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Via U.S. mail and electronic mail:
eric@nvsca.com

Eric Spratley
Executive Director
Nevada Sheriffs' and Chiefs' Association
P.O. Box 17971
Reno, NV 89511

Re: Ethics Decisions Involving Sheriffs and Chiefs:
Uniforms/Badges/Letterhead During Campaigns

Dear Executive Director Spratley,

The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A gives the Nevada Commission on Ethics ("Commission") jurisdiction over the conduct of state and local government public officers¹ and public employees² regarding conflicts of interest between public duties and private interests, including state and local government law enforcement officers and employees.

The Commission has recently addressed several matters involving various state and local government law enforcement positions, and the accompanying conflicts of interest that have resulted in the context of political activity. As a courtesy, and as directed pursuant to a stipulated agreement between the Commission and Storey County Sheriff, Gerald Antinoro, I am contacting you to provide important guidance for state and local government law enforcement officials who contemporaneously seek an appointed or elected position. See *In re Antinoro*, Comm'n Op. Nos. 18-031C and 18-052C (2019), enclosed. The Commission strongly encourages the Nevada Sheriffs' and Chiefs' Association to inform its members of this guidance. The Commission has determined that it is a violation of the Ethics Law for a state or local government law enforcement officer or employee to wear or use his/her uniform, badge or other physical accouterment of office, or official letterhead or government email to support or oppose any political campaign.

¹ "Public officer" is a person serving in a position designated by NRS 281A.160 and 281A.182.

² "Public employee" is defined as a person who performs public duties under the direction of a public officer for compensation paid by the State or any county, city or other political subdivision. NRS 281A.150.

Under the Ethics Law, public officers and employees have a duty to avoid conflicts of interest and protect the public's faith in the appropriate separation between the use of government resources and private endeavors. Specifically, a public officer or employee must not use official government resources in support of a political campaign. For purposes of this matter, government resources include, without limitation, an official uniform, badge or other physical accouterment of public office, or the official letterhead or government-issued email account.

The Commission has previously determined that a public employee of a state or local government law enforcement agency is prohibited from using a uniform, badge or other physical accouterment of public office in support of his/her political campaign or as part of a political endorsement, even if the property is purchased by the public officer or employee. A public officer or employee has a significant personal and financial interest in achieving or maintaining an elected position, or endorsing another candidate for an elected position.

However, the Commission understands that there has been previous reliance by elected, incumbent law enforcement officials on a 2012 advisory opinion issued by the United States Office of Special Counsel ("OSC") regarding application of the federal *Hatch Act*, which restricts certain political activities of certain state and local government employees. The OSC Opinion advised that elected sheriffs were permitted to wear uniforms while campaigning for themselves or another candidate without violating the *Hatch Act*. However, the *Hatch Act* and the OSC's advisory opinions apply only to partisan political activities and are not binding or determinative on state or local government laws or policies that prohibit such use. Nevada has enacted the Ethics Law, which has been interpreted by the Commission to prohibit such use.

A law enforcement uniform and badge signify the power and prestige of the office and are considered governmental property for purposes of the Ethics Law. The Commission has now definitively concluded that no state or local government law enforcement official, including an elected, incumbent official, may wear his/her uniform, badge or other physical accouterment of office, and may not use official letterhead or government email, in support or opposition of a political campaign, including his/her own campaign or as an endorsement. Such use constitutes a violation of NRS 281A.400(7).

The Commission has further opined that the public's trust in government is questioned when there is an appearance of government interference or influence during an election. See *In re Parish*, Comm'n Op. No. 12-64C (2013) ("A representative democracy guarantees the right of the people to govern through elected representatives, the integrity of which is voiced through the electoral process where elected representatives are held accountable ... inherent in the electoral process are guarantees of free, open and equal participation by the voters, including assurances that government remains neutral in the process and allows all candidates a fair and equal chance to win, free of manipulation from public money, power or influence. ... While government resources should not be used to support [or oppose] any candidate during an election, the law specifically ensures that an incumbent candidate should not receive unwarranted or unfair benefits ... during an election through the use of public resources to promote his candidacy. The Legislature secures government neutrality in elections by regulating the conduct of public officers and employees who are entrusted with public resources to ensure that the election process is not manipulated through the use of public resources or other influence.")

The Commission's interest in this matter is not intended to infringe upon the operations of law enforcement. Instead, the Commission values and appreciates the public's reliance on law enforcement and balances those duties against the multitude of concerns it has received in recent years questioning the appropriate separation between the public duties and private political campaigns of state and local government law enforcement officers. Consequently, the Commission has provided clear guidance, which hereafter has precedential value and will be enforceable against all state and local government law enforcement officers and employees.

The Commission's decisions, as well as a link to NRS Chapter 281A and other relevant informational guides for public officers, are available on the Commission's website, www.ethics.nv.gov.

If you have any questions or concerns, please do not hesitate to contact me. I am also available to provide Ethics in Government Law training to your organization if further education is desired on these matters.

Sincerely,

/s/ Yvonne M. Nevarez-Goodson
Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Enclosure