

**NEVADA LEGISLATURE**  
**Twenty-First Special Session, 2004**

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**ASSEMBLY DAILY JOURNAL**

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**THE SECOND DAY**

CARSON CITY Thursday, November 11, 2004

Assembly called to order at 8:50 a.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Terry Sullivan.

Let us pray. We thank You for the success of the opening day of this special session and ask again that You continue to give us the guidance and wisdom that will see us through this day and all the days that follow to a successful conclusion of our mission here. But mostly we want You to bless each and every veteran of this great country for their special service to mankind. We ask this in whose name we pray.

AMEN.

Pledge of Allegiance to the Flag.

Assemblywoman Buckley moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Buckley moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering Articles of Impeachment of Nevada State Controller Kathy Augustine, with Assemblyman Perkins as Chairman of the Committee of the Whole.

Motion carried.

IN COMMITTEE OF THE WHOLE

Assemblyman Perkins presiding.

Quorum present.

The impeachment of Nevada State Controller Kathy Augustine considered.

CHAIRMAN PERKINS:

We are now acting as a Committee of the Whole, with myself as the Chair. At this point, I think we need to call forward Stacy Jennings, from the Ethics Commission, to receive her testimony. While she is making her way forward, I want to note for our record, yesterday as well as today, that we have, in our midst, Brenda Erdoes, the Legislative Legal Counsel, who has been present during our proceedings, and then, for today's record, to note that Mr. Arrascada and Mr. Gentile are also here. And after you are sworn in, Ms. Jennings, please state your name and spell it for the record.

NANCY TRIBBLE, CHIEF CLERK OF THE ASSEMBLY:

Raise your right hand, please. Do you solemnly swear the testimony evidence you are about to give shall be the truth, the whole truth, and nothing but the truth?

STACY JENNINGS:

I do. Thank you. Mr. Speaker. My name is Stacy Jennings, S-T-A-C-Y J-E-N-N-I-N-G-S, and my profession is the Executive Director of the Nevada Commission on Ethics.

CHAIRMAN PERKINS:

We appreciate you being here this morning. I think it would be helpful for the Committee to understand the complaint, or request for opinion, I guess, is the proper term, that arrived in your office. Could you explain to the Committee how that occurred?

STACY JENNINGS:

Yes, Mr. Speaker. The Attorney General's Office came to my office on July 8 of this year. They had compiled an investigative report, numerous supporting documentation, and other items that were provided to our office with an official complaint form that was received July 8 of 2004. We forwarded it to Ms. Augustine's counsel on July 9 of 2004, and it went through our standard investigative process, which I can explain if you would like me to.

CHAIRMAN PERKINS:

If you could give us a sense of what your standard investigative process was, and . . . and even describe that information that . . . that you discovered and what conclusions you made and what the pro . . . and I imagine you made a recommendation to either a panel or your full Commission.

STACY JENNINGS:

Sure. The notice was sent to Ms. Augustine on July 9. She, under regulation, would have had ten days from the day that she received it to respond. She signed a waiver of statutory time frames to have more time to adequately respond and provided a response to our office on August 13 of this year. If you look at the . . . there is a pile of documentation on your desk that I believe that you got from our office. There would be something that would be called Hearing Book 1, General Information. It is a stapled document. It looks like this. This report is the essence of the investigation process. It has the Request for Opinion, which would be detailed as Exhibit B; my report and recommendations, which would be detailed under Exhibit A to this, or tab A; it has the response that Kathy Augustine submitted on August 13. I asked . . . gave them some initial questions. They responded to those on September 2. It went to the two-member panel of our Commission on September 3. They came forward with a determination regarding just and sufficient cause to proceed to a hearing, which would be found under E. So that is what is contained in Hearing Book 1.

The . . . in the course of . . . of conducting the investigation, I reviewed the documentation that the Attorney General's Office provided to us. I went back and reinterviewed a number of the witnesses that I believe you got testimony from yesterday, and, in reviewing those, I came forward with my report and recommendation, which is found under tab A. In that report and recommendation, I recommended that they look at three violations of . . . of . . . of . . . or three different statutes: NRS 281.481(7), which was the subject of the stipulation, which essentially says that you cannot use public time, property, equipment, or facility for personal gain; also, I looked at two other statutes, one is a prohibition under NRS 281.481(2) that says that you cannot use your position in government to secure or grant unwarranted privileges, preferences, benefits,

or advantages for yourself; and NRS 281.481(9), which says that you cannot use your position in government to influence a subordinate for your own personal interest.

The panel met on September 3. The panel looked at—you have a . . . actually I do not think you have a copy of the panel transcript. It was a very brief meeting. The panel came out and recommended—its determination is found again in that exhibit labeled Hearing Book 1 under Number E. The panel recommended that they . . . that the full Commission have a hearing and look into all three of those statutes: NRS 281.481(2), NRS 281.481(7), and NRS 281.481(9). Subsequent to that, the hearing was scheduled for September 22. Before the Commission. The two hearing books that you have, Hearing Book 1 and Hearing Book 2, which is titled List of Exhibits—it looks like this, it is on your desk—were prepared and distributed to Ms. Augustine and her counsel and the Commission for their review. And that would be the record that we forwarded to this body.

We have a regulation, it is NAC 281.109, I believe, that allows a public officer to come before the Commission to resolve any manner . . . or . . . any matter pending before the Commission by stipulation rather than going to a public hearing. That is what ended up happening in this case. Ms. Augustine's counsel, Mr. Arrascada, came forward and said that she was interested in entering to a stipulation. That stipulation has been presented to you. It would be . . . has a cover letter dated September 22, 2004, that I wrote to Nancy Tribble, the Chief Clerk of the Assembly, with a copy of the stipulation as it was negotiated by the Commission with Ms. Augustine's counsel. You have cop . . . complete copies of those proceedings. One of them is . . . says, "Open hearing, agenda items 1, 3, and 5," from the Wednesday, September 22, 2004, meeting. The other one says it is from the "closed hearing under agenda item 2."

CHAIRMAN PERKINS:

Can I interrupt you for a second? The blue binders in front of you, there is an Exhibit No. 40 that I believe is the stipulation you just referred to. Can you verify that for me?

STACY JENNINGS:

Mr. Speaker, I do not have any numbered book.

CHAIRMAN PERKINS:

I will have Mr. Oceguera give you one. They were there yesterday.

STACY JENNINGS:

Yes, Mr. Speaker, Exhibit No. 40 is a copy of the stipulation, which was agreed upon between Ms. Augustine and the Commission. The terms of that were discussed under agenda item 2 in what was a closed hearing for the Commission to deliberate with its legal counsel pursuant . . . or under the provisions of NRS 281.511(13).

CHAIRMAN PERKINS:

Do you remember what the vote on the stipulation was by the Commission?

STACY JENNINGS:

Yes, the vote on the stipulation was three votes in favor and two votes against. We had five members eligible to serve in the matter.

CHAIRMAN PERKINS:

Of the two votes against, did those commissioners make it known why they voted against the . . . the stipulation?

STACY JENNINGS:

I would refer you to the open hearing under agenda item 3. It . . . to the best of my recollection, Commissioner Flangas dissented because he believed there should be a higher civil penalty attached to the stipulation. And Commissioner Hutchison had . . . believed that we should go forward to a full public hearing, rather than adopting the contents of the stipulation.

CHAIRMAN PERKINS:

I am sorry for the interruption. Please continue.

STACY JENNINGS:

So we did go into the open . . . we went into the closed hearing. There was a discussion. A document came out or some . . . an agreement came out of that. I went and printed those off and went into a room with Mr. Arrascada and Mr. Gentile and Ms. Augustine, so they had a chance to review that. And she signed the stipulation. Her counsel—both of her counsels—signed the stipulation, and then we went back into the Commission. We convened our open hearing, and there were certain questions asked on the record, which are also reflected in the contents of the stipulation that Ms. Augustine understands the charges against her and has been advised and—of those—and, if you look at page 2 of 7 of the stipulation, she fully and voluntarily waived her right to a hearing and agreed to abide by the terms of the stipulation and have it adopted as the official opinion of the Commission.

CHAIRMAN PERKINS:

Was there a discussion during . . . either during the negotiations of the stipulation or amongst the Commission where there was understanding by Ms. Augustine that violations of Chapter 281 or admission to a willful violation might subject her to impeachment proceedings?

STACY JENNINGS:

If you look, Mr. Speaker, at page 6 of 7 of the stipulation, paragraph 9 reads, “Kathy Augustine is an elected public officer removable from office by impeachment only. Kathy Augustine’s willful violations of NRS 281.481, Subsection 7, therefore, implicate the provisions of NRS 281.551, Subsection 5a, and pursuant thereto, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its findings.”

CHAIRMAN PERKINS:

Thank you. Do you have any further testimony?

STACY JENNINGS:

No. I would be happy to answer any questions that the Committee has.

CHAIRMAN PERKINS:

Let me ask you, as well, to refer to Exhibit 39 in the blue binder. It is the Executive Director’s report and recommendation regarding Request for Opinion 04-47.

STACY JENNINGS:

Yes.

CHAIRMAN PERKINS:

I just want to be sure that is the report that you compiled.

STACY JENNINGS:

The contents behind the Exhibit 39 are actually two items. The . . . the first ten pages are my report and recommendations regarding just and sufficient cause. The 11th page under that is the actual, official panel determination that was issued on September 3, after the panel proceeding.

CHAIRMAN PERKINS:

All right. Questions from the Committee? Mr. Seale.

ASSEMBLYMAN SEALE:

Thank you, Mr. Speaker. Ms. Jennings, are there any other conditions relative to the stipulation other than those that are in the stipulation itself?

STACY JENNINGS:

Mr. Speaker, Assemblyman Seale, no, the complete terms that resolve the matter are contained in all seven pages of the stipulation.

ASSEMBLYMAN SEALE:

Thank you.

CHAIRMAN PERKINS:

Thank you, Mr. Seale. Further questions from the Committee? We have none. Thank you for your testimony.

STACY JENNINGS:

Thank you.

CHAIRMAN PERKINS:

Without objection, it would be my intention to add Exhibits 40 and 41 to the record. I am sorry. Yep. 39 and 40—I am sorry. That is the last witness I have on my witness list. Then refer to Mr. Arrascada, Mr. Gentile, and ask you that . . . anything to add to our proceeding? Please, just for the sake of the recording.

JOHN ARRASCADA:

Mr. Speaker, members of the House . . . I am not . . . I am sorry, the Assembly. I would first ask and inquire of the Speaker if this is the appropriate time to provide a summation, as opposed to providing sworn witness testimony, based on the concerns that I raised yesterday.

CHAIRMAN PERKINS:

I believe it would be, Mr. Arrascada, yes.

JOHN ARRASCADA:

Mr. Speaker, members of the Assembly. When we began these proceedings yesterday at roughly 11 o'clock, it was prefaced with, "This is a very historical proceeding. One that has never been conducted in this state before." And it was stated, from the time the Governor intimated he would be calling a special session, that special measures would be needed, for fairness of process, for Ms. Augustine, and for the people of the state of Nevada. We read ad nauseam in the press and heard constantly that the Legislative Counsel Bureau was working on putting together a special process for these proceedings. What we were told yesterday was that these proceedings would be conducted just like any other hearing, just like the passing of a bill. We were not even given a bill draft. Is that the regular proceedings for the passing of a bill? We provided to this Body, and I hope, and we asked for them to be made part of the record—letters on November 8 and November 9 regarding the process and the use of the Attorney General's Office in these matters because of an inherent conflict in interest, which we have outlined in those letters. And I would urge each of you to review them.

We were advised by the Legislative Counsel Bureau that the Attorney General's Office would not be used as a prosecutor, nor would there be a special prosecutor in this Body, and that that was no longer at issue. We raise these issues not as subterfuge or as the . . . due to the fact of a lack of witnesses or evidence on behalf of Controller Augustine. We raise these issues to ensure the fairness of process in this matter. But, the proceedings, as they have occurred, have now made this an issue.

It is clear that the Attorney General has a conflict of interest. For those of you who have not reviewed the letter brief and the other letter that was sent on November 8 and November 9 respectively, I will just outline briefly why the Attorney General should not have participated in these proceedings, and I will do it briefly:

1. A Deputy Attorney General represented Ms. Augustine when she was approached by Attorney General Investigators in a criminal investigation and had her provide a statement, waive her Miranda rights, and urged her to provide them with information that he had obtained confidentially.

2. Secondly, the matters, the evidence, the exhibits that have been provided for you were brought from the investigation, which purportedly began as a criminal investigation. And by Nevada law, the dissemination of this material is improper, and it should not have been provided to you.

We came to these proceedings yesterday, ready to proceed and move forward, and we still intend to do that. Our concerns were, purportedly, addressed by the Legislative Counsel Bureau, Lorne Malkiewich, when he advised us there was no conflict, that the conflict issue was resolved because the Attorney General would not participate, and that there would not be . . . would not be a prosecutor. I think it is apparent to all of us what we saw yesterday, that the Attorney

General was a prosecutor in facilitating the evidence and information that was provided to you. The Attorney General gave you . . . provided to you an opening statement yesterday, with absolutely no personal, first-hand knowledge of what occurred.

We were advised that this Body hears people come and testify and provide information that have conflicts of interest at all times. I think, though, it is incumbent upon everyone here to reflect that the Supreme Court rules of the state of Nevada do not allow lawyers that have a conflict to take off their lawyer hat and put on another hat, and then not have the conflict. A conflict follows you wherever you go.

When Mr. Perkins . . . Speaker Perkins held his press conference yesterday morning, he said that he would look at this as it was akin . . . this proceedings that we have here as being akin to a grand jury or a preliminary hearing in a criminal matter. This Body passed, and we are one of only two states in the country that have protections for those that are targets of a grand jury. And one of those protections is that hearsay is not allowed in a grand jury proceeding, even though the lawyers for the accused are not allowed there. In this matter, what you heard yesterday, the testimony, the statements were replete with hearsay, innuendo, and argument. I ask that you consider that.

In a preliminary hearing, we would be allowed to cross-examine witnesses to test their credibility, their reliability, and their recollection of facts. No one that testified here yesterday was placed under the crucible of cross-examination to address their biases, their reliability, and their credibility. The process that was used here yesterday in these impeachment proceedings, based on my research and investigation of the entire 50 states in the United States of America, to my knowledge, has never been utilized anywhere before. The speaker said yesterday that we were making history, but we are going to make history in the Nevada way. As a fourth-generation Nevadan, I know that the Nevada way includes fairness, a respect for fundamental rights, process, and that people are allowed to speak their mind and fight their fight, but fight it fair. I think we all must question whether yesterday was done in a Nevada way.

Finally, as I started, I stated, or restated, what the Speaker had said regarding this being an historical proceeding. And I only ask all of you, as this process moves on, to reflect upon how will those who view this history think of these proceedings.

There are no . . . and I will be . . . able and welcome to receive any questions.

CHAIRMAN PERKINS:

Questions from the Committee? It appears we have none. Thank you, Mr. Arrascada.

JOHN ARRASCADA:

Thank you.

CHAIRMAN PERKINS:

What we are having passed out now are the correspondence between the Legislative Counsel Bureau and various parties, including Mr. Arrascada and Mr. Gentile. Based upon Mr. Arrascada's statement, it would be my intention to add their . . . the letters from their offices from November 7 and November 9 to our record. I would also direct the Committee's attention to the November 9 letter from Lorne Malkiewich addressed to Mr. Arrascada, and the only reference is in paragraph 2, the first paragraph that says, "In response to your letter of November 2004, the Assembly will not be using sp . . . prosecutor, special or otherwise, for its proceedings." So, I just want to make that part of our record as well.

I would also like to address just two quick points referring to the press conference yesterday. It was my statement to the press that these proceedings would be more like akin to a grand jury, and, for the benefit of the members, the purpose for that was to let the public know that the portion that the Assembly has responsibility over is a minute portion compared to what . . . that of the trial in the Senate, and trying to provide some public education for them to understand that, since this is such a unique proceeding.

With that said, I think we will close the public . . . close the hearing on the impeachment proceeding and ask the . . . and move the members into a work session and see if there are any members that wish to speak about the . . . the proceeding or offer suggestions. Ms. Buckley.

ASSEMBLYWOMAN BUCKLEY:

Thank you, Mr. Speaker. May we have a one-minute recess?

CHAIRMAN PERKINS:

Certainly. We will have a one-minute recess.

Chairman Perkins announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Committee of the Whole in recess at 9:18 a.m.

#### IN COMMITTEE OF THE WHOLE

At 9:24 a.m.

Assemblyman Perkins presiding.

Quorum present.

The impeachment of Nevada State Controller Kathy Augustine considered.

CHAIRMAN PERKINS:

The Committee will come back to order. As we get started, and so it is not taken out of context, you all have the letter that Lorne also authored on November 9, 2004. I refer you to the 3rd paragraph, particularly, and again, you have the rest of the letter, so it is not out of context. But, to quote the 3rd paragraph, it says, “The objections”—referring to Arrascada—“The objections that you have raised to the procedure up to this point are not relevant to the impeachment proceeding. The Governor has properly convened the Legislature in special session. The Assembly is vested by the Constitution with the power of impeachment, and the Assembly is the judge of the rules of its proceedings.” So that is much of the . . . I think covers much of the reason why we handled this as . . . as we did, and why the . . . Mr. . . . where did he go? . . . why Mr. . . . why I do not believe that Mr. Arrascada’s points, while well-taken, are . . . is . . . specifically germane to what . . . to our proceeding. Ms. Buckley, do you have a couple of other questions, I think, of our legal staff?

ASSEMBLYWOMAN BUCKLEY:

Yes, thank you, Mr. Speaker. To you and through you to Brenda Erdoes, of our legal staff. There were a number of issues raised about the fundamental fairness of this proceeding and what is constitutionally required, and I wonder if you could address that for a moment.

BRENDA ERDOES:

Yes. We have looked at this very thoroughly, and what we have found is that the Assembly is clearly the judge of its own proceedings. We believe that it is very clear that Supreme Court Rule 178, which is what I believe Mr. Arrascada was referring to, does not apply in these proceedings, and beyond that, we have even researched the . . . you might say, the history of that rule to determine that the main reason behind it, if you will, is that you want to avoid the imposition of a . . . maybe a . . . a priority given to a witness because, perhaps, he or she serves as a prosecutor and then sits as a witness. That did not occur in this case, so, even if you were to apply the logic of the rule, I believe that we have successfully avoided any unfairness in that situation, and, therefore, we believe that the proceeding has been conducted fairly and pursuant to all the rules.

ASSEMBLYWOMAN BUCKLEY:

Okay. Thank you, Mr. Speaker.

CHAIRMAN PERKINS:

Thank you, Ms. Buckley. Thank you, Ms. Erdoes. Mr. Hettrick.

ASSEMBLYMAN HETTRICK:

Thank you, Mr. Speaker. I met with Brenda as well, and I have also seen Mr. Malkiewich’s letter. I appreciate the concern the counsel has, but I believe, having served in this Body, now, I

am proud to say, ranking 6th in seniority, I believe that the rules are properly done. We have researched them appropriately. I am satisfied that our legal staff is correct in their analysis of the position that we have taken in this Body. I am comfortable that we are, indeed, doing this correctly.

I know it does not follow the pattern of judicial evidence and that type of thing, but we . . . we do not follow that pattern. We have our rules, and we make our own rules. I do not believe the rules we established here are unfair. So, I just want to say to this Body that we have been as fair as we can be and have provided every opportunity. And I believe that we are doing the appropriate thing for this Body, Mr. Speaker.

CHAIRMAN PERKINS:

Thank you, Mr. Hettrick. Other remarks from the Committee? Before we take a motion to act on the business we have already heard, I refer the Committee back to Exhibit 41. It is an exhibit we admitted yesterday. It is an investigative report from the Attorney General's Office. Without objection, after looking at the exhibit and looking at the testimony received yesterday, there is really nothing in the exhibit that is helpful to this discussion that we did not receive direct testimony on. So I do not believe the exhibit is necessary for our proceedings. And, again, without objection, I will have it removed from the record.

Further comments from the Committee? Ms. Buckley.

ASSEMBLYWOMAN BUCKLEY:

Thank you, Mr. Speaker. The definition of impeachment is to "formally charge a person with a violation of the public trust." It is the Assembly's sole role and responsibility to consider impeachment proceedings. After the testimony that we received, I feel that we have no other choice but to recommend to the full Assembly that we issue Articles of Impeachment against the State Controller.

What evidence do we have? We have direct testimony from the employees in her office that employees, especially one, spent most of her time working to ensure the re-election of the Controller instead of tending to the state's business. We have direct testimony that duties were taken away from an employee because they were too swamped working on campaign activities, despite the fact that it defied auditing principles to do so. We had direct testimony that the Controller never asked for volunteers for her campaign, but required their participation. We had direct testimony that, despite various individuals voicing concern about these issues, the Controller continued requiring individuals to work on her campaign. We had direct testimony that the only people concerned about performing campaign activities on state time were the employees, not the State Controller. We have an admission by the Controller, freely and voluntarily, with benefit of counsel of her choice, of three willful violations of our ethics statutes—a signed confession.

Article 7, Section 2, of the Constitution provides that, "a state officer shall be liable for impeachment for misdemeanor or malfeasance in office." According to [Black's Law Dictionary](#), misdemeanor or malfeasance is a broad catch-all term intended to capture all forms of official misconduct, including violation of a law, breach of the public trust, or other wrongful act. This is what we have here—admitted willful violations of our ethics law and a breach of the public trust by diverting public resources to a campaign instead of completing the people's business.

I have heard comments to the effect that elected officers run for office all the time. The line gets blurred between what staff can do and what staff cannot do, but I think the line is pretty clear. You cannot require or intimidate your employees into campaigning for you. You cannot ignore, dismiss, or retaliate against employees who are concerned about doing campaign work on state time. You cannot have an employee on state time organize campaign fund-raisers, give campaign speeches, compile and maintain donor lists, format and mail requests for contributions, design fund-raising invitations, prepare contribution reports, and maintain multiple versions of fund-raising lists on databases. If you are an elected official and you are doing that, you are violating the public trust. And we will make that very clear if that is how we vote today.

And so, with that, I would move that the Committee of the Whole recommend to the entire Assembly that we issue three Articles of Impeachment, the three being those as set forth in the Ethics Commission:



Article 1—That the State Controller, in her official capacity, willfully committed misdemeanor or malfeasance in office. To wit: on or between October 2001 and January 2003, Kathy Augustine willfully violated NRS . . . did my mike go out? Okay. Is that better? . . . Article 1—On or about October 2001 and January 2003, Kathy Augustine willfully violated NRS 281.481, paragraph 7, as she reasonably should have known that causing state employee Jennifer Normington, on state time, to perform functions relating to her 2002 re-election campaign, violated the provisions of NRS 281.481(7).

Article 2—While acting in her official capacity as State Controller of the state of Nevada, Kathy Augustine, in violation of Nevada Ethics In Government Law, has willfully committed misdemeanor or malfeasance in office, to wit: that she willfully violated 281.481, paragraph 7, as she reasonably should have known that the act of causing computer equipment owned by the state of Nevada and located in the Office of State Controller to be used for creating, maintaining, storing, and printing documents relating to her 2002 re-election campaign. And . . .

Article 3—Misdemeanor or malfeasance in office while acting in her official capacity as State Controller of the state of Nevada, Kathy Augustine, in violation of the Nevada Ethics In Government Law, has willfully committed misdemeanor or malfeasance, to wit: during the same time period, Kathy Augustine willfully violated NRS 281.481, paragraph 7, as she reasonably should have known that the act of causing equipment and facilities provided by the state of Nevada for use of the Office of Controller to be used for business and purposes related to her 2002 re-election campaign violated NRS 281.481(7).

Wherefore, by virtue of such conduct, Kathy Augustine has committed misdemeanor or malfeasance in office pursuant to Section 2 of Article 7 of the Nevada Constitution and the laws of the state of Nevada, which warrants impeachment and trial before the Senate.

CHAIRMAN PERKINS:

You have heard the motion. In Committee of the Whole, a second is not required. Prior to taking the vote, I think I will make a small statement as well. I think it is more appropriate in . . . during the Committee of the Whole, rather than from the rostrum during the Assembly Floor.

Impeachment proceedings are extraordinary, unique, and special proceedings of their kind or class, and such proceedings do not have a direct or close comparison in the civil or criminal law. Under the Nevada Constitution, the Assembly shall have the sole power of impeaching. The concurrence of a majority of all members elected shall be necessary to an impeachment. The Nevada Constitution and the Nevada Revised Statutes do not contain any specific provisions detailing the rules, practices, and procedures, which this House must follow during impeachment proceedings.

Impeachment hearings in the Assembly are not an adversarial criminal proceeding in which the guilt or innocence of the accused officer is adjudicated. Instead, impeachment hearings in the Assembly are simply a legislative investigation to determine whether there is sufficient evidence of official misconduct by the accused officer to justify the issuance of Articles of Impeachment. Because impeachment proceedings in the Assembly are not an adversarial criminal proceeding, the constitutional rules and restrictions, which apply to criminal proceedings, including the formal rules of evidence, do not apply to the impeachment hearings in the Assembly. Indeed, an impeachment hearing in the Assembly is no different from any other legislative hearing in which the Assembly, or committee thereof, seeks to conduct an investigation and gather information concerning the performance of its legislative functions.

That is why we conducted this proceeding in the Committee of the Whole, employing our normal committee procedures and allowing all witnesses to testify freely. We have completed the function of the investigation, and must now turn to . . . to the motion for the consideration of the issuance of Articles of Impeachment.

As commonly understood in parliamentary practice, the power to impeach is the power to charge a public official with a violation of the public trust. The . . . the Assembly has been given this power to accuse a public officer of a violation of the public trust. Based upon historical practice, the Assembly may make such an accusation by adopting Articles of Impeachment. When the Assembly and the Senate are exercising their respective impeachment functions under Article 7 of the Nevada Constitution, each House has the power and responsibility to give

meaning to the phrase “misdemeanor or malfeasance in office,” and to determine which acts constitute impeachable offenses.

An impeachable offense need only “involve some type of abuse of power or breach of the public trust.” Misdemeanor in office has been judicially interpreted to cover every species of official wrong, and is synonymous with the term “misconduct in office.” Malfeasance has been judicially interpreted to mean “an official committed an act, knowing that he was doing wrong, or, at least under such circumstances, that any reasonable person who had done the same thing would have known he was doing something wrong.” In the context of a different statutory provision, the Nevada Supreme Court has interpreted the phrase “willful misdemeanor in office” to cover a broad range of official misconduct. The Court held that the term “willful misdemeanor in office” covered any willful violation of an official duty. The Court explained that the term “misdemeanor” was not used in the statute in its technical sense to refer to a species of crime; instead, the term was used in its more comprehensive sense of misbehavior, misconduct, or violation of duty.

We have a motion before the Committee. Further comments on the motion? Seeing none, all in favor of the motion please indicate by saying “aye.” Are there any opposed? Ms. Buckley, would you move to rise us from the Committee of the Whole, please?

On motion of Assemblywoman Buckley, the committee did rise and report back to the Assembly.

#### ASSEMBLY IN SESSION

At 9:39 a.m.

Mr. Speaker presiding.

Quorum present.

Mr. Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 9:40 a.m.

#### ASSEMBLY IN SESSION

At 10:42 a.m.

Mr. Speaker presiding.

Quorum present.

#### MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Buckley moved that CREATIVE IMAGES PHOTOGRAPHY: Daniel Nollsch; KRNV-TV: Jeff Deitch, Gene Kennedy; KVVU-TV FOX 5: Lorraine Blanco, be accepted as accredited press representatives, that they be assigned space at the press table in the Assembly Chambers, and that they be allowed use of appropriate broadcasting facilities.

Motion carried.

Assemblywoman Buckley moved that the Assembly recess until 12:00 p.m.

Motion carried.

Assembly in recess at 10:44 a.m.

ASSEMBLY IN SESSION

At 12:39 p.m.  
Mr. Speaker presiding.  
Quorum present.

REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Committee on Committee of the Whole, to which were referred Article of Impeachments Nos. 1, 2, 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

RICHARD PERKINS, *Chairman*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, November 10, 2004

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day adopted Assembly Concurrent Resolution No. 1.

CLAIRE J. CLIFT  
*Secretary of the Senate*

MOTIONS, RESOLUTIONS AND NOTICES

ARTICLES OF IMPEACHMENT

**Preamble**

WHEREAS, Kathy Augustine was first elected to the office of State Controller of the State of Nevada in November 1998, and was re-elected to that office in November 2002; and

WHEREAS, On September 22, 2004, Controller Augustine stipulated before the Nevada Commission on Ethics that she willfully violated NRS 281.481(7) as she reasonably should have known that:

1. Causing state employee Jennifer Normington, on state time, to perform functions related to Kathy Augustine's 2002 re-election campaign violated the provisions of NRS 281.481(7);

2. The act of causing computer equipment owned by the State of Nevada and located in the Office of the State Controller to be used for creating, maintaining, storing and printing documents relating to her 2002 re-election campaign violated the provisions of NRS 281.481(7); and

3. The act of causing equipment and facilities, provided by the State of Nevada for use by the Office of the State Controller, to be used for business and purposes related to her 2002 re-election campaign violated the provisions of NRS 281.481(7); and

WHEREAS, Testimony and evidence received by the Assembly seated as the Committee of the Whole on November 10 and 11, 2004, indicated that Controller Augustine knew or should have known that her conduct violated NRS 281.481 (7); and

WHEREAS, Willful violations of chapter 281 of NRS clearly constitute the type of offenses for which impeachment may be appropriate because such violations by a public officer who is removable from office by impeachment only must be reported by the Nevada Commission on Ethics to the appropriate person responsible for commencing impeachment proceedings pursuant to NRS 281.55 I (5)(a); and

WHEREAS, The Assembly finds that the willful violations of NRS 281.481(7) by Controller Augustine and the manner in which she abused her official power demonstrate a lack of honesty, principles and good morals; and

WHEREAS, The Assembly further finds that Controller Augustine violated the public trust and her willful violations of NRS 281.481(7) constitute Misdemeanor or Malfeasance in Office, which warrants adoption of the following Articles of impeachment.

Assemblywoman Buckley moved the adoption of the preamble of the Articles of Impeachment as submitted by the Committee of the Whole in the matter of impeachment of Nevada State Controller Kathy Augustine.

Preamble adopted unanimously.

**Article I  
(Misdemeanor or Malfeasance in Office)**

While acting in her official capacity as State Controller of the State of Nevada, Kathy Augustine, in violation of the Nevada Ethics in Government Law, has willfully committed Misdemeanor or Malfeasance in Office, to wit:

On or between October 2001, and January 2003, Kathy Augustine willfully violated NRS 281.481 (7), as she reasonably should have known that causing state employee Jennifer Normington, on state time, to perform functions related to Kathy Augustine's 2002 re-election campaign violated the provisions of NRS 281.481(7). Kathy Augustine caused Jennifer Normington, on state time, to organize campaign fundraiser events, give campaign speeches, compile and maintain donor lists, format and mail requests for contributions, design fundraiser invitations, prepare contribution reports for submission to the Secretary of State and maintain a database of Kathy Augustine's campaign contributions.

Wherefore, Kathy Augustine, by such conduct, has committed Misdemeanor or Malfeasance in Office pursuant to Article 7, section 2 of the Nevada Constitution and the laws of the State of Nevada, which warrants impeachment and trial before the Senate.

Assemblywoman Buckley moved the adoption of Article I of the Articles of Impeachment as submitted by the Committee of the Whole in the matter of the impeachment of Nevada State Controller Kathy Augustine.

Article I adopted unanimously.

**Article II (Misdemeanor or Malfeasance in Office)**

While acting in her official capacity as State Controller of the State of Nevada, Kathy Augustine, in violation of the Nevada Ethics in Government Law, has willfully committed Misdemeanor or Malfeasance in Office, to wit:

On or between October 2001, and January 2003, Kathy Augustine willfully violated NRS 281.481 (7), as she reasonably should have known that the act of causing computer equipment owned by the State of Nevada and located in the Office of the State Controller to be used for creating, maintaining, storing and printing documents relating to her 2002 re-election campaign violated the provisions of NRS 281.481 (7).

Wherefore, Kathy Augustine, by such conduct, has committed Misdemeanor or Malfeasance in Office pursuant to section 2 of Article 7 of the Nevada Constitution and the laws of the State of Nevada, which warrants impeachment and trial before the Senate.

Assemblywoman Buckley moved the adoption of Article II of the Articles of Impeachment as submitted by the Committee of the Whole in the matter of the impeachment of Nevada State Controller Kathy Augustine.

Article II adopted unanimously.

**Article III (Misdemeanor or Malfeasance in Office)**

While acting in her official capacity as State Controller of the State of Nevada, Kathy Augustine, in violation of the Nevada Ethics in Government Law, has willfully committed Misdemeanor or Malfeasance in Office, to wit:

On or between October 2001, and January 2003, Kathy Augustine willfully violated NRS 281.481 (7), as she reasonably should have known that the act of causing equipment and facilities, provided by the State of Nevada for use by the Office of the State Controller, to be used for business and purposes related to her 2002 re-election campaign violated the provisions of NRS 281.481(7).

Wherefore, Kathy Augustine, by such conduct, has committed Misdemeanor or Malfeasance in Office pursuant to section 2 of Article 7 of the Nevada Constitution and the laws of the State of Nevada, which warrants impeachment and trial before the Senate.

Assemblywoman Buckley moved the adoption of Article III of the Articles of Impeachment as submitted by the Committee of the Whole in the matter of the impeachment of Nevada State Controller Kathy Augustine.

Article III adopted unanimously.

Mr. Speaker announced that all Articles of Impeachment against Nevada State Controller Kathy Augustine, presented to the Assembly on Thursday, November 11, 2004, have been adopted unanimously and signed by the Assembly.

Mr. Speaker appointed Assemblymen Leslie, Anderson, and Hettrick as a committee to deliver the Articles of Impeachment to the Senate.

#### REMARKS FROM THE FLOOR

Mr. Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Before we move into our business, with the permission of the legislative Body, we find ourselves here on a very important national holiday and we want to make sure it is properly recognized. In order to do so, the first thing I would like to do is to ask all of our veterans to please rise. Please remain standing. I would, also, like to ask all of the members who have family members who are either active military or veterans of our armed forces to rise, as well. That would include those of you in the gallery who are veterans, or find yourselves in a similar situation. We would all like to thank you and your loved ones to their service to our country, especially in these trying times. Thank you very much. I apologize that we did not have a more appropriate recognition of this holiday. We find ourselves in a kind of spontaneous manner. Hopefully this will suffice for us.

#### ASSEMBLYWOMAN BUCKLEY:

The act of voting for Articles of Impeachment is a solemn occasion. The act of accusing an official of violating a public trust is a serious responsibility; one that is not taken lightly. As we embarked upon this process we were faced with the task of doing something that had never been done before in Nevada's history. I am proud of the manner in which these proceedings were conducted, with everyone giving a fair opportunity to present testimony. I am proud of the leadership shown by the Speaker in conducting these proceedings with fairness and dignity. I believe that every member came to this Body with an open mind. That this decision was unanimous shows that the evidence dictated the result and nothing else. I also want, on behalf of all of the members of the Assembly, to thank our staff; everyone who came together so quickly to provide the usual professional service that we have all become quite accustomed to in this Body. We thank you very much for all your hard work.

#### UNFINISHED BUSINESS

#### SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Concurrent Resolution No. 1; Assembly Resolution No. 1, Assembly Resolution No. 2, Assembly Resolution No. 3; Senate Bill No. 1; Senate Concurrent Resolution No. 1.

Assemblyman Perkins moved that the Assembly adjourn until the call of the Chair, and that it do so in memory of the nation's veterans.

Motion carried.

Assembly adjourned at 1:02 p.m.

Approved:

RICHARD D. PERKINS  
*Speaker of the Assembly*

Attest: NANCY S. TRIBBLE

*Chief Clerk of the Assembly*