**STATE OF NEVADA**

# BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for Advisory Opinion Concerning the Conduct of **Public Officer**, Member, City Council, State of Nevada,

Public Officer.
_____/

Request for Opinion No. 10-07A

## ABSTRACT OF OPINION

### I. STATEMENT OF THE CASE

Public Officer requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of her past conduct under the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum[1] of the Commission heard this matter on March 11, 2010. Public Officer appeared at the hearing and provided sworn testimony. She was represented by counsel.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented by Public Officer, the Commission deliberated and orally advised Public Officer of its decision that she did not violate NRS 281A.420 when she failed to disclose or abstain because she had no knowledge of her pecuniary interest or commitment in a private capacity to the interests of others prior to voting on a matter before the City Council.[2]

Public Officer elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract in lieu of the full opinion.

### II. QUESTION PRESENTED

Public Officer asks the Commission for advice regarding her obligations to disclose and/or abstain on a resolution that came before the City Council during which she was unaware that she had a private interest in the matter until after she voted to approve the resolution and the City entered into a related contract.

[1] The following Commissioners participated in this opinion: Chairman George M. Keele, Esq., and Commissioners Erik Beyer, Gregory Gale, CPA, Paul Lamboley, Esq., John W. Marvel, and James M. Shaw. After disclosing a potential conflict of interest, Commissioner John T. Moran, III, Esq. abstained in the matter.

[2] Commissioner Lamboley voted against this determination on grounds that the RFO became moot once the City entered into a contract per the City Council's resolution.

## III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

### A. ISSUES

Public Officer serves as an elected member of the City Council. She requests an opinion respecting her disclosure and abstention obligations under NRS 281A.420(1) and (3) where, under the peculiar facts of this matter, she had no knowledge of her husband's activities giving rise to her pecuniary interest or commitment in a private capacity to the interest of others.

This matter involves Public Officer's participation in the City Council's deliberations and vote approving a resolution that came before the City Council concerning "Corporation." A competing entity, "Competitor," appeared at the meeting and expressed opposition to the resolution. Competitor is an affiliated company of "Parent Corporation" which also owns "The Publication." Prior to deliberating and voting on the resolution, Public Officer was unaware that The Publication intermittently paid her spouse to write a column. Public Officer is seeking a confidential advisory opinion before deciding whether to have the City Council vote "rescinded and reconsidered so that [she might] either make the appropriate disclosure and vote, or make the appropriate disclosure and abstain from voting on the item." Shortly before the hearing of this matter, the City formalized and signed a contract with Corporation per the City Council's resolution.

### B. RELEVANT STATUTES

#### 1) Disclosure

Under NRS 281A.420(1)(b) and (c), when a public officer "has a pecuniary interest" in a matter or when the public officer's actions would "reasonably be affected by the public officer's . . . commitment in a private capacity to the interest of others," the public officer "shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter . . . without disclosing sufficient information . . . to inform the public of the potential effect of the action or abstention . . . upon the public officer's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity."

Public Officer testified that her husband was paid by The Publication approximately $2,500 to $3,000 a year to write an intermittent column. Because she has a community property interest in these earnings, she has a pecuniary interest in her husband's income and a commitment in a private capacity to the interest of her husband under NRS 281A.420(1). The interests of her husband include his interests in The Publication, which in turn has interests in Parent Corporation. The proper question is whether she had a pecuniary interest in the matter before the City Council or whether her husband's interests included interests in the matter before the City Council sufficient to require disclosure.

Nevertheless, Public Officer testified convincingly that she had no knowledge at the time of her vote of her husband's relationship with The Publication, which gives rise to her community property pecuniary interest or her commitment in a private capacity to the interest of others. Under the peculiar facts of this case therefore, she could not have disclosed what she did not know. Thus, the Commission concludes that Public Officer did not violate NRS 281A.420(1) by failing to disclose, at the City Council meeting, the facts giving rise to her pecuniary interest or commitment in a private capacity to the interest of others.[3]

**2) Abstention**

NRS 281A.420(3) requires a public officer to abstain from voting on a matter "with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by . . . (b) [t]he public officer's pecuniary interest; or (c) [t]he public officer's commitment in a private capacity to the interests of others."

As discussed above, Public Officer convincingly testified that she had no knowledge of her husband's relationship with The Publication at the time she voted to approve the resolution in favor of Corporation and against the interests of Competitor. Thus, the independent judgment of a reasonable person in Public Officer's situation would not have been materially affected by an unknown pecuniary interest or commitment in a private capacity to the interests of others. The Commission therefore concludes that Public Officer did not violate NRS 281A.420(3).

**3) Public Policy**

The Commission emphasizes that this advisory opinion is based on the specific facts presented in this case that persuasively establish that Public Officer had no knowledge on the date of the City Council meeting of her husband's relationship with The Publication. In addition, the Commission urges Public Officer to be particularly vigilant in the future about financial matters involving her spouse that might give rise to interests and commitments that conflict with her public duties. As NRS 281A.020(1)(b) declares in setting forth the public policy of this state, "[a] public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves." Accordingly, it is advisable for all public officers to keep informed about the personal economic interests of his or her spouse in order to avoid potential conflicts of interest or the appearance of impropriety in performing their public duties.

This case is distinguishable based on its facts from the Commission's otherwise firm position that "deliberate ignorance of readily knowable facts will not be condoned by this Commission." *In re Atkinson Gates, Williams and Malone*,

[3] The Commission decides this issue solely on the basis that Public Officer did not know about her husband's interests in The Publication, a subsidiary of Parent Corporation. Although the Commission heard argument, it does not determine whether Public Officer had a pecuniary interest and/or whether the interests of her husband in The Publication created interests in the resolution before the City Council which involved the interests of Competitor, a separate subsidiary of Parent Corporation. The Commission does not determine whether an interest in a subsidiary of a parent company creates a disclosure/abstention requirement in a matter involving a separate subsidiary of the parent company.

Consolidated Comm'n Opinion Nos. 97-54, 97-59, 97-66, 97-53 and 97-52 (1997) ("each public official [must] vigilantly search for reasonably ascertainable potential conflicts of interest" and "public officials cannot remain willfully ignorant of readily knowable facts and must, instead, design and implement systems to spot and respond to potential ethical conflicts). Public Officer was not willfully ignorant of her husband's involvement with The Publication based on the extent and nature of her husband's intermittent involvement with The Publication. Furthermore, based on the facts present herein, it was not reasonable to ascertain every affiliated company of Competitor through its Parent Corporation and such company's unrelated interests from the Competitor before the City Council.

## IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Public Officer was an elected member of the City Council and as such was a "public officer" as defined by NRS 281A.160.

2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. The Commission concludes that because Public Officer did not know and was not willfully ignorant of her husband's employment relationship with The Publication or its affiliation with Competitor, she did not violate NRS 281A.420(1) by failing to disclose, at the City Council Meeting, her pecuniary interest or commitment in a private capacity to the interests of her husband (his employer's interests) before voting to approve the resolution.

4. The Commission concludes that because Public Officer did not know of her husband's employment relationship with The Publication or its affiliation with Competitor, she did not violate NRS 281A.420(3) by failing to abstain from voting to approve, at the City Council Meeting, the resolution.

Dated this 4th day of October, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman[4]

[4] At the time this written opinion was issued, then-Chair Keele no longer served on the Commission. Current Chair Beyer signs this opinion on behalf of the participating Commissioners.