

## Opinion No. 98-24

### BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion concerning the conduct of  
JAN JONES, Mayor, Las Vegas; and  
ARNIE ADAMSEN, LARRY BROWN, MICHAEL J. McDONALD, and GARY REESE, Members, Las Vegas City  
Council**

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Steve Miller regarding Las Vegas Mayor Jan Jones and Las Vegas City Council members Arnie Adamsen, Larry Brown, Michael J. McDonald, and Gary Reese. Commissioner Wines abstained from participating throughout and voting in this matter. A just and sufficient hearing was held in closed session on July 23, 1998. At this hearing, Mr. Miller appeared and represented himself. Mr. Adamsen, Mr. Brown, Mr. McDonald, and Mr. Reese all appeared through Cathy Hansen of the City of Las Vegas. Ms. Jones appeared and was represented by Ann Morgan and Elizabeth Fielder of Schreck Morris. As a result of the testimony and evidence presented, the Commission determined that just and sufficient cause did exist to proceed further with the matter.

The hearing on the merits was bifurcated. A hearing on the merits was held regarding Mr. Reese and Ms. Jones on August 14, 1998. A hearing regarding Messrs. Adamsen, Brown, and McDonald was held on September 18, 1998 at which time the matter was dismissed against them.

At the hearing on the merits on August 14, 1998, the following witnesses testified: W. S. Boyd, Larry Woodrum, Mr. Adamsen, Mr. Brown, Mr. McDonald, Mr. Reese, Mr. George, Mr. Gordon, and Ms. Jones. Numerous exhibits and documents were accepted into the record. At this hearing, Ms. Jones was represented by Ann Morgan and Elizabeth Fielder of Schreck Morris, and Mr. Reese was represented by Morse and Mowbray and Harold Morse. The Commission immediately deliberated and announced its decision regarding the matter at the close of the August 14, 1998 hearing. The Commission now issues the Findings of Fact and Order which follow.

### FINDINGS OF FACT

1. Sometime prior to April 9, 1998, Paseo Partners LLC submitted an application for a special use permit with the City of Las Vegas to build a Nick's Fishmarket restaurant on the front one-half acre of a parcel located at the corner of Sahara and Paseo Del Prado. The special use permit was necessary because Paseo Partners intended the restaurant to operate as a "supper club," meaning, under the Las Vegas zoning laws, that the restaurant would only cater to a dinner clientele and would only operate after 5:00 p.m.

2. The half-acre site where Paseo Partners proposed to build the restaurant was in front of a multi-story building in which the primary tenant was BankWest. BankWest leased the building from Paseo Partners. At all times during the lease negotiations, BankWest was aware that Paseo Partners intended to build a restaurant on the front half-acre parcel. In the course of negotiations, BankWest was given the right to review Paseo Partners' plans and to approve the design, which approval could not be unreasonably denied.

3. William Boyd was one of four founders of BankWest, and Perry Whitt and Don Snyder are BankWest directors. All three were also Boyd Gaming Corporation executives. Ms. Jones and Messrs. Adamsen, Brown, McDonald

and Reese had all received campaign contributions from Mr. Boyd, Boyd Gaming, or other people and entities affiliated with Boyd Gaming. The president of BankWest was Larry Woodrum.

4. On April 9, 1998, the original plans for the Nick's Fishmarket restaurant were rejected by the Las Vegas Planning Commission. Paseo Partners appealed the denial to the Las Vegas City Council. The main party objecting to the Nick's Fishmarket project was BankWest through its attorneys. The concerns expressed by BankWest at the Planning Commission meeting were that the theme and design were incompatible with the bank's building, that the restaurant would block the visibility from Sahara of one of the bank's entrances, that the restaurant would supplant existing landscaping, that there was no "turnaround" for delivery trucks, that the restaurant might cause traffic problems by blocking the view of drivers leaving the parking lot onto Sahara, and that the bank would share parking with restaurant patrons at about 5:00 p.m.

5. On April 11, 1998, Mr. Woodrum visited Mr. Reese at Mr. Reese's barbershop for a haircut. Mr. Woodrum had been Mr. Reese's patron since 1963. Both Mr. Reese and Mr. Woodrum described themselves as friends. Mr. Woodrum discussed his concerns regarding the Nick's Fishmarket project with Mr. Reese. In particular, Mr. Woodrum mentioned two concerns: (1) that the construction of the restaurant would disrupt the operations of BankWest, and (2) that deliveries to the restaurant would block BankWest's drive-through facilities and access to parking.

6. Mr. Reese recalled that either before the May 11th or the May 26th city council meetings, Mr. Woodrum "stuck his head in the door" of Mr. Reese's barbershop just to tell Mr. Reese, "Gary, we'll still be friends no matter how you vote on this project." Mr. Reese also iterated at hearing several times that Mr. Woodrum would never have told him that he was "dead set" against the Nick's Fishmarket project because, according to Mr. Reese, their friendship was such that Mr. Woodrum "would never put me [Mr. Reese] in that position," meaning that Mr. Woodrum would never put Mr. Reese in the position of having to choose between his friendship with Mr. Woodrum and his vote upon the Nick's Fishmarket project.

7. On May 6, 1998, Marc Gordon of Paseo Partners spoke with Ms. Jones about the Nick's Fishmarket project. It was Mr. Gordon's impression as a result of this conversation that Ms. Jones had some concerns with the project as it was then proposed, but that if those problems could be addressed she would likely support the project.

8. On May 11, 1998, the Las Vegas City Council reviewed Paseo Partners' appeal. Ms. Jones was not present. At the beginning of the hearing regarding Paseo Partners' appeal, Mr. Reese made the following disclosure:

Mayor Pro Tem, if I might just before we get started here. I want to, for the record, I have talked to my attorney, I have a close friend at the bank, Bank West. I have my personal account, my business account, at this bank. I feel like that anybody can have their account wherever they so choose. I feel like that I can vote on this, I can participate in this with a clear conscience. I don't think there'll be any conflict of interest. I just wanted it on the record that I have this tie with Bank West and I will be participating.

After Mr. Reese's disclosure, Paseo Partners made a full presentation of its application and project. Between the April 9, 1998 Planning Commission meeting and the May 11, 1998 City Council meeting, Paseo Partners had made substantial changes to its project to address concerns raised by BankWest and the Planning Commission,

and it was this improved version of the project that was presented on May 11' 1998. BankWest, again appearing through its attorneys, opposed the project on essentially the same grounds as it had presented to the Planning Commission. Paseo Partner's presentation highlighted that it had changed its project to address many of the concerns raised by BankWest. The City Council decided to continue the matter to the next meeting so that several concerns could be addressed. Specifically, the City Council asked Paseo Partners to meet with BankWest to discuss and negotiate regarding the bank's concerns.

9. On May 22, 1998, TES, Ltd. closed the purchase of a parcel of property through a series of transactions. Ms. Jones' husband, Richard Schuetz, is a partner in TES. Trusts controlled by Messrs. Boyd and Whitt were among the sellers of the parcel. As a result of the transaction, TES owed the owners of the property, including the trusts controlled by Messrs. Boyd and Whitt, approximately \$3,610,000.00.

10. Also on May 22, 1998, Mr. Boyd called Ms. Jones in response to several messages she had left with his office. At hearing, Mr. Boyd testified regarding the conversation as follows:

The mayor said, "Bill, I'd like to come in and see you; talk about my campaign."

I said, "Fine. I'll be back in Las Vegas on Friday. We will talk – on Monday" -- pardon me -- "on Monday," and that we would talk then.

I then said, "I'd like to mention the restaurant that's proposed to be built in front of BankWest."

And the mayor immediately said, "No," she said, "that's not good for the community and I'm opposed to it."

We said good-bye. That was the end of the conversation.

According to the hotel records of Mr. Boyd's telephone calls that day, the telephone call with Ms. Jones lasted 24 seconds.

11. On May 22, 1998, Mr. Boyd was unaware that Mr. Schuetz was one of the three investors in TES, Ltd. Mr. Boyd did not become aware of Mr. Schuetz' involvement in TES, Ltd. until a newspaper article appeared after the May 26, 1998 meeting of the Las Vegas City Council.

