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May 1, 2019

**VIA EMAIL**

Robert Fellner

Policy Director

Nevada Policy Research Institute

[robert@nevadapolicy.org](mailto:robert@nevadapolicy.org)

Mr. Fellner,

This correspondence is in response to your email of April 11, 2019, submitted to me as the Director of the Legislative Counsel Bureau.

Your email alleges that Ms. Marlene Lockard violated the provisions of subsection 2 of NRS 218E.085 by making false statements in the testimony she provided to the Senate Committee on Government Affairs during its hearing on SB 224, which was conducted on March 1, 2019. Subsection 2 of NRS 218E.085 provides as follows:

2. A person who knowingly misrepresents any fact when testifying in a hearing or proceeding before a House or committee or in communications to a Legislator preliminary to that hearing or proceeding is guilty of a misdemeanor.

Although not mentioned in your email, NRS 218H.930 also specifically prohibits a lobbyist from knowingly or willfully making a "false statement or misrepresentation of facts [to] any member of the Legislative Branch in an effort to persuade or influence the member in his or her official actions." Because Ms. Lockard is a registered lobbyist for the 2019 Legislative Session, and I am responsible for the administration and enforcement of the provisions of NRS 218H.010 to 218H.110, inclusive, which provide for the regulation of persons who act as lobbyists in the Legislative Building, I have chosen to respond to your email and to address both the provisions of NRS 218E.085 and 218H.930 in this response.

After receiving your email, I watched and listened to the video of the testimony provided by all parties at the March 1, 2019, meeting of the Senate Committee on Government Affairs. I also reviewed the opinions issued by the District Court and the Nevada Supreme Court in *Public Employees' Retirement System of Nevada v. Reno*

*Newspapers, Inc.* and in *Public Employees' Retirement System of Nevada v. Nevada Policy Research Institute, Inc.* As you would expect, I also discussed your email with Ms. Lockard and asked her about the testimony she provided.

Your email specifically references the following statement that Ms. Lockard made during her testimony:

For more than 35 years. PERS personal information was considered confidential. As a result of the court cases that have been mentioned, we are now at a point where one standing order continues to make public, if requested, date of birth, beneficiary information, gender, passports, addresses of ex-spouses, birth certificates and marital status. What is the purpose of releasing this personal information to the public?

Although you indicate that the entirety of the second sentence above is false, you specifically identify as a knowing misrepresentation of fact the inclusion of passports, addresses of ex-spouses and birth certificates in the list of information referenced above. You indicate that your conclusion that Ms. Lockard's testimony misrepresented facts is based on the fact that the court orders regarding PERS information do not specifically require the release of the information cited above. You also indicate that there is no reasonable basis for Ms. Lockard to mistakenly believe her statement to be true.

In response to the concerns raised in your email, Ms. Lockard cited a statement made in District Judge James T. Russell's Order dated May 1, 2014, in the case of *Reno Newspaper, Inc. vs. Public Employees Retirement System of Nevada* as the basis for her testimony. The statement cited by Ms. Lockard from the order indicates:

Given the foregoing confirmation from Mr. Owen, there is no question that PERS has an obligation to provide the entirety of the pension information to the RGJ to the extent it is contained in a media separate from the original files.

Ms. Lockard indicates that she specifically noted in her testimony that PERS may be required to release information regarding passports, addresses of ex-spouses and birth certificates under the court's order if PERS is ever requested to do so because information regarding passports, addresses of ex-spouses and birth certificates is within the entirety of the pension information maintained by PERS. She also stated that she confirmed with PERS representatives prior to her testimony that such information is maintained by PERS. She indicated that her point was that unless the law is clarified, PERS could conclude that it is required to release the entirety of pension information, including information regarding passports, addresses of ex-spouses and birth certificates if such information was ever requested. Ms. Lockard also noted that even if PERS refused to release such information, she believes it is unclear whether a court would order the release of the information based on the current statutes and recent case law.

Interested persons are encouraged to testify before the committees of the Legislature and to communicate with Legislators before committee hearings to assist

Legislators in their deliberations. In fact, to remove any fear that a person may have when testifying about or discussing sensitive matters, subsection 1 of NRS 218E.085 gives witnesses who testify before the Legislature or who communicate with Legislators an absolute privilege to publish defamatory matter if the matter has some relation to a legislative hearing or proceeding. Despite that privilege, knowingly misrepresenting any fact when testifying before the Legislature or in communications to a Legislator preliminary to a hearing is a misdemeanor. The committee process used by the Legislature is designed to ensure that the Legislature receives non-legislative opinions regarding the perceived need for, and the advantages and disadvantages of, legislation under the consideration of the Legislature.

To be considered a violation of NRS 218E.085 or NRS 218H.930, there must be a false statement or misrepresentation of facts and that false statement or misrepresentation must be made knowingly (both provisions) or willfully (NRS 218H.930). From my review of the information provided in your email and the testimony provided at the March 1, 2019, hearing, it appears that Ms. Lockard was expressing her opinion regarding the current state of the law regarding the information maintained by PERS and her opinion regarding the advantages of enacting SB 224. My reading of the opinions issued by the District Court and the Nevada Supreme Court leads me to the conclusion that the courts have not specifically ruled on whether retirees' passport information, addresses of retirees' ex-spouses, and birth certificates of retirees would be considered public records that must be provided if a request for such information is ever made. The opinions appear instead to suggest that any such request would be subject to a factual determination of whether the risks posed by disclosure of the information would outweigh the benefits of the public's interest in access to the information.

Although you and others may disagree with the opinion expressed by Ms. Lockard regarding the confidentiality of certain information maintained by PERS, there is no evidence that she offered her concerns as anything other than her opinion. Additionally, I find that Ms. Lockard's summary of the current state of the law regarding the disclosure of PERS information is not unreasonable based on the courts' decisions in the two cases discussed previously in this correspondence. Based on these determinations, no further action will be taken by this office with respect to your email submitted on April 11, 2019.

Sincerely,



Richard S. Combs

cc: Marlene Lockard  
Via e-mail