



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Opinion Concerning the Conduct of
**DAVID HUMKE, DAVE AIAZZI,
ROBERT LARKIN, DWIGHT DORTCH
and JOHN MAYER,**
Members, Regional Transportation Commission
Board of Washoe County, State of Nevada,

Request for Opinion No. 09-01C

Subjects.

OPINION

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

The board members of the Washoe County Regional Transportation Commission (RTC), the subjects of Request for Opinion No. 09-01C (the Public Officers), were present during the hearing and provided sworn testimony. The Public Officers were represented by Leif Reid, Esq. and Garrett Gordon, Esq. The following witnesses provided sworn testimony during

the hearing: Matthew Griffin, Deputy Secretary of State for Elections; Kimberly Rhodemyre, Complainant; John Slaughter, Washoe County Director of Management Services; and Angela White, RTC Marketing Director.

On January 5, 2009, Kimberly Rhodemyre filed with the Commission a Request for Opinion (the complaint) against the Public Officers. The complaint alleged that the Public Officers violated the Ethics in Government Law (Ethics Law) by causing an expenditure for certain mailers (mailers) that advocated the passage of two ballot initiatives in the November 2008 election.

The Commission staff presented its investigative findings to an investigatory panel of two Commissioners, pursuant to NRS 281A.440(3). The panel determined that there was just and sufficient cause for

¹ The quorum consisted of Chairman Keele and Commissioners Beyer, Marvel and Moran. Commissioners Hutchison and Lamboley served on the investigatory panel in this matter. Pursuant to NRS 281A.220(4) and NRS 233B.122(1), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter. Commissioner Shaw disclosed a conflict of interest and abstained from acting on this matter, pursuant to NRS 281A.420.

the Commission to hold a hearing and render an opinion in this matter.

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

FINDINGS OF FACT

1. On January 18, 2008, the RTC Board created the Blue Ribbon Committee on Transportation Funding (BRC). The BRC's function was to make recommendations to the RTC for ballot questions that would address shortfalls in transportation funding. The ballot questions would be placed on the Washoe County ballot in the November 2008 election.
2. The BRC recommended two ballot questions to be placed on the November 2008 ballot: (1) RTC-2, which sought to generate sales and use tax revenue to support transit services provided by the RTC; and (2) RTC-5, an advisory question which sought to adjust fuel tax to provide funding for road construction.
3. The BRC requested the RTC educate the public on RTC-2 and RTC-5 (the ballot questions).
4. The mailers, post cards containing information about the ballot questions, were generated by RTC as part of its outreach plan to educate the public on the ballot questions.
5. It is common practice for RTC staff to prepare and disseminate education mailers without the RTC Board's approval.
6. The RTC's executive director, not the RTC Board, is responsible for the daily operation of the RTC.
7. The RTC Board meets approximately once a month in a public meeting to handle the business of the RTC. At no time did the RTC Board consider and take action on the actual mailers in a public meeting.
8. On May 16, 2008, the RTC Board voted to approve its Fiscal Year (FY) 2009 Final Budget (Public Officers Dortch and Humke were not present for the vote). The detailed, line-item budget provided for a comprehensive community outreach and education program for a possible transportation funding initiative. However, the Public Officers were provided with a budget containing only category totals and not the detailed, line-item budget.
9. In July of 2008, Angela White, the RTC's Marketing Director, and Gregory Krause, the RTC's former Executive Director, drafted the mailers. The RTC's legal counsel, Stan Peck, gave the final approval on the language of the mailers.
10. Mr. Krause authorized the expenditure for printing and disseminating the mailers. This expenditure was made with funds from RTC's FY 2009 budget. The expenditure was for \$21,566.40. Approximately 80,000 mailers were printed and disseminated.
11. The Public Officers did not direct RTC staff to create mailers advocating the passage of the ballot questions nor did they authorize the expenditures for such material.
12. On July 8, 2008 the Washoe Board of County Commissioners (BCC) approved the ballot questions with a resolution. The

resolution ordered the county clerk to submit the ballot questions to the county registrar of voters for placement of the questions on the ballot.

13. As provided in the BCC's resolution, John Slaughter, Washoe County's Director of Management Services, submitted the ballot questions to the county registrar of voters.

14. The ballot questions were certified as eligible to be on the ballot on July 8, 2008 when the BCC approved the resolution. However, the ballot questions were officially deemed "on the ballot" on September 3, 2008, the printing deadline for the November election ballots.

CONCLUSIONS OF LAW

1. At all relevant times, as members of the RTC Board, David Humke, Dave Aiazzi, Robert Larkin, Dwight Dortch and John Mayer were "public officers" as defined in NRS 281A.160. Further, the allegations concern the Ethics Law. Therefore, the Commission has jurisdiction to render an opinion in this matter, pursuant to NRS 281A.440(2).

2. Because insufficient evidence existed to support the allegation that, after September 3, 2008, Public Officers requested or otherwise caused RTC to incur an expense or make an expenditure to support the ballot questions, the complaint was dismissed.

DISCUSSION

The provision of the Ethics Law at issue prohibits the expenditure of public funds to support a ballot question once it is placed on the ballot.

NRS 281A.520(1)(a) provides:

1. [A] public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

(a) A ballot question.

The Nevada Supreme Court (Court) has interpreted and opined on this provision.

In *Glover v. Concerned Citizens for Fuji Park*, a case concerning the expenditure of public funds to challenge an initiative before it was placed on the ballot, the Court interpreted the predecessor of the current statute (former NRS 293.725) and determined that the law prohibited "campaigning for or against a measure that had already been placed on the ballot." 119 Nev. 488 (2002).

In *Las Vegas Convention and Visitors Authority v. Miller*, citing to *Glover*, the Court concluded that NRS 281A.520(1)(a) does not prohibit government entities from expending public funds on an initiative before it is placed on the ballot. 124 Nev. 62 (2008).

Therefore, in the instant case, the Commission must first determine the date on which the ballot questions were deemed on the ballot.

Mr. Slaughter testified that the ballot questions were, in essence, on the ballot on July 8, 2008 when the BCC approved the resolution to place the ballot questions on the ballot and he notified the registrar of this approval. However, Matthew Griffin, Deputy Secretary of State for Elections, testified that the ballot questions were only "certified," or eligible to be placed on the

ballot on July 8, 2008, but that until all the necessary steps were taken, such as the writing of the arguments for and against the questions, the ballot questions were not yet considered to be on the ballot. Instead, Mr. Griffin stated that the questions were finally deemed on the ballot on September 3, 2008, the ballot printing deadline for the November election.

Since the Court uses the language “on the ballot” versus “certified” or “eligible to be on the ballot,” the Commission relies on the September date.

Next, the Commission must determine whether the RTC’s expenditure for the mailers occurred before or after September 3, 2008.

On May 16, 2008, the RTC Board approved the FY 2009 budget, which included appropriations for printing and mailing materials associated with RTC’s comprehensive community outreach and education program for a possible transportation funding initiative. After July 8, 2008, when the ballot questions were certified eligible to be on the ballot, RTC staff created the mailers and disseminated the mailers. The evidence presented showed that the RTC’s expenditure for the mailers occurred prior to September 3, 2008.

Even if the Commission determined the operative date of the ballot questions to be July 8, 2008, no evidence existed that the Public Officers requested or otherwise caused RTC to incur an expense or make an expenditure on the mailers on or after this date. In fact, no evidence was presented that the Public Officers played any role in the creation, authorization or dissemination of the mailers.

Ms. White testified that in accordance with the BRC’s request that RTC educate the public on the ballot questions, RTC staff decided on the mailers, prepared the mailers, and disseminated the mailers. Additionally, she testified that the expenditure for the mailers was authorized by the RTC’s former executive director with final authorization on the language of the mailers being given by RTC’s legal counsel.

Therefore, based on NRS 281A.520(1)(a) and the Court’s interpretation of the statute, the Public Officers did not violate NRS 281A.520(1)(a). For this reason, the Commission does not reach the question of whether the language in the mailers advocated the passage of the ballot questions in violation of NRS 281A.520(1)(a).

CONCLUSION

Therefore, by a unanimous vote, the Commission concluded that insufficient evidence existed to support the allegations that the Public Officers requested or otherwise caused RTC to incur an expense or make an expenditure to support the ballot questions, in violation of NRS 281A.520(1)(a). Accordingly, the allegations against the Public Officers in the complaint were dismissed.

Dated this 13th day of August, 2009.

NEVADA COMMISSION ON ETHICS

By: 

George Keele, Chairman

CERTIFICATE OF MAILING

Opinion No. 09-01C

I certify that I am an employee of the Nevada Commission on Ethics and that on this day at Carson City, Nevada, I placed a true and correct copy of the above Opinion in an envelope and caused same to hand delivered via Reno Carson Messenger to the following address:

David Humke
Dave Aiazzi
Robert Larkin
Dwight Dortch
John Mayer
c/o Leif Reid, Esq.
Lewis and Roca, LLP
50 W. Liberty Street, Suite 410
Reno, NV 89511

Dated: _____

08/17/09



Michelle A. Ene, Executive Assistant