

Abstract of Advisory Opinion No. 98-18

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion of Public Officer

This opinion is in response to a first-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Mr. Abstract concerning his service and conduct as a Municipality Planning Commissioner. A hearing on this matter was held by the Commission on July 23, 1998, at which Mr. Abstract testified and presented evidence. Mr. Abstract has not waived his right to confidentiality for this proceeding, so this opinion has been abstracted pursuant to NRS 281.511 (9). After receiving Mr. Abstract's testimony and evidence, the Commission deliberated the matter and rendered its decision in closed session. The Commission now issues the Findings of Fact and Opinion which follow.

FINDINGS OF FACT

1. Prior to April 1998, Mr. Abstract worked for Prior Planning and Design (PPD). Starting on April 28, 1998, Mr. Abstract began working at Employer (Employer). Also in April 1998, Mr. Abstract applied for a seat on the Municipality Planning Commission.
2. PPD's services included, among other things, planning and design of projects for private developers, and PPD regularly presented these projects to the Municipality Planning Commission. Several projects on which Mr. Abstract had worked while he was employed by PPD could and would appear before Mr. Abstract if he became a Municipality Planning Commissioner.
3. Employer does not do planning or design and does not appear before the Municipality Planning Commission. Employer is a consulting firm that primarily works with public bodies to monitor and oversee large public works projects. Employer has a history of contracting with the city of Municipality as a contract and public works consultant. In fact, at the time of Mr. Abstract's hiring and the Commission's hearing, Employer was on the city of Municipality's on-call list for public works projects. To get on Municipality's on-call list, Employer had to compete with many other firms in a public process. At the time of hearing, Employer was working on a Municipality project.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2) because Mr. Abstract would be a public officer as defined in NRS 281.4365.

The starting point of our analysis is NRS 281.230(1) which provides:

Except as otherwise provided in this section and NRS 218.605, the following persons ***shall not***, in any manner, directly or indirectly, ***receive any*** commission, personal profit or ***compensation of any kind resulting from any contract*** or other transaction in which the employing state, county, municipality, township district or quasi-municipal corporation is ***in any way interested or affected***.

(a) State, county, **municipal**, district and township officers of the State of Nevada. ...
(Emphasis supplied.)

Violation of NRS 281.230 would not only be an ethical violation, but is also criminal, including being a felony where the compensation exceeds \$250. NRS 281.230(5).

Unfortunately, Mr. Abstract come squarely within NRS 281.230(1) because he is an employee of Employer, a company that has a history of contracting with Municipality and presently has contracts with Municipality. The language of NRS 281.230(1) is intentionally broad and sweeping (using the word "any" five times). Because of the broad language of NRS 281.230(1), we must conclude that Mr. Abstract, as a municipal officer of Municipality to which NRS 281.230(1) applies, would receive compensation, directly or indirectly, from Employer's ongoing contracts with Municipality.

The exception to the broad sweep of N AS 281 .230(1) found in N AS 281.230(4) will not help Mr. Abstract in this situation. As Mr. Abstract candidly admitted, the process by which Employer gained its contract with the city of Municipality was highly competitive because there are many firms in the area seeking and capable of performing the types of consulting services Employer provides. Because there are a competitive number of similar firms, Mr. Abstract (as long as he is employed by Employer) could never show that "the sources of supply [of consulting services] are limited" as would be required under NRS 281.230(4) for the exception to apply.

Because Mr. Abstract's service on the Municipality Planning Commission would put him in violation of NRS 281.230(1), we must recommend regretfully that Mr. Abstract resign his employment with Employer or not take a seat as a Municipality Planning Commissioner. NRS 281.230(1) makes no exception for a person such as Mr. Abstract who is uniquely knowledgeable and who would have made a fine public servant. We appreciate and acknowledge Mr. Abstract's conscientiousness as evidenced by his willingness to seek our advice early in his public service, especially where that advice means the end of that public service.

CONCLUSION

Based upon the record, the Commission concludes that NRS 281.230(1) requires that Mr. Abstract either resign his employment with Employer or not take a seat as a Municipality Planning Commissioner.

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 1, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman