



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **MICHAEL A. SCHNEIDER**, Senator,
Nevada State Legislature,

Request for Opinion No. 09-73A

Public Officer. /

OPINION

Public officer Michael A. Schneider requested a confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A. Schneider appeared before a quorum¹ of the Commission on November 23, 2009, and provided sworn testimony. At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission orally advised Schneider of its decision that under the Ethics Law the proposed arrangement between Schneider's private business entity, the Federal Government and the Nevada Housing

Division is not a prohibited contract under NRS 281A.430(1).

The Commission subsequently issued a letter to Schneider setting forth its decision. Schneider waived confidentiality with respect to this proceeding. Therefore, the Commission now publishes this letter as its written Opinion.²

I. QUESTION PRESENTED

Whether the Ethics Law prohibits you, a public officer and part owner in a private business entity, from entering into a contract with the federal government for federal funds that are administered by the State Housing Division to develop a low-income housing project in Nevada.

¹ The following Commissioners participated in this opinion: Chairman George M. Keele, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, John T. Moran, III, Esq., and John W. Marvel.

² Section II. Discussion, in relevant form and substance, reproduces the Commission's letter to the requester.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, a public officer (State Legislator) and part owner in a private business entity (College Villas, LP), from entering into a contract with the federal government for federal funds that are administered by the State Housing Division to develop a low-income housing project in Southern Nevada.

Based on the information provided to the Commission, College Villas is jointly owned by you and Mr. Joseph DeSimone. You are a limited partner for the purpose of investing previously owned land in College Villas and Mr. DeSimone is the general partner responsible for managing the business of College Villas. Accordingly, College Villas was pursuing a project, or the contract at issue, to build a low income housing project in exchange for access to low interest federal funding in the form of tax credits and bonds.

The U.S. Government is encouraging the development of low-income housing in the Southwestern states through such incentives. The Nevada Housing Division administers the federal funds on behalf of the federal government to ensure that such projects in Nevada comply with the standards for the funding. Neither the Nevada Legislature, nor you as a State Legislator, have any authority over the Housing Division related to this project or these funds.

NRS 281A.430(1) prohibits a public officer from entering into a contract with a governmental entity and any business entity in which the public officer has a pecuniary interest. However, based on prior Commission decisions interpreting the types of contracts within the scope of NRS 281A.430, the Commission unequivocally held that the proposed arrangement between College Villas, the Federal Government and the Nevada Housing Division did not constitute such a contract.

Specifically, the Commission determined there was no nexus between the conditions for qualifying for the federal funding or the purpose of the federal funding to build low-income housing and your duties as a state legislator. Further, the Commission held that the contract is not one in which you or College Villas will provide goods or services in exchange for federal money. Rather, you will receive low interest loans to build the housing project on your land which will be repaid over a period of 40 years through the rental income from the development. Accordingly, the investors in the federal bonds and tax credits will have a claim to 99 percent of the development and College Villas will own one percent until the loans are repaid. After the bonds are repaid, College Villas will own 100 percent of the development. Therefore, it is a simple funding or mortgage structure. The development will not be "sold" to the Federal Government.

Finally, the Commission found that, because the State Housing Division's role in the arrangement for the federal funding was administrative and ministerial, it did not trigger the restriction on contracts contemplated under NRS 281A.430. Specifically, no evidence indicated that the Housing Division has any ability to amend or impose additional criteria for the federal funding. Instead, the Housing Division acts only as an agent for the exchange of federal funds and collects documentation that College Villas satisfies the Federal Government's requirements for the funding. For the aforementioned reasons, the Commission has determined that your involvement, as presented, in College Villas pursuit of the federal funding to build the low-income housing development would not violate the Ethics in Government Law.

This decision of the Commission became effective on November 23, 2009.

Dated this 4th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman³

³ At the time this written opinion was issued, the presiding officer in this matter, then-Chair Keele, no longer served on the Commission. Therefore, current Chair Beyer signed this opinion on behalf of the participating Commissioners.

NRS 281A.430 Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board, commission or body may, in the ordinary course of his or her business, bid on or enter into a contract with any governmental agency, except the board, commission or body on which he or she is a member, if the member has not taken part in developing the contract plans or specifications and the member will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than a public officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if:

(a) The contracting process is controlled by the rules of open competitive bidding or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;

(b) The sources of supply are limited;

(c) The public officer or employee has not taken part in developing the contract plans or specifications; and

(d) The public officer or employee will not be personally involved in opening, considering or accepting offers.

If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281A.420, shall disclose the public officer's interest in the contract and shall not vote on or advocate the approval of the contract.