

## Opinion No. 98-03

### BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion concerning the conduct of  
JOHN DOTSON, Chief of Police, City of Sparks, Nevada; and  
WILLIAM BRENT LEE, Detective, Sparks Police Department**

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Frank Torres regarding the parts John Dotson and William Brent Lee played in Mr. Lee's promotion from sergeant to lieutenant for the Sparks Police Department. A hearing on the opinion request was held on April 24, 1998 in Sparks, Nevada. The Commission heard testimony from Gary Potter, Alan Mentzer, Thomas Carson, Robert Schmidt, Robert Cowman, Tony Zamboni, Sherman Boxx, John Dotson, William Brent Lee, and Frank Torres. At the conclusion of the hearing, the Commission deliberated the matter and reached a decision. The Commission now issues the Findings of Fact and Opinion which follows.

#### FINDINGS OF FACT

1. On January 15, 1993, Mr. Dotson was appointed to be the Chief of Police for the City of Sparks.
2. Shortly after moving to Sparks, Mr. Dotson was introduced to Mr. Lee who was then a detective for the Sparks Police Department (SPD). At hearing, Mr. Dotson and Mr. Lee confirmed that they were good friends. In fact, Mr. Dotson said that he was closer to Mr. Lee than he was to any other sergeant at the time of Mr. Lee's application for promotion.
3. In November or December 1996, Mr. Lee contacted Alan Mentzer, Department Chair for the Truckee Meadows Community College (TMCC) Criminal Justice Program, regarding what educational opportunities might be available to Mr. Lee to complete credits necessary for promotion from sergeant to lieutenant. Mr. Lee sought Mr. Mentzer's assistance because Mr. Lee knew that promotional opportunities were imminent because of the retirements of three lieutenants in the spring and summer of 1996. At the time Mr. Lee first spoke with Mr. Mentzer, Mr. Lee had nine college credits that could be applied towards a criminal justice degree, the last of which were received in 1982. Mr. Lee told Mr. Mentzer that because of Mr. Lee's schedule at the time, formal class work would not be feasible, so Mr. Mentzer discussed with Mr. Lee TMCC's independent study process that allowed greater flexibility to the obtaining of credit.
4. In January or February 1997, Mr. Lee and Mr. Mentzer met again to discuss Mr. Lee's academic process. Mr. Mentzer approved some of Mr. Lee's in-service training for academic credit and established an independent study process for the remaining credits so that Mr. Lee would attain a total of 30 credits by the end of the spring 1997 semester.
5. On March 13, 1997, Mr. Lee registered at TMCC with Mr. Mentzer's assistance. Although March 13, 1997 was well into the spring 19~7 semester, Mr. Mentzer testified that it was not unusual for students to register late, especially where the registration was for units through the independent study process.
6. Mr. Lee's independent study process involved approximately five meetings or conversations between Mr.

Lee and Mr. Mentzer, mostly on Mr. Lee's lunch hour, during which Mr. Mentzer became convinced that Mr. Lee possessed the requisite knowledge to satisfy the course goals for the various courses for which Mr. Lee had registered. Mr. Mentzer did not require Mr. Lee to read any books, make any written reports, do any written course work, or take any written tests. Instead, Mr. Mentzer orally tested Mr. Lee. Mr. Mentzer kept no written records regarding his discussions or oral testing of Mr. Lee.

7. Mr. Mentzer testified that he relied, in large part, on Mr. Lee's extensive 20-year history in law enforcement. In his career, Mr. Lee had been a patrol officer, a detective, a narcotics officer, a humane officer, a dispatcher, a SWAT team member, a SWAT team leader, a communications supervisor, a patrol supervisor, and a field training officer. Mr. Mentzer testified that such experience could essentially substitute for course work that would have taught similar information and skills.

8. During the week of April 16, 1997, a job announcement was to advertise three openings for promotional opportunities from sergeant to lieutenant of the SPD.

9. Among other things, the job announcement defined the requisite experience and education for the promotion as follows:

A typical way of gaining the knowledge and skill outlined above is: Equivalent to possession of an Associate degree with major course work in administration of justice, law enforcement or a related field and three years of sworn law enforcement supervisory experience at a level equivalent to the City's class of Police Sergeant. Additional law enforcement supervisory experience may be substituted for the education equivalent on a year for year basis to a maximum of one year (i.e.: 30 credits and 4 yrs of sworn law enforcement supervising). **\* It is the applicant's responsibility to make sure that a certified transcript for the minimum credit qualifications is received by Human Resources. If an applicant has an official transcript that displays the required credits in his/her official personnel file in Human Resources he/she will not have to resubmit a transcript.** (Emphasis in original.)

The job announcement required that all application materials had to be received by the Sparks Human Resources Office no later than April 25, 1997.

10. On April 21, 1997, Mr. Mentzer submitted a letter to the Human Resources Department documenting Mr. Lee's completion of 30 credits, 21 of which were received through independent study.

11. At the close of the application period, Mr. Lee was one of six or seven applicants for the three lieutenant's openings.

12. On May 14, 1997, all the applicants took an examination. As a result of the examination, the applicants were ranked by score. Because there were three lieutenants positions available, the Human Resources Department submitted the top five ranking applicants to Mr. Dotson for his consideration. The list that was sent to Mr. Dotson was in alphabetical order, not ranked order, and Mr. Dotson was never made aware of the applicants' rankings.

13. Sparks City Charter § 9.060(1) establishes a procedure to fill vacancies within a department and mandates that

a list of not fewer than the "three most highly qualified applicants" be submitted to the department head and that the department head "shall appoint from the list the applicant considered by him to be most suitable."

14. Because of the charter provision and litigation regarding it, Mr. Dotson was required to personally make the final appointment decisions regarding the three lieutenants' positions. Mr. Dotson decided to enlist the assistance of his two deputy chiefs to assist him with the personal interviews of the five applicants.

15. After personally interviewing the five applicants, Mr. Dotson ultimately recommended that one of the three promotions from sergeant to lieutenant go to Mr. Lee. Mr. Dotson denied that the promotion was in any way based upon his friendship with Mr. Lee. Instead, Mr. Dotson explained that his promotion of Mr. Lee was based upon Mr. Lee's qualifications, experience, and leadership.

16. After questions arose in the press regarding Mr. Lee's promotion, Mr. Mentzer was asked to address an inquiry by John Richardson, president for TMCC, regarding Mr. Lee's credits. According to Mr. Mentzer, he submitted materials regarding Mr. Lee's work through his dean, through the vice president, and ultimately to the president, and the president was satisfied with Mr. Mentzer's independent study curriculum for Mr. Lee.

### **ANALYSIS AND OPINION**

The Commission has jurisdiction over this matter pursuant to NRS 281.511 (2). Mr. Dotson is a public officer as defined by NRS 281.4365 in his capacity as police chief and Mr. Lee is a public employee as defined in NRS 281.436 in his capacity as a police sergeant and lieutenant.

Mr. Torres asked the Commission to conclude that "the system was manipulated" by Mr. Dotson and Mr. Lee because of their friendship so that Mr. Lee could be promoted from sergeant to lieutenant despite Mr. Lee's purported lack of qualifications, thus violating NRS 281.481 (2). We must find that Mr. Dotson and Mr. Lee did not violate NRS 281.481 (2) because the evidence showed that neither Mr. Dotson or Mr. Lee did anything that would constitute the giving of "unwarranted privileges, preferences, exemptions or advantages" to Mr. Lee.

The evidence showed that Mr. Lee met the objective criteria required by the job announcement in that he had the requisite combination of supervisory experience and educational credits. Mr. Lee was one of five finalists according to the objective testing. Mr. Lee fared well in the subjective interview conducted by Mr. Dotson and the deputy chiefs. Absent the odd way in which Mr. Lee attained his educational credits and Mr. Lee's admitted friendship with Mr. Dotson, it is unlikely that Mr. Lee's promotion would have been questioned at all. We will examine these two factors to determine whether Mr. Dotson or Mr. Lee used their positions to grant Mr. Lee an unwarranted advantage or benefit in the attaining of a promotion from sergeant to lieutenant.

Regarding the way in which Mr. Lee attained his educational credits, we must say that we are struck by the oddity of the testimony of Mr. Mentzer. Read fairly, Mr. Mentzer's testimony is that Mr. Lee was given 21 credits in five weeks as a result of five hour-long telephone calls without Mr. Lee reading a single book, writing a single word, or taking a single written objective test. We can understand why Mr. Torres would question this practice, and we can also understand why some of the unsuccessful applicants would feel cheated because they had put in the long hours of study and classroom instruction over several years to obtain the same educational units that Mr. Lee obtained with five telephone call with Mr. Mentzer. We can also understand why Mr. Torres and others would feel that Mr. Lee was unfairly qualified for promotion as a result of the quizzical way in which Mr. Lee attained his

credits. Viewed one way, it appeared that the educational requirement in the job announcement was completely subverted because the educational requirement could be satisfied by work experience.

Unfortunately, as questionable as TMCC's policy may be, it is not within our jurisdiction to resolve the question. Mr. Lee attained 30 credit units by the time necessary under the job announcement, and here our inquiry must end. Mr. Lee met the requisite objective criteria, so according to Sparks' civil service rules, Mr. Lee was qualified to take the examination and to be promoted. There was no evidence in the record that Mr. Lee or Mr. Dotson used their positions to obtain any unwarranted benefit from Mr. Mentzer. Instead, the record has many references to Mr. Lee's and Mr. Mentzer's concerns that Mr. Lee be treated like any other student, and it appears he was (with the exception that he attained six more units through independent study than any previous student had through Mr. Mentzer). The benefit conferred on Mr. Lee by Mr. Mentzer was "warranted" to the extent that according to Mr. Mentzer, Mr. Lee completed the requisite work to receive passing grades in all 21 units of course work.

While we find almost nothing in the record to support Mr. Mentzer's superlative grades for Mr. Lee, and, in fact, we cannot find anything in the record that shows Mr. Lee did much of anything for his grades, we cannot find that Mr. Lee did anything wrong by using Mr. Mentzer and TMCC in his quest to attain his needed credits. Mr. Lee did nothing unethical by taking advantage of a curious educational process. Concerns regarding the use or misuse of independent study (which in itself is a useful educational tool) must be addressed to Mr. Mentzer's superiors and, ultimately, the Board of Regents. According to Mr. Mentzer, his superior did inquire regarding Mr. Lee's units and was satisfied with Mr. Lee's independent study curriculum. We cannot second-guess the educational process even if we are troubled by it.

Regarding Mr. Lee's admitted friendship with Mr. Dotson, we must conclude based upon the record that this friendship was not used by Mr. Dotson to give Mr. Lee an unwarranted advantage in the promotion process. The Sparks City Charter § 9.060(1) mandates that Mr. Dotson make the promotion decision. The evidence showed that Mr. Dotson attempted to lessen any effect his friendship with Mr. Lee might have by involving his two deputy chiefs in the interviewing process, by assuring that he did not know the rankings of the five candidates, and by treating each of the five candidates essentially equally. It may be that Mr. Dotson's personal knowledge of Mr. Lee gathered through years of friendship may have given Mr. Dotson a subjective comfort with Mr. Lee's promotion, but the evidence before us also showed that objectively Mr. Lee was an experienced and knowledgeable applicant worthy of promotion independent of Mr. Dotson's friendship. In other words, while the design of the system mandated Mr. Dotson's participation, and while Mr. Dotson's participation had the potential to taint the promotional process because of his friendship with Mr. Lee, the evidence showed that Mr. Dotson interposed several types of constraints intended to make the promotion process as objective as possible, and we are satisfied that Mr. Lee's promotion was untainted by his friendship with Mr. Dotson. As one Commissioner aptly noted, Mr. Lee should not be punished because of his friendship with Mr. Dotson.

We can understand how questions arose among the unsuccessful applicants regarding Mr. Lee's promotion because of the appearance created by Mr. Lee's instantaneous receipt of 21 academic units just days before the closing of the application deadline and because of Mr. Lee's admitted friendship with Mr. Dotson. The problems "with TMCC's policies and the Sparks City Charter were not created by Mr. Dotson or Mr. Lee, and there is no evidence that either used their positions to create or grant an unwarranted advantage for Mr. Lee. We must conclude that neither Mr. Lee nor Mr. Dotson violated NRS 281.481 (2) regarding Mr. Dotson's promotion of Mr. Lee.

## **CONCLUSION**

Based upon the record, the Commission concludes that Mr. Dotson and Mr. Lee did not violate NRS 281.481(2) regarding Mr. Dotson's promotion of Mr. Lee. While we are seriously concerned with TMCC's apparent policy of allowing experience to substitute for academic achievement, we have no jurisdiction to render a ruling that invalidates Mr. Lee's academic record.

## **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: June 15, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ HELEN CHISOLM, Vice-Chairwoman