



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. 11-65A

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 quorum¹ of the Commission heard this matter on September 13, 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 the Ethics Law requires him to disclose his various commitments in a private capacity to both proponents and opponents of a project before the governing body; however, he must abstain only if the project includes a gaming component because the independence of judgment of a reasonable person in his situation would be materially affected by a relationship to those with ties to gaming.

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 governing body ("Governing Body") of a political subdivision ("Political

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

Subdivision"). He asks the Commission to advise him regarding his disclosure and abstention obligations regarding a matter in which he has personal and business connections to both proponents and opponents of a project that will come before the Governing Body.

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Public Officer is member of the Governing Body. A project ("Project") is expected to come before the Governing Body in the near future, which may impact gaming interests in the local business community. The Project is expected to be controversial, and Public Officer has personal and business connections with those on both sides of the Project. Public Officer asks the Commission to advise him regarding his obligations to disclose and/or abstain when the matter eventually comes before the Governing Body.

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. To promote the integrity in public service, 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. As a member of the Governing Body, 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 Governing Body and his private interests 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

Under NRS 281A.420(1)(a) and (c), when a public officer's actions regarding a matter involve the public

officer's acceptance of a gift or loan or would "reasonably be affected by the public officer's . . . commitment in a private capacity to the interest of others," the public officer "shall not approve, disapprove, vote, abstain from voting or otherwise act upon [the] matter . . . without disclosing sufficient information concerning the gift, loan . . . or commitment to inform the public of the potential effect of the action or abstention upon the persons who provided the gift or loan, . . . or upon the persons to whom the public officer . . . has a commitment in a private capacity." The definition of commitment in a private capacity is set forth in NRS 281A.420(8)(a), which provides:

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.

a) Doe Family Interests

Public Officer testified that he has many friends and business associates throughout the local community, but that his relationship with the Doe Family is so close and personal that it is more than just a friendship and akin to a familial relationship.² For several decades, Public Officer has been involved with members of the Doe Family as a friend, neighbor, partner, and business associate. His relationship has persisted throughout the years and he recently served as a member of the Board of Directors of "Doe Company," a company owned by the Doe Family which has gaming interests in the local community. After he resigned from the Board several months ago, the Doe Company gave him a substantial monetary gift as gratitude for his service on the Board. Although Public Officer did not accept this gift as related to "the matter" before the Governing Body (Project), he nonetheless accepted Doe Company's gift for his service to Doe Company which implicates his relationship to the Doe Family and its interests in the matter before the Governing Body (competitive gaming interests in the community).

The Commission finds Public Officer's personal and business relationships and commitments to the Doe Family and Doe Company to be so long-standing and extensive that they are similar to a relationship by blood,

² Public Officer testified that his relationship with Mr. Doe was similar to that of a father/son relationship and those bonds have extended to Doe's family members.

marriage or adoption under NRS 281A.420(8)(a)(2) and comprise a substantial and continuing business relationship under NRS 281A.420(8)(a)(4), as well. In addition, under NRS 281A.420(8)(a)(3), his recent service on the Board of the Doe Company can be considered employment. The Commission therefore concludes that Public Officer certainly has various commitments in a private capacity to the interests of the Doe Family and Doe Company.

It is anticipated that the Governing Body will be requested to consider a matter involving the Project which will implicate local gaming interests, and that the existing businesses, including gaming competitors and those opposed to gaming enterprises in the local community, will strongly oppose the Project. Consequently, any action the Governing Body takes on the gaming component of the Project will impact all those with gaming-related interests (competitors) in and around the local community, including the Doe Company. Under these circumstances, the Commission concludes that Public Officer's private commitment to the interests of the Doe family would reasonably affect his vote on the Project. Accordingly, the Commission advises Public Officer that under NRS 281A.420(1)(c) he must disclose his relationship with and acceptance of gifts from the Doe Family and Doe Company when the Governing Body considers the Project, provided the Project involves gaming components.

b) Familial Business Interests

The Commission observes that Public Officer's own gaming interests in Nevada, or at least those of his family members, may likewise be impacted by the Project. Public Officer testified that he still holds a gaming license in the State, but has no involvement in the operations of any gaming entities. Likewise, Public Officer recently sold a business with gaming interests to his blood relative (within the third degree of consanguinity) which includes payment of a note (loan). He does not receive compensation or interests in the operations of the gaming aspects of the business, but does receive regular payments on the note. Although Public Officer testified that the business would not be affected by the Project because it was not a direct competitor, the broader testimony and evidence revealed that the regional gaming enterprises may be affected and may oppose the Project. Consequently, under NRS 281A.420(1)(a)(b) and (c), he must disclose these gaming interests as well in connection with the Project, including the nature of the loan agreement respecting the business, his relative's interests in opposing the Project as the owner of an enterprise with gaming interests and his pecuniary interests in other gaming establishments, if any.

3) Abstention

NRS 281A.420(3) requires a public officer to abstain from voting on 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) [t]he public officer's acceptance of a gift or loan; (b) [t]he public officer's pecuniary interest; or (c) [t]he public officer's commitment in a private capacity to the interests of others." In determining whether abstention is required in a particular matter, under NRS 281A.420(4)(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 . . . to vote or otherwise act upon a matter . . ." and "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 commitment in a private capacity to the interests of others."

Based on the facts before the Commission, the Commission concludes that NRS 281A.420(3) requires Public Officer to abstain from the Project due to his private commitment to the interests of the Doe Family, so long as the Project includes a gaming component. His long and ongoing personal relationship with the family, coupled with his recent involvement in their gaming interests, clearly would materially affect the independent judgment of a reasonable person in Public Officer's situation.

With respect to the gaming interests of Public Officer and his family, the situation is not as clear because the gaming establishments are not

located within the local community. Also, Public Officer testified that any gaming component of the Project would have no impact on these interests.

With respect to abstention requirements based on his own or his family's gaming interests, the Commission advises Public Officer to evaluate the situation at the time the Project comes before the Governing Body and the details of the Project become known to him, and make a determination at that time whether the independence of judgment of a reasonable person in his circumstance would be materially affected by his private commitments. Public Officer may also return to the Commission to request further advice as the details become known.

4) Other commitments

Public Officer also requested the Commission to advise him on his obligation to disclose or abstain based on his personal and business relationship with Mr. X., one of the consultants on the Project. Public Officer has had a long-time friendship with Mr. X. and Mr. X. assisted Public Officer with three campaigns for public office starting several decades ago. Although their friendship continues, it appears that their business relationship ended with Public Officer's campaign for office in 2002. Although Public Officer does not anticipate utilizing Mr. X.'s services in future campaigns, we note that their business relationship spanned almost 25 years and that they have been friends for decades. In light of the public policy favoring

disclosure to promote openness and transparency in government, we conclude that Public Officer has a commitment in private capacity to Mr. X.'s interests within the meaning of NRS 281A.420(8)(a)(4) that must be disclosed. We further conclude that Public Officer's abstention on the Project is not required due to his relationship with Mr. X. because the independent judgment of a reasonable person in Public Officer's situation would not be materially affected by this commitment.

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. Public Officer's ownership interest in any gaming establishment in the local community creates a pecuniary interest in the Project, provided the Project includes a gaming component, as a competitor of the Project.
4. NRS 281A.420(1) requires Public Officer to disclose his ownership interests in any existing gaming establishments and the pecuniary interests of such establishments as a competitor of the Project, provided the Project includes a gaming component, in sufficient detail to allow members of the public to understand the potential effect of his participation in the

Governing Body's actions on his pecuniary interests.

5. Under NRS 281A.420(8), Public Officer has a commitment in a private capacity to the interests of the Doe Family, his blood relatives and Mr. X.
6. NRS 281A.420(1) requires Public Officer to disclose his relationship with the Doe Family, and his acceptance of a gift from Doe Company, at the time the Governing Body considers the Project, provided the project includes a gaming component, in sufficient detail to allow members of the public to understand the potential effect of his participation in the Governing Body's actions on the interests of the Doe family.
7. NRS 281A.420(1) requires Public Officer to disclose his relationship with the blood relative to whom he sold a business enterprise with gaming interests, including the nature of the loan agreement respecting the business and his relative's interests in opposing the Project, in sufficient detail to allow members of the public to understand the potential effect of his participation in the Governing Body's actions on his interests and the interests of his relative.
8. NRS 281A.420(1) also requires Public Officer to disclose his relationship with Mr. X. at the time the Governing Body considers the Project, whether or not the Project includes a gaming component, in sufficient detail to allow members of the public to understand the

potential effect of his participation in the Governing Body's actions on Mr. X.'s interests.

9. The independence of judgment of a reasonable person in Public Officer's situation would be materially affected by Public Officer's commitment in a private capacity to the Doe Family's interests, thus NRS 281A.420(3) requires Public Officer to abstain with respect to the Project, provided the project includes a gaming component. If no gaming is included in the Project, then Public Officer's abstention is not required.

Dated this 4th day of October, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman