

## Hypothetical Advisory Opinion No. 86-4

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### FACTS

The requestor is a duly elected public officer and member of the governing body of a political subdivision of the State of Nevada. The requestor is married. The spouse of the requestor owns an aircraft which is kept at the airport owned by the political subdivision for which the requestor is a member of the governing body. The spouse of the requestor has and has had for a number of years, an oral arrangement with a corporation which would arrange for the rental of the aircraft owned by the requestor's spouse.

Rental of the aircraft is made at a fixed hourly rate which is collected by the corporation. From this hourly rental fee, the corporation deducts its management fee. The hourly rental fee is charged to all users of this aircraft including the owner. The aircraft owner is required to pay for all maintenance, repairs, fuel, insurance, tie down fees, management fees, and all other aircraft related expenses. If rental fee income is insufficient to defray expenses, the owner must pay the amount of the insufficiency. If rental fee income is sufficient to defray expenses, any surplus of income over expenses is remitted to the aircraft owner by the corporation. The oral arrangement described in this paragraph can be terminated on the giving of one month's advance notice. The aircraft owned by the requestor's spouse has been repaired, serviced, or maintained by several different entities.

The Ethics Commission has been provided with unaudited financial statements and federal income tax forms which show that the aircraft owned by the requestor's spouse has operated at a net loss under the oral arrangement with the corporation for the calendar years 1983, 1984, 1985, and the first half of 1986. Financial statements beyond that time were not available to the Ethics Commission. The purpose of the oral arrangement has been represented to the Commission to be made for the purpose of generating income, and deferring maintenance expenses. The intent of the agreement is not to produce a profit. Although the Commission finds that this arrangement has not been profitable for the past several years, there is nothing in the record which would indicate that the aircraft owner would decline to accept payments of net income from the corporation should this arrangement become profitable in the future. It has been represented to the Ethics Commission that the type of aircraft owned by the requestor's spouse is the only one of its kind kept at this airport that is available for rent. Also, it has been represented to the Ethics Commission that there is very little demand for the rental of this type of aircraft. The financial statements provided to the Ethics Commission tend to support the lack of demand for rental inasmuch as this aircraft has been rented and flown for a total of slightly less than 251 hours during the three-and-one-half years prior to the Commission's issuance of an opinion in this matter. This rental time includes the time that the aircraft has been flown by the owner.

The governing body of the political subdivision which owns the airport and of which the requestor is a member has received proposals for the fixed based operator (F.B.O.) for this public airport from three different entities. Two of the three bids received came from corporations which have either managed the oral rental agreement concerning the aircraft owned by the requestor's spouse or serviced that aircraft. These F.B.O. proposals were reviewed by an ad hoc review committee appointed by the governing body of which the requestor is a member. The recommendation of the ad hoc review committee to the governing body of this political subdivision was that the proposal made by the corporation which had provided repair and maintenance services to the aircraft owned by the requestor's spouse was the most beneficial proposal for the political subdivision. The ad hoc committee also concluded that the proposal made by the corporation responsible for the management of the rental agreement pertaining to the aircraft owned by the requestor's spouse was the second most beneficial proposal made to the political subdivision. The committee found very little difference in the amount of benefit conferred by both of these proposals.

The governing body of the political subdivision owning this airport took up the matter of the selection of the fixed-

based operator for the airport at one of their regular meetings. All five members of this governing body were present at this meeting and had had the recommendations of the ad hoc review committee for study for approximately two weeks prior to this regular meeting. At this regular meeting, the governing body of the political subdivision heard presentations from each of the three entities submitting proposals. Prior to these presentations, the requestor stated to the balance of the governing body and for the benefit of all members of the public present what her spouse's business dealings had been with two of the three business entities which had submitted F.B.O. proposals. The requestor stated that these business relationships were not of a nature which would influence her vote one way or the other concerning the selection of the airport's fixed-based operator. There were no objections made to the requestor's participation in this vote by any of the three business entities being considered for this award or by the other members of the governing body of this political subdivision. After the presentations by the three entities, one of the members of the governing body of this political subdivision (not the requestor) moved that the corporation which handled the rental arrangement concerning this aircraft by the requestor's husband be selected as the fixed-base operator for the airport facility. This motion was seconded by another member of this public body other than the requestor. The motion passed on a three-two vote with the requestor voting in favor of the motion.

The governing body of this political subdivision has noticed its intent to reconsider the award of the fixed-based operator lease at a subsequent meeting conducted approximately four months after the meeting at which the initial award was made. The interval between the two meetings was designated for the purpose to permit the political subdivision's legal counsel to draft up the specific terms of the fixed-based operator's lease in accord with the directions given by the governing body of the political subdivision. The governing body of the political subdivision will also approve the execution of the lease between the political subdivision and the fixed-based operator at either the meeting at which reconsideration takes place or at a subsequent meeting of that body.

## **QUESTIONS**

1. Has the requestor complied with the Code of Ethical Standards in participating in the governing body's deliberations and initial decision to award the airport fixed-based operator lease to a corporation which has managed the rental of the aircraft owned by the requestor's spouse?
2. Will the requestor be in compliance with the Code of Ethical Standards in participating in the future deliberations and votes to reconsider the initial award of the fixed-based operator lease and the approval of the execution of the fixed-based operator lease for the airport facilities owned by the political subdivision?

## **ANALYSIS AND OPINION**

It is the public policy of this state that a public officer must commit himself or herself to the avoidance of conflicts between private interests and those of the general public whom the official serves. See NRS 281.421(1)(b). The Ethics Commission also recognizes the importance of the policy that elected officers in a representative form of government act on the issues that come before them in their official capacity. However, the Commission concludes that it is preferable not to vote when a public officer has a financial interest in a matter coming before that officer in his or her official capacity.

The Ethics Commission concludes that the requestor has an interest in the aircraft owned by her spouse and an interest in the aircraft's rental and repair arrangements that comes within the meaning of NRS 281.4335. The Ethics Commission also concludes that the requestor's interest in this aircraft as well as the aircraft's rental and repair arrangements were properly disclosed by the requestor to the other members of the public body prior to the deliberations and vote on the initial award of the airport fixed-base operator lease in the manner required by NRS 281.481(3). The Ethics Commission must now address whether it was legal for the county commissioner to have participated in the vote to make the initial award and to participate in the future reconsideration vote or to participate in the future vote to approve the execution of the airport fixed-based operator lease.

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 the requestor's situation would be materially affected by the requestor's private financial interest. See NRS 281.501(1)(b).

The interest of the requestor in the aircraft owned by the requestor's spouse as well as the requestor's interest in the aircraft's rental and repair, as stated in that portion of this opinion entitled "Facts" is not a private financial interest which would materially affect the independence of judgment of the requestor in voting to award the airport fixed-based operator lease. The Ethics Commission concludes that the interest is incidental because the long-standing rental arrangement between the aircraft owner and the corporation has produced a monetary loss and the only "benefit" would come in the form of a tax loss which could be used potentially to offset other income. The repair service arrangement between the aircraft owner and a second corporation submitting a proposal to be selected as the airport's fixed-base operator was no different from service arrangements which any other aircraft owner would obtain for the maintenance of their aircraft. Therefore, the requestor did not act in violation of the provisions contained in NRS 281.501(1)(b) by voting to make the initial award of the airport fixed-base operator lease nor would this statutory provision be violated by future reconsideration and lease approval votes so long as the business relationships between the aircraft owner and the two corporations remain as described in the factual portion of this opinion, *supra*.

Although the Ethics Commission finds no violation of the additional standards contained in NRS 281.501(1) (b) in the factual context of this opinion, this conclusion in no way mandates that the requestor participate in the future votes taken by the governing body of this political subdivision concerning the airport fixed-based operator's lease. The requestor may participate or abstain from participation in those future votes as the requestor deems appropriate after taking into consideration the public policy factors contained in the first paragraph of this section of the opinion.

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