

M E M O R A N D U M

TO: Board of Trustees

FROM: Phil Horan
Board of Trustees Vice Chairman

Jason Guinasso
District General Counsel

SUBJECT: Review, discuss, and possibly give direction on how IVGID Trustees should disclose and abstain from voting when a conflict of interest arises

DATE: September 5, 2017

I. **CONFLICTS OF INTEREST as discussed in 2014 Ethics in Government Manual for Nevada Public Officers and Public Employees (NRS 281A)**

To recognize a conflict of interest when it arises, public officers and employees must be aware of matters affecting circumstances or persons with whom they have entered into a loan as a borrower or a lender; from whom they have received a gift; persons or entities or issues with which they have a significant pecuniary (financial) interest, and persons to whom they have a commitment in a private capacity to that person's interests.

NRS 281A.065 defines "commitment in a private capacity" with respect to the interests of another person, to mean a commitment, interest or relationship of a public officer or employee:

1. to their spouse or domestic partner
2. to a member of their household (NRS 281A.100 "Household" means an association of persons who live in the same home or dwelling and who are related by blood, adoption, marriage or domestic partnership.)

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3. to a family member or in-law related by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;
4. to the employer of the public officer or employee, or the employer of the spouse, domestic partner or a member of the household of the public officer or employee;
5. to a person with whom the public officer or employee has a substantial and continuing business relationship; or
6. to anyone with whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in 1 to 5 above.

II. DISCLOSURE AND ABSTENTION

Generally, when a matter comes before a public officer that affects a gift or a loan, a significant pecuniary interest or a person to whom the public officer has a commitment in a private capacity, that conflict must be disclosed. NRS 281A.420(1) prohibits a public officer or employee from acting to approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

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| (a) Regarding which the public officer or employee has accepted a gift or loan; |
| (b) In which the public officer or employee has a significant pecuniary interest; or |
| (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person, |

unless the public officer must disclose sufficient information concerning the gift, loan, interest or commitment to put the public on notice of the potential effect of the action or abstention upon the person who provided the gift or loan upon the public officer's or employee's significant pecuniary interest, or upon the person to whom the public officer or employee has a commitment

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in a private capacity. The disclosure must be made publicly at the time the matter is considered.

In addition to disclosure, a public officer must abstain from voting on or advocating the passage or failure of a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) the public officer's acceptance of a gift or loan;
- (b) the public officer's significant pecuniary interest; or
- (c) the public officer's commitment in a private capacity to the interests of another person.

The Commission has developed a guide to disclosure and abstention.

III. WHEN YOU THINK YOU MAY HAVE A CONFLICT OF INTEREST AT A PUBLIC MEETING, ASK YOURSELF THE FOLLOWING QUESTIONS TO DETERMINE WHETHER TO DISCLOSE THE CONFLICT OR BOTH DISCLOSE AND ABSTAIN FROM PARTICIPATING.

- DOES THE MATTER BEFORE ME HAVE TO DO WITH:
 - MY ACCEPTANCE OF A GIFT OR A LOAN?
 - MY SIGNIFICANT PECUNIARY (economic) INTEREST?
 - THE INTERESTS OF A PERSON TO WHOM I HAVE A COMMITMENT IN A PRIVATE CAPACITY?
 - That's defined as a commitment, interest or relationship with a person: 1. who is the spouse or domestic partner of the public officer or employee; 2. who is a member of the household of the public officer or employee; 3. who is related to the public officer or employee, or to the spouse or domestic partner of that person, by blood, adoption, marriage or domestic partnership within the third degree; 4. who employs the public officer or employee, the spouse or domestic partner of that person or a member of the household of the public officer or employee; 5. with whom the public officer or employee has a substantial and

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continuing business relationship; or 6. with whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described above.

- If my answer to any of the above is YES, then, when the matter is being considered,
 - 1. I must disclose, on the record, sufficient information to fully inform or put the public on notice of the potential effect of my acting or abstaining on the matter due to my conflict of interest. My disclosure must describe the nature and extent of the relationship that is the source of the conflict.
AND
 - 2. I must abstain only in a clear case where the independence of judgment of a reasonable person in my situation would be materially affected by the conflict just disclosed. I should undertake the abstention analysis on the record immediately after I state my disclosure. ***

- HERE IS AN EXAMPLE OF WHAT YOU MIGHT SAY WHEN YOU DISCLOSE:
 - *"Mr./Madam Chair, NRS 281A.420 requires me to disclose a conflict of interest. The matter before this body affects my acceptance of a gift or loan/my pecuniary interest / my commitment in a private capacity to the interests of Mrs. Foster, my foster mother. (Next, you must take time to describe the potential conflict between your interest and the matter before the body or board on which you serve.) Ms. Foster's doughnut business will be financially enhanced if we approve building the new police station next door to her shop, and she will likely face financial ruin if we don't. Ms. Foster is everything to me even if she isn't my biological mother. She raised me in her home from age 3 until I turned 19. Our relationship is substantially similar to a blood relation, probably closer, so I conclude that the independence of judgment of a reasonable person in my*

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situation would / would not be materially affected by this relationship, and because this is / is not a clear case of a disqualifying conflict of interest, I am going to be voting / abstaining from voting in this matter." (If you decide to abstain, you must refrain from advocating for or against the matter in any way.)

- REMEMBER, YOU MAY DISCLOSE EVEN AN APPEARANCE OF IMPROPRIETY, THOUGH YOU ARE NOT REQUIRED TO DO SO. THIS TYPE OF DISCLOSURE ASSISTS IN YOUR DUTY TO AVOID CONFLICTS OF INTEREST AND TO ENHANCE AND MAINTAIN THE PUBLIC TRUST. SEE NRS 281A.020.
- If the public officer is a member of a body which makes decisions, the disclosure must be made in public to the chair and other members of the body. If the public officer is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of his or her organization or, if the public officer holds an elective office, to the general public in the area from which he or she is elected.

IV. OTHER POINTS AND CONSIDERATIONS

Public officers need not disclose campaign contributions or contributions to a legal defense fund that were reported pursuant to the statutes relevant to those gifts.

In addition to the disclosure and abstention requirements, a public officer who will be abstaining from participating may not 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 the public officer's situation would be materially affected by a gift or loan; a significant pecuniary interest; or a commitment in a private capacity to the interests of another person.

It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by a conflict of interest where the resulting benefit or detriment accruing to the

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public officer, or if the public officer has a commitment in a private capacity to the interests of another person, accruing to the other person, is not greater than that accruing to any other member of any general business, profession, occupation or group affected by the matter.

Appropriate weight and proper deference must be given to the public policy of this State which favors the right of a public officer to perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public officer has properly disclosed the acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity in the manner required.

"Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the disclosure and abstention restrictions are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person." NRS 281A.420.

Except as otherwise provided in the Open Meeting Law, if a public officer will abstain from voting because of the Ethics Law, the quorum needed and the number of votes necessary to act upon the matter is reduced as though the member abstaining were not a member of the body or committee.