

**Opinion No. 01-40**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**  
**IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF**  
**JOAN SHANGLE, Eureka County Clerk and Treasurer**

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on March 7, 2002, pursuant to allegations in a Request for Opinion submitted in proper form to the Commission on or about November 21, 2001, under NRS 281.511, Subsection 2, and a Commission panel<sup>[1]</sup> determination entered January 7, 2002, finding just and sufficient cause for the Commission to render an opinion in this matter on whether the conduct of Joan Shangle, Eureka County Clerk/Treasurer, in connection with certain tax delinquent property, violated the provisions of NRS 281.481, Subsection 1; NRS 281.481, Subsection 2; NRS 281.481, Subsection 5; NRS 281.481, Subsection 6; and/or NRS 281.501, Subsection 3.

Notice of the hearing was properly posted and served. Ms. Shangle was present with her counsel, Gary D. Fairman, Esq., and provided sworn testimony. Witnesses Lois Pollard, Joseph Tscheschke, and Eureka County Assessor James Ithurralde appeared by telephone and provided sworn testimony. Witness Byron L. Bilyeu, Esq., former Deputy District Attorney for Eureka County, appeared in person and provided sworn testimony.

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Ms. Shangle is the elected Eureka County Clerk. In that capacity, she also serves as the ex officio Eureka County Treasurer.<sup>[2]</sup> She was appointed to the office of Eureka County Clerk and ex officio Treasurer in April 1963. Thereafter, she was elected to ten consecutive terms and has served as the Eureka County Clerk and ex officio Treasurer continuously and without interruption since April 1963.
2. As Eureka County Clerk, Ms. Shangle is clerk of the Seventh Judicial District Court, ex officio clerk of the Eureka Board of County Commissioners, and the election official for Eureka County's primary, general, and special elections.
3. As Eureka County Treasurer, Ms. Shangle is the ex officio tax receiver for all taxes assessed upon the Eureka County real property tax roll.<sup>[3]</sup>
4. The county tax receiver is required to record on the tax roll, contiguously with the name of the person or the description of the property liable for such taxes, the date of receipt of all payments of taxes paid to the county.<sup>[4]</sup>
5. Property held in trust by the County Treasurer by virtue of a delinquent tax deed may, prior to commencement of posting or publication of a notice of public sale of the property, be reconveyed to (1) the property owner, or (2) the beneficiary under a deed of trust, or (3) the mortgagee under a mortgage, or (4) the person to whom the property was assessed, or (5) the person holding a contract to purchase the property before its conveyance to the county treasurer, or (6) the successor in interest of any of the foregoing persons, upon payment to the County Treasurer of an amount equal to the taxes accrued and any costs, penalties and interest legally chargeable against the property.<sup>[5]</sup>
6. By deed recorded in Eureka County on May 25, 1967, all interest in a certain parcel of real property (hereinafter the "Tscheschke property") was transferred from William Earl Pollard and Lois L. Pollard to Joseph W. Tscheschke. The Pollards were beneficiaries under a Deed of Trust granted by Joseph Tscheschke to secure an indebtedness in the amount of \$13,000, which was also recorded in Eureka County on May 25, 1967.
7. Shortly after the Deed and Deed of Trust were recorded,<sup>[6]</sup> Joseph Tscheschke relinquished back to the Pollards all of his interest in the "Tscheschke property." No deed reflecting the transfer of Tscheschke's interest to the Pollards exists or was ever recorded in Eureka County.
8. Joseph Tscheschke never received any notice from Eureka County of taxes due and/or delinquent, nor did he

ever pay any taxes, on the "Tscheschke property."

9. The "Tscheschke property" is vacant land located across the street from Ms. Shangle's home.

10. On August 28, 1973, by Deed of Correction curing a clerical error on a tax deed previously recorded, Ms. Shangle, as Eureka County Treasurer caused to be recorded in Eureka County a County Treasurer's tax deed for delinquent taxes against the "Tscheschke property."

11. On February 20, 1982, Lois Pollard signed a deed transferring all of her interest in the "Tscheschke property" to Monte W. Shangle and Joan Shangle.<sup>[7]</sup> The Shangles never recorded the deed.

12. On September 15, 1998, Ms. Shangle wrote a check in the amount of \$2,441.14 payable to Eureka County. A notation on the check read "TAXES – (Int. due at final)." On April 1, 2001, Ms. Shangle wrote a check in the amount of \$658.42 payable to Eureka County Treasurer. A notation on the check read "To Apply To Tax (Bal. due when ended)." Ms. Shangle held the checks in a file in her office without ever negotiating them on behalf of Eureka County or recording them on the tax roll.

13. On May 20, 1996, in preparation for a public sale pursuant to statute to recover delinquent property taxes, the Eureka County Board of Commissioners authorized Ms. Shangle to order title searches on all tax delinquent properties being held by her as Eureka County Treasurer under tax deeds. Ms. Shangle failed to order the title searches.

14. At its meeting on August 7, 2000, the Eureka County Board of Commissioners instructed Ms. Shangle to (a) order title searches on a list of one-third of the oldest tax delinquent properties, including the "Tscheschke property," being held by her as Eureka County Treasurer under tax deeds, and (b) advertise the properties and sell them at public auction as required by Nevada Revised Statutes.

15. Sometime after the August 7, 2000, Eureka County Board of Commissioners meeting and before submitting the list of tax delinquent properties to Stewart Title Company, Ms. Shangle "whited-out" all reference on the list to the "Tscheschke property."

16. On October 1, 2001, Ms. Shangle published a Notice of Public Sale offering for sale at a public auction to be held October 31, 2001, several parcels of real property being held by her as Eureka County Treasurer under tax deeds. The "Tscheschke property" was not included on the Notice of Public Sale.

17. On October 5, 2001, at a meeting of the Eureka County Board of Commissioners, when asked why the "Tscheschke property" was not included on the Notice of Public Sale, Ms. Shangle represented to the commission that she and her husband had redeemed the "Tscheschke property" by paying the taxes due thereon totaling about \$3,000.

18. On October 17, 2001, by letter addressed to Theodore Beutel, Eureka County District Attorney, Ms. Shangle "withdrew" her "request for redemption" on the "Tscheschke property."

19. At its meeting on October 19, 2001, the Eureka County Board of Commissioners ordered Ms. Shangle to cancel the October 31, 2001, tax sale because she had failed to post the sale notices as required by law and failed to properly prepare and distribute documentation in support of the sale.

20. At its meeting on October 19, 2001, the Eureka County Board of Commissioners also ordered Ms. Shangle to include the "Tscheschke property" on a subsequent Notice of Sale offering the county's tax deeded properties for sale at a public auction.

21. On October 23, 2001, Joseph Tscheschke signed a quitclaim deed transferring all his interest in the "Tscheschke property" to Monte W. Shangle and Joan Shangle. The Shangles never recorded the quitclaim deed.

22. By a standing order issued on November 6, 2001, the Eureka County Board of Commissioners directed Ms. Shangle to sell all tax delinquent properties held in trust by her or that become trust property in the future as quickly as permitted by law, unless specifically directed otherwise by the Commissioners, and to follow the procedures

provided in NRS Chapter 361 and those outlined in the standing order.

23. The 2001/2002 assessed value of the “Tscheschke property” was \$8,190 (35% of fair market value).

24. Eureka County has received no payment for delinquent taxes on the “Tscheschke property.” As of October 10, 2001, taxes and penalties due on the “Tscheschke property” totaled \$12,245.23 (\$4,722.73 in taxes, \$7,522.50 in penalties) and remain unpaid.

25. The Eureka County Treasurer has never advertised the “Tscheschke property” for sale at public auction pursuant to statute to recover delinquent taxes for the benefit of Eureka County.

### **CONCLUSIONS OF LAW**

1. Ms. Shangle 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 281.465 and NRS 281.511, Subsection 2(b).

WHEREFORE, based upon a preponderance of the evidence in this matter, the Commission renders the following Opinion:

### **OPINION**

Ms. Shangle’s conduct as a public officer as described herein is very disappointing and very distressing to the Commission. It is understandable that public officers in Nevada’s small, rural counties may conduct business with less formality than those in Nevada’s larger, more metropolitan areas. However, even in small, rural counties, the formality of a public officer’s conduct should never be so relaxed that it offends the public trust and the ethical standards to which public officers are accountable.

The Nevada Legislature, when it enacted the Ethics in Government law, declared it to be the public policy of this state that a “public office is a public trust and shall be held for the sole benefit of the people” and a “public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.”<sup>[8]</sup> Further, in creating the Nevada Ethics in Government Law of NRS Chapter 281, the Nevada Legislature found that “[t]o enhance the people’s faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.”<sup>[9]</sup>

The Commission has previously discussed the objectives of this public policy:

Policy objectives for ethics in government laws in general include...Impartiality, fairness and equality of treatment toward those dealing with government... Assurance that decisions of public importance will not be influenced by private considerations...Maintenance of public confidence in government...Prevention of use of public office for private gain...For this purpose, ethics in government laws identify certain types of conflicts of interest and prohibit conduct by public officials that would allow these conflicts to affect decisions of the public official.”<sup>[10]</sup>

Ms Shangle claims that in about 1972, she and her husband, Monte Shangle, without seeking a title report and without acquiring a deed, purchased the “Tscheschke property” from the Pollards for the sum of \$5,000. However, no cancelled check, receipt, or other record exists to document the purported sale.

Further, Ms. Shangle claims that at some point in the early 1970s she consulted then Eureka County Deputy District Attorney, Byron Bilyeu, about a problem she was having obtaining clear title and a deed to real property she and her husband were purchasing from a neighbor. She also claims to have expressed concern to Mr. Bilyeu about the taxes on the property that were becoming delinquent. Ms. Shangle claims that she was advised by Mr. Bilyeu to pay the taxes on the property while she was attempting to resolve the title problem.

Based on Mr. Bilyeu's advice, and without seeking further legal advice or clarification, Ms. Shangle claims that for the next approximately 30 years she "paid" the taxes on the "Tscheschke property" by writing a check and holding it in a file in her office. She further claims that by this practice she was personally "redeeming" the "Tscheschke property." However, the checks were never negotiated on behalf of Eureka County. Therefore, the funds never left Ms. Shangle's bank account nor were they ever deposited into Eureka County's account. Under no definition, therefore, does Ms. Shangle's practice constitute "payment." Rather, her practice was dishonest, it violated her statutory duty as county treasurer with regard to processing tax payments, and it offended her ethical obligations as a public officer.

Further, her conduct in (a) "whiting-out" the reference to the "Tscheschke property" on the delinquent tax list she was instructed to provide to Stewart Title Company for title searches and (b) failing to include the "Tscheschke property" on the notice of public sale of the tax delinquent property she was holding in her capacity as Eureka County Treasurer also amounts to dishonesty and a violation of her statutory duties as county treasurer and ex officio tax collector, and it offends her ethical obligation as a public officer.

For many years, with regard to the "Tscheschke property," Ms. Shangle allowed her private interests (pecuniary and/or otherwise) to influence her decisions and conduct as Eureka County Treasurer and ex officio tax collector and cause her to depart from the faithful and impartial discharge of her public duty. In matters over which she alone had control by virtue of her elected position, Ms. Shangle afforded to herself privileges, preferences, and opportunities, with regard to property in which she claimed a private ownership interest, that were not available to any other property taxpayer in Eureka County. The privileges, preferences, and opportunities she afforded to herself were unjustified and unreasonable. Her conduct, therefore, violates the provisions of NRS 281.481, Subsections 1, 2, and 6.[\[11\]](#)

Ms. Shangle has been Eureka County's Clerk and Treasurer for almost 40 years. She knew or she reasonably should have known that her extraordinary conduct over the years with regard to the "Tscheschke property" was improper. None of the circumstances described herein would have or could have occurred had Ms. Shangle not been the county treasurer. Ms. Shangle deliberately chose to place her private interests above her public duty in matters involving the "Tscheschke property." Therefore, the Commission finds that Ms. Shangle's violations of NRS 281.481, Subsections 1, 2, and 6, are "willful" pursuant to NRS 281.4375.[\[12\]](#)

If the Commission finds that a public officer has willfully violated the provisions of Nevada's Ethics in Government Law, NRS Chapter 281, the Commission may impose on the public officer civil penalties as provided in NRS 281.551.[\[13\]](#) Having found Ms. Shangle's violations herein to be "willful" pursuant to NRS 281.4375, the Commission imposes a civil penalty against her in the amount of \$500.00.[\[14\]](#)

The Commission finds no violation by Ms. Shangle of NRS 281.481, Subsection 5,[\[15\]](#) or NRS 281.501, Subsection 3.[\[16\]](#)

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: May 17, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

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[\[1\]](#) Commissioner Todd Russell and Commissioner Jim Kosinski served as the panel in this matter.

[\[2\]](#) NRS 249.010.

[\[3\]](#) NRS 361.475.

[4] NRS 361.485.

[5] NRS 361.585.

[6] Testimony revealed that Joseph Tscheschke held the "Tscheschke property" for only "a couple of months" before returning it to the Pollards to satisfy his indebtedness to them.

[7] Mr. Pollard is deceased. He died in January 1983.

[8] NRS 281.421, Subsection 1.

[9] NRS 281.421, Subsection 2(b).

[10] Nevada Commission on Ethics, Abstract of Opinion No. 00-53, dated January 24, 2001.

[11] NRS 281.481, Subsection 1, provides: 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.

NRS 281.481, Subsection 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. As used in this subsection, "unwarranted" means without justification or adequate reason.

NRS 281.481, Subsection 6, provides: A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

[12] NRS 281.551(6) provides a "safe harbor" with regard to "willfulness" if (a) the public officer relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents...or upon the manual published by the commission pursuant to NRS 281.471; and (b) the public officer was unable, through no fault of his own, to obtain an opinion from the commission before the action was taken; and (c) the public officer took action that was not contrary to a prior published opinion issued by the commission. However, Ms. Shangle does not meet the "safe harbor" criteria of NRS 281.551(6). Although she "consulted" with the Deputy District Attorney, she did so in her private capacity concerning private issues, not in her public capacity. Further, there is no evidence that Ms. Shangle at any time attempted to obtain an opinion from the Commission.

[13] NRS 281.551(1) provides: "In addition to any other penalty provided by law, the commission may impose on a public officer or employee or former public officer or employee civil penalties: (a) Not to exceed \$5,000 for a first willful violation of this chapter; (b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and (c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

[14] Following the hearing and prior to publication of the written opinion in this matter, Ms. Shangle paid the \$500.00 civil penalty imposed by the Commission.

[15] NRS 281.481(5) prohibits a public officer or employee from using information acquired through his public duties or relationships, which by law or practice is not at the time available to people generally, to further the pecuniary interests of himself or any other person or business entity.

[16] In pertinent part, NRS 281.501(3) prohibits a public officer or employee from approving, disapproving, voting, abstaining from voting or otherwise acting upon a matter (a) regarding which he has accepted a gift or loan; (b) which would reasonably be affected by his commitment in a private capacity to the interest of others; or (c) in which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest.