



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of The Request For
Advisory Opinion by JANET PORTER
Commissioner, Commission for
Common-Interest Communities,
Real Estate Division, State of Nevada.**

Advisory Opinion No. 06-63

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. Janet Porter (“Porter”), Commissioner on the Commission for Common-Interest Communities of the Real Estate Division (“CIC”), filed the Request.

The matter was properly noticed as a non-confidential matter. Porter appeared in person and provided sworn testimony. Porter sought an opinion from the Commission as to whether she is prohibited from serving on the CIC, while simultaneously serving as a member of the board of directors (“Board”) of the homeowner association where she resides.

After fully considering the request for an advisory opinion and considering all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Porter 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. Porter was appointed to the CIC to serve as a “unit’s owner,” someone who has served on the executive board of a homeowner’s association, pursuant to NRS 116.600.2.
2. The Board is a three-person board. However, the Board has been unable to fill the vacancy of the third director. Porter wishes to act as the third director on the Board.
3. CIC hears matters pertaining to licensing and regulation of common-interest communities managers and violations of the law as it pertains to common-interest communities.
4. Porter estimates that presently, more than half of the people residing in the State of Nevada live in common-interest communities. There are hundreds of homeowner associations. It is unlikely that her own homeowner association and the Board would frequently come before CIC.

CONCLUSIONS OF LAW

1. As a member of the CIC, Porter is 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. Porter was appointed to CIC pursuant to NRS 116.600.2.
4. Porter must disclose and abstain pursuant to NRS 281.501, as interpreted by the Commission in the *Woodbury* opinion.²

DISCUSSION

The issue is whether a conflict exists by Porter serving on the CIC while simultaneously serving on the Board. The facts presented in this matter establish that, with hundreds of

homeowner associations, it is unlikely that the Board would frequently come before CIC. Nothing in the facts provided by Porter suggests that her dual appointment alone poses a conflict under the Ethics in Government Law (NRS 281.411-281.581).

However, Porter, with guidance of her legal counsel, must make a case-by-case analysis about disclosure and abstention, as prescribed by NRS 281.501. Guidelines for disclosure and abstention have been provided by the Commission in the *Woodbury* opinion. If a matter related to her homeowner association comes before the CIC, Porter would not only have to disclose that she is a director on the Board, but also that she is a homeowner within the association. In *Woodbury* the Commission opined, "...disclosure is required whenever a public officer's actions would "*reasonably* be affected by his [private] commitment" to the interests of others...while a reasonable person's independence of judgment must "...be *materially* affected by..." that private commitment before abstention is also necessary.


Therefore, Porter is not prohibited from serving simultaneously on the CIC and the Board. However, in the appropriate circumstances, she must disclose and abstain as required by NRS 281.501.

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

² See *In Re Woodbury*, NCOE 99-56.

NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS
OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY
OTHER FACTS AND CIRCUMSTANCES.

DATED: 12-26-07, NEVADA COMMISSION ON ETHICS

By: 
MARK HUTCHISON, Vice Chairman