

Opinions No. 97-54, 97-59, and 97-66

In the Matter of the Requests for Opinion Concerning YVONNE ATKINSON GATES, Clark County Commissioner

Opinion No. 97-53

In the Matter of the Request for Opinion Concerning MYRNA WILLIAMS, Clark County Commissioner

Opinion No. 97-52

In the Matter of the Request for Opinion Concerning LANCE MALONE, Clark County Commissioner

BEFORE THE NEVADA COMMISSION ON ETHICS

This Opinion is in response to third-party requests for opinion filed with the Nevada Commission on Ethics (Commission) by Robert Rose concerning the conduct of Clark County Commissioners Lance Malone (Request No. 97-52), Myrna Williams (Request No. 97-53), and Yvonne Atkinson-Gates (Request No. 97-54), a third-party request from Joseph Maviglia against Yvonne Atkinson-Gates (Request No. 97-59), and a request taken by the Commission on its own motion (Request No. 97-66). Mr. Malone was represented by Donald Campbell, Ms. Williams was represented by Peter Bernhard, and Ms. Atkinson-Gates was represented by Kathleen England and Richard Segerblom.

A just and sufficient cause hearing in closed session was held for Ms. Atkinson-Gates on November 13, 1997, for Mr. Malone on November 14, 1997 and May 27, 1998, and for Ms. Williams on November 14, 1997 and May 13, 1998. Public hearings on the merits of this matter were held by the Commission on some or all of these matters on

March 18, March 20, May 27, June 24, June 25, June 26, and June 27, 1998 in Las Vegas and North Las Vegas, Nevada.

At the various hearings of this matter, the following people testified and presented evidence: Mr. Malone, Ms. Williams, Ms. Atkinson-Gates, Michael Chambliss, Judy Klein, Chris Hilbus, Cynthia Cicero, Randall Walker, Jackie Enman, Jeff Briggs, Jim Williams, Dale Askew, Marge Adison, Ron LaBar, Ann Zimmerman, David Banks, Mike Hasenzahl, Mark Malone, Melody Malone, Tammy Starring, Kathleen Fernandez, LaRae Wallace, and Doug Driggs. Numerous exhibits were admitted on behalf of the Commission, Ms. Atkinson-Gates, Mr. Malone, and Ms. Williams, including the Commission's own investigation which involved interviews of over 50 people and numerous documents. 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. Ms. Atkinson-Gates, Mr. Malone, and Ms. Williams were, at all times pertinent, Clark County Commissioners, and Ms. Atkinson-Gates is also the chairwoman of the Clark County Commission (CCC). Clark County owns and operates the McCarran International Airport in Las Vegas, and the CCC is the ultimate authority responsible for the management and operation of the Airport. Within county government, the Airport is an "enterprise fund" agency, meaning that the Airport's budget and funding is drawn solely from the Airport's operation and that no general revenues from the county are included in the Airport's budget or funding.

2. Regarding most of the concessions that operate at the Airport, the CCC has made master leases with two entities: WH Smith is the master concessionaire for the retail concessions at the Airport, and Host Marriott is the master concessionaire for the food and beverage concessions at the Airport. Mr. Banks dealt with the concessions at the Airport for WH Smith, and Clarke Sharpe and Mr. Hasenzahl dealt with the concessions at the Airport for Host Marriott.

3. The CCC negotiated with the master concessionaires that a certain percentage of the concessions under their

control would be given to disadvantaged business enterprises (DBE) based upon a percentage of gross revenues generated by their concessions. At that time, none of the concessions within the control of the master concessionaires were operated by DBEs. By federal law, DBEs are businesses in which at least 51% of the ownership of the business is held by a member or members of federally recognized minority classes, namely racial minorities, ethnic origin minorities, and women. Tied to the Airport's attempting to meet the DBE goals was the continued receipt by the Airport of approximately \$22-23 million of federal money, which constituted about 8% of the Airport's annual budget.

4. The latest terminal to be constructed at the Airport was Terminal D. Pursuant to agreements with the master concessionaires, thirteen concessions (six for Host Marriott and seven for WH Smith) at Terminal D would be granted to DBE-certified applicants. The need for qualified concessionaires was known to Airport employees sometime in early 1997, at which time Airport employees contacted several local businesses to inform them of the upcoming opportunities and to solicit their participation in the process.

5. On July 11, 1997, an informational meeting was held at the Airport. At this meeting, the Terminal D concessions were described and the process for filing a Request for Qualifications (RFQ) to become a DBE-certified concessionaire at Terminal D was explained. At this meeting, RFO packets were distributed to all interested businesses and people. The RFQ process described in the packets explained that a submitting business or person did not need to be DBE-certified at the time of application. The RFQ process and documents also expressly discouraged applicants from submitting concept proposals because, as was explained, the master concessionaires would only be examining the qualifications of the applicants and would be assigning the successful applicants the businesses they would be operating. At hearing, several witnesses testified that they were expressly informed by Ms. Cicero, the DBE Coordinator for the Airport, at the informational meeting that they were not to contact or lobby the county commissioners because such efforts would be of no avail. The deadline for submitting RFQ proposals was August 1, 1997.

6. The RFO process was designed to leave the final selections of DBE concessionaires to the master concessionaires, with the CCC essentially just ratifying the choices made by the master concessionaires. This process was selected to alleviate heated debates within the CCC that had occurred in previous concession awarding processes.

7. Sometime in late July 1997, Mr. Walker, the Director of the Airport, spoke with Ms. Atkinson Gates and asked her to speak to the other commissioners to find out if any of them favored any of the DBE applicants. Ms. Atkinson Gates asked Mr. Malone if he had any DBE applicants he favored, and he provided Ms. Atkinson Gates with three names: Gay Reber, Tammy Starring, and Jerry Whitsett. Later that day, Ms. Atkinson Gates typed a list of names on an 8 1/2" x 11" piece of paper after speaking only with Mr. Malone.^[1] The list of names included: Janellen Radoff, Vickie Richardson, Judy Klein, Tonie Sison, Michael Chambliss, Angela Berliner, Brian Ayala, Ralph Ulivarri, Gay Reber, and Harlan Brooks.

8. Ms. Williams was not consulted about placing names on Ms. Atkinson Gates' list. Ms. Williams explained at hearing that she had instructed Airport staff, including Mr. Walker, not to tell her about the various DBE applicants, and Mr. Walker confirmed Ms. Williams' testimony. Ms. Williams wanted to leave the selection of the DBE concessionaires to the "professionals," namely the representatives for the master concessionaires, and she testified that she would support any list of candidates ultimately made by the master concessionaires.

9. Mr. Malone had known Ms. Reber for 15 years at the time that he gave her name to Ms. Atkinson Gates. Ms. Reber had been a friend of Mr. Malone's wife since high school. He knew that Ms. Reber's business experience was that she had worked in her father's appliance store and that Ms. Reber had previously sought to place a massage concession at the Airport. Mr. Malone did not know Ms. Starring at all and had not met her at the time that he gave her name to Ms. Atkinson Gates. He knew virtually nothing about Ms. Starring's business acumen or experience. Instead, Mr. Malone recommended Ms. Starring to Ms. Atkinson Gates solely based upon a representation made to Mr. Malone by his brother, Mark Malone, that Ms. Starring was "good people." Mark Malone was employed at that time by Ms. Starring as a valet parking attendant. Mr. Malone knew Mr. Whitsett because Mr. Whitsett had personally met with and lobbied Mr. Malone. Mr. Whitsett had told Mr. Malone that he had tried to get a concession at the Airport before and had been unsuccessful.

10. Of the list of names that Ms. Atkinson Gates submitted to Mr. Askew, two were personal friends of Ms.

Atkinson Gates'. Michael Chambliss had known Ms. Atkinson Gates for 17 years. He had worked on all of Ms. Atkinson Gates' campaigns for public office except her first run for county commissioner in 1992 because in that race Ms. Atkinson Gates' opponent was William "Doc" Pearson, Mr. Chambliss' uncle. In Ms. Atkinson Gates' 1996 campaign for county commission, Ms. Atkinson Gates paid Mr. Chambliss between \$27,000 and \$50,000 as a campaign consultant.^[2] Ms. Atkinson Gates also paid Mr. Chambliss \$1,250 per month through all of 1995 for consulting services. Mr. Chambliss described himself as Ms. Atkinson Gates' "eyes and ears" in the community because in his job with the City of Las Vegas, Mr. Chambliss had daily contact with the citizenry of Las Vegas. Additionally, when Ms. Atkinson Gates left Nevada for several weeks for medical treatment during her 1996 campaign, Ms. Atkinson Gates entrusted Mr. Chambliss with the management of her campaign. Mr. Chambliss submitted RFQs with two entities: DAPO, Inc. (a corporation formed specifically to submit the RFQ), and Pearson Food Group (in which he was partners with Mr. Pearson and Harlon Brooks^[3]). At the time Mr. Chambliss submitted his two RFQS, he already had a concession at the Airport that generated \$500,000 per year in net revenues for Mr. Chambliss and his partner.^[4]

11. Ms. Atkinson Gates has known Ms. Klein since 1992, mostly through Ms. Klein's activity in the Democratic Party. Ms. Klein was the administrative assistant to Frank Schreck, a prominent Clark County fund-raiser who worked predominantly for Democratic candidates, including Ms. Atkinson Gates. The efforts of Mr. Schreck and Ms. Klein on Ms. Atkinson Gates' behalf had produced hundreds of thousands of dollars for Ms. Atkinson Gates' campaigns.^[5] Ms. Klein described Ms. Atkinson Gates as a friend, and even had Ms. Atkinson Gates' daughter as a flower girl in Ms. Klein's wedding.

12. Ms. Williams' also had a relationship with Ms. Klein. Both Ms. Klein and Ms. Williams described a long-standing personal friendship in which they both described each other as "best friends." Ms. Klein and Ms. Williams were part of a small circle of five or six close friends who regularly socialized as well as who regularly worked together on common political and social goals. Additionally, Ms. Klein and Mr. Schreck also raised hundreds of thousands of dollars for Ms. Williams' various political campaigns.

13. Ms. Atkinson Gates gave the list of names she had made with consultation with Mr. Malone to Mr. Askew, the Clark County Manager. Mr. Askew thereafter gave the list of names to Mr. Walker. Through his assistant Mr. Lindstrom, Mr. Walker thereafter gave the list of names to representatives of the two master concessionaires.

14. Host Marriott and WH Smith each received over thirty RFQs by the August 1, 1997 deadline.

15. On August 17 or 18, 1997, Mr. Banks spoke with Mr. Lindstrom, Mr. Walker's assistant. Mr. Banks and Mr. Lindstrom discussed Ms. Atkinson Gates' list. Mr. Banks told Mr. Lindstrom that if that was the list of names that the CCC would approve for WH Smith, that he found the names acceptable, so he made Ms. Atkinson Gates' list WH Smith's list which was ultimately presented to the CCC. At hearing, Mr. Walker expressed concern about receiving Ms. Atkinson Gates' list because it was contrary to the way things had been done in the past.

16. Ms. Williams was aware that Ms. Klein was seeking a concession at Terminal D because the two of them spoke about it when they met on July 11, 1997 at the informational meeting. Both Ms. Williams and Ms. Klein testified that after July 11, 1997, they did not speak again about Ms. Klein's application. Ms. Williams voted for Ms. Klein's business, JV Ventures, without disclosing their long-standing friendship because Ms. Klein was unaware that Ms. Klein was affiliated with JV Ventures as Ms. Williams had not closely read the materials provided to her by the county's staff. Ms. Williams explained that had she known that Ms. Klein was involved with JV Venture, she would have disclosed her relationship with Ms. Klein and would have abstained from voting regarding JV Ventures.^[6]

17. The approval of the DBE applicants submitted to the CCC by the master concessionaires was scheduled for the CCC's meeting on August 19, 1997. Letters informing some of the unsuccessful applicants that they had not been selected were mailed on August 18, 1997. According to the testimony at hearing, the county commissioners, including Mr. Malone, Ms. Atkinson Gates, and Ms. Williams, were not made aware of the final lists of DBE applicants until they were briefed in their usual briefings by county staff, which briefings regarding this matter occurred either on August 18 or the morning of August 19.

18. The minutes of the August 19, 1997 meeting showed that the lists of DBE applicants submitted by the master concessionaires were passed unanimously by the CCC with almost no discussion by members of the CCC and with no disclosures or abstentions made by any of the members of the CCC.

ANALYSIS AND OPINION

Because this matter involves requests regarding three county commissioners and because our analysis as to each commissioner is different (even though they all arise within a single factual context), we will analyze and discuss each of the commissioners' matters separately after we have discussed an issue of general applicability to all three commissioners' matters.

NRS 281.501(2)(c) and (3)(b) and the Question of Evaluating Interpersonal Relationships

NRS 281.501(2) and (3) are at issue in each of the three matters subject of this opinion, and those sections provide:

2. In addition to the requirements of the code of ethical standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) ***His commitment in a private capacity to the interests of others.***

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interest to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. 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. Except as otherwise provided in subsection 6, such 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. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. [Emphasis supplied.]

Questions presented in this matter turn on whether certain interpersonal relationships constitute "commitment[s] in a private capacity to the interests of others," and if so, what kind of relationship will require disclosure under NRS 281.501(3) and abstention from action under NRS 281.501(2).

Regarding NRS 281.501(2) and (3), this Commission has previously ruled that:

1. A filial relationship requires disclosure and abstention. NCOE Opinion 90-4 (sister and brother); Matter of Paul Christensen, NOOE Opinion 90-5.

2. A paternal relationship requires disclosure and abstention. NCOE Opinion 86-6; see also Matter of Alan Rock, NCOE Opinion 94-53 (requiring disclosure, but not abstention).

3. A marital relationship requires disclosure and abstention. NCOE Opinion 83-1; Matter of Yvonne and Neil Weaver, NCOE Opinion 95-55; see also NCOE

Opinion 86-4 (requiring disclosure, but not abstention); NCOE Opinion 87-2 (requiring disclosure, but not abstention); NCOE Opinion 91-1 (requiring disclosure, but not abstention)

4. A marital relationship in which the spouse of the board member was the attorney for an applicant before the board required disclosure and abstention not only of the attorney-spouse's representation, but also regarding any matter in which the attorney-spouse's firm ever represented clients before the board. NCOE Opinion 93-11.

5. A live-in relationship requires disclosure and abstention. NCOE Opinion 94-14.

None of the above opinions have been challenged through the process of judicial review.

The legislature could have specifically defined those types of interpersonal interests or relationships that would trigger disclosure and abstention,^[7] but in its wisdom, the legislature used a broader definition of "commitment in a private capacity to the interests of others." We think the legislature's policy was thoughtful and wise. Personal relationships come in all shades and varieties. Depending on the circumstances, a person might be fiercely committed to the success of a life-long friend and might be entirely indifferent or even opposed to the success of a brother or first cousin. We find the legislature's intent to be well conceived because it looks to the substance of the relationship rather than the label on the relationship.

Though NRS 281.501(2)(c) and (3)(b) are wise in conception, they are difficult in application, particularly as applied to something as protean as personal relationships. Nonetheless, NRS 281.501(2)(c) and (3)(b) compel us to wade neck deep into these difficult waters. Though interpersonal relationships are inherently experiential, emotional, and subjective, we think that several factors can be discerned in interpersonal relationships by which we can qualitatively adjudge such relationships: (1) the length of a relationship, (2) the context of the relationship, (3) the substance of the relationship, and (4) the frequency of the relationship. By legislative design, the determination of whether a given relationship would materially affect the independence of judgment of a reasonable person will always be a case-by-case examination.

Analysis Regarding Ms. Williams (Request No. 97-53)

The questions regarding Ms. Williams were:

1. Did Ms. Williams violate NRS 281.481(2) by using her position as a county commissioner to attempt to gain or to gain an unwarranted privilege, preference, exemption or advantage for Jody Klein, Vicki Richardson, and JV Ventures regarding their business which ultimately was awarded a contract to operate a coffee business at Terminal D of the McCarran International Airport?
2. Did Ms. Williams violate NRS 281.501(2) or (3) by her participation and vote upon any matter related to Judy Klein and Vicki Richardson before the Clark County Commission that resulted in their business being awarded a contract to operate a business at Terminal D of the McCarran International Airport?

Regarding the first question, the evidence showed that Ms. Williams did not use her position as a county commissioner to benefit anyone related with JV Ventures. Rather, the evidence showed that Ms. Williams, while aware that her best friend Ms. Klein was submitting a DBE application, endeavored not to be lobbied and not to be in any way involved in the Terminal D concession process until the master concessionaires submitted their final lists for the CCC's approval. The evidence showed that Ms. Williams carried through with her plan, even to a fault, since she so disconnected herself from the DBE concession process that she did not read the CCC's materials closely enough to have spotted that Ms. Klein was involved with a successful applicant, JV Ventures. Based upon Ms. Williams' course of conduct, the record shows that Ms. Williams did not attempt to or use her position as a county commissioner to benefit anyone associated with JV Ventures or any of the other successful DBE applicants; thus, Ms. Williams did not violate NRS 281.481(2).

Regarding the second question, the evidence showed that Ms. Williams' relationship with Ms. Klein was sufficient to have required disclosure under NRS 281.501(3) and abstention under NRS 281.501(2). Ms. Williams and Ms. Klein described their relationship as "best friends." They were friends of long standing. Their friendship was forged in the context of common political and philosophical beliefs that both felt strongly enough about that they had become politically active on behalf of those causes. Ms. Klein is an integral part of political endeavors that have raised hundreds of thousands of dollars for Ms. Williams' successful political career. Ms. Williams and Ms. Klein see each other and talk frequently in both personal and political contexts. Based upon this evidence, we must conclude that a reasonable person in Ms. Williams' situation would have her independence of judgment materially affected by such a long standing and close relationship. Therefore, the relationship between Ms. Williams and Ms. Klein would have required disclosure under NRS 281.501(3) and abstention from participation in any matter before the CCC in which Ms. Klein was interested under NRS 281.501(2).

The question of whether Ms. Williams' violated NRS 281.501(2) or (3) in this matters is problematic. We find Ms. Williams' testimony to be simultaneously credible and troubling. Ms. Williams testified that she did not know that Judy Klein was affiliated with JV Ventures when she cast her vote on behalf of JV Ventures and that had she known about the affiliation, Ms. Williams would have disclosed her relationship with Ms. Klein and would have abstained from voting for JV Ventures' application. In fact, as we have previously discussed Ms. Williams scrupulously separated herself from the knowledge of just who the successful DBE applicants were, so much so that she voted for Ms. Klein's business without even knowing that she had done so.

The evidence remained ambiguous throughout the hearing as to whether Ms. Klein had in her possession documents that would have indicated Ms. Klein's involvement with JV Ventures, but even if such documents were in Ms. Williams' possession, her testimony was that she did not closely review the documents anyway. We find Ms. Williams' rendition of facts to be credible, and, thus, we find that Ms. Williams did not violate NRS 281.501(2) or (3) because although she did have a "commitment in a private capacity to the interest of [an]other" at the time she voted, she did not know that her vote implicated this commitment.

Because part of the Commission's charter is to advise public officials such as and including Ms. Williams about their ethical obligations, we must indicate that Ms. Williams' strategic decision to remain ignorant of the identities of the DBE applicants as she voted is fraught with potentially negative ethical ramifications. In the future, deliberate ignorance of readily knowable facts will not be condoned by this Commission. We insist each public official vigilantly search for reasonably ascertainable potential conflicts of interest. The solution for a public official who knows that her best friend may end up appearing before her, or who is overwhelmed with the volume of her workload, is to task her staff with assisting her to root out potential ethical concerns. Other professions, such as attorneys and accountants, are required to design and implement effective systems to find and avoid conflicts of interest. If our analysis of Ms. Williams' matter teaches anything, we wish the lesson to be that public officials cannot remain willfully ignorant of readily knowable facts and must, instead, design and implement systems to spot and respond to potential ethical conflicts.

This is especially so in the case of Ms. Williams who was put on specific notice that her "best friend" had put in an application for one of these very lucrative contracts. We note that her attorney put forth an interesting explanation in support of her willful ignorance: that she did not want anyone to construe her efforts to find out which application involved Ms. Klein as indicating her wish to have Ms. Klein's application treated as having her personal support. However well intentioned that posture may have been, the result was wrong. Ms. Williams could, and should, have used her staff to learn which application was Ms. Klein's, making it very clear that she needed to do so in order to properly disclose and abstain.

Analysis Regarding Mr. Malone (Request No. 97-52)

The questions regarding Mr. Malone were:

1. Did Mr. Malone violate NRS 281.481(2) by using his position as a county commissioner to attempt to gain or to gain an unwarranted privilege, preference, exemption or advantage for Gay Reber and GRR Group, Inc. regarding their business which ultimately was awarded a contract to operate a food and beverage business at Terminal D of the McCarran International Airport?
2. Did Mr. Malone violate NRS 281.501(2) or (3) by his participation and vote upon any matter

related to Gay Reber before the Clark County Commission that resulted in her business being awarded a contract to operate a business at Terminal D of the McCarran International Airport?

Both of these questions necessarily turn on Mr. Malone's relationship with Gay Reber. The evidence showed that Mr. Malone had known Ms. Reber for 15 years because Ms. Reber was a close friend of Mr. Malone's wife. Mrs. Malone's and Ms. Reber's friendship originated in high school and continues to the present day. Ms. Reber and Mrs. Malone have maintained this relationship over the years through personal visits and frequent telephone calls. Based on the evidence, we find that the friendship between the Malones and Ms. Reber was significant and substantial.

That Mr. Malone's own subjective independence of judgment was affected by his relationship with Ms. Reber was evidenced by his testimony about the inclusion of Ms. Reber's name in the list of three names he gave to Ms. Atkinson Gates. At the time Mr. Malone gave Ms. Reber's name to Ms. Atkinson Gates, he knew only that Ms. Reber had worked in her father's appliance business and that she previously sought to place a massage concession at the Airport, and Mr. Malone knew substantially nothing about any of the other DBE applicants. In fact, at the same time he recommended Ms. Reber, he also recommended Ms. Starring based solely upon his brother's recommendation that Ms. Starring "was good people." We must conclude that Mr. Malone's recommendations of Ms. Reber and Ms. Starring to Ms. Atkinson Gates were made based upon his or his brother's personal relationships with the subjects of his recommendations, regardless of the applicants' merits, since Mr. Malone had no real knowledge of their merits or the comparative merits of any of their competitors. Mr. Malone's recommendation of Ms. Reber and Ms. Starring was cronyism,^[8] pure and simple.

Regarding the first question, as our analysis above shows, Mr. Malone's recommendation of Ms. Reber to Ms. Atkinson Gates constituted the use of his position as a county commissioner to secure or grant to Ms. Reber an unwarranted privilege, preference, or advantage under NRS 281.481(2). As Mr. Banks' testimony showed, Mr. Malone's recommendation of Ms. Reber eventually ended up being WH Smith's selection and recommendation, after passing through Ms. Atkinson Gates, Mr. Askew, and Mr. Walker. Notwithstanding his protestations to the contrary, we find that Mr. Malone knew that his recommendation of Ms. Reber to Ms. Atkinson Gates was giving Ms. Reber a unique, overwhelming, and ultimately prevailing advantage unavailable to any of Ms. Reber's DBE competitors. The evidence shows that Mr. Malone's recommendation of Ms. Reber accomplished Mr. Malone's intent, namely that his wife's long-time friend was given DBE concessions, and in so doing, Mr. Malone violated NRS 281.481(2).

Similarly, as we have already discussed, the relationship between the Malones and Ms. Reber was significant and substantial. Based upon the length of the relationship (15 years), the context of the relationship (high school friends who remain friends years later), the substance of the relationship (socializing and ongoing communication between the families), and the frequency of the relationship (Mrs. Malone and Ms. Reber frequently speak on the telephone) and the obvious commitment Mr. Malone felt as a result of the relationship as evidenced by his blind recommendation of Ms. Reber to Ms. Atkinson Gates, we must conclude that a reasonable person in Mr. Malone's situation would have his independence of judgment materially affected by a friendship that has lasted a major part of his and his wife's life. Thus, Mr. Malone should have disclosed full nature and extent of his relationship with Ms. Reber on August 19, 1997 when the matter of her DBE concessions came before him pursuant to NRS 281.501(3) (b), and he should have abstained from voting on her matter on NRS 281.501(2)(c). In failing to do so, Mr. Malone violated NRS 281.501(2) and (3).

Analysis Regarding Ms. Atkinson Gates (Request Nos. 97-54, 97-59, and 97-66)

The questions regarding Ms. Atkinson Gates were:

1. Did Ms. Atkinson Gates violate NRS 281.481(2) by using her position as a county commissioner to attempt to gain or to gain an unwarranted privilege, preference, exemption or advantage for Mike Chambliss, William "Doc" Pearson, DAPO, Inc., and Pearson Food Group regarding their businesses which ultimately were awarded contracts to operate businesses at Terminal D of the McCarran International Airport?
2. Did Ms. Atkinson Gates violate NRS 281.501(2) or (3) by her participation and vote upon any matter related to Mr. Chambliss and/or William "Doc" Pearson before the Clark County Commission that resulted in their businesses being awarded contracts to operate businesses at Terminal D of the McCarran International Airport?

3. Did Ms. Atkinson Gates violate NRS 281.481(2) by using her position as a county commissioner to attempt to gain or to gain an unwarranted privilege, preference, exemption or advantage for Judy Klein, Vicki Richardson, and JV Ventures regarding their business which ultimately was awarded a contract to operate a business at Terminal D of the McCarran International Airport?

4. Did Ms. Atkinson Gates violate NRS 281.501(2) or (3) by her participation and vote upon any matter related to Judy Klein and Vicki Richardson before the Clark County Commission that resulted in their business being awarded a contract to operate a business at Terminal D of the McCarran International Airport?

Analysis of Ms. Atkinson Gates' Relationship With Mr. Chambliss

The first two questions regarding Ms. Atkinson Gates address her relationship with Mr. Chambliss, so we must examine that relationship. Michael Chambliss had known Ms. Atkinson Gates for 17 years. He had worked on all of Ms. Atkinson Gates' campaigns for public office except her first run for county commissioner in 1992 because in that race Ms. Atkinson Gates' opponent was William "Doc" Pearson, Mr. Chambliss' uncle.^[9] In Ms. Atkinson Gates' 1996 campaign for county commission, Ms. Atkinson Gates paid Mr. Chambliss between \$27,000 and \$50,000 as a campaign consultant. Ms. Atkinson Gates paid Mr. Chambliss \$1,250 per month through all of 1995 for consulting services. Mr. Chambliss had personally helped Ms. Atkinson Gates through the city's building permit process several times, even obtaining permits on Ms. Atkinson Gates' behalf on two occasions. Mr. Chambliss described himself as Ms. Atkinson Gates' "eyes and ears" in the community because in his job with the City of Las Vegas, Mr. Chambliss had daily contact with the citizenry of Las Vegas. Additionally, when Ms. Atkinson Gates left Nevada for several weeks for medical treatment during her 1996 campaign, Ms. Atkinson Gates entrusted Mr. Chambliss with the management of her campaign.

Mr. Chambliss and Ms. Atkinson Gates both attempted to classify their relationship as business acquaintances, as though such a classification would alleviate Ms. Atkinson Gates' commitment to Mr. Chambliss. We find this self-classification odd, incredible, and not the least helpful or relevant. The substance of their relationship belies their deprecations. They have known each other for many years. The context of their relationship is that Mr. Chambliss' efforts on Ms. Atkinson Gates' behalf have resulted in Ms. Atkinson Gates' political successes. Ms. Atkinson Gates thought highly enough of Mr. Chambliss' skills to put him on a retainer throughout an entire year. In fact, Ms. Atkinson Gates has paid Mr. Chambliss as much as \$50,000. The substance of their relationship continues as Mr. Chambliss acts as Ms. Atkinson Gates' "eyes and ears" in the community while he is doing his job for the City of Las Vegas, and he speaks with her often in this capacity. In the past, Mr. Chambliss helped Ms. Atkinson Gates through the building permit process, even obtaining permits for Ms. Atkinson Gates at her request. Most telling is that when Ms. Atkinson Gates needed somebody to manage her campaign during her absence from the state, she turned to Mr. Chambliss. Regardless of the label Ms. Atkinson Gates and Mr. Chambliss wish to put on their relationship, it is clear that their relationship is substantial, trusting, and complex because so many facets of their lives intersect in their relationship.

Analysis of Ms. Atkinson Gates' Relationship With Ms. Klein

The third and fourth questions regarding Ms. Atkinson Gates address her relationship with Ms. Klein, so we must analyze that relationship. It must first be said that Ms. Atkinson Gates' relationship with Ms. Klein is substantively quite different from Ms. Williams' relationship with Ms. Klein because Ms. Atkinson Gates' relationship lacks the strong personal components that are so prominent in Ms. Williams' relationship. Nonetheless, we find Ms. Atkinson Gates' relationship with Ms. Klein to be significant. Ms. Atkinson Gates has known Ms. Klein since 1992 through Ms. Klein's activity in the Democratic Party. Ms. Klein was the administrative assistant to Mr. Schreck, a prominent Clark County fund-raiser who had raised funds for Ms. Atkinson Gates' campaigns. The efforts of Mr. Schreck and Ms. Klein on Ms. Atkinson Gates' behalf have produced hundreds of thousands of dollars for Ms. Atkinson Gates' campaigns. Ms. Atkinson Gates attended Ms. Klein's wedding, and Ms. Atkinson Gates' daughter was Ms. Klein's flower girl. Though their meetings were at political events, as active as Ms. Atkinson Gates and Ms. Klein are in the same causes, they would meet frequently at the events.

It may well be that Ms. Atkinson Gates and Ms. Klein are not close friends, but our inquiry does not end there.

Based on the evidence, Ms. Atkinson Gates' relationship with Ms. Klein appears to be a political alliance in which both are dedicated to common causes, one of which is the furtherance of Ms. Atkinson Gates' political aspirations. We have no doubt that Ms. Atkinson Gates is beholden to Ms. Klein based upon Ms. Klein's raising of hundreds of thousands of dollars of funds with which Ms. Atkinson Gates has mounted her successful political campaigns. Though the foundation of Ms. Atkinson Gates' relationship with Ms. Klein is quite different from the personal foundation that underlies Ms. Williams' relationship with Ms. Klein, we find both relationships to be equally compelling and committing to the public officials involved.

Analysis of the Questions Regarding Ms. Atkinson Gates

Having found that Ms. Atkinson Gates had significant relationships with Mr. Chambliss and Ms. Klein, we now consider whether Ms. Atkinson Gates' actions on behalf of those relationships constitutes violations of NRS 281.481(2) and NRS 281.501(2) and (3). We will first consider the questions regarding NRS 281.481(2).

The evidence showed that the CCC had established a selection process for the DBE applicants that would have been free of political influence. The process, as designed, was supposed to allow the master concessionaires to review the applications based on criteria set by the master concessionaires. This was a sensible design since ultimately the performance of the master concessionaires, both financially and as judged by the CCC, would in part be measured by the success of the DBE concessionaires, and so the judgment, expertise, and financial viability of the businesses of the master concessionaires would lead them to choosing the best available candidates for the DBE concessions. Furthermore, this design would, if it had been followed, avoid the acrimonious debates that had previously plagued similar concession awarding processes.

Unfortunately, the workable design was entirely and single-handedly subverted by Ms. Atkinson Gates. At the time Ms. Atkinson Gates made her list of recommendations, she had little or no information regarding many of the names on the list, including Ms. Reber, Ms. Starring (both names provided by Mr. Malone). The deadline for the submittal of applications had not yet closed. Interestingly, the names submitted by Ms. Atkinson Gates were the personal names of people, not their business names, so her intent was obviously to recommend people, not businesses. Particularly troubling was the inclusion of Ms. Klein's name on the list because the materials submitted by Ms. Klein with her application did not mention the only arguably relevant experience which Ms. Klein so touted at our hearing, namely that she had worked in her father's restaurant over 20 years ago. Instead, Ms. Klein's application materials were effusive about her extensive political connections, and it was these same political connections that were essentially all Ms. Atkinson Gates knew about Ms. Klein at the time that she was recommending Ms. Klein to be a DBE concessionaire. For all intents and purposes, Ms. Klein had no relevant experience, certainly none known to Ms. Atkinson Gates at the time, so we must conclude that Ms. Atkinson Gates included Ms. Klein's name on Ms. Atkinson Gates' list solely because of Ms. Atkinson Gates relationship with and commitment to Ms. Klein.

Ms. Atkinson Gates' list had a devastating effect of the credibility of the DBE application process for Terminal D, because the list passed from her to Mr. Askew, to Mr. Walker, and finally to Mr. Banks. With candor and truth that was refreshingly uncharacteristic in this matter, Mr. Banks explained that Ms. Atkinson Gates' list became his list. It was that simple. In reality, Ms. Atkinson Gates (with Mr. Malone's help), not WH Smith, chose the WH Smith DBE concessionaires. A process that was designed to be apolitical and merit-based was rendered entirely political and cronyism- based by Ms. Atkinson Gates with her little list.

