



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Request for Opinion
Concerning the Conduct of **SHARI BUCK**,
Mayor, City of North Las Vegas,
State of Nevada

Request for Opinion No.: 11-63C

Subject. /

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The Executive Director bases the following report and recommendation on the staff's consideration and investigation of the Third-Party Request for Opinion ("RFO") filed regarding the conduct of Shari Buck, a public officer, and on her written response to the RFO, attached as an exhibit to this Report and Recommendation, and the other materials attached hereto. The Executive Director provides her Report and Recommendation and its exhibits for the consideration of the two-commissioner investigatory panel ("Panel"), pursuant to the requirements of NRS 281A.240.

Facts:

This RFO alleges that Shari Buck ("Buck"), Mayor of the City of North Las Vegas, violated several provisions of the Nevada Ethics in Government Law, particularly NRS 281A.420(1) and (3) when the City Council considered canvassing a recent election. The conduct forming the basis of the allegations is that 1) Buck failed to disclose a conflict of interest and undertake the abstention analysis adequately, and 2) advocated the failure of a matter in which she had a commitment in a private capacity to the interest of her husband despite announcing her intent to abstain from that vote, and 3) by approving an agenda, influenced another matter before the City Council in which she had a conflict of interest and should have abstained (RFO, Tab A, p. 4 of 45).

The RFO revolves around the highly-publicized and controversial 2011 municipal election in North Las Vegas. The Requester alleged a multitude of issues, mainly that a conflict of interest existed between Buck's public position as the mayor of North Las Vegas and her private interest in electing Ward 4 candidate Wade Wagner.

Wagner campaigned against the then-incumbent Council Member, Richard Cherchio, and prevailed by one vote; however, it became known that a lone vote was cast in a wrong ward, Ward 4. Shortly thereafter, numerous lawsuits were filed to establish the official winner of the election.

In the meantime, the City Council decided that the proper course of action should be a new election and voted against a canvass of the vote at the June 15, 2011 City Council meeting. (RFO, Tab A, p. 20 of 45). Following the decision not to canvass the vote, at its June 30, 2011 meeting, the City Council approved a new election planned for July 19, 2011. (RFO, Tab A, p. 41 of 45). Shortly before the date approved for the new election, the District Court issued a Writ of Prohibition and a Writ of Mandamus directing the City not to hold a new election and proceed with canvassing the vote. (Response, Tab C, pp. 13-30 of 68).

Subsequent to the court decision, the Ethics Commission received the RFO at hand, alleging that Buck violated numerous provisions of NRS 281A, mainly NRS 281A.420(1) and (3).

Allegations:

1. That Mayor Buck violated NRS 281A.420 (1) and (3) because she should have disclosed more information than she did at the **June 15, 2011** City Council meeting, Agenda Item No. 15.

2. That during the **June 30, 2011** City Council meeting, Agenda Item No. 1, Buck attempted to "influence the outcome of" or advocate for the passage or failure of a matter on which she intended to abstain.

3. That Buck influenced a matter she had abstained from when she created and signed the agenda for the **July 14, 2011** City Council meeting.

Relevant Nevada Revised Statutes (NRS):

NRS 281A.020 Legislative findings and declarations.

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

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:
 - (a) Regarding which the public officer or employee has accepted a gift or loan;
 - (b) In which the public officer or employee has a pecuniary interest; or
 - (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others, without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest,

or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

* * * * *

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

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

8. (a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

- (1) Who is a member of the public officer's or employee's household;
- (2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (3) Who employs the public officer or employee or a member of the public officer's or employee's household;
- (4) With whom the public officer or employee has a substantial and continuing business relationship; or
- (5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

Analysis and Recommendation:

NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics RFO **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics RFO must be unanimous.

3. As used in this section, **"credible evidence" means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

1. ADEQUATE DISCLOSURE AND ABSTENTION ON JUNE 15?

Before the City Council's consideration of whether to canvass the vote, Buck disclosed that she had made a campaign donation to candidate Wagner and that her husband received compensation for his work on Wagner's campaign (RFO, Tab A, p. 10 of 45). The requester alleges that Buck failed sufficiently to disclose her endorsements and participation in

advertising (mailers) in favor of candidate Wagner. (RFO, Tab A, p. 4 of 45 – [claim]), (RFO, Tab A, pp. 42-45 of 45 [copy of mailers]). The requester also alleges that although Buck abstained from voting on the item, presumably adhering to NRS 281A.420(1) and (3), she abstained for an “alternate reason” and should have undertaken the abstention analysis based upon her public endorsements and mailers in behalf of Wagner’s candidacy. (RFO, Tab A, p. 4 of 45), (RFO, Tab A, p. 10 of 45).

The requester apparently alleges that making a campaign donation and encouraging voters to support a candidate creates a commitment in a private capacity to the interests of the candidate that triggers disclosure and abstention. No evidence or inference is provided of how these relationships might implicate the Ethics in Government Law or how they might fit the definition provided in NRS 281A.420(8).

The record indicates that Buck disclosed her husband's pecuniary interest and employment relationship with Wagner’s campaign and then abstained (RFO, Tab A, p. 10 of 45), as follows:

Mayor Buck:

“I need to make a statement. And I want to make sure that this Election is fair and everything is on the up and up and I want to be very cautious in this, so, let me just disclose that I donated to a campaign that would not preclude me from voting on this. However, a member of my family worked on a campaign and was paid, and so, therefore, to be very cautious, I will abstain tonight. I want to avoid any appearance of impropriety. However, I do believe that this Council will make the right decision and do what’s prudent for all of the voters in this City.”

Although Buck disclosed her contribution to Wagner’s campaign, the statute does not require her to do so. Neither was Buck required to disclose her public endorsements/mailers supporting Wagner. Wagner’s Contribution and Expenses Report (C & E) includes Buck’s mailers as an “in-kind” contribution (Response, Tab C, pp. 64-65 of 68).

While I recommend that the Panel find that the explicit allegations in the RFO are not based upon any credible evidence in the record or application to the statutes, the allegations and evidence presented do implicate NRS 281A.420 with another perspective. The requester’s argument that the disclosure and abstention efforts undertaken by Buck were inadequate does not allege that the requirements of NRS 281A.420 were not followed carefully or thoroughly, or did not apply the directives in the Woodbury Opinion. However, should the Investigatory Panel wish to pursue this allegation on the basis that the disclosure and/or abstention analysis was inadequate, the RFO, evidence presented and Notice to the Subject would support moving forward to the full Commission for a hearing.

2. ADVOCATING DESPITE DISCLOSURE & ABSTENTION?

Before leaving the room as a part of her abstention from a vote regarding the canvass and/or new election, Mayor Buck voiced her opinion that the City Council would be taking an illegal action by approving a new election for Precinct 4306 in Ward 4, and stated that she was very concerned that the Council seemed to be headed toward approving a new vote (RFO, Tab A, pp. 21-22 of 45). In doing so, Buck may have attempted to make her opinion known and advocate for voting against the matter, or at least preserve her standing with the public, as follows:

Mayor Buck:

Okay then I want to take this opportunity just to express my opinion before I abstain and leave the room again. I have grave concerns that the direction this Council has chosen to go in is not only wrong but is illegal. The City Attorney, Matt Griffin previously gave us a recommendation to canvass the vote, but the Council has chosen to disregard that opinion. This now has put the liability on the City and the taxpayers who it didn't have, where it didn't have to be had the law been followed. I'm very concerned about this prospect and what's going on. To be overly cautious I will abstain again and refer to the record made on June 5th as to why I'm abstaining and now I will turn the meeting over to Mayor Pro Tem.

In her Response (Tab C), Buck argued that her comments about the legality of the action were within the scope of her duties and the comments referred to the June 15, 2011 meeting where the City Council decided not to canvas the Ward 4 vote.

NRS 281A.420 (1) and (3) prohibit advocacy without a proper disclosure and undertaking the abstention analysis on the record at the time the matter is considered. The minutes show that Buck failed to reiterate her disclosure at the time the matter was being considered and failed to evaluate the independence of judgment of a reasonable person ALTOGETHER, announced that she would abstain, and then attempted to advocate against the matter before the Council by offering her personal opinions and concerns. In Kubichek, the Commission warned against just such expressions of opinion, finding them to be pure advocacy. (cite?)

Based on the foregoing, I recommend that the Investigatory Panel find that **sufficient credible evidence is present** to find just and sufficient cause to forward this allegation to the full Commission for hearing.

3. CREATING THE JULY 14, 2011 AGENDA

Finally, the RFO alleges that Buck influenced a matter she had abstained from when she created and signed the agenda for the July 14, 2011 City Council meeting. (RFO, Tab A, p. 4 of 45), including an item to consider a canvass of the June 7, 2011 Municipal General Election results for Ward 4 (Response, Tab C, pp. 48-52 of 68).

North Las Vegas City Clerk Karen Storms reported that *the Mayor does not create agendas. I took direction from the City Attorney's Office and created the agenda with their approval. Technically, it's the City Manager's agenda.*" (Response, Tab C, p. 67 of 68). Mayor Buck did not ask for the item to be placed on the agenda. Apparently, the Mayor signs off on the agenda compiled by the City Clerk with direction from the City Manager and City Attorney.

More importantly, the creation of an agenda has never been interpreted to come under the abstention doctrine in NRS 281A.420. As a result, I recommend that this allegation be **DISMISSED**, as no credible evidence was presented to support a finding of a violation of NRS 281A.420 in this instance.

I respectfully provide my recommendation to this honorable panel.


Caren Jenkins, Esq.
Executive Director

Date: 9/21/11