

Advisory Opinion No. 75-6

QUESTION:

Can a member of the Nevada State Legislature who was the only supplier of a given product to the University of Nevada continue to sell that product to them at their request, although there are now other suppliers who can sell the University substantially the same product?

RESPONSE:

No, to continue to sell the product to the University where you are no longer the sole supplier would be a conflict of interest prohibited by the Nevada Ethics in Government Law.

Previously, under NRS 218.580 state legislators were prohibited from contracting with state agencies. Subsequently, NRS 218.580 was amended to provide that state legislators could contract with state agencies if they were the only suppliers of the commodity needed.

Since then two things have occurred. First, NRS 218.580 was repealed in 1975 and its place taken by Chapter 540 of the 1975 Statutes of Nevada, the Nevada Ethics in Government Law. NRS 281.720 provides that:

"Notwithstanding the provisions of the Nevada Ethics in Government Law:

1. Any public officer may sell or enter into contract to sell to any public agency any item or commodity if such officer is the only source of supply of such item or commodity within the state."

The following facts are established:

1. You have never solicited such purchases, the University always initiated purchases.
2. The product was purchased in small quantities and was especially formulated for the experimental purposes of the University.
3. Some purchases were paid by Federal grant monies and not by State Funds.
4. State purchases from you represented only a small part of your total business.
5. There are now additional suppliers of the product in the geographical area.

While it is true that you do not serve on a money committee of the Legislature, as a member of the Legislature you must vote on all appropriates to the University. Subsection 1, of NRS 281.610 provides:

"1. No public officer or employee may seek or accept any gift, service, favor employment, engagement, emolument or economic opportunity that would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties." (Emphasis added.)

Your ability to vote on the University appropriations while contracting with the University, creates, where you are no longer the sole supplier of a particular commodity, an appearance of impropriety in the opinion of this commission.

The Commission emphasizes that it is convinced of your personal integrity and honesty in this and other matters pertaining to your official duties and private interests. However, under NRS 281.630 (5), as a part of our criteria for issuing advisory opinions, we must consider whether a public officer's "...participation under the circumstances would adversely affect the confidence of the people in the impartiality of their public officers and employees." The appearance, as well as the actual fact, of impropriety must be avoided.

Of course, should you again become the sole supplier of said product NRS 281.720(1) would exempt you from the prohibition of the Nevada Ethics in Government Law.

January 13, 1976.