

**Advisory Opinion No. 01-10**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**  
**IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF**  
**LYNN HETTRICK, Assembly Minority Leader, Nevada State Legislature**

This matter came before a quorum<sup>[1]</sup> of the Nevada Commission on Ethics (hereinafter the "Commission") on April 19, 2001, on the request for advisory opinion filed by Lynn Hettrick, Nevada State Assembly Minority Leader, pursuant to NRS 281.511, Subsection 1. The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511, Subsection 5. Assemblyman Hettrick appeared by telephone, was sworn and presented testimony. Following the hearing, Assemblyman Hettrick waived confidentiality in this matter pursuant to NRS 281.511, Subsection 5(c).

Assemblyman Hettrick seeks an advisory opinion from the Commission regarding whether a letter he proposes writing and signing as Assembly Minority Leader will violate any provision of NRS Chapter 281, Nevada's Ethics in Government Law. The letter seeks contributions to fund the expense which the Republican Party will incur to engage the services of legal and political consultants necessary in the effort to create a fair and equitable reapportionment and redistricting plan for Nevada. The letter will be distributed by the Nevada Republican Party to registered Nevada Republicans and reads as follows:

Dear

I am pleased to support the Nevada Republican Party's commitment to fund the cost of the legal and political consultants required to do reapportionment and redistricting. By working together, we can do a fair and accurate job that will withstand court challenges.

The reapportionment/redistricting standards are very high and even the most carefully crafted plans are subject to court challenges. By employing the services of experienced consultants and having our plans reviewed by legal counsel we can create the fairness and equity Nevada's citizens deserve. But the cost of consultants and attorneys can easily reach several hundred thousand dollars - we need your help.

Would you join in our partnership with the Nevada Republican Party and contribute to the cost of creating fair and equitable reapportionment and redistricting plan for Nevada?

We appreciate your help.

Lynn Hettrick  
Assembly Minority Leader

The Commission, after full consideration of the request for opinion, the testimony, and the evidence makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Assemblyman Hettrick is an elected member of the Nevada State Assembly and serves as Assembly Minority Leader. He resides in Gardnerville, Nevada, and represents District 39 (Douglas County and Carson City). He was first elected to the Nevada Assembly in 1992.
2. Senator William Raggio is an elected member of the Nevada State Senate and serves as Senate Majority Leader. He resides in Reno, Nevada, and represents Washoe County District 3. He was first elected to the Nevada Senate in 1972.
3. The State Legislature is currently addressing redistricting and reapportionment issues in Nevada.

4. The National Republican Party has advised local Republican parties that regardless of how constituted, about 70 percent of all redistricting and reapportionment plans will be challenged in court.
5. It is the goal of the Nevada Republican Party to design a redistricting and reapportionment plan for Nevada that is defensible in court and will withstand a legal challenge.
6. The Nevada Republican Party requested Senator Raggio and Assemblyman Hettrick to write a letter supporting the effort of the Nevada Republican Party to raise money to retain the services of legal and political consultants to assist in developing a fair and impartial redistricting and reapportionment plan.
7. The letter would be printed on Assemblyman Hettrick's letterhead and be included in a package that would be sent to donors who typically contribute to the Nevada State Republican Party.
8. Legislators are prohibited from engaging in personal campaign fund-raising activities during the legislative session.
9. No money raised as a result of the proposed letter will benefit either Senator Raggio or Assemblyman Hettrick personally, the Nevada Republican caucus, or the Republican Senate conference. All money raised as a result of the proposed letter will go directly to the Nevada Republican Party and will be used by them to retain the services of (a) a Washington, D.C., law firm recognized nationally and which has provided legal services for the Republican Party in connection with redistricting for the past twenty years, and (b) a Virginia political consultant who has provided consulting services to the Republican Party on the redistricting issues throughout the country. All excess funds, if any, will be retained by the Nevada Republican Party for its use.
10. Assemblyman Hettrick testified that any redistricting and reapportionment plan passed by the Legislature will likely have little consequence in either Assemblyman Hettrick's district or Senator Raggio's district and that any prevailing redistricting plan is unlikely to benefit either major political party to the detriment of the other, given the political balance in the Nevada Legislature. Therefore, Assemblyman Hettrick does not believe that the endeavor which he proposes will advance any personal or private interest in violation of any provisions of NRS 281.
11. The Nevada Senate is controlled by Republicans, and the Nevada Assembly is controlled by Democrats.

### **CONCLUSIONS OF LAW**

1. Assemblyman Hettrick is a public officer as defined by NRS 281.005 and NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

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

### **OPINION**

It appears to the Commission that, as an elected legislator, Assemblyman Hettrick has a public duty to participate in furthering a redistricting and reapportionment process that is fair and impartial. Undertaking an endeavor such as sending a letter to raise money to engage the services of legal and political consultants to ensure a process which is fair and in compliance with law would be consistent with that public duty.

Further, all individuals enjoy a constitutional right to speak out on political concerns. However, Nevada's Ethics in Government Law prohibits an elected public official from "speaking out" on political concerns or otherwise engaging in activity in such a manner that would create an appearance of impropriety or the impression that the government sanctions the activity.<sup>[2]</sup> Public officers must, therefore, temper their constitutional right with a common-sense realization that the reason their endorsement is sought is because of their public position and the respect and deference accorded to that position.

Stated simply for purposes of this matter, as a State Assemblyman, Mr. Hettrick has more power and carries more weight in sending a fund raising letter than would an average citizen sending the same letter. There is risk, therefore, of creating an appearance of impropriety or the impression the State Assembly and/or the State Legislature endorses the content of the letter. For that reason, it would be improper for Assemblyman Hettrick to use his Nevada Assembly letterhead for the proposed letter because the letter is, in essence, a political fund raising letter.

Further, NRS 281.481, Subsection 8, with limited exceptions, prohibits a member of the legislature from using "governmental time, property, equipment or other facility for a non-governmental purpose or for the private benefit of himself or any other person" and from requiring or authorizing "a legislative employee, while on duty, to perform personal services or assist in a private activity." Therefore, it would be improper for Assemblyman Hettrick to perform activities related to the proposed fund raising endeavor using any governmental time, property, equipment or other facility. It would also be improper for Assemblyman Hettrick to require or authorize the assistance of any legislative employee, while on duty, in performing activities related to the proposed fund raising endeavor.

Based upon all of the foregoing, the Commission finds that if Assemblyman Hettrick's conduct conforms with the guidance of this Opinion, and if the proposed letter is modified to meet the following conditions, Assemblyman Hettrick's endeavor will not violate the provisions of NRS Chapter 281 which otherwise would govern the proposed activity:

1. Strike the words "in our partnership" from the third paragraph
2. Print the letter on Nevada Republican Party letterhead
3. The letter may be signed by Assemblyman Hettrick and Senator Raggio in their respective capacities as Assembly Minority Leader and Senate Majority Leader.

**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: June 4, 2001.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman

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[\[1\]](#) Commission members Skip Avansino, Bill Flangas, Richard Hsu, Jim Kosinski, Vice Chairman Todd Russell, and Chairman Peter Bernhard constituted the quorum. Commission members Lizzie Hatcher and Hal Smith were absent.

[\[2\]](#) See, Commission Opinion No. 98-41, In the Matter of the Request for Opinion Concerning the Conduct of Richard Kirkland, Washoe County Sheriff.