

## Opinions No. 01-27 and 01-28

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF JEFF GRIFFIN, Mayor, City of Reno; and Member, Board of Directors, Reno-Sparks Convention and Visitors Authority

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on November 8, 2001, pursuant to allegations in a Request for Opinion submitted in proper form to the Commission on or about July 2, 2001, under NRS 281.511, Subsection 2, and a Commission panel<sup>[1]</sup> determination entered August 29, 2001, finding just and sufficient cause for the Commission to render an opinion in this matter on whether Mayor Griffin violated the provisions of NRS 281.501, Subsections 2 and/or 3, and offended the Commission's directive in Opinion No. 97-48 dated May 29, 1998, when he voted (a) as Mayor at a Reno City Council meeting on June 26, 2001, on a motion to appoint Mr. William Newberg to the Board of Trustees of the Airport Authority of Washoe County; and (b) as a member of the Board of Directors of the Reno-Sparks Convention and Visitors Authority (RSCVA) at an RSCVA meeting on June 28, 2001, on a motion to appoint Mr. Michael Caryl to the Board of Trustees of the Airport Authority of Washoe County.

Notice of the hearing was properly posted and served. Mayor Griffin was present with his counsel, Deputy Reno City Attorney Michael Halley, Esq., and provided sworn testimony. Mr. Russell Romine also appeared as a witness and provided sworn testimony.

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. Jeff Griffin is the elected Mayor of the City of Reno, Nevada. He has served as Reno's Mayor since June 1995.
2. Mr. Griffin is the former owner of Nevada Foreign Trade Services (NFTS).
3. On August 27, 1997, NFTS and The Reno Tahoe International Airport Authority (now known as the Airport Authority of Washoe County) entered into a contract for services related to the filing of a foreign trade zone expansion application with the federal Foreign Trade Zone Board.
4. NFTS's contractual responsibilities were completed December 28, 1999. On February 28, 2000, the Airport Authority of Washoe County made the final payment to NFTS for its performance under the contract.
5. On January 4, 2001, Mr. Griffin sold all of his right, title and interest in NFTS to Mr. Russell Romine and Christopher M. Romine and Debbie A. Romine, co-trustees of The Romine Family Trust, received payment in full therefore, and resigned as an officer and director of NFTS.
6. On February 4, 2001, Mr. Romine and the co-trustees of The Romine Family Trust, the new shareholders of NFTS, changed the company's name to Great Basin Logistics, Inc. Mr. Griffin has no interest in Great Basin Logistics, Inc.
7. Mr. Griffin is former owner of Griffin Transport Services, Inc.
8. On January 4, 2001, Mr. Griffin sold all of his right, title and interest in Griffin Transport Services, Inc. to Mr. Russell Romine and Christopher M. Romine and Debbie A. Romine, co-trustees of The Romine Family Trust. Mr. Griffin holds a personal unsecured promissory note from the Mr. Romine and the co-trustees of The Romine Family Trust, the principals who purchased Griffin Transport Services, Inc.
9. On October 22, 2001, Mr. Griffin, as Mayor of Reno, Nevada, was a luncheon speaker for the National Association of Foreign Trade Zones.

10. On June 25, 2001, Mr. Griffin, in his capacity as Mayor of Reno, Nevada, voted in opposition to a motion before the Reno City Council to appoint Mr. William Newberg to the Board of Trustees of the Airport Authority of Washoe County. On June 28, 2001, Mr. Griffin, in his capacity as a member of the RSCVA Board of Directors, voted in favor of a motion to appoint Mr. Michael Caryl to the Board of Trustees of the Airport Authority of Washoe County.

### 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 and NRS 281.511, Subsection 2(b).

WHEREFORE, the Commission unanimously renders the following Opinion:

### OPINION

NRS 281.501, Subsection 3, provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon 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 interests of others; or
- (c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest...[S]uch a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body...This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

On any matter in which a public officer has, *inter alia*, a pecuniary interest, NRS 281.501, Subsection 3, prohibits the public officer from approving, disapproving, voting, abstaining from voting, or otherwise acting upon the matter "without disclosing sufficient information concerning the...[pecuniary] interest to inform the public of the potential effect of the action...upon...his [pecuniary] interest." See also, Commission Opinion 99-56, In the Matter of the Opinion Request of Bruce L. Woodbury, Clark County Commissioner (12/22/99).

NRS 281.501, Subsection 2, provides:

...[A] public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a 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.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the

requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

NRS 281.501, Subsection 2, prohibits a public officer from voting on matters under certain specific circumstances. However, public officers have a public duty to consider and act on matters that come before them unless they are specifically disqualified therefrom pursuant to NRS 281.501, Subsection 2. To require otherwise would deprive the public of its elected or appointed representation. As the Commission noted in a prior opinion:[\[2\]](#)

[T]he public (and an elected official's constituents) have an interest in matters which come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would materially affect one's independence of judgment. Compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and independent judgment. And, in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority. The burden, therefore, is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a reasonable person's independence of judgment would be materially affected by those private commitments.

In its Opinion No. 97-48, the Commission concluded, "NRS 281.501(2) compels Mr. Griffin to abstain from participating in any future vote regarding the Airport Authority [of Washoe County] that may come before the Reno City Council as long as NFTS is involved with the Airport Authority." The Commission further stated that "[o]nce the relationship between NFTS and the Airport Authority ceases, so will Mr. Griffin's obligation to disclose and abstain regarding Airport Authority matters." NCOE Opinion No. 97-48 at 2-3.

In determining whether or not a public officer or public employee has violated any provision of NRS Chapter 281, the Commission must look at the evidence actually presented in a matter. By statute, the Commission may not find that a public officer or public employee has violated any provision of NRS Chapter 281 unless such finding is supported by a preponderance of the evidence in the matter.[\[3\]](#) The Commission is loath to assume any fact not in evidence on the record.

Contrary to the allegations herein, the preponderance of the evidence in this matter clearly establishes that on June 26, 2001, and June 28, 2001, when Mayor Griffin voted on appointments to the Board of Trustees of the Airport Authority of Washoe County, he had no ownership or other pecuniary interest in NFTS and there was no contractual relationship between NFTS or Griffin Transport Services, Inc., and the Airport Authority of Washoe County.

The disclosure requirements of NRS 281.501, Subsection 3, are affirmative in nature. If a public officer's independence of judgment in a matter is materially affected by one of the three enumerated interests, he must disclose information about that interest and how it affects his participation and/or vote. There is nothing in the statute that requires a public officer to disclose that he has no such interest.

It is the Commission's opinion, therefore, that Mayor Griffin did not violate the provision of NRS 281.501, Subsections 2 and/or 3, or offend the Commission's directive in Opinion No. 97-48 dated May 29, 1998, when he participated in the discussion and voted (a) as Mayor at a Reno City Council meeting on June 26, 2001, on a motion to appoint Mr. William Newberg to the Board of Trustees of the Airport Authority of Washoe County; and (b) as a member of the Board of Directors of the Reno-Sparks Convention and Visitors Authority (RSCVA) at an RSCVA meeting on June 28, 2001, on a motion to appoint Mr. Michael Caryl to the Board of Trustees of the Airport Authority of Washoe County.

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 25, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

---

[1] Commissioner William Flangas and Commissioner Rick Hsu served as the panel in this matter.

[2] See, Commission Opinion No. 99-56, In the Matter of the Opinion Request of Bruce L. Woodbury, dated December 22, 1999.

[3] See, NRS 281.551(11).