

## Opinion No. 02-08

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of ARTHUR NEIL HARRIS, Sheriff, Elko County

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on July 11, 2002, pursuant to allegations in a Request for Opinion submitted in proper form to the Commission on or about May 13, 2002, under NRS 281.511, Subsection 2, and a Commission panel<sup>[1]</sup> determination entered June 13, 2002, finding just and sufficient cause for the Commission to render an opinion in this matter on whether the conduct of Arthur Neil Harris, Sheriff, Elko County, (a) in connection with a contract between Sheriff Harris and the Elko County Library violated the provisions of NRS 281.230 and NRS 281.505; and (b) in connection with personal use of the Sheriff's official county vehicle violated the provisions of NRS 281.481, Subsection 7.

Notice of the hearing was properly posted and served. Sheriff Harris was present with his counsel, Donald A. Thorpe, Esq., Erickson, Thorpe & Swainston, Ltd, Reno, Nevada, 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. Arthur Neil Harris is the elected Sheriff of Elko County, Nevada. He has been Elko County Sheriff since March 1990. He is presently a candidate for re-election.
2. In his private capacity, Mr. Harris and his wife own Neil's Pest Control Service, a business they started as sole proprietors in 1982. Mr. and Mrs. Harris incorporated the business in approximately 1985.
3. Mrs. Harris owns and operates full-time a child daycare center in Elko.
4. Until approximately five years ago, Neil's Pest Control Service was the sole pest control business in Elko, Nevada. Neil's Pest Control Service is now one of two pest control services located in Elko County. Elko County road superintendent Otis Tipton owns the other pest control service.
5. Neil's Pest Control Service does pest inspections for sales of real estate and provides pest inspection reports to Stewart Title and First American Title, the only two title companies in Elko. Both title companies are open for business only during regular weekday business hours.
6. In approximately December 1982, the Elko County Library contacted Neil's Pest Control Service to address a problem with ants. Since then, Neil's Pest Control Service has contracted with Elko County to provide pest control services to the Elko County Library, initially at the rate of \$20.00 a month and now \$25.00 a month. The initial contract involved no bidding process and the manager of the County Library set the contract specifications.<sup>[2]</sup>
7. Under the pest control services contract with the Elko County Library, Neil's Pest Control Service has received a total of \$500.00 over a period of the last two fiscal years.
8. Since June 2000, Neil's Pest Control Service has voluntarily provided pest control service to the Elko County

jail free of charge.

9. The Elko County Manager handles the contract process for Elko County and Sheriff Harris has never been involved in developing the contract plans or specifications for Elko County with regard to the pest control services Neil's Pest Control provides to the Elko County Library.

10. Counties with a population of less than 100,000 and annual expenditures of less than one million dollars may enter into a contract of any nature without advertising if the estimated amount required to perform the contract is \$10,000 or less;<sup>[3]</sup> however, if the estimated amount required to perform the contract is more than \$5,000 but not more than \$10,000, requests for bids must be submitted to two or more persons capable of performing the contract, if available.<sup>[4]</sup>

11. The population of Elko County is approximately 45,275 and Elko County annual expenditures total less than one million dollars.

12. Geographically, Elko County encompasses 17,179 square miles.

13. The county vehicle assigned to Sheriff Harris in his official capacity is an unmarked police vehicle with a police radio, a flip-down visor for red lights, and a siren. Sheriff Harris is on-call twenty-four hours a day, seven days a week. He uses the vehicle five days a week during regular work hours for official business, making short, occasional stops to conduct personal business. He also uses the vehicle to respond to law enforcement calls after hours and on weekends. At other times when he is not on official business, the vehicle is parked at Sheriff Harris' home.

14. Sheriff Harris owns three personal vehicles.

15. Elko County Sheriff's Department policy prohibits the use of department property by department personnel for personal reason without the express permission of the Sheriff or his appointed authority. The policy has been in effect since 1981.<sup>[5]</sup>

16. Due to the size of the county and the need for prompt law enforcement response, Elko County Sheriff's patrol deputies and detectives are each assigned a "take-home" official vehicle. Some of the vehicles are marked and some are unmarked. Sheriff Harris allows patrol deputies and detectives to conduct limited personal business while on patrol or official business.

17. Elko County policy restricts the use of county-owned vehicles to County business, but allows County Department heads to establish supplemental department vehicle policies.<sup>[6]</sup>

18. The Sheriff's Department policy with regard to use of official vehicles by the Sheriff and his deputies has been in effect considerably longer than the Elko County regarding use of county vehicles, and the County acquiesces to the Sheriff's Department policy regarding personal use of official Sheriff's Department vehicles.

### **CONCLUSIONS OF LAW**

1. Sheriff Harris 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<sup>[7]</sup> renders the following

Opinion:

## OPINION

### A. NRS 281.230; NRS 281.505

NRS 281.230 prohibits county officers, among others, from receiving in any manner, directly or indirectly, "any commission, personal profit or compensation of any kind resulting from any contract or other significant transaction in which the employing...county...is in any way directly interested or affected." NRS 281.230(1). The statute, however, does allow a public officer or employee to bid on or enter into a contract with a governmental agency "if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers." NRS 281.230(4).

Likewise, NRS 281.505 prohibits a public officer or employee from bidding on or entering into "a contract between a governmental agency and any private business in which he has a significant pecuniary interest" [NRS 281.505(1)], but allows a public officer or employee to bid on or enter into a contract with a governmental agency "if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers." [NRS 281.505(4)].

With regard to the contract between Neil's Pest Control Service and the Elko County Library, since 1982, when Mr. Harris first entered into the contract, the sources of supply in Elko County for pest control services have been limited. In 1982, Neil's Pest Control Service was the only pest control service in Elko. Presently, Neil's Pest Control Service is one of only two such services in Elko, both of which are owned by county employees.

Further, there is no evidence that Sheriff Harris in any way took part in developing the contract plans or specifications for the Elko County Library with regard to its pest control requirements or that Sheriff Harris solicited pest control business from Elko County.

Finally, although the contract between Neil's Pest Control Services and the Elko County Library was not a result of an open and competitive bidding process, Elko County was authorized by statute<sup>[8]</sup> to enter into the contract without advertising for bids because the population of Elko County is less than 100,000, its annual expenditures are less than one million dollars, and the estimated amount required to perform the contract was \$10,000 or less.

Therefore, Sheriff Harris has not violated the provisions of NRS 281.230 and/or NRS 281.505, or any other provision of Nevada's Ethics in Government Law, with regard to the contract between Neil's Pest Control Services and the Elko County Library.

### B. NRS 281.481, Subsection 7

Pursuant to NRS 281.481, Subsection 7, a public officer or employee may not use "governmental time, property, equipment or other facility to benefit his personal or financial interest." The subsection does not prohibit, *inter alia*, "[a] limited use of governmental property, equipment or other facility for personal purposes if: (1) [t]he public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances; (2) [t] use does not interfere with the performance of his public duties; (3) [t]he cost or value related to the use is nominal; and (4) [t]he use does not create the appearance of impropriety." NRS 281.481(7)(a).

That which creates an "appearance of impropriety" for a public officer can be defined as conduct that would cause a

reasonable person to perceive that the public officer's ability to carry out his or her official responsibilities with integrity, impartiality and competence (attributes incorporated in the Legislature's public policy declaration of NRS 281.421 regarding public office) is impaired.

There is no evidence that Sheriff Harris' conduct in occasionally dropping off pest control reports for Neil's Pest Control Service to title companies during normal business hours using his official Sheriff's Department vehicle (an activity that consumes less than a minute of time) would cause a reasonable person to perceive that Sheriff Harris' ability to carry out his official responsibilities with integrity, impartiality and competence is in any way impaired so as to create an appearance of impropriety.

Further, Sheriff Harris is responsible for and has authority to authorize the personal use of official Sheriff's Department vehicles, he has established a policy allowing limited personal use of official Sheriff's Department vehicles, and there is no evidence that Sheriff Harris' use of his official vehicle to drop off pest control reports for Neil's Pest Control Service to title companies during normal business hours in any way interferes with the performance of his public duties. In addition, the cost, if any, associated with the use of his official vehicle in this manner is negligible.

The very nature of rural law enforcement often requires county sheriffs and their deputies to be available twenty-four hours a day seven days a week and to spend extended time in their official vehicles. Under those circumstances, and from a practical standpoint, occasional stops by law enforcement officers while in their official vehicle to conduct *de minimis* personal business does not violate Nevada's Ethics in Government law.

Therefore, Sheriff Harris' *de minimis* personal use of his official vehicle as described herein does not violate the provisions of NRS 281.481, Subsection 7, or any other provision of Nevada's Ethics in Government Law.

### **CONCLUSION**

Under the facts and circumstances herein, the Commission finds that Sheriff Harris did not violate the provisions of NRS 281.230, NRS 281.505, or NRS 281.481, Subsection 7.

The Commission concludes this opinion by reminding all public officers that the Legislature has declared it to be the public policy of Nevada that a public office is a public trust and shall be held for the sole benefit of the people, and that a public officer must commit himself to avoid conflicts between his private interests and those of the general public whom he serves. See, [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: August 15, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

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[1] Commissioners Rick Hsu and Jim Kosinski served as the panel in this matter.

[2] At the time, Mr. Harris was undersheriff and owned the only pest control service in Elko County.

[3] [NRS 332.035, Subsection 1\(b\)](#).

[4] [NRS 332.035, Subsection 1\(c\)](#).

[5] Elko County Sheriff's Department Policy Manual, Section 4.01.280.

[6] County of Elko policy manual, Section V2.2.

[7] Commissioners Hsu and Kosinski did not participate in this matter pursuant to NRS 281.462, Subsection 4.

[8] [NRS 332.035, Subsection 1\(b\)](#).