



JANUARY 2014

INSIDE THIS BRIEF

- **THE NEVADA ETHICS IN GOVERNMENT LAW**
- **CODE OF ETHICAL STANDARDS**
 - Public officers and employees*
 - Gifts*
 - Unwarranted privileges*
 - Contracting with government*
 - Private compensation for performing public duties*
 - Private use of confidential information*
 - Suppressing information for pecuniary interests*
 - Misuse of government resources (nonlegislator)*
 - Misuse of government resources (legislator)*
 - Lobbying by local elected officials*
- **HONORARIA**
- **STATEMENT OF FINANCIAL DISCLOSURE**
- **NEVADA'S COMMISSION ON ETHICS**
- **WILLFUL VIOLATIONS OF ETHICS LAWS**

PREPARED BY CAROL M. STONEFIELD
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU

RESEARCH BRIEF ON

NEVADA'S ETHICS IN GOVERNMENT LAWS

The issue of governmental ethics is complex and often controversial. Indeed, maintaining public trust in our process of representative democracy is vital to the success of our governing system. In a message to Congress in April 1961, President John F. Kennedy once said:

The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.

Assuring the public's confidence in government requires elected officials and all who work in public service to place the public's interest over personal interests and exhibit the highest levels of ethical standards and behavior. Laws exist in all 50 states to clarify ethical matters such as personal financial disclosures, honoraria, conflicts of interest, gifts, and unwarranted privileges.

THE NEVADA ETHICS IN GOVERNMENT LAW

The Nevada Ethics in Government Law is set forth in Chapter 281A of the *Nevada Revised Statutes* (NRS). These provisions were created by the Legislature in the mid-1970s to separate the roles of persons who are both public servants and private citizens and ensure that public officers and employees exercise their duties for the sole benefit of Nevada residents. These statutes also govern policies regarding personal financial disclosure, abstentions in voting by elected public officers, and the operations of Nevada's Commission on Ethics.

CODE OF ETHICAL STANDARDS

In Nevada, public officers and public employees are governed by a “Code of Ethical Standards” that is intended to prevent abuse of public office by prohibiting situations in which conflicts of interest may arise (NRS 281A.400 through 281A.480).

Public officers and employees

A public officer means a person who is elected or appointed to a position established by the Nevada Constitution or State or local laws and who exercises discretion over the formulation of public policy, the expenditure of public funds, and the administration of laws and rules. For the purposes of the Ethics in Government Law, the president of a State university, college or community college, a superintendent of a county school district, and a county manager or a city manager are designated as public officers.

A public employee means a person who performs duties under the direction of a public officer for compensation paid by the State or a political subdivision.

Gifts

A public officer or employee shall not seek or accept any gift, service, favor, or employment that would improperly influence a reasonable person to depart from the faithful and impartial discharge of his or her public duties.

Unwarranted privileges

A public officer or employee shall not use his or her position in government to secure unwarranted privileges, preferences, exemptions, or advantages for himself or herself, a family member, or for a business entity in which the public officer or employee has a significant interest.

Contracting with government

With certain exceptions, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business in which the public officer or employee has a significant pecuniary interest. A member of a local legislative body shall not sell goods or services to a local agency over whom the body has jurisdiction, unless: (1) the member is the sole source of supply within the jurisdiction; (2) public notice is given; (3) the member discloses the significant pecuniary interest; and (4) the local legislative body approves the purchase according to law.

A member of a board, commission, or similar body who is engaged in a business regulated by that board or commission may, in the ordinary course of his or her business, bid or enter into a contract with a governmental agency (other than the board) if the member has not taken part in developing the contract plans and the member will not be personally involved in opening, considering, or accepting offers.

Finally, certain public officers or employees may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the rules of open competitive bidding are not employed due to an emergency situation, or the sources of supply are limited. The public officer or employee must not take part in developing the contract plans or specifications, and the public officer or employee may not be personally involved in opening, considering, or accepting offers.

The Commission on Ethics may provide a public officer or employee relief from strict application of the prohibition if the individual requests an opinion and the Commission determines that neither

the public nor the agency would be adversely affected.

Private compensation for performing public duties

A public officer or employee shall not accept any salary, retainer, or other compensation from any private source for the performance of his or her duties as a public officer or employee.

Private use of confidential information

A public officer or employee who acquires, through his or her public duties, any information which by law or practice is not at the time available to the people generally, shall not use the information to further the pecuniary interests of himself or herself or any other person or business entity.

Suppressing information for pecuniary interests

A public officer shall not suppress any governmental report or other document because it might tend to affect unfavorably on his or her pecuniary interests.

Misuse of government resources (nonlegislator)

A public officer or employee, except State legislators who are subject to certain restrictions described below, shall not use governmental time, property, equipment, or other facility to benefit his or her personal or pecuniary interest. However, a limited use of governmental property and equipment is permissible if: (1) a policy allowing that use in emergency situations has been established; (2) the use does not interfere with the performance of duties; (3) the cost or value related to the use is nominal; and (4) the use does not create the appearance of impropriety. If a government agency incurs a cost as a result of a use specified above or would ordinarily charge a member of the general public for the use, the public officer

or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

Misuse of government resources (legislator)

A State legislator shall not use governmental time, property, or equipment for a nongovernmental purpose or the private benefit of himself or herself or another person. However, a limited use of State property and resources is permissible if: (1) the use does not interfere with the performance of the State legislator's duties; (2) the cost or value related to the use is nominal; and (3) the use does not create the appearance of impropriety. Ethics laws do not prohibit legislators from using, for nongovernmental purposes, mailing lists, computer data, or other information lawfully obtained from a governmental agency if the lists, data, and information are also available to members of the general public.

The use of telephones and other means of communication are permitted if there is not a special charge for that use. Furthermore, a member of the Legislature shall not require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except in rare situations where the employee's service is necessary for the legislator or employee to perform their duties or when the service has been established as legislative policy. Finally, a legislator shall not attempt to benefit personally or financially through the influence of a subordinate or seek other employment or contracts through the use of the State legislator's official position.

Lobbying by local elected officials

A member of a local legislative body may not represent or counsel a private person for compensation before another local agency whose jurisdiction includes any part of the same county in which the member serves.

The Commission may relieve the member of this prohibition under certain circumstances.

HONORARIA

Nevada Revised Statutes 281A.510 prohibits a public officer or employee from accepting or receiving an honorarium, which is defined as:

. . . the payment of money or anything of value for an appearance or speech by the public officer or public employee in the officer's or employee's capacity as a public officer or public employee.

Certain things are excluded from the definition of "honorarium," such as: (1) payment of the actual and necessary costs incurred by the public officer or their spouse or staff for transportation, meals, and lodging while away from the public officer's or employee's residence; (2) compensation which would otherwise be earned in the normal course of the public officer's office or employment; (3) a fee for a speech that is related to the public officer's outside occupation; and (4) a fee for a speech or presentation delivered to an organization of legislatures, legislators, or other elected officials.

STATEMENT OF FINANCIAL DISCLOSURE

Most states require some form of personal financial disclosure for public officers. In Nevada, the Financial Disclosure Statement includes information regarding general income sources, debt, business ventures, real estate, and contributions of certain gifts. The following individuals must file Financial Disclosure Statements: (1) every candidate for public office who, if elected, is entitled to receive compensation of \$6,000 or more annually for serving in that office; (2) every elected public officer, except an elected supervisor of a

conservation district; and (3) every appointed public officer who is entitled to receive compensation of \$6,000 or more annually for serving in that office.

Financial Disclosure Statements for elected public officers and candidates for public office must be filed with the Office of the Secretary of State. All other public officers who receive an annual compensation of \$6,000 or more must also file the statement with the Secretary of State. Candidates for public office must file the statement no later than the tenth day after the last day to qualify for office (ten days after the close of candidate filing). Meanwhile, elected public officers must file the statement on or before January 15 of each year of their term and appointed public officers must file within 30 days of their appointment and annually, thereafter, on or before January 15.

Nevada Revised Statutes 281.581 provides civil penalties for willful failure to file a statement of financial disclosure. The following table sets out those penalties.

Failure to File a Financial Disclosure Statement	Civil Penalties
1 to 10 days late	\$25
11 to 20 days late	\$50
21 to 30 days late	\$100
31 to 45 days late	\$250
45 or more days late (or not filed)	\$2,000

NEVADA'S COMMISSION ON ETHICS

Nevada's Commission on Ethics is responsible for the enforcement of the Code of Ethical Standards summarized above. The mission of the Commission on Ethics is:

. . . to enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties.

The Commission enforces guidelines set forth by the Legislature to separate the roles of persons who are both public servants and private citizens, while at the same time, ensuring that public officers and public employees retain the public trust by exercising their powers and duties for the sole benefit of the people of the State. The Commission is required when disposing of a request for an opinion to treat comparable situations in a comparable manner and to ensure that the disposition of a request for an opinion bears a reasonable relationship to the severity of the violation of the Ethics Law.

Established by the Nevada Legislature in 1975, the Commission on Ethics is an independent executive commission of State government and serves in a “quasi-judicial” capacity. The Commission has a full-time staff including an Executive Director, a General Counsel, a Senior Investigator, a Research Analyst, and an Office Manager. The Attorney General may appoint a deputy to act in place of the General Counsel or employ outside legal counsel if the General Counsel is unable to act on a particular matter. The Commission has eight members, four of whom are appointed by the Legislative Commission and four of whom are appointed by the Governor. Commission members serve four-year terms. Main functions performed by the Commission include:

1. Interpreting and providing guidance to public officers and employees on Nevada’s “Ethics in Government” laws;
2. Investigating and adjudicating third-party ethics complaints against public officers and employees for violating certain ethics provisions; and
3. Educating public officers and employees regarding ethical provisions and prohibitions under Nevada law.

WILLFUL VIOLATIONS OF ETHICS LAWS

Since 2005, NRS 281A.480 has required a public officer or employee to establish by sufficient evidence that he or she satisfied the following requirements to overcome the statutory presumption that his or her actions were willful:

1. The public officer or employee relied in good faith upon the advice of the legal counsel retained by his or her public body, agency or employer; and
2. The act or failure to act was not contrary to a prior published opinion issued by the Commission.

The Commission must consider various aggravating and mitigating factors when determining whether a violation is willful. The Commission must also treat comparable situations in a comparable manner and to ensure that the disposition of the matter bears a reasonable relationship to the severity of the violation.

