

Advisory Opinion No. 01-36

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF

LINDA HOWARD, Member, Board of Regents of the University and Community College System of Nevada

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on October 11, 2001, on the request for advisory opinion filed by Linda Howard, Member, Board of Regents, University of Nevada, pursuant to NRS 281.511, Subsection 1. The matter was properly noticed as a confidential matter pursuant to NRS 281.511, Subsection 5. However, on the record, Ms. Howard waived confidentiality and the Commission considered this matter in open session. Ms. Howard appeared in person, was sworn and presented testimony.

Ms. Howard seeks an opinion from the Commission advising her regarding the propriety of potential employment as a Public Service Intern I with a federally funded non-academic program associated with the University of Nevada, Las Vegas, while she serves as an elected member of the University Board of Regents.

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

FINDINGS OF FA CT

1. Ms. Howard is an elected member of the Board of Regents of the University and Community College System of Nevada. She was elected to that position in November 2000.
2. Ms. Howard is also an undergraduate student at the University of Nevada, Las Vegas (UNLV), working toward a Bachelor Degree in Education and Business. She anticipates completing her undergraduate studies in May 2002.
3. In or about early September 2001, Ms. Howard learned about a part-time Public Service Intern I position available to UNLV students. The position is an academic-year appointment and supports UNLV's off-campus Academic Outreach Program (the "Program") under the direction of the Program's Executive Director, Dr. Bill Sullivan. The intern position reports to the Program's Assistant Director, Dr. Jill Triplett, who reports to the Program's Executive Director, Dr. Bill Sullivan, who reports to UNLV's Vice President of Student Life, who reports to UNLV's President. The Board of Regents has no direct control over the Program and its staff.
4. Ms. Howard learned about the position in her capacity as a student from the Director of the University's Office of Diversity, Ann Casados-Mueller. Ms. Casados-Mueller met Ms. Howard in the 1980s when she was employed by the Nevada Department of Human Resources and Ms. Howard was working for Governor Miller. Ms. Casados-Mueller knows Ms. Howard as a student at UNLV. She is familiar with Ms. Howard's work with minority students and minority issues in the community and, therefore, believed that Ms. Howard was well suited for the public service intern position and encouraged her to apply.
5. In her position at UNLV, Ms. Casados-Mueller reports to the Vice President of Administration, Dr. Juanita Fain, who reports to the President of UNLV. The Board of Regents has no direct control over Ms. Casados-Mueller's position at UNLV.
6. The Public Service Intern I position is federally funded and available to all university undergraduate students. After she graduates from UNLV in May 2002, Ms. Howard will no longer be eligible to work in that position. Total compensation to the student appointed to the Public Service Intern I position for the academic year is \$14,000 and is paid from the Academic Outreach Program's budget.
7. The Public Service Intern I position would provide Ms. Howard the opportunity to work on behalf of minority students at the middle school through high school level.

8. At the time Ms. Howard applied for the Public Service Intern I position, a Public Service Intern II position was also available to graduate level students. The Public Service Intern II position has already been filled. The intern positions at UNLV have existed for many years, and job specifications for both positions, including required qualifications, have been issued by the State of Nevada Department of Personnel since April 1966. Several students, including Ms. Howard, have applied for the Public Service Intern I position. The successful candidate will be selected sometime soon and work for the Program beginning with the next academic semester.

CONCLUSIONS OF LAW

1. Ms. Howard 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 majority vote, the Commission renders the following Opinion:

OPINION

The Commission finds nothing in the facts and circumstances provided to the Commission by Ms. Howard in this matter that would specifically place Ms. Howard in violation of Nevada's Code of Ethics for public officers provided in NRS 281.481 should she be selected as the successful candidate to fill the Program's position of Public Service Intern I. However, the facts and circumstances herein do cause the Commission concern about potential ethical risks inherent under these facts and circumstances. Ms. Howard is cautioned that, as an elected member of the Board of Regents, she is subject to the disclosure and/or abstention provisions of NRS 281.501 with regard to potential conflicts between her private interests in the Program's Public Service Intern I position and her public duties as a member of the Board of Regents. Ms. Howard is also cautioned that her potential dual capacities as an elected member of the Board of Regents (which oversees the university administration and university issues) and an employee of a UNLV Program presents a very real risk of the appearance of impropriety (potentially implicating at least NRS 281.481, Subsection 2) and the potential for abuse of the power she possess as an elected member of the Board of Regents. Ms. Howard is, therefore, reminded that, notwithstanding this first-party opinion of the Commission, the public is not precluded from subsequently bringing facts supporting possible disclosure, abstention, impropriety, and/or abuse of position allegations before this Commission in the form of an ethics complaint (should such issues arise), and she is cautioned to maintain appropriate separation between her potentially conflicting roles with regard to the university in accordance with the public policy declared in NRS 281.421.

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: February 1, 2002.

NEVADA COMMISSION ON ETHICS

By: TODD RUSSELL, Chairman