

Opinion No. 95-66

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for Opinion of ROBERT COFFIN, Senator, State of Nevada

This opinion is in response to the first-party opinion request of Senator Robert Coffin filed on December 18, 1995, with the Nevada Commission on Ethics (Commission). The issue presented is whether Senator Coffin's planned sale of documents he possessed to the University of Nevada Las Vegas (UNLV) was prohibited by the Nevada Ethics in Government Law.

A hearing on the merits of the request was held on January 15, 1996, in Las Vegas, Nevada. Mr. Coffin represented himself and testified at the hearing. Mark Cardinalli, assistant counsel for the University of Nevada, Mr. John Gallagher, Executive Director of the UNLV Foundation, and Ken Knight, owner of a private research company in Las Vegas, testified at the hearing. The hearing was not confidential pursuant to Mr. Coffin's written request and was, therefore, open to the public. After the conclusion of the hearing, the Commission publicly deliberated and issued an oral ruling on that same day. Based upon the foregoing, the Commission makes the Findings of Fact and issues the opinion that follows.

FINDINGS OF FACT

1. At all times pertinent to this matter, Mr. Coffin was a Nevada State Senator.
2. In November 1989, Mr. Coffin was contacted by representatives of the Union Pacific Railroad (UP) regarding UP's plans to move their rail yard in the city of Las Vegas. On December 1, 1989, Mr. Coffin met with some UP representatives and discussed with them strategies for UP's upcoming presentation to the Clark County Commission. Mr. Coffin did not talk to any of the commissioners on behalf of the UP, but he did speak with a member of the Latin Chamber of Commerce. At this same time, there were no bills before the legislature that specifically involved UP, sponsored by Mr. Coffin or otherwise.
3. In the course of this conversation, Mr. Coffin asked whether UP had any old documents that it intended to dispose of. Because Mr. Coffin was in the rare book and document business, he was aware that railroads often had stores of historically relevant documents. Mr. Coffin was told that UP did have some old papers stored in the basement of a building in Los Angeles and that the documents were going to be destroyed as garbage since UP was disposing of the building.
4. On December 4, 1989, Mr. Coffin went to the building in Los Angeles and examined the documents. Realizing that there might be some documents of potential value in the papers, Mr. Coffin and UP entered into an agreement whereby Mr. Coffin paid UP \$500.00 for the right for two years to examine and take any papers or documents from the basement of the Los Angeles building, which documents, in fact, were in the condition of trash or garbage and were to be destroyed.
5. Mr. Coffin testified that over the following four years he drove from Las Vegas to Los Angeles to review the documents. The conditions in the basement were poor, since the basement had neither electricity nor windows, had suffered from some flooding, and was used by vagrants. Mr. Coffin wore a breathing mask and used portable lighting to allow him to examine the documents. Many of the documents were damaged by water or by their use as insulation and bedding material. Sometimes Mr. Coffin would work alone and sometimes he would work with family members or employees of his business.

