



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for Advisory Opinion Concerning the Conduct of **Emily Reese**, Teacher, Washoe County School District, State of Nevada,

Request for Opinion No. 16-42A
CONFIDENTIAL

Public Employee. /

CONFIDENTIAL OPINION

I. STATEMENT OF THE CASE

Public employee Emily Reese ("Reese") requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of her anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum¹ of the Commission heard this matter on April 20, 2016. Reese appeared and provided sworn testimony.

Reese questions whether she may hold public office as a member of the Washoe County School District ("District") Board of Trustees ("WCSD Board") and remain employed as a teacher at the Rainshadow Community Charter High School ("Charter School"), which is a District-sponsored public charter school. Specifically, Reese is concerned about the ethical implications of serving as a trustee of the WCSD Board, the sponsoring body of the Charter School that employs her in her private capacity.

After fully considering Reese's request and analyzing the facts, circumstances and testimony presented by Reese, the Commission deliberated and advised Reese of its decision that the Ethics Law prohibits her from simultaneously serving on the WCSD Board and as a teacher at the Charter School. The Commission now renders its final written Opinion stating its formal findings of fact and conclusions of law.²

The facts in this matter were obtained from documentary and testimonial evidence provided by Reese. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below accept as true those facts Reese presented. Facts and circumstances that differ from those presented to and relied upon by the Commission in this Opinion may result in different findings and conclusions than those expressed in this Opinion.

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¹ The following Commissioners participated in this opinion: Chair Cheryl Lau, Vice-Chair Keith A. Weaver and Commissioners Barbara Gruenewald, James Shaw and Dan H. Stewart.

² The individual comments made by any Commissioner during the hearing are not binding on the Commission's final opinion.

II. QUESTION PRESENTED

Reese is currently employed as a teacher at the Charter School and she seeks election as a trustee to the WCSD Board, which is the entity that sponsored the Charter School and is charged with reviewing the Charter School's performance.

Reese questions whether she may simultaneously serve on the WCSD Board and maintain her employment as a teacher at the Charter School. In other words, can a public charter school teacher serve as a school board trustee within the same school district and properly avoid any perceived appearance of impropriety or conflicts of interest under the Ethics in Government Law?

III. FINDINGS OF FACT

1. Emily Reese ("Reese") is currently employed as a school teacher at the Charter School. In this capacity, Reese is a teacher of District students.
2. Reese is a candidate for Trustee for District D of the WCSD Board. The WCSD Board general election takes place in November 2016.
3. The Charter School is a non-profit corporation organized pursuant to the provisions of Chapter 82 of the Nevada Revised Statutes.
4. The Charter School is a public charter school formed pursuant to the provisions of NRS 386.490 to 386.649, inclusive, and is one of eight charter schools sponsored by the WCSD Board in accordance with regulations adopted by the Nevada Department of Education ("NDE" or "Department").
5. All employees of charter schools are deemed public employees pursuant to NRS 386.595(1).
6. NDE has adopted regulations that prescribe the process for submission of an application to form a charter school or renew a charter contract to a board of trustees of a school district, the contents of the applications and the criteria and type of investigation that must be applied by the board of trustees in determining whether to approve such applications. NDE has also adopted regulations that prescribe a charter school's procedures for accounting and budgeting and requirements for performance audits and financial audits of charter schools by a district and NDE.
7. Pursuant to NRS 386.565, the WCSD Board is prohibited from interfering with the day-to-day operations and management of a charter school, except as authorized by the written charter or charter contract or any other statute or regulation applicable to charter schools or its officers or employees.³
8. On July 31, 2009, the WCSD Board approved the Charter School's application to form a charter school and executed the Charter Contract Agreement ("Charter Agreement") with the Charter School.

³ The WCSD charter school website page explains that "State law states sponsoring districts may not interfere in the normal, day-to-day business of charter schools . . . so, charters are free to chart their own course, free of many, but not all, rules and regulations covering other schools. For example, charters can use a unique curriculum and different instructional methods."

9. On June 23, 2015, the WCSD Board considered the renewal for the Charter School and its annual performance audit, including compliance with the Charter Agreement. The staff report for Agenda Item 5 identified the following areas of concern:
 - a. “Substantial concern regarding the financial sustainability including the pattern of net excess (deficiency) and decrease in the unreserved fund since 2012 (NRS 386.535). Projected budgets embrace student enrollments of 150 and 177 respectively, which is not conducive compared to the enrollment history of the school. Funding sources are explored, but not concrete.”
 - b. “Declination in enrollment since 2012, with rising attendance issues and poor graduation rates, indicating student needs are not being met.”
 - c. “Lack of evidence, measureable goals and/or detail regarding the Charter organizational vision for the next charter term. Redefining the culinary program, exploration to purchase the building, renting the space for potential future income are all visionary, but lack concrete projections that ensure success.”
 - d. “1-star school without a solid plan to increase student achievement.”

See Staff Report, Agenda Item 5, June 23, 2015, Regular Meeting of the WCSD Board of Trustees. After discussion and consideration of the agenda item, the WCSD Board approved the application for renewal of the “Washoe County School District Public Charter and Charter Contract,” with the caveat that the Charter School is under a compliance watch and is on probation for a one-year period. The next performance or compliance review is anticipated to be conducted in June 2016.

10. Pursuant to State law, the District’s sponsorship and related Charter Agreement, the Charter School receives its state and local funding from NDE.
11. The Charter Agreement provides the District with broad oversight authority over the Charter School pursuant to NRS 386.515 and allows the District to take all reasonable steps necessary to confirm that the Charter School is and remains in material compliance with the Charter Agreement and applicable law and regulations. The District’s oversight of the Charter School includes:
 - a. Oversight, intervention, termination, renewal, and closure processes and procedures for the Charter School;
 - b. Reviewing the performance and compliance of the Charter School within the terms of the charter agreement and applicable laws and regulations;
 - c. Ensuring the Charter School’s compliance with reporting requirements;
 - d. Monitoring the educational, legal, fiscal and organizational condition of the Charter School; and
 - e. Providing guidance to the Charter School on compliance and other operational matters.

12. The Charter School pays a yearly sponsorship fee to the District in an amount of 1.5% of the total amount of money apportioned to the Charter School during the school year.
13. The Charter School must maintain all appropriate insurance coverage, including liability insurance and employment-related insurance, and provide proof of insurance to the District.
14. The Charter School is responsible for all costs associated with its school operations, including the cost of contracting for goods and services.
15. The WCSD Board receives an annual monitoring report for each District-sponsored charter school, including the Charter School.
16. The Charter School is governed by the Charter School Governing Body (“Governing Body”). The Governing Body consists of seven voting members and has final authority in matters affecting the Charter School, including but not limited to staffing, job titles, employee salary and benefits, financial accountability and curriculum.
17. According to the Charter School’s Bylaws, the Governing Body is authorized to:
 - a. Make and change policies, rules and regulations not inconsistent with law, or with the Bylaws, for the management and control of the School and its affairs, and of its employees, and agents;
 - b. To lease, purchase, or otherwise acquire, in any lawful manner, for and in the name of the School, any and all real and personal property, rights, or privileges deemed necessary or convenient for the conduct of the School’s purpose and mission;
 - c. Establish and approve all major educational and operational policies;
 - d. Hire, supervise and direct an employee to function as the administrator of the School who will be responsible for the day-to-day operations of the School;
 - e. Develop and approve the annual budget and financial plan which shall be monitored and adjusted as necessary throughout the year; and
 - f. Submit a final budget to the State pursuant to statute and regulation.
18. Under NRS Chapter 386 and NAC regulations, the Charter School’s Governing Body is required to prepare the school’s tentative annual budget and adopt the school’s final budget. The tentative budget must be submitted to NDE and copies of the final budget must be submitted to NDE, the Legislative Counsel Bureau and the District, as sponsor of the Charter School. These entities are not authorized by law to amend or approve the Charter School’s annual budget.
19. NRS 386.305 prohibits school board trustees from being financially interested in any contract made by the board of which he or she is a member.

20. NRS 386.515 outlines the following duties and powers for the District as the sponsor of the Charter School:

- a. Evaluate applications to form charter schools as prescribed by NRS 386.525;
 - b. Approve applications to form charter schools that are of high quality, meet the identified educational needs of the students, and will serve to promote the diversity of public educational choices in this State;
 - c. Decline to approve applications to form charter schools that do not satisfy requirements of NRS 386.525;
 - d. Negotiate and execute charter contracts pursuant to NRS 386.527;
 - e. Monitor, in accordance with NRS 386,490 to 386,649, inclusive, and in accordance with the terms and conditions of the applicable charter contract, the performance and compliance of each charter school sponsored by the entity; and
 - f. Determine whether the charter contract of a charter school merits renewal or whether the renewal of the charter contract should be denied, or whether the written charter should be revoked or terminated in accordance with NRS 386.530, 386.535 or 386.5351, as applicable.
21. Pursuant to NRS 386.515, the District, as a sponsor of the Charter School, must also develop policies and practices that are consistent with State laws and regulations governing charter schools, which include methods of the District's oversight and evaluation and other duties required of it as a sponsor.
22. The District has established Policy 6700, which confirms that it will monitor the performance of District-sponsored charter schools, negotiate and execute charter agreements between the District and its sponsored charter schools, build a culture of collaboration, offer technical assistance, and provide a District Administrator whose duties include coordinating annual reporting of District-sponsored charter schools as well as the applicable renewal process. Additional obligations of the District are included in individual charter contracts. Policy 6700 requires District-sponsored charter schools to maintain a minimum two-star classification on the Nevada State Performance Framework annually, a stable and sustainable financial condition, sound governance and comply with all applicable requirements of NDE, NRS and NAC in reporting and administration.
23. During the 2015 Legislative Session, Senate Bill 509 amended NRS Chapter 386 to expand and increase the authority of the WCSD Board and other sponsors over sponsored charter schools, including holding public hearings concerning requests to amend written charters or charter contracts to: (1) expand grade levels served by the charter school; (2) significantly increase or decrease enrollment; (3) acquire additional facilities to expand the enrollment of the charter school; or (4) consolidate the operations of multiple charter schools. The law further expands certain powers of a sponsor over matters associated with charter schools with revoked or terminated written charters.
24. Under certain conditions, NRS 386.595 requires reassignment of licensed employees of a charter school to employment within the school district in accordance

with the applicable collective bargaining agreement if a charter school ceases to operate. However, a school district is not required to reassign a licensed employee of a charter school if the employee was not granted a leave of absence by the school district to accept employment at the charter school. Reese currently does not have reassignment rights to a teaching position at another school within the District.

25. Pursuant to NRS 386.595, an employee of a charter school is deemed a public employee and is eligible for the same benefits as an employee of a public school, including, without limitation, participation in the Public Employees' Retirement System "PERS").
26. The Charter School employs its teachers pursuant to a written contract. Reese's Contract for Licensed Teacher ("Employment Contract") provides salary and benefits, including the right to participate in PERS. The Employment Contract was signed by the Governing Body's Chair and the Charter School's Principal on August 31, 2015.
27. Reese's Employment Contract states that her salary is based on the District's salary schedule. The Charter School sets its own salary schedule; however, it utilizes the District's salary schedule in its employment contracts in order to attract and compete for employees and teachers.
28. In regard to the connectivity between the authority of the WCSD Board and its ability to increase teachers' salaries and the resultant effect on her salary, Reese does not perceive a conflict; however, she recognizes that there is the potential as a Trustee to affect her salary as a teacher because collective bargaining sets a prevailing wage that applies to those similarly-situated, regardless whether the teacher is involved in the bargaining efforts.
29. Employees at the Charter School are not currently subject to a collective bargaining agreement.
30. Reese desires to continue her employment as a teacher at the Charter School if she is elected to the WCSD Board.

IV. ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

The Ethics Law promotes the appropriate separation between public duties and private interests. Reese is currently a public employee and will become a public officer if she is elected during the upcoming election for WCSD Board Trustee. As such, Reese will have dual public responsibilities that she must separate from her private interests in her employment in order to preserve the public trust.

The District, as the sponsor of the Charter School, has broad oversight authority over the Charter School even though it may not interfere with the school's day-to-day operations and management. In particular, the WCSD Board has the authority to grant, renew, revoke and terminate the Charter Agreement. Reese questions whether the Ethics Law would preclude her from remaining employed as a teacher with the Charter School if she is elected to serve as a trustee for the WCSD Board. Specifically, Reese is concerned about the ethical implications of serving as a member of the governing body of the school district that has authorized and sponsored the charter school that employs her.

As an employee of the Charter School, Reese must commit herself to avoid conflicts between her private interests and those of the general public whom she serves. The Commission has issued opinions on simultaneous service as a public employee while serving as a member of the public entity's governing body and whether such dual public service or employment demonstrates a conflict of interest and appearance of impropriety when it implicates serving two masters under the auspices of being the "boss of yourself" or the "boss of your boss." In reviewing the question presented, the Commission considers whether its prior opinions in this area apply to Reese's circumstances.

B. RELEVANT STATUTES

1. Public Trust

NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a public trust and shall be held for the sole benefit of the people.
 - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. Improper Acceptance of Employment, Engagement or Economic Opportunity

NRS 281A.400(1) provides:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

3. Improper Use of Government Position

NRS 281A.400(2) provides:

A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person.

4. Improper Influence of a Subordinate

NRS 281A.400(9) provides:

A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

5. Prohibited Contracts

NRS 281A.400(3) and (10) provide:

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

...

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

NRS 281A.430(1) provides:

Except as otherwise provided in this section and NRS 218A.970 and 332.800, a public officer or employee shall not bid on or enter into a contract between an agency and any business entity in which the public officer or employee has a significant pecuniary interest.

6. Disclosure and Abstention

NRS 281A.420(1) and (3) provide:

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

....(b) In which the public officer or employee has a significant pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person,

→without disclosing information concerning the gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of the person that is sufficient to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's significant pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

...

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or

advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's significant pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of another person.

V. DECISION

A. PRIOR COMMISSION OPINIONS

The Commission considers whether conflicts would exist between Reese's public duties as a WCSD Board Trustee and her private interests in her employment with the Charter School in light of the provisions set forth in the Ethics Law, as interpreted by applicable Commission precedent in similar circumstances. Several Commission opinions address school district employees seeking election to the governing body of that school district. These opinions prohibit the dual public service contemplated by Reese.⁴ However, these opinions did not review employment by a district-sponsored public charter school, and the Commission has declined to adopt a bright line rule that prohibits public employees from serving on public bodies that oversee some aspect of the public entity that employs the employee. See *In re Ancho*, Comm'n Opinion No. 06-26 (2006) ("*Ancho*"); see also *In re Bell*, Comm'n Opinion No. 10-10A (2010). Rather, each situation is evaluated on a case-by-case basis to determine whether serving in such a dual capacity is permissible. *In re Public Employee*, Comm'n Opinion No. 10-54A (2010).

The Commission weighs many factors when determining whether a dual public employment situation creates a conflict of interest. In *Ancho*, which involved a county employee who sought an advisory opinion regarding whether she could serve as a member of the Board of County Commissioners, the Commission considered the following factors: the population served by the public officer and the number of qualified candidates for the Board;⁵ the amount of oversight the Board had over the public employee's employment or superiors; the ability of a Board member to exert undue influence over the public employee's superiors; and whether, as a Board member, the public employee would be required to disclose and abstain regularly on matters before the public body as a result of conflicts of interest created by her employment. See also *In re Bell*, Comm'n Opinion No. 10-10A (2010).

B. HOLDING DUAL POSITIONS CREATES AN IMPERMISSIBLE CONFLICT

Reviewing the specific facts of Reese's situation, the Commission reaches the same conclusion it has in its earlier opinions involving public school teachers who seek election to a school board in the district in which they are employed. These prior opinions recognize that serving a single public body in a dual capacity is fraught with ethical dilemmas. If Reese is elected to the WCSD Board, she will be in a position with authority

⁴ See, e.g., *In re Public Employee*, Comm'n Opinion No. 98-71 (2000)(substitute teacher running for School Board); *In re Klosowski-King*, Comm'n Opinion No. 06-05 (2006)(adult education coordinator seeking seat on School Board) and *In re Public Employee*, Comm'n Opinion No. 10-73A (2012)(teacher running for school board).

⁵ The Washoe County School District is one of Nevada's largest school districts, and it does not appear in the record that the District has an inability to attract candidates for office. Nonetheless, this fact was not determinative in the Commission's Opinion as Reese has the right to run for public office and the voters make the selection for the office.

over her employer, which has potential to affect the employment and private pecuniary interests of her superiors, herself and her co-workers. Further, Reese's service in dual roles would give rise to substantive and regular conflicts of interest that cannot be alleviated through the disclosure and abstention process of NRS 281A.420, some of which are highlighted below.

