



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for  
Advisory Opinion Concerning the  
Conduct of WILLIAM CADWALLADER,  
Senior Planner, City of Fernley, Lyon County  
State of Nevada,  
Public Employee.**

**Advisory Opinion No. 09-04A**

**OPINION**

Pursuant to NRS 281A.440(1), this request for an advisory opinion by public employee William Cadwallader (Cadwallader) came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (Commission) for a hearing on April 9, 2009. Cadwallader appeared in person and provided sworn testimony.

Cadwallader sought an advisory opinion from the Commission on the propriety of his future conduct as it relates to the Ethics in Government Law (Ethics Law). Specifically, Cadwallader sought guidance regarding whether his serving on the Lyon County Planning Commission (County Planning Commission) and the Mound House Advisory Council (Mound House Council) while simultaneously being employed by the City of Fernley (Fernley) would violate the Ethics Law.

<sup>1</sup> The following Commissioners participated in this opinion: Vice Chairman Keele and Commissioners Beyer, Lamboley, Marvel and Shaw.

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

**FINDINGS OF FACT**

1. Cadwallader has been employed with Fernley for two and a half years and is currently a Senior Planner.
2. As Senior Planner, Cadwallader advises the Fernley Planning Commission and the Fernley City Council on planning and zoning matters.
3. Cadwallader resides in Mound House, Nevada. Mound House is an unincorporated town located approximately forty miles west of Fernley. Both Mound House and Fernley are in Lyon County.

3. Lyon County has unincorporated portions of land (islands) adjacent or contiguous to areas within the Fernley city limits. Although these islands are technically part of Lyon County, they fall within Fernley's jurisdiction only for master plan purposes. Lyon County has jurisdiction over these islands for zoning purposes.

4. Cadwallader serves as Chairman of the Mound House Council. The Mound House Council is an adjunct to the Lyon County Board of Commissioners for master plan amendments and zoning changes.

5. Master plan amendments that affect Mound House are first reviewed by the Mound House Council before presented to the County Planning Commission. The Mound House Council makes recommendations to the County Planning Commission.

6. Cadwallader was approached by a member of the County Planning Commission and asked to serve on the County Planning Commission.

### **CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Cadwallader was a public employee, as defined by NRS 281A.150.

2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. It would be permissible, under the Ethics Law, for Cadwallader to serve on the County Planning Commission while simultaneously being employed by Fernley,

provided he resign from the Mound House Council.

4. Additionally, pursuant to NRS 281A.420(4), whenever matters affecting Fernley come before the County Planning Commission, Cadwallader must disclose his employee-employer relationship with Fernley.

4. Further, pursuant to NRS 281A.420(2), whenever matters affecting Fernley come before the County Planning Commission, Cadwallader must abstain from acting on such matters.

### **DISCUSSION**

The facts in this matter were provided by Cadwallader. Facts and circumstances that differ from those used by the Commission in this advisory opinion may result in a different opinion.

On the issue of Cadwallader serving simultaneously on the Mound House Council and the County Planning Commission, Cadwallader recognized that as a member of the Mound House Council, he has a statutory duty to advise the County Planning Commission, a public body of which he would also be a member. Therefore, Cadwallader, in his capacity as a member of the Mound House Council could review matters scheduled to come before the County Planning Commission, make a recommendation on those matters and, the following week, in his capacity as County Planning Commissioner, act on the same matters. This situation would, at the very least, create an appearance of impropriety.

After the hearing of this advisory opinion, Cadwallader volunteered to resign from the Mound House Council should he be appointed to the County Planning

Commission. Therefore, the following analysis pertains solely to Cadwallader serving on the County Planning Commission while simultaneously being employed with Fernley.

NRS 281A.420(4) sets out the standards for disclosure of a conflict of interest and provides in relevant part:

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;<sup>2</sup>

...

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. [S]uch 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.

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<sup>2</sup> “Commitment in a private capacity to the interest of others” means a commitment to a person:

...

- (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 its *Woodbury*<sup>3</sup> opinion, 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.” Second, before abstention is also required, a reasonable person’s independence of judgment “must be *materially* affected” by that private commitment.

As a Fernley employee, Cadwallader has a commitment in a private capacity to the interest of his employer, the City of Fernley. The independence of judgment of a reasonable person in Cadwallader’s position would reasonably be affected by this commitment.

Therefore, whenever matters affecting the City of Fernley, his employer, come before the County Planning Commission, Cadwallader must disclose his commitment to the City of Fernley.

Additionally, whenever matters affecting the City of Fernley come before the County Planning Commission, Cadwallader must abstain from voting or otherwise acting on such matters.

NRS 281A.420(2) sets out the standards for abstention and 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

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<sup>3</sup> *In re Woodbury*, Comm’n on Ethics Opinion No. 99-56 (1999).

his situation would be materially affected by:

...

(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 independence of judgment of a reasonable person in Cadwallader's position would be materially affected by Cadwallader's commitment to the City of Fernley.

There is a certain allegiance that an employee owes to an employer. Because of this allegiance, the public may perceive that the City of Fernley has an expectation of such allegiance in form of Cadwallader's vote in favor of the City of Fernley.

Cadwallader testified that there have been instances in which the City of Fernley and Lyon County did not see eye to eye on issues involving planning or the county master plan. On such matters, where Lyon County and the City of Fernley are at odds, the County Planning Commission would likely be the forum where such differences would play out.

Therefore, pursuant to NRS 281A.420(2), whenever matters affecting

Fernley come before Cadwallader for action, Cadwallader must abstain from voting or otherwise acting on such matters.

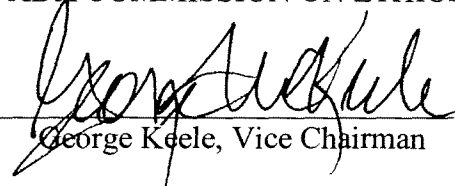
### CONCLUSION

Therefore, by a unanimous vote, the Commission concluded that whenever matters affecting the City of Fernley come before the County Planning Commission, Cadwallader: (1) must disclose his employee-employer relationship with Fernley; and (2) abstain from voting or otherwise acting on such matters.

Dated this 24<sup>th</sup> day of June, 2009.

NEVADA COMMISSION ON ETHICS

By: \_\_\_\_\_

  
George Keele, Vice Chairman