

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF**

**WILLIAM BARRETT, (former) Chief, Clark County Facilities Division**

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on June 21, 2001, pursuant to allegations in a Request for Opinion submitted in proper form to the Commission on or about February 12, 2001, under NRS 281.511, Subsection 2, and a Commission panel<sup>[1]</sup> determination entered April 12, 2001, finding just and sufficient cause for the Commission to render an opinion in this matter on whether Mr. Barrett's alleged conduct in having employees of the Clark County Facilities Division work on local political campaigns violated the provisions of NRS 281.481, Subsections 1, 2, 7, and/or 9.

Notice of the hearing was properly posted and served. Mr. Barrett was present with his counsel, John T. Moran, Esq., and Shawn R. Huggins, Esq., of the Las Vegas law firm Moran & Associates, and provided sworn testimony. Other witnesses providing sworn testimony included past and/or present Clark County Facilities Division employees Donald Bradd Banaszak, Rudy Sideri, Paul Connor, Gene Smith, Walter Kosbob, Daniel Schubert, and Juan Matamoros.

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. William Barrett is the former Chief of the Facilities Division of Clark County, a position he held for approximately eight years prior to his retirement in February 2001.
2. Prior to his appointment as Chief, Mr. Barrett was a maintenance operations supervisor in the Facilities Division and, from 1980 to approximately 1983, was a Facilities Division employee assigned to the jail and other areas of the Las Vegas Metropolitan Police Department.
3. For fourteen months in 1989-1990, Mr. Barrett was president of the Service Employees International Union (which represents Clark County employees).
4. As Chief of the Clark County Facilities Division, Mr. Barrett was on-call 24/7 and was responsible for the operation, maintenance, alteration and construction of Clark County facilities, including the County's buildings, parks, community centers, senior centers, fire stations, police stations, courthouses, new buildings, and police department mountaintop repeaters.
5. During the period of approximately 1990-1997, at the initial suggestion of County Manager Pat Shamey and with the support of Department Director Earl Hawkes, Mr. Barrett studied and implemented a team-building work concept within the Facilities Division called "Total Quality Management" (TQM). TQM is derived from a Japanese work environment model based on employee work teams and management coaches/motivators. Under TQM, team members made collective work decisions in the spirit of team work and supported each other's efforts in the spirit of team building.
6. Clark County applicants and employees are subject to civil service employment rules and regulations. Applicants for employment with Clark County and subsequent promotion must pass an appropriate civil service examination administered by the Clark County Human Resources Division and be listed by Human Resources as qualified before being considered as a candidate for a position or promotion within Clark County.
7. Within the Facilities Division, individuals considered to fill vacancies or receive promotions were selected from the appropriate list of qualified candidates provided by Human Resources. With respect to new employees, the carpenters TQM team interviewed and selected carpenter candidates, the plumbers TQM team interviewed and

selected plumbers, the electricians TQM team interviewed and selected electricians, etc. With respect to promotions, qualified candidates were interviewed and selected by a board generally consisting of three Facilities Division employees and two employees from other Clark County divisions.

8. As Chief of the Facilities Division, Mr. Barrett had no power to hire or promote employees without going through the civil service process; however, he did have the power to transfer employees outside of that process.

9. Mr. Barrett is a strong believer in and passionate about the American political process by which individuals have the opportunity to “elect their own bosses” by exercising their right to campaign and vote. Mr. Barrett grew up in Boston in a politically active family of Irish descent and has been personally involved in political campaigning since he was 14 years old. During the time he was Chief of the Facilities Division, Mr. Barrett personally volunteered his time on Saturdays and weeknights to work on a number of local political campaigns in Clark County (making phone calls, displaying signs, walking neighborhoods, attending rallies). Mr. Barrett encouraged Facilities Division employees, union members, veterans, and others to likewise exercise their right as Americans and voluntarily involve themselves in grass-roots political processes.

10. On their own time (normally Saturdays), several employees of the Clark County Facilities Division walked neighborhoods and handed out political flyers and/or attended political rallies. No county employee participated in such political activity on county time or received county compensation therefore. No county employee was offered employment benefits by Mr. Barrett in return for participation in political campaign work. No county employee received from, or was threatened by, Mr. Barrett with adverse employment consequences for refusal to participate in political campaign work.

### **CONCLUSIONS OF LAW**

1. Mr. Barrett is a former public employee as defined by NRS 281.436.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, Subsection 2(b).

WHEREFORE, the Commission, by majority vote, renders the following Opinion:

### **OPINION**

#### **A. NRS 281.481, Subsection 1**

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.

It is not an unusual workplace practice, nor is it inherently unethical, for a supervisor to use the power of his position to ensure that subordinates follow his direction and comply with his requests so as to accomplish managements' goals and objectives. Further, it is not unusual or inherently unethical for supervisors to use reward and/or punishment incentives to encourage appropriate subordinate employee behavior and performance. That subordinate employees may feel pressured thereby to please their supervisors is also not unusual or necessarily a result of inherent unethical supervisory conduct.

However, as is the case herein, when subordinate employees “volunteer” their personal time to work on and support the campaigns of political candidates supported by the public officer in charge of the division where they are employed for no apparent reason other than because they reasonably believe it is expected of them by their superiors and their work team, the Commission is concerned.

Certainly, the political process and an individual's right to freely participate in political activity are of extreme importance. Although the importance of exercising one's right to freely participate in political activity is not

diminished in any way by the fact that the individual is a public officer, public officers are required to appropriately separate their private political interests and activities from their public duties. See, NRS, 281.421.

When Mr. Barrett was a union president, it was essentially his official responsibility to politically mobilize union members and engage them in political activity supporting candidates that he and the union supported. However, when he became Chief of the Clark County Facilities Division, political mobilization of his subordinates was not only outside of his official responsibility, it crossed the line into inappropriate and potentially unethical conduct as a public officer.

The Commission is not convinced that the political effort of Facilities Division employees in response to Mr. Barrett's regular encouragement and obvious political enthusiasm was entirely "voluntary." To the contrary, based upon all of the testimony herein, the Commission believes that employees of the Facilities Division reasonably felt pressured to support Mr. Barrett's political interests. No Facilities Division employee who testified appeared to have supported any political candidate other than those supported by Mr. Barrett. Further, no Facilities Division employee who testified could articulate any basis on which they believed that any candidate they supported was worthy of their support. The Commission is convinced, therefore, that Facilities Division employees felt unduly pressured by Mr. Barrett, the person whom they perceived held the power to affect their county employment, and sought to curry favor with him by "volunteering" their personal time to the campaigns of political candidates whom Mr. Barrett supported.

In that respect, the preponderance of the evidence herein creates a reasonable inference that Mr. Barrett sought or accepted services or favors from employees within the Facilities Division that might tend improperly to influence him in discharging his supervisory responsibilities. Because of the manner in which Mr. Barrett communicated and manifested his political enthusiasm and interest in particular political campaigns, Facilities Division employees could reasonably perceive that the potential existed for him to make employment-related decisions based on whether or not they participated in the political activity he supported.

Mr. Barrett's conduct, therefore, violated the provisions of NRS 281.481, Subsection 1. However, the violation was not "willful" as that term is defined in NRS 281.4375 and interpreted by the Commission in Opinion No. 00-41.[\[2\]](#)

#### **B. NRS 281.481, Subsection 2.**

NRS 281.481, Subsection 2, provides:

A public officer or employee shall not use his position in government to secure or grant unwarranted 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. As used in this subsection, "unwarranted" means without justification or adequate reason.

On its face, NRS 281.481, Subsection 2, reasonably appears to require the Commission to apply a two-prong test to determine whether a public officer has violated the statute. First, the Commission must find that a public officer's official conduct benefited some person or business entity.[\[3\]](#) Then the Commission must find that the public officer intended such conduct to so benefit the person or business entity.[\[4\]](#)

The testimony and evidence in this matter reveals no conduct by Mr. Barrett related to his political activism by which he secured or granted any "privilege, preference, exemption or advantage" to himself or to any other person or business entity.[\[5\]](#) The Commission, therefore, finds no violation of NRS 281.481, Subsection 2, by Mr. Barrett.

#### **C. NRS 281.481, Subsection 7.**

NRS 281.481, Subsection 7, provides:

A public officer or employee, other than a member of the legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

- (1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;
  - (2) The use does not interfere with the performance of his public duties;
  - (3) The cost or value related to the use is nominal; and
  - (4) The use does not create the appearance of impropriety;
- (b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
- (c) The use of telephones or other means of communication if there is not a special charge for that use.
- If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

The Commission finds no evidence herein that Mr. Barrett used any county property or equipment to benefit his personal or financial interest. Even if some county employees produced campaign signs or other campaign materials using Clark County Facilities Division equipment and/or supplies, there is no credible evidence herein that Mr. Barrett was in any way involved in, or even aware of, any such activity.

Therefore, the Commission finds no violation of NRS 281.481, Subsection 7, by Mr. Barrett.

#### **D. NRS 281.481, Subsection 9.**

NRS 281.481, Subsection 9, provides:

A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

It is alleged herein that Mr. Barrett influenced subordinate county employees to work on political campaigns. However, even though Mr. Barrett did actively encourage and/or influence county employees to become involved in the political campaign process, there is no credible evidence herein that in so doing Mr. Barrett attempted to benefit himself personally and financially.

Therefore, the Commission finds no violation of NRS 281.481, Subsection 9, by Mr. Barrett.

### **CONCLUSION**

Mr. Barrett's conduct as alleged herein violated the provisions of NRS 281.481, Subsection 1. However, the violation was not "willful" as that term is defined in NRS 281.4375 and interpreted by the Commission in Opinion No. 00-41.[\[6\]](#)

Mr. Barrett's conduct as alleged herein did not violate the provisions of NRS 281.481, Subsections 2, 7, and 9.

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.

DATED: February 1, 2002.

NEVADA COMMISSION ON ETHICS

By: TODD RUSSELL, Chairman

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[1] Commissioner Skip Avansino and Commissioner Lizzie Hatcher served as the panel in this matter.

[2] See, Nevada Commission on Ethics Opinion No. 00-41, In the Matter of the Request for Opinion Concerning the Conduct of Michael J. McDonald, Las Vegas City Councilman (07/13/01).

[3] "...secure or grant unwarranted 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." NRS 281.481, Subsection 2 (emphasis added).

[4] "A public officer...shall not use his position in government..." NRS 281.481, Subsection 2 (emphasis added).

[5] Since the Commission finds no evidence as to the first prong of the two-prong test, the Commission has no reason to analyze the second prong (i.e., intent).

[6] See, Nevada Commission on Ethics Opinion No. 00-41, In the Matter of the Request for Opinion Concerning the Conduct of Michael J. McDonald, Las Vegas City Councilman (07/13/01).