



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Jim Pitts, Sheriff, County of Elko,
State of Nevada,

Request for Opinion No. **14-71C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-71C before the Nevada Commission on Ethics (“Commission”) concerning Jim Pitts (“Pitts”), Sheriff of Elko County, Nevada, and serves as the final opinion in this matter. As set forth herein, the parties have agreed to the dismissal of the alleged violations because the laws pertaining to the issues raised by this Request for Opinion are not clearly defined and therefore a preponderance of evidence does not support a violation of the Ethics Law. Nevertheless, through this stipulation, the Commission seeks to provide guidance to others on the issues presented in this matter.

2. **JURISDICTION:** At all material times, Pitts served as the Sheriff of Elko County. As such, Pitts is an elected public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A provides the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Pitts in this matter.

3. **PROCEDURAL HISTORY:**

- a. On or about October 13, 2014, the Commission received this RFO alleging that Pitts, in campaigning for re-election for the office of Sheriff of Elko County violated certain provisions of the Ethics Law. In essence, the RFO alleged that Pitts improperly wore his official Sheriff uniform while engaging in campaign activities. Additionally, it was alleged that Pitts had improperly allowed his

subordinates to contribute to and assist in his reelection campaign. It was alleged that these activities:

- 1) Failed to avoid conflicts of interest between his public and private life by using his current office to gain favor for his campaign (NRS 281A.020(1));
 - 2) Sought economic opportunity which would tend to improperly influence a reasonable person in his position to depart from the faithful and impartial discharge of public duties by using his uniform and badge to further his campaign interests (NRS 281A.400(1));
 - 3) Used his position and his title as Sheriff to gain an unwarranted advantage for his himself by furthering his campaign interests (NRS 281A.400(2));
 - 4) Used governmental time and resources in his capacity as Sheriff to further his own campaign interests NRS 281A.400(7)); and
 - 5) Attempted to benefit a significant personal or pecuniary interest through the influence of a subordinate by having the subordinate employee attend Pitts' campaign events in uniform (NRS 281A.400(9)).
- b. On October 22, 2014, Pitts was served with a Notice to Subject of Request for Opinion, along with a copy of the RFO. The RFO and Notice included allegations that Pitts violated the referenced statutes.
 - c. Pitts submitted his response to the RFO on November 20, 2014. After the Commission's Investigatory Panel concluded that the Commission should hold a hearing and render an opinion, the matter was set for a formal hearing.
 - d. On August 6, 2015, Pitts filed a Motion to Dismiss Notice of Additional Issues and Facts Related to RFO No. 14-71C and a Motion for Summary Judgment ("Motions"), and the Commission's Associate Counsel responded thereto.
 - e. In lieu of a hearing on the Motions, Pitts and the Commission now enter into this Stipulated Agreement finding no violation of the Ethics Law set forth in NRS Chapter 281A, including NRS 281A.020(1) and NRS 281A.400(1), (2), (7) and (9).

- f. This Stipulated Agreement serves as an opportunity for the Commission to promote and clarify the goals of the Ethics Law and serves to educate all public officers similarly situated to Pitts.

4. **STIPULATED FACTS**: At all material times, the following stipulated facts¹ were relevant to this matter:

Relevant Persons and/or Entities

- a. Pitts was the elected Sheriff of Elko County and a public officer as defined in NRS 281A.160.
- b. The Elko County Sheriff's Office is a local agency as defined in NRS 281A.119 and part of a political subdivision as defined in NRS 281A.145.
- c. Clair Morris was the Undersheriff of the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- d. Mike Silva was a lieutenant in the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- e. Nick Czegledi was a detective sergeant in the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- f. Kevin McKinney was a lieutenant in the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- g. Annette Kerr was the office manager of the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- h. Armida Marin was an administrative assistant in the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- i. Julie Hamilton was an administrative assistant in the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.
- j. Jamie Velasques was an administrative assistant in the Elko County Sheriff's Office, a public employee as defined in NRS 281A.150.

¹ Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17)(as amended by Assembly Bill 60, 78th Session of the Nevada State Legislature, effective May 27, 2015). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

Campaign for Sheriff of Elko County, Nevada

- k. Pitts' official campaign website (homepage and "about" page) and candidate Facebook page displayed a picture of Pitts in his Sheriff's dress uniform and badge.
- l. Pitts did not use public funds or receive a uniform or other allowance to pay for the uniform and items associated with his Sheriff's uniform, including his badge and duty weapon.
- m. Pitts and the Commission acknowledge that the use of uniforms and badges in campaign materials in Nevada has been employed by candidates for other law enforcement offices in Nevada. The Commission further acknowledges that when utilizing his uniform and badge as part of his reelection activities, Pitts was relying upon a February 29, 2012 opinion of the U.S Office of Special Counsel which concluded that the Federal Hatch Act, 5 U.S.C. 1502(a)(1), would not prohibit a candidate subject to its regulation from wearing his/her uniform or using his/her official title while campaigning for reelection.²
- n. On May 6, 2014, after normal duty hours, Elko County Sheriff candidates participated in a question and answer forum in the City of Elko ("candidate forum I") on various political issues. Sheriff Pitts appeared at this event.
- o. At the May 6, 2014 candidate forum I, numerous Sheriff's Office staff attended the event including: Undersheriff Morris, Detective Sgt. Czegledi, Lt. McKinney, Office Manager Kerr, administrative assistant Marin and most of the narcotics squad. Undersheriff Morris appeared at the event in dress uniform.

² Although Federal law has indicated that elected officials may wear official uniforms or use official titles while campaigning for reelection, the State of Nevada and County of Elko have not adopted any such laws or policies, and the Elko County Sheriff's Policies prohibit employees from engaging in political activities during working hours, wearing any part of the uniform or utilizing a Sheriff's Office badge to endorse, support or oppose a political campaign or initiative, unless specifically authorized by the Sheriff. (See sections 314.2.2, 321.5 and 405.16 of Sheriff's Policies). Although the Sheriff's internal policies do not have the force and effect of law and are subject to change, elimination, or waiver by the Sheriff in his sole discretion, the Commission suggests that Sheriff Pitts clarify these policies because they can be interpreted as conflicting with the opinion regarding application of the Hatch Act provided by the U.S. Office of Special Counsel and trigger potential application of the Ethics Law.

- p. On September 25, 2014, Elko County Sheriff candidates participated in a question and answer forum on local issues for Elko County Spring Creek residents (“candidate forum II”). Sheriff Pitts appeared at this event.
- q. At the September 25, 2014 candidate forum II, numerous Sheriff’s Office staff attended the event including: Undersheriff Morris, Office Manager Kerr, and Detective Sgt. Czegledi. Undersheriff Morris appeared at the event in dress uniform. On October 7, 2014, Elko County Sheriff candidates participated in a question and answer forum at the Elko Convention center (“candidate forum III”).
- r. At the October 7, 2014 candidate forum III, numerous Sheriff’s Office staff attended the event including: Office Manager Kerr, Detective Sgt. Czegledi, Lt. Silva, and administrative assistants Hamilton and Velasquez. Lt. Silva appeared at the event in dress uniform
- s. All of the subordinates appeared freely and voluntarily and were neither requested nor encouraged by Pitts to attend these campaign functions.

Campaign Donors and Volunteers Who Are Pitts’ Subordinates

- t. Office Manager Kerr was Sheriff Pitts’ campaign manager, Undersheriff Morris paid for one of Sheriff Pitts’ re-election ads, assisted on the campaign and donated to the campaign.
- u. Detective Sgt. Czegledi assisted on and donated to the campaign. Armida Marin assisted on the campaign.
- v. Luiz Carlos Nunes assisted on the campaign.
- w. None of the subordinates felt coerced in any way to participate in or contribute to Pitts’ reelection campaign, and each voluntarily acted on his/her own initiative and in his/her personal capacity.

5. TERMS OF AGREEMENT / CONCLUSIONS OF LAW: Based on the foregoing, Pitts and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.

- b. Pitts holds public office, which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Elko County). Pitts and all other public officers and public employees have a legal obligation to avoid conflicts between their personal interests and their public duties as set forth in NRS 281A.020 et seq.
- c. To promote integrity in public service, the Commission is concerned with situations involving public officers/employees that create the appearance of impropriety and conflicts of interest, as well as actual impropriety and conflicts. (See *In re Maltman*, Comm'n Opinion No. 12-66A (2012)).
- d. As a public officer, the conflict of interest provisions of the Ethics Law apply to Pitts. Specifically, pursuant to NRS 281A.020, Pitts must commit to avoid actual and perceived conflicts of interest and must not use his position in government to benefit his personal or financial interests.
- e. In *In re Kirkland*, Comm'n Opinion No. 98-41 (1998) ("*Kirkland*"), the Commission stated that if a public officer's/employee's use of his/her uniform or badge during campaign activities was unlawful under the Hatch Act or any other applicable law, such conduct would be equivalent to the conferral of an unwarranted advantage and therefore violate NRS 281A.400(2)(which prohibits a public officer or employee from using his or her position in government to secure an unwarranted preference or advantage). Because Nevada law or the Washoe County Code did not specifically prohibit Kirkland's use of his uniform and badge, the Commission found that such use did not confer upon him an unwarranted preference or advantage. However, the Commission further stated that Sheriff Kirkland's use of his badge and uniform constituted the use of the "physical accoutrements of his office or position to bolster the endorsement" of a person's candidacy, in violation of NRS 481A.400(7)(because the law prohibited a public officer or employee from using governmental time, property or equipment to benefit his personal or financial interest) and thus would create the appearance of impropriety.

- f. The Commission recently revisited this issue in *In re Kuzanek*, Comm'n Opinion No. 14-61C (2014) ("*Kuzanek*"). In *Kuzanek*, the parties agreed through a stipulated agreement that use of the Washoe County Sheriff Deputy uniform and undersheriff badge provided an unfair advantage to Undersheriff Kuzanek during his campaign for Sheriff and therefore resulted in a violation of the Ethics Law. See *Kuzanek*, Comm'n Opinion No. 14-61C at p.6 ("This is the type of harm to the public that the Ethics Law is designed to prohibit."). However, Kuzanek was not the elected Sheriff of Washoe.
- g. The issue of whether an elected, incumbent sheriff may campaign in uniform is one of first impression for the State of Nevada and the Commission, and has not been addressed by Nevada's courts or Legislature. Without State or local law governing or clarifying duties of elected incumbents regarding utilization of the accoutrements of office, the parties stipulate to dismissal of the alleged violation.
- h. A number of Pitts' subordinates appeared at his campaign events, assisted on his re-election campaign and donated money to his campaign. Each has stated that they did so freely, voluntarily and without any coercion by Pitts. The Commission has previously expressed concern in cases where subordinate employees work on and support the campaigns of political candidates supported by the supervising public officer for no apparent reason other than because they believe it is expected of them by their superiors. See *In re Barrett*, Comm'n Opinion No. 01-08A (2001). These concerns remain valid and are not affected by this Stipulated Agreement.
- i. The Sheriff's Policies in place at the Elko County Sheriff's Office contemplate that conflicts of interest could arise out of the activity engaged in by Pitts' subordinates in support of his campaign.³ Nevertheless, the evidence in this case does not support a finding that Pitts' subordinates were acting involuntarily or felt pressured to support Pitts' campaign with their time and money. Therefore the parties stipulate to the dismissal of the alleged violation.

³ The Sheriff's Policies prohibit a superior from receiving any monetary or nonmonetary contribution from a subordinate in violation of NAC 284.770, which is incorporated by reference in the Policies.

- j. Based upon the Stipulated Facts and applicable law, the Commission finds that no violation of NRS Chapter 281A occurred, as alleged in the RFO 14-71C, which specific alleged violations are NRS 281A.020(1) and NRS 281A.400(1), (2), (7) and (9).
- k. This Stipulated Agreement applies only to the stipulated facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- l. This Stipulated Agreement applies only to these matters before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Pitts.

6. WAIVER:

- a. Pitts knowingly and voluntarily waives his right to a hearing before the Commission on the allegations in this RFO (No. 14-71C) and any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B), and any other applicable provisions of law.
- b. Pitts knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

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7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties stipulated to be bound by the terms of this Stipulated Agreement during the regular meeting of Commission on June 15, 2016.

DATED this 21 day of June, 2016.




Jim Pitts

The above Stipulated Agreement is approved by:

FOR JIM PITTS, Subject


DATED this 28th day of June, 2016.



Thomas P. Beko, Esq.
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 30th day of June, 2016.



Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 30th day of June, 2016.



Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.⁴

DATED: June 15, 2016.

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

⁴ Chair Lau participated in the Panel hearings and is therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.