

## Opinion No. 96-49

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Opinion Request Regarding STEVEN BOWLES, Mineral County Treasurer

This Opinion is in response to an anonymous request filed with the Nevada Commission on Ethics regarding the conduct of Steven Bowles, Mineral County Treasurer. Because the evidence submitted by the requester was sufficient to enable the Commission to make a preliminary determination to take jurisdiction over the matter, the Commission accepted jurisdiction.

A hearing on the opinion request was held on November 15, 1996 in Hawthorne, Nevada. Four witnesses were subpoenaed by the Commission to appear and provided testimony at the hearing: Mineral County Clerk and Treasurer's Office employees Ms. Brenda Jones, Ms. Brenda Stinson, and Ms. Glenda Peterson, and Mineral County District Attorney, Mr. Brian Kunzi. In addition to these witnesses, Mr. Bowles and Ms. Jean Justus, Chief Deputy of the County Clerk and Treasurer, were sworn and provided testimony concerning the circumstances of the request for an Opinion. The hearing and all documents related to the matter were public. Immediately after the hearing, the Commission deliberated. Based on the foregoing, the Commission makes the following Findings of Fact, Conclusions of Law, and Opinion.

#### FINDINGS OF FACT

1. In November 1994, Mr. Bowles was elected to the Office of Mineral County Clerk and Treasurer. Mr. Bowles took office on January 1994. Mr. Bowles' duties included receiving and disbursing moneys due and accruing to the county, overseeing deputy Court clerks, conducting county elections, and collecting taxes.
2. On approximately November 1, 1995, the County Clerk and Treasurer's Office commenced performing services for the State of Nevada Department of Motor Vehicles (DMV) which had previously been performed by the Office of the County Assessor. Mr. Bowles committed his office to taking over the DMV work after the County Assessor informed him that her office did not have time to continue such functions.
3. Mr. Bowles' professional staff included Ms. Glenda Peterson, a 16-year county employee who currently serves as Deputy Clerk 1, and Ms. Brenda Jones, 14-year county employee who is presently employed as Deputy Clerk 1. Since 1992 until approximately mid-1996, Ms. Brenda Stinson was employed in the office serving as Deputy Clerk 1. The employment duties of all three included processing vouchers, mailing checks, collecting taxes, issuing receipts, apportioning state and local monies received by the office, and engaging in various transactions related to motor vehicle registration and collection of fees in regard thereto. Ms. Stinson's duties additionally included opening and sorting the mail.
4. The DMV advised Mr. Bowles that it would fund the attendance by one of his employees at a two-week, DMV training seminar to be conducted in Reno on October 9, 1995 through October 20, 1995. Mr. Bowles subsequently sought and obtained approval from the Mineral County Board of Commissioners (Board) to fund the attendance of one additional employee at the county's expense. Mr. Bowles further expressed his own desire to attend the training at his personal expense because he anticipated staying at the home of his brother in Reno. Ms. Janet Miller was selected to attend the DMV training at State expense; Ms. Jones was selected to attend the training at county expense.
5. For in-state travel, the-county's per them and travel policy reimbursed the following: (a) \$.27 per mile for the use of a private vehicle if a county car was unavailable, (b) \$5.50 for breakfast, \$6.50 for lunch, and \$14.00 for dinner, (c) \$38.00 per night for lodging or the actual room rate, whichever were less. Receipts for room rental were required. The only differences between the state's and the county's per them policies were that the state compensated personal use of a car at the rate of \$.30 per mile, and the state paid \$38.00 per night for lodging regardless of the actual cost.
6. Mr. Bowles contacted the management of the El Capitan Casino/Hotel in Hawthorne to determine whether hotel

rooms at an establishment under the same ownership in Reno, the Silver Club, could be provided at a discount rate. After Mr. Bowles learned that the Silver Club would provide three rooms at no cost to the county, he informed Ms. Jones that it was not necessary that she include a room rate in her travel advance claim submitted to the county.

7. In September 1995 the county advanced Ms. Miller \$433.80 for mileage and meals and Ms. Jones \$260.00 for meals for their attendance at the DMV training. The figure for Ms. Miller was erroneously based upon mileage at the county rate of \$.27/mile rather than state rate of \$.30/mile. The DMV training occurred during the first two weeks of October 1995. Both women traveled to and from Reno in Ms. Miller's car. Mr. Bowles traveled in his own car. All three stayed in rooms provided by the Silver Club at no charge.

8. On October 24, 1995, the DMV received a travel voucher signed in Mr. Bowles' name and submitted by him requesting State reimbursement of expenses associated with the training of one county employee in the amount of \$800-50. The testimony before the Commission was unclear as to how this figure was arrived at by Mr. Bowles. It would appear that the correct figure for reimbursement from the state, which would properly be only for Ms. Miller's permitted expenses, should be either \$830.00 or \$802.00. The difference between these figures is that Ms. Miller's initial projection to the County was for two dinners at \$14.00 each, in addition to the ten days' worth of meals for a total of \$260.00 requested by Ms. Jones, The \$830.00 figure includes those two dinners, the lower figure does not. Both also include the state rate for reimbursement for rooms. Mr. Bowles testified that he had been told by DMV officials in Reno that the request for reimbursements must be made in the name of the department head, although the employee designated as traveling at state expense was Ms. Miller. The total included sums designated as room-rate reimbursement at \$38.00 per night for ten nights. Neither, Ms. Jones nor Ms. Miller sought any reimbursement in the form of room rates because their hotel rooms had been provided free of charge. It must be noted that Ms. Miller would have been entitled to the \$38.00 per night reimbursement due to state policy, as noted above. It should further be noted that Mr. Bowles was not entitled to such reimbursement because he was not the designated employee sent at state expense.

9. In late November 1995, Ms. Stinson opened an envelope directed to the Treasurer's Office which contained a State reimbursement check made payable to Mr. Bowles for the October 1995 travel expenses, Ms. Stinson placed the check on Mr. Bowles' desk. Mr. Bowles cashed the check on November 27, 1995 and personally kept the money.

10. Mr. Bowles' standard procedure was that deputies in the office worked four, ten-hour shifts from the hours of 7-00 a.m. until 6:00 p.m. Ms. Jones' scheduled shifts were Mondays through Thursdays, while Ms. Peterson's shifts were scheduled for Tuesdays through Fridays. The County Clerk's office maintained a separate cash drawer for the DMV transactions. The money in the DMV cash drawer was counted by one deputy and balanced with the accounts by another deputy at the end of every business day so that there would be no reason to recount the money each morning. The DMV cash drawer was never recounted in the morning. If any discrepancies were noted, the deputy clerks would notify Ms. Justus, the chief deputy. The DMV cash drawer contained between \$1,400 to \$6,000 daily. Deposits were taken daily to a special checking account in a local bank. Though the drawer was always kept locked, Mr. Bowles and all other employees in the office had access to the DMV cash drawer.

11. On January 6, 1995 (a Friday), Mr. Bowles left town to attend a state, basketball tournament at which members of the Mineral County High School Booster Club would be participating. In his private capacity, Mr. Bowles served as treasurer for the club. Because the club's account did not have sufficient funds to cover the weekend's expenses, Mr. Bowles removed \$100.00 from the DMV cash drawer and replaced it with an envelope containing a \$100-00 check drawn against the Booster Club's account. The check was accompanied by a note from Mr. Bowles stating that should the check be cashed prior to his return, such action would result in closure of the account. Upon her discovery of the check and note on the following Monday morning, Ms. Jones notified Ms. Justus who instructed Ms. Jones to place a "hold" sticker on the check and to keep the check in the DMV cash drawer until the cash was returned. The check remained in the drawer for several weeks until Mr. Bowles replaced it with \$100.00 in cash.

12. On April 2, 1996, four months after he received the reimbursement money, Mr. Bowles deposited into the DMV's general fund \$605.00 in cash for the travel expenses advanced and incurred by the county for one of his staff member's attendance at the October 1995 DMV training. The money was appropriated into the Treasurer's travel budget account. Mr. Bowles returned the money only because Mr. Kunz! had threatened to take action against Mr. Bowles if he persisted in retaining money that rightly should have been reimbursed to the county. The remainder of the money received from the state was retained by Mr. Bowles. Mr. Bowles testified that for some reason he

believed he was entitled to this remaining money to reimburse him for his expenses, although he was not an officially designated attendee at the DMV training at either county or state expense. Indeed, he had indicated he would attend at his own expense. No clear evidence was presented to the Commission as to how this figure of \$605.00 for state reimbursement for Ms. Miller's expenses was reached.

13. At approximately 7:00 a.m. on the morning of April 22, 1996 (a Monday), Ms. Jones arrived at the office to unlock the DMV cash drawer and to commence her work day. Ms. Jones observed from her desk Mr. Bowles' arrival to the building. Without entering his private office, Mr. Bowles proceeded directly down the hallway to the DMV cash drawer and attempted to unlock it. Ms. Jones informed Mr. Bowles that she had already unlocked the drawer, Mr. Bowles explained that because no food had been purchased for a picnic held by the Democratic Party over the weekend, he had entered the office on Saturday and removed some cash from the drawer to buy food for the picnic. Mr. Bowles told Ms. Jones that he was replacing the money he had taken, and then he left the building. One hour later, Ms. Jones discussed with staff members how they should approach Mr. Bowles to confront him concerning his personal use of the DMV cash drawer. The employees determined from that day forward to lock DMV funds in an office vault at the conclusion of each business day, The staff requested a staff meeting with Mr. Bowles.

14. The staff meeting was held on April 25, 1996. When Ms. Stinson informed Mr. Bowles that his behavior was illegal and that his staff had made the determination to secure DMV money in the vault every night, he became incensed, informing Ms. Stinson that she could not tell him "what to do" and that if she were not able to "back up" her accusations, she would be making a "career-limiting decision."

15. After the meeting, Ms. Jones and Ms. Stinson went to the District Attorney's Office to inform Mr. Kunzi of what they had seen and what had subsequently happened. The women were in tears because they were very upset, and they expressed their concerns that their jobs were in jeopardy. At this time Mr. Kunzi, at the request of the Board, had commenced investigating the matter of Mr. Bowles' reimbursement of the state funds submitted to him for the DMV training.

16. In early May 1996, Mr. Kunzi contacted Nevada Attorney General Frankie Sue Del Papa for assistance in the investigation of the alleged improprieties because he was concerned that a conflict-of-interest existed between his simultaneous public duties to provide legal advice to both the Board and Mr. Bowles. On May 7, 1996, Mr. Kunzi complied with her instructions to submit all related documents to Mr. Robert Pike, Chief of the Investigations Division, who would conduct an investigation to determine whether Mr. Bowles had acted criminally.

17. On June 7, 1996, Mr. Pike contacted and interviewed Mr. Bowles by telephone. Mr. Bowles admitted to Mr. Pike that he had made the arrangements to have three rooms at the Silver Club "comped" for purposes of attendance at the DMV training but that he had properly reimbursed the county for expenditures it had advanced for the travel and meals of the three persons participating in the training. Mr. Bowles explained the delay in returning such funds was motivated by his aggravation with one of the Board members who opposed his position concerning county budget issues. He denied removing any money from the DMV cash drawer to fund either the Booster Club or the Democratic Party picnic.

18. In the report of his investigation dated June 18, 1996, Mr. Pike concluded that there was insufficient evidence to support a criminal prosecution of Mr. Bowles. Though Mr. Kunzi disagreed with Mr. Pike's conclusions, he relied upon Mr. Pike's report and determined not to take any further action regarding Mr. Bowles' conduct.

19. On August 23, 1996, the Board discussed in a public meeting the results of Mr. Pike's investigation. Mr. Bowles admitted that he removed cash from the DMV cash drawer, but he claimed that he did so only for the purpose of "testing the girls" and that the money had never left the confines of the building. Mr. Bowles stated that on Friday, April 19, 1996, he transferred monies from the drawer to a briefcase in his office where it remained over the weekend. When by 7.-15 a.m. the following Monday morning he had received no phone call from the staff to his home to report the DMV cash shortfall, he drove to work to retrieve the briefcase from his office and return the money he had taken from the drawer. Because Ms. Jones had already arrived in the office and saw him attempting to unlock the drawer, Mr. Bowles claimed that he provided Ms. Jones with the fictitious account concerning the borrowing of such funds to provide food at a Democratic Party picnic in order to conceal his "testing" methodology.

20. On August 24, 1996, Mr. Bowles held a staff meeting in which he iterated to his staff the motivation behind his conduct.

21. On September 20, 1996, following Ms. Jones' failure to return to work at the conclusion of her lunch hour because of a headache, Mr. Bowles wrote to Ms. Jones to inform her that because he believed she was abusing county sick-leave policy, she would hence be required to provide a note from her physician whenever she intended to claim hours absent from the office as sick-leave. Mr. Bowles placed a copy of his correspondence in Ms. Jones' personnel file and mailed copies to Ms. Jones' union and the district attorney's office, Mr. Bowles subsequently informed Ms. Jones that similar documentation would be required for time taken on annual leave. No such policy has been directed toward any other staff member by Mr. Bowles.

22. In early November 1996, Ms. Jones received a copy of an employment application with an attached note signed by Mrs. Bowles which read: "The Health Nurse Office job closes 11/8. If you hate it so bad here go for it!"

### **ANALYSIS AND OPINION**

The Commission has jurisdiction in this matter pursuant to NRS 281.511(2). Based on the Findings of Fact, the Commission concludes that at all pertinent times, Mr. Bowles was a public officer as defined in NRS 281.4365(1).

The request and the hearing revealed five issues:

- (1) Did Mr. Bowles' use of the DMV cash drawer regarding the Booster Club's check violate NRS 281.481(7)?
- (2) Did Mr. Bowles' removal of cash from the DMV cash drawer to buy food for the Democratic Party picnic violate NRS 281.481(7)?
- (3) Did Mr. Bowles' arranging to have free rooms provided for the DMV training and then subsequently seeking and obtaining reimbursement for those rooms violate NRS 281.481(2)?
- (4) Did Mr. Bowles' retention of the State reimbursement funds for over four months before paying the money to the county violate NRS 281.481(7)?
- (5) If Mr. Bowles violated any of the above provisions, were his violations willful such that they should be punished according to NRS 281.551?

The Commission concludes that Mr. Bowles acted unethically regarding each of the four substantive issues. We will analyze each issue in order.

Regarding the first issue, NRS 281.481(7) states, "A public officer or employee, other than a member of the legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest." When Mr. Bowles removed \$100 from the DMV cash drawer and placed in the cash drawer a check that he knew was drawn against insufficient funds, he converted public money to his own personal benefit. Mr. Bowles' proffered excuse that the money was taken after hours for a good cause (i.e. the Boosters Club) that the Club could not otherwise have afforded and that the money was repaid in full several weeks later are not sanctioned by NRS 281.481(7) and cannot be condoned by the Commission. Mr. Bowles personally benefited by his use of the DMV cash drawer because, under the circumstances that he thought excused his conduct, he could not have obtained the funds any other way, NRS 281.481(7) draws a clear and bright line: public property, including public money, belongs to the public and cannot be used for personal benefit or gain.

Regarding the second issue, our analysis is similar. We find that Mr. Bowles removed money from the DMV cash drawer on a Friday to pay for food for the Democratic Party picnic that weekend and that he planned to secretly return the money on the following Monday morning so that his personal use of the funds would go undiscovered. Unfortunately, Mr. Bowles' plan was foiled when Ms. Jones saw him replacing the money. We conclude that Mr. Bowles' proffered excuse that he was "testing the girls" was incredible and concocted after the fact in an attempt to justify his personal use of public money, Mr. Bowles used the DMV cash drawer as his own personal automated teller machine, and in so doing, he violated NRS 281.481(7).

Regarding the third issue, NRS 281.481(2) provides. "A public officer. . .shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself . . . or any other person." Mr. Bowles sought a preferential room rate from the management of the El Capitan for his attendance at the DMV training, and he was rewarded with the lowest rate of all: free rooms. Nonetheless, Mr. Bowles later sought reimbursement of \$38.00 per night for rooms that he had already arranged to have for free. Not only did Mr. Bowles violate NRS 281.481(2) by seeking preferential room rates from the management of the El Capitan, but he compounded the violation by later seeking reimbursement for room charges that he never incurred through his own efforts. Moreover, the only person entitled to even seek reimbursement for room charges, pursuant to state travel policy, was Ms. Miller, the employee selected to travel at state expense. She did not do so. We conclude that Mr. Bowles sought and received an unwarranted preference or advantage for himself in the way he procured free rooms through the management of the El Capitan and by seeking reimbursement for the free rooms he had procured. Moreover, he also retained some of the reimbursed money, although not authorized to do so. This conduct violates NRS 281.481(2).

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