

RENO NEWSPAPERS INC

Publishers of

RENO GAZETTE-JOURNAL

955 Kuenzli St. P.O.Box 22000 RENO, NV 89520 PHONE: (775) 788-6200
Legal Advertising Office (775) 788-6394

Customer Account # 349008
PO# /ID# 4253
Legal Ad Cost \$58.88

- . Washoe County
- . Comptrollers Office
- . PO Box 11130
- . Reno, NV 89510

PROOF OF PUBLICATION

STATE OF NEVADA
COUNTY OF WASHOE

ss Tana Ciccotti

Being first duly sworn, deposes and says:
That as the legal clerk of the RENO
GAZETTE-JOURNAL, a daily newspaper
published in Reno, Washoe County,
State of Nevada, that the notice:
Ordinance 1141

has published in each regular and entire
issue of said newspaper on the following
dates to wit:
Dec. 14, 21, 2001

Signed T Ciccotti

Subscribed and sworn to before me this
DEC 31 2001

Susan V. Dummar
Notary Public

NOTICE OF ADOPTION
WASHOE COUNTY
ORDINANCE NO. 1141

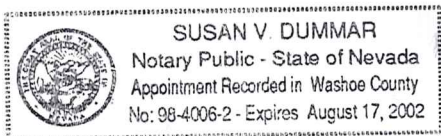
NOTICE IS HEREBY GIVEN THAT: Bill No. 1317, Ordinance No. 1141 entitled:

"An Ordinance amending Chapter 5 of the Washoe County Code by adding provisions prohibiting reprisal or retaliatory action against an officer or employee who discloses improper governmental action, and providing other matters properly relating thereto,"

was adopted on December 11, 2001 by Commissioners Shaw, Bond, Galloway, Short, and Sferrazza. This ordinance shall be in full force and effect from and after December 21, 2001.

Typewritten copies of the ordinance are available for inspection by all interested persons at the office of the County Clerk, 75 Court Street, Reno, Nevada.

AMY HARVEY,
Washoe County Clerk
No.4253 Dec.14,21, 2001



SUMMARY: An ordinance amending Washoe County Code by adding provisions prohibiting reprisal or retaliatory action against an officer or employee who discloses improper governmental action.

BILL NO. 1317

ORDINANCE NO. 1141

AN ORDINANCE AMENDING CHAPTER 5 OF THE WASHOE COUNTY CODE BY ADDING PROVISIONS PROHIBITING REPRISAL OR RETALIATORY ACTION AGAINST AN OFFICER OR EMPLOYEE WHO DISCLOSES IMPROPER GOVERNMENTAL ACTION, AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WASHOE DO ORDAIN:

SECTION 1. Chapter 5 of the Washoe County Code is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this ordinance.

SECTION 2.

5.3331 Definitions. As used in sections 5.3331 to 5.3336, inclusive, the following words and phrases shall have the following meanings:

1. "Improper governmental action" means any action taken by an officer or employee in the performance of his official duties, whether or not the action is within the scope of his employment, which is:

- (a) In violation of any state law or regulation;
- (b) In violation of Washoe County Code, an ordinance adopted by the board of county commissioners, or an ordinance or regulation adopted by the appointing authority which employs the officer or employee;
- (c) An abuse of authority;
- (d) Of substantial and specific danger to the public health or safety; or
- (e) A gross waste of public money.

2. "County" means Washoe County.

3. "County employee" means any person who performs public duties under the direction and control of a county officer, or in the case of the district health department, for the district health officer, and in either case, for compensation paid by or through the county.

4. "County officer" means a person elected or appointed to a position with the county, or the district health department, that involves the exercise of a county or district health department power, trust or duty, as applicable, including:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of county or district health department policy;

(b) The expenditure of money of the county; and

(c) The enforcement of laws and regulations of the state, county, or district health department.

5. "Reprisal or retaliatory action" includes:

(a) The denial of adequate personnel to perform duties;

(b) Frequent replacement of members of the staff;

(c) Frequent and undesirable changes in the location of an office;

(d) The refusal to assign meaningful work;

(e) The issuance of letters of reprimand or evaluations of poor performance;

(f) A demotion;

(g) A reduction in pay;

(h) The denial of a promotion;

(i) A suspension;

(j) A dismissal;

(k) A transfer;

(l) Frequent changes in working hours or workdays; or

(m) If the employee is licensed or certified by an occupational licensing board, the filing with that board, by or on behalf of the employer, of a complaint concerning the employee, if such action is taken, in whole or in part, because the county officer or employee disclosed information concerning improper governmental action.

SECTION 3.

5.3332 Appointment, qualifications and authority of hearing officer; county manager's duties.

1. The board will periodically appoint a hearing officer or a panel of hearing officers from the recommendations made by the county manager.

2. A person who wishes to serve as a hearing officer pursuant to sections 5.3331 to 5.3336, must:

(a) Possess a bachelor's degree from an accredited college or university and have at least 4 years of professional experience in resolving disputes between opposing parties, 2 years of which included making determinations or adjudicating issues by interpreting statutes or administrative rules or regulations;

(b) Possess an associate's degree from an accredited junior college or community college and have at least 5 years of professional experience in resolving disputes between opposing parties, 2 years of which included making determinations or adjudicating issues by interpreting statutes or administrative rules or regulations;

(c) Have at least 2 years of experience as a hearing officer with an administrative agency of the state; or

(d) Possess any other combination of education and experience which the county manager deems to be equivalent to the education and experience required by paragraph a, b, or c, and demonstrate to the satisfaction of the county manager that he possesses the knowledge, skills and abilities required by this subsection.

3. In addition to those qualifications listed in subsection 2, a hearing officer must:

(a) Be able to:

(1) Interact effectively with all participants at a hearing in a manner which ensures an impartial, orderly proceeding;

(2) Work independently;

(3) Listen and analyze the evidence presented at a hearing and communicate effectively his decisions on motions and objections related to that evidence;

(4) Communicate effectively, orally and in writing, with persons from a variety of social, economic and educational backgrounds;

(5) Render an impartial decision based on:

(i) The evidence presented at a hearing; and

(ii) An objective analysis of applicable statutes, regulations and case law;

(6) Write decisions and opinions in a clear, concise and accurate manner; and

(b) Be knowledgeable of the provisions of state law and regulations, and county code relating to local governments, including county government.

4. If the hearing officer determines that the action taken was a reprisal or retaliatory action, the hearing officer may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file his decision with the county manager, or other elected or appointed board responsible for the actions of that person and prepare a separate copy redacting identifying or sensitive information. The redacted copy of the decision of the hearing officer shall be made public.

5. The county manager, or the county manager's designee, shall provide each officer and employee with a summary of the provisions of sections 5.3331 to 5.3336, inclusive.

SECTION 4.

5.3333 Written appeal by officer or employee who claims reprisal or retaliatory action was taken.

1. A county officer or employee who claims a reprisal or retaliatory action was taken against him for disclosing information concerning improper governmental action may file a written appeal with the director of human resources. The appeal must be:

(a) Filed within 60 workdays after the date the alleged reprisal or retaliatory action took place.

(b) Submitted on a form provided by the director of human resources.

(c) Contain a statement that sets forth with particularity:

(1) The facts and circumstances under which the disclosure of improper governmental action was made; and

(2) The reprisal or retaliatory action that is alleged to have been taken against the county officer or employee.

2. Upon receipt of the written appeal, the director of human resources shall contact a hearing officer from among those who have qualified and been appointed by the board. The director of human resources shall ascertain whether the hearing officer has any conflicts which would prevent him from hearing the appeal. The hearing officer shall be entitled to reasonable compensation from the county for time spent hearing and determining the appeal, and for reasonable travel costs or other expenses incurred in hearing the appeal. The director of human resources shall forward the written appeal to the hearing officer.

3. The hearing officer may reject an appeal form that is incomplete or otherwise deficient as insufficient to commence the appeal.

SECTION 5.

5.3334 Time for hearing; continuances.

1. The hearing officer shall convene the hearing at the time and place specified for the purpose of hearing the appeal.

2. Written notice of the time and place of the hearing must be given to the parties at least 10 days in advance. The notice must contain the information required for a party to request reasonable accommodation.

3. The hearing officer shall provide reasonable accommodation to a party with a disability who requests such accommodation within the time sufficient to make the accommodation.

4. Hearings may be continued beyond the period originally scheduled or recessed until a future date which is agreeable to the hearing officer and the parties if good cause is shown.

SECTION 6.

5.3335 Procedures for conduct of hearing on written appeal; hearing officer's decision.

1. The provisions of this section govern the procedure for conducting a hearing for a written appeal filed pursuant to sections 5.3331 to 5.3336, inclusive.

2. The employee or officer filing the appeal may represent himself at the hearing or be represented by an attorney or other person of the employee's or officer's own choosing.

3. All testimony must be under oath administered by the hearing officer.

4. The appeal must be heard in the following manner:
- (a) Opening statement for the officer or employee.
 - (b) Opening statement for the employer, unless reserved.
 - (c) Presentation of the officer's or employee's case, followed by cross-examination. During the presentation of the officer's or employee's case, the county officer or employee must establish
 - (1) The officer or employee was an officer or employee on the date of the alleged reprisal or retaliatory action;
 - (2) The officer or employee disclosed information concerning improper governmental action; and
 - (3) The alleged reprisal or retaliatory action was taken against him within 2 years after the date he disclosed the information concerning improper governmental action.
 - (d) If the officer or employee establishes the facts set forth in paragraph (c), presentation of the employer's case, followed by cross-examination, to establish that the employer did not engage in the alleged reprisal or retaliatory action or that the action was taken for a legitimate business purpose and was not the result of the disclosure of information concerning improper governmental action by the officer or employee.
 - (e) If the employer establishes a legitimate business purpose for the alleged reprisal or retaliatory action, the officer or employee may introduce evidence, followed by cross-examination, to demonstrate that the stated business purpose is a pretext for the reprisal or retaliatory action.
 - (f) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.
 - (g) Argument for the officer or employee.
 - (h) Argument for the employer.
 - (i) Closing argument for the officer or employee.
 - (j) Submission of the appeal for a decision.
5. Except as otherwise provided in subsection 6, all hearings on appeals must be open to the public.
6. On the motion of either party, the hearing officer shall exclude from the hearing room witnesses in the matter not at the time under examination except the parties to the proceeding. No hearing may be closed to the public except on motion of either party for good cause shown.
7. A document or piece of physical evidence sought to be introduced during the hearing must first be identified for the record and the hearing officer may request the production of such records and the appearance of such persons as he requires.
8. The hearing officer shall determine the evidence upon the charges and specifications as set forth by the appeal document, and shall not consider any additional evidence beyond the scope of the charges.
9. An officer's or employee's past performance by way of an act or a failure to act may be shown by competent evidence.

10. All testimony and exhibits offered at the hearing must be relevant and bear upon the matter in contention. Any testimony or exhibits which are considered by the hearing officer as not meeting this criterion may properly be excluded.

11. The hearing officer shall also consider the objection of either side to the introduction of evidence. Competence and relevance must be the primary test in ruling on objections.

12. A decision must be based on evidence presented. The hearing officer shall be guided in his decision by the weight of the evidence as it appears to him at the hearing.

13. Any letter, paper or object offered in evidence must be properly authenticated. The representative for the opposing party is entitled to examine the exhibit when it is offered.

14. The hearing officer shall render his decision within 30 days of the conclusion of the hearing.

SECTION 7.

5.3336 Prohibitions and application.

1. An officer or employee shall not directly or indirectly use or attempt to use the officer's or employee's official authority or influence to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence another officer or employee, as applicable, in an effort to interfere with or prevent the disclosure of information concerning improper governmental action.

2. For the purposes of this section, use of "official authority or influence" includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action.

3. An officer or employee shall not use the provisions contained in sections 5.3331 to 5.3336, inclusive, to harass another officer or employee.

4. Nothing contained in section 5.3331 to 5.3336, inclusive, prohibits an officer or employee from initiating proper disciplinary procedures against another officer or employee, as applicable, who discloses untruthful information concerning improper governmental action.

5. Sections 5.3331 to 5.3336, inclusive, are intended to be directory and preventive rather than punitive, and do not abrogate or decrease the effect of any of the provisions of state statutes or county code provisions which define crimes or prescribe punishments with respect to the conduct of officers or employees.

SECTION 8. This ordinance shall be retroactive to October 1, 2001.

[Business Impact Note: The Board of County Commissioners hereby finds that this ordinance does not impose a direct and significant economic burden upon a business, nor does it directly restrict the formation, operation or expansion of a business.]

Proposed on the 20th day of November, 2001.

Proposed by Commissioner Bond.

Passed on the 11th day of December, 2001.

Vote:

Ayes: Commissioners Shaw, Short, Galloway, Bond and Sferrazza

Nays:

Absent:

James M. Shaw
Chairman
Washoe County Commission

ATTEST:

Amy Harvey
County Clerk

This ordinance shall be in force and effect from and after the 21st day of December, 2001.