



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Advisory Opinion by SHARLA HALES
Trustee, Area 2, Douglas County School District,
State of Nevada.**

Advisory Opinion No. 07-13A

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a telephonic hearing on March 28, 2007 on Douglas County School District Trustee Sharla Hales' (Hales) request for an advisory opinion, pursuant NRS 281A.440.1.² Hales provided her sworn testimony by telephone.

Hales sought an opinion from the Commission regarding, (1) whether the Ethics in Government Law allows Hales to simultaneously serve as a school board trustee in one school district and represent another school district as legal counsel, and (2) whether Hales may use her experience as a school board trustee in one district as a "selling point" in marketing her legal services to another school district.

¹ The quorum consisted of then Chairman Kosinski and Commissioners Capurro, Cashman, Flangas, Hutchison and Jenkins. Commissioner Keele disclosed his private commitment to Hales and abstained from voting. A disclosure by Commissioner Hsu was made regarding his attorney-client relationship with the Douglas County School District and other school districts. Commissioner Hsu abstained from voting.

² Formerly NRS 281.511 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.

After fully considering the request for advisory opinion and analyzing all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Hales of its decision in the matter. The Commission renders this written Opinion.

FINDINGS OF FACT

1. At the time of the hearing, in her public capacity, Hales served as the Area 2 Trustee for the Douglas County School District (Douglas). She was also the president-elect of the Nevada Association of School Boards.
2. In her private capacity, Hales is a lawyer, licensed in Nevada since 1987. She practiced part-time as an independent contractor with other lawyers.
3. Hales' area of interest over the years has been schools and education. She considered pursuing work as legal counsel for school districts outside of Douglas County.
4. Hales' plan to seek legal work with school districts consisted of contacting school districts in Northern Nevada, other than Douglas, and offering to submit a proposal for legal services when the need for such services would arise for a particular district.
5. Hales would not use letterhead, staff, equipment or other accouterments of her public office in her proposed plan to seek legal work with other school districts.
6. Hales would point to her knowledge and experience gained as a school board trustee and work performed in various areas of the law in seeking legal work with other school districts.

CONCLUSIONS OF LAW

1. At the time of the hearing, as the elected Area 2 Douglas County School District Trustee, Hales was a public officer as defined by NRS 281A.160.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281A.440.1 and NRS 281A.460.

3. Hales' marketing plan, by itself, would not violate the Ethics in Government Law.

However, Hales may not use her experience as school board trustee as a selling point.

4. Hales may simultaneously serve as a school trustee in one school district and represent another school district as legal counsel. Should a conflict arise, Hales must disclose and may need to abstain from acting on the matter in accordance with the provisions in NRS 281A.420 and as those provisions were interpreted by the Commission in the *Woodbury* opinion (Commission on Ethics Opinion No. 99-56).

DISCUSSION

The issues are, (1) whether the Ethics in Government Law allows Hales to simultaneously serve as a school board trustee in one school district and represent another school district as legal counsel, and (2) whether Hales may use her experience as a school board trustee in one district as a selling point in marketing her legal services to another school district.

The focus of the Ethics in Government Law is for public officers to commit themselves to avoid conflicts between their private interests and those of the general public whom they serve.³ To that end, the Code of Ethical Conduct⁴ provides guidelines to show the appropriate separation between the roles of persons who are both public servants and private citizens.

³ See NRS 281A.020, Legislative findings and declarations.

⁴ The Code of Ethical Conduct provides:

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. 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.

2. 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 281A.420.

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

The facts presented in this matter established that Hales sought to serve as legal counsel to school districts other than Douglas while simultaneously serve in her public office of Douglas trustee. The Commission determined that such dual representation, by itself, is not prohibited. However, the Commission advised Hales that situations may arise that will require her to comply with the Code of Ethical Standards (NRS 281A.400) and with the disclosure and abstention provisions of NRS 281A.420. Further, the Commission advised Hales to review the guidance provided in the *Woodbury* opinion with regard to disclosure and abstention.

As to Hales' marketing plan, the Commission concluded that she may not market her public office of Douglas trustee as a selling point when seeking legal work with other school districts. This would implicate various provisions of the Code of Ethical Standards, particularly

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3. 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.
 4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
 5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.
 6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
 7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:
 - (a) A limited use of governmental property, equipment or other facility for personal purposes if:
 - (1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;
 - (2) The use does not interfere with the performance of his public duties;
 - (3) The cost or value related to the use is nominal; and
 - (4) The use does not create the appearance of impropriety;
 - (b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
 - (c) The use of telephones or other means of communication if there is not a special charge for that use.If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.
 - ...
 9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.
 10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

NRS 281A.400.1, .2, and .10. Instead, Hales could market her experience and her knowledge that she gained over the years of serving as trustee and through working with other lawyers in various areas of the law. Hales listing her service as trustee on her resume without emphasis would be an example of what would be appropriate under the Code.

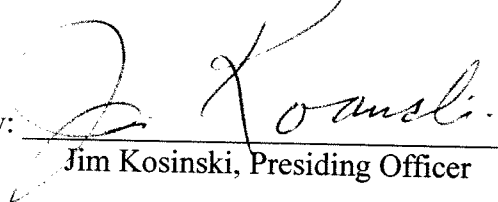
CONCLUSION

The Commission found⁵ that Hales could serve as Douglas trustee while simultaneously representing other school districts as legal counsel. However, when conflicts arise, Hales must disclose her private interests and determine whether her abstention is required. The Commission also found that Hales may not use her office of Douglas trustee as a selling point when seeking legal work with other school districts but she may market her experience and her knowledge.

NOTE: this matter is a first-party advisory opinion request. For purposes of a first-party advisory opinion requested pursuant to NRS 281A.440.1 and NRS 281A.460, all facts in the matter are provided by the public officer requesting the advisory opinion. Facts and circumstances that differ from those provided by the public officer and used by the commission in this advisory opinion may result in an opinion contrary to this opinion.

DATED: 4/10/08.

NEVADA COMMISSION ON ETHICS

By: 
Jim Kosinski, Presiding Officer

⁵ As to whether Hales can simultaneously serve as trustee for Douglas and legal counsel for other districts, the vote was 5 to 1 with Commissioner Flangas voting no. As to Hales not using her office as a selling point the vote was 5 to 1 with Commissioner Jenkins voting no.