

Hypothetical Advisory Opinion No. 86-5

BEFORE THE NEVADA COMMISSION ON ETHICS

The Commission on Ethics met to consider your first party request for an advisory opinion concerning the propriety of elected members of the State Board of Finance accepting campaign donations from business entities which either have matters pending before the board or have been granted industrial revenue bonds by the board.

The legislature has dealt with campaign contributions in a limited way in chapter 294A of the Nevada Revised Statutes. NRS 294A.007 generally defines a campaign contribution as a payment of money to a candidate. A candidate must report campaign contributions on forms furnished by the Secretary of State. NRS 294A.010. These reports are public documents whereby voters may be informed of the sources, dates, and amounts of campaign contributions to any candidate.

Beyond the reporting requirement, chapter 294A contains no guidelines, instructions or limitations concerning campaign contributions. It would therefore appear that a contributor may legally give any amount at any time to any candidate, potential candidate, or incumbent elected official.

You have raised some very legitimate questions about the propriety of the amounts and timing of campaign contributions to elected members of the State Board of Finance by applicants who appear before the board seeking financing through industrial revenue bonds. You have asked us to establish some constraining guidelines concerning campaign contributions in this situation for the future guidance of elected public officials.

It is the opinion of the Commission that the legislature did not intend to give this commission the authority to interpret the law as it applies to campaign contributions. The commission is charged with the duty of rendering opinions regarding the code of ethical standards as set forth in NRS 281.481 et seq. The laws regarding disclosure of campaign contributions are set forth in chapter 294A of the Nevada Revised Statutes over which the commission has no authority.

When the legislature created this commission in 1985, it retained the Code of Ethical Standards, NRS 284.481, originally enacted in 1977. NRS 281.481(1) generally provides that a public officer may not seek any gift, emolument, or economic opportunity which would tend improperly to influence a reasonable person to depart from the faithful and impartial discharge of his public duties. Conceivably this could be construed to include campaign contributions. However, it is our firm opinion that this construction is not in accordance with legislative intent. Accordingly, we construe NRS 281.481(1) to provide an exemption for campaign contributions. This exemption is expressly written into the ethics statutes of some states.

We view the questions you have raised as fundamental public policy matters. If they are to be dealt with, they need to be addressed by the legislature as extensions of chapter 294A, the Campaign Practices Act. Some states prohibit public officials from accepting campaign contributions from persons who appear before such officials seeking favorable rulings. Nevada has not elected to address that matter.

It would be appropriate for this commission to review the facts and circumstances and render an opinion regarding a campaign contribution if it appeared that either of the following had occurred:

1. A public officer solicited a campaign contribution in exchange for his vote; or
2. A public officer accepted an offer to contribute to his campaign in exchange for his vote.

Since there was no evidence of the foregoing presented to the commission, it is the opinion of the commission that no ethical violation was committed or would be committed in the future as to the facts as stated herein. However, we feel it would be in order for the legislature to address the issue you have raised about the amount and timing of campaign, contributions to elected officials who sit in judgment upon matters affecting applicants who appear before them. Also, we believe that the legislature should apprise elected public officials and defeated candidates regarding what they may properly do with surplus campaign funds following an election and establish laws regarding limits on contributions and gifts which may be accepted by public officials.

COMMISSION ON ETHICS

By: Chairman