



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct of
Roxanne Stangle, Member,
Minden Town Board,
State of Nevada,

Request for Opinion No. 12-05A
CONFIDENTIAL

Public Officer. /

CONFIDENTIAL OPINION

I. STATEMENT OF THE CASE

Public officer, Roxanne Stangle ("Stangle"), requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of her future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS").¹ A quorum² of the Commission heard this matter on February 15, 2012. Stangle appeared in person and provided sworn testimony.

Stangle serves as a member of the Minden Town Board and questions whether she may promote and operate certain local special events, which are subject to approval and sponsorship by the Board and also benefit her private pecuniary and business interests.

After fully considering Stangle's request and analyzing the facts, circumstances and testimony presented by Stangle, the Commission deliberated and orally advised Stangle of its decision that she may operate these events, but she should disclose her pecuniary interests and abstain from voting on matters before the Board involving these events. The Commission now renders this final written Opinion stating its findings of fact and conclusions of law.

The facts in this matter were obtained from documentary and

¹ Stangle waived confidentiality of this request for opinion following the February 15, 2012 hearing.

² The following Commissioners participated in this opinion: Chairman Erik Beyer and Commissioners Timothy Cory, Gregory Gale, Magdalena Groover, Paul Lamboley and James Shaw.

testimonial evidence provided by Stangle. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below accept as true those facts Stangle presented. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this Opinion.

I. QUESTION PRESENTED

Stangle serves as a member of the Minden Town Board. Stangle questions whether she may promote and operate certain local events, which are subject to approval and sponsorship by the Board and which benefit her private pecuniary and business interests.

II. FINDINGS OF FACT

1. In her public capacity, Stangle serves as a Member of the Minden Town Board ("Board").
2. In January 2012, the Board Chairman designated members of the Board to serve on various specialized subcommittees concerning regular issues before the Board, including garbage collection, water rates and special events. The subcommittees receive factual information and provide a report and recommendation to the Board. The Board, including the members of the respective subcommittees, votes on the matter. Stangle was appointed to serve on the subcommittee dealing with special events.
3. The Board regularly approves and sponsors local special events which take place in Minden. If an event is approved by the Board, the Town sponsors the event by providing liability insurance for the event, waiving street closure fees in the amount of \$500 per day and providing trash dumpsters and removal service for approximately \$70-90 per event (\$17.50 per dumpster for 4-5 dumpsters per event). Town sponsorship does not include a written contract and the Town does not receive any remuneration from the event, unless otherwise donated.
4. Stangle owns a private retail business, "Tumblewind Antiques and Collectibles" (Tumblewind, Inc.). Stangle's business includes a 4,000 square foot store located in downtown Minden from which she operates an antique business in a portion of the store. Stangle rents out the remaining space to approximately 20 other retail businesses.
5. For the last 27 years, Stangle has promoted and operated, in partnership with other local business owners, several special events in Minden, including the Spring Arts and Crafts Festival and Car Show, the Fall Arts and Crafts Show, and the Farmers Market ("Street Fairs").
6. The Street Fairs take place on Esmeralda Avenue, the street on which Stangle's private business is located (as well as the other business owners which operate

the events). The Street Fairs are located on this street to enhance and promote business for these small business owners.

7. Stangle's partnership with the other local business owners is informally known as the "Minden Business Group." The Minden Business Group is not a legal partnership and it is not required to have a business license to operate these Street Fairs. Instead, it is an informal group of interested local business owners that coordinate these Street Fairs with the Town's support. In the distant past there were several local business owners who participated in this group, but in the recent past and presently there are 3 partners, including Stangle.
8. The Minden Business Group undertakes the planning, coordination, organization and operation of these Street Fairs. As part of its planning and operation, the Minden Business Group approves the booths which operate during the Street Fairs and collects booth rental fees in the amount of \$150 per booth. The businesses located on Esmeralda Street also set up booths outside of their businesses, but they are not charged a booth rental fee. The Board does not consider or approve which booths may participate.
9. The Minden Business Group provides permits, advertising, security, entertainment and

clean-up for the Street Fairs. After expenses, the Minden Business Group receives a net profit of approximately \$1,800 to \$2,100 for each Street Fair. Stangle takes a one-third share of the profits.

10. The Minden Business Group also operates a concession booth at these events selling food and beer which generates a net profit (after expenses) of approximately \$1,000 per Street Fair. Minden Business Group has the only booth at these Street Fairs authorized to sell beer. However, other food booths are permitted.
11. Stangle's private business receives between 5 and 10 percent of its overall annual revenues from increased customer traffic during the Street Fairs.
12. Over the 27 years of operation, Stangle and the Minden Business Group have donated significant proceeds from the Street Fairs to the Town.
13. Stangle has served on the Board since January 2011. When the Street Fairs have come before the Board, Stangle has disclosed her private interests and abstained from voting.

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

As a member of the Board, Stangle questions whether her involvement in planning and operating various special events which are sponsored by the Board/Town is appropriate. Stangle owns a local retail business in downtown Minden and she works with other local business owners to promote and operate various street fairs to attract customers to the local businesses. Stangle earns a profit from these street fairs and her retail business also benefits from increased revenues during the fairs. The other business owners likewise benefit from increased revenues, including those which rent space in Stangle's store.

Because the Board/Town sponsors these events by providing liability insurance, waiving certain fees and providing free trash collection services, Stangle has received public criticism that it is not appropriate for her to continue her involvement in the street fairs while she is serving as a member of the Board.

The Ethics in Government Law does not prohibit Stangle from pursuing private pecuniary and business interests while she serves as a public officer. However, Stangle must not allow her private interests to interfere with her public duties (NRS 281A.400(1)) or use her public position to secure unwarranted

benefits or privileges for her private interests (NRS 281A.400(2)). If her private interests intersect with her public duties, Stangle has an obligation to preserve the public trust, in this case through proper disclosure and abstention (NRS 281A.420). Because Stangle operates several local events for profit in her private capacity, which also benefit her private retail business, Stangle has a conflict of interest regarding these events when they seek and acquire the Board's/Town's approval and/or sponsorship.

Likewise, to the extent Stangle enters into any form of a contract with the Board to operate and promote these events, Stangle must not improperly use her position as a Board member to negotiate and/or execute such contracts. NRS 281A.430 and 281A.400(3) and (10).

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 Ethics Law promotes the appropriate separation between

public duties and private interests. As a Board member, Stangle has a duty to protect the public trust and separate her responsibilities to the Town of Minden from her private interests. By serving as a member of the Board, Stangle has the potential to benefit her personal and pecuniary interests by influencing or voting on matters that may affect her private business or the local events she operates. However, the evidence clearly reflects that Stangle has undoubtedly taken every necessary step to ensure the public trust while engaging in her private activities. Stangle is advised to continue her practice of disclosures and abstentions while serving on the Board regarding the special events she operates. Nonetheless, Stangle is further encouraged to pursue her endeavors with these special events as it is clear that they are aimed at promoting the local business community and benefitting the Town with donations and community-based activities.

2) Ethical Standards

The Ethics Law prohibits Stangle from engaging in activities that improperly influence her public duties or create unwarranted or improper private benefits through the use of her public position. Specifically, NRS 281A.400(1), (2) and (5) govern the parameters of conduct that Stangle should consider in conducting the Street Fairs while simultaneously serving as a member of the Board.

NRS 281A.400(1) (2) and (5) provide:

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

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further

the pecuniary interests of the public officer or employee or any other person or business entity.

Based on the record evidence, Stangle has been promoting and operating the Street Fairs in Minden for 27 years, nearly 3 decades prior to her public service as a member of the Board. It appears that the Town and Board favor such special events as evidenced by their continued sponsorship throughout the years and the benefits to the local culture, economy and business community. The events and Town sponsorship have not changed significantly, if at all, since the time Stangle operated these events prior to becoming a Board member.

Likewise, all other special events not operated by Stangle which seek Town sponsorship appear to receive similar Board approval because the Town encourages these special events to promote community, economic and business growth. Further, Stangle's partners have been available and willing to address the Board and answer any questions related to the Street Fairs. Accordingly, Stangle's involvement in the Street Fairs is not deemed to be the acceptance of economic opportunities that would improperly influence a reasonable person in her position to depart from the faithful and impartial discharge of public duties, particularly if she discloses and abstains from voting on these matters as a Board member.

Stangle has likewise not used her position as a Board member in any way to secure any preferences or privileges for her private business or

pecuniary interests, let alone unwarranted privileges. Stangle has testified that since her role on the Board she has disclosed her interests in the Street Fairs and abstained from participating and voting. Stangle has been operating these events for nearly 3 decades to benefit the Town as a whole and several other local businesses. Stangle has even donated significant proceeds from the Street Fairs to the Town for various beautification projects. Stangle's disclosure and abstention regarding the Street Fairs has ensured the public that she has not used her position to provide unwarranted preferences to herself or her business partners. Therefore, the Commission advises her to disclose and abstain in similar future matters and make her partners available to the Board for questions.

Finally, if Stangle acquires any information as a member of the Board that is not otherwise available to any other member of the public, she must not use that information to further her own interests or those of any other person or entity, including her private retail business or her partners in the Street Fair operations.

According to Stangle's testimony, the Board routinely provides the same sponsorship opportunities to any event seeking approval from the Board. The record reflects that information concerning insurance and fees is the same for every special event. To the extent Stangle learns of details not otherwise available to the public, she may not

use that information for her private benefit or to benefit any other person or entity.

3) Government Contracts as Public Officer

NRS 281A.400(3) and (10) provide:

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

NRS 281A.430(1) provides:

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

The evidence reflects that the Town's sponsorship of the Street Fairs does not result in any written or formal contracts with Stangle or her partners. The Town Board, through its public process, agrees to indemnify the event planners and operators and waive certain street closure fees and other minimal expenses. Likewise, Stangle has not participated in any negotiations for any agreements with the Town or

otherwise used her position as a Board member to ensure the sponsorship. Stangle disclosed her interests and recused herself from voting on these events. Furthermore, these events have been regularly approved for decades, and Stangle's partners provided the Board with the relevant information. While it could be deemed a verbal contract, it is not the type of contract contemplated by the provisions of NRS 281A.400(3) or (10) or NRS 281A.430. If the operators of local events enter into contracts with the Board for insurance and/or other waivers of fees, Stangle must not participate on behalf of the Board to negotiate or execute such a contract.

4) Disclosure

NRS 281A.420(1), in relevant part, provides:

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 person to whom the public officer or employee has a commitment in a private capacity. Such 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 to the chair and other members of the body

As a public officer, Stangle must publicly disclose sufficient information regarding the nature and extent of any interests she may have in any matter before the Board which would be affected by her pecuniary interests or commitments to her business partners in the various Street Fairs. Stangle testified that the Street Fairs bring increased sales to her retail business as well as to the businesses which rent space from her store, and she earns additional income by operating the Street Fairs as well as the food and beverage booths at the Street Fairs.

Consistent with the Commission's *Woodbury* opinion, Stangle should disclose sufficient information concerning the nature and extent of her pecuniary and business interests which are affected by the Street Fairs and how or whether those interests may be affected by any matter before the Board requesting the Town's sponsorship. *In re Woodbury*, Comm'n Opinion No. 99-56 (1998).

The Commission advises Stangle to similarly disclose and abstain where appropriate on any subcommittee meetings involving these interests.

5) Abstention

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

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 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 other's.

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 person, 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 other.

(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, Stangle is prohibited from voting upon or advocating for or against the passage of a matter in which the independence of judgment of a reasonable person in her situation would be materially affected. In this case, the record reflects that her retail business and pecuniary interests benefit directly and significantly from operating these local events. Stangle testified that

she earns approximately 5-10 percent of her annual revenues during the events and she rents space in her store to approximately 20 other businesses which similarly benefit from increased customer sales during these events. Furthermore, she runs a food and beverage booth which produce additional income, and her booth has the exclusive right to sell beer. She is one of three partners in charge of determining which booths are permitted to participate in the Street Fairs and from which she receives direct income.

The nature of the benefits to Stangle's pecuniary and business interests represents a clear case in which the independence of judgment of a reasonable person in Stangle's position would be materially affected by voting on a matter which would significantly affect her pecuniary interests and business. The Town's sponsorship waives various fees and expenses and provides an invaluable resource of liability insurance, without which the Street Fairs may not succeed. Accordingly, Stangle should abstain from participating and voting on any matter affecting the Street Fairs she operates under these circumstances.

IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Stangle 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. Based on the language and intent of the provisions set forth in NRS 281A.400(1), (2) and (5), Stangle would not be deemed to be using her position as a member of the Board to seek private economic opportunities which would influence her public duties or to secure unwarranted preferences for her pecuniary and business interests by operating special events if she discloses her interests and abstains from voting as a member of the Board on matters relating to the Town's sponsorship of these events.
4. Pursuant to NRS 281A.420(1), Stangle should disclose sufficient information concerning the nature and extent of her business and pecuniary interests and how or whether those interests may be affected by any matter before the Board involving the approval or sponsorship of the local events operated by Stangle.
5. Applying NRS 281A.420(3), Stangle should abstain from voting on matters involving the Board's approval or sponsorship of the local events she operates. Due to her significant pecuniary interests in the Street Fairs, the Town's sponsorship of the events creates a clear case in which the independence of

judgment of a reasonable person in Stangle's situation would be materially affected by her pecuniary interests.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

Dated this 21st day of November, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman