

Hypothetical Advisory Opinion No. 86-2

BEFORE THE NEVADA COMMISSION ON ETHICS

FACTS

The requestor has been a member of the Nevada Legislature for over six years. This individual has served in both the Assembly and Senate of the Nevada Legislature. In addition, the requestor has been a land developer for over 11 years.

During a legislative session, the requestor sponsored legislation which was passed by the legislature, approved by the Governor, and related to unincorporated town boards. This legislation provided for election of certain town board members, staggered terms for these elected officials, and vested these officials certain sovereign functions pertaining to zoning, building codes, and health or safety codes.

The requestor's sponsorship of this legislation was performed at the request of the legislator's constituents who resided within an unincorporated town. Initially, the legislative proposal merely provided for election of town board members and for staggered terms for those elected officials. During the legislative process, the same constituents requested that the legislative proposal be amended to provide for the zoning, building code, and health or safety code powers. The requestor in turn asked the legislative counsel to draft a legislative proposal concerning this second request. The legislative counsel suggested that the second request be incorporated into the town board election bill. This proposal containing both requests made by the requestor's constituents was processed by both houses of the legislature and approved by the Governor.

Four years prior to the consideration of the legislative proposal discussed in the preceding two paragraphs, the requestor purchased certain real property located within the unincorporated town from which these legislative proposals concerning unincorporated town government ultimately came. This real property was approved as a subdivision by various governmental agencies having planning and zoning jurisdiction over the realty three years prior to the legislative consideration of and action on the proposal which the requestor introduced concerning unincorporated town board powers. Two months prior to the commencement of the legislative session in which town board legislation was considered, the requestor began negotiating with a corporation for the purpose of selling the real property located within the unincorporated town from which the requestor had received constituent requests concerning town board legislation. During the same month in which the legislative session began, the requestor reached an agreement in principle as to the price and terms of sale of this realty with the purchasing corporation. Early in the fourth month of the legislative session, the negotiations between the requestor and the corporation produced a written offer and acceptance agreement. Three weeks later, a final offer and acceptance agreement was executed which made minor adjustments to the earlier offer and acceptance agreement. Four days after the execution of the final offer and acceptance agreement, an escrow was opened with a title company to consummate the sale of the requestor's real property located within the unincorporated town.

QUESTION

Should the requestor have participated in the legislative consideration of a bill pertaining to unincorporated town government while the requestor was involved in the sale of his realty located within this unincorporated town?

ANALYSIS AND OPINION

The Nevada Ethics in Government Law provides a code of ethical standards. NRS 281.481(2) provides:

No public officer or employee may use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a financial interest or any other person.

Additional ethical standards are codified in NRS 281.501. That section provides in pertinent part:

1. In addition to the general requirements of the Code of Ethical Standards, a member of the legislative branch should not vote upon but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in a situation would be materially affected by:
 - (a) His acceptance of a gift or loan;
 - (b) His private financial interest; or
 - (c) His commitment in a private capacity to the interests of others.
2. A member of the legislative branch may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a business, profession, occupation, or group, is not greater than that accruing to any other member of the business, profession, occupation or group.

Neither the provisions of the Code of Ethical Standards quoted above nor any other provisions of the Code of Ethical Standards are violated by the requestor's sponsorship of the legislation concerning the election of town board members, establishing staggered terms for those elected officials and vesting in those officials certain zoning, building code and health and safety code powers. The commission reaches this conclusion because the requestor's sale of real property located within the unincorporated town from which the request for this legislation came produced no economic benefit to the requestor that was conditioned upon the introduction, legislative consideration of, subsequent passage and ultimate approval of the legislation. The sale of this real estate was not conditioned on the establishment of a planning commission within the unincorporated town. Also, the sale of this real property was not contingent on any change in zoning that would have to be considered by any planning and zoning agency presently in existence or that may come into existence as a result of the new legislation. The existing zoning of the real property which was sold by the requestor had been in place for over two years prior to the commencement of the negotiations that culminated in the sale and for over two years prior to the legislature's consideration of the legislation pertaining to unincorporated town boards.

This advisory opinion is rendered based upon the facts presented. Given other facts, the opinion of the Commission may differ.

COMMISSION ON ETHICS

By: Chairman