

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion concerning the conduct of  
DIANNE STEEL, former member, Nevada Assembly**

This Opinion is in response to a request filed by Ellen Nelson, Executive Director of Common Cause, concerning the conduct of former Nevada Assemblywoman Dianne Steel. Ms. Nelson claimed that Ms. Steel's resignation from as an assemblywoman to serve as Chief of Staff in the Office of the Lieutenant Governor of Nevada violated Ms. Steel's public oath of office and article 4, section 8, of the Nevada Constitution.

A hearing on the opinion request was held on August 1, 1996, in Las Vegas, Nevada at which Ms. Nelson and Ms. Steel appeared, testified, and provided evidence. Because Ms. Steel waived her statutory right to confidentiality of the proceedings pursuant to NRS 281.411(4), the hearing was open to the public. Immediately after the hearing, the Commission deliberated and closed the administrative record of the matter. Based upon the foregoing, the Commission makes these Findings and renders the Opinion that follows.

**FINDINGS OF FACT**

1. On November 8, 1994, Ms. Steel was elected to the Nevada State Assembly representing District No. 16 in Clark County. During the 1995 session of the Legislature, Ms. Steel served as co-chairperson of the Assembly Committee on Economic Development and Tourism and as a member of the Assembly Committee on Health and Human Services.
2. Prior to the 1995 session, the support staff of the Office of Lieutenant Governor consisted of two assistants compensated at an annual salary of \$35,000 each, and two administrative secretaries compensated at an annual salary of \$24,898 each.
3. During preparation of the 1996 budget for the Lieutenant Governor's Office, Dr. Hammargren requested the state legislature to change the title of one of the designated Assistant positions within his office to Chief of Staff.
4. In the 1995 session, A.B. 734 was enacted into law to make appropriations to specified governmental offices from the state's general fund for the fiscal years 1995-1996 and 1996-1997. Support of the Office of the Lieutenant Governor was budgeted at \$263,120 and \$269,375, respectively. In addition, A.B. 736 established the maximum salaries for officers and employees in the unclassified service of the state. Included among the titles or positions and the corresponding salaries thereof was the position of Chief of Staff to the Lieutenant Governor at an annual salary of \$39,200. Ms. Steel did not vote on A.B. 734 and voted against A.B. 736.
5. Following adjournment of the 1995 legislative session, Lieutenant Governor Hammargren began a search for a chief of staff. Because the position was in the unclassified service of the state, no public job posting was made, but the position opening was not a secret. Ms. Steel, who was aware that Lieutenant Governor Hammargren had also spoken to other potential candidates, first learned of the position opening in August 1995 through a mutual friend of her and the Lieutenant Governor.
6. In September 1995, Lieutenant Governor Hammargren offered Ms. Steel the position.
7. On November 1, 1995, Ms. Steel requested the Legislative Counsel Bureau (LCB) to determine whether she was

legally prohibited from accepting Lieutenant Hammargren's offer because she was an assemblywoman who voted upon the bill that created the position. On November 17, 1995, Deputy Legislative Counsel Eileen O'Grady concluded that because the position of Chief of Staff in the Lieutenant Governor's Office was not a "civil office of profit" under article 4, section 8 of the Nevada Constitution, the provision did not apply to her circumstances. Ms. O'Grady advised, however, that because the Office of Lieutenant Governor is part of the executive branch of state government, Ms. Steel might wish to obtain an opinion from the Attorney General regarding the matter.

8. In December 1995, Lieutenant Governor Hammargren requested an opinion from the Attorney General regarding Ms. Steel's situation. In response, Nevada Attorney General Frankie Sue Del Papa issued a formal opinion dated January 2, 1996, in which she concluded that Ms. Steel could accept the position for two reasons: (a) because Ms. Steel would no longer be a member of the legislature prior to acceptance of the position in the executive branch, she would not fall within the prohibition of article 3, section 1 of the Nevada Constitution which precludes a person charged with the exercise of duties in one branch of government from exercising any functions of the other; and (b) because the position of chief of staff of the office of lieutenant governor is not a "civil office of profit" within the meaning of article 4, section 8 of the Nevada Constitution which restricts members of the legislature from being appointed to a "civil office of profit under this state", but rather constitutes an **employment**.

9. On February 20, 1996, Ms. Steel resigned as an assemblywoman to assume the duties of the Lieutenant Governor's Chief of Staff. In such capacity, Ms. Steel has no authority to act independently outside of the duties designated by the Lieutenant Governor. Her responsibilities include streamlining office procedures, preparing speeches, and drafting correspondence on the Lieutenant Governor's behalf.

### ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.465 and NRS 281.511(2). Based upon the Findings of Fact, the Commission concludes that during her tenure as an assemblywoman, Ms. Steel was a public officer as defined by NRS 281.4365(1). Further, because the Commission likewise retains jurisdiction over **former** public employees (See NRS 281.551(1), the fact that Ms. Steel resigned her elected office **prior** to accepting the Chief of Staff position, whether that position be characterized as an "office" or "employment" does not preclude the Commission from rendering an opinion interpreting the statutory ethical standards of conduct of NRS 281.481 and applying these standards to the facts and circumstances of this matter.

Both the Attorney General and the Legislative Counsel determined that because the position of chief of staff in the lieutenant governor's office constituted an employment rather than an office, Ms. Steel would not run afoul of article 4, section 8 of the Nevada Constitution should she immediately accept employment in the lieutenant governor's office upon resignation from her office as assemblywoman.<sup>[1]</sup> Those opinions are not dispositive of our inquiry because the Commission is legally authorized to determine the propriety of Ms. Steel's conduct under the Nevada Ethics in Government law.

The issue presented in this matter is whether Ms. Steel's resignation of her public office as assemblywoman to commence service as Chief of Staff for the Lieutenant Governor violated NRS 281.481(1), (2), (5) or (10).<sup>[2]</sup> We find for the reasons that follow that Ms. Steel's acceptance of the position in Dr. Hammargren's office did not constitute conduct prohibited by the Code of Ethical Standards.

The facts show that Ms. Steel acted reasonably and ethically. For example, Dr. Hammargren sought out Ms. Steel in late September 1995: Ms. Steel did not seek the position herself, either directly or indirectly. Ms. Steel did not write or propose any legislation concerning the position. Ms. Steel did not act upon any legislation proposed by or directly affecting Lieutenant Governor Hammargren in restructuring the duties, titles, or compensation of his staff members. Before accepting the job offer, Ms. Steel requested and received opinions from both the LCB and the Attorney General.

Under these circumstances, Ms. Steel's acceptance of Dr. Hammargren's employment offer was not resultant from misuse of her office to obtain an "unwarranted privilege, preference, exemption or advantage" pursuant to NRS 281.481(2) nor did it constitute an "emolument or economic opportunity which would tend improperly to influence a reasonable person " in Ms. Steel's position "to depart from the faithful and impartial discharge of her public duties" within the meaning of NRS 281.481(1). There is no evidence that Ms. Steel discharged any public duties on Lieutenant Governor Hammargren's behalf or that she used any influence she may have had as an assemblywoman to obtain her eventual public employment as Chief of Staff; rather, Dr. Hammargren relied upon Ms. Steel's general reputation and skills as an attorney to support his employment offer.

Further, there is no evidence that Ms. Steel possessed any special information otherwise unavailable publicly which enabled her to achieve an advantage beyond that which may have been available to any other person with regard to the opportunity to secure employment as Chief of Staff in the Lieutenant Governor's office. Consequently, Ms. Steel's conduct does not violate NRS 281.481(5). Finally, because Ms. Steel did not use her official position as an assemblywoman to seek out Mr. Hammargren's employment, but, instead, because she was approached by Dr. Hammargren, there is no basis to conclude that Ms. Steel committed a violation of NRS 281.481(10).

### **CONCLUSION**

The Commission concludes that Ms. Steel did not violate NRS 281.481(1), (2), (5), or (10) by choosing to resign as an assemblywoman to accept employment as the Lieutenant Governor's Chief of Staff. The Commission acknowledges that public officers and employees should not be prohibited from listing their public employment and experience upon their resumes to demonstrate that they possess the skills and abilities required for desired positions. As long as Nevada law is not otherwise contravened, the continued integrity of state government is not threatened, and the requirements of the Nevada Ethics in Government law are followed, it is not contrary to the public interest that public officers or employees pursue alternative careers, especially where such public officer or employee contemplates continued service in a public capacity.

### **COMMENT**

It is specifically noted that the foregoing Opinion applies 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: September 15, 1996.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

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[1] The provision states as follows:

No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

[2] NRS 281.481 provides in pertinent part:

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

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5. If a public officer or 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.

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10. A public officer or employee shall not seek other employment or contracts through the use of his official position.