



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Dwight Dortch**, Member, City Council,
City of Reno, State of Nevada,

Request for Opinion No. 12-52A

_____ Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Reno City Council Member Dwight Dortch (“Dortch”) 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 October 17, 2012. Dortch appeared in person and provided sworn testimony.

Dortch sought an opinion from the Commission regarding his disclosure and abstention obligations concerning a matter before the City Council involving his former employer and business partner.

After fully considering Dortch’s request and analyzing the facts, circumstances and testimony presented by Dortch, the Commission deliberated and orally advised Dortch of its decision that, with respect to voting on measures before the Reno City Council involving a company with which Dortch had significant employment and business relations, Dortch must disclose the relationships, but need not abstain from voting. The Commission now renders this final written Opinion stating its findings of fact and conclusions of law.

¹ The following Commissioners participated in this opinion: Chairman Erik Beyer, Vice Chairman Paul Lamboley and Commissioners John Carpenter, Timothy Cory, James Shaw and Gregory Gale. As of the date of issuance of this written opinion, Chairman Beyer’s term on the Commission expired.

After the hearing in this matter, Dortch waived confidentiality with respect to the Commission's proceedings. Therefore, the Commission publishes this Opinion.

The facts in this matter were obtained from documentary and testimonial evidence provided by Dortch. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below accept as true those facts Dortch 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.

II. QUESTION PRESENTED

Dortch serves as a member of the Reno City Council ("City Council") and questions whether his former employment and business relationships with a private entity doing business in the City requires his disclosure and/or abstention on future matters before the City Council involving the City's consideration and approval of certain legislative, fiscal and administrative matters affecting the private entity.

III. FINDINGS OF FACT

1. In his public capacity, Dortch has served as the Councilman representing Ward 4 of the City Council since 2002, and he also serves as the City Council's member-representative on the Reno Redevelopment Agency ("RDA"). As Councilman, Dortch's duties generally include formulation, administration and enforcement of policies, codes and ordinances, approval of City agreements and budgets, and implementation of administrative, economic development, public safety, recreational and cultural matters.
2. Between approximately October 2007 and February 2010, Dortch was employed full-time as the Director of Corporate Partnerships for SK Baseball, otherwise publicly known as the Reno Aces Baseball Team ("SK Baseball"). SK Baseball conducts baseball and related business operations in the downtown Reno area, including ownership of the Reno Aces and operating the baseball stadium.
3. After his service as the Director of Corporate Partnerships, Dortch remained an independent consultant for SK Baseball between February 2010 and August 2010. Dortch provided consultant services for SK Baseball's sales and corporate partnership staff. Dortch has not had any employment, consulting or other business relationships with SK Baseball since August 2010 and does not under any circumstances expect to have any such relationship in the future.
4. During 2011, SK Baseball and one of its corporate sponsors/partners were engaged in a civil lawsuit. On approximately August 4, 2011, Dortch provided witness testimony regarding the litigation during a deposition. The litigation filed by SK Baseball against the corporate partner involved a contract dispute regarding an issue that arose and/or occurred during Dortch's tenure as an

employee and/or consultant with SK Baseball. SK Baseball was allegedly offended by Dortch's testimony partly blaming SK Baseball for its role in the dispute.

5. While he was employed and/or engaged as a consultant by SK Baseball, Dortch disclosed his relationships to SK Baseball when any matters affecting SK Baseball came before the City Council or RDA and abstained from voting on those matters.
6. On or about January 6, 2011, Dortch formed Dwight Dortch Consulting, LLC, a Nevada limited-liability company to consult with auto dealers regarding their compliance with federal and state mandates. Dortch's consulting company is entirely unrelated to any services he provided for SK Baseball.
7. Dortch affirms that he does not contemplate a future employment or business relationship with SK Baseball under any circumstance.
8. Dortch maintains social friendships with current SK Baseball employees, but has had no conversations with those friends regarding SK Baseball's request to the City for refinancing measures or any other matters.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES; COMMISSION DECISION

A. ISSUES

As a public officer, the conflicts of interest provisions of the Ethics Law apply to Dortch's conduct. Specifically, Dortch must commit himself to avoid actual and perceived conflicts of interest, and he is required to publicly disclose sufficient information concerning any private relationships and interests which would reasonably affect matters before the City Council. He is also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in his position.

Dortch formerly served as a high level management employee and consultant for SK Baseball, a private entity with significant ties to the City's economic development and community involvement. The City has assisted in financing SK Baseball's enterprises and SK Baseball has regular interests in various matters before the City Council, including continuous financing measures. Although he has not served as an employee or consultant for approximately two years, Dortch has recently participated as a witness in private litigation that involved his duties and responsibilities as an employee/consultant for SK Baseball, and the duties he performed for SK Baseball have continuing ties to SK Baseball's current partnership with the City.

Dortch had a significant employment and/or business relationship with SK Baseball that has a continuing and significant impact on SK Baseball's current operations and its business with the City. Based on the nature of this relationship and its continuing effects on City-related matters, Dortch is advised to disclose the nature of his relationship with SK Baseball before voting on City matters involving SK Baseball. However, he need not abstain from participating and voting based on the relationship as it presently exists unless he determines that the issue involves some matter governing SK Baseball over which he had material influence that could affect the objectivity of a reasonable person in his situation.

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.

2. Disclosure/Abstention/Commitments –

NRS 281A.420(1), (3), (4) and (8) 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 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.

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.

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.

(b) "Public officer" and "public employee" do not include a State Legislator.

C. COMMISSION DECISION

The Ethics Law promotes the appropriate separation between public duties and private interests. Pursuant to NRS 281A.020, as a member of the City Council, Dortch has public responsibilities that he must separate from his private interests and relationships. By serving as a council member and voting on matters which affect those private interests and relationships, Dortch may violate the public trust he holds for the sole benefit of the people and the commitment that he avoid conflicts between his private interests and those of the public he serves. The Commission is also concerned about related appearances of impropriety and whether Dortch's former role as a high-level employee and consultant for a private business entity might continue to influence public decisions affecting that business entity.

In addition to Dortch's general obligation to maintain the public trust and avoid conflicts of interest, the Legislature has deemed certain specific relationships to implicate conflicts of interest, such as relationships with employers and those with whom a public officer or employee shares significant and continuous business relationships, or relationships substantially similar to those, and require disclosure of the relationship and possibly abstention from voting. NRS 281A.420(1)(3)(4) and (8). In the present case, the Commission must evaluate the factual record to determine whether Dortch's past employment and business relationships with a private business entity, SK Baseball, constitute an existing relationship to the interests of that entity which may conflict with the public interests of the City. The relationship issues here examined involve Dortch's employment by SK Baseball between October 2007 and February 2010 during which time he was Director of Corporate Partnerships, his subsequent engagement as a consultant for SK Baseball between February 2010 and August 2010, and his witness status in 2011 litigation involving an SK Baseball business contract during Dortch's employment.

With regard to business relationships, the Commission has held that a prior business relationship is substantial and continuing, or substantially similar to a substantial and continuing business relationship, if the public officer cannot rule out the possibility of engaging in the relationship in the future. *See In re Public Officer*, Comm'n Opinion No. 11-61A (public officer had commitment in a private capacity to former campaign manager who helped him get elected to current office and could not rule out possibility of retaining campaign manager's services for next election). The Commission in this case extends its view of a substantial and continuing relationship to include one in which the public officer's relationship status may have ceased with a business entity, but the activities and/or interests involved in that relationship have a continuing, present status in recent litigation as well as in recent City action involving that entity, and about which matters the public officer has significant and substantial personal knowledge.

The Commission concludes that Dortch's former employment and business consulting relationship with SK Baseball has a continuing effect on SK Baseball and the City, including the recent 2011 litigation in which Dortch was called to provide

witness testimony regarding SK Baseball's business-related issues. While Dortch has no intent to be employed or provide further consulting services to SK Baseball, Dortch's required participation in the litigation has effectively rekindled Dortch's relationship with and interests in SK Baseball. Further, the high-level position held by Dortch as an SK Baseball employee included the ability to have significant input, influence and knowledge of issues involving SK Baseball and the City that have a continuing impact on the present day partnership between SK Baseball and the City.

The combination of Dortch's past employment and consulting activities together with his involvement in the SK Baseball litigation and business matters which are continually before the City of Reno also forms a relationship that is substantially similar to a relationship described in NRS 281A.420(8)(a). The Commission acknowledges that the nature of Dortch's relationship with SK Baseball may not have fit precisely within the literal language of NRS 281A.420(8), but his relationship with SK Baseball is not solely in the past. The record reflects that his former employment with SK Baseball has significant and continuous impact on the interests of SK Baseball and the City that requires disclosure. NRS 281A.420(1).

The provisions of NRS Chapter 281A embody organic, living principles of ethics law that do not uniformly apply given their required application to a variety of differing facts and circumstances in each case arising in the context of public office or employment. Dortch inquired of the Commission about his concerns over disclosure and abstention issues because of the nature of his relationship with SK Baseball. Although mainly in the past, a combination of circumstances demonstrates that Dortch's relationships have living tentacles that raise questions in the performance of his present public duties. While he may not have a continuing business relationship in the traditional sense, the nature of his high-level management/consultant position and the issues he touched while employed evidence continuing effects on both SK Baseball business as well as its relationship with the City.

Dortch correctly recognized this conflict, even though it may not have fit perfectly within the literal language of any one specific provision of NRS Chapter 281A, and more specifically, the provisions of NRS 281A.420 of the Ethics Law. The Dortch inquiry and record evidence presents the Commission with the appropriate opportunity to analyze his relationship with SK Baseball and the City in the context and intent of the entirety of the Ethics Law, not simply the literal disclosure provisions set forth in NRS 281A.420(1). Dortch, like all other public officers, is required under the Ethics Law to commit himself to avoid actual and perceived conflicts of interest. NRS 281A.020.

Dortch's disclosure of his past relationship with SK Baseball and the continuing nature of the ongoing issues that affect SK Baseball and the City by virtue of the recent litigation involving SK Baseball and the work he performed for SK Baseball is the appropriate mechanism for Dortch to avoid any possible conflicts of interest and protect the public's trust in his ability to best represent its interests. Furthermore, the Commission has interpreted the duty to disclose as not simply a

duty to disclose the existence of the relationship itself, but the full nature and extent of that relationship. See *In re Woodbury*, Comm'n Opinion No. 99-56 (1999). If Dortch were to fully explain that the relationship with SK Baseball was 2 years in the past, but that significant issues he was involved in continue to have a living impact on present day business matters affecting SK Baseball and the City, including the pending matter involving the litigation he participated in as a witness and the City's continued financing of SK Baseball, Dortch would put himself in the best position to determine whether he, or a reasonable person in his situation, could act independently from his private interests and relationships and properly preserve the public trust.

SK Baseball has a long-standing partnership with the City, both in terms of financing and overall economic development in the area. When Dortch filed his RFO, the exact agenda issue had not yet been determined, but he contemplated the City's anticipation of the need to revisit financing and consider additional measures to keep the Aces Baseball Team in Reno, Nevada. During his tenure as an employee and/or consultant with SK Baseball, Dortch served as a high-level manager and advisor that were sufficiently significant and substantial enough to require his disclosure and abstention during *any* issue before the City Council that involved SK Baseball at that time.

Dortch has provided evidence that his relationship with SK Baseball did not come to a full conclusion upon his termination as an employee or consultant. Rather, the issues that he was directly involved with and/or in charge of during his tenure became the subject of some private litigation that SK Baseball had with one of its corporate partners. Well after Dortch left SK Baseball as a manager and/or consultant, he provided witness testimony in the litigation regarding his knowledge and/or actions during his tenure with SK Baseball. This litigation brought Dortch's former service back to present day issues and considerations for SK Baseball. The litigation is but one example of the types of continuing issues that affect present day matters that may involve the City's interests, despite that he is no longer employed with SK Baseball.²

SK Baseball has continuing, significant business dealings with the City that may or may not affect the decisions that Dortch made while he was an employee. Although not determinative, Dortch testified before the Commission that he understood SK Baseball to be disappointed in his testimony during the litigation and considered whether his ongoing interests in or views of SK Baseball's business matters would render him with conflicts in SK Baseball's future matters before the City. There is no clear determinative metric or proper standard by which to precisely measure the effects of Dortch's former influence and work for SK Baseball on its current operations and decisions, including those which affect the City. However,

² As another example, Dortch may have negotiated a contract on behalf of SK Baseball during his tenure that may have some relevance to or consideration by the City Council today. Likewise, he may have made or influenced some significant decision regarding SK Baseball's financial involvement with the City that comes back before the City for consideration at present time.

during his employment and consulting relationship with SK Baseball, Dortch had significant input and influence on behalf of SK Baseball's interests which rendered him in conflict with his role as a City Councilman.

The record evidences that SK Baseball appears to be integrally and inextricably tied to the City of Reno for its business operations, community involvement and financial support. SK Baseball's continued activism with the City regarding issues with which Dortch had significant input and influence does not cease because Dortch's employment ceased with SK Baseball. Rather, his knowledge and influence continue while he serves as a public officer of the City.

Based on the intangible effects of Dortch's role with SK Baseball and their continuous influence on matters affecting the City of Reno, Dortch is advised to adhere to the provisions of NRS 281A.020 and 281A.420(1). He should avoid any actual or perceived conflicts with his relationship to SK Baseball and must make appropriate disclosures. The best manner for Dortch to honor these obligations is to provide the public with a sufficiently informative disclosure that provides the public with an appropriate understanding of his SK Baseball relationship and interests, and informs them of his ability to act on behalf of his constituents in a responsible, objective manner. Such a disclosure should include any information then available to Dortch regarding whether his former service for SK Baseball has or had influence or impact on the issue before the City Council.

On the issue of abstention, which is independent of disclosure requirements and based on the facts presented at this time, we conclude that Dortch would not have a conflict that would require him to abstain from voting under NRS 281A.420(3) and (4). The litigation at issue did not involve Dortch's understanding of a pending matter before the City Council involving potential financing of the baseball team. However, Dortch is advised to consider abstention if his former involvement in SK Baseball has an impact on current City-related business with SK Baseball. Dortch is welcome to return to the Commission for advice on any particular issue.

V. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Dortch 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. Pursuant to NRS 281A.020 and 281A.420(1), Dortch is advised to disclose sufficient information concerning the nature and extent of his relationship with and interests in SK Baseball and how or whether his relationship and interests affect the City Council's present consideration of matters affecting SK Baseball, including, without limitation, his involvement in the litigation concerning SK Baseball.

4. Applying NRS 281A.420(3) and (4), Dortch is not required to abstain from participating or acting on matters affecting SK Baseball based on his involvement in the litigation involving SK Baseball. However, Dortch is advised to consider abstention if his former involvement in SK Baseball has an impact on current City-related business with SK Baseball. Dortch is welcome to return to the Commission for further advice if future matters before the City Council involve matters over which he had significant control or influence as an employee/consultant for SK Baseball.

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.

The Following Commissioners Participated in this Opinion:

Dated this 5th day of March, 2013.

NEVADA COMMISSION ON ETHICS

By: /s/ Paul Lamboley
Paul Lamboley
Vice-Chairman

By: /s/ John Carpenter
John Carpenter
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: /s/Gregory Gale
Gregory Gale
Commissioner

By: /s/ James Shaw
James Shaw
Commissioner