

Opinion No. 97-15

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of RICHARD CARVER, Nye County Commissioner

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by the Amargosa Town Advisory Board concerning the conduct of Richard Carver, Nye County Commissioner. A public hearing was held by the Commission on January 15, 1999, in Las Vegas, Nevada. Chairwoman Boetsch recused herself from the discussion and the vote. The Commission addressed the results of an investigation conducted by this Commission regarding Mr. Carver's financial responsibility for his mother and father-in-law's debts to the Nye County Regional Medical Center (NCRMC). At the conclusion of the hearing, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues a discussion of the procedural history, factual findings, and legal analysis supporting this opinion as follow.

PROCEDURAL HISTORY

1. On March 5, 1997, the Nevada Commission on Ethics received this opinion request in the form of a letter from the members of the Amargosa Town Advisory Board.
2. Subsequent to the filing of the opinion request, the Commission became aware that an investigation of the same allegations was already underway by the Department of Taxation, so the Commission decided to wait until the Department of Taxation finished its investigation. The Department of Taxation's investigation was completed in July 1998. The Department of Taxation referred three matters to the Commission and the Attorney General for further review.
3. On August 13, 1998, the Commission held a hearing to determine whether there was just and sufficient cause to proceed to a hearing on the merits of Request No. 97-15. At that time, the Commission considered the three issues raised by the Department of Taxation. The Commission determined that there was just and sufficient cause to proceed on only one of the three referred matters, namely the matter regarding Nye County Commissioner Richard Carver and his votes for and support of NCRMC.
4. Based upon the evidence presented the Commission approved an investigation to determine whether Mr. Carver's votes on financial matters regarding the NCRMC were influenced by his financial responsibility for his mother's and step-father's bills owed to NCRMC.
5. On January 15, 1999, the Commission held a hearing on the merits regarding the outcome of the investigation.

FINDINGS OF FACT

The Commission makes the following findings of fact based upon its investigation in this matter:

1. Mr. Carver is not indebted to NCRMC. Mr. Carver's mother and step-father, Jean C. and Reeve M. Duhme, are

indebted to NCRMC, but that debt is not the responsibility of Mr. Carver.

2. Mr. Carver had not intimated to any current or past employee that he was expecting his family's debts to be treated any differently because of his position on the Nye County Commission/Hospital District Board of Trustees nor was there any evidence that such debts were treated differently.

3. In April of 1997, the Nevada Tax Commission found the Nye County Hospital District to be in a state of severe financial emergency, and, as a result, the Nevada Department of Taxation had taken over management and control of the Hospital District. Although the Board of Trustees still meet on a regular basis, the Board was effectively eliminated from the decision-making role when the Department of Taxation acquired control.

4. Cathy Clifford, former Chief Financial Officer of NCRMC, was interviewed by the investigator. Ms. Clifford left NCRMC in early 1996. She stated that she was never made to believe that Mr. Carver's family's debt was to be treated any differently than the debt of other patients.

5. Carrie Causey, former bill processor at NCRMC, was interviewed by the investigator. Ms. Causey's job was to prepare the bills from the postings entered by data processing and to send the bill to the patient or the person responsible. While she recalled preparing numerous bills for Mr. and Mrs. Duhme (Mr. Carver's mother and step-father) and possibly sending the bills to Mr. Richard Carver at his home address, she could not confirm that Mr. Carver was responsible for the debt.

6. Amber Guthridge, former manager of data processing at NCRMC, was interviewed by the investigator. She left NCRMC on August 27, 1998. She was aware that there was an outstanding debt owed by the Duhmes and that there were ongoing attempts to collect the debt. She believed that Mrs. Duhme was a Medicare and private pay patient. Like most others in that pay status, Mrs. Duhme could not pay the full amount owed. She also believed that Mrs. Duhme had made an application for Medicaid, but did not know the status of the application. She was aware of the financial condition of NCRMC and believed that the staff was doing everything possible to collect all monies owed. She never witnessed attempts to change the way the Duhmes' bills were handled.

7. Janet Newberry, former lead biller of NCRMC, was interviewed by the investigator. She was employed from March 1995 until September 1997. She believed that the guarantor for the Duhmes was Mr. Gary Carver, Mr. Carver's brother. She noted that numerous attempts were made to get the bills paid and when Mr. Gary Carver failed to respond, NCRMC employees approached Mr. Richard Carver. Ms. Newberry was told that Mr. Richard Carver stated that he would be responsible for his mother but not his step-father. Ms. Newberry stated that Bill Welsh of Nevada Rural Hospital Project told her nothing could be done because of Mr. Carver's position. She also stated that she attempted to get NCRMC to place a lien on a piece of property owned by the Duhmes in the Amargosa Valley and that nothing was done because of Mr. Carver's position. Ms. Newberry further stated that the Duhmes gave a piece of property in Smokey Valley to Mr. Carver's son in an attempt to keep the property in the family and away from NCRMC. Ms. Newberry did not believe the standard collection procedure was followed for the Duhmes because of Mr. Carver's position, even though she could not provide tangible proof to support her claim.

8. Steve Bradhurst, Nye County Manager, was interviewed by the investigator. He was aware of the controversy surrounding Mr. Carver and was informed on the issues regarding NCRMC. He was in constant contact with the Administrator and with the Nevada Department of Taxation because of the financial condition of NCRMC. He stated

emphatically that Mr. Carver did not owe NCRMC anything, either for himself, his immediate family, or for his mother and step-father. Mr. Bradhurst explained that when Mr. Carver's mother and step-father were admitted to the extended care facility no one on the staff of NCRMC secured an agreement regarding the payment for the services. He noted that several others were admitted in a similar fashion and their bills were also going unpaid. He noted that in these circumstances, the bills were "self-pay" along with any other entitlements the hospital could secure, such as Medicare and Medicaid.

9. Melinda Lewis, Hospital Administrator, was interviewed by the investigator. She has been the Administrator of NCRMC since March 1997 when she was appointed in an acting capacity. She accepted the position full-time in December 1997 at the request of Nevada Rural Hospital Project. She was intimately familiar with the controversy regarding Mr. Carver and stated that Mr. Carver did not owe NCRMC any outstanding debt. Mr. and Mrs. Duhme were just two of several patients admitted to NCRMC without an identifiable source of payment. Ms. Lewis noted that several attempts were made to get assistance from Mr. Gary Carver in filing an application for Medicaid for the Duhmes. Mr. Gary Carver was uncooperative. Afterwards, Ms. Lewis and someone from Nevada Rural Hospital Project called Mr. Carver and explained the circumstances. Mr. Richard Carver enlisted the services of his wife who completed the Medicaid application for Mrs. Duhme. Medicaid eventually accepted this application, and Medicaid is now paying Mrs. Duhme's expenses. Additionally, Mr. Carver had liquidated everything that he could in an attempt to bring Mrs. Duhme's account current. Ms. Lewis did note that there was still an outstanding balance that accumulated prior to the Medicaid benefits becoming effective. She further stated that there was never a hint of intimidation or expectation of different treatment from Mr. Richard Carver. She reiterated that he had no liability in this matter, She even discussed the matter with the current Chief Financial Officer/Assistant Administrator, David Bezdard, and he concurred that Mr. Richard Carver had no responsibility for the Duhme's debts.

10. Bill Welsh, Nevada Rural Hospital Project/former Administrator of NCRMC, was interviewed by the investigator. Mr. Welsh was placed as the Administrator in April 1997 when the severe financial emergency was declared. He served in that capacity until December 1997 when Ms. Lewis took the position. He still maintained daily contact with her and was very aware of the issue regarding Mr. Carver. Mr. Welsh stated that Mr. Carver did not owe NCRMC for his mother's or step-father's outstanding debt. Mr. Carver has made payment on his mother's account, but not his step-father's. Since Mr. Welsh had been associated with the hospital, Mr. Carver had not been treated any differently than any other patient. Mr. Welsh noted that Nevada Rural Hospital Project was in the process of cleaning up the finances of NCRMC and that there were many bills that could not be proven because of poor accounting practices in the past. Some of these bills might well be the Duhme's. When the Nevada Rural Hospital Project took over management of the facility there were 18 of 22 extended care patients that had no identified source of pay, and the facility was approximately \$500,000 in debt to its vendors. The Duhmes were two of the group. Today all but three people in the extended care facility have Medicaid coverage in addition to other pay sources. For the past 12 to 14 months the outstanding bills have been worked with extensively, and the hospital has collected approximately \$500,000.00. Mr. Carver has cooperated fully with the Nevada Rural Hospital Project in attempting to stabilize the financing of NCRMC. Since April 1997 Mr. Carver has not made a financial decision concerning the hospital, either as a County Commissioner or as a member of the Hospital Board of Trustees.

11. Michael A. Pitlock, Executive Director with the State Department of Taxation, was interviewed by the investigator. Mr. Pitlock had been involved in the operation of the Hospital District since April 1997. He confirmed that there were no debts owed to the hospital by Mr. Carver. While there are monies owed to the Hospital District related to the care of Mr. Carver's mother, these debts are not the financial responsibility of Mr. Carver. At no time

during Mr. Pitlock's involvement with the Hospital district had he observed any inappropriate conduct by Mr. Carver related to his duties as a member of the Hospital District Board of Trustees.

12. The investigator performed a title search at the Nye County Assessor's Office and a record search at the Nye County Recorder's Office for records pertaining to Mr. Richard L. Carver and Jean C. and Reeve M. Duhme. Careful inspection of the property descriptions did not reveal any current transactions that appeared to be associated with the Duhmes.

12. Contrary to Ms. Newberry's claim that NCRMC would not pursue legal remedies to collect from the Duhmes because of Richard Carver's position, the investigator provided a certified copy of a November 5, 1996 Notice of Lien by NRM/C/Nye County Medical Associates against Mrs. Duhme's parcel #21-311-10 related to debts owed from the hospital's treatment of Mrs. Duhme from January 9, 1996 through October 24, 1996. The lien verified that a balance of \$51,531.66 was due and owing. The Nye County Recorder's Office also verified this lien where "Duhme, Jean C." is clearly indicated as the guarantor.

13. Other property transfers were made prior to the Duhmes entering the extended care facility.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2) because Mr. Carver is a public officer as defined in NRS 281.4365.

NRS 281.501(3) provides in pertinent part:

...A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest,

without disclosing the full nature and extent of the gift, loan, commitment or interest. ...[S]uch a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body.

In the matter at hand, it has been shown through a thorough investigation that Mr. Carver has neither accepted a gift nor has he the responsibility of paying a debt owed by his mother and step-father to NCRMC. Further, the investigation showed no clear intimation that Mr. Carver expected his family's debts to be treated any differently because of his position on the Nye County Commission/Hospital District Board of Trustees, nor is there any evidence that such debts were treated differently. Any innuendos or rumours on the part of former NCRMC employees suggesting otherwise are outweighed by the credible statements and evidence. The title transfers predated Mr. Carver's relatives' hospitalization. Further, NCRMC placed a lien on Mrs. Duhme's parcel of land in order to recover on the debts owed to the hospital. This evidence was directly contradictory to the testimony from the most negative witness who was interviewed.

Additionally, interviewees Mr. Welsh, Mr. Pitlock, Ms. Lewis, Mr. Bradhurst, Ms. Guthridge, and Ms. Clifford all agreed that Mr. Carver was not the responsible party for repayment of the debts and that his family's debts were not treated any differently than any other person who owed monies to the hospital.

It is understood by this Commission that Mr. Carver assisted his mother in liquidating her assets to payoff her debts and that his wife helped his mother to successfully complete the Medicaid application. Further, it is the contention of Mr. Welsh that Mr. Carver has not made a financial decision concerning the hospital, either as a County Commissioner or as a member of the Hospital Board of Trustees, since April of 1997.

Finally, because Mr. Carver's position was not affected by his mother's or step-father's financial condition, there is no evidence to suggest that he had a pecuniary interest which was affected nor was there evidence to suggest that his commitment in a private capacity was affected by the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which he is committed in a private capacity was greater than that accruing to any other member of the general business, profession, occupation or group.

We conclude, therefore, that Mr. Carver must disclose his family's hospital debts any time he is faced with a vote regarding NCRMC, but he is not required to abstain from voting on matters associated with the financial aspects of the NCRMC.

CONCLUSION

Based upon the record, the Commission concludes that Mr. Carver did not violate NRS 281.501(2) or (3).

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: April 17, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman