

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUESTS FOR ADVISORY OPINION OF

**DENNIS DANIELS, SAM DIBLASI, and DAVE TROUP, Public Employees**

This matter came before the Nevada Commission on Ethics ("Commission") on Thursday, July 15, 2000, for hearing on the first-party requests for advisory opinion filed with the Commission on June 21, 2000, by the above-named public employees concerning whether their participation as compensated instructors in the state-accredited Apprenticeship Training Program sponsored by the Plumbing and Mechanical Contractors of Nevada, Inc. (PMCN), a non-profit professional trade organization, violates NRS 281.481, Subsections 1, 2 and 4, or any other provision of the Ethics in Government Law. With the consent of the parties and their counsel, the three advisory opinion requests were consolidated for purposes of the hearing and the advisory opinion issued by the Commission.

Notice of the hearing was properly served. The hearing was closed pursuant to NRS 281.511, Subsection 5. However, the parties waived confidentiality herein following the hearing in this matter.

Salvatore C. Gugino, Esq., counsel for Mr. Daniels, Mr. Troup and Mr. DiBlasi, was present together with Mr. Troup and Mr. DiBlasi, who both appeared in person. Mr. Daniels was out of the state and unable to appear in person. Also present, at the request of the parties and their counsel and without waiving the right of confidentiality of this matter, were the President, Vice President, and Executive Director of Plumbing and Mechanical Contractors of Nevada (PMCN). In addition to representing the three parties, Mr. Gugino is also counsel to PMCN. Mr. Gugino represented to the Commission that Mr. Daniels, Mr. Troup and Mr. DiBlasi all waive any conflicts of interest implicated by the multiple representation and consent to Mr. Gugino representing them in this matter. Mr. Troup and Mr. DiBlasi both gave testimony under oath.

The Commission, after full consideration of the requests for advisory opinion, all information in the record, and all of the facts and circumstances presented in testimony makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Mr. Daniels, Mr. Troup and Mr. DiBlasi are employed by the Clark County Building Department as building inspectors.
2. The Plumbing and Mechanical Contractors of Nevada, Inc. (PMCN) was formed in 1986 as a non-profit, statewide professional trade organization. Since 1990, PMCN has been chartered by the National Association of Plumbing-Heating-Cooling Contractors (NAPHCC), one of the nation's oldest and largest trade organizations.
3. Over the past twelve years, PMCN has developed a plumbing apprenticeship program and in July 1990 received approval from the U. S. Department of Labor Bureau of Apprenticeship and Training (BAT) for its four-year Joint Apprenticeship Training Program (hereinafter "the Program"). The Program is based upon NAPHCC's four-year Plumbing Apprenticeship Program, which meets BAT requirements and which has also been approved by the Nevada State Apprenticeship Council pursuant to NRS Chapter 610, and by the State of Nevada Departments of Education and Labor. Since its inception, the Program has also received the approval of the Southern Nevada Chapter of the International Association of Plumbing and Mechanical Officials.
4. Throughout its history, the Program has been supported by both city and county governments in many jurisdictions.

5. Inspectors from Clark County, as well as inspectors from the City of Las Vegas and others qualified in the industry, have participated as instructors in the Program since its inception in 1986. Both the City of Las Vegas and Clark County have routinely granted approvals for their inspectors to teach in the Program and various other apprenticeship programs.
6. The Program does not now involve, nor has it ever involved, any use of county time, materials or resources by the instructors or the Program. The Clark County inspectors do not solicit funds for the Program from anyone regulated by the Clark County Building Department, nor is the Program funded directly by contractors. The Program has received funding from state and federal programs and PMCN. The Clark County inspectors participate as instructors in the Program on their own time in the evening between approximately 5:30 p.m. and 8:30 p.m. All class field trips and other such activities are scheduled on weekends.
7. Mr. Daniels, Mr. Troup and Mr. DiBlasi have always complied with Clark County's policy requiring County approval of outside employment; and, for the past several years, Clark County has approved the participation of its inspectors as instructors in the Program.
8. The Program's students are recruited through newspaper advertisements, and all applicants are subjected to a screening process and must find work with a NAPHCC contractor. The Clark County inspector/instructors participate in the oral interview portion of the applicant screening process. The oral interviews consist of general questions structured to determine an applicant's physical fitness for work in the industry (e.g., can the applicant climb a ladder). Each applicant is asked the same set of questions.
9. Students admitted to the Program have no prior training in the industry, and they are not owners or operators of any of the businesses which the Clark County Building Department regulates. They are trained to become Journeyman Plumbers. Students who complete the Program may apply and take the State Journeyman's examination and, if they pass the examination, they are licensed in Nevada as Journeyman Plumbers and are qualified to work in the plumbing industry.
10. In their capacity as Clark County Building Inspectors, Mr. Daniels, Mr. Troup and Mr. DiBlasi do not conduct official business in the field with apprentices and, therefore, do not interact with their students in an official capacity in the field.
11. Mr. Daniels, Mr. Troup and Mr. DiBlasi are qualified to teach in the Program because of their training, skill and experience as plumbers (all of which they acquired outside of their employment as Clark County Building Inspectors) and their ability to teach apprentices to become qualified plumbers.
12. Mr. Daniels, Mr. Troup and Mr. DiBlasi are compensated by the Program the same as all other instructors. Compensation for the instructors is similar to and competitive with other apprenticeship training programs in the industry. Mr. Daniels, Mr. Troup and Mr. DiBlasi receive no special consideration from the Program because they also happen to be Clark County Building Inspectors. None of the functions they perform in the training program are related to their job functions with Clark County.
13. On or about August 16, 1999, based upon concern of a possible perception of a conflict of interest under NRS 281.481, Subsection 1, 2 and 4, the Clark County Building Department rescinded the approval of Mr. Daniels, Mr. Troup and Mr. DiBlasi to serve as instructors in the Program pending an opinion from the Nevada Commission on Ethics.

### **CONCLUSIONS OF LAW**

1. Mr. Daniels, Mr. Troup and Mr. DiBlasi are public employees as defined by NRS 281.436.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511, Subsection 1.

**WHEREFORE**, on motion duly made, seconded, and approved by unanimous vote, the Commission renders the following Opinion:

### OPINION

NRS 281.481, Subsections 1, 2 and 4, 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.
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.

Nothing in the facts presented in this request for advisory opinion suggests that Mr. Daniels, Mr. Troup and Mr. DiBlasi, by participating as instructors in the Program, are engaged in any activity that would tend improperly to influence them, or a reasonable person in their positions, to depart from the faithful and impartial discharge of their public duties. Further, nothing in the facts presented in this request for advisory opinion suggests that Mr. Daniels, Mr. Troup and Mr. DiBlasi have used their positions as inspectors for Clark County to secure unwarranted privileges, preferences, exemptions or advantages for themselves, any member of their respective households, any business entity in which they have a significant pecuniary interest, or any other person. Finally, nothing in the facts presented in this request for advisory opinion suggests that Mr. Daniels, Mr. Troup and Mr. DiBlasi have, as instructors in the Program, received any compensation from any private source for the performance of their duties as public employees. Rather, the facts herein establish quite clearly (a) the separate nature of their private activities as instructors in the Program and their public responsibilities as inspectors for the Clark County Building Department, and (b) the great public benefit realized by their participation as instructors in the Program.

NRS 281.553, which prohibits public officers and public employees from accepting or receiving an honorarium, provides some guidance on the issue in this opinion request. The statute makes it clear that the honorarium prohibition does not include a "fee for a speech related to the public officer's or employee's profession or occupation outside of his public office or employment if.- (1) Other members of the profession or occupation are ordinarily compensated for such a speech; and (2) The fee paid to the public officer or public employee is approximately the same as the fee that would be paid to a member of the private sector whose qualifications are similar to those of the officer or employee for a comparable speech." Although the compensation Mr. Daniels, Mr. Troup and Mr. DiBlasi receive for teaching in the Program is not exactly a "fee for a speech" as contemplated in NRS 281.553, one can reasonably draw an analogy between the two.

In deliberating this request for advisory opinion, the Commission considered whether the broad proscriptive language of NRS 281.230 should apply to the circumstances herein. NRS 281.230 prohibits public officers and public employees from receiving any commission, personal profit or compensation of any kind and in any manner, directly or indirectly, resulting from any contract or other transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way interested or affected. However, after considering the prohibitions of NRS 281.230 in light of all of the facts and circumstances of this matter, the Commission finds that by enacting NRS 281.230, the Legislature did not intend to prohibit activity by public officers

and public employees that provides a public benefit such as that described in this request for advisory opinion and that does not otherwise offend more specific relevant statutes.

Therefore, it is the opinion of this Commission that Mr. Daniels, Mr. Troup and Mr. DiBlasi violate no provision of NRS 281.481, Subsections 1, 2 and 4, or any other Nevada Ethics in Government statute by participating as compensated instructors in the state-accredited Apprenticeship Training Program sponsored by the Plumbing and Mechanical Contractors of Nevada, Inc. (PMCN), a non-profit professional trade organization.

**NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.**

DATED: August 28, 2000

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman