

Hypothetical Advisory Opinion No. 86-3

BEFORE THE NEVADA COMMISSION ON ETHICS

FACTS

The requestor has served as an assemblyman in the Nevada Legislature for a number of years. During a recent session of the Nevada Legislature, the requestor served as the chairman of an assembly committee. This committee introduced legislation relating to the appropriation of water, requiring that a person who applies for a right to use water for watering livestock actually own the livestock. This bill also provided that the applicant for appropriation of water specify the place of use of water used for watering the livestock and provided other matters relating to the subjects listed in this and the preceding sentence. This bill was referred back to the requestor's committee for purposes of conducting a hearing on the bill.

The committee conducted a hearing on the bill and at the conclusion of that hearing voted this bill out of committee. Prior to the bill's transmittal to the floor of the assembly, several members of the requestor's committee received additional information from a variety of groups and individuals who had not had an opportunity to testify with respect to the bill at the time of the initial hearing. The legislative committee voted the bill back into their committee in accord with the rules governing the committee's activities.

Since 1978, there have been numerous applications for water rights on a reclamation and irrigation project located within the requestor's legislative district. Three of these applications were made by the requestor for purposes of changing the place of use of decreed water rights under a United States District Court decree pertaining to the Truckee and Carson Rivers.

The requestor's applications described in the preceding paragraph are among 150 applications filed by members of the irrigation district and acted on by the state engineer.

All of the applications described in the preceding two paragraphs were filed and processed in accord with the statutory procedures set forth in chapter 533 of the Nevada Revised Statutes and under provisions set forth in judgments and decrees entered in litigation filed in the United States District Court for the District of Nevada.

Extensive public administrative hearings in the matter of these water applications were held before the state engineer just prior to, during, and after the legislative session at which the requestor's committee considered the legislation pertaining to water law. During these hearings, all parties who had standing, including the United States, made evidentiary presentations and elicited extensive testimony from witnesses and experts. The record in these administrative proceedings was concluded by the submission of post-hearing briefs setting forth the respective positions of the parties. The state engineer entered judgment in the matter of the protested applications, including the requestor's applications in the form of administrative rulings issued during and after the legislative session at which the requestor's committee considered this legislation relating to the appropriation of water.

The administrative rulings described in the preceding paragraphs set forth specific findings of fact and conclusions based on the record of evidence developed during the public hearings. These decisions and the record of the public hearings were submitted for review by the United States District Court which has continuing jurisdiction over these matters as a result of the previous judgments and decrees entered pertaining to water rights in the Truckee and Carson Rivers.

The readiness of the applications for action by the state engineer was solely influenced by the timely filing of the applications, submittal of the required supporting maps and completion of the publication and protest periods. No

single application or group of applications was given preferential treatment over any other applications during the hearing process conducted by the state engineer. The records of the state engineer's hearing process are available for inspection in the office of the state engineer as a matter of public record.

QUESTION

Should the requestor have participated in his committee's introduction and consideration of legislation pertaining to water law while the requestor had applications pending before the state engineer to change the place of use of decreed water rights?

ANALYSIS AND OPINION

The Nevada Ethics in Government Law contains a Code of Ethical Standards. A portion of the ethical standards referred to in the preceding sentence is codified in NRS 281.481. That section provides in pertinent part:

2. 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.

The Nevada Ethics in Government Law contains additional standards which are part of the Code of Ethical Standards. These provisions 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 interest 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 member of the business, profession, occupation or group.

The requestor's alleged conflict of interest is stated to have arisen because the requestor had pending applications to change the place of use or diversion of water which did not involve the grazing of livestock upon federal land, and that these applications were granted soon after the requestor's committee acted on the legislative proposal concerning the appropriation of water.

The Commission concludes that the requestor did not use his position in government to secure unwarranted privileges or advantages for himself, any member of his household or any business entity in which the requestor had a financial interest through his actions on the legislative proposal and the processing of the requestor's water rights applications. The applications were processed independently by the state engineer in accord with applicable statutes and decisional law.

There is no connection between the content of the legislative proposal and the nature of the requestor's water rights applications which were pending with the state engineer. The requestor's actions, as a legislator, taken with respect

to this particular legislative proposal were not materially affected by the pendency of these applications before the state engineer. The requestor's conduct did not violate the additional ethical standards contained in NRS 281.501(1).

The requestor's applications to change the place of use or diversion of water were processed with a large group of applications made by other persons whose applications were of a similar nature. All applications were processed in the same manner by the state engineer. Therefore, the requestor's action with respect to the legislative proposal did not confer a benefit or cause the requestor a detriment with respect to the requestor's pending water rights applications that was any greater than that accruing to any other member of the group of people who had an application of similar nature pending before the state engineer at the time this legislative proposal was considered. Therefore the requestor's conduct with respect to the legislative proposal did not violate the additional standards which are part of the Code of Ethical Standards contained in NRS 281.501(2) .The conduct of the requestor in participating in the legislative committee introduction and consideration of a proposal to amend existing Nevada water law did not violate the Code of Ethical Standards contained in the Nevada Ethics in Government Law by virtue of the pendency of the requestor's water rights applications before the state engineer.

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