

**Advisory Opinion No. 03-05**

**IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF  
GREGORY A. HOEFER, Member, Commission of Appraisers of Real Estate, State of Nevada.**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on Thursday, June 12, 2003, on the request for advisory opinion filed pursuant to NRS 281.511, Subsection 1, by Gregory A. Hoefer, Member, Commission of Appraisers of Real Estate, State of Nevada.

The matter was properly noticed. Mr. Hoefer expressly waived the confidentiality provisions of NRS 281.511(5) and requested that this matter be public. Mr. Hoefer appeared in person and was sworn and presented testimony.

Mr. Hoefer requests the Commission's advisory opinion determining whether he has a "commitment in a private capacity to the interest of another" that would compromise his ability to be impartial and disqualify him from hearing cases brought before the Commission of Appraisers of Real Estate on behalf of the Real Estate Division. Mr. Hoefer's former wife, from whom he was divorced in 1988, is presently the chief administrator of the Real Estate Division.

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

**FINDINGS OF FACT**

1. In his public capacity, Mr. Hoefer is an appointed member of the Commission of Appraisers of Real Estate.
2. In his professional capacity, Mr. Hoefer is a licensed appraiser of real estate in Nevada.
3. NRS Chapter 645C provides for the protection of users of appraisals in the State of Nevada through licensing, certification, and regulation of appraisers of real estate by the Real Estate Division of the Nevada Department of Business and enforcement thereof by the Commission of Appraisers of Real Estate.
4. The Commission of Appraisers of Real Estate is composed of five members appointed by the Governor. Each member must be a certified or licensed appraiser.
5. The Commission of Appraisers of Real Estate is a quasi-judicial body charged by statute with (a) adopting licensing, certification, and enforcement regulations and (b) hearing and deciding appeals of action taken by the Real Estate Division against applicants and disciplinary complaints submitted by the Real Estate Division against appraisal licensees and holders of appraisal certificates.
6. Disciplinary cases heard and decided by the Commission of Appraisers of Real Estate are brought by the Real Estate Division on behalf of its chief administrator, Gail Anderson, as the Petitioner.
7. The Real Estate Division of the Nevada Department of Business and Industry administers NRS Chapter 645C.<sup>[1]</sup>
8. Gail J. Anderson is currently the chief administrator of the Real Estate Division.
9. Mr. Hoefer was married to Gail J. Anderson from 1973-1988. They were divorced in the State of Washington in 1988. Since their divorce, neither Mr. Hoefer nor Ms. Anderson has ever been obligated to provide to the other any alimony, spousal support, or any other type of personal, financial support, nor has either had any business, financial,

or personal relationship with the other.

10. Mr. Hoefer and Ms. Anderson have two adult children: a son, age 22; and a daughter, age 20. Their son is independent and lives on his own. Neither Mr. Hoefer nor Ms. Anderson has any financial support obligation to their son. Their daughter attends UNLV on a millennial scholarship and lives in Mr. Hoefer's home. Neither Mr. Hoefer nor Ms. Anderson has any financial support obligation to their daughter.

11. Members of the Commission of Appraisers of Real Estate work at the pleasure of the Governor, their appointing authority.

12. The chief administrator of the Real Estate Division is appointed by the Director of the Department of Business and Industry,<sup>[2]</sup> is in the unclassified service of the state, and is subject to the administrative supervision of the Director of the Department of Business and Industry.<sup>[3]</sup>

13. The Director of the Department of Business and Industry is in the unclassified service of the state and is appointed by, is responsible to, and serves at the pleasure of the governor.<sup>[4]</sup> The Director is responsible for the administration of all provisions of law relating to the jurisdiction, duties and functions of all divisions and other entities within the department.<sup>[5]</sup>

14. In addition to the Real Estate Division, the Department of Business and Industry consists of the following other divisions: Consumer affairs division; Division of financial institutions; Housing division; Manufactured housing division; Division of insurance; Division of industrial relations; Office of labor commissioner; Taxicab authority; Nevada athletic commission; Office of the Nevada attorney for injured workers; Transportation services authority; and various commissions (such as the Dairy Commission) created or placed within the department pursuant to a specific statute or other official action.<sup>[6]</sup>

### **CONCLUSIONS OF LAW**

1. The members of the Commission of Appraisers of Real Estate (a) take action in an official capacity that involves a substantial and material exercise of administrative discretion in the formulation of public policy; (b) enforce the laws and rules of the State of Nevada; and (c) are involved with the Real Estate Division in expending public money to effect the intent of the provisions of NRS Chapter 645C. The members of the Commission of Appraisers of Real Estate are, therefore, appointed to a position which is established by statute and which involves the exercise of a public power, trust or duty.

2. In his capacity as an appointed member of the Commission of Appraisers of Real Estate, Mr. Hoefer is a "public officer" pursuant to NRS 281.4365.

3. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and unanimously approved, 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, 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.

NRS 281.501(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.

Nothing in the facts of this matter suggests that Mr. Hoefler has any pecuniary interest related to Ms. Anderson or a commitment to her in a private capacity as defined in NRS 281.501(8). Mr. Hoefler and Ms. Anderson have been divorced for approximately 15 years. Their two children are independent adults. There is no evidence that Mr. Hoefler has any pecuniary interest or obligation related to Ms. Anderson. Ms. Anderson is not a member of Mr. Hoefler's household. Ms. Anderson is not related to Mr. Hoefler by blood, adoption or marriage within the third degree of consanguinity or affinity. Ms. Anderson does not employ Mr. Hoefler or a member of his household. There is no evidence that Mr. Hoefler now has or ever has had a substantial and continuing business relationship with Ms.

Anderson. Nor is there any evidence that Mr. Hoefler has any other commitment or relationship to Ms. Anderson that is substantially similar to a commitment or relationship as defined in NRS 281.501(8).

Therefore, based upon the specific facts presented herein, Mr. Hoefler has no "commitment in a private capacity to the interest of another" as to Ms. Anderson that would disqualify him from performing his duties as a member of the Commission of Appraisers of Real Estate.

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: July 1, 2003.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

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[1] NRS 645C.170.

[2] NRS 232.520.

[3] NRS 232.530.

[4] NRS 232.515.

[5] NRS 232.520.

[6] NRS 232.510.