

Abstract of Advisory Opinion No. 98-52

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 Ms. Z seeking guidance from the Commission regarding whether there was a conflict between her public service as a Planning Commissioner and her private employment as the Vice President of a non-profit corporation. A confidential hearing was held by the Commission on November 12, 1998, in Reno, Nevada. Ms. Z was represented by her public counsel. The Commission received testimony from Ms. Z. Ms. Z did not waive statutory confidentiality, so the proceeding was not open to the public. The Commission now issues the Findings of Fact and Opinion which follows.

FINDINGS OF FACT

1. In 1998, Ms. Z was appointed to serve as a commissioner on a Planning Commission to serve the remainder of a preceding commissioner's term. Ms. Z intended to seek reappointment in January 1999 when the term she was filling expired at the end of December 1998.
2. At the time of her appointment, Ms. Z was employed as the Vice President of non-profit corporation (NPC). The NPC is a non-profit organization that works to preserve land and water throughout the United States. The NPC locates available land that it deems environmentally sensitive and facilitates the purchase or transfer of the land to public agencies. The arrangements the NPC facilitates often involve land exchanges (whereby environmentally sensitive land is exchanged for other land that is not sensitive) or the purchase of land use restrictions such as conservation easements (whereby a landowner places a permanent land use restriction upon his land so that the land can only be used for agriculture or other undeveloped purposes). The NPC does not purchase or develop the land itself.
3. At the time of the hearing before the Commission, the NPC was involved in a proposal before the federal Bureau of Land Management to dispose of lands in one county in order to use those funds to purchase conservation easements in Ms. Z's county.
4. The only potential nexus between Ms. Z's public duties as a planning commissioner and her private duties on behalf of the NPC might be if the NPC sought or needed action from the Planning Commission such as an amendment to the county master plan, since master plan amendments are first heard by the Planning Commission. Ms. Z explained that if any NPC matter came before the Planning Commission, she would disclose her employment with the NPC and would abstain from participating in or voting upon any such matter.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.465(1)(a) and 281.511(2)(b) because Ms. Z is a public officer as defined in NRS 281.4365.

Ms. Z answered her own primary question when she explained that if a matter involving the NPC came before the Planning Commission she would disclose her employment with the NPC and would abstain from participation or voting in the matter. Ms. Z's understanding of the application of the Ethics in Government Law to her primary question is correct.

In the course of the hearing of this matter, an additional question arose regarding Ms. Z's obligations regarding properties that are contiguous to or may be related to properties in which the NPC is interested. At hearing, her counsel stated that he would advise Ms. Z to disclose her relationship to such affected property through her employment with the NPC and that he would further advise her to abstain from participating in or voting upon such a matter. This advice is correct. *In Matter of Larry Scheffler*, [NCOE Opinion No.95-21, 95-23, and 95-37](#), this Commission opined that a city councilman must disclose his ownership in land and must abstain from participation in or voting upon matters before him as a city councilman not only when the land is his, but whenever the land at issue would affect the value of his land. At issue in that case were several matters upon which Mr. Scheffler voted that involved property contiguous to or nearby his land where the votes would act to significantly increase the value of his land.

The only difference between [Matter of Larry Scheffler](#) and Ms. Z's matter is that the potential votes would not be affecting Ms. Z's personal property but would, instead, be affecting property in which Ms. Z's employer, the NPC, is involved. In *Matter of Richard Stone*, [NCOE Opinion No.96-32](#), this Commission held that a general improvement district trustee willfully violated the Ethics in Government Law when he participated in and voted upon matters related to a lawsuit between his GID and his employer regarding his employer's real property. Therefore, our opinions in [Matter of Larry Scheffler](#) and [Matter of Richard Stone](#) require Ms. Z to disclose her employment with the NPC and to abstain from participating in or voting upon any matter in which the effect on a property before her as a planning commissioner would have a substantial and knowable effect upon a property in which the NPC was involved. Based upon the testimony at hearing, this Commission is satisfied that such circumstances might never arise or would be, in any case, extremely rare.

CONCLUSION

Based upon the record, the Commission concludes that Ms. Z would need to disclose her employment with NPC pursuant to NRS 281.501 (3) and would need to abstain from participating in or voting upon any matter pursuant to NRS 281.501 (2) that: (1) involved real property in which the NPC was interested, or (2) involved real property upon which the vote would effect a property in which the NPC was interested. If Ms. Z or her public counsel have specific questions about a future specific set of circumstances, they are invited to bring such circumstances to this Commission for further review and opinion. We commend Ms. Z for conscientiously recognizing her ethical obligations and for seeking the advice of her public counsel and this Commission.

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 15, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman