

Opinion No. 96-78

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Advisory Opinion from the CITY OF RENO

This Opinion is in response to a first-party request for opinion filed with the Nevada Commission on Ethics (Commission) by the Reno City Attorney's Office concerning future conduct of Reno City employees and the Reno mayor. A hearing was held on February 27, 1997 at which Mr. Chan Griswold testified and presented evidence. Immediately thereafter, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings of Fact and Opinion which follows.

FINDINGS OF FACT

1. Century theaters has offered to provide to the City of Reno a number of annual passes to its movie theaters. The passes would allow the holder to attend movies at the theater free of charge. There is no limit to the number of movies that could be viewed free of charge to the holder. The usual cost of movies at Century theaters is \$7.00. The value of a pass, therefore, could range from zero (if it was never used) to hundreds of dollars (if it was used frequently throughout a year). The intended distribution of the passes would be to all elected officials and to all department heads to be distributed in their discretion.
2. Century theaters has several matters that are either pending or will be upcoming before the Reno City Council regarding planned expansions or new construction projects.
3. The City of Reno is examining whether to purchase cellular telephones for its city councilmembers to facilitate greater accessibility to the part-time city councilmembers. One option being examined involves cellular telephones capable of carrying multiple telephone lines and numbers. The mayor raised the question whether he could have a personal telephone line and number assigned to his city-provided cellular telephone, which personal telephone line and number he would personally pay for. The mayor's question was raised for convenience's sake, since his proposed arrangement would allow him to carry a single cellular telephone, rather than carrying two such telephones.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter because the employees of the City of Reno are public employees as defined in NRS 281.436 and the mayor is a public officer as defined in NRS 281.4365. The City of Reno's request raised two issues: (1) would the acceptance and distribution of the movie passes violate NRS 281.481(1) or (2); and (2) would allowing the installation of a private line on a city-owned cellular telephone for the convenience of the mayor violate NRS 281.481(7)?

Regarding the first issue, we conclude that there is a potential for violation of NRS 281.481(1) or (2)^[1] through the acceptance and use of the annual movie passes. Under the circumstances of this request, where Century Theaters has pending and future matters before the City of Reno, the appearance of impropriety that would be occasioned by the gifts of these passes is unavoidable. Just as importantly, though, is that if the passes were used frequently, significant financial benefit would be realized by the user, and if the user were a city councilmember, there would be a point at which the use "would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties." NRS 281.481(1). Similarly, the acceptance of the passes by elected and appointed officials, particularly in light of the unlimited value of the passes, may well qualify as "unwarranted privileges or advantages" under NRS 281.481(2), particularly because the intended recipients are

people who could influence the destiny of Century Theaters' projects.

In fact, it is difficult to conclude other than that the intent behind the gift of the passes is to positively influence officials and employees of the City of Reno who hold in their hands the fate of projects important to Century Theaters. In so saying, we are not intending to indicate anything nefarious in Century Theaters' gifts or that the various officials and employees who would be the recipients are venal and easily influenced by gifts of free movies. Rather, our analysis is based upon the objective standards set out in NRS 281.481(1) and (2), and under those objective standards we believe that a reasonable person might be influenced by the generous gifts being tendered by Century Theaters. We must conclude that under the unique circumstances of this matter, the City of Reno should decline the offered annual movie passes because of the potential for violation of NRS 281.481(1) and (2) that those passes represent.

Regarding the second issue, we conclude that NRS 281.481(7) would be violated by the personal use of the city-owned cellular telephone suggested by the mayor. NRS 281.481(7) is absolute, prohibiting any use of "governmental time, property, equipment or other facility to benefit his personal or financial interest." In NRS 281.481(8), the legislature carved out a specific exception for legislators that allows certain *de minimis* uses of governmental time, property, or equipment for legislators. We must conclude that the legislature did not intend similar *de minimis* exceptions for other public officials within the scope of NRS 281.481(7).

We appreciate that the mayor and the other city council members must be busy people since in addition to the usual personal and work lives we all maintain, they also work "part-time" for the City of Reno. We also acknowledge the convenience and sensibility that would be worked by the mayor's proposal. Nonetheless, we must interpret NRS 281.481(7) as it is written, not as we might want it to be written, and, as written, NRS 281.481(7) would prohibit the mayor's personal use of the city-owned cellular telephone. On the other hand, NRS 281.481(7) would **not** prohibit the mayor from installing a city telephone line and number on a cellular telephone that he owned, so the convenience the mayor seeks could be accomplished through his personal purchase of a cellular telephone capable of carrying multiple lines, one of which would be a public line paid for by the City of Reno that would be used only for city business.

It must be noted, however, that at present there is pending legislation which may change this exception and make it available for other public employees and public officials. If this legislation becomes law, at its effective date, the request by the mayor would no longer be violative of NRS 281.481(7).

CONCLUSION

The Commission concludes that the City of Reno should decline Century Theaters' tender of annual movie passes as described in this matter because those passes would raise the potential for violations of NRS 281.481(1) and (2). The Commission also concludes that the mayor may not have a personal line installed upon a city-owned cellular telephone because such personal use of public equipment would violate NRS 281.481(7), as it is presently written. We can recommend that the same benefit to the mayor could be accomplished by the city installing a public line upon a personally owned cellular telephone as long as the public line was used only for public business. We also advise that this law may be changed in the 1997 legislative session in such a manner as to allow for this requested use.

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: June 5, 1997

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

[1] NRS 281.481(1) and (2) provide:

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.