



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

**In the Matter of the Request for Opinion
Concerning the Conduct of
ROGER TOBLER, Mayor, Boulder City,
State of Nevada,**

Request for Opinion No.: 11-46C

Subject. /

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The Executive Director bases the following report and recommendation on the staff's consideration and investigation of the Third-Party Request for Opinion ("RFO") filed regarding the conduct of Roger Tobler, a public officer, and on his written response to the RFO, attached as an exhibit 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 the requirements of NRS 281A.240.

Facts:

The main party is Roger Tobler, the Mayor of Boulder City who, as part of his role as an elected official in southern Nevada, sits on the Regional Transportation Commission ("RTC"). Tobler has served on the City Council since 2003, and the City Council appointed him to serve on the RTC that same year. Tobler's most recent re-election took place in June 2011. (Response, Tab C, p. 2). Tobler is a public officer as defined in NRS 281A.160.

Other involved parties include:

-Bruce Woodbury, consultant/lobbyist for First Transit, Inc. and well-known former southern NV elected official. (Response, Tab C, pp. 3 and 14).

-First Transit Inc., one of two transportation companies being considered to be awarded a multi-million dollar bus service contract with the RTC. (Exhibit 1, p.13).

In Tobler's 2011 re-election campaign, Tobler asked Woodbury, a well-known local political figure, to endorse his candidacy. Woodbury agreed and allowed Tobler to use his name on campaign materials in the honorary role of "campaign co-chair." (Exhibit 5). Woodbury had no responsibilities and received no compensation in that role; he made no appearances or speeches and was rather uninvolved in Tobler's campaign other than by making a campaign contribution. While they are acquainted and see one another at various events, Woodbury and Tobler have no personal social relationship, though they share some political views. (Response, Tab C, p. 13).

To support her allegations, the requester alleges that Woodbury asked a local resident for permission to place a large Tobler campaign sign on his property. (RFO, Tab A, p. 9). Woodbury denies having done so; however, he noted that his son Rodney, who ran for City Council during that same election cycle, did have a sign on that property. (Response, Tab C, p. 13).

Tobler and Woodbury both deny any quid pro quo arrangement, and Tobler sided with the RTC staff recommendation and the best interests of his Boulder City constituents when forming an opinion about the bus contract.

Allegations:

The allegations center on whether Tobler's relationship with Woodbury required Tobler to disclose a conflict of interest before participating in the RTC vote to award the bus contract (NRS 281A.420(1)), whether he must abstain from participating in that issue due to the conflict (NRS 281A.420(3)), and whether by participating and voting as an RTC member regarding the transportation contract beginning in May 2011, Tobler used his position in government to secure unwarranted privileges or advantages for himself or grant unwarranted preferences or advantages to Mr. Woodbury (NRS 281A.400(2)) as a *quid pro quo* for Woodbury's support during Tobler's most recent campaign.

The requester was Tobler's opponent in the 2011 campaign, and based her RFO and allegations on the relationship at issue in *Carrigan* as outlined in NRS 281A.420(8).

Relevant Nevada Revised Statutes (NRS):

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.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:
 - (a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and
 - (b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:
 - (1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
 - (2) The expenditure of public money; and

(3) The administration of laws and rules of the State or any county, city or other political subdivision.

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.

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

- (a) Regarding which the public officer or employee has accepted a gift or loan;
- (b) In which the public officer or employee has a pecuniary interest; or
- (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

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3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, 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:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of others.

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

- (1) Who is a member of the public officer's or employee's household;
- (2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (3) Who employs the public officer or employee or a member of the public officer's or employee's household;
- (4) With whom the public officer or employee has a substantial and continuing business relationship; or
- (5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

Analysis and Recommendation:

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.

Based upon the materials provided by the parties and the results of the staff investigation of this matter, insufficient credible evidence exists to support the allegations of unwarranted benefits sought or bestowed upon Mr. Tobler or Mr. Woodbury, or that the relationship between these individuals meets the statutory definition of a commitment in a private capacity to the interests of others. What's more, the facts do not support a finding that the relationship is substantially similar to one of the relationships enumerated in the statute. Therefore, I recommend that the Panel find that **a lack of sufficient credible evidence was found** to support a reasonable belief that the Commission should hear this matter and render an opinion regarding the allegations that Roger Tobler violated NRS 281A.400(2) or NRS 281A.420(1) and (3). Accordingly, I recommend that the Investigatory Panel **dismiss** this RFO in its entirety.

I respectfully provide my recommendation to this honorable panel.



Caren Jenkins, Esq.
Executive Director

Date: August 23, 2011.