

Opinion No. 96-60

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of DINA TITUS, Nevada State Senator

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Reyna Gobel concerning the conduct of Senator Dina Titus. A hearing was held on January 24, 1997 at which Ms. Gobel and Ms. Titus testified and presented evidence. Ms. Titus was also represented by Paul E. Larson. Immediately thereafter, the Commission publicly deliberated the matter but was unable to reach a decision. Because two members of the Commission were absent for the taking of the evidence, they were provided with tapes of the hearing to review for subsequent deliberations. On February 28, 1997, the Commission again deliberated the matter, this time with all members participating, and the Commission was able to reach a ruling. The Commission now issues the Findings and Fact and issues the Opinion which follows.

FINDINGS OF FACT

1. Ms. Titus is a professor of political science at the University of Nevada, Las Vegas (UNLV) and is also a state senator. In her capacity as a Democratic state senator, Ms. Titus is the minority floor leader.
2. On June 18, 1996, Ms. Titus wrote a letter on Nevada Senate stationery addressed to "College Democrats of America." Ms. Titus testified that she specifically chose the Senate stationery over her UNLV stationery because she intended the letter to be a partisan correspondence and she felt that the Senate stationery would have more impact with the recipient. In this letter, Ms. Titus relates how, in her capacity as a professor, she had been asked to serve as faculty adviser to two competing UNLV student Democrat clubs. Ms. Titus stated that at first she declined to be adviser to either group, but that eventually she decided that one of the two clubs better represented the students of UNLV. Ms. Titus recommended the club that she advised to be the representative to the national College Democrats of America conference.
3. Ms. Gobel was the leader of the UNLV student Democrat club that was not selected or advised by Ms. Titus. Ms. Gobel felt that Ms. Titus' letter was libelous and unfair.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter because Ms. Titus is a public officer as defined in NRS 281.4365 in her capacity as a state senator and is a public employee as defined in NRS 281.436 in her capacity as a UNLV professor. The sole question in this matter is whether Ms. Titus violated NRS 281.481(2) or (8)^[1] by using state senate stationery to write the June 18, 1996 letter.

The analysis under NRS 281.481(2) is whether in choosing to - use Senate stationery for the June 18, 1996 letter, Ms. Titus granted an unwarranted advantage to one UNLV student Democratic club over the other. We find that Ms. Titus did not violate NRS 281.481(2) by using Senate stationery for the letter. We can certainly understand why Ms. Gobel was concerned with the letter, both for its content and for the stationery it was written upon. The letter is a clear statement by Ms. Titus of recommendation for one club and disrecommendation for Ms. Gobel's club. Even though Ms. Titus's knowledge of the facts in the letter came through her activities as a professor and not through her activities as a senator, Ms. Titus acknowledged that she intentionally chose the Senate stationery because she felt she was writing a partisan correspondence and that she wanted to make the best impression on her audience.

Ms. Titus could have written the same letter on her UNLV stationery. Had she used her UNLV stationery, though, she still could have mentioned that she is a Democratic state senator and is minority floor leader because these are true statements. That Ms. Titus holds two public positions simultaneously is lawful and unremarkable in a state with a citizen legislature, and she must always be allowed to publicly acknowledge her twin accomplishments.

Thus, Ms. Titus' choice of stationery is not controlling. Had Ms. Titus chosen UNLV stationery for this letter rather than Senate stationery, this controversy would likely not have existed at all. Public officials and professors are often asked to provide letters of recommendation by their constituents, and the propriety of providing such letters is not at issue in this case. Thus, we find that Ms. Titus did intend to grant an advantage to one club over the other, but we cannot find that that advantage was "unwarranted" under the circumstances of this matter. Therefore, Ms. Titus did not violate NRS 281.481(2).

The analysis under NRS 281.481(8) focuses solely on whether Ms. Titus use of Senate stationery for the June 18, 1996 letter created "the appearance of impropriety" under NRS 281.481(8)(a)(1)(iii) because we are convinced that the first two elements of NRS 281.481(a)(1) are satisfied under the circumstances of this matter. An observer might feel that it would have been more appropriate for Ms. Titus to have used her University stationery for the letter, especially since the information in the letter clearly implicates to a greater degree her capacity as a professor, but that is much different from concluding that she was legally *prohibited* from using her Senate stationery. Under the circumstances of this matter, Ms. Titus did not violate NRS 281.481(8).

CONCLUSION

Based upon the record, the Commission concludes that Ms. Titus did not violate NRS 281.481(2) or (7) when she used Senate stationery for the June 18, 1996 letter.

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: /s/ MARY E. BOETSCH, Chairwoman

[1] NRS 281.481(2) provides:

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.

NRS 281.481(8) provides:

A member of the legislature shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(i) The use does not interfere with the performance of his public duties;

(ii) The cost or value related to the use is nominal; and

(iii) The use does not create the appearance of impropriety.