



STATE OF NEVADA  
COMMISSION ON ETHICS

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE  
REQUEST FOR OPINION  
CONCERNING THE CONDUCT OF  
WENDY RUDDER, Deputy Public Administrator,  
Lincoln County**

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**Opinion No. 06-57**

This matter came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on December 13, 2006, pursuant to a Request for Opinion filed by Sheila Davis ("Complainant") on August 21, 2006, pursuant to NRS 281.511(2)(b), and a determination on November 16, 2006, by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether Ms. Rudder's conduct violated provisions of the Ethics in Government Law, specifically, NRS 281.481(1), NRS 281.481(2), NRS 281.481(3) and/or NRS 281.505.

The issues before the Commission in this matter are limited to the following:

1. Did Ms. Rudder violate NRS 281.481(1) by seeking or accepting an engagement, emolument or economic opportunity by storing property of a decedent's estate she was

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<sup>1</sup> The quorum consisted of Chairman Jenkins and Commissioners Capurro, Flangas, Keele and Kosinski. Commissioner Hutchison was absent and excused. Commissioners Cashman and Hsu served as the panel in this matter. Pursuant to NRS 281.462(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

administering at a storage facility owned by Ms. Rudder and, if so, would such conduct tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties?

2. Did Ms. Rudder violate NRS 281.481(2), first, by using her position as Lincoln County Deputy Public Administrator to secure or grant unwarranted privileges, preferences, or advantages for herself, for any business entity in which she has a significant pecuniary interest, or for her nephew and his wife, people to whom she has a commitment in a private capacity, when she employed them to remove such estate property, and, secondly, by storing said property in a storage facility owned by Ms. Rudder?

3. Did Ms. Rudder violate NRS 281.481(3) by entering into contract between Lincoln County and a private storage business in which she has a significant pecuniary interest?

4. Did Ms. Rudder violate NRS 281.505 by entering into contract between Lincoln County and a private storage business in which she has a significant pecuniary interest?

5. If Ms. Rudder's conduct, related to any of the above issues, amounted to a violation of the any of the referenced statutes, was the violation "willful" pursuant to NRS 281.4375<sup>2</sup> as limited by NRS 281.551(5)?<sup>3</sup>

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<sup>2</sup> NRS 281.4375 defines "willful violation" as: "the public officer or employee knew or reasonably should have known that his conduct violated this chapter."

<sup>3</sup> NRS 281.551(5) provides: "An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements:

(a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471; (b) he was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and (c) he took action that was not contrary to a prior published opinion issued by the Commission.

6. If Ms. Rudder's conduct, related to any of the above issues, is deemed a "willful" violation of any of the referenced statutes, does the willful violation warrant the imposition of a civil penalty or any other action pursuant to the provisions of NRS 281.551?<sup>4</sup>

Notice of the hearing was properly posted and served. Ms. Rudder was present with her legal counsel, Bret Whipple, Esq., and provided sworn testimony. The following individuals appeared as witnesses and provided sworn testimony: Philip Dunleavy, Lincoln County District Attorney/Lincoln County Public Administrator; Tina Osborn, Owner/Operator R&L Mini Storage. Additionally, the following individuals participated by telephone and provided sworn testimony: Joshua Nay, Ms. Rudder's nephew; Brittney Nay, Mr. Nay's wife and Ms. Rudder's niece; Nancy Escobedo, Owner/Operator J&N Storage.

#### **FINDINGS OF FACT**

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact:

1. At all times relevant to the Request for Opinion in this matter, Ms. Rudder was serving as a public officer in the position of Lincoln County Deputy Public Administrator/Deputy Public Guardian. Lincoln County District Attorney Philip Dunleavy, who also serves as the Lincoln County Public Administrator, appointed Ms. Rudder by contract to her positions as Lincoln County Deputy Public Administrator/Deputy Public Guardian.

2. The Public Administrator is responsible for processing the estates of persons who die in the county who have no known relatives or no relatives willing and/or able to act as administrator of the estate of the deceased. Ms. Rudder receives \$150.00 per month for her service as Deputy Public Administrator/Deputy Public Guardian.

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<sup>4</sup> NRS 281.551 sets forth the penalties the Commission is authorized to impose.

3. The allegations surrounding the complaint filed by Ms. Davis result from certain events that occurred after the death of her friend Jimmy Creech. Ms. Davis alleges that she promised Mr. Creech that she would look after his possessions after his death. However, since Mr. Creech did not have a valid will and Ms. Davis was denied by the court appointment as personal representative of Mr. Creech's estate, the Public Administrator assumed responsibility of the Creech estate.

4. The county does not provide a storage facility for the Public Administrator and available commercial storage in the county is limited.

5. Ms. Rudder owns B&W Wash N Store, a commercial storage facility located in Alamo, Nevada. Alamo is approximately fifty miles away from Caliente, Nevada, where the Creech apartment is located. Ms. Rudder's fees for storage units are comparable to those of other storage facilities in Caliente and the surrounding area.

6. Ms. Rudder was unable to find available storage in the Caliente area for storing Mr. Creech's personal property. Thereafter, Ms. Rudder obtained permission from Mr. Dunleavy to store Mr. Creech's property in the storage facility she owns. Mr. Dunleavy was under the impression that Ms. Rudder was going to store the property in her personal garage and was not aware that Ms. Rudder owns a storage facility in Alamo.

7. Ms. Rudder obtained permission from Mr. Dunleavy to hire Joshua Nay, and his wife Britteny Nay to collect and transport Mr. Creech's property from his apartment to the storage facility. Mr. Nay is Ms. Rudder's nephew. Mr. Dunleavy was not aware that Mr. and Mrs. Nay were related to Ms. Rudder.

8. Mr. and Mrs. Nay received \$260.00 for 13 hours of work, which included packing and transporting Mr. Creech's property to Ms. Rudder's storage facility in Alamo, where it

remained until the estate sale. Mr. Nay testified that he is not aware of anyone in Lincoln County that provides the kinds of services that he and his wife provided for Ms. Rudder.

9. Testimony at the hearing revealed that Ms. Rudder did not receive training with regard to inventorying and disposing of a decedent's property. Also, Ms. Rudder did not have knowledge about laws prohibiting nepotism or the Ethics in Government Law.

### **CONCLUSIONS OF LAW**

1. Ms. Rudder, as Lincoln County Deputy Public Administrator, is a public employee as defined in NRS 281.436.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, subsection 2(b).

**WHEREFORE**, based upon a preponderance of the evidence in this matter, the Commission renders the following Opinion:<sup>5</sup>

### **OPINION**

**1. NRS 281.481(1).**

NRS 281.481(1) provides:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

Nothing in this matter suggests that, by storing Mr. Creech's personal property in her privately owned storage facility in Alamo, Ms. Rudder sought an engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in Ms.

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<sup>5</sup> The vote on each issue was as follows:

- NRS 281.481(1): No violation, unanimous
- NRS 281.481(2): No violation, unanimous
- NRS 281.481(3): Violation, 4 to 1; Not willful, unanimous
- NRS 281.505(1): Violation, unanimous; Not willful, unanimous

Rudder's position to depart from the faithful and impartial discharge of her public duties as Deputy Public Administrator in violation of NRS 281.481(1).

Ms. Rudder testified at the hearing that she attempted to locate a storage unit to store Mr. Creech's personal property but that none were available in the Caliente area. Witness testimony at the hearing revealed that limited commercial storage exists in the Caliente area and those facilities rarely have vacancies. Ms. Rudder's storage facility charges are comparable to those charged by facilities in the Caliente area. Therefore, the Commission concludes that Ms. Rudder's conduct did not violate NRS 281.481(1).

**2. NRS 281.481(2).**

NRS 281.481(2) provides:

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.<sup>6</sup>

(b) "Unwarranted" means without justification or adequate reason.

After the court determined that Mr. Creech's will was invalid and that Ms. Davis would not be acting as the personal representative of Mr. Creech's estate, Ms. Rudder, in her capacity as Deputy Public Administrator, assumed that responsibility and processed the Creech estate. Testimony at the hearing revealed that there were few if any, storage facilities available in the Caliente area at the time Ms. Rudder commenced to administer the Creech estate. Similarly,

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<sup>6</sup> NRS 281.501, subsection 8 provides: "... 'commitment in a private capacity to the interests of others' means a commitment to a person: (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection."

testimony indicated that access to moving companies and/or personnel to remove Mr. Creech's personal property was similarly limited. Ms. Rudder testified that she needed someone to help her process Mr. Creech's personal property and that it had to be someone whom she trusted. Mr. and Mrs. Nay were available to help Ms. Rudder accomplish this task.

Under those circumstances, hiring Mr. and Mrs. Nay was warranted. No evidence or testimony was presented in this matter to allow the Commission to conclude otherwise. Therefore, Ms. Rudder did not use her position in government to secure or grant unwarranted privileges, preferences, or advantages for herself or for Mr. and Mrs. Nay, people to whom she has a commitment in a private capacity. Mr. Rudder's conduct did not violate NRS 281.481(2).

**3. NRS 281.481(3).**

NRS 281.481(3) provides:

A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

Ms. Rudder executed a contract between the Lincoln County Public Administrator's office and herself as owner of B&W Wash N Store, a private business in which Ms. Rudder has a significant pecuniary interest. As a result, Ms. Rudder violated NRS 281.481(3). The evidence indicates that Ms. Rudder neither knew nor reasonably should have known that her conduct violated NRS 281.481(3). Testimony at the hearing revealed that Ms. Rudder did not have knowledge about laws prohibiting contracting with the government. Therefore, the Commission finds that the violation of this provision was not willful and, thus, no penalty is imposed.

**4. NRS 281.505.**

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.

Subsection 1 of NRS 281.505 prohibits a public officer or public employee from bidding on or entering into a contract between a governmental agency and any private business in which he has a significant pecuniary interest. However, subsection 4 of the provision provides an exception from the strict prohibition under subsection 1. Under subsection 4, an officer or employee may bid on or enter into a contract with a governmental agency if *all* four of the following requirements are met: 1) If the contracting process is controlled by rules of open competitive bidding; 2) the sources of supply are limited; 3) he has not taken part in developing the contract plans or specifications; and 4) he will not be personally involved in opening, considering or accepting offers.



Ms. Rudder entered into a contract between the Lincoln County Public Administrator's office and herself, as owner of B&W Wash N Store, a private business in which Ms. Rudder has a significant pecuniary interest. Under the facts and circumstances surrounding this contract, Ms. Rudder does not meet all of the four requirements enumerated in subsection 4 of NRS 281.505 for relief from the strict prohibition in subsection 1 of NRS 281.505. Therefore, Ms. Rudder's conduct violated subsection 1 of NRS 281.505. The Commission finds that Ms. Rudder's conduct with regard to this provision was not willful. Ms. Rudder neither knew nor reasonably should have known, that her conduct violated this provision. Accordingly, no penalty is imposed.

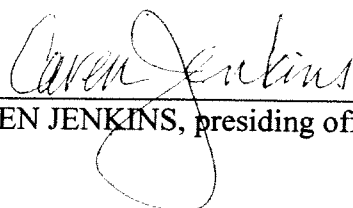
### **CONCLUSION**

Based on the foregoing, the Commission finds no violation by Ms. Rudder of NRS 281.481, subsections 1 or 2, and does find that Ms. Rudder violated NRS 281.481, subsection 3 and NRS 281.505, subsection 1. The Commission concluded that neither violation was willful, and imposed no penalties in this matter.

**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. 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: May 2, 2007.

NEVADA COMMISSION ON ETHICS

By:   
CAREN JENKINS, presiding officer at hearing