



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion
Concerning the Conduct of STEVE ROSS,
Member, Las Vegas City Council,
State of Nevada,**

Request for Opinion No. 09-10C

Subject.

**EXECUTIVE DIRECTOR'S APPROVAL OF INVESTIGATOR'S REPORT
AND RECOMMENDATION**

The following is the Executive Director's recommendation based on the Investigation of the Ethics Complaint filed against STEVE ROSS (ROSS).

Facts

At all time relevant to the investigation, ROSS was a member of the Las Vegas City Council, State of Nevada. In his private capacity, ROSS was the secretary/treasurer of Southern Nevada Building and Construction Trades Council (SNBCTC), an association of various trade union workers.

From 2007 to 2009, ROSS voted on certain matters related to construction projects that came before the Las Vegas City Council.

**Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC)
and Advisory Opinion No. 07-25A**

The purpose of the Nevada Ethics in Government Law is to hold public officials accountable to the public they serve. Such officials should not use their positions to benefit themselves or their employers. NRS 281A.020.

The panel is to decide if there is just and sufficient cause for the Commission to render an opinion on whether ROSS violated NRS 281A. According to NAC 281A.435, a finding of just and sufficient cause by a panel must be based on "credible evidence." Such evidence is based on a minimal level of any reliable and competent form of proof that supports a reasonable belief that the Commission should hear the matter and render an opinion. The panel is not to determine whether ROSS violated NRS 281A.

The applicable Ethics in Government Law is NRS 281A.420(2),(4) and (8). In addition, the applicable law on public works projects is that Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020.

The relevant and controlling Nevada Commission on Ethics (Commission) opinion is the advisory opinion Ross requested in 2007. Commission Advisory Opinion No. 07-25A provides, among other things, that ROSS must disclose when his actions would reasonably affect his private commitment to SNBCTC. Further, he must determine if the independence of judgment of a reasonable person would be materially affected by his private commitment to his employer SNBCTC. If so, then, ROSS must abstain on those matters involving SNBCTC that come before the City Council. Investigation, Tab G, Exhibit 14.

Discussion

The allegations are analyzed below on ROSS' votes on several construction matters without disclosing his commitment to his employer, SNBCTC. Investigation, Tabs B and C.

First allegation: On September 19, 2007, the City Council voted to approve a Special Use Permit for a proposed non-restricted gaming facility and an amendment to the Centennial Hills Sector Plan on what was referred to as Kyle Canyon. ROSS voted to approve the permit and did not disclose his relationship with SNBCTC. Investigation, Tab G, Exhibit 12, pages 167-169.

The "Kyle Canyon" vote was not related to any specific building project. Because there is no evidence that the Special Use Permit personally benefited ROSS or SNBCTC, he did not need to disclose nor abstain on this vote. Therefore, the recommendation is that the Panel find that just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on the first allegation on whether ROSS violated NRS 281A.420(2) and (4) when he voted on the Special Use Permit on September 19, 2007.

Second allegation (disclosure): ROSS voted on a Resolution of Intent to finance a new City Hall on November 19, 2008 without disclosing his relationship to SNBCTC. According to the minutes, ROSS voted on the Resolution to begin the financing of a new City Hall. Investigation, Tab G, Exhibit 9, p. 11.

Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020. This requirement would benefit ROSS' employer SNBCTC and its members when the new City hall was built by providing them jobs. ROSS failed to disclose his relationship to SNBCTC before the vote. Therefore, the recommendation is that the Panel find that just and sufficient cause EXISTS for the Commission to render an opinion on the second allegation on whether ROSS violated NRS 281A.420(4) on November 19, 2008 when ROSS failed to disclose.

Second allegation (abstention): ROSS voted on a Resolution of Intent to finance a new City Hall on November 19, 2008. ROSS voted on the Resolution to begin the financing of a new City Hall. Investigation, Tab G, Exhibit 9, p. 11.

Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020. ROSS' vote would benefit his employer SNBCTC and its members when the new

City Hall was built by providing them jobs. Therefore, the recommendation is that the Panel find that just and sufficient cause EXISTS for the Commission to render an opinion on the second allegation on whether ROSS violated NRS 281A.420(2) on November 19, 2008 when ROSS voted for the Resolution.

Third allegation (disclosure): ROSS voted on a Resolution to seek approval to issue tax-exempt bonds for construction of the new City Hall on December 3, 2008 without disclosing his relationship to SNBCTC. According to the minutes, ROSS voted on the Resolution to seek approval to issue tax-exempt bonds for the construction of the new City Hall. Investigation, Tab G, Exhibit 9, p. 9.

Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020. This requirement would benefit ROSS' employer SNBCTC and its members when the new City hall was built by providing them jobs. ROSS failed to disclose his relationship to SNBCTC before the vote. Therefore, the recommendation is that the Panel find that just and sufficient cause EXISTS for the Commission to render an opinion on the third allegation on whether ROSS violated NRS 281A.420(4) on December 3, 2008 when ROSS failed to disclose.

Third allegation (abstention): ROSS voted on a Resolution to seek approval to issue tax-exempt bonds for construction of the new City Hall on December 3, 2008. According to the minutes, ROSS voted on the Resolution to seek approval to issue tax-exempt bonds for the construction of the new City Hall. Investigation, Tab G, Exhibit 9.

Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020. ROSS' vote would benefit his employer SNBCTC and its members when the new City Hall was built by providing them jobs. Therefore, the recommendation is that the Panel find that just and sufficient cause EXISTS for the Commission to render an opinion on the third allegations on whether ROSS violated NRS 281A.420(2) on December 3, 2008 when ROSS voted on the Resolution.

Fourth allegation (disclosure): ROSS voted on a Resolution on the financing of the new City Hall on February 18, 2009 after disclosing his relationship to SNBCTC. According to the minutes, the City Council voted on the Resolution on the financing for the construction of the new City Hall. Nevada governments must pay prevailing wage on public works projects. . Investigation, Tab G, Exhibit 10, p. 62, lines 1752-1756.

Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020. This requirement would benefit ROSS' employer SNBCTC and its members when the new City hall was built by providing them jobs. More than 300 unemployed members of SNBCTC showed up at this City Council meeting to support passage of the Resolution. Investigation, Tab B, p. 20. ROSS disclosed his relationship to SNBCTC before the vote. Therefore, the recommendation is that the Panel find that just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on the fourth allegation on whether ROSS violated NRS 281A.420(4) on February 18, 2009 when ROSS disclosed.

Fourth allegation (abstention): ROSS voted on a Resolution on the financing of the new City Hall on February 18, 2009. According to the minutes, the City Council voted on the Resolution

on the financing for the construction of the new City Hall. Investigation, Tab G, Exhibit 10, p. 62, lines 1752-1756.

Nevada governments must pay prevailing wage on public works projects. NRS 338.010(15) and NRS 338.020. ROSS' vote would benefit to his employer SNBCTC and its members when the new City Hall was built by providing them jobs. More than 300 unemployed members of SNBCTC showed up at the City Council meeting to support passage of the Resolution. Investigation, Tab B, p. 20. The City Attorney Brad Jerbic advised ROSS that he could vote because there was not greater benefit to SNBCTC and its members. Investigation, Tab G, Exhibit 10, p. 62, lines 1758-1765. Since prevailing wages must be paid on public works projects and the new City Hall will be a public works project, SNBCTC and its members will benefit from ROSS' vote. Therefore, the recommendation is that the Panel find that just and sufficient cause EXISTS for the Commission to render an opinion on the fourth allegation on whether ROSS violated NRS 281A.420(2) on February 18, 2009 when ROSS voted on the Resolution.

Fifth allegation (disclosure): ROSS voted on the proposed bid awarded to Capriati Construction, a non-union contractor, for the construction of an interchange near Horse Drive and U.S. 95 on February 18, 2009. According to the minutes of the City Council, ROSS attempted to overturn the Capriati bid in favor of Frehner Construction, a union contractor, without disclosing his relationship with SNBCTC. Investigation, Tab B, p.143-144, Tab G, Exhibit 9, p. 4 and Exhibit 11, p. 52, line 1422. Ultimately, ROSS voted to approve the Capriati bid.

At a minimum, ROSS should have disclosed his relationship with SNBCTC before the vote to inform the public as required by NRC 281A.420(4). Because ROSS failed to disclose his relationship to SNBCTC before the vote, the recommendation is that the Panel find that just and sufficient cause EXISTS for the Commission to render an opinion on the fifth allegation on whether ROSS violated NRS 281A.420(4) when ROSS failed to disclose.

Fifth allegation (abstention): ROSS voted on the proposed bid awarded to Capriati Construction, a non-union contractor, for the construction of an interchange near Horse Drive and U.A. 95 on February 18, 2009. According to the minutes of the City Council, ROSS attempted to overturn the Capriati bid in favor of Frehner Construction, a union contractor, without disclosing his relationship with SNBCTC. Investigation, Tab B, p.143-144, Tab G, Exhibit 9, p. 4 and Exhibit 11, p. 52, line 1422. Ultimately, ROSS voted to approve the Capriati bid.

Since ROSS had no relationship with Frehner or Capriati that would have prohibited him from voting or requiring abstention, the recommendation is that the Panel find that just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on the fifth allegation on whether ROSS violated NRS 281A.420(2)(4) and (8) when ROSS voted on the Capriati bid.

Sixth through Twenty-sixth allegations: ROSS voted on certain items on the Consent agenda that allegedly benefited SNBCTC members from September 5, 2007 to April 15, 2009. Investigation, Tab C.

None of the construction companies mentioned in the Notice of Additional Issues and Facts are members of SNBCTC. Investigation, Tab E, p. 4. Since there is no benefit to SNBCTC, the recommendation is that the Panel find that just and sufficient cause DOES NOT EXISTS for the Commission to render an opinion on the sixth through twenty-sixth allegation on whether ROSS violated NRS 281A.420(2) (4) when ROSS voted on these items on the Consent agenda.

Recommendation and Conclusion

In conclusion, the Executive Director approves the Investigation and recommends the following.

Whether ROSS' votes on the above matters materially affected his private commitment to his employer SNBCTC are decisions the Commission must determine after a hearing. Therefore, the Executive Director recommends that the Panel find just and sufficient cause EXISTS for the Commission to hold a hearing and render an opinion on the:

Second allegation on disclosure and abstention; and

Third allegation on disclosure and abstention on whether ROSS violated NRS 281A.420(2)(4);

Fifth allegation on disclosure on whether ROSS violated NRS 281A.420(4). Therefore, the Panel should refer these allegations to the Commission for a hearing and to render an opinion.

Further, the recommendation is that the Panel find that just and sufficient cause DOES NOT EXIST on the:

First allegation on abstention on whether ROSS violated NRS 281A.420(2);

Fourth allegation on disclosure and abstention on whether ROSS violated NRS 281A.420(2)(4);

Fifth allegation on abstention on whether ROSS violated NRS 281A.420(2); and

Sixth through the twenty-sixth allegations on whether ROSS violated NRS 281A.420(2)(4), therefore, the Commission need not render an opinion on these allegations and the Panel should dismiss these allegations.

Approval of Investigation and Executive Director's Recommendation by:

Dated: _____

Patricia D. Cafferata, Esq.
Executive Director