



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Doug Mills**, Member, Lander County
Board of Commissioners, State of Nevada,

Request for Opinion No. **14-78A**
CONFIDENTIAL

Public Officer. /

CONFIDENTIAL OPINION

I. STATEMENT OF THE CASE

Doug Mills ("Mills"), member of the Lander County Board of Commissioners ("Board"), 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 January 21, 2015. Mills appeared telephonically and provided sworn testimony.

Mills sought an opinion from the Commission regarding his disclosure and abstention obligations as a member of the Board given his simultaneous service as Treasurer for the Battle Mountain Chamber of Commerce ("Chamber") and volunteer for the Lander County Sheriff's Search and Rescue team ("SAR"), (hereafter collectively referred to as "entities"), where both entities receive grants from Lander County.

After fully considering Mills' request and analyzing the facts, circumstances and testimony presented by Mills, the Commission deliberated and orally advised Mills of its decision that Mills' anticipated future conduct does not violate any of the provisions or intent of NRS 281A.400(2) regarding the use of his position to secure or grant unwarranted advantages. However, the Commission advised Mills that any matter before the Board for public action involving either of the two entities would require a disclosure explaining the full nature and extent of the relationships and interests and their impact on the matter before the Board. The Commission further noted that abstention may be necessary regarding any funding issues pertaining to the entities. However, such a decision would have to be made based upon the matter presented to the Board for public action.

The Commission now renders this final written Opinion stating its formal findings of fact and conclusions of law.²

¹ The following Commissioners participated in this opinion: Chairman Lamboley, Vice Chairman Gale and Commissioners Carpenter, Cory, Groover, Lau, Shaw, and Weaver.

² Any individual comments made by a commissioner during the hearing or deliberations are not binding on or part of the Commission's final decision.

Mills elected to retain confidentiality with respect to the Commission's proceedings. Therefore, the Commission will publish an abstract of this Opinion.

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

II. QUESTIONS PRESENTED

1. Mills questions whether the Ethics Law prohibits him from maintaining his positions on the governing board of the Battle Mountain Chamber of Commerce ("Chamber") and as a volunteer for the Lander County Sheriff's Search and Rescue ("SAR") team while serving as a Lander County Commissioner.
2. Mills also questions whether the Ethics Law requires him to disclose his association with either entity and/or abstain on matters concerning either entity which may come before the Lander County Commission.

III. FINDINGS OF FACT

1. In his public capacity, Mills was elected as a Lander County Commissioner in November 2014 and took office in January 2015. As a Commissioner, Mills' duties generally include the formulation, administration and enforcement of County policies, codes and ordinances, approval of County contracts, agreements and budgets, and implementation of administrative, economic development, public safety, recreational and cultural matters.

Mills and the Battle Mountain Chamber of Commerce

2. The Battle Mountain Chamber of Commerce is a 501(c)(6) non-profit organization that receives private funds, grants and donations to enable its operation and to provide services to its member business entities. The Chamber strives to support, strengthen and expand existing businesses by increasing their customer base. The Chamber lobbies for the interests of its members through the promotion of businesses in the community, including gathering statistics, printing promotional brochures, answering inquiries, and advertising the quality of life in Lander County. The Chamber serves as the Visitors Center for Battle Mountain and Lander County. Additionally, the Chamber's Executive Director serves on the Lander County Economic Development Board.
3. In his private capacity, Mills serves as Treasurer on the Board of Directors for the Battle Mountain Chamber of Commerce. As Treasurer, Mills is responsible for managing the funds that enable the Chamber to provide services to its member business entities. This is a voluntary position that receives no salary. Only the Executive Director receives a salary.
4. The Chamber is funded primarily by two grants. A grant provided by Lander County funds the Chamber's Executive Director's salary. The other grant is provided by the Lander County Convention and Tourism Authority to fund the operating expenses of the Chamber.

Mills and Lander County Sheriff's Search and Rescue Team ("SAR")

5. SAR assists the Lander County Sheriff's Office and other search and rescue teams, i.e., Washoe County's HASTY team and Newmont Mining Company, in preserving life and removing survivors from the site of a disaster, emergency or hazard to safety in case of lost, stranded, entrapped or injured people.
6. SAR is a non-profit organization that is primarily funded by the Lander County Sheriff's Office for approximately \$7,000 annually. Funding resources are applied mainly to search and rescue equipment and its maintenance.
7. SAR is comprised predominately of private citizen volunteers and a few county employees from the Sheriff's Office who fulfill the expertise needed for the search and rescue work, such as local emergency medical technicians.
8. Newmont Mining Company, the largest employer in the county, also provides assistance to SAR through funding and employee participation in rescue operations. Search and rescue in Lander County often involves underground or cave rescue operations, and Newmont's volunteers on SAR have the skills needed for these specialized rescue operations, such as rope rescue and mountaineering. There is a mutual benefit to the County and Newmont by providing skilled search and rescue personnel.
9. SAR meets twice a month at the Sheriff's Office to discuss the coordination and utilization of available resources and personnel in an emergency.
10. On average, SAR handles only one or two rescue operations per year.
11. In his private capacity, Mills has served as a volunteer on the SAR team for approximately 10 years.
12. As a volunteer, Mills participates in search and rescue operations in Lander County. He also volunteers on the SAR Finance Committee that focuses on fundraising for SAR. However he is not in charge of the committee. The main fundraising event is an annual golf tournament at Mountain View Golf Course.

Board Funding of the Entities

13. Mills understands that the Board considers funding for each of the entities approximately once a year and that the Board's Budget Committee initially reviews the funding through individual line items.
14. However, Mills does not know whether the Board reviews the funding as line items or as part of the overall general budget.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

As a public officer, Mills must commit himself to avoid actual and perceived conflicts of interest between his public duties and personal endeavors (NRS 281A.020) and ensure that he will not use his position in government to gain unwarranted privileges,

preferences, exemptions or advantages for himself, or for any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person (NRS 281A.400(2)).

The Ethics in Government Law also imposes certain disclosure and abstention obligations on public officers, including disclosures of certain private interests which would reasonably affect public decisions. NRS 281A.420(1). Specifically, Mills must disclose whether he has a commitment in a private capacity to the interests of another person or entity or a significant pecuniary interest in a matter before or affecting the County; and Mills must also abstain from matters regarding which the independence of judgment of a reasonable person in his situation would be materially affected. NRS 281A.420(3).

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. Use of Government Position

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 has a commitment in a private capacity to the interests of that person. As used in this subsection, "unwarranted" means without justification or adequate reason.

3. 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 significant pecuniary interest; or
 - (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person,

→without disclosing information concerning the gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of the person that is sufficient 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 significant pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such a 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 in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

4. Abstention

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

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 significant 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 acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person 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 another person, accruing to the other person, is not greater than that accruing to any other member of any 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 acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

(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, significant pecuniary interest or commitment in a private capacity to the interests of another person 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, significant pecuniary interest or commitment in a private capacity to the interests of another person.

5. "Commitment in a private capacity" Defined.

NRS 281A.065

"Commitment in a private capacity," with respect to the interests of another person, means a commitment, interest or relationship of a public officer or employee to a person:

1. Who is the spouse or domestic partner of the public officer or employee;
2. Who is a member of the household of the public officer or employee;
3. Who is related to the public officer or employee, or to the spouse or domestic partner of the public officer or employee, by blood, adoption or marriage or domestic partnership within the third degree of consanguinity or affinity;
4. Who employs the public officer or employee, the spouse or domestic partner of the public officer or employee or a member of the household of the public officer or employee;
5. With whom the public officer or employee has a substantial and continuing business relationship; or
6. With whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in subparagraphs 1 to 5, inclusive.

V. COMMISSION DECISION

A. INTRODUCTION

Nevada's Ethics Law mandates that public officers hold public office for the sole benefit of the public and avoid conflicts of interest, both actual and perceived. NRS 281A.020. Mills is concerned that such conflicts might exist between his newly elected position as a Lander County Commissioner and either or both of his roles as a volunteer for Battle Mountain's Chamber of Commerce and the Lander County Sheriff's Search and Rescue team. Mills seeks Commission guidance regarding his responsibilities as a public officer in these public and private roles.

B. COMMITMENT IN A PRIVATE CAPACITY

As an elected Lander County Commissioner, Mills is a public officer and has public duties that he must separate from his private interests and relationships to preserve the public trust. NRS 281A.020. NRS 281A.065 establishes certain relationships that implicate conflicts of interest. Pursuant to NRS 281A.065, the Legislature has deemed certain relationships to establish the type of private commitments that implicate certain conflicts of interest. The Commission has previously determined that a public officer's role as a director of a nonprofit entity establishes a relationship that is substantially similar to a substantial and continuing business relationship. (*See In re Public Officer, Comm'n*

Opinion No. 12-04A (2012); *citing to In re Public Employee*, Comm'n Opinion No. 10-66A (2012), *In re Public Officer*, Comm'n Opinion No. 11-84A (2012) and *In re Public Officer*, Comm'n Opinion No. 12-15A (2012)). Therefore, a public officer's volunteer service on the Board of Directors of a nonprofit organization constitutes a commitment in a private capacity to the interests of that organization. (See *Id.*) The Commission concluded that people who volunteer their time and efforts to a nonprofit organization are interested in and committed to the goals of the organization, serve as a fiduciary to the organization, and have a commitment in a private capacity to the interests of the organization and its members. (See *Id.*)

Based upon prior opinions, Mills clearly has a commitment in a private capacity to the Chamber as he is an officer of that organization. See *In re McCoy*, Comm'n Opinion No. 09-58A (2012) (A person who serves on the board of directors of a corporation, whether non-profit or for-profit, has a fiduciary obligation to the corporation, which is a commitment to the interest of others.)

While Mills is not an officer of SAR, he has been an active member for over 10 years and serves as a member of the SAR Finance Committee. The nature and extent of Mills' volunteer service to SAR creates a commitment in a private capacity based upon his long term involvement in the close organization. See *In re Public Officer*, Comm'n Opinion 11-26A (2011) and NRS 281A.065(6) (A commitment in a private capacity to the interests of another person includes a relationship with an entity that is substantially similar to a commitment, interest or relationship such as a substantial and continuing business relationship.)

The factual scenario of *In re Public Officer*, Comm'n Opinion 11-26A (2011) is similar to Mills' relationship with SAR. In Comm'n Opinion No. 11-26A, the public officer was appointed to fill an unexpired term on the Board of Directors of a General Improvement District. However, at the time of his appointment he served as a volunteer for a community organization that supports the GID. The ethical question was whether the Ethics Law permitted him to serve as a member of the GID and volunteer for Community Organization. (See *id.*) While the Commission's Opinion did not directly discuss whether there was a commitment in a private capacity, it held that the "dual service could create the perception of a conflict of interest and thus the appearance of impropriety." (*Id.*) Therefore the Commission advised the public officer "to properly disclose the conflict and abstain from action in his role as a public officer when appropriate..." (See *id.*)

Based upon Comm'n Opinion No. 11-26A, and the provisions of NRS 281A.065(6) regarding a similar "commitment, interest or relationship", Mills has a relationship with SAR that reaches the level of a commitment in a private capacity and triggers concerns about appearances of impropriety when matters involving SAR come before the Lander County Commission. Consequently, based upon the factual scenario presented, Mills has a commitment in a private capacity to both entities. However, this commitment does not prevent his volunteer service to the community because of his elected position as a County Commissioner.

As the Legislature has recognized the importance of continued involvement of private citizens in the operation of our public service, the Commission acknowledges and supports the efforts of private citizens with varied interests to serve the public in related capacities. Mills has private interests, knowledge and experience in the Chamber and SAR. His service to the private organizations is vital to the community. In most instances, the goals and objectives of the County and the entities will be compatible. In those few areas where there may be conflicts of interest, Mills can maintain public integrity and trust through appropriate disclosures and abstentions and continue to serve the public in his capacity as a commissioner for Lander County. Therefore, Mills may continue to serve as a Commissioner, the Treasurer of the Chamber and a volunteer of SAR while the Ethics Law governs his conduct in the context of the appropriate uses of his official position and disclosure and abstention. (See *In re Public Officer*, Comm'n Opinion 11-26A (2011) permitting dual service as a Board member and a volunteer of a non-profit that receives funding from the Board).

C. DISCLOSURE AND ABSTENTION

The Commission is concerned about whether Mills' role as a volunteer and Treasurer of the Battle Mountain Chamber of Commerce and his role as a volunteer with SAR create any undue advantages for himself or those entities when matters from either entity are brought before the Board and require disclosure of the relationships and possible abstention from voting. NRS 281A.420(1) and (3). Each entity is a non-profit organization supported in large part by county grants. Mills is an uncompensated volunteer for each entity. However, as a County Commissioner, Mills may be called upon to vote regarding funding for either entity.

In evaluating whether Mills' commitment in a private capacity to the entities requires disclosure and/or abstention, the Commission again relies upon its former opinion, *In re Public Officer*, Comm'n Opinion 11-26A (2011), which provides guidance on the issue of disclosure and abstention when a public officer is a member of a board or commission that has monetary power over a non-profit or service organization in which the public officer is an active member in his private capacity. In Comm'n Opinion No. 11-26A, the public officer was appointed to fill an unexpired term on the Board of Directors of a General Improvement District, however, at the time of his appointment he served as a volunteer on the Community Organization which supports the GID. In that matter, the Commission concluded that:

When the Board considers a matter concerning the [Community Organization], Public Officer is advised to disclose his activities as a [Community Organization] member on the public record to avoid the appearance of impropriety. For example, if the [Community Organization] seeks funding, either directly or through the [GID's] efforts, or has any substantive matter before the Board, Public Officer should disclose his interests in the [Community Organization] on the public record at the time the Board considers the matter. If Public Officer has doubts about whether or not he should

disclose his membership on the [Community Organization], he is well advised to make the disclosure.

