



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,  
City Council, State of Nevada,

Request for Opinion No. 11-61A

\_\_\_\_\_  
Public Officer./

**ABSTRACT OF OPINION**

**I. STATEMENT OF THE CASE**

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 Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum<sup>1</sup> of the Commission heard this matter on August 11, 2011. Public Officer appeared at the hearing 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 under the Ethics Law he has a commitment in a private capacity to the interests of

others that he must disclose when a certain project comes before the City Council, but he need not abstain from voting on the matter as that relationship presently exists. Public Officer should, however, conduct an abstention analysis on the record at the time the matter comes before the City Council and must abstain if he concludes that the independence of judgment of a reasonable person in his circumstance would be materially affected by his private interests or commitments.

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 City Council. He asks the Commission to advise him regarding his disclosure and abstention obligations with respect to a matter which involves the

<sup>1</sup> The following Commissioners participated in this opinion: Chairman Erik Beyer and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Keith A. Weaver, Esq., and James M. Shaw.

interests of the campaign consultants for his three City Council elections.

### **III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES**

#### **A. ISSUES**

Public Officer is a member of the City Council. He anticipates that a project, known as the "PUD Project," will eventually come before the City Council either for direct action or by way of an appeal from the City Planning Commission. The project involves a Planned Unit Development which may include gaming. Widespread opposition to the development is expected. His former campaign manager ("C.M.") and political consultant ("P.C.") are involved as consultants in the PUD Project. These individuals assisted Public Officer with his three successful campaigns for City Council. He has had no personal or business relationship with them since the end of his last campaign in 2008; however, it is possible that he may retain their services should he campaign for political office in the future. Public Officer requests this Commission's advice regarding his disclosure and abstention obligations when the PUD Project comes before the City Council.

#### **B. RELEVANT STATUTES**

##### **1) Public Policy**

NRS 281A.020 provides in part:

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.

2. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interests. The 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 to promote the integrity in public service. As a member of the City Council, 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. Whether there would be such conflicts between his public duties as a member of the City Council and his private commitments must be considered in light of the provisions set forth in NRS Chapter 281A and as

interpreted by applicable Commission precedent in similar circumstances.

## 2) Disclosure of Commitment in a Private Capacity

NRS 281A.420(1) and (8)(a) provide:

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.

\* \* \*

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

(1) Who is a member of the public officer's or employee's household;

(2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;

(3) Who employs the public officer or employee or a member of the public officer's or employee's household;

(4) With whom the public officer or employee has a substantial and continuing business relationship; or

(5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

Under NRS 281A.420(1)(c), a public officer must disclose his commitment in a private capacity to the interest of others before voting or otherwise acting upon a matter which would be reasonably affected by that commitment. A "commitment in a private capacity to the interests of others" is defined in NRS 281A.420(8)(a)(4) to include a commitment to a person "[w]ith whom the public officer . . . has a substantial and continuing business relationship."

The Commission first determines whether Public Officer has a

commitment in a private capacity to the interests of his campaign consultants within the definition of NRS 281A.420(8)(a)(4). Public Officer retained the firms which were owned by his campaign manager and which employed C.M. and P.C. to conduct his campaign for City Council in three successive elections – 2000, 2004, and 2008. Both C.M. and P.C. personally provided campaign and public relations services to Public Officer during all three of his City Council races and C.M. served as his campaign manager. Their efforts on his behalf were significant, with expenditures for goods and services exceeding \$100,000 for the three elections. Although he could not recall the amount, Public Officer indicated that C.M. and P.C. were paid for their services via commissions on the sums expended. Public Officer has no continuing personal relationship with either C.M. or P.C., and they have provided no services to him since the end of his 2008 campaign. Public Officer testified, however, that it is possible that he would retain them for a possible future political campaign.

Based on the above facts, and because Public Officer could not conclusively state that his dealings with C.M. and P.C. have ended, the Commission concludes that Public Officer has a substantial and continuing business relationship with C.M. and P.C. and therefore a commitment in a private capacity to their interests, which include the PUD Project. We also conclude that Public Officer's action on the PUD Project would reasonably be affected by his commitment to C.M. and P.C.

Accordingly, the Commission advises Public Officer that he must disclose his private commitment to C.M.'s and P.C.'s interests when the City Council considers the PUD Project. The disclosure must conform to NRS 281A.420(1), requiring that Public Officer disclose sufficient information concerning the nature and extent of his commitment to inform the public of the potential effect of any action or abstention relating to the project upon C.M. and P.C.

### **3) Abstention**

NRS 281A.420(3) and (4) provide:

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.

The Ethics Law requires 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 commitment in a private capacity to the interests of others. NRS 281A.420(4)(b) (emphasis added). The Commission concludes that the nature of Public Officer's relationship with C.M. and P.C. does not establish a clear case for abstention based on his commitment in a private capacity to their interests. Accordingly, the Commission advises Public Officer that he is not required to abstain from the PUD Project due to his relationship with C.M. and P.C.

The Commission nonetheless cautions Public Officer that until the PUD Project is presented to the City Council, he will have only limited information concerning the nature of the project and the extent of its impact on the community or particular individuals. We therefore recommend that Public Officer conduct an abstention analysis pursuant to NRS 281A.420(3) and (4) in light of any additional information that may arise concerning his private interests respecting the PUD Project and evaluate at that time whether he has an interest that would require his abstention in the matter. We also remind Public Officer that the Ethics Law favors the right of a public officer to vote or otherwise act upon a matter,<sup>2</sup> and therefore encourage him

---

<sup>2</sup> The Commission notes the 2009 amendments to NRS 281A.420 concerning abstention which encourage voting by public officers in representative government unless there is a clear conflict of interest which affects the independence of judgment of a

to return to the Commission with any questions he may have concerning his disclosure and abstention obligations on the PUD Project, or on any other matter that comes before the City Council.

#### **IV. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Public Officer was a "public officer," as defined in 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. Under NRS 281A.420(8), Public Officer has a substantial and continuing business relationship with C.M. and P.C., and therefore has a commitment in a private capacity to their interests.
4. NRS 281A.420(1) requires Public Officer to disclose the nature and extent of his relationship with C.M. and P.C. at the time the City Council considers the PUD Project in sufficient detail to allow members of the public to understand the potential effect of his participation in the City Council's actions on the interests of C.M. and P.C.

5. On the facts before the Commission, Public Officer's private commitment to the interests of C.M. and P.C. does not establish a clear case for abstention, and he is therefore not required to abstain from acting with respect to the PUD Project under NRS 281A.420(3) and (4).

Dated this 4<sup>th</sup> day of October, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer  
Erik Beyer  
Chairman

---

reasonable person in the public officer's position.