

Opinion No. 97-10 and 97-45

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of JUDITH VANDEVER, Clark County Recorder; and JEFFREY JAEGER, Assistant Clark County Recorder

This Opinion is in response to two third-party requests for opinion filed with the Nevada Commission on Ethics (Commission) by Bea Parkin concerning the conduct of Clark County Recorder Judith Vandever and Assistant County Recorder Jeffrey Jaeger. The first request was filed on February 13, 1997, and concerned a Las Vegas Chamber of Commerce mailing sent by Ms. Vandever Opinion Request No. 97-10). The second request was filed on September 2, 1997 and concerned testimony given by Ms. Vandever and Mr. Jaeger at the hearing on the merits of Opinion Request No. 97-10 (Opinion Request No. 97-45).

An evidentiary hearing on Opinion Request No. 97-10 was held by the Commission on May 30, 1997, in Las Vegas, Nevada. Testimony was given by Ms. Parkin, Ms. Vandever, and Mr. Jaeger. Ms. Vandever and Mr. Jaeger also presented documentary evidence. At the conclusion of the hearing the Commission publicly deliberated the matter and rendered a decision.

Prior to issuance of the written opinion on Opinion Request No. 97-10, Ms. Parkin filed Opinion Request No. 97-45, alleging that Ms. Vandever and Mr. Jaeger misled the Commission at the hearing on Opinion Request No. 97-10. On September 26, 1997, the Commission held a preliminary administrative hearing to determine whether just and sufficient cause existed for the Commission to conduct a hearing on the merits of Opinion Request No. 97-45. Ms. Parkin, Ms. Vandever, and Mr. Jaeger were not present. The Commission determined that just and sufficient cause did exist to proceed on Opinion Request No. 97-45.

On November 14, 1997, the Commission proceeded to a full hearing on the merits of Opinion Request No. 97-45. Testimony was received from Ms. Parkin, Ms. Vandever, and Mr. Jaeger. The Commission determined that it required information from additional witnesses and continued the hearing on the merits to March 20, 1998 to receive additional testimony. On March 20, 1998, testimony was received from Ms. Parkin, Ms. Vandever, Mr. Jaeger, Michele Shafe, Huston Shoopman, and Rosemary Vassiliadis, and the hearing on the merits was concluded. At the conclusion of the hearing, the Commission deliberated and rendered a final decision as to both opinion requests. The Commission now issues the Findings of Fact and Opinion which follows.

FINDINGS OF FACT

1. Ms. Vandever is the duly-elected Clark County Recorder. Shortly after her election as Recorder, Ms. Vandever became a member of several chambers of commerce in the Las Vegas/Clark County area, including the largest such group, the Las Vegas Chamber of Commerce.

2. In September 1996, Ms. Vandever wrote a letter addressed to all Community Council Members of the Las Vegas Chamber of Commerce. Copies of the letter were sent to all Chamber members because under the Chamber bylaws, all Chamber members were also automatically members of the Community Council. The letters were a solicitation for votes for election to the Chamber's Community Council Board of Directors.

3. The letters were printed on Clark County stationery and mailed in Clark County envelopes, with postage affixed thereon by a Clark County postage meter. Ms. Vandever used Chamber of Commerce mailing labels. County employees assisted Ms. Vandever on county time in preparing and sending the letters.

5. Mr. Jaeger is responsible for preparation of the Recorder's office budget. The budget year at issue is 1996-97.

6. Membership in the Chamber of Commerce was a line item on the Recorder's office budget for fiscal year 1996-97, but mailings to Chamber members were not. At the first hearing on this matter, Ms. Vandever and Mr. Jaeger represented to the Commission that the mailings were known to and were approved by the necessary officials in Clark County who oversaw the Recorder's budget. Ms. Parkin's second request for opinion (No. 97-45) resulted as a challenge to these representations. After hearing from the budget officials involved --namely Ms. Shafe, Mr. Shoopman, and Ms. Vassiliadis --it appears that the Chamber mailings were not known to or specifically approved by the budget officials overseeing the Recorder's budget.

7. At the time the mailing was sent, there was no written policy concerning mass-mailings. The mailroom staff generally mailed all items sent to them for mailing, unless the mailings were obviously personal. Once mailed, the mailroom staff deducted the number of mailings from the appropriate budget account. The Chamber mailing in this matter appeared proper, was mailed by the mailroom staff, and was deducted from the Recorder's mailing budget account. By the standards of the mailroom, the Chamber mailing was not considered a large or important mass mailing.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2). At all times relevant hereto, Ms. Vandever was a public officer as defined in NRS 281.4365 in her capacity as Clark County Recorder and Mr. Jaeger was a public employee as defined in NRS 281.436 In his capacity as Assistant County Recorder.

