and sent. The public officer's signature was part of the signature block although the public officer did not sign the letter.
3. The letter was mailed to approximately 260 businesses. Approximately 15 businesses responded by sending a donation.
4. At the public officer's direction, a second letter was sent to the same businesses retracting the donation request contained in the first letter. No further donations were received. All donations received were returned to the donors.
5. The public officer reimbursed the state for the mailing expenses incurred.

OPINION

Based on the above stated Finding of Fact, the Commission concludes that the subject of the opinion is a public officer as defined by NRS 281.4365.

The legislative Declaration and Findings which express the public policy of the Nevada Ethics in Government Law appear at NRS 281.421:

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 interest 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 through 281.511, inclusive), the opinions of the Commission may include guidance to the public official pursuant to NRS 281.521(1):

1. The Commission's opinions may include guidance to a public officer or employee on questions 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 the judgment of a reasonable person in his situation.
 - (d) He possess 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.

Reviewing the Code of Ethical Standards, NRS 281.481 through NRS 281.551, general requirements found in NRS 281.481 (2) are relevant to the Commission's present inquiry and provide the following:

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

The language in NRS 281.481(2) reflects a prohibition against a public officer using his governmental position to secure unwarranted advantages for any person. The Commission finds that the public officer who is the subject of this opinion misused his position as a public officer when he approved the letter on agency letterhead prior to its being sent out. The letter was not sent out with the intent of gaining advantages for the public officer or the agency employees; however, businesses receiving the letter which are regulated by the state agency easily could have felt obligated or pressured to make a donation.

The use of agency letterhead with an official signature block on a letter soliciting donations from regulated businesses violates the Code of Ethical Standards, notwithstanding good intentions.

DATED: February 20, 1995.

NEVADA COMMISSION ON ETHICS

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