



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **WILLIAM E. ROBERTS**, Superintendent
of Schools, Nye County School District,
State of Nevada,

Request for Opinion No. 10-121A

Public Employee. /

OPINION

Public employee William E. Roberts requested a confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A. Roberts appeared before a quorum¹ of the Commission on January 13, 2011, and provided sworn testimony. At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission orally advised Roberts of its decision that as the Nye County School

Superintendent he is not a public officer under the current Ethics Law and is therefore not required to file a Financial Disclosure Statement. However, because the position "involves the exercise of a public power, trust or duty," the Commission will seek to amend NRS 281A.160 to include county school superintendents as public officers without regard to whether the position is created by law.

The Commission subsequently issued a letter to Roberts setting forth its decision. Roberts waived confidentiality with respect to this proceeding. Therefore, the Commission now publishes the letter as its written Opinion.²

¹ The following Commissioners participated in this opinion: Chairman John T. Moran, III, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Paul H. Lambole, Esq., John W. Marvel, and James M. Shaw.

²Section II. Discussion, in relevant form and substance, reproduces the Commission's letter to the requester.

I. QUESTION PRESENTED

Whether, as Nye County School Superintendent, you are a public officer as defined in NRS 281A.160 and therefore required to file an annual Financial Disclosure Statement under NRS 281A.610.

II. DISCUSSION

You asked the Commission whether you are a "public officer," as that term is defined in NRS 281A.160, serving as the Superintendent of the Nye County School District. If you are deemed a public officer, you are required to file an annual Financial Disclosure Statement ("FDS") pursuant to NRS 281A.610.

The Commission determined that the position of Superintendent of Schools for the Nye County School District is not "established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision," as required by NRS 281A.160 to qualify as a public officer. Therefore, you are not required to file a FDS pursuant to the provisions of NRS 281A.610.

The Commission reviewed the statutes which govern the appointment of superintendents of school districts set forth in chapter 391 of NRS. The Commission determined that NRS 391.100 authorizes, as opposed to requires, the board of trustees of a school district to employ a superintendent. The Nevada Legislature has stated that the position may be created by

a school district board of trustees. The permissive language suggests that the position need not be created at all. Accordingly, a superintendent is not a position "established" by statute because of the permissive language in the statute. Furthermore, the Commission determined that no Nye County ordinance otherwise established the position.

The Commission supported its decision in this matter on the same basis. In that decision, the Commission cited to *UCCSN v. D.R. Partners*, 117 Nev. 195, 202-03; 18 P.3d 1042, 1047 (2001), to support the principle that a statute which authorizes a position to be created and administered by another entity does not "establish" the position in statute. In the case, a Nevada statute authorized the Board of Regents of the University and Community College System of Nevada to prescribe the duties of the officers of the System, including the presidents of the various colleges within the System. The Court stated that "the position of community college president was created not by any statute, but administratively by the Board, and the Board can as easily abolish the position or substitute another for it."

Consequently, the community college president was not a public officer within the meaning of a statute defining "public officer" for purposes of the laws applicable to public employees and officers, generally. The definition of "public officer" in NRS 281A.160 was derived from the definition described in that statute.

While the Commission declared that the Superintendent of the Nye County School District is not a public officer based on the limited factors set forth in this decision, the Commission held that the function and duties of the Superintendent otherwise satisfy the remaining elements of the definition of "public officer" set forth in NRS 281A.160 – exercising a public power, trust and duty.

The Commission's decision in this matter became effective on January 13, 2011.

Dated this 4th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman³

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:

(a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and

(b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

(1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(2) The expenditure of public money; and

(3) The administration of laws and rules of the State or any county, city or other political subdivision.

³ At the time this written opinion was issued, the presiding officer in this matter, then-Chair Moran, no longer served on the Commission. Therefore, current Chair Beyer signed this opinion on behalf of the participating Commissioners.