



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of The Request For
Advisory Opinion by JONI EASTLEY
Commissioner, Nye County Board of
County Commissioners, State of Nevada**

Advisory Opinion No. 07-51A

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for hearing on January 12, 2008 on Nye County Commissioner Joni Eastley's (Eastley) request for an advisory opinion pursuant NRS 281A.440.1.² The matter was properly noticed as a non-confidential matter. Eastley appeared in person and provided sworn testimony.

Eastley sought an opinion from the Commission regarding whether her acceptance of a shawl from American Unity Investments constituted a gift for disclosure purposes.

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

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

FINDINGS OF FACT

1. American Unity Investments (American) is a corporation based in China. American is interested in establishing a port at the Tonopah airport in Nye County (County), Nevada.
2. Tonopah is in Eastley's district. Therefore, when dealing with County business matters that pertain to Tonopah, Eastley considers herself an ambassador for the County. As such, she may serve as host to Tonopah guests on behalf of the County.
3. Eastley, in her official capacity, accepted a gift from American during a meeting with its vice-president that was held in Tonopah. The gift was a shawl made in Nepal of 70% cashmere and 30% silk. The value for such a shawl is unknown.
4. Eastley did not want to offend American by not accepting the shawl. However, at no time did Eastley intend to keep the shawl for herself. Instead, Eastley planned to donate the shawl to a group focused on advocating against domestic violence and for its fundraising efforts.
5. Within 3 days of receiving the shawl, Eastley contacted the Commission on Ethics to seek guidance on her receipt of the shawl.

CONCLUSIONS OF LAW

1. Eastley 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. When a public officer accepts a gift on behalf of the public body she serves, the gift is to the public body itself, not the individual, if the public officer delivers the gift to the appropriate personnel representing the public body and refrains from directing the public body on how the gift should be used.

4. If Eastley engages in conduct consistent with Conclusion of Law No. 3, she will not have accepted a gift which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties in violation of NRS 281A.420.1.
5. If Eastley engages in conduct consistent with Conclusion of Law No. 3, she will not need to disclose her receipt of the shawl as a gift on her Financial Disclosure Statement under NRS 281A.620.1(e).
6. If Eastley engages in conduct consistent with Conclusion of Law No. 3, she would not need to disclose the gift under NRS 281A.440.4 or abstain on matters involving American under NRS 281A.420.2.

DISCUSSION

The main issue is whether Eastley's acceptance of a shawl from American constitutes a gift for disclosure purposes.

NRS 281A.400.1 provides:

A public officer or employee shall not seek or accept any gift... which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

NRS 281A.420.4 and .2 provide:

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;

...

without disclosing sufficient information concerning the gift...to inform the public of the potential effect of the action or abstention upon the person who provided the gift...

2. [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...

The facts presented in this matter establish that Eastley accepted a shawl from the vice president of American, a company seeking to establish a port in the Tonopah airport. The vice president of American presented the shawl to Eastley during a meeting in Tonopah. Eastley believed it might be customary for the giving of such gifts in business transactions with international companies such as American and did not want to offend the vice president and American by rejecting the shawl. Eastley therefore, accepted the shawl in her official capacity as county commissioner. At no time did Eastley intend to keep the shawl for herself. She planned to donate the shawl to a group dedicated to advocating against domestic violence so the advocate group could use the shawl for fundraising purposes.

The Commission is sympathetic with Eastley's desire to donate the shawl. However, if Eastley had the discretionary power to choose what charity receives the gift or otherwise direct how it is used, such power would indicate that her acceptance of the gift was on behalf of herself and not the public body she serves. Moreover, the public officer could arguably receive unwarranted personal benefit by making such a donation, even though she received no direct financial gain. A public officer who truly accepts a gift on behalf of the public body she serves will have no power to dispose of the gift or otherwise direct how it is used. Instead, the public officer should relinquish control of the gift by delivering it to the appropriate personnel representing the public body to make the determination how the gift should be used.

CONCLUSION

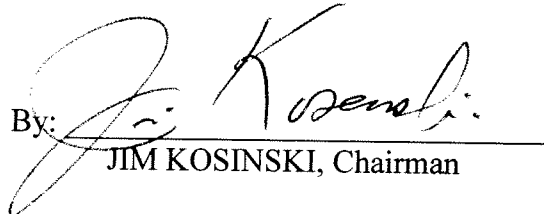
The Commission finds that Eastley accepted the shawl in her official capacity and on behalf of the public body that she serves. So long as Eastley follows the Commission's directive and gives the shawl to the appropriate County personnel and refrains from directing

the County on how the shawl should be used, she (a) will not have accepted a gift which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties in violation of NRS 281A.420.1; (b) she will not need to disclose her receipt of the shawl as a gift on her Financial Disclosure Statement under NRS 281A.620.1(e); and (c) she would not need to disclose the gift under NRS 281A.440.4 or abstain on matters involving American under NRS 281A.420.2.

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