



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of the Request For
Advisory Opinion by SHELLY ALDEAN &
ROBIN WILLIAMSON, Members
Carson City Board of Supervisors,
Carson City, State of Nevada.**

Request for Opinion No. 07-23A

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for hearing on May 9, 2007, regarding two members of the Carson City Board of Supervisors (CCBOS), Shelly Aldean and Robin Williamson (Aldean/Williamson) on a request for an advisory opinion pursuant NRS 281A.440.1.² The matter was properly noticed as a non-confidential matter. Aldean/Williamson appeared in person without counsel and provided sworn testimony.

Aldean/Williamson sought an opinion from the Commission regarding whether a conflict of interest exists between their public duties on the CCBOS and their private volunteer service as trustees of the Western Nevada Community College Foundation (Foundation). Specifically, Aldean/Williamson question whether their abstention would be necessary whenever matters concerning the Western Nevada Community College (WNC) come before CCBOS.

¹ The quorum consisted of then Chairman Kosinski and Commissioners Cashman, Flangas, Hsu and Hutchison. Commissioner Keele made a disclosure and abstained.

² Formerly NRS 281.511 of the Ethics in Government law. The Ethics in Government law has been re-codified and is now found in Chapter 281A of NRS. This opinion cites to the re-codified statutes.

After fully considering the request for advisory opinion and analyzing all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Aldean/Williamson of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. Aldean/Williamson are both members of the CCBOS.
2. Aldean/Williamson are both on the board of trustees for the Foundation. The Foundation is not a public entity, but is a private non-profit corporation separate from WNC.
3. The main objective of the Foundation is to raise funds for WNC.
4. WNC is a public college under the control of the Board of Regents of the University and Community College System of Nevada (Board of Regents).
5. WNC was approached by and has been working with the Carson City Parks and Recreation Department in fulfilling the desire of the residents of Carson City to build a multipurpose recreation facility.
6. In the near future, CCBOS may be asked to approve an inter-local agreement with the Board of Regents for the construction and operation of a multipurpose indoor recreation, health, wellness and educational facility on the WNC campus.
7. WNC is attempting to secure funding from the legislature to match Carson City's donation to the project.
8. Williamson, in her public capacity on CCBOS, represents the ward where the proposed multipurpose facility is to be located if the inter-local agreement is executed.
9. The Foundation has not been involved in any of the discussions, negotiations, decisions or fundraising regarding the multipurpose facility and will have no involvement with the inter-local agreement between the Board of Regents and CCBOS.

CONCLUSIONS OF LAW

1. Aldean/Williamson are public officers, as defined by NRS 281A.160.
2. The Commission has jurisdiction to render an advisory opinion in this matter, pursuant to NRS 281A.440.1 and NRS 281A.460.
3. Public officers are required to commit themselves to avoid conflicts between their private interests and those of the general public whom they serve, pursuant to NRS 281A.421.1(b).
4. Public officers must disclose sufficient information concerning a commitment or interest to inform the public of the potential effect of the action or abstention upon the person to whom he or she has a commitment, or upon his or her interest, pursuant to NRS 281A.420.4.
5. Because Aldean/Williamson have commitments in a private capacity to the Foundation as trustees, they are required to disclose their relationship with the Foundation on matters before CCBOS involving WNC pursuant to NRS 281.A.240.4.
6. Public officers shall not vote upon or advocate the passage or failure of a matter with respect to which the independence of judgment of a reasonable person in his or her situation would be materially affected by his or her commitment in a private capacity to the interest of others, pursuant to NRS 281A.420.2.
7. Because the independence of judgment of a reasonable person in the position of Aldean/Williamson would not be materially affected by their commitment in a private capacity to the Foundation, Aldean/Williamson may vote on the potential inter-local agreement between CCBOS and the Board of Regents concerning the multi-purpose facility at WNC under NRS 281A.420.2.

DISCUSSION

The issue is whether Aldean/Williamson have a conflict of interest between their public duties on the CCBOS and their private volunteer service as trustees of the Foundation.

Specifically, Aldean/Williamson ask the Commission whether or not abstention would be necessary when matters concerning the multipurpose facility at WNC come before CCBOS.

The issue of disclosure and abstention relating to a conflict of interest is governed by NRS 281A.420.2³ and .4⁴, and by the definition of a commitment in a private capacity to the interest of others pursuant to NRS 281A.420.8⁵.

Although Aldean/Williamson have a commitment in a private capacity, the Foundation has not been involved in any of the discussions, negotiations, decisions or fundraising regarding the multipurpose facility at WNC and the Foundation did not have any involvement in the

³ NRS 281A.420.2 provides:

[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 NRS 281A.420.4 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 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.

⁵ NRS 281A.420.8 provides:

As used in this section, "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

selection of WNC as a location for the facility. Moreover, the Foundation will not have any involvement with the possible inter-local agreement between the Board of Regents and CCBOS. Therefore, Aldean/Williamson do not have a conflict of interest under NRS 281A.420.4 that precludes them from voting on matters before CCBOS involving the multi-purpose facility, including the potential inter-local agreement. However, Aldean/Williamson must disclose their interests in the Foundation when such matters come before CCBOS.


CONCLUSION

WHEREFORE, the Commission finds that Aldean/Williamson do not have a conflict of interest between their private commitment to the Foundation and their public duties for CCBOS that would require them to abstain from voting on matters relating to the multipurpose facility and the related inter-local agreement. However, Aldean/Williamson must disclose their private commitment to the Foundation whenever this matter comes before CCBOS.

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. 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.

DATED: 3/1/08.

NEVADA COMMISSION ON ETHICS

By: 
Jim Kosinski, Presiding Officer

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.