



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

In the Matter of the Request for Opinion
Concerning the Conduct of **Robert Eliason**,
North Las Vegas City Councilman,
State of Nevada,

Request for Opinion No.: 11-56C

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 Robert Eliason, 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 North Las Vegas Council Member Robert Eliason. Eliason was first elected to the North Las Vegas City Council in 2001, reelected in 2005, and his current and final term expires in 2013. During the 2011 municipal election, Eliason endorsed a (now defeated) candidate for the Ward 4 City Council position. The candidate's Contribution and Expenses Report ("C&E") indicates that Eliason contributed \$500 to his campaign. (Exhibit 1, p. 2).

The allegations center on two June 2011 City Council meetings. Specifically, the allegation is that on June 15, 2011, Eliason opposed the passage of agenda item No. 15, "Canvass of the June 7, 2011 Municipal General Election Results." (Response, Tab C, p. 7 of 20), (Exhibit 2, p. 3 [marked as page 30]). At the Council meeting on June 15, 2011, Mr. Eliason disclosed that he had made a campaign contribution to a person interested in the matter before the City Council, and then proceeded to participate and vote. On June 30, 2011, he made no disclosure and voted in favor of holding a new election. (Exhibit 3, p. 7), (Exhibit 4, p. 3).

Allegations:

The RFO alleges that NRS 281A.020 and 281A.420 (1) and (3) required Eliason to fully disclose a conflict of interest and abstain from voting in both instances.

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.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.

2. The provisions of subsection 1 do not require a public officer to disclose:

(a) Any campaign contributions that the public officer reported in a timely manner pursuant to NRS 294A.120 or 294A.125; or

(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 294A.286.

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.

(b) "Public officer" and "public employee" do not include a State Legislator.

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.

During the investigation, Eliason stated that, indeed, he had made a campaign contribution to and supported one of the candidates, and before the June 15 and June 30 meetings, he sought advice from the City Attorney and, based on the advice, he was confident that he need not disclose, but could do so to avoid the appearance of impropriety, and that his vote on these matters would not implicate any provisions of the Nevada Ethics in Government Law. NRS 281A.420 (2) specifically exempts campaign contributions from that statute's disclosure and abstention requirement.

Based on the foregoing, I recommend that the Panel find that **neither the RFO nor the investigation provided any credible evidence to support a reasonable belief that the Commission should hear this matter and render an opinion.** No evidence was found that Eliason had any gift, loan, pecuniary interest or commitment in a private capacity to the interests of another that would require him to make any disclosure, much less undertake an abstention analysis and abstain from voting, either on the vote to canvass the election or to undertake a new election in North Las Vegas. Further, no evidence was adduced to support the notion that Eliason failed to adequately separate his private interests from his public duties as is required under NRS 281A.020. Accordingly, I **recommend that the Panel dismiss** this RFO in its entirety.

I respectfully provide my recommendation to this honorable panel.



Caren Jenkins, Esq.
Executive Director

Date: 9/21/11