

## Opinion No. 97-14

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of JOHN ANDRUS, former Member, Mesquite City Council

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Deputy Attorney General Robert Auer concerning past conduct of the Mesquite City Council. Mr. Auer had received the complaint from John Isaacs, publisher of the Desert Valley Times, a newspaper in Mesquite. An investigation conducted by Commission staff determined that the only member of the Mesquite City Council who made use of the information which is the subject of this opinion request was former Councilman James Andrus. Therefore, Mr. Andrus became the sole subject of the opinion request at the public hearing which was held by the Commission on November 14, 1997, in Las Vegas, Nevada. The Commission received testimony from Mr. Andrus, former Mesquite City Councilman Joey Bowler, and Mesquite resident Bob Draskovich. At the conclusion of the hearing 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. At the time of the alleged incidents which gave rise to this opinion request Mr. Andrus was a Mesquite City Councilman.
2. Sometime prior to February 5, 1997, Mesquite City Manager Bill Da Vee drafted a resolution to raise the rates for plots and services at the Mesquite Municipal Cemetery. Under this resolution, the price of cemetery plots for residents would be doubled from \$250.00 per plot to \$500.00 per plot. Other fees and services were similarly raised by significant amounts. The resolution was placed on the Mesquite City Council agenda for consideration on February 11, 1997.
3. The agenda for the February 11' 1997 meeting was posted on February 5, 1997. The agenda item regarding the cemetery fees read: "Consideration of approval of Resolution #170, a resolution of the City Council of Mesquite, Nevada amending Mesquite Municipal cemetery fees."<sup>[1]</sup> The agenda was posted at the Mesquite City Hall, the Mesquite Library, the Mesquite Post Office, and the Chalet Cafe.
4. On February 11, 1997 and prior to the City Council meeting, Bob Draskovich picked up Mr. Andrus' meeting packet from the City's office. Mr. Draskovich and Mr. Andrus are friends, and it was Mr. Draskovich's usual practice to pick up Mr. Andrus' packets for him, as Mr. Andrus was generally unable to do so because he worked out of town.
5. After reviewing the meeting packet, Mr. Draskovich telephoned Mr. Andrus and advised him that the resolution regarding the cemetery fees was on the agenda for that evening. Mr. Draskovich told Mr. Andrus he was going to purchase plots before the price went up and suggested Mr. Andrus do so as well. Also that day, Mr. Andrus received a phone call about the cemetery plots from Matthew Reber, his nephew, who is employed by the City of Mesquite as a dogcatcher.

6. Mesquite City records show that on February 11, 1997, just hours before the City Council meeting, Mr. Andrus purchased ten cemetery plots, Mr. Reber purchased two plots, and Mr. Draskovich purchased twelve plots.

7. During discussion of the proposed resolution at the Council meeting, Mr. Andrus commented that some City employees had already purchased plots at the current rate, and requested that the effective date of the resolution be deferred to afford members of the public the same opportunity. He then made a motion to approve the resolution with an effective date of March 1, 1997, which was passed unanimously by the Council.

8. Many individuals purchased cemetery plots following between the February 11 City Council meeting and the March 1, 1997 effective date of the new rate.

### ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2). At all times relevant to this opinion request, Mr. Andrus was a public officer as defined in NRS 281.4365 in his capacity as a Mesquite City Councilman.

The question presented in this matter is whether Mr. Andrus violated NRS 281.481(5)<sup>[2]</sup> by acting upon information known to him as a city councilman that may not have been available to the general public purchase cemetery plots in the Mesquite Municipal Cemetery prior to voting to raise the fees for those plots.

The record clearly shows that Mr. Andrus purchased ten cemetery plots on the day the City Council was scheduled to vote on increasing the fees at the cemetery. Additionally, Mr. Andrus' close friend, Mr. Draskovich, bought twelve plots and Mr. Andrus' nephew bought two plots. All of these people hurried out and bought the cemetery plots just hours before Mr. Andrus would be voting to double the cost of the plots. Mr. Andrus testified that he did not purchase the plots because he knew the price was going to go up; rather, he purchased them because he was concerned there might be a rush for plots and he wanted to ensure that he had enough plots for his family in one area.

Mesquite City records show that only six individuals purchased plots at the cemetery between the posting of the agenda on February 5 and the February 11 Council meeting, of which three were Mesquite employees and a fourth was Mr. Draskovich. However, many Mesquite residents who were not employed by the City purchased plots after the meeting, prior to the increased rates becoming effective. The difference in the amount of public participation appears to be the media in which the two purchasing opportunities were publicized. The City Council's agenda was posted as legally required, but the City Council's action at the meeting was publicized through the local newspaper. Although it appears Mr. Andrus, members of his family, and his friends had information that was not *widely* known by the public, the information cannot be considered information that was "not at the time available to people generally" under NRS 281.481(5) because the information was *legally* available to the public as a result of the properly posted agenda for the meeting. Therefore, we cannot conclude that Mr. Andrus violated NRS 281.481(5).

### CONCLUSION

Based upon the record, the Commission concludes Mr. Andrus did not violate NRS 281.481(5).

## 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

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[1] It is not our bailiwick to pass on whether the text of the agenda item complied with NRS 241.020(2).

[2] NRS 281.481(5) provides that "[i]f a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity."