



**STATE OF NEVADA
COMMISSION ON ETHICS**

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR ADVISORY OPINION OF
ELDON B. HARDY,
Former Ombudsman, Common Interest Communities
Real Estate Division
Nevada Department of Business and Industry**

**Advisory Opinion
No. 06-22**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on May 19, 2006, on the request for an advisory opinion filed with the Commission by Mr. Hardy, former Ombudsman for the Real Estate Division's Common Interest Communities.

The matter was properly noticed as non-confidential and the hearing was open to the public pursuant to NRS 281.511(5)(c). Mr. Hardy appeared in person, was sworn, and presented testimony.

Mr. Hardy seeks an advisory opinion from the Commission determining whether the Ethics in Government Law allows him to offer consulting services to homeowners and homeowner associations in need of advice and guidance with regard to NRS Chapter 116 and NAC Chapter 116 (Common-Interest Ownership Uniform Act).

After fully analyzing the request for an advisory opinion and considering all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Mr. Hardy of its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. Mr. Hardy was employed for approximately five years with the Nevada Real Estate Division as Ombudsman for the Common-Interest Communities department. Mr. Hardy retired from that position on April 7, 2006.
2. The duties of the Ombudsman for the Common-Interest Communities are outlined in NRS 116.625. Mr. Hardy's duties, during his tenure as Ombudsman, included the following: Assisting owners in common-interest communities to understand their statutory rights and responsibilities; investigating disputes involving NRS 116 and assist in resolving such disputes; and assist in processing claims submitted to mediation or arbitration.
3. Mr. Hardy wishes to provide consulting services to homeowners and homeowner associations that seek guidance with regard to any issues addressed by Chapter 116 of NRS and NAC.
4. Mr. Hardy does not plan to represent homeowners or homeowner associations before the Common-Interest Communities Commission.

Rather, he expects to counsel his clients prior to them appearing before the commission.

5. Mr. Hardy would consider counseling his clients on legislative measures and regulatory proposals should his clients request his advice and guidance on such matters.
6. Since a backlog of cases exists at the Common-Interest Communities department of the Real Estate Division, it is likely that Mr. Hardy would be asked to consult on issues that were pending before the Common-Interest Communities Commission when he was employed as Ombudsman.

CONCLUSIONS OF LAW

1. Mr. Hardy is a former public employee as defined by NRS 281.436.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511(1) and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved by a six-to-two vote¹, the Commission renders the following opinion:

¹ Commissioners Caren Jenkins, Randall Capurro, Timothy Cashman, Rick Hsu, Mark Hutchison, and George Keele voted to approve the motion, while Commissioners William Flangas and James Kosinski voted nay.

OPINION

The issue in this opinion concerns the propriety of Mr. Hardy's proposed consulting activities in view of the restrictions contained in NRS 281.236 and NRS 281.491.

Subsection 1 of NRS 281.491 provides:

A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. *Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service.* As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations. (Emphasis added.)

According to Mr. Hardy's testimony at the hearing in this matter, he has been approached by individuals, either homeowners or members of homeowner associations, requesting his help with Common-Interest Ownership issues. Mr. Hardy expressed to the Commission his desire to share his knowledge in the area of Common-Interest Ownership. He stated that initially, he intends to provide his consulting services without compensation. However, he would eventually like to charge for his services.

The Commission advised Mr. Hardy that, for the one-year period after his retirement from employment with the Common-Interest Communities, he is prohibited from representing or counseling for compensation a private person, including homeowners and homeowner associations, upon any issue which was under consideration by Common-Interest Communities during his tenure. However, Mr. Hardy would not

violate NRS 281.491(1) if, during the first year after his retirement, he engaged in consulting services relating only to the proposal or consideration of legislative measures or administrative regulations, so long as the consulting does not involve issues that were pending at the Common-Interest Communities during his tenure.

Although Mr. Hardy also requested an opinion with regard to the provisions of NRS 281.236,² the Commission determined that those provisions do not apply to Mr. Hardy's circumstances and therefore, renders no opinion in that regard. The main goal of NRS 281.236 is to reduce the temptation for public employees to compromise public duties in favor of possible employment opportunities³ but such facts do not exist in Mr. Hardy's case.

² NRS 281.236 provides, in part: ...a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the Executive Branch of government shall not, except as otherwise provided in subsection 4, employ a former public officer or employee of the agency, except a clerical employee, for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry; (b) During the immediately preceding year he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or (c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

4. A public officer or employee may request the Commission on Ethics to apply the relevant facts in his case to the provisions of subsection 3 and determine whether relief from the strict application of the provisions is proper. If the Commission on Ethics determines that relief from the strict application of the provisions of subsection 3 is not contrary to: (a) The best interests of the public; (b) The continued integrity of state government; and (c) The code of ethical standards prescribed in NRS 281.481, it may issue an opinion to that effect and grant such relief. The opinion of the Commission on Ethics in such a case is subject to judicial review.

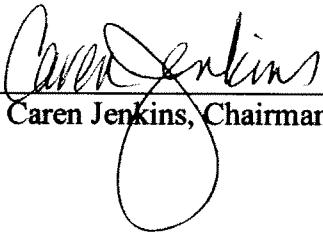
5. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038.

³ See, *In re Sheldrew*, CEO 00-44 (12-19-00).

NOTE: THIS MATTER IS A FIRST-PARTY ADVISORY OPINION REQUEST. FOR PURPOSES OF A FIRST-PARTY ADVISORY OPINION REQUESTED PURSUANT TO NRS 281.511(1) AND NRS 281.521, ALL FACTS IN THE MATTER ARE PROVIDED BY THE PUBLIC OFFICER REQUESTING THE ADVISORY OPINION, AND THE COMMISSION MAKES NO INDEPENDENT INVESTIGATION AS TO THE TRUTH OF THOSE FACTS. THE RECORD HEREIN, THEREFORE, CONSISTS SOLELY OF FACTS PROVIDED ON THE RECORD BY THE PUBLIC OFFICER, AND THIS OPINION IS BASED SOLELY UPON THOSE FACTS. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE PROVIDED BY THE PUBLIC OFFICER IN THIS ADVISORY 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: January 4, 2007.

NEVADA COMMISSION ON ETHICS

By: 
Caren Jenkins, Chairman