



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Tim Kuzanek, Undersheriff, Washoe
County, State of Nevada,

Request for Opinion No. **14-61C**

Public Employee. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-61C before the Nevada Commission on Ethics (“Commission”) concerning Tim Kuzanek (“Kuzanek”), Former Undersheriff, Washoe County, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Kuzanek served as the Undersheriff of Washoe County, appointed by the Sheriff. As such, Kuzanek was a public employee as defined in NRS 281A.150. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A provides the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Kuzanek in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

a. On or about August 4, 2014, the Commission received this RFO from a private citizen alleging that Kuzanek, in campaigning for the elected office of Sheriff of Washoe County:

- (1) Failed to avoid conflicts of interest between his public and private interests by using his office to gain favor for his private campaign, which would have resulted in a pay increase (NRS 281A.020(1));
- (2) Used his position and his title as Undersheriff to gain an unwarranted advantage for himself by furthering his private campaign interests (NRS 281A.400(2));

- (3) Used governmental time and resources in his capacity as Undersheriff to further his private campaign interests NRS 281A.400(7)); and
- (4) Sought other employment contracts through the use of his official position (NRS 281A.400(10)).

- b. As required by NAC 281A.410, the Commission gave Kuzanek notice of this RFO by mail. Pursuant to NRS 281A.440(3), Kuzanek was provided an opportunity to respond to the allegations.
- c. On September 4, 2014, Kuzanek submitted his written response to the RFO. Kuzanek waived his right to a panel determination pursuant to NRS 281A.440, and the Commission and Kuzanek agree that there is just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.400(7) and 281A.020(1).¹
- d. In lieu of a hearing, Kuzanek now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:** At all material times, the following events were relevant to this matter:

Relevant Persons and/or Entities

- a. Kuzanek was the Undersheriff of Washoe County appointed at the pleasure of the Sheriff and, as such, was a public employee as defined in NRS 281A.150.
- b. Gregory Ferraro (“Ferraro”) of The Ferraro Group was the public relations manager for Kuzanek’s campaign for Sheriff of Washoe County.
- c. Mary Kandaras (“DA Kandaras”) was a Deputy District Attorney for Washoe County, Civil Division, assigned to represent the Sheriff’s office.
- d. The Washoe County Sheriff’s Office is a local agency as defined in NRS 281A.119 and part of a political subdivision as defined in NRS 281A.145.

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¹ The allegations pertaining to violations of NRS 281A.400(2) and NRS 281A.400(10) are not supported by sufficient credible evidence and are dismissed through this Stipulated Agreement.

Campaign for Sheriff of Washoe County, Nevada

Legal Advice

- e. Kuzanek discussed the parameters of campaigning for Washoe County sheriff with DA Kandaras in approximately December, 2013.
- f. DA Kandaras informed Kuzanek regarding the Hatch Act (5 U.S.C. § 1501 et al), Nevada Revised Statutes; NCOE Opinions, Washoe County Code, Sheriff's Office policies and constitutional First Amendment case law regarding his campaign.
- g. DA Kandaras did not make any recommendations to Kuzanek regarding his campaign, including whether he could use his undersheriff's badge and/or his uniform in campaign materials. However, DA Kandaras advised Kuzanek that no legal authority supported or directly prohibited the use of his undersheriff's badge and/or his uniform in campaign materials.

Kuzanek Campaign

- h. On March 3, 2014, Kuzanek filed his candidacy for Sheriff of Washoe County for the 2014 General Election.
- i. Kuzanek retained public relations firm, The Ferraro Group, for his campaign.
- j. Greg Ferraro and his team created the framework for Kuzanek's campaign, except that the specific details of the campaign regarding advertising, such as the webpage, Facebook, signs, etc., were contracted out to various independent contractors.
- k. Kuzanek's campaign had various semi-independent entities assisting in the campaign. However, Kuzanek retained final approval for all campaign materials.
- l. Kuzanek's official campaign website's homepage and candidate Facebook page displayed a picture of Kuzanek in full sheriff's office dress uniform and a picture of his undersheriff's badge.
- m. Without conceding a violation, but in an effort to work cooperatively with the Commission, Kuzanek removed the photos of himself in dress uniform and of his undersheriff's badge from his official campaign website and candidate Facebook page after he was notified of the ethics investigation in this matter.

- n. Kuzanek and the Commission acknowledge that the use of uniforms and badges in campaign materials in Nevada has been employed by candidates for other law enforcement offices in Nevada.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Kuzanek and the Commission agree as follows:

- a. Each of the findings of fact enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. Kuzanek held a public office which constituted a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Washoe County). Public employees have a duty to avoid conflicts of interest between public duties and private interests. NRS 281A.020.
- c. A public employee must not use government time or resources to benefit his personal or financial interests. Limited use of government resources is permitted only if the use does not create the appearance of impropriety. (NRS 281A.400(7)(a)(4), and *In re Kirkland*, Comm'n Opinion No. 98-41 (1998).
- d. Washoe County Code 5.337(1) states that "employees shall not engage in any employment, activity or enterprise which is inconsistent, incompatible, or in conflict with their duties as Washoe County officers and employees ... including but not limited to: . . . (2) The use for private gain or advantage of a badge, uniform, prestige or influence of their county positions of employment.
- e. Washoe County Code 5.341, also known as the "little Hatch Act" states:
 - 5.341 Political activity. Employees shall have the right to vote as they choose and to express their political opinions on all subjects without recourse, except that no employee shall:
 - 1. Directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, contribution or political service, whether voluntary or involuntary, for any political purpose from anyone on any employment list or holding any position in the classified service.
 - 2. Engage in political activity during the hours of his county employment with the purpose of improving the chances of a political party or individual seeking office, or at any time

engage in political activity for the purpose of securing preference for promotion, transfer or salary advancement.

3. While off duty, engage in political activity to an extent that it impairs his attendance or efficiency as an employee.
 4. As an employee in a department administering federally aided programs, engage in political activities at any time which are forbidden by federal law.
- f. Washoe County Code 5.340(2) allows for de minimus use of county property if:
- (a) The use does not interfere with the performance of public duties including duties of both the officer/employee and other county staff, or interfere with the provision of county services;
 - (b) The cost or value related to the use is nominal; and
 - (c) The use does not create the appearance of impropriety.
- g. Washoe County Sheriff's Office Policy ("SOP") 004.026 states "members may not use County property as an endorsement by the Sheriff's office for any political activity."
- h. SOP 265.004(B) states that "uniform items furnished by the Sheriff's Office shall remain property of this Office."
- i. In *Kirkland*, the Commission found the following factual scenario: Washoe County Sheriff Richard Kirkland appeared in a televised political advertisement endorsing Jim Hardesty for district judge. The advertisement showed Sheriff Kirkland in full uniform, and concluded with an endorsement of Hardesty at the end of the advertisement. The Washoe County Code limited certain political activities for government actors, therefore the Commission held that:

We find that some aspects of Mr. Kirkland's endorsement advertisements could create such an appearance of impropriety. In particular, we find that the use of his uniform, badge, and his uniformed deputies creates an improper appearance that his endorsement was an official endorsement by Washoe County or the Washoe County Sheriff's Office.

...

The uniform and the badge are the critical difference. An endorsement from a citizen named Richard Kirkland is very different from an endorsement from Washoe County Sheriff Richard Kirkland. Similarly, an endorsement by a citizen in a suit and tie or a polo shirt is very different from an endorsement from a man whose uniform and badge allow him to suspend a person's

civil rights and to lawfully use force to do so. Mr. Kirkland's popularity as the Washoe County Sheriff with the public he serves is hard earned and deserved; it should not be exploited to further the political ambitions of candidates who have found Mr. Kirkland's personal favor.

We discern a hard line. A public officer will not create an appearance of impropriety under NRS 281.481(7)(a)(4) by endorsing a person's candidacy if he or she uses his or her name and official title in an advertisement. A public officer will create an appearance of impropriety under NRS 281.481(7)(a)(4) if, in the course of endorsing a person's candidacy, he uses the physical accouterments of his office or position to bolster the endorsement. So, for example, a public officer should not use his uniform, badge, employees, private office, or other non-public facilities for the purposes of making an endorsement advertisement. At all times, public officers should temper their constitutional right to speak out on political concerns with a common-sensical realization that the reason their endorsement is sought is because of their public position and the respect and deference that that position is accorded by the public.

- j. In this instance, Kuzanek used the “physical accouterments of his office or position to bolster” his own campaign by displaying himself in Washoe County Sheriff’s Deputy full dress uniform and in the photo of Washoe County’s Undersheriff badge. (*See Kirkland*)
- k. In *Kirkland*, the Commission noted that the endorsement of public officers such as Sheriff Kirkland is sought because of “the respect and deference that that position is accorded by the public.” Additionally, the Commission noted that “the uniform and the badge are the critical difference” regarding the endorsement.
- l. The uniform and the badge signify the power and prestige of the Washoe County Sheriff’s office while Kuzanek’s title of undersheriff reflects his rank and position within that office.
- m. The use of the Washoe County Sheriff Deputy uniform and undersheriff badge act as a visual endorsement, affirmation and, and sanction of Kuzanek’s campaign for sheriff, and provide an unfair advantage to Kuzanek at government cost. This is the type of harm to the public that the Ethics Law is designed to prohibit.

- n. A public officer and/or employee cannot engage in any activity that involves the use of the public agency's time, facilities, equipment and supplies or the use of state or political subdivision badge or uniform to give that person an advantage, and it creates the appearance of impropriety. Therefore, Kuzanek's conduct constitutes a single violation of NRS 281A.020 and 281A.400(7).
- o. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Kuzanek's violation in this case should not be deemed a "willful violation" pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for reasons that follow:
 - (1) Kuzanek has not previously been the subject of any violation of the Ethics Law.
 - (2) Kuzanek has not received any personal financial gain as the result of his conduct in this matter.
 - (3) Kuzanek has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process.
 - (4) Kuzanek relied in good faith upon Counsel's advice.
 - (5) Candidates for other law enforcement offices had used similar campaign techniques.
- p. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- q. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding the Subject.

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6. **WAIVER:**

- a. Kuzanek knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the Commission on the allegations in this RFO (No. 14-61C) and of any and all rights he 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 any other applicable provisions of law.
- b. Kuzanek knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of the Commission on January 21, 2015.

DATED this 3RD day of February, 2015.



Tim Kuzanek

The above Stipulated Agreement is approved by:

DATED this 26th day of January, 2015.

FOR TIM KUZANEK, Subject




Rew Goodenow, Esq.
Counsel for Subject

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FOR NEVADA COMMISSION ON ETHICS

DATED this 4th day of February, 2015.



Yvonne M. Nevarez-Goodson, Esq.
Executive Director

DATED this 3 day of February, 2015.



Jill C. Davis, Esq.
Associate Counsel

The above Stipulated Agreement is accepted by the Commission.²

DATED January 21, 2015.

By: /s/ Paul H. Lamboley
Paul H. Lamboley
Chairman

By: /s/ Gregory J. Gale
Gregory J. Gale
Vice-Chairman

By: /s/ John C. Carpenter
John C. Carpenter
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: /s/ Cheryl A. Lau
Cheryl A. Lau
Commissioner

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver
Commissioner

² Kuzanek waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.