



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, County
Planning Commission, State of Nevada,

Request for Opinion No. 11-18A

Public Officer. /

ABSTRACT OF OPINION

A public officer ("PUBLIC OFFICER") 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. Public Officer appeared before a quorum¹ of the Commission on February 11, 2011, 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 accept a gift from the local Visitors Authority.

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

I. QUESTIONS PRESENTED

- A. Whether, as a member of the County Planning Commission, you are a public officer under NRS 281A.160.**

¹ The following Commissioners participated in this opinion: Vice Chairman Erik Beyer, and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Paul H. Lambole, Esq., and John W. Marvel.

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

B. Whether you may accept a gift from the local Visitor's Authority of two free tickets for a luncheon and event.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, a member of a County Planning Commission, from accepting a gift from the local Chamber of Commerce and Visitors Authority which sponsors an annual Luncheon and Event. The gift includes free tickets for the luncheon and event for you and your guest. The luncheon and event are intended to educate the public about certain community issues and their potential impact on planning and development in the local area.

As indicated at the hearing, the County Planning Commission has final decision-making power over variances and special use permits. Consequently, the Planning Commission does not serve solely as an advisory body to the County Board of Commissioners. Therefore, because your position satisfies all other criteria set forth in NRS 281A.160, you are a public officer subject to the provisions of NRS 281A.

The Commission determined that you may accept the free tickets for the luncheon and event for yourself and a guest. NRS 281A.400(1) prohibits you from accepting a gift which would tend to influence a reasonable person in your position to depart from the faithful discharge of his public duties. However, the Commission found that the Visitors Authority rarely appeared before the County Planning Commission and the gift was intended to educate you as a Commissioner

and as a member of the community. Therefore, the Commission determined that such a gift would not improperly influence you, or a reasonable person in your situation, from carrying out your official duties.

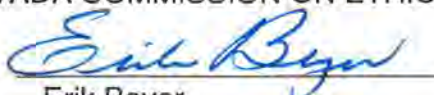
Likewise, the Commission determined that accepting the tickets would not constitute the improper use of your position to secure an unwarranted benefit, privilege or advantage pursuant to NRS 281A.400(2). The gift was offered to you as well as other County and State public officials. Because the intent of the program was educational and related to matters that potentially affect your responsibilities as a public officer, the Commission declared that the gift was warranted.

Despite the Commission's approval for you to accept the gift for you and a guest, the Commission advised you to be cautious in the future about your responsibilities pursuant to NRS 281A.020 and 281A.420. Should the Visitors Authority or a private party interested in the Event come before the Planning Commission in any capacity, you should be mindful of any responsibility to disclose and abstain from voting, as required.

The Commission's decision became effective on February 11, 2011.

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-Vice-Chair Erik Beyer, had become the Chair of the Commission.

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:

(a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and

(b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

(1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(2) The expenditure of public money; and

(3) The administration of laws and rules of the State or any county, city or other political subdivision.

2. "Public officer" does not include:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

3. "Public office" does not include an office held by:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

* * *

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

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4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee.

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