



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of
The Request For Opinion Concerning
The Conduct Of PETER LIAKOPOULOS,
Member of the Nye County
Board of County Commissioners**

Opinion No. 07-21C

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (hereinafter the "Commission") for a hearing on June 13, 2007, pursuant to a Request for Opinion filed on April 12, 2007 and a determination made by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether Commissioner Liakopoulos' conduct violated the provisions of NRS 281.501, subsections 2 and 4.

The issues before the Commission in this matter are limited to the following:

1. Whether Commissioner Liakopoulos, in violation of NRS 281.501, subsection 4, failed to make a sufficient public disclosure regarding his business relationship with KPVM-TV Channel 41 ("Channel 41") at the time an offer of dedication and improvements to Higley Road, the road on which Channel 41 is located, were considered by the Nye County Commission.

¹ The quorum consisted of Chairman Kosinski and Commissioners Cashman, Flangas, Keele, Hsu and Hutchison. Commissioners Capurro and Jenkins served as the panel in this matter. Pursuant to NRS 281.462(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

2. Whether Commissioner Liakopoulos violated NRS 281.501, subsection 2 when he voted on the offer of dedication and improvements to Higley Road, a matter affecting Channel 41, an entity with whom Commissioner Liakopoulos has a commitment in a private capacity.

Notice of the hearing was properly posted and served. Commissioner Liakopoulos was present and provided sworn testimony. There were no other witnesses who provided testimony.

FINDINGS OF FACT

The Commission, after hearing testimony and considering the evidence presented, makes the following Findings of Fact:

1. Commissioner Liakopoulos was elected as Nye County Commissioner, his first elected public office, in November of 2006. During his first three months in office, Commissioner Liakopoulos received a briefing from the Nye County District Attorney's office regarding conflicts of interest and the Ethics in Government law. However, Commissioner Liakopoulos did not seek legal advice from the Nye County District Attorney on the Higley Road matter.
2. In his private capacity, Commissioner Liakopoulos produces television shows and sells advertising related to his shows. This livelihood makes up 60 percent of his income.
3. There are two other television stations besides Channel 41 that serve the Pahrump Valley area, Channels 30 and 62. Commissioner Liakopoulos has done business with these stations.
4. Commissioner Liakopoulos has a contractual relationship for station air time with Channel 41 and its owner, Mr. Vern Van Winkle.
5. The contractual rate charged by Channel 41 to Commissioner Liakopoulos for station air time has remained the same during their relationship.
6. For approximately ten years, Mr. Van Winkle attempted to have Higley Road improved.

7. Nye County (“County”) chose to improve Higley Road by chip sealing approximately 600 feet of Higley Road in 2007. At that time, crews were working on other road projects near Higley Road, so it would be less costly to the County to chip seal the road while equipment and crews were already in the area rather than to bring crews back to the area at a later date.

8. At the March 20, 2007 meeting of the Nye County Board of County Commissioners, prior to voting on the Higley Road improvement matter, Commissioner Liakopoulos disclosed that, as part of his livelihood, he purchased time on Channel 41. He also stated that he had brought the Higley Road item forward because improvements to the road were long overdue. The Higley Road improvement matter was unanimously approved by the County.

9. Should any finding of fact be better construed as a conclusion of law, it may be so deemed.

CONCLUSIONS OF LAW

1. At all relevant times, Peter Liakopoulos was a member of the Nye County Board of County Commissioners, a public officer as defined in NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, subsection 2(b).

3. Commissioner Liakopoulos has a commitment in a private capacity to the interest of Channel 41 within the definition of NRS 281.501, subsection 8.

4. Commissioner Liakopoulos’ commitment in a private capacity to the interest of Channel 41 was not reasonably affected by the vote on the Higley Road matter.

5. Commissioner Liakopoulos did not violate NRS 281.501, subsections 2 or 4. He disclosed sufficient information concerning his private commitment to Channel 41 and its owner

prior to voting on the Higley Road matter to inform the public of the potential effect of his voting on and approving the matter.

6. Should any conclusion of law be better construed as a finding of fact, it may be so deemed.

WHEREFORE, based upon a preponderance of the evidence, by a five to one vote,² the Commission renders the following Opinion.

DISCUSSION

The Nevada Legislature has declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." (See NRS 281.421). Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the role of persons who are both public servants and private citizens." The Commission is therefore directed to hold public officers accountable when they fail to place public interest and public trust ahead of their private interests.

1. NRS 281.501, subsection 4.

NRS 281.501, subsection 4 provides:

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 others³; or

² Chairman Jim Kosinski voted nay.

³ NRS 281.501, subsection 8 provides: "... 'commitment in a private capacity to the interests of others' means a commitment to a person: (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection."

(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.

The facts presented at the hearing established that the disclosure made by Commissioner Liakopoulos was sufficient. Commissioner Liakopoulos disclosed that he purchased time on Channel 41 and stated that he brought the Higley Road item forward because improvements to the road were long overdue. The evidence established conclusively that the contractual or business relationship between Commissioner Liakopoulos and Mr. Van Winkle had not been increased or enhanced or that neither of them had benefited in any way by Commissioner Liakopoulos' vote on the Higley Road matter. No evidence or testimony was presented in this matter that would allow the Commission to conclude otherwise. Therefore, the Commission finds that Commissioner Liakopoulos' conduct during the March 20, 2007 County meeting relating to the Higley Road improvement matter did not violate NRS 281.501, subsection 4.

2. NRS 281.501, subsection 2.

NRS 281.501, subsection 2 provides:

Except as otherwise provided in subsection 3, in 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.

The facts presented at the hearing established that the independence of judgment of a reasonable person in Commissioner Liakopoulos' position would not have been materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others, including, specifically, Channel 41 and Mr. Van Winkle because the resulting benefit or detriment accruing to him, to Channel 41, and to Mr. Van Winkle as a result of the County-approved improvements to Higley Road in 2007, was not greater than that accruing to any member of the general business, profession, occupation or group of which Commissioner Liakopoulos, Channel 41 or Mr. Van Winkle is a member. Therefore, the Commission finds no violation by Commissioner Liakopoulos of NRS 281.501, subsection 2.

CONCLUSION

Based on the foregoing, the Commission finds no violation by Commissioner Liakopoulos of NRS 281.501, subsections 2 or 4.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DESCRIBED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION.

DATED: December 13, 2007.

NEVADA COMMISSION ON ETHICS

By: 

MARK HUTCHISON, Vice Chair

DISSENT

When a public officer receives 60 percent of his income from an entity benefiting from an action by that public official, I believe the public official must disclose that information pursuant to subsection 4 of NRS 281.501. This statute, mandating disclosures by public officials and public employees, requires that a public official, in this case Commissioner Liakopoulos, must disclose “sufficient information concerning the...interest to inform the public of the potential effect of the action or abstention upon...his interest.”

The Fact that 60 percent of Commissioner Liakopoulos’ income came from Channel 41, which benefited from the improvement of the road upon which it was located (and a road the owner of Channel 41 had been trying to have paved for 10 years), and that this fact was not disclosed to the public, could have a substantial effect on “the people’s faith in the integrity and impartiality of public officers...” NRS 281.421.2(b).

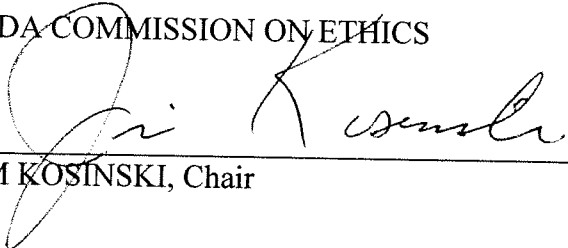
My concern with this opinion by the Commission is that 60 percent may be a precedent and a standard for future cases involving the income of public officials, or even the percentage of campaign contributions in any one campaign, which may be required to establish “sufficient information” as required by subsection 4 of NRS 281.501.

As to whether Commissioner Liakopoulos should have abstained, I think there was sufficient testimony that it was good public policy to have Higley Road improved while the County road crews were in the area improving other roads.

DATED: December 13, 2007.

NEVADA COMMISSION ON ETHICS

By:



JIM KOSINSKI, Chair