Opinion No. 00-54

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF
ERIN KENNY, Clark County Commissioner

This matter came before a quorum[1] of the Nevada Commission on Ethics (hereinafter “Commission”) for hearing on
Thursday, April 19, 2001, pursuant to a Request for Opinion filed with the Commission in proper form on November
30, 2000, and the Commission Panel Determination dated January 30, 2001, finding just and sufficient cause for the
Commission to hear the matter and render an opinion regarding whether Commissioner Kenny's conduct in
connection with an August 2, 2000, meeting in her home violated NRS 281.481(1).

The matter was originally set for hearing on February 15, 2001. However, Commissioner Kenny, by and through her
counsel, Frank J. Cremen, Esq., filed with the Commission a Request for Continuance and Waiver of Statutory Time
Requirement, and the hearing was continued to April 19, 2001.

The hearing was properly noticed. Commissioner Kenny was present with her counsel, Frank J. Cremen, Esq. The
following persons presented sworn testimony before the Commission: Commissioner Kenny, Donald Bradd
Banaszak, Clark County District Attorney Stewart Bell, Maryanne Dawicki, Steve Dupont, Gene Smith, Stephani
Smith, Don Burnette, Jeremiah Carroll, Raymond Visconti, and Randall Walker.

The Commission, after full consideration of the testimony of witnesses, the evidence received into the record, and
argument of counsel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In her public capacity, Erin Kenny is an elected member of the Clark County Board of Commissioners. She was
first elected to the County Commission in November 1994 and assumed office January 2, 1995. Commissioner
Kenny was re-elected to the County Commission in 1998.

2. In the summer of 2000, Tom Beatty, Executive Director of the Service Employees International Union (SEIU),
contacted Commissioner Kenny to request a meeting to discuss concerns about alleged improprieties in the Clark
County Facilities Division of the Department of General Services (hereinafter “Facilities Division”) which had been
brought to the attention of SEIU by former and present employees of the Facilities Division.[2] Commissioner Kenny
agreed to meet with a union representative, an employee union steward, and any former or current Facilities Division
employees willing to come forward to talk about the concerns and the underlying allegations. The meeting was held
in Commissioner Kenny’s home on August 2, 2000, and was attended by Commissioner Kenny, Maryanne Dawicki
(SEIU field representative), Donald Bradd Banaszak (a union steward and employee of the Clark County Facilities
Division), and Gene Smith (a former Facilities Division employee invited to the meeting by Mr. Banaszak). The
meeting lasted approximately ninety minutes.

3. At the beginning of the meeting, Mr. Smith and Mr. Banaszak explained their personal situations and
experiences with regard to the Facilities Division. Mr. Smith talked about his termination from county employment[3]
and his desire to be reemployed by the Facilities Division. Mr. Banaszak expressed his dissatisfaction with job
assignments and not being considered for promotions within the Facilities Division, and his belief that his job
assignments and failure to receive promotions were punishment by Mr. Barrett for his refusal to work on Mary
Kincaid’s political campaign and his refusal to acquiesce to the “Billy’s Boys”[4] scheme. Commissioner Kenny
listened to Mr. Smith and Mr. Banaszak and suggested to Mr. Smith the names of other entities and industries Mr.
Smith might contact in an effort to seek other employment.

4. Later in the meeting, Ms. Dawicki, Mr. Banaszak, and Mr. Smith explained to Commissioner Kenny their
allegations of impropriety concerning the Facilities Division, Mr. Barrett, and certain County Commissioners whom
they believed “protected” Mr. Barrett in his county employment.
5. During the meeting, Commissioner Kenny recommended that Mr. Smith’s and Mr. Banaszak’s allegations be investigated and copies of county overtime records be acquired. Commissioner Kenny stated that if the allegations of impropriety in the Facilities Division could be substantiated, as a County Commissioner she would work to try to rectify the situation in general and as it may have affected Mr. Smith and Mr. Banaszak. The availability and location of county overtime records that might support the allegation that Facilities Division employees were receiving overtime pay for campaign work was also discussed.

6. The following day, Mr. Banaszak, on union bank time and on behalf of SEIU, conducted a further investigation of the allegations. Mr. Banaszak spoke with current and former Clark County Facilities Division employees and encouraged those who had worked on political campaigns in connection with their county employment or knew of wrongdoings in the Facilities Division to come to a parking lot meeting that afternoon. Of those that appeared at the parking lot meeting that afternoon, no one, including Mr. Banaszak, wanted to come forward publicly with information to support their allegations.

7. Prior to the August 2, 2000, meeting, and in response to the allegations brought to the attention of SEIU, Maryanne Dawicki spoke with Mr. Banaszak (the union steward) about conducting an on-going investigation[5] to document over time a pattern of activity involving Facilities Division employees which would support the alleged improprieties within the Clark County Facilities Division. As part of that investigation, Ms. Dawicki and Mr. Banaszak videotape activities at a campaign fundraiser for Commissioner Kincaid which, together with copies of Facilities Division overtime records, might support the allegation that county employees were receiving overtime pay from Clark County to work on a political campaign.

8. Shortly after videotaping the Kincaid campaign fundraiser, Ms. Dawicki went on vacation. Before she left on vacation, Ms. Dawicki instructed Mr. Banaszak to be patient regarding the investigation, emphasizing that in order to prove the allegations of impropriety in the Facilities Division, the investigation would have to continue over a period of time.

9. When Ms. Dawicki returned from vacation, she learned from Mr. Banaszak that he and his “buddy” had given the videotape to Glen Meeks, a news reporter with T.V. Channel 13. Later, at the August 2, 2000, meeting at Commissioner Kenny’s home, Ms. Dawicki first realized that Mr. Banaszak’s “buddy” was Gene Smith and that Mr. Banaszak had been working with Mr. Smith for several months regarding the allegations concerning the Facilities Division.

10. The investigation initiated by Ms. Dawicki and Mr. Banaszak ultimately produced no concrete proof to support the allegations that Clark County Facilities Division employees were receiving county pay and/or preferential treatment in the Facilities Division for their work on political campaigns.

11. At all times pertinent to this matter, the chain of command at the Facilities Division was as follows: skilled trade workers reported to supervisors; supervisors reported to maintenance and operations supervisors; maintenance and operations supervisors reported to Mr. Barrett, Chief of the Facilities Division; and Mr. Barrett reported to Earl Hawkes, Director of the Department of General Services, Clark County.

12. Open positions within the Facilities Division are announced on job opening notices posted by the Clark County Department of Human Resources. To be considered for an open position, an employee is required to first complete an application form in accordance with Department of Human Resources procedures. The Department of Human Resources evaluates the application forms and provide a list of qualified candidates to the requesting supervisor. The supervisor interviews those candidates on the list provided by the Department of Human Resources and selects the person to fill the position.

13. Mr. Banaszak has been employed by Clark County for a little more than six years. He was initially hired by Clark County as a maintenance worker. Subsequently, he applied for and was promoted to the position of carpenter, a skilled trades worker level position, the position he now holds and held at all times pertinent to this matter. Since becoming a carpenter, Mr. Banaszak has applied for no further promotions or other positions in Clark County for the Facilities Division.

14. Following newspaper coverage of the request for opinion filed with the Commission in this matter and Ms.
Dawicki’s affidavit in connection therewith, Mr. Banaszak resigned as a SEIU steward.

15. As a County Commissioner, Commissioner Kenny has no power or authority to hire or fire any county employee.

16. At times relevant to the facts and circumstances herein, Stephani Smith, a candidate running for the office of Clark County Commissioner, was the political opponent of Commissioner Mary Kincaid in her bid for reelection. Commissioner Kenny was a political supporter of Stephani Smith.

CONCLUSIONS OF LAW

1. Commissioner Kenny 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 approved by majority vote, the Commission renders the following Opinion:

OPINION

The sole issue before the Commission is whether Commissioner Kenny’s conduct in connection with the August 2, 2000, meeting at her home violated the provisions of Subsection 1 of NRS 281.481.

NRS 281.481, Subsection 1, provides:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

The intent of NRS 281.481, Subsection 1, is to prohibit a public officer or employee from violating the public trust by talking official action in exchange for a personal benefit (i.e., a “quid pro quo”), thereby departing from the faithful and impartial discharge of public duties. The Commission’s analysis in this matter involves a two-pronged factual determination: (1) whether Commissioner Kenny sought or accepted a gift or service or favor or employment or engagement or emolument or economic opportunity, and (2) whether the gift or service or favor or employment or engagement or emolument or economic opportunity would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties as a Clark County Commissioner.

The complaint alleges that Commissioner Kenny, during a meeting in her home on August 2, 2000, asked Bradd Banaszak, Maryanne Dawicki and Gene Smith to break in to the Clark County Government Center and access locked offices, file cabinets and the county computer system to acquire documents damaging to Commissioner Kincaid’s reelection campaign in favor of Commissioner Kincaid’s opponent and friend of Commissioner Kenny, Stephani Smith, in exchange for a job with Clark County for Gene Smith and a promotion for Bradd Banaszak.

The evidence in this matter reveals that at no time did Commissioner Kenny possess any power or authority to offer a county job to anyone or promote any county employee. Further, although those who attended the meeting on August 2, 2000, at Commissioner Kenny’s home may each have approached the meeting with different goals and intentions in mind, the preponderance of the evidence herein fails to support the allegation that Commissioner Kenny offered any job or promotion to anyone, in exchange for some personal benefit or otherwise. Rather, the evidence in this matter clearly demonstrates that Commissioner Kenny, consistent with her responsibilities in carrying out the faithful and impartial discharge of her public duty as a Clark County Commissioner, attempted nothing more at the meeting at her home on August 2, 2000, than to gather information and solicit evidence of alleged improprieties in the Clark County Facilities Division. Although in that fact-finding effort Commissioner Kenny’s language may have been salty and her comments somewhat caustic from time to time, and to some extent her eagerness to gather certain information may have been motivated by political goals, mere salty language, caustic comments, and/or political motivation do not, by themselves, amount to a violation of NRS 281.481, Subsection 1.
The intent of Nevada’s ethics in government laws is, primarily, to keep public officers grounded in the policy that a public office is a public trust to be held for the sole benefit of the people. Therefore, so that the people’s faith in the integrity and impartiality of public officers may be enhanced, public officers must be committed to an effort of consciously avoiding conflicts between their private interests and those of the general public whom they serve. See, NRS 281.421.

The efforts of Mr. Smith, Mr. Banaszak, and Ms. Dawicki to bring to the public’s attention the problems within the Facilities Division reflect their expressed concern about the public trust. However, the evidence in this matter fails to support a conclusion that Commissioner Kenny violated her obligation to serve the public trust by her efforts on August 2, 2000, or any other time, to address issues of fairness and equity within the Facilities Division. Further, the evidence in this matter fails to support a conclusion that on August 2, 2000, Commissioner Kenny sought or accepted any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties.

The Commission, therefore, finds that Commissioner Kenny did not violate the provisions of NRS 281.481, Subsection 1, as alleged in the request for opinion filed herein.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED 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.


NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

[1] Commission Chairman Peter Bernhard and Commission members Raymond Avansino, Todd Russell, and Jim Kosinski constituted the quorum. Commission members Bill Flangas and Rick Hsu did not participate in this hearing pursuant to NRS 281.462, Subsection 4. Commission members Hal Smith and Lizzie Hatcher were absent.

[2] The alleged improprieties included an allegation that Facilities Division Director Bill Barrett provided preferential treatment, promotions, and overtime assignments to reward those Facilities Division employees who participated in working on political campaigns of certain candidates for Clark County Commission that he endorsed; that he allowed Facilities Division employees to work on such political campaigns on county time and using county resources; that, when authorizing overtime and granting promotions, he discriminated against Facilities Division employees who refused to participate in such political campaign work; and that he authorized the use of county time and equipment for county employees to move a flower shop owned by Clark County Commissioner Mary Kincaid.

[3] Gene Smith was terminated from his employment with the Facilities Division following a criminal conviction for theft of county-owned property (a washer and dryer).

[4] “Billy’s Boys” is a term that was commonly understood by Facilities Division employees to mean those employees who received favorable treatment by Bill Barrett, Chief of the Facilities Division, as a reward for participating in activities promoted by Mr. Barrett.

[5] Ms. Dawicki’s proposed investigation included videotaping Commissioner Kincaid’s campaign headquarters and campaign activities on an ongoing basis and, through the union grievance process, requesting overtime records.