INDEX OF EXHIBITS

Exhibit	Description
A	Letter from Brenda J. Erdoes, Legislative Counsel, to Assemblyman Jim Wheeler (Jan. 7, 2014).
B	Excerpts from Certified Record of Proceedings: In the Matter of Assemblyman Ira Hansen, Request for Opinion Number 14-21C and In the Matter of Assemblyman Jim Wheeler, Request for Opinion Number 14-22C.
C	Stipulation and Order.
D	Notice of Entry of Order Denying Motion to Dismiss and Granting Petition for Judicial Review.
E	Complaint to Have Declared Void Action Taken By Commission on Ethics in Violation of Open Meeting Law.
F	Plaintiffs' Proof of Service of Summons and Complaint.

Respondents' Motion to Dismiss Appeal, Etc.

Exhibit A

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

RICK COMBS, *Director*
(775) 684-6800

LEGISLATIVE COMMISSION (775) 684-6800
STEVEN A. HORSFORD, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
DEBBIE SMITH, *Assemblywoman, Chair*
Mike Chapman, *Acting Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

January 7, 2014

Assemblyman Jim Wheeler
Post Office Box 2135
Minden, NV 89423

Dear Assemblyman Wheeler:

You have asked whether the prohibition against placing or setting a steel trap within 200 feet of a public road or highway applies to box traps and snare traps. Title 45 of NRS includes the various state laws concerning wildlife. Chapter 503 of NRS, which is included within that title, establishes the state laws relating to hunting, fishing, trapping and various other protective measures. The term "trap" is defined in NRS 501.089 for purposes of Title 45 to mean "a device that is designed, built or made to close upon or hold fast any portion of an animal." NRS 503.580 addresses placing or setting traps within a certain distance of a public road or highway. Specifically, NRS 503.580 provides:

> 1. For the purposes of this section, "public road or highway" means:
> (a) A highway designated as a United States highway.
> (b) A highway designated as a state highway pursuant to the provisions of NRS 408.285.
> (c) A main or general county road as defined by NRS 403.170.
> 2. It is unlawful for any person, company or corporation to place or set any steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap, within 200 feet of any public road or highway within this State.
> 3. This section does not prevent the placing or setting of any steel trap inside, along or near a fence which may be situated less than 200 feet from any public road or highway upon privately owned lands.

NRS 503.585 makes violation of NRS 503.580 a misdemeanor.

In interpreting the provisions of NRS 503.580, we are guided by several well-established rules of statutory construction. First, as a general rule of statutory construction, a court presumes that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995). "Under long established principles of statutory construction, when a statute is susceptible to but one natural or honest construction, that alone is the construction that can be given." Randono v. CUNA Mut. Ins. Group, 106 Nev. 371, 374 (1990), citing State v. California Mining Co., 13 Nev. 203, 217 (1878). Moreover, "[w]hen the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." Imperial Palace, Inc. v. State ex rel. Dep't of Taxation, 108 Nev. 1060, 1067 (1992), citing City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891 (1989). Subsection 2 of NRS 503.580 clearly indicates that the prohibition applies to any "steel trap . . . larger than a No. 1 Newhouse trap." Therefore, applying the plain meaning rule to NRS 503.580, the prohibition clearly must be read to apply only to placing or setting a steel trap that is larger than a No. 1 Newhouse trap within 200 feet from any public road or highway and only if the trap is used for the purpose of trapping mammals.

Along with an analysis based on the plain meaning rule, we generally look at legislative intent because the Nevada Supreme Court has held that when the plain meaning of the statutory language is supported by the legislative history of the statute, a court will be reluctant to interpret the statutory language in a manner that is contrary to its plain meaning and the legislative history of the statute. *See, e.g.*, Gaines v. State, 116 Nev. 359, 366-67 (2000). However, in this case such an analysis was not possible. The provisions of NRS 503.580 were originally enacted in Assembly Bill No. 19 (1931). Chapter 155, Statutes of Nevada 1931, p. 249. The relevant provisions of Assembly Bill No. 19 (1931) read as follows:

> [I]t shall be unlawful for any person or persons, company or corporation to place or set any steel trap, used for the purpose of trapping animals, larger than a No. 1 Newhouse trap within two hundred feet of any public road or highway within this state; *provided,* that for the purposes of this act a public road or highway shall mean only such roads or highways as have been designated as such by law or by the county commissioners of the county in which they are situated; *and provided further,* that this act shall not be construed so as to prevent the placing or setting any steel trap inside, along or near a fence which may be situated less than 200 feet from any public road or highway upon privately owned lands.

Although amended several times since their original enactment, the provisions of NRS 503.580 have remained substantively unchanged. The only change to the phrase "to place or set any steel trap, used for the purpose of trapping animals, larger than a No. 1 Newhouse trap" through the years was to swap the term "mammal" for the term "animal." After reviewing all available legislative histories concerning the provisions of Assembly Bill No. 19, we were unable to find a record of any discussions that occurred concerning the scope or applicability of those provisions.

In addition to the plain meaning rule, there is another well-established principle of statutory construction that should be considered in the interpretation of NRS 503.580. The Nevada Supreme Court has long held that the Legislature is not presumed to intend that which the Legislature could have easily included within a statute, but chose not to include within the statute. *See, e.g.*, Palmer v. Del Webb's High Sierra, 108 Nev. 673, 680 (1992) (Young, J., concurring) (explaining that the Legislature could have easily provided a definition of occupational disease had it chosen to do so); Joseph F. Sanson Inv. Co. v. 268 Ltd., 106 Nev. 429, 432-33 (1990) (quoting In re 268 Ltd., 75 B.R. 37 (Bankr. D. Nev. 1987)) (explaining that the Legislature could have easily worded a statute so as to make attorney's fees in addition to, instead of included within, the expenses of a trust); State v. University Club, 35 Nev. 475, 484-5 (1913) ("As the question is one entirely subject to legislative control, the legislature can, if it so desires, amend the law so as to require licenses from social clubs the same as it now requires the same from persons engaged in the business of selling liquors."); State ex rel. Norcross v. Eggers, 35 Nev. 250, 258 (1912) ("If the legislature had intended that the $25,000 appropriated by section 7 should include salaries, instead of using language negativing such intent, it would have used language manifesting such intent, as it did in the case of the act in relation to banks and banking and creating the office of state bank examiner and fixing his salary, which act was passed at the same session of the legislature.") Had the Legislature intended to restrict the placing or setting of any trap within 200 feet of a public road or highway, the Legislature could have easily done so. For example, various other provisions of chapter 503 of NRS refer to a "trap" or "traps" without specifying the type or size of the trap. *See* NRS 503.450, 503.452 and 503.454. In these sections, it is clear that the traps to which the section refers are all traps rather than only those steel traps that are larger than a No. 1 Newhouse trap as is provided in NRS 503.580.

The courts in this State have also long held that, where possible, a statute should be read so as to give meaning to all of its parts. Nevada Tax Comm'n v. Bernhard, 100 Nev. 348, 351, 683 P.2d 21 (1984); Nevada State Personnel Div. v. Haskins, 90 Nev. 425, 427, 529 P.2d 795 (1974). The term "trap" is defined for the purpose of NRS 503.580 to mean "a device that is designed, built or made to close upon or hold fast any portion of an animal." NRS 501.189. This definition is very broad and could include any snare or other device that closes upon or holds fast any portion of an animal. Despite this broad definition, however, the provisions of subsection 2 of NRS 503.580 are expressly limited to the placing or setting of a "steel trap" which is "larger than a No. 1 Newhouse trap." To read the provisions of subsection 2 of NRS 503.580 in a manner which gives meaning to all of its parts, those provisions must be read to allow the placing or setting of all traps other than steel traps larger that a No. 1 Newhouse trap within 200 feet of any highway or public road.

In determining the meaning of "steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap" as that phrase is used in subsection 2 of NRS 530.580, it is important to consider an additional rule of statutory construction. When the provisions of a statute are interpreted, the Nevada Supreme Court has consistently held that the interpretation of the statute should be consistent with what reason and public policy would indicate the Legislature intended in enacting those provisions, and that the interpretation should avoid absurd results. Theis v. State, 117 Nev. 744, 751, 30 P.3d 1140 (2001); English v. State, 116 Nev. 828, 832, 9 P.3d 60 (2000). Based on these authorities, the provisions of subsection 2 of NRS 503.580 must be interpreted in a manner which is consistent with what reason and public policy would indicate the Legislature intended in enacting those provisions and which avoids an absurd result. It is important to note that the prohibition set forth in NRS 503.580 applies only to a "steel trap" that is "larger than a No. 1 Newhouse trap." Thus, it is clear that the prohibition set forth in NRS 503.580 does not apply to traps made of any material other than steel. Additionally, for the prohibition to apply, the trap must be larger than a No. 1 Newhouse trap. To avoid an absurd result as is required by the case law, the types of traps to which the prohibition applies must necessarily be directly comparable in size to a No. 1 Newhouse trap. The term "No. 1 Newhouse trap" is not defined for the purposes of NRS but the Nevada Attorney General has opined that a No. 1 Newhouse trap is a "jaw-foot trap used for trapping muskrats and mink." Attorney General Opinion No. 1971-57. Therefore, it is clear that the only type of trap to which the prohibition set forth in NRS 503.580 applies is a "jaw-foot" type of trap. Because a snare trap and a box trap are not "jaw-foot" types of traps, it is equally clear that these traps are not subject to reasonable comparison for the purpose of establishing a violation of subsection 2 of NRS 503.580. Accordingly, interpreting the prohibition set forth in subsection 2 of NRS 503.580 to apply to any type of trap used to trap mammals other than a jaw-foot trap would be inconsistent with what reason and public policy would indicate the Legislature intended in enacting those provisions and would lead to an absurd result.

This interpretation is consistent with another very important line of cases. It has long been held that a criminal statute is one which imposes a penalty for transgressing the provisions of the statute. Ex Parte Davis, 33 Nev. 309, 315, 110 P. 1131 (1910); State v. Wheeler, 23 Nev. 143, 152, 44 P. 430 (1896). As such, a criminal statute must be strictly construed in a defendant's favor and may not be enlarged by implication or intendment beyond the fair meaning of the language used. Anderson v. State, 95 Nev. 625, 629-30, 600 P.2d 241 (1979); Ex Parte Sweeney, 18 Nev. 74, 75, 1 P. 379 (1883). As noted above, the provisions of subsection 2 of NRS 503.580 make it unlawful for any person to place or set any steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap, within 200 feet of a public road or highway within this State. Pursuant to NRS 501.385, any person who performs an act or attempts to perform an act made unlawful or prohibited by a provision of title 45 of NRS is guilty of a misdemeanor. Based upon the holdings in Anderson and Ex Parte Sweeney, any question or ambiguity concerning the applicability of the provisions of subsection 2 of NRS 503.580 must be resolved in a defendant's favor and the application of those provisions must not be given an enlarged or implied meaning beyond the fair meaning of the language used in those provisions.

As a final note, the Nevada Supreme has held that an administrative agency which is charged with the duty of administering a legislative act is impliedly clothed with the authority to construe any relevant laws and to set any necessary precedent for administrative action. Any construction placed on a statute by that agency is entitled to deference. State Industrial Ins. Sys. v. Snyder, 109 Nev. 1223, 1228, 865 P.2d 1168 (1993) (citing Truckee Meadows v. Int'l Firefighters, 109 Nev. 367, 849 P.2d 259 (1993) and Jones v. Rosner, 102 Nev. 115, 719 P.2d 805 (1986)). Pursuant to NRS 501.105, the Board of Wildlife Commissioners is required to establish policies and adopt regulations necessary to preserve, protect, manage and restore wildlife and its habitat. Pursuant to NRS 501.331, the Department of Wildlife is required to administer the wildlife laws of this State. As such, any interpretation of the provisions of subsection 2 of NRS 503.580 by the Commission or the Department in carrying out their duties is entitled to deference. However, based upon research and information provided to our office by the Department, the Commission and the Department have not issued a written policy interpreting those provisions. Rather, the Department, in enforcing those provisions, has relied upon those provisions as written without resorting to any construction or interpretation prepared by the Commission or Department.

Based on the foregoing principles of statutory construction, it is the opinion of this office that the prohibition contained in subsection 2 of NRS 503.580 against placing or setting a steel trap within 200 feet of a public road or highway does not apply to box traps or snare traps.

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

J. Randall Stephenson
Principal Deputy Legislative Counsel

Respondents' Motion to Dismiss Appeal, Etc.

Exhibit B

Tracy L. Chase, Esq.
Nevada Bar No. 2752
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469
Attorney for Respondent

REC'D & FILED
2015 MAY 14 PM 3:27
SUSAN MERRIWETHER
CLERK
BY V. Alegria
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

IRA HANSEN, in his official capacity as Nevada State Assemblyman for Assembly District No. 32; And JIM WHEELER, in his official capacity as Nevada State Assemblyman for Assembly District No. 39,

Petitioners,

vs.

THE COMMISSION ON ETHICS OF THE STATE OF NEVADA,

Respondent.

Case No. 15OC000761B

Dept. No. II

Certified Record of Proceedings

In the Matter of Assemblyman Ira Hansen, Request for Opinion Number 14-21C

and

In the Matter of Assemblyman Jim Wheeler, Request for Opinion Number 14-22C

INDEX OF CERTIFIED RECORD
Ira Hansen and Jim Wheeler v. Nevada Commission on Ethics
Case No. 15OC000761B

CERTIFIED RECORD
Ira Hansen and Jim Wheeler v. Nevada Commission on Ethics
Case No. 15OC000761B

On this 14th day of May, 2015, I, Darci L. Hayden, Senior Legal Researcher for the Commission on Ethics of the State of Nevada, certify pursuant to NRS 52.265 that the Bates-numbered documents, NCOE 00001-00144, are true, exact, complete and unaltered photocopies of the record of proceedings and the transcript of evidence which resulted in the final decision of the agency in Third-Party Requests for Opinion Nos. 14-21C and 14-22C.

Darci L. Hayden

RECEIVED
MAR 05 2014
COMMISSION ON ETHICS

14-21C

NEVADA COMMISSION ON ETHICS
THIRD-PARTY REQUEST FOR OPINION

NRS 281A.440(2)

1. Provide the following information for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS Chapter 281A. ***(If you allege that more than one public officer or employee has violated the law, use a separate form for each individual.)***

NAME: *(Last, First)*	Ira Hansen		**TITLE OF PUBLIC OFFICE:** *(Position: e.g. city manager)*	State Assemblyman
PUBLIC ENTITY: *(Name of the entity employing this position: e.g. the City of XYZ)*	Nevada Legislature			
ADDRESS: *(Street number and name)*	68 Amigo Court		**CITY, STATE, ZIP CODE**	Sparks,NV 89441-6213
TELEPHONE:	Work: 775-684-8851	Other: *(Home, cell)* 775-221-2502	**E-MAIL:**	Ira.Hansen@asm.state.nv.us

2. Describe in specific detail the public officer's or employee's conduct that you allege violated NRS Chapter 281A. ***(You must include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)***

Check here ☒ xx if additional pages are attached.

See attachment.

3. Is the alleged conduct the subject of any action currently pending before another administrative or judicial body? If yes, describe:

No

4. What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Essence of Statute
☒ xx xx	NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
☒ xx xx	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
☒ xx xx	NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
☐	NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and any business entity in which he has a significant pecuniary interest.

☐	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
☒	NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
☐	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
☒	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
☒	NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
☒	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
☐	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
☐	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
☒	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
☐	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
☐	NRS 281A.430/530	Engaging in government contracts in which public officer or employee has a significant pecuniary interest.
☐	NRS 281A.500	Failing to timely file an ethical acknowledgment.
☐	NRS 281A.510	Accepting or receiving an improper honorarium.
☐	NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.
☐	NRS 281A.550	Failing to honor the applicable "cooling off" period after leaving public service.

5. Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Check here ☐ if additional pages are attached.

NAME and TITLE: (Person #1)	Ira Hansen, Nevada Assemblyman			
ADDRESS:	68 Amigo Court		**CITY, STATE, ZIP**	Sparks, NV 89441-6213
TELEPHONE:	Work: 775-684-8851	Other: *(Home, cell)* 775-221-2502	**E-MAIL:**	Ira.Hansen@asm.state.nv.us
NATURE OF TESTIMONY:	Party to the events			
NAME and TITLE: (Person #2)	Jim Wheeler, Nevada Assemblyman			
ADDRESS:	P.O. Box 2135		**CITY, STATE, ZIP**	Minden, NV 89423-2135
TELEPHONE:	Work: 775-684-8843	Other: *(Home, cell)* 775-546-3471	**E-MAIL:**	Jim.Wheeler@asm.state.nv.us
NATURE OF TESTIMONY:	Party to the events			

6. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS PURSUANT TO NRS 281A.440(2)(b)(2).
Attach all documents or items you believe provide credible evidence to support your allegations. NAC 281A.435(3) defines credible evidence as any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made. A newspaper article or other media report will not support your allegations if it is offered by itself.

State the total number of additional pages attached (including evidence) 10.

7. REQUESTER'S INFORMATION:

YOUR NAME:	Fred Voltz			
YOUR ADDRESS:	1805 N. Carson St., #231		**CITY, STATE, ZIP:**	Carson City, NV 89701-1216
YOUR TELEPHONE:	**Day:** 775-297-3651	**Evening:** --	**E-MAIL:**	zebedee_177@yahoo.com

By my signature below, I affirm that the facts set forth in this document and all of its attachments are true and correct to the best of my knowledge and belief. I am willing to provide sworn testimony if necessary regarding these allegations.

I acknowledge that, pursuant to NRS 281A.440(8) and NAC 281A.255(3), this Request for Opinion, the materials submitted in support of the allegations, and the Commission's Investigation are confidential until the Commission's Investigatory Panel renders its determination, unless the Subject of the allegations authorizes their release.

Fred Voltz
Signature:

3/5/2014
Date:

Fred Voltz
Print Name:

You must submit an original and two copies of this form bearing your signature, and three copies of the attachments to:

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Clear All Fields

PRINT FORM

Forms submitted by facsimile will not be considered as properly filed with the Commission.
NAC 281A.255(3)

TELEPHONE REQUESTS FOR OPINION ARE NOT ACCEPTED.

Supplement to Third-Party Request for Opinion—Nevada Commission on Ethics—

Ira Hansen and Jim Wheeler

2. Background

In November 2013, Nevada State Assemblyman Ira Hansen was cited by the Nevada Department of Wildlife on four counts of illegally setting animal traps near Buffalo Canyon Road in Churchill County, Nevada. The trial date concerning these four charges has been tentatively set for May 27, 2014, 1:30 p.m., in Churchill County/New River Justice Court.

Sometime in November or December 2013 after the citations were issued, Assemblyman Hansen collaborated with Nevada State Assemblyman Jim Wheeler. Assemblyman Wheeler subsequently requested a legal opinion from the Nevada Legislative Counsel Bureau (LCB) about NRS 503.585, which concerns the placement of steel traps within 200 feet of a public road or highway. Assemblyman Wheeler asked for an LCB interpretation as to whether this statute applied to box traps and snare traps. This was the precise issue Assemblyman Hansen needed a legal interpretation of in preparing his legal defense against the four charges of illegal animal trap setting.

Attached to this Third-Party Request for Opinion is a copy of the January 7, 2014 legal opinion letter to Assemblyman Wheeler co-authored by LCB's Brenda J. Erdoes, Legislative Counsel and J. Randall Stephenson, Principal Deputy Legislative Counsel, further documenting the chronology of events.

If any non-legislator Nevadan allegedly violated a state statute in his or her private life, he/she would not have access to the LCB's attorneys and staff to build a defense or interpret statutes. Non-legislator defendants would have to hire private legal counsel to perform any necessary legal work. If they were indigent, which Assemblyman Hansen is not, the court would have appointed a public defender.

Assemblyman Hansen publicly stated (January 29, 2014 *Reno Gazette Journal* article attached) he will use this publicly-funded opinion Assemblyman Hansen asked Assemblyman Wheeler to request of LCB in preparing a defense case against alleged statutory violations Assemblyman Hansen committed as a private citizen, not as an elected official.

Seven Unanswered Ethical Questions

Why didn't Assemblyman Hansen directly request this LCB opinion for his upcoming trial if he had no concerns with the possible appearance or fact of impropriety?

2. (continued)

Is it ethical for a Nevada elected official to directly request, or indirectly request through another elected official, the use of taxpayer-funded resources (the LCB) for personal benefit in his/her private life?

Why was Assemblyman Wheeler complicit with Assemblyman Hansen in violating NRS 281A.020(1), 281A.400(1), 281A.400(2), 281A.400(5), 281A.400(7), 281A.400 (8)(a) and (8)(b), 281A.400(9), and 281A.420(1)?

Why didn't Assemblyman Hansen personally hire private legal counsel to investigate the provisions of NRS 503.580?

Does LCB legal assistance provided to Assemblyman Hansen for his alleged private life statutory violations give his defense an inappropriate advantage when the case goes to trial vs. the public's case against Assemblyman Hansen presented by the Churchill County District Attorney?

How can the LCB be shielded from behind-the-scenes pressure to help individual legislators or other state employees with personal legal problems?

Shouldn't Assemblymen Hansen and Wheeler have filed a First-Party Request for Opinion with the Nevada Commission on Ethics before asking an entity employed by the Legislature (the LCB) to perform legal research of a private nature?

Potential Remedies

Assemblymen Hansen and Wheeler expressly agreed to uphold the provisions of NRS 281 when they executed the Nevada Commission on Ethics' Nevada Acknowledgment of Ethical Standards for Public Officials upon entering elected office in 2011 and 2013, respectively.

The Nevada Commission on Ethics may or may not have the unilateral authority to impose formal sanctions and/or penalties if it is found either assemblyman violated their oaths of office, partially contained in NRS 281.

One alternative: A Nevada Commission on Ethics' recommendation to another entity (the full Legislature, the Interim Finance Committee of the Legislature, the Assembly Speaker, the Legislative Commission, the Nevada Attorney General, or?) could call for personal reimbursement by Assemblyman Hansen of any LCB staff time spent (including base salary, fringe benefits and administrative overhead) researching and issuing the January 7, 2014 legal opinion to Assemblyman Wheeler on behalf of Assemblyman Hansen for his legal defense as a private citizen.

The suggested legal fee reimbursement would be in addition to any monetary fines that might be levied against either elected official.

5. Additional Persons with Knowledge of Facts and Circumstances

Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau

401 S. Carson Street; Carson City, NV 89701-4747

(775) 684-6600

J. Randall Stephenson, Principal Deputy, Legislative Counsel, Legislative Counsel Bureau

401 S. Carson Street; Carson City, NV 89701-4747

(775) 684-6600

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

January 7, 2014

Assemblyman Jim Wheeler
Post Office Box 2135
Minden, NV 89423

Dear Assemblyman Wheeler:

You have asked whether the prohibition against placing or setting a steel trap within 200 feet of a public road or highway applies to box traps and snare traps. Title 45 of NRS includes the various state laws concerning wildlife. Chapter 503 of NRS, which is included within that title, establishes the state laws relating to hunting, fishing, trapping and various other protective measures. The term "trap" is defined in NRS 501.089 for purposes of Title 45 to mean "a device that is designed, built or made to close upon or hold fast any portion of an animal." NRS 503.580 addresses placing or setting traps within a certain distance of a public road or highway. Specifically, NRS 503.580 provides:

> 1. For the purposes of this section, "public road or highway" means:
>
> (a) A highway designated as a United States highway.
>
> (b) A highway designated as a state highway pursuant to the provisions of NRS 408.285.
>
> (c) A main or general county road as defined by NRS 403.170.
>
> 2. It is unlawful for any person, company or corporation to place or set any steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap, within 200 feet of any public road or highway within this State.
>
> 3. This section does not prevent the placing or setting of any steel trap inside, along or near a fence which may be situated less than 200 feet from any public road or highway upon privately owned lands.

NRS 503.585 makes violation of NRS 503.580 a misdemeanor.

In interpreting the provisions of NRS 503.580, we are guided by several well-established rules of statutory construction. First, as a general rule of statutory construction, a court presumes that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State. 117 Nev. 664. 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995). "Under long established principles of statutory construction, when a statute is susceptible to but one natural or honest construction, that alone is the construction that can be given." Randono v. CUNA Mut. Ins. Group. 106 Nev. 371. 374 (1990). citing State v. California Mining Co., 13 Nev. 203, 217 (1878). Moreover. "[w]hen the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." Imperial Palace, Inc. v. State ex rel. Dep't of Taxation. 108 Nev. 1060, 1067 (1992). citing City Council of Reno v. Reno Newspapers. 105 Nev. 886. 891 (1989). Subsection 2 of NRS 503.580 clearly indicates that the prohibition applies to any "steel trap . . . larger than a No. 1 Newhouse trap." Therefore. applying the plain meaning rule to NRS 503.580. the prohibition clearly must be read to apply only to placing or setting a steel trap that is larger than a No. 1 Newhouse trap within 200 feet from any public road or highway and only if the trap is used for the purpose of trapping mammals.

Along with an analysis based on the plain meaning rule, we generally look at legislative intent because the Nevada Supreme Court has held that when the plain meaning of the statutory language is supported by the legislative history of the statute, a court will be reluctant to interpret the statutory language in a manner that is contrary to its plain meaning and the legislative history of the statute. *See, e.g.*, Gaines v. State. 116 Nev. 359, 366-67 (2000). However. in this case such an analysis was not possible. The provisions of NRS 503.580 were originally enacted in Assembly Bill No. 19 (1931). Chapter 155, Statutes of Nevada 1931. p. 249. The relevant provisions of Assembly Bill No. 19 (1931) read as follows:

> [I]t shall be unlawful for any person or persons. company or corporation to place or set any steel trap. used for the purpose of trapping animals, larger than a No. 1 Newhouse trap within two hundred feet of any public road or highway within this state; *provided*, that for the purposes of this act a public road or highway shall mean only such roads or highways as have been designated as such by law or by the county commissioners of the county in which they are situated: *and provided further*. that this act shall not be construed so as to prevent the placing or setting any steel trap inside, along or near a fence which may be situated less than 200 feet from any public road or highway upon privately owned lands.

Although amended several times since their original enactment. the provisions of NRS 503.580 have remained substantively unchanged. The only change to the phrase "to place or set any steel trap, used for the purpose of trapping animals, larger than a No. 1 Newhouse trap" through the years was to swap the term "mammal" for the term "animal." After reviewing all available legislative histories concerning the provisions of Assembly Bill No. 19, we were unable to find a record of any discussions that occurred concerning the scope or applicability of those provisions.

In addition to the plain meaning rule, there is another well-established principle of statutory construction that should be considered in the interpretation of NRS 503.580. The Nevada Supreme Court has long held that the Legislature is not presumed to intend that which the Legislature could have easily included within a statute, but chose not to include within the statute. *See, e.g.*, Palmer v. Del Webb's High Sierra, 108 Nev. 673, 680 (1992) (Young, J., concurring) (explaining that the Legislature could have easily provided a definition of occupational disease had it chosen to do so); Joseph F. Sanson Inv. Co. v. 268 Ltd., 106 Nev. 429, 432-33 (1990) (quoting In re 268 Ltd., 75 B.R. 37 (Bankr. D. Nev. 1987)) (explaining that the Legislature could have easily worded a statute so as to make attorney's fees in addition to, instead of included within, the expenses of a trust); State v. University Club, 35 Nev. 475, 484-5 (1913) ("As the question is one entirely subject to legislative control, the legislature can, if it so desires, amend the law so as to require licenses from social clubs the same as it now requires the same from persons engaged in the business of selling liquors."); State ex rel. Norcross v. Eggers, 35 Nev. 250, 258 (1912) ("If the legislature had intended that the $25,000 appropriated by section 7 should include salaries, instead of using language negativing such intent, it would have used language manifesting such intent, as it did in the case of the act in relation to banks and banking and creating the office of state bank examiner and fixing his salary, which act was passed at the same session of the legislature.") Had the Legislature intended to restrict the placing or setting of any trap within 200 feet of a public road or highway, the Legislature could have easily done so. For example, various other provisions of chapter 503 of NRS refer to a "trap" or "traps" without specifying the type or size of the trap. *See* NRS 503.450, 503.452 and 503.454. In these sections, it is clear that the traps to which the section refers are all traps rather than only those steel traps that are larger than a No. 1 Newhouse trap as is provided in NRS 503.580.

The courts in this State have also long held that, where possible, a statute should be read so as to give meaning to all of its parts. Nevada Tax Comm'n v. Bernhard, 100 Nev. 348, 351, 683 P.2d 21 (1984); Nevada State Personnel Div. v. Haskins, 90 Nev. 425, 427, 529 P.2d 795 (1974). The term "trap" is defined for the purpose of NRS 503.580 to mean "a device that is designed, built or made to close upon or hold fast any portion of an animal." NRS 501.189. This definition is very broad and could include any snare or other device that closes upon or holds fast any portion of an animal. Despite this broad definition, however, the provisions of subsection 2 of NRS 503.580 are expressly limited to the placing or setting of a "steel trap" which is "larger than a No. 1 Newhouse trap." To read the provisions of subsection 2 of NRS 503.580 in a manner which gives meaning to all of its parts, those provisions must be read to allow the placing or setting of all traps other than steel traps larger that a No. 1 Newhouse trap within 200 feet of any highway or public road.

In determining the meaning of "steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap" as that phrase is used in subsection 2 of NRS 530.580, it is important to consider an additional rule of statutory construction. When the provisions of a statute are interpreted, the Nevada Supreme Court has consistently held that the interpretation of the statute should be consistent with what reason and public policy would indicate the Legislature intended in enacting those provisions, and that the interpretation should avoid absurd results. Theis v. State, 117 Nev. 744, 751, 30 P.3d 1140 (2001); English v. State, 116 Nev. 828, 833, 9 P.3d 60 (2000). Based on these authorities, the provisions of subsection 2 of NRS 503.580 must be interpreted in a manner which is consistent with what reason and public policy would indicate the Legislature intended in enacting those provisions and which avoids an absurd result. It is important to note that the prohibition set forth in NRS 503.580 applies only to a "steel trap" that is "larger than a No. 1 Newhouse trap." Thus, it is clear that the prohibition set forth in NRS 503.580 does not apply to traps made of any material other than steel. Additionally, for the prohibition to apply, the trap must be larger than a No. 1 Newhouse trap. To avoid an absurd result as is required by the case law, the types of traps to which the prohibition applies must necessarily be directly comparable in size to a No. 1 Newhouse trap. The term "No. 1 Newhouse trap" is not defined for the purposes of NRS but the Nevada Attorney General has opined that a No. 1 Newhouse trap is a "jaw-foot trap used for trapping muskrats and mink." Attorney General Opinion No. 1971-57. Therefore, it is clear that the only type of trap to which the prohibition set forth in NRS 503.580 applies is a "jaw-foot" type of trap. Because a snare trap and a box trap are not "jaw-foot" types of traps, it is equally clear that these traps are not subject to reasonable comparison for the purpose of establishing a violation of subsection 2 of NRS 503.580. Accordingly, interpreting the prohibition set forth in subsection 2 of NRS 503.580 to apply to any type of trap used to trap mammals other than a jaw-foot trap would be inconsistent with what reason and public policy would indicate the Legislature intended in enacting those provisions and would lead to an absurd result.

This interpretation is consistent with another very important line of cases. It has long been held that a criminal statute is one which imposes a penalty for transgressing the provisions of the statute. Ex Parte Davis, 33 Nev. 309, 315, 110 P. 1131 (1910); State v. Wheeler, 23 Nev. 143, 152, 44 P. 430 (1896). As such, a criminal statute must be strictly construed in a defendant's favor and may not be enlarged by implication or intendment beyond the fair meaning of the language used. Anderson v. State, 95 Nev. 625, 629-30, 600 P.2d 241 (1979); Ex Parte Sweeney, 18 Nev. 74, 75, 1 P. 379 (1883). As noted above, the provisions of subsection 2 of NRS 503.580 make it unlawful for any person to place or set any steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap, within 200 feet of a public road or highway within this State. Pursuant to NRS 501.385, any person who performs an act or attempts to perform an act made unlawful or prohibited by a provision of title 45 of NRS is guilty of a misdemeanor. Based upon the holdings in Anderson and Ex Parte Sweeney, any question or ambiguity concerning the applicability of the provisions of subsection 2 of NRS 503.580 must be resolved in a defendant's favor and the application of those provisions must not be given an enlarged or implied meaning beyond the fair meaning of the language used in those provisions.

As a final note, the Nevada Supreme has held that an administrative agency which is charged with the duty of administering a legislative act is impliedly clothed with the authority to construe any relevant laws and to set any necessary precedent for administrative action. Any construction placed on a statute by that agency is entitled to deference. State Industrial Ins. Sys. v. Snyder, 109 Nev. 1223, 1228, 865 P.2d 1168 (1993) (citing Truckee Meadows v. Int'l Firefighters, 109 Nev. 367, 849 P.2d 259 (1993) and Jones v. Rosner, 102 Nev. 115, 719 P.2d 805 (1986)). Pursuant to NRS 501.105, the Board of Wildlife Commissioners is required to establish policies and adopt regulations necessary to preserve, protect, manage and restore wildlife and its habitat. Pursuant to NRS 501.331, the Department of Wildlife is required to administer the wildlife laws of this State. As such, any interpretation of the provisions of subsection 2 of NRS 503.580 by the Commission or the Department in carrying out their duties is entitled to deference. However, based upon research and information provided to our office by the Department, the Commission and the Department have not issued a written policy interpreting those provisions. Rather, the Department, in enforcing those provisions, has relied upon those provisions as written without resorting to any construction or interpretation prepared by the Commission or Department.

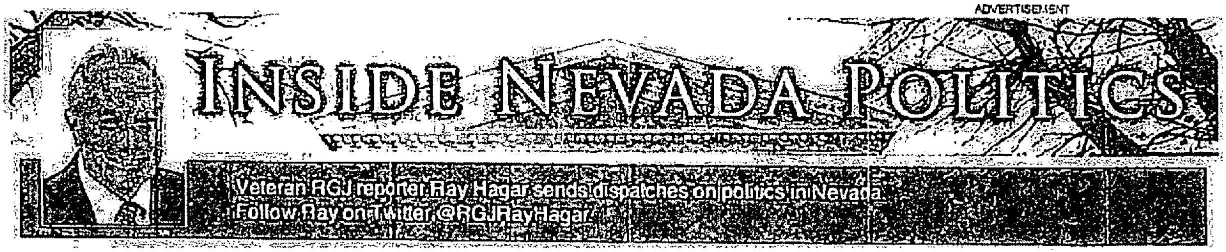
Based on the foregoing principles of statutory construction, it is the opinion of this office that the prohibition contained in subsection 2 of NRS 503.580 against placing or setting a steel trap within 200 feet of a public road or highway does not apply to box traps or snare traps.

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

J. Randall Stephenson
Principal Deputy Legislative Counsel



Assemblyman Ira Hansen charged with 4 counts of illegally setting traps; calls charges 'a vendetta' by Dept. of Wildlife

7:22 pm, Jan 29, 2014 | Written by Ray Hagar

Like 2 Tweet 8 g+1 0 Share Pin

Assemblyman Ira Hansen, R- Sparks, has been charged with four misdemeanor counts of unlawfully setting traps near the Buffalo Canyon Road in Churchill County, according to documents filed with the Churchill County District Attorney's office by the Nevada Department of Wildlife.

Hansen, who has trapped in Nevada for more than 30 years, called the charges a "vendetta" against him by NDOW officials. Hansen said he has been a "watchdog" on the agency and has testified against the department's budget increases at the Legislature.

"I did not break any law," Hansen said. "I am in complete compliance with the law. They are doing this to stir the pot, make me look bad because that takes the heat off of them for the felonies, in my opinion, they have committed."

Hansen said NDOW has withheld public documents and data from him and denied access to other public information. Hansen said he had filed a complaint with the Nevada Attorney General over the issue.

"That is what this is about," Hansen said. "I did not break any law. I did not do anything that was unsafe. I've been doing this (trapping) for over 35 years and I have been a lobbyist on these issues (before he was elected to the Assembly in 2010). I know the law and they have totally tried to make something out of the law that is not there."

NDOW law-enforcement spokesman Edwin Lyngar denied any vendetta against Hansen by NDOW.

"The vendetta is utter nonsense," Lyngar said. "The officer who investigated this, a field officer who was on routine patrol, found these snares. Any other person who owned the snares would be treated in exactly the same way.

"Our field officer did his professional job, as he has been trained to do and followed the law as we have enforced it in Nevada for many years," Lyngar said. "Any allegation that there has been any difference treatment is nonsense on it's face."

Hansen was most-likely trapping bobcats, Lyngar said.

"He was trapping too close to a roadway," Lyngar said. In Nevada you have to be at least 200 feet from a roadway. This serves an important purpose. You don't want to trip right along a roadway where people or dogs go, particularly with snares, which can be very harmful to people's dogs."

The latest incident is the seventh time Hansen has been cited for trapping or non-trapping violations since 1980, said NDOW spokesman Chris Healy.

Charges ranged from hunting a protected species to transporting wildlife without a permit. He was convicted in 1992 for having no registration numbers on his traps. He was found not guilty of failing to visit traps within a 96 hour time frame in 2004.

Hansen set four snare traps too close to a roadway in early November, according to court documents. He has been summoned to appear in New River Justice Court on March 3 to answer the charges.

Each count carries a fine up to $500, said Lyngar.

"One of our game wardens encountered the traps," Lyngar said. "One of our game wardens then wrote a report them forwarded to the district attorney in Churchill County. The district attorney issued a summons of a criminal complaint. We forwarded the complaint to the district attorney and left it at their discretion."

A key issue is the type of traps Hansen used. Hansen used snares, according to NDOW.

Snares are not covered by the law that bars setting steel traps within 200 feet of a public road or highway, Hansen said.

"I have been involved a long time with those issues and I know the law as well," Hansen said.

Hansen said the Legislative Counsel Bureau has issued an opinion that backs his claim that he has not broken the law.

"I will give you a prediction right now: This will either be dismissed outright or I will be found not guilty because when you see what the LCB says and when you read the law, you will see that I was in compliance," Hansen said. "This is nothing more than a vendetta."

This entry was posted in Uncategorized. Bookmark the permalink.

Site Map | Back to Top

NEWS
Crime and Courts
Crime Mugs
Education
News Columnists
Nevada Legislature
Nevada Data Page
Nation and World
Fact Checker
Photo Galleries

LOCAL LIFE
Food and Drink
Outdoors
Home & Garden
Health
SNAP
Make It Easy
Reno Magazine
Announcements
Celebrations
MomsLikeMe.com

NEIGHBORHOODS
Central and Southeast Reno
North Reno
Northwest Reno
South Suburban Reno
Southwest Reno
Sparks/Spanish Springs
Fernley
Dayton
Yerington

ENTERTAINMENT
Entertainment News
Music
Movies and Video
Casinos
Comics and Games
Electromix
Datebook

SPORTS
Wolf Pack
Prep Sports
Reno Aces
Sports Columnists
Reno Bighorns
Golf
Winter Sports
Sports Betting & TV
Colleges

VOICES
Letters to the Editor
Editorials
Forums
Voices Columnists
Send a letter to the editor
Your Turn
Staff Blogs

BUSINESS
Real Estate and Retail
Economy
Gaming and Tourism
Growth and Development
Transportation
Technology
Money and Markets
Northern Nevada Networking
People on the Move
Small Business

OBITS
Submit an obituary
Read an obituary

HELP
Access your account
Contact Us
Newsroom Contacts
Advertise
Send a letter to the editor
Send in a celebration
Site Map

FOLLOW US
Twitter
Facebook
Mobile
RSS
E-mail Alerts
Text Alerts

News | Jobs | Cars for Sale | Homes for Sale | Apartments for Rent | Real Estate | Shopping | Mom Groups

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party
Request for Opinion Concerning the
Conduct of Public Officer **IRA HANSEN**,
Assemblyman, State of Nevada,
Subject.

Request for Opinion No. 14-21C

In the Matter of the Third-Party
Request for Opinion Concerning the
Conduct of Public Officer **JIM WHEELER**,
Assemblyman, State of Nevada,
Subject.

Request for Opinion No. 14-22C

ORDER ON REVIEW OF JURISDICTIONAL DETERMINATION

BACKGROUND:

On March 5, 2014, the Nevada Commission on Ethics ("Commission") received Third-Party Requests for Opinions ("RFOs") from a member of the public pursuant to NRS 281A.440(2)(b) concerning the conduct of Nevada State Assemblyman Ira Hansen and Nevada State Assemblyman Jim Wheeler ("Subjects"), alleging violations of certain provisions of the Nevada Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A. Subjects are public officers under the Ethics Law, as defined in NRS 281A.160. Pursuant to NAC 281A.405, the Commission's Executive Director and Commission Counsel determined that the Commission has jurisdiction under NRS 281A.280(1)(a) to initiate investigations concerning these RFOs, now procedurally consolidated under NAC 281A.260 as related requests sharing common facts and issues.

On March 24, 2014, the Commission's Executive Director, pursuant to NRS 281A.440 and NAC 281A.410, issued Notices of the RFOs to the Subjects and provided them with the requisite opportunity to respond to the allegations.

Subjects are presently represented in this matter by Brenda J. Erdoes, Esq., Legislative Counsel, Kevin C. Powers, Esq., Chief Litigation Counsel, and Eileen G. O'Grady, Esq., Chief Deputy Legislative Counsel, of the Nevada Legislative Counsel Bureau ("LCB").

Pursuant to the provisions of NAC 281A.265 and 281A.405, on July 18, 2014, the Commission entered into a Stipulation with the Subjects' counsel to authorize the submission of a jurisdictional motion with the requisite opportunity to respond by the Commission's Executive Director and Associate Counsel. The Commission also issued an Order staying all further pre-panel and panel proceedings and a Notice of Hearing and Scheduling Order to hear oral argument on September 17, 2014.

On August 4, 2014, Subjects' counsel submitted a motion requesting the Commission's review of the jurisdictional determination in this matter and a dismissal of the RFOs ("Motion"). The Commission's Executive Director/Associate Counsel submitted an opposition to the Motion on September 8, 2014 ("Opposition"), and the Subjects' counsel submitted a reply to the opposition on October 6, 2014 ("Reply").

Following various scheduling conflicts, on November 19, 2014 the Commission heard oral argument on the Motion and took the matter under submission.[1]

PROCEDURAL AND LEGAL STANDARDS:

Under NRS 281A.290(1), the Commission has adopted procedural regulations which will be liberally construed pursuant to NAC 281A.250(2) to determine all matters before the Commission in a just, speedy and economical manner. For good cause shown pursuant to NAC 281A.250(3), the Commission may deviate from its procedural regulations if the deviation will not materially affect the interests of a party who is the subject of the RFO.

NRS 281A.440(8) states that all information, communications, records, documents and other material in the possession of the Commission or its staff that is related to a request for opinion regarding a public officer . . . are confidential and not public records pursuant to chapter 239 of NRS until . . . [t]he investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter ... or ... [t]he public officer ... authorizes the Commission in writing to make its information ... publicly available, whichever occurs first." Further, NRS 281A.440(15) exempts from the requirements of the Open Meeting Law (NRS Chapter 241) any hearings by the Commission to receive information and/or deliberate on information related to a request for opinion concerning the conduct of a public officer.

The Subjects' Motion is based on the Subjects' interpretation of doctrines of separation of powers and legislative privileges and immunity that promote legislative autonomy under Art. 4, Sec. 6 of the Nevada Constitution; an interpretation set out in the provisions of NRS 41.071 and made applicable to Commission proceedings under NRS 281A.020(2)(d).

NRS 281A.020(2)(d) states:

> The provisions of this chapter [281A] do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

---

[1] Commissioners Groover and Weaver did not participate in oral argument, but having reviewed that transcript and all pleadings, did participate in this decision. Commissioner Carpenter has recused himself from any participation in these RFOs.

NRS 41.071 provides:

> 1. The Legislature hereby finds and declares that:
>
> (a) The Framers of the Nevada Constitution created a system of checks and balances so that the constitutional powers separately vested in the Legislative, Executive and Judicial Departments of State Government may be exercised without intrusion from the other Departments.
>
> (b) As part of the system of checks and balances, the constitutional doctrines of separation of powers and legislative privilege and immunity facilitate the autonomy of the Legislative Department by curtailing intrusions by the Executive or Judicial Department into the sphere of legitimate legislative activities.
>
> (c) The constitutional doctrines of separation of powers and legislative privilege and immunity protect State Legislators from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.
>
> (d) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be hindered or obstructed by executive or judicial oversight that realistically threatens to control their conduct as Legislators.
>
> (e) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government.
>
> (f) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be questioned or sanctioned by the other branches of government for their actions in carrying out their core or essential legislative functions.
>
> (g) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, the only governmental entity that may question or sanction a State Legislator for any actions taken within the sphere of legitimate legislative activity is the Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.
>
> (h) Therefore, the purpose and effect of this section is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.
>
> 2. For any speech or debate in either House, a State Legislator shall not be questioned in any other place.
>
> 3. In interpreting and applying the provisions of this section, the interpretation and application given to the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the Constitution of the United States must be considered to be persuasive authority.
>
> 4. The rights, privileges and immunities recognized by this section are in addition to any other rights, privileges and immunities recognized by law.
>
> 5. As used in this section, "State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.

Abrogation of common-law privileges and immunities is not a consideration in this case. NRS 281A.185(2)(a).

Proceedings on this Motion were conducted consistent with Commission rules in NAC Chapter 281A and applicable provisions of NRS 233B, as well as consideration of judicial rules of civil procedure and evidence in NRCP and NRE, as appropriate.

The motion practice on subject-matter jurisdiction issues is generally set out in the provisions of NAC 281A.405. Requested review by the Commission may include an oral argument or an evidentiary-style hearing. In this case, review was limited to oral arguments of counsel, in which both fact and law issues were urged and argued.

As in Commission hearings on Third-Party RFOs, oral arguments may follow similarly relaxed, liberal procedural allowances.

NAC 281A.465 provides:

> 1. In conducting any hearing concerning a third-party request for an opinion, the rules of evidence of the courts of this State will be followed generally but may be relaxed at the discretion of the Commission.
> 2. The Chair or presiding officer may exclude immaterial, incompetent, cumulative or irrelevant evidence or order that the presentation of such evidence be discontinued.
> 3. A subject may object to the introduction of evidence if the subject:
> (a) Objects to such evidence promptly; and
> (b) Briefly states the grounds of the objection at the time the objection is made.
> 4. If an objection is made to the admissibility of evidence, the Chair or presiding officer may:
> (a) Note the objection and admit the evidence;
> (b) Sustain the objection and refuse to admit the evidence; or
> (c) Receive the evidence subject to any subsequent ruling of the Commission.

Under provisions of NAC 281A.405, when RFO jurisdiction is initially found, the Requester is not generally deemed a party to the proceedings if the Subject seeks Commission review. The Executive Director assumes the responsibility to respond to the Subject's jurisdictional motion.

The Subjects' Motion effectively precludes the Executive Director from investigating the allegations made in the RFOs against the Subjects as would normally be conducted under NRS 281A.440 and NAC 281A.045 and 281A.405, and there has been no jurisdiction-related discovery requested by any party prior to the oral argument. Moreover, under NRS 281A.440(8), proceedings at this stage on Subjects' motion are, and must be maintained as, confidential. Consequently, the combined result is that the evidentiary record is limited to the facts as alleged in RFOs, the Supplemental Statements, the motion-related pleadings, and the respective exhibits thereto.

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE COMMISSION ON ETHICS OF THE STATE OF NEVADA,

Appellant,

vs.

IRA HANSEN, IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO. 32; AND JIM WHEELER, IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO. 39,

Respondents.

Electronically Filed
Dec 21 2015 08:28 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Supreme Court Case No. 69100

Appeal from First Judicial District Court, Carson City, Nevada, Case No. 15 OC 00076 1B

RESPONDENTS' MOTION TO DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION

OR, IN THE ALTERNATIVE,

MOTION TO STAY APPEAL AND REMAND TO DISTRICT COURT FOR RESOLUTION OF RESPONDENTS' COMPLAINT TO VOID NOTICE OF APPEAL FILED BY COMMISSION ON ETHICS AS ACTION TAKEN IN VIOLATION OF OPEN MEETING LAW

BRENDA J. ERDOES, Legislative Counsel (Nevada Bar No. 3644)
KEVIN C. POWERS, Chief Litigation Counsel (Nevada Bar No. 6781)
EILEEN G. O'GRADY, Chief Deputy Legislative Counsel (Nevada Bar No. 5443)
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson Street
Carson City, Nevada 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: erdoes@lcb.state.nv.us; kpowers@lcb.state.nv.us; ogrady@lcb.state.nv.us
Attorneys for Respondents

MOTION

Pursuant to NRAP 27(a), Respondents Ira Hansen, in his official capacity as Nevada State Assemblyman for Assembly District No. 32, and Jim Wheeler, in his official capacity as Nevada State Assemblyman for Assembly District No. 39 (the Assemblymen), by and through their counsel, the Legal Division of the Legislative Counsel Bureau (LCB), hereby file this motion to: (1) dismiss the appeal for lack of appellate jurisdiction; or (2) in the alternative, stay the appeal and remand to the district court for resolution of the Assemblymen's pending complaint filed in the district court under NRS 241.037(2) to void the notice of appeal filed by Appellant Commission on Ethics (Commission) as action taken by the Commission in violation of the Open Meeting Law (OML) codified in NRS Chapter 241.[1]

STATEMENT OF THE ISSUES FOR THE MOTION

1. Did the Commission violate the OML when it filed a notice of appeal without first making its decision or taking "action" to appeal the district court's order in an open and public meeting that complied with the OML?

2. If the Commission violated the OML, is the Commission's notice of appeal void as a matter of law under the absolute voiding rule in NRS 241.036 and is it therefore invalid and without any legal force or effect?

---

[1] All OML citations are to the law as amended in 2015 by SB70, 2015 Nev.Stat., ch.226, §§2-7, at 1054-62, and SB158, 2015 Nev.Stat., ch.84, §2, at 329-32.

3. If the Commission’s notice of appeal is void as a matter of law and therefore invalid and without any legal force or effect, should the Court dismiss the Commission’s appeal for lack of appellate jurisdiction because the Commission did not legally file a valid notice of appeal during the jurisdictional appeal period and thereby lost the right to appeal in this case?

4. If the Court decides not to consider the OML issue in the first instance on appeal, should the Court stay the appeal and remand to the district court for resolution of the Assemblymen’s pending OML Complaint filed in the district court under NRS 241.037(2) to void the Commission’s notice of appeal as action taken by the Commission in violation of the OML?

STATEMENT OF THE CASE

On January 7, 2014, pursuant to the express authority in NRS 218F.710 which authorizes a legislator to request a legal opinion from the LCB on “any question of law, including existing law,” the LCB provided Assemblyman Wheeler with a written legal opinion that he requested regarding the statutory construction of existing law in NRS 503.580. (Ex. A at 00007-00011).[2] The statute regulates the trapping of mammals and states “[i]t is unlawful for any person, company or

---

[2] Because the copy of the LCB opinion in the administrative record is a low-quality photocopy that is not clearly legible, a higher-quality photocopy is included in Exhibit A. It is marked with bates-stamp numbers to correspond with the copy in the administrative record. (00007-00011).

corporation to place or set any steel trap, used for the purpose of trapping mammals, larger than a No. 1 Newhouse trap, within 200 feet of any public road or highway within this State.” NRS 503.580(2).

In the LCB opinion, Assemblyman Wheeler’s question of law is expressed as follows: “You have asked whether the prohibition against placing or setting a steel trap within 200 feet of a public road or highway applies to box traps and snare traps.” (Ex. A at 00007). To answer this question of law, the LCB opinion applies “several well-established rules of statutory construction” and opines that the prohibition applies only to a “jaw-foot” type steel trap and “does not apply to box traps or snare traps.” (Ex. A at 00007-11). The LCB opinion cites and follows a 1971 Nevada Attorney General opinion, AGO 1971-57 (Dec. 22, 1971), which opines that as used in NRS 503.580, “[a] No. 1 Newhouse Trap is a jaw-foot trap used for trapping muskrats and mink.” (Ex. A at 00010). The LCB opinion concludes that “[b]ased on the foregoing principles of statutory construction, it is the opinion of this office that the prohibition contained in subsection 2 of NRS 503.580 against placing or setting a steel trap within 200 feet of a public road or highway does not apply to box traps or snare traps.” (Ex. A at 00011).

The LCB opinion was limited exclusively to this broad and general question of statutory construction, and it did not apply its statutory construction to the personal facts or circumstances of any party. Therefore, the LCB opinion adhered to the statutory requirements of NRS 218F.710 because it answered a pure question of law. See Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 4 (1994) ("The construction of a statute is a question of law."); Sheriff v. Encoe, 110 Nev. 1317, 1319 (1994) (explaining that "[t]he proper construction of a statute is a legal question rather than a factual question"); State Dep't Tax'n v. McKesson Corp., 111 Nev. 810, 812 (1995) (explaining that courts undertake independent review of the administrative construction of a statute because "it is the statutory interpretation of [the law] that is at issue rather than any type of factual review.").

On March 5, 2014, Fred Voltz filed an ethics complaint against each Assemblyman, which the Commission designated as Requests for Opinions Nos. 14-21C and 14-22C (collectively the RFOs). (Ex. B.)[3] The RFOs allege that Assemblyman Hansen "collaborated" with Assemblyman Wheeler in order to use their legislative positions to request the LCB opinion for a private or nongovernmental purpose in violation of the Ethics Law in NRS Chapter 281A.[4] (Ex. B at 00001-6.) Before the LCB opinion was provided to Assemblyman

---

[3] Each RFO is nearly identical. To avoid duplicative exhibits for purposes of this motion, Exhibit B includes only the RFO against Assemblyman Hansen.

[4] With regard to the RFOs, all Ethics Law citations are to the law in effect when the RFOs were filed in 2014. However, before the Commission filed its notice of appeal on October 29, 2015, the Ethics Law was amended by AB60, 2015 Nev.Stat., ch.198, at 916-26. Thus, with regard to the Commission's notice of appeal, all Ethics Law citations are to the law as amended by AB60.

Wheeler on January 7, 2014, Assemblyman Hansen had a disagreement in November 2013 with an employee of the Department of Wildlife concerning the interpretation of NRS 503.580, and he later was issued citations on December 31, 2013, for alleged violations of NRS 503.580 for placing or setting snare traps within 200 feet of a public road or highway. The RFOs allege that because the LCB opinion addresses "the precise issue Assemblyman Hansen needed a legal interpretation of in preparing his legal defense against the four charges of illegal animal trap setting," the LCB opinion was requested for a private or nongovernmental purpose. (Ex. B at 00004.)

Pursuant to a stipulation and order approved by the Commission, the Assemblymen filed a motion to dismiss the RFOs on grounds that the Commission lacks subject matter jurisdiction over the RFOs because: (1) all allegations against the Assemblymen involve actions taken within the sphere of legitimate legislative activity; (2) those legislative actions are protected by NRS 281A.020(2)(d) and NRS 41.071 and the constitutional doctrines of separation of powers and legislative privilege and immunity; and (3) the Nevada Assembly is the only governmental entity that may question or penalize the Assemblymen regarding those legislative actions.

On March 3, 2015, the Commission issued an order denying the motion to dismiss. (Ex. B at 00134-142.) Despite the Assemblymen's objections that any investigation into the motive, intent or purpose of the Assemblymen in requesting the LCB opinion is precluded by legislative privilege and immunity, the Commission indicated in its order that it may inquire into “the legitimacy of the respective conduct as ‘legislative acts’ falling within the ‘legitimate sphere of legislative activity’ based on assertions that the [Assemblymen’s] requested legal opinion are acts not related to any legislative function but rather are for purposes related to their personal, private interests.” (Ex. B at 00139.)

On April 2, 2015, the Assemblymen filed: (1) a judicial-review petition under the Ethics Law and Administrative Procedure Act (APA) in NRS Chapter 233B; and (2) in the alternative, a writ petition under Article 6, Section 6 of the Nevada Constitution and NRS Chapter 34. On April 30, 2015, the district court approved a stipulation and order in which the parties agreed to stay all administrative investigations and proceedings in the RFOs pending judicial review before the district court and any state appellate court. (Ex. C at 2-3.) The parties also agreed to a stipulated schedule for briefing the judicial-review petition and responding to the writ petition, and the parties consented to service by electronic mail. (Ex. C at 3-4.) Finally, the Assemblymen waived the confidentiality of the RFOs under NRS 281A.440(8). (Ex. C at 3.)

On June 30, 2015, the Commission filed a motion to dismiss both the judicial-review petition and the writ petition. In September 2015, the parties completed their briefing for the Commission's motion to dismiss and the Assemblymen's judicial-review petition. On October 1, 2015, the district court entered an order that: (1) denied the Commission's motion to dismiss the judicial-review petition and the writ petition; (2) denied the Assemblymen's writ petition; and (3) granted the Assemblymen's judicial-review petition under the Ethics Law and APA and ordered the Commission to terminate its ethics proceedings against the Assemblymen.[5] (Ex. D at 7.)

In its order, the district court concluded that, as a matter of law under NRS 41.071 as amended by AB496, 2015 Nev. Stat., ch. 513, § 3, at 3193-95, the Assemblymen's actions were "within the sphere of legitimate legislative activity and protected by legislative privilege and immunity." (Ex. D at 5.) The district court also concluded that the Commission failed to show that AB496 is unconstitutional. (Ex. D at 5.) Because the Assemblymen's actions were within the sphere of legitimate legislative activity and protected by legislative privilege and immunity, the district court held that "the Nevada Assembly has sole jurisdiction to

---

[5] Although the district court did not state that it denied the Assemblymen's writ petition as moot, that is the legal effect of the district court's order. By granting the Assemblymen's judicial-review petition on its merits and ordering the relief requested in the judicial-review petition, it was not necessary for the district court to rule on the merits of the Assemblymen's alternative writ petition. Therefore, once the district court granted the Assemblymen's judicial-review petition, their alternative writ petition became moot.

question and sanction [the Assemblymen] regarding those acts. Therefore, the Commission must terminate its proceedings in this matter. (Ex. D at 6-7.)

On October 26, 2015, the Assemblymen served the Commission with written notice of entry of the district court's order by electronic mail pursuant to the parties' written stipulation and consent to service by electronic mail. (Ex. D at 1-2.) On October 29, 2015, the Commission filed a notice of appeal. However, before filing the notice of appeal, the Commission did not make its decision or take "action" to appeal the district court's order in an open and public meeting that complied with the OML. In fact, in October and November 2015, the Commission did not hold any open and public meetings that complied with the OML.

SUMMARY OF THE ARGUMENT

The Commission is a public body subject to the OML. Unless there is a specific statutory exception that expressly exempts a public body from the OML, the public body may make a decision or take "action" regarding a matter only in an open and public meeting that complies with the OML. Before filing its notice of appeal, the Commission did not make its decision or take action to appeal the district court's order in an open and public meeting that complied with the OML. Furthermore, there is no specific statutory exception that expressly exempted the Commission from the OML and allowed it to make its decision or take action to appeal the district court's order without first complying with the OML.

In 2001, the Legislature amended the OML to allow public bodies to "receive information" and "deliberate toward a decision" regarding litigation in private conferences with their attorneys. However, based on the plain language and legislative history of the attorney-client litigation exception, public bodies are not allowed to make a decision or take "action" regarding litigation in private conferences with their attorneys, but they must make a decision or take "action" regarding such litigation only in open and public meetings that comply with the OML. For the past 15 years since the Legislature enacted the exception, the Office of the Attorney General (OAG) has advised public bodies, in both its Open Meeting Law Manual (OMLM) and its Open Meeting Law Opinions (OMLOs), that even though public bodies may deliberate regarding litigation in private conferences with their attorneys, public bodies cannot take action regarding litigation unless such action is taken in open and public meetings that comply with the OML. Therefore, the Commission violated the OML by filing its notice of appeal without first making its decision or taking action to appeal the district court's order in an open and public meeting that complied with the OML.

Because the Commission violated the OML, its notice of appeal is void as a matter of law under the absolute voiding rule in NRS 241.036. There are no exceptions to the absolute voiding rule in NRS 241.036, and the OML does not allow a public body to take any subsequent action to cure its violation or reverse the effects of the absolute voiding rule in NRS 241.036. Consequently, because the Commission's notice of appeal is void as a matter of law, it is invalid and does not have any legal force or effect.

This result is supported by caselaw from other jurisdictions. The Arizona Court of Appeals has held that a public body's notice of appeal is "null and void" under Arizona's open meeting law where the public body does not first make its decision or take action to appeal in an open and public meeting. *Johnson v. Tempe Elementary Sch. Dist.*, 20 P.3d 1148, 1151 (Ariz.Ct.App.2000), review denied (Ariz. Oct. 3, 2001); *City of Tombstone v. Beatty's Guest Ranch & Orchard*, No. 2 CA-CV 2013-0018, 2013 WL 6243854 (Ariz.Ct.App. Nov. 27, 2013), review denied (Ariz. Apr. 22, 2014).

Accordingly, because the Commission's notice of appeal is invalid and does not have any legal force or effect, the Commission did not legally file a valid notice of appeal during the jurisdictional appeal period. Having failed to file a valid notice of appeal during the jurisdictional appeal period, the Commission lost the right to pursue an appeal in this case, and its appeal must be dismissed for lack of appellate jurisdiction.

Finally, because the issue of whether the Commission violated the OML is a pure question of law and because the absolute voiding rule in NRS 241.036 is self-executing, the Court has the power and discretion to apply the OML to this case and dismiss the Commission's appeal for lack of appellate jurisdiction without remanding the case for any further proceedings in the district court. However, if the Court decides not to consider the OML issue in the first instance on appeal, the Court should stay the appeal and remand to the district court for resolution of the Assemblymen's pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML.

ARGUMENT

I. Legal standards governing the OML.

In enacting the OML, the Legislature declared as the public policy of this State that "all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." NRS 241.010(1). To carry out the OML's objectives, the Court has held that "meetings of public bodies should be open 'whenever possible' to comply with the spirit of the Open Meeting Law. Since generally all meetings must be open, this court strictly construes all exceptions to the Open Meeting Law in favor of openness." *Chanos v. Nev. Tax Comm'n*, 124 Nev. 232, 239 (2008) (quoting *McKay v. Bd. of Sup'rs (McKay I)*, 102 Nev. 644, 651 (1986)). Consequently, "exceptions to the Open Meeting Law extend only to the portions of a proceeding specifically, explicitly, and definitely excepted by statute." *Id.*

The Legislature has codified these legal standards in the OML. Specifically, the OML provides that "[t]he exceptions provided to this chapter . . . must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers." NRS 241.016(4). The OML also provides that:

> A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute.

NRS 241.020(1).

Thus, unless there is a specific statutory exception that expressly exempts the public body from the OML, the public body may make a decision or take "action" regarding a matter only in an open and public meeting that complies with the OML. NRS 241.020(1); McKay v. Bd. of Cnty. Comm'rs (McKay II), 103 Nev. 490, 492-93 (1987) ("the wording of the open meeting law requiring exceptions to be expressly enacted and 'specifically provided' forecloses the court from reading in or implying exceptions.").

Furthermore, the OML draws a clear distinction between a public body's "deliberations" and its "action." NRS 241.010(1), 241.015(1)-(3), 241.016(4) & 241.020(1); Chanos, 124 Nev. at 238 (explaining that under the OML, "a meeting, by definition, can consist of “action” or “deliberation.”). A public body “deliberates” when its members collectively “examine, weigh and reflect upon the reasons for or against the action. [This] includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.” NRS 241.015(2) (defining “deliberate” (emphasis added)); *Dewey v. Redev. Agency*, 119 Nev. 87, 97-98 (2003). By contrast, a public body takes “action” when it makes the ultimate decision. NRS 241.015(1) (defining “action”). Consequently, a public body’s deliberations do not include its ultimate decision to take action.

Finally, because of the OAG’s enforcement role under the OML, the Court has found that: (1) the OAG’s reasonable interpretation of the OML is entitled to deference; and (2) when the Legislature has had ample time to amend the law in response to the OAG’s interpretation but fails to do so, such acquiescence indicates the OAG’s interpretation is consistent with legislative intent. *Del Papa v. Bd. of Regents*, 114 Nev. 388, 396 (1998). Therefore, when interpreting the OML, the OAG’s manual and opinions provide persuasive guidance regarding the OML’s requirements. *Id.* (agreeing with a reasonable interpretation in the OAG’s manual where the Legislature evidenced acquiescence because it “had sixteen years to override the Attorney General’s interpretation of [the OML] via amendment,” but failed to do so).

II. Because the Commission did not make its decision or take action to appeal the district court's order in an open and public meeting that complied with the OML, the Commission's notice of appeal is void as a matter of law.

The Commission is a public body subject to the OML. NRS 241.015(4); OMLO 2002-17 (Apr. 18, 2002). As such, unless a specific statute expressly exempted the Commission from the OML, the Commission was allowed to make a decision or take action to appeal the district court's order only in an open and public meeting that complied with the OML. NRS 241.020(1); McKay II, 103 Nev. at 491-93; Johnson, 20 P.3d at 1151 ("[O]nce the Board finished privately discussing the merits of appealing, the open meeting statutes required that board members meet in public for the final decision to appeal."). In Nevada, there is no specific statute which expressly exempts the Commission from the OML and allows it to make a decision or take action to appeal a district court's order without first complying with the OML.

Under the Ethics Law, all information in the possession of the Commission or its staff that is related to any RFO is confidential until the investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter or until the subject of the RFO authorizes the Commission in writing to make its information publicly available, whichever occurs first. NRS 281A.440(8) as amended by AB60, 2015 Nev.Stat., ch. 193, at 920. There is no provision in this statute which expressly exempts the Commission from the OML and allows it to make a decision or take action to appeal a district court's order in a private conference. Furthermore, in the stipulation and order approved by the district court on April 30, 2015, the Assemblymen waived the confidentiality of the RFOs under NRS 281A.440(8) and therefore authorized the Commission in writing to make its information publicly available. (Ex. C at 3) Accordingly, NRS 281A.440(8) did not expressly exempt the Commission from the OML.

The Ethics Law also contains a limited exception from the OML, but that exception does not apply here. The limited exception in NRS 281A.440(16) exempts "[a] meeting or hearing that the Commission . . . holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the Commission . . . on such information or evidence." NRS 281A.440(16) as amended by AB60, 2015 Nev. Stat., ch. 193, § 3, at 921 (emphasis added). The Commission did not make its decision or take action to appeal the district court's order in a meeting or hearing held by the Commission under NRS 281A.440.

First, to legally hold such a meeting or hearing, the Commission must comply with NRS 281A.440(11), which provides that:

> 11. Whenever the Commission holds a hearing pursuant to this section, the Commission shall:
>
> (a) Notify the person about whom the opinion was requested of the place and time of the Commission's hearing on the matter;
>
> (b) Allow the person to be represented by counsel; and

> (c) Allow the person to hear the evidence presented to the Commission and to respond and present evidence on the person's own behalf.
>
> ¬ The Commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

NRS 281A.440(11) as amended by AB 60, 2015 Nev.Stat., ch.198, §3, at 921 (emphasis added). It is clear from the plain language of this statute that a meeting or hearing contemplated by NRS 281A.440(16) is an adjudicatory proceeding at which the merits of an RFO are adjudicated by the Commission after notice and an opportunity for the subject to be heard. A meeting or hearing contemplated by NRS 281A.440(16) does not include any meeting or hearing at which the Commission makes a decision or takes action to appeal a district court's order.

Furthermore, even assuming that NRS 281A.440(16) had any application, its plain language expressly exempts only the Commission's receipt of "information or evidence" and its "deliberations" on such information or evidence. It does not expressly exempt the Commission's ultimate decision to take action, which must occur only in an open and public meeting that complies with the OML. Accordingly, NRS 281A.440(16) did not expressly exempt the Commission from the OML.

Finally, the OML contains a limited attorney-client litigation exception that allows public bodies to "receive information" and "deliberate toward a decision" regarding potential or existing litigation in private conferences with their attorneys.[6] NRS 241.015(3)(b)(2). However, based on the plain language and legislative history of the attorney-client litigation exception, it does not allow public bodies to make a decision or take "action" regarding potential or existing litigation in private conferences with their attorneys. Legis. History AB225, 71st Leg., at 1771-75, 1810-16, 2064-70, 2442-43, 2475-79 (Nev. LCB Resch. Libr. 2001) (discussing the intent and purpose of the attorney-client litigation exception).[7]

Before 2001, the OML did not include a "statutory exception specifically providing public bodies with the privilege to meet in private just because they have their attorneys present; hence, such meetings [were] prohibited." McKay II, 103 Nev. at 491. As a result, the OML prohibited public bodies from gathering in private with their attorneys to deliberate or take action regarding litigation. Id. at 495-96. However, the OML did not prohibit "an attorney for a public body from conveying sensitive information to the members of a public body by confidential memorandum," nor did it "prevent the attorney from discussing sensitive

---

[6] For ease of discussion, the term "conference" is used as a convenient shorthand for "a gathering or series of gatherings of members of a public body . . . at which a quorum is actually or collectively present, whether in person or by means of electronic communication." NRS 241.015(3)(b).

[7] A copy of Legis. History AB225, 71st Leg. (Nev. LCB Resch. Libr. 2001), is available at: http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2001/AB225,2001.pdf

information in private with members of the body, singly or in groups less than a quorum.” Id. But when a quorum of the body met to deliberate or take action regarding litigation, the OML required the body to hold open meetings. Id.

Against this backdrop, the Legislature enacted the limited attorney-client litigation exception during the 2001 legislative session. AB225, 2001 Nev.Stat., ch.378, §2, at 1836. When the Assembly Committee on Government Affairs first considered the exception in AB225, the committee adopted an amendment proposed by the Nevada Press Association that was intended to ensure continued public access to the deliberations of public bodies with their attorneys. Legis. History AB225, at 1771-75, 1810-16. The amendment defined a “meeting” under the OML to include:

> a series of gatherings between individual members of the public body and an attorney employed or retained by the public body regarding potential or existing litigation . . . if the gatherings were held with the intent to deliberate toward a decision or take action regarding the litigation.

