

Advisory Opinion No. 75-19

QUESTION:

As a liaison person from the local legislative body to a certain advisory committee to the same local legislative body, and as a non-voting member of that advisory committee, I have participated in the study, discussion, and further development of a certain proposal before that committee. A certain client of my private business is requesting approval of that proposal. My client owns property which may be used in implementing the proposal. His proposal is one among five being considered by the advisory committee. He has been my client from June to December 24, 1975. The transfer of his business to my firm had been originally scheduled for a year earlier, but had to be delayed in order to adequately settle the previous account with the other firm. Therefore, have my actions in participating in the advisory committee been in violation of the Code of Ethics? If this matter were subsequently to come before the local legislative body, would I be in conflict?

RESPONSE:

The Nevada State Ethics Commission did not find the situation and circumstances as presented to it by yourself and your representatives to be in violation of the Code of Ethics. Your position on the advisory committee and the study and discussion of the proposal in that advisory committee antedate by more than a year your acceptance of the client with the economic interest in the proposal. Your interest in the proposal does not seem to come solely from your relationship to this certain client.

Since the committee in question is solely advisory in law, it is probably not covered by the provisions of the Nevada Ethics in Government Law, which according to Attorney General Opinion No. 193 (9-3-75), does not apply, so far as the financial disclosure requirements are concerned, to purely advisory bodies. However, the law does not seem to distinguish between the application of the Code of Ethics and the disclosure provisions.

Furthermore, your position on the advisory committee is strictly in a liaison capacity and does not allow for you to take action or vote. However, the Ethics Commission wishes to remind you and all public officials that the Nevada Ethics in Government Law does not limit itself exclusively to the actions of voting when one has an "economic interest" in the matter as defined in the Law. Section 24 of the Law says that "the public officer shall not participate in, or in any way attempt to influence...." This Commission has consistently held in all our opinions that the prohibition against "influence" is equally important, if not more so, with the prohibition against "voting." However, the testimony presented by you and your witnesses indicate that you have not attempted to influence, nor to present, one proposal more favorably or strongly than another or others.

Although not required by law, this Commission would point out that a voluntary disclosure of the fact that you had an economic interest or client relationship at the time that it began, would save you much discomfort and embarrassment later on. It seems to us that waiting until a matter is at the vote stage to make such interest known is a bit late according to the spirit of the law, in that proposals, and the matter that they incorporate, are normally narrowed down and fairly well set before they come to the vote. The potential for influencing a matter is probably much greater and more significant in the development stages than in the voting action.

It should be noted that the Nevada Ethics in Government Law goes beyond the traditional concepts of "improper influence." Such traditional concepts related "improper influence" to requests for political favors, to offer or solicit

rewards for given actions, etc. The Code of Ethics looks rather more to the mere existence of "an economic interest" on the part of the public officials and to the use of the official position or office "to have a material effect" (Section 24) on that "economic interest". Where an action in his official position would have a "material effect" on an "economic interest" of the official, the official must "not participate in, or in any way attempt to influence governmental actions or decisions relating to any matter within the responsibility of his public agency." (Section 24). "Economic interest," of course, included sources of income, e.g., insurance accounts, from which one received \$250 or more annually. (Section 24(2)(c)). Under this law, then, an official cannot excuse himself from improper action merely on the grounds that he neither was asked, nor asked for, the favor in return for a favorable decision. Where there is a question of "economic interest", he simply must not take action, nor attempt to influence action. As noted above, this Commission did not find any indication that you either could or did take action or attempt to influence the advisory committee. This point is made solely to remind you and other officials who might refer to this case that the key phrase under this law is: "economic interest" as defined in Subsection 2(a)-(d) of Section 24. Favors given and returned is not an adequate expression for evaluating one's activities.

If this matter should subsequently come before you on the local legislative body and if the certain client or any other person economically interested in the proposal is a client of yourself, then, since you are a member of a legislative body, the prohibitions of Section 35 of the Nevada Ethics in Government Law would apply, and you would have to refrain from "introducing, voting upon, or exerting influence on the proposal." Section 35 says:

"No public official serving in a legislative capacity may introduce, vote upon, or otherwise exert influence on legislation for or on behalf of any person or firm having a contractual relationship with such public official or any business in which the official has a financial interest."

January 12, 1976.