

**MINUTES OF THE  
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Eighth Session  
February 9, 2015**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Patricia Farley at 3:31 p.m. on Monday, February 9, 2015, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Patricia Farley, Chair  
Senator James A. Settelmeyer, Vice Chair  
Senator Greg Brower  
Senator Kelvin Atkinson

**COMMITTEE MEMBERS ABSENT:**

Senator Tick Segerblom (Excused)

**STAFF MEMBERS PRESENT:**

Michael Stewart, Policy Analyst  
Brenda Erdoes, Legislative Counsel  
Linda Hiller, Committee Secretary  
Haley Johnson, Committee Secretary

**OTHERS PRESENT:**

Yvonne Nevarez-Goodson, Executive Director, Commission on Ethics  
Ron Pierini, Sheriff, Douglas County  
Scott Anderson, Chief Deputy, Office of the Secretary of State  
Alan Glover  
Jeanine Hansen, State President, Nevada Families for Freedom  
John Wagner, Independent American Party

**Chair Farley:**

Our first agenda item will be a presentation by Yvonne Nevarez-Goodson, the Executive Director of the Commission on Ethics.

**Yvonne Nevarez-Goodson (Executive Director, Commission on Ethics):**

Today I will give an overview of the Commission on Ethics, its mission, work and operations with my presentation ([Exhibit C](#)).

The Commission is an eight-member appointed public body. Four members are appointed by the Legislative Commission and four members are appointed by the Governor. The goal of the Commission on Ethics is to be an independent body. We have no more than four members of any one political party and no more than four members from any specific county in the State. We also try to have the same breakdown in the investigatory panels.

The Commission's statewide jurisdiction extends to over 100,000 public employees and public officers. Our staff of six people proves sufficient to address all of the issues that come forward in requests for opinions.

The Commission on Ethics' mission is to preserve and protect the integrity of public service, particularly through its elected public officials and its appointed public officers.

Conflict of interest is a concept that the Commission deals with frequently. It is relatable on many levels because there might be a conflict between one's public duties and private interests. When dealing with these conflicts, the Commission figures out how to avoid them or how to address them appropriately.

The Commission's jurisdiction is limited to the provision of *Nevada Revised Statutes* 281A and its application to public employees and public officers, including State public employees down through local jurisdictions. The Commission does not have jurisdiction over the Judicial Branch, and its jurisdiction over State Legislators is limited. The Commission does not have reach over the conduct of State Legislators with respect to core legislative functions or anything otherwise protected by legislative privilege and immunity.

The definition of public officer has changed over the course of the last couple of sessions. Senate Bill No. 228 of the 77th Session made clear that the definition

of public officers includes superintendents of school districts along with city and county managers.

The Ethics Commission jurisdiction also extends over the conduct of former public employees and officers for 2 years after they leave public service.

The primary work of the Commission has two main processes: the first-party request for opinions and the third-party request for opinions. The first-party request for opinions are advisory opinions that the Commission offers to its public employees and officers. The third-party requests for opinion are known as our public complaints.

The primary goal of the Commission is twofold, the first being outreach and education, the second the advisory opinion process. If we get more outreach and education, we will receive less complaints.

In a confidential advisory request, a public employee or officer can ask the Commission for advice about his or her own conduct. That conduct must relate to the provisions of NRS 281A, and it can be about past, present or future conduct. The entire process is confidential, so the individual has the ability to set forth specific facts or circumstances for advice on how her or his actions might intersect with the provisions of NRS 281A.

The process has a person submit a form that the Commission staff then vets to determine if a hearing in front of the full Commission is called for. It is a confidential, closed hearing, exempt from the Open Meeting Law. The individual is questioned by members of the Commission. The intent is not to be adversarial, it is to get at the heart of the conflict.

The Commission will then deliberate the circumstances and offer an oral opinion at the hearing. That opinion is put in writing within the next 45 to 60 days.

Because of the past backlog in written opinions, the 2013 Legislature approved an additional position of associate counsel. We no longer have the backlog. Our projection is that we will satisfy that 45- to 60-day turnaround in all advisory opinions.

Our third-party requests for opinion are complaints levied by members of the public to the Commission of alleged violations of NRS 281A committed by

public officers or public employees. This process has several layers of administrative and procedural due process.

The initial level of scrutiny is by the executive director and the associate counsel. Every request is vetted for three things: 1. Are the allegations against a public employee or public officer; 2. Do the allegations involve the provisions of NRS 281A; and 3. Was the request for opinion submitted with a minimum level of threshold evidence for us to accept jurisdiction. If the request satisfies those three requirements, the Commission staff sends notice to the subject of that request for opinion and gives her or him an opportunity to respond to the allegations. This initiates the investigatory process.

There are appeal rights for both subjects and requesters to challenge the staff's jurisdiction. If they think the staff got it wrong, they have the ability to go straight to the Commission for a response. If that appeal does not happen in a timely manner, then the investigatory process is initiated while we await the response of the subject to the allegations.

At the end of the investigatory process, the executive director submits a recommendation to a two-member investigatory panel of the Commission. The panel evaluates the investigation, the subject's response to the allegations and then determines if more evidence is needed. If the investigatory panel does not determine sufficient evidence exists, the matter is dismissed.

If there is sufficient evidence to move forward, notice is given to the subject for a potential hearing. At this stage, we may start settlement negotiations if we think the matter does not warrant a hearing. We attempt to negotiate with the subject to determine whether there has been a willful violation.

In that process, the subject is entitled to due process rights for anyone appearing before an administrative hearing. These rights include notice, opportunity to be heard, opportunity to cross-examine witnesses and evaluate evidence that the Commission collected during its investigation.

At that point, the third-party request for opinion becomes public. The Commission perspective and due process perspective is that any matter remains confidential until fairly vetted through our investigatory process.

While the Commission is required to maintain confidentiality, we do not have the ability to prevent the requester from going public with her or his third-party request for opinion. If the requester takes the complaint to the media, I can neither confirm nor deny any of the investigation information to the press.

This becomes somewhat disingenuous at times because the press may have received the agreement notice of hearing and scheduling order from the requesting party. We intend to address this issue in part of our legislative package this year.

That concludes the procedural components that we perform with our requests for opinion. The Commission also addresses written filings.

In 2011, our financial disclosure statement responsibilities were transferred to the Office of the Secretary of State, which proved to be a tremendous help to our staff. Now questions that arise about the requirements for financial disclosure statements are properly vetted through that Office.

However, we do require a couple of forms. The first form is our acknowledgement of statutory ethical standards. Every public officer who is elected or appointed to office has a requirement to file this form, stating that she or he has read and understands the statutory ethical standards. The second is known as the agency representation form.

Public officers, much like yourselves, often represent private clients before various entities. If these public officers represent private clients before an Executive Branch agency of State government, they are required to disclose the names of those clients and the nature of those representations.

The Commission has had to address the overlap by persons who represent private clients in a confidential manner. For example, attorneys, physicians and CPAs all have confidential client relationships. If you serve as a public officer and you have represented clients before Executive Branch agencies, the public trust and public duty trumps the private client. The public official has an obligation to let the private client know that undertaking that representation requires public disclosure.

**Senator Brower:**

How does the Commission define public agency? What about the Attorney General's Office (AG)? Does a Legislator who represents a client in a case brought by the AG's Office have to disclose that? Is the AG's Office considered an Executive Branch agency as opposed to a department?

**Ms. Nevarez-Goodson:**

If the representation itself is before an Executive Branch agency of State government, then that is a required disclosure. If it simply involves the AG's Office, that might be represented separately and may not be true.

For example, the Ethics Commission is also an Executive Branch agency. We have lawyers who are part-time public officers as Commissioners representing clients who could come before the Ethics Commission. That is a required disclosure. Let us say that it can be on a case-by-case basis, depending on which agency hears arguments.

**Senator Brower:**

Let us say there is no agency, so it is not the case of the AG's Office representing an agency, but it is a criminal or civil case brought by the AG's Office or a district attorney's office. Would they be considered Executive Branch agencies for disclosure purposes?

**Ms. Nevarez-Goodson:**

I think the answer is no. The representation itself has to be an issue before the agency. If it was a licensing issue before a professional licensing board, that issue would have to be before that specific Executive Branch agency.

The disclosure and abstention provisions applicable to most public officers and employees may be different for State Legislators. The principles and concepts do apply across any agency of government, but in terms of how our statutes work and how they might apply to others, it is important for Committee members as well as the Legislature to understand.

We refer to the provisions of NRS 281A.400 as our ten commandments—the ten things that we want public officers and employees to heed. Subsections 1 and 2 are issues that the Commission runs into most often.

Subsection 1 is a prohibition against accepting any gift, service, favor or economic opportunity that might unduly influence or improperly influence your decisions as a public officer or employee. We see that a lot in the sense of gifts.

We intentionally do not define gifts in our statute because gifts are somewhat specific, often to a particular circumstance. What might be a gift to one person might not be a gift to another person, depending on the issue, the agency or the person at stake. The triggering aspect of that statute intends to determine whether it would improperly influence a reasonable person.

Subsection 2 is using one's position in government to secure an unwarranted benefit. We refer to this as improper use of your public position. Some public officers hold powerful, specific positions in government. The interest of their particular positions is that they do not improperly use them to benefit themselves or those to whom they have a commitment in a private capacity.

Most of the provision governs this idea of a "commitment in a private capacity" to the interest of another person. This term is defined in NRS 281A.065 with a list of relationships the Legislature has deemed important and close enough that the interest of those persons becomes statutorily attributed to that public officer. Throughout our statutes, this term indicates a conflict to oneself extends to someone with whom you have a commitment in a private capacity. That is what those statutes intend to accomplish.

The provisions of NRS 281A.400, subsections 3 and 4 exist in the statute because we do not want our public employees and public officers participating as agents in government to negotiate contracts to which they might have a personal interest. We also do not want them accepting a salary or other compensation for duties they already perform in their public capacities.

Next we have the provisions of NRS 281A.400, subsections 5 and 6. The Commission does not see this often; they are somewhat comparable to insider trading. If a public employee or a public officer might obtain information by virtue of the public office, she or he should not use that information to obtain benefit in a private capacity or suppress that information to obtain benefit in a private capacity.

Somewhat more applicable with respect to our public employees as opposed to our public officers are the provisions of NRS 281A.400 subsection 7 that

prohibits the use of government resources, time, property or facilities for private purpose.

There are various exceptions to this provision. For example, we are not talking about making a private phone call from your government phone. We are simply catching those instances that involve an abuse of government property at a cost to the public. Cost to the public means time owed to the public; while at work, government employees owe their time to the taxpayer.

The other time we tend to see this is more applicable to our public officers when incumbents run for reelection. We do not want those incumbents using the benefits and the resources of their offices to benefit their private campaigns.

The final provisions are NRS 281A.400, subsections 9 and 10. Subsection 9 involves the improper use of your government position to influence a subordinate for a personal reason. You have to think about it reasonably from the ears of the subordinate. Does the subordinate perceive that you are asking her or him to do something as a simple favor or suspect that not doing the favor for you will somehow affect her or his employment status.

And finally, subsection 10 prohibits individuals from using their public offices to secure other employment or contracts through the use of their official positions.

Other sections in NRS 281A govern our cooling-off requirements typically applicable to higher-level employees in government who are in decision-making positions. We do not want them leaving those positions for the private sector or industries that they may have regulated not less than 12 months prior.

As a final standard of ethics in government, we talk about our contracting standards under the provisions of NRS 281A.403 and NRS 281A.430 that govern the ability of public officers and public employees to engage in certain contracts with government. As a general matter it is fairly prohibited, but there are various exceptions.

The first exception is if the contract is an open-competitive bid because that process has inherent fairness and the inability to use one's position to influence the decision. Another exception is the ability to seek relief for the Commission. Circumstances may be appropriate for a contract to occur, so relief is available from the Commission.



Relatable provisions are criminal in nature. The Commission does not have jurisdiction over criminal sanctions; we are an administrative agency. The most we are going to do is issue administrative sanctions if we find violations. We often advise public officers that various provisions not under the jurisdiction of the Commission could involve them criminally. That does include nepotism provisions, bribery and certain contracts.

We found in many circumstances that the Commission has granted relief or otherwise authorized certain contracts, but provisions in other statutes similarly prevent such measures at the same time. We remind them that we only offer guidance with respect to the application of NRS 281A.

**Chair Farley:**

I will now open the bill hearing on S.B. 5 sponsored by Senator Settlemeyer.

**SENATE BILL 5:** Revises provisions governing elections for nonpartisan offices.  
(BDR 24-90)

**Senator Settlemeyer:**

The subject in Senate Bill 5 has been discussed for numerous years in my community. As Legislators, we have the opportunity to take advantage of what is called the 50.1 rule. In a partisan primary race, if no candidate from another party files to run against you when two or more people in your own party are running and you win the primary election by at least 50.1 percent of the votes, then you are declared the winner and do not have to go on to the general election.

This rule was set forth because with the Legislator seats and other offices, everyone had the ability to weigh in on the election. Why continue with the formality of going on to the general election? Allow these people to return to their jobs or prepare to have that job in the future.

You have my walk-through ([Exhibit D](#)). There will be an amendment from Reno and Sparks that has indicated they would like to be out of the bill. They are proud of their city charters and do not appreciate the Legislature messing with them. The Cities of Reno and Sparks have asked to be redacted from this bill; therefore, sections 4 and 5 on would be deleted. My original intent was to apply this just for countywide offices.

If nonpartisan candidates could get 50.1 percent of the vote, this bill would allow such candidates as the sheriffs in Nevada to move forward as winners and not have to go through the general election process. This would also apply to school boards and other countywide races. We had to amend this to include Carson City.

**Senator Atkinson:**

Is it just the nonpartisan races or major party races as well?

**Senator Settelmeyer:**

Under Nevada law, all partisan races can take advantage of this rule only if no one of another party is in the race. The nonpartisan races make more sense because everybody can vote in those primaries. We are extending what we do for partisan races to those nonpartisan, countywide races. That is the intent of the bill.

**Senator Atkinson:**

I was just clarifying because with the two major parties, if you have three candidates and one of them gets 50.1 percent, which has happened ...

**Senator Settelmeyer:**

It happened recently. I forget who took advantage of the rule and won the position in the primary.

**Senator Atkinson:**

It was Assemblyman Harvey J. Munford just this past election. He received just above 50 percent, and he was done after the primary election. So it does not affect those parties and is more or less the nonpartisan folks. But you said Carson City wanted out?

**Senator Settelmeyer:**

Reno and Sparks wanted out because they are not countywide. I do know that Carson City's charter is countywide and the school board members may like to take advantage of this concept. If there were only two candidates, they would go straight to the general election. It would have to be three people.

**Senator Farley:**

Any individual who would like to come forward to speak in favor, please do so.

**Ron Pierini (Sheriff, Douglas County):**

I appreciate Senator Settlemeyer bringing S.B. 5 forward. I ran four times before this without competition. This last election, I had two people run against me in the primary. It was unique in a sense that during the primary, I won 70 percent of the votes; in the general election, I won by 70 percent again.

We have put a lot of work in about 8 to 10 months. When you win the primary with 70 percent of the votes and still have another 5 months to campaign, it is challenging. It is hard on your family, it is hard on your job and in my situation as sheriff, I have a lot of responsibility.

You are doing the right thing if you pass this bill. It gives the person who wins the primary election with over 50 percent the chance to go back to work and do her or his job. It costs a lot of money and time for you and your family, not to mention your job. I would like to see this bill pass.

**Senator Atkinson:**

I have a problem with the argument. I understand the concept, but we all could argue the need to be finished to get to our other jobs.

In my last race, three people filed for my Senate seat, two others from my own party and myself. On the last day, I was upset because I thought the same thing as Sheriff Pierini. I remember thinking that I was not going to get over 50 percent of the vote so I would have to take it all the way to the general election. I was hoping a Republican would file. At 4:55 p.m., a Republican filed and I was really happy. But on primary election day, I was really mad when I got 70 percent.

I understand that this thing can work both ways, but I have a problem with the argument that we would like to move on. When you sign up to run, you sign up to go through November, and that is just the way it is.

I would like to hear more of an argument. I do agree with you on the financial side; these elections cost way too much money.

**Mr. Pierini:**

I understand what you are saying and that a candidate should be prepared to go all the way to the general election. When you get that 50.1 percentage in the primary election, the odds are that you will win that particular position.

A lot of people do not sign up to run for an election because they hear what we have to go through. If we are really reaching out to people to participate in our system, this will be a good thing. We need to do everything we can to get people running for office and this might help.

**Scott Anderson (Chief Deputy, Office of the Secretary of State):**

We want to echo our appreciation for the work that Senator Settlemeyer has done on S.B. 5. We come before you to show our support of this bill. It would make the administration of elections easier, and fewer races would have to be put on the general ballot. We offer our assistance to the Committee and to Senator Settlemeyer as we move forward with this bill.

**Alan Glover:**

I was the Carson City Clerk/Recorder for 30 years. In Carson City, we run nonpartisan. The ability to win with the 50.1 percent vote was put into the Carson City Charter in 1969. It has worked well for a long time.

The clerks like that this saves putting one more position on the general election ballot, saving money to publish and advertise. Anything that clerks can do to keep clutter off the general election ballot is appreciated because the ballots tend to get very long.

A lot of talk over the years resulted in deciding to extend this to all nonpartisan offices. We have not had it happen a lot with school board races because, normally, we only have one or two people file for school board.

We encourage you to consider this a good piece of legislation that has had a great track record in Carson City for over the last 40 years.

**Senator Atkinson:**

Have any of the other smaller jurisdictions that run nonpartisan weighed in, or have we heard from them on the matter?

**Senator Settlemeyer:**

No one else has weighed in with concerns. I would have no problem if the effect of the bill reaches countywide if that is the prerogative.

**Senator Farley:**

I close the hearing on S.B. 5 and open the hearing on S.B. 104, which is also sponsored by Senator Settlemeyer.

**SENATE BILL 104:** Makes various changes relating to political advertising.  
(BDR 24-86)

**Senator Settlemeyer:**

The concept for Senate Bill 104 came about last Session. The issue is about items paid for by campaigns. Someone's opponent went to a parade, threw out candy that had been bought in bulk but did not affix stickers that said "paid for by" and violated the letter of the campaign law in NRS 294A.348.

I went to the Secretary of State and said we have a problem. Former Secretary of State Ross Miller and his office agreed that there was a problem. Part of that comes from the fact that memorabilia, like pens for example, may have three printed lines. So what do you want to give up to keep the cost below the \$5 limit required by statute the office you are running for, your name or the URL for your Website?

In discussion with Secretary of State Miller, what made sense was a monetary limit below \$5. My walk-through for the bill ([Exhibit E](#)) details each section of law that I sought to change and why I sought to do so, listing some items that would be included without limitation.

We made sure to add that the exclusion otherwise provided by the section does not apply to any door hanger, bumper sticker, yard sign, advertising through television or radio broadcast, newspaper, magazine, outdoor advertising facility or mailing. We wanted to capture the essence of the intent of the original legislation while leaving out the little \$5 items.

**Senator Atkinson:**

The language now is "paid for and authorized by." Am I correct?

**Senator Settlemeyer:**

The language specifies "paid for by." I believe that the "paid for and authorized by" was more federal language.

**Senator Atkinson:**

Then we have to clarify retail cost of less than \$5. Hardly anybody buys anything that is \$5. So are we talking about each item?

**Senator Settlemeyer:**

I would be more than willing to go up or down on that number. Whatever the Committee feels is appropriate. I want to make sure that the small items are excluded.

**Senator Atkinson:**

I am fine with it; I do not care if it is \$5 or \$10. We need to clarify that means each item. We are not talking about if you bought 1,000 T-shirts; obviously, that is above \$5. We are talking about \$5 an item.

**Brenda Erdoes (Legislative Council):**

A part in there says that you have to say "authorized by," but that is more for the messages and not the items that you give out.

**Senator Settlemeyer:**

I had made the same recommendation about the wording; however, legal stood by the wording of "any item having a retail cost of less than \$5." I would like to include the word "each", just to ensure that everyone who reads it would have the same determination.

**Jeanine Hansen (State President, Nevada Families for Freedom):**

It is reasonable. When I heard that people were making complaints about candy, I was just flabbergasted. Things can get petty at times. The laws are already complicated regarding campaigning, and that discourages people from participating in the political process. This clears up some things that need to be specified in the law so there is no confusion. We support this bill.

**John Wagner (Independent American Party):**

The Independent American Party supports S.B. 104.

**Mr. Anderson:**

We echo the sentiments of the previous administration; we support this bill. It becomes petty when you look at the practicality of putting the disclosure on certain items. From a practical standpoint, this is good legislation and the Secretary of State's Office supports it.

Senate Committee on Legislative Operations and Elections  
February 9, 2015  
Page 15

**Senator Farley:**

I close the hearing on S.B. 104, thank you Senator Settlemeyer again for your hard work and efforts on this bill and I adjourn this meeting of the Senate Committee on Legislative Operations and Elections at 4:31 p.m.

RESPECTFULLY SUBMITTED:

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Haley Johnson,  
Committee Secretary

APPROVED BY:

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Senator Patricia Farley, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
	C	56	Commission on Ethics	Nevada Ethics in Government Law
S.B. 5	D	6	Senator James A. Settlemeyer	Bill Information Document
S.B. 104	E	2	Senator James A. Settlemeyer	Bill Information Document