

## Opinion No. 94-53

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Opinion Request Regarding ALAN ROCK

This Opinion is in response to a first party opinion request filed with the Nevada Commission on Ethics (Commission) by Alan R. Rock, a member of the Washoe County Planning Commission (planning Commission). Mr. Rock had been prompted to submit his request as a result of media allegations that claimed that he had violated the Nevada Ethics in Government Law by voting on a matter in which he had a conflict of interest.

Based upon the fact that the request for an opinion was filed by Mr. Rock in regard to his own past conduct, the Commission will assume Mr. Rock as a public officer at the time of the circumstances concerning the subject of his request.

Mr. Rock waived a just and sufficient cause hearing provided for by NRS 281.511(2) and agreed to proceed to a hearing on the merits of the opinion request. A hearing on the merits was held on February 23, 1995, in Reno, Nevada. Mr. Rock was present and testified in the matter. Mr. Rock waived confidentiality concerning the matter and the opinion is therefore made public pursuant to NRS 281.511(4).

At the conclusion of the hearing, the Commission closed the administrative record of the matter. It now issues the Findings and Conclusions that follow.

#### FINDINGS OF FACT

1. The Washoe County Planning Commission (Planning Commission) consists of seven members. NRS 278.030. Alan Rock is a member of the Planning Commission, and for the purposes of this opinion, was a public officer within the meaning of NRS 281.4365(2)(c). Mr. Rock had served on the Planning Commission for approximately ten and one-half years.
2. On July 5, 1994, the Planning Commission reviewed the Administrative Permit Application for "Bridges in Consciousness," an organization that wanted to operate a residential facility for AIDS patients within an existing single-family home located on Ponderosa Drive in Sparks, Nevada. The parcel of land on which the proposed group home would be located was zoned E-I (First Estates) in a residential neighborhood in Sparks. Because the project utilized the existing zoning, a site review was required by the transition policy. The proposed facility was intended to house six residents, a full-time caretaker, and a director.
3. State funding had been made available to Bridges in Consciousness based on the endorsement made by the Washoe County Commission on January 24, 1995. The home would be operated by a non-profit company that would be paid by the state.
4. To be a resident of the Bridges in Consciousness' facility, one would need to prove that he or she had tested positive for HIV. In July 1994, there were approximately 364 AIDS cases in Washoe County. Since July 1988, approximately 900 Washoe County residents have tested positive for HIV.
5. Ponderosa Drive is a public, one-way street in Sparks that culminates in a dead-end. The road has no curbs, gutters, or sidewalks. The homes are situated on one-acre lots which sit back 50 feet from the street. There is no common sewer line hook-up to the proposed residential facility. The only available line is located upon private property on the opposite side of Ponderosa Drive. There is no road maintenance agreement among the residents of

Ponderosa Drive.

6. Mr. Rock's parents, Richard and Elaine Rock, reside in a home situated at 2112 Ponderosa Drive, at the end of the dead-end of the street, approximately four acres away and on the opposite side of the street from the proposed Bridges in Consciousness facility. The Rocks have lived in their residence approximately 36 years.

7. Bridges in Consciousness was also interested in an alternative house in Lemon Valley, which was larger and less expensive than that located on Ponderosa Drive and which also had public transportation readily available.

8. Group homes are new in Washoe County. Until Bridges in Consciousness' request came before the Planning Commission, the Planning Commission had never examined an application for a group home.

9. NRS 449.030(1) provides that "[n]o person, state or local government or agency thereof may operate or maintain in this state any medical facility or facility for the dependent without first obtaining a license therefor as provided in NRS 449.001 to 449.240, inclusive." NRS 449.040 provides in pertinent part as follows:

Any person, state or local government or agency thereof desiring a license under the provisions of NRS 449.001 to 449.240, inclusive, must file with the health division [of the department of human resources] an application of a form prescribed, prepared and furnished by the health division, containing:...

...

**10. Evidence satisfactory to the health division that the facility conforms to the zoning regulations of the local government within which the facility will be operated or that the applicant has applied for an appropriate reclassification, variance, permit for special use or other exception for the facility.** (Emphasis supplied.)

NRS 449.017 includes within the definition of "residential facility groups," an establishment that furnishes food, shelter, assistance and limited supervision to any aged, infirm, mentally retarded, or handicapped person.

