



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of The Request for Opinion
Concerning The Conduct Of PAMELA SMITH,
President of the Board of Trustees,
Storey County School District, State of Nevada.**

Request for Opinion No. 07-43C

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (hereinafter the "Commission") for a hearing on December 12, 2007, pursuant to a Request for Opinion filed on October 4, 2007. On November 20, 2007 a Commission panel found just and sufficient cause to hold a hearing and render an opinion on whether Pamela Smith's ("Smith") conduct violated the provisions of NRS 281A.400.2.

The issue before the Commission in this matter is limited to the following:

Did Smith use her official position in government to secure an unwarranted privilege or advantage for herself or any person to whom she had a commitment in a private capacity, when she requested free bottled waters from the school booster's concession stand during the Virginia City High School (VCHS) football game on August 18, 2007?

¹ The quorum consisted of Vice Chairman Hutchison and Commissioners Cashman, Jenkins and Keele. Commissioner Hsu having a conflict of interest disclosed and abstained in accordance with NRS 281A.420.2 and .4; Chairman Kosinski and Commissioner Capurro 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.

Notice of the December 12, 2007 hearing was properly posted and served. Smith was present with her counsel, Carolyn K. Renner, Esq., and provided sworn testimony. Lori Barrington, volunteer for VCHS and Dr. Robert Slaby, School District Superintendent also appeared as witnesses and provided sworn testimony. The Commission and Smith stipulated to the fact that she had paid \$5.00 for the bottled waters that she obtained from the concession stand on August 18, 2007.

FINDINGS OF FACT

After hearing testimony and considering the evidence presented, the Commission makes the following Findings of Fact:

1. On August 18, 2007, VCHS played a home football game. The game was a big event for the school and the community because it was the first time VCHS had a football team in 64 years.

2. The VCHS Boosters organized a concession stand and invited certain VIPs and their families to attend the game. The Boosters invited two men that had played football for VCHS in the early 1940's. Smith approached the concession stand and requested two bottled waters from Lori Barrington, a volunteer at the concession stand. Ms. Barrington requested Smith pay for the bottled waters. Smith then introduced herself and explained that she was getting the bottled waters for the Booster's VIP guests. Ms. Barrington insisted that the bottled waters be paid for and ultimately Smith prepared an "IOU" for \$4.00 and left with four bottled waters. Smith later returned and paid \$5.00 for the bottled waters.

CONCLUSIONS OF LAW

1. At all relevant times, Smith was President of the Board of Trustees of the Storey County School District, 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. Smith did not violate NRS 281.400.2 , and did not use her official position in government to secure an unwarranted privilege or advantage for herself or any person to whom she had a commitment in a private capacity, when she requested free bottled waters from the school booster's concession stand during the Virginia City High School (VCHS) football game on August 18, 2007.

DISCUSSION

The complaint against Smith alleges that she used her official position in violation of NRS 281A.400.2.

NRS 281A.400.2 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 281A.420.

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

Smith had a reasonable belief that she was to "take care of" the two VIPs during the August 18, 2007, football game. She based this belief on a conversation that she had with Dr. Slaby and members of the Booster's Club when they introduced Smith to the VIPs. When Smith

requested the bottled waters from the concession stand, she believed it was within her powers and duties to ensure that the VIPs were taken care of. An apparent miscommunication occurred when Smith introduced herself as the School Board President to Lori Barrington (“Barrington”), a volunteer in the concession stand. Smith stated to Barrington that the bottled waters were for VIPs. However, Barrington, mistook this as an attempt by Smith to use her position to obtain the privilege of free bottled waters.

Smith paid for the bottled waters that she obtained. Her attempt to obtain the bottled waters for free was warranted based on the fact that she had been advised that the VIPs were to be taken care of. Smith assumed this included providing the VIPs with free bottled waters. The fact that this matter is before the Commission is unfortunate, considering that the issue resulted from a mere misunderstanding between two well-meaning people.

The Commission unanimously finds that Smith did not violate NRS 281A.400.2. She did not use her official position in government to secure an unwarranted privilege or advantage for herself or any person to whom she had a commitment in a private capacity, when she requested free bottled waters from the school booster’s concession stand during the Virginia City High School (VCHS) football game on August 18, 2007.

CONCLUSION

This matter arose from an unfortunate misunderstanding between two women dedicated to their community and to this historic event. Therefore, the Commission finds that a preponderance of the evidence does not exist to conclude that Smith used her official position in violation of NRS 281A.400.2 to secure or grant unwarranted privileges or advantages for herself or anyone to whom she has a private commitment.

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: 12-26-07 . NEVADA COMMISSION ON ETHICS

By: 
MARK HUTCHISON, Vice Chairman