

Abstract of Advisory Opinion No. 00-25

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR AN ADVISORY OPINION OF PUBLIC OFFICER, Chairman, County Board of Commissioners

This matter came before seven of the eight members^[1] of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on the advisory opinion request filed with the Commission by Public Officer, Chairman of the County Board of Commissioners, pursuant to Subsection I of NRS 281.511. The hearing was properly noticed, and notice of the hearing was properly served. The hearing was closed pursuant to NRS 281.511, Subsection 5.

Public Officer seeks an Advisory Opinion from the Commission regarding the effect of his employment with a not-for-profit organization on his participation and voting on certain matters before the County Board of Commissioners. Specifically, Public Officer asks the following three questions:

1. Does his employment by not-for-profit organization create an inherent conflict of interest on matters before the County Board of Commissioners?
2. May he, as a member of the County Board of Commissioners, without violating the ethics in government law, vote on matters before the County Board of Commissioners involving specific issues of the same nature as not-for-profit organization's mission?
3. May he, as a member of the County Board of Commissioners, without violating the ethics in government law, vote on matters before the County Board of Commissioners involving matters related to the county's program of the same nature as not-for-profit organization's mission?

Public Officer appeared in person and was sworn in as a witness and presented testimony. The Commission, after full consideration of the testimony and evidence received into the record makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Public Officer is an elected member, and Chairman, of the County Board of County Commissioners. His term expires in 2002.
2. Until recently, Public Officer's sole employer has been a local company.
3. Recently, Public Officer became employed by not-for-profit organization as the director for its projects in Nevada. Public Officer receives a salary from not-for-profit organization. His salary is not related to the success of any transactions, nor does he receive any commission from any transaction.
4. In his position with not-for-profit organization, Public Officer helps facilitate transactions that meet not-for-profit organization's mission. Some of those transactions may occur in County.
5. By unanimous decision of the County Board of Commissioners, the general election ballot will include a question for the voters that will allow County to levy a sales tax to initiate a local program. Such a program would result in direct and serious competition with not-for-profit organization.
6. Issues regarding the ballot measure and the program, if approved by voters, will come before the County Board of Commissioners. Issues involving property in which not-for-profit organization has an interest may also come before the County Board of Commissioners.

7. Not-for-profit organization supports the ballot issue.
8. Public Officer supports the ballot issue.
9. Public Officer will receive no personal financial or professional benefit if the ballot question is approved.

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, Subsection 1.

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

OPINION

The Commission is authorized to render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances upon request from a public officer or public employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as a public officer or employee. NRS 281.511, Subsection 1.

The Commission's opinion may include guidance to the public officer or employee on questions whether: (a) a conflict exists between his personal interest and his official duty; (b) his official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter; (c) the conflict would materially affect the independence of the judgment of a reasonable person in his situation; (d) he possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision; (e) it would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal interest or pursue some other designated course of action in the matter. NRS 281.521, Subsection 1.

The statutes authorizing the Commission to render advisory opinions to public officers and public employees contemplate specific questions on specific facts and circumstances which may present a specific conflict between and public officer's or employee's private interests and public duties.

The Commission, therefore, declines to render an opinion on the first question presented in this matter because of its general nature and the broad set of circumstances some of which may or may not present a conflict.

With regard to the second and third questions presented in this matter, the Commission reiterates the standards on disclosure and abstention discussed in Commission Opinion No. [99-56](#) (the "Woodbury Opinion") and refers Public Officer to that Opinion for a full discussion of those standards.

Specifically, on matters which come before the County Board of Commissioners concerning the general election ballot question regarding a local tax-supported program and a commensurate plan and the county's program, Public Officer, as a member and Chairman of the County Board of Commissioners, must disclose sufficient information concerning his relationship as an employee of not-for-profit organization and the effects of the general election ballot question and the commensurate plan on his employer, not-for-profit organization, to inform the public of the potential effect of his action as required by NRS 281.501, Subsection 3. Then, after making such proper disclosure, Public Officer must determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his employment commitment with not-for-profit organization, under the circumstances presented in particular matters. If so, Public Officer must also refrain from advocating the passage or failure of the matter and abstain from voting upon the matter, all in accord with NRS 281.501, Subsection 2.

The public would then know from Public Officer's disclosures what the relationship is and what the effects of that relationship would be on the particular matter coming before the County-Board of Commissioners and they could decide whether or not Public Officer exercised his judgment properly either to abstain or not abstain on a case-by-case basis.

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 Todd Russell recused himself on this matter.