

Opinion No. 00-26

**BEFORE THE NEVADA COMMISSION ON ETHICS
IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct
of Robert S. Ferraro, Mayor of Boulder City**

STIPULATION

WHEREAS, on July 7, 2000, a complaint was filed with the Nevada Commission on Ethics (hereinafter the "Commission") alleging that on June 13, 2000, at a regular meeting of the Boulder City Council, Mayor Ferraro introduced, and on June 27, 2000, at a regular meeting of the Boulder City Council, voted in favor of, Bill No. 1249 which proposed an ordinance amending the Boulder City Code to increase the salaries of the City Council members and the Mayor; and

WHEREAS, Mayor Ferraro acknowledges that the Commission has provided him with notice of the allegations against him and an opportunity to file a written response thereto and that he is fully advised as to the allegations asserted against him in the complaint; and

WHEREAS, on July 19 and August 24, 2000, Mr. Ferraro filed with the Commission his written responses to the allegations against him; and

WHEREAS, pursuant to NRS 281.511, the Commission's Executive Director, investigated the complaint and rendered a written recommendation that just and sufficient cause exists for the Commission to conduct a public hearing and render an opinion in this matter; and

WHEREAS, on September 8, 2000, a two-member Commission panel reviewed the complaint, the written responses thereto filed by Mayor Ferraro, and the recommendation of the Executive Director, and determined that just and sufficient cause exists for the Commission to conduct a public hearing and render an opinion in this matter; and

WHEREAS, Mayor Ferraro represents that he is fully aware of his right to a hearing before the Commission on the allegations against him and that he is fully aware of any and all rights he may be accorded pursuant to Chapter 281 of the Nevada Revised Statutes (NRS), the regulations of the Commission, the Nevada Administrative Code (NRS Chapter 233B), and the laws of the state of Nevada; and

WHEREAS, Mayor Ferraro hereby freely and voluntarily waives his right to a hearing and any and all rights which he may be accorded herein by NRS Chapter 281, the regulations of the Commission, and the laws of the state of Nevada; and

WHEREAS, this stipulation is for the purpose of the opinion to be rendered on the specific facts and circumstance of this matter before the Commission and no inferences regarding the findings or statutes quoted herein may be drawn to apply generally to any other facts and circumstances;

NOW, THEREFORE, in consideration of the foregoing, the Nevada Commission on Ethics (hereinafter the "Commission") and Robert S. Ferraro, Mayor of Boulder City, do hereby stipulate to the following Findings of Fact, Conclusions of Law, and Opinion in this matter:

FINDINGS OF FACT

1. Robert S. Ferraro holds the elected office of Mayor of Boulder City, Nevada.
2. At the June 13, 2000, Boulder City Council meeting, Mayor Ferraro introduced Bill No. 1249, "AN ORDINANCE AMENDING THE BOULDER CITY CODE BY REPEALING SECTION 1-5-1 IN ITS ENTIRETY, REPEALING ORDINANCE NO. 869, AND ADOPTING A NEW SECTION 1-5-1 IN LIEU THEREOF PERTAINING TO THE SALARIES OF CITY COUNCIL MEMBERS AND MAYOR."

3. At the June 27, 2000, Boulder City Council meeting, Mayor Ferraro moved to approve Bill No. 1249, adopting the ordinance, and voted in favor thereof.

4. The ordinance increased Mayor Ferraro's salary, and that of the city council members, 48.2% effective July 1, 2001. Prior to this increase, the city council and mayor had not received a salary increase, other than Consumer Price Index increases, since 1991.

5. The Boulder City Charter allows the city council to raise the salaries for city council members and the mayor, effective after the next municipal election, through passage of an ordinance.

6. A salary increase for city council members and the mayor was initially proposed on September 21, 1999 by Boulder City Staff. Staff's proposal used the City's wage compensation package for City employees approved in 1996 as a model and proposed that the salary for city council members and the mayor be at 80% of the Las Vegas Valley salary for elected officials (\$34,953 for the mayor and \$28,345 for city council members).

7. The city council held a public workshop on April 5, 2000, to discuss the issue of salary increases for city council members and the mayor. As a result of the workshop, it was determined to use a local City yardstick to measure the salaries for the city council members and the mayor relative to the ability of the city to pay as well as to the magnitude of the city council's ultimate responsibility. Staff thereafter recommended the salaries proposed in Bill No. 1249 by calculating a percentage of the General Fund budget.

8. Mayor Ferraro has served five terms as Mayor of Boulder City, beginning in 1976. His present term will end on June 30, 2003. He has not yet determined whether he will seek a sixth term as Mayor. At the end of his present term, he will be eligible for PERS retirement benefits. PERS retirement benefits are based upon the average of the retiree's highest thirty-six (36) months of salary. The salary increase Mayor Ferraro will receive as a result of the city council's adoption of the ordinance will result in an increase of approximately \$300.00 per month in Mayor Ferraro's retirement benefits if he retires at the end of his present term.

9. The earliest any other member of the Boulder City Council will be eligible for retirements benefits is June, 2002.

10. At the time the matter was considered by the Boulder City Council on June 13, 2000 and June 27, 2000, Mayor Ferraro made no disclosure of the effect on his pecuniary interest (i.e., his imminent retirement benefits) of his action with regard to introducing and voting in favor of approving Bill No. 1249 and the subsequent adoption of the ordinance increasing his salary.

11. It is not unusual for public bodies to approve salary increases for their members without each member making a formal disclosure of an obvious pecuniary interest in the salary increase at the time the matter is considered.

12. Mayor Ferraro was not advised by the city's legal counsel, the Boulder City Attorney, of a need to formally disclose in this particular matter. Mayor Ferraro, and his Counsel, believed that the very nature of the issue itself disclosed to the public that each member of the council, including the mayor, would enjoy a pecuniary benefit from voting for a salary increase.

CONCLUSIONS OF LAW

1. Robert S. Ferraro 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(1)(a) and NRS 281.511(2)(b).

OPINION

1. NRS 281.501 requires disclosure by a public officer, at the time the matter is considered, in any matter (a) regarding which he has accepted a gift or loan; (b) which would reasonably be affected by his commitment in a private capacity to the interest of others; and (c) in which he has a pecuniary interest.

2. NRS 281.501 requires a public officer to abstain from voting on, or advocating the passage or failure of, any matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by (a) his acceptance of a gift or loan; (b) his pecuniary interest; or (c) his commitment in a private capacity to the interests of others.

3. At the time a public officer is considering any matter (a) regarding which he has accepted a gift or loan; (b) which would reasonably be affected by his commitment in a private capacity to the interest of others; or (c) in which he has a pecuniary interest, he must disclose sufficient information concerning (a) the gift or loan, (b) the commitment in a private capacity to the interests of others, or (c) his pecuniary interest therein to inform the public of the potential effect of his action as required by NRS 281.501(3); and, after making such proper disclosure, he must determine whether the independence of judgment of a reasonable person in his situation would be materially affected thereby and, if a reasonable person's judgment would be materially affected in such a situation, the public officer must refrain from advocating the passage or failure of the matter and abstain from voting upon the matter in accordance with NRS 281.501(2). See, Nevada Commission on Ethics Opinion No. 99-56 ("the Woodbury Opinion") for a full discussion of the required disclosure and abstention standards.

4. On June 13, 2000 and June 27, 2000, the city council of Boulder City considered the adoption of an ordinance to increase salaries for city council members and the mayor. The ordinance was properly before the city council for its consideration. At that time, Mayor Ferraro was not required to disclose his pecuniary interest in the proposed salary increase because the pecuniary benefit of a salary increase is obvious and the public record in this matter adequately provided notice to the public about Mayor Ferraro's proposed salary increase. However, the retirement benefit to Mayor Ferraro should have been included as part of the public record on the matter or Mayor Ferraro should have disclosed that benefit at the time the matter was being considered by him on June 13, 2000 and June 27, 2000 in accordance with NRS 281.501.

5. Mayor Ferraro's failure to comply with the disclosure requirements of NRS 281.501 regarding the potential retirement benefit to him as a result of the proposed increase in salary was not willful in that he believed, in good faith, that the very nature of the issue itself disclosed to the public that each member of the council, including the mayor, will enjoy a pecuniary benefit from voting for a salary increase.

6. In his public capacity, Mayor Ferraro will comply with the disclosure requirements and abstention standards as provided in NRS 281.501 and Commission Opinion No. 99-56.

7. The foregoing opinion applies only to the specific facts and circumstances described herein. Facts and circumstances that 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.

CONTINGENCY

This stipulation is subject to the approval of the Nevada Commission on Ethics in open meeting. If the Commission does not adopt this stipulation as its Opinion, the matter will proceed to a hearing before the Commission (as provided in the Request for Continuance and Waiver filed by Mayor Ferraro in this matter) and this stipulation shall be of no force or effect for either party, nor shall it be admissible for any purpose.

ACCEPTANCE

I have read the above Stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED: December 12, 2000.

By: /s/ ROBERT S. FERRARO, Mayor, Boulder City, Nevada

By: /s/ DAVID R. OLSEN, City Attorney, Boulder City, Attorney for Mayor Ferraro

ADOPTION BY COMMISSION

The foregoing Stipulation is adopted as the Findings of Fact, Conclusions of Law and Opinion of the Nevada Commission on Ethics in this matter and shall become effective on the 18th day of December 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman