

Hypothetical Advisory Opinion No. 88-2

BEFORE THE NEVADA COMMISSION ON ETHICS

FACTS

A councilman is an independent contractor in the banking industry. The councilman contracts exclusively with one particular bank in the area of originating and processing loan applications to purchase mainly single-family dwellings. The councilman solicits, obtains and facilitates the closing of loans. He further solicits developers to arrange commitments for financing between the bank and developers for persons who purchase single-family dwellings from said developer. The councilman receives a commission directly from the bank upon the processing of each loan.

Each developer who wishes to obtain a permit to build a single-family dwelling subdivision must come before the city council. In each instance, the councilman disclosed his financial interest with respect to his independent contract with the bank whenever he had actual knowledge the bank had a commitment for financing with the developer.

Question

Would it be considered a conflict of interest for councilman to process loans to purchasers of single-family dwellings in a subdivision that recently received favorable zoning action by the city council, where councilman voted with the majority in permitting the subdivision to be built?

Question

Would it be considered a conflict of interest for councilman to process loans of the nature previously discussed, in a subdivision where the city planning commission has approved the final map and the city building department has issued the permit?

Analysis and Opinion

The councilman must make a full disclosure that he is a loan agent for the bank when zoning decisions concerning single-family dwellings come before the city council. Disclosure of his position should be made at or before voting, and disclosure should be made directly to the chairman and the other members of the city council pursuant to NRS 281.481.

When a situation of this nature arises, it is incumbent upon the councilman to thoroughly investigate whether the bank has a commitment for financing with the developer. If the councilman discovers such a relationship, he must disclose his interest as previously stated, and must abstain from voting. He may, however, participate in discussion of the matter. There is a sufficiently small enough number of loan agents with the bank to constitute a special class of persons within the banking industry. Since the councilman fits into this category he may realize a special gain or loss as a direct result of the city council's decision. See NRS 281.501(2) Therefore the councilman in all good conscience must abstain from voting in order to maintain a neutral position. In addition, councilman must refrain from soliciting any developers of subdivisions of single-family dwellings that will be coming before the city council for zoning action, prior to that action. Conduct to the contrary would be in violation of NRS 281.481(1) and (2) in that councilman would be seeking economic opportunity which would tend to improperly influence a reasonable person in his position to depart from the faithful and impartial discharge of his duties. Further, it may appear councilman is using his position to secure unwarranted preferences or advantages for himself or any business entity in which he has a significant pecuniary interest.

In addressing the first question directly, there is no conflict of interest where the councilman has processed loans for single-family dwellings in a subdivision that received favorable zoning action by the city council, unless councilman has secured the opportunity to process loan applications by improperly using his influence as a councilman. See NRS 281.481.

As to the second question, no ethical problem exists for councilman where he processed loans for purchasers of single-family dwellings in a subdivision where the city planning commission has approved the final map of the subdivision and the city building department has issued the building permits.

The Councilman is not allowed to vote in either of these two areas. Unless he attempted to use his position to influence the city planning commission and city building department, there is no conflict of interest.

This advisory opinion is rendered based upon the facts presented. Given other facts, this opinion may differ.