

Opinion No. 98-11

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF

JENNIFER GALENTINE and ROD CORBIT, Employees of the Nevada State Printing Division

This Opinion is in response to a third-party request filed on March 10, 1998 with the Nevada Commission on Ethics (Commission) by Steve Sweetland concerning the conduct of Jennifer Galentine and Rod Corbit, both employees of the Nevada State Printing Division. A confidential just and sufficient cause hearing was held on April 22, 1998, and a public hearing on the merits was held on November 13, 1998. Thirteen witnesses testified at the hearings and numerous documents were admitted into evidence. At its hearing on November 13, 1998, the Commission publicly deliberated the matter and rendered its decision. The Commission determined that no evidence had been presented showing that Mr. Corbit had committed any violation of the Ethics in Government Law, so Mr. Corbit was dismissed from this matter. The Commission now issues the Findings and Fact and Opinion which follows pertaining only to Ms. Galentine.

FINDINGS OF FACT

1. From January 1995 through November 1997, Mr. Sweetland was employed by the Nevada Department of Transportation (NDOT) at its sign shop in Reno, Nevada as a sign fabricator. Mr. Sweetland lived in Carson City and his family was based in Carson City.
2. At all times pertinent to this matter, Ms. Galentine was employed with the Nevada State Printing Division (SPD) as a Printing Management Analyst. Part of Ms. Galentine's duties was to interview, hire, and supervise employees for various administrative positions at the SPD.
3. Mr. Sweetland regularly commuted to his NDOT job with another employee of the NDOT sign shop named Paul Duke. Mr. Duke was married to Sherry Duke, who is Ms. Galentine's sister.
4. Mr. Sweetland wanted to move within the State system from his employment in Reno to employment in Carson City so that he could be closer to his family and home.
5. In September or October 1997, a shipping and receiving clerk position became open at the SPD in the shipping and receiving department. The direct supervisor who would make the recommendation for the hiring for this position was Mark Day, although the actual appointment would be made by the State Printer, Don Bailey, in conjunction with Ms. Galentine and Mr. Corbit. Mr. Duke told Mr. Sweetland of the opening, and Mr. Sweetland applied for the clerk position.
6. In the week of October 20, 1997, Ms. Galentine approached Mr. Day and told him that her husband was unemployed and that if Mr. Day would hire Mr. Sweetland, Ms. Galentine's husband would be hired by Mr. Duke or would stand a good chance of being hired to fill the vacancy that would be created in the NDOT sign shop by Mr. Sweetland's departure. A few hours after this conversation, Mr. Day called Lee-Ann Easton, a Personnel Officer with the Department of Administration, and expressed to Ms. Easton his concern that he felt he was being pressured into making a hiring decision by Ms. Galentine that was his decision to make. Mr. Day also expressed a concern that the appointment for the clerk position was being held up until Mr. Day agreed to recommend Mr. Sweetland for the position.
7. Mr. Sweetland interviewed for and was offered the clerk position, but he declined the offer because the position was unclassified and would require overtime. During the interview process, Ms. Galentine told Mr. Sweetland that if he were asked how he heard about the clerk position at the SPD he was to tell them that he did not hear about it from her but had, instead, heard about it from another state employee, meaning Mr. Duke, her brother-in-law.

8. On November 3, 1997, Mr. Sweetland was interviewed by Ms. Galentine and Mr. Corbit for an opening at the SPD for a storekeeper position.

9. Subsequent to this interview, Mr. and Mrs. Duke (Ms. Galentine's sister) spoke with Mr. Sweetland about his taking a position with the SPD while all three were riding together on one of their commutes from Reno to Carson City. Although the Dukes told Mr. Sweetland that the decision was ultimately his to make, the Dukes did recommend employment with the SPD. Mr. and Mrs. Duke were aware at this time that Mr. Galentine had been unemployed for a number of months because the Dukes and the Galentines socialize regularly.

10. On November 18, 1997, the SPD hired Mr. Sweetland for the storekeeper position at Ms. Galentine's recommendation.

11. In February 1998, Mr. Galentine was hired to fill Mr. Sweetland's vacant position at the NDOT sign shop. Ms. Galentine had no involvement in her husband's hiring. Mr. Duke did participate in the interview of Mr. Galentine.

12. Considerable and sharply conflicting evidence was presented by both Mr. Sweetland and Ms. Galentine as to whether Mr. Sweetland was a good and qualified employee while he was employed as a shopkeeper at SPD and whether Mr. Sweetland could or did seek to be reemployed in his former position with NDOT. This Commission renders no opinion as to the merits of either party's evidence or argument regarding this contentious point.

13. By the time of the just and sufficient cause hearing in this matter, Mr. Sweetland had secured a transfer to another position in a different department of State government.

ANALYSIS AND OPINION

Mr. Sweetland alleged that Ms. Galentine violated NRS 281.481(1), (2), and (9)^[1] by using her position with the SPD to hire Mr. Sweetland so that an opening would be created at the NDOT sign shop into which Ms. Galentine's husband could be hired. This Commission first concludes that as a matter of law, no evidence was presented that would sustain a finding that Ms. Galentine violated NRS 281.481 (1). On the other hand, this Commission does conclude that Ms. Galentine violated NRS 281.481(2) and (9), and this Commission's analysis follows.

The substantial evidence in this Commission's record showed that Ms. Galentine used her position as Mr. Day's superior to influence Mr. Day's recommendation to hire Mr. Sweetland. Ms. Galentine admitted that the conversation with Mr. Day occurred, and her representation regarding the conversation varied only in the coloration lent to the details of the conversation. Ms. Galentine explained that she told Mr. Day of her hopes regarding her husband's prospects at NDOT should Mr. Day hire Mr. Sweetland away from NDOT so that she would be "above board." We find this explanation unconvincing for two reasons. First, that was certainly not the way that the conversation was received by Mr. Day, since he was on the phone within hours to a Personnel Officer, Ms. Easton, questioning whether Ms. Galentine could pressure him into making a recommendation that was his to make. Mr. Day was quite clear that he felt that Ms. Galentine was "pushing" him to recommend Mr. Sweetland, and she had admitted to Mr. Day then and to this Commission at hearing that she confided in Mr. Day that her intent was to have her husband apply for Mr. Sweetland's NDOT position once Mr. Sweetland vacated it.

Second, Ms. Galentine's explanation is nonsensical. If her intent was to assure that no undue influence was exercised on her husband's behalf in the hiring of Mr. Sweetland, she would have said nothing to Mr. Day about her husband's prospects at gaining Mr. Sweetland's open NDOT position. In view of the circumstances, the timing, Ms. Galentine's reputation among her employees, her obvious and understandable desperation created by her husband's protracted unemployment, and her credibility and demeanor at hearing, we conclude that Ms. Galentine intended Mr. Day to receive precisely the message that Mr. Day did receive; namely, that she wanted Mr. Day to recommend Mr. Sweetland for the clerk position to create an opening at NDOT for which her husband would be qualified.

Ms. Galentine's coercion of Mr. Day evidenced her obvious intent to hire Mr. Sweetland away from NDOT. When Ms. Galentine herself recommended Mr. Sweetland for the storekeeper position, she completed her scheme. We can understand why Mr. Sweetland would suspect that something untoward had occurred based upon the

timing of events (Mr. Galentine had just been informed that he would not receive a position he had sought with the Department of Prisons), the parties involved (Ms. Galentine's brother-in-law would be interviewing Mr. Galentine for the NDOT position), and the eagerness shown by Ms. Galentine to hire Mr. Sweetland into both positions involved (one of which he was overqualified for and the other of which he may have been under qualified for). The evidence did not bear out all of Mr. Sweetland's suspicions, but we find his suspicions were reasonable based upon the evidence he was able to ascertain before hearing.

In using her authority over Mr. Day to attempt to coerce him into hiring Mr. Sweetland, and in ultimately hiring him herself, to create an opening at NDOT into which her husband could be placed, Ms. Galentine secured for herself and her husband an unwarranted privilege or advantage under NRS 281.481(2). The privilege or advantage created was the creation of an opening at NDOT for which her husband could compete (although there is a question as to how competitive his hiring was in light of Mr. Duke's participation in the interview and hiring process). This privilege or advantage was unwarranted because rather than allowing Mr. Sweetland's hiring process to be unaffected by her personal interest, Ms. Galentine assured that her personal interest was foremost in the process. We will never know whether Mr. Sweetland was the best candidate for the storekeeper position because Ms. Galentine so infected the hiring process with her own personal interest. NRS 281.481(2) was intended to prevent the overwhelming of an objective process by a personal animus.

This Commission also concludes that Ms. Galentine violated NRS 281.481(9) when she coerced Mr. Day into recommending Mr. Sweetland for the clerk position. NRS 281.481(9) is intended, in part, to prevent a superior from forcing her subordinate to do what the superior would be ethically prohibited from doing herself. Ms. Galentine and her household would clearly be benefited by Mr. Galentine's opportunity and hiring at NDOT, so her attempt to influence Mr. Day to hire Mr. Sweetland clearly violated NRS 281.481(9). This Commission concludes that Ms. Galentine's violations of NRS 281.481(2) and (9) were willful under NRS 281.551(l). Her coercive conversation with Mr. Day alone would qualify her misuse of her position as willful. More disconcerting, though, is that her personal interest in Mr. Sweetland's hiring was so consuming that she may well have hired Mr. Sweetland despite his lack of qualifications, thus exposing Mr. Sweetland to unnecessary anxiety, stress, and obvious discontent and consternation just to satisfy her selfish ends. Such a disturbing misuse of authority cannot be condoned. Therefore, we impose a civil penalty of \$200 upon Ms. Galentine pursuant to NRS 281.551(1).

CONCLUSION

Based upon the record, the Commission concludes that Ms. Galentine violated NRS 281.481(2) and (9). For this violation, the Commission imposes a civil penalty of \$200 against Ms. Galentine. Ms. Galentine shall pay her penalty by cash or by cashier's check or money order made payable to "State of Nevada, Office of the Treasurer," to be received by the Commission office no later than 5:00 p.m. P.S.T. on July 30, 1999. Failure to pay the penalty shall result in such legal action as is necessary to collect the penalty.

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, Chairman

[1] NRS 281.481(1), (2), and (9) provide as follows:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business

entity in which he has a significant pecuniary interest, or any other person.

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.