

## Opinion No. 92-10

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of RICHARD HARLESS, Member, Board of Trustees, Airport Authority

This Opinion is in response to an opinion request by Robert A. Swartz, Chairman, Airport Authority of Battle Mountain (Airport Authority) concerning Richard Harless, member of the Board of Trustees for the Airport Authority. The issue in the matter is whether Richard Harless violated Nevada's Ethics in Government Law, when he voted on a matter which before the Board of Trustees for the Airport Authority regarding a lease of airport property to Don Connelly, from whom Mr. Harless was sub-leasing an airport hanger space.<sup>[1]</sup>

On May 14, 1992, Mr. Harless appeared before the Nevada Commission on Ethics (Commission) pursuant to NRS 281.511(2). Mr. Harless was represented by Attorney Hy Forgeron.

Statutory confidentiality of all proceedings was waived by Mr. Harless and the Commission meeting was therefore open to the public. Based on the foregoing, the Commission makes these Findings and renders the opinion that follows:

#### FINDINGS

1. Richard Harless was elected to the Board of Trustees for the Airport Authority in November 1990. He took office in January 1991.
2. Mr. Harless sub-leases airport hanger space from Don Connelly for his airplane at the Battle Mountain Airport.
3. A proposed lease agreement between the Airport Authority and Don Connelly came before the Airport Authority at a regularly scheduled meeting on February 11, 1992. Mr. Harless and three other airport authority members voted in favor of authorizing the Board of Trustees' attorney to negotiate a lease agreement with Mr. Connelly.
4. The proposed lease agreement was presented to the Board of Trustees for approval at the regular meeting of the Airport Authority on March 10, 1992. At that meeting Mr. Harless disclosed the fact he rented hangar space from Mr. Connelly and proceeded to vote on the lease agreement.

#### OPINION

At the time of the hearing in this matter, Mr. Harless was a public officer as defined by NRS 281.4365.

NRS 281.501(2), and (3) are the relevant statutory provisions to the issue in this matter:

2. In addition to the requirements of the code of ethical standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, 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:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in ~ private capacity to the interest of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest where the resulting benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting, or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing the full nature and extent of the gift, loan, commitment or interest.

Such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body.

A member of the legislative branch is defined in NRS 281.4355 to mean "any member of the legislature or any member of a board of county commissioners or governing body of a city or other political subdivision who performs a legislative function."

Mr. Harless is a member of a governing body (the Board of Trustee) of a political subdivision (Airport Authority), and as such is a member of the legislative branch for purposes of the applicability of NRS 281.501(2).

Mr. Harless had a duty to disclose the full nature and extent of his business interest with Mr. Connelly pursuant to the provisions of NRS 281.501(3) prior to voting on any issue relating to the lease between the Airport Authority and Mr. Connelly. Mr. Harless did not make such a disclosure at the February 11, 1992, Board of Trustee's meeting prior to voting to negotiate a lease between the Airport Authority and Mr. Connelly. At the March 10, 1992, Board of Trustee's meeting, Mr. Harless properly disclosed his business relationship with Mr. Connelly prior to voting on the proposed lease agreement between Mr. Connelly and the Airport Authority. The Board of Trustees approved the lease agreement between the Airport Authority and Mr. Connelly and Mr. Harless voted for approval. Mr. Harless was not required to abstain from voting on the proposed lease agreement pursuant to the provisions of NRS 281.502(2), because a private lease agreement of the nature and scope of that between Mr. Connelly and Mr. Harless would not affect the independence of judgment of a reasonable person.

Mr. Harless first became aware that a possible violation of the Code of Ethical Standards existed after he had voted at the February, 1992 meeting. At that time he spoke with the legal counsel for the Airport Authority but legal counsel did not advise him regarding the possible violation. Therefore, the Commission finds that Mr. Harless' failure to disclose his business relationship with Mr. Connelly prior to the February 1992 vote was not willful.

## **CONCLUSION**

"Richard Harless violated the provisions of NRS 281.501(3) by failing to disclose his interest as a sub-lessee of an Airport hangar from Mr. Don Connelly when a proposed lease agreement between the Don Connelly and the Airport Authority of Battle Mountain came before the Board of Trustees for consideration on February 11, 1992. Mr. Harless was not required to abstain from voting on the lease agreement between Don Connelly and the Airport Authority pursuant to the provisions of NRS 281.501(2).

## **COMMENT**

It is specifically noted that the foregoing opinion applies only to these specific circumstances and may not apply to other circumstances. The provisions of the Ethics in Government Law discussed and quoted above must be applied

on a case-by-case basis, with result which will vary depending on the specific facts and circumstances involved.

DATED: October 3, 1995

NEVADA COMMISSION ON ETHICS

By: /s/ THOMAS R. C. WILSON, II, Chairman

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[1] Mr. Swartz also requested an opinion regarding Mr. Harless' signing a referendum petition which requests that the Airport Authority Act for Battle Mountain, formerly known as the Airport Authority Act for Lander County, Chapter 458, Statutes of Nevada 1983, as amended, be submitted to the qualified electors of Lander County, Nevada for their approval or rejection at a special election called for such purpose. The question was whether a member of an elected board could sign a petition which could result in the dissolution of the board.

The Commission finds that there is no just or sufficient cause for it to render an opinion concerning Mr. Harless' signing of the referendum petition. A member of a board by virtue of his membership on that board does not forfeit his right to sign a petition.