

Opinion No. 97-48

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of JEFF GRIFFIN, Mayor of Reno

This Opinion is in response to a first-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Deputy Reno City Attorney Chan G. Griswold concerning Reno Mayor Jeff Griffin's ability to vote on matters concerning the Economic Development Authority of Western Nevada (EDAWN) and the Airport Authority of Washoe County (Airport Authority). A hearing on the opinion request was held on October 17, 1997, in Reno, Nevada. The Commission heard testimony from Mr. Griswold and Mr. Griffin, as well as from Sam Dehné, a Reno citizen. At the conclusion of the hearing, the Commission deliberated the matter and reached a decision. The Commission now issues the Findings of Fact and Opinion which follows.

FINDINGS OF FACT

1. Mr. Griffin was elected to the office of Mayor of Reno in June 1995. As Mayor, Mr. Griffin is a member of the Reno City Council. In his private capacity, Mr. Griffin is the owner of Nevada Foreign Trade Services (NFTS), which provides international trade services and is the only provider of foreign trade zone services in northern Nevada.
2. EDAWN is a non-profit corporation which is involved in economic development and diversification in the Truckee Meadows area. It has a 30-member Board of Trustees. Washoe County and the cities of Reno and Sparks each have a representative on the Board.
3. The Reno-Tahoe Airport Authority is the governmental body empowered to oversee the affairs of the Reno-Tahoe International Airport. The Airport Authority Board of Trustees consists of eight members, four of whom are appointed by the Reno City Council and serve at the Council's pleasure.
4. In 1986, EDAWN received the necessary federal approvals to establish foreign trade zones. A foreign trade zone is a designated physical location in which imported goods may be stored free of certain duties and taxes until the goods are shipped outside the foreign trade zone. The intent of creating foreign trade zones is to encourage international trade through the favorable advantages that the use of such zones allows.
5. EDAWN contracted with NFTS to operate EDAWN's foreign trade zones. The contract term was ten years, and was renewed for an additional ten years in 1996. NFTS carries EDAWN as an additional insured on its insurance policy; however, no money changes hands between EDAWN and NFTS. Instead, NFTS makes most of its money through fees from companies that use the foreign trade zone and other related services provided by NFTS. NFTS provides a wide variety of services to its client companies depending on each client's particular needs.
6. Reno makes an annual financial grant to EDAWN, presently in the amount of \$35,000, which requires approval by the Reno City Council. This sum is 5% of EDAWN's total budget. Washoe County and Sparks also make annual grants to EDAWN, as does NFTS.
7. In July 1997, the Airport Authority awarded a contract to NFTS to expand the foreign trade zone onto property owned by the Airport Authority. NFTS currently receives approximately \$10,000 a year from its contract with EDAWN; however, this figure will increase by virtue of the expansion contract with the Airport Authority.
8. The Airport Authority Contract was a professional services contract, and as such was not put out to bid. Though companies other than NFTS could have submitted a bid, none did.
9. It is not anticipated that any further action will be required in the future by the Airport Authority on the contract between it and NFTS.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2). Mr. Griffin is a public officer as defined in NRS 281.4365 in his capacity as Mayor.

The Commission was asked by Mr. Griswold to review and advise the Reno City Attorney's Office and Mr. Griffin about two issues: (1) whether Mr. Griffin must abstain from voting on the annual grant to EDawn after disclosure of his company's contract with EDawn; and (2) whether Mr. Griffin must abstain from voting on matters relating to the Airport Authority after disclosing the contract his company has with the Airport Authority.^[1]

The standard which governs when a member of the legislative branch must abstain from voting upon matters before the entity of which he is a member is contained in NRS 281.501(3), which provides in pertinent part:

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. . . [S]uch 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....

It is clear that Mr. Griffin's interests in NFTS and its contracts with EDawn and the Airport Authority are precisely the kinds of pecuniary and personal interests within the contemplation of NRS 281.501 (2). The question, therefore, is whether the independence of judgment of a reasonable person in Mr. Griffin's situation would be materially affected by those interests in NFTS and its contracts with EDawn when the EDawn annual grant or Airport Authority matters are before the Reno City Council. Regarding both EDawn and Airport Authority matters, we conclude that the independence of judgment of a reasonable person in Mr. Griffin's circumstances would be materially affected by those interests, and thus, Mr. Griffin must abstain from participating in such matters.

Regarding the EDawn annual grant from the Reno City Council (apparently the only EDawn matter that comes before the Reno City Council), we believe that a reasonable person would be concerned with the financial soundness of an entity through which that person's primary income is derived. NFTS derives considerable income from its relationship with EDawn to provide foreign trade zone services to NFTS' clients, and the foreign trade zone service can only be provided by NFTS through its contract with EDawn. Reno's annual grant to EDawn, presently about \$35,000, is substantial in terms of dollars and in terms of the percentage that the grant accounts for of EDawn's budget. Under these circumstances, we must conclude that NRS 281.501(2) compels Mr. Griffin to abstain from participating in the vote regarding the annual grant by the Reno City Council to EDawn.

Similarly, we believe that NRS 281.501(2) compels the same conclusion regarding any matter involving the Airport Authority that might come before the Reno City Council. As a result of the contract between NFTS and the Airport Authority whereby some of NFTS's business will actually be operated on Airport Authority property, Mr. Griffin should not vote upon matters that pertain to a relationship that is important to his business. To some extent, the success of the Airport Authority affects the success of NFTS' operation at the airport. Mr. Griffin indicated that NFTS' involvement with the airport would, by its own terms, cease in the near future. Under these circumstances, we must conclude that NRS 281.501(2) compels Mr. Griffin to abstain from participating in any future vote regarding the Airport Authority that may come before the Reno City Council as long as NFTS is involved with the Airport Authority. Once the relationship between NFTS and the Airport Authority ceases, so will Mr. Griffin's obligation to disclose and abstain regarding Airport Authority matters.

CONCLUSION

Based upon the record, the Commission concludes that Mr. Griffin must disclose the full nature and extent of his

company's contract with EDawn prior to any Reno City Council action on its annual grant to EDawn, or any other matter involving EDawn which may come before the Council, and he must also abstain from voting on the matter.

Furthermore, Mr. Griffin must disclose the full nature and extent his company's contract with the Airport Authority whenever the Reno City Council is considering a matter pertaining to the Airport Authority, including appointment of trustees, and he must abstain from voting on those matters as long as there is a potential the Airport Authority could take further action on his company's contract.

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

[\[1\]](#) Because Mr. Griswold and Mr. Griffin have agreed that Mr. Griffin must disclose his ownership of NFTS and its contracts with EDawn and the Airport Authority when EDawn and Airport Authority matters come before the Reno City Council, we will not discuss Mr. Griffin's obligation to disclose these interests as required by NRS 281.501(3). Mr. Griffin must disclose the full nature and extent of his interest in NFTS whenever the EDawn annual grant or the Airport Authority comes before the Reno City Council. Mr. Griffin's disclosures should relate that his company, NFTS, has a contract with the particular entity (EDawn or the Airport Authority) and the details and specific information about the contract, such as the scope or purpose of the contract and, with respect to EDawn, that his company contributes to its budget.