

## Abstract of Opinion No. 93-02

### BEFORE THE NEVADA COMMISSION ON ETHICS

This opinion is in response to a request by a Fire Protection Officer (Requester) with the Nevada Department of Conservation and Natural Resources, Division of Forestry (NDF), who is stationed in Nevada. During his off-duty hours, Requester serves as the City Fire Chief, a paid, part-time position. The Nevada Commission on Ethics (Commission) has taken jurisdiction in this matter pursuant to NRS 281.511(1).

Requester asked the Commission to determine whether his dual employment as a full-time state Fire Protection Officer with the NDF and part-time City Fire Chief constitutes a conflict of interest prohibited by the Nevada Ethics in Government Law.

This matter came before the Commission for a hearing in Reno, Nevada, on February 26, 1993, at which time the Commission heard testimony from Requester. Requester did not waive his statutory right to confidentiality of the proceedings and the hearing was therefore closed to the public pursuant to NRS 281.511(4). Immediately after the hearing, the Commission deliberated in executive session.

The issue in this opinion is whether Requester's simultaneous employment as a full-time Fire Protection Officer with the Nevada Division of Forestry and his part-time employment as the City Fire Chief violates the Code of Ethical Standards at NRS 281.481(1) or (4). Based upon the foregoing, the Commission makes these Findings and renders the opinion that follows.

#### FINDINGS

1. Requester was hired by the NDF during the 1974 fire season as a seasonal firefighter in a Nevada County. After the 1974 fire season, the County Fire Protection District requested NDF to convert the seasonal position to full-time status. NDF made the position permanent and full-time and hired Requester as the Fire Protection Officer responsible for coordinating the County Fire Protection District. Requester is stationed in the City and as a fire protection officer is responsible for pre-suppression, suppression, fire prevention, and law enforcement services for the County Fire Protection District and serves as the command officer at all fire related incidents until relieved. NDF's work performance standards for a fire protection officer describes Requester's responsibilities in his position with NDF:

A. Conduct, plan, implement, and supervise directly all assigned subordinates in assigned of fire prevention programs in schools, public organizations, and for the general public both inside and outside the District.

B. Conduct landowner assistance calls explaining fire hazards and measures for corrections.

C. Plan, organize, and direct inspection programs of businesses within the District.

D. Conduct fire safety inspections of schools, homes, and area small businesses and industry in the District.

E. Plan, organize, and direct fire hydrant, cistern, and water system maintenance and monitoring programs.

F. Act as a liaison with volunteer fire departments to continually upgrade protection and suppression equipment, help, replace or add to current and faulty equipment.

G. Prepare and conduct training programs for volunteer fire departments.

2. On January 1, 1980, based in part upon his experience as a fire protection officer, Requester was appointed by the County Board of Commissioners to serve as the County Fire Chief for an indefinite term. He was paid a monthly salary for work performed in a less than part-time capacity, to attend to the duties as the County Fire Chief.

3. In 1991, the NDF requested an attorney general's opinion on the propriety of Requester's simultaneous employment as a fire protection officer with NDF and as County Fire Chief. On June 3, 1991, an attorney general opinion was issued in which it was concluded that Requester's service as County Fire Chief, while employed as a full-time state employee by the NDF, constituted simultaneous employment in violation of NRS sections 281.127, 281.230 and 281.481 because the duties of both public positions, for which Requester was being paid dual salaries, encompassed substantially the same responsibilities for the same geographical area.

4. As a result of the attorney general opinion, the County Fire Chief's job description was re-written to encompass only certain geographical areas, so as to not overlap with the full-time County duties outlined in NDF's work performance standards. Any reference in the fire chief's job description to County or to the NDF having an agreement to provide fire protection outside of City and geographical area were eliminated. Requester's title as County Fire Chief was changed to City Fire Chief.

5. The duties of the City Fire Chief (Fire Chief) were rewritten in the following manner:

A. The position of Fire Chief shall be considered a less than part-time position and the individual so appointed shall not be required to jeopardize his or her full-time employment under any circumstances.

B. The Fire Chief is required to work closely with the County Commissioners in matters of management, work plans and related programs, purchasing and inventory control and administration of the ambulance service program for the City and geographical area.

C. The Fire Chief may attend meetings of the County Commissioners to report to them on matters that may directly or indirectly affect the performance and needs of the fire department in the City.

D. The Fire Chief shall supervise those individuals hired by the Board of Commissioners as paid firefighters in the City and geographical area.

E. The Fire Chief shall work closely with the Public Works Director on matters of mutual interest such as fire hydrant installation and location and recommendations for improvements that may have a direct effect on fire fighting operations in the City and geographical area.

F. The Fire Chief shall coordinate fire prevention activities within the City and geographical area. These duties include informing the public about fire safety and making property inspections for situations which create fire hazards.

G. The Fire Chief should coordinate the review of plans of all commercial building projects within the City and geographical area which could produce fire-fighting problems or

develop hazards that affect property or the safety of the general public.

H. The Fire Chief should review the local licensing procedures to make sure they provide the department with notice of conditions affecting the fire departments fire prevention programs.

I. The Fire Chief shall maintain a liaison with the building department on matters commonly related.

6. The City has four full-time fire department employees stationed at the City fire station (three of whom were captains) and one volunteer fire chief who was part of the volunteer fire department. One of the captains would perform Requester's responsibilities should Requester be absent due to his NDF duties.

7. Requester's duties as City Fire Chief are performed during his off-duty hours. Requester had taken annual leave from his state job in order to attend conferences for the City Fire Department (CFD), and although such circumstances has never arisen, Requester would take annual leave from his state job should a fire commence in the City during his state job hours.

8. Requester's involvement in an emergency response would depend upon the nature of the call. The NDF does not respond to small incidents, medical calls, or call accidents. For instance, if he were on duty as an NDF state employee when a call for a chimney fire in the City was received, Requester would not respond to the call. Because approximately 90% of all fire calls in the City are of a medical nature, they are to be handled by volunteers in the CFD.

9. In the event of a major fire in the City, such as in the case of a three or four-story building fire, Requester would probably respond as an NDF state employee and be in command as the state fire protection officer based on the state's mutual aid contract with the City .If a mutual aid request was made to transfer command of an incident from the CFD to the NDF, management jurisdiction of the CFD would be assumed by the City Assistant Fire Chief and not by Requester. However, if the assistant chief decided to pass on his command to the NDF, Requester in his capacity as a state fire protection officer would work together with the City Assistant-Chief to coordinate appropriate response to the incident.

## OPINION

Requester is a public employee as defined in NRS 281.436. The issue in this matter is restated as whether Requester's simultaneous employment as a full-time fire protection officer with the Nevada Division of Forestry and his part-time employment as the City Fire Chief violates the Code of Ethical Standards at NRS 281.481(1) or (4).

NRS 281.421(1) and (4) provides the following:

(1) A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend to improperly influence a reasonable person in his position to depart from the faithful discharge of his duties.

....

(4) A public officer or employee shall not accept any salary retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

Requester did not use his position as a Fire Protection Officer to secure his employment as Fire Chief for the City

although such previous experience may have been a factor in his appointment as the City Fire Chief. Requester's job responsibilities as the City Fire Chief and his state job responsibilities as an NDF fire protection officer are separate and distinct. The job duties and description of the Fire Chief position have been modified to ensure Requester's employment with the City is completely separate from the work he performs for the NDF as a fire protection officer. The CFD's jurisdiction is limited to the City and does not encompass all of the County .If a significant fire incident were to occur in the City while Requester was working with NDF it would not be Requester's decision, but the CFD official in charge of a City fire incident as whether to transfer command of that incident from the CFD to the NDF.

Requester did not violate the provisions of NRS 281.481(1) because his position as a NDF fire protection officer while also serving as the City Fire Chief would not, as those job responsibilities are presently defined, tend to improperly influence a reasonable person in either of Requester's positions to depart from the faithful and impartial discharge of his public duties. Requester also did not violate NRS 281.481(4), which prohibits salary augmentation for performance of public duties, because the income Requester receives for his position as a NDF fire protection officer is compensation for duties which are separate, distinct and mutually exclusive of the duties and responsibilities for which he is compensated as City Fire Chief. Similarly, Requester's compensation for serving as City Fire Chief is for responsibilities which are separate and apart from those he performs for NDF.

### **CONCLUSION**

Requester's full-time employment as a fire protection officer for the Nevada Division of Forestry and his part-time employment as the City Fire Chief does not violate the Code of Ethical Standards at NRS 281.481(1) and (4).

### **COMMENT**

It is specifically noted that the foregoing Opinion applies to these specific circumstances, and may not apply to other circumstances. The provisions of NRS 281.481 quoted and discussed above must be applied on a case-by-case basis, with results which will vary depending on the specific facts and circumstances involved.

DATED: October 2, 1995.

NEVADA COMMISSION ON ETHICS

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