



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Adam Mayberry**, Trustee,
Washoe County School District,
State of Nevada,

Ethics Complaint
Case No. 22-050C

Subject. /

REVIEW PANEL DETERMINATION
NRS 281A.730; NAC 281A.440

The Nevada Commission on Ethics (“Commission”) received this Ethics Complaint (“Complaint”) on May 2, 2022, regarding the alleged conduct of Subject Adam Mayberry (“Mayberry”) and the use of “mixed use” social media platforms to support his campaign for election as a Washoe County School District (“WCSD”) Trustee. On June 13, 2022, the Commission issued its order instructing the Executive Director to investigate the alleged violations of NRS 281A.400(2), (7) and NRS 281A.520.

Mayberry is a public officer as defined in NRS 281A.160, and the Commission has jurisdiction over this matter pursuant to NRS 281A.280 because the allegations contained in the Complaint relate to Mayberry’s conduct as a public officer and have associated implications under the Ethics Law.

On October 19, 2022, a Review Panel consisting of Chair Kim Wallin, CPA, CMA, CFM (Presiding Officer) and Commissioner James Oscarson reviewed the following: (1) Complaint; (2) Order on Jurisdiction and Investigation; (3) Mayberry’s Response to the Complaint; and (4) Executive Director’s Recommendation to the Review Panel with Summary of Investigatory Findings.¹

The Review Panel finds and concludes that the investigation did not present just and sufficient cause to refer the Complaint to the Commission for further proceedings. In part, the Review Panel considered whether the evidence supported a reasonable belief based upon credible evidence that Mayberry violated NRS 281A.400(2), (7) and NRS 281A.520 prohibiting the use of a public office, government property or causing the public to expend funds to support private campaigns.

In synopsis, the investigation confirmed no public funding was provided to support Mayberry’s campaign or that Mayberry improperly used his public position to support his campaign for re-election. Accordingly, there is insufficient evidence to support the referral of NRS 281A.400(2) and NRS 281A.520 to the Commission for additional proceedings.

The alleged violation of NRS 281A.400(7) required more analysis. The restriction against use of government property prevails unless all limited exceptions apply. Two

¹Commissioner Damian Sheets, Esq. received the materials but was absent for the consideration. Pursuant to NAC 281A.177, two members of the Review Panel are sufficient to conduct pending business. All materials provided to the Review Panel, except the Ethics Complaint and the Order on Jurisdiction and Investigation, represent portions of the investigatory file and remain confidential pursuant to NRS 281A.750.

exceptions are at issue in the Review Panel's just and sufficient cause review: (1) whether the WCSD has a written policy permitting the use; and (2) did the use create an appearance of impropriety.

WCSD's Written Policy

The WCSD policy does not detail what uses are permitted. Instead, it only restricts commercial use of government property. Consequently, the Review Panel takes this opportunity to indicate that the WCSD policy should be clarified to establish boundaries for use of government property to compliment and assure compliance with the Ethics Law.

Social Media and Appearance of Impropriety

In re Kirkland, Comm'n Op. No. 98-41 (1999). In *Kirkland*, the Commission was asked to determine whether a sheriff could use his uniform and badge in an endorsement for a judicial candidate. In addition to the uniform, the planned campaign endorsement included video of the Washoe County jail behind the sheriff. Sheriff Kirkland was careful not to incur additional agency expenses to assist with the endorsement commercial. The Commission still concluded that use of that official imagery violated the ethics law noting most importantly:

The starting point of our analysis is an incontrovertible premise that it would never be proper for a governmental agency to endorse a political candidate. Neither the State of Nevada, Washoe County, nor the City of Reno has any business endorsing the candidacy of a supreme court justice, state legislator, federal legislator, sheriff, district judge, or dogcatcher. Tyranny would be the inevitable mischief that would be worked by a government that could exercise its immense resources to influence the election of the very people that would work within that government.

It follows that if the government cannot endorse candidacies, then its elected, appointed, or employed agents likewise **cannot create the impression of government sanction.**

In re Kirkland, at p. 4. (emphasis added)

If the use in question leads a reasonable person to believe the government supported the campaign, it would create an appearance of impropriety. *In re Antinoro*, Comm'n Op. Nos. 18-031C/18-052C (2019). Moreover, the Commission has determined that:

Simply, public officers and employees are not entitled to take advantage of public resources to support their own campaign or other political campaigns. *Id.* (referencing application of NRS 281A.400(7)); See also *In re Matson*, Comm'n Op. No. 11-67C (2014).

Furthermore, the Commission has instructed that a disclaimer is recommended in private political endorsements that reference an official title, which disclaimer must confirm that the endorsement is not sanctioned by the government. *In re Public Officer*, Comm'n Op. No. 19-0124A (2020).

Certainly, the policy of the State of Nevada is for public officers to avoid conflicts between private interests and public duties and the Review Panel must determine

whether there is just and sufficient cause to refer this case to the Commission based upon the evidence presented. The best ethical practice for public officers or employees who are also candidates for office is to maintain separate official and campaign social media presences in order to make it crystal clear that communications from any official account are not related to promotion of a candidacy and those on the campaign account are for private campaign purposes. Moreover, a mixed use social media account creates concern under the Ethics Law and increases the likelihood that ethics complaints will be filed, each of which will be considered based upon the facts presented in the case.

To support a just and sufficient cause determination on whether the specific posts presented in the mixed use account creates an appearance of impropriety, the Review Panel considered the fact that Mayberry had already removed most of the referenced data and the investigation did not establish the other posted materials were property of WCSD or were obtained by use of WCSD staff, displayed WCSD logos, or were obtained through special access to venues afforded to WCSD Trustees. The photographs displayed attendance at a few public events such as graduation and school openings, where any member of the public could take the photograph.

Further, the evidence did not support the determination that a reasonable person would believe the government was supporting Mayberry's private campaign based upon the totality of circumstances, which included that the social media account contained a communication indicating that the "Committee to Elect Adam Mayberry is responsible for this page." Under the circumstances presented including there is a lack of evidence or indicia of an appearance of impropriety, the Review Panel is unable to substantiate the just and sufficient cause determination for a referral to the Commission of the allegations related to NRS 281A.400(7).

Based on the application of the just and sufficient cause standard to these particular circumstances, the Review Panel determines that there was not sufficient credible evidence to support a referral to the Commission to render an opinion regarding the alleged violations of NRS 281A.400(2), NRS 281A.400(7), and NRS 281A.520. Nevertheless, this determination should not be taken to indicate that mixed use accounts with a minimal disclaimer would be allowed by the Commission. Public officers, including Mayberry, would be wise to follow the educational aspects of this Review Panel Determination or seek an advisory opinion about their individual circumstances.

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IT IS HEREBY ORDERED:

Under NAC 281A.430, the Review Panel unanimously finds and concludes that the facts do not support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the alleged violations of NRS 281A.400(2), (7) and NRS 281A.520. Accordingly, the Complaint is dismissed.

Dated this 25th day of October, 2022.

REVIEW PANEL OF THE NEVADA COMMISSION ON ETHICS

By: /s/ Kim Wallin
Kim Wallin, CPA, CMA, CFM
Chair/Presiding Officer

By: Absent
Damian R. Sheets, Esq.
Commissioner

By: /s/ James Oscarson
James Oscarson
Commissioner

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the foregoing **REVIEW PANEL DETERMINATION** via U.S. Certified Mail and electronic mail addressed as follows:

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c/o Adam Hosmer-Henner
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Dated: 10/25/21



Employee, Nevada Commission on Ethics