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Opinion No. 00-11

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of J. PHILLIP KEENE, III, (former) President and Chief Executive Officer, Reno-Sparks Convention and Visitors Authority

This matter came before a quorum of the **Nevada** Commission on Ethics (hereinafter the "Commission") for hearing on May 17, 2001, and July 19, 2001, pursuant to allegations in a Request for **Opinion** submitted in proper form to the Commission on or about May 10, 2000, under NRS 281.511, Subsection 2, and a Commission panel^[1] determination entered June 30, 2000, finding just and sufficient cause for the Commission to render an **opinion** in this matter on whether J. Phillip Keene, III, (former) President and Chief Executive Officer, Reno-Sparks Convention and Visitors Authority (RSCVA), used his public office (a) to benefit his personal or financial interest by using governmental property as prohibited by NRS 281.481, Subsection 7, and (b) "to secure or grant unwarranted privileges, preferences, exemptions, or advantages for himself" in violation of NRS 281.481, Subsection 2, by charging personal expenses to RSCVA credit cards and/or failing to promptly reimburse the RSCVA therefor.

On October 26, 2000, Mr. Keene waived the statutory time requirements of NRS 281.511(4) concerning the Commission's **opinion** in this matter.

Notice of the hearing was properly posted and served. Mr. Keene was present with his counsel, Calvin R.X. Dunlap, Esq., and Monique Laxalt, Esq., and provided sworn testimony. Reno Mayor and RSCVA Board Member Jeff Griffin; and RSCVA employees Julie Williams, Charlotte Bischoff, Kristy Crandell, Tim Smith, Lisa Nilsen, and Brian Rivers also appeared as witnesses and provided sworn testimony.

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

FINDINGS OF FACT

1. The Reno-Sparks Convention and Visitors Authority (RSCVA) (originally known as the Washoe **County Fair and Recreation Board**) was created as an agency of Washoe County on or about March 5, 1959, by action of the Washoe County Board of Commissioners exercised pursuant

to statutory authority.

2. J. Phillip Keene, III, was the President and Chief Executive Officer (C.E.O.) of the RSCVA from July, 1997, until May 10, 2000. He was appointed to that position by the RSCVA Board of Directors.

3. For the last approximately 35 years, Mr. Keene has been an advertising agency and marketing professional in both private industry and public governmental agencies in Arizona, Utah, California, and **Nevada**. His experience includes eight years of employment with state or public agencies, seven years with a nonprofit agency that worked closely with state government, and over two years in public office with the RSCVA.

4. Mr. Keene's employment contract with the RSCVA stated: "The RSCVA will pay or reimburse Mr. Keene for reasonable business expenses incurred by Mr. Keene which are directly related to the performance of Mr. Keene's duties of employment."

5. When Mr. Keene was appointed RSCVA President and C.E.O., the RSCVA issued to him a Bank of America credit card and a Diners Club credit card for his use in connection with performing his duties as RSCVA President and C.E.O. Mr. Keene received no instruction or training on the RSCVA's policies, procedures, and practices regarding the proper use of the RSCVA credit cards issued to him.

6. Significant RSCVA accounting and financial procedures applicable to all RSCVA departments and division are summarized in the Reno-Sparks Convention & Visitors Authority Financial Procedures Manual. The Financial Procedures Manual in effect at the time Mr. Keene was RSCVA President and C.E.O. was dated July 1, 1997. The July 1, 1997, manual provides: "Credit cards are issued for the exclusive benefit and convenience of the Authority and shall not be used by any employee for personal charges, or for other charges not appropriately associated with conduct of Authority business."^[2] During the time Mr. Keene was RSCVA President and C.E.O., he never reviewed the RSCVA's financial policies and procedures.

7. During the time he was RSCVA President and C.E.O., Mr. Keene regularly and unabashedly used the credit cards issued to him by the RSCVA to charge such personal expenses as retail purchases, a medical office visit, boat repairs, and expenses associated with personal trips and entertainment. Mr. Keene believed that so long as he reimbursed the RSCVA for such personal expenses charged to his RSCVA credit cards, no policy or standard prohibited such practice.

8. On or about December 10, 1998, Mr. Keene charged a personal expense of \$15.00^[3] to the RSCVA Bank of America credit card without reimbursing the RSCVA therefor.

9. On or about October 26, 1998, Mr. Keene charged to the RSCVA Diners Club credit card a personal expense of \$113.14.³ On December 31, 1998, Mr. Keene reimbursed the RSCVA \$113.14 by personal check (#1826).

10. Six (6) times during the period January 29, 1999, to February 15, 1999, Mr. Keene charged to the RSCVA Diners Club and Bank of America credit cards personal expenses totaling \$729.03.³ On June 30, 1999, Mr. Keene reimbursed the RSCVA \$729.03 by personal check (#2202).

11. Six (6) times during the period May 9, 1999, to June 11, 1999, Mr. Keene charged to the RSCVA Bank of America credit card personal expenses totaling \$839.61.3 On June 14, 1999, Mr. Keene reimbursed the RSCVA \$241.13 by personal check (#2138); and on July 29, 1999, Mr. Keene reimbursed the RSCVA \$839.60 by personal check (#2212).
12. Three (3) times during the period August 24, 1999, to September 2, 1999, Mr. Keene charged to the RSCVA Bank of America credit card personal expenses totaling \$593.94.3 On October 10, 1999, Mr. Keene reimbursed the RSCVA \$593.94 by personal check (#2366).
13. Seventeen (17) times during the period July 11, 1999, to August 11, 1999, Mr. Keene charged to the RSCVA Bank of America credit card personal expenses totaling \$2,527.12.3 Mr. Keene reimbursed the RSCVA \$2,527.12 by endorsing back to the RSCVA on January 18, 2000, a check he received from the RSCVA.
14. Twenty-two (22) times during the period November 18, 1998, to February 23, 2000, Mr. Keene charged to the RSCVA Diners Club and Bank of America credit cards personal expenses totaling \$4,238.22.3 On March 22, 2000, Mr. Keene reimbursed the RSCVA \$344.35 by personal check (#2496) and \$515.52 by personal check (#2949); on March 21, 2000, Mr. Keene reimbursed the RSCVA \$3,298.75 by personal check (#2492); and Mr. Keene reimbursed the RSCVA \$844.98 by endorsing back to the RSCVA on January 18, 2000, a check he received from the RSCVA.
15. On September 8, 1999, Mr. Keene charged to the RSCVA Bank of America credit card a personal expense of \$116.00.3 On March 23, 2000, Mr. Keene reimbursed the RSCVA \$116.00 by personal check (#2497).
16. On January 24, 2000, Mr. Keene charged to the RSCVA Diners Club credit card a personal expense of \$204.36.3 On March 23, 2000, Mr. Keene reimbursed the RSCVA \$204.36 by personal check (#2495).
17. On April 22, 1999, Mr. Keene incurred a personal expense of \$9.813 for personal use of his RSCVA issued cell phone. On June 30, 1999, Mr. Keene reimbursed the RSCVA \$9.81 by personal check (#2202).
18. On July 16, 1999, Mr. Keene incurred a personal debt to the RSCVA in the amount of \$840.003 for the unused portion of a travel advance he received from the RSCVA. On October 9, 1999, Mr. Keene reimbursed the RSCVA \$720.63; on October 14, 1999, Mr. Keene reimbursed the RSCVA \$27.57; and on January 18, 2000, Mr. Keene reimbursed the RSCVA \$91.80 for this debt by endorsing back to the RSCVA checks he received from the RSCVA.
19. On November 14, 1998, Mr. Keene incurred a personal debt to the RSCVA in the amount of \$854.643 for the unused portion of a travel advance he received from the RSCVA. On February 2, 1999, Mr. Keene reimbursed the RSCVA \$854.64 by personal check (#2053).
20. On January 13, 2000, \$339.353 of Mr. Keene's personal expenses were charged to another RSCVA employee's RSCVA Bank of America credit card during a trip to London. On January 18, 2000, Mr. Keene reimbursed the RSCVA \$339.35 by endorsing back to the RSCVA a check he

received from the RSCVA.

21. Mr. Keene's charges to RSCVA credit cards for personal expenses and his other personal debt to the RSCVA totaled \$11,420.22. Mr. Keene's payments to the RSCVA in reimbursement for those personal expenses and personal debts totaled \$12,411.72.

22. During the time Mr. Keene was RSCVA President and C.E.O, the RSCVA incurred finance and/or late charges totaling \$719.34 on Mr. Keene's RSCVA Bank of America credit card account and \$1,810.55 on Mr. Keene's RSCVA Diners Club credit card account.

23. RSCVA Finance Director Timothy Smith met with Mr. Keene on several occasions regarding Mr. Keene's use of RSCVA credit cards for personal expenses and his failure to timely reimburse the RSCVA for those charges. In September and/or November, 1999, in a meeting between Mr. Smith, RSCVA accounting manager Brian Rivers, and Mr. Keene, Mr. Smith asked Mr. Keene to rectify the situation regarding his failure to reimburse the RSCVA for personal expenses charged to RSCVA credit cards and discontinue the practice of charging personal expenses on RSCVA credit cards. Thereafter, Mr. Keene continued to charge personal expenses to RSCVA credit cards.

24. During the time Mr. Keene was RSCVA President and C.E.O., he was away from his office approximately twenty-five percent of the time traveling and attending meetings. When he was in his office, he gave very low priority to reconciling his RSCVA credit card statements and completing his expense reports.

25. Mr. Keene did not believe that charging personal expenses to RSCVA credit cards was illegal or contrary to ethical standards or business practices.

26. Mr. Keene was never advised that he was a public officer or a public employee and he did not believe that the statutory code of ethical standards for **Nevada's** public officers and public employees provided in NRS Chapter 281 applied to him in his position as RSCVA President and C.E.O.

27. During the time Mr. Keene was RSCVA President and C.E.O., he never sought the advice of **legal** counsel regarding whether the RSCVA President and C.E.O. was a "public officer" and/or "public employee" subject to **Nevada's** statutory code of ethical standards and opinions rendered by the Commission.

28. Mr. Keene knew that meetings of the RSCVA Board of Directors were subject to **Nevada's** Open Meeting Law.

CONCLUSIONS OF LAW

1. Mr. Keene is a former public officer as defined by NRS 281.005 and 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, the Commission renders the following **Opinion** based upon a preponderance of the evidence in this matter:

OPINION

NRS 281.481, Subsection 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 member of his household, any business entity in which he has a significant pecuniary interest, or any other person. As used in this subsection, "unwarranted" means without justification or adequate reason.

The prohibitions of NRS 281.481, Subsection 2, for public officers and public employees are clear and unambiguous. As RSCVA President and C.E.O., Mr. Keene enjoyed an executive privilege: having an agency credit card at his disposal. Inherent in that privilege was the obligation to use the agency's credit responsibly for the benefit of the agency. Instead, while he was the agency's top executive, Mr. Keene "regularly and unabashedly" charged thousands of dollars of his own personal expenses to the RSCVA credit cards and then failed to reimburse the RSCVA for those personal expenses in a responsible and timely manner, thereby advantaging and financially benefiting himself without regard for any detriment to the RSCVA. The evidence herein provided no justification or adequate reason for Mr. Keene's conduct and practice of exploiting the RSCVA's credit. The advantage and financial benefit Mr. Keene enjoyed thereby was, therefore, "unwarranted" pursuant to NRS 281.481, Subsection 2, and in clear violation of that statute.

In pertinent part, NRS 281.481, Subsection 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;

* * * *

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

By charging thousands of dollars of his personal expenses to RSCVA credit cards while he was

RSCVA President and C.E.O., and failing to promptly reimburse the RSCVA therefore, Mr. Keene used the RSCVA's credit to benefit his personal financial interests. The RSCVA's credit is the property of the RSCVA. There was no evidence herein (a) that anyone in authority at the RSCVA established any policy allowing the practice of charging personal expenses to RSCVA credit cards; (b) that the value related to Mr. Keene's personal use of RSCVA credit cards was anything but significant; or (c) that Mr. Keene's personal use of RSCVA credit cards created anything less than an appearance of impropriety. Mr. Keene's conduct, therefore, clearly violated the provisions of NRS 281.481, Subsection 7.

If the Commission finds that a public officer or former public officer has willfully violated the provisions of **Nevada's** Ethics in Government Law, NRS Chapter 281, the Commission may impose on the public officer or former public officer civil penalties as provided in NRS 281.551.^[4] A violation of the provisions of **Nevada's** Ethics in Government Law, NRS Chapter 281, is "willful" if the public officer "knew or reasonably should have known that his conduct violated this chapter." NRS 281.4375.

Mr. Keene testified that he received no instruction or training on RSCVA's policies, procedures and practices regarding the proper use of the RSCVA credit cards issued to him. However, considering Mr. Keene's maturity, 35 years of executive level professional experience, and the fact that he was the top executive at the RSCVA, it is inconceivable to believe that he would require instruction or training to understand the impropriety of charging thousands of dollars of personal expenses to an employer's credit card (whether the employer is a private business or a governmental agency). Further, Mr. Keene testified that he did not believe that charging personal expenses to RSCVA credit cards was illegal or contrary to ethical standards or business practices. However, again considering Mr. Keene's maturity, 35 years of executive level professional experience, and the fact that he was the top executive at the RSCVA, it is also inconceivable to believe that he neither knew nor reasonably should have known that his practice of regularly and unabashedly charging thousands of dollars of personal expenses to a governmental agency's credit card violated ethical standards.

The Commission finds that Mr. Keene knew or reasonably should have know that his conduct as discussed herein violated the provisions of NRS Chapter 281. Therefore, Mr. Keene's violations of NRS 281.481, Subsections 2 and 7, were "willful" pursuant to NRS 281.4375. However, the Commission declines to impose a civil penalty against Mr. Keene for the willful violations as authorized pursuant to NRS 281.551, Subsection 1.

CONCLUSION

Mr. Keene's conduct in charging personal expenses to RSCVA credit cards, in incurring personal debt to the RSCVA for his personal use of a cell phone his failure to promptly return the unused portion of travel advances, and in causing the RSCVA to incur finance charges and late fees by failing to timely reimburse the RSCVA for his personal expenses charged to RSCVA credit cards violated the provisions of **Nevada's** Ethics in Government Law. Specifically, Mr. Keene's conduct violated the provisions of NRS 281.481, Subsections 2 and 7. The violations were "willful" as defined by NRS 281.4375. However, the Commission declines to impose a civil penalty for the willful violations as authorized pursuant to NRS 281.551, Subsection 1.

Public officers and public employees are reminded that the **Nevada** Legislature has declared it to be the public policy of this state that (a) a public office is a public trust and shall be held for the sole benefit of the people, and (b) a public officer or employee must commit himself to avoid conflicts

between his private interests and those of the general public whom he serves. NRS 281.421.

NOTE: THE FOREGOING **OPINION** APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED 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: April 25, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

[1] Commissioner William Flangas and Commissioner Lizzie Hatcher served as the panel in this matter.

[2] RSCVA 1997 Financial Procedures Manual, page 61.

[3] As identified in Schedule 3 of the Kafoury, Armstrong & Co. Independent Accountant's Report dated April 19, 2000.

[4] NRS 281.551(1) provides: "In addition to any other penalty provided by law, the commission may impose on a public officer or employee or former public officer or employee civil penalties: (a) Not to exceed \$5,000 for a first willful violation of this chapter; (b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and (c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.