



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of
The Request For Advisory Opinion
by PUBLIC OFFICER
City Council Member**

**Abstract of
Request for
Advisory Opinion
No. 08-01A**

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for hearing on February 14, 2008, regarding the request of Public Officer, for an advisory opinion, pursuant NRS 281A.440.1.² The matter was noticed as a confidential matter. Public Officer appeared in person and provided sworn testimony.

Public Officer seeks an opinion regarding whether during City Council meetings, may Public Officer discuss and/or vote on certain airport leases at the City Airport (Airport), when a member of Public Officer's family (family member) has leasehold interests in certain leases at the Airport.

¹ The quorum consisted of then Acting Chair Hutchison and Commissioners Capurro, Cashman, Hsu, Keele, Kosinski and Moran.

² Formerly NRS 281.511 of the Ethics in Government law. The Ethics in Government law has been re-codified and is now 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, circumstances and testimony presented, the Commission deliberated and orally advised Public Officer of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. Public Officer was elected to the City Council.
2. Public Officer's family member has leasehold interests in certain leases at the Airport. Public Officer is not named in the leases.
3. Family member is a member of a tenants association at the Airport (Association). The Association advocates for certain Airport tenants.
4. Family member is also a member the Advisory Committee (Committee), which provides recommendations to the City Council.
5. There are many different and inconsistent lease formats currently in use at the Airport. These leases are not uniform in their terms, conditions or rates. Therefore, Association has advocated for City Council to approve a uniform lease document for all tenants.
6. Public Officer typed the initial drafts of the proposed lease format at the request of family member, due to family member's lack of computer skills.
7. The proposed leases, if approved by City Council, would affect each leaseholder differently.
8. On the advice of legal counsel, Public Officer disclosed Public Officer's relationship with family member, and the family member's leaseholds, at the time the matter was being considered by City Council and Public Officer also abstained from voting on the matter.
9. The proposed Airport leases are expected to come before City Council for action in the future.

CONCLUSIONS OF LAW

1. Public Officer, as a member of the City Council, 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. Public Officer may not vote on the Airport leases because the benefit or detriment accruing to Public Officer as a result of the decision either individually or as a relative to family member who is a leaseholder, is in fact different than that accruing to other leaseholders, and therefore the presumption under NRS 281A.420.1³ does not apply.
4. Pursuant to NRS 281A.420.4,⁴ Public Officer shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter which would be affected by Public Officer's commitment to family member⁵, without disclosing sufficient information concerning their relationship to inform the public of the potential effect of the action or abstention upon family member or upon family member's interest.

³ NRS 281A.420.1 provides:

[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.

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: (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.

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...

5. Pursuant to NRS 281A.420.2⁶, Public Officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, the Airport leases.

DISCUSSION

The issue is whether, during City Council meetings, Public Officer may discuss and/or vote on certain Airport leases, when a family member has certain leasehold interests at the Airport.

The issues of disclosure and abstention relating to a conflict of interest on the part of a public officer are governed by NRS 281A.420.2 and .4. Pursuant to NRS 281A.420.4, Public Officer has already made it a practice to make the proper disclosure at City Council meetings regarding Public Officer's relationship with family member and family member's leasehold interests at the Airport. Public Officer has been advised by legal counsel that, pursuant to NRS 281A.420.2, Public Officer may provide factual information but cannot advocate for or against the leases. Public Officer argues that Public Officer and family member do not stand to gain any greater benefit or detriment, than would any other leaseholder, should City Council approve the leases. Therefore, Public Officer argues that Public Officer should be allowed to participate, pursuant to NRS 281A.420.1. The Commission rejects Public Officer's argument. The proposed new lease format is designed to bring uniformity in the wide variety of lease terms that exist between the City and various Airport leaseholders. Under the proposed lease format, the rental increase to leaseholders would not be the same across the board; in fact, some leaseholders would actually pay lower rent. The financial benefit or detriment accruing to each leaseholder as

⁶ 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: (b) His pecuniary interest; or (c) His commitment in a private capacity to the interests of others...

a result of the approval of a uniform lease would not be the same. Therefore, the presumption found in NRS 281A.420 does not apply.

The Commission decided by a majority vote⁷ that Public Officer, pursuant to NRS 281A.420.2, must abstain from voting on the leases. The Commission advised Public Officer that Public Officer may participate in a manner that is consistent with the Commission's Opinion No. 97-07 (*Kubichack*) without advocating. Because the line between participating and advocating is razor thin, Public Officer should carefully review the *Kubichack* opinion and keep its principles in mind, to ensure that Public Officer does not advocate on Airport lease issues before the City Council.

CONCLUSION

WHEREFORE, pursuant to NRS 281A.420.2, the Commission finds that Public Officer must abstain from voting or advocating on matters pertaining to the proposed Airport leases. However, Public Officer may participate without advocating in City Council discussions on Airport lease issues in a manner that is consistent with the Commission's Opinion No. 97-07 (*Kubichack*).

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, the record consists solely of facts provided on the record by the public officer. This opinion is based 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: 3/18/08

NEVADA COMMISSION ON ETHICS

By: 

Mark Hutchinson, Chairman

⁷ Commissioners Capurro, Cashman, Hsu and Moran voted aye, while Commissioners Hutchison, Keele and Kosinski voted nay.