



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Advisory Opinion Concerning the
Conduct of MICHAEL R. CHESHIRE,
Member, State Board of Equalization,
State of Nevada,**

Advisory Opinion No. 08-59A

Public Officer.

OPINION

Pursuant NRS 281A.440.1, this request for an advisory opinion by State Board of Equalization (SBE) member Michael R. Cheshire (Cheshire) came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a telephonic hearing on October 20, 2008. Cheshire appeared in person in Carson City, represented by Deputy Attorney General Dawn Kemp and provided sworn testimony.

Cheshire sought an opinion from the Commission as to whether it is appropriate for him to participate in SBE hearings on Incline Village and/or Crystal Bay, Nevada residential property valuation appeals.

After fully considering the request for advisory opinion and analyzing all of the facts and circumstances and testimony

presented, the Commission deliberated and orally advised Cheshire of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. In his public capacity, Cheshire is a member of the SBE. In his private capacity, Cheshire is a professional appraiser in Las Vegas where he lives.
2. The Village League (League) is a non-profit membership corporation whose members are persons who own residential real property at Incline Village and/or Crystal Bay, Nevada. The League represents Incline Village and/or Crystal Bay residential real property taxpayers on appeals taken from the decisions of the Washoe County Board of Equalization (WCBE) regarding land valuations for the 2008-2009 tax year.

¹ The following Commissioners participated in this opinion: Chairman Hutchison and Commissioners Beyer, Keele, Lambolely and Shaw. Commissioners Cashman and Moran disclosed conflicts of interest and abstained, pursuant to NRS 281A.420.

3. The appeal process contemplated in statute for property tax disputes requires a petitioner to proceed to the WCBE first and if denied relief there, petition the SBE for relief.

4. On September 3, 2008 the League and Maryanne Ingemanson (Petitioners) filed a Writ of Mandamus (Writ) in the First Judicial District Court requesting Cheshire's recusal from hearing any and all residential property valuation appeals to the Board or, in the alternative, that the Court disqualify Cheshire from hearing their appeals. Petitioners claim Cheshire is biased and cite Judicial Canon 3, the standards for recusal applicable to judges.

5. In the Writ, Petitioners claim that they and the taxpayers they represent will be unable to get a fair hearing before the Board because of the "adverse" relationship between Petitioners and Cheshire. Petitioners claim that Cheshire voted on certain percentage factor increases relating to property valuation, adverse to the *Bakst* and *Barta* Nevada Supreme Court decisions. Petitioners also claim that Cheshire has voted in every instance to support the position of the Washoe County Assessor (Assessor) against the Incline Village and/or Crystal Bay taxpayer, either to reverse a WCBE decision in favor of the taxpayer or to sustain a WCBE decision in favor of the Assessor. Petitioners also claim Cheshire openly vouched for the credibility of the Assessor based on their personal relationship. Lastly, Petitioners claim that in responding to earlier allegations of bias, Cheshire threatened to retaliate against Incline Village and/or Crystal Bay homeowner taxpayers.

6. On September 5, 2008, the Honorable James Todd Russell, a judge at

the First Judicial District Court, issued an Order To Show Cause ordering Cheshire not to hear any Incline Village and/or Crystal Bay property valuation appeals to the Board until further order of the Court. A hearing on the Order was set for September 19, 2008. However, the parties have stipulated to continue the hearing on the Order until November 7, 2008, to allow time for Cheshire to request an Advisory Opinion from the Commission.

7. Cheshire testified before the Commission that he has no private commitment to the interest of others that would be affected by his actions on SBE hearings on Incline Village and/or Crystal Bay residential property valuation appeals.

8. Cheshire testified before the Commission that he has no private commitment to the interest of the Assessor.

9. Cheshire testified before the Commission that he does not disagree with the *Bakst* and *Barta* opinions but does feel that they do not go far enough in instructing the SBE on how to proceed on certain matters.

10. No other testimony was presented to the Commission.

CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Cheshire was a public officer, as defined by NRS 281A.160.

2. The Commission has jurisdiction to render an advisory opinion in this matter, pursuant to NRS 281A.440.1 and NRS 281A.460.

3. Based on the facts provided by Cheshire for this opinion, he has no private

commitments, pursuant to NRS 281A.420.8, that would require his disclosure, pursuant to NRS 281A.420.4, when matters pertaining to Incline Village and/or Crystal Bay residential property valuation appeals come before the SBE.

4. Based on the facts provided by Cheshire for this opinion, he has no private commitments as defined in NRS 281A.420.8, that would materially affect the independent judgment of a reasonable person in Cheshire's position thereby requiring his abstention on matters before the SBE relating to Incline Village and/or Crystal Bay residential property valuation appeals.

5. In any matter before the SBE where Cheshire has a private commitment to the interest of others, as defined in NRS 281A.420.8, Cheshire must disclose his interest, pursuant to NRS 281A.420.4, and abstain from acting, pursuant to NRS 281A.420.2.

DISCUSSION

All the facts in this matter were provided by Cheshire. Facts and circumstances that differ from those used by the Commission in this advisory opinion may result in an opinion different from this opinion.

The question before the Commission is whether it is appropriate for Cheshire to participate in SBE hearings on Incline Village and/or Crystal Bay residential property valuation appeals for 2008-2009 tax year.

NRS 281A.420.4 provides in relevant part:

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...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.

“Commitment in a private capacity to the interests of others” means 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. NRS 281A.420.8.

In Cheshire's case, as it pertains to matters before the SBE concerning Incline Village and/or Crystal Bay residential property valuation appeals, unless he has a "commitment in a private capacity to the interest of others," as defined in NRS 281A.420.8, he has no commitment to disclose.

Although Petitioners filed the Writ requesting Cheshire's recusal from hearing any and all Incline Village and/or Crystal Bay residential property valuation appeals, this does not create a commitment in a private capacity to the interest of others, as defined in NRS 281A.420.8. In the *Mayer* opinion, this Commission determined that where there is no private commitment or relationship to the entity suing the public officer, the public officer has no obligation to disclose and/or abstain. *In Re Mayer*, Comm'n on Ethics Opinion No. 07-47A (2008).

Additionally, Cheshire would not need to abstain from acting in SBE hearings on Incline Village and/or Crystal Bay residential property valuation appeals.

NRS 281A.420.2 provides in relevant part:

[I]n 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 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

The Commission advises Cheshire that, before he acts on any matter related to the issues discussed herein, he seek the advice of SBE's Deputy Attorney General and carefully study the Ethics Law and the Commission's interpretation of subsections 2 and 4 of NRS 281A.420 in its *Woodbury* opinion. In *Woodbury*, the Commission set out the steps that a public officer must take whenever a matter that may affect his independence of judgment comes before the public body in which he sits. First, disclosure is required whenever a public officer's actions would "*reasonably* be affected by his private commitment." Second, before abstention is also required, a reasonable person's independence of judgment "must be *materially* affected" by that private commitment. *In re Woodbury*,

Nevada Comm'n on Ethics Opinion No. 99-56 (1999).

The Commission's guidance in this Opinion is limited to the Ethics in Government Law (NRS 281A) and does not extend to other ethical considerations such as SBE's own ethical code, if one exists, or the judicial canons applicable to judges.

CONCLUSION

Therefore, by a unanimous vote the Commission concluded that based on the facts provided by Cheshire, when matters concerning Incline Village and/or Crystal Bay residential property valuation appeals come before the SBE, Cheshire need not disclose a private commitment to the interest of others, as Cheshire has no such commitments. Additionally, having no private commitment amounting to one defined in NRS 281A.420.8, he is not required to abstain from voting.

The Commission further advises Cheshire that, in the future, if he has a private commitment to the interest of others as defined in NRS 281A.420.8 on any matter that is before the body in which he serves, he must comply with the disclosure and abstention provisions of NRS 281A.420 and the Commission's interpretation of these provisions in its *Woodbury* opinion.

Dated this 27th day of October, 2008.

NEVADA COMMISSION ON ETHICS

By: _____


Mark Hutchison, Chairman