

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of

GERALD SIEREN, former State Inspector, Nevada Division of Occupational Safety and Health

This Opinion is in response to the request for an opinion filed with the Nevada Commission on Ethics (Commission) by Pioneer Chlor Alkali Company, Inc. (Pioneer) concerning Mr. Gerald Sieren, a former State Inspector for the Nevada Division of Occupational Safety and Health, later known as the Occupational Safety and Health Enforcement Section, Division of Industrial Relations, Department of Business and Industry of the State of Nevada (OSHES). OSHES enforces the provisions of NRS Chapter 618, also known as the Nevada Occupational Safety and Health Act. The issue presented is whether Mr. Sieren violated the Code of Ethical Standards as a result of his participation as an expert witness against Pioneer in a private lawsuit for which he was compensated concerning his knowledge, observations, and state documents reviewed or drafted by him as an OSHES inspector.

A just and sufficient cause hearing on the request was held on May 19, 1995, in Las Vegas, Nevada, at which time the Commission received documentary evidence regarding the subject matter of this Opinion and heard testimony from Mr. Sieren, Mr. Kevin R. Stolworthy, counsel for Pioneer, and Mr. Larry C. Johns, legal counsel to the plaintiff in a personal injury lawsuit filed against Pioneer as a result of the chemical spill. Mr. Sieren did not waive his statutory right to confidentiality pursuant to NRS 281.511(4) and the hearing was therefore not open to the public. Prior to the conclusion of the hearing Mr. Sieren stipulated that the record of the proceedings be merged into a full hearing on the merits, and, accordingly, the hearing proceeded on the merits. At the conclusion of the testimony and the introduction of exhibits, the Commission closed the record and proceeded to deliberation. Based upon the foregoing, the Commission makes the following Findings of Fact and issues the Decision that follows.

FINDINGS OF FACT

1. Gerald Sieren is a 1963 graduate of the University of Kansas where he received a Bachelor's Degree in Aeronautical Engineering. He subsequently obtained a Master's Degree in Electrical Engineering from the U.S. Naval Postgraduate School in Monterey, California. His experience in chemical plant maintenance and operating experience stems primarily from his Navy experience as a steam plant operator on board ship from 1964 through 1967, and as project manager on Mare Island, Vallejo, California for refueling naval submarines from 1972 through 1978.
2. From June 1985 until June 1989, Mr. Sieren was employed by the State of Nevada as an OSHES compliance safety engineer. In this capacity, Mr. Sieren conducted industrial inspections and accident investigations, including the 1988 PEPCON explosion in the Basic Management Industries (BMI) Industrial Complex in Henderson, Nevada which prompted State concern about other facilities of this nature whose operations have the capacity to contaminate large, populated areas. Accordingly, a number of OSHES inspectors were assigned to conduct inspections of the damage to the other plants in the BMI complex, including the ICI/Stauffer chlorine plant, later to become Pioneer. Inspectors cited Pioneer for violations of Nevada safety regulations related to the improper venting of pressure relief valves on certain chlorine storage tanks. Mr. Sieren was assigned to further inspect and resolve these problems. In the process, Mr. Sieren became aware that serious problems affecting public safety existed at Pioneer.
3. During the course of the inspection and violation abatement efforts at the facility, Mr. Sieren prepared several complex memorandums to Pioneer officials relating to the plant's safety at that time. Mr. Sieren relied upon several scientific reference texts to assist him with his mathematical formulas and calculations. One of the documents, a memorandum dated October 17, 1988, contained a 29-page discussion with mathematical calculations with respect to the reliability of the pressure relief valves on Pioneer's chlorine storage tanks. Mr. Sieren's analysis concluded that the plant was statistically 35 years overdue for a major spill, based on the data supplied by Pioneer. On May 15, 1989, and June 7, 1989, Mr. Sieren prepared additional OSHES memoranda concerning his observations that the Plant was in poor condition and was not being maintained in accordance with accepted standards and therefore posed a threat to the safety of the community. His memorandum of May 15, 1989, detailed some of the problems

observed and made recommendations on how to resolve them.

4. From approximately July 1989 to March 31, 1991, Mr. Sieren was employed by the State Industrial Insurance System (SIIS) as an Industrial Hygienist. Though in that capacity he primarily investigated inhalation problems and similarly related health-based claims, due to his electrical background he was oftentimes called upon to investigate matters associated with electricity or electrical exposure and shock.
5. While employed by the State of Nevada, Mr. Sieren previously testified as a witness in civil lawsuits concerning information obtained in OSHES inspections. On at least two occasions he was directed to testify by his supervisor, and on one occasion was provided a state-paid attorney to accompany him to a deposition. While employed by SIIS, he had once been paid witness fees for providing testimony concerning a respiratory claim.
6. On April 1, 1991, Mr. Sieren commenced employment with the State Department of Conservation and Natural Resources, Nevada Division of Environmental Protection (NDEP), where he currently serves as a Staff Engineer.
7. On or about May 6, 1991, Pioneer vented and discharged approximately 42 tons of liquefied chlorine into the environment from its plant. Within 24 hours following the leak, Mr. Sieren was sent in his capacity as NDEP Engineer to the plant to evaluate its general overall condition and was given a tour of the plant in conjunction with OSHES' and Pioneer's efforts to bring the plant back on line. Mr. Sieren also attended a briefing concerning the repairs and modifications that had been made to the plant. Although his day-to-day work assignment at NDEP focused on the regulation of hazardous and radioactive waste at the Nevada Test Site, the NDEP Hazardous Waste Management Bureau Chief, Mr. Verne Rosse, requested Mr. Sieren to keep an eye on the situation at the plant during the recovery phase following the chlorine spill to make sure that Pioneer followed NDEP regulations in restarting the plant and to assess the plant's readiness to resume production of chlorine. During his investigation, which was conducted alone, Mr. Sieren spent approximately two months on a daily basis at the plant where OSHES employees and investigators were also present.
8. On June 5, 1991, Mr. Sieren issued a memorandum to Mr. Rosse in which he documented his findings and concluded that although the plant was ready to load chlorine and perform recirculation, because the plant had too many uncorrected deficiencies and had not solved all of the problems as identified in 1988 and 1989, he did not consider it ready to resume full-scale production of chlorine.
9. On September 30, 1992, Brian J. Valentine, a resident of the community adjacent to the plant, filed a personal injury action in state district court against Pioneer on theories of negligence and strict liability (the *Valentine* case). The action was subsequently removed to the Federal District Court for the District of Nevada on the basis of federal diversity jurisdiction. Legal counsel to Mr. Valentine was provided by Mr. Larry Johns of Las Vegas.
10. In August 1994, Mr. Sieren received a telephone call from Mr. Johns who informed Mr. Sieren that in the discovery process he had obtained a copy of Mr. Sieren's October 1988 memorandum from Pioneer and that he had reviewed his prediction that the plant would experience a major spill. Mr. Sieren discussed his history of involvement with Pioneer and described his observations concerning the plant while he was at OSHES as well as those made during subsequent assignments. According to Mr. Sieren, there was no indication at this time that he would be called as a witness in the *Valentine* case, and he did not agree to be an expert witness to testify about any of the activities in which he was involved while employed by OSHES.
11. After Mr. Johns identified Mr. Sieren as an expert witness for the plaintiff in the lawsuit to testify to the cause of the 1991 chlorine leak at the plant, Pioneer noticed Mr. Sieren's deposition for October 19, 1994, and served him with a subpoena. Mr. Sieren thereafter telephoned Mr. Johns to learn that Mr. Johns had identified Mr. Sieren as an expert witness on the basis of the October 1988 OSHES memorandum and that Mr. Stolworthy would be taking his deposition to learn what he knew about the plant and whether it would have a bearing upon Mr. Valentine's lawsuit. Because a major spill at Pioneer did in fact occur within three years following Mr. Sieren's prediction in his October memorandum, this document took on major significance to the litigation.
12. Mr. Sieren informed Mr. Johns that because it had been five or six years since he had written that document, he did not feel qualified to testify intelligently concerning its contents without reviewing the memorandum as well as its supporting references and other documents, some of which he had prepared [OSHER documents]. Mr. Sieren explained that it was necessary that he be paid for the time spent in reviewing these materials. He could not do the

work on state time; he was no longer working for OSHES. Mr. Johns therefore agreed to compensate Mr. Sieren \$100.00 an hour to review these documents in preparation for the deposition and subsequently paid him \$1500.00 for 15 hours of his time. A portion of Mr. Sieren's time was spent reviewing his 1991 memorandum concerning the status of Pioneer's readiness to restart chlorine production after the spill based on personal observations made at the plant while employed by NDEP. Because Mr. Sieren was under the impression that the state permitted him to take civil leave in order to testify, he informed Mr. Johns that it was not necessary that he be compensated for the time spent during the actual deposition. Mr. Sieren and Mr. Johns did not discuss whether Mr. Sieren would testify at trial if the case went to trial.

13. On October 7, 1994, OSHES filed a motion for a protective order seeking to relieve Mr. Sieren from the subpoena on the ground that NRS 618.365(2) barred him from testifying in a lawsuit concerning information he had obtained or received in his former capacity as OSHES inspector with regard to any employer or incident. NRS 618.365(2) provides that information obtained by OSHES in connection with an OSHES investigation "must not be admitted as evidence in any civil action other than an action for enforcement, variance hearing or review under this chapter." Because Pioneer was not presently involved in any health or safety enforcement action brought by OSHES, OSHES asserted that Mr. Sieren's testimony was prohibited by statute.

14. On October 31, 1994, U.S. Magistrate Judge Robert J. Johnston granted OSHES' motion for a protective order, ruling that pursuant to NRS 618.365(2) Mr. Sieren's testimony in the *Valentine* case "shall not include any observations or information received by him as an OSHES inspector, or by OSHES in connection with OSHES' investigation of Pioneer's chemical plant." The order did not, however, preclude Mr. Sieren from otherwise testifying as either an expert or lay witness in the matter.

15. On November 1, 1994, Mr. Stolworthy proceeded with Mr. Sieren's deposition. He asked Mr. Sieren many questions about what he knew about Pioneer, warning him repeatedly not to base his answers on OSHES documents, observations, or his experience as an OSHES inspector, but rather on other documents or information that Mr. Sieren may have reviewed. Mr. Sieren described the June 5, 1991, NDEP memorandum he had addressed to Mr. Rosse as well as other documents he had reviewed, but explained that he had come to the deposition primarily prepared only to answer questions concerning his 1988 OSHES memorandum and that in view of Magistrate Johnston's order, he needed additional time to review all other documents to enable him to testify meaningfully and intelligently. Those documents included Pioneer's operating logs, maintenance records, employee interviews, and reports prepared by Failure Analysis Associates, which was under contract to Pioneer. To facilitate Mr. Sieren's review of such materials, Mr. Stolworthy and Mr. Johns stipulated to continue the deposition to December 1-5, 1994.

16. Mr. Johns agreed to provide Mr. Sieren with the documents he wanted him to review and told him to keep track of his time so that he could be compensated. Although Mr. Sieren was under the impression that during the instant deposition he was on civil leave,^[1] he explained that because his deposition was continued to review documents on his own time, he did not believe it fair that the state of Nevada grant him civil leave for the subsequent depositions. He believed it appropriate to take annual leave for that purpose and desired compensation for the use of his annual leave. Mr. Johns informed Mr. Sieren that because it was customary for the law firm to compensate a subpoenaed witness, he should bill Mr. Stolworthy's firm for the additional time that would be spent during the continued deposition.

17. Following the first day of his deposition, Mr. Sieren was informed by his supervisor, Mr. Dick Serdoz, that he had received a call from Kent Hanson, NDEP's deputy attorney general, who had received a call from Mr. Stolworthy inquiring whether Mr. Sieren was on annual leave during the time of that deposition. Upon learning that Mr. Serdoz had incorrectly informed Mr. Hanson that Mr. Sieren had taken annual leave for such deposition, Mr. Sieren and Mr. Serdoz made a conference call to Mr. Hanson to inform him that Mr. Sieren had been on civil leave and inquired whether it had been proper for Mr. Sieren to accept compensation for his review of documents and to be an expert witness. Mr. Hanson responded that he was not Mr. Sieren's personal attorney and advised him to consult private counsel.

18. By December 15, 1994, when Mr. Sieren was again deposed by Mr. Stolworthy, Mr. Sieren had reviewed approximately 2,000 pages of documents obtained from Pioneer through discovery. Mr. Sieren testified as to his opinions and their basis, which included in addition to his own post-inspection of the site, documents provided by the U.S. Department of Labor; a two-volume reference text standard for process safety, entitled *Loss Control in the*

Process Industries, by Mr. Frank Lees; a pamphlet published by the Chlorine Institute (pamphlet no. 67), entitled "Safety Guidelines for the Manufacture of Chlorine"; and the scientific reporting done by persons who kept the logbooks of the Failure Analysis Associates, the group which investigated the plant following the May 1991 incident. Mr. Sieren also referred to a PHM audit conducted by the ICI, prior owners of the plant, which appeared to have been conducted in 1988. In addition, Mr. Sieren supported his opinions with information obtained from plant-employee interviews and other deposition testimony.

19. On the basis of the information reviewed, Mr. Sieren testified that the plant was "shoddily" operated and maintained, especially, the liquefaction and the storage components. It was Mr. Sieren's opinion that the failure of the isolation valve on the chlorine storage tanks that enabled chlorine gas to escape suddenly over a period of less than 12 hours was neither accidental nor the result of normal equipment wear and tear, but the result of faulty maintenance and operation of the plant. Mr. Sieren testified that plant tools and measuring equipment were either nonexistent, obsolete or in poor condition and that plant employees were neither well-trained nor supplied with air respirators. Mr. Sieren concluded that had a different, more reliable valve been used for the isolation valve on the specific storage tank in issue, the chlorine leak would not have occurred because the valve would have operated properly. Had the employees been prepared for that incident by casualty control drills and the possession of blanks, tools, airpacks, and other equipment prestaged, they would have been able to seal off the leak much sooner. Further, had Pioneer incorporated the means, which Mr. Sieren considered an industry standard, to vent off the pressure in the storage tank to some type of gas absorption unit (i.e., a "scrubber"), the leak would probably have been much less severe.

20. Because of Magistrate Johnston's order, Mr. Sieren testified that he could not testify as to whether Pioneer had a scrubber gas absorption unit or scrubber system at the time of the May 6, 1991, leak. He stated however, that he did not see one at the time of his post-inspection of the site on behalf of NDEP, and that if there had been a scrubber there, it would have been obvious. Based upon employee interviews following the spill and the formation of similar chemicals, there was evidence of previous incidents of high levels of primary liquefiers expected to cause internal corrosion in some of the same places that the internal corrosion was found as a result of the May 1991 incident.

21. On December 17, 1994, Mr. Sieren submitted a \$500.00 bill to Mr. Stolworthy for the five hours of deposition testimony he provided on December 15, 1994.

22. On February 3, 1995, Mr. Stolworthy informed Mr. Johns that based upon Pioneer's opinion that Mr. Sieren had acted unethically by accepting money in exchange for assisting in the investigation of the plaintiff's case, the \$500.00 requested by Mr. Sieren would be withheld pending a ruling on the matter by the Commission.

23. On February 6, 1995, Pioneer filed a motion to prohibit Mr. Sieren from testifying as an expert and lay fact witness in the *Valentine* action.

24. Upon learning of Mr. Stolworthy's Opinion Request to the Commission, Mr. Sieren immediately ceased all participation in the Pioneer civil suit pending a ruling by the Commission on the matter. In addition, he sought clarification of the issue before the NDEP Committee on Ethics, which was formed on March 14, 1995, approximately two months after Mr. Stolworthy's Opinion Request to the Commission.

25. On March 23, 1995, United States Magistrate Judge Roger L. Hunt ordered that while Mr. Sieren could not testify as to any of his observations or expert opinions in his capacity as an NDEP agent or OSHES investigator, he was not prohibited from providing testimony as a lay, fact witness to his firsthand observations while an NDEP agent.

26. On March 27, 1995, Mr. Stolworthy received a ruling from the NDEP ethics committee that Mr. Sieren may testify about the contents of the June 1991 NDEP memorandum at the civil trial if he were subpoenaed because documents in NDEP files are public information and available for public inspection and NAC 284.758 was not applicable. It also stated, however, that Mr. Sieren could not serve as an expert witness against Pioneer in the same civil action, regardless of whether he was paid for testifying.

27. Mr. Sieren conceded to the Commission that he made an error in judgment in participating in the civil case as an expert witness and that he is not entitled to \$500.00 from Mr. Stolworthy's law firm for his deposition testimony.

ANALYSIS AND OPINION

The Nevada Commission on Ethics takes jurisdiction in this matter pursuant to NRS 281.511(2). Based upon the Findings of Fact, the Commission concludes that Mr. Sieren is a public employee as defined by NRS 281.436.

The question before the Commission was whether Mr. Sieren's request and acceptance in a civil lawsuit of compensation for observations, information, or review of documents received or drafted by him in his capacity as a government investigator, which would serve the basis of his testimony in the matter, violated NRS 281.481(1), (2) and (5).^[2]

Mr. Sieren was originally subpoenaed to testify at a deposition regarding information that he received or obtained while working as an employee of OSHES in the course of violation abatement efforts conducted at Pioneer after the issuance of a serious citation on or about May 17, 1988. Although Mr. Sieren testified that he had not agreed to testify as an expert witness and did not understand that he would be called in the *Valentine* litigation as an expert witness until after he was subpoenaed for deposition by Pioneer's legal counsel, the plaintiff's attorney identified him as an expert witness whom he intended to call at trial because of Mr. Sieren's working knowledge of the plant and educational background. Mr. Sieren accepted \$1,500.00 in compensation for the time spent to refresh his recollection in reviewing governmental documents as well as reports of his prior analysis, conclusions, supporting textbook references and personal observations obtained in his public capacity that would enable him to intelligently testify concerning his knowledge of safety regulations, recommendations, violations, and other items within the areas of his expertise as to Pioneer. It was anticipated that Mr. Sieren's testimony would illustrate and confirm that Pioneer was aware of inadequacies in its plant that could cause injury to the general public prior to the 1991 accident.

Analysis Under NRS 281.481(1)

NRS 281.481(l) provides that a public employee must refrain from seeking or accepting any employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties. The standard is objective, not subjective. Thus, while it may be that Mr. Sieren himself may not have actually been influenced against the faithful and impartial discharge of his duties with NDEP, our inquiry must be whether such a scenario presents a reasonable tendency that such detrimental influence might occur. We find that an employee in Mr. Sieren's position reasonably may be detrimentally influenced by the receipt of private expert witness fees for testimony regarding information gathered by the employee in the discharge of his public duties, and thus, that seeking or accepting such fees would violate NRS 281.481(1).

The public policy manifest in NRS 281.481(1) as applied in this case is that a government employee performing critical investigative functions should be responsible solely to his agency and its mission when making an investigation. The facts of the matter before us raise the concern that if a governmental investigator knew that he could be paid privately for testimony regarding the results of his investigation, then he might tend to investigate with partiality and bias that would detrimentally color the discharge of his public duty. To be useful, a governmental investigation must be objective, fair, and trustworthy, and NRS 281.481(1) properly acknowledges that the promise or potential of private gain could damage the credibility of an investigation.

In this matter, Mr. Sieren's investigations of the plant, while with OSHES or NDEP, were actually untainted by bias because Mr. Sieren was not contacted by Mr. Johns until over a year had passed since the completion of the more recent NDEP investigation and over three years had passed since the completion of the OSHES investigation. It is foreseeable, however, that a governmental investigation may identify or predict a problem that in fact later occurs. In this case, Mr. Sieren's foresight was accurate. Because of this foreseeability, the rule under NRS 281.481(1) must be that a governmental investigator cannot testify as a privately paid witness.

In *Tahoe Ins. v. Morrison-Knudson*, 84 F.R.D. 362 (D. Idaho 1979), the district court ruled that while the government-employed experts in that matter could testify as to their firsthand observations as ordinary lay witnesses, they were prohibited from testifying to the opinions they formed while serving on an investigatory panel. For the same reason, the Commission concludes that while Mr. Sieren did not seek Mr. Johns out to secure his status as a government witness and did not knowingly or intend to violate any provision of the ethics laws in preparation for his deposition, he nevertheless violated NRS 281.481(1) by accepting money to review the documents upon which he would rely as a retained expert witness to testify against a company that he regulated.

Analysis Under NRS 281.481(2)

NRS 281.481(2) prohibits a public employee from using his position in government to secure unwarranted privileges or advantages for himself. A public employee should not be able to benefit financially from his position by receiving a fee for the utilization of his knowledge or expertise obtained through his government employment. We conclude that because Mr. Sieren's state employment allowed him access to information upon which he relied in preparing to testify in return for a prohibited source of income in violation of NRS 281.481(1), his conduct likewise constituted an "unwarranted privilege or advantage" in violation of NRS 281.481(2).

Analysis Under NRS 281.481(5)

NRS 281.481(5) provides that if a public employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity. Both prior to and after the 1991 chlorine spill at Pioneer, Mr. Sieren personally inspected the plant during the course of his regulatory duties. Mr. Sieren conducted a tour of the plant within 24 hours of the accident and had spoken to plant employees. As an employee of NDEP, his functions included observing, reporting, and forming an opinion as to "whether the plant was in good enough condition to resume chlorine operations." As a result, Mr. Sieren had gained unique knowledge and inside information in his official capacity that was not available to anybody else.

Though NDEP documents are generally public records,^[3] members of the public were not and would not be provided access to the plant facilities which would enable them to make personal observations nor would they be allowed conduct employee interviews. Mr. Sieren's access to the plant and its employees was unique because of his state employment. We conclude that the pecuniary benefit which ultimately inured to Mr. Sieren, as well as the tactical advantage which may have been provided to Mr. Johns as a result, was prohibited by NRS 281.481(5).

Special Issues and Concerns Raised by this Opinion Request

This matter has raised two issues deserving of additional comment and analysis. First, it appears to the Commission that the state administrative procedures should provide guidance for employees such as Mr. Sieren in this matter. NAC 284.582 allows a civil servant leave with pay if the employee is subpoenaed to appear as a witness in court or at an administrative hearing. See Footnote 1 *supra*. Unfortunately, NAC 284.582 does not provide for the manner of payment for time spent by the employee in preparation for his or her appearance.

Mr. Sieren was on civil leave pursuant to NAC 284.582 at the time of his deposition on November 1, 1994. Following Magistrate Johnston's protective order prohibiting Mr. Sieren from testifying with regard to any OSHES documents, observations or experience received as an OSHES inspector concerning Pioneer, Mr. Sieren requested additional time to review other information and observations from which his testimony was not barred under the order. NAC 284.582, as it is presently written, presented Mr. Sieren with the following options: (1) appear unprepared; (2) review the relevant documents upon which his testimony may be based using his personal time at no charge; (3) review such documents on state time; or (4) review such documents for a reasonable fee paid by the party seeking his testimony. In this case, the Commission determined that the latter choice, as made by Mr. Sieren, violated the Code of Ethical Standards notwithstanding his good intentions.

Because the effect of this Opinion is to disallow a state employee's receipt of private payment for his or her preparation time, a state employee who will serve as a witness will have only the first three choices above. The public interest, however, may best be served by enabling a state employee to prepare and testify at state expense as a neutral witness in the interest of finding the truth and a fair resolution of litigation among private parties. The Commission suggests that NAC 284.582 be amended to allow state employees to either be allowed civil leave for the time necessary to prepare for his or her service as a witness or to be paid by the state for their time necessary to prepare for their service as witnesses. Such an amendment should obviate the dilemma faced by Mr. Sieren in this matter.

The second concern raised by this matter is the treatment accorded Mr. Sieren by NDEP's deputy attorney general. While it may be that Mr. Sieren's request for guidance appeared that he was asking for personal legal advice, we believe that the deputy attorney general should have advised Mr. Sieren or referred him to this Commission for

guidance. Our concern is that although Mr. Sieren sought his counsel, he did not receive the counsel deserved so that he may well have avoided most of what now appears negative about him in this Opinion.

CONCLUSION

The Commission concludes that Mr. Sieren violated NRS 281.481(1), (2), and (5) in requesting and accepting compensation as an expert witness for his review of governmental documents which would support the basis of his testimony in a third-party civil lawsuit. Mr. Sieren's violation was not willful under NRS 281.551(5) because he sought advice of counsel and was not advised, through no fault of his own, that he could seek the Commission's advice. Because this Opinion addresses and resolves an important issue of public policy for the first time, this Opinion will be made public pursuant to NRS 281.511(4)(f) as it was in effect at the time that Mr. Sieren's request was filed.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The statutory provisions quoted and discussed above must be applied on a case-by-case basis with results which may vary depending on the specific facts and circumstances involved.

DATED: May 6, 1996.

NEVADA COMMISSION ON ETHICS

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

[1] Nevada's civil leave policy provides that any state employee who is granted civil leave must be paid his regular state salary while on civil leave and he may retain any fee paid to him for his service as a witness. The policy is set forth in NAC 284.582 in pertinent part as follows:

1. Except as otherwise provided in subsection 2, civil leave with pay must be granted to any employee who is required, during his normal hours of work, to serve:

(b) As a witness in a court or at an administrative hearing unless he is a party to the action which is not related to his job. The period of the leave must not be deducted from the balance of his annual leave. An employee who is granted the leave must be paid his regular salary while on the leave, and he may retain any fee paid to him for his service as a juror or witness.

2. If an employee, in his official capacity as a state employee and as part of his required duties, serves as a witness during his regular working hours, he shall accept any witness fee offered to him and relinquish it to the agency by which he is employed.

[2] NRS 281.481(t), (2), and (5) provide as follows:

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

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.

* * *

5. If a public officer or employee acquires, through his public duties or relationships, any information with by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

[3] NRS 618.341(3) provides as follows:

3. The division shall keep confidential:

(a) The name of any employee who filed any complaint against an employer or who made any statement to the division concerning an employer; and

(b) Any information which is part of a current investigation by the division, but the fact that an investigation is being conducted is public information.

For the purposes of this subsection, "current investigation" means any investigation conducted before the issuance of a citation or notice of violation or, if no citation or notice of violation is issued, an investigation which is not closed.

