

## Opinion No. 99-44

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of JEFF GRIFFIN, Mayor of Reno

This matter came before a five-member quorum<sup>[1]</sup> of the Nevada Commission on Ethics (hereinafter "Commission") for hearing on February 17, 2000, on a third-party Request for Opinion submitted on August 23, 1999, by Sam Dehné concerning the conduct of Jeff Griffin, Mayor of Reno, Nevada. The Request for Opinion alleged that Mayor Griffin:

- (a) Violated the provisions of NRS 281.481, Subsection 2, which prohibit a public officer or employee from using his position in government to secure or grant unwarranted<sup>[2]</sup> 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;
- (b) Violated the provisions of NRS 281.481, Subsection 3, which prohibit a public officer or employee from participating as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest;
- (e) Violated the provisions of NRS 281.481, Subsection 6, which prohibit a public officer or employee from suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests; and
- (d) Committed perjury in his sworn testimony before the Ethics Commission on June 10, 1999, thus violating the provisions of NRS 281.525, which makes it unlawful (a misdemeanor) 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.<sup>[3]</sup>

Notice of the hearing was properly served. Mr. Dehné appeared in person and was sworn as a witness. Mayor Griffin was present with his attorney, Michael Halley of the Reno City Attorney's Office, and was sworn in as a witness. Also sworn as witnesses on behalf of Mr. Dehné were Guy Felton and Jackie Decker.

Commission Chairman Peter Bernhard addressed preliminary procedural and disclosure matters and marked the parties' exhibits for the records.

The Commission, after full consideration of testimony of Mr. Dehné, Mr. Felton, Ms. Decker and Mayor Griffin, and the evidence received into the record, makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. Jeff Griffin is, and was at all times pertinent hereto, Mayor of Reno, Nevada.
2. On June 10, 1999, the Commission held a combined just and sufficient cause hearing on previous Requests for Opinion Nos. [99-15](#) and [99-16](#) submitted by Mr. Dehné regarding the conduct of Mayor Griffin and Krys Bart, Executive Director of the Reno/Tahoe Airport Authority. The opinion request alleged that Mayor Griffin and Ms. Bart conspired to implement a cargo operations facility that would benefit a business owned by Mayor Griffin.
3. Following the hearing, the Commission determined there to be no just and sufficient cause to proceed further and dismissed the matter as to both Mayor Griffin and Ms. Bart.<sup>[4]</sup>

4. During the June 10, 1999, hearing, the Commission questioned Ms. Bart extensively about her involvement in matters relating to decisions of the Reno Airport Authority regarding issues of economic impact to the airport, including the airport's cargo area, and to what extent, if any, she and Mayor Griffin discussed those issues.<sup>[5]</sup> Ms. Bart concluded her testimony by stating:

"I have had no discussions with Mayor Griffin. Mayor Griffin knows what he reads in the newspaper, as far as I know. But I personally have not sought Mr. Griffin's input. I have not sought his approval on any of these issues."<sup>[6]</sup>

5. Immediately following Ms. Bart's testimony, the Commission Chairperson asked Mayor Griffin: "Have you done anything to try to manipulate the situation at the airport so that the cargo area increases?" Mayor Griffin answered, "No."<sup>[7]</sup>

### CONCLUSIONS OF LAW

1. Mayor Griffin is a public officer as defined by NRS 281.005 and 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 unanimously approved, the Commission renders the following Opinion:

### OPINION

By majority vote,<sup>[8]</sup> based upon a lack of necessary evidence, the Commission finds no just and sufficient cause to proceed further concerning the claims that Mayor Griffin violated NRS 281.481, Subsection 2; NRS 281.481, Subsection 3; NRS 281.481, Subsection 6; and NRS 281.525.

With regard to NRS 281.481, Subsections 2, 3 and 6, Mr. Dehné failed to present any evidence concerning violations thereof.

With regard to NRS 281.525, the issue is whether or not the Commission should refer the matter to the appropriate prosecuting authority, based on the testimony of Mayor Griffin during the June 10, 1999, hearing. In other words, did Mayor Griffin make a "false, deceptive or misleading" statement when he responded "no" to the question, "Have you done anything to try to manipulate the situation at the airport so that the cargo area increases?" The Commission finds that ***in the context of the testimony as presented on June 10, 1999***, including the Commission's questions to Ms. Bart during the June 10, 1999, hearing, Ms. Bart's testimony in response to those questions, and the follow-up question to Mayor Griffin, his one word response, "No," fails to amount to a "false, deceptive or misleading" statement in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion, sufficient to refer the matter to the prosecuting authority for further action. Therefore, in the context of the testimony as a whole, Mayor Griffin's one word response will not be referred for further action under NRS 281.525 to the prosecuting authority.

**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: May 31, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman

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[1] Two Commissioners (Hal Smith and Lizzie Hatcher) were not present and one Commissioner (Skip Avansino) recused himself from participation and voting in this matter.

[2] NRS 281.48 1, Subsection 2, defined "unwarranted" as "without justification or adequate reason."

[3] The request for opinion did not cite NRS 281.525 but referred to Mayor Griffin's June 10, 1999 testimony. NRS 281.525 was adopted prior to the sections of Chapter 281 which permit third-party opinion requests, and its title refers only to advisory opinions (which the Commission refers to as first-party opinion requests). Therefore, NRS 281.525 may not even apply to a third-party opinion request like this, and in any case, it does not establish a separate ethical violation for enforcement by the Commission; instead, it speaks to enforcement by the Attorney General or district attorney as a criminal matter, and the Commission's only power under NRS 281.525 is to refer a matter to the appropriate prosecuting authority.

[4] See, Nevada Commission on Ethics [Opinion No. 99-15 and Opinion No. 99-16](#) dated July 7, 1999.

[5] See, Transcript of June 10, 1999, hearing on Opinion Request # 99-15/99-16, pp. 32-41.

[6] See, Transcript of June 10, 1999, hearing on Opinion Request # 99-15/99-16, p. 41.

[7] See, Transcript of June 10, 1999, hearing on Opinion Request # 99-15/99-16, p. 41.

[8] Of the six Commission members present (quorum), four voted in favor of the motion and two abstained.