

Opinion No. 98-28

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of ROD COUNTRYMAN, Inspector General, Nevada Department of Prisons; and PAMELA MIDDLETON, Public Employee, Nevada Department of Prisons

This opinion is in response to third party opinion request filed with the Nevada Commission on Ethics (Commission) by Michael Carmazzi concerning the conduct of Inspector General Rod Countryman and Pamela Middleton. An evidentiary hearing was held by the Commission on June 10, 1999, in Reno, Nevada at which Mr. Carmazzi and Mr. Countryman presented evidence. Ms. Middleton did not present any evidence. Jeanne Greene, Keith Swearingen, Carla Padgett, Jack Gentry, Wally Voskuil, Kathy McCormick and Taco Prims also testified. Mr. Carmazzi was represented by Hal Taylor. Mr. Countryman was represented by Deputy Attorney General Keith Marcher. Ms. Middleton, after having been properly noticed, did not appear at the hearing. However, she was represented by her attorneys, James Boles and Jeff Dickerson. Based on the testimony and evidence presented at the hearing, the Commission now issues the Findings of Fact, Conclusions and Opinion which follow.

FINDINGS OF FACT

1. At all times pertinent to this matter, Rod Countryman was Inspector General for the Nevada Department of Prisons (NDOP). When Mr. Carmazzi filed this opinion request, Ms. Middleton was also employed by the NDOP. Between the filing of this opinion request and the hearing in this matter, Ms. Middleton was terminated by the NDOP. Ms. Middleton was appealing her termination from the NDOP to the State of Nevada Department of Personnel (State DOP).
2. Mr. Countryman and Ms. Middleton were co-workers and personal friends when they both worked at the NDOP.
3. Mr. Countryman encouraged Ms. Middleton and other NDOP employees to apply for criminal investigator openings that were becoming available at the NDOP.
4. Ms. Middleton submitted applications for both the Criminal Investigator I (CI-I) and the Criminal Investigator III (CI-III) positions. The CI-III position required more education, skills and training than the CI-I position.
5. Because of his specialized knowledge of the skills required for these positions, Mr. Countryman was asked to assist the State DOP in reviewing the applications submitted for the CI-I and the CI-III investigator positions.
6. Mr. Countryman assisted Carla Padgett from the NDOP in evaluating the CI-I application. He also assisted Kathy McCormick from the State DOP in evaluating the CI-III applications. At the conclusion of the interviewing process, Mr. Countryman was to make hiring recommendations to Mr. Bayer, Director of the NDOP. Ultimately, however, Director Bayer had the final hiring authority for any position within the NDOP.
7. It was Mr. Countryman's understanding that if an applicant qualified for a CI-III position, they would automatically

qualify for the CI-I position. Mr. Countryman also knew that if an individual wanted to be considered for both positions, they had to submit a separate application for each position.

8. Ms. Middleton submitted an application for the CI-I position and a separate application for the CI-III position.

9. Keith Swearingen retired from the NDOP on January 9, 1998. Prior to retiring, Mr. Swearingen was aware that the State DOP had some issues regarding the inconsistencies contained in Ms. Middleton's applications. Mr. Swearingen was asked by the State DOP for help in clarifying the inconsistencies. As such, he approached Mr. Countryman and asked him to review Ms. Middleton's application for the CI-III position. Mr. Swearingen believes that Mr. Countryman told him that Ms. Middleton qualified for the CI-I position but not the CI-III position.

10. On February 25, 1998, Jeanne Greene, the acting director for the State DOP, sent Ms. Middleton a letter asking her to clarify the different information contained in her CI-I application and her computer network technician application. Mr. Countryman testified that Ms. Middleton showed him the letter and that he read the portions that Ms. Middleton had highlighted. Based on his reading of the highlighted portions, he sent a response to Ms. Greene. This letter to Ms. Greene stated that he felt Ms. Middleton would make an excellent investigator.

11. Jeanne Greene has been with the State DOP for approximately 20 years. She met with Wally Voskuil and Mr. Countryman on March 25, 1998 regarding the inconsistencies contained in Ms. Middleton's applications. During this meeting, Ms. Greene testified that she told Mr. Countryman that Ms. Middleton was not eligible for the CI-I position. She testified that Mr. Countryman then told her that he was still going to allow Ms. Middleton to continue with the interview process for the CI-I position. Ms. Greene testified that Mr. Countryman could continue to interview Ms. Middleton but that he could not hire or appoint her to the CI-I position. However, Ms. Greene testified that she has never encountered a situation whereby someone was allowed to continue with the interview process once they had been removed from the eligible candidate list.

