



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of The
Request For Advisory Opinion Of
JOHN MAYER, City Council Member,
Ward One, City of Sparks, State of Nevada.**

Advisory Opinion No. 07-47A

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on December 12, 2007 on Councilman Mayer's (Mayer) request for an advisory opinion pursuant to NRS 281A.440.1.²

The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281A.440.5.³ Mayer appeared in person, was represented by David Creekman, Esq., Senior Assistant Sparks City Attorney and was sworn and presented testimony.

Mayer sought an opinion from the Commission as to whether a conflict of interest exists prohibiting him from participating in matters before the Sparks Redevelopment Agency (Agency) or the Sparks City Council (Council) involving real estate transactions between

¹ The quorum consisted of Chairman Kosinski and Commissioners Capurro, Cashman, Hsu, Hutchison, Jenkins and Keele.

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

³ Mayer subsequently waived confidentiality of this matter.

Agency and local hotel and casino the Sparks Nugget (Nugget), its owners the Ascuaga family or any of its legal entities.

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 Mayer of its decision in the matter. The Commission renders this opinion.

FINDINGS OF FACT

1. Mayer is a voting member of both the Council and the Agency.
2. The Agency is in the process of furthering its redevelopment goals in the City of Sparks' downtown redevelopment district. Part of its goal is to obtain parcels of land which are owned by different entities. These parcels would need to be transferred into ownership and control of the Agency.
3. The Ascuaga family owns the Sparks Nugget, a hotel and casino. The Ascuagas, through a limited liability company known as Basco, are transferring ownership of certain downtown Sparks real property to the Agency. Agency, in consideration for the conveyances from Basco to Agency will exchange other real property to Basco. The terms for the transactions between Basco and Agency will be set forth in a development agreement to be voted on by the Council and by Agency.
4. The Nugget is involved in litigation against the City of Sparks, the Council and individual Council members in their official capacity. Three of the lawsuits involved have been consolidated into one matter that is currently before the Nevada Supreme Court. A fourth lawsuit is pending before a district court.
5. Mayer has no personal relationship of any kind with the Nugget, the Ascuaga family or any of its legal entities.

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

CONCLUSIONS OF LAW

1. Mayer is 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. Mayer has no relationship with the Nugget or the Ascuaga family or any of its legal entities, including Basco. Therefore, he need not make a disclosure or abstain from participating on matters concerning real property transactions between the Agency and the Ascuaga family or any of its legal entities, including Basco.

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

DISCUSSION

NRS 281A.420.2 and .4 provide in part:

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 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...

NRS 281A.420.8 provides:

8. 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

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

Mayer questions whether he has a commitment or relationship with the Ascuaga family or any of its legal entities by virtue of the lawsuits it has filed naming Mayer as a party. The Commission finds that Mayer has been named, in his *public* capacity, in one or more lawsuits by the Ascuaga family and/or its legal entities. As such, Mayer has no *private* commitment or relationship with the Ascuaga family or any of its legal entities involved in the lawsuits against Mayer.

WHEREFORE, based upon a preponderance of the evidence in this matter, by a unanimous vote, the Commission renders its conclusion.

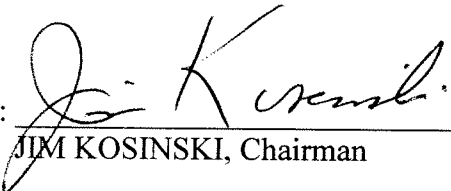
CONCLUSION

Mayer has no obligation to disclose and/or abstain on matters before Agency or the Council concerning the real property transactions between the Ascuaga family or any of its legal entities and Agency pertaining to the Sparks downtown redevelopment district.

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, and 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, and 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: 1/25/08.

NEVADA COMMISSION ON ETHICS

By: 
JIM KOSINSKI, Chairman