

Opinion No. 93-06

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Requests for Opinion of YVONNE ATKINSON-GATES and THERON H. GOYNES

This opinion is in response to opinion requests by Yvonne Atkinson Gates, a member of the Clark County Board of County Commissioners, and Theron H. Goynes, a member of the North Las Vegas City Council. Ms. Atkinson-Gates and Mr. Goynes were represented by B. Mahlon Brown, Esq. of Brown & Brown, Chtd.

The Nevada Commission on Ethics (Commission) met to receive testimony and other evidence in this matter on April 2, 1993 in Las Vegas, Nevada and on May 27, 1993 in Reno, Nevada. Zev E. Kaplan, Clark County Deputy District Attorney, appeared on behalf of Clark County.

Statutory confidentiality of all proceedings was waived by Ms. Atkinson-Gates and Mr. Goynes and the Commission's meetings on this opinion request were therefore open to the public.

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

FINDINGS OF FACT

1. Yvonne Atkinson-Gates is an elected member of the Clark County Board of County Commissioners.
2. Theron H. Goynes is an elected member of the North Las Vegas City Council.
3. The Regional Transportation Commission of Clark County (RTC) is a public entity created in 1965 pursuant to Chapter 373 of the Nevada Revised Statutes. The RTC currently serves as the designated recipient for section 9 funds from Federal Transit Administration as well as acting as the Metropolitan Planning Organization (MPO) for the Las Vegas urbanized area. The Commission that governs the RTC consists of eight individuals, who are elected members of the governing bodies of Clark County and the five cities within Clark County (Las Vegas, North Las Vegas, Henderson, Boulder City, and Mesquite). The jurisdiction of the RTC is co-terminus with Clark County.

One of the RTC's principal responsibilities in recent years has been the development and implementation of plans for improving public transportation in the Las Vegas valley. The population in the area has grown dramatically as has the need and the public demand for improved transportation services. To address that need, the citizens of Clark County approved Question 10 in November 1990, M advisory ballot question which urged the Nevada State Legislature to enact legislation to implement the Funding Program adopted by the Clark County Commissioners. The State legislature responded in 1991 by passing Senate Bill 112, Ch 19, Statutes of Nevada 1991, at page 25, which authorized a tax program anticipated to generate approximately \$100,000,000 annually for transportation improvements in Clark County.

Since the establishment to a local funding resource, the significant public obligation of the RTC has been to respond to the demand for improved services, and to plan for and develop cost effective public transit serving the needs to the citizens in Clark County.

4. Ms. Atkinson-Gates was appointed as a Clark County Commissioner by the Board of County Commissioners to the RTC.

5. Mr. Goynes was appointed as a City Councilman by the North Las Vegas City Council to the RTC.
6. The Equal Opportunity Board of Clark County (EOB) is a private, non-profit corporation which, for many years antedating the creation of the RTC of Clark County, has provided para-transportation services in Clark County. Federal law, namely the Economic Opportunity Act of 1964, requires and, accordingly, one-third of the members of the Board of Directors of the EOB consist of members of local government entities within Clark County, Nevada.
7. Ms. Atkinson-Gates was appointed to the EOB Board of Directors as a Clark County Commissioner by the Board of County Commissioners.
8. Mr. Goynes was appointed to the EOB Board of Directors as a City Councilman by the North Las Vegas City Council.
9. Pursuant to the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the provisions of Question 10 of the 1990 advisory ballot question, transportation services will be provided by the RTC to disabled and handicapped persons in Clark County. Accordingly, the RTC is preparing and will publish a request for proposals (RFP) to interested parties or entities, including the EOB, for a contract to provide para-transportation services to disabled and handicap persons in Clark County.
10. The EOB will submit to the RTC in response to the RFP a proposal for a contract to provide para-transportation services to disabled and handicapped persons in Clark County.
11. The RFP issued by the RTC and the process and criteria used by the RTC in evaluating the proposals submitted is not limited to costs, or the lowest bid submitted, but, rather, will include other criteria relating to the ability to provide such services and the nature of the need for the services to be provided.
12. Ms. Atkinson-Gates and Mr. Goynes as members of the Board of Directors of the EOB will review and vote on the proposed contract to be submitted by the EOB in response to the RTC's request for proposals for a contract to provide para-transportation services to disabled and handicapped persons in Clark County.
13. Ms. Atkinson-Gates and Mr. Goynes as members of the Board of Directors of the RTC will deliberate and vote on the selection of one and rejection of the proposals submitted to the RTC in response to its RFP for a contract to provide para-transportation services to disabled and handicapped persons in Clark County, including that submitted by the EOB.
14. Directors of a corporation, whether for-profit or not for-profit, have a fiduciary obligation to act in a manner which is in the best interest of the corporation. Ms. Atkinson-Gates and Mr. Goynes as Directors of EOB have such a fiduciary obligation.^[1]
15. Members of the governing body of a governmental entity, or a commission, have a public duty to act in a manner which is in the public interest and consistent with the public interest served by the governmental entity or commission. Ms. Atkinson-Gates and Mr. Goynes as members of the RTC have such a public duty.
16. Ms. Atkinson-Gates serves on both the RTC and the EOB in her public capacity as a Clark County Commissioner.
17. Mr. Goynes serves on both the RTC and the EOB in his public capacity as a North Las Vegas City Councilman.
18. Neither Ms. Atkinson-Gates nor Mr. Goynes has a personal pecuniary interest in the RTC or the EOB or in this matter before those entities.

19. Ms. Atkinson-Gates has a commitment in her public capacity as a Clark County Commissioner to the interests of the Clark County Board of Commissioners (the County of Clark), to the interests of the RTC of which she is a member as a county commissioner, and to the interests of the EOB of which she is a member as a county commissioner.

20. Ms. Atkinson-Gates does not have a commitment in her private capacity to the interests of the Clark County Board of Commissioners (the County of Clark), the RTC, or the EOB.

21. Mr. Goynes has a commitment in his public capacity as a North Las Vegas City Councilman to the interests of the North Las Vegas City Council (the City of North Las Vegas), to the interests of the RTC of which he is a member as a city councilman, and to the interests of the EOB of which he is a member as a city councilman.

22. Mr. Goynes does not have a commitment in his private capacity to the interests of the North Las Vegas City Council (the City of North Las Vegas), to the RTC, or the EOB.

OPINION

Based upon the above stated Findings of Fact, the Commission concludes that Ms. Atkinson-Gates and Mr. Goynes 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 before a board of which he is a member. The central issue of this opinion is whether either Ms. Atkinson-Gates or Mr. Goynes have a commitment in their private capacity to the interests of another, namely the EOB, such that either would be required to make disclosure and abstain from voting as a member of the RTC.

Ms. Atkinson-Gates and Mr. Goynes are public officers with a commitment in their public capacities to the interests of the RTC and the EOB. Such commitment is the result of the elected positions they hold. Ms. Atkinson-Gates, as a County Commissioner, and Mr. Goynes, as a City Councilman, are members of the Board of Directors of the EOB, which will approve a proposal to be submitted to the RTC for a contract for the EOB to provide para-transportation services. Ms. Atkinson-Gates and Mr. Goynes both are also on the Board of Directors of the RTC, which by its vote will select one proposal for the contract among several submitted, including that of the EOB, to provide para-transportation services to disabled and handicap persons of Clark County.

An apparent conflict exists between the responsibility to deliberate and vote as a director of the EOB on the contract and submittal of a proposal for a contract, and to deliberate and vote as a director of the RTC to accept or reject such proposals submitted, including that of the EOB. Those circumstances, however, do not create a conflict between one's commitment in a private or personal capacity to the interests of the EOB and the public officer's duty or obligation as a Director of the RTC. Any such conflict is between a commitment in one's public capacity to the interests of the EOB and a duty to the RTC. Such a conflict is public or institutional in nature and exists solely between one's public responsibility as an EOB Director and one's public responsibility as a member of the RTC, with respect to the acceptance or rejection of the proposal submitted by the EOB. The conflict is wholly within the context of one's dual responsibilities as a public officer who as such serves on both the EOB and on the RTC.

The Clark County Commission and the North Las Vegas City Council, in making the appointments of their members to both the RTC and the EOB, have at least impliedly found that such dual public responsibilities is advantageous and in the public interest. In any event, it is not a conflict within the meaning of NRS 281.501. [\[2\]](#)

No evidence was presented to the Commission that either Ms. Atkinson-Gates or Mr. Goynes has a commitment in her or his private capacity to the EOB or that either has a pecuniary interest in the EOB or in its proposal to be submitted to the RTC.

A director of a corporation has a fiduciary obligation to act in a manner which is in the best interest of the corporation. Ms. Atkinson-Gates and Mr. Goynes as Directors of EOB have such a fiduciary obligation. That fiduciary obligation constitutes a commitment to the interests of the corporation, the EOB. The issue, however, is whether such commitment is in one's public capacity, rather than in one's private capacity, as addressed by NRS 281.501, requiring disclosure, and, if materially effecting the reasonable person's independence of judgment in the matter, requires recusal or abstention from voting as a member of the RTC. Ms. Atkinson-Gates and Mr. Goynes serve on the Board of Directors of the EOB in their capacity as public officers. Their respective commitments to the interests of the EOB are in their public, and not their private, capacities.

A public officer who is a member of a governmental entity or commission has a public duty to act in a manner which is in the public interest and consistent with the public interest served by the governmental entity or commission of which one is a member. Ms. Atkinson-Gates and Mr. Goynes as members of the RTC have such a public duty.

The Commission concludes that Ms. Atkinson-Gates and Mr. Goynes have no personal interest or any commitment in their private capacities to the interest of another, namely the EOB, which requires disclosure or which may materially affect the independence of judgment of the reasonable man in their circumstances, requiring abstention from voting on the proposal of the EOB when considered by the RTC.

DATED: August 16, 1993.

NEVADA COMMISSION ON ETHICS

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

[\[1\] Opinion No. 91-6](#) In the Matter of the Opinion Request of Diane Cornwall, Gene McDowell and Tina Leighton;
[Opinion No. 92-11](#) In the Matter of the Opinion Requests of and with respect to Kathryn Wishart and Grant Sims;
and County of Clark vs. City of Las Vegas, 92 Nev. 323, 550 p .2d 779 (1976).

[\[2\] Opinion No. 92-11](#) In the Matter of the Opinion Request of and with respect to Kathryn Wishart and Grant Sims.