

Opinion No. 96-14

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion concerning the conduct of BRUCE WOODBURY, Clark County Commissioner

This Opinion is in response to a request filed with the Nevada Commission on Ethics (Commission) by Mr. Lee Wayne Haynes of Las Vegas Nevada concerning the conduct of Bruce Woodbury, a member of the Clark County Board of Commissioners (Board). Mr. Haynes asked the Commission to determine whether Mr. Woodbury violated state ethics laws by failing to disclose and abstain from voting upon a matter in which he was alleged to have had a pecuniary interest at the time the matter was considered by the Board.

A just and sufficient cause hearing on the request was held in Las Vegas on May 9, 1996. The Commission received sworn testimony from Mr. Haynes and Mr. Woodbury. The proceedings were confidential pursuant to the provisions of NRS 281.511(4) and therefore not open to the public. At the conclusion of the testimony heard, Mr. Woodbury stipulated that the record of the proceedings be merged into a full hearing on the merits. Based upon that stipulation, the matter proceeded to the merits in public on the following morning of May 10, 1996, at which time the Commission received testimony from Mr. Richard Goecke, Director of the City of Las Vegas Public Works Department.

Based on the foregoing, the Commission makes the following Findings of Fact and issues the Decision that follows.

FINDINGS OF FACT

1. Bruce Woodbury is an elected member of the Board and, for the purposes of this opinion, a public officer within the meaning of NRS 281.4365(1) and a member of the legislative branch^[1] as defined by NRS 281.4355.
2. Mr. Haynes is a resident of the Clark County district represented by Mr. Woodbury.
3. Through SNDW Investments, a general partnership, Mr. Woodbury has an undivided one-fourth interest in improved real estate located in an incorporated area of Clark County on the southwest corner of Rainbow Boulevard and Del Rey Avenue in Las Vegas. The property, known as the Rainbow Design Mart (Design Mart) fronts Rainbow Boulevard midway between Charleston Boulevard to its north and Oakey Boulevard to its south. The Design Mart is currently leased by a number of retailers who operate interior design and decorating businesses. Mr. Woodbury is not involved in the management of the leases nor does he have knowledge of the lease terms.
4. Prior to his election to the Board, Mr. Woodbury owned additional real estate in Clark County. Upon his election to public office, Mr. Woodbury divested himself of most of such property and has not purchased any additional property since that time.
5. The City of Las Vegas (City) has jurisdiction and responsibility over street widening projects in the City. The Regional Transportation Commission (RTC) funds street widening projects, except for the construction of curbs, gutters, sidewalks, and streetlights. The City determined to widen Oakey Boulevard, an east-west arterial highway in the City, for the approximately two miles of that thoroughfare between Rainbow and Decatur Boulevards. Mr. Richard Goecke was the City administrator responsible for the Oakey widening project. Because a small segment of Oakey ran through property within Clark County's (County) jurisdiction, the City requested the County to form a special improvement district (SID) to fund the curbs, gutter, sidewalks, and streetlights in the County's segment.

6. An SID is created by a resolution adopted by the governing public body, such as the Board. NRS 318.055(1)(a). The SID's organization must be through the adoption of an ordinance by the Board. NRS 318.055(2). The basic powers which may be granted to an SID include furnishing curbs, gutters, and sidewalks (NRS 318.125 and 318.130) and streetlights (NRS 318.141). NRS 318.116. The expenses of making these public improvements may be made through special assessments upon properties abutting improvements. NRS 318.350.

7. The total cost of the Oakey widening project was \$6 million to \$7 million. Of this amount, approximately \$320,000.00 would be paid by a County SID for the County's segment of the project.

8. In addition to the County's providing statutory notice (NRS 318.060), neighboring residents were informed of the County's proposed formation of an SID by Mr. Haynes, who had made a door-to-door canvass of the neighborhood to distribute pamphlets publicizing anticipated formation of the SID.

9. The Board is not authorized to proceed with the creation of the Sill if 51 % of the affected property owners in the proposed Sill protest its formation. Even in the event that 51% of the owners of property within the proposed Sill protest the creation of the Sill, the installation of curbs, gutters, sidewalks, and streetlights may nevertheless proceed where 50% of the total project costs could be obtained through non-Sill funding. General funds of the RTC could and would provide such resources regarding the Oakey widening project.

10. On February 20, 1996, Mr. Woodbury voted in the Board's unanimous decision to approve, adopt, and authorize the resolution creating Special Improvement District No. 93 (Sill 93) without disclosing his interest in the Design Mart. Sill 93 was created to fund the installation of curbs, gutters, sidewalks, and streetlights along the County's segment of the Oakey widening project. The nearest point of Sill 93 to the Design Mart was approximately 1,100 feet, or 3/10 of a mile, southeast of the Design Mart. The street between Sill 93 and the Design Mart is fully developed with commercial properties upon which several dozen businesses operate.

11. Neither Sill 93 nor the Oakey widening project elicited any objection from those residents in the neighboring area. Only two property owners protested the formation of Sill 93. Even had a sufficient number of residents objected to Sill 93, the City would have either (1) widened Oakey without curbs, gutters, sidewalks, and streetlights on the County's segment or (2) widened Oakey with curbs, gutters, sidewalks, and streetlights if 50% of the total project costs could be obtained through funding by the RTC.

OPINION

The Commission has jurisdiction over this matter pursuant to the provisions of NRS 281.511(2).

The issue in this opinion is whether, under NRS 281.501(2) and (3), Mr. Woodbury had a pecuniary interest that required him to disclose or abstain from voting to approve County's creation of Sill 93 in light of Sill 93's proximity to the Design Mart.

The first question we must resolve in this matter is whether Mr. Woodbury had a pecuniary interest (e.g. his 1/4 interest in the Design Mart) that required disclosure of the nature and extent of that interest pursuant to NRS 281.501(3)^[2] before he voted on the ordinance that created Sill 93. Mr. Haynes contended that Mr. Woodbury had such an interest in Sill 93 because the increased volume of traffic that would be generated along Oakey Boulevard as a result of the completion of the Oakey widening project would benefit the Design Mart, and thus Mr. Woodbury, through increased consumer traffic that would allow an eventual increase in the market value of the Design Mart property and its leases.

We conclude that Mr. Woodbury's interest in the Design Mart is not a pecuniary interest that required disclosure before his vote on the creation of Sill 93 because the land in which he had an ownership interest is approximately

1,100 feet from the Oakey widening project of which Sill 93 was a small part. Similarly, we conclude that Mr. Woodbury's commitment to the interests of his investment partners of the Design Mart also did not require disclosure for the same reason. Where the County's segment of the Oakey project (and thus Mr. Woodbury's official involvement) was small compared to the overall project and in light of the City's determination to complete the Oakey widening project **regardless** of the County's or Sill 93's participation, we cannot conclude that Mr. Woodbury's vote upon the ordinance that created Sill 93 was unreasonable.

We feel we need to briefly contrast our decision in this matter with our recent decision in the *Matter of the Opinion Requests Regarding Larry Scheffler* (Opinion Nos. [95-21](#), [95-23](#) & [95-37](#)). The extent to which a public officer has a pecuniary interest that must be disclosed before a given vote must be measured by the vote's impact upon the individual public official. Whether such an interest exists is always a factual question governed by the circumstances of each case. In *Scheffler*, we found that Mr. Schemer's voting on certain land use issues resulted in a direct or foreseeable increase in the value and usefulness of properties in which he held an interest by increasing the marketability of adjacent properties or by increasing the services to his own properties. While the proximity of Mr. Scheffler's properties to those upon which he voted was an important factor, as we explained in *Scheffler*, it was also important to examine the **effect** of the votes as an additional factor. Consequently, we expressly declined to state a mechanical "proximity rule" because such an approach could never adequately address all the pertinent factors that would arise in subsequent cases.

In contrast to the *Scheffler* decision, in this matter no substantial evidence was presented to show that the Design Mart and its tenants would appreciably benefit from the widening of Oakey Boulevard. While the benefits to Mr. Scheffler regarding his votes in the *Scheffler* matter were either directly evident or were reasonably foreseeable, in this matter there is no direct benefit and we cannot find any indirect or reasonably foreseeable benefit resultant to the Design Mart by Mr. Woodbury's vote to create Sill 93. In fact, as has already been pointed out, the Oakey widening project was going forward with or without Sill 93. Sill 93 did nothing more than create a funding mechanism for incidental improvements to the County's small segment of the larger City project, and any benefit Mr. Woodbury and the Design Mart might have realized from the Oakey widening project would have been realized **regardless** of whether Sill 93 was created. Under such circumstances, we cannot conclude that Mr. Woodbury's vote to create Sill 93 did not require disclosure pursuant to NRS 218.501(3) or our interpretation of that statute in the *Scheffler* decision.

For the same reasons, we conclude that Mr. Woodbury's interest in the Design Mart did not require him to abstain from voting on the ordinance that created Sill 93. NRS 281.501(2) requires a public officer to abstain from voting only where his pecuniary interest or his commitment in a private capacity to the interests of another would materially affect "the independence of judgment of a reasonable person in his situation. ..." Because Mr. Woodbury's vote could not effect whether the Oakey widening project, but merely whether the County's small segment would have matching incidental improvements that would be on the City's larger portion of the project, we conclude his independence of judgment was not materially affected by his 1/4 interest in the Design Mart or by his partner's similar interests.

CONCLUSION

Mr. Woodbury was not required either to disclose his interest or his partners' interests in the Design Mart pursuant to NRS 281.501(3) or to abstain pursuant to NRS 281.501(2) from voting regarding the ordinance that created Sill 93 that facilitated incidental improvements on the County's segment of the City's Oakey widening project.

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: September 13, 1996.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

[1] 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."

[2] NRS 281.501(3) provides:

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.