



Confidentiality waived 7/2/2012

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Richard Machado**, Sheriff,
Pershing County, State of Nevada,

Request for Opinion No. 11-25A
CONFIDENTIAL

Public Officer. /

CONFIDENTIAL OPINION

I. STATEMENT OF THE CASE

Public officer, Richard Machado ("Machado"), requested this 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 Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum¹ of the Commission heard this matter on March 7, 2011. Machado appeared via telephone and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission deliberated and orally advised Machado of its decision that the Ethics Law would prohibit him from accepting remuneration for operating his private traffic safety school, even if he were to donate the funds to charity.² The Commission now renders this formal written Opinion stating its findings of fact and conclusions of law.

Machado elected to retain confidentiality with respect to this proceeding. Therefore, the Commission will publish an Abstract in lieu of the full opinion.

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.

² Commissioner Keele voted against this determination.

The facts in this matter were obtained from documentary and testimonial evidence provided by Machado. The Commission's findings of fact set forth below accept as true those facts presented by Machado for the purposes of the advice offered in this Opinion. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this Opinion.

II. QUESTION PRESENTED

Richard Machado was recently elected as the Pershing County Sheriff. He also owns a private business that operates a program administered by the District Attorney's Office. He asks the Commission to advise him concerning the ethical implications of continuing this arrangement now that he is a public officer.

III. FINDINGS OF FACT

1. Machado is the newly elected Sheriff of Pershing County.
2. Pursuant to NRS Chapter 248, as Sheriff, Machado is a designated peace officer charged to enforce the laws in Pershing County, including, without limitation, traffic laws.
3. The District Attorney's Office administers a State authorized traffic school program whereby those who have received traffic citations have the option of having three demerits removed from their driving record by successfully completing a traffic safety class.
4. Machado is licensed as a Traffic Safety School Instructor and operates a licensed Traffic Safety School through his wholly owned private company. As required by NRS Chapter 483, Machado's school offers a State-approved curriculum and course materials.
5. The District Attorney's Office administers the traffic school program and collects enrollment fees from the students. The District Attorney's Office retains a portion of the fees to cover its administrative costs and remits the balance to Machado to compensate him for teaching.
6. After enough students have enrolled in the program, Machado schedules a traffic safety class. He holds about two classes a year and teaches 10 to 12 students annually.
7. Machado is the only licensed instructor in Pershing County and the surrounding communities. Apart from on-line instruction offered via the Internet, Machado's traffic school is the only licensed traffic school in the area.
8. Machado teaches the traffic safety classes on those days when he is not regularly scheduled to work, but has taught no classes since being elected Sheriff.

9. Machado would like to continue teaching traffic safety classes and is willing to donate his earnings to local charities.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Machado owns and operates the only licensed traffic safety school in Pershing County and the surrounding communities. For the last several years, he has teamed with the District Attorney's Office to offer a traffic safety program to those cited for certain traffic violations, allowing for the removal of three demerit points from their driving records upon successful completion of a traffic safety course. Students enroll in the courses through the District Attorney's Office and pay a fee to attend the class. After enough students have enrolled, Machado schedules and teaches the traffic safety class. The District Attorney's Office, after deducting a certain amount for its administrative costs, pays the remainder of the fees collected to Machado as compensation for teaching the class. Since he was elected Sheriff, Machado has discontinued the traffic safety classes pending advice from this Commission about whether the Ethics Law would allow him to continue his involvement with the traffic safety program.

As Pershing County Sheriff, Machado is charged with enforcing

the traffic laws in Pershing County. He is concerned that his operation of a traffic safety school might conflict, or at least appear to conflict, with his duties as Sheriff. He observes that he and his deputies have authority to issue traffic citations and that, as Sheriff, he is in a position to benefit his personal business by directing his deputies to increase the number of tickets they write in order to boost enrollment in his traffic safety courses. Machado desires to continue to offer traffic safety courses, which are otherwise unavailable in Pershing County, and therefore asks the Commission whether he may do so if he were to donate his teaching fees to local charities.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020 provides in relevant part:

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 to avoid conflicts between his private interests and those of the general public whom he serves.

The Ethics Law promotes the appropriate separation between public duties and private interests. As a public officer, Machado has public responsibilities that he must

separate from his private interests. By serving as the Sheriff and the owner of a traffic safety school, Machado has a potential conflict of interest that could violate the public trust if he were to continue teaching traffic safety classes for profit. Whether an improper conflict arises between his public duties as Sheriff and his private interests in the traffic safety school must be considered in light of the provisions set forth in NRS 281A and as interpreted by applicable Commission precedent in similar circumstances.

Based on the facts presented to us, the Commission concludes that the Ethics Law would not prohibit Machado from teaching traffic safety courses now that he is Sheriff. We advise him, however, that if he accepts compensation for his services, he would be in violation of certain statutes, even if he were to donate such compensation to charity.

Specifically, should Machado earn money from his traffic safety school as he has in the past, this would create at least an appearance of impropriety, and perhaps even an actual conflict of interest, in violation of NRS 281A.400(1), (2) and (10). Under NRS 281A.400(1), a public officer is prohibited from seeking or accepting an engagement or economic opportunity which would tend improperly to influence a reasonable person in the public officer's position to depart from the faithful and impartial discharge of the public officer's duties. In addition, NRS 281A.400(2) prohibits a public officer from using his government position to secure

unwarranted preferences or advantages for himself or his private business entity. Further, NRS 281A.400(10) bars a public officer from seeking other employment or contracts through the use of his official position.

Under Nevada law, the Sheriff's Office enforces the traffic laws in Pershing County where Machado's traffic school is located. As Machado pointed out to the Commission, his role as Pershing County Sheriff provides him with the opportunity to benefit his own business by directing his deputies to issue more traffic citations in order to increase enrollment in traffic safety courses. Because Machado's earnings are based on the number of students enrolled in the classes, his acceptance of compensation for his teaching services implicates both NRS 281A.400(1) and (2). Although the Commission does not imply that Machado would actually act in such a manner, the question is whether a reasonable person in Machado's position would tend to act improperly in these circumstances in violation of NRS 281A.400(1) and (2). Similarly, Machado has operated his traffic school under an informal arrangement with the District Attorney's Office for a number of years. Now that he is Sheriff, continuing this arrangement creates an appearance that Machado may be improperly using his official position in violation of NRS 281A.400(10).

Machado, however, can avoid the conflicts outlined above if he accepts no compensation for his services.

His suggestion that he donate his earnings to local charities is a good one, but does not resolve his ethical dilemma because he will have accepted the compensation in the first place. Also, he arguably will receive a personal benefit by making such a donation, even though he personally receives no direct financial gain. See *In re Eastley*, RFO No. 07-51A (public officer who accepts gift on behalf of a public body may not direct how the gift should be used).

The student enrollment fees that the District Attorney Office's collects for Machado can be disposed of in any number of ways, so long as Machado does not direct how the fees are paid out. For example, the District Attorney could remit Machado's portion of the fees to a local governmental body, such as the Lovelock City Council or Pershing County Commission, and that body could then select the charity to receive the funds. The Commission advises Machado, however, that he must detach himself from either developing or participating in whatever distribution process is eventually adopted. His assertion of control over the fees in any manner is what the Ethics Law dictates against.

In closing, the Commission praises Machado for his initiative in bringing a traffic safety school to Pershing County. He is providing a service that would otherwise not be available in this rural area. That he is willing to continue teaching the traffic safety courses without compensation is a tribute to his

commitment to serving the public in his community.

V. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Machado was a "public officer," as defined by NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. The Ethics Law does not prohibit Machado from teaching traffic safety classes in Pershing County now that he is the Pershing County Sheriff. However, if he chooses to accept compensation for his traffic school services, he would violate NRS 281A.400(1), (2) and (10) even if he donates his earnings to charity.

Dated this 20th day of June, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman³

³ At the time this written opinion was issued, then-Chair Moran no longer served on the Commission. Therefore, current Chair Beyer signs this opinion on behalf of the Commission.