



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Advisory Opinion by **Public Officer**,
Member, Board of Directors,
County General Improvement District,
State of Nevada,

Request for Opinion No. 11-26A

Public Officer. /

ABSTRACT OF OPINION

I. STATEMENT OF THE CASE

Public Officer requested this 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 Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum¹ of the Commission heard this matter on March 7, 2011. Public Officer appeared and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission deliberated and orally advised Public Officer of its decision that Public Officer would not violate the Ethics Law by serving as a member of

the Board of Directors ("Board") of a County General Improvement District ("GID") and simultaneously volunteering his services to a group which provides assistance to employees of the GID while carrying out the functions and duties of the GID.

Public Officer elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract in lieu of the full opinion.

II. QUESTION PRESENTED

Public Officer is a member of the GID Board. He questions whether the Ethics Law permits him to serve on the Board and at the same time volunteer his services to an organization which assists GID employees in carrying out their duties.

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

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

The Board recently selected Public Officer to fill an unexpired term on the Board. At the time of his appointment, he served as a volunteer member of the GID's Volunteer Services Team ("Team"), an organization that functions as an auxiliary to the GID to provide volunteer services to the employees of the GID while carrying out the duties and functions of the GID. The Team operates at the direction of the GID Director who is appointed by the Board to oversee the administration and operations of the GID. Upon his appointment to the Board, Public Officer resigned from the Team due to concerns that his volunteer service would conflict with his responsibilities on the Board. Public Officer questions whether the Ethics Law would permit him to continue to volunteer with the Team while serving on the GID Board.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020(1) provides:

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 or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

The Commission has reviewed Public Officer's situation and concludes that no conflict would arise between his volunteer service on the Team and his duties as a member of the Board. If Public Officer were to rejoin the Team, it appears that his volunteer efforts would be in concert with his Board member duties in that both positions are committed to serving the public interest in the community. His volunteer activities would be limited and infrequent and thus would not interfere with his obligations to the Board in managing the GID's affairs. Also, the Team acts as an auxiliary to the GID and provides services on a volunteer basis that the GID would otherwise have to provide or, perhaps, do without.

Even though Public Officer's future involvement with the Team would not create an impermissible conflict of interest under NRS 281A.020, the Commission is concerned that such dual service could create the perception of a conflict of interest and thus the appearance of impropriety. In particular, we note that a Team representative regularly appears before the Board to report on its activities and that the Director must also appear before the Board to request approval of major expenditures for Team activities. In addition, we note that the Team's primary activities directly support the employees while engaged in GID business. Thus, Public Officer's participation in those activities, even on a volunteer basis, could lead to the perception that he is biased in favor of the employees and call into question his ability to impartially carry out his official Board responsibilities.

Nevada's Ethics Law is concerned with situations involving public officers that create appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts. As a member of the Board, Public Officer holds a public office and must therefore commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves. We therefore caution Public Officer that the Ethics Law requires that he take care to avoid the appearance of impropriety on matters before the Board, especially on issues regarding employees. Where there is potential for conflict, Public Officer is advised to properly disclose the conflict and abstain from action in his role as a public officer when appropriate under the circumstances outlined below.

2) Disclosure and Abstention

NRS 281A.420(1), (3) and (4), governing disclosure and abstention, provide as follows:

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.

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.

As a public officer, Public Officer is subject to the disclosure and abstention provisions of NRS 281A.420. When the Board considers a matter concerning the Team, Public Officer is advised to disclose his activities as a Team member on the public record to avoid the appearance of impropriety. For example, if the Team seeks funding, either directly or through the Director's efforts, or has any substantive matter before the Board, Public Officer should disclose his interests in the Team on the public record at the time the Board considers the matter. If Public Officer has doubts about whether or not he should disclose his membership on the Team, he is well advised to make the disclosure.

The Ethics Law, however, does not necessarily require Public Officer to abstain from voting on Team matters. Public Officer must undertake an abstention analysis on the record to ascertain whether the independence of judgment of a reasonable person in his situation would be materially affected by the matters before him such that abstention would be necessary. Public Officer is welcome to come back to the Commission for clarification regarding abstention concerning specific matters before the Board.

IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Public Officer 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. As a member of the Board of Directors of the County GID, Public Officer may seek and accept a volunteer membership position with the Team to assist GID employees to carry out their duties.
4. On funding and other substantive issues brought before the Board regarding the Team, Public Officer should disclose his membership interest in the Team on the public record to avoid the appearance of any impropriety.
5. Likewise, on funding and other substantive issues brought before the Board regarding the Team, Public Officer should undertake an analysis of his membership interest in the Team on the public record and decide whether or not he must abstain from voting and advocating the passage or failure of a particular issue.

Dated this 4th day of October, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman²

² At the time this written opinion was issued, then-Chair Moran no longer served on the Commission. Therefore, current Chair Beyer signs this opinion on behalf of the Commission.