

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fifth Session
February 5, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:51 p.m. on Thursday, February 5, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Harry Mortenson, Vice Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Judie Fisher, Committee Manager
Terry Horgan, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

Patricia D. Cafferata, Executive Director, State of Nevada Commission on Ethics

Chair Koivisto:

[Roll taken.] Let us go right ahead into the presentation concerning the Commission on Ethics. Today, we have with us Patricia Cafferata, the Executive Director.

Patricia D. Cafferata, Executive Director, State of Nevada, Commission on Ethics:

In 1981, I served in the Assembly representing southwest Reno. I was elected State Treasurer in 1982; the first woman elected to a constitutional office in the State of Nevada. I have also been District Attorney of Lincoln, Lander, and Esmeralda Counties, and now I am Executive Director of the Ethics Commission.

The Commission is made up of eight people; four appointed by the Legislature and four appointed by the Governor. No more than four can be of any one political party; so, as a practical matter, we have four Republicans and four Democrats except that we currently have a vacancy. There could also be an independent or a non-partisan appointed to the Commission. Only four can come from one county and usually Clark County has had four; however, as I said earlier, we have a vacancy, and that vacancy is from Clark County. We have three from Washoe County, one from Douglas County, one from Carson City, and two from Las Vegas.

Erik Beyer, a former State Senator, comes from Washoe County; Mark Hutchinson is a lawyer from Las Vegas; George Keele is a lawyer from Douglas County; Paul Lamboley is a lawyer from Washoe County; John Marvel is a former State Assemblyman; John T. Moran, III is a lawyer from Clark County; James Shaw is a former county commissioner from Washoe County; and then we have the vacancy. The law requires that the Legislature appoint a lawyer and the Governor appoint a lawyer. The Governor must appoint either a former public employee or a former public elected official.

The Legislature has to appoint a former elected public official. As you can tell, we have a lot of lawyers on the Commission; it has just worked out that way.

We have two offices; one in Las Vegas with our main office in Carson City. In Carson City, Adrianna Fralick is our General Counsel. The other person in Carson City with me is Michelle Ené, our administrative assistant. She handles all the personnel, the budgeting, and all the running of the operation, such as arranging meetings and so forth. In Las Vegas, Tami De Vries is our research analyst. She is like a paralegal and helps research statutes; helps research prior opinions and helps put together all our materials. Michel Vavra is our investigator. He is also in Las Vegas.

Sixty-five percent of our activity concerning elected or appointed officials comes from the local governments, and 35 percent comes from the state—either state employees, state legislators, or elected state officials. We are funded that way; 65 percent of our funding comes from local governments—the cities and the counties. If a governmental entity is so small that its population does not warrant it, they do not pay for our services, although we provide them. The rest of the money comes from the state General Fund. We are .005 percent of the General Fund.

We offer ethics training to anyone who calls requesting it. We do it for government groups, local governments and state agencies, and we train all over the state. We go to wherever the request comes from.

We also receive all the financial disclosure statements and acknowledgment statements. The law requires us to notify the city clerks, county clerks, and other elected officials to send us their lists of highly appointed people—people who are the heads of local governments or state agencies. They send us the lists, and we send out the notices that people must file their financial disclosure statements by January 15. You Assemblymen do this, but you file your statements with the Secretary of State, and we get everyone else. We also get the acknowledgment statements from all the people who are supposed to file financial disclosure statements.

We also issue advisory opinions. Any public employee or elected official can ask us for an advisory opinion relating to the ethics of a situation. Out of the 59 opinions we issued last year, only 13 were advisory. Advisory opinions are binding on the person. We have the authority to file ethics complaints against employees or officials; but, as a matter of course, that is not our policy. We do not want to be perceived as being on a "witch hunt"; however, if we give you an opinion and you violate it or do not follow it, we will file an ethics complaint

against you and hold a hearing. If you do not like our decision, you can appeal our decision to court.

We actually handle more third-party complaints where someone files an ethics complaint against a public employee or a public official. We get complaints mainly in two areas. One is misuse of office—you used your office to get something for yourself that you were not legally entitled to. The second area involves not disclosing or abstaining on something the individual should have. That section only applies to people with a vote, so it includes county commissions, city councils, and people in those positions.