The WCSD Board is restricted from interfering with the day-to-day operations and management of the Charter School. Nonetheless, the WCSD Board holds ultimate control over, or is the "boss of," the Charter School because the Board's powers are broad with respect to its authority over the Charter School's status and many of the affairs of all District-sponsored charter schools. Of significant concern is the WCSD Board's authority, established in NRS Chapter 386, to review and approve or terminate applications for renewal for all district-sponsored charter schools, including the Charter School where Reese is employed. The WCSD Board has explicit oversight authority over the Charter School pursuant to NRS 386.515 and may take all reasonable steps necessary to confirm that the Charter School remains compliant with its Charter Application. In furtherance of its authority, the District may conduct site visits to the Charter School to fulfill its oversight responsibilities including, but not limited to, inspection of the facilities; inspection of records maintained by the school; and interviews of school employees and other stakeholders.

If elected as a Board Trustee, possessing the power to review, approve, revoke or terminate the status of a District-sponsored charter school and related monitoring of compliance of the Charter School would place Reese in the position of having ultimate or final control over the existence of her employer. This power is amplified in Reese's situation because her employer, the Charter School, is already subject to a one-year probationary period for its charter renewal due to financial and other concerns expressed by the WCSD Board at its June 2015 meeting.

The authority of the WCSD Board with respect to its sponsored charter schools was recently expanded. During the 2015 Legislative Session, Senate Bill 509 amended NRS Chapter 386 to increase the authority of the WCSD Board and other sponsors over charter schools, including holding public hearings concerning requests to amend written charters or charter contracts to: (1) expand grade levels served by the charter school; (2) significantly increase or decrease enrollment; (3) acquire additional facilities to expand the enrollment of the charter school; or (4) consolidate the operations of multiple charter schools. The law further expands certain powers of the sponsor over matters associated with charter schools whose written charter has been revoked or terminated. This expansion or increase of authority generates oversight by the WCSD Board with respect to enrollment, grade levels, facilities and other affected operations of its district-sponsored charter schools.

Also, a district-sponsored charter school must obtain written approval from the school district before it enters into any facility lease, purchase agreement, or loan agreement, relocates to different facilities or signs a contract with an Educational Management Organization to operate the charter school. In addition to approval of the WCSD Board on these agreements, the Charter School is in contract with the District under its Charter Agreement and is obligated to pay a yearly sponsorship fee to WCSD in an amount of 1.5% of the total amount of money apportioned by NDE to the Charter School during the school year. The existence of the Charter School is currently dependent upon the WCSD Board's sponsorship and the school's compliance with the Charter Agreement.

Further, a connection exists between the salaries and benefits provided to WCSD teachers at non-charter schools and those provided to teachers at the Charter School, including Reese. The WCSD Board reviews and approves the District's salary structure and benefits packages, which are utilized by the Charter School to determine the compensation package Reese receives as an employee of the Charter School. The connection is evident from the record before the Commission. Although the Charter School is free to offer a compensation package different from that available to teachers at non-charter schools, the Charter School has determined to provide a package that is comparable to non-charter public schools, likely so it is able to compete and attract and retain teachers during a time when a shortage of public school teachers exists in the State. Thus, the decisions of the WCSD Board regarding salary and benefits for teachers has potential to directly affect or, at a minimum, influence the salaries and benefits provided by its District-sponsored charter schools.

In addition to the WCSD Board's specific oversight authority over the Charter School, as defined by law and the Charter Agreement, the Board maintains general policy formulation and decision-making authority over all District-sponsored charter schools. Thus, it is likely that a number of issues and decisions related to charter school operations, in general, will come before the Board and directly implicate the Charter School employing Reese, repeatedly placing her in a position of control over her superiors and her private employment situation and implicating the Ethics Law.

C. NUMEROUS INHERENT ETHICAL CONFLICTS EXIST

This advisory opinion discusses only the most obvious conflicts that would arise if Reese is elected as a Board Trustee and remains employed at the Charter School. However, they serve to highlight the ethical dilemmas that exist when one holds dual positions resulting in a "boss of your boss" or "boss of yourself" situation. As the Commission has opined, inherent conflicts requiring frequent disclosure and abstention would impede a reasonable person in a similar situation in discharging his or her public duties faithfully and impartially while serving two masters. *See In re Public Employee*, Comm'n Opinion No. 10-73A (2010). The Commission reviews such circumstances based upon evident and potential conflicts, including appearances of impropriety, the existence of which does not necessarily reflect actual bias, especially under circumstances where a public employee requests preemptive advice from the Commission, as Reese has done. The Commission appreciates Reese's forethought and action in seeking this Opinion under the Ethics Law and emphasizes that this decision does not reflect on personal integrity.

In conducting its review, the Commission considered the entire record and connectivity between the two positions and determines that, if elected as a WCSD Board Trustee, Reese would be placed in a situation that would require her to disclose and abstain regularly on matters coming before the WCSD Board. The Commission in no way implies that Reese would violate the Ethics Law by using the position of Board Trustee to advance her own pecuniary interests; nonetheless, Reese or any other person in this situation would have the means and opportunity to effect undue or unwarranted influence over the Charter School and its management or supervisors in order to benefit herself financially.

These conflicts implicate, without limitation, the following provisions of the Ethics Law: (1) NRS 281A.020(1)(public trust held for sole benefit of the people and duty to avoid conflicts); (2) NRS 281A.400(1)(seeking or accepting employment, engagement, or economic opportunity which would tend improperly to influence a reasonable person to depart from the faithful performance of public duties); (3) NRS 281A.400(2)(use of public

position to secure or grant unwarranted privileges, preferences, exemptions or advantages); and (4) NRS 281A.400(9)(attempt to influence a subordinate in order to advance own pecuniary interests). *Id.* Moreover, as a WCSD Board Trustee, Reese would be prohibited from participating in the negotiation or execution of many or all contracts between the District and the Charter School, a business entity in which she has a significant pecuniary interest as an employee. NRS 281A.400(3) and (10); NRS 281A.430(1).⁶

If Reese were to serve simultaneously as WCSD Board Trustee and remain employed as a teacher at the Charter School, she would be placing herself in a situation where she serves two masters, one of which has ultimate control over the other, which creates exposure to regular private conflicts. The Commission is less concerned with the number of potential conflicts that may be cured by disclosure and abstention⁷ and more concerned with the substantive nature of the conflicts and core issues before the WCSD Board that would affect Reese's employment and, more broadly, affect the Charter School and/or other District-sponsored charter schools in general that compete for sponsorship and resources. For purposes of the conflict and associated analysis, the Commission did not find enough distinction between a teacher serving the students of WCSD in a non-charter school versus a charter school sponsored by the District. Both raise significant conflicts and implications under the Ethics Law.

Accordingly, the Commission advises Reese that she is permitted under the ethics Law to campaign for election to the WCSD Board of Trustees while she is employed as a teacher at the Charter School. However, if elected, the Commission must regretfully advise that Reese must decide whether to maintain her employment as a teacher with the Charter School or resign such employment to accept the elected seat on the WCSD Board.

VI. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Reese was a public employee as defined by NRS 281A.150 and NRS 386.595(1) ("All employees of a charter school shall be deemed public employees").
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. The Ethics Law does not preclude Reese, as an employee of a public charter school sponsored by the Washoe County School District, from seeking election to the Washoe County School District Board of Trustees.

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⁶ See also NRS 386.305, which prohibits school board trustees from being financially interested in any contract made by the board of which he or she is a member.

⁷ In conducting its review, the Commission was mindful of the Legislature's guidance that the frequency with which Reese would be required to disclose a conflict and abstain "disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs." See NRS 281A.420(4)(b) and *In re Bell*, Comm'n Opinion No. 10-10A (2010).

4. Application of the Ethics Law and its individual statutes under the circumstances presented prohibits Reese from simultaneously serving as a member of the Washoe County School District Board of Trustees and maintaining her employment as a teacher at the Charter School. Therefore, if elected to the Washoe County School District Board of Trustees, Reese must decide if she will resign from her teaching position prior to taking office.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

The Following Commissioners Participated in this Opinion:

Dated this 18th day of May, 2016.

NEVADA COMMISSION ON ETHICS

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice Chair

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner