

Abstract of Advisory Opinion No. 99-13

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 Ms. A. Ms. A serves as a Councilperson for a local city council ("Council"). Ms. A is also employed with Company C. The city ("City") does a *de minimis* amount of business with Company C. In recent years, the City's purchases from Company C amounted to approximately 2110th of 1% of Company C's business.

None of these purchases come before the City Council for approval and none of the City's purchases come through Ms. A at Company C. In other words, Ms. A is not aware of the purchases the City makes from Company C until after they happen and she learns about them at a city council meeting. The majority of the City's purchases from Company C are across the counter, small ticket items purchased by individual City employees. The retail and wholesale sales staff of Company C are a separate function from the area Ms. A works in.

Specifically, Ms. A asked what effect NRS 281.230 had on her employment with Company C and her city council position.

A hearing on the opinion request was held on April 15, 1999. Ms. A appeared and presented testimony. She did not waive her 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. Ms. A is a member of a local city council.
2. Ms A also works for Company C.
3. In recent years, the City's business accounted for approximately 2110th of 1% of Company C's revenues.
4. The majority of these purchases are over the counter, small ticket items made by individual City employees.
5. The retail and wholesale sales staff of Company C are a separate function from the area where Ms. A works.
6. Ms. A is not aware of the *de minimis* sales transactions between the City and Company C until after they have transpired.

OPINION

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

NRS 281.230 contains the relevant statutory provisions in this matter. NRS 281.230(1) 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;
- (b) Deputies and employees of state, county, municipal, district and township officers; and
- (c) Officers and employees of quasi-municipal corporations.

The question before the Commission is whether Ms. A can work for Company C while still serving as local city council member.

In this specific incident, we find that it is not a violation of NRS 281.230 for Ms. A to serve as local city councilperson while maintaining her position with Company C. However, the Commission makes it very clear that this decision is very fact specific and came after lengthy discussion and deliberation.

Based on the *de minimis* amount of business (2/10th Is of 1%) the City does with Company C, the Commission has determined that Ms. A is not directly or indirectly receiving any commission, personal profit or compensation from the business transactions between the two entities. NRS '281.230. The Commission realizes that Nevada has a citizen government with few full-time government officials and, as in this instance, many elected or appointed individuals have outside jobs within the community. Additionally, the Commission emphasizes the fact that Ms. A has no involvement in the purchasing process through the City and no involvement in the sales process through her company. Therefore, since Ms. A has no involvement with the purchasing process on the City side and no involvement with the sales process on Company C's side, she is not violating NRS 281.230. However, the Commission wishes to make it abundantly clear that this opinion could drastically change if the amount of business between the City and Company C increases.

CONCLUSION

Due to the *de minimis* nature of the purchases involved and the fact that Ms. A does not have any control over the purchasing decisions or the selling decisions, we find that Ms. A is not directly or indirectly being compensated by the business transactions between the City and Company C. As such, NRS 281.230 is not being violated. However, this opinion could drastically change if the amount of business between the City and Company C increases.

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 29, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman

Chairman Boetsch opposed this decision.