



Confidentiality Waived

## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Cameron Kinney**, Councilmember,  
City of Carlin, State of Nevada,

Advisory Opinion No. 21-054A  
CONFIDENTIAL

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Public Officer. /

### CONFIDENTIAL OPINION

#### I. STATEMENT OF THE CASE

Cameron Kinney (“Kinney”) requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675, 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”). Pursuant to Section 13 of the Commission’s approved regulation, LCB File No. R108-18, a quorum of the Commission considered this matter by submission, without holding an advisory-opinion hearing.<sup>1</sup> The Commission considered the request for an advisory opinion, information provided by Kinney that he affirmed as true, and publicly available information.

Kinney sought an opinion from the Commission regarding his disclosure and abstention obligations under NRS 281A.420 on an agenda item for a neighbor’s land use variance anticipated to be considered by the City Council. After fully considering Kinney’s request, the Commission deliberated and advised Kinney about the disclosure and abstention requirements of NRS 281A.420.

The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law. The facts in this matter are based the evidence confirmed to be true by Kinney, which facts are set forth below. 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.<sup>2</sup>

#### II. QUESTIONS PRESENTED

Kinney questions whether he may participate on an application for a variance sought by his neighbor under circumstances where he is within the noticed area and he believes the value of his own property would be adversely affected if the variance was approved by the City Council.

<sup>1</sup> The following Commissioners participated in this opinion: Chair Wallin, Vice-Chair Duffrin and Commissioners Gruenewald, Lowry, Oscarson, Towler, Sheets and Yen.

<sup>2</sup> The Commission reserves its statutory authority should an ethics complaint be filed presenting contrary circumstances. See *In re Howard*, Comm’n Op. No. 01-36 (2002) (notwithstanding first-party opinion, public is not precluded from bringing ethics complaint) and *In re Rock*, Comm’n Op. No. 94-53 (1995) (reservation of right to review until time issue is raised).

### **III. FINDINGS OF FACT**

1. Cameron Kinney (“Kinney”) is a Council Member for the City of Carlin, State of Nevada (“Carlin”).
2. Kinney received a copy of the Notice of Public Hearing dated August 3, 2021, indicating that an adjacent property owner is seeking a variance to allow the placement of a mobile home on his property.
3. The public hearing on the variance application is scheduled for August 25, 2021.
4. Kinney is concerned that if the variance is approved by the City Council to allow his neighbor to live in a mobile home, it could potentially change the value of all of the properties located in the near vicinity, including Kinney’s property.
5. Kinney requests guidance on his compliance obligations under the Ethics Law, including his disclosure and abstention requirements on the agenda item for the variance application.

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

#### **A. ISSUES**

As a public officer, Kinney must commit himself to avoid actual and perceived conflicts of interest between his public duties and private interests. NRS 281A.020. Specifically, NRS Chapter 281A prohibits Kinney from using his position in government to either seek any emolument or economic opportunity that would improperly influence a public officer in discharge of public duties or to secure unwarranted privileges, preferences, exemptions or advantages for himself or any person to whom he has a commitment in a private capacity under NRS 281A.065. Kinney is required to make a proper disclosure on matters affecting his own pecuniary interests and private commitments, and then conduct the abstention analysis set forth in NRS 281A.420 to determine if he may participate on the matter. Abstention is required when Kinney’s private interests or commitments would clearly and materially affect the independence of judgment of a reasonable person in a similar position. See NRS 281A.420(1), (3) and (4).

#### **B. RELEVANT STATUTES**

##### **1. Public Trust/Avoiding Conflicts**

**NRS 281A.020 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. The Legislature finds and declares that:
  - (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators serve as "citizen Legislators" who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.

(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

### **1. "Pecuniary interest" defined**

#### **NRS 281A.139 provides:**

"Pecuniary interest" means any beneficial or detrimental interest in a matter that consists of or is measured in money or is otherwise related to money, including, without limitation:

1. Anything of economic value; and
2. Payments or other money which a person is owed or otherwise entitled to by virtue of any statute, regulation, code, ordinance or contract or other agreement.

### **2. Improper Use of Government Position**

#### **NRS 281A.400(1) provides:**

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

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

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.

**NRS 281A.400(9) provides:**

A public officer or employee shall not attempt to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity through the influence of a subordinate.

**3. Disclosure and Abstention Requirements**

**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;

(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; or

(d) Which would reasonably be related to the nature of any representation or counseling that the public officer or employee provided to a private person for compensation before another agency within the immediately preceding year, provided such representation or counseling is permitted by NRS 281A.410,

↳ without disclosing information concerning the gift or loan, the significant pecuniary interest, the commitment in a private capacity to the interests of the other person or the nature of the representation or counseling of the private 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, upon the person to whom the public officer or employee has a commitment in a private capacity or upon the private person who was represented or counseled by the public officer or employee. 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.

**NRS 281A.420(3) 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 significant pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of another person.

**NRS 281A.420(4) provides:**

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 duty of the public officer to make a proper disclosure at the time the matter is considered and in the manner required by subsection 1.

(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 makes a proper disclosure at the time the matter is considered and 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

**V. COMMISSION DECISION**

**A. INTRODUCTION**

The Ethics Law mandates that public officers hold public office for the sole benefit of the public and they are required to avoid conflicts of interest, both actual and perceived. NRS 281A.020. Kinney has been provided notice as an abutting property owner that his neighbor is seeking a variance to permit placement of a mobile home on his lot as a dwelling. Kinney is concerned that if the variance is granted it will lessen the property values of his own and other properties located in the neighborhood.

**B. PECUNIARY INTERESTS**

Under applicable land use laws or regulations, Kinney was provided proper notice from the City that his land would be affected by the proposed variance. Further, Kinney confirms he believes if the variance is granted to allow placement of the mobile home on an adjacent property, his land use value would be directly affected.

Under the Ethics Law a "pecuniary interest" is defined under NRS 281A.139 as "any beneficial or detrimental interest in a matter that consists of or is measured in money or is otherwise related to money, including without limitation

1. Anything of economic value; and
2. Payments or other money which a person is owed or otherwise entitled to by virtue of any statute, regulation, code, ordinance or contract or other agreement."

The Merriam-Webster dictionary defines "significant" as having or likely to have influence or effect, important or probably caused by something other than mere chance. Merriam-Webster Collegiate Dictionary 1159 (11<sup>th</sup> ed. 2003). Similarly, *The American Heritage College Dictionary* 1268 (3rd ed. 1997) defines "significant" as "meaningful" or "important."

NRS 281A.139, as originally enacted, did not contain the word "significant." The term was added by Senate Bill ("SB") 228 of the 77<sup>th</sup> Nevada Legislative Session (2013). The Commission's Executive Director at the time testified that "significant" was being added to several subsections of the Ethics Law, to eliminate a *de minimis* interest from being seen as a true conflict. See Exhibit C submitted at the Hearing on SB 228 before the Assembly Legislative Operations & Elections Comm., 77th Leg. (Nev. May 14, 2013). Therefore, a significant pecuniary interest means that the associated benefits or detriments are important and not incidental, trivial or *de minimis*.

The Commission does not view Kinney's anticipated reduction in the value of his property if the variance were to be granted by the City Council as *de minimis*, trivial or insignificant. Accordingly, Kinney will have duties to properly disclose the significant pecuniary interest and comply with the abstention requirement of NRS 281A.420.

### **C. DISCLOSURE REQUIREMENTS – NRS 281A.420(1)**

As a public officer, Kinney has a duty to avoid conflicts of interest arising when significant pecuniary interests or private commitments affect the discharge of his public duties. See NRS 281A.020. This duty includes disclosing sufficient information to inform the public how his private matters and associated interests would reasonably affect his decision on matters before the City Council. See NRS 281A.420(1). The Ethics Law requires disclosure in matters: (1) in which a public officer or employee has accepted a gift or loan; (2) in which the public officer or employee has a significant pecuniary interest; (3) which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person; or (4) which would reasonably be related to the nature of any representation or counseling provided to a private person for compensation before another agency within the preceding year. NRS 281A.420(1).

The Commission has issued many opinions associated with disclosure and abstention requirements of NRS 281A.420 and these opinions are searchable on its official website. Opinions addressing the requirements of NRS 281A.420 rest upon the facts and circumstances presented because the statutory analysis involves both consideration of the involved pecuniary interests and private commitments and the effect the matter to be considered would have on such interests.

The Commission has long-standing opinions indicating that the nature and quality of a nearby development could reasonably have an effect upon the uses and value of private holdings. See *In re Scheffler*, Comm'n Op. Nos. 95-21, 95-23 and 95-37 (1996); *In re Woodbury*, Comm'n Op. No. 96-14C (1996); *In re Weber*, Comm'n Op. No. 09-47C



(2012); *In re Johnson*, Comm'n Op. No. 11-42C (2012); *In re Dortch*, Comm'n Op. No. 13-54A (2014); and *In re Romero*, Comm'n Op. No. 19-059A (2019).

In its *Scheffler* decision, the Commission indicated that the benefits to Scheffler from his votes were directly evident and reasonably foreseeable requiring disclosure and abstention, which decision was primarily based upon the proximity of Scheffler's land to the proposed development. In *Woodbury*, the Commission expanded its analysis indicating that the proximity of a property to the proposed development is important; however, other circumstances should be considered including whether the evidence demonstrates a direct or reasonably foreseeable benefit (or detriment) to the public officer's or employee's private interests or commitments. Consequently, the Commission has declined to utilize a "mechanical" proximity rule as the only test of whether the private interests of a public officer or employee are affected by a proposed development or land-use matter.

To trigger disclosure requirements, the matter under consideration must have a nexus to or reasonably affect the private interest or commitment. See NRS 281A.420; *In re Public Officer*, Comm'n Op. No. 12-15A (2012). But, even if the nexus is remote, the Commission advises proper disclosure of such interests, in keeping with the public trust. See *In re Weber*, Comm'n Op. No. 09-47C (2012).<sup>3</sup>

Accordingly, the Commission reviews the facts of each case to determine whether there is a sufficient nexus, whether beneficial or detrimental, between the development matter and considers the private interests of the public officer or public employee. Regarding Kinney's circumstances, the Commission finds that his property is located in the affected notice area and the proposed variance could have reasonably foreseeable impacts to affect or diminish Kinney's property values. The facts affirmed to be true by Kinney confirm that he owns the adjacent property, he received notice that his property could be affected by the proposed variance, and Kinney has explicit concerns about diminished property values for his own property. Therefore, this case presents facts establishing a sufficient nexus or reasonably foreseeable impact between the variance application and the potential to directly affect Kinney's own property valuation. The potential impact is foreseeable and is not speculative or remote. Accordingly, pursuant to NRS 281A.420(1), Kinney is advised to make a proper disclosure on the variance application.

A proper disclosure advises the public about the full nature of the potential effects that the private interests and commitments have on the public matter to be considered. A public officer's disclosure is paramount to transparency and openness in government. The statutory requirements and related public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. Kinney is reminded that the Ethics Law does not recognize a continuing disclosure or a disclosure by reference.

The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests and commitments.

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<sup>3</sup> In *Weber*, the Commission addressed the duty to disclose on matters that may affect property interests located in close proximity (outside of the required notice area) to a development project indicating that mere ownership of property in the general area to a development project without any evidence of a reasonable effect on the public officer's interests or commitments is not sufficient to implicate the NRS 281A.420 disclosure requirements; however, even though the interests were remote a disclosure was recommended to inform the public about the nature of the interests to confirm there was not a sufficient nexus as to require disclosure. See also, *In re Romero*, Comm'n Op. No. 12-059A (2019) for discussion on remoteness.

Silence based upon a prior disclosure fails to inform the public or supervisory head of the organization about the nature and extent of the conflict. See *In re Buck*, Comm'n Op. No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)). At a minimum, a disclosure should identify Kinney's private property interests and the potential affect that his participation on the variance application would have on these interests, including diminished property value to his own property.

#### **D. ABSTENTION REQUIREMENTS – NRS 281A.420(3) AND (4)**

NRS 281A.420(3) and (4) detail the abstention requirements to be considered after a proper disclosure has been made by the public officer/employee. NRS 281A.420(3) mandates that a public officer shall not participate on a matter when the independence of judgment of a reasonable person in the public officer's situation would be clearly and materially affected by the disclosed conflict. NRS 281A.420(4) creates a presumption against abstention and authorizes participation in limited circumstances.

After a proper disclosure, the presumption permits the public officer to participate if the matter would not result in any form of benefit or detriment accruing to the public officer (or persons/entities to whom he has a private commitment) that is greater or less than that accruing to any other member of the general business profession, occupation or group that is affected by the matter. For example, if the public officer is voting upon a general business license increase and his or her business would be subject to the increase and pay the same amount as other businesses similarly situated, the public officer may make a proper disclosure and explain to the public why the legal presumption permits her participation. As the Commission explained:

...[W]ithout a public disclosure, the Commission is hindered from application of the presumption, and the Public Officer is left without the benefit of the public policy presumption set forth in NRS 281A.420(3) and (4). A proper disclosure acts as a condition precedent to recognition of the public policy attributes of NRS 281A.420(3) and (4), which instruct that appropriate weight and proper deference be given 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 appointed and to otherwise act upon a matter, provided the public officer has properly disclosed the public officer's commitment in a private capacity to the interests of another person in the manner required, and the independence of judgment of a reasonable person would not be clearly and materially affected by the private interests.

*In re Public Officer*, Comm'n Op. No 15-74A (2018), at pgs. 9-10.

Initially, it is noted that the presumption would not permit Kinney to participate on this variance application that directly affects his property interests, as the adjacent property owner. Under the circumstances, the independence of judgment of a reasonable person in Kinney's situation would be clearly and materially affected by the private pecuniary interests relating to the value of one's own property. The Ethics Law requires abstention on matters clearly or materially affecting private interests and commitments. See NRS 281A.420(3).<sup>4</sup>

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<sup>4</sup> Matters relating to procedural due process (impartiality or bias) could implicate legal matters outside the scope of the Ethics Law. See *In re Public Officer*, Comm'n Op. No. 12-40C (2012). It is recommended that guidance on such matters be obtained from the City's official legal counsel prior to participating on a matter.



## **E. CODE OF ETHICAL STANDARDS – NRS 281A.400**

Kinney has a duty to protect the public trust and separate his public responsibilities from his private pecuniary and business interests. The provisions of NRS 281A.400 serve to assist Kinney in maintaining a proper separation between private interests and public duties. For each referenced section of NRS 281A.400, Kinney must be mindful of the following implications:

- NRS 281A.400(1) and (2) – Kinney’s public duties will intersect with his significant pecuniary interests when the variance application is considered. To avoid this conflict, Kinney must not use his public position to benefit his private interests.
- NRS 281A.400(9) – Kinney is advised that influencing a subordinate in an attempt to benefit a private interest or commitment is precluded under the Ethics Law.

## **VI. CONCLUSIONS OF LAW**

1. At all times relevant to this matter, Kinney is a public officer as defined by NRS 281A.160.
2. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
3. Pursuant to NRS 281A.139, Kinney has a significant pecuniary interest in maintaining the value of his property.
4. Pursuant to NRS 281A.420(1), Kinney is advised to provide a proper disclosure that informs the public about the nature and extent of the conflict and how the matter under consideration reasonably affects his significant pecuniary interests.
5. Pursuant to NRS 281A.420(3) and (4), Kinney is advised to abstain from participation on the variance application because his participation would clearly and materially affect his own pecuniary interests.

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Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law construed to constitute a Finding of Fact, is hereby adopted, and incorporated as such to the same extent as if originally so designated.

Dated this 19<sup>th</sup> day of August, 2021.

THE NEVADA COMMISSION ETHICS

By: /s/ Kim Wallin  
Kim Wallin, CPA, CMA, CFM  
Chair

By: /s/ James Oscarson  
James Oscarson  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Vice-Chair

By: /s/ Damian R. Sheets  
Damian R. Sheets, Esq.  
Commissioner

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

By: /s/ Thoran Towler  
Thoran Towler  
Commissioner

By: /s/ Teresa Lowry  
Teresa Lowry, Esq.  
Commissioner

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner