

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF AN OPINION REQUEST

RE: DEVERE DRESSLER, Member, Douglas County Planning Commission

This matter came before five of the eight members^[1] of the Nevada Commission on Ethics (hereinafter "Commission") for hearing on Friday, August 11, 2000, pursuant to a written panel determination entered June 30, 2000, finding just and sufficient cause for the Commission to render an opinion in this matter.

On May 12, 2000, Robert E. Havranek, J.D., Ph.D., President of the Pleasantview Homeowners Association in Gardnerville, Douglas County, Nevada, filed with the Commission a request for opinion (ethics complaint) pursuant to NRS 281.511, Subsection 2, concerning the conduct of Devere Dressler, a member of the Douglas County Planning Commission. In his complaint, Dr. Havranek alleges that Commissioner Dressler violated the disclosure and abstention provisions of the ethics in government law, specifically NRS 281.501, Subsections 2 and 3. Commissioner Dressler filed a response to Dr. Havranek's complaint on May 22, 2000.

Pursuant to NRS 281.511, Subsection 3, the Commission's Executive Director investigated the facts and circumstances relating to the complaint and provided a written recommendation determining that there was just and sufficient cause for the Commission to hold a hearing and render an opinion in this matter.

On June 30, 2000, pursuant to NRS 281.462, a two-member Commission panel^[2] reviewed the Executive Director's written just and sufficient cause recommendation and the entire file in the matter and made a final determination that just and sufficient cause did exist for the Commission to hold a hearing and render an opinion in this matter on the issue of whether Commissioner Dressler, by his action at the April 11, 2000, meeting of the Douglas County Planning Commission with regard to the "Bing matter," violated the disclosures standards of Subsection 3 of NRS 281.501. Specifically, the first question before the Commission in this matter is whether Commissioner Dressler was required to make a disclosure at the April 11, 2000, Douglas County Planning Commission meeting. If so, the Commission would address the questions of whether the disclosure Commissioner Dressler actually made was adequate and if the disclosure was presented at the proper time.

The hearing was properly noticed. Commissioner Dressler was present with his counsel, Brian Chally, Chief Civil Deputy with the Douglas County District Attorney's Office, and was sworn as a witness. Also present and sworn as witnesses were Robert E. Havranek, President of the Pleasantview Homeowners Association in Douglas County, who filed the request for opinion with the Commission, and David D'Amico, a spokesperson for residents of Chambers Field and Terra Vista subdivisions in Douglas County.

The Commission, after full consideration of the testimony of witnesses, and the evidence received into the record, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Devere Dressler is a resident of Douglas County and member of the Douglas County Planning Commission. He was appointed to that position in January 2000.
2. In his private capacities, Devere Dressler works a family ranch and he owns a seven percent partnership interest in the Fred H. Dressler Company, which interest he acquired in July 1997. Devere Dressler's father's family trust owns the remaining 93% partnership interest. 'Me Fred H. Dressler Company owns land in Douglas County (commonly known as the Mud Lake Property) and the small gravel pit located thereon. In September 1994, Douglas

County granted to A & A Construction Company a special use permit, subject to specific restrictions and conditions, to conduct surface mining operations on the Mud Lake Property gravel pit. The Fred H. Dressler Company leases the gravel pit operation on the Mud Lake Property to A & A Construction Company. Under the terms of the lease agreement, the Fred H. Dressler Company receives from A & A Construction Company a percentage of its sales of dirt, rock and gravel extracted from the gravel pit. Since July 1997, Devere Dressler's share of the partnership income from the A & A Construction Company lease has been as follows: \$1,083.43 in 1997, \$3,061.73 in 1998, and \$2,837.03 in 1999.

3. Devere Dressler's father's family trust owns other land in Douglas County and a small, shallow surface mining gravel pit located thereon. In December 1999 Douglas County granted to Devere Dressler, for the benefit of his father's family trust, a special use permit, subject to specific restrictions and conditions, to conduct surface mining operations on this gravel pit. Devere Dressler has no actual interest in and receives no income from his father's family trust.

4. Both of the Dressler gravel pits are extraction and hauling operations. Both the 1994 and the 1999 special use permits expressly disallow rock crushing operations, concrete batch plants and asphalt plants. There has been no violation of any term or condition of either the 1994 or the 1999 special use permit.

5. Bing Construction Company of Nevada owns a gravel pit at 1226 Kimmerling Road, Gardnerville Ranchos, in Douglas County. In 1994, Douglas County granted to Bing Construction Company a special use permit, subject to specific restrictions and conditions, to conduct open pit mining operations at its gravel pit. The Bing gravel pit functions as a rock crushing operation and concrete batch plant and asphalt batch plant operations and is the only source of aggregate for concrete and asphalt in Douglas County.

6. Bing Construction Company has violated some of the conditions to which the 1994 special use permit is subject.

7. Commissioner Dressler has no family, business or financial relationship with any member of the Bing family or with Bing Construction Company.

8. At its April 11, 2000, meeting, the Douglas County Planning Commission held a public hearing on, and thereafter approved, an application by Bing Construction Company for a major modification of the Bing Construction Company open pit mining special use permit.

9. During the April 11, 2000, public hearing, Commissioner Dressler participated in the Planning Commission's consideration of the Bing application and voted in favor of its approval.

10. Prior to the April 11, 2000, public hearing on the Bing application, Commissioner Dressler consulted with Deputy District Attorney Tom Perkins concerning whether Commissioner Dressler's partnership interest in the Fred H. Dressler Company, which owns the Mud Lake Property and gravel pit and receives income from A & A Construction Company which leases the property and gravel pit, would implicate any disclosure obligation and/or voting restriction under Nevada's ethics in government laws. Deputy District Attorney Perkins advised Commissioner Dressler that based upon all the facts and circumstances of this matter, Commissioner Dressler had no duty or obligation to make any disclosure regarding his partnership interest in the Fred H. Dressler Company.

11. Chief Deputy District Attorney Robert T. Morris served as counsel for the Douglas County Planning Commission at the April 11, 2000, meeting.

12. During a break in the public testimony on the Bing application at the April 11, 2000, Douglas County Planning Commission meeting, Mr. Havranek approached Chief Deputy District Attorney Morris and stated that he believed Commissioner Dressler had a conflict of interest because of his ownership interest in a local gravel pit and that he should disclose the conflict and abstain from voting on the Bing permit.

13. Before the meeting resumed, Chief Deputy District Attorney Morris spoke with Commissioner Dressler about his interest in the gravel pit. After their discussion, Chief Deputy District Attorney Morris advised Commissioner Dressler that he was not in violation of the ethics law and that he had no pecuniary or private interest that would require disclosure and abstention, but that, in the interest of defusing the issue and making the record clear, he should state on the record that he had an interest in the Mud Lake Property gravel pit.

14. When the meeting resumed, Commissioner Dressler disclosed on the record his interest in the Mud Lake Property gravel pit. Chief Deputy District Attorney Morris stated on the record that the disclosure was sufficient and that Commissioner Dressler's interest in the gravel pit did not constitute a conflict of interest requiring him to abstain from voting on the Bing application.

CONCLUSIONS OF LAW

1. Commissioner Dressler 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 281.465, Subsection 1(a); and NRS 281.511, Subsection 2(b).

WHEREFORE, on motion duly made, seconded, and unanimously approved, the Commission renders the following Opinion:

OPINION

The policy considerations behind Nevada's ethics in government laws include the desire to ensure impartiality, fairness and equality of treatment toward those who come before government and the assurance that decisions of public importance will not be influenced by private considerations so as to maintain the public confidence in government and prevent the use of public office for any private gain. Therefore, Nevada's ethics in government laws provide disclosure standards and, in some cases, an abstention requirement for public officers and employees.

NRS 281.501, Subsection 3, provides:

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;^[3] or (c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest.

NRS 281.501, Subsection 2, provides:

In addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by: (a) His acceptance of a gift or loan; (b) His pecuniary interest; or (c) His commitment in a private capacity to the interests of others.³ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

The ethics in government laws are directed not only at dishonorable actions, but conduct that tempts dishonor. Therefore, even a situation which presents a potential for wrongdoing rather than actual wrongdoing might give rise to an obligation to disclose or abstain. The public officer may not have done anything wrong in the ordinary sense of the word, but the conflict may put him in danger of doing wrong. So, an appearance of impairment of impartial judgment would exist even in a well meaning public official when his personal economic interests are affected by the business which might be before the government body. The ethics in government laws attempt to prevent honest government agents from succumbing to temptation that might be presented.^[4]

In this matter, there is no evidence at all that Commissioner Dressler had any private or pecuniary interest which would have required disclosure pursuant to NRS 281.501, Subsection 3, or abstention pursuant to NRS 281.501, Subsection 2, regarding his vote on the Bing application before the Douglas County Planning Commission on April 11, 2000. Any suggestion to the contrary under the circumstances of this matter is just too remote to find a disclosure or abstention obligation.

However, a public officer and his advising legal counselor should always assess the question of potential for wrongdoing in light of the policy behind the ethics in government laws when evaluating the public officer's disclosure obligations in any particular matter. Commissioner Dressler is cautioned to always carefully evaluate what effect, if any, his private business interests may have on his independence of judgment when matters come before him as a member of the Douglas County Planning Commission.

Based on the evidence presented herein, the Commission finds no disclosure or abstention violation by Commissioner Dressler pursuant to NRS 281.501 when he voted on the Bing matter before the Douglas County Planning Commission on April 11, 2000.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT 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: October 6, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman

^[1] Commission Member Hal Smith was a panel member in this matter and did not participate in this hearing pursuant to NRS 281.462, Subsection 4; Commission Member Todd Russell did not participate in this hearing because of a family relationship with Mr. Dressier. Commission Hatcher was absent from the hearing due to illness.

^[2] Commissioners Hal Smith and Joni Wines served as the two-member Commission panel for this matter.

^[3] NRS 281.501, Subsection 8, defines "commitment in a private capacity to the interests of others" as a commitment to a person (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

[\[4\]](#) In its deliberations on this matter, the Commission referred to its discussion in Abstract of Advisory Opinion No. 99-57, dated May 19, 2000, (on an unrelated issue) concerning the policy objectives of the ethics in government laws.