



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Opinion Concerning the Conduct of
BONNIE DUKE, Former Finance Director,
City of Fernley,
State of Nevada,

Request for Opinion No. 09-12C

Former Public Employee.

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) during a public hearing on November 12, 2009, pursuant to NRS 281A.440(2).

Bonnie Duke (“Duke”) was present at the hearing and provided sworn testimony. Brent L. Kolvet, Esq., of the law firm Thorndal, Armstrong, Delk, Balkenbush & Eisinger, represented Duke in this matter. The Commission heard testimony from four witnesses during the hearing.

On February 25, 2009, Sandra Mathewson filed a Request for Opinion (“RFO”) with the Commission alleging that Duke violated the Ethics in Government Law (Ethics Law) set forth in NRS 281A by using the City of

Fernley credit card to pay various professional licensing fees and membership dues related to Duke’s Utah Certified Public Accountant (CPA) license.

During the investigation, the Commission’s Executive Director discovered additional relevant issues and facts beyond those presented in the RFO. In accordance with NAC 281A.415(2), the Executive Director provided Duke with notice of the additional issues and facts and offered Duke the opportunity to respond.

Pursuant to NRS 281A.440(3) and (4), an investigatory panel of two Commissioners determined that just and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding each of the allegations.

After fully considering and analyzing the facts and circumstances presented in

¹ The quorum consisted of Chairman George M. Keele, Esq. and Commissioners Gregory J. Gale, CPA, Paul H. Lamboley, Esq., John W. Marvel and J.T. Moran III, Esq.

evidence, including witness testimony and documents, the Commission deliberated and orally advised Duke of its decision that, based on a preponderance of the evidence, Duke did not violate the Ethics Law. The Commission now renders this written Opinion outlining its findings.

Facts and circumstances different from those presented to and considered by the Commission may result in a different opinion.

I. FINDINGS OF FACTS

1. At all relevant times, Duke was employed as the Finance Director for the City of Fernley (“City”) in the state of Nevada.
2. The City issued a credit card for Duke to use for certain City-related expenses as governed by a written City policy (“Policy”). The Policy authorized credit card use for certain government-related travel and training arrangements and for the procurement of certain services, supplies, capital items, or other general expenditures upon specific advance written authorization of the City manager.
3. Although the Policy required written advance authorization from the City Manager for charges other than travel or training, the City Manager did not require such prior written authorization if the charges were related to City business.
4. The City has a budgetary process for prior authorization of any City expenditures. Specifically, each department head submits a proposed budget by line item to the City Manager

who prepares an overall recommended budget for approval by the City Council.

5. Annually, Duke submitted the Finance Department’s proposed budget to the City Manager which included her CPA membership dues, license fees and continuing professional education fees by line item. The City Manager approved the proposed budgets and submitted them to the City Council. Each year of Duke’s employment, the City Council approved these expenses as part of the Finance Department’s budget.
6. Between May 2007 and July 2008, Duke made four separate charges to the City credit card which are addressed in this Request for Opinion. The charges include:
 - (a) \$63 - annual Utah CPA license fees on July 28, 2008;
 - (b) \$105 - annual membership dues in the Utah CPA Association on May 6, 2008;
 - (c) \$100 - annual membership dues in the Utah CPA Association on May 16, 2007; and
 - (d) \$190 - annual membership dues in the American Institute of Public Accountants on July 17, 2007.
 - (e) \$119 – continuing professional education fees for CPEExpress Infobytes in 2007.
7. Since Duke’s employment began in November 2001, the City has approved and paid Duke’s annual fees and dues in the Utah CPA Association. Duke made annual payments to the Association with the City credit card or by City check

issued directly to the Utah CPA Association.

8. The Finance Director's job description preferred the employee to hold a master's degree or be licensed as a Certified Public Accountant. Duke's active Utah CPA license assisted her to perform her professional duties and responsibilities by keeping her current in her field.
9. The City Manager verbally authorized each of Duke's credit card charges described herein.
10. The City Council subsequently approved and authorized each of the credit card charges through the City's regular budget process.
11. Duke utilized the Utah CPA Association's members-only website to assist with her duties as Finance Director, including, without limitation, access to resources relating to financial and accounting practices and government financial information. The Association also provided various training opportunities.
12. Duke utilized her membership in the American Institute of Certified Public Accountants for an on-line training course regarding internal controls and to purchase a software program required by the City. The City received a \$240 discount on the software program as a result of Duke's membership.

II. DISCUSSION

The Request for Opinion alleged that Duke violated the Ethics Law by using her position in government as the City's Finance Director to secure unwarranted personal or

financial privileges or advantages by funding her private professional licensing fees and membership dues in violation of NRS 281A.400(2).

NRS 281A.400(2) provides, in relevant part:

A public . . . employee shall not use the public . . . employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public . . . employee

As a public employee, Duke was issued a City credit card to use for City-related purposes. She utilized the card to make the charges questioned in the RFO. Therefore, Duke used her position in government, through the use of the public credit card to pay for the licensing fees and membership dues at issue.

Although Duke used her position in government to pay her out-of-state professional dues, the expenditures were warranted. As defined in NRS 281A.400(2)(b), a personal or pecuniary privilege or advantage obtained through the use of one's government position is "unwarranted" if it is "without justification or adequate reason."

Duke maintained her active CPA license in Utah and related CPA memberships in Utah to assist with the functions and objectives of her position as the City's Finance Director. Duke's job description indicated it was desirable for the employee to be licensed as a CPA. Duke had access to resources otherwise unavailable by virtue of her Utah CPA license and related memberships which provided continuing education opportunities and other training programs beneficial to carrying out her duties as Finance Director.

As a result of her professional memberships, Duke also obtained a software program for the City at a discounted price.

In addition to pursuing City-related business and benefitting the City, each of the charges at issue was authorized by the Fernley City Manager and City Council in accordance with the City's budget process as well as the regular practices of the City Manager. Because the expenditures were related to City business and were approved through the budget process and subsequently approved by the City Manager and City Council, Duke did not violate NRS 281A.400(2).

While the evidence on the record identifies an arguable inconsistency between the Policy, the City Manager's practices related to credit card use and the City's budget process, Duke's use of the credit card for her professional dues and fees was both pre-approved and subsequently approved by the City Manager and City Council. Deficiencies in City policies and practices cannot and do not create an ethics violation.

III. CONCLUSIONS OF LAW

1. At all times relevant to the request for opinion, Duke was a "public employee," as defined by NRS 281A.150.
2. Pursuant to NRS 281A.280 and 281A.440(2), the Commission has jurisdiction to render an opinion in this matter.
3. Duke did not violate NRS 281A.400(2) in 2007 or 2008 by charging the costs of various professional fees and dues on the City credit card because each charge was approved by the City through the City Manager and by the City Council. Additionally, each expenditure related to

the pursuit of City-related business and benefitted the City. By the use of the credit card, Duke did not use her position in government to secure or grant an unwarranted privilege, preference, exemption or advantage for herself.

Dated this 13th day of October, 2010.

NEVADA COMMISSION ON ETHICS

By: 

George M. Keele, Esq.
Chairman, November 12, 2009²

² Commissioner Keele was the Chairman of the Commission during the hearing in this matter.