(See *id.*)

Disclosure is required when a public officer would reasonably be affected by the public officer's commitment in a private capacity. (NRS 281A.420(1)(c)). In this instance, Mills has a commitment in a private capacity to the interests of both entities that must be disclosed when a matter before the Board concerns either or both entities. (See also *In re Public Officer*, Comm'n Opinion, 13-46A (2013)). However, based on the limited information available to the Commission regarding potential matters that may involve these entities before the Board, abstention is not absolute.

In Comm'n Opinion 11-26A (2011), the Commission noted that the public officer was not required to automatically abstain but rather "undertake an abstention analysis on the record to ascertain whether the independence of judgment of a reasonable person in his situation would be materially affected by the matters before him such that abstention would be necessary." (*In re Public Officer*, Comm'n Opinion 11-26A (2011)) The same analysis applies in this situation. The Commission does not have specific examples of the types of matters that may be presented to the Lander County Commission related to the Chamber or SAR. However, if those decisions relate to issues as important as funding, Mills, and a reasonable person in his situation, would be materially affected by the private interests and commitments to those entities and must refrain from advocating the passage or failure of the matter and abstain from voting upon the matter.

The Commission recognizes the difficulty concerning an analysis regarding the funding issues where Mills is not certain whether the proposed funding is included as a line item or as part of the overall general budget. As a line item, Mills can and should abstain from voting on the matter. However, where such funding is made part of the overall general budget presented and proposed to the Board, Mills may be confronted with the inability to vote and participate on the overall budget where his conflict involves only a small portion of the budget related to funding for the entities. If the funding is part of the general budget, Mills is advised to consult with the Board's District Attorney and prior Commission opinions regarding the abstention consideration, and consider whether he may be able to carve out from the general budget approval a separate vote on the funding for the entities, from which he can abstain.

The Commission cautions Mills that he must carefully address abstention issues pertaining to the entities as the Commission cannot provide concrete advice without specific facts. Mills must disclose when either entity is on the Board's agenda, and proceed in a heightened consideration of abstention, because of the nature of his relationship and continuing membership of those two entities. This is true both to the budget committee level of his participation as a County Commissioner or as a Commissioner at the Commission level. Mills must exercise a heightened sensitivity to any Board issue that impacts either entity.

D. USE OF GOVERNMENT POSITION

The analysis of NRS 281A.420 extends to NRS 281A.400(2). NRS 281A.400(2) does not prohibit a public officer from acting in a manner consistent with his personal interests. Rather, the intent of this statute prohibits a public officer from acting in a manner which creates unwarranted privileges, preferences or advantages for a personal interest, including non-profits to which the officer has a commitment in a private capacity. (See *In re Public Officer*, Comm'n Opinion No. 12-15A (2012)). Therefore without any specific facts to suggest a violation of NRS 281A.400(2), "the Ethics Law protects the public through appropriate disclosure and abstention provisions when a public officer has a private interest in a public matter regarding which she has some authority or influence." (See *id.*) Therefore, NRS 281A.400(2) dovetails in its respective analysis depending on the future factual scenarios presented to Mills in his capacity as a County Commissioner. If a specific matter creates ambiguity, Mills is welcome to return to the Commission for a specific opinion on a precise factual matter.

VI. CONCLUSIONS OF LAW

The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed. The people have a right to expect that every public official and employee will conduct himself in a manner that will tend to preserve public confidence in and respect for the government he represents. Such confidence and respect can best be promoted if every public official and employee uniformly avoid both actual and potential conflicts between their private interests and the public interest. Helping public officials and employees achieve these goals is one of the objectives of the Ethics Law and therefore the Commission concludes:

1. At all times relevant to this matter, Mills 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.065, Mills has a commitment in a private capacity to the Chamber and SAR.
4. Mills does not violate the provisions of NRS 281A.020 by maintaining his volunteer positions with the Chamber and SAR.
5. Mills does not violate the provisions of NRS 281A.400(2) by maintaining his volunteer positions with the Chamber and SAR while serving as a Lander County Commissioner. However, Mills must analyze future matters depending on the scope of the issue before the County Commission and commit to avoid the use of his official position to provide any unwarranted preferences to the Chamber or SAR.
6. Pursuant to NRS 281A.420(1) and (3) Mills must disclose his relationship with the Chamber and SAR, and abstention should be considered in future matters depending on the scope of the issue before the County Commission. Specifically, Mills is advised to abstain from voting on matters involving funding decisions by the County Commission to the Chamber or SAR.

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 24th day of March, 2015.

NEVADA COMMISSION ON ETHICS

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

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

By: /s/ John C. Carpenter
John C. Carpenter
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

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

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

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