We must conclude that Ms. Atkinson Gates knew exactly what effect her recommendations might have on the DBE selection process. She put personal names on a list, some of whom she knew little or nothing about except that they were her or Mr. Malone's personal friends, intending that her list would have influence in the selections made by the master concessionaires. Ms. Atkinson Gates' influence was undeniable and complete, since every name on her list (Janellen Radoff, Vickie Richardson, Ms. Klein, Tonie Sison, Mr. Chambliss, Angela Berliner, Brian Ayala, Ralph Ulivarri, Ms. Reber, and Harlan Brooks, and perhaps Ms. Starring) received at least one DBE concession, and in three cases (Mr. Chambliss, Ms. Klein, and Ms. Reber), two DBE concessions.

We have previously stated:

Public officers are not pirates or potentates. Government largesse, in whatever form, is not to be plundered by a public officer for his personal gain, nor is it to be granted to a select few who gain a public officer's princely favor. The rule of law

established in NRS 281.501(2) is intended to prohibit such misuse of public office, thereby assuring the public that its servants' votes and advocacy are guided by trustworthy conscience and reason, not by fickle fealty or affiliation.

Matter of Richard Stone, NCOE Opinion 96-32, at 6. In this particular matter, the evidence showed that Ms. Atkinson Gates did use her position as a county commissioner to grant an unwarranted privilege, preference, or advantage to Mr. Chambliss and Ms. Klein by including their names on a list that ultimately became a master concessionaire's final list. The privilege, preference, or advantage was unwarranted because Ms. Atkinson Gates' recommendations gave Mr. Chambliss and Ms. Klein a unique competitive advantage that resulted in their being awarded DBE concession contracts that they may well not have received absent Ms. Atkinson Gates' powerful recommendation. The evidence showed that Ms. Atkinson treated the Terminal D DBE concessions as personal "plums" to be granted to those who had found their way into her favor. Ms. Atkinson Gates acted upon her "fickle fealty or affiliation" with Mr. Chambliss and Ms. Klein, and in so doing, she violated NRS 281.481(2).

Regarding the questions addressing NRS 281.501(2)(c) and (3)(b), we find that a reasonable person in Ms. Atkinson Gates' situation would have her independence of judgment materially affected by her relationships with Mr. Chambliss and Ms. Klein. In fact, the course of events shows that Ms. Atkinson Gates' own subjective independence of judgment was affected, because she recommended Mr. Chambliss and Ms. Klein without any real knowledge of Ms. Klein's qualifications and without any comparative analysis of the merits of the other applicants. Under NRS 281.501(3)(b), Ms. Atkinson Gates should have disclosed the full nature and extent of her relationships with Mr. Chambliss and Ms. Klein on August 19, 1997 when their DBE applications came before the CCC, and under NRS 281.501(2)(c), those relationships should have compelled Ms. Atkinson Gates to abstain from voting upon Mr. Chambliss' and Ms. Klein's DBE applications. In failing to do so, Ms. Atkinson Gates violated NRS 281.501(2) and (3).

Willfulness

In Mr. Malone's and Ms. Atkinson Gates' cases, the Commission determined that no sanctions would be imposed by voting that these violations were not willful. This does not mean that the Commission found them to be accidental or unintentional. Rather, it means only that the Commission felt that no sanctions needed to be imposed in addition to the public attention focused on the hearings and these subjects and the costs incurred by them. Thus, in this case willfulness is a term of art indicating only whether sanctions should be imposed.

Recommendations Regarding Future Contracting Processes

This matter exposed a serious flaw in the CCC's method of addressing contracts such as the DBE concessions contracts in this matter. Several county commissioners testified that they intended to remain essentially ignorant regarding the qualifications of the applicants and were, instead, willing to approve whatever applicants were brought to them by the master concessionaires. Of course, the evidence also showed that not only were Mr. Malone and Ms. Atkinson Gates unwilling to remain ignorant about the process, they were, instead, actively involved in selecting the applicants well in advance of their eventual votes of approval. Both situations are ethically problematic.

Willful ignorance of a matter before a county commissioner cannot produce an educated vote. Instead, such willful ignorance begs the question whether such a vote has any meaning whatsoever. Ethically, what a public official does not know can hurt him or her. Such ignorance will inevitably lead to improper voting behavior under NRS 281.481(2) and (3), because if a public official does not know whom she is voting about, she may well be voting about someone about whom she ought not be voting. Ms. Williams' conduct in this case is "Exhibit A" of the perils of such willful ignorance.

On the other hand, machination behind the scenes of a contracting process that is facially fair is repugnant and reprehensible. In this matter, we can understand the sense of frustration and outrage expressed by several of the unsuccessful applicants because they literally never had a chance. The witnesses who expressed concern that the concession-awarding process was "political" were sadly right: all the evidence showed just how political, and therefore unfair, the process was.

We would recommend that Clark County conduct a comprehensive review of its contracting process. As the state's largest county, Clark County ought to be a model of efficiency and fairness. The review ought to determine at least

the following:

- (1) What contracts can be executed without CCC approval;
- (2) For those contracts that can be executed without CCC approval, what processes can be instituted to assure that the processes always remain fair and untainted by county staff or the county commissioners;
- (3) For those contracts that must have CCC approval, what processes can be instituted to assure that the county commissioners cannot taint or skew the process and that their vote is knowledgeable and fair, based solely upon the merits of the matters before them; and
- (4) For all contracts, what internal appellate-type processes can be established to allow unsuccessful bidders to challenge an award of a contract.

As a final recommendation, Clark County should also immediately develop a system within the staff of the CCC to check for and respond to potential conflict of interest for each county commissioner. The evidence in this case showed that the county commissioners are heavily burdened with all of their duties and responsibilities to the CCC and its various committees and affiliated organizations. In such a situation where their workload is so enormous, potential conflicts are bound to exist, and they may be overlooked simply because of the volume of work that each county commissioner processes. Large law firms have developed software specifically to spot conflicts of interest so that the firm does not accidentally or unintentionally represent both sides of a contested issue. It may be that adapting such software or developing proprietary software for the same purpose would go a long way toward avoiding future ethical scrutiny.

CONCLUSIONS

Ms. Williams did not violate NRS 281.481(2) or NRS 281.501(2) or (3) when she voted to approve the DBE concession contract for JV Ventures, of which Ms. Williams' best friend Ms. Klein was a principal because Ms. Williams was unaware, at the time of her vote, that Ms. Klein had an interest in JV Ventures.

Mr. Malone violated NRS 281.481(2) by placing the name of Ms. Reber on Ms. Atkinson Gates' list of recommended applicants, thus giving Ms. Reber an unwarranted privilege, preference, or advantage over all other DBE applicants. Mr. Malone also violated NRS 281.501(3) by failing to disclose his relationship with Ms. Reber when he considered her DBE application on August 19, 1997, and he violated NRS 281.501(2) by voting in favor of Ms. Reber's DBE application on August 19, 1997.

Ms. Atkinson Gates violated NRS 281.481(2) by placing the names of Mr. Chambliss and Ms. Klein on a list of recommended applicants, thus giving Mr. Chambliss and Ms. Klein an unwarranted privilege, preference, or advantage over all the other DBE applicants. Ms. Atkinson Gates also violated NRS 281.501(3) by failing to disclose her relationships with Mr. Chambliss and Ms. Klein when she considered their DBE applications on August 19, 1997, and she violated NRS 281.501(2) by voting in favor of Mr. Chambliss' and Ms. Klein's DBE applications on August 19, 1997.

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 26, 1998.

NEVADA COMMISSION ON ETHICS

By: MARY E. BOETSCH, Chairwoman

[\[1\]](#) We find no support in the record for Ms. Atkinson Gates' assertion that she spoke with county commissioner

Bruce Woodbury before she made her list.

[2] We are very troubled by Ms. Atkinson Gates' campaign disclosure statements, and her explanation at hearing regarding them was not helpful. Our review of the statements, all sworn statements by Ms. Atkinson Gates, and Ms. Atkinson Gates' exhibits submitted at hearing shows three different amounts paid to Mr. Chambliss: \$50,000 on her original reports, \$27,000 on her amended reports, and \$34,300 on her exhibit submitted at hearing. Only a few checks to Mr. Chambliss were on all three sets of statements, some checks to Mr. Chambliss on the first set of statements were not shown on the second set of statements or the exhibit, and most oddly, that some checks on the exhibit and second statements were not on the pre-existing statements. We are further troubled by the second set of statements because they were filed only weeks before this Commission had scheduled its first full hearing on this matter in March 1998. It is certainly reasonable to conclude that none of the sets of statements or the exhibit were accurate and that the second set of statements was submitted in an attempt to minimize Ms. Atkinson Gates' payments to Mr. Chambliss.

[3] Mr. Brooks operated barbecue restaurants at airports in Texas and had previously sought a concession at the McCarran Airport. Ms. Atkinson Gates explained at hearing that she had opposed Mr. Brooks' earlier application because although he was a minority because he was African-American, Mr. Brooks was not local to Nevada and Clark County. Mr. Chambliss' and Mr. Pearson's partnerships in the Pearson Food Group seemed calculated primarily to render to Mr. Brooks partners who could be considered local.

[4] We find incredible Mr. Chambliss' and Ms. Atkinson Gates' assertions that their relationship was not personal and was, instead, purely a business relationship. Their undeniable conduct, such as Ms. Atkinson Gates' entrusting of her 1996 campaign to Mr. Chambliss and his assistance to her in negotiating and obtaining building permits, as well as the length and substance of their relationship which involved weekly, if not daily, contact, all belies their attempts to minimize their relationship. Both their testimonies would have been much more credible and enhanced had they treated the Commission with more candor and honesty regarding their relationship.

[5] We find Ms. Klein's description at hearing of her role in the Clark County and State Democratic Party to be bizarre and incredible. Ms. Klein's political connections and involvement with the Democratic Party showed a fervent dedication to the mission of the party and its candidates. Her resume submitted with her RFO application fairly bubbled over with her enthusiasm for the Party and its leading candidates. We are baffled and troubled by Ms. Klein's insistence at our hearing that she was a minion in the Democratic Party, particularly where there was no need to belittle her obvious and praiseworthy accomplishments on behalf of causes and candidates whom she supported. Would that all citizens were as concerned and active in our democracy as Ms. Klein. Unfortunately, Ms. Klein's disparagement of herself and her contributions to the Democratic Party, Ms. Atkinson Gates, and Ms. Williams negatively affected her credibility.

[6] We found Ms. Williams' testimony to be credible and believable, and, thus, we find her representations that she would have disclosed her relationship with Ms. Klein and would have abstained from voting as to JV Ventures' application to be credible and believable.

[7] For example, NRS 281.210, Nevada's anti-nepotism statute, expressly draws a line at the "third degree of consanguinity or affinity" for application of the statutory prohibition.

[8] Cronyism is defined as "partiality to cronies esp. as evidenced in the appointment of political hangers-on to office without regard to their qualifications." Webster's New Collegiate Dictionary 271 (1st ed. 1977).

[9] The evidence showed that Ms. Atkinson Gates had no relationship with Dr. Pearson, and, in fact, had defeated Dr. Pearson for her seat on the city council. Therefore, the portion of the question dealing with Dr. Pearson will not be analyzed further.