6. Once the documents were gathered, Mr. Coffin reviewed them and selected from them those documents that he believed had historical value. Mr. Coffin estimated that he spent thousands of hours and \$20,000 of his own money restoring and assembling the documents into a coherent collection.
7. In 1992, Mr. Coffin donated documents that were pertinent to California history from this collection, valued at approximately \$50,000, to the Nevada Museum so that the Museum could use those documents to trade for documents in the possession of California collections that related to Nevada history.
8. Also in 1992, Mr. Coffin spoke for the first time with the UNLV Library about its potential interest in the collection. In 1994, Mr. Coffin made a verbal offer to the UNLV Library to sell it the collection. Mr. Coffin was told that the offer could not be considered until he had a catalog of the items in the collection.
9. On March 31, 1995, Mr. Coffin's collection was appraised by Mr. Allan J. Stypeck, senior member of the American Society of Appraisers, to be worth \$600,000.
10. Also in March 1995, Mr. Coffin presented a catalog of the collection to the UNLV Library and began to negotiate a final potential selling price. Mr. Coffin and the UNLV Library agreed to a potential sales price of \$350,000. As part of the transaction, the UNLV Library had the collection independently appraised by Frank Spellman who appraised the collection to be valued between \$500,000 and \$750,000.
11. The testimony of Mr. Coffin, Mr. Cardinalli, and Mr. Gallagher addressed the details of the sales transaction. The UNLV Library would be the purchaser of the collection. The purchase would be paid through a down payment and annual payments over six years. The purchase money would be raised by the Foundation and would be donated by the Foundation to the UNLV Library specifically for the purposes of purchasing the collection. Because no money from the UNLV or UNLV Library budgets would be used for any of the purchase, no taxpayer money would be used to purchase the collection. The testimony made clear that the title to the collection was to be changed to the UNLV Library, and the Foundation would have no legal title, interest, or claim to the collection. Mr. Coffin understood the installment payments would only be made if the Foundation were able to raise the necessary money for each installment, and he indicated that he was willing to assume this risk for the benefit of the collection and UNLV, his alma mater.
12. On June 28, 1995, Susan E. Gardner, Deputy Legislative Counsel, issued an opinion to Mr. Coffin regarding whether the proposed sale of the collection to a governmental agency violated Nevada law. Ms. Gardner's conclusion was that the sale would be permissible under Nevada law, including the Nevada Ethics Law, as long as the governmental agency complied with bidding requirements contained in NRS 281.505.
13. Mr. Coffin testified that he could best maximize his profit with his collection by selling it in pieces on the open market, however, as a result, the collection would be divided among several states or would end up in the hands of private collectors. Mr. Coffin testified that his intent was and still is to keep the collection intact in Nevada so that it would be available to Nevada scholars of Nevada's history.
14. Mr. Knight testified to the commercial and practical value of the collection as a research resource for land and development issues. A letter submitted by Michael S. Green, Instructor of History at the Community College of Southern Nevada, extolled the unique value of the collection for historical research and scholarship. Mr. Stypeck's appraisal also stresses the value of the collection as a unique resource of Nevada historical documents.
15. Though the hearing was public, no testimony was offered by any party or person in opposition to the proposed sale of the collection by Mr. Coffin to the UNLV Library.

OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511 (1). Mr. Coffin was a public officer in his position as State Senator as such employment is defined in NRS 281.4365(1).

The issues presented in this matter are (1) whether Mr. Coffin's acquisition of the papers and documents that became his collection violated NRS 281.481(1), (2), or (5)^[1], and (2) whether Mr. Coffin's proposed sale of his collection of unique documents to the UNLV Library is prohibited by NRS 218.605 or NRS 281.505.^[2] We find for the reasons that follow that Mr. Coffin's acquisition of the documents was not unethical, nor will be his sale of the documents to the UNLV Library as long as the transaction complies with the dictates of NRS 218.605(2) and NRS 281.505(4).

Mr. Coffin's Acquisition of the Documents

Mr. Coffin was contacted in late 1989 by UP. Mr. Coffin provided information and advice to UP with respect to UP's plans to move its rail yard. Mr. Coffin did not contact any of the Clark County Commissioners. Mr. Coffin did not write or propose any legislation on UP's behalf nor had there been such legislation. Mr. Coffin did not act upon any legislation proposed by or directly affecting UP. It appears that Mr. Coffin's involvement with UP was merely to provide the routine assistance appropriately within the bounds of the function of a state senator.

Mr. Coffin initiated the discussion of the documents because of his personal and business interests in rare books and documents, particularly those pertinent to Nevada history. That UP fortuitously responded positively to Mr. Coffin's inquiry does not transform the limited interaction into an "unwarranted privilege or advantage," nor would it constitute an "emolument or economic opportunity which would tend improperly to influence a reasonable person" in Mr. Coffin's position. We cannot conclude, based upon the evidence before the Commission, that the relationship between Mr. Coffin and UP was a quid pro quo. The evidence did not show that UP "rewarded" Mr. Coffin for his information by "giving" Mr. Coffin access to its documents in Los Angeles. Rather, it appeared to the Commission that Mr. Coffin acted within his function as a legislator by providing information to UP and that the subsequent relationship with respect to the documents in Los Angeles was a mutually beneficial, arms-length transaction.

Thus, Mr. Coffin's acquisition of the documents from UP did not constitute a violation of NRS 281.481(1) because the transaction between Mr. Coffin and UP did not constitute a "gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person" in Mr. Coffin's position "to depart from the faithful and impartial discharge of his public duties." As has been discussed, UP's transaction with Mr. Coffin was arms-length and Mr. Coffin did not discharge any public duties on UP's behalf. Mr. Coffin's acquisition did not constitute a violation of NRS 281.481(2) because he did not use his position as state senator to gain access to the documents; instead, he used his acumen as a businessman to take a calculated risk that UP's garbage would prove useful to his business. Finally, Mr. Coffin's acquisition did not constitute a violation of NRS 281.481(5) because the information he received from UP regarding the documents was not information which "by law or practice [was] not available to people generally." Rather, the information was available to any person who might have inquired of UP.

Mr. Coffin's Sale of the Collection

The four requisites for a permissible contract between a legislator and a governmental entity found in NRS 218.605(2) and 281.505(4) are functionally identical. It is clear from both NRS 218.605 and NRS 281.505 that Mr. Coffin's proposed sale to the UNLV Library will be permissible only if the transaction satisfies all four requisites of the statutes.

The element of whether the supply is limited is per se satisfied when the object of the transaction is unique, such as

is Mr. Coffin's collection.

The remaining three elements, however, must be satisfied for the transaction to be permissible. The statutes would require that the UNLV Library prepare and issue an invitation to bid or a request for a proposal for the sale of historical documents for use in library research and scholarship in a generic form and without direct reference to the catalog of Mr. Coffin's collection. As was pointed out at the hearing, we will not know whether a similar collection exists, and therefore, whether a competing bid or response to proposal to the UNLV Library's terms will be received. Mr. Coffin's bid or response may be the only one received, notwithstanding the requirement of NRS 281.505(4). Mr. Coffin can have no part in the development of the bid, invitation, or request for proposal, or the opening or considering of the bids or proposals submitted. Based upon the representations made at the hearing by Mr. Coffin and Mr. Cardinalli, we are confident that the procedural requirements of NRS 218.605(2) and 281.481(4) can be satisfied.

CONCLUSION

The Commission concludes that Mr. Coffin did not violate NRS 281.481(1), (2), and (5) in acquiring the documents from the Union Pacific Railroad in 1989. Mr. Coffin will not violate NRS 218.605 and 281.505 in selling the collection to the UNLV Library as long as the requirements of those statutes are followed.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The statutory provisions quoted and discussed above must be applied on a case-by-case basis with results which may vary depending on the specific facts and circumstances involved.

DATED: May 6, 1996.

NEVADA COMMISSION ON ETHICS

By: /s/ THOMAS R. C. WILSON, Chairman

[1] NRS 281.481 provides in pertinent part:

A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

...

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

[2] NRS 218.605 provides in pertinent part:

1. Except as otherwise provided in subsection 2, it is unlawful for any member of the legislature to:

(a) Become a contractor under any contract or order for supplies or any other kind of contract paid for in whole or in part by money appropriated by the legislature of which he is a member for the state or any of its departments, or the legislature or either of its houses, or to be interested, directly or indirectly, as principal,

in any kind of contract so paid.

2. Any member of the legislature may:

(a) Sell or enter into a contract to sell, to the state or any of its departments any item, commodity, service or capital improvement, if:

(1) The sources of supply for the item, commodity, service or capital improvement are limited;

(2) The contracting process is controlled by rules of open competitive bidding;

(3) He has not taken part in developing the plans or specifications for the sale or contract; and

(4) He will not be personally involved in opening, considering or accepting any bids for the sale or contract.

NRS 281.505 provides in pertinent part:

1. Except as otherwise provided in this section, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

...

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.