



**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,  
Local Governing Body, State of Nevada,

Request for Opinion No. 12-69A

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Public Officer. /

**ABSTRACT OF OPINION**

**I. STATEMENT OF THE CASE**

Public Officer requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his past and 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 February 20, 2013. Public Officer appeared at the hearing and provided sworn testimony.

Public Officer sought an opinion from the Commission regarding his disclosure and abstention obligations concerning a matter before the local government body involving his private business relationships and pecuniary interests.

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, with respect to voting on matters that affect entities with which he conducts significant private business, Public Officer should have disclosed the full nature and extent of the relationships and abstained from voting. The Commission advises Public Officer to disclose such relationships on future matters and abstain from voting. 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 Paul Lamboley, Vice-Chairman Gregory Gale and Commissioners Timothy Cory, Magdalena Groover, Cheryl Lau, James Shaw and Keith Weaver. Commissioner John Carpenter disclosed a conflict of interest and abstained from participating and voting on this matter.

Public Officer elected to retain confidentiality with respect to the Commission's proceedings. Therefore, the Commission publishes this Abstract in lieu of the full opinion.

## **II. QUESTION PRESENTED**

As a member of a local governing body, Public Officer questions whether his private business relationships and pecuniary interests with various local businesses created conflicts of interest that required disclosure and/or abstention regarding a proposed amendment to a local ordinance/code provision affecting the various local businesses.

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

### **A. ISSUES**

Public officer's company provides services to various local businesses in the community. Several of the local businesses to which Public Officer provides substantial services proposed an amendment ("Proposed Amendment") to a local ordinance/code provision that would significantly affect certain local businesses in the community. Public officer's company also provides minimal services to various other local businesses opposing the Proposed Amendment. By comparison, the work provided to this latter group of businesses is significantly less than that provided to those businesses which support the Proposed Amendment. Public Officer provided significant documentation governing the level of private contracts and "as-needed" services that he has provided to the local businesses favoring the Proposed Amendment. Accordingly, Public Officer has an indirect pecuniary interest in the Proposed Amendment under consideration by the local governing body based on the benefit of his business relationships with those directly affected by the Proposed Amendment.

Given his level of business dealings with the proponents of the Proposed Amendment, and to a much lesser degree, the opponents to the Proposed Amendment, Public Officer also has a commitment in a private capacity to the interests of those businesses that should have been disclosed prior to voting on matters related to the Proposed Amendment. It appears that Public Officer did make a disclosure that his company conducted business with several of the proponents of the Proposed Amendment, but he did not disclose his business relationships with the opponents of the Proposed Amendment and he did not elaborate on the level of business dealings/pecuniary interests and how or whether those interests would affect his vote or abstention on the matter. The Ethics Law requires disclosure of the full nature and extent of private/pecuniary interests and commitments in a private capacity to the interests of others to inform the public of the nature of the conflict. See *In re Woodbury*, Comm'n Opinion No. 99-56 (1999). Moreover, Public Officer's substantial business and pecuniary interests with the businesses interested in the matter created a clear case in which the independence of judgment of a reasonable

person in his situation would be materially affected such that abstention was also necessary.

## **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 Commission takes seriously the obligation of a public officer to preserve the public trust and commit himself to avoid conflicts between his private interests and public duties. Where these conflicts arise in the context and consideration of public matters, the public officer can honor his obligations through appropriate disclosures and abstentions. In this case, Public Officer has a significant pecuniary interest in his business, as well as pecuniary interests in and commitments to the interests of the local entities expected to be affected by the Proposed Amendment under consideration by the local governing body. Public Officer should have fully disclosed his pecuniary interests and commitments affected by the Proposed Amendment. Furthermore, given the nature of his business relationships and the significant pecuniary interests related to his business interests, Public Officer should have abstained from voting on the Proposed Amendment. Public Officer is advised to disclose and abstain on all related future matters unless his interests and commitments significantly change.

### **2) 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...

The Commission concludes that Public Officer's business relationships with the proponents of the Proposed Amendment are substantial and continuing and therefore create commitments in a private capacity to the interests of those business entities. The record reflects that three percent of Public Officer's overall revenues for 2012 were generated by one of the proponents of the Proposed Amendment in the amount of approximately \$170,000. Such a pecuniary interest is significant and substantial, and the local business lobbied Public Officer regarding its interests in the Proposed Amendment.

The local business had significant interests in the passage of the Proposed Amendment and Public Officer should have disclosed his commitment to the local business and the business' corresponding interest in the matter before the local governing body. The implication otherwise might suggest that Public Officer would be voting on the Proposed Amendment to guarantee and promote his continued business relationship with the local business rather than vote on a proposal he believes to be in the best interests of the public.

Public Officer testified that he did in fact recognize the conflict of interest and disclosed to the local governing body and the public that he maintained a business relationship with each of the businesses supporting the Proposed Amendment. However, Public Officer did not describe the full nature and extent of those business relationships and pecuniary interests and how or whether the relationships and interests would be affected by his vote or abstention on the matter to inform the public of the extent of the conflict. While the Commission commends Public Officer for his sensitivity to the public trust and recognition of his conflicts of interest, the Commission takes this opportunity to educate Public Officer and other public officers in similar circumstances regarding the required sufficiency of the disclosure for it to be transparent and meaningful to the public and the representative process. The Commission therefore advises the Public Officer to make such full and descriptive disclosures on all future matters involving the Proposed Amendment.

The Commission is also mindful that while Public Officer's pecuniary interests were significantly less with respect to the other businesses supporting the Proposed Amendment, those relationships and the corresponding pecuniary interests likewise should have been disclosed. Furthermore, Public Officer informed the Commission that he had regular business interests and relationships with various other local businesses which would be affected by the Proposed Amendment, and presumably oppose the measure. These relationships and interests should also have been disclosed.

### 3) 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 Commission recognizes the distinction between the requirements for disclosure and abstention set forth in the Ethics Law, with the latter being reserved only for those clear cases in which the conflict cannot be resolved with disclosure alone. Disclosure is a fairly objective evaluation while abstention is predicated on the reasonable man approach, which is heavily dependent upon the subjective considerations of the public official. Moreover, the Legislature has expressed a view that public officers should vote to maintain the representative voice in governmental

affairs unless the conflict clearly and materially would affect the independence of judgment of a reasonable person in their situation.

In this case, a clear conflict would exist if Public Officer were an owner, principal or employee of one of the entities interested in or affected by the Proposed Amendment. While Public Officer's personal business will not be directly affected by the Proposed Amendment's terms, the record nevertheless reflects a substantial, albeit indirect, interest in the matter by virtue of Public Officer's significant business relationships and pecuniary interests with local entities interested in the Proposed Amendment. Such relationships and interests would materially affect the independence of judgment of a reasonable person in his situation.

The record substantiates Public Officer's significant business dealings with one of the businesses supporting the Proposed Amendment in 2012, representing 3 percent of his overall revenues. Public Officer's pecuniary interests in and business relationships with the major proponents of the Proposed Amendment represent a clear case in which the independence of judgment of a reasonable person in Public Officer's situation would be materially affected. Thus, Public Officer should have abstained from voting on the Proposed Amendment and is advised to abstain in similar future matters.

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

1. At all times relevant to the hearing of this matter, Public Officer 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.420(1) Public Officer must disclose sufficient information concerning the nature and extent of his pecuniary interests and private commitments and how or whether those interests and commitments may be affected by any matter before the local governing body. Public Officer is advised to fully disclose his pecuniary interests and business relationships during the local governing body's consideration of similar matters involving the Proposed Amendment in the future.
4. Pursuant to NRS 281A.420(3) and (4), Public Officer should have abstained from voting during the first reading and determination regarding the Proposed Amendment. Public Officer had significant and substantial pecuniary interests and business relationships affected by the matter such that the independence of a reasonable person in his situation would be materially affected. Public Officer is advised to abstain from voting on similar matters involving the Proposed Amendment in the future.

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 9<sup>th</sup> day of August, 2013.<sup>2</sup>

NEVADA COMMISSION ON ETHICS

By: /s/ Paul Lamboley  
Paul Lamboley  
Chairman

By: /s/ Gregory Gale  
Gregory Gale  
Vice-Chairman

By: /s/ Timothy Cory  
Timothy Cory  
Commissioner

By: /s/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: /s/ Cheryl Lau  
Cheryl Lau  
Commissioner

By: /s/ James Shaw  
James Shaw  
Commissioner

By: /s/ Keith Weaver  
Keith Weaver  
Commissioner

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<sup>2</sup> Although this Abstract is published on August 9, 2013, the matter was decided on February 20, 2013, prior to the effective dates of any amendments to NRS Chapter 281A set forth in Senate Bill 228 of the 77<sup>th</sup> Nevada Legislative Session (Chapter 551, 2013 Statutes of Nevada).