



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**Shirley L. Matson**, Assessor,  
Nye County, State of Nevada,

**Request for Opinion No. 11-67C**

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Public Officer. /

#### OPINION

#### **I. STATEMENT OF THE CASE**

Pursuant to NRS 281A.440(2)(b), a Third-Party Request for Opinion ("RFO") was filed with the Nevada Commission on Ethics ("Commission") on August 15, 2011, alleging that Shirley L. Matson, ("Matson"), Nye County Assessor, violated various provisions of the Ethics in Government Law (Ethics Law) set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). Specifically, the RFO alleged that Matson failed to honor her commitment to avoid certain conflicts of interest between her public duties as the Assessor and a citizen-initiated recall petition against her, used her official position to obtain unwarranted personal privileges to maintain her elected position, used governmental resources to benefit her personal interests and attempted to benefit her personal interests through the influence of subordinates. Pursuant to NRS 281A.440, the Commission staff conducted an investigation of the allegations, and an Investigatory Panel<sup>1</sup> of two commissioners determined that just and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding the allegations.

The matter then came before a quorum of the Commission for a public hearing on April 18 and 19, 2012.<sup>2</sup> Matson attended the hearing and provided sworn testimony. The Commission also considered the testimony of numerous witnesses and documentary exhibits as well as various stipulations of fact. Matson was

<sup>1</sup> Chairman Erik Beyer and Commissioner Keith Weaver served on the Investigatory Panel. Pursuant to NRS 281A.220(4), they did not thereafter participate in any proceedings of the Commission relating to the matter.

<sup>2</sup> The quorum consisted of Vice-Chair (and Presiding Officer) Paul Lamboley and Commissioners John Carpenter, Gregory Gale, Magdalena Groover and James Shaw.

represented during the Commission proceedings by attorneys Brian Pezzillo, Esq. and Jennifer Robinson, Esq. of Pezzillo Robinson law firm in Las Vegas, Nevada.

At the conclusion of the hearing, and after fully considering the facts and circumstances disclosed by the evidence, including witness testimony and documents, the Commission deliberated on the record and orally announced its decision that, based on a preponderance of the evidence, Matson willfully violated two (2) provisions of the Ethics Law and imposed a \$5,000.00 civil penalty. The Commission dismissed the remaining two (2) allegations for a lack of sufficient evidence. The Commission now renders this written Opinion setting forth its formal findings of fact and conclusions of law.<sup>3</sup>

## **II. FACTUAL/PROCEDURAL BACKGROUND**

Matson serves as the elected Assessor for Nye County, Nevada. On August 15, 2011, a private citizen filed an RFO with the Commission alleging that Matson violated various provisions of the Ethics Law. The RFO alleged that three months after Matson took office, Matson, through the use of her County position and resources, made inappropriate comments regarding the immigration status of several “Mexican/Latino, non-English speaking construction employees” working to construct a county jail on a site adjacent to her County office. For these insensitive public comments as the Assessor, Matson was publicly reprimanded by the Nye County Board of County Commissioners.

In addition to the public reprimand, a private citizen, Stephanie Lopez, initiated a recall petition against Matson seeking to recall her from her elected position, as provided in NRS Chapter 306. To secure the recall, the petitioner(s) were required to obtain the requisite number of signatures from registered voters within the jurisdiction for verification by the County Clerk. The signatures were generally collected at various public sites, including the County’s public buildings in accordance with NRS 293.127565. Several County employees working in the Assessor’s Office privately supported and/or participated in the recall effort. Approximately three weeks after the recall petition was filed, the recall petitioners held an event in the parking lot of the County (public) building in Pahrump, Nevada which houses the County Assessor’s Office (as well as other County offices) to collect signatures in support of the recall (hereafter referred to as the “parking lot recall event”).

In response to the parking lot recall event, Matson drove her County-issued vehicle to the event and placed several signs on the vehicle that she created with County office supplies expressing her opposition to the recall petition. Several minutes later, Matson returned to the county vehicle, removed the signs and drove the vehicle away. Shortly thereafter, she returned to the event in her personal vehicle and re-taped the same signs to her personal vehicle. Upon returning to her office following the car-switch, Matson instructed an employee to issue a “Personal Property Declaration” letter to one of the recall petitioners, Stephanie Lopez, alleging

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<sup>3</sup> Matson paid the \$5,000 fine on or about June 5, 2013.

that Lopez had a cleaning business and failed to file the required form. Lopez denied owning the business and declined to file the form. The letter appeared to be retaliation against Lopez for filing the recall petition and collecting the related signatures in the parking lot of the County building. Matson's actions were alleged to constitute the misuse of her official position and/or public property for personal benefit and the improper influence of a subordinate.

In response to the recall petition and related signature events, Matson appeared to confuse the line between her public duties as the Assessor and her private interests in defending against the recall events. Additional allegations were asserted stemming from Matson's personnel interactions with county employees of the Assessor's office who supported and/or participated in recall efforts, or who were suspected of supporting the recall efforts. These interactions were generally alleged to constitute failures to avoid conflicts of interest, improper use of her public position to secure unwarranted advantages in preserving her elected position from the recall efforts and improper influence over her subordinates.

In summary, the Commission was presented with various assertions from the requester regarding facts and evidence that Matson, as Assessor, used government resources in the form of supplies and materials to create signs opposing the recall petition which Matson posted on her county-issued vehicle and on the property outside of the Assessor's office, influenced a subordinate to further her private interests with respect to a citizens' effort to recall Matson as the Assessor, and used her official position in personnel-related matters to cause significant County resources to be expended to oppose the recall effort. After a thorough investigation, the Commission's Executive Director presented the following four recommendations (allegations) to the Commission's Investigatory Panel pursuant to NRS 281A.440(4) and the Panel made the associated determinations regarding whether credible evidence existed to support a finding of just and sufficient cause for the Commission to hold a hearing and render an opinion in the matter:

1. NRS 281A.020 – Matson failed to commit to avoid conflicts between her private interests and those of the public which she serves.
  - The Panel determined that all of the conduct alleged implicated this statute and was supported by credible evidence.
2. NRS 281A.400(7) – Matson used governmental time, property, equipment or other facility to benefit her personal or financial interest.
  - The Panel determined that the allegations regarding Matson's use of County time, office supplies, a County vehicle, and the services of a staff member were supported by credible evidence.
3. NRS 281A.400(9) – Matson attempted to influence a subordinate to benefit her personal or financial interest.
  - The Panel determined that the allegation regarding Matson's attempted influence of a staff member, Ms. Stringer, to issue the letter to the recall petitioner, Ms. Lopez, to benefit Matson's personal interest was supported by credible evidence.

4. NRS 281A.520 – Matson did not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the narrow period identified in the statute between the filing of candidacy and the election.
  - Since Matson had already been elected before the conduct occurred, the Panel found that this statute did not apply to her conduct.

The Executive Director also presented supplemental evidence to the Panel during the Panel hearing in the form of an email composed by Matson and sent to several employees. The email was not included in the initial panel materials; however, the Executive Director made a recommendation based on the email to include an additional allegation that Matson violated NRS 281A.400(2) for using her official position to seek or secure unwarranted preferences regarding the recall efforts. Based on the additional evidence and recommendation, the Panel directed the Executive Director to provide Matson with notice of the additional allegation and evidence and provide her with an opportunity to respond. After a written response was filed, the Panel reconvened at a second hearing. The Executive Director presented the following additional allegation and recommendation to the Panel pursuant to NRS 281A.440(4) and the Panel made the associated determination regarding whether credible evidence existed to support a finding of just and sufficient cause for the Commission to hold a hearing and render an opinion regarding the allegation:

5. NRS 281A.400(2) – Matson used her official position to seek or secure unwarranted preferences regarding the recall efforts.
  - The Panel determined that the allegations supported by various email and other correspondence between Matson and County Assessor staff were supported by credible evidence.

### **III. FINDINGS OF FACT**

1. In her public capacity, Matson serves as the elected Assessor of Nye County (County). Matson took office on or about January 3, 2011. Matson has not held any public position prior to her term as Assessor. The Assessor has two County offices: the main office in Pahrump, Nevada and a smaller office in Tonopah, Nevada.
2. On or about March 25, 2011, less than three (3) months after taking office, the Nye County Board of Commissioners received evidence, deliberated and publicly reprimanded Matson for what it determined to be “inappropriate comments” by a Nye County official when Matson sent an email in her official capacity as the Assessor requesting that the Nye County Sheriff review the immigration status of “Mexican/Latino, non-English speaking construction employees” working on a new jail building adjacent to Matson’s office.

3. Pursuant to NRS Chapter 306, on or about July 6, 2011, three private citizens (“Recall Petitioners”), including Stephanie Lopez, filed a Notice of Intent to Recall Matson as the elected Assessor.
4. On or about July 27, 2011, the Recall Petitioners hosted an event (a booth to obtain signatures in support of the recall) in the parking lot of the County building in Pahrump, Nevada which houses the County’s Assessor and Recorder Offices, the County Manager and other County offices (hereafter referred to as the “parking lot recall event”). Matson interfered with the parking lot recall event by parking her County-issued vehicle in front of the booth, displaying signs on the County vehicle which she made using County office supplies (folders, pens and tape) and interacting with the petitioners in her opposition to the recall.
5. The photographs and video recording of the events made on or about July 27, 2011 are accurate depictions of the events which took place at the parking lot recall event of that date<sup>4</sup>, including:
  - a. The silver Toyota vehicle in the photographs is a Nye County vehicle provided to Matson for her use during Assessor business.
  - b. The small, red SUV in the photographs is Matson’s personal vehicle.
  - c. Using County office supplies Matson created and then placed the signs depicted in the photographs on the County vehicle.
  - d. Matson removed the signs, drove the County vehicle to her home and retrieved her personal vehicle and parked it in the County parking lot. Matson then placed the signs on her personal vehicle.
6. NRS 293.127565 states that the public officer or employee in control of a public building or otherwise responsible for the operation of a public building may authorize the use of the public building, including the area inside and outside the building, to gather signatures for a recall petition. Prior to the parking lot recall event, Robert Jones (Jones), Nye County Facilities Manager, under the direction and supervision of the County Manager, authorized the use of the county building and adjacent parking lot area for the parking lot recall event. Matson was not involved in or informed of the authorization by Jones for the parking lot recall event. Matson was not the public officer in control of the building.
7. On or about July 27, 2011, following her actions at the parking lot recall event, Matson returned to her office and directed her subordinate, Sheree Stringer, Personal Property Appraiser, to send a demand letter for a Personal Property Declaration (a document which assists the Assessor to assess appropriate taxes on the property) to Recall Petitioner/Organizer, Stephanie Lopez (“Lopez”), for an alleged cleaning business owned and operated by Lopez. See Comm’n Hearing

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<sup>4</sup> See Comm’n Hearing Exhibit 1, Bates Numbers 253-258.

Exhibit 9, Bates Numbers 432 and 433 (Email correspondence between Matson and Personal Property Appraiser Sheree Stringer requesting property declaration and confirmation of its delivery); See also, Stringer testimony, Comm'n Hearing Transcript, pp. 83-96. Matson testified she was informed by a private citizen that Lopez had a cleaning business on or about the same time as the recall efforts were being undertaken. The usual office procedures for sending out Property Declarations were fairly informal and were based upon general business searches and physical observations and word-of-mouth by members of the public and Assessor's staff. Stringer sent out the Property Declaration on or about the same day as the parking lot recall event in accordance with Matson's direction and general office procedures. Lopez denied ownership of any business and did not file the form. No further action was taken on the matter by Matson or the Assessor's staff.

8. On or about July 28, 2012, the day following the parking lot recall event, Matson created signs with her own equipment and materials and placed the signs on and/or around the sidewalk/parking lot area outside the Pahrump County building which houses the Assessor's office. The signs supported her position as Assessor in response to the recall petition. The County Facilities Manager had not authorized placement of the signs and removed them from the sidewalk. These signs were not made with County property.
9. The photographs of the signs made and placed on the sidewalk by Matson on or about July 28, 2011 are accurate depictions of the signs placed on that date. See RFO, Bates Numbers 41-42.
10. In response to Matson's conduct during the parking lot recall event and receipt of the demand letter from the Assessor's office for completion of a Personal Property Declaration for a business which did not exist, Lopez, a private citizen, filed this RFO.
11. In response to recall efforts, office tensions grew between Matson and several of her subordinates within the Assessor's Office. Some of the subordinates supported the recall efforts in their private capacities, during their private time. Matson confronted all Assessor employees regarding their ability to work with her amid the recall efforts, requested support of her opposition to the recall and issued threats and/or proposed disciplinary action against certain employees during the timeframe of the recall efforts, including, without limitation:
  - a. Reprimanding Appraiser employee Julianne Dudenski and referring during the reprimands to Dudenski's private participation in recall events against Matson. See Comm'n Hearing Exhibit 11, Bates Numbers 474-477 (Emails and other documents exchanged between Dudenski and Matson); and Dudenski Testimony, Comm'n Hearing Transcript, pp 125-162.

- b. Discussing the recall on a public radio station stating that she had a private investigator informing her that Assessor employee Julianne Dudenski (subordinate) had been participating in the recall and she was going to “see what [she could] do to extricate this employee from [her] office as soon as [she could].” See Comm’n Hearing Exhibit 10, Bates Numbers 446-451 (Audio recording of the August 5, 2011 KPAH radio broadcast featuring Shirley Matson, including notes made by Commission Investigator. Recording made by Byron Foster).
  - c. Emailing Assessor employee Sheree Stringer (subordinate) encouraging support for Matson’s opposition to the recall. See Comm’n Hearing Exhibit 9, Bates Number 435 (Email correspondence between Personal Property Appraiser Sheree Stringer and Matson).
  - d. Emailing Assessor staff (subordinates) encouraging them to avoid recall petitioner, Stephanie Lopez. See Comm’n Hearing Exhibit 9, Bates Number 437 (Email correspondence between Personal Property Appraiser Sheree Stringer and Matson).
  - e. Emailing Assessor staff (subordinates) regarding her view of the lies associated with the recall. See Comm’n Hearing Exhibit 9, Bates Number 438 (Email correspondence between Personal Property Appraiser Sheree Stringer and Matson).
  - f. Emailing Assessor staff (subordinates) that she was willing to reinstate instant messaging capability on the computer system since the recall had concluded and failed. See Comm’n Hearing Exhibit 9, Bates Number 441 (Email correspondence between Personal Property Appraiser Sheree Stringer and Matson).
  - g. Emailing various Assessor staff (subordinates) with threats regarding their employment status for participating in an alleged investigation of Matson by the District Attorney related to her alleged conduct during the recall. See Comm’n Hearing Exhibit 9, Bates Number 442 (Email correspondence between Personal Property Appraiser Sheree Stringer and Matson).
  - h. Emailing Assessor staff (subordinates) of her intentions to subpoena them to testify at the Commission’s evidentiary hearing. See Comm’n Hearing Exhibit 9, Bates Number 443 (Email correspondence between Personal Property Appraiser Sheree Stringer and Matson).
12. The recall effort failed for lack of sufficient signatures to support the petition, and personnel issues continued for several months over the failed recall between Matson and County staff, including Assessor subordinates, County human resources staff and fellow elected officials. As a result of the conflicts, the County employees’ union representatives became involved.

13. Matson obtained a copy of the recall signatures to determine which Assessor employees supported the recall effort. See Comm'n Hearing Exhibit 11, Bates Numbers 468 (Copy of Recall Petition); See also, Matson Testimony, Commission Hearing Transcript, pp 67-70. She used this information to determine which employees she felt could continue to work for her after the recall efforts. *Id.*
14. In and around the time of the recall efforts against Matson, and within 3 to 4 months after the recall effort failed, various departments of County government, including the Human Resources Department and the District Attorney, expended significant time advising Matson of various County personnel and liability concerns and issues regarding Matson's retaliatory interactions with her subordinates over issues concerning the recall, including disciplinary action taken by Matson against certain employees and proposed terminations of certain employees. See Comm'n Hearing Exhibits 12-14, Bates Numbers 481-523 (Emails and other documents exchanged between Human Resource Director Danelle Shamrelle, District Attorney Brian Kunzi and Matson); and Shamrell and Kunzi Testimony, Comm'n Hearing Transcript, pp 219-265 and 266-305, respectively. Matson's motivations for personnel actions derived from her feelings concerning the employees' presumed involvement in the failed recall petition.
15. Pending the Commission's proceedings in this RFO, many of Matson's proposed disciplinary actions, including proposed employment terminations, were overturned by the County Human Resources Division and the District Attorney over concerns of liability and protections under the employees' employment contracts. Those employees were placed on paid, administrative leave pending an independent investigation by County staff and a proper determination of discipline.

#### **IV. STATEMENT AND DISCUSSION OF ISSUES, RELEVANT STATUTES AND COMMISSION DECISION**

##### **A. ISSUES**

The Nevada Legislature has expressly declared the public policy of the State that public office is a public trust to be held for the sole benefit of the people. In support of the public policy, the Legislature also included mandatory provisions governing the conduct of public officers and employees which require that public officers and employees *must* avoid conflicts between their private interests and those of the general public they serve. NRS 281A.020(1). Matson's failure to avoid conflicts between her private interests in opposing a recall and the interests of the public she serves, including the use of her position to intimidate or harass other County officials and employees in an employment/personnel context during a recall environment, constitutes a willful violation of NRS 281A.020. Further, Matson's use of County supplies to create signs containing disparaging comments in defense of the recall which she placed on the County vehicle and then on her personal vehicle while parked in the County parking lot constitutes a separate willful violation of NRS



281A.400(7). Pursuant to NRS 281A.480(1), Matson shall pay a civil penalty in the amount of \$4,000.00 for her willful violation of NRS 281A.020 and an additional civil penalty in the amount of \$1,000.00 for her second willful violation of NRS 281A.400(7).

Pursuant to NRS 281A.480(9), the Commission must support a finding of a violation by a preponderance of the evidence. Accordingly, insufficient evidence was established to support the allegations implicating NRS 281A.400(2) and (9). Therefore, those allegations are dismissed. Nevertheless, Matson's overall conduct, including that described in the allegations concerning NRS 281A.400(2) and (9), resulted in a comprehensive course of conduct contravening the public trust and the requirements of the Ethics Law. Matson knowingly and intentionally departed from the faithful and impartial discharge of her public duties in violation of the public trust and used government resources for her personal interests in a manner sufficient to warrant sanctions for her conduct.

## **B. RELEVANT STATUTES**

### **1) Public Policy**

**NRS 281A.020(1) provides:**

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.

### **2) Use of Governmental Position to Secure Unwarranted Preferences**

**NRS 281A.400(2) provides:**

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.

### **3) Use of Governmental Resources to Benefit Personal or Financial Interest**

**NRS 281A.400(7) provides, in relevant part:**

7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

### **4) Use of Governmental Position to Influence Subordinates.**

**NRS 281A.400(9) provides:**

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

## **C. COMMISSION DECISION**

This RFO involves significant interplay between the requirements and prohibitions set forth in the Ethics Law and the complexities of personnel laws and policies in the context of public employment. The Commission does not interpret or rule on matters strictly involving employment laws and personnel issues within the public sector. However, the Commission recognizes, and this case represents, the very underpinnings of the Ethics Law in the context of public employment. In particular, the personnel concerns at issue here form the underlying framework for Ethics Law considerations in the arena of public employment and public office.

In this case, the Commission has been presented with a public official, new to public office and its related employment and human resource considerations, navigating her official duties within the untenable waters of private recall efforts against her by members of the community, including members of her staff. Within a few months after she assumed public office, Matson began expressing some rather unfortunate and inappropriate personal views concerning immigration and ethnicity issues within the County in her official capacity. This conduct prompted significant public scrutiny, including a recall effort against her continuing to serve as the elected County Assessor. Consequently, Matson engaged in a course of conduct which confused her obligations as a public officer to uphold the public trust.

At the outset, the Commission finds and concludes that Matson's personal, private and pecuniary interests in this matter included her interests in maintaining her elected (paid) position and her public reputation and image despite recall efforts. Unfortunately, Matson regularly interjected these private interests into her public role as an elected official and her responsibilities as the Assessor. At its core, the Ethics Law promotes the appropriate separation between public and private interests to preserve the public trust, and where Matson interposed her public position and the role of the Assessor's Office in efforts to defend against recall efforts, Matson ran afoul of the Ethics Law. In other personnel contexts described herein, the Commission understands and appreciates the concerns expressed by various members of the public and County government, and Matson's subordinate staff within the Assessor's office, but finds insufficient evidence of ethics violations where the true concern involved personnel considerations to be undertaken by the County.

### **1) Use of Government Resources for Personal Benefit (NRS 281A.400(7))**

At the outset of the hearing on this matter, Matson stipulated on the record that, albeit a mistake, she got caught up in the moment upon witnessing the parking lot recall event, became frustrated and immediately used governmental time and resources to make signs (preparing the signs during business hours using office materials) to defend against the recall efforts during the recall parking lot event, and also used her County vehicle to stage and promote her messages during the recall parking lot event. The Commission appreciates the acknowledgment of her mistake, but concludes that she nevertheless knowingly and intentionally engaged in this conduct and used County property to show the recall petitioners that she would defend her position as the Assessor during government time and in rash measures utilizing her public position and its resources. Accordingly, the Commission must and does find that Matson's actions constituted the use of governmental time and resources for her personal and pecuniary interests in defending her public position as the Assessor in violation of NRS 281A.400(7). Her conduct was willful as defined by NRS 281A.170 and the Commission imposes a \$1,000.00 civil penalty.

However, the Commission accepts that the pressure of the moment got the best of her and she reacted to the circumstances by using a minimal amount of government property. Accordingly, the Commission intends its conclusion in this context to be instructive as well as punitive to prevent future misuse of governmental resources under similar circumstances. While this singular incident alone does not persuade the Commission that Matson's conduct resulted in a major transgression of the public trust and overwhelming use of public resources, it was this parking lot recall event which set in motion the series of events that led Matson to allow her personal recall efforts (defenses) to interfere with her duty to protect the public trust and separate her private interests from those of the public served by her as the Assessor.

## **2) Influencing Subordinate for Personal Benefit (NRS 281A.400(9));**

The timing of Matson's request of a subordinate to issue a Property Declaration to Ms. Lopez, the individual known to be leading the recall efforts, is more than coincidental, despite contentions that the request was made within usual office procedures and at the behest of a private citizen. The very day that Matson was upset and outraged over the parking lot recall event, she directed a subordinate to issue a declaration to the event's coordinator and leader. Matson had no independent information and/or belief that Lopez maintained a cleaning business, did not undertake additional research upon learning of the supposed business from a random member of the public before acting in her official capacity to request such a declaration, and she waited to require the declaration until she was directly confronted with a private issue involving the recall initiated by Lopez.

It was well within Matson's right to defend herself against the recall; however, it was not appropriate to use her official position to assist her in those efforts. Whether or not her efforts were successful, the attempt alone triggers the application of the Ethics Law. Nevertheless, the testimony from various witnesses explained that the Assessor's Office used very informal methods to issue Property Declarations, including word-of-mouth observations by the public. Further, when Lopez returned the Declaration denying such cleaning business, the Assessor did not pursue the declaration or any matters concerning Lopez in an official capacity. Based on the testimony provided in regard to this matter, the Commission finds insufficient evidence to conclude that Matson violated NRS 281A.400(9) regarding the improper influence of a subordinate for personal benefit in this instance. However, as described more fully below, the Commission does view Matson's subsequent interactions with her subordinates during the recall circumstance to violate NRS 281A.020.

## **3) Using Position to Secure Unwarranted Benefits (NRS 281A.400(2))**

The RFO in this case also presented an allegation that Matson's email threat to certain subordinates regarding their employment status pending the recall constituted the use of her position as the Assessor to secure unwarranted personal benefits related to the recall; i.e., discouraging support for the recall through employment threats. The Commission received an overwhelming amount of documents and email communications between Matson and her staff and/or other County officials regarding her influence as the Assessor to discuss recall circumstances and suggest and/or imply that she could undertake various disciplinary actions against employees who appeared to support the recall.

The documents, read alone, constituted damning and persuasive evidence that Matson had improperly used her position to grant unwarranted benefits to herself in the recall efforts. However, significant testimony was offered to explain many of the communications and provide context to much of the conduct. Accordingly, the testimony was sufficient to mitigate the otherwise serious nature of the documents

under allegations implicating NRS 281A.400(2). Therefore, the Commission concludes that insufficient evidence supports a violation of NRS 281A.400(2). However, based on the overwhelming evidence in the form of emails, documents and testimony, the Commission further evaluates Matson's conduct under the full scope of the Ethics Law and concludes that Matson's conduct nevertheless violated the provisions of NRS 281A.020 governing the public trust. To the extent her conduct raises questions of County liability and employment rights, Matson's conduct should be properly vetted by the County through its employment and personnel channels.

#### **4) Avoiding Conflicts/Preserving Public Trust (NRS 281A.020)**

Matson failed to maintain the appropriate separation and independence between her public responsibilities as the Assessor and her private interests in defending her position during a recall campaign. She became completely and utterly blinded by her frustration over the public recall efforts such that she blurred the lines between her duties as an elected public officer to preserve the public trust respecting Assessor-related business and her private interests in the recall. In her efforts to defend her public position, Matson used her position as the Assessor, and the attributes of the public office, via government power, time, resources and staff, to support her cause.

When her anti-recall efforts were not welcomed with support by members of her staff, her reaction was punitive and vengeful and seemingly unrelated to job performance. Her proposed disciplinary actions against certain members of her staff appeared to be retaliation for their support, or perceived support, of the recall. In their private capacities, the staff members were entitled to support or oppose the recall petition without fear of reprisals for their private endeavors.

Although Matson offered testimony to explain her frustrations and confusion regarding the government employment laws and limitations during the recall, her conduct nevertheless fell short of the standard of conduct required by public officers under the Ethics Law. The documents and overwhelming testimony offered by numerous subordinate staff and County officials indicated a serious pattern of conduct, despite efforts to advise and counsel her to the contrary, designed to threaten employees who supported the recall petition. Matson's overall conduct and interaction with several of her subordinate employees constitutes the improper use of her public position, including improper influence of her subordinates through veiled threats of disciplinary action and/or termination in the context of the surrounding recall efforts during the relevant time frame. While the conduct may not reach the literal provisions of NRS 281A.400(2) or (9), the conduct nevertheless implicates the Commission's concerns with NRS 281A.020 governing Matson's responsibility to ensure the public trust and avoid conflicts between her public and private interests.

The hundreds of pages of documents and emails admitted into evidence that were prepared within the first year after Matson took office clearly evidence Matson's efforts to discourage staff involvement in the recall efforts through veiled threats and reprisals and/or punishment of employees who were known to support the recall.

Various emails were exchanged between Matson and multiple employees and County officials highlighting the serious nature of the communications and their association to disciplinary actions with the recall efforts. Matson clearly mistook her position as the elected Assessor responsible for assessing value and property taxes as a position entitling her to government power, resources and venue to promote her candidacy in a recall environment.

Although these issues raise independent concerns for the County regarding employment rights and liabilities, the Commission does not divest itself of jurisdiction and opportunity to enforce the Ethics Law in a public employment context where personal interests such as those in a campaign-related environment are at play. Matson should have removed any influence in her role as an elected official in negotiating and defending against the recall, other than what she may have properly promoted as her duties and accomplishments in the position. The situation here is not unlike the limitations on incumbent public officers from using their public positions to benefit them in a campaign for reelection. Such incumbents are not entitled to the advantage of public resources during a campaign for reelection. To hold otherwise could imply that the Ethics Law has no stake in curbing activity designed to promote candidacy through government support.

Beyond the specific incidents described in the parking lot recall event and the direction and/or influence of staff, Matson clearly failed to appreciate the separation between her private efforts to defend against the County's recall efforts and her public responsibilities as the Assessor. For all of her conduct in these instances, Matson engaged in a course of conduct which violated NRS 281A.020. Her conduct was willful as defined by NRS 281A.170 and the Commission imposes a \$4,000.00 civil penalty. Although her conduct was serious and resulted in 2 willful violations of the Ethics Law, the Commission is mindful that Matson was new to public service and therefore does not intend to seek her removal from office as permitted pursuant to NRS 281A.480(4)(c)(1). Rather, the Commission expects that Matson will learn from her mistakes and promote the public trust in her continued service as the Assessor. Under NRS 281A.480(4)(c)(2), if Matson is found to willfully violate the Ethics Law in another matter, the Commission will be obligated to move the appropriate district court for her removal from office.

## **V. CONCLUSIONS OF LAW**

1. At all times relevant to this matter, Matson was a "public officer," as defined by NRS 281A.160 and 281A.180. The Commission has jurisdiction over former public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.

3. As Nye County Assessor, Matson willfully violated the provisions of NRS 281A.020 by failing to commit to avoid conflicts between her personal interests and those of the public she serves through the use of her position to attempt to threaten and/or influence the employment status of County employees in defense of her interests against the recall efforts.
4. Matson willfully violated the provisions of NRS 281A.400(7) by using County resources to create and display signs containing disparaging comments concerning those supporting the recall effort.
5. Pursuant to NRS 281A.480, Matson must pay a civil penalty in the amount of \$4,000.00 for the willful violation of NRS 281A.020 and \$1,000.00 for the willful violation of NRS 281A.400(7). Matson's total civil penalty for two (2) willful violations is \$5,000.00.
6. The Commission concludes that insufficient evidence supports a violation of NRS 281A.400(2) or (9). Accordingly, those allegations are dismissed.
7. Pursuant to NRS 281A.480(4)(c)(1), the Commission is authorized to pursue removal proceedings of a public officer after a finding of fewer than three willful violations of the Ethics Law. However, based on the facts of this case and the nature of the willful violations as presented, the Commission declines to pursue removal proceedings against Matson.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

The following Commissioners participated and concur in this Opinion, except as noted:

Dated this 14<sup>th</sup> day of January, 2014.

NEVADA COMMISSION ON ETHICS

By: /s/ Paul Lamboley  
Paul Lamboley<sup>5</sup>  
Presiding Officer

By: /s/ Gregory Gale  
Gregory Gale  
Commissioner

By: /s/ John Carpenter  
John Carpenter  
Commissioner

By: /s/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: /s/ James Shaw  
James Shaw  
Commissioner

<sup>5</sup> Commissioner Lamboley believed sufficient evidence supported a violation of each of the allegations and statutes implicated in the RFO.