



Commission on Off - Highway Vehicles

Full Commission Meeting

December 3, 2015

Meeting Minutes**DRAFT**

Meeting Locations:

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| <i>Nevada Public Utilities Commission 1150 East Williams Street Hearing Room B Carson City, Nevada 89701</i> | <i>Nevada Public Utilities Commission 9075 West Diablo Drive Suite 250 Hearing Room B Las Vegas, Nevada 89148</i> | <i>Phone in Number 712-432-1212 Meeting ID-957-738-378</i> |
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I. MEETING OF THE NEVADA COMMISSION ON OFF-HIGHWAY VEHICLES

1. CALL TO ORDER

Chair McKay called the meeting to order at 9:00 am.

2. PLEDGE OF ALLEGIANCE

The pledge was recited.

3. ROLL CALL OF THE COMMITTEE MEMBERS

Commissioner Cox - Present, Las Vegas
Commissioner Elmore - Absent
Commissioner Baker - Present, Las Vegas
Commissioner Gerow - Present (arrived late), Carson City
Commissioner Griggs - Absent
Commissioner Jackson - Present, Carson City
Commissioner Lambert - Present, teleconference
Commissioner Lee - Present, Las Vegas
Commissioner Richardson - Absent
Chair McKay - Present, Carson City
There is a quorum.

4. PUBLIC COMMENT

No public comment.

5. MEETING MINUTES

The Executive Secretary Subcommittee ("ESS") of the NCOHV will vote to approve its November 10, 2015 meeting minutes. The ESS's October 26, 2015 minutes were previously approved on November 10, 2015. The Commission will vote to approve the October 15, 2015 NCOHV meeting minutes. MOTION: Commissioner Baker makes a motion to approve the minutes from November 10, 2015, seconded by Chair McKay. AG Palmer, the minutes from October 26 and November 10 both say full commission meeting and that needs to be changed to Executive Secretary Sub Committee. Chair McKay, with those two changes is that still acceptable to the motion maker? Commissioner Baker agrees. The motion passes unanimously.

MOTION: Commissioner Jackson makes a motion to approve the minutes from October 15, 2015; seconded by Commissioner Baker.

AG Palmer, on item 8 where it talks about Commission Lee, it needs to include his full disclosure. On item 6 the Director of Administration is listed as Patrick Gates and not Patrick Cates. On item 12 it should be periderm and it is listed twice. Chair McKay, I will make sure Kim gets those changes for the final form.

The motion passes unanimously.

Michael Gerow has joined the meeting at 9:09 am.

6. HIRING AN EXECUTIVE SECRETARY

The ESS met on October 26, 2015, to review the applications received for the open position of Executive Secretary and to select the candidates to be interviewed during a subsequent open meeting. The ESS selected Jennie Bear, Jessica Grundy, and Nora Shelton for interviews on November 10, 2015. Nora Shelton later withdrew her application for consideration. The ESS interviewed Jessica Grundy and Jennie Bear at a properly noticed open meeting on November 10, 2015.

The ESS will provide the NCOHV with their hiring recommendations for further discussion by the NCOHV. The Commission may vote to hire one of the candidates following this discussion.

Commissioner Baker, if the meeting minutes were read you saw that Jessica Grundy and Jennie Bear were interviewed and were both very well qualified. In the end the subcommittee felt that Jessica Grundy had a little stronger connection by working with the state's Grants division and the division of Tourism. The subcommittee felt that Jessica Grundy was the top candidate but also felt that Jennie Bear was also very well qualified. She contacted the reference for Jessica Grundy: Kelly Williams who works for the division of Conservation and Natural Resources and Emmy (last name not discernible) who is the marketing manager for the division of Tourism. Both people almost mirrored their comments in that she is extremely organized, very through, takes on all responsibilities. They were both very impressed with her and she was always willing to take on extra work. They both felt very confident that she could take on the responsibilities of this job with minimal over site. The subcommittee would collectively like to recommend that the full commission support the decision to hire Jessica Grundy and authorize Chair McKay to negotiate a salary. Commissioner Jackson, he thought the salary was set in stone at \$29.00.

Commissioner Baker, it was set in stone when it was a contract position but now that the position is being offered as a state position with full benefits and the salary can be negotiated. It also gives the chance for a review and a possible salary raise.

Commissioner Jackson, what is the range? Commissioner Baker, a list of responsibilities was provided to state HR, they aligned it with the states position classification and provided the salary range of \$20.27 to \$29.97 depending on education and experience. Commissioner Jackson, he commends Commissioner Baker for doing such a good job. Chair McKay, he has had two conversations with the HR administrator for the state yesterday and he resent the job posting, the estimate of benefit expenses and both resumes to her. She indicated that she would get him direction next week for the salary range and her advice was to hire. Once the details are received they can put together a contract for her pending the Commission's decision today. They will be much closer to an answer next week. Commissioner Baker, the challenge is her being a state employee and who will keep track of her. The cleanest option will be if one of the division who hosts the Commission keeps track of the employee and the Commission is the funding source. Then they would be in the system in regards to payroll and keeping track of hours, sick time, vacation time and benefits. Commissioner Jackson, is it appropriate at this time to put into the contract some kind of mandatory review? On another board he sat on they did a formal review every six months or does it need to be in the contract. AG Palmer, there should be a state procedure for reviews. Part of what the Commission will be looking for is authorization for the Chairman or someone to work with state administration and the various components and make sure that everything is in place and that person will have the authority to get this position full going. Commissioner Baker, the reviews need to be included in the process.

MOTION: Commissioner Jackson makes the motion to hire Jessica Grundy; seconded by Commissioner Gerow.

The motion passes unanimously.

MOTION: Commissioner Baker makes the motion to authorize the Chair to work with the state to coordinate the benefits package and payroll; seconded by Commission Gerow.

The motion passes unanimously.

MOTION: Commissioner Jackson makes a motion to give the executive secretary subcommittee the authority to negotiate and implement the contract but the contract still must be approved by the full commission; seconded by Commissioner Cox.

Chair McKay, can the executive secretary subcommittee negotiate a temporary contract and come back to full commission to ratify a permanent contract. Commissioner Jackson and Commissioner Cox agree to the change. AG Palmer, the concern is having to work with several different agencies and if there is more than one person every time a decision is made there will have to be an open meeting. There is also another party involved, the person who is being hired. If they agree to the contract and then the full Commission decides to change the terms you are possibly opening the Commission up for litigation.

Commissioner Jackson withdraws his motion.

MOTION: Commission Jackson makes a motion to allow the Chair to negotiate the contract within the previously stated parameters of \$22.27 to \$29.97 an hour; seconded by Commissioner Cox. Commissioner Cox, the commission is at 1.8% of total administration costs, well under the 5% limit.

The motion passes unanimously.

7. PARTNERSHIP WITH NEVADA STATE PARKS FOR OFFICE SPACE, EQUIPMENT, AND SERVICES

The NCOHV will discuss and may vote on whether to enter into an inter-local agreement with Nevada

State Parks to provide office space for the NCOHV Executive Secretary, to purchase related equipment needed, and to store NCOHV official records. The agreement will also provide for opportunities between the respective agencies to work jointly to serve off-highway vehicle users in Nevada.

Chair McKay, at the last full commission meeting they were attempting to negotiate an arrangement with state grants to house the executive secretary. Due to some statutory issues that was not possible. The Administration Director Patrick Cates had indicated to give him a few weeks and he would explore other options. He has talked to NDOT, DMV, State Parks and his assessment after talking with those agency heads is that State Parks is the best agency for the Commission to partner with. He has had a discussion with Eric Johnson on how the partnership could work better for the state and OHV users in the state. They manage the RTP program for the past 22 years which uses federal gas tax money. The bulk of the discussion was how to work better together in the future. They provided him an estimated cost sheet if the Commission chooses to have office space and related services within state Parks. Annual costs would be: \$2,500.00 for rent, a phone with voicemail \$200.00, email \$40.00, long distance charges \$50.00, insurance \$15.00, copy machine use \$80.00. The first year cost would be \$3,155.00 if the Commission chooses to do all those services with them. Some additional options are: a computer through the state \$840.00, two software packages of Microsoft office and Adobe \$530.00, printer \$380.00, office chair \$200.00, 10-key \$50.00. There potentially would be \$2000.00 if they got all of the other equipment. Potentially, if the Commission did everything it would be a \$5,000.00 expense to get set up in their office and then \$3,000.00 a year after that.

Commissioner Baker, it would be good to have a location so the Commission has a presence in a state building. It provides an opportunity to talk with different people within the different agencies. It would be better to invest in a tablet or a laptop so it can be portable for the meetings and then to have a printer at the office location. Commissioner Gerow, in using the 5% number; was it clarified 5% of the revenue for the year or are we still using a phantom number. Commissioner Cox, it is the total money in the account on January 1st. There will be some different accounting practices now to make sure what has been set aside for grants is not included in that total fund. The money that is that fund is the total operating budget for the year. 5% of the 2015 budget is \$51,000.00 and 5% of the 2016 is estimated at \$75,000.00. AG Palmer, a better reading would be the actual cash in the account as opposed to what the bank balance reflects. Commissioner Cox, based on the \$2 million balance right now and monies to be received for the last quarter; that is where he is getting his 5% number from. Chair McKay, the LCB senate fiscal analyst Mark L. is working on some more advice about how the Commission can set their books. Commissioner Gerow, there needs to be clarity on where the 5% is coming from. He does not want the Commission going down the road and then have someone come back at a later date and tell them that they cannot claim the money from years past. Then that might put the Commission in a situation where they have over spent the 5%. Commissioner Cox, the Commission allocated \$700,000.00 for this round of grants and the Commission may not end up giving all of that out. Since it will still be in the account next year, is that considered double dipping. AG Palmer, it is not double dipping. The Commission may want to review the statute so it is very clear what it is and secondly the Commission may want to have a budget meeting and put together a budget. Chair McKay, those are all good ideas so that we can have a clearer picture of the finances. Commissioner Gerow, in the private sector if I go over my budget I have the opportunity to pull in more cash or borrow cash, the Commission cannot do that. What does the Commission do if they have a contract with an employee and then cannot meet those funds? They are trying to hold the Commission to unknown perimeters, they only have estimates. Commissioner Cox, the Commission works forward based on what they took in the previous year. Commissioner Gerow, it is being based off a bank account balance

number which is a direct representative of the revenue. Is the Commission using fiscal 2015 or fiscal 2016 and what was left over from fiscal 2015? Commissioner Lee, the Commission should be budgeting on what the income is not what the total amount is. Commissioner Jackson, we are way off this item and thinks the Commission should have a budget meeting and decide this in a properly agenzized item in an upcoming meeting.

MOTION: Commissioner Jackson makes a motion to move forward with the partnership with State Parks to house and supervise the newly hired executive secretary; seconded by Commissioner Lee.

Commissioner Lambert, offers a friendly amendment to allow proceeding with negotiations as opposed to having to do it. Commissioner Jackson, one of the issues is that the new employee needs to be house fairly quickly, if there is no time constraints then he accepts the friendly amendment.

Commissioner Jackson withdraws his original motion.

MOTION: Commissioner Jackson restates his motion for the Commission to authorize the Chairman to finalize an agreement with State Parks to house and equip Commission's the executive secretary and to oversee said employee; further authorize the Chairman to negotiate payment of benefits other than salary through the State Parks department being a one year agreement. Seconded by Commissioner Lee. Chair McKay, to keep the options open if this does not work out with State Parks does he have the authority to work it out with State Administration and HR. AG Palmer, as long as the one year is okay with state guidelines. Chair McKay, there are agreements within the contract that provide both us and State Parks a way out if one of the parties is unhappy.

The motion passes unanimously.

MOTION: Commission Jackson makes a motion that the Commission go ahead and purchase a computer, printer, and any other auxiliary equipment up to the cost of \$2,000.00 to be purchased through the state for the use of the executive secretary; seconded by Commissioner Cox. Commissioner Baker, it was discussed having a tablet or laptop but a regular computer may be needed to access some of the needed programs. She has a tablet with a docking station which gives her access to all the needed programs. Commissioner Lee, the Commission should authorize the tablet or laptop first and then if a tower is needed at a later point then the commission can approve it then.

Chair McKay restates the motion; the motion is to purchase the equipment for the executive secretary by the best means possible up to \$2,000.00. This is acceptable to the commission.

The motion passes unanimously.

5 minute break

8. PARTNERSHIP WITH THE CLARK COUNTY DESERT CONSERVATION PROGRAM FOR PUBLIC EDUCATION AND OUTREACH IN 2016

The NCOHV will discuss and may vote on whether to enter into an inter-local agreement with the Clark County Desert Conservation Program to provide joint funding for public education and outreach in 2016. The NCOHV may vote to allow its Chair to enter into a contract with the Clark County Desert Conservation Program and to allow Commissioner Baker to serve as the NCOHV representative to work with the County and the successful advertising bidder.

Commissioner Baker, this topic was discussed at the last meeting. Chair McKay and herself were able to meet with the chair of the program. They are offering \$200,000.00 of their dollars towards going out for a request for proposal to promote responsible OHV use and to promote the OHV registration program. They are asking the Commission to commit \$50,000.00 to push the message out after the material is created. They will allow the Commission to have a representative sit in on the evaluation committee and the winner of the contract will come to a full commission to present their ideas. The full commission will authorize the winner to move forward. They would like to know what type of product the Commission would like to see, for example one brochure or a couple different brochure, video or media. Outside of Clark County, what are the key markets? They are also okay to expand to scope to things that would be unique to the Commission. Commissioner Jackson, this is a great idea and he would like this to be a pilot to going into partnerships with other counties. He is not comfortable with only the Chair making the negotiations, any contract should be approved and negotiated by the full commission. It should be the full commission entering into the contract, he can see blow back if something goes wrong. AG Palmer, the county has already drafted a proposal of what the inter local will look like. All the Chairman would be entering into is the authorization that the Commission agrees to commit \$50,000.00 that Commission Baker can work with the county on putting together the RFP, and selecting the marketer. The selected person will move forward with some ideas and come back to the full Commission, where

the full Commission will get decide on the final product. Commissioner Jackson, if they propose something the Commission does not want, can the Commission say no? Commissioner Baker, the Commission cannot with draw the money but can tell the marketing firm what they want done, that is part of the proposal. Commissioner Gerow, he agrees with Commissioner Jackson. It sounds like the Commission will vote today to put \$50,000.00 into this program, then they will select a company to carry this program out. We don't want to put the Commission in a situation where the Desert Conservation program can push their agenda with our money without the Commission having a final say. AG Palmer, here is a portion of the draft on article one, "county and agency have entered into this agreement". So it is not the Chairman entering into the agreement he would just be the person entering into it on behalf of the Commission for the purposes of jointly executing the work which will later be described in the consulted scope of work. In article 2, the responsibilities, "both parties agree that the county and the commission to collaborate on the proposal evaluation and selection of consultant who will provide off highway vehicle education outreach and marketing services. Both parties agree to collaborate on the review and approval of deliverables". Commissioner Jackson, how many people do we have voting on this? AG Palmer, the Commission has the same amount of power as the county. Commissioner Jackson, he would not be comfortable with this unless the Commission has some sort of veto on the content. AG Palmer, the Commission does. Commissioner Jackson, if you can tell me for sure that we have a veto on the content then I will be okay. AG Palmer, there is one sentence; "both parties agree to collaborate on the review and approval of the deliverables provided by the consultant". This is an equal partnership with the county. Commissioner Lambert, his concerns are in line with Commissioner Jackson's concerns. He does not feel that he has the adequate information to vote on this issue. Commissioner Baker, the Desert Conservation Program is asking us as an entire Commission to have a discussion about what materials are wanted. Then she would be at the meeting to ensure it happened. The entire Commission makes a decision on what product they want today then she and two other people would sit on the review of the proposals and they all individually score the proposals to identify the person who wins the contract. The winner goes forward and creates the materials that have been requested today and then they come back to the full Commission. The full Commission can tell them what they like or don't like and provide the company feedback. The only thing the full Commission would not be involved with is the review and ranking of the proposals. Commissioner Gerow, this looks to be really good for the Commission. We will have say in the end product. Commissioner Cox, he is very comfortable with this proposal. For a long time the Commission has been looking for more public education and outreach. Chair McKay, I need someone to make the motion to commit the \$50,000.00 for the partnership and the Chair will work with the DAG and others to execute and inter local agreement.

MOTION: Commissioner Lee makes the motion as previously stated by Chair McKay; seconded by Commissioner Baker. The motion passes unanimously.

Commissioner Baker, can we have a secondary discussion about what we want them to create. Do we want them to create a brochure that just outlines the OHV Commission goals in general? A brochure for law enforcement and then have them contact Commissioner Lee for details and input, a video that promotes the OHV registration and maybe identify the grants. Chair McKay, the Commission has discussed public education wants a couple of times in the past year and he could forward Commissioner Baker that list. We need something for OHV dealers and law enforcement and it needs to include some type of media component like PSA's or internet. Commissioner Jackson, there may be a grant proposal where someone is willing to do some of those things and maybe we should wait until after the grant process. AG Palmer, before the RFP is put together the grant process will be finalized and so that answer will be known. Commissioner Baker is just looking for direction. Chair McKay, when considering the needs of the rest of the state outside of Clark County the Commission may choose to fund additional efforts in the rest of the state based on a similar message. Commissioner Jackson, if this works well he can see the Commission partnering with agencies around the state. Commissioner Lee, the biggest question he gets asked is if there is any material from the OHV Commission that patrol officers can hand out to the public when issuing warnings or citations. Commissioner Baker, I am good with the direction that we want to go. I will also talk to them and see if this is enough or if the person selected will come and talk with us at the front end. AG Palmer, she wanted to let everyone know that this is the group that provided the initial funding to get OHV started.

10. PRESENTATION FROM THE DEPARTMENT OF MOTOR VEHICLES ("DMV")

The Commission will receive a report from a representative of the DMV on the status of NCOHV state registrations and the revenue and expense reports related to the quarterly distribution of NCOHV funds.

Doreen Rigsby, DMV, the updates are as follows: registration fees \$54,762.00; registration renewal fees \$245,060.00; replacement decals \$50.00; title processing fees \$16,442.25; title fees \$40,620.70; title fees for out of state \$435.00; VIN assignments \$40.00; late registration fees \$26,625.00. The DMV expenses are as follows: salaries \$41,917.26 and operating costs \$28,016.17. A quarterly revenue was issued for \$314,101.52. The excess balance is \$383,048.00, the excess fee will not be seen in the second quarter because that is what was remaining effective was July 1. The remaining updates are as follows: new registrations 2,816; renewals 12,310; duplicate decals 53; OHV titles processed 2,185; phone calls answered 5,289; mail correspondence 1,196. The total active registrations as of September 30th 40,618. Chair McKay, Commissioner Cox, AG Palmer and himself have been in discussion with DMV on look of the DMV report. Doreen Rigsby, DMV, one of the things that caught her eye was the state fiscal year is July to June and the Commission is January to December. Does the Commission want monthly or quarterly updates? Chair McKay, if it pleases the Commission it could be called an interim report, DMV could provide monthly reports with the quarterly report being the final in the agreed upon format. Commissioner Gerow, was this a standard quarter with nothing excessive put in and this is what the Commission should roughly expect quarterly? Doreen Rigsby, DMV, the Commission is staying about the same, the people who are going to register do register. Commissioner Gerow, as a seller he sees what is being put into the system as new sales and it seems like they are losing the renewals. These numbers will go up if we can stop losing the renewals. Doreen Rigsby, DMV, in looking at the late registration fees it shows that people aren't committed yearly but they did receive a suggestion that may want to be looked at as a Commission. As the website grows, if there was a process to have an automatic renewal would help. Commissioner Gerow, is the automatic renewal something that DMV can do? Doreen Rigsby, DMV, they could put in a service request and they are trying to move to a more automated system. Commissioner Gerow, it would really help the renewal process if it was made easier for the public. AG Palmer, on the report it shows year to date but moving forward we might want to see each quarter broken out and then year to date with revenue and expenses. The detail on the expenses, rather than having the name of the people that the salaries encompass, use their title or their function. That way the Commission can see exactly what salary expenses are going towards administering the program and the same thing with the operating expenses. Doreen Rigsby, DMV, she has a meeting next week and can see what can be included into the report.

9. TRAINING PROVIDED BY THE NEVADA COMMISSION ON ETHICS

The Nevada Commission on Ethics will provide training to the NCOHV.

