

Opinion Nos. 99-15 and 99-16

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of JEFF GRIFFIN, Mayor of Reno, and KRYS BART, Executive Director, Reno/Tahoe Airport Authority

This Opinion is in response to third-party requests for opinion filed with the Nevada Commission on Ethics (Commission) by Sam Dehné regarding the conduct of Jeff Griffin, Reno Mayor and Krys Bart, Executive Director of the Reno/Tahoe Airport Authority. With the permission of Mr. Dehné, request Nos. 99-15 and 99-16 were combined for purposes of hearing and adjudication. A just and sufficient cause hearing was held in closed session on June 10, 1999. Mr. Dehné appeared and represented himself. Mr. Griffin appeared and was represented by his counsel, Michael K. Halley, Chief Deputy City Attorney for Reno. Ms. Bart appeared and was represented by her counsel, Robert H. Ulrich, General Counsel for the Airport Authority. Testimony was received from Mr. Dehné, Mr. Griffin, Ms. Bart, Jackie Decker and Gilbert Weikel.

As a result of the testimony and evidence presented, the Commission determined that just and sufficient cause did not exist to proceed further with the matter, so the Commission dismissed the matter against Mr. Griffin and Ms. Bart.

The Commission also found that Mr. Dehné's requests contained false information and were submitted in violation of NRS 281.525 and 281.551(2). The Commission now issues the Findings of Fact and Order which follow, solely addressing Mr. Dehné's violations of NRS 281.525 and 281.551(2).

FINDINGS OF FACT

1. On March 29, 1999, Mr. Dehné filed two request for opinions with the Commission. Mr. Dehné alleged that Mr. Griffin and Ms. Bart and other airport trustees traveled together to Dallas, Texas under the guise of meeting with American Airlines executives to discuss American Airlines' plans for its recent acquisition of Reno Air. It is alleged that Mr. Griffin and Ms. Bart used this opportunity in order to conspire and implement a cargo operations facility on property previously set aside for the Nevada Air Guard and, that by doing so, Mr. Griffin and Ms. Bart allegedly violated the Commission's Opinion [97-48](#).
2. Ms. Bart began her tenure at the Reno/Tahoe Airport on December 14, 1998. Five days later she and Mr. Griffin met for the first time while boarding a shuttle bus at the Dallas/Fort Worth airport in Texas and made their introductions. They did not travel together, either from Reno to Dallas or Dallas to Reno.
3. Others attended the Dallas meeting including, but not limited to, Senator Bryan, Governor-elect Kenny Guinn, Tom Tate, head of tourism for Nevada and Phil Keene of the Reno-Sparks Convention and Visitors Authority (RSCVA).
4. The purpose of the trip was to meet with American Airlines' CEO and top senior staff to discuss the concerns of the City of Reno and Reno/Tahoe International Airport that American Airlines' would take away Reno Air's service from Reno. The group presented arguments as to why American Airlines and Reno Air should continue to provide service in Reno.
5. It was the belief of the above officials that the Reno area would be severely impacted if American Airlines withdrew Reno Air service from the community.
6. Mr. Griffin attended the Dallas meeting in his capacity as Reno Mayor and as the chairman of the RSCVA. At

no time during the meeting did Mr. Griffin and Ms. Bart discuss plans for cargo operations at the Reno/Tahoe Airport.

7. On or about March 8, 1999, three months after the Dallas meeting, Ms. Bart canceled the Nevada Air Guard plans and implemented plans for the increase of the air cargo operations. Her decision was based on fiscal reasons. Her analysis had shown that the airport's growth had slowed. Landing fees provided the primary funding for the airport. In recent years, income from airline-related landing fees had decreased while the air cargo activity had increased. In fact, the air cargo activity had exceeded 400% growth in the region. Therefore, the decision to expand the cargo operations was based on fiscal reasons, not personal ones.

8. The cargo area in the northern region of the Reno-Tahoe Airport will be expanded on August 28, 1999 to handle the United States Postal Service (USPS). The anticipated benefit of this plan is increased landing fees from cargo operations that will off-set the cost to airline carriers, thereby providing an economic inducement for the carriers to continue their service at the Reno-Tahoe Airport. The long-term benefit will allow northern Nevada to access overnight express air-mail service provided by the USPS. Major corporations would then be able to use this service.

9. Ms. Bart testified that the cargo operation decision was made by her and the Board of Trustees. She has never discussed this matter with Mr. Griffin nor has she sought his input or approval on the issue.

10. Mr. Dehné testified that he did not know nor did he have any evidence as to what unwarranted benefit, exemption or privilege Ms. Bart would receive by expanding the air cargo operations at the airport.

11. Mr. Griffin's contract with the Airport Authority expires in July 1999.

12. The trip to Dallas, Texas was reported in two newspapers. Mr. Griffin appeared on two live talk shows to discuss the continuation of service of Reno Air. Therefore, the trip was not clandestine nor secret.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.465(l)(a) and 281.511(2)(b) because Mr. Griffin and Ms. Bart are public officers as defined in NRS 281.4365.

NRS 281.525(l) provides:

It is unlawful for any person to make, use, publish or disseminate any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion.

A violation of NRS 281.525(l) is punishable as a misdemeanor. NRS 281.551(2) provides in pertinent part:

2. In addition to other penalties provided by law, the commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281.51 1, against a person who:

- (a) Submits to the commission, in bad faith or with a vexatious purpose, an accusation or information that is false;
- (b) Submits to the commission, in connection with a request for an opinion that the commission determines to be without merit, an accusation or information that is false;. . .

Additionally, there are several crimes that address the making or presenting of false information to a governmental

agency. See NRS 197.190 (Obstructing public officer) and NRS 199.120 (Perjury).

Mr. Dehné violated NRS 281.525(l) and 281.551(2). Mr. Dehné's opinion requests allege several facts and circumstances which he did not verify or attempt to verify before filing his requests with this Commission. Mr. Dehné asked that this Commission take a leap of faith not based upon factual evidence to support his position, but upon innuendo, supposition and blatant exaggerations in order to find just and sufficient cause to go forward on a merits hearing. This Commission could not, in good conscience, find just and sufficient cause. Further, Mr. Dehné's flagrant disregard for this Commission's processes and procedures shows his contempt for this Commission. The following provides examples of his blatant attempt to coerce this Commission.

In an effort to clear up the apparent confusion regarding Mr. Dehné's claim that Mr. Griffin violated this Commission's Opinion [97-48](#), it should be noted that the opinion never instructed Mr. Griffin to refrain from dealings with the airport. The statement from the opinion quoted by Mr. Dehné in his request 99-16 that "Mr. Griffin must disclose the full nature and extent of his company's contract with the Airport Authority whenever the Reno City Council is considering a matter pertaining to the Airport Authority, including appointment of trustees, and he must abstain from voting on those matters as long as there is the potential the Airport Authority could take further action on his company's contract" was taken out of context by Mr. Dehné and applied incorrectly with this matter.

Opinion [97-48](#) does not mention any prohibition of contact with the Airport Authority. It does require that Mr. Griffin distance himself from discussing with city council members and voting at city council meetings upon any matter that pertains to a relationship important to his business. Opinion [97-48](#) narrowly discusses the disclosure and abstention requirements of NRS 281.501(3). Mr. Dehné's attempt to claim otherwise can only be perceived by this Commission as an attempt to coerce it into rendering a decision in Mr. Dehné's favor.

At the June 10, 1999 just and sufficient cause hearing, Mr. Griffin indicated that his contract with the airport will expire in July 1999. If the contract with the airport is not renewed, thus ending all private enterprises Mr. Griffin has with the airport, Mr. Griffin may once again participate in airport matters with the city council. As Opinion [97-48](#) instructs, "Under these circumstances, we must conclude that NRS 281.501(2) compels Mr. Griffin to abstain from participating in any future vote regarding the Airport Authority that may come before the Reno City Council as long as [Nevada Foreign Trade Services] is involved with the Airport Authority. **Once the relationship between NFTS and the Airport Authority ceases [i.e. expiration of the contract], so will Mr. Griffin's obligation to disclose and abstain regarding Airport Authority matters.**" (Emphasis added.) Given the foregoing analysis, even though Mr. Dehné concluded that Opinion [97-48](#) broadly covers all aspects of Mr. Griffin's dealings with the Airport, this Commission does not and cannot reach the same conclusion.

