

## Opinion No. 98-14

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of DANNY LUNSFORD and DAVID STIX, Members, Fernley Town Council

This Opinion is in response to a third-party request filed on March 25, 1998 with the Nevada Commission on Ethics (Commission) by Don Parsons concerning the conduct of Danny Lunsford and David Stix (Mr. Stix, Jr.), both members of the Fernley Town Council. A just and sufficient cause hearing was held on April 22, 1998, and a hearing on the merits was held on July 24, 1998. Throughout these hearings, Mr. Lunsford and Mr. Stix were represented by Ron Banta, and Mr. Parsons represented himself. At its hearing on July 24, 1998, 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. In 1982, Lyon County applied with the federal Bureau of Land Management (BLM) for 600 acres of BLM-surplus land along the highway between Fernley and Yerington. At the time of this application, Fernley was not incorporated and was governed by Lyon County. The 600-acre parcel was approximately one and one-half miles outside of the limits of Fernley.
2. In 1984, the first election for a town board of Fernley was held, with the first board conducting business beginning in January 1985.
3. In 1987, the Fernley Town Board applied to assume the application for the 600-acre parcel from Lyon County. At this time, the Fernley Town Board was advised by the BLM that in order to take title to the 600-acre parcel, Fernley would need to fully develop the 600 acres over a five-year period.
4. Fernley's budgetary resources were and continue to be inadequate to develop the 600-acre parcel in accordance with the BLM's five-year requirement. The cost to run utilities out to the parcel was estimated at almost \$1 million. The town presently struggles to maintain its present parks which total only about 68 acres, and can only do so with some financial help from Lyon County. In fact, the town had turned down the donation of a park from a developer because the Town Board did not think that the town could support the maintenance of the park.
5. In late 1994, Rich Cable approached the Fernley Town Board with a plan to develop approximately 3,400 acres along the highway between Fernley and Yerington. The 600-acre parcel on which Fernley had made an application was surrounded by Mr. Cable's planned development. Mr. Cable indicated an interest in acquiring the 600-acre parcel.
6. The Fernley Town Board directed one of its members, Carl Steinberg, to meet and negotiate with Mr. Cable. Through these meetings, Mr. Steinberg and Mr. Cable reached the outline of an agreement whereby the town would withdraw its application for the 600 acres, would support before the BLM Mr. Cable's application for those 600 acres, and if Mr. Cable was awarded the 600 acres, Mr. Cable would build an 80 acre park which he would

donate to Fernley. The 80-acre park would be fully developed with baseball and soccer fields, restrooms, parking lots, lights, etc.

7. The issue of Mr. Cable's agreement to build the 80-acre park in return for the ability to develop the other 520 acres in the 600-acre parcel appeared numerous times before the Fernley Town Board. The issue has been controversial because some citizens and board members wanted the opportunity to develop the full 600 acres while other citizens and board members preferred the idea of being given a fully developed 80 acre park which the town would only have to maintain thereafter.

8. In 1996, Mr. Lunsford and Mr. Stix, Jr. were elected to serve on the Fernley Town Board.

9. Mr. Lunsford had not met Mr. Cable until after Mr. Lunsford began his service as a town board member. Mr. Lunsford and Mr. Cable met as a result of Mr. Cable's business before the town board since Mr. Cable was often before the town board because Mr. Cable was developing property in the Fernley area. Mr. Lunsford and Mr. Cable have only met outside the business of the town board a few times at which Mr. Lunsford would buy Mr. Cable a beer or Mr. Cable would buy Mr. Lunsford a beer. These few contacts are the only personal contacts between Mr. Lunsford and Mr. Cable.

10. Mr. Stix, Jr. had not met Mr. Cable until after Mr. Stix, Jr. began his service as a town board member. Mr. Stix, Jr.'s meetings with Mr. Cable have always been solely in the context of board business. Mr. Stix, Jr. and Mr. Cable have never socialized.

