



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Advisory Opinion Concerning the
Conduct of ROGER TOBLER,
Mayor, City of Boulder City,
State of Nevada,**

Advisory Opinion No. 09-16A

Public Officer.

OPINION

Pursuant NRS 281A.440(1), this request for an advisory opinion by Roger Tobler (Tobler), Mayor of Boulder City, Nevada, came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on April 9, 2009. Tobler appeared in person, with his counsel, City Attorney Dave Olsen, and provided sworn testimony.

Tobler sought an advisory opinion from the Commission on the propriety of his future conduct as it relates to the Ethics in Government Law (Ethics Law). Tobler seeks guidance on whether he must disclose and abstain when matters involving a certain customer from his private business come before the Boulder City Council or the Redevelopment Agency on a matter for action.

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 Tobler of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. In his public capacity, Tobler is the Mayor of Boulder City.
2. Tobler's public duties include presiding over the Boulder City Council and the Redevelopment Agency.
3. In his private capacity, Tobler owns the True Value Hardware Store (hardware store) in Boulder City, which is one of only two hardware stores in town.
4. Boulder Inn & Suites (Boulder Inn), a local business, recently appealed to the Boulder City Council a determination by the

¹ The following Commissioners participated in this opinion: Vice Chairman Keele and Commissioners Beyer, Lamboley, Marvel, Moran and Shaw.

Boulder City Planning Commission. The Planning Commission denied Boulder Inn's request for a sign permit because the sign was not consistent with the requirements in the Boulder City Sign Code.

5. Boulder Inn has a charge account with the hardware store from which it purchases supplies on a regular basis.

6. Boulder Inn accounts for three-tenths of one percent (.3%) of the hardware store's total sales.

7. The City Attorney advised Tobler to disclose his business relationship with Boulder Inn whenever it comes before the Boulder City Council or the Redevelopment Agency for action but that his abstention is not necessary. Out of an abundance of caution, Tobler seeks an opinion from the Commission.

CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Tobler has been 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 evidentiary record in this case it does appear that Tobler's business relationship with Boulder Inn requires Tobler to disclose sufficient information concerning the relationship to inform the public of the potential effect of the action upon Boulder Inn and upon Tobler's private interest.

4. Based on the evidentiary record in this case it does not appear that Tobler's business relationship with Boulder Inn is

sufficiently substantial so as to require Tobler's abstention on matters before the Boulder City Council or the Redevelopment Agency affecting Boulder Inn.

DISCUSSION

Facts in this matter were provided by Tobler. 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 issues before the Commission are as follows:

1. Whether Tobler must disclose his business relationship with Boulder Inn whenever it comes before the Boulder City Council or the Redevelopment Agency for action.

2. Whether Tobler must abstain from voting on or advocating the passage or failure of matters affecting Boulder Inn that come before the Boulder City Council or the Redevelopment Agency for action.

As to the first issue, NRS 281A.420(4) sets out the standards on disclosure of conflicts of interest and provides in relevant part:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

...

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others;² or

² "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

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the... commitment or interest to inform the public of the potential effect of the action or abstention 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.

In the Commission's *Woodbury*³ opinion, 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.

Tobler testified that his business relationship with Boulder Inn had been continuous for more than one year. Business from Boulder Inn represented approximately \$600 per month, amounting to less than 1 percent of the total sales for the hardware store. Based on this relationship, Tobler's actions would

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).

³ *In re Woodbury*, Comm'n on Ethics Opinion No. 99-56 (1999).

reasonably be affected by his relationship with Boulder Inn.

Therefore, pursuant to NRS 281A.420(4) and this Commission's interpretation of that statute in the *Woodbury* opinion, every time Boulder Inn comes before the Boulder City Council or the Redevelopment Agency on a matter for action, Tobler must disclose sufficient information concerning his business relationship with Boulder Inn to inform the public of the potential effect of the action or abstention upon Boulder Inn and upon Tobler's private interest.

As to the second issue, NRS 281A.420(2) sets out the standards on abstention and provides in relevant part:

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:

(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.

On the evidence presented in this case, the Commission determined that the amount of business that Boulder Inn conducts with the hardware store is insufficient to require Tobler's abstention on matters affecting Boulder Inn that come before the Boulder City Council or the Redevelopment Agency for action. Thus, the independence of judgment of a reasonable person in Tobler's position would not appear to be materially affected by the business relationship between Tobler and Boulder Inn.

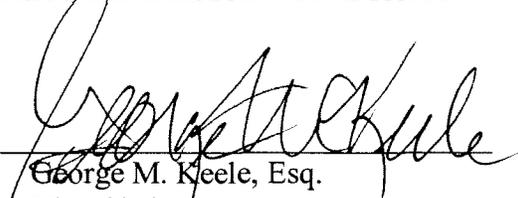
The Commission advises Tobler that, before he acts on any matter related to the issues discussed herein, he should review the Ethics Law and the Commission's interpretation of subsections 2 and 4 of NRS 281A.420 in its *Woodbury* opinion and also seek the advice of the City Attorney.

CONCLUSION

Therefore, by a unanimous vote, the Commission concluded that: (1) Tobler must disclose his business relationship with Boulder Inn every time matters affecting it come before the Boulder City Council or the Redevelopment Agency; and (2) Tobler is not required to abstain from voting on or advocating the passage or failure of matters affecting Boulder Inn that come before the Boulder City Council or the Redevelopment Agency for action.

DATED: April 30, 2009.

NEVADA COMMISSION ON ETHICS

By: 
George M. Keele, Esq.
Vice Chairman