

Opinion No. 99-36

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of ROBERT WEBER, RONALD LYNN, GREGORY FRANKLIN and GARY HOUCK, Clark County Building Department employees

This matter came before the Commission for hearing on January 20 and 21, 2000, on a third-party Request for Opinion submitted on July 22, 1999, by Robert Rose and Craig Walton (hereinafter, collectively, the "Requesters") concerning the conduct of Robert Weber, Ronald Lynn, Gregory Franklin and Gary Houck (hereinafter, collectively, the "Respondents"), employees of the Clark County Building Department. Following a preliminary hearing held September 17, 1999, the Commission found just and sufficient cause to proceed to a full hearing on the merits of this matter on the limited issue of whether the Respondents violated NRS 281.481, Subsection 7, which prohibits a public officer or employee from using "government time, property, equipment or other facility to benefit his personal or financial interest."

Requester Craig Walton was not a party to this matter at the time of the just and sufficient cause hearing, but joined as a Requester thereafter by filing a separate but identical Request for Opinion.

Notice of the hearing was properly served. The Requesters both appeared in person. Respondent Robert Weber was present with his attorney, Stan Parry, Esq. Respondents Ronald Lynn, Gregory Franklin and Gary Houck were also present.

Following the September 17, 1999, just and sufficient cause hearing, the Commission authorized the Advantage Group to investigate this matter and prepare a report of its investigation for the Commission. The Advantage Group's investigative report (dated January 18, 2000) was received at the Commission's office late in the day on January 19, 2000. The report was distributed to the Commission, the Requesters, and the Respondents on January 20, 2000, before this hearing commenced. Because the investigative report was not available to distribute to the parties for their review in advance of the hearing, the Commission entertained a lengthy discussion with the parties on the question of whether to proceed with the hearing or continue the hearing to a later date to allow the parties more time to review and respond to the report. After hearing at length from all parties, and giving due consideration to the desire of the Respondents to go forward and have this matter finally resolved, the Commission proceeded with the hearing.

The Requesters, the Respondents, and witnesses were sworn and testified.

Certain witnesses for the Requesters were not available to testify at the hearing. The Commission, therefore, accepted and considered offers of proof from the Requesters as to the facts to which those witnesses would testify if they were present.

At the conclusion of the testimony by the witnesses, Respondents made a motion to dismiss this matter based on a lack of evidence that any use of governmental time, property, equipment, or other facility used by Respondents for SNC/ICBO and/or EDUCODE business benefited any of their personal or financial interests, a required element to find a violation of NRS 281.481, Subsection 7.

The Commission, after full consideration of the testimony of the parties and all witnesses, the offers of proof as to the testimony of witnesses not available to testify, and the evidence received into the record, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents are employed by the Clark County Building Department.
2. Respondents are members of, past and/or present officers and/or committee chairpersons of and/or educational instructors for, and actively support the activities of, the Southern Nevada Chapter of the International

Conference of Building Officials (hereinafter the "SNC/ICBO") and/or EDUCODE.

3. ICBO is a nonprofit organization which serves as a private/public industry forum for issue discussion and the development of county codes and regulations which lead to the safe construction of buildings, and as an industry resource for industry professional education and training. Its membership in Southern Nevada includes businesses and individuals representing both the public and private sectors, including county and local building officials and staff (Clark County, Las Vegas, North Las Vegas, Boulder City, Henderson, Mesquite); public utilities; contractors; architects; engineers; members of the Association of General Contractors; and members of the Southern Nevada Home Builders Association. Members of SNC/ICBO are working to standardize building codes and regulations throughout Clark County (including the cities of Las Vegas, North Las Vegas, and Henderson).
4. EDUCODE is a nonprofit educational organization established within local ICBO chapters to provide building industry professional education and training on building codes and regulations.
5. Members of ICBO support its efforts and those of EDUCODE by paying dues and by volunteering their time (without compensation) to serve as officers of the organization, serve on committees, develop educational curricula and serve as instructors, attend classes, host activities, attend programs, and assist with administrative matters such as mailings, telephone calls, and processing dues payments.
6. Respondents participated in some SNC/ICBO and EDUCODE related activities during the business day and some Clark County resources (staff time, postage, telephones) were used for SNC/ICBO and EDUCODE business. Respondents' SNC/ICBO dues are paid by from the Clark County Building Department budget.
7. On a voluntary basis, some members of SNC/ICBO (including some Clark County Building Department staff) solicited funds from members of the building industry to support the work of ICBO and EDUCODE.
8. Effective November 1, 1999, Respondent Weber implemented a new policy at the Clark County Building Department prohibiting employees from soliciting "any organization, group or person which the Department regulates for any purpose."
9. The public benefited by the County's use of its resources to support ICBO and EDUCODE.
10. The County's use of its resources to support ICBO and EDUCODE benefited no personal or financial interest of any Respondent.

CONCLUSIONS OF LAW

1. Respondents are public officers and/or public employees as defined by NRS 281.005, 281.436, and/or NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465, Subsection 1(a); and NRS 281.511, Subsection 2(b).

WHEREFORE, on motion duly made, seconded, and approved by five (5) affirmative votes and one (1) negative vote, the Commission renders the following Opinion:

OPINION

The Commission commends Requesters for their professionalism and good faith effort to improve the quality of government by bringing the issues in this Request for Opinion before the Commission. The Commission is very concerned about the issue of regulators soliciting members of its regulated industry and cautions Respondents that the solicitations made by members of the Clark County Building Department approach conduct which could easily cross the ethical violation line. The Commission commends Respondent Weber for the policy changes in that regard which he implemented effective November 1, 1999.

However, the Commission is charged with applying the ethics in government law to the facts established in each case brought before it, and the facts in this matter (established from the testimony of witnesses, the evidence in the

record, and the offers of proof) present no evidence that any use of governmental time, property, equipment, or other facility by Respondents for SNC/ICBO and/or EDUCODE business benefited any of their personal or financial interests, a required element to find a violation of NRS 281.481, Subsection 7. In fact, all of the evidence clearly established that Respondents acted in utmost good faith; that their activities were within their job descriptions; and that their ICBO and EDUCODE related activities were for the benefit of Clark County, for the benefit of Nevada, for the benefit of the other municipalities that participated, and for the benefit of the public at large.

Further, the Commission recognizes that the decision to budget county money for ICBO and EDUCODE activities rests with the Clark County Board of Commissioners and the Clark County Building Department, who are charged with the responsibility of deciding how to spend county money. Should the public disagree with those budget decisions, it can seek remedy through the appropriate political process.

Therefore, with no evidence that Respondents' conduct benefited their personal or financial interests, this Commission finds no violation of NRS 281.481, Subsection 7. This matter is, therefore, dismissed.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES WHICH DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: March 3, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman