



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of
Request for Advisory Opinion by
WILLIAM J. RAGGIO,
Senate and Majority Floor Leader,
State Senate, State of Nevada.**

**Request for
Advisory Opinion
No. 07-49A**

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for hearing on February 14, 2008, regarding the request of State Senator William J. Raggio (Senator Raggio), in his official capacity for an advisory opinion, pursuant NRS 281A.440.1.² The matter was noticed as a confidential matter. Senator Raggio appeared in person and provided sworn testimony. Witnesses Lorne J. Malkiewich, Director of the Legislative Counsel Bureau, and Claire J. Clift (Ms. Clift), Secretary of the Senate, were present and provided sworn testimony.

¹ The quorum consisted of then Acting Chair Hutchison and Commissioners Capurro, Cashman, Hsu, Keele, Kosinski and Moran.

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.

Senator Raggio seeks an opinion from the Commission regarding whether he or any other member of the Legislature or its staff may participate in fundraising efforts for a meeting of the American Society of Legislative Clerks and Secretaries (ASLCS), under NRS 281A.400.

Specifically, Senator Raggio seeks answers to the following questions:

- A. May he sign a letter to registered lobbyists requesting they provide in-kind goods or services or make a monetary contribution to ASLCS?
- B. If the Secretary of the Senate, Ms. Clift, sends the requests, may she indicate that Senator Raggio supports the seminar or refer to him as Chair of the Host Committee?
- C. If Ms. Clift sends the requests, may she use state time and property (letterhead and computer programs and other materials)?

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

FINDINGS OF FACT

1. Senator Raggio is a member of the Nevada State Senate. Additionally, Senator Raggio serves as Majority Leader of the Senate and, as such, is a part of the Legislative Leadership (Leadership).
2. Ms. Clift is the Secretary of the Nevada State Senate and a full-time employee.
3. Ms. Clift is a principal member of the Executive Committee for ASLCS, a private non-profit organization.
4. Ms. Clift has no influence over legislation.

5. Nevada Legislative Commission (Legislative Commission) approved hosting the ASLCS Professional Development Seminar (Seminar) to be held in Reno in October 2008.
6. The Legislative Commission set aside \$60,000 for the Seminar and requested the Leadership to send out a fundraising letter to minimize the cost to the State.
7. The proposed letter to be sent to Nevada lobbyists and others, compiled from previous donor lists for similar functions, included suggested sponsor levels.
8. The Seminar, for the most part, should be self-supporting through the collection of fees from participants.
9. As many as 300 participants are expected at this Seminar, which would provide an economic benefit to the state. There is no private benefit being sought or accepted by Senator Raggio, Ms. Clift or any other member of the Legislature or the Legislative Counsel Bureau staff.
10. Senator Raggio has no interest in finding out who does or does not donate as a result of the letter soliciting funds.
11. The donations collected would be deposited into a specific state fund for the Seminar. In the past when funds remain after all bills are paid for the Seminar, those funds are sent to ASLCS and maintained for future endeavors.

CONCLUSIONS OF LAW

1. Senator Raggio, as a state senator, is 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. NRS 281A.400.1³ prohibits Senator Raggio from seeking or accepting any gift, service, favor, or economic opportunities that would improperly influence a reasonable person in his position to depart from his public duties.
4. Senator Raggio will not violate NRS 281A.400.1 by signing the fundraising letter in his public capacity or allowing his name to be used in fundraising activities of Ms. Clift.
5. NRS 281A.400.2⁴ prohibits Senator Raggio from using his position in government to secure or grant unwarranted privileges, preferences, or advantages for himself or others to whom he has a private commitment.
6. Senator Raggio will not violate NRS 281A.400.2 by signing the fundraising letter in his public capacity or allowing his name to be used in fundraising activities of Ms. Clift.
7. NRS 281A.400.8⁵ prohibits Senator Raggio, as a member of the Legislature, from using governmental time, property, equipment or other facility for nongovernmental purposes for the private benefit of himself or another.

³ A public officer or employee shall not seek or accept any gift, service, favor, 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.

⁴ 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.

⁵ A member of the Legislature shall not:

(a) Use governmental time, property, equipment or other facility for a **nongovernmental** purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of his public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

8. Senator Raggio will not violate NRS 281A.400.8 by allowing or authorizing Ms. Clift to use governmental property, time and equipment to send fundraising letters.

DISCUSSION

The issue is whether Senator Raggio, any other member of the Legislature or its staff may send a fundraising letter or lend his name to support the Seminar, in light of NRS 281A.400.

Senator Raggio is sending the fundraising letter in his public capacity at the direction of the Legislative Commission. He does not have any pecuniary interest in ASLCS, nor does he have a commitment in a private capacity to the non-profit organization. At most, Senator Raggio has a commitment in a *public* capacity to ASLCS due to the Legislative Commission's authorization of the fundraising to offset the cost to the State of Nevada of hosting the Seminar that will, among other things, benefit Legislative staff. Under such circumstances, Senator Raggio is not seeking a gift or favor for himself or for his private interests which would improperly influence a reasonable person in his position to depart from his public duties under NRS 281A.400.1. Similarly, Senator Raggio's use of his position to support ASLCS (to which he owes no commitment in a private capacity) does not constitute an unwarranted privilege under NRS 281A.400.2. Finally, Ms. Clift's use of government time, property and equipment to send

(2) 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

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the Legislator or legislative employee to perform his official duties; or

(2) Where such service has otherwise been established as legislative policy. (Emphasis added.)

the fund raising letter is for a governmental purpose and does not create a private benefit for herself or Senator Raggio under NRS 281A.400.8.

The Commission reviewed the proposed fundraising letter and attachments containing levels of donations, including a top level of \$5,000 or more. The Commission is concerned that such a hierarchy on donations may encourage lobbyists to donate at the highest level to curry favor in the Legislature. Even though Senator Raggio has no interest in knowing the identity of the donors, the donation hierarchy may create an appearance of impropriety. Therefore, in order to avoid the appearance of impropriety, the fundraising materials must set forth a reasonable cap on donations. At the hearing, Senator Raggio and Ms. Clift determined that a \$2,000 per-donor cap was reasonable.

CONCLUSION

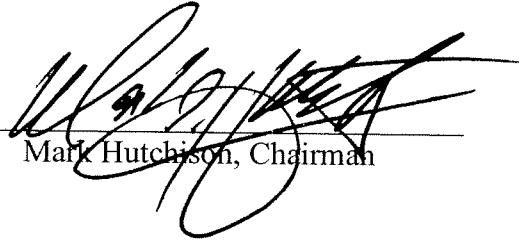
WHEREFORE, the Commission finds that Senator Raggio would not violate NRS 281A.400.1, .2 or .8 by signing a fundraising letter in his public capacity as Majority Leader of the Senate in support of the ASLCS Seminar provided there is a reasonable cap on the donations in order to avoid the appearance of impropriety.

Additionally, since there is no improper benefit to Senator Raggio, the Commission finds that Ms. Clift may send out letters under her own signature and may indicate that Senator Raggio supports the Seminar and refer to him as Chair of the Host Committee. Finally, the Commission finds that Senator Raggio, Ms. Clift or any other authorized staff member may use time, property and equipment of the Legislature to send the fundraising letter to raise funds for the Seminar.

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, the record consists solely of facts provided by the public officer. This opinion is based upon those facts. 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: 3/18/08.

NEVADA COMMISSION ON ETHICS

By: 
Mark Hutchison, Chairman