12. Between May 11 and May 26, 1998, representatives of Paseo Partners and BankWest met to discuss BankWest's concerns. In this interim, Paseo Partners also made substantial changes to its project, and, as a result of these changes, the Las Vegas city staff had changed its recommendation from rejection to approval. Representatives of Paseo Partners and BankWest had also heavily lobbied city council members regarding their positions regarding the Nick's Fishmarket project. In fact, BankWest had hired a lobbyist specifically to represent BankWest's position to the city council members.

13. On May 26, 1998, the Las Vegas City Council heard again Paseo Partners' appeal. On the morning of May 26, 1998, Mr. Reese met with Steve George, a Deputy City Attorney, and discussed with Mr. George his relationship with Mr. Woodrum. Mr. Reese told Mr. George that he and Mr. Woodrum had been friends for 30 years. Mr. Reese also explained that he maintained his personal and business bank accounts with BankWest and that he had a personal loan with BankWest for approximately \$12,000. Through Mr. George's questioning of Mr. Reese, Mr. Reese also explained that he had never met Mr. Woodrum for lunch or dinner or at a private social function,

but that since Mr. Reese' election, Mr. Reese and Mr. Woodrum had met at several public functions. Mr. Reese did not disclose to Mr. George that Mr. Woodrum had patronized Mr. Reese's barbershop a few weeks earlier and had discussed with Mr. Reese specific objections Mr. Woodrum had with the Nick's Fishmarket project. Mr. Reese also did not tell Mr. George about Mr. Woodrum's subsequent visit in which he informed Mr. Reese that they would still be friends regardless of Mr. Reese's vote on the Nick's Fishmarket project. Based upon his discussion with Mr. George, Mr. Reese made the following disclosure before participating in the discussion and vote on the Paseo Partners' matter:

Mayor Pro –Mayor Pro Tem. Mayor, if I might please, I would like to disclose that I am a friend of the president of the bank. My savings account, my checking account is there. I feel that I can look at this in an open manner. I don't feel like it would be any type of a conflict. Steve, I have talked to our City Attorney about this.

14. The transcript of the May 26, 1998 meeting of the Las Vegas City Council showed pointed opposition to the Paseo Partners' project by Ms. Jones and Mr. Reese. The transcript showed overt hostility between Ms. Jones and Mr. Gordon on several occasions. Ms. Jones several times stated that the issue was one of land use and not of BankWest's opposition. Curiously, though, the only opposition to speak at the hearing was BankWest, through its counsel. Additionally, the only points raised against the project were identical to points of opposition raised by BankWest throughout the process. In particular, much of the discussion at the hearing focused upon a false assumption that delivery trucks would be backing up and maneuvering in a tight space, whereas the new design proffered by Paseo Partners had addressed this issue and had provided a design that would not require or permit the backing or awkward maneuvering of delivery trucks. While Paseo Partners' presentation was frequently interrupted with questions and comments, no questions or comments interrupted Mr. Lionel during his presentation of BankWest's objections to the project. Furthermore, local residents who were opposed to the project at the Planning Commission testified at the May 26, 1998 hearing that they were no longer opposed to the project based upon the changes Paseo Partners had made to the project. Even though Ms. Jones stated that BankWest's objections were not to be considered, in her final soliloquy regarding the matter, she expressed as the reasons for her opposition the very concerns BankWest had articulated, including the concerns that the restaurant would effect BankWest's visibility on Sahara and that trucks would need to maneuver to make their deliveries.

15. At the May 26, 1998 meeting the Las Vegas City Council denied Paseo Partners' appeal. Ms. Jones made the motion to deny the appeal. Ms. Jones and Mr. Reese voted against Paseo Partners' appeal. None of the city council members disclosed that they had received campaign contributions from Mr. Boyd or his affiliated entities and people. Ms. Jones did not disclose that her husband had an interest in TES, Ltd. which, by this time, owed \$3,610,000.00 to trusts administered by Mr. Boyd and Mr. Whitt.

16. On May 28, 1998, Ms. Jones filed an amended Statement of Financial Disclosure with the Commission which listed the loan to TES, Ltd. from trusts administered by Mr. Boyd, Mr. Whitt, and others. Testimony by Ms. Jones and Mr. Schuetz showed that Ms. Jones intentionally did not know about Mr. Schuetz' interest in TES, Ltd. because Ms. Jones and Mr. Schuetz had executed a prenuptial agreement and neither felt it was their place to know or be involved in the others financial transactions. Ms. Jones testified that on May 26, 1998, when she cast her vote on Paseo Partners' appeal, she did not know about Mr. Schuetz' interest in TES, Ltd. or that TES, Ltd. owed

\$3,610,000.00 to trusts administered by Mr. Boyd, Mr. Whitt, and others.

## **ANALYSIS AND OPINION**

The Commission has jurisdiction over this matter pursuant to NRS 281.465(1)(a) and 281.511(2)(b) because Ms. Jones and Mr. Reese are public officers as defined in NRS 281.4365. Though the ethical questions regarding Ms. Jones and Mr. Reese are the same –did either violate NRS 281.481(2) or 281.501(2) or (3) as a result of her or his participation before and vote at the Las Vegas City Council's meetings regarding the Paseo Partners' appeal –the factual circumstances and analyses regarding each is very different, so this Commission will analyze the questions regarding the two city council members separately.

### **Analysis Regarding Ms. Jones**

The analysis regarding Ms. Jones turns on the resolution of two factual questions: (1) Did Ms. Jones know that her husband owed \$3,610,000.00 to trusts administered by two of BankWest's principles at the time she participated in and cast her vote regarding Paseo Partners' appeal on May 26, 1998? , and (2) Did Ms. Jones' conversation with Mr. Boyd on May 22, 1998 constitute a quid pro quo such that her vote on May 26, 1998 was guided by her commitment in her private capacity to Mr. Boyd, to BankWest, and to her gubernatorial campaign? This Commission concludes that the answers to both of these questions are in the negative, and, therefore, Ms. Jones did not violate NRS 281.481(2) or 281.501(2) or (3).

Regarding the question of Ms. Jones' knowledge of Mr. Schuetz' interest in TES, Ltd., including knowledge of TES, Ltd.'s debt to trusts administered by Mr. Boyd, Mr. Whitt, and others, the evidence showed that Ms. Jones' and Mr. Schuetz' lives were both in turmoil during the critical time period involved. Ms. Jones was undergoing cancer treatment while, at the same time, Mr. Schuetz' father unexpectedly died. By their descriptions of this time, it was obvious that they spent little time together through this period, and no time together talking about Mr. Schuetz' financial dealings. Based on the evidence before this Commission, we conclude that Ms. Jones was unaware of Mr. Schuetz' interest in TES, Ltd. and that TES, Ltd. owed a large amount of money to trusts administered by Mr. Boyd, Mr. Whitt, and others.

Thus, when Ms. Jones spoke with Mr. Boyd on May 22, 1998, she did not know that her husband owed millions of dollars to Mr. Boyd, Mr. Whitt, and others. Similarly, when Ms. Jones participated in and voted upon the Paseo Partners' matter on May 26, 1998, she did not know that her husband owed BankWest principles millions of dollars in their private capacities. Thus, Ms. Jones did not and could not have violated NRS 281.481(2) or 281.501(2) or (3) because she was ignorant of her husband's interest in TES, Ltd.

We must caution, though, that deliberate ignorance of a readily knowable fact is not an excuse for violation of the Ethics in Government Law. As this Commission stated in Matter of Yvonne Atkinson Gates, Lance Malone, and Myrna Williams, NCOE [Opinion Nos. 97-52, 97-53, 97-54, 97-59, and 97-66](#), at page 16: "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." A prenuptial agreement is not an excuse for a public official like Ms. Jones not to know her husband's affairs, even where both parties are careful to keep their financial affairs separate and distinct. This Commission grants that Ms. Jones' and Mr. Schuetz' personal lives were understandably unsettled at the time of the closing of the TES, Ltd. transaction and that communications between Ms. Jones and Mr. Schuetz were likely focused on things other than Mr. Schuetz' real

estate dealings. Nonetheless, this Commission advises Ms. Jones to develop some method by which she can be apprised of Mr. Schuetz' financial dealings so that she can assess and evaluate any potential conflicts that may arise between his personal dealings and her public duties.

