



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion
Concerning the Conduct of ALAN ROWLEY II, JOHNNY
GORUM, ROY BRIGGS and EMILY CARTER,
City Council Members, City of West Wendover,
State of Nevada,**

**Requests for Opinion Nos.: 09-66C
09-67C
09-68C
09-69C**

Subjects. /

**EXECUTIVE DIRECTOR'S RECOMMENDATION
AND APPROVAL OF INVESTIGATOR'S REPORT**

The following is the Executive Director's recommendation based on the staff's consideration and investigation of the Ethics Complaint filed against Alan Rowley II, Johnny Gorum, Roy Briggs and Emily Carter ("Subjects"), each of whom is a public officer, and on the Subjects' written responses to the Complaints, attached to the Investigator's Reports. Those Reports are approved as attached for the consideration of the two-commissioner panel.

Allegations:

The Complaints all allege that four of the five elected members of the West Wendover City Council failed to disclose their employment by Peppermill Casinos, Inc., an entity interested in the outcome of the vote before the matter was considered by the City Council. In addition, none of the four members abstained from participating in the vote.

Facts:

Each of the subjects is employed in some capacity by Peppermill Casinos, Inc., which is the primary employer in West Wendover – supporting approximately one-half of the residents of that community. Peppermill Casinos, Inc. owns several large casinos in West Wendover, with each offering hotel sleeping rooms in compliance with the West Wendover City Code.

No dispute exists that all of the Subjects engaged in considering an agenda item proposing a change to the City Code to allow a casino to be built, but to delay the building of the required number of related hotel rooms. Further, no dispute exists that each of the subjects had engaged in a discussion with Mr. Lewis, a high-ranking manager in the Peppermill Casinos, Inc. corporate hierarchy, in which Mr. Lewis expressed his opinion that the requested change should be denied. Finally, each of the subjects admits having taken part in voting on the agenda item.

Nevada Revised Statutes (NRS):

The applicable statutes are¹:

NRS 281A.420(4)	Failure to sufficiently disclose a conflict of interest.
NRS 281A.420(2)	Failure to abstain from acting on a matter in which a conflict existed.

NRS 281A.420(4) provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise **act upon any matter:**

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

Without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.

NRS 281A.420(2) provides:

Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, 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 his situation would be materially affected by:**

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

¹ This citation refers to the statute applicable at the time of the alleged violation. Changes were made by Senate Bill 160 of the 2009 legislative session and became effective May 28, 2009, after the alleged violation.

Recommendation:

After reviewing the evidence and NRS 281A.420(2) and NRS 281A.420(4), I recommend that the Panel find just and sufficient cause **EXISTS** for the Commission to hear evidence and render an opinion on the allegations that the Subjects failed to make sufficient disclosure of their commitments in a private capacity to their own interests as employees and to those of their employer, Peppermill Casinos, Inc., regarding the proposed change to the West Wendover City Code, and further, that just and sufficient cause **EXISTS** for the Commission to hear evidence and render an opinion on the allegations that the Subjects failed to abstain from voting on the issues although the independence of judgment of a reasonable person in their situations would be materially affected.

Analysis:

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 complaint **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 complaint 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.

Credible evidence in the form of admissions from the Subjects, and corroboration from the Investigator’s telephone conferences with Mr. Lewis of the Peppermill Casinos, Inc., is present in sufficient detail to support a reasonable belief that this matter should be forwarded to the Commission for hearing and further determination.

Of course, should the Commission hold that these subjects should have abstained from voting, the Ethics in Government Laws would have the practical effect of strangling the operation of the City Council as it is presently constituted in West Wendover, since a singular corporation employs 80% of the City Council members. Should abstention be required, the council members eligible to vote would be reduced to a sole member on all issues of taxation, employment, policy and so forth. Hardly a matter would come before the council which would not affect Peppermill Casinos, Inc. in some manner. Matters affecting public policy in such a global way should be taken to the full Ethics Commission for deliberation and determination.

Conclusion:

I recommend that the Panel find just and sufficient cause **EXISTS** for the Commission render an opinion on all of the above allegations against Alan Rowley II, Johnny Gorum, Roy Briggs and Emily Carter including the alleged violations of NRS 281A.420(2) and (4).

I hereby approve the attached Investigator’s Report and provide the above recommendation to this honorable panel.

_____/s/_____
Caren Jenkins, Esq.
Executive Director

Date: November 25, 2009