Assemblyman Settlemeyer:

Would it save any money to have one person be in charge of all the financial disclosures rather than having two separate entities handle them?

Patricia Cafferata:

Actually, I believe the Secretary of State has proposed legislation this session that his Office would receive all financial disclosure statements. The Ethics Commissioners are delighted to have the Secretary of State assume that responsibility. Part of the problem is that no one knows where to file. We get elected people's financial disclosure statements. We log them in and send them to the Secretary of State, and vice versa. If there were one place where everyone filed, it would make a lot more sense. The Commission would love to give this up. I believe the Secretary of State asked last session to make this change, but the Ethics Commission did not show up. The Secretary of State did not want to grab that duty away from the Ethics Commission, so they just deferred it. It would be good to have one place to file that everyone knew.

Assemblyman Hambrick:

I appreciate your policy that says when someone comes to you for an opinion but then decides not to take your advice, all bets are off, so to speak. Should one of us seek legal advice from either our own in-house counsel or the Attorney General and follow that advice, we are still subject to your investigation. So, we could take our counsel's advice, but you might disagree. Sometimes, we freshmen believe the procedures are convoluted.

Patricia Cafferata:

If you follow your lawyer's advice that is a pretty big defense, although the Ethics Commission does not always see it that way. What prior opinions sometimes say is, "Well it was a violation, but it was not willful." I am not the Ethics Commission so I cannot give ethics opinions, but that is what they have done in the past.

When we get a request for an advisory opinion, general counsel and I look at it. We make certain it is from an elected official or a public employee and that the individual is asking an ethics question. Then we do a mini-investigation. Either she or I contact the person and get a few more details concerning what is being asked about. We then look at the law. For instance, if it is someone asking about conduct on a general improvement district, we would look at general improvement district law so that we have some understanding about what it is they are doing and what the issues are. She would draft a bench memo, and it would be sent to the Commission. We have 45 days in which to do that. The Commissioners sit and render a written opinion. Opinions are confidential, unless confidentiality is waived, and they are binding on the individual. Some people waive beforehand; some people waive after; and some people do not waive. You can go to court if you do not like our opinion. Basically, we look at only the specific facts we are given. We do not go out and conduct any big investigation.

If someone files a third-party complaint, the first thing that happens is that my general counsel and I review it. By the way, we reject 50 percent of all complaints that are filed because they do not meet our three-pronged test for some reason. We are looking for three things:

- It must concern a public employee or public official.
- There has to be an allegation of an ethics violation, and it has to be in our statute, Chapter 281A of *Nevada Revised Statutes* (NRS).
- There has to be some sort of evidence, and it cannot just be a newspaper clipping, for instance. That is not sufficient evidence. There must be minutes, some kind of record, or something else to support the claim.

The general counsel and I look at the complaint. If we determine there is nothing to it, we tell the person who filed the complaint. If the person does not like our decision and insists on going to the Commission, we send it to a panel, and they decide whether we were right or wrong. If they agree with us, that is the end of it. If they do not agree with us, the complaint goes forward.

If we have jurisdiction, the complaint goes before a panel of two Commissioners who are members of opposite political parties. The standard is "just and sufficient cause" in our statute, which is probable cause: Is there enough of a violation; enough evidence that we should go forward to a full hearing. If one Commissioner decides there is sufficient cause, it goes forward. If both Commissioners decide there is not sufficient cause, the complaint is done.

Once the complaint goes forward, we prepare a notice of what the charges are. It goes to a full hearing except for the two Commissioners who were on the panel. The six Commissioners give an opinion; it is written up and published. Once it goes past the panel, it is no longer confidential; it is public record and we put everything up on our website. Once we have that opinion, it is subject to judicial review. If they do not like the opinion they can take us to court, and a few have done that. That is the process.

If there is a violation, it can be "unwillful," and there is no penalty. We can find that you violated the Ethics in Government Law, and there is no penalty. Now, how does it become not willful?

- In good faith you relied on your attorney.
- You were unable to come to the Ethics Commission to ask for an advisory opinion in the time frame.
- Your conduct is not contrary to one of our prior opinions.

If the conduct is willful, it is different and there are a variety of penalties:

- For the first willful violation, the fine is up to \$5,000.
- For a second willful violation, the fine is up to \$10,000.
- For a third willful violation, the fine is up to \$25,000.

There are other miscellaneous penalties; for instance, if someone received money, the individual might be asked to pay it back. A person could be asked to pay legal fees. Any officer who is subject to the impeachment statutes or any state employee who is the head of an agency could be removed from office through impeachment. If there is one willful violation for any state officer subject to impeachment, we must refer it for impeachment. If it is a local government person who has one willful violation, we may file for removal from office, but we do not have to. If there are three willful violations, we must file for removal.

Now, I will turn to my annual report ([Exhibit C](#)). This report gives you the statistics. We operate under the fiscal year, and this report is based on that year which is July 1 to June 30. However, when we keep track of cases, they start in January; so half our cases are in one fiscal year, and the other half are in the next fiscal year.

In general, we have had about 50-55 cases a year, and about half of those have been dismissed. However, once we had the complaint against Governor Gibbons, we got a lot of publicity. People discovered they could file ethics

complaints, and it would not cost them anything; so, instead of getting three or four cases a month, we got eight cases within 48 hours after that publicity started. As a result, during the last calendar year we had 81 cases, and most came in after September.

I became executive director when it was time for people to file financial disclosure statements, so I started looking at who was filing. There were a lot of local government officials, heads of agencies with huge budgets, who were not filing financial disclosure statements. For example, superintendents of school districts were not filing; so I worked with the clerks, and we expanded a lot of those lists to include a lot more people. Instead of receiving a few hundred, we are now getting several hundred.

Concerning the acknowledgment statements, most people did not even know they were required to be filed, although I know the Legislature is diligent about having you do that. We notified the Governor's Office, and they are now making that part of their packet. When you file for office you are handed a packet with all the forms you need in it and the deadlines for those forms. When you are appointed, you do not get this kind of follow-up, but now the Governor's Office is much better at that. Hopefully, everyone will soon be able to give these forms to the Secretary of State.

The other handout for you today is our ethics manual ([Exhibit D](#)). The first section is a copy of Chapter 281A of the NRS, which is our jurisdiction. The second section contains a couple of opinions that have to do with abstention and disclosure for people who vote. These cases are our seminal cases that we refer to frequently when we are making decisions. Section three contains the forms. There is no penalty if you do not file the acknowledgment form; however, if someone files an ethics complaint and the person had filed an acknowledgment form, that person cannot say, "I did not know I had to do that" or "I didn't know what the law was." I am sure that is why the Legislature adopted this form—so people had to look at these laws.

I am sure you are all familiar with the financial disclosure statement. We receive these from all who are appointed, and the Secretary of State's Office gets financial disclosure statements from all who are elected. We have found people in violation of this when they fail to disclose certain things that were required, but we do not penalize you if you fail to file or you are late. The person who does that is the Secretary of State, and there is a penalty for every day or couple of days that you miss your deadline. We do not have anything to do with that; I just tell the Secretary of State, and the Secretary of State decides what to do. Some people have good excuses and some do not.

I am sure you all have been told about the disclosure statement because your counsel is very good about telling you what the law is; however, they also apply to anyone who is on a part-time board or commission—which is most people. Most elected officials in Nevada are part-time. If you are on a board and you represent a client, either as a lawyer, accountant, engineer, et cetera, before some state agency, you need to file this form. The legislators are really good about this, but other people get caught up in this because they do not know.

Here is the form for an advisory opinion request. You can choose to waive confidentiality; you can choose to waive the 45-day deadline if you want. The next form is the request for the advisory opinion, and the last form is the ethics complaint form with its requirements.

I always like to close with a case study that was one of the first cases we did when I got to the Ethics Commission. It has to do with gifts. Everyone in government seems to get gifts every once in a while and particularly at Christmas time when candy, flowers, and all kinds of stuff comes in. It happens in all state agencies and in all local governments, so it applies to everybody. This case involved Joni Eastley, a county commissioner from Nye County. She represents the Tonopah District, which is where their airport is located. She was representing the County, and there was a Chinese company that wanted to do something at the airport. She was at a meeting, and a lady from China approached her with a shawl and said, "Here. I would like you to have this token." Joni's policy is never to accept gifts from anyone, period, but how do you say that without being rude? She took the shawl and was going to give it to a domestic violence group to raise money. She called me the next day asking what to do. I explained I could not tell her what to do as I was not the Ethics Commission, but if she wanted an advisory opinion she should send in the request form. We held a hearing and she brought the shawl. We did a little research, and in China, on the street, the shawl was worth about \$19.95. From Neiman Marcus, the same shawl was \$350.

The Commission said she accepted the shawl on behalf of the County. It was not hers; she was representing the County. She could not give it away because it was not hers, so she had to give it to the County, and the County could decide what they wanted to do with it.

I love to tell this story because right after this case came down I spoke to a county fiscal officers' association. When I was finished speaking, they thanked me very much and handed me a presidential coin set. I told them, "Thank you very much. I accept on behalf of the Nevada Commission on Ethics." We looked it up on the Internet, and it was worth \$19.95, so I went to the next

Commission meeting and said, "It is yours; what do you want me to do with it?" I called Cultural Affairs and asked if they had a non-profit we could donate it to on behalf of the Ethics Commission, and they accepted it. As a result, I told the Commissioners we needed to have a policy about gifts. The policy for us is that I have to talk to our Chairman and Vice Chairman, and they tell me how to dispose of things. Other agencies do it differently; for instance, Dave Sarnowski at the Commission on Judicial Discipline has them on display on the walls in his office. Think about it. I do not know if the Legislature has an ethics policy on gifts, but I just added this story because it applies to everyone.

Most people get into trouble with the Ethics Commission not because they meant to but because they just did not understand. As I said, 65 percent of the complaints we receive concern local governments because they do not think about the relationships. In all the small towns, everyone is related to everyone else; they all went to school together; they married each others' relatives. They do not think about it when they vote; they forget to disclose. Most of the time it is unintentional; they just do not think about the connections, and of course, that is what it is all about—what are the connections? This is different than benefitting yourself, which is pretty clear, but you just do not think about voting for your brother-in-law's contract or business or something like that. It is usually unintentional.

Assemblywoman Smith:

How is the Commission bound to consider prior decisions? This Commission made a decision on Commissioner Eastley's action. If a similar case came up in two or three years, what is the obligation to consider this Commission's decision?

Patricia Cafferata:

In general, they would follow it. If we get the same issue, we can point to a prior decision and ask them whether they really need to come to us. The problem is the facts are never quite the same, so there can be gray areas, but they would certainly consider this.

Assemblywoman Smith:

They would bring all these prior decisions, or you, as their staff person, would bring all the decisions forward relative to that situation, and they would have some obligation to consider what had happened in the past?

Patricia Cafferata:

When Tami De Vries, our research analyst, knows what the complaint is, she goes into our bank of opinions and pulls up the applicable ones. Again, the trick is that they are not always quite the same, but we would have three or four opinions to consider.

Chair Koivisto:

I would like to point out, and particularly to our new Committee members, that when we hear ethics bills in here, and there probably will be a number of them coming to us this session, one of the things that you will hear a lot is "willful." Was it "willful" or not "willful?" It was good to hear you clarify that so as we go forward, people will have an understanding of that.

Patricia Cafferata:

That is a big line in the sand because if it is willful, there are lots of consequences, and none of them are good. As I said, someone might vote for a brother-in-law to be janitor in one of the public buildings without even thinking about it. There are some who would say that was willful, that it was a violation and the person ought to be penalized. The other side of it is that, somehow, the person had to have done it knowingly. That is a big concern.

Chair Koivisto:

Are there any questions from the Committee for Ms. Cafferata? [No response.] I do not see any; you covered it really well.

Patricia Cafferata:

Thank you. I appreciate the opportunity to present my agency.

Chair Koivisto:

Before Mr. Settelmeyer was elected to serve in the Assembly last session, he came before this Committee about ...

Assemblyman Settelmeyer:

I testified here a long time ago on behalf of the Carson Valley Conservation District and also on behalf of the Nevada State Conservation Commission.

Chair Koivisto:

His issue was that they had difficulty recruiting people to serve on these boards and commissions because of the requirement to file disclosures when these are unpaid positions.

Patricia Cafferata:

Conservation districts are exempt, probably because of you.

Chair Koivisto:

Yes, that is exactly right.

Patricia Cafferata:

The conservation districts and county health officers must have had great lobbyists because they are excluded. The law now reads that you have to make \$6,000 a year in an appointed office to file. In an elected office, it does not matter what you make; you have to report. It is always a concern; but then you look at the way some of the statutes are written and find there are a lot of people who are not covered who really should be covered. They are making large salaries and managing huge budgets, but they are exempt just because of the way the law is written.

Assemblyman Settlemeyer:

Originally, we did not realize we needed to fill those forms out. No one had informed us—although I know ignorance is no excuse. All of a sudden, the Secretary of State indicated that all conservation district members were liable for \$10,000 fines. We all said, "We quit." The Secretary of State replied that we were still liable, and that is what began our appearances before this esteemed Body to grant us a retroactive exemption so we would not be liable. This Body was kind enough to do that.

Patricia Cafferata:

It is a problem in some of the smaller counties, particularly the elected positions, such as those concerning general improvement districts. Those people are all elected, and there is no threshold for salary. I am not suggesting we exempt anyone, but it makes it very difficult to find people to serve. Then, if an ethics complaint gets filed against one of these positions, the tendency is for people to decide they do not need that kind of hassle. They either resign or refuse to step up and serve in some of these elected positions.

Chair Koivisto:

Even though it would seem that much of this should be common sense, we still have very specific laws that apply; however, those do not always match up. It is a fine line.

Patricia Cafferata:

We do have a housekeeping bill in the Senate. I do not know what it will look like when it gets here, but it is a long bill containing many definitions.

Thank you very much for your time. If you have any questions, please feel free to call.

Chair Koivisto:

We need to approve our Committee Rules now ([Exhibit E](#)). You should all have copies at your desks. The Committee Rules are based on the joint rules of the Senate and Assembly and the Assembly Rules. A motion would be in order.

ASSEMBLYMAN CONKLIN MOVED FOR ADOPTION OF THE COMMITTEE RULES.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion? [No answer.]

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

You also should have the committee brief as it was sent to you by email and you also have a hard copy in your offices. I will let Patrick say a few words about the committee brief.

Patrick Guinan, Committee Policy Analyst:

As you all have copies of the brief, I will be happy to answer any questions anyone has about it. There are a couple of things I would point out, though. The committee brief you have right now is specific to the Elections, Procedures, and Ethics Committee because Chairman Mortenson would like to do a separate committee brief on the first day we have a Constitutional Amendment Committee meeting. That meeting will include more specific information about some issues that may arise in the Constitutional Amendments Committee. Right now, that meeting is slated for next Thursday.

On Tuesday, you received a compendium of election laws put together by the Secretary of State's Office. It is very handy and saves you a lot of time because you do not need to search through the larger versions of the NRS. You also received a report at that meeting, and I hope you will have a chance to look at it. It is from the Secretary of State's Office and was required after the passage of Senate Bill No. 401 of the 74th Legislative Session. It requires the county election officials to compile some interesting and important information after an election has taken place. At the end of the year, all that information is reported to the Secretary of State's Office. The Secretary of State turns it over

to the Legislature and to this Body to review. It contains things like how many mail ballots were sent in total and how many of them were rejected. It contains numbers on post-election audits of the voting machines and how those came out. It is very interesting and, in this instance, demonstrates that our election went very well, as you heard from the Secretary of State and the clerks in their presentations on Tuesday.

If anyone has any questions or wants more information based on this report, I would be happy to try to gather that for you.

Chair Koivisto:

During the Interim, we had a staff study done on elections as a result of some of the bills we heard during the last session and questions people had about elections and things that might need to be changed or fixed. We are waiting for that to be published.

Is there anything else to come before the Committee? [No answer.] We are adjourned [at 4:40 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments

Date: February 5, 2009

Time of Meeting: 3:51 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest List
	C	Patricia D. Cafferata, Ex. Dir., State of Nevada Commission on Ethics	2008 Annual Report
	D	Patricia D. Cafferata	Booklet entitled "Basic Obligations of Nevada's Elected and Appointed Officials"
	E	Patrick Guinan, Committee Policy Analyst	Committee rules