



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the First-Party Request for  
Advisory Opinion Concerning the Conduct  
of **Vicky Maltman**, Trustee,  
Sun Valley General Improvement District,  
State of Nevada,

Request for Opinion No. 12-66A

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Public Officer. /

**OPINION**

**I. STATEMENT OF THE CASE**

Sun Valley General Improvement District (“SVGID”) Trustee, Vicky Maltman (“Maltman”), requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.440(1) regarding the propriety of her 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 December 12, 2012. Maltman appeared in person in Carson City and provided sworn testimony. Also present during the Commission proceedings was SVGID’s legal counsel, Madelyn Shipman, Esq.

Maltman sought an opinion from the Commission regarding whether she is required to disclose her position as a SVGID Trustee and/or abstain from participating and voting on SVGID’s pending agenda item concerning whether to reappoint her as a continuing Trustee or appoint a new person for the next term.

After fully considering Maltman’s request and analyzing the facts, circumstances and testimony presented by Maltman, the Commission deliberated and orally advised Maltman of its decision that she should disclose her current position as a Trustee and abstain from voting on any matter that includes her reappointment. The Commission now renders this final written Opinion stating its findings of fact and conclusions of law.

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<sup>1</sup> The following Commissioners participated in this opinion: Chairman Erik Beyer and Commissioners John Carpenter, Timothy Cory, Gregory Gale, Magdalena Groover, Paul Lamboley, James Shaw and Keith Weaver.

Maltman elected to waive confidentiality with respect to this proceeding. Therefore, the Commission will publish this full opinion.

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

Maltman presently serves as an appointed member of the SVGID Board of Trustees ("SVGID Board"). Maltman's present term is scheduled to expire on January 6, 2013. Due to unique circumstances, a vacancy has occurred on the Board for a position commencing on January 7, 2013 and the SVGID Board is required to make an appointment to fill the vacancy for the new term. Maltman and other applicants have submitted applications to be appointed to the pending vacant seat and Maltman questions whether she may participate as a current member of the Board and vote on the appointment to the vacant seat.

## **III. FINDINGS OF FACT**

1. In her public capacity, Maltman is presently serving a temporary (2-month) term as a Trustee member of the SVGID Board. The five-member SVGID Board is responsible for providing water, garbage, sewer and recreation services to the 20,000 residents of Sun Valley.
2. On or about October 25, 2012, SVGID Trustee X resigned from her position on the SVGID Board for personal reasons. Trustee X's term was scheduled to expire on January 6, 2013.
3. Pursuant to NRS 318.090(5), a vacancy on the SVGID Board must be filled within thirty (30) days through an appointment by the remaining members of the Board. If the Board fails to make an appointment within the thirty-day time frame, the Board of County Commissioners must make an appointment to fill the vacancy. On November 8, 2012, after the general election, the remaining members of the Board appointed Maltman to fill the brief 2-month period of Trustee X's unexpired term.
4. Prior to her appointment, Maltman was also a candidate in the general election for one of the full-term positions on the SVGID Board scheduled to commence on January 7, 2013.
5. SVGID Trustees are elected by plurality vote. The SVGID Board had three open seats to be filled during the 2012 general election and five candidates seeking those three open positions, including Trustee X and Maltman. Under a plurality election, the

candidates who receive the highest number of votes are elected to fill the open positions. Maltman received the fourth-highest number of votes from the electorate and was not awarded a position on the Board for the full term commencing on January 7, 2013.

6. Prior to her resignation, Trustee X was a candidate for re-election to the SVGID Board during the 2012 general election. However, the date of her resignation made it too late to remove her name from the ballot. Trustee X received the highest number of votes during the election and was therefore elected to serve another term as a SVGID Trustee. Trustee X informed the SVGID Board and Maltman that she intended to decline acceptance of the position to serve the new term; however, she has not yet provided a written withdrawal or resignation for the new term.
7. The SVGID Board appointed Maltman to the temporary position because she had the fourth-highest number of votes during the election and *presumably* would have been awarded a seat as the candidate with the third-highest votes had Trustee X been able to take her name off the ballot.
8. Although the Board has not yet received Trustee X's formal resignation, as of January 7, 2013 there will be another vacancy on the SVGID Board with Trustee X expected to decline the newly elected term. Although Trustee X was elected to a four (4) year term, a vacancy on the board must be filled by an appointee who will serve only until the next biennial election, at which time the vacancy must be filled by election if the term extends beyond the first Monday in January following the next election. NRS 318.090(5). Trustee X's elected term was scheduled to commence on January 7, 2013 and expire on the first Monday in January 2017, extending past the first Monday in January (2015) following the 2014 biennial election. Thus, the appointee acting as Trustee X's replacement will serve only until the first Monday in January 2015, a two-year term.
9. In an effort to begin the year with a full membership, the SVGID Board is scheduled to make the appointment during the Board's next scheduled meeting on or about December 13, 2012. Normally, the Board would wait until the term is scheduled to commence on or after January 7, 2013 to fill the vacancy. The SVGID Board intends to make a conditional appointment in December to fill the seat which is expected to be declined by Trustee X.
10. Because the Board appointed Maltman for the temporary position, Maltman expected that she would be nominated to fill the full term. Three of the Board members who voted for Maltman's temporary appointment remain on the Board to consider her application for the two-year term vacancy.
11. SVGID Trustees receive \$9,000 per year or approximately \$750 per month in compensation. If selected to fill the vacancy Maltman would earn approximately \$18,000 over the course of the two-year term.

12. At the time of hearing in this matter, three (3) applications for appointment to fill Trustee X's elected term had been received by SVGID, including Maltman's. Additional requests may be made at the December 13, 2012 meeting.
13. Three (3) members of the Board constitute a quorum at any meeting. NRS 318.090(4).
14. When the matter of the appointment comes before the Board, the Chair will identify all written applications and invite any verbal applications for consideration during the meeting. The Chair will then read the combined list into the record and invite each of the Trustees to make one (1) nomination from the list. The number of nominees will be dependent upon the number of Trustees participating. The Chair will then state the list of nominees and invite a motion to appoint one of the applicants on the list of nominees. The first nominee to receive a majority vote by the Board will be appointed to fill the vacancy.
15. Maltman would like to participate as a SVGID Trustee during the December 13, 2012 meeting to nominate herself, if no other Trustee nominates her, and/or vote in favor of her appointment to the new term.
16. Without Maltman's participation and vote there will likely be four (4) Trustees participating in the nomination and vote.

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

##### **A. ISSUES**

As an appointed member of the SVGID Board, albeit temporarily, the conflicts of interest provisions of the Ethics Law are applicable to Maltman as a public officer. Maltman questions whether she may participate and vote in the Board's pending selection process to appoint an individual to fill a newly vacant term, a position for which Maltman is an applicant. This case presents unique factual circumstances regarding the appointment process to an open seat on a general improvement district.

Under State law, the SVGID Board or the Board of County Commissioners must make appointments to fill vacant, unexpired terms on the Board. The vacancy at issue was created under unique circumstances. The now vacant seat was originally awarded to an incumbent Trustee during the recent general election. However, that Trustee resigned her initial term on the Board immediately before the election and intended to remove herself from consideration on the ballot during the general election. Unfortunately, her resignation came too late to take her name off the ballot and she was re-elected to serve another term. The Trustee's resignation from her initial term created a brief 2-month vacancy on the Board until the expiration of that term, and she is expected to decline the position for the newly elected term, which will create a vacancy in the office for the new term.

Shortly after Trustee X's resignation and the general election in November 2012, the SVGID Board appointed Maltman to serve out the remaining 2-month term, expiring on or about January 6, 2013. The Board must make another appointment to fill the vacancy in the new term commencing on or about January 7, 2013. Maltman seeks to be (re)appointed to fill the new term. Because she currently serves as a member of the Board, she seeks to participate and vote on the Board's appointment to fill the open seat for the new term. Maltman's participation and vote would be in her own favor.

The Ethics Law prohibits Maltman from putting her private interests above the interests of the public or otherwise using her position in government to create unwarranted benefits for her private interests (NRS 281A.400(2)). Furthermore, the Ethics Law requires Maltman to disclose conflicts of interest and abstain from voting on public matters which would be materially affected by her personal interests (NRS 281A.420(1) and (3)). If Maltman's private interests intersect with her public duties, she has an obligation to preserve the public trust (NRS 281A.020), in this case through proper disclosure and abstention (NRS 281A.420). Because Maltman would be using her governmental position to participate and vote on her own personal (re)appointment to the Board, she has a conflict of interest which she should disclose, and she should further abstain from voting on the matter.

## **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 an appointed Trustee, Maltman has a duty to protect the public trust and separate her responsibilities to SVGID from her private interests in reappointment. By serving as a member of the SVGID Board, Maltman has the potential to benefit her personal and pecuniary interests by influencing or voting on matters that may affect her reappointment. To promote integrity in public service the Ethics Law is concerned with situations involving public officers that create the appearance of impropriety and conflict of interest, as well as actual impropriety and conflicts. Maltman holds a public office and therefore must commit herself to avoid perceived and actual conflicts between her private interests and those of the public she serves. Based on the circumstances, Maltman is advised to disclose her personal and pecuniary interests in the (re)appointment (\$750/month/\$9,000/year) and abstain from voting on the matter. Her interest in reappointment creates a clear case in which the independence of judgment of a

reasonable person in her situation would be materially affected in a matter which determines the appointment.

## **2) Use of Government Position to Secure Unwarranted Preferences.**

**NRS 281A.400(2), provides:**

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.

As a public officer, Maltman must not use her public position to secure unwarranted privileges, preferences or advantages for herself. Maltman's participation in the nomination and consideration of her own application for appointment to the vacant position is precisely the type of conduct that NRS 281A.400(2) is intended to prohibit. Using her position as a Board member to nominate and/or vote to secure her own (re)appointment on the Board is an advantage to Maltman's interests, both personal and pecuniary, over the other applicants for the position. In fact, it is possible that Maltman's vote could be a tie-breaking vote to ensure her reappointment. Maltman has not provided any justification or adequate reason why she must participate in this vote. Consequently, under the circumstances identified herein, Maltman would violate the provisions of NRS 281A.400(2) by voting to secure her own (re)appointment. The Commission's decision extends to votes for or against herself or any other applicant.

## **3) Use of Government Position to Seek Other Employment.**

**NRS 281A.400(10), provides:**

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.

Although it is not clear whether Maltman's service on the SVGID Board constitutes "employment" within the meaning of NRS 281A.400(10), the intent, nonetheless, of this provision is to prohibit public officers from using their official positions to achieve separate employment. Maltman would receive \$18,000 in compensation for serving as a Trustee for two years. Given Maltman's unique position as a temporary Trustee, she would be deemed to be improperly using her public position to seek and accept the two-year term by voting for her own appointment or voting for or against any other applicant for appointment while she remains an applicant for the same position.

#### **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...

NRS 281A.420(1)(b) requires a public officer to disclose any pecuniary interests before participating or voting on a matter which would be affected by that interest. SVGID Trustees earn compensation in an amount of approximately \$9,000 per year, or approximately \$750 per month. If appointed to the two-year term, Maltman would earn approximately \$18,000. Maltman would clearly be voting on a matter which directly affected her pecuniary interest if she were to vote to approve her own appointment or vote for or against any other applicant while she remains an applicant for the appointment. Accordingly, Maltman should disclose this pecuniary interest at the time the agenda item is called. Her disclosure should include the nature and extent of the pecuniary interest and how it would be affected by her vote on the matter.

#### **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.

The Ethics Law requires abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's position would be materially affected by the public officer's pecuniary interest. NRS 281A.420(4)(b). The Commission concludes that the potential \$9,000 yearly compensation (\$18,000 over the two-year term) which would be paid to Maltman as an appointed SVGID Trustee constitutes a material pecuniary interest that is sufficient to establish a clear case for Maltman's abstention from participation in the SVGID agenda item to fill the vacancy. A reasonable person in her situation would be materially affected by such a vote to secure their own compensation and service on the SVGID Board. Accordingly, Maltman should also abstain from voting on the matter.

## **V. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Maltman 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. Under NRS 281A.400(2) and (10) and NRS 281A.420(1) and (3), Maltman is advised to disclose her material pecuniary interest in the \$18,000 compensation for serving as a Trustee of the SVGID Board over the two-year term and abstain from voting on the appointment to fill the newly vacant term for which she is an applicant.



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 24<sup>th</sup> day of January, 2013.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer  
Erik Beyer  
Chairman

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/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: /s/ James Shaw  
James Shaw  
Commissioner

By: /s/ Keith Weaver  
Keith Weaver  
Commissioner