There are two issues presented by these opinion requests. The first is whether Ms. Vandever violated NRS 281.481(7) by utilizing governmental time, property, equipment and employees for her own benefit. The second, presented by Opinion Request No. 97-45, is whether Ms. Vandever or Mr. Jaeger violated NRS 281.525(1) by misleading the Commission at the May 30, 1997 hearing on Opinion Request No. 97-10. Each of these issues will be taken up separately.

The Chamber Mailing

NRS 281.481(7) provides:

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.

Ms. Parkin alleged that Ms. Vandever violated NRS 281.481(7) by using county stationery, employees, and equipment to send a self-promoting letter to members of the Chamber of Commerce and by using preprinted mailing labels purchased from the Chamber of Commerce at a cost to Clark County of \$214 and county postage to

mail the letters to the entire 4,400 Chamber membership at a cost to Clark County of \$1,408.

Ms. Vandever neither disputes that she sent the letters nor that they were prepared and mailed on county time using county personnel, equipment and postage. Instead, Ms. Vandever testified that county officials were not only aware of this, but encouraged and supported it as part of her involvement with the Chamber of Commerce. Ms. Vandever felt that her membership with the Chamber was part of her duties as County Recorder. Ms. Vandever said that she would not belong to the Chamber if she were not the County Recorder, as she does not own a private business.

Ms. Vandever explained that her reason for wanting to sit on the Community Council Board within the Chamber was that it would elevate her to a position that would allow her to better interact with the public as Recorder because it would make her more visible. She advised the Commission that the Chamber of Commerce did not charge her for the mailing labels; they were provided to her free of charge, as they were to all who ran for the board.

There was no written county policy which would specifically prohibit a mailing by a county officer such as Ms. Vandever's Chamber mailing. The unwritten policy in the mailroom at that time was that if the mailroom received something which was obviously not county business or was questionable, employees were to address the person who gave them the mail directly or advise the Director of General Services or his assistant of it. The mailroom did not keep a log of mass mailings, and mailroom personnel did not recall Ms. Vandever's Chamber mailer. Ms. Vandever's Chamber mailer was sent without question by the mailroom staff.

We can understand that Ms. Vandever felt that her involvement with the Chamber of Commerce was part of her job. Her office does deal with many of the businesses who are members of the Chamber on a daily basis. Ms. Vandever's fellow elected officials encouraged her effort to increase the customer service profile of the Recorder's Office. The Recorder's budget did specifically include line items regarding her Chamber dues which were approved by all the appropriate budgeting officials. We can only fault Ms. Vandever and the budgeting officials because Ms. Vandever should have specifically requested funds for the Chamber mailing in her budget and the budgeting officials should have had a policy in place regarding mass mailings. Much of the confusion that arose during our hearings on this matter came from these small faults. We are encouraged that these faults have been corrected and hope that a matter like this never again arises.

We conclude that even assuming Ms. Vandever enjoyed her involvement with Chamber activities and that this involvement benefited Ms. Vandever's future political endeavors, there is no evidence Ms. Vandever's use of government time, property, equipment, or personnel to prepare and mail the Chamber mailer was done to benefit her personally. Rather, the record in this matter indicates Ms. Vandever's actions were done in furtherance of her involvement with the Chamber of Commerce as County Recorder.

Because there was no written policy that specifically prohibited Ms. Vandever from sending this type of mailer, and because she did not benefit personally from the mailer, the Commission concludes that Ms. Vandever did not violate NRS 281.481(7).

The Misleading Statements

The second issue, presented by Opinion Request No. 97-45, is whether Ms. Vandever or Mr. Jaeger violated NRS 281.525(1) by misleading the Commission at the May 30, 1997 hearing on Opinion Request No. 97-10. NRS

281.525(1) provides:

It is unlawful for any person to make, use, publish or disseminate any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion.

At the May 30, 1997 hearing on Opinion Request No. 97-10, Ms. Vandever testified that the Chamber mailing was a known and approved part of her budget, that it was included in her postage budget, and that she had discretion as the elected head of the Recorder's Office to use those funds as she deemed appropriate. Mr. Jaeger testified that he was the person responsible for preparing the budget for the Recorder's Office. Mr. Jaeger explained that Chamber business expenditures, including membership, were line items on the budget that was approved by the Clark County Commissioners. Both Ms. Vandever and Mr. Jaeger represented that money for community mailings were specifically included in the Recorder's budget. Mr. Jaeger stated that the budget analyst for the Recorder's office was aware that there were expenditures incurred by the office that pertained specifically to activities related to Chamber business. Mr. Jaeger also explained that the finance department reviewed the budget and submitted it to the Clark County Commissioners, who then approved it.

At the conclusion of the hearing in May, we were left with the impression that the finance department was specifically aware that Ms. Vandever intended to send a mailer to Chamber members and that the county commissioners had specifically approved this particular mailer as part of the Recorder's budget. Ms. Vandever and Mr. Jaeger fostered this perception and said nothing to refute it, and based on that conclusion, we determined there had been no ethical violation on the part of Ms. Vandever in sending the mailer. As the preceding discussion shows, our analysis is still that Ms. Vandever's Chamber mailing did not violate NRS 281.481(7).

Subsequent to that hearing, Ms. Parkin submitted her second opinion request (No. 97-45). Included with that request was information that indicated that the Chamber mailing was not specifically included in the Recorder's budget and, therefore, was not known or specifically approved by the Clark County Commissioners.

At subsequent hearings held November 14, 1997 and March 20, 1998, Ms. Vandever testified that the Chamber mailer was authorized implicitly by the Clark County Strategic Plan and that the postage for the Chamber mailer was included in her postage budget. She reiterated that she thought the expenditure was within the realm and latitude of her flexibility and said she believed the county commissioners would approve it if it were a line item on her budget. She admitted that she did not know if any of the budget officials was aware that she planned specifically to spend funds to send the Chamber mailer. Mr. Jaeger admitted there was nothing in the Recorder's budget that indicated taxpayer money would be spent for Chamber mailings.

At the March 20, 1998 hearing, the Commission heard testimony from Michele Shafe, Rosemary Vassiliadis, and Huston Shoopman. Ms. Shafe was the budget analyst for the Recorder's office during preparation and approval of the 1996-97 budget. She testified that she reviewed her notes and worksheets from that time and found nothing concerning the Chamber of Commerce. She recalls discussion of Chamber dues, but does not recall any discussion of a Chamber mailing. She does not recall that Chamber mailings were specifically included in the budget. The only report the finance department received concerning postage usage was a monthly recapitulation of postage used by each department.

Rosemary Vassiliadis was the assistant finance director during preparation and approval of the 1996-97 budget. She testified that nothing in the Recorder's office budget justification showed the Chamber mailing. The finance department was not aware Ms. Vandever intended to send the Chamber mailer, and the commissioners would not have known about it when they approved the budget. She became aware of the mailer when Huston Shoopman told her about it, after the fact.

Huston Shoopman is the current budget analyst for the Recorder's office. He became aware of the Chamber mailing when he was advised by Ms. Vandever and Mr. Jaeger that it was the subject of a request that had been filed with the Ethics Commission. He advised Ms. Vassiliadis of it because he thought he should keep her informed of things which occurred in his departments. A directive was issued last fall which required that mass-mailings of more than \$100 be specified in the budget.

Both Ms. Vassiliadis and Mr. Shoopman confirmed that during their conversation regarding Ms. Vandever's Chamber mailing Ms. Vassiliadis indicated that she questioned the expenditure. Ms. Vassiliadis also indicated that in her opinion Ms. Vandever should have paid back the amount spent for the Chamber mailing, but Ms. Vassiliadis also indicated that she had no authority to require such repayment. Ms. Vandever admitted that it was suggested to her that she should reimburse the county for the mailer, but she explained that she did not do so because that would not clear her name.

We must find, based upon the sizable record before us, that Ms. Vandever and Mr. Jaeger allowed the Commission to be misled regarding our conclusion at the May 30, 1997 hearing that the Chamber mailing was approved specifically by the Clark County Commissioners as part of the Recorder's budget. They should have been forthright with the Commission and admitted that the mailing was not a specific line item in the budget, that neither the finance department nor the county commissioners were aware of their intention to send a mailing to Chamber members, and that their belief the expenditure was an authorized use of county funds was based solely on their belief that they had latitude in their postage budget to use it as Ms. Vandever deemed appropriate. By necessity, we must rely on the integrity and veracity of statements made to us in the course of our hearings, and misleading statements do not assist us in analyzing important questions before us. While we do not think that Ms. Vandever or Mr. Jaeger were intentionally or maliciously calculating, but we do think they were satisfied with the misleading state of the record because it left an impression on us that was favorable to Ms. Vandever's position. By so misleading the Commission, Ms. Vandever and Mr. Jaeger violated NRS 281.525(1).

As a final matter, NRS 281.525(3) requires us to provide a copy of this opinion to the district attorney, in this case the Clark County District Attorney, because NRS 281.525(2) makes a knowing violation of NRS 281.525(1) a misdemeanor. While we do not condone Ms. Vandever's and Ms. Jaeger's misleading statements, we do not think that their conduct merits criminal sanction, so to the extent that our recommendation carries any weight, we do not recommend that either Ms. Vandever or Mr. Jaeger be prosecuted under NRS 281.525(2). We believe that the admonition made by this opinion is enough.

CONCLUSION

Based upon the record, the Commission concludes Ms. Vandever did not violate the provisions of NRS 281.481(7) by sending a mass mailer to members of the Las Vegas Chamber of Commerce. The Commission further concludes that Ms. Vandever and Mr. Jaeger violated the provisions of NRS 281.525(1) because they

allowed the Commission to draw incorrect and misleading conclusions concerning the inclusion of the mailer in the Recorder's budget and its approval by the county commissioners.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and 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: May 29, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman