



**STATE OF NEVADA
COMMISSION ON ETHICS**

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR ADVISORY OPINION OF
KATHLEEN V. ANCHO
Secretary, Lander County Sheriff**

**Advisory Opinion
No. 06-26**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on June 14, 2006, on the request for an advisory opinion filed with the Commission by Ms. Ancho, Secretary to the Lander County Sheriff.

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

Ms. Ancho sought an advisory opinion from the Commission as to whether the Ethics in Government Law prohibited her from simultaneously serving on the Lander County Board of County Commissioners ("County Commission") as a Commissioner and as Secretary to the Lander County Sheriff, her current employer.

After reviewing the request for an advisory opinion and considering all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Ms. Ancho of its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. At the time of her hearing, Ms. Ancho planned to run for the public office of Lander County commissioner.
2. At the time of her hearing, Ms. Ancho was employed as Secretary to the Lander County Sheriff.
3. Ms. Ancho's duties as secretary include, but are not limited to:
 - a. Accounts payable;
 - b. Accounts receivable, billing and issuance of licenses;
 - c. Coordinating and accounting for travel and training of personnel;
 - d. Maintaining inmate accounts;
 - e. Maintaining grant funds and task force accounts; and
 - f. Maintaining accounts for the treasurer's office.
4. Ms. Ancho's position is created by the Sheriff and approved by the County Commission pursuant to the Lander County Code.
5. According to the organizational chart provided by Ms. Ancho, the Lander County elected officials, including the Sheriff, do not fall under the supervision of the County Commission.
6. The County Commission establishes a merit personnel system for the county.
7. The County Commission approves all staff for county officers or department heads and sets classifications, grade, step and salary.
8. Based on the collective bargaining agreement between Lander County and Lander County Sheriff and the Lander County Law Enforcement Employees Association that

was provided to the Commission, Administrative Secretaries are listed as covered by the agreement under Bargaining Unit B. However, Ms. Ancho testified at the hearing that it was her belief that the secretaries were not included in the agreement; therefore, it is unclear whether Ms. Ancho, as Secretary to the Sheriff, is covered under said agreement.

CONCLUSIONS OF LAW

1. Ms. Ancho is a public employee as defined by NRS 281.436.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511(1) and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved by a six-to-two vote¹, the Commission renders the following opinion:

OPINION

The issue before the Commission is whether Ms. Ancho would be in violation of the Ethics in Government Law if she were to serve as a county commissioner while employed as Secretary to the Lander County Sheriff.

In Nevada Commission on Ethics Opinion No. 98-71, in response to an advisory opinion request from a county school district substitute teacher who sought guidance regarding whether a conflict of interest prohibited him from being a county school district board member while simultaneously substitute teaching in the district, the Commission opined:

“...[T]he Commission takes the position that the mere opportunity for an employer to effect undue or unwarranted influence over a subordinate in order

¹ Commissioners Capurro, Cashman, Flangas, Hsu, Hutchison and Keele voted to approve the motion, while Commissioners Jenkins and Kosinski voted nay.

to advance his own pecuniary interests would create an appearance of impropriety; a hurdle that Mr. B would not be able to surpass unless he were to resign his employment as a substitute teacher. Furthermore, NRS 281.230 is designed to keep public and private interests separate so that there is no question, hint or temptation for a public officer to compromise his public duty to benefit his private interests. Because Mr. B, as School Board Trustee, would be in a position to control the funds allocated for the School District's substitute teacher program, he would have the opportunity and means to benefit himself financially. Therefore he would be in the position to financially benefit from the concurrent positions of Administrator and employee of the same governmental entity.”

The Commission concluded in Opinion No. 98-71 that the public employee's service on the school board would place him in violation of NRS 281.230(1)² and NRS 281.481(2) and recommended that he either resign his employment with the school district or decline a seat on the school board because he could not maintain both positions at the same time.

At this time, the Commission declines to make a bright line rule against public employees, in general, serving on public bodies that oversee some aspect of the public entity that employs the employee. Considering that not all employees wishing to serve in dual capacities will have an identical fact pattern, each situation should be evaluated by this Commission on a case-by-case basis. There are many factors to consider when determining whether dual roles pose a conflict of interest. Such factors include, but are not limited to, whether the public office in which the candidate seeks to serve on is in an area of the State with a small population and where the pool of candidates may be limited. The Commission should also consider what oversight the public body has over the employee's employer and

² NRS 281.230(1) states: “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.” NRS 281.230 is not within the Commission's jurisdiction and therefore, the Commission is not authorized to interpret or enforce it. However, the Commission advises Ms. Ancho to consult with legal counsel on the provision.

whether the employee, as an elected official, would be in a position to exert undue influence over his superiors. Additionally, the Commission should explore whether the public employee, in his elected capacity, would have to abstain from participating on matters affecting his employer on a regular basis because of conflicts created by his dual public positions. This Commission has long recognized that “[a]bstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would *materially* affect one's independence of judgment.” See, *In Re Woodbury*, CEO No. 99-56.

Although the County Commission does not supervise the Sheriff, it does approve the Sheriff's budget for staff and sets classifications, grade, step and salary for the staff. If Ms. Ancho were to serve simultaneously as county commissioner and remain employed as Secretary to the Sheriff, she would be placing herself in a situation where she would be serving two masters, which may create, at the very least, an appearance of impropriety. Ms. Ancho would need to be cautious to avoid using her position as Commissioner to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself or her employer in violation of NRS 281.481(2).³ Further, Ms. Ancho may very well be covered under the collective bargaining agreement between her employer and the Commission of which she would be a member; therefore, by serving in both capacities, she may put herself at the risk of violating NRS 281.230.

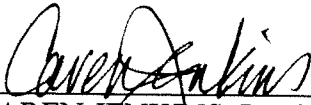
³ NRS 281.481(2) states: “A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment 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 281.501. (b) “Unwarranted” means without justification or adequate reason.

Therefore, it is this Commission's opinion, based on the facts and circumstances surrounding Ms. Ancho's case, that if elected, she has the choice of either serving on the County Commission, or as Secretary to the Lander County Sheriff, but not both.

NOTE: THIS MATTER IS A FIRST-PARTY ADVISORY OPINION REQUEST. FOR PURPOSES OF A FIRST-PARTY ADVISORY OPINION REQUESTED PURSUANT TO NRS 281.511(1) AND NRS 281.521, ALL FACTS IN THE MATTER ARE PROVIDED BY THE PUBLIC OFFICER REQUESTING THE ADVISORY OPINION, AND THE COMMISSION MAKES NO INDEPENDENT INVESTIGATION AS TO THE TRUTH OF THOSE FACTS. THE RECORD HEREIN, THEREFORE, CONSISTS SOLELY OF FACTS PROVIDED ON THE RECORD BY THE PUBLIC OFFICER, AND THIS OPINION IS BASED SOLELY UPON THOSE FACTS. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE PROVIDED BY THE PUBLIC OFFICER IN THIS ADVISORY OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION.

DATED: September 14, 2007

NEVADA COMMISSION ON ETHICS

By: 
CAREN JENKINS, Presiding officer at hearing