

## Hypothetical Advisory Opinion No. 87-3

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### FACTS

1. The subject of the opinion request received notification of the meeting and a copy of the request for opinion in a timely manner.
2. The subject of the opinion request is currently serving as a county commissioner, hereinafter referred to as "Commissioner".
3. Commissioner worked as an employee of the applicant for county surveyor on a part-time, hourly basis prior to being elected county commissioner.
4. Commissioner disclosed his relationship as an employee of the applicant for county surveyor prior to abstaining from voting on the appointment of a county surveyor.
5. The board of county commissioners voted in favor of the applicant for county surveyor that had employed Commissioner on a part-time hourly basis, and the applicant was duly appointed county surveyor.
6. County surveyor was authorized by the board of county commissioners to conduct a survey.
7. Commissioner disclosed his relationship as a part-time hourly employee of county surveyor prior to abstaining from voting on the authorization of the survey.
8. Commissioner worked for county surveyor on a part-time hourly basis in conducting the survey authorized by the board of county commissioners.
9. As of the date of the commission meeting when this matter was considered, no vote had been taken on the authorization of compensation to the county surveyor for the survey completed pursuant to paragraph 6 herein.
10. Commissioner intends to disclose his relationship as a part-time hourly employee of county surveyor prior to abstaining from voting on the authorization of compensation to the county surveyor for the survey completed pursuant to paragraph 6 herein.
11. Commissioner has not been appointed as deputy to the county surveyor.
12. Prior to employing commissioner, county surveyor did not solicit competitive bids for assistance in conducting the survey.
13. No written contract exists between county surveyor and commissioner for commissioner to assist county surveyor in conducting surveys.
14. In the past year, county surveyor has paid commissioner fifteen dollars per hour for commissioner's assistance in conducting surveys, totaling approximately \$1,000.
15. Commissioner does not have an ownership interest in the private business owned by the county surveyor nor does commissioner share in the profits of the business.

16. The sources of supply in the county are limited for the type of assistance provided by commissioner to county surveyor.

17. The private business of county surveyor is located approximately 134 miles from the city in which commissioner is employed by county surveyor.

18. When county surveyor undertakes projects in and around the city in which commissioner is employed, due to cost considerations, county surveyor seeks to employ persons residing in or near the location of the project rather than transporting employees from the city in which his private business is located.

## OPINION

Commissioner is a member of the legislative branch as defined by NRS 281.4355. As such, in addition to the general requirements of the code of ethical standards, commissioner may not vote 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 his pecuniary interest. NRS 281.501(1)(b). The general ethical standards provide that prior to abstaining from voting on a matter in which he has a significant pecuniary interest, commissioner must disclose the full nature and extent of his interest. NRS 281.481(3).

Commissioner conducted himself in an ethical manner by disclosing the full nature and extent of his employment by county surveyor on a part-time hourly basis prior to abstaining from voting on the appointment of the county surveyor and the authorization of the survey to be conducted by the county surveyor.

It is the opinion of the Commission on Ethics that commissioner may continue to seek employment from county surveyor on a part-time hourly basis on any private matter wherein there is no expenditure of public funds. If commissioner elects to continue his employment with county surveyor to assist him in the performance of private contracts, commissioner must continue to disclose his pecuniary interest prior to abstaining from voting on any surveyor other services which require authorization by the board of county commissioners. Additionally, commissioner must disclose his pecuniary interest and abstain from voting on any authorization of compensation to county surveyor for surveys and other services rendered to the county. NRS 281.501(1)(b) and 281.481(3).

When the county surveyor conducts surveys or performs other services for the county, the county surveyor will be compensated by public funds expended and authorized by the board of county commissioners on which the commissioner serves. Even though the commissioner intends to disclose his pecuniary interest and abstain from voting in those instances, it is the opinion of the commission on ethics that such conduct would constitute a breach of the code of ethical standards.

NRS 281.481(1) provides in relevant part, that no public officer may seek or accept any employment or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties. Commissioner would be placing himself in a position where he would ultimately be receiving the public funds authorized to be paid to county surveyor by the board to which he was elected. Such conduct does not, in our opinion, represent the faithful and impartial discharge of a public duty.

Therefore, we conclude that based upon the foregoing facts, commissioner may not seek or accept employment from the county surveyor for public surveys or other services which require the expenditure of county funds. Commissioner may continue to seek employment from county surveyor on a part-time hourly basis for private surveys and other services which do not require the expenditure of county funds. If commissioner elects to continue being employed by county surveyor for private interest and abstain from voting on matters which involve the authorization of surveys and other services by county surveyor and the compensation of county surveyor for these

services.

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