



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

**In the Matter of the Request for Opinion
Concerning the Conduct of
CALVIN EILRICH, City Council Member,
City of Fernley,
State of Nevada,**

Request for Opinion No.: 11-47C

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 Calvin Eilrich, 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 Calvin Eilrich, City Council member, City of Fernley. Eilrich has served on the City Council since 2008; his wife, Dinah, served as Chair of Fernley's Arts and Culture Commission since 2007, and he, his wife and his colleague City Council Member Roy Edgington are officers in a non-profit organization - Fernley Hills Shooting Range. Eilrich is a public officer as defined in NRS 281A.160.

Vote to dissolve Arts and Culture Commission

The RFO alleges that during the May 4, 2011 City Council meeting, Eilrich failed to abstain on a matter in which he had a commitment in a private capacity to the interest of his spouse, Dinah Eilrich. (RFO, Tab A, pp. 3-4). The item was to direct the City manager to prepare amendments to ordinances and/or resolutions regarding several Boards, including the Arts and Culture Commission. (RFO, Tab A, pp. 16 and 18). In addition, the requester alleged a violation of the disclosure and abstention provisions; however Eilrich disclosed his wife's interest in the matter, and explained that he did not believe he was required to abstain. Eilrich voted to dissolve the various Boards.

At the beginning of the May 4, 2011 discussion of item No. 18, Eilrich disclosed his wife's involvement with the Arts and Culture Commission. The minutes reflect that: **"Councilman Eilrich disclosed that his wife serves on the current Arts & Culture Commission; he assured that her position would affect his professional opinion and making a decision in the best interest of the City."** Following discussion on the

matter, a motion was made and Eilrich voted. However, the investigation revealed that the minutes contain a typographical error.

The audio recording provides that: ***"...yes before we go any further I need to disclose that there may be a perceived conflict of interest. My wife Dinah does serve on the current Arts & Culture Commission; however, I do not believe it will affect my professional opinion on doing my job in the best interests to the city."*** (Exhibit 1, time: 1:19:00, emphasis added).

When Eilrich became aware of the error, he requested a correction. The August 3, 2011 City Council agenda included item No. 11, which reflects a request for a change as "discussion and possible amendment to the May 4 minutes..." (Exhibit 2, p. 20). In addition, a staff report on the same matter is included (Exhibit 2, p. 22). The corrected statement is included in approved minutes. (Exhibit 2, p. 42). Therefore, the correction of the record appears to be complete.

Conflict with Council Member Edgington

While it appears that Councilman Eilrich, Dinah Eilrich, and Councilman Edgington all serve on the board of the non-profit organization Fernley Hills Shooting Range, there does not seem to be any link between those parties to create a commitment in a private capacity to the interest of others, based on the individuals' duties to the organization as fiduciaries. What's more, no information was adduced that the Shooting Range came before the City Council for action in any manner that might require Edgington or Eilrich to disclose their participation on that Board.

Relevant Nevada Revised Statutes (NRS):

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 was found** to support a reasonable belief that the Commission should hear this matter and render an opinion regarding the allegations that Calvin Eilrich violated NRS 281A.420(1) and (3). The error in the minutes initially provided a minimal level of evidence to undertake this investigation, but that evidence was rebutted by the recording and subsequent correction of the City Council's minutes. Accordingly, I recommend that the Investigatory Panel **dismiss** this RFO in its entirety.

I respectfully provide my recommendation to this honorable panel.

_____/s/ Caren Jenkins_____ Date: August 23, 2011
Caren Jenkins, Esq.
Executive Director