

## Opinion No. 97-29

### BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion concerning the conduct of  
IRIS BLETSCH, former Member, Boulder City Council;  
ROBERT FERRARO, Member, Boulder City Council; and  
ERIC LUNDGAARD, former Mayor, Boulder City**

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Hamilton D. Moore concerning the conduct of former Boulder City Councilwoman Iris Bletsch, Boulder City Councilman Robert Ferraro, and former Boulder City Mayor Eric Lundgaard. A public hearing was held by the Commission on November 14, 1997, in Las Vegas, Nevada. Mr. Moore, Ms. Bletsch, and Mr. Ferraro testified and presented evidence. Ms. Bletsch and Mr. Ferraro were represented by Boulder City Attorney Bill Andrews. The Commission also took testimony from Joseph Brown, who represented El Dorado Energy, and Kay Scherer of R&R Advertising. Although Mr. Lundgaard was named in the opinion request, the ethical violations he was accused of in the request did not concern the matter before the Commission at the November 14 hearing as they had been considered and decided previously with another opinion request which alleged identical violations against Mr. Lundgaard. At the conclusion of the hearing the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings of Fact and Opinion which follows.

#### FINDINGS OF FACT

1. At all times relevant to this opinion request, Ms. Bletsch and Mr. Ferraro were members of the Boulder City Council. Ms. Bletsch did not seek re-election to the Council in 1997.
2. El Dorado Energy, LLC (El Dorado Energy) is a limited liability company which has negotiated a lease with Boulder City to build a natural gas power plant in the El Dorado Valley area near Boulder City.
3. Ms. Bletsch owns 100 shares of common stock in Enova Corporation (Enova). She did not purchase the stock directly. Ms. Bletsch owned stock in San Diego Gas & Electric, which merged with Enova on January 2, 1996, and she received the Enova stock as a result of that merger. The total number of shares issued by Enova is 116,610,000. Ms. Bletsch receives \$78 in dividends from her stock each quarter.
4. R&R Advertising (R&R) is an advertising firm which represents El Dorado Energy. The El Dorado Energy account was handled by the Las Vegas office of R&R, and the work R&R performed for El Dorado Energy was overseen by Kay Scherer. The work R&R has done for El Dorado Energy on the power plant was research, public information, and presentation preparation.
5. Mr. Ferraro's son, Greg, is employed as a lobbyist for R&R in its Reno office. According to Ms. Scherer, Greg Ferraro had no dealings with the El Dorado Energy account.
6. Ms. Bletsch and Mr. Ferraro voted in the Council's decision to approve the lease on April 22, 1997. Ms. Bletsch and Mr. Ferraro had been advised by Boulder City Attorney Bill Andrews that they were not required to abstain from the vote. At the time of the vote, Ms. Bletsch disclosed that she owned stock in Enova, but did not disclose the exact amount. Mr. Ferraro did not disclose his son's employment with R&R Advertising.

#### ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2). At all times relevant to this opinion request, Ms. Bletsch and Mr. Ferraro were public officers as defined in NRS 281.4365 as members of the Boulder City Council.

This opinion request presents three questions: (1) whether Ms. Bletsch's disclosure prior to her voting on the lease to El Dorado Energy to build the power plant was adequate under NRS 281.501(3); (2) whether Mr. Ferraro was required by NRS 281.501(3) to disclose his son's employment with R&R Advertising prior to voting on the matter; and (3) whether Ms. Bletsch's stock ownership in Enova and Mr. Ferraro's son's employment with R&R were interests sufficient to require them to abstain from voting on the matter, pursuant to NRS 281.501(2). These issues will be discussed individually.

### **Ms. Bletsch's Disclosure on April 22, 1997**

The record at hearing showed that Ms. Bletsch made a disclosure regarding her Enova stock. The testimony differed only concerning Ms. Bletsch's the wording of Ms. Bletsch's disclosure. Mr. Moore testified that he had reviewed the audio tape of the April 22, 1997 City Council Meeting, and that Ms. Bletsch made the following disclosure:

...I do have stock in Enova. I got stock in Enova because I owned, for many years, San Diego Gas & Electric and when they all got together and became Enova, I didn't have any choice; I just rode along....

Mr. Andrews represented that he had viewed a videotape of the April 22, 1997 meeting and that Ms. Bletsch's disclosure was that she owned "a small amount of stock" in Enova. Ms. Bletsch testified that she did not "remember every statement I made earlier."

It is clear that Ms. Bletsch had a "pecuniary interest" under NRS 281.501(3)(c) that required her disclosure. Once the duty of disclosure arose, NRS 281.501 (c) required that Ms. Bletsch disclose the "full nature and extent" of her interest in Enova. While we commend Ms. Bletsch and Mr. Andrews for recognizing Ms. Bletsch's disclosure obligation and for attempting to fulfill that obligation, we must find, unfortunately, that Ms. Bletsch's actual disclosure fell just short of the "full nature and extent" required. The intent of disclosure under NRS 281.501(3) is to ensure that those attending public meetings are fully informed when a public official has any interest in the matter before her and, where indicated, why that public official is not participating in the matter. Therefore, to have been adequate, Ms. Bletsch's disclosure should have included the number of shares she owned in Enova, the approximate value of those shares, and that Enova might become a partial owner of El Dorado Energy.

Ms. Bletsch testified that she did not know how much stock she owned at the time she made the vote. That may be, but we cannot condone ignorance of an easily ascertainable fact to become a defense, particularly where that fact ought to have been important to Ms. Bletsch herself. It is fair to expect public officials to be cognizant of their own affairs and to be vigilant to separate those private affairs from their public duties. Unfortunately, we must conclude that Ms. Bletsch violated NRS 281.501(3) because her disclosure regarding her Enova stock was not sufficiently detailed. However, because Ms. Bletsch recognized her obligation and in good faith attempted to fulfill her obligation, we find that her violation was in no way willful.

### **Ms. Bletsch's Vote on April 22, 1997**

NRS 281.501(2) requires that a public officer "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: ... (b) His pecuniary interest. ..."

Mr. Moore alleged that Ms. Bletsch's vote on the lease to El Dorado Energy was a violation of NRS 281.501(2)

because of her pecuniary interest in Enova. Mr. Moore speculated that if the power plant had received final approval, Ms. Bletsch's stock would have increased in value, thus creating a "pecuniary interest" that should have required Ms. Bletsch to abstain from voting regarding any matter involving the power plant.

To the contrary, Joseph Brown, counsel for El Dorado Energy, explained that although the ownership of El Dorado Energy had originally been contemplated as being divided between Houston Industries, the Natural Gas Clearinghouse, and Enova, which was the case at the commencement of negotiations with Boulder City and at the time of the April 22, 1997 vote, Enova and the Natural Gas Clearinghouse had recently declined to take part in ownership of the company. Therefore, at the present time, the sole owner of El Dorado Energy is Houston Industries. As to how Ms. Bletsch's stock in Enova would have been affected by installation of the power plant if Enova had been an owner of El Dorado Energy at that time, it was Mr. Brown's opinion that Ms. Bletsch would have seen no substantial increase in her interest because it was such a small portion of Enova's holdings.

Aside from Mr. Moore's and Mr. Brown's contradictory speculations regarding the effect Enova's participation in the power plant would have had on the value of Enova's stock, no factual evidence was presented to the Commission which showed how the stock in Enova would actually have been affected by establishment of the power plant had Enova been an owner of El Dorado Energy at that time. On the evidence presented, the Commission cannot find that at the time of the vote on the lease, a reasonable person in Ms. Bletsch's circumstances (e.g. a person holding 100 shares out of over 116 million such shares of a company that had only a fractional interest in a power plant) would have materially affected his or her independence of judgment because the benefit that may have been realized directly by Ms. Bletsch would be highly speculative and subject to the control of many factors beside the Boulder City Council's approval of this particular lease. In so saying, of course, we are not indicating that stock ownership is not a "pecuniary interest" that might require abstention, just that under the unique circumstances of this matter the stock ownership was insufficient. We conclude under the circumstances of this matter that Ms. Bletsch's interest in Enova did not require her to abstain from voting on the lease under NRS 281.501(2).

### **Mr. Ferraro's Vote on April 22, 1997**

Mr. Moore contended that Mr. Ferraro had a "commitment in a private capacity" to the interests of his son, Greg Ferraro that required disclosure of that interest pursuant to NRS 281.501(3) and that required him to abstain from voting on the lease to El Dorado Energy pursuant to NRS 281.501(2). We disagree.

The evidence at hearing showed that Greg Ferraro had no involvement with the El Dorado Energy power plant project, nor did he attempt to contact anyone in the agency regarding that project. Robert Ferraro's vote had no impact upon his son's position with R&R. Greg Ferraro has not and will not receive any remuneration as a result of R&R's representation of El Dorado Energy or the placement of the power plant in the El Dorado Valley. At the time of the vote on the lease to El Dorado Energy, Robert Ferraro was aware that R&R represented El Dorado Energy, but was also aware that his son did not work in the office that handled the El Dorado Energy account and had nothing to do with the project. Finally, Robert Ferraro testified that he never discussed the El Dorado Energy matter with his son.

We conclude that Greg Ferraro's employment with R&R is too attenuated to be considered a "commitment to the interest of others" to trigger either disclosure by Robert Ferraro under NRS 281.501(3) or abstention under NRS 281.501(2) regarding El Dorado Energy matters before the Boulder City Council. Had Greg Ferraro been in Ms. Scherer's position or been assisting Ms. Scherer in performing R&R's servicing of the El Dorado Energy account, then our analysis would likely be different. Under these circumstances, though, Greg Ferraro had no involvement whatsoever in R&R's servicing of the El Dorado Energy account in another office at the opposite end of the state. Robert Ferraro did not violate either NRS 281.501(2) or (3).

### **CONCLUSION**

Based upon the record, the Commission concludes that Ms. Bletsch did not violate NRS 281.501(2) by voting on the lease to El Dorado Energy, although the Commission must conclude that Ms. Bletsch's disclosure prior to voting on the lease was technically deficient and, therefore, constituted a violation of NRS 281.501(3). The Commission finds Ms. Bletsch's violation was unintentional and not willful. Finally, the Commission concludes that Mr. Ferraro was neither required to disclose his son's employment with R&R Advertising nor abstain from voting on the lease to El Dorado Energy.

### **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: May 29, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman