



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
GEORGE C. CHACHAS, Mayor, City of Ely.**

Opinion No. 06-13

This matter came before a quorum¹ of the Nevada Commission on Ethics (hereinafter the “Commission”) for hearing on April 11, 2007. A Request for Opinion was filed pursuant to NRS 281.511(2)(b) on March 3, 2006 by Gary Fairman, Special Counsel to the City of Ely. Subsequently, a determination was made on November 21, 2006, 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 Mayor of Ely George Chachas’ conduct violated the Ethics in Government Law, specifically the provisions of NRS 281.481(1), NRS 281.481(2), NRS 281.501(2) and/or NRS 281.501(4).

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

1. By seeking to avoid the payment of a disputed utilities debt he owed to the City of Ely, did Mr. Chachas, in his capacity as Mayor, seek or accept any service, favor, emolument or

¹ The quorum consisted of Chairman Kosinski and Commissioners Capurro, Flangas, Hsu and Keele. Commissioner Jenkins disclosed a conflict of interest in the matter and abstained from participation. Commissioners Cashman and Hutchison served as the panel in this matter. Pursuant to NRS 281.462(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

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, in violation of NRS 281.481(1)?

2. Did Mr. Chachas, as the Mayor of Ely, use his position in government to secure or grant unwarranted² privileges, preferences, exemptions or advantages for himself in violation of NRS 281.481(2), when he vetoed the Ely City Council's ("Council") decision to hire special legal counsel to pursue collection of the utilities debt Mr. Chachas owed to the city?

3. Did Mr. Chachas, as Mayor of Ely, violate NRS 281.501(2) when he advocated against hiring special legal counsel to pursue collection of the utilities debt owed by Mr. Chachas and when he vetoed the Council's action to hire special legal counsel for this purpose?

4. Did Mr. Chachas, as Mayor of Ely, violate NRS 281.501(4) when he failed to publicly disclose his personal financial interest in the issue of the Council's hiring special legal counsel to collect the utilities debt Mr. Chachas owed to the City?

5. If Mr. Chachas, as the Mayor of Ely, violated any of the referenced statutes, was the violation "willful" pursuant to NRS 281.4375³ as limited by NRS 281.551(5)⁴?

6. If Mr. Chachas' conduct, as the Mayor of Ely, related to any of the above issues is deemed a "willful" violation of any of the referenced statutes, does the willful violation warrant the imposition of a civil penalty or any other action pursuant to the provisions of NRS 281.551?

² As used in NRS 281.481(2), "unwarranted" means without justification or adequate reason.

³ NRS 281.4375 defines "willful violation" as: "the public officer or employee knew or reasonably should have known that his conduct violated this chapter."

⁴ NRS 281.551(5) provides: "An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements:

(a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471; (b) He was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and (c) He took action that was not contrary to a prior published opinion issued by the Commission.

Notice of the hearing was properly posted and served. Mayor Chachas was present with his legal counsel, Hector J. Carbajal II, Esq., and provided sworn testimony.

FINDINGS OF FACT

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

1. At all relevant times, Mr. Chachas was the Mayor of Ely.
2. Mayor Chachas owns the Town & Country Motel. As proprietor of the Town & Country Motel, Mayor Chachas is required to pay certain utilities to the City of Ely.
3. At its January 12, 2006 meeting, the Council discussed and then voted on Agenda Item No. 15 to hire outside legal counsel to collect the debt allegedly owed by Mayor Chachas to the city for the Town & Country Motel. During the Council's consideration of Agenda Item No. 15, Mayor Chachas did not publicly disclose that he was the owner of the Town & Country Motel and that he was the subject of the matter being discussed. Mayor Chachas argued against passage of Agenda Item No. 15.
4. The Ely City mayor is not entitled to a vote except in the case of a Council tie. However, the mayor may exercise the right of veto upon all matters passed by the Council.
5. On January 26, 2006, Mayor Chachas vetoed the January 12, 2006 Council approval of Agenda Item No. 15.
6. Mayor Chachas was aware three days before the January 12, 2006 meeting that Agenda Item No. 15 would be heard at that meeting.
7. In 1993, in response to a complaint filed against Mayor Chachas—who was at the time the Mayor of Ely—the Commission found him in violation of the Ethics in Government Law. In Opinion No. 92-33, the Commission found Mayor Chachas in violation of NRS

281.481(2) on three separate counts for using his position as mayor to benefit personally. Additionally, the Commission found that Mayor Chachas violated NRS 281.481(4), the disclosure provision, by failing to disclose his business interest during a Council meeting where a matter affecting his personal business was considered.

CONCLUSIONS OF LAW

1. Mayor Chachas, as Mayor of Ely, is a 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, Subsection 2(b).

WHEREFORE, based upon a preponderance of the evidence in this matter, the Commission renders the following Opinion⁵:

OPINION

The Nevada Legislature has declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the role of persons who are both public servants and private citizens." NRS 281.421. The Commission is therefore

⁵ The vote on each issue is as follows: NRS 281.481(1)—no violation, unanimous; NRS 281.481(2)—violation, 3 to 2. Affirmative finding of willfulness—4 to 1; NRS 281.501(4)—violation, unanimous. Affirmative finding of willfulness—4 to 1; NRS 281.501(2)—violation 3 to 2. Affirmative finding of willfulness—3 to 2; As to \$500 civil penalty—4 to 1; Affirmative vote to initiate proceedings for removal of office upon issuance of written opinion—unanimous.

directed to hold public officers accountable when they fail to place public interest and public trust ahead of their private and/or pecuniary interests.

1. NRS 281.481(1).

NRS 281.481(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.

There is insufficient evidence to demonstrate that Mayor Chachas sought or accepted an economic opportunity which tended improperly to influence a reasonable person in Mayor Chachas' position to depart from the faithful and impartial discharge of his public duties as Mayor of Ely in violation of NRS 281.481(1). Therefore, the Commission concludes that Mayor Chachas' conduct as it pertains to his actions on January 12, 2006 and January 26, 2006, does not violate NRS 281.481(1).

2. NRS 281.481(2).

NRS 281.481(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 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 281.501.⁶

⁶ NRS 281.501, subsection 8 provides: "... 'commitment in a private capacity to the interests of others' means a 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.

Mayor Chachas admitted at the hearing that he had attempted to impede the City’s efforts to hire outside legal counsel to collect the debt he owed to the City of Ely. By advocating against approval of Agenda Item No. 15 and by vetoing the item, Mayor Chachas used his position in government to secure unwarranted privileges, preferences, exemptions and advantages for himself. Mayor Chachas provided neither justification nor adequate reason for his conduct; therefore, it was an unwarranted violation of NRS 281.481(2).

Under subsection 5 of NRS 281.551 (the “safe harbor” provision), an action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements: (a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471; (b) he was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and (c) he took action that was not contrary to a prior published opinion issued by the Commission.

Mayor Chachas testified that he did not seek the advice of legal counsel prior to the January 12, 2006 Council meeting with regard to Agenda Item No. 15, nor did he seek an opinion from this Commission prior to that meeting. Mayor Chachas took action contrary to prior published opinions issued by the Commission, including Opinion No. 92-33 regarding the conduct of Mayor Chachas himself, where the Commission found him in violation of NRS 281.481(2) on three separate counts for using his position as mayor to benefit personally. Therefore, Mayor Chachas’ conduct was willful when he advocated against approval of Agenda

Item No. 15 and vetoed the item. He knew or reasonably should have known that his conduct violated NRS 281.481(2).

3. NRS 281.501(4).

NRS 281.501(4) 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 interest 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. Except as otherwise provided in subsection 6, such 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. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. 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.

At the January 12, 2006 Council meeting, Mayor Chachas presided over the Council and read Agenda Item No. 15 into the record. The item read, "City Council-Discussion/Action, Authorization to seek outside legal representation for the City of Ely to resolve delinquent utility account for the Town & Country Motel owned by George C. Chachas." Although the agenda item description mentions that Mayor Chachas owns the Town & Country Motel, the mere existence of the item on the agenda or the reading of that item into the record is inadequate disclosure. NRS 281.501(4) requires disclosures to include "sufficient information concerning the [public officer's] interest to inform the public of the potential effect of the action or

abstention upon his interest.” Mayor Chachas said nothing at the Council meeting to provide this information to the public.

Therefore, the Commission finds, by a preponderance of the evidence, that Mayor Chachas violated subsection 4 of NRS 281.501. Further, the Commission finds that Mayor Chachas’ violation was willful. Mayor Chachas does not satisfy any of the requirements under the safe harbor provision (NRS 281.551(5)), including, without limitation, taking no action contrary to a prior published opinion issued by the Commission. In Opinion No. 92-33 the Commission found that Mayor Chachas violated disclosure laws by failing to disclose his business interest during a Council meeting where a matter affecting his personal business was considered. The Commission finds that Mayor Chachas’ violation of NRS 281.501(4) is willful.

4. NRS 281.501(2).

NRS 281.501(2) provides:

Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, 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 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

In Nevada Commission on Ethics Opinion No. 97-07, the Commission opined:

“[T]he line dividing allowable factual testimony and prohibited advocacy is razor thin. Statements that begin, ‘in my opinion...,’ ‘I think...,’ ‘I believe...,’ or ‘I would hope...,’ would be signals that the statement might be more advocate than informative.” *In Re Janet Kubichek* (1998).

Mayor Chachas testified at the hearing that since two council members were absent at the January 12, 2006 meeting, it was his “hope” that, by vetoing the passage of Agenda Item No. 15, the disputed utility debt could be resolved with the full council in attendance. Additionally, Mayor Chachas testified that he made a mistake by not removing himself from the January 12, 2006 proceeding when the Council was considering Agenda Item No. 15. However, Mayor Chachas stated that he made this mistake because the city attorney failed to point out to him that he had a conflict of interest. The Commission finds that Mayor Chachas was not merely presenting objective facts to the Council when they were considering Agenda Item No. 15. Mayor Chachas’ intent was to influence the outcome of the Council’s action both at the January 12, 2006 meeting and subsequently when he vetoed the Council’s passage of the item.

Therefore, the Commission finds, by a preponderance of the evidence, that Mayor Chachas violated NRS 281.501(2) when he advocated for the failure of Agenda Item No. 15, a matter in which Mayor Chachas has a pecuniary interest. Mayor Chachas knew or reasonably should have known that his conduct violated this provision. The Commission finds that Mayor Chachas’ conduct in violating NRS 281.501(2) was willful. Mayor Chachas does not satisfy any of the requirements under the safe harbor provision (NRS 281.551(5)).

5. NRS 281.551(4)(c).

NRS 281.551(4)(c) states:

If the Commission finds that: Three or more willful violations have been committed by a public officer removable from office pursuant to NRS 283.440,

the Commission shall file a proceeding in the appropriate court for removal of the officer.⁷

The Commission finds that Mayor Chachas committed three willful violations of the Ethics in Government Law. If Mayor Chachas continues to hold his current office at the time this written opinion is signed, or if he holds any office in Nevada in the future, the Commission must file a proceeding for his removal pursuant to NRS 281.551(4)(c) and NRS 283.440.

CONCLUSION

Based on the foregoing, the Commission finds no violation by Mayor Chachas of subsection 1 of NRS 281.481. The Commission finds one willful violation of subsection 2 of NRS 281.481, one willful violation of subsection 2 of NRS 281.501 and one willful violation of subsection 4 of NRS 281.501. The Commission imposes a fine of five hundred dollars (\$500), payable to the Commission within thirty (30) days after Mayor Chachas' receipt of this Opinion. Further, the Commission is statutorily obligated to file a proceeding for Mr. Chachas' removal from office pursuant to NRS 281.551(4)(c) and NRS 283.440.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DESCRIBED 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: June 20, 2007.

NEVADA COMMISSION ON ETHICS

By: 

JIM KOSINSKI, Chair

⁷ NRS 283.440(1) states: "Any person now holding or who shall hereafter hold any office in this State, except a justice or judge of the court system, who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom..."