

## Opinion No. 97-21

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of JOHN MILTON, Humboldt County Commissioner

This opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Roger Mears and Marla McLean concerning the conduct of Humboldt County Commissioner John Milton. An evidentiary hearing was held by the Commission on June 20, 1997, in Reno, Nevada, at which Mr. Milton and Ms. McLean testified and presented evidence. Humboldt County District Attorney Mike McCormick also testified. Mr. Milton was represented by O. Kent Maher, and Mr. Mears and Ms. McLean were represented by Hal Taylor. On August 6, 1997, Mr. Mears filed supplemental materials with the Commission, claiming that the supplemental materials showed that Mr. Milton had perjured himself in his testimony on June 20, 1997. An additional hearing was held on August 15, 1997. On April 24, 1998, the Commission held a final hearing in this matter to address Mr. Mears' perjury allegations. The Commission now issues the Findings of Fact and Opinion which follow.

#### FINDINGS OF FACT

Because this matter involved a central core of background information and several specific acts by Mr. Milton, we will first discuss the general background facts and then will discuss the specific acts raised by the requesters.

##### **Mr. Milton and Desert Mountain Surveying**

1. At all times relevant to this opinion request, John Milton was and is a public officer as defined in NRS 281.4365 in his capacity as a Humboldt County Commissioner.
2. Mr. Milton was employed by Desert Mountain Surveying (DMS) from April 1976 until July 20, 1983, when he purchased the business from Robert Caldwell. Prior to his employment with DMS, Mr. Milton had worked for the Humboldt County Surveyor.
3. DMS has been in business since 1959. It is the largest surveying firm in the Humboldt County area and has been in business the longest. At some times during its existence, DMS has been the only surveying firm in the area and at other times it has had other competing firms in the area. There are currently four surveying firms that serve the same area as DMS.
4. DMS has the most extensive historical surveying records in the area, both because it has been in business the longest and because at one time it copied all of the county surveyor's records. Mr. Milton does not know how much work DMS receives due to this, and he stated this is something which any surveying firm has the opportunity to do. Ms. McLean stated DMS has a good reputation in the area, but she is not sure if it has a reputation of being better than other surveying firms in the area. She told the Commission that from March 1993 to March 1997, DMS prepared 88% of the parcel maps which were recorded. Mr. Maher estimated that DMS did approximately 70% of the parcel maps for the area, and Mr. Milton estimated the current number is 50%.

## **Procedure for Approval of Applications and Parcel Maps**

5. In Humboldt County, the procedure to obtain approval of a parcel map begins with the submittal of an application and appropriate documentation, including a preliminary map, to the county planning department. The applicant is not required to hire a surveyor to prepare the preliminary map, and many people forego the expense of hiring a surveyor to prepare one. However, if a surveyor prepares a preliminary map, it must be stamped by the surveyor.
6. The Humboldt County Planning Commission holds a hearing on each application and makes recommendations regarding approval or disapproval of the application and conditions that might be appropriate for the application.
7. After the application has been heard by and recommendations have been made by the Planning Commission, the application is heard by the Humboldt County Commission. The county commissioners are provided with a staff report from the planning director, recommendations from the planning commission, and a copy of the planning commission minutes, any maps submitted with the application, and any correspondence or referrals from the fire department or other agencies. The county commissioners are not provided with a copy of the application. The county commissioners can add additional conditions at the meeting and either approve or deny the application. If the application is approved, a final map is prepared. By law, the final map must be produced, stamped, and signed by a professional land surveyor.
8. Mr. Milton was elected to the Humboldt County Commission in November 1992 and took office in January 1993. He was re-elected to the commission in 1996. At the time he was elected, he anticipated he would have a conflict with anything submitted by DMS and made it his policy to abstain on those matters.

### **BC&D Enterprises (Map #1-636)**

9. On March 4, 1993, the County Commission considered a parcel map application submitted by DMS on behalf of BC&D Enterprises. Mr. Milton testified that although he did not recall personally preparing the preliminary map for BC&D, he abstained from the matter due to his employment with DMS. He did not disclose his reasons for abstaining at that time because he was not aware that detailed disclosures were required. The minutes of the meeting reflect the application was denied; however, according to Mr. Milton, the minutes were in error. Mr. Milton explained that there had been a tie vote on the matter which meant that the application was deemed approved. BC&D did not proceed with the project at that time.
10. BC&D subsequently resubmitted its application to subdivide the property using the same documentation it used in March of 1993. The county commissioners considered and approved the new application by unanimous vote on April 18, 1994. The minutes of the meeting state, "Chairman Milton noted he does do work for BC&D Enterprises, however, is not engaged to do this particular parcel map." Mr. Milton told the Commission he voted on the matter at that time because he did not believe he had a conflict since DMS did not submit that application.
11. DMS surveyed the property in July 1994 and recorded the final map for BC&D on December 23, 1994.

### **Trowbridge/LDS Church/Brinkerhoff (Map #1-581)**

12. George Trowbridge, A.I.A., submitted a parcel map application to the planning commission on November 10, 1993 on behalf of a local church. The parcel map checklist submitted with the application indicated John Milton would be preparing the map before December 9, 1993.

13. The county commissioners voted unanimously to approve the application on December 20, 1993. Mr. Milton had not been retained by the applicants at that time. In fact, his records indicate DMS' first contact with the applicants was the day after they obtained approval from the county commissioners. Because the county commissioners did not receive copies of the applications when they considered the application for approval, Mr. Milton had no knowledge Mr. Trowbridge had made statements on the application that DMS would be surveying the property.

14. DMS surveyed the property in January 1994 and recorded the final map for the church on January 24, 1994.

**Richard Brown (Map ##1-658,1-659,1-747,1-748,1-752,  
1-787,1-846,1-847,1-848,1-851,1-852,1-855,  
1-856, 1-857, 1-859, 1-860, 1-861)**

15. Mr. Milton has done a considerable amount of work for Mr. Brown. The evidence showed a series of seventeen maps that had been submitted with three applications. Through these successive applications, Mr. Brown effected a development scheme of subdividing and re-subdividing his property into increasingly smaller lots. DMS surveyed and then prepared the final maps. Mr. Milton participated in and voted upon each of the applications submitted by Mr. Brown at the September 19, 1994, February 5, 1996 and June 3, 1996 meetings of the County Commission.

16. Mr. Milton testified that whenever he had ongoing projects for people such as Mr. Brown, he discussed the matter with the district attorney off-the-record prior to the meeting and sought his advice. If Mr. McCormick advised him to abstain on a matter, he did so. District Attorney Mike McCormick concurred that he has advised Mr. Milton on these matters. Mr. McCormick advised Mr. Milton that he could participate in and vote upon these matters because DMS, at the time of Mr. Milton's vote, did not have a contract to do the surveying of the next set of subdivided lots. In all cases, DMS got the surveying contract after Mr. Milton's participation in and vote upon Mr. Brown's applications. Mr. McCormick offered to the Commission to take responsibility for his advice.

**James Delaney (Map ##1-644,1-645,1-717,1-718,  
1-742,1-759,1-760,1-765)**

17. On January 3, 1995, the county commissioners voted unanimously to approve Mr. Delaney's application to divide a parcel of property into four lots (Map #1-717). DMS surveyed the property in January 1995 and recorded the final map on January 23, 1996.

18. On February 21, 1995, the county commissioners considered Mr. Delaney's application to divide a parcel of property into three lots (Map #1-718). This parcel was contiguous to the parcel Mr. Delaney received approval to subdivide in January 1995. The minutes of the meeting reflect the application was approved, with Mr. Milton abstaining "due to a possible conflict of interest." Mr. Milton said he abstained on this application because he wasn't sure who he was working for with regard to the property – Mr. Beavers, Mr. Delaney, or Mr. Kearns. He explained at our hearing that Mr. Delaney and Mr. Kearns had been transferring property back and forth between

them and he thought Mr. Delaney had begun using "straw men" to get around the more stringent requirements the county places on new subdivisions of property. DMS had an ongoing relationship with both Mr. Delaney and Mr. Kearns at that time. DMS surveyed the property subject of this application in April 1995 and recorded the final map on January 23, 1996.

19. On November 6, 1995, the county commissioners approved another application by Mr. Delaney to subdivide a parcel of property into three lots (Map #1-742). The minutes reflect Mr. Milton abstained "due to a possible conflict of interest." Mr. Milton told the Commission he abstained for the same reasons he abstained on the application involving Map #1- 718. DMS surveyed the property in March 1996 and recorded the final map on March 18, 1996.

20. On March 18, 1996, the county commissioners unanimously approved Debra Mayhew's application to divide a parcel of property into two lots. DMS was first retained by Ms. Mayhew on March 21, 1996. When Mr. Milton researched the property, he discovered Ms. Mayhew had purchased this property from Mr. Delaney under a contract of sale; therefore, Mr. Delaney remained the owner of record. DMS surveyed the property in April 1996 and recorded the final map on May 10, 1996.

21. On April 1, 1996, the county commissioners unanimously approved Mr. Delaney's applications to further subdivide two parcels of his property (Map ##1-759 & 1-760). Mr. Milton told the Commission he voted on those applications because he did not believe he was doing any work for Mr. Delaney then. DMS surveyed those properties subject of this application in April 1996 and recorded the final maps for both on April 23, 1996.

22. Mr. Milton testified he stopped doing work for Mr. Delaney in April 1996, and has abstained on all of Mr. Delaney's matters since that time.

#### **James Paullo (Map ##1-576 & 1-637)**

23. Mr. Paullo stated in an undated letter to the Regional Planning Commission, apparently submitted with his parcel map application to divide his property into two parcels, that "Desert Mountain will be doing the parcel map." The county commissioners voted unanimously to approve the application (Map #1-576) on August 24, 1993. DMS surveyed the property in September 1993 and recorded the final map for Mr. Paullo on November 30, 1993.

24. On October 17, 1994, the county commissioners considered and unanimously approved Mr. Paullo's application to further subdivide his property into four parcels (Map #1-637). Mr. Milton testified he participated in and voted on this matter because he did not perceive a conflict, as it was his belief Mr. Paullo would not hire DMS to prepare the final map since Mr. Paullo had never paid DMS for their work on his previous map. Mr. Paullo did, however, hire DMS, which surveyed the property in October 1994 and recorded the final map on January 17, 1995.

#### **Frank Sanchez (Map #1-866)**

25. Mr. Milton testified DMS had done a survey on Mr. Sanchez's property for the previous owner of the property, a man who lived in Georgia whose name he could not recall. There were boundary problems with the right-of-way and surveyor's monuments. The owner for whom DMS had done the previous survey work subsequently sold the

property to Mr. Sanchez.

26. Mr. Sanchez submitted an application to divide the property into two parcels. The county commissioners considered and unanimously approved the application on October 21, 1996. Mr. Milton testified he participated in and voted on this matter because he had no relationship with Mr. Sanchez at the time.

### **ANALYSIS AND OPINION**

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2). In each of the six factual scenarios discussed above, Mr. Milton participated in the matters as a county commissioner and ultimately as the owner of DMS. At issue in this matter are NRS 281.481(2) and 281.501(2) and (3).<sup>[1]</sup> We conclude that in three of the scenarios, Mr. Milton violated NRS 281.501(2) and NRS 281.481(2), but that in the other scenarios Mr. Milton did not violate NRS 281.501(2) and NRS 281.481(2).

#### **The Factual Scenarios Resulting in Violations**

We have held previously that NRS 281.421 provides the "guiding light" for our interpretation of the Ethics in Government Law. See Matter of Bob No/en, NCOE Opinion 96-39, at 9. NRS 281.421(1) provides:

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.

In keeping with NRS 281.421, we interpret NRS 281.481(2) to prohibit, in part, "self-dealing," that is the use of one's public office to benefit one's personal business. Similarly, NRS 281.501(2) specifically prohibits a public officer from voting on a matter in which a reasonable person's independence of judgment would be materially affected by "his pecuniary interest," which pecuniary interest includes the public officer's business, especially where it is his source of income.

Mr. Milton's conduct in three of the factual scenarios (Paullo, Brown, and Delaney) resulted in violations of NRS 281.481(2) and 281.501(2). Common to these three scenarios are these facts: (1) DMS had done work for the clients at some time before the applications were considered by the county commission; (2) DMS did work for the clients after the applications were approved; and (3) DMS had a reasonable expectation of continued employment by that client for future work and applications at the time Mr. Milton voted upon the clients' matters.

At hearing, Mr. Milton conceded that NRS 281.501(2) and (3) required that he disclose and abstain regarding any application which was prepared by DMS or on which DMS had performed work as part of the application. We agree. For any such application, it is clear that DMS' financial gain, and thereby Mr. Milton's personal pecuniary interest, would be directly affected by his vote, since DMS would be the surveyor for the final map only if the application passed. To this extent, we also endorse the District Attorney's advice, since Mr. McCormick had advised Mr. Milton that for any application in which DMS had an existing contract Mr. Milton would be required to disclose his interest and abstain from voting.

Where we differ from Mr. Milton and Mr. McCormick is on the effect of Mr. Milton's reasonable expectation that DMS would obtain future work after a given application was approved. DMS did original surveying work for Messrs. Paulo, Brown, and Delaney, and in some cases the surveying was extensive because of the odd shape of the parcels. Then in each case, the owners subdivided their property using the map already drawn by DMS, and in the cases of Messrs. Brown and Delaney, the owners subdivided their property numerous times at several different meetings. Though DMS' contracts apparently ended with each piece of surveying work, DMS received each of the subsequent surveying contracts as the owners continued to subdivide their properties.

We are convinced that DMS and Mr. Milton had a reasonable expectation for continued work that created a personal pecuniary interest for Mr. Milton sufficient to trigger NRS 281.481(2) and 281.501(2). Where the original survey work was involved and where a clear course of subdivision was evident, we must say that Mr. Milton and DMS had every reason to believe that they would be the surveyor throughout the continuance of the project. We cannot draw the line where Mr. Milton and Mr. McCormick did, namely that Mr. Milton did not have a pecuniary interest until DMS actually had a contract to perform surveying services. Such an interpretation of the language of NRS 281.481(2) and 281.501(2) is reasonable, but could result in an elevation of form over substance by allowing an unscrupulous public officer to agree with his client that no actual contract would be signed until after his vote, thus allowing the public officer to vote with impunity upon matters directly and actually affecting his personal pecuniary interest.

We must draw a different line, namely that where a public officer has a reasonable expectation of continued or future work for a client that would directly affect the public officer's personal pecuniary interest, then the public officer must disclose and abstain regarding that matter under NRS 281.481(2) and 281.501(2). The reasonable expectation may arise from a past course of dealings, a foreseeable future course of dealings, special expertise or work already performed, and the number of available competitive options for the use of the public officer's services. In this case, all of these factors were present in differing amounts for each of the scenarios involving Messrs. Paulo, Brown, and Delaney. In each of these three scenarios, DMS and Mr. Milton had reason to believe that they would be the surveyor on future work because the initial surveying was complex and involved, the future course of subdividing conduct was evident and predictable, and DMS was one of only a few competitors (and perhaps the only realistic option under the circumstances) able to provide the surveying needs of the three clients involved.

We must also comment on two instances that arose during our hearing. First, regarding Mr. Paulo's second application, Mr. Milton explained that he did not think that he would be contacted to serve as the surveyor on Mr. Paulo's second application because Mr. Paulo had not paid DMS for its work on his first application. We must point out that NRS 281.481(2) and 281.501(2) are intended to prevent a public officer from affecting the interests of another, whether the effect would be positive or **negative**. It is equally violative of the Ethics in Government Law to participate in and vote upon a matter because one may do harm to another as it is to do good to another. Where DMS' and Mr. Milton's pecuniary interests relating to Mr. Paulo may have been negative as a result of Mr. Paulo's failure to pay DMS for previous services rendered, Mr. Milton should have disclosed his negative relationship with Mr. Paulo and should have abstained from voting in his second application.

Second, regarding Mr. Delaney, Mr. Milton expressed some concern that arose during DMS' and his course of transactions with Mr. Delaney that Mr. Delaney might have been misusing the County's processes to avoid the effect of certain ordinances. Our concern is twofold: (1) Mr. Milton and DMS continued to serve Mr. Delaney, even after Mr. Milton's suspicions were roused, and (2) Mr. Milton never informed his fellow county commissioners of

his concerns regarding Mr. Delaney. Mr. Milton's harboring of potentially important public policy and legal concerns regarding Mr. Delaney appears troubling.

The evidence showed that Mr. Milton may be a victim of his own success. DMS has been the only constant provider of surveying in its region since 1959. DMS has a unique core of records that give DMS a distinct competitive advantage. The market within which DMS operates is not large enough to sustain many competitors. At many times, DMS is the only surveying business in the region. Under Mr. Milton's ownership, DMS has expanded its practice successfully into other counties. Consequently, DMS performs most of the surveying work in the region (estimates ranged from 70% to 88% in Humboldt County) and always had, both before and after Mr. Milton became a county commissioner. It may just be a fact of life that Mr. Milton's reasonable expectation of future work as we have defined it herein makes him less effective as a county commissioner than he would otherwise be if he were in a different profession. Unfortunately, we cannot change our conclusion or bend the law away from the reality created by Mr. Milton's circumstances.

As a final matter, we commend Mr. Milton for attempting to alleviate the conflicts inherent in his dual roles as surveyor and county commissioner by implementing his contact book system. Properly implemented, this system should provide Mr. Milton with the information necessary to allow him to anticipate and avoid potential conflicts of interest in the future.

### **The Factual Scenarios Not Resulting in Violations**

In the three remaining factual scenarios (BC&D, Trowbridge, and Sanchez), we cannot find that Mr. Milton violated NRS 281.481(2) and 281.501(2) by participating in the votes of these matters. Because each of these matters has different facts, each will be discussed separately.

Regarding the BC&D matter, the evidence showed that DMS had prepared BC&D's original application in March 1993 and that Mr. Milton disclosed that DMS was assisting the applicant and abstained from voting in the matter. For some reason, BC&D submitted a second application in April 1994. Though the map submitted by BC&D for the second application was a copy of DMS' map for the first application, Mr. Milton did not recognize the map as DMS' and DMS did not have any contract or relationship with BC&D at the time of the second application. Under these circumstances, we cannot find that DMS and Mr. Milton had a reasonable expectation for future work from BC&D at the time that Mr. Milton voted upon BC&D's second application. Over a year had passed between the two applications during which time BC&D had not contacted DMS. We believe Mr. Milton's claim that he did not recognize DMS' map as presented in BC&D's second application because he had not personally been involved in BC&D's earlier application and had no personal knowledge of its contents.

Regarding the Trowbridge matter, we cannot hold against Mr. Milton the applicant's intentions where Mr. Milton was unaware of them. The evidence showed that the applicant indicated on its application that it intended to use DMS as its surveyor, but the county commissioners did not receive or see the application. Thus, Mr. Milton had no way of knowing the applicant's intention to hire DMS as its surveyor until **after** Mr. Milton had voted to approve the matter, and only then when the applicant went through with its intentions and retained DMS as its surveyor. Under these circumstances, Mr. Milton's vote on the applicant's application could not be seen as an attempt to better his personal pecuniary interest.

Finally, regarding Mr. Sanchez' application, the evidence showed that DMS' relationship was with Mr. Sanchez'

predecessor in title, and that DMS' last work for that predecessor in title was years before Mr. Milton's vote on Mr. Sanchez' application. NRS 281.481(2) AND 281.501(2) do not prohibit Mr. Milton from participating in a matter when DMS could theoretically be chosen as one of several available surveyors. DMS had no relationship with Mr. Sanchez' prior to Mr. Milton's vote. Thus, the distinction between this instance and the three scenarios in which we found a violation should be plain: in the three violative scenarios, DMS had a preexisting relationship that would reasonable and foreseeably continue into future work, whereas in Mr. Sanchez' matter Mr. Milton had no reason to believe that Mr. Sanchez' would enter into a relationship with DMS any more than that Mr. Sanchez might chose one of DMS' competitors. The bare fact that Mr. Sanchez later chose DMS to be his surveyor after the county commission approved his application is insufficient for us to find that Mr. Milton violated NRS 281.481(2) or NRS 281.501(2).

### Inadequate Disclosure

At our hearing, Mr. Milton revealed that prior to receiving the request for opinion in this matter, his disclosures, when he made them, were simply of the form, "I must disclose that I have a conflict of interest regarding this matter, so I will be abstaining." Such a disclosure is inadequate under NRS 281.501(3).

NRS 281.501(3) provides that a public officer shall not abstain from any matter in which he has a disqualifying interest "without disclosing the **full nature and extent**" of the disqualifying interest. The disclosure must be made at the time that the matter is considered, in public, and to the chairman and members of the body on which he serves. NRS 281.501(3). In *Matter of William Curran*, NCOE Opinion [96-25](#), we described the scope of the disclosure required under NRS 281.501(3) as follows:

The Legislature has mandated **full** disclosure, not disclosure of as much as possible under the circumstances (as Mr. Curran would have it). The duty of NRS 281.501(3) is absolute, and substantial compliance will not satisfy the duty. The salutary public policy behind the full disclosure requirement is that a public officer, when declining to exercise his public function, should reveal publicly precisely why he is unable to perform his public function. (Emphasis in original.)

Similarly, in *Matter of Jay Bingham*, NCOE Opinion [96-72](#), we held that "there should be no mystery as to why an elected officer is failing to participate in a matter before him."

In this matter, Mr. Milton's disclosures were insufficient because he failed to identify the "full nature and extent" of the interest that was requiring his abstention. As a result of this hearing, we now know that the interest in most cases was that DMS and Mr. Milton had an existing business relationship with the applicant that would be directly affected by the outcome of the vote upon the applicant's application by the County Commission. Had Mr. Milton made a disclosure similar to the previous sentence, he would have satisfied NRS 281.501(3). Mr. Milton acknowledged that his disclosures were not so detailed, so we must conclude that his disclosures violated NRS 281.481(3).

As a final matter regarding this issue, Mr. Milton explained that the minutes of the meetings of the county commissioners were not verbatim. Mr. Milton explained that when a commissioner abstained on a matter during a meeting, regardless of what the commissioner actually said, it is the custom of the secretary to state in the minutes that the commissioner "abstained due to a possible conflict of interest." In view of the advice and findings

just made, and in view of the importance bodies such as this Commission must give to such minutes years after the actual disclosures were made, we would suggest that the secretary for the County Commission transcribe all future disclosures verbatim in the minutes so that should questions arise regarding the sufficiency of a disclosure arise in the future, both the public officer and this Commission will have an accurate record to review.

### **The Question of Willfulness of Mr. Milton's Violations**

We cannot conclude that any of Mr. Milton's violations were willful. Regarding his violations of his duty to abstain from participation in the matters discussed above, the evidence showed that Mr. Milton sought the advice of his legal counsel and that he always acted in accord with this advice. Mr. Milton could have been more careful and more conscious of the appearance his votes may have had on the public observing the meetings. Nonetheless, we are not convinced that Mr. Milton's votes were tainted by his or his clients' interests.

Regarding Mr. Milton's insufficient disclosures, unfortunately Mr. Milton suffered the same sorry ignorance of the scope of disclosure mandated by NRS 281.501(3) as we have seen time and again in similar previous matters. While ignorance of the law is no excuse for its violation, it may and in this case did make Mr. Milton's violations of the law unwilling. We are ever hopeful that through opinions such as this one that public officials will study and learn their obligations under the Ethics in Government law and that we will not see future violations of NRS 281.501(3).

### **The Allegations of Perjury**

On August 6, 1997, Mr. Mears presented documents to the Commission that Mr. Mears claimed would "show that John Milton perjured himself at the hearing 1) He said he didn't see this in his packet 2) This was in his packet." The documents were based upon two one-line, unsworn statements by Joyce Lacaillade, Senior Administrative Clerk for Humboldt County, that purported that certain documents were contained in the Humboldt County Commission's packets on August 24, 1993 and December 20, 1993. Mr. Milton had testified these documents were not in those packets. Mr. Mears' and Ms. McLean's intent in raising these documents was that Mr. Milton perjured himself when he stated that these documents were not in the county commissioners' packets at the times of those votes and, furthermore, that Mr. Milton would have known of DMS' involvement in the Trowbridge and Paullo projects at the time he voted on those projects.

Because the new information presented by Mr. Mears, if it were true, would affect Mr. Milton's credibility and would affect this Commission's analysis of the Trowbridge and Paullo matters, the Commission held a hearing on April 24, 1998 to review Mr. Mears' new evidence. At the April 24, 1998 hearing, Mr. Milton testified and presented the testimony of Shawna Del Soldata, Carrie Hawkins, and Mr. McCormick. Ms. Del Soldata was the clerical staff for the county commissioners in 1993, and one of her job duties in 1993 was the assembly of the commissioners' packets for the meetings. Ms. Hawkins was the chief administrative officer for the county in 1993, and as such, she was also aware of the materials that were routinely included in the commissioners' meeting packets. Mr. McCormick testified that he received the same packets as the commissioners.

The gist of Mr. Milton's presentation on April 24, 1998 was unequivocal: the materials that Ms. Lacaillade claimed were in the commissioners' packets were not in the commissioners' packets and that the same types of materials were never included in commissioners' packets. In other words, Ms. Lacaillade was mistaken. Since we find Mr. Milton, Ms. Del Soldata, Ms. Hawkins, and Mr. McCormick to have testified credibly regarding this issue, and since Mr. Mears and Ms. McLean only had Ms. Lacaillade's unsworn, single-sentence statements to support their

allegations, we must conclude that Ms. Lacaillade was mistaken.

We are greatly concerned by the allegations of perjury made by Mr. Mears and Ms. McLean against Mr. Milton because the evidence adduced at the April 24, 1998 hearing --which clearly showed that certain materials were not included in the commissioners' packets --was readily available to Mr. Mears and Ms. McLean before Mr. Mears filed his allegation of perjury. We find Mr. Mears' and Ms. McLean's "investigation" of the facts underlying their allegation of perjury to have been irresponsible and intentionally indifferent to potentially exculpatory evidence. The evidence at the June 24, 1998 hearing showed that once Mr. Mears and Ms. McLean got the answer they wanted from Ms. Lacaillade, they did not check with anybody else to verify whether Ms. Lacaillade was telling the truth. At the June 24, 1998, Mr. Mears and Ms. McLean showed a recklessness and contempt for this Commission that was intolerable and unjustifiable.

If we could penalize Mr. Mears and Ms. McLean for their misuse of this Commission's processes, we would. Unfortunately, no provision of the Ethics in Government law as it was in effect at the time that Mr. Mears and Ms. McLean filed their allegation of perjury would allow this Commission to penalize Mr. Mears and Ms. McLean as they deserve. We must be satisfied with the rebuke in this opinion.

### **CONCLUSION**

Based upon the record, the Commission concludes that Mr. Milton violated NRS 281.501(2) and 281.481(2) by voting in favor of applications presented by Messrs. Paullo, Brown, and Delaney since Mr. Milton, through DMS, had actual ongoing business interests or a reasonable expectation of future such business interests that would be directly affected by the outcome of a vote of the County Commission on which Mr. Milton served. We conclude that Mr. Milton did not violate NRS 281.501(2) and NRS 281.481(2) by voting upon the applications of BC&D, Mr. Trowbridge, and Mr. Sanchez because neither Mr. Milton nor DMS had an ongoing business interest or reasonable expectation of future such interests with these applicants at the time that he voted upon their applications.

We also conclude that Mr. Milton did violate NRS 281.501(3) by making insufficient disclosures of the interests, usually his and DMS's business interests with their clients, that required that he abstain from voting on and participating in an application.

Finally, we conclude that none of Mr. Milton's violations were willful, and thus we impose no sanctions as a result of his violations.

### **COMMENT**

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

DATED: October 16, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

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[1] NRS 281.481(2) and 281.501(2) and (3) provide in pertinent part as follows:

**281.481(2).** A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

**281.501(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.

**281.501(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...