Mr. Dehné violated NRS 281.525(l) and 281.551(2). Mr. Dehné's claim that Mr. Griffin violated Opinion [97-48](#) was false. Further, Mr. Dehné's blatant attempt to induce the Commission to revisit the airport contract issue by alleging unsupported and improbable allegations smacks of harassment and an attempt to vex Mr. Griffin. Mr. Dehné would like the Commission to conclude that Mr. Griffin's participation in discussion with the American Airlines officials at a meeting in Dallas was a cover up for the real purpose: to meet with Ms. Bart regarding the cargo expansion project at the Reno/Tahoe airport. He wants this Commission to disregard the facts before it; that Mr. Griffin, acting in his capacity as Mayor, attended the meeting in order to encourage American Airlines executives to keep Reno Air services at the airport. American Airlines' withdrawal of Reno Air services at the airport would have a devastating effect on the area's economy. Mr. Dehné did not provide any evidence, except hearsay testimony and, at best, circumstantial evidence. Unfortunately for Mr. Dehné, there is ample evidence to disprove his outlandish claims. Ms. Bart began her tenure at the airport shortly before she met Mr. Griffin. She did not meet or talk with him until they met in Dallas. They did not travel together as Mr. Dehné alleges, nor did Ms. Bart seek Mr. Griffin's input before making the fiscally-based decision to use the land for air cargo rather than the Nevada Air Guard. In fact there was no evidence presented to suggest that Ms. Bart's decision and implementation of cargo operations occurred any other way than the way she testified. The Dallas meeting was not covert nor was there an attempt to hide it from the public as Mr. Dehné implied.

NRS 281.551(10) provides guidance for this Commission's determination as to whether a given opinion request was submitted in violation of NRS 281.551(2), and it provides:

In determining for the purposes for this section whether a person submitted an accusation or information in bad faith or with a vexatious purpose, the commission may consider various factors, including, without limitation:

(a) When the accusation or information was filed with or provided to the commission;

(b) Whether and, if applicable, in what manner the person who submitted the accusation or information publicly disseminated the accusation or information before the commission determined whether there was just and sufficient cause to render an opinion in the matter;

(c) Whether the accusation or information sets forth alleged facts or details that are misleading or deceptive; and

(d) Whether the accusation or information or the conduct of the person who submitted the accusation or information:

(1) Would be perceived as annoying or harassing by a reasonable person; or

(2) Demonstrates conscious disregard for the process and procedures established by the commission.

Utilizing the factors in NRS 281.551(10), we find that Mr. Dehné's opinion requests were submitted "in bad faith or with a vexatious purpose" for several reasons. First, it is public knowledge of which this Commission is well aware that there is a long-standing enmity between Mr. Dehné and Mr. Griffin that was amplified by several of Mr. Dehné's offerings of scathing public comment or testimony at hearings on unfounded opinion requests against Mr. Griffin which were filed by Mr. Dehné and others.

Second, Mr. Dehné set out the facts and circumstances of his opinion requests in a deliberately misleading and deceptive manner. Mr. Dehné's opinion requests made it appear that Ms. Bart's decision on the cargo matter was made immediately after her return from the trip by the statement, "almost immediately following that trip, executive director changed course 180 degrees and canceled the long-planned movement of the Nevada Air Guard to Rewana Farms" and "airport executive director is suddenly plowing full-steam ahead to place cargo operations on the ill-gotten land. This sudden change in direction came right after the executive director and the mayor were together on that trip to Texas." In fact, the Dallas trip occurred in December 1998 and the decision to expand air cargo operations at the airport was made in March 1999. Three months had passed between the two events. Further, Mr. Dehné attempted to continue the deception at the just and sufficient cause hearing by testifying that the trip occurred in "early March 1999" and that "within days" of Mr. Griffin's and Ms. Bart's return from Dallas the plan to move the air guard was cancelled. It is the fact that Mr. Dehné did not attempt to ascertain the truth of his allegations prior to filing his opinion requests that is egregious to this Commission. His opinion requests and testimony were deliberately inflammatory and without basis in fact. The only conclusion this Commission can make is that Mr. Dehné set out to deliberately mislead the Commission in order to induce them to render a decision in his favor by enlarging the truth or by attempting deception.

Third, Mr. Dehné submitted allegations which he knew he did not have evidentiary support, and he admitted as much under questioning from this Commission. He could not verify the date of the Dallas trip, yet he made claims that the trip occurred immediately prior to Ms. Bart's and the airport trustees' decision to expand the air cargo operations at the airport. He could not even verify that Ms. Bart and Mr. Griffin even discussed the air cargo operations or that Ms. Bart sought Mr. Griffin's input and approval. Knowing there was no evidence and relying on hearsay, innuendo and supposition, Mr. Dehné purposely chose to represent fiction as fact to this Commission. NRS 281.511(2)(b)(1) requires that a person submitting a request to the Commission also submit "*all related evidence deemed necessary by the commission* for it to make a preliminary determination of whether there is just and

sufficient cause to render an opinion in the matter.” (Emphasis added.) The Commission repeatedly queried Mr. Dehné about the evidentiary support he had for his statements that Mr. Griffin influenced Ms. Bart’s decision to use the land for cargo operations or that Ms. Bart’s decision was influenced by anything other than professionally or fiscally related issues. Instead of answering these simple questions, Mr. Dehné dodged the questions with more innuendo and supposition and attempted to shift the burden for ascertaining his evidence onto the Commission. Also, Mr. Dehné could not answer the Commission’s query as to where in Opinion [97-48](#) it prohibits Mr. Griffin from contact with the airport authorities. Mr. Dehné’s response was, “It’s just a conclusion of your conclusion.”

Fourth, Mr. Dehné’s attitude and demeanor at the hearing demonstrated “a conscious disregard for the process and procedures established by the commission.” NRS 281.551(10)(d)(2). Mr. Dehné was openly defiant, argumentative and contemptuous of the Commission, and the hostility and contempt manifested itself by his deliberate disregard of the chairwoman’s attempt to maintain order in the meeting. At several points, Mr. Dehné was instructed to refrain from speaking while the chairwoman, or others, had the floor. His argumentative manner and blatant refusal to refrain from interrupting resulted in his removal from the meeting.

Finally, Mr. Dehné’s actions could only be “perceived as annoying or harassing by a reasonable person.” NRS 281.555(10)(d)(1). Mr. Dehné’s opinion requests were brought without substantiated evidence and were used in an attempt to reopen an issue which had been already addressed by this Commission which included the issue of Mr. Griffin’s dealings with the airport. We find that a reasonable person being subjected to Mr. Dehné’s unfounded filings would conclude that Mr. Dehné intended to annoy and harass Mr. Griffin and Ms. Bart.

This Commission will not be used as a weapon to further anyone’s private aims. We are not a forum for speculation, innuendo, rumor-peddling, or vituperation. Any intentional misuse of this Commission’s process exposes the subjects of the requests to undeserved public scrutiny and treats this Commission’s salutary public mandate with contempt.

We conclude that Mr. Dehné made false statements to this Commission and that he did so in bad faith and with the intent to vex Mr. Griffin and Ms. Bart. Further, his disruptive attitude at the just and sufficient cause hearing also displayed his contempt for this Commission. Such a blatant misuse of this Commission’s processes deserves and necessitates an appropriately stiff sanction. Consequently, this Commission imposes upon Mr. Dehné a civil penalty in an assessment of \$5,000 pursuant to NRS 281.551(2). Mr. Dehné shall pay the penalty by cash or cashier’s check or money order made payable to “State of Nevada, Office of the Treasurer,” to be received by the Commission’s 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. Furthermore, because Mr. Dehné’s violations are so obvious and so abusive of this Commission’s purpose, a violation of NRS 281.525(l), this Commission will refer this matter for criminal review and potential prosecution to the Washoe County District Attorney pursuant to NRS 281.525(3).

COMMENT

Based upon the foregoing and the substantial evidence in the record, the Commission concludes that Mr. Dehné violated NRS 281.525(1) and 281.551(2) in this matter. For this violation, the Commission imposes a civil penalty upon Mr. Dehné of \$5,000.00. Pursuant to NRS 281.525(3), the Commission will also inform the Washoe County District Attorney of Mr. Dehné’s violation of NRS 281.525(1) so that the District Attorney can determine whether to proceed against Mr. Dehné under NRS 281.525(2) or other applicable criminal statutes.

DATED: July 7, 1999

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO G. RECANZONE, Vice Chairman