11. On March 4, 1998, the Fernley Town Board voted to approve an agreement with Mr. Cable that essentially memorialized the terms of the arrangement reached by Mr. Cable and Mr. Steinberg. A few weeks before this vote, Mr. Cable had mentioned to Mr. Stix, Jr. that Mr. Cable was getting ready to come before the town board to get some zoning changed on a parcel Mr. Cable was purchasing from Mr. Stix, Jr.'s father. Mr. Stix, Jr. was not made aware of any of the terms of the transaction between Mr. Cable and Mr. Stix, Sr. In fact, Mr. Stix, Jr. made a point of not discussing the matter with his father because Mr. Stix, Jr. felt that the less he knew about the transaction, the better he could continue to participate in matters relating to Mr. Cable.

12. When Mr. Stix, Jr. became aware that his father and Mr. Cable were working on a "real estate deal, Mr. Stix, Jr. consulted the town's attorney, Rebecca Harold, to discuss what effect Mr. Stix, Sr.'s pending deal with Mr. Cable might or ought to have upon Mr. Stix Jr.'s service as a board member. Ms. Harold advised Mr. Stix, Jr. that as long as he had no financial interest in the transaction, he could participate in and vote upon matters relating to Mr. Cable.

13. At the March 1998 meeting, Mr. Stix, Jr. disclosed that he was aware of a deal between Mr. Cable and Mr. Stix, Sr. when a matter regarding Mr. Cable came before the town board. After making the disclosure, Mr. Stix, Jr. realized that the matter about which he had made this disclosure was not, in fact, the matter related to his father's parcel. When the matter of his father's parcel came before the town board, Mr. Stix, Jr. abstained from participating in the matter and Mr. Stix, Jr. left the room while the matter was discussed and voted upon.

## **ANALYSIS AND OPINION**

Mr. Parsons claimed that Mr. Lunsford and Mr. Stix, Jr. gave Mr. Cable an unwarranted advantage in violation of NRS 281.481(2) because they supported the plan whereby Mr. Cable would get 520 acres of the 600-acre parcel in return for the development of a park on the remaining 80 acres of the 600-acre parcel. Mr. Parsons also claimed that Mr. Lunsford and Mr. Stix, Jr. should not have advocated for or voted upon the proposal that formalized the agreement between Fernley and Mr. Cable, thus violating NRS 281.501(2) and (3). This Commission finds that the substantial evidence in the record in this matter does not support Mr. Parsons' contentions.

The keystone to Mr. Parson's arguments regarding both Mr. Lunsford and Mr. Stix, Jr. was that they each had a relationship with Mr. Cable that underlay their support for Mr. Cable's proposal regarding the 600-acre parcel. In [Matter of Yvonne Atkinson Gates, Myrna Williams, and Lance Malone, NCOE Opinion Nos. 97-52, 97-53, 97-54, 97-59, and 97-66](#) (hereinafter the [Terminal D](#) opinion), this Commission set out a four factor analysis by which it will evaluate an interpersonal relationship to determine whether such a relationship might constitute a "commitment in a private capacity to the interest of others" under NRS 281.501(2)(c) and 281.501(3)(b). The four factors this Commission will consider are "(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." [Terminal D](#), at 13.

Regarding Mr. Lunsford, Mr. Parsons pointed to a portion of a transcript of a town board meeting in which Mr. Lunsford described Mr. Cable and two other developers as "friends." At hearing, the substance of Mr. Lunsford's relationship with Mr. Cable was examined extensively. Using the four [Terminal D](#) factors, we must conclude that Mr. Lunsford's relationship with Mr. Cable did not constitute a "commitment in a private capacity" to Mr. Cable's interests. First, Mr. Lunsford had only known Mr. Cable for a short period (approximately one year). Second, Mr. Lunsford knew Mr. Cable primarily through town board meetings. Third, the sole substance of the relationship between Mr. Lunsford and Mr. Cable was Mr. Cable's business before the town board. Fourth, essentially Mr. Lunsford only met Mr. Cable when Mr. Cable had a matter before the town board. The reality of the relationship, upon examination, does not bear the weight with which Mr. Parsons attempts to freight the word "friend" used (perhaps too flippantly) by Mr. Lunsford.

Mr. Parsons' argument regarding Mr. Stix, Jr.'s relationship was more complex, since the "commitment in a private capacity" Mr. Parsons discerned was the interrelationship between Mr. Stix, Jr. and his father and Mr. Stix, Sr.'s business relationship with Mr. Cable. In Opinion 86-6, this Commission has previously opined that a paternal relationship will constitute a "commitment in a private capacity to the interest of others" requiring both disclosure under NRS 281.501(3) and abstention under NRS 281.501(2). In this matter, though, the matter with which Mr. Parsons has expressed his concern is much more attenuated and removed. Mr. Stix, Jr. did disclose and abstain from voting in the actual matter involving his father's transaction with Mr. Cable. Mr. Stix, Jr. did not make a similar disclosure and abstention regarding Mr. Cable's proposal with the town board regarding the 600-acre parcel. Such a disclosure and abstention was not necessary under the circumstances of this matter because there was no evidence presented that the consummation of the deal between Mr. Stix, Sr. and Mr. Cable was contingent upon Mr. Stix, Jr.'s support for Mr. Cable's proposal regarding the 600-acre parcel. Absent such evidence, we will not assume or presume such a *quid pro quo*.

At hearing, Mr. Stix, Jr. stated that he intentionally avoided knowing about the details of the transaction between his father and Mr. Cable because he wanted to preserve his ability to vote upon other matters in which Mr. Cable was involved. In the [Terminal D](#) opinion, this Commission discussed a similar decision made by one of the county

commissioners in that matter, and we emphatically concluded that such a strategy of ignorance was ill advised, stating:

...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. William's 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.

[Terminal D](#), at 15-16. The same principal is applicable to Mr. Stix, Jr., and maybe more so because of the closeness inherent in doing business in a small town like Fernley. In this case, once Mr. Stix, Jr. became aware of the pending arrangement between his father and Mr. Cable and that the matter would be before Mr. Stix, Jr. as a town board member, Mr. Stix, Jr. should have sought out information from Mr. Stix, Sr. so that Mr. Stix, Jr. would be informed regarding the full nature and extent of his potential conflict of interest.

The substantial evidence in this matter showed that each of the two choices regarding Fernley's use of the 600-acre parcel were supported by compelling public policy arguments. This Commission is not the forum to resolve such issues of public policy. Rather, the record in this case showed that the public policy debate occurred in the proper forum, namely the Fernley Town Board. No evidence was presented to this Commission that the ultimate resolution of the matter in favor of Mr. Cable's proposal was in any way "unwarranted" so as to constitute a violation of NRS 281.481(2). The record showed that neither Mr. Lunsford nor Mr. Stix, Jr. had any motive to give an unwarranted advantage to Mr. Cable or that Mr. Cable, in fact, received such an advantage. In fact, the record showed that Mr. Cable was committing himself to the construction of a park costing almost \$1 million that he would, according to his proposal, donate to Fernley. The record established that Fernley would not be able to afford such a grand park on its own in the foreseeable future. Under the circumstances proven in this record, Mr. Lunsford and Mr. Stix, Jr. did not grant Mr. Cable an "unwarranted" advantage or privilege under NRS 281.481(2).

## **CONCLUSION**

Neither Mr. Lunsford nor Mr. Stix, Jr. violated NRS 281.481(2) in negotiating with or voting for Mr. Cable's proposal regarding the disposition of the 600-acre parcel at issue in this matter. Furthermore, neither Mr. Lunsford nor Mr. Stix, Jr. violated NRS 281.501(2) or (3) in advocating in or voting upon Mr. Cable's proposal when it came before the town board.

## **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