



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for  
Opinion Concerning the Conduct of  
DYLAN FREHNER,  
former Deputy District Attorney,  
Lincoln County, State of Nevada,**

**Request for Opinion No. 07-48C**

**Subject.**

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**OPINION**

This matter came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (Commission) for a hearing on June 30, 2008, pursuant to allegations in a Request for Opinion (ethics complaint) filed on November 26, 2007. A Commission panel found just and sufficient cause existed for the Commission to render an opinion whether former Deputy District Attorney of Lincoln County Dylan Frehner (Frehner) violated the Ethics in Government Law (Ethics law).

Frehner was present at the hearing and provided sworn testimony. The following witnesses also provided sworn testimony: Phillip Dunleavy, former District Attorney of Lincoln County and Ronda Hornbeck, Chairman, Lincoln County Commission.

The issue before the Commission was whether Frehner violated NRS 281A.400.10, when he allegedly used his position as deputy district attorney to obtain an employment

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<sup>1</sup> The following Commissioners participated in this opinion: Vice Chair Cashman and Commissioners Capurro, Keele, Kosinski and Lambole. Commissioners Hsu and Moran 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.

contract for the position of General Counsel and Provisional General Manager for the Lincoln County Water District (LCWD).

After fully analyzing all of the facts and testimony presented, the Commission deliberated and orally advised Frehner of its decision in the matter. The Commission now renders this written Opinion.

### **FINDINGS OF FACT**

1. Frehner was the Deputy District Attorney for Lincoln County until approximately January 1, 2007.
2. In January 2006 the Lincoln County District Attorney Phil Dunleavy (Dunleavy) entered into an interlocal agreement with the LCWD. Frehner was assigned by Dunleavy to act as legal counsel for LCWD under that agreement.
3. In November 2006, Dunleavy lost his reelection campaign to Greg Barlow (Barlow).
4. LCWD wanted Frehner to remain as its legal counsel after Barlow commenced his term as district attorney but there was uncertainty whether Frehner would in fact continue to represent LCWD.
4. LCWD had set aside funds to hire a general manager, but had failed to fill the position. With Frehner in mind, LCWD combined the position of General Counsel and General Manager.
5. Members of LCWD approached Frehner and requested that he make a proposal for LCWD to hire him as its full time General Counsel and Provisional Manager.
6. At its December 4, 2006 meeting, LCWD approved the termination of the interlocal agreement with the Lincoln County District Attorney and appointed Frehner as its General Counsel and Provisional General Manager effective January 1, 2007.
7. Frehner prepared the employment contract between himself and LCWD and negotiated its terms with LCWD. LCWD approved the final contract at its December 18, 2006 meeting.

## CONCLUSIONS OF LAW

1. As a former Deputy District Attorney, Frehner is a public officer, as defined by NRS 281A.160.
2. Frehner did not violate NRS 281A.400.10. Insufficient evidence exists to support the allegation that Frehner used his position as deputy district attorney to seek an employment contract for the position of LCWD General Counsel and Provisional General Manager.

## DISCUSSION

It should be noted that this 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 different from this opinion.

The issue is whether Frehner violated NRS 281A.400.10, when he allegedly used his position as deputy district attorney to obtain an employment contract for the position of General Counsel and Provisional General Manager for LCWD.

NRS 281A.400.10 provides:

A public officer or employee shall not seek other employment or contracts through the use of his official position.

Insufficient evidence exists to show that Frehner sought the employment contract for the position of LCWD General Counsel and Provisional General Manager through the use of his position as deputy district attorney. In fact, because LCWD was uncertain whether Frehner would continue to act as its legal counsel once Barlow took office as district attorney and LCWD was pleased with Frehner's job performance as legal counsel, LCWD sought out Frehner for the General Counsel and Provisional General Manager position.

**CONCLUSION**

**WHEREFORE**, based upon a preponderance of the evidence, by a unanimous vote, the Commission finds that Frehner did not violate NRS 281A.400.10. Therefore, the allegations in the ethics complaint are **DISMISSED**.

DATED: 8/20/08

NEVADA COMMISSION ON ETHICS

By:   
TIMOTHY CASHMAN, Vice Chair

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<sup>1</sup> The quorum consisted of Vice Chair Cashman and Commissioners Capurro, Keele, Kosinski and Lamboley. Commissioners Hsu and Moran 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.