12. Ms. Greene testified that Ms. Middleton appeared on the CI-I eligibility list prepared by the State DOP on February 2, 1998 but that, due to the application inconsistencies, her name was not included on subsequent eligible candidate lists. These eligibility lists are good for approximately 30 days.

13. After the meeting with Mr. Countryman, Ms. Greene testified that she immediately went to Carla Padgett's office and told her to remove Ms. Middleton's name from the CI-I eligible candidate list. The next CI-I eligibility list prepared after her March 25, 1998, meeting with Mr. Countryman was released on April 4, 1998. Ms. Greene testified that Ms. Middleton's name was not on it as a candidate for the CI-I position.

14. Ms. Greene testified that she personally reviewed Ms. Middleton's applications for the CI-I position and the computer network technician and that she was concerned about the inconsistencies contained in the two applications. As a matter of fact, Ms. Greene made the determination that Ms. Middleton had been untruthful on her applications.

15. The inconsistencies contained in the applications is the reason Ms. Greene had Ms. Middleton's name removed from the list of candidates eligible for the CI-I position.

16. Carla Padgett works for the NDOP. She testified that she obtained the applications for the CI-I position from the State DOP and that she and Mr. Countryman reviewed the applications. She testified that she and Mr.

Countryman reviewed all the applications on the same day and that she randomly divided the applications into two piles and gave one set to Mr. Countryman and one set to herself. She knows that Mr. Countryman reviewed Ms. Middleton's application because his initials are on it.

17. Once the CI-I applications were processed by Ms. Padgett, they were sent back to the State DOP and those making the first cut were scheduled to take a written exam. If the candidate passed the written exam, they then took a physical test. If the candidate passed the physical test, they would be scheduled for oral interviews.

18. Ms. Padgett testified that she believed Mr. Countryman would be the appointing authority for the CI-I position although Director Bayer would have the ultimate say.

19. Ms. Padgett recalls Jeanne Greene telling her to remove Ms. Middleton's name from the eligibility list for the CI-I position.

20. Wally Voskuil testified that he attended the March 25, 1998 meeting with Ms. Greene and Mr. Countryman. He testified that this meeting stemmed from the inconsistencies contained in Ms. Middleton's CI-I application and her network technician application as well as the letter Mr. Countryman wrote in support of Ms. Middleton. Mr. Voskuil recalls Mr. Countryman responding that it is common for people to tailor their applications to fit the desired position. He also recalls Ms. Greene telling Mr. Countryman that Ms. Middleton could not be appointed the CI-I position until the situation regarding the inconsistencies on her applications had been cleared up.

21. Like Ms. Greene, Ms. Voskuil considered the inconsistencies in Ms. Middleton's applications to be significant.

22. Kathy McCormick was the State DOP recruiter for the NDOP CI-I and CI-III positions. She worked with the NDOP in initially screening the applications for the CI-I and CI-III positions. Because of his knowledge of the NDOP requirements, Ms. McCormick asked Mr. Countryman to act as a subject matter expert in reviewing the CI-III applications.

23. If Ms. McCormick was unsure whether or not an applicant met the initial criteria for the CI-III position, she would put them in a "maybe" pile and would then ask Mr. Countryman to review the application and render a decision regarding the initial qualifications. She does specifically recall asking Mr. Countryman if Ms. Middleton qualified for the CI-III position. However, when testifying, she was unable to recall Mr. Countryman's response.

24. Ms. McCormick testified that Mr. Countryman personally contacted her prior to the hearing in this matter and questioned her about her recollection regarding their meeting concerning Ms. Middleton's CI-III application. During this conversation, Ms. McCormick stated that Mr. Countryman told her that he had a copy of the investigator's interview with her and that he had a different recollection about what transpired during that meeting. In other words, Ms. McCormick felt Mr. Countryman was telling her that her recollection was incorrect. Ms. McCormick stated that she felt Mr. Countryman was pressuring her to change her story regarding what happened when she and Mr. Countryman met to score Ms. Middleton's CI-III application. Mr. Countryman testified that he was not attempting to get Ms. McCormick to change her recollection of the events when he contacted her. He stated, he thought talking to her about the situation might clear things up. Mr. Countryman also admitted that he used poor judgment in contacting Ms. McCormick about this matter.

25. Ms. McCormick testified that the handwriting on Ms. Middleton's CI-III application which initially qualified Ms. Middleton for the CI-III position was hers. However, she does not recall if she approved Ms. Middleton's application or if she simply transferred information to Ms. Middleton's application from a form that Mr. Countryman completed.

26. Mr. Countryman testified that he does not remember when Ms. Middleton showed him the February 25, 1998 letter Ms. Greene sent to her regarding the discrepancies in her applications. He believes that he only had it a day or two before he sent his letter to Ms. Greene regarding Ms. Middleton. Again, he testified that he did not read the entire letter that Ms. Greene sent to Ms. Middleton. He stated he only read the portions of the letter that Ms. Middleton had highlighted.

27. Mr. Countryman testified that he told Ms. McCormick that he did not feel that Ms. Middleton qualified for the CI-III position. He also stated that he did not ever formally review Ms. Middleton's application, he did not sit down with it and read the contents of it, that he did not score her application and that he did not know the status of Ms. Middleton's application when he left the meeting with Ms. McCormick.

28. Mr. Countryman testified that Ms. McCormick called him the next day and told him that Ms. Middleton and two other individuals qualified for the CI-III position. He testified that he did not question the State DOP on this decision because he did not think it was his place to do so.

29. Mr. Countryman also reviewed Ms. Middleton's CI-I application. Again, however, he did not read the contents of it because he was told by the State DOP that if an individual qualified for a CI-III position, they would automatically qualify for a CI-I position.

30. Mr. Countryman did not have any involvement in Ms. Middleton's written or physical testing. Furthermore, he never recommended Ms. Middleton to Director Gayer for the CI-I or the CI-III positions. He testified that he never used his position as Inspector General to confer or attempt to confer any type of benefit on Ms. Middleton.

31. Keith Swearingen initially approached Mr. Countryman about the discrepancies in Ms. Middleton's applications in December 1997. Mr. Swearingen asked Mr. Countryman if Ms. Middleton had performed the tasks she had put on her applications. Mr. Countryman confirmed to Mr. Swearingen that Ms. Middleton had performed the tasks in question. Based on this encounter, Mr. Countryman thought the matter had been cleared up.

32. Mr. Countryman testified that he was under the impression that the discrepancies in Ms. Middleton's applications were minor. He also testified that he personally told Ms. Middleton that she did not qualify for the CI-III position.

33. Mr. Countryman testified that if the problems with Ms. Middleton's application had not surfaced, he still would not have recommended her for the CI-I position because there were other more qualified candidates.

OPINION

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Mr. Countryman and Ms. Middleton are public employees as defined in NRS 281.436.

NRS 281.481(2) contains the relevant statutory provisions in this matter. It provides:

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.

The questions before the Commission are whether (1) Ms. Middleton used or attempted to use her friendship with Mr. Countryman to gain an unwarranted promotion to the position of a CI-I or a CI-III, and (2) whether Mr. Countryman used his position as Inspector General for the NDOP to gain or attempt to gain an unwarranted privilege via a promotion for his friend, Ms. Middleton.

In this specific incident, although the Commission felt Mr. Countryman exercised extremely poor judgment in reviewing Ms. Middleton's applications, writing the letter to Ms. Greene recommending Ms. Middleton for the CI-I position, allowing Ms. Middleton to continue with the application process after Ms. Greene told him she was ineligible for the CI-I position and, most importantly, telephoning Kathy McCormick in an attempt to persuade her to recall the circumstances of their meeting the way he remembered them, the Commission finds that Mr. Countryman's actions did not rise to the level of an actual violation of NRS 281.481(2). Furthermore, the Commission also determines that there was not sufficient evidence presented to conclude that Ms. Middleton violated NRS 281.481(2).

CONCLUSION

In this specific incident, although the Commission felt Mr. Countryman exercised extremely poor judgment in reviewing Ms. Middleton's applications, writing the letter to Ms. Greene recommending Ms. Middleton for the CI-I position, allowing Ms. Middleton to continue with the application process after Ms. Greene told him she was ineligible for the CI-I position and, most importantly, telephoning Kathy McCormick in an attempt to persuade her to recall the circumstances of their meeting the way he remembered them, the Commission finds that Mr. Countryman's actions did not constitute a violation of NRS 281.481(2). Furthermore, the Commission also determines that there was not sufficient evidence presented to conclude that Ms. Middleton violated NRS 281.481(2).

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of the NRS 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: May 8, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman