

Advisory Opinion No. 75-17

QUESTION:

Would the following set of situations and facts constitute a conflict of interest or any other possible conflicts? I hold an office established by the Nevada Revised Statutes in the unclassified section and exercise some discretionary powers. I am currently considering entering into partnership in a retail business to sell a certain service. The business would be strictly side-line and I would continue to pursue my present state office. I would not conduct personal business during the hours of 8 A.M. to 5 P.M., nor use my state position to promote business. Operation of the service would be conducted by hired personnel and I would serve only in the capacity of an invested owner with limited managerial input.

RESPONSE:

The Nevada Ethics in Government Law in and of itself would not directly prohibit such concurrent engagement in private business; however, that section of the Nevada Revised Statute which establishes and regulates the office which you hold does seem to so prohibit. It is the opinion of the Chair (subsequently to be approved by the entire commission), therefore, that as long as the Nevada Revised Statutes contain the prohibition on your pursuit of business as set out below, the Nevada Ethics in Government Law under Sec. 21 6.:

“It would operate in the best interests of the people for him to withdraw from participation or pursue a designated course of action in the matter.”

would prohibit your entering upon the proposed business involvement. If you were to pursue your proposed course of action despite the prohibitions of Nevada Revised Statutes in reference to your office which says:

“Devote his entire time and attention to the business of his office and shall not pursue any other business or occupation or hold any other office for profit.”

Would be rendered meaningless, and thus, contrary to the provision of the Nevada Ethics in Government Law, “the confidence of the people in the impartiality of their public officers would be adversely affected.” (NRS 281.630 5.)

It is the opinion of the Chair that the Nevada Revised Statute which established your office applied by anticipation some of the principles incorporated in the Nevada Ethics in Government Law to the office you now hold. The prohibitions referred to above seem to reflect the opinion of the people that their public officials cannot serve two masters at the same time; this involves not only matters of distribution of time, but also that people in decision making levels of government should not have business relationships with those same persons whom they regulate to any extent that might tend to influence an official to depart from the faithful exercise of his official duties. (NRS 281.610 1.). When one comes to doing a retail business that has no direct linkage to the area of responsibility regulated by the public office, the probability of conflict of interest seems remote. The potential for conflict of interest in these situations arises from either customers who do a substantial amount of business with the retail outlet and who may also come before the person or his agency for some regulatory decision, or from wholesalers selling to the retailer and who may also have occasion to seek regulatory decisions before the person or his agency. It is more to this hidden and subtle form of conflict of interest that the requirements of disclosure of the Nevada Ethics in Government Law are addressed. The potential for conflict of interest or undue influence is increased when the official in the private business pursuit becomes directly involved with customers and wholesalers as in managing and administering the business as you proposed to do on a part time basis. It does seem that the section of the Nevada Revised Statutes related to your office and prohibiting pursuit of any other business or occupation referred to above would prohibit this direct kind of managerial and administrative involvement which you proposed to do on a part time

basis.

From the standpoint of the Nevada Ethics in Government Law, I see no a priori conflict between your official position and the proposed retail service. Conflicts of interests there would become known only in the course of your operation in terms of customers doing more than \$250 worth of business per annum or from wholesalers of products used in the proposed operation who gave special pricing, discounts, rebates, gifts of products, etc. which valued more than \$250 per annum and who were also in some way subject to regulatory decisions, applications of the law, actions of whatever kind from you personally or from your agency. The matters of such sources of income etc. would have to be filed and set forth in your annual disclosure report.

For the exact application and interpretation of the prohibitions of the Nevada Revised Statutes applicable to your office in regard to pursuit of business, I suggest that you consult the Deputy Attorney General assigned to your agency.

As stated above, it is the opinion of the Chair that the prohibitions on pursuit of business set out in NRS when taken in conjunction with the provisions of the Nevada Ethics in Government Law would prohibit you from entering upon the proposed business. It is furthermore, the opinion of this Chair that, even if the provisions of the Nevada Revised Statutes regarding your office and pursuit of business were to be deleted, your proposed action would not be a direct violation of the Nevada Ethics in Government Law, but that the provisions of the same law regarding taking action where one has a known interest as defined in the law and outlined in section 24 of the Nevada Ethics in Government Law, would have to be carefully observed so as to avoid even the appearances of a conflict of interest.

It is also the opinion of this Chair that the mere investment in the proposed business would not be prohibited under the law, but that you would have to report the investment in the annual disclosure required of you by law and that you would have to observe the provisions of Sec. 24 regarding taking action where relevant economic interests were involved with official duties of your office.

NOTE BENE: The above opinion was issued by the Chairman of the Committee under the provisions of the Rules and Regulations of the Ethics Commission under the heading: "Procedures for Issuing Advisory Opinions" which says:

"In situations where a requesting party needs an immediate answer to his request and cannot wait for a regularly scheduled meeting of the Commission, the Chairman is authorized to render an interim advisory opinion, which shall be subject to ratification or change at the next meeting of the Commission. All such requests for the interim opinions shall be in writing and signed by the requesting party. In granting such interim opinions, the Chairman shall notify the requesting party that the opinion is not final and may be subject to change at the next meeting of the Commission."

This procedure was used because the requestor in his letter he requested an immediate response. The Advisory Opinion sent to him in letter form indicated to him that this was a provisional response written by the chairman and subject to ratification or change at the next meeting of the Ethics Commission.

DATED: December 19, 1975

By: /s/ Fr. Larry Dunphy, Chairman

At the Special Meeting of the Ethics Commission held in Carson City on January 9, 1976, the above Interim or Provisional Advisory Opinion as written by the Chairman under the provisions of Regulation No. 15 of the Rules and Regulations of Advisory Opinions was reviewed and considered by the entire Commission. It was approved and

ratified as written and thus becomes the Opinion of the Commission.