

## Opinion No. 96-67

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of JERRY KANE, former member, Fernley Town Board

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Donald Parsons concerning the conduct of Jerry Kane who was a member of the Fernley Town Board at the time the acts complained of were committed. A hearing was held on February 28, 1997 at which Mr. Parsons, Mr. Kane, Mr. Vic Harpence, and Mrs. Blossom Kane testified and presented evidence. Neither party was represented by counsel. Immediately thereafter, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings and Fact and issues the Opinion which follows.

#### FINDINGS OF FACT

1. At all times pertinent to this request, Mr. Kane was a Fernley Town Board member. Subsequent to the making of the request, Mr. Kane was defeated and as of the date of the hearing, Mr. Kane was no longer a Fernley Town Board member.
2. On September 30, 1996, Mr. Kane purchased paper on which he intended to photocopy campaign fliers that he had made for his reelection campaign for the Fernley Town Board. At some time prior to October 14, 1996, Mr. Kane used the copier leased by the Town of Fernley to make approximately 1,500 double-sided campaign fliers using the paper he had purchased on September 30, 1996. According to his written statement presented to the Commission, Mr. Kane "authorized the use" of the Town copier for himself as "Chairman of the Board."
3. Mr. Kane explained that he had excess campaign funds and that he had a friend who owned a photocopying business from which he could have obtained the photocopies of the fliers at no cost. Mr. Kane explained that he copied the fliers using the Town copier for reasons of convenience. At the time that Mr. Kane made the copies using the Town copier, he did not pay for the copies.
4. On October 14, 1996, Mr. Kane used the Fernley Chamber of Commerce's (Chamber) bulk mail permit to mail the campaign fliers. The Chamber had advertised in the local newspaper that its bulk mail permit could be rented for \$10 by Chamber members and \$25 for non-members. Mr. Kane paid \$10 for the use of the bulk mail permit, although Mr. Kane was not a member of the Chamber at that time.
5. Mr. Parson testified that he had been told that Mr. Kane was charged only \$10 because he was a member of the Town Board, and the Town was a member of the Chamber. Mr. Parsons believed, therefore, that Mr. Kane had used the Town's Chamber membership to obtain a reduced bulk mailing fee. Mr. Kane, on the other hand, testified that he did not know what the fee structure was and that he merely paid the fee that he had been asked to pay. Mr. Kane also stressed that the person at the Chamber who assisted with the bulk mailing had to have been aware that the materials were personal to Mr. Kane because on their face, the materials were obviously fliers for his personal campaign. Mr. Kane also explained that he had surplus campaign funds and would have paid the \$25 fee had that been asked of him.
6. On October 18, 1996, Mr. Parsons confronted Mr. Kane with Mr. Parsons' knowledge that Mr. Kane had used the Town copier to copy his fliers and had used the Town Chamber membership to obtain a reduced bulk mailing fee. Only after this conversation did Mr. Kane pay for the copies he had made on the Town copier, and he only paid the Town's cost for the copies (\$.0105/copy). The Town copier was not publicly available.

7. Mr. Parsons testified that commercial copies could be made in Fernley for approximately \$.09/copy.

### **ANALYSIS AND OPINION**

The Commission has jurisdiction over this matter because Mr. Kane was a public officer as defined in NRS 281.4365. As a public officer, Mr. Kane was bound by the Nevada Ethics in Government Law. Mr. Parsons' request raised two issues: (1) Did Mr. Kane violate NRS 281.481(7)<sup>[1]</sup> by using the Town copier to make copies of his personal campaign flier, and (2) Did Mr. Kane violated NRS 281.481(7) by using the Town's Chamber bulk mailing rate to mail his campaign fliers?

Regarding the first issue, we conclude that Mr. Kane did violate NRS 281.481(7) when he used the Town copier to make 1,500 double-sided photocopies of his personal campaign fliers. Mr. Kane admitted that he used the copier, and, in fact, he even claimed to have "authorized" this personal use of the copier in his capacity as Chairman of the Fernley Town Board. Even though Mr. Kane used his own paper and paid the Town's cost for the copies, the prohibition in NRS 281.481(7) is simple and absolute. Depending upon the witness, Mr. Kane either paid \$31.50 more than he needed to or \$240.00 less than he could have paid for the copies at a commercial copier. Mr. Kane's personal use of the Town copier not only violated the letter of NRS 281.481(7), but particularly during a campaign season and for his own campaign materials, Mr. Kane's personal use of the Town's copier created an appearance of impropriety and inconsideration for the public he served. The appearance of impropriety is made even worse in light of Mr. Kane's failure to pay for the copies until after he was confronted by Mr. Parsons many days *after* he had made the copies.

Regarding the second issue, we conclude that Mr. Kane did not violate NRS 281.481(7) when he obtained a \$10 rate for the use of the Chamber's bulk rate permit rather than the \$25 rate that he should have paid as a non-member of the Chamber. We can understand why Mr. Parson was concerned with the appearance that Mr. Kane used the Town's Chamber membership to gain a \$15 advantage to mail in bulk Mr. Kane's personal campaign literature, especially in light of Mr. Kane's admitted use of the Town copier to make the photocopies of the campaign fliers. The evidence showed, though, that Mr. Kane did not intentionally use the Town's membership to obtain the lower bulk mailing rate, but rather, that the Chamber's staff mistakenly charged Mr. Kane the wrong rate. Thus, unlike Mr. Kane's use of the Town photocopier which was deliberate, Mr. Kane's use of the Town's Chamber membership was inadvertent, and thus, not a violation of NRS 281.481(7).

### **CONCLUSION**

Based upon the record, the Commission concludes that Mr. Kane did violate NRS 281.481(7) when he used the Town copier to make photocopies of his personal campaign literature, but Mr. Kane did not violate NRS 281.481(7) when he obtained a reduced bulk mail permit rate from the Chamber for the mailing of his campaign literature. We further conclude that Mr. Kane's violation was not willful under NRS 281.551(1), and thus, we assess no penalties against Mr. Kane as a result of his violation.

### **COMMENT**

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of the Nevada Revised Statutes 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: April 14, 1997

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

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[1] NRS 281.481 (7) provides that "[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."