10. NAC 449.277 through NAC 449.2784 provides the regulatory authority governing residential facilities for groups of less than seven residents. NAC 449.27715 defines "Facility" as a residential facility for groups, as defined in NRS 449.017, which has less than seven residents. NAC 449.2772 provides the manner of application for a license to operate a residential facility for groups of less than seven residents and includes as a requirement that "[s]atisfactory assurances must be given that the facility complies with all applicable state and local codes relating to safety from fire and the protection of health." NAC 449.27725 sets for the procedure for licensing facilities for groups with less than seven residents as follows:

1. An applicant for a license to operate a new facility shall contact the division before making any commitment to purchase or lease a facility.

...

4. If a proposed facility is not currently licensed, the division shall, upon request, furnish the applicant with a written statement of the results of its inspection of the facility.

5. The division shall review any plans for new construction or remodeling of a facility and furnish the applicant with a statement of its findings.

The division may withhold the issuance of a license pending compliance by the facility with any local regulation relating to sanitation and the protection of health. NAC 449.27755.

11. The use classification system contained in the Washoe County Code classifies uses according to a limited number of types on the basis of common functional, product, or compatibility characteristics, thereby providing a

basis for regulation of uses in accordance with criteria that are directly relevant to the public interest. Washoe County Code (W.C.C.), 110.304.00. W.C.C. 110.304.15 specifies that "Residential Use types" includes the occupancy of living accommodations on a wholly or primarily non-transient basis but excludes institutional living arrangements providing 24-hour skilled nursing or medical care and forced residence, such as asylums and prisons. W.C.C. 110.304.15(7)(b) classifies "residential group home use" as the occupancy of living quarters by a group or group of persons not defined as families on a weekly or longer basis, such as group care homes with six or fewer paying residents. Under W.C.C. 110.302.15(b), residential group homes are permitted in Washoe County with the approval of an Administrative Permit. W.C.C. 110.302.15 (b); Table 110.302.05.1.

12. W.C.C. 110.304.20 specifies that Civic Use types include the performance of utility, educational, cultural, medical, protective, governmental, and other uses which are strongly vested with public or social importance. W.C.C. 110.304.20(g) classifies "group care use" as care services provided in residential facilities that accommodate seven or more persons or in facilities authorized to provide services, but excludes those uses classified under Major Services and Utilities. Typical uses include halfway houses, intermediate care facilities, or senior citizen board and care homes.

13. Group care use services are allowed in Washoe County only upon approval of a Special Use Permit approved by the Board of Adjustment pursuant to W.C.C. 110.302.15(d); Table 110.302.05.1. The Planning Commission or Board of Adjustment may require conditions of approval necessary to eliminate or minimize to an acceptable level any potentially adverse effects of the use.

14. NRS 449.0038 defines "facility for intermediate care" as follows:

"Facility for intermediate care" means an establishment operated and maintained to provide 24-hour personal and medical supervision, for a person who does not have illness, disease, injury or other condition that would require the degree of care and treatment which a hospital or facility for skilled nursing is designed to provide."

15. NAC 449.614 through 449.746 provides the regulatory authority governing intermediate care facilities. NAC 449.662(1) and (6) set forth certain conditions required to obtain a license to operate an intermediate care facility and provide as follows:

1. No person may operate an intermediate care facility without a license from the health division.

...

6. The facility must comply with all currently adopted life safety, environmental health, building and zoning codes. If there is a difference between the state and local codes, the more stringent standards apply.

NAC 449.683 (1) likewise provides that:

A facility must comply with all currently adopted life safety, health division, building and zoning codes. If there is a difference between state and local codes, the more stringent standards apply....

16. In May and June of 1994, prior to Bridges in Consciousness' application and prior to the Planning Commission meetings concerning the matter, Mr. Rock attended two public meetings concerning the operation of the Bridges in Consciousness' facility in his capacity as a Planning Commission member and not as a potential neighbor of the home. Both meetings had been attended by representatives of Bridges in Consciousness and members of the potentially affected neighborhood. Mr. Rock had been invited to attend the first meeting, along with all the of the

residents who lived on Ponderosa Drive, by Ms. Glenda Dvorak, one of the organizers for Bridges in Consciousness. Mr. Rock introduced himself at the first meeting as a member of the Planning Commission but stated he was only present to listen. By the time of the second meeting, Bridges in Consciousness was in the process of developing their application to the Planning Commission.

17. Mr. Rock had only one conversation with his parents regarding the Bridges in Consciousness facility, and that had concerned how the project could be structured to minimize the impact upon the neighbors. Due to the size of the lots, landscaping, and the fact that they did not live immediately adjacent to the proposed group home, Mr. Rock's parents would not be directly affected. Their concerns did not relate to the fact that people with AIDS might be residing in the group home, but that the additional traffic generated might adversely impact their neighbors.

18. Mr. Rock's parents attended one of the two public meetings conducted prior to the Planning Commission's hearings on the matter, but had never made a public statement about the proposed project nor taken any position on the matter, either publicly or privately with their son.

19. Upon meeting with Planning Commission staff and Rusty Nash, Washoe County Deputy District Attorney who also serves as Planning Commission counsel, it was determined that because Mr. Rock had no financial interest in any property on Ponderosa Drive and because his parents would not be affected by the grant of the special use permit, Rock's vote and participation in discussion at the July 1994 Planning Commission meeting concerning Bridges in Consciousness' application would be appropriate as long as he disclosed that his parents owned a home and lived on Ponderosa Drive and that his ability to make a decision in the matter would not be affected. Mr. Nash did not inform Mr. Rock that he would be required to disclose his personal relationship with his parents at any additional meetings concerning the issue.

20. The Washoe County Commission had obtained a written opinion from Mr. Nash that stated that Washoe County would not be able to defend its position should it vote "no" on Bridges in Consciousness' project because the people to be housed in the facility were covered by the Americans with Disabilities Act (ADA).

21. At the July 5, 1994 public hearing of the Planning Commission, Mr. Rock stated he had previously attended two public neighborhood meetings on the issue being heard. He also disclosed that his parents lived on Ponderosa Drive where the proposed group home would be located. He explained that the group home would not impact his parents either way, as their house was situated at the other end of the street. Mr. Rock advised that he had an open mind about the special use permit and would vote on the application based on the record presented at the meeting.

22. At the hearing, Ms. Dvorak spoke to the need of a residential group home because of the increasing numbers of HIV -positive residents in Washoe County .In regard to the potential traffic impact upon the Ponderosa Drive neighborhood, traffic studies indicated that the proposed facility would generate approximately five additional trips per day upon Ponderosa Drive. Reno Disposal Services would serve the residence twice weekly. Ms. Dvorak expected Mr. Rock to abstain from voting on the issue because of a possible conflict of interest related to his parents.

23. At the hearing, Mr. Jeff Murphree, Planner of Department Development Review, reviewed the staff report, dated June 24, 1994, noting that residential group homes were permitted in Washoe County with the approval of an Administrative Permit. Based on evidence presented at previous group home hearings, Mr. Murphree noted that group homes did not increase traffic above that which is associated with single family homes, that group homes were not proven to have adverse effects on property values, and that group homes must be considered a residential, not commercial, use. Mr. Murphree additionally stated that the proposed use of the facility met parking requirements.

24. Mr. Nash stated at the hearing that in addition to group homes for other purposes in the Washoe County Code and Nevada Revised Statutes, AIDS patients were covered by both the Federal Fair Housing Law and the ADA. He

indicated that the application before the Commission should be heard on the issues of conformity as applied to any other residential group home and that the residents' status as AIDS patients could not be a factor in deciding the suitability of Bridges in Consciousness' application.

25. Opposition to the facility at the meeting was based upon the community's alleged concerns for public safety and condition of the private road that serviced the residents of Ponderosa Drive. Residents were concerned that the additional traffic that would be generated as a result of the group home would increase the hazards posed to children in the area who walked to a public school at the opposite end of Ponderosa Drive without benefit of sidewalks. In addition to their expressed interests that OSHA Rules and Regulations be followed and sewer lines be taken into consideration, the community was concerned about limiting the hours and number of trips that could be taken by service-related vehicles to and from the AIDS home.

26. At the hearing, Mr. Rock stated that he believed there was a better and better-priced location for the group home. He compared the cost for the size of the proposed home on Ponderosa Drive with one on his own residential street in Sparks, where the streets were in excellent condition.

