



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Requests
for Opinions Concerning the Conduct of
SHARON McNAIR, Former Member and
Treasurer, Governing Body of Beacon Academy
of Nevada, a Public Charter School,
State of Nevada,

Requests for Opinion Nos. 10-105C
10-106C
10-108C
10-109C
10-115C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Consolidated Third-Party Requests for Opinion Nos. 10-105C, 10-106C, 10-108C, 10-109C and 10-115C before the Nevada Commission on Ethics (“Commission”) concerning Sharon McNair (“McNair”), and renders an opinion as agreed.

2. **JURISDICTION:** At all material times, McNair served as member and the Treasurer of the Governing Body (“Governing Body”) of Beacon Academy of Nevada (“Beacon Academy”), a public charter school. Pursuant to Nevada Revised Statute (“NRS”) 386.549, the governing body of a charter school is a public body. The provisions of the Nevada Administrative Code (“NAC”) 386.345 establish that the members of the governing body are public officers within the meaning provided in NRS 281A.160. NRS 281A.280 gives the

Commission jurisdiction over current and former elected and appointed public officers for alleged conduct which occurred within the immediately preceding two years. Accordingly, the Commission has jurisdiction over McNair.

3. **PROCEDURAL STATUS AND HISTORY:**

The following events are relevant to the matter:

- a. Pursuant to Chapter 386 of the NRS and NAC and the Bylaws of Beacon Academy, the Governing Body elected McNair to serve as a member and the Treasurer of the Governing Body on or about June 2008. McNair resigned from the Governing Body on or about March 15, 2011.
- b. Between December 10, 2010 and December 16, 2010, the Commission received five third-party requests for opinion (“RFOs”) from a private citizen (“Requester”) regarding McNair’s alleged conduct as a member and Treasurer of the Governing Body interfering with her private interests in violation of various provisions of NRS 281A. The RFOs generally alleged, among other matters not subject to the jurisdiction of the Commission, that McNair had: 1) used her official position to seek favors and influence subordinates regarding her daughter’s employment with Beacon Academy; and 2) used her official position to secure an unwarranted and/or unlawful contract with Beacon Academy to provide accounting services through her private accounting firm, McNair & Associates.
- c. As required by NAC 281A.410, the Commission provided McNair with notice of the RFOs by mail. Pursuant to NRS 281A.440(3), McNair was provided an opportunity to file a written response to the RFOs and submitted separate written responses to the allegations through the Governing Body’s legal counsel, Flangas McMillan Law Group, and her personal attorney, Chara L. Allen, Esq.

d. Based on the facts developed from the Commission's investigation, the Commission's Executive Director provided a report and recommendation to an investigatory panel pursuant to NRS 281A.440(4). The Executive Director recommended that there was credible evidence to establish just and sufficient cause for the investigatory panel to forward certain allegations implicating various provisions of NRS 281A to the Commission for a hearing and opinion as follows:

- (1) McNair's alleged attempts to have Beacon Academy hire her daughter, Kimberly McNair-Styles (a person to whom McNair has a commitment in a private capacity), as an employee of Beacon Academy and/or retain her daughter's employment status after she was subjected to disciplinary action by Beacon Academy's Principal, implicating NRS 281A.020, NRS 281A.400(1), (2) and (9) and NRS 281A.420(1).
- (2) McNair's alleged contract with Beacon Academy for billing and accepting fees from the charter school for services provided by McNair & Associates, McNair herself, or Amy Billey, an employee of McNair & Associates, implicating NRS 281A.020, NRS 281A.400(1), (2), (3), (4), (5), (9) and (10), NRS 281A.420(1) and (3) and NRS 281A.430(1).
- (3) McNair's alleged attempts to have Beacon Academy hire her associate from McNair & Associates, Ms. Billey, implicating NRS 281A.020 and NRS 281A.400(1), (2), (3), (9) and (10).

- e. The Commission's Executive Director further recommended that credible evidence did not exist to support allegations that McNair's conduct violated NRS 281A.400(7).¹

- f. Pursuant to NRS 281A.440, on May 9, 2011, a two-member investigatory panel of the Commission reviewed the RFOs, McNair's responses, the Executive Director's report and recommendation and other evidence. The Panel adopted the Executive Director's recommendations described in paragraphs "d" and "e" herein and forwarded the matter to the Commission for a hearing and opinion.

- g. In lieu of a full hearing regarding these alleged violations of NRS 281A, McNair now enters into this stipulation acknowledging her duty as a former public officer to commit to avoid conflicts between her private interests and those of the public she served. Accordingly, McNair agrees that an appearance of impropriety and conflicts of interest arose from interfering in her daughter's employment situation with Beacon Academy and entering into a contract with Beacon Academy to provide accounting services while she was a member of the Governing Body. *See generally* NRS 281A.020, NRS 281A.400 and NRS 281A.430.

¹ RFO 10-115C alleged that McNair used government resources to retain the Governing Body's legal counsel for private matters. Due to lack of credible evidence, RFO 10-115C was dismissed and therefore this stipulation governs only RFOs 10-105C, 10-106C, 10-108C and 10-109C.

4. **RELEVANT STATUTES:** The following excerpts from Nevada Revised Statutes are relevant to the allegations giving rise to this proposed stipulated agreement:

a. **NRS 281A.020(1)** – Public Policy / Legislative Declaration

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

b. **NRS 281A.400(1)** – Seeking/Accepting Favor Influencing Public Duties

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

c. **NRS 281A.400(2)** – Unwarranted Preferences

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

d. NRS 281A.400(3) – Participating as Agent of Government in Contract

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

e. NRS 281A.400(4) – Accepting Private Compensation for Public Duties

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee.

f. NRS 281A.400(5) – Using Non-public Government Information For Pecuniary Interest

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.

g. NRS 281A.400(9) – Using Position to Influence Subordinate

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

h. NRS 281A.400(10) – Using Position to Seek Other Contracts

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

i. NRS 281A.420(1) – Disclosure

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

- without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. . . .

j. NRS 281A.400(3) and (4) – Abstention

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of others.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of

the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others.

k. NRS 281A.430(1) – Entering into Contracts with Governmental Entities

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

l. NRS 281A. 170 – “Willful Violation” Defined

“Willful violation” means a violation where the public officer or employee:

1. Acted intentionally and knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter.

m. NRS 281A.105 – “Intentionally” Defined

“Intentionally” means voluntarily or deliberately, rather than accidentally or inadvertently. The term does not require proof of bad faith, ill will, evil intent or malice.

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n. NRS 281A.115 – “Knowingly” Defined

“Knowingly” imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

5. FINDINGS/STIPULATIONS OF FACT:

a. McNair’s Public Interests

(1) McNair was a member and the Treasurer of the Governing Body between approximately June 2008 and March 2011. McNair resigned from the Governing Body on or about March 15, 2011.

(2) McNair held a public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada.

b. McNair’s Private Interests

At all times relevant to this matter:

(1) McNair was a certified public accountant licensed in the State of Nevada.

(2) McNair owned and was employed by McNair & Associates, a private accounting firm.

(3) McNair’s daughter was a licensed math teacher in the State of Nevada and during all material times described herein was employed as a part-time teacher by Beacon Academy.

c. McNair’s Conduct

(1) Upon learning that the Beacon Academy Principal had reduced her daughter’s workload, McNair contacted Beacon Academy’s Executive Director and

requested that he evaluate the situation as it related to her daughter and two other teachers who were involved.

(2) McNair sought and negotiated with Beacon Academy's Executive Director to enter into a contract with her private accounting firm, McNair & Associates, to provide accounting services to the charter school.

6. **TERMS:** Based on the foregoing, McNair and the Commission agree as follows:

- a. Each of the findings/facts enumerated in section 5 is deemed to be true and correct.
- b. The Commission finds insufficient evidence that McNair interfered or became involved in any decision by Beacon Academy to hire her daughter as an employee of the charter school.
- c. McNair initiated a phone call to Beacon Academy's Executive Director upon learning that the Beacon Academy Principal had reduced her daughter's workload and requested that the Executive Director evaluate the situation as it related to her daughter and two other teachers who were involved.
- d. McNair's act of contacting a subordinate to request action on behalf of her daughter's interests (a person to whom McNair has a commitment in a private capacity) constitutes the use of her position as a Governing Body member to seek a favor or unwarranted preference and/or to influence a subordinate for her private interests, resulting in a single violation of the Ethics in Government Law, implicating the provisions of NRS 281A.020 and NRS 281A.400(1), (2) and (9).
- e. McNair sought and negotiated with Beacon Academy's Executive Director to enter into a contract with her private accounting firm to provide accounting services to the

charter school, and, as a result of that contract and the services rendered, her firm received approximately \$34,684.00 in payments from Beacon Academy.

- f. McNair's act of entering into a contract to provide accounting services that was not otherwise offered to other accounting firms constitutes the use of her official position to negotiate, seek and accept a contract or engagement (and an unwarranted preference/advantage), not otherwise available to the public, through her subordinate for her private interests. That contract would tend to improperly influence a reasonable person to depart from the faithful discharge of her public duties, and McNair received compensation for services, which should have been performed without compensation in her role as the Treasurer, or by a Beacon Academy employee or another CPA firm. Such conduct constitutes a single course of conduct which amounts to a single violation of the Ethics in Government Law implicating the provisions of NRS 281A.020, NRS 281A.400(1), (2), (3), (4), (5), (9) and (10) and NRS 281A.430(1).
- g. The Commission finds insufficient evidence that McNair failed to properly disclose and/or abstain from voting or acting on any matters involving her private interests before the Governing Body.
- h. The Commission finds insufficient evidence that McNair used her position to have a private employee of McNair & Associates, Amy Billey, hired as an employee of Beacon Academy to replace other staff.
- i. McNair's two violations of NRS 281A were willful under NRS 281A.170. McNair acted intentionally and knowingly as these terms are defined in NRS 281A.105 and 281A.115, respectively.

- j. For an act to be intentional, NRS 281A.105 does not require, nor was there any evidence to suggest, that McNair acted in bad faith, or with ill will, evil intent or malice. However, McNair acted voluntarily and deliberately to become involved in her daughter's employment situation and Beacon's accounting services. Her acts were not accidental or inadvertent. *See also In re Fine v. Nevada Commission on Judicial Discipline*, 116 Nev. 1001 (2000) ("the relevant inquiry regarding willful misconduct is an inquiry into the intentional nature of the actor's conduct. ... The fact that an actor may have acted with the best of intentions does not relieve the actor of liability.").
- k. NRS 281A.115 does not require that McNair had actual knowledge that her conduct violated NRS 281A and imposes constructive knowledge on a public officer when there are other facts that should put an ordinarily prudent person upon inquiry. *See also Garcia v. The Sixth Judicial District Court of Nevada*, 117 Nev. 697 (2001) ("constructive knowledge fulfills a statutory requirement that an act be done 'knowingly.' State of mind need not be proved by positive or direct evidence but may be inferred from conduct and the facts and circumstances disclosed by the evidence.") and *State v. Rhodig*, 101 Nev. 608 (1985) ("... the law does not require knowledge that such an act or omission is unlawful."). While the evidence reflects that McNair was not familiar with the Ethics in Government Law (and therefore had no actual knowledge that her conduct violated the provisions of NRS 281A), the record reflects she was aware of and relied upon the statutes and regulations governing charter schools set forth in Chapter 386 of NRS and NAC, certain provisions of which directly or expressly refer governing body members to their

responsibilities under NRS 281A. These facts would or are deemed to put an ordinarily prudent person upon inquiry that a member of a governing body of a charter school is subject to the provisions of NRS 281A.

- l. For the two willful violations set forth in this section, McNair will pay a total civil penalty (sanction) of \$5,000.00 pursuant to NRS 281A.480 on or before August 31, 2012, in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- m. The Commission finds no evidence that Ms. McNair acted in bad faith, with ill intent, or had actual knowledge that her conduct violated any provisions of NRS 281A. As a public officer in the State of Nevada, McNair should have known of the Ethics in Government Law provisions contained in NRS 281A. However, the evidence established that Ms. McNair did not know of the pertinent provisions. Instead, with respect to the contract arrangements between McNair and Beacon Academy for accounting services, she relied upon the expertise of Beacon Academy's Executive Director and the Governing Body's legal counsel, John McMillan, Esq., to guide her conduct as a public officer. Reliance upon inaccurate legal advice (or a lack thereof) respecting NRS 281A does not relieve a public officer from the responsibilities of NRS 281A.
- n. The evidence established a conflict between the provisions of NRS 281A regarding public officers and the NAC governing charter schools in the State of Nevada relating to contracting requirements between members of governing bodies and charter schools. McNair relied upon the provisions of the NAC governing charter schools, as she was unaware of the provisions of NRS 281A regarding public officers.

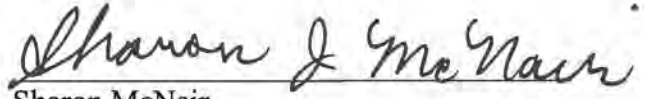
- o. The Nevada Ethics Commission acknowledges that McNair is a well-respected and ethical Certified Public Accountant in the State of Nevada and, throughout the course of the investigation and hearing, McNair was always very forthright and honest in her testimony, responses and participation.
- p. The Commission finds that the violations set forth in this Stipulation should have no negative or prejudicial impact on McNair's CPA license, abilities, professional affiliations, reputation, or standing in the community as McNair acted in good faith and relied upon the direction and advice offered by individuals whom she trusted and on whom she reasonably relied.
- q. This agreement applies only to the specific facts, circumstances and law related to these RFOs. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create an entirely different resolution of this matter.

7. **WAIVER:**


- a. McNair knowingly and voluntarily waives a full hearing before the Commission on the allegations against her and of any and all rights she may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. McNair knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS 281A, 233B or any other provision of Nevada law.

8. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby.

DATED this 24 day of August, 2011.

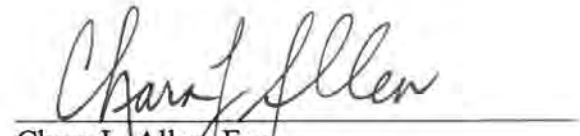

Sharon McNair

DATED this 24 day of August, 2011.


Erik Beyer, Chairman
Nevada Commission on Ethics

The above Stipulated Agreement has been reviewed and approved by:

DATED this 24 day of August, 2011.


Chara L. Allen, Esq.
Counsel for Sharon McNair

DATED this 19th day of September, 2011.


Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel