



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for  
Advisory Opinion Concerning the  
Conduct of FRED WESLEY SMITH, JR.  
Member, State Board of Equalization,  
State of Nevada,**

**Advisory Opinion No. 08-45A**

**Public Officer.**

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**OPINION**

Pursuant NRS 281A.440.1, this request for a confidential advisory opinion by Nevada State Board of Equalization (SBE) member Fred Wesley Smith, Jr. (Smith) came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (Commission) for a hearing on August 13, 2008. Smith appeared in person and provided sworn testimony.

Smith sought an opinion from the Commission specifically on whether, pursuant to NRS 281A.420, he must disclose and abstain from participating in contested cases that come before the SBE regarding valuation issues applicable to residential parcels located in Incline Village and Crystal Bay, Nevada.

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

<sup>1</sup> The following Commissioners participated in this opinion: Acting Chair Lamboley and Commissioners Beyer, Capurro, and Keele. Commissioners Cashman and Moran disclosed a conflict and abstained pursuant to NRS.281A.420.

## FINDINGS OF FACT

1. In his public capacity, Smith is a member and the chair of the SBE.
2. Smith was a partner in a partnership that owned a parcel of land in Incline Village. This parcel was sold in January 2008.
3. Smith's parents own a parcel of land in Incline Village.
4. Beginning in tax years 2004-2005 through tax years 2007-2008, Smith petitioned the valuation performed by the Washoe County Assessor based on his use of specific valuation methodologies. The appeal process contemplated in statute for property tax disputes requires a petitioner to proceed to the Washoe County Board of Equalization (CBE) first and if denied relief there, petition the SBE for relief.
5. During the years when these appeals were proceeding from the CBE to the SBE, Smith recused himself from participating in those cases.
6. On July 25, 2008, the Nevada Supreme Court issued its opinion on *State of Nevada vs. Barta*, 124 Nev. Adv. Op. 58 (2008). Both Smith's parcel and his parents' parcel were involved in that contested case before the Nevada Supreme Court. As a result of this court ruling in favor of the taxpayers, each parcel will receive a refund of approximately \$30,000.
7. Cases will be coming before SBE concerning other Incline Village and/or Crystal Bay property owners that will reference the *Barta* decision.
8. Smith agrees with the court's reasoning in the *Barta* opinion and candidly admits that he would not be impartial with respect to the contested cases addressing parcels in Incline Village and Crystal Bay.

## CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Smith was 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 matters concerning contested cases addressing parcels in Incline Village and Crystal Bay come before the SBE, pursuant to NRS 281A.420.4 and as this provision is interpreted in the Commission's *Woodbury*<sup>2</sup> opinion, Smith must publicly disclose sufficient information to inform the public of the potential effect of his action or abstention upon his private interests.
4. When matters concerning contested cases addressing parcels in Incline Village and Crystal Bay come before the SBE, pursuant to NRS 281A.420.2 and as this provision is interpreted in *Woodbury*, Smith must abstain from voting on those matters.

## DISCUSSION

The issue is whether, pursuant to NRS 281A.420.2 and NRS 281A.420.4, Smith must disclose and abstain from participating in contested cases that come before the SBE regarding valuation issues applicable to residential parcels located in Incline Village and Crystal Bay, Nevada.

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<sup>2</sup> *In re Woodbury*, Comm'n on Ethics Opinion No. 99-56 (12-22-1999).

Smith provided all the facts in this matter. Facts and circumstances that differ from those provided by Smith and used by the Commission in this advisory opinion may result in an opinion different from this opinion.

NRS 281A.420.4 provides in relevant part:

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;<sup>3</sup> or

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the...commitment or interest to inform the public of the potential effect of the action or abstention 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.

NRS 281A.420.2 provides in relevant part:

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.

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<sup>3</sup> “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. NRS 281A.420.8.

In *Woodbury*, the Commission set out the steps that a public officer must take whenever a matter that may affect his independence of judgment comes before the public body in which he sits: first, disclosure is required whenever a public officer's actions would "*reasonably* be affected by his private commitment"; and second, before abstention is also required, a reasonable person's independence of judgment "must be *materially* affected" by that private commitment. *In re Woodbury*, Comm'n on Ethics Opinion No. 99-56 (12-22-1999).

Here, Smith's actions on matters involving contested cases that come before the SBE regarding valuation issues applicable to residential parcels located in Incline Village and Crystal Bay would reasonably be affected by his private pecuniary interests. As a result of the *Barta* decision, Smith and his parents will each receive approximately \$30,000. Smith agrees with the court's reasoning in *Barta* and admits that he would not be impartial on similar cases. Smith concedes that the independence of judgment of a reasonable person in his position would be materially affected by his private interests.

### CONCLUSION

Therefore, by a unanimous vote the Commission concluded that whenever matters that come before the SBE on contested cases regarding valuation issues applicable to residential

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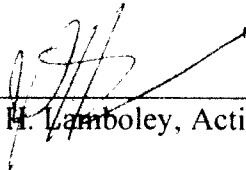
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parcels located in Incline Village and Crystal Bay, Smith must publicly disclose sufficient information to inform the public of the potential effect of his action or abstention upon his private interests. Further, Smith must also abstain from voting on these matters.

DATED: August 19, 2008.

NEVADA COMMISSION ON ETHICS

By:   
Paul H. Lamboley, Acting Chair