

Opinion No. 96-26

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of CHARLES McNEELY, Reno City Manager

This Opinion is in response to a request by Ms. Andrea Engleman regarding Reno City Manager Charles McNeely. The Nevada Commission on Ethics (Commission) has jurisdiction in this matter pursuant to NRS 281.511(2).

The Commission met in Reno, Nevada, on September 16, 1996 to conduct a public hearing on the opinion request. The Commission heard testimony from Ms. Engleman and Mr. McNeely, as well as from Reno City Attorney Patricia Lynch, who appeared as a witness at the request of the Commission's legal counsel. Immediately thereafter, the Commission closed the record and proceeded to deliberation. Based upon the foregoing, the Commission makes the Findings of Fact and renders the Opinion that follows.

FINDINGS OF FACT

1. The Reno City Council (Council) is the governing legislative body of the city, consisting of seven elected members. The Council also acts as the Redevelopment Agency of the City of Reno (Agency) as authorized by NRS 279.416.
2. By the spring of 1996, the Council, sitting as the Agency, had determined that redevelopment in the downtown-core area of Reno was merited, but the individual Council members were decisively split concerning the extent to which the power of eminent domain should be exercised to condemn various business properties to effect the redevelopment.^[1] The issue became a constant source of friction among Council members that contributed to an ever-increasing rift that affected their ability to efficiently conduct city business.
3. Allocated in the Council's budget for 1996 were funds to provide for a Council retreat. The Council had participated in similar retreats before.
4. In early 1996, the Council negotiated the terms of an employment contract to hire Mr. McNeely as Reno City Manager. Mr. McNeely insisted on a contract provision that a retreat occur shortly after his hiring. The Council agreed.
5. Immediately after getting to work for Reno, Mr. McNeely began planning the agenda of the retreat, which would include workshop programs for setting priorities and performance standards. The anticipated event generated much citizen interest. Mr. McNeely spoke with various community groups concerning the objectives of the retreat, and especially the objective of assisting the cohesion and cooperation of the Council. His message did not include the solicitation of contributions for the purpose of conducting the Council's retreat.
6. Mr. McNeely considered a total of six potential locations at which the retreat might be conducted, five in Nevada and one in California at Donner Lake, approximately 35 miles west of Reno. The facility at Donner Lake was approved by the Council because it was the least expensive alternative. The total cost for the retreat would be \$11,726.00, of which \$2,126.00 was for the facility and food and \$9,600.00 was compensation for the facilitators for the retreat.
7. Mr. McNeely received three or four letters and one or two telephone calls from Reno citizens who complained about the decision to hold the retreat in California rather than in Nevada. Ms. Lynch received two such telephone

calls, one of which from Ellen Nelson, executive director of Common Cause in Nevada, who expressed her concern about the costs.

8. The Greater Reno/Sparks Chamber of Commerce (Chamber) and the Downtown Improvement Association (DIA) contacted Mr. McNeely to offer donations to the city in order to defray the costs of the retreat. The Chamber is a private organization composed of various Reno and Sparks area businesses, trades, or professional associations, some of which have economic relationships with the city. Chamber representatives believed that the retreat would benefit the community by restoring a sense of unity among the Council members. Mr. McNeely accepted the donations. The Chamber contributed \$1,100.00 to the city which was deposited into the general city fund and was not specifically earmarked for the retreat. The DIA is an association of downtown Reno businesses who are interested in the improvement and redevelopment of downtown Reno. The DIA donated \$1,000.00 to the city which was also deposited in the general fund without specific earmarking for the retreat.

9. The retreat's agenda was publicly posted in accordance with provisions of Nevada's Open Meeting Law. The retreat occurred on April 26 and 27, 1996 and was attended by Council members and other city officials, including Ms. Lynch and the Reno City Clerk, as well as members of the press.

OPINION

Mr. McNeely is a public employee as defined by NRS 281.4365.

The issue in this matter is whether Mr. McNeely's acceptance of contributions from the Chamber which provided the source of funds to conduct a public retreat for Council members violated the provisions of NRS 281.481(4). This provision of the Code of Ethical Standards states:

A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

The premise of NRS 281.481(4) is that only the government shall compensate employees for governmental work and non-governmental private sources cannot reward, compensate, control or influence a public officer's or employee's public service work performance. We perceive that NRS 281.481(4) was intended to assure that a government employee's loyalties remain solely with the government he serves and the people served by that government so that the institutions of government cannot be turned to private benefit or use.

In *Matter of Professor Looney and President Crowley*, Opinion [92-17](#) (1992), the Commission examined NRS 281.481(4) and determined that donations from a private foundation made directly to University of Nevada Reno (UNR) public employees violated the provisions of NRS 281.481(4). The Commission held, however, that private donations made to the UNR Board of Regents became public money and could be used by the Regents as the Regents deemed appropriate, including granting additional benefits to some employees. The Commission explained that "[t]his is based upon the practice that only the government normally should compensate employees for government work, so that third parties do not reward, compensate, control or influence a government or public employee's decision or service. Accordingly it is usual for the law to forbid a supplement to a public employee's salary from private or outside sources." [Matter of Professor Looney and President Crowley](#), at 8. Our analysis focused on the control of the funds. If the donor gave the donation to a general fund that could be expended as the donee agency deemed fit, then the donee agency would control the expenditure of the funds, not the donor, even if the subsequent expenditure decision by the agency coincided with the desires of the donor.

In this matter, the donations by the Chamber and the DIA were proper under the guidelines discussed in [Matter of Professor Looney and President Crowley](#). The donations were made to the city's general fund from which the

payments for the retreat were made in the normal course. Mr. McNeely was clear that the donations were not accepted with any conditions upon their use even though, clearly, both the donors and the donee contemplated that the money would be used to defray the retreat expenses. Mr. McNeely testified that the retreat would have gone forward with or without the donations since the city had already budgeted for a retreat because it had held such retreats before. We are not empowered to "second-guess" the merits of a retreat such as was held in this matter, including the Council's decision to hold the retreat in California; such decisions are clearly matters of policy that must be left to the sound discretion of the officials elected to make such decisions. Additionally, because both the Chamber and the DIA appear to be *bona fide* associations of citizens (and not, therefore, alter egos for a single person), whatever "favor" may have been "curried" as a result of the donations would be diluted across the diverse and varied members of both organizations and could not be attributed to any single individual member.

Finally, the record was devoid of evidence that either Mr. McNeely or any specific Council member personally benefited in any way from the donations. The retreat, as described by Mr. McNeely and the press coverage, was **not** a pleasure trip. Though Donner Lake provided a scenic backdrop for the retreat, the agenda, organization, and conduct of the retreat was clearly focused on Council business, in particular the improvement of the Council's function. Consequently, we conclude that neither Mr. McNeely nor any other city employee or Council member received supplementary income from a private source prohibited by NRS 281.481(4).

CONCLUSION

We conclude that Mr. McNeely did not violate NRS 281.481(4) by accepting donations to Reno's general fund from the Chamber and the DIA, even though the general fund was used to pay the costs of Council attendance at a public retreat. Based upon the record, the Commission finds no evidence of any conduct or improprieties in violation of the Code of Ethical Standards which would suggest that Mr. McNeely's actions were incompatible with the proper discharge of his public service.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific circumstances, and may not apply to other circumstances. The provisions of NRS 281.481 quoted and discussed above must be applied on a case-by-case basis, with results which will vary depending on the specific facts and circumstances involved.

DATED: December 2, 1996.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

[1] The city council may condemn property for public uses in the manner prescribed by chapter 37 of the NRS. NRS 266.270.