

Abstract of Advisory Opinion No. 00-01

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF A PUBLIC OFFICER

This matter came before the Nevada Commission on Ethics (hereinafter "Commission") on Friday, January 21, 2000, for hearing on the request for advisory opinion filed with the Commission by Public Officer, a City Councilman, pursuant to Subsection 1 of NRS 281.511. Notice of the hearing was properly served. The hearing was closed pursuant to NRS 281.511, Subsection 5.

Public officer requested an Opinion from the Commission regarding abstention on matters before the City Council involving entities with which public officer may have business relationships. Specifically, public officer asked whether he should abstain from voting on matters before the City Council involving (1) Business Entity, and (2) companies doing business with Community Organization.

Chairman Bernhard disclosed a conflict of interest, recused himself as Chairman over this proceeding, and abstained from voting on this matter. Vice Chairman Recanzone presided over this hearing.

Public officer appeared in person, was sworn, and presented testimony.

The Commission, after full consideration of the request for opinion, the testimony, and the evidence makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Public officer is an elected member of a City Council.
2. After spending his first year and a half on the City Council, public officer realized he needed employment to supplement his Councilman income.
3. Public officer first came to the city in Nevada in 1983-1984 as a member of Community Organization, and since has made the city his home.
4. About a year and a half ago, public officer talked to the general manager of Community Organization about potential employment with them, specifically in the community relations and marketing areas.
5. In January, 1999, public officer entered into a professional services contract with the Community Organization as a part-time consultant to increase the visibility of the business in the community. Under the terms of the contract, public officer creates community outreach programs for Community Organization. He is an independent contractor and receives a flat monthly fee from Community Organization for his services. He intends to renew this professional services contract for calendar year 2000.
6. The community outreach programs public officer created involve corporate sponsors who donate money to Community Organization and, in return, have the privilege of designating a charity for which Community Organization serves as a "promotional organization" to raise community awareness of the charity and its mission. The corporate sponsorships also allow Community Organization to provide tickets to their events to underprivileged children and others who would otherwise not be able to buy tickets to attend the events.
7. One such program involves Business Entity. As a major corporate sponsor, Business Entity donated \$20,000 to Community Organization and selected Foundation as the designated charity. Through that sponsorship, Community Organization displayed both the Foundation and the Business Entity logos on a billboard, included an ad in the

program sold at Community Organization events, designated three nights of Community Organization's events to promote Foundation at the events, and presented a check to Foundation on behalf of Business Entity at the first-night ceremonies.

8. From time to time, Business Entity, as well as many other corporate sponsors of Community Organization (e.g., casinos, car dealerships, beverage companies), may appear before the City Council on routine or other matters.

9. There are limited circumstances which would bring Community Organization before the City Council. With the exception of maintaining a business license, the only matter that has in the past brought Community Organization before the City Council was its need to obtain a permit for a special event.

10. Public officer receives no compensation from Business Entity Foundation.

CONCLUSIONS OF LAW

1. Public officer is a public officer as defined by NRS 281.005 and NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511(1).

WHEREFORE, on motion duly made, seconded, and approved by unanimous vote, the Commission renders the following Opinion:

OPINION

Commission Opinion No. [99-56](#) (hereinafter the "*Woodbury Opinion*") is instructive and helpful for guidance in this matter, and public officer is respectfully referred thereto. A copy of the *Woodbury Opinion* is provided herewith. In the *Woodbury Opinion*, this Commission addresses the provisions of NRS 281.501 (as modified by the Nevada Legislature in 1999 by S.B. 478) and construes that statute's disclosure and abstention standards. NRS 281.501 and the *Woodbury Opinion* impose on public officers broad disclosure standards in matters before them. Further, once the public officer has made that broad disclosure, he must, on a case-by-case basis, analyze whether the effect of the decision he is making as a public officer is so material that it would affect a reasonable person's independence of judgment. Based on his own analysis, public officer must then decide whether to vote or abstain on those matters.

As the Commission stated in the *Woodbury Opinion*:

Abstention in all such cases would be a safe harbor for public officers and employees. However, the public...(and an (appointed official's appointing authority)) have an interest in matters which come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would *materially* affect one's independence of judgment. Compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and independent judgment. And, in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority. The burden, therefore is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a reasonable persons' independence of judgment would be materially affected by those private commitments." Nev. Comm'n. on Ethics, Op. No. [99-56](#), at page 8.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES WHICH DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS

OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: March 20, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO G. RECANZONE, Vice Chairman