

State of Nevada
Commission on Ethics

MEMO

Date: 11/17/2021

To: Nevada Commission on Ethics

From: Ross Armstrong, Candidate for Executive Director

Re: Jurisdiction Recommendation – Don Porta (Case No. 21-023C)

Complaint Summary

A complaint filed on October 30, 2021 alleged Don Porta, Administrative Officer for City in Nevada violated NRS 281A.400(2) and NR 281.400(7) by staying overnight in a city facility several times a week from July 2021 through August 2021.

Jurisdiction Analysis

- 1) Is the alleged conduct within the statute of limitations?

The statute of limitations established in NRS 281A.280 is 2 years from the conduct or reasonable discovery of the conduct.

The conduct in this complaint is from July of 2021 to August 2021. That timeframe is within the statute of limitations.

- 2) Is the individual named in the complaint a public officer, public employee, or former officer or employee?

Don Porta is an Administrative Officer for the City and the City is in the State of Nevada. Porta is a public employee as defined by 281A.150. As a city employee he is under the direction and control of the City Manager who is designated as a public officer under NRS 281A.182(1)(c). The statutory exemptions to the definition of public officer are not present in this complaint.

- 3) Is the alleged conduct otherwise precluded from Commission jurisdiction?

The complaint indicates violations of NRS 281A.400(2) (unwarranted privileges) and NRS 281A.400(7) (government asset for personal benefit) which are within the jurisdiction of the Commission. There are no allegations that would place this matter properly before the Equal Opportunity Commission or the Nevada Equal Rights Commission nor are there facts that would place this conduct into a discrimination or harassment allegation that would preclude the Commission's jurisdiction in this matter.

Conclusion: The facts alleged in the complaint are within the statute of limitations and Porta is a public employee as defined in NRS 281A.150 and there are no other jurisdictional exceptions to the Commission's jurisdiction in this matter. I recommend the Commission determine that it does have jurisdiction in this matter.

Is an investigation warranted?

If the Commission determines it has jurisdiction in this matter, the evidence described in the complaint is sufficient to warrant an investigation. The complaint includes specific time frames, locations, and additional avenues for factual investigation.

While an investigation will determine the actual amount of benefit, if the conduct was occurring four times a week for a six week period and we apply the average U.S. General Services Administration rate for overnight accommodations in Nevada the personal gain would be approximately \$2,500.

Should the requestor's identity be confidential?

NRS 281A.750(2)(a) requires the Commission to keep the requester's information confidential if "he or she is a public officer or employee who works in the same public body, agency or employer as the public officer or employee who is the subject of the ethics complaint." This requirement exists if the person who files the request asks that their identity be kept confidential.

In this complaint, the requestor has asked that her identity remain confidential and she works for the same public agency as the subject of the complaint. Therefore, the Commission is required to keep the identity of the complainant confidential. NRS 281A.750(2).

Summary of Recommendations In Accordance with NAC 281A.405

- 1) I recommend the Commission make a determination that it does have jurisdiction.
- 2) If the Commission determines it does have jurisdiction, I recommend directing the Executive Director to investigate the complaint.
- 3) I recommend the identity of the person who filed the complaint remain confidential.

NEVADA COMMISSION ON ETHICS

JUSTIFICATION FOR TRAINING OFFICER / PUBLIC INFORMATION OFFICER POSITION - ARMSTRONG



COMMISSION'S MISSION



The Nevada Commission on Ethics, by the authority granted under Chapter 281A of NRS, strives to enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties.

COMMISSION'S GUIDING PRINCIPLES



3. We are committed to providing outreach and education to our Stakeholders (the public and public officers and employees) to enhance their awareness and understanding of ethics requirements and prohibitions under the Nevada Ethics law.
7. We carry out our duties in a rigorous and detailed manner and utilize the resources provided to us wisely and only for the legitimate purposes of the agency.
9. We continuously improve our public communication and public access to provide guidance and assistance to those we hold accountable for compliance.
10. We value and respect the opinions and recommendations of our Stakeholders, Staff and Commission Members which guide us in our decision making.

COMMISSION'S MAIN FUNCTIONS & CURRENT TEAM



| | Education (Training & Outreach) | Prevention (Advisory Opinions, Acknowledgements) | Intervention (Investigations, Adjudications) |
|-------------------------|---------------------------------------|--|--|
| Executive Director | X | X | X |
| Commission Counsel | X | X | X |
| Associate Counsel | | X | X |
| Senior Legal Researcher | | X | X |
| Investigator | | | X |
| Executive Assistant | X | X | X |
| | | | |

COMMISSION'S MAIN FUNCTIONS & PROPOSED TEAM



| | Education (Training & Outreach) | Prevention (Advisory Opinions, Acknowledgements) | Intervention (Investigations, Adjudications) |
|---------------------------------------|---------------------------------------|--|--|
| Executive Director | X | X | X |
| Commission Counsel | X | X | X |
| Associate Counsel | | X | X |
| Senior Legal Researcher | | X | X |
| Investigator | | | X |
| Executive Assistant | X | X | X |
| Public Information Officer | X | | X |

PUBLIC INFORMATION / TRAINING PERSONNEL IS A BEST PRACTICE



City of Honolulu Ethics Commission

- 10 total team members including a Training Specialist

New York City Conflicts of Interest Board

- Education and Engagement Unit
- Active and engaging social media presence

Georgia Government Transparency Commission

- 5 total team members including a Press Secretary

PUBLIC INFORMATION OFFICER IS THE BEST FIT FOR NEVADA COMMISSION ON ETHICS



Training Officer Series

(Training Officer I & Training Officer II)

- Design and develop training curriculums using an instructional design model, deliver trainings, monitor outside trainers, oversee training programs and recommend learning solutions.
- Series focuses on training and learning for the agency staff

Public Information Officer Series

(PIO I & PIO II)

- Using modern communications and social media, manages a public information program.
- A public information program can include
 - Informational brochures, public service announcements, publicity campaigns, newsletters, and evaluation of effectiveness of the information program
 - Organized and effective web platforms and other multi-media education campaigns and strategies
 - Includes internal and external information and communication

WHAT MIGHT A NEVADA COMMISSION ON ETHICS INFORMATION CAMPAIGN LOOK LIKE



Broad Communications Strategy

Effective Website, General Training Resources, Engaging Social Media Presence

Targeted Recipients Communication

Civil Government Attorneys,
Agency Contracting & Grant Staff

Individualized Communication

Retiring Employees

Individualized Communication

New Public Officers/Employees

Individualized Communication

Agency Request

Individualized Communication

Candidates for office & their staff

OBJECTIVE MEASURES OF SUCCESS



- Number of informational / educational materials produced and delivered
- Number of engagements on social media and website
- Increase in training and education requests
- Initial increase in requests for advisory opinions and complaints followed by a longer term decrease in findings of ethics violations

FISCAL ASK OF THE LEGISLATURE



| Public Information Officer II* | | | |
|--------------------------------|----------------|--------------------|-------------------|
| Salary | Other Expenses | State General Fund | County Assessment |
| \$66,628 | \$15,000 | \$22,858 | \$58,770 |

*This ask is for one full fiscal year of funding.

NEVADA COMMISSION ON ETHICS

JUSTIFICATION FOR THE PASSAGE OF AB65 IN 2023 LEGISLATIVE SESSION - ARMSTRONG



ASSEMBLY BILL 65 (2021) HISTORY



* AB65 passed by more than a 2/3 votes in each house which means when the Legislature next considered vetoes, the bill may have sufficient support to have the veto overridden.

AB65 – OVERARCHING GOALS



A more efficient and effective ethics process increases confidence in government

- Enhances and clarifies ethical standards of conduct
- Stronger confidentiality protections for individuals submitting complaints and for public officers or employees seeking advice
- Procedural clarity and streamlining

AB65 – ENHANCES AND CLARIFIES ETHICAL STANDARDS



- Section 7 – Clarifies that the ethical standards are cumulative and the Commission can consider the same set of facts as violations as multiple standards and clarifies when former public officers or employees fall under the jurisdiction of the Commission
- Section 10 – Established a standard against a “gross or unconscionable abuse of power that would undermine the integrity or impartiality of a reasonable person in the public officer or public employees position”
- Sec 29 – Clarifies the “limited use exception” to prevent policies from being established after the bad conduct to excuse the bad conduct. Also statutorily defines “appearance of impropriety” consistent with established case law
- Sec 32 – replaces “willful refusal” with “a public officer who refuses” which allows for education of the requirement to the public official before moving forward with a complaint case
- Sec 33 – clarifies who the “cooling off” period applies to

AB65 – STRONGER CONFIDENTIALITY PROTECTIONS



Confidentiality protections encourage public officers and employee to seek advice to prevent ethics violations and encourage those aware of ethical violations to report them

- Sec 9 – Consistent application of confidentiality of Advisory Opinions if the requester seeks judicial review
- Sec 27 – Clarifies that the Commission may subpoena personnel records as part of an investigation but requires the Commission to maintain the confidentiality of those records
- Sec 37 – Establishes a process for the Executive Director or Commission Counsel to provide informal advice that has the same confidentiality as an Advisory Opinion
- Sec 40 – Provides for a “Notice of Allegations” rather than providing a copy of the complaint, further protecting the confidentiality of the individual making the complaint.

AB65 – PROCEDURAL CLARITY AND STREAMLINING



Clarity about procedural matters and establishing mechanisms that encourage early resolution help conserve limited Commission resources and enhance trust in the system

- Sec 8 – Creates a duty to reasonably assist and cooperate with the investigation
- Sec 11 – Requires agencies to provide list of those employed who fall within the ethics law for purposes of enforcement and education of the acknowledgement requirements
- Sec 21 – Establishes a mediation and settlement process to encourage early resolution of matters before the Commission
- Multiple sections – establish and clarify the process and standard for granting extensions of time, open meeting law compliance, and general procedural or language clean up.

PASSAGE OF AB65 IS GOOD PUBLIC POLICY



- Enhanced and clear standards of ethics will assist in raising the standard of ethical conduct by Nevada's public officers and employees.
- Confidentiality protections encourage education and prevention as well as encourage those with knowledge of violations to come forward.
- Procedural clarity and streamlining will conserve Commission resources, encourage early resolution, and result in a more efficient ethics process.



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AB65 – STRATEGIES FOR SUCCESS



The Commission should be aware of how stakeholder and Legislator input informed changed language during the 2021 Legislative Session

- Qualification of the Executive Director – resistance to requiring the individual to be a licensed Nevada attorney
- Cooling-off limitations are consistent with input during the 2019 Legislative Session attempt to pass Senate Bill 129

Strategies for successful passage of AB65 language during the next legislative session

- Work to get a Commission on Ethics presentation before the appropriate interim legislative committee
- Reach out to key legislators to understand the impetus behind Amendment 777 to determine if there is alternative language that may be acceptable to all parties
- Determine if focused, smaller bills versus an omnibus change may be more successful