

THE THIRD DAY

CARSON CITY (Friday), November 12, 2004

Senate called to order at 9:49 a.m.

President Hunt presiding.

Roll called.

All present except Senators Carlton, Heck and Washington, who were excused.

Prayer by Pastor Albert Tilstra.

We turn to You, O God, for the wisdom that only You can give. If we want to know what You want us to do, then we can ask You and You will gladly tell us.

Then, God, also give these men and women of the Senate the faith to believe in the ultimate triumph of righteousness no matter how dark and uncertain the skies look today. I pray for the bifocals of faith that see the conflicts of the hour but also see farther down the goodness of God working out His plan in the world He has made.

AMEN.

Pledge of allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

By Senator Raggio:

Senate Resolution No. 4—Amending the Rules of the Senate for the 21st Special Session of the Nevada Legislature to include procedures for considering Articles of Impeachment.

Senator Raggio moved the adoption of the resolution.

Remarks by Senators Raggio and Care.

Senator Raggio requested that the following remarks be entered in the Journal.

SENATOR RAGGIO:

Senate Resolution No. 4 amends the rules of the Senate previously adopted for the Twenty-first Special Session of the Legislature to provide procedures for considering Articles of Impeachment that have been adopted by the Assembly. I will briefly outline those procedures and address any questions you may have regarding the proposed procedures.

Pursuant to these proposed rules, the impeachment proceedings will be conducted in a Committee of the Whole. The members of the Senate will set a date for commencing the proceedings and will identify the prosecutor of the Articles of Impeachment. The President of the Senate will be required to ensure that a copy of the Articles of Impeachment and a notice to appear be served upon the State Controller. The State Controller is entitled to be represented by counsel and is afforded an opportunity to object to the sufficiency of the Articles of Impeachment.

In order to expedite this matter, limitations have been placed on the amount of time allowed for opening statements, the examination and cross-examination of witnesses, and closing arguments. However, to ensure that the State Controller is accorded all of the rights to which she is entitled, the Chair may extend these limitations, at his discretion, if so required.

Any evidence introduced during the impeachment proceedings must be relevant and germane. However, formal rules of evidence will not apply.

A vote will be taken separately on each Article of Impeachment and, as required by Section 1 of Article 7 of the Nevada Constitution, a judgment of conviction will require a two-thirds vote of the Senate.

SENATOR CARE:

Thank you, Madam President. I appreciate that we have never undertaken this procedure in the history of this State. I have a number of questions, and I would like to have some time to review these rules. I have questions about the rules of evidence. The bottom of page 7 states, "The Chair will not admit any evidence that is not relevant and germane." On the next page, "formal rules of evidence do not apply to the proceedings." That would seem a contradiction. I raised an issue previously about the scope of the Proclamation. It states "all matters relating to" which would open up anything that might seem relevant to these proceedings.

Senator Raggio moved that the Senate recess until 10:30 a.m.
Motion carried.

Senate in recess at 9:59 a.m.

SENATE IN SESSION

At 10:38 a.m.

President Hunt presiding.

Quorum present.

Remarks by Senator Care, Raggio, Titus, Schneider and Coffin.

Senator Raggio requested that the following remarks be entered in the Journal.

Senator Raggio requested the remarks of Mrs. Brenda J. Erdoes, Legislative Counsel, be entered in the Journal.

SENATOR CARE:

Thank you, Madam President. I appreciate the Majority Leader's indulgence. My concern is for the process itself since we have never done this before and we need to establish a record here, today. I have a few questions.

Will the Chair of the Committee of the Whole be allowed to vote on the verdict?

BRENDA J. ERDOES (Legislative Counsel):

Yes, he will be allowed to vote. He is like the Chair of any committee in the Senate.

SENATOR CARE:

In proposed Rule No. 53, the list of exhibits and witnesses are to be released to the Chair of the Committee of the Whole. Can we amend that to say "issue not only to the Chair of the Committee of the Whole but to all Senators."

MRS. ERDOES:

Yes, we can put that in, and we can include language that says they must keep them confidential so they are not sent out.

SENATOR CARE:

Absolutely, thank you. Regarding proposed Rule No. 53, paragraph 2, will rebuttal witnesses, or impeachment witnesses, be allowed to be called?

MRS. ERDOES:

Yes, this provides that the Chair of the Committee of the Whole, subject to the body's overruling the Chair's call, would be able to approve additional witnesses as they occur.

SENATOR CARE:

In Rule No. 54, paragraph 2, is it the practice that Legislators and Members of Congress may not issue subpoenas but only the counsel for both parties and the Chair of the Committee of the Whole may do so?

MRS. ERDOES:

No, that is not the practice, and that is not the way these rules are set up. The Committee of the Whole can ask for a subpoena here as can the Defense or the Prosecution.

SENATOR CARE:

In Rule No. 56, paragraph 1, which is about witnesses communicating with other witnesses, I would feel comfortable with language stating these witnesses may not communicate with Senators.

MRS. ERDOES:

We can add that if you would like.

SENATOR CARE:

In Rule No. 56, paragraph 5, there are a number of time limits under the proposed rules, but I can wait until November 29 to discuss those limits. There is one restricting each Senator to five minutes only. Is it possible for one Senator to yield his time to another Senator so that one Senator might ask more questions in a longer period?

MRS. ERDOES:

These rules do not contemplate that. You can exceed the five minutes if the Chair authorizes that.

SENATOR CARE:

"Good cause," "discretion," and sometimes "authorizes" is used with the Chair of the Committee of the Whole. This is a discretionary call, and I do not know that there is any way to define those powers. I would suggest that sometime between now and November 29 a working definition be given for what is meant by "good cause" when the Chair has that discretion.

MRS. ERDOES:

We can work on that for you.

SENATOR CARE:

On November 29, I may raise some further questions on the time limits in regards to opening statements, closing statements and whether there should be rebuttal permitted. We can debate them at that time.

SENATOR TITUS:

Thank you, Madam President. I am concerned about protecting the process, protecting this institution, protecting the public and protecting the rights of people who are involved in this proceeding. I have concerns as to whether one person can serve as both judge and juror in this process and have some concern about this body turning over so much of its authority to just one member who serves as Chair. If the amendments Senator Care proposed are added, I will feel better about these rules. I would like to be certain the provisions where the documents, the proposals and schedules from the planning conference given to the Chair only will then go to all members of the Senate if these rules are not formally amended today. Is that the case?

SENATOR RAGGIO:

Counsel has indicated to me the changes we are referring to can be made now. We will take a recess to accommodate those changes. They seem to be appropriate.

SENATOR TITUS:

My other question is under Rule No. 59. I want to be certain all options for possible sanctions in addition to removal from office are provided for.

MRS. ERDOES:

Yes, that provides for the full array.

SENATOR SCHNEIDER:

Thank you, Madam President. I understand we have counsel, Dan Greco. Ms. Augustine has counsel. Will both counsels have an opportunity to look at these rules, and will they give us input? If they see something they think needs changing, can they present ideas that the Senate may wish to consider? We do not wish to handicap our counsel or Ms. Augustine's counsel in any way.

SENATOR RAGGIO:

That is appropriate. If we adopt the rules as amended, everyone will have the copy. If, in the interim, between today's meeting and the meeting on November 29, there are suggestions for appropriate changes, they can be given to Legislative Counsel. We can consider them on November 29. If the body wishes any additional changes to the rule, an amendment can be voted on at that time.

SENATOR COFFIN:

As a non-lawyer, I look at these rules and I want to make certain that under Rule No. 61 "such additional procedures as may be needed," the Chair would make the decision. We must blend these amendments into the rules. Do I understand that we will change language pertaining to the Chair in the Committee of the Whole? When it states, "the Chair deems," there may be something important we may need to deal with but cannot if the Chair does not rule.

MRS. ERDOES:

No change was suggested for this section as of yet. We placed that section in the rules because, since we have never done this before, we are not certain we have all the procedures in them that are needed. The point of this section was to enable the body to move forward without having to return to the Senate to formally adopt an amendment to the rules. As a body of the Committee of the Whole, another procedure could be adopted as needed. This section is part of the procedural requirements that if the Chair made a ruling that was not in accordance with the body, they could make an objection to it, and the body could vote whether to go with the ruling of the Chair or not. The body does have a chance to overrule any of the procedures enacted. This was meant to expedite the procedure.

SENATOR COFFIN:

I do not want to see anything done outside the House. It would be like A.B. 38 of the 72nd Session, the Ratification bill—if we made a mistake, staff fixed it during session. This would be between meetings.

BRENDA ERDOES:

This would be done during the meeting at which you were all present. It would be a procedure set at that point.

SENATOR COFFIN:

Why does the Chair deem it necessary? Could the Chair put the question to the House?

BRENDA ERDOES:

This is language we took from another House's proceedings. We could make the change you suggest, but we understood it as a simpler process. The Chair would deem it necessary or not. It would be up to the body to overrule that choice of the Chair.

SENATOR COFFIN:

Where is the guarantee that the body could overrule? Is it in the rules we voted on Wednesday?

MRS. ERDOES:

In Rule No. 58, Procedural Rulings, the second section in subsection 1, states, "the ruling of the Chair shall be the judgment of the committee unless three Senators move to have the question submitted to the vote of the majority of the Senators present."

SENATOR COFFIN:

That takes care of that question. There is one last point to discuss. There has been a discussion about reaching an agreement on creating these amendments, drafting them and presenting them into a document to be presented to this House to be voted upon later or to be voted on now contingent upon the changes being made and then presented to us.

MRS. ERDOES:

We will make the changes suggested, and then, we will present a clean document to you on which you can vote today.

SENATOR TITUS:

If a member of the Senate wished to obtain additional information, not heard from any of the witnesses called by either side, could a Senator request for someone to be a witness?

MRS. ERDOES:

Yes, the Senator would make a motion during the Committee of the Whole for a person to testify. The committee may also issue a subpoena to that person. We have provided a way for the body to have anyone appear that they want.

SENATOR TITUS:

If I made the motion, would that motion be voted on by the entire House or would the Chair decide if there was cause to call that person?

MRS. ERDOES:

Either the Chair would make a determination to go ahead or you could object to the Chair's ruling and overrule it.

SENATOR RAGGIO:

Counsel has informed me these changes can be made by 11:15 a.m. For these proceedings, we will start at the times indicated. The Legislative Counsel will make the changes indicated, and we will vote on those rules. If they are adopted, the counsel for the plaintiff and defendant can indicate to the Legislative Counsel any changes they feel might be appropriate. We can consider them again on the meeting scheduled for November 29.

SENATOR COFFIN:

I think it might take longer to make the changes, and I would like to review the changes after they have been printed. I would like a reasonable amount of time to study the changes.

SENATOR RAGGIO:

That is appropriate. We will recess until 11:15 a.m.

Senator Raggio moved that the Senate recess until 11:15 a.m.

Motion carried.

Senate in recess at 10:56 a.m.

SENATE IN SESSION

At 11:29 a.m.

President Hunt presiding.

Quorum present.

Senator Raggio withdrew his motion to adopt Senate Resolution No. 4.

Senator Raggio requested that his remarks be entered in the Journal.

Under Rule 53, the planning conference provides for a summary of the case, lists of witnesses and exhibits to be forwarded to each member of the Senate. Previously, it had indicated only the Chair. On page 5, information exchanged during the planning conference will be kept confidential by each person to whom a copy is provided. On page 7, the subsection is added. This is the exclusionary rule of witnesses to prevent witnesses from being in the presence of other testimony so they will not be tainted by that testimony. This would add a new subsection that indicates a person who is called as a witness shall not communicate with a Senator until the conclusion of the impeachment proceedings. Once we are sworn today under our oath we are required to take, any Senator should be careful in discussing this matter. They should not discuss it even among us. Other suggestions may be forthcoming to the counsel and we will have the opportunity if necessary to amend these rules.

By Senator Raggio:

Senate Resolution No. 4—Amending the Rules of the Senate for the 21st Special Session of the Nevada Legislature to include procedures for considering Articles of Impeachment.

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That the Rules of the Senate for the 21st Special Session of the Nevada Legislature are amended by the following additions:

*X. PROCEDURES FOR CONSIDERATION OF
ARTICLES OF IMPEACHMENT*

Rule No. 49. Organization.

1. Upon receipt of Articles of Impeachment from the Assembly, the Senate shall prepare to conduct proceedings on impeachment. The Senate may conduct the proceedings on impeachment while sitting as a Committee of the Whole.

2. The Senate shall assign a day for commencing the proceedings on impeachment and identify the prosecutor of the Articles of Impeachment.

3. The President of the Senate shall cause a copy of the Articles of Impeachment, with a notice to appear and answer the same in person or by counsel at the time and place appointed and a copy of these rules, to be served upon the defendant.

4. All matters relating to the impeachment if not having a specific order of business will be considered a special order of the day.

5. Upon completion of its duties with respect to the impeachment, the Committee of the Whole shall rise and the Senate shall reconvene to receive the report from the Committee.

Rule No. 50. Gubernatorial Appointment to Fill Vacancy.

1. A letter of intent to appoint a person to temporarily fill the vacancy in the Office of the State Controller submitted by the Governor must be read into the record.

2. The motion for reconsideration is out of order if the Senate affirmatively votes to consent to the appointment.

3. If the Senate does not affirmatively consent to the appointment, the Governor shall submit to the Senate for its advice and consent another letter of intent to appoint a different person to temporarily fill the vacancy.

Rule No. 51. Preliminary Matters.

1. Before convening as a Committee of the Whole to hold proceedings on impeachment, the Secretary of the Senate shall administer an oath to the President of the Senate. The President of the Senate shall then administer an oath to each of the members of the Senate, by which they swear to do justice according to law and evidence in the proceedings on impeachment.

2. The defendant may be represented by counsel throughout the proceedings.

3. If the defendant intends to object to the sufficiency of the Articles of Impeachment, the defendant must submit to the Secretary of the Senate a written explanation and support for such objection at least 3 days before the date scheduled for the commencement of the proceedings on impeachment.

4. At the time fixed for the commencement of the proceedings on impeachment, the Committee shall call the defendant to appear and answer the Articles of Impeachment. If the

defendant does not appear in person or by counsel, the defendant shall be deemed to have entered a plea of guilty.

5. *When the defendant appears before the Committee, the defendant may object to the sufficiency of the Articles of Impeachment if the defendant has submitted a written explanation pursuant to subsection 3, or may answer by an oral plea of not guilty.*

6. *If the defendant objects to the sufficiency of the Articles of Impeachment, the Chairman will open the hearing and discussion on the objection to the sufficiency of the Articles of Impeachment. Oral argument supporting the objection may be presented to the Committee by the defendant or counsel for the defendant, and oral argument opposing the objection may be presented to the Committee by the prosecutor. Such arguments must not exceed 30 minutes, unless the Chairman authorizes a longer period. Upon conclusion of the discussion of the objection, the Committee shall rise and the Senate shall reconvene to consider whether to sustain the objection to the sufficiency of the Articles of Impeachment.*

7. *If the objection to the sufficiency of the Articles of Impeachment is sustained by a majority vote of the members of the Senate who heard the argument, the proceedings on impeachment must be dismissed. If the objection is not sustained, the defendant must be ordered to answer the Articles of Impeachment. If the defendant refuses to answer, the defendant shall be deemed to have entered a plea of guilty.*

Rule No. 52. *Eligibility of Senators.*

1. *Notwithstanding the provisions of NRS 281.501, each Senator is, by virtue of his office, eligible to participate and vote in the proceedings on impeachment, and no Senator is subject to disqualification.*

2. *A Senator who is absent for any reason during any portion of the proceedings concerning impeachment must be provided an opportunity to review any available exhibits, videotapes and transcripts from that portion of the proceedings.*

Rule No. 53. *Planning Conference.*

1. *The Director of the Legislative Counsel Bureau shall meet with the prosecutor and the defendant or counsel for the defendant one or more times, as determined by the Director, before the commencement of the proceedings on impeachment to exchange a list of witnesses whom each intends to call and copies of exhibits each intends to introduce during the proceedings on impeachment. Each shall provide a copy of the list of witnesses and a copy of the exhibits and shall submit a statement which provides a summary of their case to the Director which the Director shall forward to each member of the Senate.*

2. *Only the witnesses and exhibits disclosed during a planning conference may be heard or introduced during the proceedings on impeachment, and only if approved by the Chairman, unless the party shows good cause why the new witness or exhibit was not disclosed during a planning conference.*

3. *Information and documentation exchanged during the planning conference and the summary statements must be kept confidential by each person to whom a copy is provided until such information and documentation has been made public by the Committee of the Whole.*

4. *The Chairman may rule on whether any witness or exhibit which is disclosed during the planning conference is relevant and germane.*

Rule No. 54. *Powers.*

1. *The Committee of the Whole has all powers granted to the Legislature to investigate and conduct hearings. The Chairman may issue subpoenas for witnesses, documents, records and any other relevant evidence, may administer oaths or cause oaths to be administered, may cause testimony to be taken and recorded, and may hold a person in contempt for disobeying a subpoena.*

2. *The prosecutor, the defendant or counsel for the defendant may request the Chairman to issue a subpoena which the Chairman may issue at his discretion.*

Rule No. 55. *Order of Proof.*

1. *The prosecutor may make an opening statement to the Committee of the Whole, which must not exceed 45 minutes. The defendant, or counsel for the defendant, may then make an opening statement to the Committee of the Whole, which must not exceed 45 minutes. Upon the motion of either party before commencement of the opening statement by that party, the time for the opening statement may be extended by the Chairman.*

2. The Chairman of the Committee shall determine the order of the presentation of evidence.

3. Upon conclusion of the presentation of all of the evidence, the prosecutor may present a closing argument to the Committee, which must not exceed 1 hour. The defendant, or counsel for the defendant, may then present a closing argument to the Committee, which must not exceed 1 hour. Upon the motion of either party before commencement of the closing argument of the party, the time for the closing argument may be extended by the Chairman.

Rule No. 56. Witnesses.

