



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

**In the Matter of the Request for Opinion
Concerning the Conduct of VICKI MAYES,
City Manager, Boulder City,
State of Nevada**

Request for Opinion No.: 11-77C

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 Vicki Mayes, a public officer, and on her written response to the RFO, attached as exhibits 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:

The main party is Vicki Mayes, the City Manager of Boulder City, who was appointed to that position in August 2004. Among those supporting her appointment to the position was Councilman Roger Tobler.

Allegations:

The allegations center on Mayes' involvement with Mayor Roger Tobler and her conduct related to promoting his personal or financial interest in purchases made by the City. The RFO alleges that Tobler has ardently supported Mayes and provided allegiance and expressed his support for her in various performance evaluations.

1. NRS 281A.020

The RFO alleges that Mayes has failed to properly commit herself to avoid conflicts between her private interests and her duty to the public.

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.

The Commission has not developed a consistent practice of acknowledging alleged violations of this statute separately from the specific conduct in other sections. However, I recommend that, in light of this articulated directive occupying its own section of statute, it should be addressed separately.

The RFO alleges that Mayes' interest in maintaining Tobler's support and allegiance so Mayes' position as City Manager is secure caused her to juxtapose her private interest against her duty to the public. This allegation appears to lack supporting evidence.

Because of the lack of credible evidence to support the allegation, I **recommend that this allegation regarding NRS 281A.020 be dismissed.**

2. NRS 281A.400

The RFO alleges that Mayes and Tobler agreed to implement an unofficial policy that the City would equally distribute its hardware purchases between his store and the other hardware store in Boulder City. When it became evident that his store's purchases from the City had declined, he approached Mayes to inquire whether the policy was being followed. While the City Manager's official "boss" is the entire City Council, the relationship between the Mayor and the Manager historically is that of supervisor/subordinate. Mayes and Tobler have worked extremely closely and extremely well together for many years. A perception exists that he is her supervisor, whether that relationship exists formally or not.

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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

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

By implementing a policy of equal distribution of spending between Tobler's and the other Boulder City hardware store, Mayes granted an unwarranted privilege to her employer. No consideration was given for having the City make purchases at the store that was most convenient or had better prices for the desired item. This policy may result in purchases being made without adequate reason, and may have resulted in an unwarranted benefit to Mr. Tobler.

Mr. Tobler approached Boulder City Manager Mayes at City Hall when he noticed that the City's purchases had declined at his store. Tobler asked her whether the City's purchases were being divided equally, and she looked into the matter. She even reminded the Public Works Department of the policy shortly after Tobler's inquiry. This conduct provided credible evidence that Mayes may have attempted to benefit the interest of a person to whom she had a commitment in a private capacity (her employer) by influencing subordinates to equalize their purchases.

Based on these facts and the credible evidence related thereto, I recommend that the Panel find that just and sufficient cause exists to forward the allegations related to NRS 281A.400(2) and (9) to the full Commission for a hearing.

3. Other allegations

The RFO alleges several matters either unrelated to the jurisdiction of the Commission or without any evidentiary basis. The Commission has no ability to enforce Boulder City's Code or Chapter 332 of NRS, for example. The RFO's allegations related to NRS 281A.530, which regulates purchases made by local governments, regulates government, and not public officers, and articulates conditions that are not present in the facts. As a result, I recommend that just and sufficient cause does not exist to forward these matters to the full Commission, based on a lack of credible evidence or jurisdiction, and that the Panel should dismiss the remaining allegations in the RFO in their entirety.

Conclusion 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.

I recommend that the Panel find that sufficient credible evidence is present to support a reasonable belief that **just and sufficient cause exists** for the Commission to hear this matter and render an opinion regarding Vicki Mayes' alleged violations of NRS 281A.400(2) and (9).

I respectfully provide my recommendation to this honorable panel.


Caren Jenkins, Esq.
Executive Director

Date: October 26, 2011