

Abstract of Advisory Opinion No. 99-20

BEFORE THE NEVADA COMMISSION ON ETHICS

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

This Opinion is in response to a first-party request for advisory opinion filed with the Nevada Commission on Ethics ("Commission") by Public Employee. Public Employee is employed by the State of Nevada. Public Employee is also a member of a state commission. Public Employee has been asked to serve on an advisory board to the board of directors of Private Company.

Public Employee requested an opinion as to whether or not his employment as state Public Employee would prohibit him from serving on the advisory board to the board of directors to Private Company. Furthermore, Public Employee expressed particular concerns regarding stock held by Public Employee's spouse and children in Private Company's parent company.

A telephonic hearing on the advisory opinion request was held on May 21, 1999. Public Employee presented testimony via telephone. Public Employee 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. Public Employee is employed by the State of Nevada.
2. Public Employee is also a member of a state commission.
3. Public Employee has been asked to serve on an advisory board to the board of directors of Private Company. This is an unpaid position.
4. Public Employee's spouse and children are shareholders in Private Company's parent company.

OPINION

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Public Employee is a public employee as defined in NRS 281.436.

NRS 281.501(3), the relevant statutory provision in this matter, provides in pertinent part that:

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. Except as otherwise provided in subsection 6, such 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. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he hold an elective office, to the general public in the area from which he is elected.

Based on the stock ownership of Public Employee's spouse, the Commission determines that a situation may arise where Public Employee would have to disclose this information should either Private Company or its parent company have a vote pending before the state commission. Furthermore, depending on the facts of the particular situation, Public Employee may also have to abstain from voting on the particular matter. It is important that Public Employee endeavor to evaluate each situation in light of NRS 281.501 (3). However, these factors would not prohibit Public Employee from serving on the advisory board to the board of directors of Private Company.

CONCLUSION

The Commission finds that it would not be a violation of NRS Chapter 281 for Public Employee to serve on the advisory board to the board of directors to Private Company. However, it is important that Public Employee endeavor to evaluate each situation concerning a vote before the state commission involving Private Company or its parent company in light of NRS 281.501(3). Specifically, Public Employee must determine whether or not it is necessary for him to disclose or disclose and abstain depending on the facts of each situation.

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: November 30, 1999.

NEVADA COMMISSION ON ETHICS

By: MARIO G. RECANZONE, Vice Chairman