



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
LYNETTE BOGGS-MCDONALD, Former City Councilwoman
City of Las Vegas**

Opinion No. 04-77

This matter came before the Nevada Commission on Ethics (hereinafter "Commission") for hearing on January 11, 2006 on a Request for Opinion filed on October 18, 2004 pursuant to NRS 281.511(2)(b), and a determination on September 28, 2005, by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether former City of Las Vegas Councilwoman Lynette Boggs-McDonald's conduct violated the provisions of NRS 281.481(2) and NRS 281.481(9).

The issues before the Commission in this matter are limited to the following:

1. With regard to NRS 281.481(2), did Ms. Boggs-McDonald use her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself or her husband by asking two legislators to intervene on a bill before the legislature that may have concerned Mr. McDonald's employment?
2. With regard to NRS 281.481(9), did Ms. Boggs-McDonald attempt to gain a personal benefit through the influence of a subordinate, specifically: a) Wendell Williams; and b) Morse Arberry?

Notice of the hearing was properly posted and served. Lynette Boggs-McDonald was present with her counsel, John H. Mowbray, Esq., and William B. Terry, Esq., and provided sworn testimony. The following individuals appeared as witnesses and provided sworn testimony:

Wendell Williams, former Nevada Assemblyman and former City of Las Vegas employee; Brian Krolicki, Nevada State Treasurer; Kathryn Besser, Nevada State Treasurer Chief of Staff; Morse Arberry, Nevada Assemblyman and former City of Las Vegas employee; Steven McDonald, Lynette Boggs-McDonald's husband and former Deputy State Treasurer for Unclaimed Property; Kimberly McDonald, Lynette Boggs-McDonald's sister-in-law; Audrie Dodge, former Senior Executive Assistant to Councilwoman Lynette Boggs-McDonald; Mike Hougen, City of Las Vegas Information Technology System Infrastructure Manager; Douglas Selby, Las Vegas City Manager; Virginia Valentine, Assistant Clark County Manager and former Las Vegas City Manager; Elizabeth Fretwell, Las Vegas Deputy City Manager; Brad Jerbic, Las Vegas City Attorney; Mark Vincent, City of Las Vegas Director of Finance and Business Services; and Mary Henderson, Lobbyist for Nevada League of Cities and Municipalities.

FINDINGS OF FACT

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

1. Ms. Boggs-McDonald worked for the City of Las Vegas as an Assistant City Manager from January 1994 through January 1997.
2. Ms. Boggs-McDonald was appointed to a vacant position as City Councilwoman for Ward 2 for the City of Las Vegas on July 12, 1999, and served in that capacity from 1999 through 2004.
3. Ms. Boggs-McDonald was appointed to a vacant position as County Commissioner in 2004 for District F for Clark County. Upon appointment, she resigned from her position with the Las Vegas City Council.
4. Ms. Boggs-McDonald is married to Steven McDonald. Steven McDonald was employed with the Nevada State Treasurer and served as Deputy State Treasurer for Unclaimed Property from July 1, 2001 through September 3, 2003.
5. The Nevada State Treasurer introduced Senate Bill 446 (hereinafter "SB 446") during the 2003 legislative session which proposed to codify a reorganization of unclassified staff positions within the State Treasurer's office. Hearings on SB 446 were held before both the Assembly Ways and Means and Assembly Government Affairs Committees.

6. Although the provisions of SB 446 had no effect on the position of Deputy State Treasurer for Unclaimed Property, Steven McDonald believed the bill would affect his position.
7. Steven McDonald sought the help of Assemblymen Wendell Williams and Morse Arberry in advocating against the passage of SB 446.
8. Wendell Williams served in the Nevada Legislature for nine (9) terms, beginning with the 1987 session and ending with the 2003 session and was the senior member of the Assembly Government Affairs Committee during the 2003 session.
9. Wendell Williams began employment at the City of Las Vegas in 1996 and was employed with the City of Las Vegas Neighborhood Services Department during the 2003 legislative session.
10. Morse Arberry has served in the Nevada Legislature for eleven (11) terms, beginning with the 1985 session, and was Chairman of the Assembly Ways and Means Committee during the 2003 session.
11. Morse Arberry was employed with the City of Las Vegas in various capacities beginning in 1977. He separated from service with the City of Las Vegas on January 4, 2002.
12. Kimberly McDonald is the sister of Steven McDonald. During the 2003 legislative session she was employed as a Special Projects Analyst and Lobbyist for the City of North Las Vegas.
13. Witness testimony revealed that Steven McDonald prepared and Kimberly McDonald delivered materials to Mr. Williams for his use in questioning the Treasurer's office at the hearing on SB 446 before the Assembly Government Affairs Committee.
14. Minutes of the Assembly Government Affairs Committee confirmed that Mr. Williams questioned the Treasurer's office extensively about SB 446.
15. Mr. Williams testified that Lynette Boggs-McDonald called him and asked him to defeat SB 446. However, this testimony was not corroborated by any other witnesses, phone records, e-mail correspondence or any other documents.
16. A telephone call thought to have been made by Ms. Boggs-McDonald to Mr. Williams from her city-issued cellular telephone was instead made by another individual. Evidence showed that the city telephone number thought to have been Ms. Boggs-McDonald's was registered to a different city employee.
17. Ms. Boggs-McDonald testified that she was out of the country during the time period that the hearings on SB 446 took place and that she had no involvement with the documents provided to Mr. Williams and that she played no part in lobbying to defeat the bill.

18. Before the end of the 2003 legislative session, Mr. Arberry asked State Treasurer Brian Krolicki about SB 446 questioning the measure's effects on State Treasurer employees. Thereafter, Treasurer Krolicki telephoned Steven McDonald, assured him that his job would not be affected by passage of SB 446 and urged Steven McDonald to relay this to Mr. Arberry.

19. Mr. Arberry testified that neither Steven McDonald nor Ms. Boggs-McDonald contacted him regarding SB 446.

20. The City of Las Vegas has a council-manager form of government, meaning the City Council appoints the City Manager. All city employees report through their supervisors to the City Manager, with the exception of the City Attorney and the City Auditor. Both the City Attorney and the City Auditor are appointed by the City Council and report directly to the City Council. The City of Las Vegas organization chart specifically provides that the Director of the Neighborhood Services Department reports directly to a Deputy City Manager, who reports directly to the City Manager.

CONCLUSIONS OF LAW

1. Lynette Boggs-McDonald is a former public officer as defined in NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511(2)(b).

WHEREFORE, based upon a preponderance of the evidence, on a motion made, seconded, and approved by a five-to-one vote,¹ the Commission renders the following Opinion:

OPINION

The complaint that is the basis of this opinion alleges that former City Councilwoman Lynette Boggs-McDonald violated NRS 281.481(2) by using her position in government to prevent her husband, Steven McDonald, from losing his job at the State Treasurer's office.

While serving on the Las Vegas City Council, Ms. Boggs-McDonald allegedly attempted to influence two city employees, Wendell Williams and Morse Arberry, to obstruct legislation

¹ Commissioners Rick Hsu, James Kosinski, George Keele, Randall Capurro and Caren Jenkins voted to approve the motion that there was no finding of a violation by Ms. Boggs-McDonald of NRS 281.481(2) or NRS 281.481(9). Commissioner William Flangas voted Nay. Commissioners Timothy Cashman and Mark Hutchison did not participate in the hearing because they served on the panel that determined that the ethics complaint should proceed to a hearing.

pending in the 2003 Nevada Legislature which she believed proposed the elimination of her husband's job at the State Treasurer's office.

During the 2003 legislative session, both Mr. Williams and Mr. Arberry were members of the Nevada State Assembly. Mr. Williams was the senior member of the Assembly Government Affairs Committee which held hearings on SB 446 concerning the reorganization of the State Treasurer's office. Mr. Arberry served as Chairman of the Assembly Ways and Means Committee.

Under NAC 281.189, the Executive Director of this Commission may investigate relevant issues and facts beyond those presented in an ethics complaint in determining her written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint. Consistent with this provision, the Executive Director recommended the panel forward to the Commission the question of whether Ms. Boggs-McDonald's conduct also violated NRS 281.481(9) by attempting to gain a benefit through the influence of her subordinates.

1. NRS 281.481(2) states:

“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 business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501².

² NRS 281.501(8) defines “commitment in a private capacity to the interests of others” as commitment to a person: (a) Who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

(b) “Unwarranted” means without justification or adequate reason.”

In its analysis, the Commission looked to past opinions for guidance in interpreting NRS 281.481(2). While at least one prior opinion held that a public officer who merely attempts, but does not succeed, in securing or granting an unwarranted advantage does not violate NRS 281.481(2)³, several members of this Commission believe that such an interpretation would be at odds with legislative intent and that merely making an attempt to obtain an unwarranted benefit would in fact bring the activity within the parameters of NRS 281.481(2). However, the Commission did not render a decision on this issue because the matter could be decided on other grounds.

On its face, NRS 281.481(2) appears to require the Commission in its deliberations to find by a preponderance of the evidence the following elements: 1) A public officer or public employee; 2) secured or granted; 3) an unwarranted benefit; 4) to himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a private commitment; 4) by using; 5) his position in government.

With the above elements in mind, the Commission considered the evidence surrounding the allegation that Ms. Boggs-McDonald used her official position to gain a benefit for her husband. Although evidence was presented that Steven McDonald asked Mr. Williams and Mr. Arberry to intervene regarding SB 446, the Commission did not find a preponderance of evidence that Ms. Boggs-McDonald herself had any related communications with Mr. Williams or Mr. Arberry. The nexus between Ms. Boggs-McDonald and SB 446 fails for several reasons.

³ See, *Matter of William Barrett, CEO No. 01-08A*

First, Mr. Williams' testimony that Ms. Boggs-McDonald communicated with him for the sole purpose of requesting him to defeat SB 446 was vague, uncorroborated by any credible evidence, and inherently unreliable. Second, although Mr. Arberry testified that Ms. Boggs-McDonald never contacted him, he appeared to contradict an earlier statement made to Commission staff that Ms. Boggs-McDonald indeed contacted him. Before the Commission, Mr. Arberry had a remarkably selective lack of memory of many events which made it difficult for the Commission to find a preponderance of evidence for a finding of a violation. Finally, no other evidence supported the contention that Ms. Boggs-McDonald contacted Mr. Arberry to intervene with regard to SB 446.

Based on the insufficiency of the evidence presented, the Commission makes no finding that Ms. Boggs-McDonald violated NRS 281.481(2).

2. ***NRS 281.481(9)*** states:

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

Ms. Boggs-McDonald argued that, as a city councilwoman, she was in no position to exert improper influence over Mr. Williams under the council-manager form of government, since Mr. Williams was five to seven management levels subordinate to the City Council. The Commission disagreed. An employee may very well feel undue pressure to follow instructions given by an elected official regardless of the number of management levels between the employee and the elected governing body on which the official serves. However, for the same reasons as set forth above, the Commission did not find a preponderance of evidence to demonstrate that Ms. Boggs-McDonald attempted to personally benefit by influencing a subordinate, including Mr. Williams.

With regard to Mr. Arberry, since he was not a City of Las Vegas employee during the time of the alleged conduct, he could not be a subordinate over which Ms. Boggs-McDonald could attempt to improperly influence. Therefore, the Commission makes no finding of a violation by Ms. Boggs-McDonald of NRS 281.481(9).

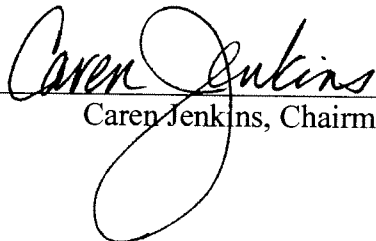
CONCLUSION

Based on the foregoing, the Commission makes no finding that Ms. Boggs-McDonald violated NRS 281.481(2) or NRS 281.481(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: September 15, 2006.

NEVADA COMMISSION ON ETHICS

By: 
Caren Jenkins, Chairman