

Advisory Opinion No. 00-46
BEFORE THE NEVADA COMMISSION ON ETHICS
IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF
JOHN W. HALDEMAN, Member Laughlin Town Advisory Board

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") on December 7, 2000, on the request for advisory opinion filed by John W. Haldeman, a member of the Laughlin Town Advisory Board, pursuant to NRS 281.511, Subsection 1. The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511, Subsection 5. Following the hearing, Mr. Haldeman waived confidentiality. Mr. Haldeman seeks an advisory opinion from the Commission on two questions concerning the definition of "public officer" for purposes of Nevada's ethics in government laws:

1. As an appointed member of the Laughlin Town Advisory Board to the Clark County Board of County Commissioners, is Mr. Haldeman considered a "public officer" under NRS 281.005 and/or NRS 281.4365?
2. Are the members of a Laughlin Town Advisory Board standing committee considered "public officers" under NRS 281.005 and/or NRS 281.4365?

Mr. Haldeman appeared in person and was sworn in 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. Mr. Haldeman is an appointed member of the Laughlin Town Advisory Board. In that capacity, he serves at the pleasure of the Clark County Board of Commissioners and he receives no compensation, stipend or reimbursement for his service.
2. The Clark County Board of Commissioners established advisory boards in various geographical areas within Clark County as a body to receive community comments on local issues (such as those involving zoning matters) and forward the community's comments and opinions to the Board of Commissioners in the form of non-binding advisory recommendations. Advisory board recommendations, together with recommendations of Clark County staff and all supporting documentation, are placed into the public record of the Clark County Board of Commissioners in open meeting.
3. The Laughlin Town Advisory Board is an advisory board of the Clark County Board of Commissioners.
4. The Laughlin Town Advisory Board has established five standing committees to hear and advise the Advisory Board on community questions and/or concerns on specific topics: public works, community development, public safety, parks, and recreation. Members of each standing committee are interested citizens appointed, in open meeting, by the Laughlin Town Advisory Board. They receive no compensation, stipend or reimbursement for their service.
5. Each standing committee is co-chaired by a member of the Laughlin Town Advisory Board and a member of the standing committee.
6. The Laughlin Town Advisory Board has no budget and no power to expend public funds. Neither do the Board's standing committees. Any recommendation by the Laughlin Town Advisory Board regarding the expenditure of public funds goes to the Board of Commissioners for final approval.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511(1).
2. NRS 281.005 and NRS 281.4365 define "public officer" for purposes of NRS Chapter 281.

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

OPINION

"Public officer" is defined in NRS Chapter 281 as follows:

NRS 281.005

1. Except as limited for the purposes of NRS 281.411 to 281.581, inclusive, "public officer" means a person elected or appointed to a position which:

(a) Is established by the constitution or a statute of this state, or by a charter or ordinance of a political subdivision of this state; and

(b) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

NRS 281.4365

1. "Public officer" means a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" includes:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(b) The expenditure of public money; and

(c) The enforcement of laws and rules of the state, a county or a city.

2. **"Public officer" does not include:**

(c) **Any member of a board, commission or other body whose function is advisory;**

The function of the Laughlin Town Advisory Board is advisory to the Clark County Board of Commissioners. The function of each Laughlin Town Advisory Board standing committee is advisory to the Laughlin Town Advisory Board. Both the Laughlin Town Advisory Board and each of its standing committees, therefore, fit within the exception to the definition of "public officer" provided in NRS 281.4365, Subsection 2(c).

No member of the Laughlin Town Advisory Board and no member of its standing committees is a "public officer" for purposes of NRS Chapter 281, Nevada's Ethics in Government Law.

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: January 4, 2001.

NEVADA COMMISSION ON ETHICS

By: PETER C. BERNHARD, Chairman