

## Advisory Opinion No. 75-14

### QUESTION:

May I professionally represent a partnership which operates a retail store if one of the partners (in this case a 40%owner) is subject to regulation by the commission to which I have been appointed?

### RESPONSE:

Yes, you may continue to represent the partnership in your private professional capacity although one member of the partnership as owner of a whole separate business entity is regulated by your regulatory commission.

In this case, the partnership, which you represent professionally, is not a business subject to regulation by your commission. One member of the partnership owns a wholly separate entity which is subject to regulation by your commission; the partner who owns this regulated business is not now your client.

The Commission gave considerable deliberation to your question before arriving at a response. It was the opinion of this Commission that the adoption and passage of the Nevada Ethics in Government Law by the 1975 State Legislature would, because of Sec. 24(1) of that law:

"1. A public officer shall not participate in, or in any way attempt to influence, governmental action or decisions relating to any matter within his responsibilities of his public agency in which he knows or has reason to believe that he has an economic interest."

along with Sec. 21 (5) & (6) of that same law:

"5. His participation under the circumstances would adversely affect the confidence of the people in the impartiality of their public officers and employees.  
6. It would operate in the best interest of the people for him to withdraw or abstain from participation or pursue a designated course of action in the matter."

would tend to modify and make more restrictive the relationships of members of your regulatory commission with business persons regulated by your commission than was permitted under previous rulings of the Office of Attorney General of the State of Nevada directed to your Commission. It was the conclusion of the Ethics Commission that the passage of the Nevada Ethics in Government Law would extend the related prohibitions stated elsewhere in the Nevada Revised Statutes by which members of the regulating agency are prohibited from having private business relationships with owners and certain others in the regulated industry during the time they are serving on the regulatory agency to your regulatory body also. The Ethics Commission concluded, therefore, that, if the retail partnership which is your professional client was itself engaged in the regulated industry, even if only in a limited or restricted manner, then you would have to divest yourself of the partnership also while serving on the regulatory agency.

However, since the business which is your client, i.e., the retail partnership, is not engaged itself in the regulated industry, although under another business entity a member of that partnership is so regulated by your agency, you may continue to represent the partnership. In this situation the connection between your official duties and the economic interest which you might have is remote and would not "...tend to improperly influence a reasonable person...to depart from the faithful and impartial discharge of his public duties." (NRS 281.610 1.)

The Ethics Commission also held that, assuming your income from the partner with the regulated industry exceeded \$250 per annum (NRS 281.700 2.(c) ), you would have to abstain from action and from attempting to influence the decision when matters relating to the regulated partner came before your agency. This would be required by NRS 281.700 1. & NRS 281.630 5. cited above. The Ethics Commission wishes to point out that in this and all similar circumstances that the requirement of the law not to attempt to "influence the decision in any way" (NRS 281.700 1.) is equally to be observed with the requirement: "not to participate in," of the same section and that, as far as "the confidence of the people in the impartiality of their public officers" (NRS 281.630 5.) is concerned, it is even more important.

December 10, 1975.