



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion
Concerning the Conduct of
MICHAEL OLSON, Chairman,
Douglas County Board of Commissioners,
State of Nevada,**

Request for Opinion No.: 11-23C

Subject./

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The Executive Director bases the following report and recommendation on the staff's investigation and analysis of the Third-Party Request for Opinion ("RFO") filed regarding the conduct of Michael Olson, a public officer, and on the written response to the RFO, both attached as exhibits to this report and recommendation, and the other materials attached hereto. The Executive Director provides her Report and Recommendation and its exhibits for the consideration of the two-commissioner investigatory panel ("Panel"), pursuant to NRS 281A.240.

Facts:

The exhibits to this Report and Recommendation support the following recitation of facts and the analysis related thereto.

The main parties involved are Douglas County Commissioners Michael Olson (Chairman), Lee Bonner, Doug Johnson, Greg Lynn and Nancy McDermid; and Douglas County Planning Commissioner Margaret Pross.

Olson was elected to the County Commission in 2008 to a four-year term. He is employed by Pro Group, an administrator of self-insured groups for worker compensation in Nevada. He does not appear to have any financial interest related to the development of the county or the modification of the County Master Plan.

During the 2010 elections of Douglas County Commissioners, Margaret Pross, a Planning Commission member who was appointed and re-appointed by the County Commission, wrote letters to the local newspaper expressing her personal views on several candidates for County Commission.

Prior to the election, one of the candidates against whom Pross had expressed her opinion wrote an email to County Commission Chairman Olson stating his concern about the attacking tone of the letters. Just after the election, Olson attended a meeting

in which another Commissioner, Nancy McDermid, commented on her lack of confidence in Pross due to the letters and Pross' public affiliation with a local entity promoting "sustainable growth." Olson believed another Commissioner might agree with Commissioner McDermid, and felt that the Commission would have an item on its agenda in the coming meetings to remove Pross from the Planning Commission. (Tab A, RFO pp. 10-17), (Tab C, Response, pp.1-4), (Exhibit 2, Affidavit of McDermid).

Prior to Michael Olson's election to the Douglas County Commission, he had served with Pross on the Planning Commission, and he believed that they had a collegial personal and professional friendship. Believing that since the Commission appointed Planning Commissioners, it could remove them, Olson decided to telephone his former colleague, Pross, to suggest that she might consider resigning rather than go through a public removal process. He mentioned his decision to Commissioner Brady, the Vice-Chair of the County Commission, who suggested that Olson tread lightly as the offer to allow Pross to resign may not be well received. Olson telephoned Pross, and Brady's prediction was on the mark. At the end of an uncomfortable call, Olson asked Pross to think about it and offered to call her in a few days. Both Olson and Pross were very upset. (Tab C, Response, pp.1-4).

Olson then spoke with the District Attorney's office and learned that the County Commission may only remove a Planning Commissioner for inefficiency, neglect of duty or malfeasance of office. None of these issues pertained to Pross' conduct. Olson attempted to telephone Pross, but received no answer or return call. (Exhibit 4).

A day or so later, Olson stopped Pross after a luncheon in a local casino and attempted to explain that he was wrong to ask her to resign. Pross responded very angrily and defensively. The two parted without resolving any of their issues.

Thereafter, Pross filed an Open Meeting Law Complaint with the Attorney General's office and this Third-Party Ethics RFO. (Tab A).

Allegations:

The main allegation is that Chairman Olson used his position in government to further his personal or pecuniary interests by 1) attempting to influence a subordinate, Pross, to resign from the Planning Commission so that 2) he could gain political power within the County Commission and 3) further his pecuniary interests by manipulating the Planning Commission membership between the time of the allegation and December 2011 such that the members would be able to and more likely to approve a Master Plan amendment that would benefit Olson's pecuniary interest.

- 1) - by calling her and suggesting that she was going to be removed by the County Commission despite the fact that the Commission lacked the authority to do so. It appears that Olson genuinely thought that Planning Commissioners were "subordinate" to County Commissioners and that the Commission had the power to remove them from office. Therefore, it appears that Olson was not trying to trick Pross in any manner.
- 2) - Pross had spoken out against two candidates who had prevailed in being elected to the County Commission. Pross alleges that by aligning with the elected Commissioners against Pross, Olson could gain additional influence with those members.

3) - If Pross had resigned or been removed, the Commission would have the ability to appoint a replacement for her seat. Three additional seats would be filled in January 2011. In December 2011, there would be 2 more appointments to the Planning Commission. If all of those 6 appointments were individuals who would support unchecked growth in Douglas County, the interest Olson is alleged to be serving would control a supermajority on the Planning Commission, and could amend the Douglas County Master Plan dramatically. However, no evidence was adduced to show that Olson has any pecuniary gain to be had from development in Douglas County.

Nevada Revised Statutes (NRS) and case law:

The applicable statutes are NRS 281A.020, 281A.400(2) and 281A.400(9):

NRS 281A.020 Legislative findings and declarations.

1. It is hereby declared 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.
 - (b) 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.

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee 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 281A.420](#).
- (b) "Unwarranted" means without justification or adequate reason.

9. A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

Analysis:

NRS 281A.020 - Evidence of Olson's failure to adequately separate his private interests from his duty to the public was wholly lacking. Making a telephone call to avoid an unnecessary public process furthers the public's interest in efficient government. The evidence supports a finding that Olson believed the Commission had the power to remove Pross. No evidence was presented or discovered as to a conflict Olson may have had regarding Pross' continuation or removal from the Planning Commission.

NRS 281A.400(2) - With regard to any unwarranted advantages secured or granted through Olson's position in government, no personal or pecuniary interest was identified that might have been served by the continuation or removal of Pross as a Planning Commissioner. Olson may have derived some support from the two Commissioners regarding whom Pross had written letters by suggesting that she resign, although no

evidence of the same was provided or discovered. The allegation is based solely on an assumption that a personal benefit would be conferred.

NRS 281A.400(9) - No credible evidence was found to support the allegation that Olson had attempted to benefit any personal or pecuniary interest by suggesting that Pross, his believed subordinate, should resign. In fact, credible evidence was found that Olson believed Pross to be a subordinate, able to be removed by the County Commission, and that he meant to serve her interest by making the telephone call suggesting her resignation as a way to help her avoid public embarrassment.

NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics RFO **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics RFO must be unanimous.

3. As used in this section, **“credible evidence” means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

Conclusion and Recommendation:

I recommend that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission render an opinion on any of the above allegations against Michael Olson, Douglas County Commission Chairman including the alleged violations of NRS 281A.020 and NRS 281A.400(2) and (9). Accordingly, I recommend that the Panel dismiss the RFO in its entirety.

I respectfully provide my recommendation to this honorable panel.


Caren Jenkins, Esq.
Executive Director

Date: May 4, 2011