



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Opinion Concerning the
Conduct of BOB LOUX,
Executive Director, Agency for Nuclear Projects,
State of Nevada,**

Request for Opinion No. 08-57C

Subject.

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a public hearing held on March 12, 13, 25 and 26, 2009, pursuant to NRS 281A.440(4).

Loux was present during the four days of hearings and provided sworn testimony. Loux was represented by Thomas E. Perkins, Esq. and Judy M. Sheldrew, Esq. The Commission heard testimony from twenty witnesses during the four days of hearings.

On September 11, 2008, Heidi S. Gansert filed a Request for Opinion (Complaint) with the Commission. The Complaint alleged that Bob Loux (Loux) violated the Ethics in Government Law (Ethics Law) when, effective July 1, 2007, he took the salary savings from a vacant position in the Agency for Nuclear Projects (Agency) and disbursed monies from the salary savings among the remaining six Agency employees, including himself, without prior approval. The disbursement allegedly increased the salaries of the employees by 16 percent.

During the course of her investigation, the Commission's executive director discovered additional relevant issues and facts beyond those presented in the Complaint. Therefore, pursuant to NAC 281A.415(2), the executive director provided Loux notice of the additional issues and facts and the opportunity to respond to them as set forth in NAC 281A.410(3).

¹ The quorum consisted of Chairman Hutchison, Commissioners Keele, Moran and Shaw and by special appointment, pursuant to NRS 233B.122, serving in the place of Commissioners Lambole and Marvel were Commissioners Donald Klasic and Robert Weise. Commissioner Beyer served on the panel in this matter. Pursuant to NRS 281A.220(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter. Commissioner Moran did not participate in the vote.

After the executive director concluded her investigation, an investigatory panel of two Commissioners, pursuant to NRS 281A.440(3), (4), determined that there was just and sufficient cause for the Commission to hold a hearing and render an opinion on the allegations.

After fully considering and analyzing all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Loux of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. The Agency is a state agency under the office of the governor.
2. At all relevant times, Loux was the Agency's executive director, a non-classified position in state government.
3. The positions for non-classified employees, unlike classified or unclassified, have no specific salary levels established.
4. The Agency's budget is prepared in coordination between the Agency and the State Budget Division.
5. The State Budget Division submits the "Governor Recommends" budget for the Agency to the Nevada State Legislature (Legislature) for approval.
6. At the end of the fiscal year, if an agency's budget for salaries has been exceeded, the agency may come before the Legislature's Interim Finance Committee to transfer funds into the salary category from other budget categories within their overall budget.

7. The Legislature did not set Loux's salary.

CONCLUSIONS OF LAW

1. At all relevant times, as Executive Director for the Agency, Loux was a public officer as defined in NRS 281A.160.
2. The Commission has jurisdiction to render an opinion in this matter, pursuant to NRS 281A.440(2).
3. Because insufficient evidence existed to support the allegation that Loux violated NRS 281A.400(9) in 2006, 2007, and 2008 when he allegedly attempted to benefit his personal or financial interest through the influence of a subordinate, that allegation was dismissed.

DISCUSSION

On March 12, 2008, the Commission heard oral argument from Loux's counsel on a Motion to Dismiss. Because there was insufficient evidence to prove, by a preponderance of the evidence, that Loux violated the Ethics Law, the Commission dismissed the following allegations:

1. Possible violation of NRS 281A.400(2) when, in 2006, Loux gave pay raises to his employees above their legislatively approved salaries.
2. Possible violation of NRS 281A.400(2) when, in 2007, Loux gave pay raises to his employees above their legislatively approved salaries.

3. Possible violation of NRS 281A.400(2) when, in 2008, Loux gave pay raises to his employees above their legislatively approved salaries.

Therefore, the remaining allegations before the Commission were whether Loux violated:

1. NRS 281A.400(2) when, in 2006, Loux gave himself a pay raise above the legislatively approved budget amount.
2. NRS 281A.400(2) when, in 2007, Loux gave himself a pay raise above the legislatively approved budget amount.
3. NRS 281A.400(2) when, in 2008, Loux gave himself a pay raise above the legislatively approved budget amount.
4. NRS 281A.400(9) in 2006, 2007, and 2008 when Loux attempted to benefit his personal or financial interest through the influence of a subordinate when he gave himself unauthorized pay raises and his subordinate certified the raises.

As to the remaining allegations numbers 1 through 3, above:

NRS 281A.400(2) states:

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 business entity in which he has a significant pecuniary interest, or any person to whom he has a

commitment in a private capacity to the interests of that person. As used in this subsection:

...

(b) “Unwarranted” means without justification or adequate reason.

The Commission’s Panel Determination, which sets out the charges against Loux, required that the Commission determine whether Loux “gave himself a pay raise above the *legislatively approved* budget amount.” (Emphasis added). Therefore, the threshold question before the Commission was whether the Legislature set Loux’s salary.

NRS 233.085 states:

1. The Governor may, within the limits of available money, employ such persons as he deems necessary to provide an appropriate staff for the Office of the Governor, including, without limitation, the *Agency for Nuclear Projects*, the Office of Science, Innovation and Technology and the Governor’s mansion. *Any such employees are not in the classified or unclassified service of the State and serve at the pleasure of the Governor.*

2. The Governor shall:

(a) *Determine the salaries* and benefits of the persons employed pursuant to subsection 1, within limits of money available for that purpose; and

(b) Adopt such rules and policies as he deems appropriate to establish the duties and employment rights of the persons employed pursuant to subsection 1. (Emphasis added).

Some witnesses testified that they had only recently become aware of the language in NRS 233.085. In fact, until

2008, the director of the State Budget Division was under the impression that Loux had discretion to set the salaries for the Agency employees.

The Commission received testimony from former governor Kenny Guinn and most of his former chiefs of staff. Loux worked for the Agency during the Guinn administration. These witnesses testified that it was common knowledge in the office of the governor that a non-classified employee, like Loux, could have his salary raised, so long as it did not exceed the amount of the governor's salary.

Governor Jim Gibbons' current chief of staff testified that the governor has the ultimate authority to determine the salaries for the non-classified employees.

Therefore, by a majority vote,² the Commission concluded that the Legislature did not set Loux's salary. Accordingly, the Commission did not get to the question of whether Loux violated the Ethics Law. The allegations concerning NRS 281A.400(2) were dismissed.

As to the remaining allegation number 4, above:

NRS 281A.400(9) states:

A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

The Commission found no evidence to support the allegation that in 2006, 2007, and 2008 Loux attempted to benefit his personal or financial interest through the influence of a subordinate when he allegedly

gave himself unauthorized pay raises and his subordinate certified the raises. Therefore, by a unanimous vote, the Commission dismissed the allegation that Loux violated NRS 281A.400(9).

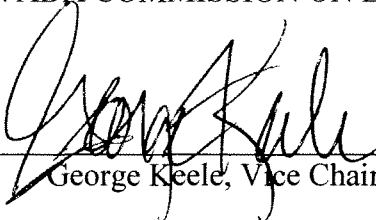
CONCLUSION

The Commission concluded that the Legislature did not set Loux's salary. Therefore, the Commission did not get to the question of whether Loux violated NRS 281A.400(2) and those allegations were dismissed.

Additionally, the Commission found no evidence to support the allegation that Loux violated NRS 281A.400(9) by attempting to benefit himself through the influence of a subordinate and that allegation was dismissed.

Dated this 11th day of May, 2009.

NEVADA COMMISSION ON ETHICS

By: 
George Keele, Vice Chairman

DISSENT

Chair Hutchison, with whom Commissioner Weise joins, dissenting in part.

This dissent is limited to the remaining allegations concerning NRS 281A.400(2).

² Commissioners Keele, Klasic and Shaw voted yes. Commissioners Hutchison and Weise voted no.

The Commission's charging document asks whether Loux gave himself a pay raise above the "legislatively approved" budget. The majority concluded that the Legislature did not set Loux's salary, never reaching the question of whether Loux violated the Ethics Law. However, it is my opinion and that of my colleague Commissioner Weise that the Agency's salary budget and individual salary amounts were approved by the Legislature through the governor's approval process. The governor's budget office worked with the Agency to prepare and recommend a budget that was submitted to legislative staff and ultimately approved by the Legislature. Thus, Loux's salary was, in fact, set by the Legislature by way of the governor's budget process. Commissioner Weise and I would have reached the question of whether Loux violated the Ethics Law.