Regarding Ms. Jones' second factual question, both Ms. Jones and Mr. Boyd agree that they conversed briefly on May 22, 1998, the Friday before the Tuesday on which Ms. Jones voted against the Paseo Partners' appeal. Both Ms. Jones and Mr. Boyd admit that they first discussed her solicitation of a political contribution from Mr. Boyd and that immediately thereafter they discussed his opposition to the Nick's Fishmarket project, with Ms. Jones confirming to Mr. Boyd that she too was opposed to the project. The conversation took 24 seconds. At the hearing on May 26, 1998, Ms. Jones vehemently asserted opposition to the Paseo Partners' project on grounds substantially identical to the grounds espoused by Mr. Boyd and BankWest.

Lacking in this conversation, though, was any evidence of a quid pro quo between Mr. Boyd and Ms. Jones. The evidence showed that Ms. Jones' opposition to the Paseo Partners' appeal preceded and was not resultant of her conversation with Mr. Boyd. Nonetheless, the timing of the call was careless in light of the surrounding circumstances and context, and this Commission can understand why the public was outraged and suspicious when this conversation was publicly revealed. Especially troubling was the substantial similarity between Ms. Jones' and BankWest's opposition to the Nick's Fishmarket project and the vehemence with which she pursued her opposition. Ms. Jones, through her own actions, created circumstances that could fuel a suspicion that something improper had occurred in her relations with Mr. Boyd. As we stated in [Matter of David A. Wood, NCOE Opinion No. 95-51](#), at page 9, though, our analysis under NRS 281.481(2) "requires proof of an improper correlation between the benefits conferred by [Mr. Boyd] upon [Ms. Jones] and the subsequent benefit [she] conferred on [him]." {Emphasis in original.} Because such proof was lacking in our record, this Commission must conclude that Ms. Jones did not violate NRS 281.481(2) or 281.501(2) or {3} regarding her conversation with Mr. Boyd and subsequent participation in and vote upon the Paseo Partners' appeal.

### **Analysis Regarding Mr. Reese**

Let it first be said that Mr. Reese acted responsibly in a good faith attempt to comply with the Ethics in Government Law. Mr. Reese spotted that the Paseo Partners appeal involved the opposition of an entity to which he had numerous personal connections, namely that he maintained his accounts with the bank, he owed the bank a substantial amount of money, and that he was a long-time friend of the bank's president. Mr. Reese discussed these personal interests with his public legal counsel. Mr. Reese acted in conformance with the advice he received from his public legal counsel by publicly disclosing his personal connections with the bank. This Commission commends Mr. Reese for his conscientious attention to his ethical obligations.

As the hearing in this matter progressed, this Commission became privy to a fuller understanding of the germane facts than Mr. Reese could or did impart to his legal counsel. Although this matter presented a very close case, based upon the full record developed at our hearing, this Commission concludes that Mr. Reese should have abstained from participating in the Paseo Partners' appeal pursuant to NRS 281.501(2).

In *Matter of Yvonne Atkinson Gates, Lance Malone, and Myrna Williams*, this Commission set out four factors it would use to weigh whether a particular personal relationship would trigger a disclosure obligation under NRS 281.501(3) or abstention under NRS 281.501(2). This Commission stated the four factors as follows:

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.

Applying these four factors to Mr. Reese's relationship with Mr. Woodrum shows that the independence of judgment of a reasonable man in Mr. Reese's circumstances would be materially affected. First, the length of Mr. Reese's relationship with Mr. Woodrum is significant. They have known each other since 1963. Second, the context of the relationship showed that this relationship was predominantly a business relationship. Mr. Reese is Mr. Woodrum's barber. Generally, such a casual business relationship would not be significant, but the evidence in this case showed otherwise.

Third, the substance of the relationship showed that the relationship was more than just a barber/patron relationship. Most telling was Mr. Reese's own description of the relationship. On May 11, 1998, he described Mr. Woodrum as a "close friend" and on May 26, 1998, he described Mr. Woodrum as a "friend." Likewise, Mr. Woodrum testified that he considered Mr. Reese a "friend." The depth of the friendship was most evident in the pieces of their conversations with which we were presented at hearing. Mr. Woodrum felt comfortable enough with Mr. Reese to discuss with Mr. Reese specific objections Mr. Woodrum had with the Nick's Fishmarket project. In particular, Mr. Woodrum told Mr. Reese that he, Mr. Woodrum, was concerned with the access to the site by delivery trucks. Mr. Reese gave Mr. Woodrum's concerns so much credence that he, Mr. Reese, drove his personal truck to the BankWest site and physically drove his truck to verify Mr. Woodrum's criticisms of the arrangements made by Paseo Partners for the delivery trucks. Strong evidence that Mr. Reese's and Mr. Woodrum's relationship was personal and more than just the relationship of a businessman to his long-standing customer was Mr. Reese's testimony that Mr. Woodrum made a special visit to the barbershop before the May 26, 1998 hearing and vote just to tell Mr. Reese, "Gary, we'll still be friends no matter how you vote on this project." That gesture by Mr. Woodrum combined with Mr. Reese's repeated insistence at hearing that Mr. Woodrum would "never put me in that position" showed that both Mr. Reese and Mr. Woodrum were concerned about the intersection of their personal friendship and Mr. Reese's public duty regarding a question close to Mr. Woodrum's business interests. A personal relationship valuable enough to cause both parties to be so concerned with the effect Mr. Reese's vote would have upon the personal relationship goes well beyond a mere casual barber/patron relationship. Based upon the substantial evidence in the record before this Commission, we find this factor to be significant.

Fourth, the frequency of the relationship was that Mr. Reese and Mr. Woodrum would see each other at least eight times per year and had done so every year for 35 years. Additionally, since Mr. Reese's election as a city councilman, Mr. Reese and Mr. Woodrum saw each other occasionally at public events. This factor does not weigh heavily because the context of the visits were always business or public.

NRS 281.421, which we have called the "guiding light" for our judgments (See Matter of Yvonne Atkinson Gates, NCOE Opinion 97-32, 97-54, and 97-66, at 21; Matter of Bob No/en, NCOE Opinion 96-39, at 9), provides at subsection 1(b) that "[a] public officer or employee must commit himself to avoid conflicts between his private

interests and those of the general public whom he serves." NRS 281.421(2)(b) provides that in order "[t]o enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines [the Ethics in Government Law] are required to show the appropriate separation between the roles of persons who are both public servants and private citizens."

In the balance, therefore, this Commission concludes that a reasonable person in Mr. Reese's circumstances would have his independence of judgment materially affected by the relationship. The materiality is proven by the concern shown by both Mr. Reese and Mr. Woodrum with the nexus between their personal relationship and the effect Mr. Reese's participation in and vote upon the Paseo Partners' appeal would have upon Mr. Woodrum's bank. This public/personal nexus is the very heart of the Ethics in Government Law, as NRS 281.421 shows. In an extremely close matter such as this one, this Commission must opt for an interpretation and application of the Ethics in Government Law that will best effectuate the salutary public policy undergirding the law. Particularly in a case where the nexus between Mr. Reese's private friendship and public duty prompted positive actions by Mr. Reese --who drove to the BankWest site specifically to test for himself the specific concerns expressed to him by Mr. Woodrum -- and by Mr. Woodrum -- who made a special trip to the barbershop just to tell Mr. Reese that their friendship was not threatened by Mr. Reese's public actions regarding the Nick's Fishmarket project -- we must find that Mr. Reese and a reasonable person in his circumstances did and would have the independence of judgment affected by a relationship as strong as that between Mr. Reese and Mr. Woodrum and, thus, that NRS 281.501(2) was implicated.

At hearing Mr. Reese argued that if he was found to have violated NRS 281.501(2) other public officials would not make disclosures in the future and would, instead, seek to conceal from their legal counsels and the public interests that should be disclosed. This argument is misguided. The disclosure and abstention provisions of the Ethics in Government Law fundamentally exist for the public, so that the people can have confidence in the integrity and fairness of their public officials. The Ethics in Government Law is not intended to be a set of mechanical rules that will provide excuses for acts that would, if discovered, cause the public to distrust its public officials. Instead, the Ethics in Government Law is intended to provide guidelines and principles to inform the judgment of public officials whenever there is a potential nexus between their private lives and their public duties. See NRS 281.421. Any public official who would fail to disclose his or her personal interests under NRS 281.501(3) because such a disclosure might attract the scrutiny of the public or this Commission would not only violate the Ethics in Government Law, but worse yet, would betray, violate, and be unworthy of the trust of the public that he or she serves.

As a final matter, Mr. Reese raised at hearing that BankWest was not a party to the Paseo Partners' appeal because the only party was Paseo Partners itself. We think this distinction is too fine and technical and is belied by what really happened throughout the course of the Paseo Partners' application. For all intents, by May 26, 1998, BankWest was the only opposition to the Nick's Fishmarket project. The concerns raised by Ms. Jones and Mr. Reese to the project were mere echoes of concerns that had been repeatedly and solely raised by BankWest throughout the project. Furthermore, BankWest would be the only real party effected by the building of the Nick's Fishmarket project. So when the substance, rather than the form, is examined, BankWest was a party, in fact the only party, opposed to Paseo Partners' appeal.

This opinion is not intended to intimate and should not be read to mean that a public official must abstain from participating in every matter in which he knows somebody who is opposed to a matter before him or her. Nevada has intentionally chosen to maintain the institution of citizen leaders, and this Commission has always



acknowledged that such citizen leaders will necessarily have myriad personal ties and relationships with constituents. The strength of a citizen leader is his or her accessibility to the people he or she serves. Only a few of a public official's private relationships and interests rise to the level of materiality necessary to require abstention from participation and voting under NRS 281.501(2), but for those few, abstention is a necessity to maintain the public's trust in the integrity of its public officials.

Mr. Reese should be commended for recognizing, acknowledging, and seeking legal counsel regarding his personal relationship with Mr. Woodrum and BankWest. Mr. George and the Las Vegas City Attorney's Office should be commended for treating Mr. Reese's ethical questions professionally and with due consideration and deliberation. In fact, if all public attorneys advised their clients with the same earnestness and methodology as the Las Vegas City Attorney's Office, the public would be better served. As the testimony of Mr. George showed, when a public attorney asks his client both the objective, statutory-based questions and the additional subjective questions, good and proper voting behavior is the result. Mr. George related that at least twice, his subjective questions about whether a public official felt he or she could be totally objective have resulted in two abstentions where the public official could legally have participated but did not for reasons of fairness to the process. Despite Mr. George's best efforts, though, he was not told all the information that was eventually presented at this Commission's hearing, and, thus, his advice varied from this Commission's analysis.

Thus, we conclude that Mr. Reese did not violate NRS 281.501(3) because he did disclose on May 11 and May 26, 1998 his relationship with Mr. Woodrum and BankWest. We conclude that Mr. Reese should have abstained from participating in or voting upon the Paseo Partners' appeal because of his relationship with Mr. Woodrum. Finally, we conclude that Mr. Reese did not violate NRS 281.481(2) because his actions did not result in the granting of an unwarranted privilege or advantage to Mr. Woodrum and BankWest. Mr. Reese acted with good faith. This opinion is intended solely to provide this Commission's analysis regarding the important questions raised in this matter.

## **CONCLUSION**

Based upon the substantial evidence in the record, the Commission concludes that Ms. Jones did not violate NRS 281.481(2) or 281.501(2) or (3) as a result of her involvement in, participation in, or vote upon the Paseo Partners' appeal. Mr. Reese did not violate NRS 281.481(2) or 281.501(3), but he should have abstained from participating in or voting upon the Paseo Partners' appeal pursuant to NRS 281.501(2) because of his relationship with Mr. Woodrum.

## **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: April 19, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman