



STATE OF NEVADA

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter Of  
The Request for Advisory Opinion Concerning  
The Conduct Of KAY BENNETT,  
Trustee, Silver Springs General  
Improvement District, Lyon County,  
State of Nevada.**

**Request for Opinion No. 07-04A**

**OPINION**

This matter came before the Nevada Commission on Ethics (Commission) for hearing on March 14, 2007. Kay Bennett (Bennett), Trustee for the Silver Springs General Improvement District (SSGID) in Lyon County filed a request for an advisory opinion, pursuant to NRS 281A.440.1.<sup>1</sup>

The matter was properly noticed and Bennett waived confidentiality in this matter. Bennett appeared in person and was represented by Keith Loomis, Esq. Bennett provided sworn testimony.

Bennett sought an opinion whether the contract between her private company, Silver Springs Airport, LLC (SSA) and SSGID creates a conflict of interest in her public duties as trustee and manager for the SSGID.

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<sup>1</sup> At the time of the hearing on this matter the Ethics in Government Law could be found in NRS 281.411 through 281.581. The Ethics in Government Law is now housed in Chapter 281A of NRS.

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 Bennett of its decision in the matter. The Commission incorporates its oral decision and renders this opinion.

### **FINDINGS OF FACT**

1. Bennett was elected as a trustee for the SSGID board in November of 2006. She was sworn in and attended her first board meeting on January 8, 2007.
2. Bennett and her husband own and manage the SSA.
3. SSGID was created for the purpose of operating a sewer treatment facility. It provides for the collection and processing of effluent and the discharge of the treated effluent.
4. In 1999, the SSA and the SSGID entered into a long-term contract (contract) for disposal and/or other utilization of treated effluent from the SSGID treatment facility. SSA is the sole provider of this service to the SSGID.
5. Bennett and her husband use the treated effluent for growing alfalfa and dispose of it at the airport during the non-growing season.
6. At the January 8, 2007 board meeting, legal counsel for the SSGID, Kevin Walsh, Esq. (Walsh), challenged the legality of Bennett's participation on the board due to the perceived conflict created by the contract.
7. Bennett was serving as chairman and interim general manager of the SSGID at the time of the hearing on this matter.

## **CONCLUSIONS OF LAW**

1. Bennett is a public officer pursuant to NRS 281A.160 because she is elected to the position of trustee of the SSGID.
2. The Commission has jurisdiction to render an advisory opinion, pursuant to NRS 281A.440.1 and NRS 281A.460.
3. Public officers are prohibited under NRS 281A.400.10 from entering into contracts through the use of their official position.
4. NRS 281A.430 prohibits public officers from entering into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.
5. Public officers are required to disclose their private pecuniary interest prior to taking any action on a matter where a conflict may exist between their private interest and their public duty, pursuant to NRS 281A.420.4.
6. After making proper disclosure, a public officer shall determine whether abstention is required under NRS 281.420.2 and Commission Opinion 99-56 (*Woodbury*).

## **DISCUSSION**

The issue is whether Bennett may serve as an elected trustee of the SSGID given the fact that she is the owner of the airport that has a long term contract with the SSGID. Additionally, whether her private interest in the airport and the contract would require her to disclose and abstain on matters pertaining to the airport and the contract.

Under NRS 281A.400.10 and NRS 281A.430, a public officer is prohibited from entering into contracts through the use of their official position or with any governmental entity. A public officer is required to disclose his private pecuniary interest and determine whether abstention is

required on matters where a conflict may exist between his private interest and his public duties, pursuant to NRS 281A.420.4 and .2.

Bennett disclosed her private interest in the contract to the voters during her campaign. She stated publicly that she would abstain from voting on matters that pertain to the contract, pursuant to NRS 318.0957.2 and NRS 281A.420.2.

SSGID counsel Walsh concluded that based on NRS 318.0957, it is unlawful for Bennett to be a member of the SSGID, while simultaneously maintaining her pecuniary interest resulting from the contract. Mr. Walsh advised that Bennett could not vote on matters pertaining on the SSGID and the SSA. However, Lyon County District Attorney Robert Auer opined that because Bennett was a party to the contract before she was elected to the SSGID board, she can maintain her elected position.

This case does not involve a situation where Bennett had entered into a contract while serving as a trustee of SSGID. The fact that Bennett entered into the contract before serving on the board, precludes any violation of NRS 281A.400.10 and NRS 281A.430.

The Commission advised Bennett concerning the need for her disclosure and possible abstention on matters pertaining to the airport or when the contract is discussed. Bennett is advised to read the Commission Opinion 99-56 (*Woodbury*) closely and apply the disclosure and abstention standards as required in NRS 281A.420.2 and .4. The Commission further advises that where abstention is required, Bennett may still be allowed to participate as a provider of factual information pursuant to the provisions in NRS 281A.420.

Still, the Commission advises Bennett that her contractual relationship with SSGID may pose some conflicts. Since the SSGID serves the single purpose of running a sewer treatment plant and Bennett has a private contractual relationship with SSGID for disposal and utilization

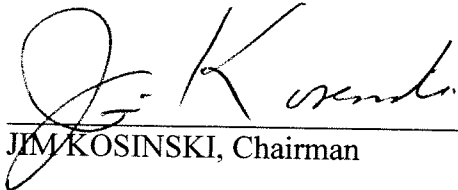
of treated effluent from the SSGID treatment facility, she may find herself needing to abstain often on matters affecting her. Regular abstention could render Bennett ineffective in her public position.

### CONCLUSION

**WHEREFORE**, the Commission unanimously<sup>2</sup> finds that in her capacity as trustee of SSGID, Bennett is required to disclose her private interest in the SSA or matters relating to the airport or any contacts between the airport and SSGID. She must apply the standards set out in NRS 281A.420 and as interpreted in the Commission's *Woodbury* opinion, specifically when determining whether her abstention is necessary.

**Note: This matter is a first-party advisory opinion request. For purposes of a first-party advisory opinion requested pursuant to NRS 281A.440.1 and NRS 281A.460, all facts in the matter are provided by the public officer requesting the advisory opinion. 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. 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: 1/25/08. NEVADA COMMISSION ON ETHICS

By:   
JIM KOSINSKI, Chairman

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<sup>2</sup> The quorum consisted of Chairman Kosinski and Commissioners Cashman, Flangas, Hsu, Hutchison Jenkins and Keele. Commissioner Capurro was absent from the meeting at the time of the vote.