
ASSEMBLY BILL NO. 130—COMMITTEE ON ELECTIONS,
PROCEDURES, AND ETHICS

FEBRUARY 4, 1999

Referred to Committee on Elections, Procedures, and Ethics

SUMMARY—Repeals certain provisions related to campaigns. (BDR 24-857)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to elections; repealing the provision prohibiting a person from making a false statement of fact concerning a candidate or a question on a ballot under certain circumstances; repealing the provision prohibiting certain persons from willfully impeding the success of the campaign of a candidate or the campaign for the passage or defeat of a question on a ballot; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 294A.410 is hereby amended to read as follows:
2 294A.410 1. ~~Except as otherwise provided in NRS 294A.345 and~~
3 ~~294A.346, if~~ ***If*** it appears that the provisions of this chapter have been
4 violated, the secretary of state may:
5 (a) Conduct an investigation concerning the alleged violation and cause
6 the appropriate proceedings to be instituted and prosecuted in the first
7 judicial district court; or
8 (b) Refer the alleged violation to the attorney general. The attorney
9 general shall investigate the alleged violation and institute and prosecute
10 the appropriate proceedings in the first judicial district court without delay.
11 2. A person who believes that any provision of this chapter has been
12 violated may notify the secretary of state, in writing, of the alleged
13 violation. The notice must be signed by the person alleging the violation
14 and include any information in support of the alleged violation.

1 **Sec. 2.** NRS 281.461 is hereby amended to read as follows:

2 281.461 1. The commission shall:

3 (a) At its first meeting and annually thereafter elect a chairman and vice
4 chairman from among its members.

5 (b) Meet regularly at least once in each calendar quarter, unless there
6 are no requests made for an opinion pursuant to NRS 281.511, ~~[294A.345~~
7 ~~or 294A.346,]~~ and at other times upon the call of the chairman.

8 2. Members of the commission are entitled to receive a salary of not
9 more than \$80 per day, as fixed by the commission, while engaged in the
10 business of the commission.

11 3. While engaged in the business of the commission, each member and
12 employee of the commission is entitled to receive the per diem allowance
13 and travel expenses provided for state officers and employees generally.

14 4. The commission shall, within the limits of legislative appropriation,
15 employ such persons as are necessary to carry out any of its duties relating
16 to:

17 (a) The administration of its affairs;

18 (b) The review of statements of financial disclosure; and

19 (c) The investigation of matters under its jurisdiction.

20 5. The commission may, within the limits of legislative appropriation,
21 maintain such facilities as are required to carry out its functions.

22 **Sec. 3.** NRS 281.465 is hereby amended to read as follows:

23 281.465 1. The commission has jurisdiction to investigate and take
24 appropriate action regarding an alleged violation of ~~§~~
25 ~~—(a) This]~~ **this** chapter by a public officer or employee or former public
26 officer or employee in any proceeding commenced by:

27 ~~[(1)]~~ **(a)** The filing of a request for an opinion with the commission;
28 or

29 ~~[(2)]~~ **(b)** A determination of the commission on its own motion that
30 there is just and sufficient cause to render an opinion concerning the
31 conduct of that public officer or employee or former public officer or
32 employee.

33 ~~[(b) NRS 294A.345 or 294A.346 in any proceeding commenced by the~~
34 ~~filing of a request for an opinion pursuant thereto.]~~

35 2. The provisions ~~[of paragraph (a)]~~ of subsection 1 apply to a public
36 officer or employee who:

37 (a) Currently holds public office or is publicly employed at the
38 commencement of proceedings against him.

39 (b) Resigns or otherwise leaves his public office or employment:

40 (1) After the commencement of proceedings against him; or

41 (2) Within 1 year after the alleged violation or reasonable discovery
42 of the alleged violation.

Sec. 4. NRS 281.475 is hereby amended to read as follows:

281.475 1. The chairman and vice chairman of the commission may administer oaths.

2. The commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of books and papers. Before issuing such a subpoena, the commission shall submit a written request to the public officer or public employee who is the subject of an inquiry or opinion of the commission, ~~for to the person or group of persons requesting an opinion pursuant to NRS 294A.345 or 294A.346,~~ requesting:

(a) His appearance ~~for the appearance of a representative of the group,~~ as a witness;

(b) The appearance as a witness of any other person who may have information relating to the inquiry or opinion; or

(c) The production of any books and papers.

Each such request must specify the time and place for the attendance of any witness or the production of any books and papers, and designate with certainty the books and papers requested, if any. If the public officer or other witness fails or refuses to attend or produce the books and papers requested by the commission, the commission may issue the subpoena.

3. If any witness refuses to attend, testify or produce any books and papers as required by the subpoena, the chairman of the commission may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the commission pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the commission, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the commission.

4. ~~Except as otherwise provided in this subsection, upon~~ **Upon** such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced the books or papers before the commission. ~~If the witness has been subpoenaed by the commission in response to a request for an opinion filed pursuant to NRS 294A.345 or 294A.346, the court shall direct the witness to appear before the court as expeditiously as possible to allow the commission to render its opinion within the time required by NRS 281.477.~~ A certified

copy of the order must be served upon the witness.

1 5. If it appears to the court that the subpoena was regularly issued by
2 the commission, the court shall enter an order that the witness appear
3 before the commission, at the time and place fixed in the order, and testify
4 or produce the required books and papers. Upon failure to obey the order
5 the witness must be dealt with as for contempt of court.

6 **Sec. 5.** NRS 281.521 is hereby amended to read as follows:

7 281.521 1. The commission's opinions may include guidance to a
8 public officer or employee on questions whether:

9 (a) A conflict exists between his personal interest and his official duty.

10 (b) His official duties involve the use of discretionary judgment whose
11 exercise in the particular matter would have a significant effect upon the
12 disposition of the matter.

13 (c) The conflict would materially affect the independence of the
14 judgment of a reasonable person in his situation.

15 (d) He possesses special knowledge which is an indispensable asset of
16 his public agency and is needed by it to reach a sound decision.

17 (e) It would be appropriate for him to withdraw or abstain from
18 participation, disclose the nature of his conflicting personal interest or
19 pursue some other designated course of action in the matter.

20 2. ~~{Except as otherwise provided in NRS 281.477, 294A.345 and~~
21 ~~294A.346, the}~~ **The** commission's opinions may not include guidance to a
22 public officer or employee on questions regarding the provisions of chapter
23 294A of NRS.

24 **Sec. 6.** NRS 281.551 is hereby amended to read as follows:

25 281.551 1. In addition to any other penalty provided by law, the
26 commission may impose on a public officer or employee or former public
27 officer or employee civil penalties not to exceed \$5,000 for a willful
28 violation of this chapter.

29 2. In addition to other penalties provided by law, the commission may
30 impose a civil penalty not to exceed \$5,000 and assess an amount equal to
31 the amount of attorney's fees and costs actually and reasonably incurred by
32 the person about whom an opinion was requested pursuant to NRS
33 281.511, against a person who:

34 (a) Submits to the commission, in bad faith or with a vexatious purpose,
35 an accusation or information that is false;

36 (b) Submits to the commission, in connection with a request for an
37 opinion that the commission determines to be without merit, an accusation
38 or information that is false; or

39 (c) Prevents, interferes with or attempts to prevent or interfere with the
40 discovery or investigation of a violation of this chapter.

41 3. If the commission finds that a violation of a provision of this
42 chapter by a public officer or employee or former public officer or
43 employee has resulted in the realization by another person of a financial

benefit, the commission may, in addition to other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

~~4. Except as otherwise provided in this subsection, and in addition to any other penalty provided by law, the commission may impose on any person who violates any provision of NRS 294A.345 or 294A.346 a civil penalty not to exceed \$10,000. If the commission finds that a violation of NRS 294A.345 or 294A.346 occurred within 10 days before an election, including any recall or special election, the commission may impose on the person who committed such a violation a civil penalty not to exceed \$30,000.~~

~~5.]~~ If the commission finds that a violation of this chapter has been committed by a public officer removable from office by impeachment only, it shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.

~~6.]~~ 5. An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee:

(a) Relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee;

(b) Was unable, through no fault of his own, to obtain an opinion from the commission before the action was taken; and

(c) Took action that was not contrary to a prior opinion issued by the commission to the public officer or employee.

~~7.]~~ 6. In addition to other penalties provided by law, a public employee who willfully violates a provision of NRS 281.481, 281.491, 281.501 or 281.505 is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

~~8.]~~ 7. NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees.

~~9.]~~ 8. The imposition of a civil penalty pursuant to ~~subsections 1 to 4, inclusive,~~ **subsection 1, 2 or 3** is a final decision for the purposes of judicial review.

~~10.]~~ 9. In determining for the purposes of this section whether a person submitted an accusation or information in bad faith or with a vexatious purpose, the commission may consider various factors, including, without

limitation:

- 1 (a) When the accusation or information was filed with or provided to
- 2 the commission;
- 3 (b) Whether and, if applicable, in what manner the person who
- 4 submitted the accusation or information publicly disseminated the
- 5 accusation or information before the commission determined whether there
- 6 was just and sufficient cause to render an opinion in the matter;
- 7 (c) Whether the accusation or information sets forth alleged facts or
- 8 details that are misleading or deceptive; and
- 9 (d) Whether the accusation or information or the conduct of the person
- 10 who submitted the accusation or information:
- 11 (1) Would be perceived as annoying or harassing by a reasonable
- 12 person; or
- 13 (2) Demonstrates conscious disregard for the process and procedures
- 14 established by the commission.
- 15 **Sec. 7.** NRS 281.477, 294A.345 and 294A.346 are hereby repealed.
- 16 **Sec. 8.** The amendatory provisions of this act do not apply to conduct
- 17 that occurred before July 1, 1999, or to the jurisdiction, duties, powers or
- 18 proceedings of the commission on ethics relating to such conduct.
- 19 **Sec. 9.** This act becomes effective on July 1, 1999.

TEXT OF REPEALED SECTIONS

281.477 Public hearing on request for opinion as to whether person committed act to impede success of political campaign: Request; notice; response; continuance; actions of commission; judicial review of final opinion.

1. If a request for an opinion is filed with the commission pursuant to NRS 294A.345 or 294A.346, the commission shall conduct a public hearing on the request. Except as otherwise provided in subsection 6, the hearing must be held as expeditiously as possible, but not later than 15 days after the receipt of the request for the opinion.

2. Such a request must be accompanied by all evidence and arguments to be offered by the requester concerning the issues related to the request. Except as otherwise provided in this subsection, if such evidence and arguments are not submitted with the request, the commission may:

(a) Draw any conclusions it deems appropriate from the failure of the person or group of persons requesting the opinion to submit the evidence and arguments, other than a conclusion that a person alleged to have violated NRS 294A.345 acted with actual malice; and

(b) Decline to render an opinion.

The provisions of this subsection do not prohibit the commission from considering evidence or arguments presented by the requester after submission of the request for an opinion if the commission determines that consideration of such evidence or arguments is in the interest of justice.

3. The commission shall immediately notify any person alleged to have violated NRS 294A.345 or 294A.346 that such an opinion has been requested by the most expedient means possible. If notice is given orally by telephone or in any other manner, a second notice must be given in writing no later than the next calendar day by facsimile machine or overnight mail. The notice must include the time and place of the commission's hearing on the matter.

4. A person notified pursuant to subsection 3 shall submit a response to the commission no later than at the close of business on the second business day following the receipt of the notice. The response must be accompanied by any evidence concerning the issues related to the request that the person has in his possession or may obtain without undue financial hardship. Except as otherwise provided in this subsection, if such evidence is not submitted within that time, the commission may:

(a) Draw any conclusions it deems appropriate from the failure of that person to submit the evidence and argument; and

(b) Prohibit that person from responding and presenting evidence at the hearing.

The provisions of this subsection do not prohibit the commission from allowing that person to respond and present evidence or arguments, or both, after the close of business on the second business day if the commission determines that consideration of such evidence or arguments is in the interest of justice.

5. Except as otherwise provided in subsection 4, the commission shall allow any person alleged to have violated NRS 294A.345 or 294A.346 to:

(a) Be represented by counsel; and

(b) Hear the evidence presented to the commission and respond and present evidence on his own behalf.

6. At the request of:

(a) The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346; or

(b) The person alleged to have violated the provisions of NRS 294A.345 or 294A.346,

the commission may grant a continuance of a hearing held pursuant to the provisions of this section upon a showing of the existence of extraordinary circumstances that would prohibit the commission from rendering a fair and impartial opinion. A continuance may be granted for not more than 15 days. Not more than one continuance may be granted by the commission

pursuant to this subsection.

7. The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346 has the burden of proving the elements of the offense, including that a person alleged to have violated NRS 294A.345 acted with actual malice. The existence of actual malice may not be presumed. A final opinion of the commission rendered pursuant to this section must be supported by clear and convincing evidence.

8. The commission shall render its opinion, or decline to render an opinion, as expeditiously as possible, but not later than 3 days after the date of the hearing. If additional time is required to determine the state of mind or the intent of the person alleged to have violated the provisions of NRS 294A.345 or 294A.346 or to determine the amount of any civil penalty that may be imposed pursuant to NRS 281.551, the commission may continue its jurisdiction to investigate those issues but shall render its opinion as to the truth or falsity of the statement made concerning the candidate or the ballot question or its opinion as to whether the person impeded the success of the campaign or induced another person to impede the success of the campaign. If the commission continues its jurisdiction pursuant to this subsection, it may render a final opinion after the time set forth in this subsection.

9. A final opinion of the commission rendered pursuant to this section is subject to judicial review pursuant to NRS 233B.130. The district court shall give a petition for judicial review of a final opinion of the commission priority over other civil matters that are not expressly given priority by law. Notwithstanding the provisions of NRS 233B.130, the court may provide for such expedited review of the final opinion, including shortened periods for filing documents, as it deems appropriate for the circumstances.

10. Each request for an opinion filed pursuant to NRS 294A.345 or 294A.346, each opinion rendered by the commission pursuant thereto and any motion, evidence or record of a hearing relating to the request are public and must be open to inspection pursuant to NRS 239.010.

11. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking any action related to the rendering of an opinion pursuant to this section.

12. Except as otherwise provided in this section, a meeting or hearing held by the commission to carry out the provisions of this section and the commission's deliberations on the information or evidence are not subject to any provision of chapter 241 of NRS.

294A.345 Causing publication of certain false statements of fact concerning candidate or ballot question during campaign prohibited; civil penalty imposed by commission on ethics.

1. A person shall not, with actual malice and the intent to impede the success of the campaign of a candidate, cause to be published a false statement of fact concerning the candidate, including, without limitation, statements concerning:

- (a) The education or training of the candidate.
- (b) The profession or occupation of the candidate.
- (c) Whether the candidate committed, was indicted for committing or was convicted of committing a felony or other crime involving moral turpitude, dishonesty or corruption.
- (d) Whether the candidate has received treatment for a mental illness.
- (e) Whether the candidate was disciplined while serving in the military or was dishonorably discharged from service in the military.
- (f) Whether another person endorses or opposes the candidate.
- (g) The record of voting of a candidate if he formerly served or currently serves as a public officer.

2. A person shall not, with actual malice and the intent to impede the success of a campaign for the passage or defeat of a question on the ballot at any election, including any recall or special election, cause to be published a false statement of fact concerning the question on the ballot.

3. Any candidate who alleges that a false statement of fact concerning the candidate has been published in violation of subsection 1, and any person or group of persons that advocates the passage or defeat of a question on the ballot at any election, is required to file a report pursuant to NRS 294A.150, and alleges that a false statement of fact has been published in violation of subsection 2, may file a request for an opinion with the commission on ethics pursuant to NRS 281.411 to 281.581, inclusive, and NRS 281.477. The commission shall give priority to such a request over all other matters pending with the commission.

4. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the commission on ethics pursuant to NRS 281.551.

5. As used in this section:

- (a) "Actual malice" means knowledge of the falsity of a statement or reckless disregard for whether a statement is true or false.
- (b) "Publish" means the act of printing, posting, broadcasting, mailing, speaking or otherwise disseminating.

294A.346 Impeding success or inducing another to impede success of campaign of candidate or for ballot question prohibited; civil penalty imposed by commission on ethics.

1. An employee, agent or volunteer of the campaign of a candidate shall not willfully perform any act in the course of his employment, agency or volunteering that impedes the success of that campaign.

2. A person shall not willfully, to impede the success of the campaign of a candidate, offer or give an item of value to:

(a) A person to induce him to obtain a position as an employee, agent or volunteer for that campaign and perform any act in the course of his employment, agency or volunteering to impede the success of that campaign; or

(b) An employee, agent or volunteer for that campaign to induce him to perform any act in the course of his employment, agency or volunteering to impede the success of that campaign.

3. An employee, agent or volunteer of a campaign for the passage or defeat of a question on the ballot at any election, including any recall or special election, shall not willfully perform any act in the course of his employment, agency or volunteering that impedes the success of that campaign.

4. A person shall not willfully, to impede the success of a campaign for the passage or defeat of a question on the ballot at any election, including any recall or special election, offer or give an item of value to:

(a) A person to induce him to obtain a position as an employee, agent or volunteer for that campaign and perform any act in the course of his employment, agency or volunteering to impede the success of that campaign; or

(b) An employee, agent or volunteer for that campaign to induce him to perform any act in the course of his employment, agency or volunteering to impede the success of that campaign.

5. Any candidate who alleges that a person has violated the provisions of subsection 1 or 2, and any person or group of persons that advocates the passage or defeat of a question on the ballot at any election, is required to file a report pursuant to NRS 294A.150, and alleges that a person has violated the provisions of subsection 3 or 4, may file a request for an opinion with the commission on ethics pursuant to NRS 281.411 to 281.581, inclusive, and 281.477. The commission shall give priority to such a request over all matters pending with the commission.

6. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the commission on ethics pursuant to NRS 281.551.