

Hypothetical Advisory Opinion No. 87-2

BEFORE THE NEVADA COMMISSION ON ETHICS

As a member of the Nevada legislature you have asked us for an advisory opinion regarding protective actions you should take to avoid an ethical conflict of interest with regard to business and real property interests owned by you and your spouse.

FINDINGS OF FACT

You have informed the commission that you and your spouse own an office building and an apartment house located in Nevada. The statement of financial disclosure on file with the commission reveals that mortgage income and rental income from your real estate holdings constitutes 10 percent or more of your gross income.

Your spouse serves on the board of directors of a public company that is licensed with the State of Nevada, Gaming Division as a slot machine route operator and a manufacturer distributor. The company owns slot machines in hotels, supermarkets and bars in Nevada and also manufactures and sells slot machines. Your spouse earns a director's fee from serving on the board of this public company. The fee amounts to 10 percent or more of your gross income. Your spouse also owns a substantial equity interest in the company.

ANALYSIS

NRS 281.481(3) provides, in pertinent part, as follows:

No public officer or employee may approve, disapprove, vote, abstain from voting, or otherwise act upon any matter in which he has a financial interest without disclosing the full nature and extent of his interest. Such a disclosure shall be made before the time when he is to perform his duty or concurrently with that performance. If the officer or employee is a member of a body which makes decisions, he shall make disclosure to the chairman and other members of the body.

When the legislation specifically involves gaming for which your spouse publicly traded company is licensed, or when legislation involves apartments or office buildings, you will need to make a disclosure in the manner outlined in NRS 281.481(3) before voting. This disclosure must be made both in committee and on the floor of the Assembly.

Having made the judgment about disclosure, the remaining question is whether you can vote. NRS 281.501(1) provides 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 judgment of a reasonable person in his situation would be materially affected by...(h)is private financial interest...." However, NRS 281.501(2) provides as follows:

A member of the legislative branch may vote upon a matter if the benefit or detriment 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.

Since your mortgage income and rental income from your interest in an office building and an apartment building constitute ten percent or more of your gross income, you have a financial interest as defined in NRS 281.4335. However, the class of persons who own apartment or office buildings is large enough whereby you and your spouse would derive no greater gain or loss than that accruing to any other member of the class. Therefore, if the legislation

before the committee or the assembly generally involves real estate, property taxes, building codes, fire protection, health regulations, etc., you need not abstain from voting since your particular interests are not being singled out. Your own financial interest is not sufficiently pin-pointed. You are merely one of the many business people or property owners affected, and, as such, you would be able to vote for or against general legislation that may affect your financial interest in the office or apartment building.

You should be advised, however, that a situation could arise where you are called upon as a legislator to consider specific legislation dealing with apartment buildings or office buildings where within the whole class of owners of apartments or office buildings, you, individually, could receive private special gain or loss as a result of the legislation. If that is the case, you must abstain from voting. But, if the legislation generally affects the whole class of owners, and you stand to gain or lose no more than any other member of the class, you may vote for or against the legislation.

With regard to the ethical issue of voting on legislation involving gaming, you have a financial interest, as defined in NRS 281.4335, in a public company licensed as a slot machine route operator and a manufacturer distributor. There is a breaking point where a class of persons is so small that proposals affecting them cease to be general legislation and become so individualized as to constitute special gain or loss. As of June 30, 1986, there were 97 manufacturer distributors and 84 slot route operators holding gaming licenses with the State of Nevada. We consider this to be a sufficiently small enough class of persons with a specialized interest within the gaming industry that special gain or loss would occur to each member of the class as a result of legislation which directly affects that class. Therefore, as to legislation which specifically affects slot route operators and manufacturer distributors, you may participate in the discussion, but you should abstain from voting. NRS 281.501(1). In the case of legislation which generally involves gaming, however, you may vote.

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