



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter Of
The Request for Advisory Opinion Concerning
The Conduct Of DENA M. HARTLEY,
Commissioner, Elko County Planning Commission,
State of Nevada.**

Request for Opinion No.: 07-05A

OPINION

This matter came before the Nevada Commission on Ethics (Commission) for hearing on March 14, 2007. Dena M. Hartley (Hartley), Commissioner on the Elko County Planning Commission (Planning Commission) filed a request for an advisory opinion, pursuant to NRS 281A.440.1.¹

The matter was properly noticed and Hartley waived confidentiality in this matter. Hartley appeared via telephone conference, was represented by Kristin McQueary, Esq. and provided sworn testimony.

Hartley sought an opinion whether her duties as a director for the Spring Creek Association creates a conflict of interest in her public duties as a member of the Planning Commission.

¹ 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 Hartley of its decision in the matter. The Commission incorporates its oral decision and renders this opinion.

FINDINGS OF FACT

1. Hartley is an elected member of the Planning Commission.
2. Spring Creek Association (SCA) is the homeowners' association for the Spring Creek subdivision in Elko County. Hartley is a director on the SCA Board of Directors (SCA Board). Hartley receives no compensation for serving on the SCA Board.
3. The Spring Creek subdivision is the largest in Elko County, representing approximately 40% of the work of the Planning Commission.
4. The SCA Board appoints the members of the Spring Creek Committee of Architecture (COA). The COA enforces the Declarations of Reservations of the SCA.
5. Approval of applications or petitions for building permits, zoning changes and variances made by the COA are forwarded directly to the Planning Commission. The SCA Board hears appeals of permit denials made by the COA, which, if overturned, are forwarded to the Planning Commission.
6. Elko County Code 4-9-4 provides that the County will not accept any application or petition for building permits, zoning changes and variances, without approval from the respective architectural review committees.

CONCLUSIONS OF LAW

1. Hartely is a public officer as defined in NRS 281A.160.

2. The Commission has jurisdiction to render an advisory opinion, pursuant to NRS 281A.440.1 and NRS 281A.460.
3. 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.
4. After making proper disclosure, a public officer shall determine whether abstention is required under NRS 281A.420.2 and the Commission Opinion 99-56 (*Woodbury*).

DISCUSSION

The issue is whether Hartley's duties as a director for the SCA Board creates a conflict of interest in her public duties as a member of the Planning Commission.

Hartley is a public officer pursuant to NRS 281A.160 because she is elected to the position of Commissioner of the Planning Commission.

Under NRS 281A.420.4 and .2, public officers are required to disclose their private interest and determine whether abstention is required on matters where a conflict may exist between their private interest and their public duties.

The SCA Board appoints the members of the COA and therefore COA acts on behalf of the SCA enforcing the Declaration of Reservations. By virtue of the delegation of duties from the SCA Board to the COA, the SCA Board supports the decisions made by the COA, thereby creating dual loyalties for Hartley. Hartley has a loyalty to the COA and to the Planning Commission. This creates an apparent conflict particularly with regard to appeals of COA decisions which ultimately may end up before the SCA Board or the Planning Commission.

Further, Hartley's fiduciary duty to SCA and her fiduciary duty to the Planning Commission create an impermissible conflict. Under Opinion 99-56 (*Woodbury*) and the

language of NRS 281A.420, the independence of judgment of a reasonable person in Hartley's position as a member of the Planning Commission would be materially affected by Hartley's fiduciary duties as a member on the SCA Board.

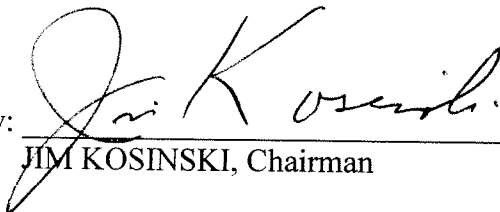
CONCLUSION

WHEREFORE, the Commission unanimously² finds that Hartley's position as a member of the SCA Board creates an impermissible conflict which would require her to abstain from participation of any matters relating to the SCA before the Planning Commission.

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

² The quorum consisted of Chairman Kosinski and Commissioners Cashman, Flangas, Hsu, Hutchison, Jenkins and Keele.