

Advisory Opinion No. 99-21

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF

HENRY K. ARRIEN, II, Member, Humboldt General Hospital Board of Trustees

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by Henry K. Arrien, II. Mr. Arrien serves on the Humboldt General Hospital Board of Trustees ("Board"). He was appointed to this position in January, 1997 and elected in November, 1998. His term expires in 2002.

Mr. Arrien is also a partner in Gamma Electric ("Gamma"). His partner is Albert Padilla. They have been partners since 1982. Since being appointed to the Board, Mr. Arrien has not bid on any hospital related work.

Specifically, Mr. Arrien asked if he could bid on hospital projects that would ultimately go before the hospital board for approval. Mr. Arrien noted that he would be bidding on projects as a subcontractor, not as the general contractor.

A hearing on the opinion request was held on July 16, 1999. Mr. Arrien appeared and presented testimony. At the conclusion of the hearing, Mr. Arrien waived his statutory right to confidentiality so this opinion will be publicly distributed.

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

FINDINGS OF FACT

1. Mr. Arrien is a member of the Humboldt General Hospital Board of Trustees.
2. He was appointed to this position in January, 1997 and elected in November, 1998.
3. His current term will expire in 2002.
4. He is also a partner in Gamma Electric in Winnemucca, Nevada and has been since 1982.
5. Since he was appointed to the Board, Mr. Arrien has not bid on any hospital projects.
6. State law requires that general contractors list all sub-contractors on the bids that are presented to boards and commissions for approval.

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. Arrien is a public officer as defined in NRS 281.4365.

NRS 281.505(1) and NRS 281.481(2) contain the relevant statutory provisions in this matter.

NRS 281.505(1) provides:

1. Except as otherwise provided in this section, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

NRS 281.481(2) states:

2. 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. Arrien can simultaneously serve on the Board and submit bids as an electrical sub-contractor regarding hospital improvement contracts that will be voted on by the Board.

As a partner of Gamma Electric, it is obvious that Mr. Arrien has a significant pecuniary interest in the success of the business. As such, we find that it would be a violation of NRS 281.505 for Mr. Arrien or Gamma to submit bids as an electrical subcontractor that would ultimately be voted on by the Board he is a member of. Furthermore, it could also be a violation of NRS 281.481(2) as Mr. Arrien could use his Board position to gain an unwarranted privilege for Gamma Electric. As such, it is unfortunate but Mr. Arden will have to decide whether he wishes to continue serving on the Board or whether he wishes to begin bidding on hospital improvement projects.

The Commission wishes to make it very clear that it is not intimating that Mr. Arden has or would commit the above violations. As a matter of fact, the Commission commends Mr. Arrien for not bidding on any hospital projects during his two years of Board service. The Commission also commends Mr. Arrien for seeking an advisory opinion prior to submitting any bids. Nonetheless, the Commission cannot refuse to recognize that the opportunity for opportunism exists because of the influence Mr. Arrien may have on his Board. This potential for financial gain could lead to direct violations of NRS 281.481(2) and NRS 281.505.

CONCLUSION

Due to the potential opportunity for opportunism, the Commission finds that it would be a violation of NRS 281.481(2) and NRS 281.505 for Mr. Arden to bid on electrical work for the Humboldt General Hospital projects since he currently serves on that Board. As such, it is unfortunate but Mr. Arrien will have to decide whether he wishes to continue serving on the Board or whether he wishes to begin bidding on hospital improvement projects.

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: February 1, 2000.

NEVADA COMMISSION ON ETHICS

BY: Peter C. Bernhard, Chairman