

Opinion No. 98-08

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of JAN JONES, Mayor, Las Vegas, Nevada

This Opinion is in response to a third-party request filed on February 26, 1998 with the Nevada Commission on Ethics (Commission) by Robert Rose concerning the conduct of Jan Jones, Mayor of Las Vegas. A public hearing was held on May 14, 1998 at which Mr. Rose and Ms. Jones both appeared and testified. Ms. Jones also presented the testimony of Larry Barton, City Manager for Las Vegas, and Ann Holland, Deputy City Manager for Las Vegas. At the conclusion of the hearing, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings and Fact and Opinion which follows.

FINDINGS OF FACT

1. On December 17 1997, Ms. Holland resigned her position as Senior Vice President for Operations of the Hotel and Tower at the Stratosphere in Las Vegas. Ms. Holland had been especially chosen by Richard Scheutz from the Stratosphere to be part of a "turnaround team" to address the operations of the then failing Stratosphere. Ms. Holland knew at the time of her hiring that her position would be temporary.
2. At the time of the events in this matter, Ms. Jones was engaged to Mr. Scheutz. Ms. Jones had met Ms. Holland through Mr. Scheutz and was aware of Ms. Holland's work at the Stratosphere. Ms. Jones described Ms. Holland as being part of an "amazing corporate culture" that effected positive changes for the Stratosphere.
3. Through a series of personnel decisions, Mr. Barton had created and filled three Deputy City Manager positions by January 1998. Mr. Barton was still unsatisfied with the performance and structure of his upper management and had been considering additional personnel moves. Coincidentally, Mr. Barton became aware of Mr. Holland's availability through a conversation with Ms. Jones at the same time that he was considering these personnel moves.
4. In January 1998, Ms. Holland was contemplating and weighing several job offers in private industry that would pay approximately the same as she had been receiving from the Stratosphere. Mr. Barton contacted Ms. Holland in the third week of January 1998 and spoke with her about the possibility of Ms. Holland coming to work for the City of Las Vegas in a high-level management position. Ms. Holland was aware that Mr. Barton would be calling because she had been earlier contacted by Ms. Jones who had expressed interest in Ms. Holland's coming to work for the city. Within the next ten days, Ms. Holland met with the Las Vegas City Council members and Mr. Barton.
5. Ms. Holland explained that there was urgency in her decision whether to work for the city because she had other outstanding job offers in private industry that were also awaiting her decision. Though the job with the city would pay considerably less than the jobs she was considering in private industry, Ms. Holland was interested in the city job because she wanted "to make an impact, not make money." She was also intrigued with the idea of working in a job outside the casino industry in which she had been working for most of her career.

6. Mr. Barton offered Ms. Holland a position as a Deputy City Manager at a salary of approximately \$100,000.00 per year. Mr. Barton reassigned one of the Deputy City Managers laterally to another position to deal with policy research and labor negotiations, and he then hired Ms. Holland into the then available Deputy City Manager position.

7. Mr. Barton had hired the three previous Deputy City Managers without interviewing other candidates or publicly advertising the positions. In each case, Mr. Barton's hiring decisions had been unanimously ratified by the City Council.

8. On February 9, 1998, the City Council unanimously ratified the hiring of Ms. Holland as a Deputy City Manager. At this vote, Ms. Jones did not disclose her relationship and personal knowledge of Ms. Holland, and Ms. Jones voted to approve the ratification of Ms. Holland's hiring.

9. The Las Vegas City Charter provided that the City Manager was responsible for the employment decisions regarding his employees, including his Deputies, and neither the mayor nor the city council are empowered to make employment decisions.

10. Both Mr. Barton and Ms. Jones indicated that the city had long sought to hire talented employees from the private sector to develop a strong "corporate culture" within the city. Both Mr. Barton and Ms. Jones were impressed with Ms. Holland's education, work experience, and accomplishments while at the Stratosphere.

ANALYSIS AND OPINION

Mr. Rose alleged that Ms. Jones NRS 281.481(2) and 281.501(2) and (3) by advocating on behalf of and voting to ratify the hiring of Ms. Holland. The substantial evidence adduced at hearing showed that Ms. Jones did not violate any provisions of the Ethics in Government Law.

The substantial evidence at hearing showed that Ms. Holland was a very capable person whose considerable accomplishments and attributes would likely make her an excellent Deputy City Manager. The question in this case, though, is not whether Ms. Holland was the appropriate person for the job, but whether the mechanics by which she was brought to the position were tainted. Though this was an extremely close case --"as close to the line as you can get" as one Commissioner noted --this Commission must conclude that the process used to hire Ms. Holland was not unethically tainted.

It is understandable why Mr. Rose might consider the process by which Ms. Holland came to be employed by the city to be "cronyism." After all, Ms. Holland was handpicked by Ms. Jones' then fiancé (later husband), and Ms. Jones had met Ms. Holland many times while she was at the Stratosphere to meet with Mr. Scheutz. Ms. Jones was unabashedly an advocate for Ms. Holland throughout the hiring process, and from Mr. Rose's vantage, it would be impossible to discern whether Ms. Jones' enthusiasm on Ms. Holland's behalf was because of Ms. Holland's merits or because of Ms. Holland's connections with Ms. Jones' fiancé.

Nonetheless, there is an equally compelling opposite view of events that, as the evidence showed, was the actual course of events. Ms. Jones explained that she desired that the city look for talented managers to hire from the private sector because she wanted to promote a "corporate culture" in City Hall. Ms. Jones was unapologetic

before the Commission in her endorsement of Ms. Holland's merits. Mr. Barton was also struck by Ms. Holland's merits. While Ms. Jones' introduction of Ms. Holland to Mr. Barton and Mr. Barton's subsequent hiring of Ms. Holland into a newly created Deputy City Manager post without interviewing or advertising for any other candidates could appear to be cronyistic, it was not, in fact. This Commission is convinced that however it appeared, Ms. Holland was actually promoted by Ms. Jones and hired by Mr. Barton because of Ms. Holland's merits and that the hiring occurred in such a seeming rush because Ms. Holland had several other pending lucrative job offers among which she needed to choose.

This Commission concludes that Ms. Jones did not use her position as Mayor to give Ms. Holland an unwarranted advantage or privilege in violation of NRS 281.481(2) because there is nothing unwarranted about seeking the best qualified candidates for an important high-level management position for the city that Ms. Jones served. Though the adage in politics is that appearances are reality, in the light of a careful factual examination as conducted by this Commission, that adage does not always hold true. The evidence showed that Ms. Jones was so forceful in her advocacy on behalf of Ms. Holland because Ms. Holland was a talented manager who would only be available for a short period of time. Thus, Ms. Jones' acts on behalf of Ms. Holland's hiring were not unwarranted and did not violate NRS 281.481(2).

Similarly, the evidence regarding Ms. Jones' relationship with Ms. Holland showed that the relationship was mostly through Ms. Holland's employment with Mr. Scheutz. The evidence did not show a significant personal relationship between Ms. Holland and Ms. Jones, nor did the evidence show that the relationship between Ms. Holland and Mr. Scheutz was a motivating, much less controlling, factor in Ms. Jones' advocacy of Ms. Holland's merits. Under these unique circumstances, we cannot conclude that Ms. Jones' was required to disclose her insubstantial relationship with Ms. Holland pursuant to NRS 281.501(3) when the matter of the ratification of Ms. Holland's employment came before the City Council in February 1998 because the nature of this relationship did not constitute a "commitment in [Ms. Jones'] private capacity to the interests of another." Since no disclosure was required under NRS 281.991(3), the higher threshold required for abstention under NRS 281.501(2) cannot be satisfied as a matter of law.

CONCLUSION

Ms. Jones did not violate NRS 281.481(2) or 281.501(2) or (3) in the advocacy on behalf of or voting to ratify the hiring of Ms. Holland in this matter.

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 30, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman