

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING
ALLEGATIONS THAT HOWARD COPELAND and/or *THE HIGH DESERT ADVOCATE*
IMPEDED THE SUCCESS OF THE CAMPAIGN OF
JOEL W. MURPHY, Candidate for the Office of Mayor of West Wendover, Nevada

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing by on May 17, 2001, pursuant to NRS 281.477, upon a Request for Opinion submitted by Joel W. Murphy, a candidate for the office of Mayor of West Wendover, Nevada, on May 4, 2001, alleging that the editorial opinion published by Howard Copelan[1] in the April 25, 2001, edition of the High Desert Advocate, a West Wendover, Nevada, newspaper, contained false statements of fact intended to impede the success of Mr. Murphy's campaign, in violation of NRS 294A.345.

Notice of the hearing was property posted and served. Mr. Murphy and Mr. Copelan appeared by telephone, and the Commission heard sworn testimony from both.

The Commission, after full consideration of the record in this matter, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At the time of the events alleged in the complaint filed herein, Joel W. Murphy was a candidate for the office of Mayor of West Wendover, Nevada.
2. At the time of the events alleged in the complaint filed herein, Howard Copelan was, and still is, owner and editor the High Desert Advocate, a West Wendover, Nevada, newspaper.
3. In the April 25, 2001, edition of the High Desert Advocate, Mr. Copelan published the following editorial opinion:

As our municipal election heats up, we are appalled at the tactics of mayoral candidate Joel Murphy that if not slanderous border on unethical.

To condemn Mayor Reese Melville for bringing bad publicity to the city for the mayor's choice of location for a private wedding reception when it was Murphy himself who publicized it was a gratuitous cruelty that cannot be forgiven. Incidentally the bar is closed the day of the reception.

Perhaps Mayor Melville's choice of locations was not as politically correct as it could have been. But the reason why Reese has been such a good mayor and not incidentally why Reese is a good man is because Reese could care less about political correctness. He does what is right because he believes it to be right and not how it looks.

The fact that Reese is not running for re-election and that his reception was being used only as a foil to stress Joel's so-called family values platform makes this whole affair disgusting. Never once has Reese Melville publicly or to our knowledge privately attacked Joel Murphy. If he ever did knowing Reese as a man of honor we know that our mayor would not even consider attacking Joel's personal life no matter how tempting a target it may be.

But Reese needs no defense, from us or anyone else. This latest outrage is however another indication of the deficiencies in Murphy's character. Is being Mayor so important that it justifies ruining a couple's reception?

4. Mr. Copelan's editorial opinion was based upon an article in the April 20-27, 2001, Wendover Times newspaper, which read:

Mayor to get married at Exotic Dance Club.

After a week of television interviews, newspaper stories, and radio talk shows centered around the discussion of brothels in West Wendover and city involvement with sex businesses, one couldn't expect anything more. But there is. West Wendover Mayor Reese Melville has sent out invitations to his wedding, which will be held inside the American Bush Exotic Dance Club. When? On the last day of being mayor, he has selected Tuesday, July 3, at 7 p.m. for his wedding.

Since Melville did not seek re-election, one of the three candidates running for mayor, will be sworn-in as the new mayor on the same night around 7:15 p.m. at the West Wendover City Council meeting.

Melville has worked at the American Bush Club during his last year of office. He was appointed to office 15 months ago after the former Mayor Walt Sanders resigned.

Sanders had endured 26 lawsuits, bounced 35 checks and took a trip to jail, all while in office as mayor. After resigning, Sanders took another trip to jail within 30 days. Although all this may be embarrassing to the city, both men were named "Man of the Year" by Howard Copelan's Advocate newspaper. Melville was selected by Copelan earlier this year and Sanders was picked just two weeks before he went to jail.

Still, most of the city's council members say they like Melville, they respect him, and they think Sanders did a lot for the newly formed city. But since it is election time, the City may be in for a change.

Councilman Joel Murphy has filed to run for mayor, saying the city doesn't need any more publicity like this.

Yesterday Murphy said, "I really think this whole brothel issue shouldn't have been brought up. Most of us in the community knew it wouldn't go anyway. I was elected because people thought I stood for the same morals as them. I'm their representative on the council. If I have to stop and have the public vote on ridiculous issues such as 'brothels in our community,' it wastes time and energy. I could understand if it was about taxes, schools or hospitals. Those are the kind of things that you put on the ballot."

Another candidate who is running for mayor has also taken a firm stand. Candidate Bob Fox says, "I'm dead set against any kind of sex businesses in West Wendover. I don't think it's right for anyone on the city council to be involved in sex businesses while in office."

Fox could have also been referring to Councilwoman Lori Cook who has owned and operated Hot Spot Video, which sells x-rated adult videos. Cook, like Melville, was not involved in any adult business when she went into office, but she has filed to run again.

The upcoming election will be June 5th.

5. In the April 11, 2001, edition of the High Desert Advocate, Mr. Copelan published the following editorial opinion:

Losing a Friend

It is with a heavy heart we write this column about our friend City Councilman and candidate for mayor Joel Murphy and it will probably cost us that friendship.

But we are first and foremost newspapermen and it should be of little consideration to our readers and advertisers how reporting news affects our personal lives. The moment we censor ourselves because the news hurts our friends is the moment we stop being a newspaper.

So here goes, in recent conversations with Joel we have learned that he was a bartender and bodyguard in a brothel in Carlin. If we hadn't been sitting down we could have been knocked over with a feather. We have known Joel and his family for close to ten years. He and his wife have worked for us on and off for close to seven years. He gave the eulogy for our father and we endorsed him in his first run at city council. Yet in all that time even when he sought public office for the first time he never intimated any of these details of his past.

Granted all of this was a long time ago and we believe him when he maintains that he has reformed. But our belief in his reformation in no way annuls his past as though it did not happen. Nor does it absolve him of his duty as seeker of public confidence to inform the same public of his public past.

Yes there are probably things in all our lives that are embarrassing and we are not interested in delving into any candidate's bedroom or report card for dirt. But what one did in one's adult life to make one's living is quite a different matter.

If Joel ran on his more recent past as a minister and doer of good deeds to win votes, he cannot and should not keep his more distant past a secret.

While forgiveness of sins is a theological matter, a man's or woman's past sins whether repented or not should be a factor in determining any candidate's fitness for office. Although this is Nevada in the 21st century there are still certain things that a politician simply cannot have in his or her past.

More than that as the prospective chief representative of the city Joel had the almost sacred duty to reveal those details that could embarrass the city. Confessing to being a generic sinner simply is not good enough and therefore he failed.

We at the Advocate also failed two years ago, when we took Joel at his word that there was nothing in his past that would embarrass the city. It was our duty to check him out regardless of our friendship and we apologize to our readers.

CONCLUSIONS OF LAW

1. Joel W. Murphy is a candidate for public office as defined by NRS 294A.005.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.477 and NRS 294A.345.

WHEREFORE, on motion duly made, seconded, and approved by majority vote, the Commission renders the following Opinion:

OPINION

NRS 294A.345 provides:

1. A person shall not, with actual malice and the intent to impede the success of the campaign of a candidate, impede the success of the candidate by causing to be published a false statement of fact concerning the candidate, including, without limitation, statements concerning:

- (a) The education or training of the candidate.
- (b) The profession or occupation of the candidate.
- (c) Whether the candidate committed, was indicted for committing or was convicted of committing a felony or other crime involving moral turpitude, dishonesty or corruption.
- (d) Whether the candidate has received treatment for a mental illness.
- (e) Whether the candidate was disciplined while serving in the military or was dishonorably discharged from service in the military.
- (f) Whether another person endorses or opposes the candidate.
- (g) The record of voting of a candidate if he formerly served or currently serves as a public officer.

2. Any candidate who alleges that a false statement of fact concerning the candidate has been published in violation of subsection 1 may file a request for an opinion with the commission on ethics pursuant to NRS 281.411 to 281.581, inclusive. Such a request must be filed with the commission not later than 10 days after the date on which the false statement of fact is alleged to have been made. The commission shall give priority to such a request over all other matters pending with the commission

3. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the commission on ethics pursuant to NRS 281.551.

4. As used in this section:

- (a) "Actual malice" means knowledge of the falsity of a statement or reckless disregard for whether a statement is true or false.
- (b) "Publish" means the act of printing, posting, broadcasting, mailing, speaking or otherwise disseminating.

In pertinent part, NRS 281.477 provides:

7. The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345...has the burden of proving the elements of the offense, including that a person alleged to have violated NRS 294A.345 acted with actual malice. The existence of actual malice may not be presumed. A final opinion of the commission rendered pursuant to this section must be supported by clear and convincing evidence. In addition to the other requirements for issuing an opinion pursuant to this subsection, the commission shall not render a final opinion determining that a person has violated NRS 294A.345 unless the commission makes specific findings that:

- (a) The person caused to be published a false statement of fact concerning a candidate;
- (b) The person acted with actual malice in causing the false statement to be published.
- (c) The person acted with the intent to impede the success of the campaign of the candidate in causing the false statement to be published; and
- (d) The publication of the false statement did in fact impede the success of the campaign of the candidate.

13. As used in this section:

- (a) "Actual malice" has the meaning ascribed to it in NRS 294A.345.
- (b) "Publish" has the meaning ascribed to it in NRS 294A.345.

Mr. Murphy's testimony and Mr. Copelan's testimony concerning the basis for and the truthfulness of the factual statements about Mr. Murphy provided in Mr. Copelan's April 25, 2001, editorial opinion directly contradicted each other. However, even if any of those factual statements could be deemed to be "false," there was absolutely no testimony provided or evidence presented that (a) Mr. Copelan acted with "actual malice" in publishing any statement about Mr. Murphy in the editorial opinion, and (b) that the publication did in fact impede Mr. Murphy's campaign. Mr. Copelan's published remarks about Mr. Murphy in response to the article published in the April 20-27, 2001, Wendover Times was clearly labeled an "Opinion" and, therefore, readers would know that the content was political commentary and the opinion of the writer.

Mr. Murphy failed to meet the burden of proof required by NRS 281.477, Subsection 7, to find a violation of NRS 294A.345. No clear and convincing evidence was presented on which the Commission could make specific findings that Mr. Copelan (a) caused to be published a false statement of fact concerning candidate Murphy prohibited by NRS 294A.345, and (b) acted with actual malice in causing such a false statement to be published, and (c) acted with the intent to impede the success of candidate Murphy's campaign in causing such a false statement to be published, and (d) actually impeded the success of candidate Murphy's campaign in causing such a false statement to be published. Therefore, NRS 294A.345 was not violated when Mr. Copelan published his editorial opinion in the April 25, 2001, edition of the High Desert Advocate.

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: September 7, 2001.

NEVADA COMMISSION ON ETHICS

By: TODD RUSSELL, Chairman

[1] Howard Copelan is the owner and editor of the High Desert Advocate.