



**STATE OF NEVADA
COMMISSION ON ETHICS**

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE REQUEST
FOR AN ADVISORY OPINION OF
HELGE CARL HARRIS, Former Nye County Public
Employee and
KELLY ANN HARRIS, Nye County Public Employee**

**Advisory Opinion
Nos. 06-20 & 06-21**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for a hearing on May 19, 2006, on the request for an advisory opinion filed with the Commission by Helge Carl Harris, Former Nye County public employee and Kelly Ann Harris, Nye County public employee.

The matter was properly noticed as non-confidential and the hearing was open to the public pursuant to NRS 281.511(5)(c). Mr. and Mrs. Harris appeared in person, were sworn, and presented testimony.

Mr. and Mrs. Harris sought an opinion from the Commission determining whether they can contract with Nye County for services through their company, Harris Fence & Concrete Company, Inc. (hereinafter "Harris Fence & Concrete"), without violating the Ethics in Government Law.

After fully analyzing the request for an advisory opinion and considering all of the facts and circumstances presented, the Commission deliberated and orally advised

Mr. and Mrs. Harris of its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. Mr. Harris was employed as a heavy equipment operator by the Nye County Road Department until September 1, 2005.
2. Mr. Harris is the President and owner of Harris Fence & Concrete, a Nevada Corporation.
3. Mrs. Harris is employed with Nye County as Planning Technician II in the Planning Department.
4. Mrs. Harris is the Secretary and Treasurer of Harris Fence & Concrete.
5. Harris Fence & Concrete has contracted to provide services to Nye County and other public entities within Nye County.
6. Recently, Nye County prohibited Harris Fence & Concrete from submitting a proposal for a contract with Nye County because of the Harrises' employment with the county.
7. In the past, Nye County has contracted with other Nye County employees. Mr. and Mrs. Harris claim Harris Fence & Concrete is the only C-5 and A-21 licensed contractor in Nye County and the surrounding area.

CONCLUSIONS OF LAW

1. At the time of the hearing, Mr. Harris was a former public employee and Mrs. Harris was a public employee as defined in NRS 281.436.

2. The Commission has jurisdiction over this matter pursuant to NRS 281.511(1) and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved unanimously, the Commission renders the following opinion:

OPINION

The issue in this opinion is whether Mr. and Mrs. Harris can contract with Nye County for services through their company, Harris Fence & Concrete, without violating the Ethics in Government Law.

NRS 281.505 provides:

1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a

public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

Since Mr. Harris is no longer employed by Nye County, he is not subject to the prohibitions in NRS 281.505. Mrs. Harris, on the other hand, is prohibited by subsection 1 of this section from bidding on or entering into a contract between a governmental agency and any private business in which she has a significant pecuniary interest. Therefore, as an officer of Harris Fence & Concrete and the spouse of the president and owner of Harris Fence & Concrete, Mrs. Harris is prohibited from bidding on or entering into a contract between Nye County and Harris Fence & Concrete. However, NRS 281.505, subsection 4 provides some relief from the strict application of subsection 1.

Harris Fence & Concrete is allowed to bid on or enter into a contract with Nye County so long as Mrs. Harris meets the four requirements enumerated in the first sentence of subsection 4 of NRS 281.505

First, the contracting process surrounding a contract between the county and Harris Fence & Concrete must be controlled by rules of open competitive bidding, unless a statute exists that otherwise allows a no-bid contract. For example, the Commission in a previous opinion interpreting NRS 281.505 found no violation of the provision existed where the sheriff of Elko County had entered into a no-bid contract with the county for the sheriff's personal pest control service.¹ In that opinion, the Commission concluded that all four criteria under NRS 281.505(4) that allowed for the contract had been met.

¹ See, *In re Harris*, CEO 02-08 (no relation to the Harrises that are the subject of this opinion).

Specifically, a question arose whether the contracting process with the sheriff was controlled by rules of open competitive bidding. Although the contract was not put through the open and competitive bidding process, the Commission concluded that because another statute authorized the contract without advertising for bids, Elko County was authorized by statute to enter into the contract without engaging in an open and competitive bidding process.

Similarly, in Mrs. Harris' circumstance, this first requirement under NRS 281.505(4) would be met if another statute specifically allows a contract between Nye County and Harris Fence & Concrete without going through the open and competitive bidding process.

Second, the sources of supply or services in question must be limited. Mr. and Mrs. Harris claim that Harris Fence & Concrete is the only known licensed C-5 and A-21 contractor in the Nye County area that provides fencing, guardrails and concrete work. For this second requirement under NRS 281.505(4) to be met, Harris Fence & Concrete must be a limited source for these services when contracting with Nye County.

Third, Mrs. Harris may not take part in developing the contract plans or specifications. It appears, based on Mrs. Harris' testimony, that this requirement would be met. Mrs. Harris testified that she knows the individuals in the county who open the bids, consider the bids, and award them. However, Mrs. Harris stated that in her position with the county, she has little if any, knowledge or influence over the bidding process or awarding of contracts. Further, Mrs. Harris testified that she does not get advance notice of an opportunity to bid on a contract through her position with the county. In fact, Mrs. Harris stated that she only learns of bidding opportunities through the local newspaper.

Finally, Mrs. Harris cannot be personally involved in the opening, considering or accepting of offers in the contracting process. Based on testimony presented at the hearing, Mrs. Harris is not personally involved in this process.

Therefore, Harris Fence & Concrete is allowed to contract with Nye County while Mrs. Harris is employed with the county, so long as the four requirements enumerated under NRS 281.505(4) are met.

Although NRS 281.230 does not fall within the jurisdiction of the Commission, it would be prudent for Mr. and Mrs. Harris to familiarize themselves with its prohibitions, a violation of which could result in criminal prosecution.

NRS 281.230 provides:

1. Except as otherwise provided in this section and NRS 218.605, 281.555 and 332.800, the following persons shall not, in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other significant transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way directly interested or affected:

(a) State, county, municipal, district and township officers of the State of Nevada;

(b) Deputies and employees of state, county, municipal, district and township officers; and

(c) Officers and employees of quasi-municipal corporations.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by the board, commission or body may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board or commission of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

5. A person who violates any of the provisions of this section shall be punished as provided in NRS 197.230 and:

(a) Where the commission, personal profit or compensation is \$250 or more, for a category D felony as provided in NRS 193.130.

(b) Where the commission, personal profit or compensation is less than \$250, for a misdemeanor.

6. A person who violates the provisions of this section shall pay any commission, personal profit or compensation resulting from the contract or transaction to the employing state, county, municipality, township, district or quasi-municipal corporation as restitution.

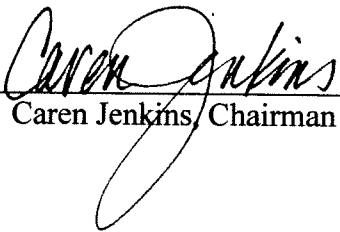
Under subsection 1 of this provision, a county employee is prohibited “in any manner, directly or indirectly” from receiving any commission, personal profit or compensation of any kind resulting from any contract or other significant transaction in which the employing county is in any way directly interested or affected. However, subsection 4 allows for an employee to bid on or enter into a contract with a governmental agency if the same four criteria found in NRS 281.505(4) are met.

Based on the information provided to the Commission by Mr. and Mrs. Harris, Harris Fence & Concrete may contract with Nye County while Mrs. Harris is a county employee only if the requirements enumerated under NRS 281.505(4) are met.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: November 16, 2006.

NEVADA COMMISSION ON ETHICS

By: 
Caren Jenkins, Chairman