



STATE OF NEVADA  
COMMISSION ON ETHICS

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE  
REQUEST FOR OPINION  
CONCERNING THE CONDUCT OF  
KEVIN PHILLIPS, Mayor, City of Caliente.**

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**Opinion No. 06-23**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on September 13, 2006, pursuant to a Request for Opinion filed on April 20, 2006, pursuant to NRS 281.511(2)(b), and a determination made on May 31, 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 Caliente Kevin Phillips' conduct violated the Ethics in Government Law, specifically the provisions of NRS 281.481(1), NRS 281.481(2), and/or NRS 281.571(1)(e).

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

1. Did Mr. Phillips, as the Mayor of Caliente, seek or accept any gift, 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, in violation of NRS 281.481(1), by accepting a trip to Europe to tour nuclear reprocessing facilities in France operated by COGEMA/AREVA ("COGEMA"), a nuclear waste contractor hired by the United States Department of Energy's Yucca Mountain project?

2. Did Mr. Phillips, as the Mayor of Caliente, use his position in government to secure or grant unwarranted<sup>1</sup> privileges, preferences, exemptions or advantages for himself or for his wife, a person to whom he has “a commitment in a private capacity to the interests of that person”<sup>2</sup> in violation of NRS 281.481(2), when Mr. Phillips and his wife traveled to Europe on the invitation from COGEMA?

3. Did Mr. Phillips, as the Mayor of Caliente, violate NRS 281.571(1)(e) by not reporting on his statement of financial disclosure, his receipt of a gift valued in excess of \$200 when he traveled to Europe on the invitation from COGEMA?

4. If Mr. Phillips’ conduct, as the Mayor of Caliente, related to any of the above issues, violated any of the referenced statutes, was the violation “willful” pursuant to NRS 281.4375<sup>3</sup> as limited by NRS 281.551(5)<sup>4</sup>?

5. If Mr. Phillips’ conduct, as the Mayor of Caliente, 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?

Notice of the hearing was properly posted and served. Mr. Phillips was present with his legal counsel, C. Stanley Hunterton, Esq., and provided sworn testimony. The following

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<sup>1</sup> As used in NRS 281.481(2), “unwarranted” means without justification or adequate reason.

<sup>2</sup> As used in NRS 281.481(2), “commitment in a private capacity to the interests of that person” 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 (a) through (d).

<sup>3</sup> NRS 281.4375 defines “willful violation” as: “the public officer or employee knew or reasonably should have known that his conduct violated this chapter.”

<sup>4</sup> 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.

individuals appeared as witnesses and provided sworn testimony: Gregory Barlow, Esq., legal counsel for the City of Caliente; Achel Robison, President of Robison/Seidler, Inc.

### **STIPULATED FACTS**

The parties stipulated to the following facts:

1. Mr. Phillips has served as Mayor of the City of Caliente since 1993, and, beginning in 1993, has served on the Joint County and City Impact Alleviation Committee (“JCCIAC”).
2. COGEMA Inc. is a provider of spent fuel reprocessing services and AREVA NC, Inc. is an affiliate of COGEMA. At some point, either COGEMA or AREVA entered into a contract with the United States Department of Energy’s Yucca Mountain Project.
3. The JCCIAC is an advisory committee to the Lincoln County Commission and the City of Caliente and does not have any authority or influence regarding any current contract COGEMA has for services at Yucca Mountain.
4. The City of Caliente does not have any authority or influence regarding any current contract COGEMA has for services at Yucca Mountain.
5. Mr. Phillips accepted an invitation from COGEMA, Inc. to tour its nuclear reprocessing facilities located in and around Valognes and Cherbourg, France. Mr. Phillips traveled inside France with a delegation from the City of Caliente comprised of Mr. Phillips’ spouse, City of Caliente Volunteer Fire Chief Steve Rowe and his spouse, and consultant Achel “Ace” Robison and his spouse. The purpose of the trip was to learn more about the nuclear fuel cycle by visiting COGEMA’s nuclear fuel handling and transportation facilities, by meeting with French stakeholders, local leaders, and emergency responders, and by reviewing with them their preparations for handling nuclear materials and emergency response preparations. The trip

occurred during July 10 through July 15, 2005. COGEMA paid for the delegation's lodging, transportation, and several meals while in France.

6. Gregory Barlow, City of Caliente's legal counsel, informed Commission staff that Mr. Phillips had inquired as to whether taking the trip would be appropriate. Mr. Barlow advised Mr. Phillips that, since COGEMA has no dealings with the City of Caliente, he saw no conflict.

### **FINDINGS OF FACT**

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

1. During a presentation by COGEMA in Las Vegas, Nevada, Mr. Phillips was first approached by COGEMA representatives about traveling to France to view its reprocessing facility. Mr. Phillips believes COGEMA representatives knew at that time that Mr. Phillips was the Mayor of Caliente and a member of the JCCIAC.

2. COGEMA extended an invitation for six individuals to travel to France. Mr. Phillips himself passed the invitation along to members of the Caliente City Council and members of the Lincoln County Commission and emergency response personnel. Other than Mr. Phillips, no member of the city council or county commission chose to make the trip to France.

3. Mr. Barlow advised Mr. Phillips that it would not pose a conflict for Mr. Phillips' wife to accompany him on the trip to Europe.

4. Mr. Robison is a government affairs consultant and his firm, Robison/Seidler, is under contract with Lincoln County to provide counsel and advice regarding the Yucca Mountain project. Mr. Robison's office coordinated the trip to Europe taken by the Caliente delegation.

5. Neither Mr. Phillips nor Mr. Robison knows who paid for the airfare between the United States and Europe. Mr. Robison testified that the Nuclear Energy Institute (NEI), a

Washington-based nuclear advocacy organization with which Mr. Robison has a contract, may have paid for the tickets. COGEMA paid for the Caliente delegation's expenses within France.

6. In an effort to learn about and view nuclear storage and transportation facilities, Mr. Phillips, in his official capacity, has taken several trips to places including: Idaho Falls, Idaho; Handford, Washington; Los Alamos, New Mexico; Carlsbad, New Mexico; Oak Ridge, Tennessee; Fernald, Ohio; Miamisburg, Ohio; Red Wing, Minnesota; and Springfield and Chicago, Illinois.

7. Mrs. Phillips works for her family's hardware store in Caliente. Testimony at the hearing indicated that Mrs. Phillips, aside from being the Mayor's wife, is a businesswoman in Caliente who understands local issues. She plays an important role in a community dealing with the possibility of nuclear waste traveling through its boundaries.

8. The City of Caliente would be affected by the transportation of nuclear waste should a nuclear waste repository be located at Yucca Mountain.

### **CONCLUSIONS OF LAW**

1. Mr. Phillips 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 Opinion<sup>5</sup>:

### **OPINION**

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<sup>5</sup> The vote on each issue is as follows:

NRS 281.481(1): No violation, unanimous.

NRS 281.481(2) as to Mr. Phillips using his position to benefit himself:  
No violation, 5 to 1

NRS 281.481(2) as to Mr. Phillips using his position for the benefit of his wife:  
No violation, 4 to 2

NRS 281.571(1)(e): No violation, 5 to 1

**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.

In his official capacity as the Mayor of Caliente, Mr. Phillips accepted an invitation from COGEMA to tour its nuclear reprocessing facilities in France. During July 10, 2005 through July 15, 2005, a delegation from the City of Caliente comprised of Mr. Phillips and his spouse, City of Caliente Volunteer Fire Chief Steve Rowe and his spouse, and Ace Robison and his spouse, traveled to Europe to learn more about the nuclear fuel cycle. They visited COGEMA's nuclear fuel handling and transportation facilities, met with French stakeholders, local leaders, and emergency responders, and reviewed with them their preparations for handling nuclear materials and emergency response preparations. The facts and evidence presented in this matter show that the JCCCIAC is an advisory committee to the Lincoln County Commission and the City of Caliente and does not have any authority or influence regarding any current contract COGEMA has for services at Yucca Mountain. Further, there is no finding that Mr. Phillips could impact NEI, either positively or negatively. No evidence exists to suggest that the act of accepting an invitation from COGEMA, to visit its nuclear reprocessing facilities in France and traveling to Europe for that purpose, tended improperly to influence a reasonable person in Mr. Phillips' position to depart from the faithful and impartial discharge of his public duties as Mayor of Caliente in violation of NRS 281.481(1). Therefore, the Commission concludes that Mr. Phillips' conduct 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.<sup>6</sup>

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

As to Mr. Phillips using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, when he accepted the trip to Europe, the Commission finds no evidence that Mr. Phillips violated NRS 281.481(2). Mr. Phillips’ trip to France to learn more about the nuclear fuel cycle by visiting COGEMA’s nuclear fuel handling and transportation facilities, by meeting with French stakeholders, local leaders, and emergency responders, and by reviewing their preparations for handling nuclear materials and emergency response preparations was warranted. Therefore, Mr. Phillips’ conduct does not violate NRS 281.481(2).

The question then becomes whether it was warranted for Mr. Phillips’ spouse to travel with him to Europe at the sponsor’s expense. Granted, the question remains as to who sponsored the airline tickets. Neither Mr. Phillips nor Mr. Robison—the person responsible for orchestrating the logistics of the trip—knows exactly who paid for the airline tickets between the United States and Europe.

Mr. Phillips traveled to Europe in his official capacity as the Mayor of Caliente and it was because of his official position that he was invited. There is no provision under the Ethics in Government Law that directly prohibits a public officer, traveling on official business, from

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<sup>6</sup> 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.”

taking his spouse on the trip. Although the honorarium statute is not alleged as being violated, in this instance the Commission looks to the honorarium statute for guidance with regard to travel and spouses. NRS 281.553 prohibits public officers or public employees from accepting or receiving an honorarium. An honorarium does not include the payment of the “actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence.” NRS 281.553(4)(a).

Testimony at the hearing indicated that Mrs. Phillips, aside from being the Mayor’s wife, is a businesswoman in Caliente who understands local issues. She plays an important role in a community dealing with the possibility of nuclear waste traveling through its boundaries. Mrs. Phillips accompanying Mr. Phillips to France to learn about the nuclear fuel cycle, nuclear fuel handling and transportation was warranted. Under those circumstances, Mr. Phillips did not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for his wife, a person to whom he has a commitment in a private capacity. No evidence or testimony was presented in this matter to conclude otherwise. The Commission, therefore, finds no evidence that Mr. Phillips violated NRS 281.481(2) with regard to his wife traveling with him to and from France.

3. ***NRS 281.571(1)(e).***

NRS 281.571(1)(e) provides:

Statements of financial disclosure, as approved pursuant to NRS 281.541 or in such form as the Commission otherwise prescribes, must contain the following information concerning the candidate for public office or public officer:

...

(e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:



(1) A gift received from a person who is related to the candidate for public office or public officer within the third degree of consanguinity or affinity.

(2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the legislative, administrative or political action of the candidate for public office or public officer.

The legislature has yet to establish what constitutes a gift for Ethics in Government Law purposes. No evidence exists that the act of accepting an invitation from COGEMA, to visit its nuclear reprocessing facilities in France and traveling to Europe for that purpose, constitutes a gift. The Commission concludes that Mr. Phillips received no gift. Therefore, Mr. Phillips did not violate NRS 281.571(1)(e) by not reporting his trip overseas on his statement of financial disclosure.

Since the Commission did not find a violation of the provisions in question, no analysis is made with regard to willfulness of a violation or with regard to the issue of penalties.

### **CONCLUSION**

Based on the foregoing, the Commission finds no violation by Mr. Phillips of NRS 281.481, Subsections 1 or 2, or NRS 281.571(1)(e).

**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 15, 2007.

NEVADA COMMISSION ON ETHICS

By: 

MARK HUTCHISON, Vice Chair