



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
HAROLD J. KEATON, County Commissioner
District B, Lincoln County Board of Commissioners**

Opinion No. 06-14

This matter came before a quorum¹ of the Nevada Commission on Ethics (hereinafter “the Commission”) for hearing on December 13, 2006, pursuant to a Request for Opinion filed on March 16, 2006, pursuant to NRS 281.511(2)(b) by Lincoln County Deputy District Attorney Dylan Frehner, and a determination made on November 16, 2006, by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether Mr. Keaton’s conduct violated NRS 281.501(4).

The issues before the Commission in this matter are limited to the following:

1. Did Mr. Keaton approve, disapprove, vote, abstain from voting or otherwise act upon the road improvements at Highland Knolls, in which he has a pecuniary interest without

¹ The quorum consisted of Chairman Jenkins and Commissioners Capurro, Flangas, Keele and Kosinski. Commissioner Hutchison was absent and excused. Commissioners Cashman and Hsu served as the panel in this matter. Pursuant to NRS 281.462(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

disclosing sufficient information concerning his interest to inform the public of the potential effect of the action upon his interest?

2. If Mr. Keaton's conduct, related to any of the above issues, violated NRS 281.501(4), was the violation "willful" pursuant to NRS 281.4375² as limited by NRS 281.551(5)?³

5. If Mr. Keaton's conduct, related to any of the above issues, is deemed a "willful" violation of the referenced statute, does the willful violation warrant the imposition of a civil penalty or any other action pursuant to the provisions of NRS 281.551?⁴

Notice of the hearing was properly posted and served. Mr. Keaton was present and provided sworn testimony. The following individuals appeared as witnesses and provided sworn testimony: Dylan Frehner, Lincoln County Deputy District Attorney; Steve Chouquer, Lincoln County Road Supervisor; Art Cameron, purchased property at Highland Knolls Subdivision from Mr. Keaton.

FINDINGS OF FACT

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact:

1. Mr. Keaton is a voting member of the Lincoln County Board of Commissioners.

² NRS 281.4375 defines "willful violation" as: "the public officer or employee knew or reasonably should have known that his conduct violated this chapter."

³ NRS 281.551(5) provides: "An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements: (a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471; (b) He was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and (c) He took action that was not contrary to a prior published opinion issued by the Commission."

⁴ NRS 281.551 sets forth penalties the Commission is authorized to impose.

2. At its September 19, 2005 meeting, the Lincoln County Board of Commissioners considered an agenda item regarding road improvements in the area known as the Highland Knolls Subdivision (“Highland Knolls”). This was a contested issue involving whether the county should assume the responsibility of road improvements in the Highland Knolls Subdivision in Lincoln County, Nevada, or whether the land owners in Highland Knolls or a general improvement district should pay for the improvements. Mr. Keaton made the following motion, as recorded in the minutes of the meeting: “to direct the supervisor of the road department to proceed on bringing the roads up to spec and getting them chip sealed.”

3. Mr. Keaton is one of three share holders in Sierra Asset Management, Inc., a Nevada corporation (“the Corporation”). At all times pertinent to Request for Opinion No. 06-14, the corporation owned a five-acre parcel (“the Parcel”) located on Sharon Street in Highland Knolls at the time the Lincoln County Board of Commissioners voted to make the road improvements.

4. At the time the Lincoln County Board of Commissioners (“the County Commission”) considered the agenda item regarding road improvements in Highland Knolls, Mr. Keaton did not disclose Sierra Asset Management’s ownership of the parcel in Highland Knolls because he felt that the parcel was only “in the vicinity” and would not be directly affected by the road improvement project that was to be considered by the County Commission.

5. Mr. Keaton’s motion was to extend Sharon Street (in Highland Knolls) to where a connection from Sharon Street could be made with Jane Street. If carried out, the Sharon Street extension would have had no contact with Mr. Keaton’s property. However, the Lincoln County Road Department, contrary to Mr. Keaton’s motion and the County Commission’s direction, extended Sharon Street to where it came in direct contact with Mr. Keaton’s property.

6. When the agenda item regarding road improvements in Highland Knolls was considered by the County Commission, it was the position of the Lincoln County District Attorney's office that a public officer should disclose his interest if he owns property that is going to be impacted by the improvements. Mr. Frehner testified that the District Attorney's office informed Mr. Keaton of this position after they discovered Mr. Keaton's conflict.

CONCLUSIONS OF LAW

1. As Commissioner of District B for the Lincoln County Board of Commissioners, Mr. Keaton is a public officer as defined in NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, Subsection 2(b).

WHEREFORE, based upon a preponderance of the evidence in this matter, by a majority vote,⁵ the Commission renders the following Opinion:

OPINION

The Nevada Legislature has declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees,

⁵ The vote was as follows:

- NRS 281.501(4): Violation, 4 to 1;
- As to willfulness: Willful, 3 to 2;
- As to \$100 civil penalty: 3 to 2.

adequate guidelines are required to show the appropriate separation between the role of persons who are both public servants and private citizens." NRS 281.421.

The Commission is directed to hold public officers accountable when they fail to place public interest and public trust ahead of their private and/or pecuniary interests. Public officers should be mindful of the provisions of NRS 281.501 which requires them to adequately disclose private interests and commitments when considering matters before them and, as appropriate, refrain from advocating the passage or failure of matters and abstain from voting when their independence of judgment is materially affected by their personal interest.

NRS 281.501(4) provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

On September 19, 2005 the Lincoln County Board of Commissioners voted to improve roads in the Highland Knolls Subdivision. This was a contested issue involving whether the county, parcel owners or a general improvement district should pay for the road improvements.

Mr. Keaton made a motion to direct the supervisor of the road department to make specific improvements to certain roads in Highland Knolls.

At the time the matter was considered, Sierra Asset Management owned a parcel of land in Highland Knolls and Mr. Keaton owned an interest in Sierra Asset Management. This relationship, at a minimum, required Mr. Keaton's disclosure of a potential conflict of interest. Although it is Mr. Keaton's position that he did not have to disclose his interest because the planned Sharon Street extension would have made no contact with Mr. Keaton's property, Mr. Keaton, as part owner of a parcel in Highland Knolls benefited from the improvement of the roads within the subdivision as well as the access to the subdivision from the nearby highway. Therefore, the Commission finds, under these circumstances, that Mr. Keaton violated NRS 281.501(4) when he failed to disclose sufficient information concerning his interest in Sierra Asset Management, which owned a parcel in Highland Knolls, to inform the public of the potential effect of the action upon his interest. Further, the Commission concludes that Mr. Keaton willfully violated NRS 281.501(4) and imposes a civil penalty of one hundred dollars (\$100), payable to the Nevada Commission on Ethics within thirty (30) days after Mr. Keaton's receipt of this Opinion.

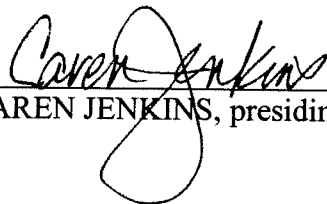
CONCLUSION

Based on the foregoing, the Commission finds one willful violation by Mr. Keaton of NRS 281.501, Subsection 4 and imposes a fine of one hundred dollars (\$100), payable to the Commission within thirty (30) days after Mr. Keaton's receipt of this Opinion.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DESCRIBED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: May 3, 2007.

NEVADA COMMISSION ON ETHICS

By: 
CAREN JENKINS, presiding officer at hearing