



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

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

Request for Opinion No.: 11-48C

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 Roy Edgington, 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 Roy Edgington, City Council member, City of Fernley. Edgington, his colleague City Council Member Cal Eilrich, and Eilrich's wife, Dinah, are officers in a non-profit organization - Fernley Hills Shooting Range. Edgington is a public officer as defined in NRS 281A.160.

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, the RFO presented no evidence nor was any information 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 allegation that Roy Edgington had any commitment in a private capacity to the interest of another when considering whether to disband the Fernley Arts and Culture Commission, among other boards. Despite Edgington's affiliation on the non-profit board with Councilman Eilrich and Mrs. Eilrich, the matter before the City Council had nothing to do with the Fernley Hills Shooting Range. Edgington's affiliation with the Eilrich family did not create a conflict of interest or other discloseable interest that might implicate NRS 281A.420(1) or (3), or that required any disclosure when Edgington considered disbanding the Arts and Culture Commission. 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