

Abstract of Opinion No. 95-12

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of PUBLIC OFFICERS

This opinion is in response to an opinion request from a private citizen asking whether four legislators in the 1995 Session of the Nevada Legislature have conflicts of interest in a senate bill concerning livestock (SB 45) introduced in the 1995 legislative session which would require their disclosure of such interests and/ or abstention from voting on the bill.

At a hearing on the merits of the opinion request, three of the legislators appeared before the Commission and presented testimony and evidence. One legislator appeared for the hearing, but because of its delay in starting, was unable to appear and testify in the matter. A request for postponement of the hearing was not made.

The hearing was confidential pursuant to the provisions of NRS 281.511(4) and therefore was not open to the public. The Commission thereafter met and deliberated in executive session. The Commission makes the following findings and renders the following Opinion:

FINDINGS

1. The Commission has jurisdiction over this matter pursuant to NRS 281.511(1) and (2).
2. Each legislator who is the subject matter of this opinion is a public officer as defined in NRS 281.4365.
3. SB 45 was introduced in the 1995 Nevada Legislature where it was referred to the Senate Committee on Natural Resources.
4. Section 4 of SB 45, is the substantive portion of the bill, and is entitled the "Livestock Owners' Bill of Rights."

Section 4 provides as follows:

1. Except where otherwise prohibited or authorized by a specific statute or regulation, the legislature hereby declares that each person who lawfully owns, possesses or otherwise exercises control over livestock in this state has the right to:
 - (a) Raise that livestock for human consumption or for processing the livestock into food for consumption by other livestock.
 - (b) Breed, raise or otherwise propagate that livestock in order to use the fur, hide or other by-product of the livestock.
 - (c) Use that livestock for sporting events, entertainment, education, teaching, lecturing, scientific investigation or public display.
 - (d) Transfer or otherwise convey ownership, possession or control of that livestock pursuant to any lawful commercial or private transaction.
 - (e) Euthanize expeditiously or otherwise dispose of that livestock as deemed necessary by such a person.
 - (f) Maintain the reproductive system of any of that livestock in its natural or unaltered state.
 - (g) Train that livestock for use in a show or an act for performing animals or for

any other activity which benefits such a person.

(h) Treat that livestock as chattel.

2. The division of agriculture of the department of business and industry shall, in carrying out its duties, ensure the protection of the rights specified in this section.

5. Section 5 of the SB 45 provides:

Except where otherwise required or authorized by a specific statute or regulation, it is unlawful for a person to prevent or attempt to prevent an owner of livestock from maintaining the reproductive system of any of its livestock in its natural or unaltered state, including, but not limited to requiring the owner to geld, castrate, spay or neuter the livestock.

6. SB 45 specifies that as used in the act, the term "livestock" has the meaning ascribed to it in NRS 561.025.

"Livestock" is defined in that statute as:

(a) All cattle or animals of the bovine species.

(b) All horses, mules, burros and asses or animals of the equine species.

(c) All swine or animals of the porcine species.

(d) All goats or animals of the caprine species.

(e) All poultry or domesticated fowl or birds.

(f) All dogs, cats or other animals domesticated or under the restraint or control of man.

7. Legislators #1 and #2 are in the business of raising livestock and each have fully operational ranches in Nevada.

8. Legislator #3 has raised livestock in the past but does not currently raise livestock. Legislator #3's livestock ranch has been leased to another who operates a livestock business.

9. Legislator #4 has raised livestock in the past but does not currently raise livestock, although Legislator #4 may reenter the livestock business in the future. Portions of Legislator #4's ranch were sold several years ago and the remaining ranch property is presently leased to another who operates a livestock business.

ISSUE

The issue before the Commission is whether pursuant to the provisions of NRS 281.501(2) and (3), the aforementioned legislators have pecuniary interests in SB 45 which require them to disclose and/or abstain from voting on SB 45.

DISCUSSION

The applicable voting provisions of the Ethics in Government Law are at NRS 281.501(1), (2), and (3). These sections provide as follows:

1. Except as otherwise provided in subsection 2 or 3, a member of the legislative branch may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either in a representative capacity as a member of a general business, profession, occupation or group, is not greater than that accruing to any other member of the general business, profession, occupation or group.

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.

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 elected. (Emphasis added).

A. Disclosure

NRS 281.501(3) requires public disclosure by a public officer of any matter in which the officer has a pecuniary interest. Disclosure is required not only prior to voting or abstaining in accordance with the discussion below, but at all times the matter is debated or discussed. If the officer is a member of a body which makes decisions, disclosure is to be made in public to the chairman and other members of the body. NRS 281.501(3).

The amount, nature or extent of a pecuniary interest is not relevant to the requirement of disclosure pursuant to NRS 281.501(3). Legislators #1 and #2 have pecuniary interests in their respective operational livestock ranches. Legislators #3 and #4 each also have a pecuniary interest in SB 45 since they both retain interests in ranches leased for a livestock business. Because SB 45 involves livestock and each legislator has a pecuniary interest in livestock-related measures, that interest must be publicly disclosed each and every time SB 45 comes before them in the legislature either in committee hearings or in the full house of the Assembly or Senate.

B. Abstention

NRS 281.501(2) provides additional standards for members of the legislative branch who vote on matters pending before them. Whether it would be appropriate for any of the legislators named in the opinion request to abstain from voting on SB 45-related matters is dependent on the extent to which each legislator's pecuniary interests in livestock are deemed significant enough to materially affect the judgment of a reasonable person in his or her situation. The

statute presumes 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." NRS 281.501(2).

In applying the abstention provisions of NRS 281.501(2) to the question of whether the four legislators are required to abstain from voting on SB 45, the Commission concludes that the respective pecuniary interests of each of them would not materially affect the independence of judgment of a reasonable person in his or her circumstance. In each of the legislator's circumstances, there is no evidence which overcomes the statutory presumption that the independence of judgment of the reasonable person would not be materially affected by his or her pecuniary interests in the ranching or livestock business where the resulting benefit or detriment of SB 45 to him or her is not greater than that accruing to any other persons who receive income from, or are in the business of ranching.

CONCLUSION

The provisions of NRS 281.501(3) dictate that based on the pecuniary interests of Legislators #1 and #2 in their operational ranches and of Legislators #3 and #4 in their leasehold income derived from ranching properties, the legislators must disclose these interests whenever a matter concerning SB 45 comes before them.

Because there is no evidence that the legislators' pecuniary interests in SB 45 would materially affect the independence of judgment of a reasonable person in their situations, and the resulting benefit or detriment which may accrue to each legislator as a result of SB 45 would not be greater than that accruing to any other member of the general business of ranching, each of the individual legislators may, under the provisions of NRS 281.501(2) vote on SB 45.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances, and may not apply to other circumstances. The statutory provisions of NRS 281.501 quoted and discussed above must be applied on a case-by-case basis, the results of which will vary depending on the specific facts and circumstances involved.

DATED: September 14, 1995.

NEVADA COMMISSION ON ETHICS

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