



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion  
Concerning the Conduct of  
WILLIAM WEBER, Member,  
Washoe County Planning Commission,  
State of Nevada,

Request for Opinion No.: 09-47C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

Request for Opinion No. 09-47C (Ethics Complaint). (Tab B):

On June 26, 2009, complainant Jeffrey Church (Church) filed an Ethics Complaint against public officer William Weber (Weber), a member of the Washoe County Planning Commission (Planning Commission), alleging that he violated NRS 281A.420(1), when on two different occasions, he voted on changes to the Forest Area Plan (Exhibit 6) without disclosing his pecuniary interest in properties located in the vicinity known as the Forest Planning Area, and violated NRS 281A.420(3), when he failed to abstain from voting on the same.

Jurisdiction:

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

1 **Issues:**

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3 The issues are whether Weber violated:

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- 5 **1.** NRS 281A.420(1), (former NRS 281A.420(4)),when on July 28, 2008, he voted on  
6 changes to the Forest Area Plan without disclosing his pecuniary interest in properties  
7 located in the Forest Planning Area.
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  - 9 **2.** NRS 281A.420(3), (former NRS 281A.420(2)),when on July 28, 2008, he failed to  
10 abstain from voting on changes to the Forest Area Plan.
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  - 12 **3.** NRS 281A.420(1), when on June 2, 2009, he voted on changes to the Forest Area Plan  
13 without disclosing his pecuniary interest in properties located in the Forest Planning  
14 Area.
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  - 16 **4.** NRS 281A.420(3), when on June 2, 2009, he failed to abstain from voting on changes to  
17 the Forest Area Plan.

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19 **Response to Ethics Complaint. (Tab C):**

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21 On August 7, 2009 a response to the Ethics Complaint was received from Weber and his legal  
22 counsel Nathan Edwards Esq. (Edwards). Edwards stated that Weber did not violate any  
23 provisions of NRS 281A because he did not gain or lose anything by the changes to the Forest  
24 Area Plan any more than other residents of the said area. In addition, Edwards stated that NRS  
25 281A.420(3) was not applicable at the time of the alleged violation on July 28, 2008. Finally,  
26 Edwards referred to the Commission's Opinion In re Dressler No. 00-12 and argued that based  
27 on that opinion, Weber had no disclosure or abstention obligation.

1 **Investigation Summary:**

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3 I interviewed the following individuals and reviewed their responses:

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5 **Witnesses interviews and responses. (Tab D):**

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  - William Weber, via mail on August 7, 2009. (Response, Tab C).
  - William Weber, via e-mail on August 14, 2009. (Exhibit 1).
  - Jeffrey Church, via telephone on August 10, 2009. (Telephone conversation only).

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11 **Documents. (Tab E):**

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

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  - E-mails from Dr. Robert Parker, dated August 10 and 16, 2009. (Exhibit 2).
  - E-mail from Jeffrey Church, dated August 10, 2009. (Exhibit 3).
  - Maps and ownership data retrieved from Washoe County Assessor's website. (Exhibit 4).
  - Forest Area Plan draft. (Exhibit 5).
  - Audio recording of July 28, 2008 and June 2, 2009 Planning Commission meetings. (Exhibit 6).<sup>1</sup>

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23 **Relevant Statutes and Commission's Opinions. (Tab F):**

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  - I. NRS 0.050 and the data from US Census Bureau.
  - II. Statutes cited by Weber in Response to Complaint.
  - III. NRS 281A.420(1) and (3). (Reflecting changes effective May 28, 2009).

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<sup>1</sup> Note: July 28, 2008 recording consist of two parts.

1 IV. Commission's Opinion In re Dressler RFO No. 00-12.

2 V. Commission's Opinion In re Keaton RFO No. 06-14.

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4 **Investigative findings:**

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6 **Background:**

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8 Weber is the at-large member of the Planning Commission representing the area from Truckee  
9 River south to the southernmost border of the Washoe County. He was first appointed into his  
10 position in 2003, re-appointed in 2006 and his current term expires in 2011. (Exhibit 1, ¶1).

11 To qualify for the southern Washoe County position, Weber was required to reside in an  
12 unincorporated area south of the Truckee River. Weber satisfied the residence requirements; he  
13 resides and owns two properties in the area known as the Forest Planning Area. (Exhibit 4).

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15 **Investigation:**

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17 The complaint alleges that during the Planning Commission meetings on July 28, 2008 and June  
18 2, 2009, Weber violated the Ethics in Government Law by failing to disclose his pecuniary  
19 interest in properties located in the Forest Planning Area. (Exhibit 4). In addition, the  
20 complainant alleges that Weber failed to abstain from voting during the said meetings.  
21 (Complaint, Tab B).

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23 Upon examining the available evidence, the result of the investigation is as follows:

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25 **1. Allegation one:** On July 28, 2008, during the Planning Commission meeting, Weber  
26 failed to disclose that he has a pecuniary interest in properties located in the Forest  
27 Planning Area. Subsequently, Weber voted on changes to the Forest Area Plan.

1 During the initial public comments of the July 28, 2008 Planning Commission meeting, Dr.  
2 Robert Parker (Parker), chair of the Galena-Steamboat Citizens Advisory Board, and asked  
3 Weber to disclose that he owns two properties in the Forest Planning Area asked that Weber be  
4 “disqualified” from voting. (Exhibit 2), (Response, Tab C, page 16).

5  
6 Weber made the following disclosure: “my disclosure is yes, I live in the district, and I don’t  
7 know why this is a surprise to Mr. Church<sup>2</sup> ... So, I do own a property there as I live there, in the  
8 Forest Area, and I have for some time. I own a property; none of which is contiguous to any of  
9 these projects or will be affected either positively or negatively by the approval of these projects.  
10 (Audio CD, Exhibit 6, Part II, time: 04:00).

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12 **2. Allegation two: On July 28, 2008, during the Planning Commission meeting,**  
13 **Weber failed to abstain from voting on changes to the Forest Area Plan.**

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15 The evidence shows that Weber did not abstain from voting on Forest Area Plan. (Response, Tab  
16 C, page 24), (Audio CD, Exhibit 6). Weber argues that at the time of this meeting, the law did  
17 not require him to abstain. At the time of this meeting, the abstention requirement for all public  
18 officers, found in NRS 281A.420(2)<sup>3</sup> stated as follows:

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20 *Except as otherwise provided in subsection 3, in addition to the requirements of the*  
21 *code of ethical standards, a public officer shall not vote upon or advocate the passage*  
22 *or failure of, but may otherwise participate in the consideration of, a matter with*  
23 *respect to which the independence of judgment of a reasonable person in his situation*  
24 *would be materially affected by:*

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- 26 (a) His acceptance of a gift or loan;
  - 27 (b) His pecuniary interest; or
  - 28 (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

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<sup>2</sup>Weber had mistaken Parker for Church.

<sup>3</sup> Version before changes effective May 28, 2009.

1 private capacity is not greater than that accruing to any other member of the general  
2 business, profession, occupation or group. The presumption set forth in this  
3 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  
5 capacity to the interests of others. (Emphasis added).

6 NRS 281A.420(3)<sup>4</sup> stated as follows:

7 *In a county whose population is 400,000 or more, a member of a county or city*  
8 *planning commission shall not vote upon or advocate the passage or failure of, but*  
9 *may otherwise participate in the consideration of, a matter with respect to which the*  
10 *independence of judgment of a reasonable person in his situation would be materially*  
11 *affected by:*

- 12 (a) His acceptance of a gift or loan;
- 13 (b) His direct pecuniary interest; or
- 14 (c) His commitment to a member of his household or a person who is related to  
15 him by blood, adoption or marriage within the third degree of consanguinity or  
16 affinity.

17 It must be presumed that the independence of judgment of a reasonable person would  
18 not be materially affected by his direct pecuniary interest or his commitment  
19 described in paragraph (c) where the resulting benefit or detriment accruing to him or  
20 to the other persons whose interests to which the member is committed is not greater  
21 than that accruing to any other member of the general business, profession,  
22 occupation or group. The presumption set forth in this subsection does not affect the  
23 applicability of the requirements set forth in subsection 4 relating to the disclosure of  
24 the direct pecuniary interest or commitment. (Emphasis added).

25 Although it is arguable that the population of Washoe County in 2008 was greater than 400,000,  
26 NRS 0.050 provides a clear definition of "population":

27 "...the number of people in a specified area as determined by the last preceding  
28 national decennial census conducted by the Bureau of Census ..."

29 The data from the last (2000) decennial census set the population of Washoe County at 339,486.  
30 (Tab F, section I). Therefore, it appears that the abstention requirement on July 28, 2008 that  
31 would have applied to Weber, a "public officer", was NRS 281A.420(2) (now pending re-  
32 codification as NRS 281A.420(3)), the abstention applicable to all public officers except perhaps  
33 only members of planning boards in Clark County, since Clark County was the only county  
34 whose population was 400,000 or more in 2008.

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<sup>4</sup> Version before changes effective May 28, 2009 in which the Legislature repealed this section.

