

Opinions No. 97-32, 97-54, 97-66
BEFORE THE NEVADA COMMISSION ON ETHICS
IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of
YVONNE ATKINSON GATES, Clark County Commissioner

This Opinion is in response to a first-party by Yvonne Atkinson Gates (#97-32) and subsequent third-party requests for opinion filed with the Nevada Commission on Ethics (Commission) by Robert Rose (#97-54) and Joseph Maviglia (#97-66). A confidential hearing of Ms. Gates' request (#97-32) was held on September 26, 1997. At this hearing, Ms. Gates was the only witness, and she was not represented by counsel. On October 1, 1997, Ms. Gates spoke about her opinion request with John Ralston, a reporter. Thus, pursuant to NRS 281.511(4), Ms. Gates waived the confidentiality of her request and her request became public. On October 27, 1997, the Commission received a request for an opinion from Robert Rose regarding Ms. Atkinson Gates (#97- 54). On November 1, 1997, the Commission received a request for an opinion from Joseph Maviglia regarding Ms. Atkinson Gates (#97-66).

On November 13, 1997, the Commission held a public hearing regarding its Notice of Just and Sufficient Cause Hearing and a confidential hearing regarding its Confidential Notice of Just and Sufficient Cause Hearing and the requests from Mr. Rose. Ms. Gates did not appear at any of these hearings. Instead, Ms. Gates was represented by Ms. Kathleen England and Mr. Richard Segerblom. At these hearings, the Commission determined that just and sufficient cause did exist to hold a hearing and render an opinion on the merits of the requests. The Commission also determined not to allow Ms. Gates to withdraw her request (#97-32) and combined Request ##97-32, 97-54, and 97-66 for the purposes of hearing and adjudication.

On January 22 and 23, 1998, the Commission held a hearing regarding the requests (##97-32, 97-54, and 97-66). At this hearing, Ms. Gates was represented by Kathleen England and Richard Segerblom. At this hearing, testimony was taken from Mahlon Edwards, Gary Primm, Lou Silvestri, Mike Sloan, Edward Nigro, Sheldon Adelson, Shelley Berkley, and Ms. Atkinson Gates. Based on the testimony and evidence presented at the hearings, the Commission makes the following Findings of Fact, Conclusions, and Opinion.

FINDINGS OF FACT

1. At all times pertinent to this matter, Yvonne Atkinson Gates was a Clark County Commissioner and was the Chairwoman of the Clark County Commission (CCC).

2. On May 22, 1997, the Commission received a first-party request from Ms. Atkinson Gates which provided:

I have recently become a partner in a retail business, which is a concessionaire in a major hotel casino in Las Vegas. I did not negotiate the lease with the hotel, nor am I involved in the day-to-day operation of the business. My business venture did not receive any special treatment in the negotiations, and the negotiated lease is comparable to other lease agreements in effect at the hotel.

In light of the fact that I have an arms length relationship with the hotel, and am receiving no remuneration from the hotel, I do not think I am required to abstain from voting on matters coming before the Board involving the hotel. However, I would like to have some guidance regarding whether I should disclose the existence of the lease prior to voting on matters involving the hotel.

Your prompt and confidential consideration of this matter would be greatly appreciated.

3. On September 26, 1997, the Ethics Commission held a confidential hearing regarding Request #97-32. Ms. Atkinson Gates represented herself and was the only witness. Ms. Atkinson Gates explained that she intended to be a partner with Ed Nigro and David Briggs in a business called "Fat Tuesdays." She had seen the business in one of her trips. The business' primary product was flavored daiquiri drinks. Ms. Atkinson Gates enlisted Mr. Nigro's assistance because Ms. Atkinson Gates had no previous business experience and because Mr. Nigro was a neighbor and she knew Mr. Nigro to be a successful businessman. The first "Fat Tuesdays" was to be located within

the MGM Hotel and Casino in Las Vegas. Ms. Atkinson Gates anticipated investing between \$50,000 and \$90,000 in the business, and a *pro forma* prepared by the business showed that she stood to make \$31,000 gross in the first year of operation.

4. At the hearing, Ms. Atkinson Gates gave the following pertinent testimony:

COMMISSIONER ALLEN: . . . What . . . is it operating now?

MS. GATES: No. We have our first . . . Ed just recently completed the negotiations with the MGM and, so, we have to be open, probably, within 120 days, I believe it is.

* * *

VICE CHAIRMAN CHISOLM: Have you talked to anybody at the MGM who has appeared before you as a commissioner? Or . . .

MS. GATES: Well, yeah, we have. Ed handled everything. But, and I'm not sure who he talked to. Some lawyers. But, they're all aware, I'm sure.

* * *

COMMISSIONER ALLEN: Are you concerned that if somebody from the gaming group has something for all gaming, that you would have to abstain because you're involved with the MGM?

MS. GATES: Well, see. . .

COMMISSIONER ALLEN: Or are you just involved with abstaining with what directly involves the MGM?

MS. GATES: Well, and that's why I'm asking you for advice. Because in talking with our district attorney, they didn't look at it as a conflict. And I know that one of the former commissioners had jewelry stores and he had them in, for instance, Caesar's, and it was never a conflict. But I wanted to just make sure and ask. And that's why I was asking the questions. I . . . let me explain to you the business is operating. I don't have any day-to-day dealings or operations or anything. Fat Tuesdays, which is a part, they are in charge of all of the day-to-day operation and management and makes all the decisions of the business. Ed and I do not.

MS. GATES: I'm, I'm . . . Ed is handling all of . . . like I said, I'm not involved in any of the day-to-day, I'm like a silent partner. Believe it or not, it was my idea, my concept. I went to Ed, who is a neighbor and a friend and asked me, me to do this because I've never been in business before. And, so, I wanted to get someone who was well known, well respected in the he public and who is a class a guy. And, so, he said, "Sure," you know, "I'll help you our. Charge you a \$1.00, unless you want me to be a partner." And, I said, "Yeah, I want you to be a partner." And, so, he's done all the negotiations, he's done all the work in putting everything together. And, so . . .

* * *

CHAIRMAN BOETSCH: . . . Have you been negotiating with any other casinos or hotels?

MS. GATES: Not to my . . . well, I'm sure . . . like I said, Ed handles all of that because he is . . .

COMMISSIONER ALLEN: She's the silent partner.

MS. GATES: I'm just a silent partner.

MS. GATES: Well, let me, let me, let me share this your. Just, just so, just so I really make it clear. David Briggs will operate Fat Tuesday and they will handle all the management and operational decisions rests within his hands. So, Ed and I don't have anything to do with the operations of the business or the management; the day-to-day management of the business.

MS. GATES: Okay. But, normally, when a hotel, normally and for a hotel, the zoning is already there and I would. . . let me just share this with you. And knowing the kind of person that Ed is, we're not gonna get in a position where we're trying to do business with someone, for instance, that's coming in, brand new, where it puts me in awkward position. He won't do that I wouldn't let him do it. And that's just not him. And if we do anything, it would probably would be with companies that are already established, that already has a track record. It won't be for some, something that is new. So...

5. Based upon Ms. Atkinson Gates' testimony, on September 26, 1997 the Commission orally advised Ms.

Atkinson Gates that she would need to disclose her ownership interest in the daiquiri business any time the MGM had business before the CCC and she would need to abstain from voting on some MGM matters, depending on the circumstances, as long as she had an ownership interest in the "Fat Tuesdays" in the MGM.

6. On October 1, 1997, Ms. Atkinson Gates discussed her request for an opinion and the Commission's proceedings with John Ralston, a columnist whose columns are printed in the Las Vegas Review-Journal and other Nevada newspapers.

7. Beginning in early October 1997, a series of press reports were published that stated that Ms. Atkinson Gates had personally sought concession leases or had otherwise discussed her "Fat Tuesdays" concept with other hotel/casinos in Las Vegas, all contrary to her testimony on September 26, 1997 that she had not spoken with the MGM.

8. On October 6, 1997, the Commission received a letter from Ms. Atkinson Gates in which she asked: "In light of the media furor that has arisen over this issue, I now wish to amplify and broaden my previous request. I wish it to now include an opinion on the overall appropriateness of such a venture by a sifting County Commissioner."

9. On October 8, 1997, the Commission received a letter from Ms. Atkinson Gates by which she attempted to withdraw Request #97-32.

10. The Commission became concerned that if the information in the press reports was true, Ms. Atkinson Gates' testimony before the Commission on September 26, 1997 might be false. In order to address its concerns, on October 22, 1997, the Commission sent Ms. Atkinson Gates a Notice of Just and Sufficient Cause Hearing to determine whether Request #97-32 should be withdrawn and whether Ms. Atkinson Gates made statements that were false, deceptive, or misleading in her testimony to the Commission on September 26, 1997. Also on October 22, 1998, the Commission sent Ms. Atkinson Gates a Confidential Notice of Just and Sufficient Cause Hearing, asking four questions, two of which dealt with Ms. Atkinson Gates' dealings with Mr. Nigro and her dealings with other casinos or hotels regarding her daiquiri business.

11. On October 27, 1997, the Commission received a request for an opinion regarding Ms. Atkinson Gates and questions surrounding her daiquiri business from Robert Rose (Request #97-54). On November 1, 1997, the Commission received a similar request for an opinion regarding Ms. Atkinson Gates from Joseph Maviglia (Request # 97-66).

12. On November 13, 1997, the Commission held a public hearing regarding its Notice of Just and Sufficient Cause Hearing and a confidential hearing regarding its Confidential Notice of Just and Sufficient Cause Hearing and the requests from Mr. Rose and Mr. Maviglia. Ms. Atkinson Gates did not appear at any of these hearings. Instead, Ms. Gates was represented by Kathleen England and Richard Segerblom. The Commission determined that just and sufficient cause existed to hold a hearing and render an opinion on the merits of all four requests, and the Commission did not allow Ms. Atkinson Gates to withdraw Request #97-32.

13. On December 12, 1997, the Commission sent Ms. Atkinson Gates a Notice of Hearing wherein the Commission notified Ms. Atkinson Gates of the questions the Commission would investigate and analyze in a hearing on the merits on January 22, 1998.

14. On January 22 and 23, 1998, the Commission held a hearing on the merits of the requests. At the hearing, Mahlon Edwards, Gary Primm, Lou Silvestri, Mike Sloan, Edward Nigro, Sheldon Adelson, Shelley Berkley, and Ms. Atkinson Gates testified. The Commission accepted documents into evidence.

15. In 1991, Mr. Nigro first met Ms. Atkinson Gates. They are neighbors. Until January 1996, their relationship was casual and only personal. In January 1996, Ms. Atkinson Gates asked Mr. Nigro to join her in a business venture to open daiquiri businesses. Mr. Nigro began researching the idea and began looking for leasing opportunities thereafter.

16. In early 1996, Ms. Atkinson Gates and Mr. Nigro talked about the potential legal and ethical implications of Ms. Atkinson Gates seeking leases and doing business with entities that regularly appeared before Ms. Atkinson Gates as a county commissioner. Ms. Atkinson Gates explained to Mr. Nigro that she would seek an opinion from the

proper authorities to resolve these questions. On June 24 1996, Mahlon Edwards, County Counsel, wrote a letter to Ms. Atkinson Gates responding to her request for advice. The letter initially informed Ms. Atkinson Gates that the district attorney's opinion was "not binding and [did] not insulate you from ethics commission imposed civil penalties or other actions if a grand jury or other prosecuting authority has a view differing from this opinion," and that Ms. Atkinson Gates could seek guidance from this Commission. Mr. Edwards' letter concluded:

It is the opinion of this office that your interest in a retail shop located on the premises of a resort hotel would present an apparent conflict of interest if you were to vote on a gaming or liquor license which would be located on the same premises. We recommend, therefore, that if such a licensing or other time affecting the business of the resort hotel in which you have a shop come before a board of which you are a member, that you disclose the nature of your interest and abstain from voting (NRS 281.501).

17. In mid-1995, Ms. Atkinson Gates contacted Randy Brant, partner in Gordon Group Holdings, a company that specializes in development and leasing of retail entertainment properties, including the Forum Shops at Caesars and the Stratosphere shops. When Ms. Atkinson Gates contacted Mr. Brant, she asked about possible leases at the Forum Shops and the Stratosphere Shops, both of which were incomplete or under construction at the time. During the initial conversation, Ms. Atkinson Gates told Mr. Brant of her daiquiri concept, and Mr. Brant was aware of the Fat Tuesdays concept. Mr. Brant did not speak with Mr. Nigro about potential leases until January 1996, when Mr. Nigro became Ms. Atkinson Gates' partner. Ultimately, Mr. Brant negotiated a lease with Mr. Nigro and Ms. Atkinson Gates to open a Fat Tuesdays at the Fashion Outlet of Las Vegas in Primm, Nevada. Though Mr. Nigro was the partner who always led the negotiations, Ms. Atkinson Gates was also an active partner and participant in the negotiations.

18. In 1996, prior to the opening of New York-New York, Ms. Atkinson Gates called Mr. Primm, who is the chairman of the board of PrimaDonna Corporation and chairman of New York-New York. Ms. Atkinson Gates asked Mr. Primm about leasing space for her daiquiri business in New York-New York at a time when the hotel/casino was still under construction. Mr. Primm testified that he felt it was inappropriate for Ms. Atkinson Gates to contact him while New York-New York was still under construction because "she has a lot to say and a lot to do with my, you know, my business life." As a result of this conversation with Mr. Primm, Ms. Atkinson Gates was directed to have a conversation with Lou Silvestri. Eventually, Ms. Atkinson Gates and Mr. Nigro met with Mr. Silvestri to discuss a possible lease with New York-New York sometime in July or August 1996. In the course of this meeting, Mr. Silvestri took Ms. Atkinson Gates and Mr. Nigro on a tour of New York-New York, which was still under construction. When Mr. Silvestri was asked about personally giving Ms. Atkinson Gates and Mr. Nigro a tour of New York-New York while it was under construction, Mr. Silvestri replied that he did so because he had known Ms. Atkinson Gates for years and because "she was a County Commissioner, and I would not be rude to that." Also in 1996, Mr. Primm met Ms. Atkinson Gates at a fund-raiser, and she asked him about the availability of lease space in a new outlet mall being built in Primm, Nevada. Mr. Primm referred Ms. Atkinson Gates to the Gordon Group which was the master lessor for the outlet mall.

19. In 1996, Ms. Atkinson Gates contacted Terry Lanni, chairman of the MGM in Las Vegas, about the possibility of leasing space at the MGM for her daiquiri business. In late 1996, Mr. Nigro and Ms. Atkinson Gates met with Mr. Lanni to discuss leasing possibilities for a Fat Tuesdays operation. Mr. Nigro's negotiations with the MGM ultimately led to a lease to operate a Fat Tuesdays at the MGM that was executed on August 31, 1997.

20. On March 16, 1996, Ms. Atkinson Gates spoke personally with Sheldon Adelson, chairman of the board for Las Vegas Sands Inc. which wholly owns the Venetian LLC, the company developing the Venetian hotel/casino in Las Vegas. Ms. Atkinson Gates and Mr. Adelson shared a table at the Jewish War Veterans dinner, and as the evening was winding down, Ms. Atkinson Gates informed Mr. Adelson that she would like to operate a daiquiri business in his soon-to-be constructed Venetian. Another witness to this conversation was Shelley Berkley, then counsel to Mr. Adelson and his companies. Mr. Adelson also claimed that a second conversation, set up by Ms. Berkley, occurred thereafter in the Sands coffee shop in which Ms. Atkinson Gates again raised the possibility of a lease in the Venetian for her daiquiri shop. Ms. Berkley and Ms. Atkinson Gates denied that the second conversation took place. Ms. Berkley admitted to being a close personal friend of Ms. Atkinson Gates. Ms. Berkley several times raised Ms. Atkinson Gates' request for a lease with Mr. Adelson and other Sands' management to remind them of Ms. Atkinson Gates' interest. Mr. Adelson did not offer Ms. Atkinson Gates a lease. Mr. Nigro never spoke with Mr.

Adelson at any time. Mr. Adelson testified that he was shocked and concerned that an elected official who would be sitting on an upcoming series of votes relating to the Venetian would ask for a lease with the Venetian because he felt Ms. Atkinson Gates was pressuring him in her position as a county commissioner.

21. On May 19, 1997, Ms. Atkinson Gates sent her first-party request for an opinion to this Commission (Request #97-32).

22. In August 1997, Ms. Atkinson Gates called Mike Ensign, chief operating officer of Circus Circus, and asked him about leasing space at Circus Circus properties. Mr. Ensign referred Ms. Atkinson Gates to Mr. Sloan who was, at that time, vice president and general counsel of Circus Circus Development Corporation, a company that handled the leasing and development of retail space within Circus Circus properties. When Ms. Atkinson Gates met with Mr. Sloan, he explained to her that Circus Circus had a policy that it did not do business with elected or appointed officials.

23. Mr. Nigro explained that because the daiquiri business was risky, he wanted to get a single business operating before he sought other opportunities, and he said that he had explained this business plan to Ms. Atkinson Gates. Both Ms. Atkinson Gates and Mr. Nigro agreed that Ms. Atkinson Gates never told Mr. Nigro about her contacts with Mr. Adelson or Mr. Sloan on behalf of the daiquiri business.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.465(1)(a) and 281.511(1) and (2)(b). Ms. Atkinson Gates is a public officer as defined in NRS 281.4365.

Two issues were addressed at the January hearing and will be addressed in this opinion: (1) Did Ms. Atkinson Gates mislead the Commission in her testimony on September 26, 1997, thus violating NRS 281.525(1) and 281.551(1); and (2) Did Ms. Atkinson Gates use her position as a county commissioner to secure or grant herself and her daiquiri business an unwarranted privilege or advantage, thus violating NRS 281.481(2)? We will discuss these issues *seriatim*.

Ms. Atkinson Gates' Testimony on September 26, 1997

The September 26, 1997 hearing was informal and conversational, as has always been the Commission's practice in hearing first-party requests. As has also always been the Commission's practice in first-party requests, the Commission conducted no investigation independent of information received from the requester. It has always been this Commission's experience that first-party requesters have been frank, sincere, and honest. Thus, in this matter, the Commission was entirely dependent upon the sincerity and truthfulness of Ms. Atkinson Gates as the Commission's sole source of information upon which to base its ruling and advice.

Unfortunately, Ms. Atkinson Gates' testimony to this Commission on September 26, 1997 was not entirely sincere and truthful. Ms. Atkinson Gates swore to tell "the truth, the whole truth, and nothing but the truth," but her testimony left misleading impressions that disappointed this Commission and that led to extensive scrutiny by the Las Vegas press. In particular, we find three portions of Ms. Atkinson Gates' testimony on September 26, 1997 to have been misleading, and we will discuss each portion individually.

First, Ms. Atkinson Gates testified several times that she was a silent partner, that Mr. Nigro "handled everything," and that she had no active participation (no involvement in the day-to-day operations) of the daiquiri business.^[1] Taken at her word on September 26, 1997, Ms. Atkinson Gates was really nothing more than an interested investor with an idea, a neophyte businesswoman who enlisted the aid of a seasoned and well-respected businessman to bring her ideas to fruition. Unfortunately, the testimony on January 22 and 23, 1998 showed that Ms. Atkinson Gates' involvement was more than she had led this Commission to believe in September. The January hearing showed that Ms. Atkinson Gates had initiated contacts with Mr. Adelson about lease space in the Venetian, with Mr. Brant about lease space in Gordon Group properties, with Mr. Primm about lease space at New York-New York, and with Mr. Sloan about lease space in Circus Circus properties. All of these contacts were made by Ms. Atkinson Gates without Mr. Nigro, and many without Mr. Nigro's knowledge and in contravention to his and Ms. Atkinson Gates' agreed business plan.

The *bona fides* of Ms. Atkinson Gates' intent and inquiries of Mr. Adelson were most evident in the testimony of Ms. Berkley, who had obviously gathered from her friend, Ms. Atkinson Gates, that Ms. Atkinson Gates was serious about wanting lease space at the Venetian because Ms. Berkley actively lobbied Mr. Adelson and other top executives in his organization about Ms. Atkinson Gates' daiquiri proposal. Taken together, Mr. Adelson's and Ms. Berkley's testimony showed that Ms. Atkinson Gates expressed a very real desire to put a daiquiri business in the Venetian.

At hearing, Ms. Atkinson Gates seemed intent on semantic quibbling about words like "negotiation," "conversation," and "asking a question," but we must view Ms. Atkinson Gates' testimony in context and in its entirety. In September, Ms. Atkinson Gates was seemingly open and helpful, and she created the impression that she had intentionally distanced herself from the tangle of management responsibilities. This Commission reacted positively to such a thoughtful and well-intentioned approach to business. In January, Ms. Atkinson Gates was evasive and unhelpful, parsing her September testimony into unnecessarily incomprehensible bits. In September, Ms. Atkinson Gates led this Commission to believe that she was truly, in her words, "like a silent partner," but the January hearing showed that she was certainly not "silent" about her partnership, and that, instead, she was actively promoting her business to the people at the very tops of their respective hotel/casino companies. We must conclude that Ms. Atkinson Gates' testimony in September 1997 about her role in her daiquiri business was misleading.

Second, in September Ms. Atkinson Gates emphatically represented to the Commission that she would not seek to place a daiquiri business in a new hotel/casino, stating:

MS. GATES: Okay. But, normally, when a hotel, normally and for a hotel, the zoning is already there and I would. . . let me just share this with you. And knowing the kind of person that Ed is, ***we're not gonna get in a position where we're trying to do business with someone, for instance, that's coming in, brand new, where it puts me in an awkward position. He won't do that I wouldn't let him do it. And that's just not him. And if we do anything, it would probably would be with companies that are already established, that already has a track record. It won't be for some, something that is new.*** So. . . (Emphasis supplied.)

This Commission took Ms. Atkinson Gates at her word and believed that Ms. Atkinson Gates would not seek to do business with "something that is new." Ms. Atkinson Gates' September testimony seemed quite sensible, since new hotel/casinos would require many appearances before the CCC over a prolonged period of time, thus requiring many disclosures and abstentions by Ms. Atkinson Gates from potentially important issues. Furthermore, it would appear improper if Ms. Atkinson Gates' business was negotiating with a new hotel/casino during the very time in which the CCC held the hotel/casino's fate in its collective hand.

Unfortunately, the January hearing showed that Ms. Atkinson Gates personally contacted top executives in charge of several new projects, including the Venetian, New York-New York, the Fashion Outlet Mall in Primm, and the new phase of the Forum Shops at Caesars. In fact, through Ms. Atkinson Gates' contacts, she and Mr. Nigro toured New York-New York while it was under construction, and the discussions with New York-New York included written correspondence with site plans.

We cannot agree with Ms. Atkinson Gates that her testimony in September was intended to lead the Commission to understand that she meant new owners or operators and not new hotel/casinos. That is not what she said. Furthermore, the distinction Ms. Atkinson Gates makes between new owners and new hotel/casinos belies the rationale for why "newness" matters. It is a new hotel/casino that would need to appear before the CCC for various approvals, not new ownership. We find Ms. Atkinson Gates' January explanation of her September testimony to be incredible and unconvincing. Instead, we must conclude that Ms. Atkinson Gates intended for this Commission to believe that she would not seek to place a daiquiri business in a new hotel/casino, and her actual conduct (as proven in January) proves her September testimony on this point to be misleading.

Third, Ms. Atkinson Gates represented to this Commission that the Clark County District Attorney had reviewed her daiquiri proposal, and "they didn't look at it as a conflict"^[2] This is directly contradicted by the Mr. Edwards' letter to Ms. Atkinson Gates dated June 24, 1996, which concluded as follows:

It is the opinion of this office that your interest in a retail shop located on the premises of a resort hotel **would present an apparent conflict of interest** if you were to vote on a gaming or liquor license which would be located on the same premises. We recommend, therefore, that if such a licensing or other item affecting the business of the resort hotel in which you have a shop comes before a board of which you are a member, **that you disclose the nature of your interest and abstain from voting** (NRS 281.501). (Emphasis supplied.)

The contrast between Ms. Atkinson Gates' testimony in September and the true state of affairs as evidenced by Mr. Edwards' letter (produced at the January hearing) and testimony could not be sharper or clearer. In September 1997, Ms. Atkinson Gates told this Commission that the district attorney did not find a conflict of interest, but Mr. Edwards and his letter told us just the opposite, that not only did Ms. Atkinson Gates plan create a conflict of interest, but that the conflict legally required Ms. Atkinson Gates' disclosure **and** abstention. Ms. Atkinson Gates' testimony in September regarding the district attorney's opinion was misleading.

As the above discussion and analysis shows, Ms. Atkinson Gates misled this Commission with her testimony in September 1997 regarding three issues. Her misleading testimony regarded substantive factual questions necessary for this Commission to properly evaluate and advise her regarding her question. This Commission initially approved Ms. Atkinson Gates' business plans as limited by our advice, based upon her misleading September 1997 testimony; however, this Commission now finds that Ms. Atkinson Gates' business plans were unethically executed based upon the complete and truthful record made at the January 1998 hearing. This shows how dependent this Commission is upon the good faith and veracity of its first-party requesters and explains this Commission's deep disappointment at Ms. Atkinson Gates for her misleading this Commission in September 1997. In so misleading this Commission, Ms. Atkinson Gates violated NRS 281.525(1) and 281.551(1).

Ms. Atkinson Gates' Contacts With Casino Executives

The second question raised by the revelations that came from the January 1998 hearing was whether Ms. Atkinson Gates' contacts with executives at casinos regulated by the CCC violated NRS 281.481(2). We conclude that the evidence showed that Ms. Atkinson Gates' contacts did constitute a use by her of her position as chairwoman of the CCC to secure for herself and her business an unwarranted advantage, thus violating NRS 281.481(2).

The unwarranted advantage was that Ms. Atkinson Gates' position as chairwoman of the CCC allowed her direct access to the top executives at major hotel/casinos that her business competitors would not have had. As the evidence showed, time and again Ms. Atkinson Gates' first telephone call to a given casino was a call straight to the top, to Mr. Adelson, Mr. Silvestri, Mr. Primm, Mr. Ensign, and Mr. Lanni.

The evidence showed that Ms. Atkinson Gates' calls were not idle chit-chat, but were, instead targeted and intended to elicit specific information directly applicable to Ms. Atkinson Gates' daiquiri venture. The evidence revealed that Ms. Atkinson Gates' contacts with the various executives provoked, in every case, some kind of response from the executive and the organization he oversaw, from arranging a contact with the appropriate executive at the hotel, to setting up a privileged tour of an as yet uncompleted new casino, to persistent lobbying from a friend who was a confidante and employee of the top executive, to, finally, the execution of a lease with the MGM.

As this Commission has said before, NRS 281.421 is the "guiding light" for our interpretation of the Ethics in Government Law. *Matter of Bob Nolen*, NCOE Opinion 96- 39, at 9. NRS 281.421 (1) provides:

It is hereby declared to be the public policy of this state that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A **public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.**

2. The legislature finds that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required **to show the appropriate separation between the roles of persons who are both public servants and private citizens.** (Emphasis supplied.)

Interpreting NRS 281.421(1) in light of the salutary public policy enunciated in NRS 281.481(2), we find that Ms. Atkinson Gates did not maintain the "appropriate separation" between her role as chairwoman of the CCC and her role as fledgling entrepreneur. The evidence showed that Ms. Atkinson Gates attempted to trade on the special access and privileges accorded her as the chairwoman of the CCC by contacting directly the chief executives of numerous casinos to solicit lease space for her personal daiquiri business. This intermixing of personal and public responsibilities touches the core of NRS 281.481(2), namely that a public official should not seek to convert special privileges and access resultant from her public service to her own personal private advantage.

However, we do not believe that the evidence showed that Ms. Atkinson Gates' misuse of her public office was so nefarious or venal as to warrant the imposition of a fine. The evidence showed that Ms. Atkinson Gates had never been in business before. Nonetheless, Ms. Atkinson Gates, who claimed she tried to avoid putting herself in an "awkward position," should have been more sensitive to the terribly awkward and potential precarious position into which she put the executives with her telephone calls. How can the chief executive of a multi-million dollar enterprise respond when he is personally contacted for personal consideration by the chairwoman of the governmental body that regulates and controls the fate of the casino and its competitors? There is no situation more fraught with the potential for abuse of governmental power than when a regulator seeks a personal favor from someone she regulates, someone whose livelihood depends upon the regulator's cooperation and assent. While there is no evidence that Ms. Atkinson Gates' contacts were heavy-handed, this Commission finds that the concerns expressed by Mr. Primm, Mr. Silvestri, and Mr. Adelson and by Circus Circus' policy not to do business with elected officials were legitimate and genuine.

Public officials must vigilantly watch for the intersection of their public and private lives and must always act in the public's interest to avoid misuse or the perception of misuse of public trust for personal gain. When one is the chairwoman of the CCC, she does not ever speak to people, especially rich and powerful people whom she regulates, as a citizen only because, like it or not, the reason these rich and powerful people take her calls directly and personally is more because of her powerful public position than because of her personal merits and the merits of her proposed business enterprise. Ms. Atkinson Gates violated the public trust and NRS 281.481(2) when she used her powerful position of chairwoman of the CCC and commensurate connections to speak directly and personally with the chief executives of casinos she regulated to seek leases for her private daiquiri enterprise.

CONCLUSION

Based upon the record, the Commission concludes that Ms. Atkinson Gates violated NRS 281.525 and 281.551(1) by giving misleading testimony to the Commission on September 27, 1997 in order to induce the Commission to render an opinion. Ms. Atkinson Gates also violated NRS 281.481(2) in using her position and commensurate access accorded the chairwoman of the CCC to further her own personal daiquiri enterprise. We do not find Ms. Atkinson Gates' conduct to merit the imposition of a civil penalty, but we consider this opinion to be a public censure of her conduct in the hope that she will never again so misuse her public trust for her private gain.

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: December 31, 1998

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

[1] VICE CHAIRMAN CHISOLM: Have you talked to anybody at the MGM who has appeared before you as a commissioner? Or...

MS. GATES: Well, yeah, we have. **Ed handled everything**. But, and I'm not sure who he talked to. Some lawyers. But, they're all aware, I'm sure.

MS. GATES: ... **I don't have any day-to-day dealings or operations or anything**. Fat Tuesdays, which is a part, they are in charge of all of the day-to-day operation and management and makes all the decisions of the business. Ed and I do not.

MS. GATES: **I'm, I'm... Ed is handling all of... like / said, I'm not involved in any of the day-to-day, I'm like a silent partner**. Believe it or not, it was my idea, my concept. I went to Ed, who is a neighbor and a friend and asked me, me to do this because I've never been in business before. And, so, I wanted to get someone who was well known, well respected in the public and who is a class a guy. And, so, he said, "Sure," you know, "I'll help you out. Charge you a \$1.00, unless you want me to be a partner." And, I said, "Yeah, I want you to be a partner." **And, so, he's done all the negotiations, he's done all the work in putting everything together**. And, so...

CHAIRMAN BOETSCH: ... Have you been negotiating with any other casinos or hotels?

MS. GATES: Not to my ... well, I'm sure... like I said, **Ed handles all of that** because he is.. .

COMMISSIONER ALLEN: She's the silent partner.

MS. GATES: **I'm just a silent partner**.

MS. GATES: Well, let me, let me, let me share this your. Just, just so, just so I really make it clear. David Briggs will operate Fat Tuesday and they will handle all the management and operational decisions rests within his hands. **So, Ed and I don't have anything to do with the operations of the business or the management; the day-to-day management of the business**. (Emphasis supplied.)

[2] COMMISSIONER ALLEN: Are you concerned that if somebody from the gaming group has something for all gaming, that you would have to abstain because you're involved with the MGM?

MS. GATES: Well, see...

COMMISSIONER ALLEN: Or are you just involved with abstaining with what directly involves the MGM?

MS. GATES: Well, and that's why I'm asking you for advice. **Because in talking with our district attorney, they didn't look at it as a conflict**. And I know that one of the former commissioners had jewelry stores and he had them in, for instance, Caesar's, and it was never a conflict. But I wanted to just make sure and ask. And that's why I was asking the questions. I ... let me explain to you the business is operating. I don't have any day-to-day dealings or operations or anything. Fat Tuesdays, which is a part, they are in charge of all of the day-to-day operation and management and makes all the decisions of the business. Ed and I do not. (Emphasis supplied.)