

Abstract of Opinion No. 92-53

BEFORE THE NEVADA COMMISSION ON ETHICS

This Opinion is in response to a first party opinion request filed with the Nevada Commission on Ethics (Commission) by an employee of the Nevada Division of Forestry (Division) that renders emergency prevention, control, and education services.

The issue presented is whether the opinion requestor's purchase from a private volunteer fire department (PFD) which performs similar functions of a vehicle for \$1.00 violated the Code of Ethical Standards at NRS 281.481(1), (2), or (5).

The opinion requestor appeared with his counsel and testified in the matter. At the hearing on the merits of the opinion request, Officials of the Division and PFD also appeared and testified. The opinion requestor did not waive statutory confidentiality in the matter and the proceeding was therefore not open to the public. Immediately thereafter, the Commission met for deliberations.

Based on the foregoing, the Commission makes the following Findings and renders the following Opinion.

FINDINGS

1. The Commission has jurisdiction over this matter pursuant to NRS 281.511(1).
2. The opinion requestor is a public employee in his position as chief unit leader with the Division. The Division assigns chief unit leaders to a geographical area of responsibility who then work with a small group of volunteer fire departments in that geographical area on an ongoing basis. Volunteer fire department personnel are dispatched with other paid emergency-response personnel on all emergency calls. Although a chief unit leader is not responsible for dispatching a particular volunteer unit, once dispatched, it is the chief unit leader who determines how long the units will remain on the scene, which units will remain, and what type of coverage will be used to cover paid stations which have responded to the incident.

Volunteers are usually paid on an hourly basis by the Division for responding to incidents and the chief unit leader approves such payments.

Volunteers are also hired by the Division through chief unit leaders to perform work for the division on emergencies or other related duties while paid personnel are away on assignments or emergencies.

3. The opinion requestor is chief unit leader for the geographical area in which the PFD is located. PFD is a non-profit corporation that has a history of working with the Division in emergency fire prevention and control situations. PFD owns and mans its own emergency vehicles and operates certain assigned vehicles from the Division. PFD volunteers are independent of the State of Nevada and operate under the PFD's own charter, which has its own budget and is directed by an independent board of directors (Board).
4. A number of years prior to the Commission hearing in this matter, PFD volunteers obtained at no cost to the organization, a vehicle with a utility box from a utility company. The donation was made without conditions, but with the understanding that the vehicle would be for emergency use by the PFD.

The vehicle was equipped by the PFD and was known as vehicle #ABC. The donated vehicle responded to almost all emergencies in the PFD's district.

5. In 1991, the PFD again requested the utility company to donate another surplus vehicle to replace vehicle #ABC, which by then had registered approximately 200,000 miles. Over 100,000 miles had been put on the vehicle by the utility company prior to it being declared surplus.

The utility company donated another surplus vehicle to the PFD in the spring of 1991. The volunteers took the newer vehicle and created a newer vehicle #ABC by removing all of the radio and other emergency equipment from the older vehicle, as well as its utility box, tires and batteries. The utility box that came with the newer vehicle was given to one of the volunteers for the cost of removing it.

There was no interest amongst the PFD volunteers for the stripped engine, cab and chassis that was the old vehicle #ABC. At one of its meetings, the PFD Board passed a motion to sell the remains of the former vehicle #ABC for one dollar (\$1.00) rather than transport the "remains" to a junkyard or attempt to sell it on an "as is" basis.

The opinion requestor was the only person expressing an interest in purchasing the vehicle. Although he had heard indirectly that the vehicle was replaced by a newer vehicle, he had not been aware, at the time he inquired into purchasing the old vehicle, that PFD had already decided to sell the chassis for \$1.00. The opinion requestor purchased the stripped-down vehicle chassis from the PFD for one dollar (\$1.00).

OPINION

Based on the above stated Findings of Fact, the Commission concludes that the opinion requestor is a public employee in his capacity as a chief unit leader for the Division as defined by NRS 281.4365.

The Nevada Code of Ethical Standards at NRS 281.481(1), (2), and (5) apply to the conduct of public officers and employees. The statute provides in pertinent part:

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

2. 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.

....

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use this information to further the pecuniary interests of himself or any other person or business entity.

....

The question for the Commission is whether the opinion requestor used his position as a Division chief unit leader to influence the sale of a stripped vehicle for \$1.00 from PFD with whom he works on a regular basis.

With respect to NRS 281.481(1), the opinion requestor did not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity from the volunteers which would tend to improperly influence him to depart from the faithful discharge of his duties by purchasing the stripped-down chassis from the PFD. The opinion requestor did not propose the One Dollar (\$1.00) purchase price, rather that was the price agreed upon by

the volunteers prior to the time that the opinion requestor expressed his interest in the vehicle. It is the opinion of this Commission there had been nothing by virtue of the opinion requestor's position as a Division chief unit leader, or influence of his position, which was used by him to buy the PFD vehicle for \$1.00. Additionally, there is no evidence that the opinion requestor's relationship with PFD would tend to improperly influence him so as to cause him to depart from the faithful and impartial discharge of his official duties as chief unit leader. As a result, NRS 281.481(1) was not violated by the opinion requestor.

With respect to NRS 281.481(2) the opinion requestor did not use his position of authority as a chief unit leader to secure or grant any unwarranted privileges, preferences, exemptions or advantages for himself. The one dollar (\$1.00) purchase price was not made available to the opinion requestor because he was a chief unit leader, but on the basis of the PFD's decision that it was more practical to sell the stripped-down chassis for this amount than pay to have it hauled to a junkyard. Therefore, the opinion requestor did not violate NRS 281.481(2).

Finally, with respect to NRS 281.481(5), the opinion requestor did not through his public position, use information unavailable to people generally which furthered his pecuniary interests. The information regarding the stripped-down chassis was not made solely available to the opinion requestor. The information had circulated among the volunteers and had been discussed at board meetings. The opinion requestor had expressed his interest in purchasing the stripped-down chassis, and only after no one else within the PFD had expressed any interest in the vehicle, was it sold to the opinion requestor. As a result, the opinion requestor did not violate the provisions of NRS 281.481(5).

CONCLUSION

The opinion requestor did not violate any of the provisions of the Code of Ethical Standards at NRS 281.481(1), (2), or (5) by virtue of his purchase of a stripped-down chassis from the private fire volunteer department.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of NRS 281.501 quoted and discussed above must be applied on a case-by-case basis, with results that will vary depending on the specific facts and circumstances involved.

DATED: October 3, 1995.

NEVADA COMMISSION ON ETHICS

By: /s/ THOMAS R. C. WILSON II, Chairman