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Nevada Ethics Commission
Potential Legislative Considerations

January 12, 2005

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I was appointed to the commission by Governor Guinn for the term beginning October 1, 1999 and was re-appointed for a second term beginning October 1, 2003 to September 30, 2007.

The 1999 Legislature revised the then existing law and provided for a full time Executive Director and legal staff, provided for the creation of two member panels to make "just and sufficient cause" determinations, and other procedural changes such as the evaluation of frivolous charges, etc. These changes raised public expectations that the Code of Ethical Standards would be better implemented and that public officers would be held more accountable to the principle that a public office is a public trust and shall be held for the sole benefit of the people. Further, expectations were raised that public officers would be held more accountable to avoid conflicts between their private interests and those of the general public whom they serve.

In the time I have served on the Commission, I have reached two major conclusions -

- (1) I am greatly impressed of how well the Commission prior to the 1999 revisions performed in spite of inadequate resources including both underfunding and understaffing.
- (2) The post 1999 Commission has generally done well considering the limitations and circumstances of the current law, but I detect a strong public perception that very little has really changed and that the public's hunger for accountability remains unfulfilled. We have had significant experience in implementing the current law and it's now time to consider further revisions to gain improved public respect and dispel the negative perception of a "toothless" Commission. We can and must do better!

Personal Recommended Legislative Actions

Consider legislation to -

- (1) NRS 551: Expunge the term “willful”. A violation is a violation is a violation!!! Timid interpretations of this term can result in significant subjective and contentious conclusions that provide escape from accountability. Harking back to the World War II Navy’s admonitions - “A rule must be clear, it must be understood, and it must be obeyed”
- (2) Consider deleting NRS 281.462 (4) to permit the two members of a panel to participate and vote on matters brought forth to a full commission hearing. At the very least consider participating, if not voting.
- (3) Although not an Ethics Commission responsibility, we could recommend legislation to consider public competitive bidding for leasing and renting all publically owned facilities such as airport concessions, etc. This would help curb the temptation for deliberate or inadvertent “cronyism”. The responsible authority would define the scope, establish qualifications, and monetary standards as appropriate for posting, evaluating and awarding public bids.

Personal Observations & Conclusions

There is nothing complicated about Ethics. Ethics is a matter of personal conscience with the duty and obligation to exercise moral self-discipline in the spirit of a public service as a public trust.

The Commission must focus on the purpose and intent of the law, despite intangible vagaries. Seldom, if ever, is it possible to write a “perfect law” to cover all possible contingencies and therefore **Intent** becomes paramount.

Where the intent and spirit of the law are clear, good judgement is required to interpret its use in particular cases, rather than treating the law as a rule book either obviously forbidding something , or if not doing that, then obviously allowing it. When an action is not clearly allowed or forbidden, one must always err on the side of caution and respect

for the ethics of integrity and independence of judgement.

The Ethics Commission must always endeavor to be legal, to be fair, to be prompt, and to be firm. Its words and actions are not only upholding the law, but setting standards by applying the law to cases.

Situations arise where a public official may get a legal opinion from counsel. It is prudent and advisable to request legal guidance. However, having done that, the public official is not relieved of his or her responsibility, and indeed the obligation and duty for evaluating the forthcoming action that may be marginally legal, but overwhelmingly unethical **The burden rests on the public official! There is simply no substitute for honest, timely, voluntary disclosure.** This is no different than hiring a professional tax expert to prepare your return - the taxpayer still remains accountable.

The actions of a few greedy, free-wheeling, corrupt, unethical public officers bring shame and disgrace to the political process and unfairly stigmatize the vast majority of sincere, honest, hard-working and dedicated public officers who conscientiously serve the public trust. Uprooting unethical public officials is indeed a significant and supreme public trust. I am aware of strong public sentiment against those unethical public officers who escape through their adroit, skillful, legal gymnastics that bring scorn, disrespect, and shame to the political process. There is strong sentiment cheering for the Commission's success in dealing with these situations. Much can be said that if public officials would only ask themselves - would this delightful opportunity have come to me if I were not occupying this position? Honestly answer this yes or no and there would be little need for Commission involvement.

The current law requires a Commission of eight members -

The legislative Commission appoints four, at least two of whom are former public officers and at least one of whom must be an attorney.

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Perhaps the time has come to reduce these mandatory requirements and permit wider diverse appointments

The success of the Commission is measured by it's earned respect from the public which then in turn serves as the real deterrent to unethical behavior. "It is not the degree of punishment, but rather the certainty of it" that will get an errant public official's attention.

Responses

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1. Willful

- o We have had several years experience with the law since its revision in 1999 and we have learned as we went along.
- o Timid interpretations and of this term results in subjective and contentious conclusions that provide escape from accountability and feeds the public perception of a weak Commission. We have made a good faith effort to apply this provision judiciously, but it simply does not pass muster and it should absolutely be expunged.
- o Expunge this provision and the Commission still has the flexibility of deciding the amount of the fine depending on the circumstances and facts of the violation, but there will always be a fine for the violation even if it amounts to only a token \$1.00 . The message is clear!!

2. Panels

- o When a panel reaches a conclusion that a case should go forward to a full Commission hearing, it comes following an exhaustive examination of the facts and consequently, the panel members are well informed on the details of the case.
- o Participation by the panel members in the full Commission hearing brings an added dimension of detail and the opportunity for the other six members to question and benefit from their deliberations.
- o At the very least, participation should be allowed, even if the vote is denied.

3. Competitive Bidding

- o The recent airport land scandals and the resurrection of the airport concessions scandals reinforces the recommendation to develop and implement a public bidding process.

4. Summation

- o The current climate demands a stronger and more effective ethics law. There are two choices - either mend it or scrap it
- o It is not simply a matter of being tough, but a matter of integrity. The abuse of the public trust has reached its limit and lukewarm forgiveness is not an option.
- o The current situation calls for solving the problems' root causes, not aggravating them via benign neglect.
- o The success of the Commission is measured by its earned respect from the public which then serves as the real deterrent to unethical behavior.