



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the
Conduct of **Tom Collins**, Member,
Board of County Commissioners,
Clark County, State of Nevada,

Request for Opinion No. 11-78A

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Public officer Tom Collins ("Collins") requested a confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS").¹ A quorum of the Commission heard this matter on September 13² and October 19³,

2011. Collins appeared in person and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission deliberated and orally advised Collins of its decision that the Ethics Law does not authorize him to lobby in a private capacity members of the Regional Transportation Commission of Southern Nevada, the Southern Nevada Health District, or local municipalities situated in Clark County, while serving as a Clark

¹ Collins waived confidentiality of this request for opinion following the October 19, 2011 hearing.

² The following Commissioners participated in the September 13, 2011 hearing: Chairman Erik Beyer and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Paul H. Lambolely, Esq., John W. Marvel, Keith A. Weaver, Esq. and James Shaw. The Commission determined that the request for opinion lacked sufficient facts and circumstances required pursuant to NRS 281A.440(1) to hold a hearing or

render an opinion and encouraged Collins to supplement his request for a future hearing.

³ At the October 19, 2011 hearing, the following commissioners participated in this opinion: Chairman Erik Beyer and Commissioners Tim Cory, Esq., Gregory J. Gale, CPA, Magdalena M. Groover, Paul H. Lambolely, Esq., John W. Marvel and Keith A. Weaver, Esq.

County Commissioner.⁴ The Commission now renders this formal written Opinion stating its findings of fact and conclusions of law.

The facts in this matter were obtained from documentary and testimonial evidence provided by Collins. The Commission's findings of fact set forth below accept as true those facts presented by Collins for the purposes of the advice offered in this Opinion. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this Opinion.

II. QUESTION PRESENTED

Collins is a member of the Clark County Commission. He asks whether he may lobby on behalf of private clients involved in matters before the Southern Nevada Health District, the Regional Transportation Commission of Southern Nevada, and several municipalities situated in Clark County.

III. FINDINGS OF FACT

1. Collins is a member of the Clark County Board of Commissioners ("Clark County Commission"), a part-time position.
2. In his private capacity, Collins owns Collins Consulting, LLC, a consulting/lobbying business.
3. Collins Consulting has potential business engagements for clients with matters involving the Southern Nevada Health District ("SNHD"), the Regional Transportation Commission of Southern Nevada ("RTC"), and the municipalities of Boulder City, Henderson, Las Vegas, North Las Vegas, and Mesquite, all of which are situated in Clark County.
4. The Clark County Commission has representatives on the governing boards of both SNHD and RTC, as do all of the municipalities listed above. Although the Clark County Commission does not control the day-to-day operations of either entity, it does have oversight over both SNHD and RTC, including the approval of SNHD's budget, and the issuance of highway bonds and collection of fuel tax revenues for RTC's funding.
5. Collins has been asked to represent an environmental clean-up company regarding funding from a grant offered to SNHD. His services would not include Collins speaking in front of the SNHD Board as a whole or with the County Commissioners who serve on the SNHD Board as a paid consultant regarding this item. He does anticipate consulting with other SNHD Board members.
6. With respect to RTC, Collins' services would include consulting with RTC members who are not Clark County Commissioners to discuss issues related to a

⁴ See Dissenting Opinion. Commissioners Gale and Groover voted against this determination and would find the proposed lobbying activities permissible under NRS 281A.410(2). Commissioner Cory voted against this determination with regard to the municipalities.

Request for Proposal under consideration by the RTC Board.

7. Collins has also been asked to represent a private client who is seeking an annual contract to provide environmental services in the municipalities of Boulder City, Henderson, Las Vegas, North Las Vegas and Mesquite.
8. The Clark County Commission adopted the Clark County Ethics in Government Policy establishing ethical standards specific to Clark County. These additional standards supplement the State standards set forth in NRS Chapter 281A.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Collins, a member of the Clark County Commission, is the sole owner of a private consulting business. He has an opportunity to provide consulting and lobbying services to potential clients on matters involving the Southern Nevada Health District, the Regional Transportation Authority of Southern Nevada, and several municipalities located in Clark County. The Clark County Commission, as well as each of the municipalities in question, all have representatives who serve on the governing bodies of the Health District as well as the Transportation Authority. Collins asks the Commission whether the Ethics Law would allow him to perform the proposed consulting and lobbying

services, provided that he refrain from lobbying the County Commissioners who serve on the Regional Boards and that he also disclose his activities if his clients should appear before the Clark County Commission, and, if necessary, abstain on matters pertaining to them.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020 provides in part:

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interests. The Ethics Law is concerned with situations involving public officers that create

appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts to promote the integrity in public service. As a member of the Clark County Commission, Collins holds a public office and must therefore commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves. Whether there would be such conflicts between his public duties as a member of the Clark County Commission and his private interests in pursuing private consulting or lobbying engagements must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances.

**2) Representing or
Counseling Private
Persons Before Public
Agencies**

The Ethics Law does not prohibit a public officer from pursuing private employment; however, it does set limitations on the nature and extent of such employment to ensure that the public officer maintains the appropriate separation between his private engagements and his public duties. When reviewing the propriety of a public officer's private business ventures, the Commission first examines NRS 281A.410 to determine whether the Ethics Law expressly prohibits the public officer's proposed employment. If so, this ends our inquiry into the matter. However, when NRS 281A.410 allows the private employment, we then must examine whether the public

officer's proposed activities implicate other provisions of the Ethics Law.

As a Clark County Commissioner, Collins is a member of a local legislative body whose activities are governed by NRS 281A.410(2), which provides, in pertinent part: ". . . a member of a local legislative body . . . may represent or counsel a private person before an agency in which he or she does not serve." Under this provision, Collins is prohibited from representing or counseling a private person before the Clark County Commission.

Collins advised us that his potential clients require services before agencies other than the Clark County Commission, specifically SNHD, RTC, and several municipalities. With respect to SNHD and RTC, we note that these two agencies are not wholly independent of the Clark County Commission. Not only do County Commission members serve on the governing boards of both these entities, but the County Commission also has direct oversight of SNHD's budget and direct control of RTC's funding through the issuance of highway bonds. In addition, each of the municipalities with which Collins would conduct business also appoints a representative to SNHD and RTC. Regarding the municipalities, we note that they are situated in Clark County and therefore fall under the jurisdiction of the Clark County Commission and are subject to the regulations promulgated by that Commission. Consequently, it appears that Collins' proposed engagements all involve entities subject to the Clark County

Commission's authority and control to some degree or another. In this situation, we conclude NRS 281A.410(2) would not permit Collins to represent or counsel private persons before SNHD, RTC or the various municipalities of Clark County.

Even if Collins' proposed counseling or lobbying engagements were permissible under NRS 281A.410(2), the Commission concludes that they would not avoid conflicts of interest, or improper influence, real or perceived, and Collins would violate the Ethics Law. First, the complexity of the County Commission's interrelationships with SNHD and RTC makes it difficult for Collins to avoid conflicts between his private clients' interests and his public responsibilities. The County Commission's authority respecting public health, regional transportation and financing overlaps that of these regional bodies. In addition, the County Commission also has a direct vote in the affairs of SNHD and RTC through its representatives serving on those entities. Similar concerns arise with respect to the municipalities because the County Commission's jurisdiction, functions and operations intersect with and may control that of the cities within its borders. Although Collins may successfully avoid conflicts of interest if he appeared before a city government, he would still be unable to avoid the appearance of a conflict due to the County Commission's power over a shared constituency.

Finally, it is simply not feasible for Collins to present himself before

these other agencies as a mere consultant or lobbyist. He enjoys a public official's relationship with the Clark County government unlike that of any other private consultant and, despite his best efforts to keep his private and public roles separate, those with whom he interacts will still perceive him as a County Commissioner.

The Commission therefore concludes that the nexus between Collins' public duties as a County Commissioner and his proposed activities before SNHD, RTC and the municipalities implicates the provisions of NRS 281A.400(1), prohibiting a public officer from accepting "any . . . favor, employment, engagement, . . . or economic opportunity which would tend improperly to influence a reasonable person in the public officer's . . . position to depart from the faithful and impartial discharge of [his] public duties," and NRS 281A.400(2), precluding a public officer from using his "position in government to secure or grant unwarranted privileges . . . or advantages" for another. Here, the obvious perception is that Collins' lobbying efforts would be more effective because he is a Clark County Commissioner and that his public position allows for the exchange of favors between interacting government officials. By this we do not mean to imply that Collins has already or will in the future violate the Ethics Law. In fact, we conclude just the opposite based on his acute knowledge of both the State and Clark County Ethics Laws and his willingness to ask this Commission for advice prior to accepting any

business engagement. Nonetheless, it is avoidance of conflict and the appearance of impropriety, even though actual impropriety is lacking, that the Ethics Law prohibits.

Accordingly, we advise Collins that the Ethics Law does not authorize him to represent, counsel or lobby in a private capacity on behalf of clients before SNHD, RTC or the cities or local governments of Las Vegas, North Las Vegas, Henderson, Boulder City and Mesquite, while he is a County Commissioner. He must therefore decline to accept the proposed engagements to provide services to his potential clients with matters involving SNHD, RTC, or the municipalities within Clark County.

V. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Collins was a "public officer," as defined in NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. The Ethics Law prohibits Collins while serving as a Clark County Commissioner from accepting the proposed engagements to represent or counsel private persons, including lobbying on their behalf, before SNHD, RTC and the municipalities of Las Vegas, North Las Vegas, Henderson, Boulder City and Mesquite.

Dated this 18th day of July, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman

Commissioner Gale, dissenting and Commissioner Groover joining in the dissent:

I do not agree that the provisions of NRS 281A.410(2) prohibit Collins, a member of the Clark County Board of Commissioners (a local legislative body), from representing or counseling private clients for compensation before an agency other than the Clark County Commission and its agencies. Rather, I take the narrower view that the Legislature carved out an express exception with NRS 281A.410(2) to authorize local and State legislators and other part-time public officers and employees to provide private representations before agencies other than those they specifically serve. The Legislature recognizes that certain public officers serve as volunteers or with minimal compensation and serve as "citizen" legislators or part-time officers while they engage in private sector business and enterprise to earn or supplement their living. The public policy of the State encourages citizen participants in representative government to contribute varied philosophies and professional, familial and business experiences and perspectives. NRS 281A.410(2) identifies the clear conflict by prohibiting such private representation before the public

officer's agency, but acknowledges the public policy of the State to allow separate private enterprise for these officers. By analogy, the majority appears to suggest that a State Legislator could not lobby any state or local governments because they pass laws that affect, even indirectly, state and local governments and their budgets; the Legislature specifically says otherwise with this statute.

Therefore, I share a narrower view of the intent of NRS 281A.410(2) than does the majority – Collins does not serve on the RTC or SNHD boards or local municipalities and therefore they are agencies other than the agency which Collins serves. To suggest that Collins serves these other boards or municipalities creates a contrary result from the express authority provided by the Legislature. To the extent there could be a connection between the duties of Collins and the RTC, SNHD or local municipalities, the Ethics Law provides separate protections under NRS 281A.400(1) and (2) to prohibit conflicts and/or abuse. If Collins' representation of private clients before these agencies involved improper influence or use of his position as a County Commissioner, the Ethics Law protects the public with the ability to file an ethics complaint. Advising him of these potential pitfalls is a preferable course rather than prohibiting the consultation altogether. Furthermore, the Legislature provided the disclosure and abstention requirements set forth in NRS 281A.420 to keep Collins' constituents aware of Collins' potential consulting conflicts.

Accordingly, I dissent.

By: 
Gregory Gale, C.P.A.

Joined by: 
Magdalena Groover