27. The Planning Commission could require that the facility hook up to the city sewer line instead of utilizing a septic system because if the sewage generated by the proposed home were to be classified as hazardous waste, a septic system would be inadequate. That had not been done as that would necessitate crossing the property of neighbors who were not willing to grant the required permission for that to occur.

28. A motion to approve Bridges in Consciousness' Administrative Permit application with the conditions that:

1. There shall be no on-street parking;
2. All sewer hook-ups shall be in before occupancy; and
3. Applicant shall participate in street maintenance,

The motion failed by a vote of three in favor to four opposed. Mr. Rock voted against the permit. A second motion was then made, seconded by Mr. Rock, to defer the matter for 30 days to allow the parties to meet and to attempt to reach some agreement. The second motion was passed by a unanimous vote of 7-0. Bridges in Consciousness agreed to the deferral.

29. Prior to the Planning Commission's regularly scheduled August 1994 meeting, Bridges in Consciousness wrote to request a continuance to the Planning Commission's September 1994 meeting to enable it to provide information to the Planning Commission concerning the affect the facility would have on traffic, solid waste disposal, and other related matters. The continuance would also allow time for additional meetings between the applicant, neighbors, and staff to enhance the likelihood of a satisfactory solution of the issues.

30. On August 2, 1994, the Planning Commission voted to grant Bridges in Consciousness a 30-day continuance of the hearing to permit the applicant time to prepare its presentation. The item was postponed until the September 7, 1994 meeting.

31. Prior to the September 7, 1994 meeting, information was brought forward to suggest that the State of Nevada Health Department (NDH) had not yet determined if the AIDS Home would qualify under NDH regulations as a group home or intermediate health care facility.

32. At the meeting on September 7, 1994, the Commission decided not to reopen the public hearing concerning Bridges in Consciousness' application, but did allow the staff to make a presentation and recommendation and did allow Planning Commission members to conduct a question and answer session with staff and members of the audience. Present at the meeting were staff members Mr. Mike Harper, Director of Department Development

Review, and Mr. Murphree. Mr. Murphree advised the Commission that three meetings had been conducted in an attempt to resolve the differences between the applicant and their prospective neighbors. Discussion at these meetings had been led and facilitated by Mr. John Slaughter, Senior Strategic Planner in the Department of Comprehensive Planning. The meetings consisted of one with Bridges and Consciousness only, one with neighbors only, and one with both the applicant and neighbors. Mr. Murphree informed the Commission that it could choose one of the following four actions: (1) Approve; (2) Approve with conditions; (3) Modify with conditions; or (4) Deny. Staff recommended approval with conditions imposed.

33. After Mr. Alfred H. Knepper, a Ponderosa Drive homeowner, expressed his belief that it was necessary for the applicant to obtain permits from the state, including a provisional license, prior to proceeding with the purchase of the property where the group home would be located, Mr. Rock questioned Mr. Harper about the Planning Commission's relationship to the state and whether the authority of the state superseded the authority of Washoe County. Mr. Harper answered that the state had given authority to Washoe County to make these decisions in NRS ch. 278, and thus the decision concerning Bridges in Consciousness' application was within the responsibilities of the Planning Commission. He stated that an additional condition could be added to approval of the permit to require the applicant to comply with all state regulations. Finally, Mr. Harper said that there were no conflicting restrictions that would prevent the facility's operation as a group home.

34. Mr. Nash advised that state requirements were irrelevant for a use permit; the Planning Commission was dealing with a zoning decision only.

35. The commissioners and staff discussed whether it was necessary to postpone acting upon Bridges in Consciousness' application pending investigation of the state's role and clarification of the home's classification from NDH. They also discussed a suggestion to approve the application subject to the condition that there be a review of the facility within one year.

36. Mr. Joel Korotkin, attorney for Bridges in Consciousness, responded that he did not believe the land use decision the Commission was facing rose to the state government level and that a delay or denial of the permit on that basis was not acceptable to his client. Stating that any action other than a decision was not justified, Mr. Korotkin requested that a decision be made with such conditions deemed necessary by the Commission.

37. A motion was made and seconded to approve the permit request with site review and conditions recommended by staff. An amended motion was subsequently seconded to include the requirement for a special use permit if the state changes use and a review in one year. The motion failed by a roll call vote of two in favor and four against, one commissioner being absent. Commissioner Rock, who did not disclose at this meeting that his parents resided on Ponderosa Drive, voted to deny the motion.

38. Subsequent to the Planning Commission's denial of its application, Bridges in Consciousness obtained clarification of proper procedures by the State Health Department and then appeared before the Washoe County Commission, which approved its operation of a group home by a vote of 5 to 0.

39. Mr. Rock did not make any presentation before the Washoe County Commission concerning the subject of the Bridges in Consciousness facility.

## **OPINION**

Because Mr. Rock voluntarily brought himself within the purview and jurisdiction of this Commission, the Commission will not address the issue of whether a planning commission is an "advisory" commission outside the scope of this Commission's jurisdiction. See, 281.4365(2)(c). The Commission cautions, therefore, that this opinion is not intended to establish a precedent regarding its jurisdiction over planning commissions. Instead, the

Commission reserves the right to review that question at such a time as it is raised.

The issue in this opinion is whether, under NRS 281.501(2) and (3), Mr. Rock had a pecuniary interest or commitment in his private capacity to the interest of others that required him to disclose or abstain from voting on matters relating to an administrative permit for the operation of the Bridges in Consciousness facility that would have been located on the same street upon which his parents reside.

NRS 281.501(2) and (3) provide the standards public officers must follow in discussing, advocating, voting, or otherwise acting on a legislative matter with respect to which the independence of judgment of a reasonable person in his or her situation would be materially affected by the acceptance of a gift or loan, a pecuniary interest, or a commitment in a private capacity to the interest of others.

### **A. Whether Disclosure Was Required**

NRS 281.501(3) provides the following with respect to a public officer's obligation to disclose an interest prior to voting on a matter affecting that interest:

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 elected.

Did Mr. Rock have a private commitment to the interest of others, namely his parents, that should have required disclosure of that interest before voting on the Bridges in Consciousness application. Because Mr. Rock had a familial relationship with two individuals who had resided for 36 years in the same home in which he had grown up, located upon the same street upon which Bridges in Consciousness intended to conduct its operation, he had an interest in his private capacity to these persons which required him to disclose the full nature and extent of that interest each and every time Bridges in Consciousness' application appeared before the Planning Commission. Pursuant to NRS 281.501(3), Mr. Rock's disclosure should have been made publicly to the chairman and other members of the Planning Commission each time the matter was considered.

Thus, although Mr. Rock fulfilled the statutory obligation to disclose his interest when Bridges in Consciousness' application was considered in the Planning Commission meeting held on July 5, 1995, he violated NRS 281.501(3) by his failure to do likewise at the August 2 and September 7 meetings. Despite Mr. Rock's impression that subsequent meetings on the same matter were continuances of the first and that the initial disclosure would carry over from the first meeting, rendering additional disclosures unnecessary, the law required that a disclosure be made at each and every meeting. The same members of the public may not have always been present at former meetings and, consequently, would not have known of the substance of the previous disclosures.

The Commission concludes that because Planning Commission counsel had not advised Mr. Rock as he should have been advised, Mr. Rock's failure to make additional disclosures at Planning Commission meetings conducted

subsequent to July, 1994, were not willful.

## **B. Whether Abstention Was Required**

The second issue before the Commission is whether Mr. Rock was required to abstain from voting on Bridges and Consciousness' application. NRS .281.501(2) permits members of the legislative branch to participate in a matter, but a member is prohibited from voting on matters with respect to which the independence of judgment of a reasonable person in his situation would HAVE BEEN materially affected by, among other things, his commitment in a private capacity to the interest of others. NRS 281.501(2) provides 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 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.

Applying NRS 281.501(2) to this case, the issue is not whether Mr. Rock's vote to deny Bridges in Consciousness' application was "correct," but rather more narrowly, whether a reasonable person in Mr. Rock's place with the same familial relationship would have had his independence of judgment affected. Mr. Rock testified that his parents were not discomfited by the fact that the proposed group home would house AIDS or HIV-positive residents. Rather, their concerns focused on the impact the facility would have had upon the other residents of the community, who likewise did not oppose the project on the basis of the health conditions of the residing patients, but because they feared the resulting adverse ramifications they believed would ensue from the operation of any group home. Although Mr. Rock stated that the neighbors were "very concerned" about possible property devaluation resulting from operation of an AIDS home on Ponderosa Drive, their primary concern was public safety. The neighbors were adamantly opposed to the project because at the time of the hearings, they did not know how often and during what hours ambulances, food trucks, or other service-related vehicles would be entering the residential area, to what degree sewer and garbage concerns had been addressed, and to what extent general traffic in the area would be increased.

At the September 7 hearing by the Planning Commission on Bridges in Consciousness' application, public testimony was received. The key testimony was that Bridges in Consciousness was required under state law to obtain some sort of permit to operate the group home from the State NHD prior to proceeding before the Planning Commission. Because it had not previously issued any permits authorizing operation of an AIDS group home, the NHD was not sure whether the group home would be classified as a hospital, an extended care facility with the appropriate OSHA regulations in place, or as a basic group home. Accordingly, the NHD did not know what type of permit it would need to issue for operation of the AIDS home and what conditions were prerequisite. Further, there were no representatives from that agency present to provide evidence on that issue at the hearings before the Planning Commission.

The Planning Commission was concerned about health related issues, about the type of permit that would be issued to the group home, and what the facility would be required to do. The home might have required special ventilation systems, sewer or septic systems with special filters, additional garbage pick up, and hazardous waste removal, all of which would have had a impact upon a previously residential neighborhood: Other extended care facilities could



not be placed in the middle of a residential neighborhood in Washoe County without special zoning. Thus, the Planning Commission believed that the group home should have had the same permits required of a nursing home, as the impact would be the same on the neighborhood. Mr. Rock testified that since a state permit was required for a nursing home, one would probably be required for an AIDS home as well.

Some of the conditions that the Planning Commission had considered imposing on the group home were limiting the time of day and number of daily trips made to and from the facility by food and health-service delivery vehicles, limiting the period of garbage pick ups, requiring conformance with sewage rules and regulations, and filtering wastes similar to that necessary for nursing homes.

Believing, however, that the NDH's determination of the home's qualification was vital to resolving the status of Bridges in Consciousness' application and what conditions would be necessary to ensure the home's minimal adverse impact upon the community, Mr. Rock asked Mr. Korotkin at the September 7 meeting if his client would agree to another 30-day extension in order to clarify the home's classification from NDH. After Mr. Korotkin decided not to defer the matter to another meeting date to enable the Planning Commission to acquire additional information relative to the permitting process, the Planning Commission voted 4-2 against Bridges in Consciousness' application. Mr. Rock testified that given the conditions he had outlined, he would have voted in favor of the project, but that based upon Mr. Korotkin's refusal to continue the matter, he decided against recommendation of the project. It was Mr. Rock's opinion that the type of permit issued by the state would weigh heavily in how the neighborhood would be impacted, and thus determine his vote.

Mr. Rock testified that not only he, but a majority of the Commission, would have voted to approve Bridges in Consciousness' application had the proper state permits been obtained and the adverse impacts addressed. In addition, the affected residential community would have been satisfied if there had been suitable conditions in place to support a group home, regardless of the health conditions of the residents.

The Commission concludes that although the Planning Commission's disagreement with the ADA interpretation and legal conclusion of its counsel may be questionable, there is no evidence in the record to demonstrate that Mr. Rock's relationship to his parents rose to the level of commitment to their wishes that would have materially affected the judgment of a reasonable person in his situation. Therefore, the Commission concludes that Mr. Rock's vote to deny Bridges and Consciousness' application did not violate NRS 281.501(2).

## **CONCLUSION**

Mr. Rock violated NRS 281.501(3) by failing to disclose that his familial relationship to two residents on Ponderosa Drive when Bridges in Consciousness matters came before the Planning Commission on August 2, 1994, and September 7, 1994. Because Planning Commission counsel failed to advise Mr. Rock appropriately, the Commission finds no basis to conclude that Mr. Rock's violation was willful. Mr. Rock did not violate NRS 281.501(2) by voting to deny approval of Bridges and Consciousness' application.

## **COMMENT**

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of NRS 281.501 quoted and discussed above must be applied on a case-by-case basis, with results that will vary depending on the specific facts and circumstances involved.

DATED: December 5, 1995.

NEVADA COMMISSION ON ETHICS

By: /s/ Thomas R. C. Wilson, Chairman