

## Opinion No. 97-34

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of RICHARD CARVER, Member, Nye County Commission

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Gary Hollis concerning the conduct of Richard Carver, a Nye County Commissioner. A public hearing on this matter was held by the Commission on May 14, 1998, in Las Vegas, Nevada, at which Mr. Carver, Mr. Hollis, Al Drayton, and Rachel Nicholson appeared and testified. The Commission deferred deliberation of the matter until the Commission's June meeting. On June 25, 1998, 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. Mr. Carver is the Nye County Commissioner for District 1 and is a rancher in his private capacity. As both a rancher and a county commissioner, Mr. Carver has been actively involved in issues relating to use of public lands in Nye County.
2. Mr. Drayton lives in an area known as Railroad Valley and is a constituent of Mr. Carver's. He became acquainted with Mr. Carver through Nye County Commission meetings and shares the same views on public lands issues as Mr. Carver.
3. During November 1995, Mr. Carver's personal vehicle experienced major mechanical failures which Mr. Carver could not afford to repair. Since Mr. Drayton felt Mr. Carver was a leading advocate regarding public lands issues at the time, Mr. Drayton felt that it was important to him and others who supported Mr. Carver that Mr. Carver continue to attend the various meetings concerning those issues. Mr. Drayton decided to purchase a vehicle for Mr. Carver's use to allow him to continue making appearances. Mr. Drayton contacted several other individuals who shared his views and received contributions towards the purchase of the vehicle, but he supplied most of the money himself.
4. Prior to the purchase of the Suburban, Mr. Carver and Mr. Drayton consulted with Ms. Nicholson, then County Counsel for the Nye County Board of Commissioners, regarding Mr. Carver's use of the Suburban. At this time, Mr. Drayton had given Mr. Carver a check for \$25,000.00. Ms. Nicholson advised that because she felt that the receipt of the money or a vehicle as an outright gift might be illegal, Mr. Carver should either purchase or lease the vehicle. At Mr. Carver's request, Ms. Nicholson drew up lease papers for Mr. Carver and Mr. Drayton. Mr. Carver and Mr. Drayton never executed the lease papers because Mr. Carver said he could not afford to make monthly payments on the vehicle because his ranching income was sporadic and unpredictable.
5. On November 15, 1995, Mr. Carver met Mr. Drayton in Fallon, and Mr. Drayton purchased a 1994 GMC Suburban at Jet Way Chevrolet for \$25,500. Before going to Fallon, Mr. Drayton had previously been quoted a price of \$25,000, but once he was there he was advised by the salesman that the final price was \$25,500. As Mr. Drayton had only \$25,000 to spend on the vehicle, Mr. Carver wrote a \$500 check to Mr. Drayton to cover the balance of the purchase price. Mr. Carver took possession of the Suburban at that time; Mr. Drayton never drove the vehicle. The vehicle was registered in Mr. Drayton's name, though Mr. Carver purchased the insurance for the vehicle.
6. In March 1996, after the public lands issues had been decided, Mr. Drayton informed Mr. Carver that Mr. Drayton had a buyer willing to purchase the Suburban for \$20,000. Mr. Carver offered to purchase the vehicle for the same price, and Mr. Drayton agreed to that. Mr. Carver said he would give Mr. Drayton a down payment of \$10,000, and

that the balance of \$10,000 would be paid within a month thereafter. No amount of interest was discussed or agreed upon. The agreement between them was verbal and was never memorialized in writing. On June 22, 1996, some three months after the agreement to purchase was reached, Mr. Carver gave Mr. Drayton a check for \$10,000 as the down-payment on the Suburban.

7. About six weeks later, Mr. Carver informed Mr. Drayton that one of Mr. Carver's pieces of heavy machinery had experienced a mechanical problem that would cost \$35,000 to repair, so Mr. Carver would be unable to pay the remaining \$10,000 on the Suburban in the foreseeable future. Mr. Drayton told Mr. Carver he was in no rush for the money and Mr. Carver could pay him the balance when possible. Mr. Carver made a \$5,000 payment to Mr. Drayton on February 6, 1998 and paid the balance of \$5,000 on February 25, 1998.

8. Mr. Carver's testimony varied from Mr. Drayton's regarding most of the significant aspects of the transaction with Mr. Drayton. Mr. Carver testified that the \$500.00 check he wrote on November 15, 1995 was a down payment for the purchase of the Suburban. Mr. Carver testified that he was purchasing the Suburban from November 15, 1995 and that his use of the Suburban was never a gift. We find, though, that all of the circumstances and the testimony of Ms. Nicholson and Mr. Drayton render Mr. Carver's rendition of event to be improbable and incredible. It appears that Mr. Drayton originally attempted to give Mr. Carver a check for \$25,000.00, that the check was returned on advice of counsel, that counsel attempted to structure a purchase or lease transaction that would be lawful, that the lawful means of concluding the transaction were infeasible for Mr. Carver, and that, thereafter, Mr. Carver decided to accept a gift of the exclusive use of the Suburban, which free use continued until Mr. Drayton decided to sell the Suburban. Mr. Drayton, the other party to the purported sale, testified that he allowed Mr. Carver to drive the Suburban for free until the legal actions involving the public lands issues were resolved. Mr. Carver's intent to purchase the Suburban originated only once Mr. Drayton indicated his intent to sell it. Even then, the terms of the purchase were exceedingly generous, with a reduced price of \$20,000.00, no scheduled payments, and no interest. The actual course of events is entirely consistent with Mr. Drayton's and Ms. Nicholson's relation of events, whereas, the actual course of events belies Mr. Carver's relation of events and common sense. Therefore, we must discount Mr. Carver's story, and, instead, look to the other evidence and testimony presented.

### **ANALYSIS AND OPINION**

The Commission has jurisdiction over this matter pursuant to NRS 281.465(1)(a) and 281.511 (2)(b). Mr. Carver is a public officer as defined in NRS 281.4365 in his capacity as a Nye County Commissioner.

There were three questions presented in this matter:

1. Did Mr. Carver violate NRS 281.481(1) and (4) by accepting free use of the 1994 Suburban from Mr. Drayton?
2. Did Mr. Carver violate NRS 281.481(1) and (4) by accepting an interest-free loan from Mr. Drayton for the purchase of the 1994 Suburban?
3. Did Mr. Carver violate NRS 281.481(6), 281.561, and 281.571 by failing to file his 1996 and 1997 Statements of Financial Disclosure or by failing to include thereon the loan of the 1994 Suburban from Mr. Drayton?

#### **Issue 1: Free Use of the Suburban**

Mr. Drayton testified that at the time he purchased the Suburban, Mr. Carver understood the vehicle was being purchased for Mr. Carver's free use throughout the pendency of certain public lands issues and that when the public lands issues were concluded, Mr. Carver would return the vehicle to Mr. Drayton. Mr. Carver maintains he always intended to purchase the Suburban from Mr. Drayton and that the \$500 check was given to Mr. Drayton on November 15, 1995, as a down-payment on the vehicle. In support of that contention, Mr. Carver offered evidence

that he paid the insurance on the vehicle and paid for some maintenance on the vehicle prior to making the June 22, 1996 payment to Mr. Drayton. Mr. Drayton's recollection was that Mr. Carver provided the \$500 simply because the purchase price was \$500 higher than Mr. Drayton had anticipated, and that Mr. Carver never advised him it was supposed to be a down-payment.

As we have already discussed, we find Mr. Drayton's rendition of the facts to be more credible than Mr. Carver's. Accordingly, we find the Suburban was purchased by Mr. Drayton for Mr. Carver's free use to represent the interests of those who agreed with Mr. Carver on public lands issues, and that Mr. Carver used it free of charge from November 15, 1995 to June 22, 1996, when he made the first payment to purchase the vehicle. The fact that Mr. Carver later purchased the vehicle is not compelling. Instead, we find that a reasonable person in Mr. Carver's circumstances would tend improperly to be influenced to depart from the faithful and impartial discharge of his public duties by the receipt of the free use of a \$25,000 vehicle. We also find that the acceptance of the free use of \$25,000 vehicle constituted an augmentation of Mr. Carver's financial circumstances for the performance of his duties as a public officer, since the Suburban was provided expressly so that Mr. Carver could continue his crusade as a county commissioner for certain public property issues and since the free use of the vehicle allowed Mr. Carver not to bear the expenses of paying for or leasing a vehicle to replace his defunct personal vehicle. We conclude that Mr. Carver violated the provisions of NRS 281.481(1), (2) and (4) by accepting free use of the Suburban.

### **Issue 2: Interest-Free Loan on the Purchase of the Suburban**

When Mr. Drayton and Mr. Carver agreed upon the terms of the purchase of the Suburban in March 1996, interest was never discussed. Mr. Carver gave Mr. Drayton a down-payment on the vehicle in June 1996, and promised to pay Mr. Drayton the balance within a month; however, Mr. Carver did not make the final payment on the vehicle until February 25, 1998, almost two years later. Because Mr. Carver did not pay interest on the purchase price during those 23 months, Mr. Carver was the recipient of an interest-free loan.

Both Mr. Carver and Mr. Drayton explained that the loan was interest-free because of the nature of Mr. Carver's finances as a rancher. Mr. Carver did not receive income at regular intervals; rather, he received income only a few times a year. Mr. Drayton indicated that he was satisfied with the repayment arrangement to accommodate Mr. Carver's straitened circumstances. Therefore, we do not find it was unreasonable for Mr. Drayton to agree to receive the balance of the purchase price for the Suburban in a lump sum at some unspecified future date, and it was Mr. Drayton's prerogative not to charge Mr. Carver interest on the purchase price. Under the unique facts presented in this case, we find that the interest-free loan between Mr. Drayton and Mr. Carver was a gift, but that the gift would not "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)) or that the gift constituted a "salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee" (281.481 (4)), and we therefore find no violation of these statutes by Mr. Carver in accepting the loan.

We must caution that our finding in this matter is not intended to indicate that interest-free loans to public officials are sanctioned under NRS 281.481(1) or (4). Rather, we must indicate generally: (1) that an interest-free loan between a person who transacts with public officials and employees does constitute a gift of at least the foregone interest; (2) that such a loan might tend improperly to influence a reasonable person in the position of the recipient public official or employee thus violating NRS 281.481(1); and (3) that such a loan might also be a prohibited augmentation of the public official's or employee's salary that would be prohibited under NRS 281.481(4). The tenor of this opinion should be understood that interest-free loans to public officials and employees will likely violate NRS 281.481(1) and (4) under most cases and that the present case is a unique exception to the general rule.

### **Issue 3: Failure to Timely File Statements of Financial Disclosure and to Include the Loan of the Suburban Thereon**

NRS 281.561 requires that all public officers file a Statement of Financial Disclosure with the Commission each year by March 31. Mr. Carver has not filed such a statement for 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996. He claimed he was unaware that he was required to file a statement with the Commission every year because he believed he was only required to file one if there were any changes in his financial status. Mr. Carver filed a statement in March 1997, however, the Suburban was not included on it.

We do not and cannot believe Mr. Carver was unaware of his obligation to annually file financial disclosure statements. Commission staff annually mails financial disclosure statements to all elected and appointed officials, so we know that Mr. Carver was mailed such a statement every year from 1988 to 1998. No exception exists for unchanged circumstances: the law simply requires an annual financial disclosure statement from each public official regardless of whether information had changed from year to year. We find Mr. Carver violated NRS 281.561 by failing to file his financial disclosure statements.

With respect to Mr. Carver's lack of inclusion of the Suburban on his financial disclosure statements, we find he was required to show the vehicle as a loan on his 1996 statement because he had not made the first payment on the vehicle by the date the statement was due. By failing to include the Suburban on that statement, Mr. Carver violated the provisions of NRS 281.481(6) and 281.571 since we must find that Mr. Carver failed to include the gift of the Suburban on the 1996 financial disclosure statement because such a disclosure might tend to unfavorably affect Mr. Carver's pecuniary interests. We find that Mr. Carver was not required to include the Suburban as a gift on his 1997 statement because he had made the first payment on the vehicle prior to the date that statement was due.

### **CONCLUSION**

Based upon the record, the Commission concludes Mr. Carver violated the provisions of NRS 281.481(1) and (4) by accepting free use of the 1994 Suburban from Mr. Drayton, but did not violate NRS 281.481(1) or (4) by accepting an interest-free loan from Mr. Drayton for the purchase of the Suburban. The Commission further concludes that Mr. Carver violated the provisions of NRS 281.481(6), 281.561, and 281.571 by failing to disclose the Suburban as a gift on his 1996 Statement of Financial Disclosure, but did not violate those provisions by not including the Suburban as a gift on his 1997 Statement of Financial Disclosure. The Commission further concludes that Mr. Carver's violations of the foregoing ethics statutes were not willful, and therefore imposes no sanctions against Mr. Carver.

### **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: August 18, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ HELEN CHISOLM, Vice Chairwoman