

**Opinion No. 96-50**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**  
**In The Matter of the Request for Opinion Regarding SHIRLEY G. WALKER**

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Edith Isidoro-Mills concerning the conduct of Shirley G. Walker, Executive Director of the Churchill Economic Development Authority. A hearing was held on February 28, 1997 at which Ms. Isidoro-Mills, Ms. Walker, and Ms Rachel Parsons testified and presented evidence. Ms. Walker was also represented by Patty Cafferata. Immediately thereafter, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings and Fact and issues the Opinion which follows.

**FINDINGS OF FACT**

1. At all times pertinent to this request, Shirley G. Walker was the Executive Director of the Churchill Economic Development Authority (Authority).
2. The Authority is a local economic development authority formed pursuant to NRS ch. 277. The Authority is a not-for-profit corporation governed by a board made up of representatives of local businesses and local governmental agencies. The intent of the Authority is to promote the economic development of Churchill County. As part of its duties, the Authority distributes funds granted to it by the State of Nevada and the federal government.
3. The Authority's office is located at 448 W. Williams in Fallon, Nevada. The office is a small suite located within a complex of professional office suites. The building is owned by Norwest Bank and is leased by Donald H. Sefton, from whom the Authority rents its suite. Mr. Sefton himself operates his business, Systems Consultants, from the same building.
4. Ms. Walker is active in the Churchill County Republican Party (Party). Ms. Parsons is the Chairwoman of the Party. When Ms. Parsons ran two items in the Lahontan Valley News and Fallon Eagle Standard (to announce a January 23, 1996 and March 23, 1996 meetings of the Party's central committee), Ms. Parsons provided as contacts her name and the Party's telephone number and Ms. Walker's name and the Authority's telephone number. Ms. Parsons testified that it was the Party's policy not to publish the work telephone numbers for its contact people and that the inclusion of Ms. Walker's work telephone number in the two advertisements was an error that has not and will not happen again. Ms. Walker was unaware that the Authority's telephone number had been included in the advertisements until after the advertisements ran.
5. During the 1996 political season, Ms. Walker ran for county commissioner. During the campaign, Mr. Sefton asked Ms. Walker for one of her campaign signs so that he could place the sign on the street front of the building in which his business and the Authority were located. Mr. Sefton placed the sign in a publicly visible portion of the street front of the building throughout the campaign.

**ANALYSIS AND OPINION**

As a threshold issue, the Commission must determine whether it has jurisdiction over this matter. The Commission's jurisdiction is limited to matters involving "public officers" or "public employees." NRS 281.465. NRS 281.4365 defines "public officer" as:

1. "Public officer" means a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" includes:
  - (a) Actions taken in an official capacity which involved a substantial and material exercise of administrative discretion in the formulation of public policy;
  - (b) The expenditure of public money; and
  - (c) The enforcement of laws and rules of the state, a county or a city.

NRS 281.436 defines "public employee" as "any person who performs public duties under the direction and control of a public officer for compensation paid by the state, a county or an incorporated city."

When the Commission first voted to take jurisdiction over this matter, it believed that the Authority was a public body, and thus, that Ms. Walker would be a public officer or employee. The evidence presented at the hearing compels us to reach the opposite conclusion. While the creation of the Authority is authorized by statute, the Authority itself is not a public agency. The Authority is a private, not-for-profit corporation that is intended to constitute a public-private partnership to further the aim of improving the economic development of Churchill County. That the Authority is authorized by statute, distributes grants given it, and has a purpose that appears, at least in part, to have a public benefit cannot transform the private Authority into a public agency.

Because the Authority is not a public agency, then Ms. Walker cannot be found to be either a public officer or a public employee. Both definitions hinge on nature of the employment of the person, and since Ms. Walker is not employed by a public agency, she cannot exercise any "public power, trust or duty." NRS 281.4365. Thus, the Commission has no authority over the conduct of Ms. Walker.

Even if the Commission had authority and jurisdiction over Ms. Walker and the Authority, we conclude that Ms. Walker did not violate any provision of the Nevada Ethics in Government Law. The use of Ms. Walker's name and the Authority's telephone number as a contact for the Party's activities would only constitute a violation of NRS 281.481(2) or (7) if Ms. Walker herself had played a part in the creation of the advertisements. The testimony of Ms. Walker and Ms. Parsons showed that Ms. Walker was unaware that her name and the Authority's telephone number were being used for the Party's purposes until after the advertisements ran -and that the policies and procedures of the Party have been changed so that no similar mistake will occur in the future.

Regarding Ms. Walker's campaign signs, the evidence showed that Mr. Sefton requested the sign from Ms. Walker and that he placed the sign upon that portion of the building in which his personal business is located. Absent some unusual clause in Mr. Sefton's lease with Norwest Bank (and the Commission had no such evidence), we conclude that generally a lessee such as Mr. Sefton may display political advertising on his premises. Under the circumstances of this matter, we find nothing improper with Mr. Sefton's display of Ms. Walker's sign, even if Ms. Walker had been a public officer or employee.

### **CONCLUSION**

Based upon the record, the Commission concludes that Ms. Walker is neither a public officer nor a public employee, and thus, the Commission has no jurisdiction or authority over Ms. Walker's conduct. Moreover, even if the Commission had jurisdiction over this matter, Ms. Walker's conduct would not have violated any provision of the Nevada Ethics in Government Law.

### **COMMENT**

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of the Nevada Revised Statutes 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: April 14, 1997.

NEVADA COMMISSION ON ETHICS

By: MARY E. BOETSCH, Chairwoman