



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of
The Request For Opinion Concerning
The Conduct Of EARL MITCHELL,
Constable of Clark County, Henderson Township,
State of Nevada.**

Request for Opinion No. 06-67

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on September 12, 2007, pursuant to a Request for Opinion filed on September 20, 2006. A determination was made by a Commission panel that just and sufficient cause existed to render an opinion on whether Clark County Constable of the Henderson Township, Earl Mitchell (Mitchell) violated NRS 281A.620.1².

Notice of the hearing was properly posted and served. Mitchell was present and provided sworn testimony. Mitchell was represented by William Brown, Esq., and Carlos Blumberg, Esq.

The complaint filed against Mitchell alleged that he failed to disclose on his Financial Disclosure Statement (FDS) the fees he receives through his office as Henderson Township Constable. However, NRS 281A.620.1(b) only requires the sources of income be disclosed. The

¹ The quorum consisted of then Chairman Kosinski and Commissioners Capurro, Flangas, Hutchison, and Jenkins. 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.

² Formerly NRS 281.571 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.

issue before the Commission is, therefore, limited to whether Mitchell failed to adequately list his position as Henderson Township Constable as a general source of income on his FDS.

After hearing testimony and considering the evidence presented, the Commission deliberated and orally advised Mitchell of its decision. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. Mitchell held the position of Clark County Constable for the Henderson Township for 13 years. Also, during that time, Mitchell was employed by the Henderson Police Department.

2. The salary fixed by the Clark County Commission for the office of constable is \$2,400 per year.

3. Constables receive additional income from fees for services performed by the constable's office. These services include small claims, notices, evictions, writs of execution and other services. Mitchell personally receives approximately \$40,000 a year in fees.

4. During Mitchell's 13 years in office he filed his annual FDS. On those FDS filings, Mitchell listed his public office of Henderson Township Constable and the \$2,400 annual salary for this office. However, Mitchell did not list this office a second time under the section of the FDS that requires public officers to list "all general sources of income."

5. Several constables throughout the state similarly failed to list their public office twice, once under the public office requirement and again under sources of income.

CONCLUSIONS OF LAW

1. Mitchell, Clark County Constable for Henderson Township, is a public officer as defined in NRS 281A.160.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281A.280 and NRS 281A.440.2(b).

3. Mitchell is required to file a FDS pursuant to NRS 281A.610.

4. Mitchell violated NRS 281A.620.1(b) when he failed to disclose on his FDS the office of Henderson Township Constable as a source of his income.

DISCUSSION

The issue is whether Mitchell violated NRS 281A.620.1(b)³, when he failed to adequately list on his FDS the office of Henderson Township Constable as a source of income.

The contents required to be disclosed in a FDS are outlined in NRS 281A.620. Specifically, NRS 281A.620.1(b) requires that “each source” of a public officer’s income be disclosed on the FDS. The actual FDS form contains a section for the public officer to list the public office(s) for which the statement is being filed and the annual salary for the office(s). Additionally, the form contains a separate section for the public officer to list “all general sources of income.”

For every FDS that Mitchell filed prior to the commencement of this complaint, he listed “Henderson Township Constable” in the first section of the FDS that asks for the public office(s). Additionally, he listed his annual salary, although he did not include his fees in the annual figure. All the years that Mitchell filed a FDS as Henderson Township Constable, he never listed that office a second time, under the section on the FDS that asks for a list of “all general sources of income.” Mitchell interpreted “general source” as the primary source of

³ NRS 281A.620.1(b) provides:

1. Statements of financial disclosure, as approved pursuant to NRS 281A.470 or in such form as the Commission otherwise prescribes, must contain the following information concerning the candidate for public office or public officer:

(b) **Each source of his income**, or that of any member of his household who is 18 years of age or older. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as “professional services” must be disclosed. (Emphasis added).

income supporting his household, Henderson Police Department and not Henderson Township Constable. Further, Mitchell claims that the fees he receives as Constable do not constitute “general sources” of income and therefore, were not required to be disclosed. However, when questioned whether he claims the approximate \$40,000 he receives annually in fees to the Internal Revenue Service for income tax purposes, he answered in the affirmative.

The Commission unanimously determined that the term “general sources of income” is clear. Therefore, Mitchell should have listed on his FDS his office of Henderson Township Constable under the section asking for “all general sources of income.”

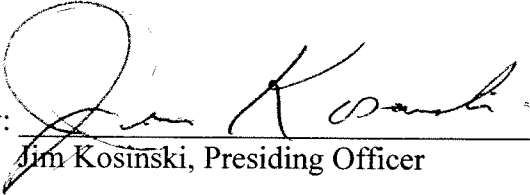
CONCLUSION

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

Mitchell violated NRS 281A.620.1(b) on seven occasions when he failed to list the public office of Henderson Township Constable as a source of income on seven FDS filings. Since several other constables throughout the state have similarly failed to list their position twice on their FDS, it appears that Mitchell’s misunderstanding of the meaning of the term “general sources of income” may be shared by others. Therefore, Mitchell’s violations of NRS 281A.620.1(b) are not willful.

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