

Advisory Opinion No. 02-24

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF
SUE FAWN CHUNG, Member, Board of Museums and History**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on January 16, 2003, on the confidential request for advisory opinion filed by Sue Fawn Chung, Member, Nevada Board of Museums and History, pursuant to NRS 281.511, Subsection 1.

The matter was properly noticed as a confidential matter. However, Ms. Chung waived confidentiality and the hearing was held in open session. Ms. Chung appeared in person and was sworn and presented testimony.

Ms. Chung requests the Commission's advisory opinion concerning whether her work as an academic consultant under a contract with the Nevada State Railroad Museum and her acceptance of an honorarium therefor violate the provisions of Nevada's Ethics in Government law provided in NRS Chapter 281.

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. In her public capacity, Ms. Chung is (a) an appointed member of the Nevada Board of Museums and History (appointed in March 2002) and (b) a faculty member of the University of Nevada, Las Vegas.
2. The Nevada Board of Museums and History develops, reviews and makes policy for investments, budgets, expenditures and general control of the private and endowed dedicated trust funds of the Museums and History division of the Nevada Department of Cultural Affairs. In all other matters pertaining to the Division of Museums and History, the Nevada Board of Museums and History serves in an advisory capacity. (See, NRS 381.002.)
3. The Division of Museums and History oversees the Nevada State Railroad Museum.
4. Ms. Chung is the only Nevada historian specializing in Asian American history.
5. Prior to her appointment to the Nevada Board of Museums and History, Ms. Chung contract with the Nevada State Railroad Museum as a temporary academic consultant on an exhibit focusing on the history of Chinese railroad workers under a grant to the Nevada State Railroad Museum from the Nevada Humanities Committee. As consultant on the project, Ms. Chung assisted in the planning and design of the exhibit and presented a public lecture to 196 people on January 8, 2003, for which she will receive a \$200.00 honorarium. Ms. Chung has no control over the amount and timing of the honorarium, which is provided by the Nevada Humanities Committee. Ms. Chung's participation as consultant on the Nevada State Railroad Museum exhibit concludes in January 2003.
6. The Nevada State Railroad Museum is part of the Division of Museums and History.
7. Prior to her consultant work on the Nevada State Railroad Museum's Chinese railroad workers exhibit, Mr. Chung worked on exhibits at the State Museum in Carson City, Nevada; the East Ely Railroad Depot Museum in Ely, Nevada; the Nevada State Museum and Historical Society in Las Vegas, Nevada; the Northeastern Nevada Historical Society Museum in Elko, Nevada; the University and Community College System of Nevada; and

participated two years ago as a speaker in the filming of a program commemorating the anniversary of the completion of the Transcontinental Railroad, which will be broadcast nationally by PBS on January 27, 2003.

8. Policies established by the University of Nevada board of regents allow faculty members of the University of Nevada system to enter into and benefit from academic consulting contracts.

CONCLUSIONS OF LAW

1. In her capacity as an appointed member of the Nevada Board of Museums and History, Ms. Chung is a “public officer” pursuant to NRS 281.4365.

2. In her capacity as a member of the faculty of the University of Nevada, Las Vegas, Ms. Chung is a “public employee” pursuant to NRS 281.436.

3. 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 unanimously approved, the Commission renders the following Opinion:

OPINION

NRS 281.553 prohibits a public officer or public employee from accepting or receiving an honorarium^[1] for making an appearance or speech in his or her capacity as a public officer or public employee. NRS 281.553 does not prohibit a public officer or public employee from receiving “payment for work performed outside the normal course of a person’s public office or employment if the performance of that work is consistent with the applicable policies of his public employer regarding supplemental employment”^[2] or from receiving payments, compensation, or fees which the statutes excludes from the definition of honorarium.^[3]

Additionally, although NRS 281.221, NRS 281.230, and NRS 281.505 create certain prohibitions regarding contracts with governmental agencies in which a public officer/employee has an interest, a full-time or part-time faculty member or employee of the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the board of regents of the University of Nevada pursuant to NRS 396.255.^[4] See, NRS 281.221(3); NRS 281.230(3); NRS 281.505(3). The University of Nevada board of regents have established policies pursuant to NRS 396.255 that allow faculty members of the University of Nevada system to enter into and benefit from academic consulting contracts such as the contract between Ms. Chung and the Nevada State Railroad Museum.

Therefore, neither Ms. Chung’s academic consultant contract with the Nevada State Railroad Museum nor her acceptance of a honorarium in connection therewith violate NRS 281.553 or any other provision of the Nevada’s Ethics in Government Law. Ms. Chung entered into the academic consulting contract with the Nevada State Railroad Museum prior to her appointment as a member of the Nevada Board of Museums and History and the \$200.00 honorarium she will receive for her work and/or lecture in connection therewith properly falls within the exceptions to the honorarium prohibitions provided in NRS 281.553(3) and (4). Further, because policies established by the University of Nevada board of regents pursuant to NRS 396.255 authorize Ms. Chung’s academic consulting contract with the Nevada State Railroad Museum, the contract does not violate the provisions of NRS 281.221(3), NRS 281.230(3), or NRS 281.505(3).

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 19, 2003.

NEVADA COMMISSION ON ETHICS

By: TODD RUSSELL, Chairman

[1] The statute defines "honorarium" as "the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee."

[2] NRS 281.553(3)(a).

[3] "Honorarium" does not include: "(a) The actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence...(b) Compensation which would otherwise have been earned by the public officer or public employee in the normal course of his public office or employment...(c) A fee for a speech related to the 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." NRS 281.553, Subsection 4.

[4] NRS 396.255 requires the University of Nevada board of regents to establish policies governing the contracts that faculty members and employees of the system may enter into or from which they may benefit.