



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
JEFF GREB, Teacher, Carson City School District.

Opinion No. 04-81

STIPULATION

WHEREAS, on November 1, 2004, a Request for Opinion (ethics complaint) was filed with the Nevada Commission on Ethics (hereinafter the "Commission"), alleging that Jeff Greb, a teacher for the Carson City School District, violated certain provisions of Nevada's Ethics in Government Law (NRS Chapter 281); and

WHEREAS, Jeff Greb acknowledges that the Commission provided him with notice of the allegations against him and an opportunity to file written responses thereto and that he is fully advised as to the allegations asserted against him in this matter; and

WHEREAS, on December 16, 2004, Jeff Greb filed with the Commission his written responses to the allegations against him; 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 June 30, 2005, a two-member Commission panel reviewed the Complaint, the written response thereto filed by Jeff Greb, 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, Jeff Greb represents that he has been provided with legal counsel in this matter and is fully aware of his right to a Hearing before the Commission on the allegations against him and of any and all rights he 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, Jeff Greb hereby freely and voluntarily waives his right to a Hearing and any and all rights which he may be accorded herein by NRS Chapter 281, NAC Chapter 281, NRS Chapter 233B, and the laws of the State of Nevada; 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 Jeff Greb, a teacher for the Carson City School District, do hereby stipulate to the following Findings of Fact, Conclusions of Law, and Opinion in this matter:

FINDINGS OF FACT

1. Jeff Greb is employed as a teacher for the Carson City School District (hereinafter the "District"), and he is a public employee as defined by NRS 281.436.
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. In addition to being a teacher, Mr. Greb was serving as the President of the Ormsby County Education Association (OCEA) at all times relevant herein.
4. OCEA is a nonprofit corporation, an employee organization within the meaning of NRS 288.040, and the recognized collective-bargaining agent for the licensed employees of

the District. At present, approximately 400 licensed employees of the District's 560 employees are members of OCEA.

5. OCEA is affiliated with the Nevada State Education Association (NSEA). Licensed employees of the District may become, but are not required to become, dues-paying members of OCEA and NSEA. NSEA and its various affiliates, including OCEA, regularly communicate with their members and other educational employees regarding matters believed to be of interest to them as educators and as citizens. In view of the fact that the public schools in Nevada are heavily dependent on funding from the Nevada Legislature, some of these communications relate to state legislators and their campaigns for election or reelection to public office.

6. During the 2004 campaign season, NSEA endorsed a candidate ("the Candidate") for election to the Nevada Assembly. The Candidate's candidacy was of particular interest to OCEA and employees of the District because the Candidate was formerly a teacher for the District, and was believed to be supportive of public education. Because the Candidate was not a public officer or employee at the time of the events in issue, the Commission had no jurisdiction over the Candidate in this matter.

7. In September, 2004, the OCEA executive board, of which Mr. Greb was President, decided to organize two neighborhood walks on Saturday, October 2, 2004, in the residential areas of Carson City near Seeliger Elementary School and Mark Twain Elementary School. The walks would involve interested members of OCEA distributing campaign literature door-to-door for the Candidate.

8. On September 22, 2004, Mr. Greb sent an electronic mail message via the District's electronic mail system to other users of the system advising them of the neighborhood

walk in support of the Candidate scheduled for October 2, 2004. The message was prepared and sent between 7:00 a.m. and 7:08 a.m., during Mr. Greb's daily classroom preparatory period.

9. Article 8.1 of the collective-bargaining agreement between OCEA and the District, effective at all times herein relevant, provided:

“The Ormsby County Education Association shall have the right to use school mailboxes and the inter-school mail service for organizational material, provided that all such material is clearly identified and the Association accepts the responsibility for such material.”

The provision is similar to those in effect in other collective bargaining agreements in school districts throughout Nevada.

10. As a matter of practice and apart from the formal provisions of the collective-bargaining agreement, OCEA has been permitted by the District and by school administrators to use school facilities and equipment for various organizational purposes, including the processing of grievances, contract negotiation, and communications with licensed employees of the District. Officers and representatives of OCEA who are employees of the District have also been permitted or required by the District, during working hours, to participate in meetings with school administrators relating to pending grievances and otherwise to conduct OCEA business during the work day. These practices, however, have not extended to the use of school facilities and equipment or working hours to advocate or oppose the election of candidates to political office.

11. The District does not charge employees or other users for the use of its electronic mail system, and the system is accessible to parents and other members of the public who use the system to communicate with teachers.

12. On October 26, 2004, the District's legal counsel, Mr. Todd Russell, opined that the use of the District's e-mail system was similar to, and covered under, Article 8 of the

collective-bargaining agreement, to wit, the OCEA contract provisions relating to use of facilities.

CONCLUSIONS OF LAW

1. Jeff Greb is a public employee as defined by NRS 281.436.
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 employees 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. There is no violation of the Code of Ethical Standards inherent in the use by OCEA representatives of the District’s time, facilities or equipment, within the limitations established by the collective-bargaining agreement or the policies of the District, to communicate with employees represented by OCEA or for purposes related to the negotiation or administration of the collective-bargaining agreement. However, a public employee’s use of the District’s time, facilities or equipment for personal interest which, in this case, was to advocate or oppose the election of a candidate to public office, is a violation of NRS 281.481(7).

5. By a preponderance of the evidence, pursuant to the provisions of NRS 281.481(7)(c) and consistent with Article 8 of the OCEA collective-bargaining agreement, Jeff Greb’s use of the District electronic mail system to communicate information regarding activities in support of the Candidate was permissible under the Code of Ethical Conduct and did not violate the provisions of NRS 281.481(7).

6. By a preponderance of the evidence, Jeff Greb *should have known* that the act of utilizing publicly paid employment hours designated as preparatory time for classroom instruction for purposes related to the promotion of a political campaign violated the provisions of NRS 281.481(7). Accordingly, under the definition of “willful violation” set forth in NRS 281.4375, Mr. Greb’s violation was willful.

7. Pursuant to NRS 281.551(1), the Nevada Commission on Ethics imposes against Jeff Greb, as the sole and exclusive penalty in this matter, a civil penalty of Fifteen Dollars (\$15.00).

8. Jeff Greb shall satisfy the civil penalty imposed herein by remitting payment in the amount of Fifteen Dollars (\$15.00) to the Nevada Commission on Ethics within 30 days. The payment must be received at the office of the Nevada Commission on Ethics, 3476 Executive Pointe Way, Suite 10, Carson City, Nevada 89706.

9. The conduct of Jeff Greb resulted in no financial benefit that would implicate NRS 281.551(3).

10. The conduct of Jeff Greb does not constitute a criminal offense subject to referral pursuant to NRS 281.551(8).

11. Jeff Greb acknowledges that he has read and understands the Code of Ethical Conduct for public employees provided in NRS Chapter 281, and that he will hereafter comply therewith.

12. Jeff Greb is a public employee subject to disciplinary proceedings by his employer. Jeff Greb's willful violation of NRS 281.481(7), therefore, implicates the provisions of NRS 281.551(7). Pursuant to that statute, the Commission is required to refer Mr. Greb to the District for its consideration of disciplinary action in accordance with the applicable provisions governing Mr. Greb's employment. The referral shall be in the form attached as Exhibit "A" hereto and will be transmitted to the District within five (5) days after the effective date of this stipulation. The referral of the Commission reflects the nominal financial impact of the violation, Mr. Greb's understanding of the provisions of the Code of Ethical Conduct, his agreement to be bound by these statutory provisions in the future, his understanding of the difference between organizational materials related to union business versus materials relating to the promotion of a political campaign, and his understanding of the prohibitions of state ethics laws in relation to conducting political activities utilizing public resources. The Commission

specifically makes no recommendation for further disciplinary action against Mr. Greb in relation to this matter, either by the District or the State Board of Education.

13. This stipulation resolves all matters before the Nevada Commission on Ethics with regard to Request for Opinion No. 04-81.

14. 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.

ACCEPTANCE

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

DATED this 14th day of September 2005.

_____/s/_____
JEFF GREB
Teacher, Carson City School District

THE ABOVE STIPULATION HAS BEEN REVIEWED BY:

**DYER, LAWRENCE, PENROSE,
FLAHERTY & DONALDSON**

_____/s/_____
MICHAEL W. DYER, Esq.
Nevada Bar No. 2083
Counsel to Jeff Greb

_____/s/_____
NEIL A. ROMBARDO, Esq.
Nevada Bar No. 6800
Senior Deputy Attorney General
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 14, 2005.

NEVADA COMMISSION ON ETHICS

_____/s/_____
Caren Jenkins
Chairman

EXHIBIT "A"

September 14, 2005

Dr. Mary Pierczynski
Superintendent, Carson City School District
1402 West King Street
Carson City, Nevada 89703

Dear Dr. Pierczynski:

The Nevada Commission on Ethics ("Commission") and Jeff Greb, an employee of the Carson City School District ("District") have entered into a stipulation, a copy of which is enclosed. Under the terms of the stipulation, Mr. Greb has acknowledged a single violation of NRS 281.481(7) based upon the facts set forth in the stipulation, and acknowledged that the violation was "willful" within the meaning of NRS 281.4375, in that Mr. Greb reasonably should have known that his conduct violated the provisions of NRS 281.481(7).

Pursuant to NRS 281.511(7), whenever a public employee is found by the Commission to have committed a "willful violation" of NRS 281.481, the Commission is required to refer the matter to the employee's employer for potential "action in accordance to the applicable provisions governing his employment." This notice is given pursuant to the statutory requirement.

This notice should not be understood as a finding or recommendation by the Commission that disciplinary action against Mr. Greb is warranted or should be taken by the District. The Commission specifically notes its belief that no such action is warranted in relation to this matter. The Commission is satisfied: (a) that the violation involved only a nominal cost to the District; (b) that Mr. Greb understands and agrees to comply with the provisions of the Code of Ethical Standards, as set forth in NRS 281.481 to 281.551, inclusive; and (c) that there is no violation of the Code of Ethical Standards inherent in the use of District time, facilities or equipment, as permitted or agreed by the District, by representatives of the Ormsby County Education Association ("OCEA") to communicate with employees represented by OCEA or for purposes related to the negotiation or administration of the collective-bargaining agreement. However, a public employee's use of the District time, facilities or equipment to advocate or oppose the election of a candidate to public office is a violation of NRS 281.481(7).

Very truly yours,

Stacy M. Jennings
Executive Director of the Commission

Enclosure