

Advisory Opinion No. 03-34
IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF
LYNETTE BOGGS McDONALD, Member, Las Vegas City Council

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on Thursday, August 14, 2003, on the request for advisory opinion filed pursuant to NRS 281.511, Subsection 1, by Lynette Boggs McDonald, Member, Las Vegas City Council.

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

Councilwoman Boggs McDonald requests the Commission's advisory opinion addressing her disclosure and/or abstention responsibilities as a public officer under NRS 281.501 with regard to her private interests as a member of the Board of Directors of Station Casinos.

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 her public capacity, Lynette Boggs McDonald is an elected member of the Las Vegas City Council. Councilwoman Boggs McDonald was appointed to the Las Vegas City Council in 1999 to represent Ward 2. She was elected to that position in 2001. Her term will expire in June 2005. As a member of the Las Vegas City Council, Ms. Boggs McDonald receives an annual salary of \$41,884.
2. In her private capacity, Lynette Boggs McDonald is President of her marketing consulting business.
3. Ms. Boggs McDonald holds a business degree from the University of Notre Dame and a Master's Degree in Public Administration from the University of Nevada, Las Vegas.
4. On July 24, 2003, Councilwoman Boggs McDonald was appointed to the Board of Directors of Station Casinos. As a member of Station Casinos' Board of Directors, Ms. Boggs McDonald receives annual compensation of \$50,000.
5. Station Casinos has two nonrestricted gaming resort hotel establishments in the City of Las Vegas and nonrestricted gaming resort hotel establishments in the City of North Las Vegas, unincorporated Clark County, and the City of Henderson.
6. Members of the Las Vegas City Council take action on applications for restricted and nonrestricted gaming establishment licenses, zoning issues pertaining to gaming establishments, the creation of gaming enterprise districts for purposes of nonrestricted gaming, and regulations designating the types of businesses that may also have restricted gaming and the number of games that may be located at such businesses. Las Vegas City Council members also take action on issues such as liquor sales, restaurant service, room tax, entertainment facilities and programs, etc., that affect gaming resort hotels.
7. Las Vegas City Council members also take action on issues concerning the Fremont Street Experience, a limited liability company comprised of seven downtown resort hotels with nonrestricted gaming formed to promote the central business district of downtown Las Vegas. Station Casinos is not presently a member of the Fremont

Street Experience.

8. Station Casinos presently has no issue pending before the Las Vegas City Council.

CONCLUSIONS OF LAW

1. In her capacity as an elected member of the Las Vegas City Council, Ms. McDonald is a "public officer" pursuant to NRS 281.4365.

2. 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

In enacting Nevada's Ethics in Government Law, the Nevada Legislature has declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the role of persons who are both public servants and private citizens." NRS 281.421.

The apparent intent of the ethical standards provided in NRS Chapter 281 is to prevent public officers and employees from becoming involved in situations generating conflicts between private and public interests so as to preserve and enhance impartiality of public officers and faith in the integrity of government.

In performing their public duties, therefore, public officers must be mindful of the Nevada Legislature's public policy declarations of NRS 281.421 and conduct themselves to avoid conflicts between their private interests and those of the general public whom they serve. Public officers must also be mindful of the provisions of NRS 281.501 requiring them to adequately disclose private interests and commitments when considering matters before them and, as appropriate, refrain from advocating the passage or failure of matters and abstain from voting when their independence of judgment is materially affected by their personal commitments and/or interests.

NRS 281.501, Subsection 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 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.

NRS 281.501, Subsection 4, 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. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected.

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.

Generally, when considering whether a disclosure is required and/or abstention is appropriate with regard to a matter before the Las Vegas City Council, Ms. Boggs McDonald should consult with legal counsel for the Las Vegas City Council and be guided by the standards provided in NRS 281.501, Subsections 2 & 4, as discussed and interpreted by the Commission in Opinion 99-56 (a copy of which has been provided to Ms. Boggs McDonald). In accordance with those standards, when a matter is before the Las Vegas City Council that implicates Councilwoman Boggs McDonald's private pecuniary interests and/or commitments in a private capacity to the interests of others, the burden is on Councilwoman Boggs McDonald, pursuant to the provisions of NRS 281.501 and the Commission's interpretation of those provisions as set forth in Opinion 99-56 (the Woodbury Opinion), to disclose her private commitments and her pecuniary interests and the effect those commitments and interests 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 and pecuniary interests. In making a disclosure, Councilwoman Boggs McDonald must disclose sufficient information concerning her commitments in a private capacity and her pecuniary interests to inform the public of the potential effect of her action as required by NRS 281.501(4); and, after making such proper disclosure, determine whether the independence of judgment of a reasonable person in her situation would be materially affected by her commitments and/or her interests, under the circumstances presented in a particular matter; and, if so, she 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(2).

Specifically with regard to matters subject to an appearance of a conflict between her private commitments and interests as a member of the Board of Directors for Station Casinos and her public duties as an elected member of the Las Vegas City Council:

1. When the nexus between a matter before the Las Vegas City Council and Station Casinos is clear to Councilwoman Boggs McDonald, she must disclose sufficient information concerning her private commitments to and interests in Station Casinos to inform the public of the potential effect of her action as required by NRS 281.501(4); and, after making such proper disclosure, she must refrain from advocating the passage or failure of the matter and abstain from voting upon the matter, all in accord with NRS 281.501(2).
2. When Councilwoman Boggs McDonald believes a nexus between a matter before the Las Vegas City Council and Station Casinos would not materially affect the independence of judgment of a reasonable person in her situation under the circumstances presented in the particular matter and, therefore, her abstention in the matter is not required pursuant to NRS 281.501(2), in addition to disclosing sufficient information concerning her private commitments to and interests in Station Casinos to inform the public of the potential effect of her action as required by NRS 281.501(4), she must also disclose the reason she believes that the independence of judgment of a reasonable person in her situation would not be materially affected under the circumstances and why, therefore, her abstention is not required.

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: September 30, 2003.

NEVADA COMMISSION ON ETHICS

By: /s/ THOMAS R. SHEETS, Chairman