



**STATE OF NEVADA  
COMMISSION ON ETHICS**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE REQUEST FOR OPINION  
CONCERNING THE CONDUCT OF  
KATHY AUGUSTINE, Controller, State of Nevada.**

**Opinion No. 04-47**

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**STIPULATION**

WHEREAS, on July 8, 2004, a Request for Opinion (ethics complaint) was filed with the Nevada Commission on Ethics (hereinafter the "Commission"), alleging that Kathy Augustine, Controller, State of Nevada, violated certain provisions of Nevada's Ethics in Government Law (NRS Chapter 281); and

WHEREAS, Kathy Augustine acknowledges that the Commission provided her with notice of the allegations against her and an opportunity to file written responses thereto and that she is fully advised as to the allegations asserted against her in this matter; and

WHEREAS, on August 13, 2004 and September 2, 2004, Kathy Augustine filed with the Commission her written responses to the allegations against her; and

WHEREAS, pursuant to NRS 281.511, the Commission's Executive Director investigated the complaint and rendered a written recommendation that just and sufficient cause exists for the Commission to conduct a public hearing and render an opinion in this matter; and

WHEREAS, on September 3, 2004, a two-member Commission panel reviewed the Complaint, the written responses thereto filed by Kathy Augustine, and the written report and

recommendation of the Executive Director, and determined that just and sufficient cause exists for the Commission to conduct a public hearing and render an opinion in this matter; and

WHEREAS, Kathy Augustine represents that she has retained legal counsel in this matter and is fully aware of her right to a Hearing before the Commission on the allegations against her and of any and all rights she may be accorded pursuant to NRS Chapter 281, the regulations of the Commission (NAC Chapter 281), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada; and

WHEREAS, Kathy Augustine hereby freely and voluntarily waives her right to a Hearing and any and all rights which she may be accorded herein by NRS Chapter 281, NAC Chapter 281, NRS Chapter 233B, and the laws of the State of Nevada, regarding only this specific proceeding; and

WHEREAS, this Stipulation is for the purpose of resolving this matter and rendering an opinion as stipulated herein in lieu of holding a hearing on the specific facts and circumstances before the Commission;

NOW, THEREFORE, in consideration of the foregoing, the Nevada Commission on Ethics and Kathy Augustine, Controller, State of Nevada, do hereby stipulate to the following Findings of Fact, Conclusions of Law, and Opinion in this matter:

#### **FINDINGS OF FACT**

1. Kathy Augustine holds the elected office of Controller, State of Nevada, and she is a public officer as defined by NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465(1)(a) and NRS 281.511(2)(b).

3. Kathy Augustine was first elected to office as the Controller, State of Nevada, in 1998, and re-elected to that office in 2002. Prior to her election as Controller, State of Nevada, she was an elected member of the Nevada Legislature for two terms.

4. Kathy Augustine was a candidate for re-election to the office of Controller, State of Nevada, on the 2002 election ballot.

5. Jennifer Normington was employed by the State of Nevada as Executive Assistant to Controller Kathy Augustine from October 4, 2001, through January 31, 2003. During this period of time, Kathy Augustine caused Jennifer Normington, on state time, to perform, from time to time, functions related to Kathy Augustine's 2002 re-election campaign, including, but not limited to, maintaining campaign records for official filing, coordinating certain campaign fundraisers, designing certain campaign invitations, and maintaining databases for campaign contributions.

6. Throughout the 2002 election campaign, computer equipment owned by the State of Nevada and located in the Office of the Controller was used, from time to time, for creating, maintaining, storing, and printing documents relating to Kathy Augustine's 2002 re-election campaign.

7. Throughout the 2002 election campaign, equipment and facilities provided by the State of Nevada for use by the Office of the Controller were used, from time to time, for business and purposes related to Kathy Augustine's 2002 re-election campaign.

8. Kathy Augustine as the elected Controller of the State of Nevada at no time sought guidance from the Nevada Commission on Ethics in the form of an advisory opinion pursuant to NRS 281.511(1) on questions of the propriety of her past, present or future conduct as a public officer using state resources for her campaign activities.

## CONCLUSIONS OF LAW

1. Kathy Augustine is a public officer as defined by NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465(1)(a) and NRS 281.511(2)(b).

## OPINION

1. The Nevada State Legislature has declared in NRS 281.421 that a public office is a public trust and shall be held for the sole benefit of the people of the State of Nevada, and that public officers must commit themselves to avoid conflicts between their private interests and those of the general public whom they serve.

2. NRS 281.481(7) provides as follows:

“NRS 281.481(7): A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

- (a) A limited use of governmental property, equipment or other facility for personal purposes if:
- (1) The 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) The use does not interfere with the performance of his public duties;
  - (3) The cost or value related to the use is nominal; and
  - (4) The use does not create the appearance of impropriety;
- (b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
- (c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.”

