



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **PUBLIC OFFICER**, Member, Governing
Body, Political Subdivision, State of Nevada,

Request for Opinion No. **10-74A**

Public Officer. /

ABSTRACT OF OPINION

A public officer ("PUBLIC OFFICER") requested an 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. Public Officer appeared before a quorum¹ of the Commission on October 18, 2010, 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 PUBLIC OFFICER of its decision that the Ethics Law allows him to vote as a member of the

governing body of a political subdivision on a matter impacting his pecuniary interests; however, disclosure of the interests is required under NRS 281A.420(1) on any matter that comes before the governing body regarding the project.

The Commission subsequently issued a letter to PUBLIC OFFICER setting forth its decision. PUBLIC OFFICER elected to retain confidentiality with respect to this proceeding pursuant to NRS 281A.440(1). Therefore, the Commission now publishes this abstract of the letter as its written Opinion.²

¹ The following Commissioners participated in this opinion: Chairman John T. Moran, III, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, Paul H. Lamboley, Esq., John W. Marvel, and James M. Shaw.

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

I. QUESTION PRESENTED

Whether NRS 281A.420(3) prohibits you as a member of the Governing Body of a Political Subdivision of the State from voting on a matter impacting your pecuniary interests.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, a member of the Governing Body of a Political Subdivision of the State ("Governing Body"), from voting on a matter impacting your pecuniary interests.

ENGINEERING FIRM and the County's Development Department proposed to the Governing Body a natural resources mitigation project to alleviate certain hazardous conditions in the vicinity of a STATE HIGHWAY located within the Political Subdivision. To fund the project, ENGINEERING FIRM and the County are seeking a federal grant which requires a commitment from the State and local governments affected by the hazardous condition to match the federal funds.

The State is expected to contribute the largest portion of these matching funds and the Political Subdivision is being asked to contribute a smaller portion. The Political Subdivision has funds available for this project which would not affect any other proposed or potential projects.

According to the evidence provided to and relied upon by the Commission, if the mitigation project

is approved, your real property located in the Political Subdivision would likely benefit by alleviated natural disaster hazards and increased value. However, the Commission received evidence that approximately fifteen to twenty percent of the real property owners in the Political Subdivision and all property owners in the County would similarly benefit from the project.

In fact, the Commission learned that the County has spent several years developing a comprehensive plan to minimize such disasters and provide a permanent resolution to these issues throughout the County. The County's various public entities and improvement districts and the overall transportation system will benefit from the project, including reliance upon access to the STATE HIGHWAY in emergency circumstances. Therefore, while the project affects your pecuniary interests in your property, the Commission determined that you will not receive a benefit which is greater or less than other property owners in the political subdivision or the County sufficient to render a reasonable person in your situation's independence of judgment in voting on this particular project materially impaired.

Consequently, the Commission encouraged you to participate in and vote on matters relating to the project. Such action would not violate NRS 281A.420(3) and (4). However, the Commission further advised you to disclose your pecuniary interests in accordance with NRS 281A.420(1) on any

matter that comes before the Board regarding this project.

The Commission's decision became effective on October 18, 2010.

Dated this 4th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman³

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

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.

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

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, 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 the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of others.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act

upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others.

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