

Abstract of Advisory Opinion No. 99-09

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Advisory Opinion of Public Officer

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by Mr. B. Mr. B serves as a Councilman for his local city council ("Council"). Mr. B would like to participate in a project relating to the redevelopment of a local natural resource. The project would work with, seek grants from, and solicit contributions from all appropriate sources.

Specifically, Mr. B asked whether he could form a non-profit corporation that would raise private and public funds in order to redevelop the natural resource. Mr. B would serve as the executive director for the corporation and would receive compensation for his services.

A hearing on the opinion request was held on April 15, 1999. Mr. B appeared and presented testimony. He did not waive his statutory confidentiality, so the proceeding was not open to the public.

Based on the foregoing, the Commission makes the following Findings of Fact, Conclusions of Law, and Opinion.

FINDINGS OF FACT

1. Mr. B is a member of his local city council.
2. Mr. B would like to form a 501 (c)(3) corporation in order to raise public and private funds to redevelop a local natural resource.
3. Mr. B would serve as executive director for this corporation.
4. Mr. B would receive compensation from the corporation for serving as executive director.
5. As executive director, Mr. B might undertake fundraising activities for the redevelopment project.
6. As a city councilman, Mr. B would abstain from voting on matters concerning the granting of city money to the project or use permit issues.

OPINION

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Mr. B is a public officer as defined in NRS 281.4365.

NRS 281.230 and NRS 281.481 contain the relevant statutory provisions in this matter. NRS 281.230(1) provides in pertinent part that:

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;

- (b) Deputies and employees of state, county, municipal, district and township officers; and
- (c) Officers and employees of quasi-municipal corporations.

In pertinent part, NRS 281.481 (2) states:

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.

The question before the Commission is whether Mr. B can serve as a compensated executive director for the non-profit redevelopment corporation while still serving as a city council member.

We find that it would be a violation of NRS 281.230(1) for Mr. B to serve as a local city councilman while simultaneously working as a compensated executive director for the non-profit corporation. NRS 281.230(1) clearly states that public officers cannot be compensated, either directly or indirectly, from any transaction that the governmental entity is in any way interested or affected. The redevelopment of natural resources is certainly something the local government has an interest in because it directly relates to the local government master plan redevelopment project. NRS 281.230 is very strict in its application. Mr. B would be violating NRS 281.230(1) if he were to allow himself to receive compensation for serving as the executive director of the non-profit corporation if any of the non-profit corporation's funding comes directly or indirectly from the city. However, Mr. B could be the executive director and perform the functions he wishes to pursue if he were not compensated by the corporation.

Should Mr. B form the non-profit corporation and act as an uncompensated executive director, he must also ensure that he does not use his position on the city council to secure or grant any unwarranted privileges or advantages for himself, any business entity in which he has a significant pecuniary interest, or any other person or entity. To do so would be a violation of NRS 281.481.

CONCLUSION

We find that it would be an a violation of NRS 281.230(1) for Mr. B to serve as a local city councilman while simultaneously working as a compensated executive director for the non-profit corporation because NRS 281.230(1) clearly states that public officers cannot be compensated, either directly or indirectly, from any transaction that the governmental entity is interested or affected.

Finally, should Mr. B form the non-profit corporation and act as an uncompensated executive director, he must be careful to ensure that he does not use his city council position to secure or grant any unwarranted privileges or advantages for himself, any business entity in which he has a significant pecuniary interest, including the non-profit corporation, or any other person or entity in violation of NRS 281.481.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of the NRS 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: January 24, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman