



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
DAVID STIX JR., Mayor, City of Fernley**

Opinion No. 06-71

This matter came before a quorum¹ of the Nevada Commission on Ethics (hereinafter the "Commission") for a hearing on March 14, 2007, pursuant to a Request for Opinion filed on October 12, 2006 and a determination on February 12, 2007, 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 Mr. Stix's conduct violated the provisions of NRS 281.481(2), NRS 281.481(7), and/or NRS 281.554.

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

1. Did Mayor Stix, use his position in government to secure or grant unwarranted² privileges, preferences, exemptions or advantages for himself in violation of NRS 281.481(2) by sending messages to citizens of the City of Fernley ("City"), published in the city newsletter, at city expense, while he was a candidate for reelection?

¹ The quorum consisted of Chairman Kosinski and Commissioners Cashman, Hsu, Hutchison and Jenkins. Commissioner Keele was absent and excused. Commissioners Capurro and Flangas 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.

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

2. Did Mayor Stix violate NRS 281.481(7) by using governmental time, property, equipment or other facility to benefit his personal interest, through the publication and dissemination of newsletters containing messages from him to the people of Fernley, while he was a candidate for reelection?

3. Did Mayor Stix violate NRS 281.554 by causing the City to make expenditures to support his candidacy for reelection, through the publication and dissemination of newsletters containing messages from him to the people of Fernley?

Notice of the hearing was properly posted and served. Mayor Stix was present with his counsel, Paul G. Taggart, Esq., and provided sworn testimony. The following individuals appeared as witnesses and provided sworn testimony: Leslieann Hayden, Administrative Specialist, City of Fernley; Gary Bacock, Fernley City Manager.

FINDINGS OF FACT

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

1. Mr. Stix ran for re-election in 2006 but was not re-elected Mayor of Fernley.
2. At the January 18, 2006, Fernley City Council (“Council”) meeting, Mr. Bacock, the City Manager, proposed agenda item 11 to the Council. The agenda item included the introduction and implementation of community outreach activities, including a newsletter, the *City in Brief*. The newsletter would serve as a communication tool between the citizens of Fernley and the Council. The newsletter was unanimously approved by the City Council. The mayor did not vote.
3. The Council authorizes and directs the use of City resources and employees to create and disseminate the newsletter.

4. Witness testimony at the hearing was that mailing the newsletter along with the monthly City water bill was a cost-efficient way of disseminating the newsletter.

5. Ms. Hayden is the assistant to the city manager and is the editor of the *City in Brief*. It was Ms. Hayden's idea to disseminate the newsletter and to include it as an insert with the sewer/water bill mailings, beginning with the June 2006 mailing. Ms. Hayden writes the articles, including the "Mayor's Message" column. After she compiles the newsletter, but prior to publication, the city manager and the mayor conduct a final review of the articles. However, there were instances when the mayor did not see the articles prior to publication.

6. The information contained in the newsletter served to informing the citizens of Fernley about matters pertaining to the City and is consistent with the mayor's general duties prescribed in NRS 266.

7. Legal counsel for the City of Fernley reviewed the newsletter before it went out initially. Legal counsel determined that it did not violate any provision of NRS and concluded that the mayor's comments in his column were informative and were not considered campaigning.

CONCLUSIONS OF LAW

1. At all relevant times, David Stix, Jr. was the Mayor of Fernley, 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, by a unanimous vote, the Commission renders the following Opinion:

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

1. 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 281.501.³

(b) "Unwarranted" means without justification or adequate reason.

Testimony presented at the hearing illustrated that the newsletter, which included messages from Mayor Stix to the citizens of Fernley, was published at city expense while Mr. Stix was a candidate for reelection. Although the City incurred an expense, the newsletter

³ 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."

expenditure was approved by the Council without a vote by Mr. Stix. Additionally, the idea for the newsletter and its dissemination through bills sent by the City to Fernley citizens came from the City Manager and his assistant and not from Mr. Stix. Ms. Hayden writes the articles, including the “Mayor’s Message” column. Further, the City sought legal advice from its legal counsel prior to publishing the first newsletter and legal counsel approved of the newsletter.

Under those circumstances, Mr. Stix did not use his public office to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself by publishing and disseminating the City newsletter. No evidence or testimony was presented in this matter to conclude otherwise. Therefore, the Commission finds that Mr. Stix’s conduct does not violate NRS 281.481(2).

2. NRS 281.481(7).

NRS 281.481(7) provides:

A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

The facts presented at the hearing established that the city manager and his assistant brought the idea of a city newsletter to the Council. The Council approved the newsletter and the expenditure associated with its creation and dissemination. Mr. Stix had no vote on the newsletter matter. The goal of the City, in publishing and disseminating the newsletter, was to communicate the state of the City to the people of Fernley. No evidence exists that Mr. Stix used governmental time, property, equipment or other facility to benefit his personal interest, through the publication and dissemination of newsletters containing messages from him to the people of Fernley, while he was a candidate for reelection. Therefore, the Commission finds no violation of NRS 281.481(7).

3. NRS 281.554.

NRS 281.554 provides:

1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

- (a) A ballot question.
- (b) A candidate.

2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:

(a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

(1) The public office held by the public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

(1) The public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

(1) A press release issued to the media by a governmental entity; or

(2) The official website of a governmental entity.

(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.

Although the City incurred an expense for the creation and dissemination of the newsletter that featured the activities of Mayor Stix, who at the relevant time was a candidate for reelection, the newsletter was created and disseminated in the course of carrying out the duty of the Mayor and the City to keep the people of Fernley informed. Therefore, the Commission finds no violation of NRS 281.554.

CONCLUSION

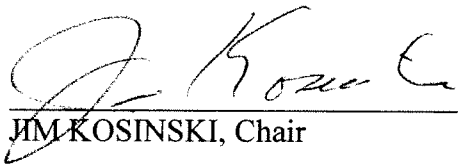
Based on the foregoing, the Commission finds no violation by Mr. Stix of NRS 281.481, subsections 2 or 7. Further, the Commission finds no violation by Mayor Stix of NRS 281.554.

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.

DATED: September 14, 2007.

NEVADA COMMISSION ON ETHICS

By:



JIM KOSINSKI, Chair