AB225, First Reprint, 71st Leg., §2 (Nev. 2001) (emphasis added).

As explained by its proponents, AB225, First Reprint, was intended to require both action and deliberations regarding litigation to be conducted in open meetings, which meant that “[a]n attorney could meet with the public body as long as discussions did not lead to action or deliberation. Any guidance or deliberation needed to be done in an open meeting.” Legis. History AB225, at 1771 (testimony of Kent Lauer, Executive Director, Nevada Press Association); id. at 2064 ("the bill does allow an attorney to advise members in private, but they cannot privately deliberate or take action on that advice.").

When AB225, First Reprint, was heard by the Senate Committee on Government Affairs, the attorney-client provision was met with considerable opposition, and the Nevada Press Association agreed to another amendment allowing public bodies to discuss or deliberate litigation in private with their attorneys but maintaining the requirement for public bodies to take action regarding litigation only in open and public meetings that comply with the OML. Legis. History AB225, at 2064-70, 2442-43, 2475-79. As a result, the final version of AB225 enacted the limited attorney-client litigation exception which provides that a "meeting" under the OML does not include a gathering of the public body:

> To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

AB225, 2001 Nev. Stat., ch. 378, § 2, at 1836 (emphasis added).

Thus, based on the plain language and legislative history of the attorney-client litigation exception, it expressly allows public bodies to confer with their attorneys in private to "receive information" and "deliberate toward a decision" regarding litigation, but it does not allow public bodies to make a decision or take "action" regarding that litigation in private. Instead, such action must be taken only in open and public meetings that comply with the OML. NRS 241.010(1), 241.015(1)-(3), 241.016(4) & 241.020(1); McKay II, 103 Nev. at 491-96.

This conclusion is reinforced by the OAG's manual and opinions which provide persuasive guidance regarding the OML's requirements. Since 2001, the OAG has advised public bodies that the law requires them to take action regarding litigation only in open and public meetings that comply with the OML. See OMLM §§4.05 & 5.11 (9th ed. 2001, 10th ed. 2005 & 11th ed. 2012) (stating that under the attorney-client litigation exception, "a public body may deliberate . . . in an attorney-client conference," but the exception "does not permit a public body to take action in an attorney-client [private] meeting."); OMLO 2005-04 (Mar. 7, 2005) ("The facts here indicate that the Board deliberated over strategy decisions with [its attorney] Ms. Nichols, but did not reach or make any decision regarding the existing litigation. Thus the Board conducted itself within the legal requirements of Nevada's Open Meeting Law.").

In conducting their public business, all public bodies "are presumed to know the law and to apply it in making their decisions." Miller v. Warden, 112 Nev. 930, 937 (1996) (quoting Jones v. State, 107 Nev. 632, 636 (1991)). This presumption also applies to the members and staff of public bodies because "[e]very one is presumed to know the law, and this presumption is not even rebuttable." Smith v.

State, 38 Nev. 477, 481 (1915). Consequently, it must be conclusively presumed that the Commission and its members and staff have known, for the past 15 years, that the Commission cannot take action regarding litigation in private conferences with its attorneys but must take such action only in open and public meetings that comply with the OML.

Despite this long-standing knowledge for the past 15 years, the Commission nevertheless filed a notice of appeal without first making its decision or taking action to appeal the district court's order in an open and public meeting that complied with the OML. Because the Commission violated the OML, its notice of appeal is void as a matter of law under the absolute voiding rule in NRS 241.036, and its notice of appeal does not have any legal force or effect. *See Johnson*, 20 P.3d at 1149-51 (holding under Arizona's open meeting law that a public body's "private decision to appeal violated the state's open meeting law and that its notice of appeal is null and void.").

Nevada's OML contains an absolute voiding rule in NRS 241.036, which states that "[t]he action of any public body taken in violation of any provision of this chapter is *void*." NRS 241.036 (emphasis added). The OML does not contain any exceptions to the absolute voiding rule in NRS 241.036. Therefore, in all cases and without exception, "[a]ctions taken in violation of the Open Meeting Law are void." *Chanos*, 124 Nev. at 244; *McKay I*, 102 Nev. at 651.

For example, in Chanos, the OAG brought an enforcement action under the OML to void the Tax Commission's actions in granting tax refunds to Southern California Edison in a series of taxpayer appeal hearings closed to the public. The Tax Commission argued that the former provisions of one of its governing statutes, NRS 360.247, created a complete exception to the OML and authorized it to close the entire taxpayer appeal to the public. The Court found that the Tax Commission's "overbroad interpretation of the statutory exception would eviscerate the Open Meeting Law's mandate that public bodies deliberate and vote in public meetings." Chanos, 124 Nev. at 234. The Court concluded, therefore, that the Tax Commission's actions in granting the tax refunds to Edison in closed hearings were void as a matter of law under the absolute voiding rule in NRS 241.036. Id. at 244. The Court explained that:

> NRS 360.247 allowed the Tax Commission to close its session to hold a hearing at which it took confidential evidence from the parties; however, the Open Meeting Law required the Tax Commission to receive nonconfidential evidence, deliberate the collective discussion of relevant facts, and vote on Edison's appeal in open session. Therefore, to the extent that the Tax Commission took nonconfidential evidence, deliberated, and voted regarding Edison's appeal in closed session, it violated the Open Meeting Law. Under NRS 241.036, actions taken in violation of the Open Meeting Law are void. . .
>
> When considering Edison's appeal, the Tax Commission deliberated entirely in closed session and voted in closed session. Therefore, its action granting Edison's refund was taken in violation of the Open Meeting Law. Actions taken in violation of the Open Meeting Law are void. Therefore, because the Tax Commission's grant of Edison's tax refund is void, we reverse the district court's judgment

Id. at 244-45 (emphasis added and footnotes omitted).[8]

Thus, based on the plain language of the absolute voiding rule in NRS 241.036 and based on the Court's decisions applying that rule, it is well established that, in all cases and without exception, any action taken by a public body in violation of the OML is void as a matter of law. It is also well established that, when an action is void as a matter of law, the action "is void ab initio, meaning it is of no force and effect." Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1304 (2006) (citing Black's Law Dictionary 5 (8th ed. 2004) (defining "ab initio" as "from the beginning")). Because such an action is void ab initio and has no force and effect, "it does not legally exist." Id. Furthermore, it is well established that void actions "cannot be cured by amendment" because "they are void and do not legally exist." Otak Nev., LLC v. Dist. Ct., 127 Nev.Adv.Op. 53, 260 P.3d 408, 412 (2011) (quoting Fierle v. Perez, 125 Nev. 728, 740 (2009), overruled in part on other grounds by Egan v. Chambers, 129 Nev.Adv.Op. 25, 299 P.3d 364 (2013)). Therefore, when the actions of a public body violate the

---

[8] See also McKay I, 102 Nev. at 651 (applying the absolute voiding rule in NRS 241.036 and holding that "the action of the Board terminating the city manager in closed session on August 13, 1985, violated the open meeting requirement of NRS 241.020 and is not within any of the exceptions to this requirement contained in NRS 241.030, and is therefore void" (emphasis added)).

OML, the public body cannot take any subsequent action that would cure the violation or reverse the effects of the absolute voiding rule in NRS 241.036.

The OML contains only one limited procedure which allows a public body to take corrective action “within 30 days after the alleged violation.” NRS 241.0365(1). However, even if the public body takes corrective action in a timely manner pursuant to that procedure, the corrective action does not cure the violation or reverse the effects of the absolute voiding rule in NRS 241.036. Instead, the only legal effect of the corrective action is that “the Attorney General may decide not to commence prosecution of the alleged violation if the Attorney General determines foregoing prosecution would be in the best interests of the public.” NRS 241.0365(1). Thus, the OML does not allow the public body to take corrective action to cure the violation or reverse the effects of the absolute voiding rule in NRS 241.036.

Moreover, the OML also expressly provides that “[a]ny action taken by a public body to correct an alleged violation of this chapter by the public body is effective prospectively.” NRS 241.0365(5) (emphasis added). When an action is effective prospectively, it does not change “the legal consequences of acts completed before its effective date.” *Miller v. Burk*, 124 Nev. 579, 592 n.44 (2008) (quoting *Miller v. Florida*, 482 U.S. 423, 430 (1987)). Therefore, under the plain language of the OML, any action taken by a public body to correct a violation of the OML is effectively prospectively, and it does not change the legal consequences of the violation or reverse the effects of the absolute voiding rule in NRS 241.036.

Accordingly, because the Commission filed a notice of appeal without first making its decision or taking action to appeal the district court's order in an open and public meeting that complied with the OML, the Commission violated the OML. As a legal consequence of the violation, the Commission's notice of appeal is void as a matter of law, and the Commission cannot take any corrective action to cure the violation or reverse the effects of the absolute voiding rule in NRS 241.036. Under such circumstances, the Commission's notice of appeal does not have any legal force or effect.

This conclusion is supported by caselaw from other jurisdictions. The Arizona Court of Appeals has held that a public body's notice of appeal is "null and void" under Arizona's open meeting law when the public body does not first make its decision or take action to appeal in an open and public meeting. Johnson, 20 P.3d at 1149-51. In Johnson, the plaintiff sought judicial review of a public board's decision to terminate his employment, and the trial court ruled in the plaintiff's favor and ordered the board to reinstate the plaintiff with back pay and also awarded him attorneys' fees and costs. After the trial court entered its judgment, the board met in executive session with its attorney concerning the status of the litigation, and the board decided to appeal the trial court's judgment at this private meeting. Thereafter, the board filed a notice of appeal.

On appeal, the plaintiff argued that "legal action decided by a public body in violation of open meeting statutes is null and void." Id. at 1149. The board countered that under Arizona's attorney-client exception, "it complied with Arizona's open meeting statute because [the exception] allows a public body, meeting in an executive session, to instruct its attorneys to file an appeal." Id. at 1150. The Arizona Court of Appeals rejected the board's argument and held that the board's notice of appeal was "null and void," explaining that:

> [W]e cannot extend the "legal advice" and "pending litigation" exceptions to include a final decision to appeal. [The open meeting law] limits executive sessions to "discussion or consultation," in contrast to the "collective decision" or "commitment" that comprises "legal action." While [the law] permits board members privately to discuss or consult with their attorneys concerning legal advice or pending litigation, [it] prohibits holding such executive sessions for taking any legal action involving a final vote or decision. A decision to appeal transcends "discussion or consultation" and entails a "commitment" of public funds. Therefore, once the Board finished privately discussing the merits of appealing, the open meeting statutes required that board members meet in public for the final decision to appeal.
>
> The Board argues that announcing its decision to appeal in an open meeting might deter settlement and reinstatement. Aside from such speculation, the law recognizes no such exception. Under the statute, any discussions concerning strategy and the merits of the case could be conducted in executive session, but the final vote or decision to appeal needed to be public.
>
> We conclude that the Board violated the open meeting law when, in executive session, it decided to appeal the superior court's judgment.

> When a public body takes legal action that violates the open meeting law without timely ratification, that legal action is "null and void." A.R.S. §38–431.05(A). Actions taken in violation of the open meeting law "cease to exist or have any effect." *Van Alstyne v. Hous. Auth.*, 985 P.2d 97, 101 (Colo.Ct.App.1999). Here, the legal action violating the open meeting law was the very decision to file this appeal. Accordingly, this resulting appeal is null and void. *See Berry v. Bd. of Governors* of *Reg. Dentists*, 611 P.2d 628, 632 (Okla.1980) (reversing granting of injunction because board failed to vote to seek injunctive relief in a public meeting).

Id. at 1151 (citations and footnotes omitted).

Recently in 2013, the Arizona Court of Appeals confronted the same issue again, and it reached the same conclusion as in *Johnson* that a public body's decision to appeal without holding an open and public meeting violated the state's open meeting law and that its notice of appeal was therefore null and void. *City of Tombstone v. Beatty's Guest Ranch & Orchard*, No. 2 CA-CV 2013-0018, 2013 WL 6243854 (Ariz.Ct.App. Nov. 27, 2013), review denied (Ariz. Apr. 22, 2014). In *Tombstone*, the city attempted to distinguish its case from *Johnson* by arguing that the city council did not actually vote or take other final action during its executive session to authorize the appeal. Instead, the city contended that the city code gave the city attorney authority to pursue the appeal without first obtaining the city council's approval.

The court rejected the city's arguments. First, the court held that because the open meeting law mandated that any final decision to take legal action must be made in a public meeting, the city council's failure to approve the final decision to appeal in a public meeting rendered the appeal null and void, regardless of whether the city council actually voted or took other final action during its executive session to authorize the appeal. Second, the court held that the city code did not give the city attorney any authority to unilaterally take legal action binding the city without a public vote and that the city code could not give the city attorney such authority because it would conflict with the provisions of the open meeting law. Therefore, the court concluded that because the “decision to prosecute this appeal without a public vote constituted legal action in violation of the open meeting law . . . ‘the resulting appeal is null and void’ and this court lacks jurisdiction.” Tombstone, 2013 WL 6243854 at *4 (quoting Johnson, 20 P.3d at 1151).

Like the public bodies in Johnson and Tombstone, the Commission violated the OML when it filed a notice of appeal without first making its decision or taking action to appeal the district court’s order in an open and public meeting that complied with the OML. Johnson, 20 P.3d at 1151; Tombstone, 2013 WL 6243854 at *4. Furthermore, like Arizona’s open meeting law, Nevada’s OML expressly provides that any action taken in violation of the OML is “void.” NRS 241.036; McKay I, 102 Nev. at 651; Johnson, 20 P.3d at 1151; Tombstone, 2013 WL 6243854 at *4. Accordingly, because the Commission violated the OML, the notice of appeal filed on October 29, 2015, is void as a matter of law under the absolute voiding rule in NRS 241.036, and the notice of appeal does not have any legal force or effect.

III. Because the Commission's notice of appeal is void as a matter of law and does not have any legal force or effect and because the time to file a valid notice of appeal has expired, the Commission's appeal must be dismissed for lack of appellate jurisdiction.

In Nevada, "[t]he proper and timely filing of a notice of appeal is jurisdictional. This court cannot treat an improperly-filed notice of appeal as vesting jurisdiction in this court." Guerin v. Guerin, 116 Nev. 210, 214 (2000) (citation omitted). If an appellant does not have the proper legal authority to file a notice of appeal, the appellant cannot legally file a valid notice of appeal that vests jurisdiction in Nevada's appellate courts. Id. at 213-14.

Because the Commission did not have the proper legal authority to file its notice of appeal due to its violation of the OML, the Commission did not legally file a valid notice of appeal that vests jurisdiction over this case in Nevada's appellate courts. See Johnson, 20 P.3d at 1151; Tombstone, 2013 WL 6243854 at *4. Furthermore, because the Commission's time to file a valid notice of appeal has expired, the Commission no longer has the right to pursue an appeal in this case. Therefore, this case must be dismissed for lack of appellate jurisdiction.

When the Commission filed its notice of appeal, it was attempting to appeal under the Administrative Procedure Act (APA), which provides that:

> An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be taken as in other civil cases.

NRS 233B.150 (emphasis added). Accordingly, because APA appeals are governed by the Court's rules and because such appeals must be taken as in other civil cases, the Commission was required to file a proper and timely notice of appeal under the Nevada Rules of Appellate Procedure (NRAP).

Under NRAP, the filing of a proper and timely notice of appeal "is mandatory and jurisdictional," *Rogers v. Thatcher*, 70 Nev. 98, 100 (1953), which means that such "[j]urisdictional rules go to the very power of this court to act." *Rust v. Clark Cnty. Sch. Dist*., 103 Nev. 686, 688 (1987). Because the filing of an improper or untimely notice of appeal does not "invoke this court's jurisdiction to entertain [the] appeal," such a defective appeal must be dismissed and cannot be considered on its merits. *Healy v. Volkswagenwerk*, 103 Nev. 329, 331 (1987). Thus, "[w]hile this court has often expressed its adherence to hearing appeals on the merits rather than dismissing the same on technical grounds, it cannot do so in absence of compliance with the jurisdictional requirement for filing [a] notice of appeal within the time limited by the rules." *Culinary Workers v. Haugen*, 76 Nev. 424, 429 (1960). Accordingly, it is well established that "[t]his court lacks jurisdiction to consider an appeal that is filed beyond the time allowed under NRAP 4(a)." Winston Products Co. v. DeBoer, 122 Nev. 517, 519 (2006).

Under NRAP 4(a)(1), the period for the Commission to file a proper and timely notice of appeal expired "30 days after the date that written notice of entry of the judgment or order appealed from [w]as served." See In re Duong, 118 Nev. 920, 922 (2002). Pursuant to the parties' stipulation and consent to service by electronic mail, the Assemblymen served the Commission by e-mail with written notice of entry of the district court's order on October 26, 2015, and their electronic service of the notice was complete upon transmission of the e-mail on that date. NRAP 25(c)(3); NEFCR 9(f). Therefore, the period for the Commission to file a proper and timely notice of appeal expired on November 25, 2015, which was 30 days after the date of electronic service of written notice of entry of the district court's order. NRAP 26(a) (prescribing rules for computing time).[9]

---

[9] When service is by regular mail, NRAP 26(c) adds 3 days to the appeal period. Lytle v. Rosemere Estates Prop. Owners, 129 Nev.Adv.Op. 98, 314 P.3d 946, 948 (2013). However, it is unclear whether NRAP 26(c) adds 3 days to the appeal period when service is by electronic means. Cf. Winston Products, 122 Nev. at 520 (noting that under NRCP 6(e), "[t]hree additional days are added to [the] filing deadline when service was made by mail or electronic means" (emphasis added)). In this case, if 3 days are added to the Commission's appeal period, the period expired on November 28, 2015, which was a Saturday, so the appeal period expired on the next judicial day: Monday, November 30, 2015. NRAP 26(a)(3).

Because the notice of appeal filed by the Commission on October 29, 2015, is void as a matter of law under the absolute voiding rule in NRS 241.036 and does not have any legal force or effect, the Commission did not legally file a valid notice of appeal during the jurisdictional appeal period. Consequently, having failed to file a valid notice of appeal during the jurisdictional appeal period, the Commission lost the right to pursue an appeal in this case, and its appeal must be dismissed for lack of appellate jurisdiction. Accordingly, the Assemblymen respectfully ask the Court to dismiss the Commission's appeal for lack of appellate jurisdiction.

IV. If the Court decides not to consider the OML issue in the first instance on appeal, the Court should stay the appeal and remand to the district court for resolution of the Assemblymen's pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML.

As a preliminary matter, the Assemblymen respectfully urge the Court to consider the OML issue in the first instance on appeal because the issue of whether the Commission violated the OML is a pure question of law which involves an issue of statutory construction and which the Court may decide de novo without any deference to the district court. See Sandoval v. Bd. of Regents, 119 Nev. 148, 153-54 (2003); Dewey, 119 Nev. at 93-94. If the Court determines that the Commission violated the OML, the Court can apply the absolute voiding rule in NRS 241.036, which lays down a clear rule of law and is self-executing as applied to all public bodies. See Wilson v. Koontz, 76 Nev. 33, 39 (1960) (explaining that a "provision is said to be self-executing if it enacts a sufficient rule by means of which the right given may be enjoyed and protected. The language used, as well as the object to be accomplished, is to be looked into in ascertaining the intention of the provision.") Wren v. Dixon, 40 Nev. 170, 195 (1916) ("prohibitory provisions . . . are usually self–executing to the extent that anything done in violation of them is void.").

Therefore, because the issue of whether the Commission violated the OML is a pure question of law and because the absolute voiding rule in NRS 241.036 is self-executing, the Court has the power and discretion to apply the OML to this case and dismiss the Commission's appeal for lack of appellate jurisdiction without remanding the case for any further proceedings in the district court. However, if the Court decides not to consider the OML issue in the first instance on appeal, the Court should stay the appeal and remand to the district court for resolution of the Assemblymen's pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML.

On December 1, 2015, the Assemblymen filed an OML complaint in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML. (Ex. E.) On December 2, 2015, the Assemblymen served the Commission with the summons and the OML complaint. (Ex. F.) Because the district court's resolution of the OML complaint could render this appeal moot, the Court has the power and discretion to stay the appeal and remand to the district court for resolution of the OML complaint.

As a general rule, "the timely filing of a notice of appeal divests the district court of jurisdiction to act in matters pending before this court, such that the district court only retains jurisdiction to consider collateral matters." Gold Ridge Partners v. Sierra Pac. Power, 128 Nev.Adv.Op. 47, 285 P.3d 1059, 1063 (2012). To be considered collateral matters within the limited jurisdiction retained by the district court, the matters generally must be "matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits." Foster v. Dingwall, 126 Nev. 49, 52 (2010) (quoting Mack–Manley v. Manley, 122 Nev. 849, 855 (2006)).

The district court also retains limited jurisdiction to address matters during the pendency of an appeal when a specific statute requires the district court to consider the matters even while the appeal is pending. Gold Ridge, 285 P.3d at 1063-64. This is particularly true when the district court's consideration of the matter "is likely to render any issues in the appeal moot, [for] it would be illogical to require the plaintiff to wait until the conclusion of the appeal to have the district court adjudicate such a [matter]." Id. at 1064.

Finally, the Court has broad discretion to "consider the request for a remand and determine whether it should be granted or denied." Foster, 126 Nev. at 53; Mack–Manley, 122 Nev. at 856 (noting the Court's broad discretion to grant a motion seeking remand to the district court). The Court also has broad discretion to issue all writs and orders "necessary or proper to the complete exercise of [its] jurisdiction." Nev. Const. art.6, §4(1).

As discussed previously, if the district court determines that the Commission violated the OML when it filed a notice of appeal without first making its decision or taking action to appeal in an open and public meeting that complied with the OML, the Commission's notice of appeal is void as a matter of law and does not have any legal force or effect. That means the Commission did not legally file a valid notice of appeal during the jurisdictional appeal period and no longer has the right to pursue an appeal in this case. Under such circumstances, the district court's decision would render this appeal moot. Therefore, in the interests of judicial economy and efficiency, if the Court decides not to consider the OML issue in the first instance on appeal, the Court should stay the appeal and remand to the district court for resolution of the Assemblymen's pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML.

CONCLUSION

The Assemblymen respectfully ask the Court to: (1) dismiss the appeal for lack of appellate jurisdiction; or (2) in the alternative, stay the appeal and remand to the district court for resolution of the Assemblymen's pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML.

DATED: This 7th day of December, 2015.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
EILEEN G. O'GRADY
Chief Deputy Legislative Counsel
Nevada Bar No. 5443
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson Street
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us; eogrady@lcb.state.nv.us
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 7th day of December, 2015, pursuant to NRAP 25, NEFCR 8 and 9 and the parties' stipulation and consent to service by electronic means, I filed and served a true and correct copy of (1) Respondents' Motion to Dismiss Appeal for Lack of Appellate Jurisdiction, Etc., and (2) Exhibits to Respondents' Motion to Dismiss Appeal for Lack of Appellate Jurisdiction, Etc., by electronic means to registered users of the Nevada Supreme Court's electronic filing system and by electronic mail, directed to the following:

Tracy L. Chase, Esq.
Commission Counsel
NEVADA COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, NV 89703
E-mail: tchase@ethics.nv.gov
Attorney for Appellant

/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau