



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
WILLIAM WEBER, Member, Washoe
County Planning Commission,
Washoe County, State of Nevada,

Request for Opinion No. 09-47C

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

On June 26, 2009, a private citizen filed a Third-Party Request for Opinion ("RFO") with the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(2) alleging that William Weber ("Weber"), a member of the Washoe County Planning Commission, violated the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS") when, on two different occasions, he failed to disclose and abstain from acting in a matter in which he had a pecuniary interest.

Pursuant to NRS 281A.440, the Commission conducted an investigation and an investigatory panel of two commissioners¹ determined that just

and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding one of the allegations.

This matter came before a quorum² of the Commission during a public hearing on October 7, 2009, in consideration of the RFO. Weber was present at the hearing and provided sworn testimony. Nathan J. Edwards, Esq., Deputy District Attorney, Washoe County, represented Weber in this matter.

At the conclusion of the hearing on October 7, 2009, and after fully considering the testimonial and documentary evidence presented, the

¹ Commissioners Mark A. Hutchison, Esq., and Gregory J. Gale, CPA, served on the Investigatory Panel. Pursuant to NRS

281A.220(4), they did not participate in the hearing or opinion in this matter.

² The quorum consisted of Chairman George M. Keele, Esq., and Commissioners Paul H. Lamboley, Esq., John W. Marvel, and John T. Moran, III, Esq.

Commission deliberated and orally provided Weber with its decision that, based on a preponderance of the evidence, Weber did not violate the Ethics Law.³ The Commission therefore dismissed the allegation against him. The Commission now renders this written Opinion stating its formal findings of fact and conclusions of law.

II. PROCEDURAL HISTORY

The Washoe County Planning Commission considered amendments to the Washoe County Comprehensive Plan on July 28, 2008, and again on June 2, 2009. The proposed amendments provided a wholesale update of the Forest Area Plan. Weber, as a member of the Planning Commission, acted upon the Forest Area Plan amendments when he voted with respect to the amendments on July 28, 2008, and again on June 2, 2009. At the July 28th meeting, Weber disclosed his ownership of property within the Forest Planning Area; however, he made no such disclosure at the meeting of June 2, 2009.

Based on these actions, an RFO was filed with the Commission alleging that on July 28, 2008, Weber violated NRS 281A.420(1) and (3)⁴ when he advocated for and voted on changes to the Forest Area Plan without adequately disclosing his pecuniary interest in property located within the Forest Planning Area. The complaint also

alleged that Weber violated NRS 281A.420(1) and (3) when he again voted on changes to the Forest Area Plan on June 2, 2009, without making any disclosure of his pecuniary interest in property within that area.

After an investigation, the Commission's Executive Director presented the allegations to the Commission's Investigatory Panel pursuant to NRS 281A.440(4). The Panel determined that there was just and sufficient cause to forward only one of the allegations to the Commission to render an opinion pursuant to NRS 281A.440(5).

The Panel found that there was sufficient credible evidence⁵ that Weber violated the Ethics Law on June 2, 2009, when he failed to disclose that he had a pecuniary interest in property located in the Forest Planning Area prior to taking action on the Forest Area Plan. The Panel, however, dismissed the allegation that Weber violated NRS 281A.420(1) on July 28, 2008, because the evidence showed that Weber made a sufficient disclosure of his interest in the property at that meeting. It also dismissed the allegations that Weber violated NRS 281A.420(3) on July 28, 2008, and again on June 9, 2009, on the grounds that his abstention was not required because no resulting benefit or detriment accrued to Weber any more or less than anyone else owning property in the Forest Planning Area.

³ Commissioner Moran disagrees with this determination and would find a violation based on Weber's failure to disclose at the June 2, 2009, meeting.

⁴ Formerly codified as NRS 281A.420(4) and (2). Re-codified by Senate Bill 160, 2009 Legislative Session, effective May 28, 2009. See 2009 *Stat. of Nevada*, ch. 257, p. 1037.

⁵ NAC 281A.435 defines "credible evidence" as "the minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion."

The Commission thus considers in this opinion only whether Weber violated NRS 281A.420(1) on June 2, 2009, by failing to disclose his interest in property located within the Forest Planning Area.

III. FINDINGS OF FACT

1. Weber is the at-large member of the Washoe County Planning Commission ("Planning Commission") representing the area from Truckee River south to the southernmost border of the county. He was first appointed to the Planning Commission in 2003, re-appointed in 2006, and his current term expires in 2011.
2. To qualify for the southern Washoe County at-large position, Weber was required to reside in the unincorporated area of Washoe County south of the Truckee River. Weber satisfied the residency requirements; he resides and owns two properties in the area known as the Forest Planning Area.
3. The Washoe County Comprehensive Plan ("Master Plan") comprises 13 different geographic areas and covers the unincorporated parts of Washoe County.
4. The Forest Area Plan ("FAP") is a component of the Master Plan and establishes the pattern of development for the Forest Planning Area, a region of about 130 square miles of unincorporated land in southwest Washoe County.
5. Pursuant to the mandates of NRS Chapter 278 requiring periodic updates to county planning documents, the Washoe County planning staff initiated the process to amend the FAP.
6. The Planning Commission considered the FAP at a special meeting held on July 28, 2008, and took action on proposed amendments to the FAP comprising a wholesale update of the plan. The amendments included establishing updated goals and policies, establishing minimum architectural and site design standards, amending the Land Use Plan map to reflect certain land use changes, and establishing an updated map series.
7. During the July 28, 2008, meeting, Weber disclosed his ownership of two residences located within the Forest Planning Area, and voted to approve amendments to the FAP.
8. The Planning Commission subsequently considered the FAP at its regular meeting held on June 2, 2009, and took action with respect to preparation of a report to the Washoe County Board of Commissioners ("Board"), pursuant to NRS 278.220(4) and Washoe County Code 110.820.30(c)(3), on issues referred by the Board to the Planning Commission.
9. During the June 2, 2009, meeting, Weber voted on issues related to the FAP without disclosing his interest in the two properties located within the Forest Planning Area.
10. The amendments to the FAP approved by the Planning Commission affected the entire area covered by the FAP and all

inhabitants within the Forest Planning Area. Included in the amendments were changes to land use designations (zoning) for designated properties within the Forest Planning Area, but such changes did not directly impact Weber's properties.

IV. STATEMENT OF ISSUES

This matter arises out of Weber's actions at the Planning Commission meeting of June 2, 2009, when he considered and voted on amendments to the FAP. The issue before the Commission is whether the Ethics Law required Weber to disclose his ownership of two properties in the Forest Planning Area at the time the FAP amendments were considered at the June 2nd meeting. The Commission finding no evidence to support a violation of NRS 281A.420(1), hereby dismisses the allegation.

V. DISCUSSION OF RELEVANT STATUTES AND ISSUES

This case implicates two important principles of the Ethics Law: 1) a public office is deemed a public trust held solely for public benefit; and 2) transparency in government affairs favors disclosure.

A. Public Policy

NRS 281A.020

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a public trust and shall be held for the sole benefit of the people.

- (b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

Weber serves as an appointed member of the Washoe County Planning Commission. He is therefore a public officer and must commit himself to avoid conflicts of interest between his private interests and those of the general public whom he serves.

B. Disclosure of pecuniary interest

NRS 281A.420(1)(b) prohibits a public officer from voting or otherwise acting on a matter in which the public officer has a pecuniary interest without first disclosing sufficient information regarding the interest. The Commission finds that although Weber had a pecuniary interest in property located in the Forest Planning Area, his disclosure of that interest was not required because Weber's property interests did not constitute a pecuniary interest in the FAP. The effect on Weber's property from the changes to the FAP is no greater than that accruing to others similarly situated within the Forest Planning Area.

NRS 281A.420(1) provides:

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

- (a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

- without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

The disclosure provisions of NRS 281A.420(1)(b) are implicated when a public officer votes or takes other action upon a matter in which he has a pecuniary interest. The extent to which a public officer has a pecuniary interest

in a matter that must be disclosed before a given vote must be measured by the vote's impact upon the individual public official. Whether such an interest exists is always a factual question governed by the circumstances of each case. *See Matter of Woodbury*, Opinion No. 96-14 (Sept. 13, 1996).

The evidence presented to the Commission established that the FAP amendments provided a wholesale update to the FAP, and that the amendments affected the entire 130 square mile area covered by the FAP and all those who reside in the Forest Planning Area. Those amendments did include land use designation (zoning) changes for certain, identified parcels in the Forest Planning Area; however, the evidence showed that neither of Weber's properties were subject to zoning changes and that the changes made did not directly impact his properties. Moreover, the FAP amendment process was initiated by Washoe County planning staff pursuant to NRS Chapter 278 in order to effectuate updates resulting from changes in policy and community desires.

The mere ownership of property in the Forest Planning Area is not sufficient to implicate the NRS 281A.420 disclosure requirements. A more direct, beneficial nexus between Weber's property ownership and the Planning Commission's action on the FAP amendments must be established by evidence before disclosure is mandated notwithstanding its desirability.

No such evidence was offered in this matter. Rather, the Commission was presented with unsubstantiated

hypotheses about the nature and extent of possible future development of land and roadways in the Forest Planning Area and speculation about how such development could potentially impact Weber's property. The evidence before the Commission disclosed that Weber's property would receive no demonstrable, direct beneficial impact as a result of the proposed land use changes and that the changes to the FAP were mandated by law and initiated by Washoe County's planning staff.

Based on the forgoing facts and circumstances, the Commission concludes that the effect on Weber's interests resulting from the Planning Commission's vote on the FAP is no greater or lesser than others similarly situated in the Forest Planning Area. Accordingly, Weber was not required to disclose his ownership of property in the Forest Planning Area at the June 2, 2009, Planning Commission meeting. We find no violation of NRS 281A.420, and therefore dismiss the remaining allegation against Weber.

Despite the Commission's conclusion that the Ethics Law did not require Weber to disclose, we emphasize that disclosure is the better course. In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. The requisite disclosure must be made at the time a matter is considered by a public body – not when the vote happens – but when the agenda item is called. Further, a prior disclosure does not satisfy the need to

disclose again when the matter is subsequently considered.

Consideration of a matter encompasses much more than the final vote. It includes questions and comments raised by the public; the questioning and advocacy relating to the matter by the public body itself; and also the preparation and making of the motions on which the public body ultimately votes. When a public body considers a matter over the course of several meetings, a public officer must remain sensitive to disclosure. Although the subject matter may be the same, consideration of different issues respecting the same subject at a subsequent meeting oftentimes prompts the need for a public officer to disclose.

Successive disclosures also provide the transparency necessary in public business. The public body's audience – many of whom may not have attended prior meetings – are thus provided with critical information concerning the public officer's interests and the reasons for the officer's continued participation in the matter after the disclosure. Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.

VI. CONCLUSIONS OF LAW

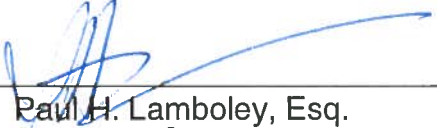
1. At all times relevant to this matter, Weber was a "public officer," as defined by NRS 281A.160. The Commission has jurisdiction over public officers pursuant to NRS 281A.280.

2. Pursuant to NRS 281A.440(2)(b) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. There is not sufficient evidence to support a finding that Weber violated NRS 281A.420(1) during the Washoe County Planning Commission meeting of June 2, 2009, by failing to disclose.

Dated this 4th day of June, 2012.

NEVADA COMMISSION ON ETHICS

By: _____


Paul H. Lambole, Esq.
Vice-Chair⁶

⁶ At the time this written opinion was issued, then-Chairman Keele was no longer a member of the Commission and Vice-Chairman Lambole signed this opinion on behalf of the Commission.