

Opinion No. 92-35

BEFORE THE NEVADA COMMISSION ON ETHICS

In The Matter of the Opinion Requests of JAY BINGHAM; JOY HYDE FIORE; and VICKIE DEMAS

This opinion is in response to separate opinion requests by Jay Bingham, Chairman, Clark County Board of Commissioners (County Commissioners); Joy Hyde Fiore; and Vickie Demas, State President, Mobilehome Owners League of the Silver State, Inc. Mr. Bingham was represented by Grant Sawyer, Esq. and Mark Fiorentino, Esq. of Lionel, Sawyer and Collins.

The subject matter of this opinion is whether Mr. Bingham failed to make disclosure and recuse from voting upon two unrelated matters that came before the County Commissioners at separate meetings, thereby failing to comply with the requirements of the Nevada Ethics in Government Law, NRS 281.411 to 281.581 et seq., if applicable.

Mr. Bingham waived the 14-day notice required by NRS 281.511(5) with respect to the third party requests for opinions by Joy Hyde Fiore and Vickie Demas. Statutory confidentiality of all proceedings was also waived by Mr. Bingham and the meeting of the Nevada Commission on Ethics (Commission) was open to the public. The Commission met to hear testimony, receive other evidence, and deliberate on this matter in Las Vegas, Nevada, on September 25, 1992, at which it announced its decision on both issues. This opinion is based upon that decision.

BACKGROUND INFORMATION

On June 15, 1992 a matter came before the County Commissioners involving the location of the southern portion of the Las Vegas Beltway. The County Commissioners were asked to approve Alternate Route E, which had been reviewed together with Alternate Route C by the Nevada Department of Transportation, the government affairs committee of the Consulting Engineers Council, the City of Henderson, the Henderson Chamber of Commerce, and the Southern Nevada Central Labor Council and was finally selected and recommended by the Nevada Department of Transportation (NDOT). The only matter before the County Commissioners was its approval of Alternate Route E as selected and requested by NDOT. The County Commissioners voted to approve Alternate Route E on a 6 to 1 vote. Mr. Bingham voted to approve Alternate Route E.

This matter is the subject of Mr. Bingham's request for an opinion and the third party request for an opinion by Joy Hyde Fiore.

Mr. Bingham through his development corporation, Falcon Development Corporation (Falcon), owns property along Alternate Route C which had earlier been considered for this part of the beltway.

On July 7, 1992 the County Commissioners considered a proposed ordinance which would limit rental increases with respect to mobile home parks to increases of the Consumer Price Index (CPI). Mr. Bingham voted against this ordinance after a hearing by the County Commissioners which lasted approximately 7 ½ hours. This matter is the subject of Mr. Bingham's request for an opinion and the third party request for an opinion by Vickie Demas as president of the Mobile Home Owner's League of the Silver State, Inc.

Both proponents and opponents of these two issues testified at the hearing.

FINDINGS OF FACT

1. Jay Bingham is the Chairman of the County Commissioners. He has held the elected position of County

Commissioner for seven years and has been Chairman of the County Commissioners for two years.

2. Mr. Bingham owns a 25% interest in Falcon and is on its Board of Directors.

3. On June 15, 1992 at a meeting of the County Commissioners, a resolution was adopted approving and in support of NDOT's endorsement of Alternate Route E for the southern portion of the Las Vegas Beltway. Mr. Bingham voted in favor of the motion.

4. Falcon is building Celebrity Homes, a development located on Green Valley Parkway near Silver Springs Road, Las Vegas. This development is located along Alternate Route C, a route that was rejected by NDOT.

5. Alternate Route C had been rejected as a proposed route prior to the June 15, 1992 meeting of the County Commissioners. Neither the County Commissioners nor Mr. Bingham played any role in rejecting Alternate Route C.

6. On July 7, 1992 at a meeting of the County Commissioners, Mr. Bingham voted against a proposed ordinance which would limit rental increases with respect to mobile home parks to any increase of the CPI. The proposed ordinance did not apply to rental increases with respect to other type of property, including residential apartments.

7. Neither Mr. Bingham nor Falcon own any mobile home parks.

8. Mr. Bingham, individually, has an ownership interest in two apartment complexes.

OPINION

The Legislative Declaration and Findings which express the public policy of the Nevada Ethics in Government Law appear at NRS 281.421:

1. It is hereby declared to be the public policy of this state that:

- (a) A public office is a public trust and shall be held for the sole benefit of the people.
- (b) A public officer or employee must commit himself to avoid conflicts between his private interest and those of the general public whom he serves.

2. The Legislature finds that:

- (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interest.
- (b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

Consistent with that policy and the specific provisions of the Code of Ethical Standards (NRS 281.481 -281.511, inclusive), the opinions of the Commission may include guidance to the public official pursuant to NRS 281.521(1):

1. The commission's opinions may include guidance to a public officer or employee on questions whether:

- (a) A conflict exists between his personal interest and his official duty.
- (b) His official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter.
- (c) The conflict would materially affect the independence of the judgment of a reasonable person in his situation.
- (d) He possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision.

(e) It would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal interest or pursue some other designated course of action in the matter.

Reviewing the Code of Ethical Standards, general requirements found in NRS 281.501 (2) is relevant to the Commission's present inquiry and states in pertinent part:

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 interest of others.

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."

NRS 281.501 (2) prohibits a county commissioner from voting on or advocating the passage or failure of a matter if certain criteria are present. It has not been alleged in either of the beltway vote or the rent limitation vote that Mr. Bingham's independence of judgment reasonably would have been materially affected by any gift or loan.

Mr. Bingham could not vote on the approval of Alternate Route E for the beltway or on the ordinance limiting rent increases for mobile homes if the independence of judgment of a reasonable person in his situation would be materially affected by his pecuniary interest or by a commitment in his private capacity to the interests of others which are affected by the matters at issue.

The Commission concludes that Mr. Bingham does not have a pecuniary interest in the approval of Alternate Route E for the beltway merely because Falcon owns property along Alternate Route C of the beltway for the reason that Alternate Route C, was earlier rejected and was not before the County Commissioners for approval. Nor is he committed in his private capacity as an owner in Falcon to the interests of others, namely Falcon or its shareholders, such that he would be required to recuse from voting on the matter for the same reasons, namely, that Falcon was not affected by the ultimate approval of Alternate Route E.

The absence of any pecuniary interest which is affected by the approval of Alternate Route E and the absence of any commitment in his private capacity to the interests of others in Alternate Route E render moot the issue of whether the independence of judgment of a reasonable person in his situation with respect to those issues would be materially affected.

Had Alternate Route C of the beltway been before the County Commissioners for approval or disapproval, the property of Falcon reasonably may have been affected, whether positively or negatively, by either the selection or rejection of Alternate Route C. In these circumstances, Mr. Bingham on the evidence presented would have been required to disclose his pecuniary interest and his commitment to Falcon and to abstain from voting.

The same test applies to the vote on the mobile home rent limitation ordinance. Mr. Bingham could not vote on this matter if the independence of judgment of a reasonable person in his situation would be materially affected by a pecuniary interest or a commitment in his private capacity to the interests of others. According to the foregoing Findings of Fact, neither Mr. Bingham nor Falcon owns a mobile home park. The Commission concludes that Mr.

Bingham does not have a pecuniary interest in the matter, nor is he committed in his private capacity to the interests of others in the matter such that he could not vote on the rent control matter.

It was suggested at the hearing that any rent limitation upon the owners of mobile home parks may also affect the owners of apartment complexes. The ordinance that the County Commissioners voted upon only involved mobile home parks, not apartments or other residential or commercial rental units.

Had the proposed rental limitation ordinance applied to apartment complexes, the apartment complexes owned by Mr. Bingham reasonably would have been affected, whether positively or negatively, by either the approval or disapproval of the proposed ordinance. In these circumstances, Mr. Bingham, on the evidence presented, would have been required to disclose his pecuniary interest and any commitment in his private capacity to the interests of other owners of his apartment complexes, and to abstain from voting.

Based upon the above Findings of Fact and Opinion, the Commission concludes that Mr. Bingham did not violate the Nevada Code of Ethical Standards and specifically did not violate NRS 281.501(2) when he voted in the matter regarding the County Commissioners' resolution in support of the NDOT's endorsement of Alternate Route E for the southern portion of the Las Vegas Beltway or when he voted on the proposed ordinance which would limit rental increases with respect to mobile home parks.

DATED: October 5, 1992.

NEVADA COMMISSION ON ETHICS

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