

Opinion No. 01-15

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF

DOUGLAS E. GLENN, Chairman, Humboldt General Hospital Board of Trustees

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on July 19, 2001, pursuant to allegations in a Request for Opinion submitted in proper form to the Commission on March 26, 2001, under NRS 281.511, Subsection 2, and a Commission panel determination entered May 22, 2001, finding just and sufficient cause for the Commission to render an opinion in this matter regarding whether Douglas E. Glenn, Chairman of the Humboldt General Hospital Board of Trustees, violated the provisions of NRS 281.481(2), NRS 281.501(2), and/or NRS 281.501(3) when he voted on August 27, 1999, to raise the rent paid by physicians for professional office space in a building owned by the Humboldt General Hospital from \$.90/sq.ft. to \$1.20/sq.ft. without disclosing his pecuniary interest in a partnership that owns two nearby professional office buildings and leases space in one of the buildings to Humboldt General Hospital.

Notice of the hearing was properly posted and served. Mr. Glenn was present and provided sworn testimony.

The Commission, after full consideration of the record in this matter, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Douglas E. Glenn is Chairman and an elected member of the Humboldt General Hospital Board of Trustees. He was elected to that position in 1998 and began serving as a board member in January 1999.
2. Humboldt General Hospital owns a seven-year-old 9600 square foot professional office building at 130 East Haskell in Winnemucca, Nevada, and, until late 1999, provided office space therein to physicians at a rental rate of \$.90/sq.ft. At its August 26, 1999, meeting, the Humboldt General Hospital Board of Trustees voted to raise the rent to \$1.20/sq.ft., including cleaning and utilities, beginning February 2000.
3. Mr. Glenn and Mr. Paul Miller are members of a partnership that owns two buildings with professional office space in the vicinity of the hospital's building at 130 East Haskell: a 25-year-old two-story building at 26 East Haskell and an adjacent building at 8 East Haskell in Winnemucca, Nevada.
4. The Glenn/Miller partnership purchased the building at 26 East Haskell approximately 20 years ago. The top half of the building is residential apartments and the bottom half of the building contains three professional office suites. Humboldt General Hospital presently leases two of the three professional suites (totaling approximately 2700 square feet) under two separate five-year leases at a rate of approximately \$.93/sq.ft. The third professional suite (approximately 800 square feet) is presently leased by a dentist under a one-year lease at a rate of approximately \$1.10/sq.ft. The rental rate includes all utilities except for electricity.
5. The entire building at 8 East Haskell has been leased for some time to Kafoury Armstrong & Company. The Kafoury Armstrong lease will terminate in August 2001 and Kafoury Armstrong has vacated the premises.

CONCLUSIONS OF LAW

1. Mr. Glenn 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, the Commission renders the following Opinion:

OPINION

A. NRS 281.501, Subsection 3

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 interests of others; 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...[S]uch a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body...This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

On any matter in which a public officer has, *inter alia*, a pecuniary interest, NRS 281.501, Subsection 3, prohibits the public officer from approving, disapproving, voting, abstaining from voting, or otherwise acting upon the matter “without disclosing sufficient information concerning the...[pecuniary] interest to inform the public of the potential effect of the action...upon...his [pecuniary] interest.” See also, Commission Opinion 99-56, In the Matter of the Opinion Request of Bruce L. Woodbury, Clark County Commissioner (12/22/99).

When, as a member of the Humboldt County General Hospital Board of Trustees (a “public officer”), Mr. Glenn voted on August 26, 2000, to increase the rent paid by physicians for professional office space in the building owned by Humboldt County General Hospital, he had a pecuniary interest in a partnership that owned two buildings in close proximity to the hospital’s building that leased professional office space to Humboldt County General Hospital for physicians and to other professionals. Mr. Glenn made no disclosure concerning his pecuniary interest at the time the matter was considered and voted upon by the board. His failure to make an appropriate disclosure violated the provisions of NRS 281.501, Subsection 3.

However, the evidence herein clearly establishes that Mr. Glenn’s violation of NRS 281.501, Subsection 3, was not willful. The entire Humboldt County General Hospital Board of Trustees, others present at the August 26, 2000, meeting, and the Humboldt County public knew that Mr. Glenn and his partner, Mr. Miller, owned the buildings at 8 East Haskell and 26 East Haskell in close proximity to the building owned by the hospital at 130 East Haskell and that Mr. Glenn and his partner, Mr. Miller, leased space in one of their buildings to the hospital. Therefore, Mr. Glenn sincerely did not believe that a formal disclosure was necessary. He now understands, however, that NRS 281.501, Subsection 3, provides no exception with regard to disclosure. If a public officer is considering a matter before him and one of the three criteria set forth in NRS 281.501, Subsection 3, applies to him, he must make a proper disclosure notwithstanding that the information he is required to disclose may be known to those present or common knowledge.

B. NRS 281.501, Subsection 2

NRS 281.501, Subsection 2, provides:

...[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. 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.

Public officers have a public duty to consider and act on matters that come before them unless they are specifically disqualified therefrom pursuant to NRS 281.501, Subsection 2. To require otherwise would deprive the public of its elected or appointed representation. As the Commission noted in a prior opinion:[\[1\]](#)

[T]he public (and an elected official's constituents) 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 person's independence of judgment would be materially affected by those private commitments.

There is no evidence herein that Mr. Glenn's pecuniary interest in the partnership discussed in this matter would in any way materially affect his independence of judgment in voting on the issue of raising the rent for office space leased to physicians by the hospital. In fact, the evidence supports the contrary. The amount of the rent increase was established based upon a proper analysis of fair market rent for the area. As an elected member of the hospital board of trustees with no issue materially affecting his independence of judgment, Mr. Glenn had a duty on August 26, 2000, to act on the rent matter being considered by the board.

The Commission, therefore, finds no violation of NRS 281.501, Subsection 2, by Mr. Glenn.

C. NRS 281.481, Subsection 2.

NRS 281.481, Subsection 2, prohibits a public officer or employee from using "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." As used in NRS 281.481(2), "unwarranted" means "without justification or adequate reason." NRS 281.481, Subsection 2.

On its face, NRS 281.481, Subsection 2, reasonably appears to require the Commission to find by a preponderance of the evidence an intention by a public officer to secure or grant a benefit by using his position in government before the Commission may declare the public officer has violated the statute.[\[2\]](#)

There is no evidence herein that by voting on August 26, 2000, to increase the rent charged by the hospital to physicians renting office space in the building owned by the hospital, Mr. Glenn in any way used his position as Chairman and member of the Humboldt County General Hospital Board of Trustees to secure an unwarranted privilege, preference, exemption or advantage for himself or any other person or business entity. The board's action to increase the rent was a prudent financial decision based upon an analysis by the board of fair market rental rates. Therefore, the Commission finds that Mr. Glenn's conduct with regard to his vote on August 26, 2000, did not violate the provisions of NRS 281.481, Subsection 2.

CONCLUSION

By failing to make an appropriate disclosure concerning his pecuniary interest in a partnership which owned two

professional office buildings in close proximity to the building owned by the hospital at the time the Humboldt County General Hospital Board of Trustees was considering and voting to increase the rent charged to physicians who leased office space in the building owned by the hospital, Mr. Glenn violated the provisions of NRS 281.501, Subsection 3. However, the violation was not willful.

Mr. Glenn's conduct herein did not violate the provisions of NRS 281.501, Subsection 2, or NRS 281.481, Subsection 2

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: February 1, 2002.

NEVADA COMMISSION ON ETHICS

By: TODD RUSSELL, Chairman

[\[1\]](#) See, Commission Opinion No. 99-56, In the Matter of the Opinion Request of Bruce L. Woodbury, dated December 22, 1999.

[\[2\]](#) "A public officer...shall not use his position in government..." (emphasis added). NRS 281.481, Subsection 2.