

Abstract of Advisory Opinion No. 02-04

In the Matter of the Request for Advisory Opinion of PUBLIC OFFICER, Member, City Council

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") on April 4, 2002, on the request for advisory opinion filed by Public Officer, Member, City Council, 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. Public Officer appeared with his counsel by telephone and was sworn and presented testimony. The Advisory Opinion issued in this matter is confidential pursuant to [NRS 281.511](#), Subsection 5(c).

With regard to the relevant facts provided herein, Public Officer requests the Commission's advisory opinion (a) determining whether his conduct as a City Council member concerning Company A and/or Company B violated the disclosure, participation, and abstention provisions of [NRS 281.501](#), or any other provision of Nevada's Ethics in Government Law; and (b) offering guidance with regard to Nevada's Ethics in Government Law to assist him in making decisions concerning his future conduct as a City Council member in similar situations.

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. Facts regarding Company A

1. Public Officer is an elected member of a City Council.
2. Public Officer owns a 25% investment interest in Company A. [1] Public Officer also owns a 25% investment interest in Company C. Company C owns the building in which Company A operates. Public Officer is not involved in the day-to-day operations of either company.
3. Public Officer made a significant initial capital investment and subsequent additional capital investments in Company A. His capital investment in Company A is subject to a promissory note.
4. Company A has made no profit since the company was established, and to date Public Officer has received no return on his investment in the company.
5. City issued a Purchase Order 1 in favor of Company A. The purchase order was requested by a division superintendent and a department director, and it was approved by the City's Finance Director and the City Manager.
6. Subsequently, City issued Purchase Order 2 in favor of Company A. The purchase order was requested by a division superintendent and a department director, and it was approved by the City's Finance Director and the City Manager.
7. Company A invoiced City based on Purchase Orders 1 and 2. The invoice was approved for payment by a division superintendent.
8. The invoice was paid by City check. The check was signed by the City Manager.
9. City Department had the authority to issue a purchase order and pay the invoice related thereto without obtaining approval from the City Council.
10. At the time the equipment was rented, neither the department head nor the division superintendent knew that Public Officer had a financial interest in Company A.

11. Until very recently, Public Officer had no knowledge that City had done business with Company A.
12. The check issued to Company A was one of several entries listed on City's check register report provided to the City Council on a consent agenda. The consent agenda item required no City Council action.
13. Also provided to the City Council as a consent agenda item was a schedule of purchase orders requiring City Council approval. The schedule listed one purchase order. The purchase order was unrelated to Company A.
14. At the City Council meeting, Public Officer made the motion and voted to approve the consent agenda; Public Officer abstained on two other agenda items that concerned matters unrelated to Company A.

B. Facts regarding Company B

1. Company B is a licensed contractor.
2. The President/Secretary/Treasurer of Company B owns a 25% interest in Company A and a 25% interest in Company C.
3. Public Officer has no personal or financial interest in Company B nor does Public Officer have any personal or business relationship with Company B's President/Secretary/Treasurer other than their mutual investment interest in Company A and Company C.
4. No contractual or financial relationship exists between Company B and Company A or between Company B and Company C.
5. By order of City department director, City published in the local newspaper an advertisement soliciting sealed bids to do a specified project for City.
6. Three companies, including Company B, bid on the project. Company B submitted the lowest bid.
7. At a city council meeting, Public Officer participated in the consideration of and voted to approve staff's recommendation to award the contract to Company B.
8. A purchase order was subsequently issued to Company B for the work. The purchase order was requested by City's department director and approved by City's finance department.
9. After completing the work, Company B invoiced City in accordance with the purchase order. The invoice was approved for payment by the City's department director.
10. The invoice was paid by City check.
11. The check was one entry on several pages of entries listed on a City invoice register provided to City Council as an item on a consent agenda. The consent agenda item required no City Council action.
12. Also provided to the City Council as a consent agenda item was a schedule of purchase orders requiring City Council approval. The schedule listed one purchase order. The purchase order was unrelated to Company A.
13. Public Officer voted to approve the consent agenda.
14. Subsequently, a second purchase order was issued to Company B for additional work. The purchase order was requested by City's department director; approved by City's finance department and City Manager; and approved for payment by City's department director.
15. Company B invoiced City referencing the second purchase order. The invoice was approved for payment by City's department director.

16. The invoice was paid by City check.
17. The check was one entry on several pages of entries listed on City invoice registers provided to the City Council under a consent agenda item. The consent agenda item required no City Council action.
18. Also provided to the City Council as a consent agenda item was a schedule of purchase orders requiring City Council approval. The schedule listed no purchase orders for approval.
19. Public Officer voted to approve the consent agenda.

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, and [NRS 281.521](#).

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

OPINION

NRS 281.501(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.

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 members 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.

NRS 281.501(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; 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. Except as otherwise provided in subsection 6, [\[2\]](#) such 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.

With regard to Company A, Public Officer does not appear to have “acted” on any matter involving Company A, a company in which he has a pecuniary interest. It does not appear that Public Officer was involved in the decision to purchase from Company A; it does not appear that Public Officer initiated or approved either of the two purchase orders in favor of Company A; it does not appear that Public Officer approved either of the two Company A invoices for payment; it does not appear that Public Officer initiated or signed the check in payment of Company A’s invoices; and it does not appear that Public Officer voted to approve any payment to Company A. Although at the City Council meeting Public Officer made the motion and voted to approve the “consent agenda,” nothing on the “consent agenda” required City Council action with regard to Company A. The list of checks issued by City provided with the “consent agenda” appears to have been provided to City Council members simply as notification of bills the City had paid; no action by the City Council was required.

With regard to Company B, at a City Council meeting, Public Officer voted to approve staff’s recommendation to award a contract to Company B, the lowest of three bidders for the project. Public Officer has no personal or pecuniary interest in Company B nor at the time did he have any personal or business relationship with Company B’s President/Secretary/Treasurer.[\[3\]](#) Further, it does not appear that Public Officer was involved in writing the bid specifications or any part of the bid process; nor does it appear that Public Officer initiated or approved either of the two purchase orders involving Company B; nor does it appear that Public Officer approved either of the two Company B invoices for payment; nor does it appear that Public Officer initiated or signed either check in payment of Company B’s invoices; nor does it appear that Public Officer voted to approve any payment to Company B. Although Public Officer voted to approve the “consent agenda” at two City Council meetings, nothing on either “consent agenda” required City Council action with regard to Company B. The invoice register provided with each “consent agenda” appears to have been provided to City Council members simply as notification of bills the City had paid; no action by the City Council was required.

Therefore, under the specific set of facts and circumstances provided herein, Public Officer’s conduct violated neither the disclosure provisions of NRS 281.501(3) nor the abstention provisions of NRS 281.501(2) with regard to either Company A or Company B, or any other provision of Nevada’s Ethics in Government Law, NRS Chapter 281.

For Public Officer’s future guidance as a member of the City Council under the facts and circumstances herein, the Commission:

1. Refers Public Officer to Commission [Opinion No. 99-56](#) (the “Woodbury Opinion”), which provides a thorough analysis of the Commission’s interpretation of the disclosure and abstention provisions of NRS 281.501(2) and (3) and a public officer’s obligations thereunder.
2. Cautions Public Officer to review and consider the provisions of the Code of Ethical Conduct for public officers found in [NRS 281.481](#), particularly 281.481(1), (2), (3), (5), and (6) regarding conflicts of interest; the provisions of NRS 281.505 and NRS 281.230 regarding contracts between a governmental agency and a private business in which a public officer has a significant pecuniary interest; and the Commission’s opinions that have interpreted and applied those specific statutes.[\[4\]](#)
3. Reminds Public Officer that the Nevada Legislature has declared it to be the public policy of this state that (a) a public office is a public trust and shall be held for the sole benefit of the people, and (b) a public officer must commit himself to avoid conflicts between his private interests and those of the general public whom he serves. (NRS 281.421).

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: April 18, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

[1] There are three other members of Company A and each owns a 25% interest in the company.

[2] The provisions of NRS 281.501, subsection 6, apply to members of the legislature.

[3] Although Public Officer and Company B's President/Secretary/Treasurer each own a 25% interest in Company A and a related company, Company C, neither Company A nor Company C existed on the date Public Officer voted to approve the bid award to Company B.

[4] The Commission's opinions may be accessed on the Commission's website, <http://ethics.state.nv.us>.