



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of JIM DAVIS,
Member, Beatty Water and Sanitation District
State of Nevada,

Request for Opinion No.: 09-88C

Subject. /

INVESTIGATOR'S REPORT (Tab A)

Introduction

1. Request for Opinion No. 09-88C (Ethics Complaint). (Tab B):

On December 14, 2009, Requestor Ray H. Williams III filed an Ethics Complaint against public officer Jim Davis, a member of Beatty Water and Sanitation District Board (BWSD), alleging that he violated NRS 281A.420(1) by failing to disclose a presumed conflict of interest and NRS 281A.420(3) when he abstained from a vote without providing any reasons or other explanation during the October 16, 2009 BWSD meeting .

2. Jurisdiction:

As a member of BWSD, no dispute exists that Davis is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics has jurisdiction to investigate and take appropriate action in this matter pursuant NRS 281A.280 and NRS 281A.440.

- 1 • Ray Williams, requestor of RFO 09-88C, via telephone on January 19, 2010. (Telephone
2 conversation only).

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4 **2. Documents. (Tab E):**

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6 I obtained and reviewed the following documents and materials relevant to the investigation:

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8 • Audio recording from the October 16, 2009 BWSO meeting. (Exhibit 3).
9 • Transcript of the October 16, 2009 BWSO meeting (completed by the investigator, not an
10 official record). (Exhibit 4).
11 • NCOE Notice to Subject, In re Davis 09-88C. (Exhibit 5).
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13 **3. Relevant Statutes and Commission's Opinions. (Tab F):**

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15 • NRS 281A.420.
16 • NCOE Opinion No. 99-56.
17 • NCOE Opinions No. 95-21, 95-23, and 95-37.
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20 **Investigative findings:**

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22 Davis was elected as a BWSO Board member approximately in 2002. He does not
23 recall the exact date. According to Davis, his term expires in November of 2010 and he does not
24 intend to run for another term due to his declining health.

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26 After reviewing the evidence, I find as follows:
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1 On February 19, 2009, I received a response to the investigator's questionnaire
2 from Davis. Davis claims that he could not hear the proceedings and he thought he was voting on
3 a matter unrelated to Williams' termination. In addition, Davis stated that he was disconnected
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5 several times prior to the relevant agenda item, and when he was connected, his ability to follow
6 the proceeding was impacted. When he realized that he could not hear the meeting and the
7 motion before the body, he decided not to vote. (Exhibit 1).

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9 I spoke with Requestor Williams via telephone on January 19, 2010, and asked if
10 he could describe the proceeding on October 16, 2009. Williams responded that the meeting
11 included a closed session where the BWSO Board discussed his termination as the general
12 manager of BWSO. After the closed session, the meeting was open for public and he was
13 terminated from his position. In addition, Williams stated that there were no apparent technical
14 issues with Davis' call during the closed session and he could clearly hear the proceedings.
15 Williams alleged that Davis appeared to be intimidated by the Board and he may not have
16 wanted to vote on the termination. Therefore, he abstained without making a disclosure and
17 without giving any reason for his abstention.

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19 On February 19, 2010, I reviewed the audio recording of the October 16, 2009
20 BWSO meeting. Although it appears that Davis was disconnected from proceedings at the
21 beginning, it is clear that his call was connected during the vote on Williams' termination. In
22 addition, Davis responded to questions asked by Chair Parsons and member Revert. Davis did
23 not question the nature of the discussion and, based on his comments, it seems that he was aware
24 of the nature of the discussion and motion, and subsequent vote. (Exhibit 3, 1 hour 8 minutes to 1
25 hour 11 minutes of the recording). (Exhibit 4).

- 26
27 ▪ NRS 281A.420(1) provides, in relevant part:

28 *a public officer or employee shall not* approve, disapprove,
vote, *abstain from voting* or otherwise act upon a matter

- 1 (a) Regarding which he has accepted a gift or loan;
2 (b) In which he has a pecuniary interest; or
3 (c) Which would reasonably be affected by his commitment in
4 a private capacity to the interest of others,
5 ***without disclosing sufficient information*** concerning the gift, loan, interest or
6 commitment to inform the public of the potential effect of the action or
7 abstention upon the person who provided the gift or loan, upon the public
8 officer's or employee's pecuniary interest, or upon the persons to whom the
9 public officer or employee has a commitment in a private capacity. Such a
10 disclosure must be made at the time the matter is considered. (Emphasis added).

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1. **Allegation one:** On October 16, 2009, Davis violated NRS 281A.420(1) by failing to disclose sufficient information concerning a presumed disqualifying interest and informing the public of the effect of his action or abstention before the vote on a termination of General Manager Ray Williams.

As to the allegation that Davis failed to make sufficient disclosure before he abstained from the vote on termination of General Manager Williams, the evidence is as follows:

The audio recordings clarify the actual proceeding. Based on its review, it appears that Davis could hear the proceeding and was not confused as to the nature of the vote. NRS 281A.420 provides that "[a] public officer shall not approve, disapprove, vote, ***abstain from voting*** or otherwise act upon a matter ***without disclosing sufficient information*** ... " (Emphasis added). The Commission held in In re Schaffler No. 95-21 that "*despite his conformance with the abstention requirement ... Scheffler's failure to disclose the nature and the extent of the interest which prompted his abstention violated NRS 281A.501(3).*"¹

- NRS 281A.420(3) provides, in relevant part:

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] ***the public officer's*** situation would be materially affected by:
(a) His acceptance of a gift or loan;

¹ Changes were made by 1995, 1999, 2003, 2007 and 2009 legislation. This section now appears as NRS 281A.420(1).

1 (b) His pecuniary interest; or
2 (c) His commitment in a private capacity to the interests of
3 others.

- 4
5 ■ NRS 281A.420(3) provides, in relevant part:

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7 (b) ... *Because abstention by a public officer disrupts the normal course of*
8 *representative government and deprives the public and the public officer's*
9 *constituents of a voice in governmental affairs, the provisions of this section*
10 *are intended to require abstention only in clear cases where the independence*
11 *of judgment of a reasonable person in the public officer's situation would be*
12 *materially affected by his acceptance of a gift or loan, his pecuniary interest or*
13 *his commitment in a private capacity to the interests of others.* (Emphasis
14 added).

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16 **2. Allegation two:** On October 16, 2009, Davis violated NRS 281A.420(3) by abstaining
17 from the vote to terminate General Manager Ray Williams.

18 The Commission's Notice to Subject In re Davis includes an allegation of a
19 violation of NRS 281A.420(3). The evidence shows that Davis abstained from the vote. (Exhibit
20 3). Therefore, Davis' abstention disrupted the normal course of representative government and
21 deprived the public and Davis' constituents of a voice regarding Williams' termination. While his
22 conduct may go against the public policy, there is no requirement that Davis vote at all.

23 Dated this 1 day of March 2010.

24 NEVADA COMMISSION ON ETHICS

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28 Mike Vavra, MPA
Investigator