

Hypothetical Advisory Opinion No. 86-6

BEFORE THE NEVADA COMMISSION ON ETHICS

You have requested an advisory opinion from the Commission on Ethics regarding the propriety of a county commissioner voting under two different sets of circumstances.

FACTS

Situation One

The father of a county commissioner owns property adjacent to a railroad overpass. The removal of the railroad overpass was the subject of an advisory opinion issued by the county commission at the request of the State of Nevada, Department of Transportation. The county commissioner did not disclose the interest of the father in the adjacent property prior to voting in favor of preserving the railroad overpass.

Situation Two

The father of a county commissioner owns property adjacent to property which was the subject of an application to the Regional Planning Commission for a zone change. The applicant appealed the denial of his application for a zone change to the county commission. The county commissioner did not disclose the interest of the father in the adjacent property prior to voting in favor of the zone change.

QUESTIONS

You have requested the opinion' of the Commission on Ethics as to whether the county commissioner should have: (1) disclosed the father's interest in the adjacent property, and (2) voted upon the matters before the board.

ANALYSIS

Question One – Disclosure

A public officer has the duty to disclose the full nature and extent of his financial interest prior to or concurrently with the performance of that public officer's duty under the law. NRS 281.481(3). "Financial interest" is defined in NRS 281.4335 to include interest of the public officer as well as interests of members of the public officer's household. "Household" is limited to persons who live in the same home or dwelling. NRS 281.434.

Applying these definitions to the facts of the instant case, there has been no evidence introduced to show that the father of the county commissioner lived in the same home or dwelling as the county commissioner. Even if the father did reside within the same home or dwelling as the county commissioner, the commissioner did not have a financial interest in the property which was the subject of the commission's vote. The county commissioner's father owned the property adjacent to the subject property and, therefore, pursuant to NRS 281.481(3), the county commissioner did not have the statutory duty to disclose the father's interest in the adjacent property prior to voting on the matters.

It is the opinion of this commission that NRS 281.481(3) should be amended to require disclosure of the interest of a public officer or a member of his household whenever performance of that public officer's duty under the law will directly or indirectly affect that interest. Additionally, the commission supports the amendment of NRS 281.434 to broaden the definition of "household" as follows:

"Household means an association of persons who live in the same home or dwelling, sharing its expenses [and] or who are related by blood, adoption or marriage within the third degree of consanguinity or affinity."

Question Two – Voting

NRS 281.501(1)(c) mandates that "...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 a judgment of a reasonable person in his situation would be materially affected by...(h)is commitment in a private capacity to the interest of others." A county commissioner is expressly included within the definition of a "(m)ember of the legislative branch." NRS 281.4355.

The facts adduced at the hearing revealed that the county commissioner has taken over the father's business and is operating that business under the father's name. This evidences a commitment to the father's interests. It is the opinion of this commission that the independence of judgment of reasonable person in the situation of the county commissioner in this case would be materially affected by the relationship between the county commissioner and the father. Therefore, the county commissioner should not have voted upon the issues regarding property located adjacent to that of the father. To do so was in violation of NRS 281.501(1)(c).

It has long been a matter of public policy in this state for public officials to avoid nepotism. (See NRS 281.210.) In furtherance of this public policy, it is the opinion of the Commission on Ethics that the independence of judgment of a reasonable person will be materially affected whenever the interest of a relative of a public officer within the third degree of consanguinity or affinity will be directly or indirectly affected by the performance of a duty of the public officer. Therefore, in order to avoid a breach of the code of ethical standards, the public officer should abstain from voting in those instances.

COMMISSION ON ETHICS

By: Chairman