



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of The Request For
Advisory Opinion by CLINTON BRENT ELDRIDGE
Commissioner, White Pine County Board of
Commissioners, State of Nevada**

Advisory Opinion No. 06-59

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (“Commission”) for hearing on October 11, 2006 on the request for an advisory opinion pursuant to NRS 281.511.1. Clinton Brent Eldridge (“Eldridge”), Commissioner on the White Pine County Board of Commissioners (“County Commission”) filed the request.

The matter was properly noticed as a non-confidential matter. Eldridge appeared in person and provided sworn testimony. Eldridge sought an opinion from the Commission regarding whether he is prohibited from participating on the County Commission or its Water Advisory Committee’s negotiation board on matters concerning Southern Nevada Water Authority (“SNWA”) and its proposed water withdrawal project from White Pine County.

After considering the request for an advisory opinion, all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Eldridge of its decision in the matter. The Commission issues this opinion.

¹ The quorum consisted of then Chair Jenkins and Commissioners Capurro, Cashman, Flangas, Hsu, Hutchison and Keele.

FINDINGS OF FACT

1. Eldridge serves as the chairman of the County Commission. He also served as a member on the County's Water Advisory Committee's negotiation team ("negotiation team").
2. The negotiation team was working with SNWA to reach an agreement with regard to control of SNWA pumps and the protection from and mitigation of environmental, economic, and social damages that may result from the proposed water exportation project.
3. Eldridge resigned from the negotiation team when he perceived a conflict of interest and since he expected that SNWA would attempt to purchase his family's ranch. At the time of the hearing, Eldridge considered rejoining the team if the Commission found that no conflict exists.
4. Eldridge is a stockholder in his family's ranching corporation which operates within the Spring and Snake Valleys in White Pine County, Nevada. Because the ranch makes no profit, he receives no compensation or dividends from the ranch. His brothers and nephew operate the ranch.
5. SNWA applied to the State Engineer for appropriation and export of approximately 120,000 acre-feet of water from the basins in which Eldridge's family ranch is located. SNWA plans to pump its water from the same aquifers from which Eldridge's family and numerous other ranchers and farmers are permitted to pump.
6. At the time of the hearing, SNWA had purchased two Spring Valley ranches, one of which is interlocked and nearly checker-boarded with Eldridge's family's properties.
7. At the time of the hearing, Eldridge's family was involved in preliminary discussions with SNWA regarding their peaceful co-existence as neighbors. Negotiations were to be focused on mutual ranching issues and would not entail the merits of SNWA's proposed pumping and

pipeline project. Eldridge's family favored not selling property to SNWA. No sale discussions had taken place.

CONCLUSIONS OF LAW

1. At the time of the hearing Eldridge was a public officer as defined by NRS 281.4365.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511.1 and NRS 281.521.
3. Eldridge must comply with the proscriptions found in NRS 281.501 and the Commission opinions interpreting those provisions, particularly, the *Woodbury* and *Kubicheck* opinions. Eldridge is not prohibited from participating on matters concerning SNWA's proposed water withdrawal project that come before the boards on which he serves if the matter involves rights shared by a group in which Eldridge is a member, and the benefit or detriment accruing to him as a result of a decision is not greater than that accruing to any other member of the group.

DISCUSSION

The issue is whether Eldridge is prohibited from participating on matters concerning the SNWA's proposed water withdrawal project that come before the public boards on which he serves.

NRS 281.501 provides in pertinent part:

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. [I]n addition to the requirements of the code of ethical standards, 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 his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

...

4. 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.

In *Woodbury*,² the Commission set out the steps that a public office must take whenever a matter that may affect his independence of judgment comes before the public body in which he sits: first, disclosure is required whenever a public officer's actions would "*reasonably* be affected by his private commitment"; and second, before abstention is also required, a reasonable person's independence of judgment "must be *materially* affected" by that private commitment.

² See, *In Re Woodbury*, Nevada Commission on Ethics Opinion (CEO) No. 99-56.

In *Kubichek*,³ the Commission recognized that, “nothing in NRS 281.501 or elsewhere in Nevada Ethics in Government Law would compel the conclusion that once [a person] became a county commissioner [he] became barred for the remainder of [his] term from participating in the ordinary process of ...government as any citizen would, and such conclusion would severely restrict the pool of potential candidates for any office.”

The facts presented in this matter establish that Eldridge serves on the County Commission which will be hearing matters concerning SNWA’s proposed water withdrawal project that will affect Eldridge’s family ranch business and other similar businesses in the community. Although, at the time of the hearing no discussions had taken place between SNWA and the Eldridge family regarding the sale of property to SNWA, Eldridge was of the opinion that such discussions would ultimately take place.

The Commission points out that every public officer must make a determination regarding whether or not to participate on a matter based on his knowledge of the matter at the time it comes before the public body on which he serves. It would be impossible to hold a public officer accountable for unforeseen events. However, a public officer would be accountable for foreseeable future events. In this case, if Eldridge was in negotiations with SNWA for the sale of his family’s property at the time matters regarding SNWA came before his public body, there is a reasonable probability that a sale would occur and Eldridge would have knowledge of this foreseeable event.

The Commission advises Eldridge to comply with the proscriptions found in NRS 281.501 and the Commission opinions interpreting those provisions, particularly, the *Woodbury* and *Kubichek* opinions. Accordingly, he needs to disclose his private interests with regard to

³ See, *In re Kubichek*, CEO 97-07

his family ranching corporation whenever a matter affecting it comes before the public boards on which he serves. If the matter involves rights shared by a group in which Eldridge is a member and the benefit or detriment accruing to him as a result of a decision is not greater than that accruing to any other member of the group, then Eldridge is not prohibited from participating and voting on the matter.

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 AND USED BY THE COMMISSION 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: December 21, 2007.

NEVADA COMMISSION ON ETHICS

By: 

MARK HUTCHISON, Vice Chairman