



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Advisory Opinion by STEVEN D. ROSS,
Councilman for Ward 6, Las Vegas City Council,
State of Nevada.**

Advisory Opinion No. 07-25A

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on May 9, 2007 on a request by Las Vegas City Councilman Steven D. Ross (Ross) for an advisory opinion pursuant NRS 281A.440.1.² Ross appeared in person, provided sworn testimony and was represented by Las Vegas City Attorney Brad Jerbic, Esq. Pursuant to NRS 281A.440.5, requests for advisory opinion are confidential unless the requester waives confidentiality. Ross waived confidentiality of this matter.

Ross sought an opinion from the Commission regarding whether he would violate the Ethics in Government Law by holding the position of Secretary-Treasurer within the Southern Nevada Building Trades Council (BCTC), while simultaneously serving on the Las Vegas City Council (Council).

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 Ross of its decision in the matter. The Commission renders this written Opinion.

¹ The quorum consisted of then Chairman Kosinski and Commissioners Cashman, Flangas, Hutchison, and Keele.

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

FINDINGS OF FACT

1. At all times pertinent to the subject matter of the hearing, Ross served as Las Vegas City Councilman for Ward 6.
2. BCTC is an alliance of trade unions and represents electricians, plumbers, painters and other construction trades in matters such as legislative and governmental affairs and in labor relations. BCTC represents the individual union member, not the general contractor or subcontractor that may employ the individual union member.
3. As a member of the Council, Ross routinely votes on matters involving the award of contracts to various union and non-union contractors. Votes are cast on the consent agenda except in the rare instance of a challenge to a contract award. Otherwise, Ross has no direct involvement in the competitive bidding process for any particular bidder for a city project.
4. Ross is seeking the elected, full-time position of Secretary-Treasurer of the Southern Nevada BCTC. The annual salary for this position is \$93,000.
5. If elected as BCTC Secretary-Treasurer, Ross would be responsible for the duties of collecting membership dues and handling the daily operations of the organization. Additionally, he would represent BCTC by promoting business relationships with potential clients. He would encourage business owners and contractors to use organized labor.
6. The Las Vegas City Attorney's office advised Ross that if he is elected to the position of BCTC Secretary-Treasurer, he must disclose his relationship to BCTC and abstain on matters involving BCTC that come before the Council.

CONCLUSIONS OF LAW

1. At all times pertinent to the subject matter of the hearing, Ross has been a public officer 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. If Ross were to use his official title of Councilman in his campaign for BCTC Secretary-Treasurer, such conduct would violate NRS 281A.400.2.
4. If Ross serves as BCTC Secretary-Treasurer while he also serves as a member of the Council, such conduct does not, by itself, violate the Ethics in Government Law.
5. When Ross, as a member of the Council, considers matters affecting him or BCTC, he must first disclose his relationship to BCTC and then abstain where necessary, pursuant to NRS 281A.420.

DISCUSSION

The issue is whether Ross would violate the Ethics in Government Law by holding the position of BCTC Secretary-Treasurer, while simultaneously serving on the Council.

One important requirement of the Ethics in Government Law is for public employees to commit themselves to avoid conflicts between their private interests and those of the general public whom they serve.³ To that end, the Code of Ethical Conduct⁴ provides guidelines to show

³ See NRS 281A. 020, Legislative findings and declarations.

⁴ NRS 281A.400, The Code of Ethical Conduct provides:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

the appropriate separation between the roles of persons who are both public servants and private citizens.

The Commissioners shared the concern that Ross's dual positions of Las Vegas City Councilman and BCTC Secretary-Treasurer would require him to serve two masters.⁵ This situation may significantly hamper his ability to represent the public that elected him to serve on the Council. Further, by virtue of the fact that Ross is a leader of an association of trade unions, he may be perceived as partial to those trade unions and their agenda.

The Commission advised Ross to properly disclose and abstain as required by NRS 281A.420⁶ on matters affecting him or BCTC. Ross must first disclose his interests in BCTC

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

...

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

⁵ In prior opinions, the Commission acknowledged: "A conflict of interest (either actual or potential) is a situation requiring a public officer to serve two masters, presenting *a potential*, rather than an actuality, of wrongdoing. The wrongdoing does not have to actually occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in danger of doing wrong. It is *avoiding* even the potential danger of doing wrong which is the focus of ethics in government laws." COE Opinion Nos. 00-53 (2001), 00-55 (2001). *Also see, Perkins, The New Federal Conflict of Interest Law*, 76 Harvard Law Review 1113 (1963).

⁶ NRS 281A.420 provides:

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. 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

whenever his actions would “*reasonably* be affected by his private commitment”; and second, before abstaining, he must determine that the independence of judgment of a reasonable person “must be *materially* affected” by that private commitment.⁷

Contractors and other private businesses often come before the Council on matters requiring Council action. These may be entities that Ross has contacted for BCTC in an effort to encourage their use of organized labor. Although abstention may be a safe harbor, the Commission cautions Ross that frequent abstention deprives his constituents of a voice in matters which come before the Council.

Finally, the Commission points out that, pursuant to NRS 281A.400.2, public officers are prohibited from using their public office to personally benefit themselves and others they are committed to privately. Although being a Las Vegas City Councilman is included in Ross’s résumé, the Commission advises Ross that using his official title of City Councilman in his campaign for BCTC Secretary-Treasurer would violate NRS 281A.400.2.

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. 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 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.

5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

⁷ See *In re Woodbury*, CEO 99-56 (1999).

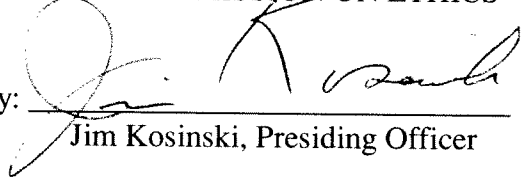
CONCLUSION

A majority⁸ of the Commission concluded that holding the position of BCTC Secretary-Treasurer while simultaneously serving on the Council would not, by itself, violate the Ethics in Government Law. However, conflicts of interest arise in a myriad of ways. Therefore, Ross is advised to seek the guidance of the City Attorney, this Opinion, this Commission's prior opinions, as necessary, and even request an advisory opinion from the Commission when such matters that may pose a conflict between Ross's public duties as Councilman and his private interests come before the Council.

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. Facts and circumstances that differ from those provided and used by the commission in this advisory opinion may result in an opinion contrary to this opinion.

DATED: 4/21/08.

NEVADA COMMISSION ON ETHICS

By: 
Jim Kosinski, Presiding Officer

⁸ The vote was 4 to 1 with Commissioner Flangas voting No.