

Opinion No. 92-11

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Opinion Requests of and with respect to KATHRYN WISHART and GRANT SIMS, Reno City Council Members

This opinion is in response to an opinion request by Rae Audrain and an opinion requested by Sylvia McCloud regarding certain actions by Reno City Council members Kathryn Wishart and Grant Sims.^[1] This opinion is also in response to an opinion request by Ms. Wishart and a request by Mr. Sims. Ms. Audrain and Ms. McCloud were both represented by Marcia McCormick, Esq. Ms. Wishart and Mr. Sims were both represented by Madelyn Shipman, Esq., Chief Deputy City Attorney of the City of Reno.

The Nevada Commission on Ethics (Commission) met to hear testimony and receive other evidence on this matter on September 4, 1992 in Reno, Nevada and orally rendered its decision that day.

Statutory confidentiality of all proceedings was waived by Ms. Wishart and Mr. Sims and the Commission's meeting was therefore open to the public.

Based on the foregoing, the Commission makes the following Findings of Fact and renders the following Opinion.

FINDINGS OF FACT

1. Kathryn Wishart is an elected member of the Reno City Council.
2. Grant Sims is an elected member of the Reno City Council.
3. The City of Reno has 38 Boards and Commissions which are either statutory or created by City ordinance or by City Council resolution. City Council members traditionally are active participants and attend the meetings of such Boards and Commissions. Similarly, other organizations, including, non-profit entities, are involved in City issues and projects, on which Council members participate.
4. In December of 1989, the Reno City Council committed from room tax receipts up to \$2 million for the acquisition and construction of a homeless facility.
5. In January of 1987, a "community team development committee" consisting of representatives of several service agencies, downtown churches, the Chamber of Commerce and various government agencies met to focus on the problem of transients. Ms. Wishart attended as a Reno City Council member. Thereafter, a community task force on the homeless evolved, coordinated by the United Way, which led to a community wide coalition of representatives of City and County government, United Way, the Chamber of Commerce, the Housing Authority, the Regional Transportation Commission, the Gaming Industry Association, and others. This effort in turn led to the creation of an umbrella, non-profit entity to coordinate and administer a plan and program for a homeless shelter, Project Restart, Inc.
6. Project Restart, Inc. (Project Restart) was created as a private non-profit corporation organized for the purpose of finding a location for the construction of a homeless shelter and administering that shelter.
7. Ms. Wishart and Mr. Sims were appointed as members of the Board of Directors of Project Restart in their capacities as members of the Reno City Council.
8. Once this site for the homeless shelter is selected by the Reno City Council, Project Restart intends to apply to the federal agency for Housing and Urban Development (HUD) for a community development block grant (CDBG) to partially fund acquisition of the site and development of the facility. HUD regulations of CDBG funding require that elected officials of the involved local government not sit on the Board of Directors of the entity (Project Restart) which applies for CDBG funding.

9. Because of the foregoing circumstances, Ms. Wishart and Mr. Sims resigned from the Project Restart Board of Directors to avoid the possibility that their membership might jeopardize the success of Project Restart in qualifying for and receiving the HUD funds necessary to the homeless project.
10. Prior to their resignations, Ms. Wishart and Mr. Sims both served on the Project Restart Board of Directors in their public capacities as Reno City Council Members.
11. Ms. Wishart and Mr. Sims had a commitment in their public capacities as Reno City Council Members, not in their private or personal capacities, to the interest of the City of Reno and to the interests of Project Restart, Inc.
12. Neither Ms. Wishart and Mr. Sims has or had a personal pecuniary interest in Project Restart or in its recommendation of a site for the homeless shelter.
13. During the Reno City Council vote on the recommendation of Project Restart for a proposed site for the homeless shelter, members Ms. Wishart and Mr. Sims each cast their respective votes.
14. The City of Reno randomly selects a title company for the City's real property transactions. First American Title Company had been so selected as the escrow agent for the City's option to purchase a site for the homeless shelter.
15. Mr. Sims had no knowledge of First American Title Company's selection as the escrow agent for such a transaction until after the Reno City Council voted on the recommendation of Project Restart.
16. Mr. Sims is a salaried employee of First American Title Company. As an employee, he had no connection with the potential transaction.
17. Mr. Sims would not benefit financially by First American Title Company's selection as the escrow agent.
18. Moreover, to the extent Mr. Sims may have had any commitment of a general nature in his private capacity as an employee to the interests of his employer, First American Title Company, he had no knowledge of its selection. In any event, such interest would not have affected the independence of judgment as a reasonable person in Mr. Sims' circumstances in casting his vote as a Reno City Council Member on the recommended site.
19. Neither Ms. Wishart nor Mr. Sims owns property or has an interest in property in downtown Reno.
20. Mayor Pete Sferrazza abstained from voting in the City Council's decision on the matter for reasons unrelated to Project Restart itself. Rather, he abstained from voting because of the stated reason of his legal representation as a private attorney for the Reno Sparks Indian Colony, which opposed the site recommended by Project Restart, which created a conflict of interest.

OPINION

Based upon the foregoing Findings of Fact, the Commission concludes that Ms. Wishart and Mr. Sims are public officers as defined by NRS 281.4365 and are members of the legislative branch as defined by NRS 281.4355. The standards found in NRS 281.501 (2) and (3) are relevant to 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 a private capacity to the interests 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. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is selected.

The language in NRS 281.501(2) and (3) address the standards of when a member of the legislative branch must make disclosure and abstain from voting upon a matter. The relevant questions for this opinion are whether either Ms. Wishart or Mr. Sims had a conflict between (i) a personal pecuniary interest or (ii) a commitment in one's private capacity to the interests of another, namely Project Restart, Inc., on the one hand and their public duty or responsibilities as Reno City Council Members such that either was requested to make disclosure and abstain from voting as a City Council member. The same issue arises with respect to Mr. Sims' employment by First American Title Company.

Addressing the first question, Ms. Wishart and Mr. Sims are public officers with commitments in their public capacities to the interests of the City of Reno and Project Restart. All of these interests are a result of the elected positions the officials hold. Both Ms. Wishart and Mr. Sims are on the Board of Directors of Project Restart, Inc., which upon the vote of its Directors made a recommendation to the Reno City Council. Both Ms. Wishart and Mr. Sims then voted as members of the Reno City Council on the recommendation of Project Restart of a site for the homeless shelter. Any conflict is between a commitment in one's **public** capacity to the interests of Project Restart and a duty to the Reno City Council. The separate jurisdictions of Project Restart to recommend and of the Reno City Council to approve or disapprove of the recommendation did not create a conflict between one's commitment in a **private** or personal capacity and one's public duty or obligation as a City Council member. Such a conflict is public or institutional in nature between a public responsibility as a council member who is a director of Project Restart, Inc. and a council member in exercising the jurisdiction of the Reno City Council to approve or disapprove the recommendation. The conflict is wholly within the context of one's dual responsibilities as a public officer who as such serves on both the Project Restart Board of Directors and on the City Council.

The Reno City Council, however, has found such dual public responsibilities for its members in serving on various board or entities which interact with the City Council to be advantageous and in the public interest. In any event, it is not a conflict within the meaning of NRS 281.501.

No evidence was presented to the Commission that either Ms. Wishart or Mr. Sims has a commitment in their private capacities to Project Restart. Neither has a pecuniary interest in Project Restart or the result of its recommendation to the Reno City Council.

One who sits on the Board of Directors of a corporation, whether non-profit or for-profit, has a fiduciary obligation to the corporation, which is a "commitment. . . to the interests of another, NRS 281.501.^[2] Whether that obligation, or commitment, to the interests of Project Restart, however, is in one's "private capacity" or in a **public** capacity is central to this question. Such a commitment in one's private capacity may raise a conflict, which must be distinguished from one's commitment in a public capacity to the interests of the corporation where one sits because of one's public office, i.e. as a member of the Reno City Council.

Therefore, the Commission concludes that Ms. Wishart and Mr. Sims did not have a commitment in his or her private capacity to the interest of another (Project Restart) which required disclosure or required either to abstain from

voting when Project Restart's recommendation came before the Reno City Council.

Addressing the second issue involving Mr. Sims and his employer, First American Title Company, the Commission has found that Mr. Sims had no knowledge that First American Title Company had in fact been randomly chosen as an escrow agent for the City's homeless shelter transaction and that, in any event, he had no financial interest in that fact as an employee on a fixed salary. Based thereon, Mr. Sims was not able to disclose his employment with First American Title prior to the vote by the Reno City Council on the homeless shelter. Moreover, to the extent Mr. Sims may have had any commitment of a general nature in his private capacity as an employee to the interest of his employer, First American Title Company, he had no knowledge of its selection. In any event, such interest would not have affected the independence of judgment of a reasonable person in Mr. Sims' circumstances in casting his vote as a Reno City Council Member on the recommended site.

DATED: August 9, 1993.

NEVADA COMMISSION ON ETHICS

By: THOMAS R. C. WILSON, Chairman

[\[1\]](#) NRS 281.511(2)(b) provides that third parties may request an opinion of the Commission with respect to the actions of public officers or employees.

[\[2\]](#) Opinion No. 91-6 In the Matter of the Opinion Request of Diane Cornwall, Gene McDowell and Tina Leighton; and County of Clark vs. City of Las Vegas, 92 Nev. 323, 550 P.2d 779 (1976).