3. NRS 281.4375 defines “willful violation” to mean that a public officer or employee knew or reasonably should have known that his conduct violated the provisions of Nevada’s Ethics in Government Law provided in NRS 281.411-281.581.

4. By a preponderance of the evidence, Kathy Augustine willfully violated NRS 281.481(7) as she reasonably should have known that causing state employee Jennifer Normington, on state time, to perform functions related to Kathy Augustine’s 2002 re-election campaign violated the provisions of NRS 281.481(7).

5. By a preponderance of the evidence, as a second act, Kathy Augustine willfully violated NRS 281.481(7) as she reasonably should have known that the act of causing computer equipment owned by the State of Nevada and located in the Office of the Controller to be used for creating, maintaining, storing, and printing documents relating to her 2002 re-election campaign violated the provisions of NRS 281.481(7).

6. By a preponderance of the evidence, as a third act, Kathy Augustine willfully violated NRS 281.481(7) as she reasonably should have known the act of causing equipment and facilities, provided by the State of Nevada for use by the Office of the Controller, to be used for business and purposes related to Kathy Augustine’s 2002 re-election campaign violated the provisions of NRS 281.481(7).

7. As a result of Kathy Augustine’s three separate willful violations of NRS 281.481(7), the Nevada Commission on Ethics imposes a civil penalty pursuant to NRS 281.551(1) totaling Fifteen Thousand Dollars (\$15,000.00) as follows:

First willful violation:	Five Thousand Dollars (\$5,000.00)
Second willful violation:	Five Thousand Dollars (\$5,000.00)
Third willful violation:	Five Thousand Dollars (\$5,000.00)

8. Kathy Augustine shall satisfy the civil penalties imposed herein by remitting payment in the amount of Fifteen Thousand Dollars (\$15,000.00) to the Nevada Commission on

Ethics in thirty (30) consecutive monthly installments of Five Hundred Dollars (\$500.00) due and payable on the first day of each month commencing October 1, 2004, and continuing each month thereafter until the civil penalties are paid in full. All such payments must be received at the office of the Nevada Commission on Ethics, 3476 Executive Pointe Way, Suite 16, Carson City, Nevada 89706-7946, no later than the first day of each month.

9. Kathy Augustine is an elected public officer removable from office by impeachment only. Kathy Augustine's willful violations of NRS 281.481(7), therefore, implicate the provisions of NRS 281.551(5)(a), and, pursuant thereto, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its findings.

10. This stipulation does not preclude the Nevada Commission on Ethics from complying with any other provision of Nevada Revised Statutes Chapter 281 including, but not limited to, NRS 281.551.

11. This stipulation resolves all matters before the Nevada Commission on Ethics with regard to Request for Opinion No. 04-47.

12. This Stipulation applies only to the specific facts, circumstances, and law described herein. Facts, circumstances, and law that differ from those in this Stipulation may result in an opinion contrary to this Stipulation. No inferences regarding the provisions of Nevada Revised Statutes quoted and discussed in this Stipulation may be drawn to apply generally to any other facts, circumstances, or laws.

**CONTINGENCY**

This Stipulation is subject to the approval of the Nevada Commission on Ethics in open meeting. If the Commission does not adopt this Stipulation as its Opinion, the matter will proceed to a Hearing before the Nevada Commission on Ethics and this Stipulation shall be of no force or effect for either party, nor shall it be admissible for any purpose, nor shall the Stipulation or any transcript related thereto be disclosed to any party other than the Nevada Commission on Ethics, Kathy Augustine, and her legal counsel.

**ACCEPTANCE**

I have read the above Stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED this 22<sup>nd</sup> day of September 2004.

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/S/  
**KATHY AUGUSTINE**  
Controller, State of Nevada

THE ABOVE STIPULATION HAS BEEN REVIEWED BY:

**ARRASCADA and ARRASCADA**

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/S/  
**JOHN ARRASCADA, Esq.**  
Nevada Bar No. 4517  
Counsel to Kathy Augustine

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/S/  
**DOMINIC GENTILE, Esq.**  
Nevada Bar No. 1923  
Counsel to Kathy Augustine

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/S/  
**NANCY LEE VARNUM, Esq.**  
Nevada Bar No. 4720  
Counsel to Nevada Commission on  
Ethics

The foregoing Stipulation is adopted as the Findings of Fact, Conclusions of Law and Opinion of the Nevada Commission on Ethics in this matter and shall become effective on September 22, 2004.

**NEVADA COMMISSION ON ETHICS**

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/S/  
**Caren Jenkins**  
Vice Chairman