

STATE OF NEVADA

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In The Matter Of  
The Request For Opinion Concerning  
The Conduct Of GARY WATERS,  
Former Member of the Nevada Board of Education,  
State of Nevada.**

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**Request for  
Opinion No. 06-30**

**OPINION**

This matter came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (Commission) for a hearing on September 12, 2007, pursuant to a Request for Opinion filed on June 5, 2006. A determination was made by a Commission panel that just and sufficient cause existed to render an opinion on whether former public officer Gary Waters (Waters) violated NRS 281A.420.2 and .4<sup>2</sup>.

Notice of the hearing was properly posted and served. Waters was present and provided sworn testimony. James Edgar Irvin, Deputy Attorney General appeared as a witness and provided sworn testimony.

Two issues were before the Commission. The first issue was whether Waters violated NRS 281A.420.4, when he allegedly failed to make a sufficient disclosure regarding his

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<sup>1</sup> The quorum consisted of then Chairman Kosinski and Commissioners Capurro, Keele, Hutchison and Jenkins. Commissioners Cashman and Hsu served as the panel in this matter. Pursuant to NRS 281A.220.4, panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

<sup>2</sup> Formerly NRS 281.501 of the Ethics in Government law. The Ethics in Government law has been re-codified and is now Chapter 281A of NRS. This opinion cites to the re-codified statutes.

relationship with Center for Health and Learning (CHL) during the March, April and June, 2006 meetings of the Nevada State Board of Education (Board). The second issue was whether Waters should have abstained from participating on the matters affecting the CHL.

The Commission, after hearing testimony and considering the evidence presented, deliberated and orally advised Waters of its decision in the matter. The Commission now renders this written Opinion.

### **FINDINGS OF FACT**

1. Waters is a former member of the Nevada State Board of Education.
2. Waters founded the CHL, a non-profit organization that facilitates special programs such as suicide prevention. At all relevant times, Waters was a volunteer with CHL.
3. During the March, April and June 2006 Board meetings, Waters introduced agenda items proposing standards for supplemental mental health and suicide prevention education programs offered within the Nevada public school districts.
4. CHL would be subject to the proposed regulations.
5. Waters brought the agenda items before the Board because he believed there was a need for standards for certain programs, such as suicide prevention.
6. At the Board meetings, Waters disclosed his relationship with the CHL.

### **CONCLUSIONS OF LAW**

1. Waters, a former member of the Nevada State Board of Education, is a former public officer, as defined in NRS 281A.160.
2. Public officers are required to disclose any commitments in a private capacity to the interest of others, as defined in NRS 281A.420.8.

3. A public officer shall not vote upon or otherwise act upon any matter that would reasonably be affected by his commitment in a private capacity to the interest of others without disclosing sufficient information concerning the commitment or interest to inform the public of the potential effect of the action or abstention upon the person to whom he has a commitment, or upon his interest, pursuant to NRS 281A.420.4.

4. A public officer shall not vote upon or otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by his commitment or interest, pursuant to NRS 281A.420.2.

### **DISCUSSION**

The first issue on whether Waters failure to disclose his relationship with the CHL during the March, April and June, 2006 meetings of the Board is governed by NRS 281A.420.4.<sup>3</sup>

The Commission finds that Waters' conduct during the March, April and June 2006 meetings of the Board relating to the proposal of standards for supplemental mental health and

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<sup>3</sup> NRS 281A.420.4 provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others<sup>3</sup>; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

suicide prevention education programs offered within Nevada public school districts did not violate NRS 281A.420.4.

The second issue on whether Waters should have abstained from participating on matters affecting the CHL is governed by NRS 281A.420.2.<sup>4</sup> The Commission dismissed the allegation that a violation of NRS 281A.420.2 occurred.

### **CONCLUSION**

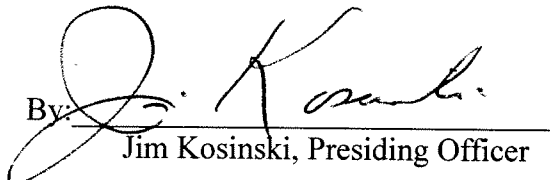
**WHEREFORE**, based upon a preponderance of the evidence, by a unanimous vote, the Commission renders the following opinion.

The Commission finds that Waters did not violate NRS 281A.420.2 or NRS 281A.420.4.

**NOTE: the foregoing opinion applies only to the specific facts and circumstances described herein. Facts and circumstances that differ from those in this opinion may result in an opinion contrary to this opinion.**

DATED: 3/21/08.

NEVADA COMMISSION ON ETHICS

By:   
Jim Kosinski, Presiding Officer

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<sup>4</sup> NRS 281A.420.2 provides:

Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by: (a) His acceptance of a gift or loan; (b) His pecuniary interest; or (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.