1. A person who may be called as a witness during the proceedings on impeachment shall not communicate with any other potential witness or person who has already testified about the proceedings and any matter about which the person may testify or present evidence until the conclusion of the proceedings on impeachment. Such a person, other than the defendant, shall not attend any hearing of the Senate or the Committee of the Whole and shall not otherwise listen to or view the proceedings of the Senate or the Committee of the Whole until after the person has completed providing testimony in the proceedings. On the day on which a witness will be called to testify, the witness shall wait outside the room in which the proceedings are being held at a place instructed by the Secretary of the Senate until summoned.

2. A person who may be or who is called as a witness during the proceedings on impeachment shall not communicate with a Senator until the conclusion of the proceedings on impeachment.

3. Before any witness provides testimony or gives a statement, the Chairman of the Committee of the Whole, or a person designated by the Chairman, shall administer to the witness the following oath:

“Do you solemnly swear or affirm that the testimony and any evidence you shall give in this matter shall be the truth, the whole truth and nothing but the truth?”

4. A witness must be examined by the party producing him for not more than 30 minutes, unless the Chairman authorizes a longer period. The witness may then be cross-examined by the opposing party for not more than 30 minutes, unless the Chairman authorizes a longer period.

5. The Chairman of the Committee may allow redirect and recross-examination.

6. After the prosecutor and the counsel for the defendant have completed questioning a witness, any Senator may question the witness for not more than 5 minutes, unless the Chairman authorizes a longer period.

7. Counsel may object to questions posed to the witnesses. The Chairman of the Committee shall determine whether to sustain such an objection. The Chairman will not admit any evidence which is not relevant and germane.

Rule No. 57. Immunity.

Neither the defense nor the prosecution may call a member of the Senate, the President of the Senate, a member of the Assembly, the counsel or staff of any of them, the staff of the Legislature or an employee of the Legislative Counsel Bureau as a witness, or subpoena the personal records or work papers of any of them.

Rule No. 58. Procedural Rulings.

1. The Chairman of the Committee of the Whole rules on all objections, motions, pleas and procedural questions made by the prosecutor and the defendant or counsel for the defendant. The ruling of the Chairman shall be the judgment of the Committee, unless three Senators move to have the question submitted to a vote of a majority of the Senators present.

2. Formal rules of evidence do not apply to the proceedings on impeachment.

3. Arguments by the prosecution and the defense on motions may be allowed with the approval of the Chairman of the Committee and shall not exceed 15 minutes, unless further extended by the Chairman.

Rule No. 59. Final Determination.

1. After receiving the report from the Committee of the Whole, the final question of whether the impeachment is sustained must be submitted to a vote of the Senate. A vote shall be taken on each Article of Impeachment separately; and if none of the Articles of Impeachment are sustained by the vote of two-thirds of the Senators elected, a judgment of acquittal shall be pronounced and entered.

2. *If the Senate votes to convict the defendant on any Article of Impeachment by the vote of two-thirds of the Senators elected, the Senate shall proceed to consider whether any sanction shall be imposed. Any such sanction shall be included in the pronouncement of judgment in the form of a resolution adopted by a majority vote which shall be entered upon the Journal of the Senate.*

Rule No. 60. Maintenance of Records.

1. *The Secretary of the Senate shall keep the record of the Committee of the Whole and perform or cause to be performed all other duties necessary to assist the Committee in carrying out its duties.*

2. *The Secretary of the Senate shall record and report the proceedings on impeachment of the Committee in the same manner as for legislative proceedings of the Senate.*

3. *Any exhibit that is presented to the Committee shall be listed in the Journal of the Senate without the text of the exhibit. The text of such exhibits shall be archived and made available for inspection upon request.*

4. *Notwithstanding the provisions of this section, minutes, records and documents of any meeting of the Committee of the Whole which is closed to the public do not become public until the Committee of the Whole determines that the matters discussed no longer require confidentiality.*

Rule No. 61. Additional Rulings on Procedure.

The Chairman of the Committee of the Whole may adopt such additional procedures as the Chairman deems necessary for the conduct of the Committee hearings so long as such additional procedures do not conflict with Rules 49 to 60, inclusive, of the Rules of the Senate for the 21st Special Session of the Legislature.

Senator Raggio moved the adoption of the resolution.

Resolution adopted.

Senator Raggio moved that the following persons be accepted as accredited press representatives, and that they be assigned space at the press table and allowed the use of appropriate media facilities: KOLO-TV: Timothy III; KRNV-TV: Jeff Deitch, Gene Kennedy; KVVU-TV FOX 5: Lorraine Blanco.

Motion carried.

REMARKS FROM THE FLOOR

Senator Care requested that the following remarks be entered in the Journal.

SENATOR RAGGIO:

During the Committee of the Whole proceedings as well as the proceedings on the Senate floor, we will not allow laptops or cell phones where you might be able to receive information during the proceedings.

SENATOR COFFIN:

I can understand laptops, but pagers and cell phones should be kept in the vibrator mode. I wish to remain in contact with my family, only.

SENATOR RAGGIO:

I understand your concerns. We must appreciate that we must not be in a position where anyone might suggest that information is being furnished pertaining to the proceedings during the time we are involved.

SENATOR CARE:

The comment has been made in both Houses that this is not a trial. That is somewhat correct. There are limitations of due process dictated by the United States Constitution. We need to get it on the record if we are talking about clear and convincing, beyond a reasonable doubt or

preponderance of the evidence. I do not know if we need a rule that discusses that. We exercise our broad powers, but we need discussion from the Legislative Counsel Bureau that indicates that we looked at that issue before we get into the proceeding.

SPECIAL ORDERS OF THE DAY

A committee from the Assembly composed of Assemblyman Anderson and Assemblywoman Leslie appeared before the bar of the Senate.

Assemblyman Anderson and Assemblywoman Leslie, on behalf of the Assembly, presented the Articles of Impeachment to the Senate.

President Hunt requested that Assemblyman Anderson read the Articles of Impeachment.

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.

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.

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.

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.

PRESIDENT HUNT:

Thank you, Assemblyman Anderson and Assemblywoman Leslie. The Senate accepts custody and possession of these Articles. The Senate will take proper order on the subject of this impeachment, of which due notice shall be given to the Assembly.

Before proceeding with any further consideration of the Articles, an oath will now be administered to me and the members of the Senate sitting on the impeachment proceedings.

I would now call upon the Secretary of the Senate to administer the oath to me in my capacity.

Claire J. Clift, Secretary of the Senate, administered the oath, as follows, to President Hunt:

I do solemnly swear or affirm that I will faithfully and impartially try the impeachment against the Honorable Controller Kathy Augustine of the State of Nevada now pending and will give my decision according to the Constitution, law and evidence so help me God.

President Hunt administered the oath to the members of the Senate except Senators Carlton, Heck and Washington who were absent and excused.

Will all the members of the Senate please rise at your desks and repeat after me. I do solemnly swear or affirm that I will faithfully and impartially try the impeachment against the Honorable Controller Kathy Augustine of the State of Nevada now pending and will give my decision according to the Constitution, law and evidence so help me God.

Senator Raggio moved that pursuant to Senate Standing Rule No. 49.2, the proceeding on the Impeachment of Controller Kathy Augustine as presented in the Articles of Impeachment be declared to commence on November 29,

2004, at 9:00 a.m. and that Daniel J. Greco serve as the Special Prosecutor with the assistance of the Attorney General.

Remarks by Senators Raggio and Coffin.

Senator Coffin requested that the following remarks be entered in the Journal.

SENATOR COFFIN:

Thank you, Madam President. Under Order of Business No. 15, with reference to the appointment of the Special Prosecutor Dan Greco, I would like to find out more about whom we are appointing. We only have a three-paragraph biography. I have some specific questions. I do not question his legal knowledge. He must have been selected for a good reason. I would like to know more about him, who he has worked with other than the District Attorney's Office in Washoe and Carson? Who else he might have been involved with regarding lawsuits with any of the parties, witnesses or members of this body since I do not know this person. In typical impeachment proceedings I have witnessed, the parties were known and were selected with due course to knowing not only their qualifications but also their partisan interests. Even though this is not a partisan gathering, I would like to know if Mr. Greco has engaged in any partisan activity. For example, what campaigns has he worked on, if he has sought public office and under what party label? If he has sought public office, it is not so important as if he has run for public office and worked in the campaigns of any individuals. The political side is important because while this is quasi-judicial it is quasi-political.

SENATOR RAGGIO:

Madam President, I do not have any information in addition to that which I furnished to the Senators. I have no knowledge that Mr. Greco has been involved in any other political matters or campaigns. The only information we have is that he is considered highly professional in his capacity, but I do not know him personally. He is the Chief Deputy District Attorney for the Washoe County District Attorney's Office and has been a prosecutor with that office for 12 years.

SENATOR COFFIN:

I understand Senator Raggio's dilemma. He has asked a good friend to suggest a reliable district attorney. He is not a person that Senator Raggio knows. We do not know anything about him, and he is coming to us as a friend of a friend or employee of a friend—no insult intended to Mr. Greco. Is it possible that before we vote on this, we could find out more about Mr. Greco, a man we will be hiring to represent us.

SENATOR RAGGIO:

Madam President. The reference that this is a friend of a friend is inappropriate. We requested a recommendation for someone who could act as a special prosecutor in this matter with prosecuting qualifications. We are not appointing someone to represent us. This is a special prosecutor to respond in part to the objection that was raised to each of us, individually, as Senators by the counsel representing the Controller. By doing this, we are not agreeing that a conflict exists. In fact, we have been advised by our own Legislative Counsel and by the Attorney General's Office that the law clearly indicates there is no conflict of interest, but to avoid the issue, a special prosecutor has been designated, and that is the best recommendation we have at the moment. An appointment needs to be made at this time so we do not further delay these proceedings. If anyone has an objection, this would be the time to state it. If it surfaces, in some way, that this person should not be named, we can address the issue when we come back on November 29. In the meantime, this person will start preparing for the presentation of this case. Mr. Greco does not represent the Senate. He is being designated to present the matter and will have the assistance of the Attorney General as the statute provides. We cannot do anything further than that because I do not have any other information on his qualifications. It is reasonable that if he has been serving in the capacity he has for 12 years, he is probably eminently qualified to assume this position.

SENATOR COFFIN:

Thank you, Madam President. I want to assure Senator Raggio that the indication that I said a friend of a friend was a poor choice of words. If I have offended the Senator, I would apologize. I do not know if this person would be fair. It is true that we have two weeks to identify any objections that could be taken up on the 29th, and I appreciate Senator Raggio's word on that and that will be sufficient. I would hope that there would be no objection to me talking or asking for information regarding Mr. Greco.

Senator Raggio amended his motion to stipulate that if there were later objections regarding the appointment of the Special Prosecutor and the assistance of the Attorney General's Office in the prosecution, those issues would be addressed on November 29, 2004.

Remarks by Senator Raggio.

Motion carried.

Senator Raggio announced the appointment of Senator Mark E. Amodei as Chair of the Committee of the Whole.

President Hunt requested a Notice to Appear and Answer, a copy of the Articles of Impeachment and a copy of the Senate Standing Rules of the Twenty-first Special Session be served on the Controller.

NOTICE TO APPEAR AND ANSWER
ARTICLES OF IMPEACHMENT

The State of Nevada,

The Senate of the State of Nevada to KATHY AUGUSTINE:

WHEREAS, The Assembly of the State of Nevada, on the 12th day of November, 2004, delivered to the Senate Articles of Impeachment against you, Kathy Augustine, which are attached to this Notice. The Senate of the State of Nevada demands that you should be put to answer the accusations as set forth in said Articles, and that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and justice.

You are therefore hereby ordered to appear before the Senate of the State of Nevada, sitting as the Committee of the Whole, at the Legislative Building, 401 South Carson Street, Room 4100, in Carson City, Nevada, on the 29th day of November 2004, at 9:00 a.m., to answer to Articles of Impeachment, and to abide by, obey and perform such orders, directions and judgments as the Senate of the State of Nevada shall make in the premises according to the Constitution and laws of the State of Nevada.

Hereof fail not. If you do not appear in person or by counsel, you will be deemed to have entered a plea of guilty.

Witness Lorraine T. Hunt, President of the Senate, at Carson City, Nevada, this 12th day of November, 2004.

LORRAINE T. HUNT
President of the Senate
Attest:
CLAIRE J. CLIFT
Secretary of the Senate

MESSAGES FROM THE GOVERNOR
STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA 89701

November 12, 2004

THE HONORABLE SENATOR WILLIAM J. RAGGIO, *Majority Leader, Nevada State Senate*

Legislative Building, 401 S. Carson St., Carson City, NV 89701

To the Honorable Members of the Nevada State Senate;

Pursuant to NRS 283.270(2), I am writing to notify you of my intention to appoint Kim Huys to serve as Acting State Controller while State Controller Kathy Augustine is suspended from office and the impeachment proceeding against her continues in the Nevada Senate.

Ms. Huys is a dedicated public servant who has the necessary experience and qualifications to serve as Acting State Controller. She presently serves as Chief Deputy State Controller and has performed admirably during this unique circumstance in our State's history. Therefore, I would encourage you to provide me with your advice and consent with respect to this temporary appointment as promptly as you are able to do so.

Sincerely,
KENNY C. GUINN
Governor of Nevada

cc: SPEAKER RICHARD PERKINS

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that the Senate consent to the appointment of Kim Huys to temporarily serve as the Acting Controller of the State of Nevada.

Remarks by Senator Raggio.

Motion carried.

REMARKS FROM THE FLOOR

Senator Raggio requested that the following remarks be entered in the Journal.

Senator Raggio requested the remarks of Mrs. Brenda J. Erdoes, Legislative Counsel, be entered in the Journal.

SENATOR RAGGIO:

Regarding the scope of the Governor's Proclamation, whether the statutory impeachment provisions in NRS 283.140 through NRS 283.290 apply to the current impeachment proceedings, the opinions from the Legislative Counsel Bureau were requested by Senator Care. I suggest the opinions be made a part of the record for this legislative day. Staff from the Legislative Counsel Bureau is available to respond if there are further questions.

SENATOR CARE:

Thank you, Madam President. I have one other issue regarding the language in the Articles of Impeachment. At issue are events that occurred between October 2001 and January 2003. May a state constitutional officer be removed from office during their second term for conduct which occurred during their first term? I would appreciate a memo from the Legislative Counsel Bureau addressing this issue. I feel it is important for posterity to understand that we contemplated these issues.

SENATOR COFFIN:

Thank you, Madam President. Are we entitled to receive transcripts prepared in the Assembly so we might be informed of the proceedings in that House? I would like to receive transcripts of the previous day's proceedings to study and verify information for the next calendar day.

PRESIDENT HUNT:

Written transcripts will not be ready that soon, but you may obtain audio-tapes and video-tapes to use for your monitoring purposes.

SENATOR COFFIN:

That will not be sufficient for me. I want the parties, myself included, to have access to documents that can help us to understand the differences in the impeachment proceedings each day.

SENATOR RAGGIO:

Daily transcripts are used in court proceedings, but in my opinion, they would not be appropriate in this venue. In court proceedings, daily transcripts are not provided to jurors. We are comparable to jurors in this Special Session. Each of us should be attentive to all information put forth during these proceedings and make concise notations for reference.

SENATOR COFFIN:

This is uncharted territory of a very serious nature. I think daily transcripts are necessary.

SENATOR RAGGIO:

Thank you, Madame President. If counsel on either side wish to ask for daily transcripts, they may do so, but they would bear the cost of doing so. We will not provide transcripts to the Senators.

SENATOR COFFIN:

The Majority Leader is an experienced and successful prosecutor. I am not. Jurors are not allowed to take their notes to study them. I am going to ask we be allowed to take our notes with us for reference purposes. Audio transcripts take excessive amounts of time to listen to. Since we have brought about this impeachment procedure, I think Ms. Augustine should be given the same rights as an indigent, during the impeachment procedure, as would be fair in Nevada law. I hope the members of this House will consider this degree of fairness. The cost is not expected to be too high in this case. We should not expect the Defense to bear the burden of the cost of producing daily transcripts.

SENATOR RAGGIO:

It is not appropriate to provide daily transcripts. Judges and jurors take notes during bench trials. Note taking is your own obligation. We are not siding with either side.

SENATOR COFFIN:

This is a case of the State of Nevada against this woman. An unusual type of testimony was heard in the Assembly, and I need to obtain a copy of transcripts of that hearing.

SENATOR CARE:

We are Senators in this proceeding. It is your responsibility to take notes. You will experience the demeanor and facial expressions of the witnesses and come to your own conclusions based on all the facts you gather through the process. Transcripts would not reveal anything more.

SENATOR COFFIN:

We are not in caucus now. I have not discussed this with anyone before. I am asking, if I was in Ms. Augustine's shoes, who would tell me how they would feel? Do we know if she has adequate finances for this proceeding?

MRS. ERDOES

We have researched Ms. Augustine's rights in this case. We do not believe such a right exists. In this situation, Standing Rule No. 60 does provide for the Secretary of the Senate to record and report on the proceedings of the impeachment in the same manner as for other legislative matters of the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Coffin moved that the Senators be provided with daily transcripts of all proceeding.

Remarks by Senators Coffin, Raggio and Care.

Motion failed.

Senator Raggio requested that the following legal opinions be entered in the Journal.

LEGAL OPINIONS

November 12, 2004

SENATOR WILLIAM J. RAGGIO

Senate Chambers

Dear SENATOR RAGGIO:

As Majority Leader of the Nevada Senate, you have asked this office to prepare an opinion in response to the question posed by Senator Care on the floor of the Senate on Wednesday, November 10, 2004, regarding the scope of the proclamation issued by the Governor, calling the Nevada Legislature into its 21st Special Session. We address your request below.

BACKGROUND

Relating to special sessions of the Legislature, section 9 of Article 5 of the Nevada Constitution provides that:

The Governor may on extraordinary occasions, convene the Legislature by Proclamation and shall state to both houses when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business, except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in Session.

(Emphasis added.) Thus, unless the Governor calls additional matters to the attention of the Legislature while in the special session, the Legislature is limited to transacting only that legislative business for which they were specially convened.

On November 9, 2004, Governor Kenny C. Guinn issued a proclamation calling the Nevada Legislature into its 21st Special Session. In relevant part, the proclamation issued by Governor Guinn stated as follows:

NOW, THEREFORE, I, KENNY C. GUINN, GOVERNOR OF THE STATE OF NEVADA, by virtue of the authority vested in me by the Constitution of the State of Nevada, do hereby convene the Legislature into a Special Session to begin at 10:00 a.m., on November 10, 2004, to consider all matters relating to the impeachment proceedings concerning State Controller Kathy Augustine.

(Emphasis added.) On November 10, 2004, on the floor of the Senate, the issue was raised whether the phrase “to consider all matters relating to the impeachment proceedings concerning State Controller Kathy Augustine” includes the authority to consider the impeachment, itself. We proceed now to determine the meaning of the relevant text, with particular focus upon the common meaning of the phrase “relating to”.

DISCUSSION

Although a gubernatorial proclamation, like an executive order, is not directly analogous to a statute enacted by a legislative body, many of the same rules of interpretation apply. For example, the executive is presumed to intend the meaning that is clearly expressed, and every word, sentence and section should be given effect, if possible. Soap & Detergent Ass’n v. Natural Res. Comm’n, 330 N.W.2d 346, 359 (Mich. 1982).

As noted above, the phrase in the Governor’s proclamation that is in question is, “to consider all matters relating to the impeachment proceedings concerning State Controller Kathy Augustine” (emphasis added). Senator Care has raised the question whether this language may be read as though the Legislature has been empowered by the Governor to consider matters “relating to” the impeachment, but not the matter of the impeachment, itself. As we shall explain below, the common and ordinary meaning of “relating to” does not admit of such a result.

The phrase “relating to” has been interpreted by courts to have a very broad scope and is frequently defined in accordance with its standard dictionary definition to mean “to stand in some relation; to have bearing or concern; to pertain; refer; to bring to association with or connection with.” Hodges v. Delta Airlines, Inc., 44 F.3d 334, 336 (5th Cir. 1995) (citing Morales v. Trans World Airlines, Inc., 112 S. Ct. 2031, 2037 (1992)). Courts have also stated directly that “the phrase ‘relating to’ is to be read broadly and should be interpreted as being comprehensive of the subject indicated.” Central States Found. v. Balka, 590 N.W.2d 832, 837 (Neb. 1999) (emphasis added). The Supreme Court of Nevada has concluded, similarly, that the phrase “relate to” has an expansive reach. See Marcoz v. Summa Corp., 106 Nev. 737, 742 n.2 (1990).

Applying this understanding of the phrase “relating to” to the specific circumstance of the Governor’s proclamation, it is the opinion of this office that “matters relating to the impeachment proceedings” necessarily include the impeachment, itself. To construe the Governor’s proclamation otherwise would be to violate the principle that “relating to” is to be interpreted as being comprehensive of the subject indicated. Clearly, to exclude consideration of the impeachment, itself, would not be “comprehensive of” the topic of impeachment proceedings as those proceedings relate to the State Controller.

Having concluded that “matters relating to the impeachment proceedings” necessarily include the impeachment, itself, it is the further opinion of this office that the plain meaning of “relating to” would also draw within the Legislature’s purview any other matters that “pertain to” the impeachment or the proceedings thereof. While the parameters of the Legislature’s authority in this context cannot be demarcated with absolute precision, the Legislature may be guided by reason and common sense in determining which matters do and do not “pertain to” the impeachment at hand. *See, e.g., Orr Ditch Co. v. Justice Court of Reno Township*, 64 Nev. 138, 177 (1947).

CONCLUSION

In summary, it is the opinion of this office that the phrase “to consider all matters relating to the impeachment proceedings concerning State Controller Kathy Augustine” should be interpreted to allow the Nevada Legislature to consider: (1) the impeachment of the State Controller; and (2) any other issues which reasonably pertain to that impeachment. If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,
 BRENDA J. ERDOES
Legislative Counsel
 By SCOTT G. WASSERMAN
Chief Deputy Legislative Counsel
 By M. SCOTT MCKENNA
Principal Deputy Legislative Counsel

November 12, 2004

SENATOR WILLIAM J. RAGGIO

Senate Chambers

Dear SENATOR RAGGIO:

As Majority Leader of the Senate, you have asked this office to prepare an opinion in response to a question raised by Senator Terry Care on the floor of the Senate on November 10, 2004. Specifically, Senator Care asked whether the statutory impeachment provisions of NRS 283.140 to 283.290, inclusive, apply to the current impeachment proceedings being conducted against the State Controller. To answer Senator Care’s question, we first must consider several well-established rules of statutory and constitutional construction. Second, we must consider the meaning of the terms “misdemeanor in office” and “malfeasance in office.” Finally, we must consider the articles of impeachment adopted by the Assembly on November 11, 2004.

DISCUSSION

In 1911, the Nevada Legislature enacted legislation establishing certain practices and procedures for the Senate to follow in conducting impeachment proceedings against state officers. That legislation has been codified in NRS 283.140 to 283.290, inclusive.

Under the statutory impeachment provisions codified in NRS 283.140, state officers are liable to impeachment for “misdemeanor in office.” In contrast, under the constitutional provisions of Section 2 of Article 7 of the Nevada Constitution, state officers are liable to impeachment for “Misdemeanor or Malfeasance in Office.” Thus, the statutory provisions of NRS 283.140 do not mirror the constitutional provisions of Section 2 of Article 7, in that the term “malfeasance” is not included in the statutory provisions.

Based on the difference in language between NRS 283.140 and Section 2 of Article 7, the question that arises is whether the statutory impeachment provisions of NRS 283.140 to 283.290, inclusive, apply to impeachment proceedings in the Senate when the articles of impeachment allege only “malfeasance in office” without alleging “misdemeanor in office.” To

answer that question, we must apply several well-established rules of statutory and constitutional construction.

First, statutes should be construed, if reasonably possible, so as to be in harmony with the constitution. Sheriff v. Luqman, 101 Nev. 149, 154 (1985). Therefore, it would run contrary to the rules of statutory and constitutional construction to place “greater interpretive effect upon one section of a statute than upon the plain terms of the constitution.” Foley v. Kennedy, 110 Nev. 1295, 1300 (1994). As a result, when there is a difference in the language between a constitutional provision and a similarly worded statutory provision, the language of the constitutional provision prevails. See, e.g., Phillips v. Snowden Placer Co., 40 Nev. 66, 73 (1916).

Second, courts will generally “infer legislative intent by reading a particular statutory provision in the context of the entire statutory scheme.” Nylund v. Carson City, 117 Nev. 913, 916 (2001). As a result, each statute is generally construed in light of the purpose of the entire act. See Acklin v. McCarthy, 96 Nev. 520, 523 (1980). If, “from a reading of the entire act, certain words necessary to give it complete sense have manifestly been omitted, courts, under well-established rules of construction, are permitted to read the same into the act in order that the law may express the true legislative intent.” State ex rel. Bartlett v. Brodigan, 37 Nev. 245, 250 (1914).

Finally, statutes should be interpreted “consistently with what reason and public policy would indicate the Legislature intended.” Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225 (2001). Statutes should not be interpreted to produce unreasonable or absurd results. See Nevada Mining Ass’n v. Erdoes, 117 Nev. 531, 542 n.29 (2001).

On their face, the statutory impeachment provisions of NRS 283.140 to 283.290, inclusive, are intended to apply to impeachment proceedings conducted pursuant to Article 7 of the Nevada Constitution. Consequently, those statutory provisions should be interpreted to be in harmony with the purpose of Article 7. Based on its plain language, the purpose of Article 7 is to authorize the legislative branch to impeach state officers for “Misdemeanor or Malfeasance in Office.” It would be anomalous to conclude that the Legislature intended its statutory impeachment provisions to apply to impeachments for “misdemeanor in office,” but not to impeachments for “malfeasance in office,” when the plain language of the constitution extends to “Misdemeanor or Malfeasance in Office.” We believe that reason and public policy indicate the Legislature intended to enact a comprehensive statutory scheme that would apply to all impeachment proceedings conducted in the legislative branch under Article 7. Under such circumstances, we believe the statutory impeachment provisions of NRS 283.140 to 283.290, inclusive, must be read to apply to all impeachment proceedings in the legislative branch for “Misdemeanor or Malfeasance in Office.”

Furthermore, we believe this conclusion is supported by the commonly accepted meanings of the terms “misdemeanor in office” and “malfeasance in office.” 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. State v. Borowsky, 11 Nev. 119, 124 (1876). In Borowsky, the defendant held the office of public administrator, and the defendant was convicted of violating a statute which criminalized “any willful misdemeanor in office” committed by a public administrator. Id. at 123-24. In affirming the defendant’s conviction, the court held that the term “willful misdemeanor in office” covered any willful violation of an official duty. Id. at 124-26. The court explained that the term “misdemeanor” was not used in the statute in its technical sense to refer to “a species of crime.” Id. at 124. Instead, the term was used “in its more comprehensive sense of misbehavior, misconduct, [or] violation of duty.” Id.

The term “malfeasance in office” has been given a similarly broad definition to cover all forms of official misconduct. In interpreting the term “malfeasance in office” as used in Section 4 of Article 7 of the Nevada Constitution and NRS 283.440, the Nevada Supreme Court has found that malfeasance in office involves the commission of any wrongful act connected with the performance of official duties. See Buckingham v. Fifth Jud. Dist. Ct., 60 Nev. 129, 135-37 (1940); Jones v. Eighth Jud. Dist. Ct., 67 Nev. 404, 408 (1950). Such malfeasance in office may be found on proof that the official committed the wrongful 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 that he was doing something wrong.” Jones v. Eighth Jud. Dist. Ct., 67 Nev. 404, 417 (1950) (quoting Atwood v. Cox, 55 P.2d 377, 393 (Utah 1936)).

Thus, as commonly understood in the law, the terms “misdemeanor in office” and “malfeasance in office” represent broad, catch-all terms which are intended to capture all forms of official misconduct by a public officer. See Black’s Law Dictionary 968 (7th ed. 1999) (defining “malfeasance”); id. at 1014 (defining “misdemeanor in office”). Thus, the terms “misdemeanor in office” and “malfeasance in office” are comprehensive terms and, when they are used in a constitutional or statutory removal provision, they include: (1) violations of any law, regulation or public policy; (2) violations of the public trust; and (3) any other wrongful conduct which affects, interrupts or interferes with the performance of official duties. See, e.g., Falloon v. Clark, 58 P. 990, 992 (Kan. 1899); Arellano v. Lopez, 467 P.2d 715, 717-18 (N.M. 1970); State v. Ward, 43 S.W.2d 217, 219 (Tenn. 1931); State v. Geurts, 359 P.2d 12, 14 (Utah 1961); In re Sims, 523 S.E.2d 273, 281 (W. Va. 1999).

Because the terms “misdemeanor in office” and “malfeasance in office” have similar meanings when they are used in a constitutional or statutory removal provision, reason and public policy would suggest that the statutory impeachment provisions of NRS 283.140 to 283.290, inclusive, apply to all impeachment proceedings in the legislative branch for “Misdemeanor or Malfeasance in Office.” We believe that any other interpretation would produce unreasonable and absurd results.

Finally, on November 11, 2004, the Assembly adopted three articles of impeachment against the State Controller. Each article adopted by the Assembly impeaches the State Controller for “Misdemeanor or Malfeasance in Office.” Therefore, the Assembly, by characterizing the conduct of the State Controller as constituting “Misdemeanor or Malfeasance in Office,” has demonstrated its intent that the provisions of NRS 283.140 to 283.290, inclusive, should apply to the current impeachment proceedings being conducted against the State Controller.

CONCLUSION

Based on the foregoing discussion, it is the opinion of this office that the statutory impeachment provisions of NRS 283.140 to 283.290, inclusive, apply to the current impeachment proceedings being conducted against the State Controller.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,
 BRENDA J. ERDOES
Legislative Counsel
 By KEVIN C. POWERS
Principal Deputy Legislative Counsel
 By SCOTT G. WASSERMAN
Chief Deputy Legislative Counsel

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections the President and Secretary signed Senate Bill No. 1; Senate Concurrent Resolution No. 1; Senate Resolutions Nos. 1, 2, 3.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to Kim Huys.

Senator Raggio moved that the Senate adjourn until Monday, November 29, 2004, at 9 a.m.

Motion carried.

Senate adjourned at 12:26 p.m.

Approved:

LORRAINE T. HUNT
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate