



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Lawrence L. Brown, III**, Vice Chair,
Board of County Commissioners, Clark County,
State of Nevada,

Request for Opinion No. **13-28A**

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Clark County Commissioner, Lawrence L. Brown, III (“Brown”), requested this 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 April 17, 2013. Brown appeared in person in Las Vegas and provided sworn testimony. Brown was represented during the hearing by Clark County counsel, Mary-Anne Miller, Esq.

Brown sought an opinion from the Commission regarding his disclosure and abstention obligations and other ethics implications concerning a matter before the Clark County Board of Commissioners (“County Commission”) involving his private employment relationship.

After fully considering Brown’s request and analyzing the facts, circumstances and testimony presented by Brown, the Commission deliberated and orally advised Brown of its decision that he should disclose his private employment relationships regarding any County Commission matters affecting the interests of the entity which employs him and the entity’s current and future owners. The Commission also advised Brown to abstain from voting on matters which affect the entity which employs him, but that abstention may not be necessary for matters that involve business interests of the owners of the entity which are unrelated to those of his employer.² In consideration of other Ethics Law provisions, the Commission informed Brown regarding the proper separation between his official position and private employment interests, including the distinction between

¹ The following Commissioners participated in this opinion: Chairman Lamboley, Vice-Chairman Gale and Commissioners Cory, Lau, Shaw and Weaver. Commissioners Carpenter and Groover were absent and did not participate in this Opinion.

² A majority of the quorum determined that the request was too speculative and lacked sufficient facts or circumstances to definitively determine whether abstention would be required in all circumstances regarding the interests of the owners of the employing entity.

providing information versus advocating. The Commission now renders this final written Opinion stating its formal findings of fact and conclusions of law.

After the hearing in this matter,³ Brown 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 Brown. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below accept as true those facts Brown 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. QUESTIONS PRESENTED

Brown serves as a member of the County Commission and questions whether his employment relationship with a private entity engaged in business in the County ("employer or employing entity") requires his disclosure and/or abstention on matters under consideration by the County Commission affecting the employing entity, and other matters affecting the persons who own and manage the employing entity and which are unrelated to the employing entity.

III. FINDINGS OF FACT

1. In his public capacity, Brown serves as Vice Chair of the County Commission. As a commissioner, Brown's duties generally include the formulation of policies and regulations, determination of financial expenditures and provision of public works to communities not covered by municipal services. The County Commission oversees regulatory formation and policy decisions which affect the County's approximately 900,000 residents and administers its annual budget of 6.2 billion dollars.
2. In his private capacity, Brown is employed part-time by the Las Vegas 51s ("LV 51s"), a professional baseball team. Brown's position is in business development for the team, focusing on community outreach and awareness, including player speaking engagements and outreach and charitable fundraising. He does not participate in sales matters. During the off-season, Brown's duties include budget formation, strategic planning and marketing.
3. The LV 51s is a separate business entity which is currently owned by Stevens Baseball Group and has a lease agreement to play at the Cashman Field Center ("Cashman Center"), an arena owned and operated by the Las Vegas Convention and Visitors Authority ("LVCVA").

³ See Article: "County commissioner Brown still waiting for ethics panel ruling," Alan Snel, Las Vegas Review-Journal, February 10, 2014.

4. Brown does not serve on the LVCVA Board; however, the County Commission appoints two of its members to serve on the 14-member LVCVA Board. NRS 244A.603(1)(a).
5. The LV 51s is in the process of being sold to a new owners' group. Two business entities contemplate buying the LV 51s in equal 50 percent shares: the Howard Hughes Corporation of Dallas, Texas ("HH") and a local group operated and managed by Steven Mack ("Mack Group"). The name of the proposed business entity which will comprise these new owner groups has not yet been determined (Hereafter, the entity will be referred to as the "LV 51s Proposed Development Group.") HH also owns a local development division in Las Vegas ("HHLV") which developed the Summerlin community in Las Vegas. The HHLV regularly appears before the County Commission on various development and land use matters unrelated to the LV 51s.
6. The LV 51s Proposed Development Group is presently evaluating the feasibility of constructing a new baseball stadium on land HH owns within unincorporated Clark County, in the Summerlin area.
7. The LV 51s Proposed Development Group and contemplated stadium relocation have become public information via local media reports. However, the specific details, including financing, purchase negotiations, effects on the Cashman Center and other related matters remain confidential pending formalized agreements. As an employee of the LV 51s, Brown has access to and may become privy to additional confidential details regarding the proposed ownership and stadium as well as other confidential matters affecting the entity that his employer may desire to keep confidential, including matters of interest to the County Commission.
8. Brown anticipates that various matters concerning the LV 51s Proposed Development Group, including the proposed stadium relocation, will be scheduled for consideration by the County Commission.
9. Brown has regular meetings and discussions with various members of the Las Vegas City Council and LVCVA on matters of shared interest to the County Commission and Brown's District. Brown expects matters relating to the LV 51s as well as the LV 51s Proposed Development Group and contemplated stadium relocation to become topics of discussion and their related impact on the City and Cashman Center.
10. Legal Counsel to the County Commission ("County Counsel") has advised Brown to disclose his employment relationships and interests in the LV 51s, and abstain from participating in, voting on and lobbying fellow Commissioners regarding any matters related to the LV 51s, including the proposed new stadium, brought before the County Commission. County Counsel also advised Brown that he should disclose his employment relationships and interests on any general matters concerning HH,

HHLV or the Mack Group which are unrelated to the LV 51s, but that he may otherwise participate and vote on such matters.

11. County Counsel further advised Brown to refrain from any appearance of attempting to influence staff and other governmental entities on any issue related to the LV 51s Proposed Development Group or proposed new stadium by distinguishing between providing factual information and advocating.

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

A. ISSUES

Under the Ethics Law, Brown must commit himself to avoid actual and perceived conflicts of interest, and he is required to publicly disclose sufficient information concerning any private employment and pecuniary relationships and interests which would *reasonably* be affected by matters before the County Commission. NRS 281A.020 and 281A.420(1). He is also required to abstain from voting or otherwise acting on matters in which such relationships would *materially* affect the independence of judgment of a reasonable person in his position. NRS 281A.420(3). Finally, the potential interaction between his private employment status and public duties as a County Commissioner requires appropriate separation between the use of his official position and the actual or potential interests of his employer, including advocating or otherwise influencing decisions or using nonpublic government information to benefit the interests of his employer. NRS 281A.400(2), (5) and (9) and 281A.410.

Brown serves as a high level management employee for the LV 51s, a private entity conducting business within Clark County. The LV 51s currently play/operate within the jurisdiction of the City of Las Vegas, and the County Commission has not before had reason to consider matters affecting the LV 51s. However, the LV 51's are presently negotiating new ownership and potential relocation to a stadium to be developed outside City limits and within the jurisdiction of the County. Such a move would require significant interplay and negotiation between the City and the County regarding the fiscal impacts of such a decision, including, among several issues, existing and new government lease agreements and land use and development opportunities and infrastructure.

HH, one of the entities (owner groups) pursuing a 50 percent stake in the ownership of the LV 51s has other significant business interests unrelated to the LV 51s (HHLV) as a developer within Clark County and regularly appears before the County Commission on matters relating to that business. Other than the proposed ownership groups and the anticipated stadium development, the specific details regarding the negotiations remain confidential. The County Commission expects to consider various matters related to the proposed operation of the LV 51s within the County, and as an employee of the LV 51s, Brown has and may acquire additional confidential information regarding the LV 51s' interests related to County matters. His role as a member of the

County Commission creates serious and considerable conflicts between his private employment-related interests and his official duties.

Based on his significant employment relationship with the LV 51s and its pending involvement with the County, Brown is advised to disclose the nature of his relationship with and interests related to the LV 51s, including its owners, and abstain from participating and voting on any matters affecting the LV 51s before the County Commission. However, the Commission concludes that abstention may not be required for all matters before the County Commission which affect the outside business interests of the owners (HH) that are unrelated to the LV 51s (i.e., the development matters affecting HHLV). Brown's personal conflicts relate to the interests and operations of the LV 51s as his employer, which may, in some circumstances, extend to the interests of its owners. However, it would not be reasonable in all circumstances to attribute to Brown the interests of such owners in a separate business enterprise to establish conflicts of interest. With the appropriate disclosures and abstentions identified in this Opinion, Brown will properly and effectively avoid such conflicts and preserve the public trust.

B. RELEVANT STATUTES⁴

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) "Commitment in a private capacity" defined

NRS 281A.420(8) provides:

8. As used in this section:
 - (a) "Commitment in a private capacity to the interests of others" means a commitment to a person:
 - (1) Who is a member of the public officer's or employee's household;
 - (2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;
 - (3) Who employs the public officer or employee or a member of the public officer's or employee's household;
 - (4) With whom the public officer or employee has a substantial and continuing business relationship; or

⁴ Before the date of issuance of this written opinion, the statutory references provided herein were amended pursuant to Senate Bill 228 of the 2013 Legislative Session (2013 Statutes of Nevada, Chapter 551).

(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.

3) 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.

4) Using Non-Public Information Obtained Through Public Position to Benefit Pecuniary Interest

NRS 281A.400(5) provides:

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.

5) Influence of Subordinate to Benefit Personal/Financial Interests

NRS 281A.400(9) provides:

9. A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

6) Disclosure

NRS 281A.420(1) 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...

7) 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 which 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 another person.

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 persons 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 others.

(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) Lobbying/Advocating

NRS 281A.410(2)⁵ provides:

In addition to the requirements of the code of ethical standards:

2. A State Legislator or a member of a local legislative body, or a public officer or employee whose public service requires less than half of his or her time, may represent or counsel a private person before an agency in which he or she does not serve. Any other public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.

C. COMMISSION DECISION

1) Public Trust/Overview

The Legislature has recognized the importance of citizen representation in public service under the Ethics Law by endorsing the public policy of the State to encourage public service by citizens who bring particular philosophies and perspectives shaped by various life experiences such as professional, family and business experiences. NRS 281A.020. Nevertheless, the provisions of the Ethics Law were enacted to strike the appropriate balance between encouraging those private interests and ensuring impartiality of official actions on behalf of the public. *Id.* Brown accurately recognized the potential conflicts between his private employment interests and his public duties, and rightfully sought the advice of the County's legal counsel as well as the Commission to objectively navigate his responsibilities under the Ethics Law. The Commission commends Brown for acknowledging these conflicts before engaging in any activity, public or private, that may impede the integrity of the public trust.

⁵ After the date of the hearing in this matter, NRS 281A.410 was amended by SB 228 of the 2013 Legislative Session (Chapter 551, 2013 Statutes of Nevada), effective January 1, 2014 to codify principles discussed in Commission Opinion, *In re Collins*, Comm'n Opinion No. 11-78A (2012). The Commission's decision in this matter applied the provisions of NRS 281A.410 applicable before January 1, 2014 but mindful of its precedent in the *Collins* matter. SB 228 added the following prohibitions to NRS 281A.410:

3. A member of a local legislative body shall not represent or counsel a private person for compensation before another local agency if the territorial jurisdiction of the other local agency includes any part of the county in which the member serves. The Commission may relieve the member from the strict application of the provisions of this subsection if:

(a) The member requests an opinion from the Commission pursuant to subsection 1 of NRS 281A.440;

and

(b) The Commission determines that such relief is not contrary to:

(1) The best interests of the public;

(2) The continued ethical integrity of each local agency affected by the matter; and

(3) The provisions of this chapter.

4. Unless permitted by this section, a public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.

The Commission addresses concerns regarding conflicts of interest and appearances of impropriety regarding Brown's role as a high-level employee for the LV 51s and any improper influence affecting public decisions in his role as a County Commissioner. In addition to Brown's general obligation to maintain the public trust and avoid conflicts of interest, the Legislature has deemed employment relationships to implicate conflicts of interest which require disclosure of the relationship and possibly abstention from voting. NRS 281A.420(8) and 281A.420(1), (3) and (4). Likewise, these conflicts of interest require Brown to remain vigilant not to use his public position to influence matters affecting the interests of his employer, including the use of nonpublic information acquired through his public position or the improper influence of subordinates. NRS 281A.400(2), (5) and (9).

2) Commitment in a Private Capacity - Employment

In the present case, Brown has a commitment in a private capacity to the interests of his employer, the LV 51s. NRS 281A.420(8). In a complex organizational structure, the commitment extends to the interests of the owners (parent companies) of the LV 51s, currently the Stevens Baseball Group and proposed to be HH and the Mack Group. Of unique relevance in this Opinion, the interests of HH include its outside business operations by HHLV, the development division/company doing business in Las Vegas, which includes land use projects and other development issues regularly under consideration by the County Commission.

As a result of the employment relationship, the interests of Brown's employer are statutorily attributed to him to establish conflicts between his private interests and public duties. See *In re Public Officer*, Comm'n Opinion No. 13-77A (2014). The Ethics Law recognizes various conflicts or perceived conflicts between public duties and persons with whom public officers and employees have employment commitments. Accordingly, Brown must consider the implications of that relationship in addressing all associated public matters, including the disclosure and abstention requirements set forth in NRS 281A.420, representation and/or lobbying provisions set forth in NRS 281A.410 and other standards of conduct governing the improper use of his position with regard to matters affecting his private employer as set forth in NRS 281A.400.

3) Disclosure

The Ethics Law requires Brown to disclose his private commitments and relationships with his employers, the LV 51s, which are reasonably affected by matters under consideration by the County Commission. Although the negotiations are still in their initial stages, Brown confirmed that HH and the Mack Group intend to purchase the LV 51s and build a stadium within the jurisdiction of the County, outside of the Las Vegas city limits. He also stated that information regarding the proposed owners and stadium has been reported by the media and thus has become public knowledge. The County Commission therefore anticipates considering various matters involving the LV 51s' proposed operation within the County, including related issues which affect the City of Las Vegas. Furthermore, HH conducts a separate business through HHLV involving local

land development that is unrelated to the LV 51s, but which regularly comes before the County Commission.

Based on the nature of Brown's employment with the LV 51s and his influence on matters affecting Clark County as a commissioner, Brown is advised to adhere to the provisions of NRS 281A.020 and 281A.420(1). He should avoid any actual or perceived conflicts as a result of his relationship to the LV 51s and must make appropriate disclosures. Brown may honor these obligations by disclosing sufficient information regarding his relationship with and the interests of the LV 51s to inform the public of the conflict and how or whether that conflict will interfere with his ability to act in the best interests of the public.

a) Employer - Current and Future Owners

Brown must disclose his current employment relationship with the LV 51s and the interests of its current (Steven's Group) and proposed (HH and Mack Group) owners before voting or abstaining on *any* issue before the County Commission involving the interests of the LV 51s and its owners. The disclosure must include an explanation to the public of the full nature and extent of Brown's employment relationship with the LV 51s and the anticipated ownership interests and plans for the development of a stadium which require approval from the County Commission. See *In re Woodbury*, Comm'n Opinion No. 99-56 (1999).

As part of Brown's disclosure regarding the potential ownership interests by HH, he must also disclose the interests of HH in its local development division/company in Las Vegas, HHLV. Although HH's outside development interests in HHLV presumably do not intersect with the interests of the LV 51s, those issues are unknown at this time, and at the very least the LV 51s and HHLV have a connection by way of their shared parent organization, HH. Therefore, the interests of HH include any proposals regarding the LV 51s as well as any other potential land use issues that affect HHLV as a local developer. Accordingly, any matters affecting HHLV which are under consideration by the County Commission would reasonably affect Brown's employment commitment/relationship to HH and should be disclosed.

The record evidences that if HH purchases a significant interest in the LV 51s and pursues a development project within the County, the LV 51s and HH will be at the mercy of the County Commission to accomplish its land use, development and financing objectives. Because HHLV is a well-known local development company operating in Clark County, it may be perceived that HHLV will or could have some interest in the proposed stadium development. Regardless of any such involvement by HHLV in the proposed stadium, Brown testified that HHLV regularly appears before the County Commission on various unrelated land use development matters. If Brown were not to disclose his employment affiliation with HH or its interests in HHLV for public matters that are unrelated to the LV 51s, it could be perceived that Brown were acting in his official capacity to benefit the interests of his employer to curry favor or promote his employment status. See *In re Public Officer*, Comm'n Opinion No. 13-77A (2014). Accordingly, the

Commission advises Brown to disclose his employment relationship with the LV 51s and HH before voting or abstaining on any matters related to the interests of HH/HHLV, even those unaffiliated with the LV 51s.

Brown also questioned the extent to which he must disclose the interests of his employers and the proposed owners regarding information that may be deemed confidential. Specifically, because of his employment role, Brown testified that he has and would likely acquire additional confidential information related to the LV 51s that his employer would like to keep confidential. Because the Ethics Law requires disclosure of the full nature and extent of private interests to inform the public of the conflict, Brown is concerned that he would be required to disclose such confidential information.

In *In re Curran*, Comm'n Opinion No. 96-25 (1996), the Commission determined that the public officer violated the Ethics Law for failing to disclose his private client's identity as part of his conflict of interest pursuant to NRS 281A.420 (formerly NRS 281.501) despite not having his client's consent to waive confidentiality. The Commission stated that "[t]he Legislature has mandated full disclosure, with no exceptions and with good reason." *Id.* This case was cited in *In re Public Officer*, Comm'n Opinion No. 10-97A (2012), regarding the necessity to identify the names of clients and nature of representation when filing an agency representation form pursuant to NRS 281A.410(3), stating that:

The disclosure is intended to provide transparency about the bodies before which the public officer appears, and the clients who have paid him to appear. The public thus needs to know both the identity of the client and the nature of the representation; neither can remain confidential. The Commission's authority is limited to interpreting and providing guidance on the provisions of the Ethics in Government Law set forth in NRS Chapter 281A, which may conflict with professional responsibilities as private citizens. As we said in *Curran*, "any time a lawyer accepts appointment to a commission or other public position and who continues to maintain a private law practice courts the very real possibility that those two occupations may at some point put him or her into a position of actual or potential conflict of interest or duty" and the public officer must disclose the identity of a private client which creates a conflict with public duties. *Id.* The policy considerations are the same regarding disclosures of conflicts of interest as those for disclosing representations of private clients before Executive Branch agencies pursuant to NRS 281A.410(3); transparency in government and ensuring the public trust.

The Commission's prior cases evidence a policy requiring public officers and employees to disclose the identity of the person which has the interests before the public body or the nature of the relationship and interests in the public matter. In this case, it is sufficient that Brown discloses the names of the existing and potential owners of his employer and their general interests in the matter before the County Commission. Brown would not be required to divulge confidential negotiations related to the manner in which HH and the Mack Group obtain their ownership, or the specific plans they have for developing a stadium. The public will be sufficiently aware of the significant interests of the owner groups in a matter involving ownership and development of a stadium to

understand Brown's conflict. Further, any public matter affecting the LV 51's will also require Brown's abstention, as described below. Because Brown will be abstaining from such matters, Brown will not be in a position to affect the confidential nature of any pending negotiations or decisions affecting the public with regard to those matters through his position on the County Commission.

b) Other Governmental Entities

Brown also informed the Commission that in his role as a County Commissioner, he regularly meets with various members of the Las Vegas City Council and LVCVA regarding matters that similarly impact the City of Las Vegas and Clark County. Among these issues include the current status of the LV 51s, which presently operate at the Cashman Center within the city limits of Las Vegas. Members of the Las Vegas City Council and LVCVA have inquired about the LV 51s' plans to sell the team and develop a stadium in Clark County. These decisions will impact various matters important to the City and the LVCVA, including economic development, tourism, tax revenues and redevelopment and/or future use of the Cashman Center. Although Brown perceives these impacts to be positive for the City and LVCVA, he recognizes the perception of bias given his private employment status. Accordingly, Brown has asked whether it is appropriate for him to discuss these matters with other governmental entities in his role as an employee of the LV 51s and liaison of the County Commission.

The Commission concludes that it would be appropriate for Brown to disclose his employment interests in the LV 51s and provide the same level of disclosure to outside governmental entities that he would offer the County Commission and public represented thereby. His meetings with these governmental entities are established in his capacity as a County Commissioner and any attempt to provide information could again be perceived as the use of his official position to persuade decisions that impact the City and LVCVA. While disclosure is encouraged under these circumstances, the Commission also offers some insight regarding the distinction between advocating and participating and/or providing information. See below.

4) Abstention

Based on the nature of the relationships identified above, the Commission concludes that Brown should abstain from acting on any matters related specifically to the LV 51s before the County Commission. However, when matters come before the County Commission regarding development interests of HH/HHLV which are unrelated to the LV 51s, Brown is not automatically required to abstain. The potential effect of such matters on his employers' interests does not clearly and materially affect the independence of judgment of a reasonable person in his situation where the matter concerns a separate business entity. Of course, Brown must carefully evaluate the matter before the County Commission to determine whether there are facts or circumstances which may reasonably relate to the interests of HH or the LV 51s that should require his abstention.

If the public matters involve routine development unrelated to the LV 51s, it may be reasonable for Brown to participate. NRS 281A.420(4) recognizes the strong public policy requiring public officers to represent their constituents' interests in representative government except in clear cases in which a conflict interrupts the independence of judgment of a reasonable person in the officer's situation. Without additional facts to support a more concrete link to his employers' interests, Brown is advised to carry out his public responsibilities and vote on such matters.

5) Appointments to LVCVA

Brown also acknowledged that the County Commission is responsible for appointing two of its members to serve on the LVCVA and questioned whether his employment interest in the LV 51s should require his disclosure and abstention regarding any appointment decisions to the LVCVA. The Commission has previously concluded that disclosure would not be required in such an instance. See *In re Johnson*, Comm'n Opinion No. 12-68A (2013) (a public officer's nomination and appointment of a person, as required by State law, to another governmental entity with which he had private interests did not trigger disclosure or abstention obligations). However, as identified above and noted in *Johnson*, to the extent the LVCVA comes before the Board or Brown in his capacity as a County Commissioner on matters related to the LV 51s, Brown should disclose his employment relationship and abstain.

6) Lobbying/Advocating Other Governmental Entities – Participating

Brown questions the boundaries within the Ethics Law regarding his ability to impart information regarding the LV 51s and its pending ownership change and stadium development with members of the City Council and LVCVA. The Commission reminds Brown of the "razor thin" line established by the Commission between participating and advocating, a line often too close to warrant a distinction. NRS 281A.420(3) states that a public officer or employee "shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter" in which he has a conflict.

The Commission has already advised Brown to abstain from voting or advocating for the passage of any matter relating to the LV 51s. However, Brown's desire to otherwise provide factual information, i.e., participate, is laced with serious, potential public trust implications. See *In re Kubichek*, Comm'n Opinion No. 97-07 (1997) ("an elected official who has already disclosed and abstained from a matter because of a disabling conflict of interest should always consider whether what she has to say really needs to be said, and if she thinks so, then she must be very careful with what she says and how she says it. Prudential forethought, common sense, and concern for appearances of impropriety will be the best prophylaxis"); see also *In re Buck*, Comm'n Opinion No. 11-63 (Public officer's assertion of factual information in matter regarding which she had conflict of interest and disclosed and abstained was determined to constitute advocacy in violation of Ethics Law). Brown should be aware that his efforts to convey what he believes to be factual information related to these matters may be construed as advocacy by virtue of his personal stake in the matter.

Further, NRS 281A.410(2) prohibits public officers from representing or counseling private persons for compensation before an agency in which they do not serve. The Commission has previously expressed its concern with public officers lobbying fellow public officials in inter-related jurisdictions regarding matters in which they have a conflict of interest, primarily because of the impact it may have on the public trust. See *In re Collins*, Comm'n Opinion No. 11-78A (2012) (County Commissioner advised that his representation of private clients before local government bodies within the jurisdiction of the County would violate NRS 281A.410(2) based on the close interrelationships of the governmental entities to the County Commission and his persona and reputation as a public official of the County). Brown's discussions with public officers from jurisdictions within the County regarding matters involving the LV 51s is precisely the concern identified in *Collins*.

Brown is advised to carefully consider whether his meetings with members from other jurisdictions regarding matters involving the LV 51s will be received as representation of his private employer for compensation, or impartial factual information imparted as a County Commissioner. See *Id.* Perception is often reality in the eyes of the public, and Brown is reminded that the Ethics Law strives to promote the public trust and prevent even appearances of impropriety. Therefore, Brown would be better served to avoid the conflict altogether and allow these jurisdictions to obtain the necessary factual information from government and public representatives who do not have the same personal interest in the matter.

7) Proper Use of Government Position

The Commission concludes that Brown's employment status with the LV 51s establishes certain interference with his duties as a public official with the County. Brown's high-level position with the LV 51s involves significant input, influence and knowledge of issues involving the LV 51s, including awareness of confidential negotiations regarding pending ownership of the organization and the potential development of a new stadium within the County, subject to approval by the County Commission.

In addition to the disclosure and abstention obligations, Brown is also advised to refrain from using his government position in any manner that could be construed as influencing subordinates within the County, persuading County decisions or using otherwise nonpublic information to benefit his private employer. See NRS 281A.400(2)(5) and (9). Based on Brown's candid testimony and forthcoming awareness of the conflict, the Commission is satisfied that Brown fully understands these responsibilities and will dedicate his conduct to preserve the public trust.

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V. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Brown 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), Brown is advised to disclose sufficient information concerning the nature and extent of his employment relationship with and related interests in the LV 51s, including its current (Stevens Group) and potential (HH and Mack Group) ownership interests and proposed stadium development. Brown is further advised to disclose the nature and extent of any interests of his employers (and owners) before the County Commission which may be unrelated to the LV 51s, but nevertheless involve matters of significance to his employer.
4. Under NRS 281A.420(3) and (4), Brown is required to abstain from voting upon or advocating the passage or failure of any matter before the County Commission involving the LV 51s, including its current and proposed owners and the proposed development of a new stadium.
5. Under NRS 281A.420(3) and (4), matters affecting the interests of the proposed owners of his employer which are unrelated to the LV 51s, such as the unrelated development interests of HHLV, without additional information, do not establish a clear case in which the independence of judgment of a reasonable person in Brown's situation would be materially affected. Therefore, his duty to abstain is not absolute unless additional facts establish a nexus to his employment interests.
6. Under NRS 281A.420(1) and (3), Brown is not required to disclose his employment relationship with the LV 51s or abstain from voting on the nomination and voting process for appointment of a member of the County Commission to serve on the LVCVA.
7. Pursuant to NRS 281A.410(2) and 281A.420(3), Brown may not advocate on behalf of or otherwise represent or counsel his employer before the Las Vegas City Council or LVCVA and should avoid appearances of impropriety implicated by providing perceived factual information related to his employer in his role as a County Commissioner.

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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 1st day of July, 2014.

NEVADA COMMISSION ON ETHICS

By: /s/ Paul H. Lamboley
Paul H. Lamboley
Chairman

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

By: ABSENT
John C. Carpenter
Commissioner

By: ABSENT
Magdalena Groover
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: /s/ Cheryl A. Lau
Cheryl A. Lau
Commissioner

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver
Commissioner