Yvonne Nevares-Goodson, Executive Director Nevada Commission on Ethics, there have been some recent media reports of the state's recent integrity report which gave Nevada an F. This is a slight decrease from the D- that was received a couple of years ago. The report is a little misleading, especially in regards to the Ethics Commission. The Ethics Commission became the scape goat because the Ethic Commission implies public integrity enforcement. In reality a lot of the scores that were reflected in that report had more to do with lobbying disclosures, campaign finance issues, open meeting law transparency and things of that nature that fall outside of the Ethics Commission. This Commission was singled out in that media report for not understanding conflicts of interest, which was misleading because this is a new commission. This does present an opportunity for this Commission to work cooperatively with agencies and to gain a better understanding of the following: what conflicts are within the scope of the Ethics and Government Law and what the Ethics Commission might do when they are confronted with those types of conflicts. In some respect the answer is quite easy, you step back and you cannot be involved in the issue in the government capacity or second it may be appropriate for you to go ahead and participate and long as there are appropriate disclosures. The Ethics Commission jurisdiction is quite limited, they do not have jurisdiction over open meeting law, public records and a lot of criminal things. They are an administrative civil agency. They have an enforcement arm and that is how they respond to the complaints that are issued by the members of the public. They also have an arm that is known as the Advisory Opinion Process and that is an avenue for public officers and public employees to come to their Commission for confidential advice about a potential conflict and then how to proceed if it is deemed a conflict. The most misunderstood thing about Ethics in Government Law is recognizing what is in fact a conflict under the statutory provision of the code. When they think of the word ethics they think of it as a broad and overreach term but when talking about Ethics in Government Law it is referring to two main issues. It refers to abuses of your government position and power and conflicts of interest; where your personal interest might come into conflict with your role as a public officer. The former is the kind of issue if you are abusing your position your probably also having a conflict of interest. Today she would like to focus on what types of conflict actually get you within the scope of Ethics in Government Law. The two main conflicts to talk about are pecuniary interest, anything that affects your financial bottom line. If there is any issue that is before you as a body or as an agency that could

potentially impact your financial interest in any form then there is a conflict of interest. That does not mean that you cannot still operate within the confines of your position given that conflict, it really does depend on the nature of the conflict. Secondly, there is a term defined in their statute known as a commitment in a private capacity to the interest of another person. What that means is that the legislature has decided for us that relationships with certain persons are so close in nature that the law is going to statutorily attribute their private interests to become your private interests. The obvious example in that realm has to do with a spouse or domestic partner. If your spouse has an interest that you can affect a decision on based on your public position that is obvious. If your spouse is a volunteer for an entity that is seeking a grant before your commission, it is still a conflict. The obvious issue when confronted with this is disclosure. When you get to thinking about the nature of this type of conflict, which is where you can get into the answer of what we might do despite that conflict. It might be a different scenario if the spouse actually worked for the entity and so her financial bottom line and therefore your financial bottom line in a community property state are obviously affected. If she works for and has financial interest then you might say that you have an absolute clear material effect on this decision and how it might impact my spouse and therefore I have to abstain. When you start to talk about that she is only a volunteer and yes she is interested in the agency but she is interested in other things too. It does not benefit her entity any more than any other entity that might be before you, you have to start talking through what the actual scope of that interest to determine whether or not your ability to make a decision in your government capacity has a material impact on your spouse's interests. The reason spouses are brought up is because that is the most relatable for people. The law actually says we have these similar types of conflicts in similar relationships with all persons to whom we are related within in the third degree of consanguinity. There is a table to help people figure out who falls absolutely within and outside the third degree of consanguinity which can help you figure out the types of relationships that are clear conflicts. They also define who employs us, because they presumably affect our bottom line and people with whom we have substantial and continued business relationships. There is another category which says that anyone who is substantially similar to any one of those persons. The reason for this is because while only people you are related to, within a certain degree qualify, they could very well be factually your second cousin once removed, but they may have grown up in the household and you are "like siblings". If you are going to testify that the nature of the relationship you have with an individual is that close and personal, we are going to argue that is it substantially similar to another relationship that is identified in this statute. You are really going to have to look a little deeper than what might specifically fall within the statute and what type of relationship might bring you a little bit closer to that level of concern. The other issue I want to draw more attention to is this business relationship, we get a number of problems in this particular area. As individuals in business in this state, we get a lot of business interest that might be, first of all, related to the work you are doing for the Commission, and also might be unrelated to that work. When we talk about business relationships, the focus should be on the relationship itself. You very well could have a business relationship with "Joe Black", and "Joe Black" could have 18 other businesses that have nothing to do with your business relationship. He could own all these other businesses, and if one of those other 18 businesses comes before you in your capacity as a commissioner, you have a conflict of interest, because you nevertheless have a business relationship with this individual. The obvious question becomes since I have no interest or effect on those other 18 businesses, their survival does not affect me. The law says, actually it does, because you have a relationship with an individual who's so significantly involved with one of these businesses. Bringing the attention back to the nature of the relationship itself, and not necessarily the interest that might be at stake, which very well could be stated that the person has zero interest in that business that is before me, but you could have relationship that triggers the conflict.

Commissioner Jackson, what if the person is a customer of the business, so that person would have no financial gain, but the business owner would have a financial gain. Is that still a conflict of interest?

Yvonne Nevares-Goodson, I would say it probably depends upon the nature of that customer relationship. In other words, do you, as the individual, or does your business have a contract with that particular company that will create the business relationship. Again, we are talking nuances. If you are just occasionally purchasing parts, then clearly, not, you are just a patron, and you are not financially or otherwise interested in the work of that business in a business sense. Businesses are so diverse and evolved in today's markets that it could very well be that you are the sole proprietor and supply 60% of the company's business and you have to start thinking about what you know, and don't know, about that business relationship.

Commissioner Gerow, so what happens if you are a business owner whose actions, in their entirety, directly affect my business? Yvonne Nevares-Goodson, that is a great question, as this is not the only commission. There are lot of boards and commissions, almost every government agency, where there are certain requirements for the makeup of the commission, and the governing bodies. If the board or commission regulates professional licensing, there are requirements that

certain members of the board hold a license in that industry. The point is we are trying to draw that expertise and involvement in those interests and industries to affect the policy that the board is given. In those areas, that doesn't necessarily create a conflict for you. One of the caveats, when we talk about disclosures and abstentions, is not so much disclosure, but abstention which is if the Commission is being asked to decide on an issue that affects your business no more or no less than any other business affected by the matter, you are presumed not to have a conflict that warrants abstention. In reference to Commissioner Gerow's question and his business of being a dealer; if you, being a dealer, like any other dealer, and this board is going to affect a policy that states that all dealers in the state of Nevada must do "X", your business is not affected any more than any other dealer business. It's suggested to disclose that the statute requires me to disclose my interest in this area, but my business will not be affected any more or any less than anyone else's, therefore; I will participate in this vote. Commissioner Gerow, I have contracts with many different state agencies for their off-road vehicles. We are coming up on rounds of funding requests and these are going to be companies that, if they get awarded, there is a large possibility they are going to come into one of my stores and buy products with that money. So is that? There are state agencies, private industries, and because I have multiple stores, I control 80+% of the off-road sales in Northern Nevada. In other words, do I need to step down from the commission? Yvonne Nevares-Goodson, I guess, yea. Commissioner Gerow, the Commission wants my expertise, so it's really a catch-22. For the State of Nevada to get the business done, everything I do is helping. Yvonne Nevares-Goodson, can it be impacting your business? Commissioner Gerow, it's everything. Especially when you start looking at how intertwined and in every aspect of this commission. Obviously, I disclose I am the dealer representative appointed by the Governor, but I want to make sure I am protected, and my businesses are protected. I don't think it's fair that my business would be disallowed contracts that I had way before I was ever appointed. Yvonne Nevares-Goodson, the question would be do you have an unfair advantage in the competitive market. Commissioner Gerow, no. Yvonne Nevares-Goodson, by virtue of the role you serve here? There are situations all the time. We can't say, for example, that a member of the city council, who might have a responsibility to impose a tax increase, they are required by law to be a resident of the county that they are serving in. Their taxes will be affected the same. In your instance, if the statute requires one of the appointees of the board to be a dealer, then presumably, there is an inherent conflict. The law has said we recognize that there is this inherent conflict. You have to walk the fine line and be careful in a situation where you can affect a decision in your government capacity that provides your business a competitive advantage in the marketplace. If there is a possibility that it could affect your business that might be one thing which is inherently built into the makeup of the commission. If it's a situation where you can use your position to make a decision or influence your colleagues to make a decision that gives your specific business interests competitive advantages in the private marketplace that is probably where you are going to have a conflict. Commissioner Gerow, all contracts are put out to bid in an open bid process. AG Palmer, trying to give an example, Mr. Gerow might be faced with a situation where someone is seeking a grant that doesn't involve the purchase of any off-road vehicle verses another application where said grant includes the purchase of a certain number of vehicles. Perhaps, that might be the type of situation where he has to determine a score for one verses the other. One potentially affects his bottom line, the other perhaps would not. That might be the type of conflict that could pose an ethical question? Yvonne Nevares-Goodson, okay, my first question in that scenario would be if the grant, that suggested the purchase of equipment, is it absolute that they would be purchasing the equipment from the Commissioner's business? If the grant stated they purchase would be made from Commissioner Gerow's business, then the conflict is obvious. If there is just the potential that affects the market, and the commissioner might happen to benefit from it, then it would probably warrant a disclosure. But because there is no guarantee of the purchase being made at the Commissioner's place of business, then I would say you probably don't have an abstention requirement in that circumstance. I can't speak specifically to the Commission, but the argument would be that you are in one of those situations where it's not obvious unless it says the purchase must be made from said dealer. The Commission would be considering, one, the inherent conflict which is that you are required to be a dealer in state of Nevada. If the situation became where there were obvious and direct conflicts every time, and you had to disclose and abstain from every decision you could possibly make, then the Governor, in this example, is going to have to make a decision that says your are probably not the dealer that we should have appointed, because you effectively cannot operate within the confines of the work. There must be some balance. Commissioner Gerow, so you take the obscure dealer over the larger dealer or the multi-location dealer? Yvonne Nevares-Goodson, possibly. We see it more as leaving the democratic process to the voters, so if we have another type of board or commission that's elected, for example, and we have one member who is constantly disclosing and abstaining because their private business is affect or something of that nature, then the voters are going to say that board/commission member cannot represent them as they cannot vote on anything. So there is no representation of the

voter's voice in government by virtue of the conflicts. The potential is for the voters to take care of the process, in that instance. The same thing would happen with appointing authorities. There is a condition to that response in that there is certain requirements that will always be inherent conflicts like residency, or profession, or business interests that a statutorily required makeup for the agency. Commissioner Gerow, the more off road grows in the state and the more revenue the state makes; everything that does affects his businesses. Obviously the Commission wants someone who is involved and he does everything he can to make the Commission so much better which is the intent. He does not put his personal business in front of it but again the better the Commission does, the better the state does with off road, all impacts his personal business. Yvonne Nevares-Goodson, you have dialed in exactly what the caution is for Ethics in Government Law, which is that if you have the power, ability, and access in a government role to benefit your private interest to significantly above and beyond what might be available to the other people in the market that could be a real problem. You pose a unique circumstance where that might be right for an opinion from the Ethics Commission or you might have to approach every decision with a certain level of caution and evaluate if abstention is necessary. Commissioner Gerow, that is difficult. By putting the Commission in front of my personal, then my personal becomes the caboose. So the better the job I do for the Commission the better it helps me. Yvonne Nevares-Goodson, if evaluate it under the principle that it won't affect your business anymore than any other business and if you hold 80% of the market place and you approve something that has the same potential benefit to your business as to any other dealer. Just because you approve a contract where someone is to purchase two off road vehicles, you do not know where they will purchase those vehicles. Those are the types of things you need to think about when making a full disclosure. Every new issue that is before the Commission requires a separate and distinct disclosure, there is no ongoing disclosure. The reason being, a member of the public may not have heard a previous disclosure. The rule is disclosure every time the matter is taken into consideration. The issue of nonprofits affected this agency in particular and the involvement in nonprofits. The Ethics Commission now has a number of opinions that have determined a public officer who serves on or has a produciary role with respect to a nonprofit organization and has a commitment in a private capacity to that organization. Anytime the interests of that organization are before the Commission in a public capacity there is a conflict of interest. And depending on the involvement of the nonprofit it probably is a conflict that requires abstention. If you are a member of a community organization and you pay dues, presumably there is a financial interest and that may not qualify as a type of conflict. Commissioner Jackson, what is the statute of limitations? If you were a member of an organization and you left a year ago, do you still have to disclose. Yvonne Nevares-Goodson, the statute that talks about commitments talks about continuing and substantial business relationships. If you have been separate and apart from and organization or a business then you are no longer continuing; if it happened yesterday so that you could vote on this then there could be some lingering on your interests. You have to think about those loop holes. There is a large number of statutes that govern the conduct outside the realm of voting and those revolve around using your position improperly, entering into certain contracts. They do not have over site over criminal provisions but while there is some flexibility in the ethics code, you need to respect your ability to enter into contracts. There are other outside provisions in NRS 281 and other statutes that could make it criminal conduct for you to engage in certain contracts with government. One of the issues that changes in 2015 legislation was the safe harbor provision. It says for your commission, since it is a relatively small commission and so you cannot be in all places at all times, the legislature recognizes that and said if you rely in good faith upon the legal advice of your counsel it will protect you from a willful violation of the ethics in government law. When certain circumstances come up, bring it to your legal counsel. Even if your legal counsel is wrong or the Ethics Commission is in disagreement with the legal advice, the Ethics Commission cannot impose a willful violation. That is not to say that it will not be a violation but it will not be willful and they cannot impose sanctions. The Ethics Commission has an open door policy with your counsel for any advice. That advice is in good faith and no one should be holding back information from your counsel. Conflicts are different for every person; no one knows what the private interests are of all people in all circumstances, business or personal. That is why it is important for you to recognize if there is a conflict at all and what might you be able to do in light of this conflict. The basic message for disclosure and abstention is that if your private interests will be reasonably affected by the issue before you then you need to disclose. The Ethics Commission's advice is to disclose everything so that you can avoid the issue immediately. If there is a material impact on your personal interest or the person's to whom you are related in some measure you must abstain. A reasonable affect on your interest is disclosure and material effect on your interest is abstention. The objective standard is put into place, would a reasonable person be affected. Commissioner Jackson, everyone filled out conflict of interest forms, are those forms public property and viewable by the public? Yvonne Nevares-Goodson, I do not know which forms you are referring to. Chair McKay, Shelia Lambert from the Grants office asked for the Commission to fill them out and if they did not fill one of these forms out

then they could not score or vote on the grants. These may be more with the grant process than ethics. Yvonne Nevares-Goodson, these forms are not part of the Ethics Commission and she does not know if they are available to the public. Commissioner Jackson, given that he has not read or looked at any of the grants coming forward, and he did not mark any conflicts on the form; as he goes through the grants and see's that he might have a conflict does he have to refill out the form or can he verbally disclose a conflict. Yvonne Nevares-Goodson, she cannot advise you on what your obligations would be to go back on the form that is something you need to work out in regards to the requirements of the form. If you are in a formal commission meeting on the record making a disclosure then there is a record of that for the purposes of the Ethics Commission. They understand that sometimes ethics come up and surprise us. The Ethics Commission has come out and said that you have some duty of due diligence, you cannot claim ignorance. There is some obligation of due diligence to know in the supporting materials that you are reviewing that the entity before you involves your business partner for example. If it is true ignorance and you found out after the fact that is one consideration, but the question coming back to you from the Ethics Commission is going to be if you should have known. And what efforts did you undertake to know what interests your business partners may have had in other issues that may have been coming before you in your government capacity. Commissioner Baker, if a Commissioner has a clear conflict with one grant applicant. Is it true that they should not be scoring any of the applications because they can influence the one grant applicant in how they rank the other grant applicants? Yvonne Nevares-Goodson, she agrees. Once the conflict is identified they would be prohibited from participating in that issue at all. If this is an applicant that you just prefer and there is no personal interest or an actual conflict with Ethics in Government law then you have a due process issue which is separate from Ethics in Government Law which means that you are biased in your approach to granting an application and you could have private law suit issues. She does agree, if you have a conflict with respect to one of the applicants then you have a conflict to all of it. Also because the Commission deals with contracts and request for proposals; the Ethics Commission's contracting law does provide and exception for circumstances that are subject to open competitive bidding because that process is supposed to be inherently fair and unbiased. If it is sight unseen and everybody has the same opportunity to submit a bid that is one thing, but along those lines what qualifies for an open competitive bid means that you did not have an opportunity to be involved in the contract specifications, you are not charged with opening the bids, deciding on them, etcetera. And that is for any circumstance in which an entity you might be interested in or a person to whom you are related might be interested in is submitting a bid for decision by your agency. That does not mean that you cannot submit the bid but you have other contracting provisions that could prohibit that. When a disclosure is issued you have to issue a disclosure of the full nature and extent of the conflict and that is what helps you determine if it is material or not. Commissioner Jackson, if there is someone who wants to get a grant and they contact a commissioner, are the commissioner's allowed to talk to them about their grant. Yvonne Nevares-Goodson, if there is no relationship with this person then it does not come under the scope of Ethics in Government Law. What you do have then, which is subject to your counsel's oversight, is potential due process issues. If this applicant has a relationship with your business or personally then you have now conflicted your public duties with your private interests and that is where it gets into Ethics. AG Palmer, to make sure everyone knows that the disclosure is there for the public who might not know who you are and what you are doing and not the other commissioner's on the board. Yvonne Nevares-Goodson, just because there is no public in the room but you are responsible under the open meeting law for issuing minutes and being accountable for the decisions that you make beyond who may actually be present in the room. If those conflicts and disclosures are not then indicated in the minutes, that is where the Ethics Commission could be receiving complaints.

11. TREASURER'S REPORT

The Commission Treasurer will report on the NCOHV's account activity, including income and expenses and current bank balances.

Commissioner Cox, the checking account balance as of October 7th was \$1,330,775.94. The deposit from DMV was \$697,149.53. The expenses are LBC room rent, Mineral Country Sheriff's invoice for their grant, and Kim Miller's wages. The checkbook balance at the end of November was \$2,005,673.97. The general fund at this point has \$1,756,893.65 and there is a list of the law enforcement grants that were approved. The forth line down says law enforcement with a balance of \$83,572.32, that is the balance of the money that still needs to be allocate for law enforcement. Mineral County shows a balance of \$3.00, their invoice was \$3.00 less than the grant awarded. This is the only invoice that he has received so far and he only pays from the invoice. Commissioner Lee, he was told that several of the agencies sent their invoices to the Grants office. Chair McKay, he

is going there after this meeting and will check on that. Commissioner Cox, since the Commission starts their year in January the net income for the year shows \$812,702.03 which is different from DMV because they are on a different fiscal calendar.

12. COMMISSIONER BRIEFINGS

Commissioners may brief the NCOHV on any emerging issues of interest to the NCOHV arising after the agenda is set. No deliberation or action will be taken on any information presented until the matter itself has been specifically included on an agenda as an item upon which action may be taken.

Chair McKay, he spent a week in Las Vegas which incorporated a Sheriffs and Chiefs meeting, Clark County Conservation meeting and he also went to the SEMA exhibit. He was asked by the SEMA organization to come down. SEMA has formed a country wide advocacy organization called Once Voice. The SEMA manufactures association has over 2,500 equipment manufactures and has a political lobbying wing in Washington and state wide. They are looking for input on what the most emergent issues are in each state in regards to off highway vehicle recreation. They are in the inception process right now and informally he is the representative for the state of Nevada and there was 5 other western states there at this meeting. He will keep the commission advised on upcoming issues. Commissioner Cox, this might be a question for legal, he has started looking at the grants and he has a question. He knows to score each grant individually but, by statute, they follow different categories and he does not know how to place them in a category. Or does the Grants office do that for the Commission after the Commissioners give them their scores. He is looking for general direction. AG Palmer, that issue should have been determined so the Commissioners have that information when they are scoring. Commissioner Cox, on the grant award agreement it has all of the categories listed but this particular page did not get put into the Refunding Request Proposal. When the scores get sent to the Grants office they could put them in the proper category and then send them back to the Commissioners but he is not sure if they are familiar with the contents of the grants. AG Palmer, Chair McKay there needs to be a meeting with Shelia to determine an answer to this issue. Chair McKay, at the meeting the Commission can fund, not fund or suggest a level and deal with those issue in the open public meeting. We will get some direction from the Grants office. AG Palmer, the Grants office is the one who puts them in order once they receive the scoring.

13. PUBLIC COMMENT

No public comment.

14. NEXT SCHEDULED MEETING

Chair McKay, he was looking for dates in January and was wondering if January 14, 2016 would work. He will send out an email to all the commissioners, AG Palmer and the grants office. Commissioner Jackson, for the grants meeting he would like to have a face to face meeting. He is suggesting from a practical point of view that the people from the north fly and the meeting be held in Las Vegas. Chair McKay, tentatively he has booked the PUC hearing rooms in Carson and Las Vegas. Commissioner Gerow, this will be the first meeting with the new executive secretary and should see if she can travel. Chair McKay, she can video conference in from Carson. AG Palmer, the question about reimbursement was raised for travel. The Commissioners are entitled to the cost of their airline ticket or mileage and there is no per diem. The question becomes how that is arranged. Commissioner Jackson, last time people purchased their tickets and were then reimbursed. AG Palmer, if there is a hardship they can bring that up with the Treasurer. Chair McKay, we need to think about Sheila and Connie from the Grants office, they need to be there to walk us through the process. They might not have the travel budget. He would like to go total face to face but between the executive secretary and the grants office they might need to stay in Carson. The people in Las Vegas can fly to Carson or use the PUC conference room in Las Vegas.

15. ADJOURNMENT

MOTION: Commissioner Jackson makes a motion to adjourn; seconded by Commissioner Gerow.
The meeting is adjourned.