



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Advisory Opinion by MICHAEL CARRIGAN,
Councilman, Sparks City Council
Sparks, Nevada,

Advisory Opinion No. 09-28A

Public Officer.

OPINION

Pursuant to NRS 281A.440(1), this request for an advisory opinion by public officer Michael Carrigan (Carrigan) came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on May 7, 2009. Carrigan appeared in person with his legal counsel Assistant City Attorney Doug Thornley (Thornley) and provided sworn testimony.

Carrigan 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), specifically, whether he has a conflict that prevents him from voting on the proposed Lazy 8 Master Plan Amendment.

After fully considering the request for advisory opinion and analyzing the facts, circumstances and testimony presented, the Commission deliberated and orally advised

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

FINDINGS OF FACT

1. Carrigan has served as councilman for the Sparks City Council (Council) since 1999.
2. The Lazy 8 is a proposed hotel/casino resort in Sparks, Nevada. The proposed Lazy 8 Master Plan Amendment was scheduled to come before the Council for action on May 11, 2009.
3. In *Comm'n on Ethics Opinions Nos. 06-61, 06-62, 06-66 and 06-68* (2007 Opinion), the Commission found Carrigan in violation of NRS 281A.420(2) for his failure to abstain from voting on a Lazy 8 matter that was before the Council at its August 23, 2006 meeting.
4. In the 2007 Opinion, the Commission concluded that the sum total of

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

the commitment and relationship shared by Carrigan and his close friend, confidant and campaign manager, Carlos Vasquez (Vasquez), equated to a “substantially similar” relationship to those enumerated under NRS 281A.420(8)(a)-(d) and therefore required Carrigan’s abstention on the Lazy 8 matter in which Vasquez was the lobbyist.

5. Carrigan challenged the 2007 Opinion. The matter is now pending a decision from the Nevada Supreme Court.

6. As a result of the 2007 Opinion, Wingfield Nevada Group (parent company of Red Hawk Land Company, the developer for the Lazy 8) removed Vasquez from the Lazy 8 project but Vasquez continues to be engaged by Wingfield on other matters. Wingfield stated that even though it potentially impacts Vasquez’s business interests, he has agreed to avoid commenting, working or representing the Lazy 8 project in all aspects.

7. Vasquez is not currently working on a campaign for Carrigan. However, Vasquez was Carrigan’s campaign manager for three consecutive election cycles since 1999 and has remained a close personal friend and confidant.

8. Carrigan is not sure he will run again for public office but if he should run again, he cannot say that Vasquez would definitely not run his campaign.

9. Thornley advised Carrigan to disclose his relationship to Vasquez at the May 11, 2009 Council meeting and vote on the Lazy 8 Master Plan Amendment since Vasquez is not currently Carrigan’s campaign manager and Vasquez is no longer involved in the Lazy 8 project.

CONCLUSIONS OF LAW

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

2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. Pursuant to NRS 281A.420(4), whenever matters affecting the Lazy 8 project come before the Council for action, Carrigan must disclose sufficient information concerning his relationship with Vasquez to inform the public of the effect of the action or abstention.

4. Further, pursuant to NRS 281A.420(2), whenever matters affecting the Lazy 8 project come before the Council for action, Carrigan must abstain from voting upon or advocating the passage or failure of such matters.

DISCUSSION

The facts in this matter were provided by Carrigan. Facts and circumstances that differ from those used by the Commission in this advisory opinion may result in a different opinion.

On the issue of disclosure, the Commission agrees with Thornley’s advice to Carrigan that he must disclose his relationship with Vasquez whenever matters affecting the Lazy 8 come before the Council for action.

NRS 281A.420(4) sets out the standards for disclosure of a conflict 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

...

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.

Therefore, Carrigan must disclose sufficient information concerning his relationship with Vasquez to inform the public of the potential effect of Carrigan's action or abstention upon Vasquez or upon his interest.

Carrigan's actions may have an effect on Vasquez even though he is no longer working on the Lazy 8 project for the

² "Commitment in a private capacity to the interest 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).

Wingfield Nevada Group. In a letter to the Commission, Scott Whittemore, Vice President of the Wingfield Nevada Group, wrote:

Even though this potentially impacts his business interests, Mr. Vasquez has agreed with Wingfield Nevada Group (parent company of Red Hawk Land Co.) and our retained legal counsel at Lewis & Roca to avoid commenting, working or representing the Tierra Del Sol/Lazy 8 project in all aspects to avoid even the appearance of any impropriety.

In addition to disclosing, whenever matters affecting the Lazy 8 project come before the Council, Carrigan must abstain from voting upon or advocating the passage or failure of such matters.

NRS 281A.420(2) sets out the standards for 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:

...

(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 independence of judgment of a reasonable person in Carrigan's position would be materially affected by Carrigan's commitment to Vasquez.

In the 2007 Opinion, the Commission concluded:

The sum total of their commitment and relationship equates to a "substantially similar" relationship to those enumerated under NRS 281.501(8)(a)-(d),³ including a close personal friendship, akin to a relationship to a family member, and a "substantial and continuing business relationship."⁴

The Commission further opined:

A reasonable person in Councilman Carrigan's position would not be able to remain objective on matters brought before the Council by his close personal friend, confidant and campaign manager, who was instrumental in getting Councilman Carrigan elected three times. Indeed, under such circumstances, a reasonable person would undoubtedly have such strong loyalties to this close friend, confidant and campaign manager as to materially affect the reasonable person's independence of judgment. *Id.* at 12.

³ NRS 281.501(8) was re-codified to 281A.420(8).

⁴ *In re Carrigan*, Nevada Comm'n on Ethics Opinion Nos. 06-61, 06-62, 06-66 and 06-68 at p. 8. (Footnote added).

The relationship between Carrigan and Vasquez upon which the 2007 Opinion was based has not changed sufficiently since 2007 to alter the abstention requirement.

The changed circumstances offered by Carrigan are that Vasquez is not currently Carrigan's campaign manager and that Vasquez is no longer involved in the Lazy 8 project. This Commission respectfully disagrees. The abstention requirement does not look at a momentary relationship but rather at a relationship that exists over a period of time. It looks back in time, as well as forward. Abstention is about the public officer's independence of judgment at the time he is called upon to exercise it.

Carrigan and Vasquez continue to share a substantial and continuing business relationship or one that is substantially similar.

The Ethics Law provides no definition for "substantial." Where no definition exists, the Commission accords the words in the Ethics Law their plain meaning unless such reading violates the spirit of the law.

Webster's New World Dictionary, Second College Edition (1982) defines "substantial" as "of or having substance, real, actual, true, not imaginary, solid, strong, firm, stout."

It has been established that Vasquez is a close personal friend and political advisor to Carrigan and that Vasquez was instrumental in getting Carrigan elected three times. The closeness of their relationship is real and therefore substantial.

Webster's defines "continuing" as "to go on again after an interruption, to

resume, to go on with, to carry on, to keep up, to persist in.” *Id.*

Although Vasquez is not currently Carrigan’s campaign manager, he was for three consecutive campaign cycles since 1999. Further, Carrigan testified that if he ran for office in the future, he could not say that Vasquez would not handle his campaign. Therefore, their business relationship is not only substantial, it is continuing.

Thus, pursuant to NRS 281A.420(2) and (8), whenever matters affecting the Lazy 8 come before the Council for action, Carrigan must abstain from voting upon or advocating the passage or failure of such matters.

CONCLUSION

By a unanimous vote, the Commission concluded that whenever matters affecting the Lazy 8 come before the Council, Carrigan must disclose his relationship with Vasquez. Additionally, by a 6 to 1 vote,⁵ the Commission concluded that Carrigan must abstain from voting upon or advocating the passage or failure of such matters.

Dated this 15th day of July, 2009.

NEVADA COMMISSION ON ETHICS

By: _____

Mark Hutchison, Presiding Officer

⁵ Commissioner Marvel voted no.