

## **Hypothetical Advisory Opinion No. 88-3**

### **BEFORE THE NEVADA COMMISSION ON ETHICS**

#### **FACTS**

Councilman is a licensed private investigator within the State of Nevada. He owns a company which provides residential confinement monitoring services pursuant to NRS 176.2231. There is one other company in the area which provides this service. In the course of operating his business, councilman solicits judges in order to make them aware of the service provided by his company and to encourage judges to utilize his company's program in sentencing criminal defendants.

The court has the discretion to order this type of confinement; however, the defendant must consent to the arrangement and must execute the contract to participate, along with an authorized representative of the company. It is the defendant's responsibility to pay the fee incurred by his participation in this program. In the event the defendant violates any of the terms and conditions of the contract, he will immediately be incarcerated and may face additional charges.

Neither the councilman, his company, nor the parent company receive public funds in connection with this program. However, as a councilman, he votes on the budgets of the municipal courts and the salaries of the municipal court judges.

#### **Question**

Is it a conflict of interest for councilman's company to provide residential confinement services through the municipal courts of the city to criminal defendants who appear therein?

#### **Analysis and Opinion**

Based upon the facts presented, no public funds are being expended in furtherance of the residential confinement program offered by councilman's company. Government agencies are not involved in contracting with councilman or the companies or corporations in which councilman has a significant pecuniary interest. The contracts in question are between councilman and private citizens; consequently, no conflict of interest exists with respect to the contracts. See NRS 281.481(3), 281.481(4) and 281.501(1). If, however, in the future public funds are expended to allow indigent defendants to participate in the program, a conflict of interest would exist and councilman should abstain from voting upon such matters. NRS 281.501(1).

Since the courts retain discretion, upon consent of the defendant, to order programs of this nature, provided by a specific company, and since the councilman considers and votes upon the court's budget and judge's salary, it is imperative that councilman refrain from using his influence with municipal court judges to promote the service offered by his company. The direct solicitation of judges by councilman would be in violation of NRS 281.481(2) which provides, in part, that:

No public officer may use his position in government to secure...preferences...or advantages for himself or...any business entity in which he has a significant pecuniary interest, or any other person.

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