



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

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Public Officer. /

**OPINION**

**I. STATEMENT OF THE CASE**

Pursuant to NRS 281A.440(2)(b), a third-party Request for Opinion ("RFO") was filed with the Nevada Commission on Ethics ("Commission"), alleging that Las Vegas City Councilman Steve Ross ("Ross") violated the Ethics in Government Law ("Ethics Law") as set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). Specifically, the RFO alleged that Ross violated the abstention and disclosure provisions in NRS 281A.420(2) and (4), when he failed to disclose and abstain from voting on matters before the Las Vegas City Council (LVCC) in which he had a commitment in a private capacity to the interest of the Southern Nevada Building and Construction Trades Council (BCTC), his private employer.<sup>1</sup>

<sup>1</sup> The Commission applied NRS 281A.420(2) (pertaining to abstention) and (4) (pertaining to disclosure) as they existed at the time of the alleged violations. The Legislature subsequently amended

As provided in NRS 281A.440, the Commission staff conducted an investigation. Thereafter, an Investigatory Panel of two commissioners determined that just and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding seven of the ten allegations presented in the RFO, asserting violations of the abstention and disclosure provisions in November 2008, December 2008, and February 2009.<sup>2</sup>

The matter then came before a quorum of the Commission for a public hearing

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these provisions during the 2009 Legislative Session, but the Commission did not apply any amendments adopted in 2009. *See* 2009 *Stat. of Nevada*, ch. 257, p. 1037 (Senate Bill 160).

<sup>2</sup>Commissioners George Keele, Esq., and Paul Lambole, Esq., served on the Investigatory Panel. Pursuant to NRS 281A.220(4), they did not thereafter participate in any proceedings of the Commission relating to the matter.

on December 10 and 11, 2009.<sup>3</sup> Ross attended the hearing and provided sworn testimony. He was represented during the Commission proceedings by Las Vegas City Attorney Bradford Jerbic and Chief Deputy City Attorney James W. Erbeck. At the conclusion of the hearing, and after fully considering the facts and circumstances disclosed by the evidence, including witness testimony and documents, the Commission deliberated on the record and orally announced its decision that Ross had committed violations in three of the seven alleged instances. The Commission further concluded, however, that none of the three violations could be considered willful under NRS 281A.170 and 281A.480(5). The Commission now renders this formal written Opinion setting forth its findings of fact and conclusions of law.

## II. PROCEDURAL HISTORY

On February 26, 2009, the Commission received an RFO submitted by three private citizens alleging that, during the Las Vegas City Council's deliberations regarding various construction projects in 2008-2009, Ross violated NRS 281A.420(4) by failing to disclose that he had a conflicting commitment in a private capacity to the interests of the BCTC and NRS 281A.420(2) by failing to abstain from voting on those matters. On April 23, 2009, one of the requesters submitted additional similar allegations.

After an investigation by Commission staff, an Investigatory Panel of the Commission formally considered the matter and determined that just and

sufficient cause existed to forward seven of the ten allegations in the RFO to the Commission for a hearing and issuance of an opinion. Specifically, the panel forwarded the following seven allegations that Ross violated:

1. NRS 281A.420(4) on November 19, 2008, when he voted or otherwise acted on a resolution to seek approval from the Clark County Debt Management Commission to issue tax-exempt bonds for financing a new City Hall, a matter which may have reasonably been affected by his commitment to his employer, BCTC, without disclosing his relationship to BCTC;
2. NRS 281A.420(2) on November 19, 2008, when he failed to abstain from voting on a resolution to seek approval from the Clark County Debt Management Commission to issue tax-exempt bonds for financing a new City Hall, a matter which may have been materially affected by his commitment to his employer, BCTC;
3. NRS 281A.420(4) on December 3, 2008, when he voted on a resolution authorizing the issuance of and calling for a hearing regarding financing for a new City Hall, a matter which may have reasonably been affected by his commitment to his employer, BCTC, without disclosing his relationship to BCTC;

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<sup>3</sup>The quorum consisted of Acting Chairman J.T. Moran III, Esq. and Commissioners Mark Hutchison, Esq., John W. Marvel, Gregory Gale, C.P.A., and Erik Beyer.

4. NRS 281A.420(2) on December 3, 2008, when he failed to abstain from voting on a resolution authorizing the issuance of and calling for a hearing regarding financing for a new City Hall, a matter which may have been materially affected by his commitment to his employer, BCTC;
5. NRS 281A.420(2) on February 18, 2009, when he failed to abstain from voting on a resolution authorizing a lease-purchase agreement for a new City Hall, a matter which may have been materially affected by his commitment to his employer, BCTC;
6. NRS 281A.420(4) on February 18, 2009, by voting upon or advocating the failure of a proposed bid awarded to Capriati Construction, a non-union contractor, for construction of a highway interchange, without disclosing his commitment to his employer, BCTC. Ross voted for the Capriati bid after allegedly attempting to overturn the bid award to Capriati in favor of a union contractor;
7. NRS 281A.420(2) on February 18, 2009, by failing to abstain from voting on a proposed bid awarded to Capriati Construction, a non-union contractor, for construction of an interchange. Ross voted for the Capriati bid, a matter that may have been materially affected by his commitment to his employer, BCTC, after allegedly attempting

to overturn the bid award to Capriati in favor of a union contractor.

The Panel also found, however, that just and sufficient cause did not exist for the Commission to hold a hearing and render an opinion on the allegations that Ross violated:

8. NRS 281A.420(4) on February 18, 2009, when he voted on a resolution authorizing a lease-purchase agreement for a new City Hall without disclosing his relationship to his employer, BCTC;
9. NRS 281A.420(2) and (4), on September 19, 2007, by failing to disclose his relationship to BCTC and failing to abstain from voting 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;"
10. NRS 281A.420(2) and (4) between September 5, 2007, and April 15, 2009, when Ross voted on consent agenda items that allegedly affected BCTC and/or its alleged members without Ross disclosing his relationship to BCTC prior to voting on the items. Twenty allegations related to these agenda items were dismissed.

The panel noted that, with respect to the above-stated February 18, 2009, lease-purchase agreement allegation, Ross did in fact disclose his relationship to BCTC before voting on the resolution

at issue. With respect to the City Council's deliberations of September 19, 2007, regarding the Kyle Canyon Special Use Permit, the panel noted that the circumstances were too attenuated to conclude that any participation by Ross in that matter could have benefited either Ross or the BCTC. And with respect to the consent agenda items considered between September 5, 2007 and April 15, 2009, the panel noted that the contractors at issue in those matters were not members of the BCTC, and therefore, Ross' relationship with BCTC did not pose a conflicting commitment.

On December 10, 2009, at the start of the proceedings before the Commission, Acting Chairman Moran made the following disclosures on the record:

That he (Moran) is an attorney and part owner of the Moran Law Firm, LLC, and as such he has a financial interest in the firm;

That his law firm appears before the Las Vegas City Council;

That he had not personally appeared before the Las Vegas City Council since he was appointed to the Ethics Commission several years prior;

That the Nevada rules governing the practice of law in this State required his firm to construct what is known as a "Chinese Wall" in order to insulate him from learning any information about clients of the law firm who might have issues before any government bodies whose members or staff

are subject to the Ethics in Government laws;

That, not only does he not have any direct involvement in any issues before the Las Vegas City Council, but he also is intentionally shielded from any knowledge of issues that might come before the Las Vegas City Council involving his law firm's clients;

That he does not benefit financially, one way or the other, if the Las Vegas City Council or any of its members vote in favor of or against the interests of the clients of his law firm;

That, in light of the above, he was of the view that the independent judgment of a reasonable person in his circumstance would not be materially affected, and that therefore, he did not believe he was required to abstain from participating in this matter.

Following this disclosures, however, Acting Chairman Moran noted that because a motion to disqualify him from participating in the matter had been filed by the City of Las Vegas, he would decline to participate in the decision of the motion to disqualify him "out of an abundance of caution" and "to fully avoid the appearance of any possible impropriety." Therefore, he relinquished the Acting Chairman's position to Commissioner Hutchison for the sole purpose of resolving the motion to disqualify.

After hearing argument from counsel representing Ross, the remaining Commission members found that Acting

Chairman Moran had no personal involvement, private interest or conflict that would disqualify him, and they voted unanimously to deny the motion to disqualify. Acting Chairman Moran thereafter resumed his participation as chair in the matter.

### III. FINDINGS OF FACT

1. Ross was a member of the Las Vegas City Council when the alleged ethical violations under consideration occurred.
2. During the period in which all the alleged violations took place, Ross was employed as the Secretary-Treasurer of the BCTC.
3. The BCTC is an alliance of trade unions that represents electricians, plumbers, painters and other construction trades in legislative and governmental affairs and in labor relations. BCTC represents the individual union member and not the general contractor or subcontractor that may employ the union member.
4. In April 2007, Ross had sought and obtained from the Commission an Advisory Opinion (RFO No. 07-25A) regarding whether he would violate the Ethics in Government Law by holding the position of Secretary-Treasurer with the BCTC, while simultaneously serving on the LVCC.<sup>4</sup>

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<sup>4</sup>During the Commission proceedings of December 10, 2009, Ross' counsel acknowledged on the record that confidentiality regarding the prior advisory opinion had been waived.

5. The Commission conducted a hearing on that request for an Advisory Opinion on May 9, 2007, and issued its written Advisory Opinion on April 21, 2008, concluding in part that:

[H]olding the position of [BCTC] Secretary-Treasurer while simultaneously serving on the [LVCC] would not, by itself, violate the Ethics in Government Law. However, conflicts arise in a myriad of ways. Therefore, Ross is advised to seek the guidance of the City Attorney, this Opinion, this Commission's prior opinions, as necessary, and even request an advisory opinion from the Commission when such matters that may pose a conflict between Ross' public duties as Councilman and his private interests come before the Council.

6. During the periods relevant to this current matter, the City of Las Vegas and Forrest City Enterprises LiveWork ("Forrest City"), a developer, were exploring and negotiating the development and construction of a new Las Vegas City Hall as part of a lease-purchase agreement.
7. On November 19, 2008, Ross voted in favor of a resolution before the LVCC to seek approval from the Clark County

Debt Management Commission to issue tax-exempt bonds backed by Certificates of Participation to fund the development of the City Hall project. The City Attorney advised Ross that neither disclosure nor abstention was necessary. Ross did not disclose his commitment in a private capacity to the interests of others as Secretary-Treasurer of the BCTC, nor did he abstain from voting on the resolution.

8. On December 3, 2008, Ross voted in favor of a "Resolution of Intent" before the LVCC authorizing the issuance of and calling for a public hearing for the City to incur financing for the new City Hall project. The City Attorney advised Ross that neither disclosure nor abstention was necessary. Ross did not disclose his commitment in a private capacity to the interests of others as Secretary-Treasurer of the BCTC, nor did he abstain from voting on the resolution.
9. On February 18, 2009, the LVCC deliberated and voted on a resolution authorizing a lease-purchase agreement for the acquisition, improvement, and equipping of a new City Hall and directing the City to forward materials to the Department of Taxation of the State of Nevada. At that proceeding, Ross disclosed on the record his relationship with the BCTC and requested the City Attorney to advise him whether he was required to abstain from voting

on the resolution. The City Attorney advised Ross that although disclosure was appropriate, the circumstances did not warrant his abstention from voting. Thereafter, Ross voted in favor of the resolution.

10. On February 18, 2009, the LVCC deliberated and voted on whether to award a contract to Capriati Construction Corporation ("Capriati"), a nonunion contractor, which had submitted the lowest bid to construct a highway interchange at the intersection of Horse Drive and U.S. Interstate 95. At that proceeding, Ross inquired about the feasibility of rebidding the project. Without disclosing his relationship with BCTC or abstaining from voting, Ross thereafter moved the LVCC to approve the award to Capriati and then voted for approval of the contract.

#### IV. STATEMENT OF ISSUES

The issues in this matter arose from Ross' participation in the deliberations and voting on two separate matters that came before the LVCC: (1) the financing of a new Las Vegas City Hall construction project; and (2) the award of a construction contract for a highway interchange at the intersection of Horse Drive and U.S. Interstate 95 in Las Vegas. Ross deliberated on and voted to approve LVCC resolutions moving forward on the financing of the new City Hall on November 19, 2008, December 3, 2008, and February 18, 2009. Ross deliberated on and voted to approve the

highway interchange construction award to Capriati on February 18, 2009.

First, the Commission considered whether: (1) Ross violated NRS 281A.420(4), as that statute existed at the time of the alleged violations, by failing to disclose his commitment to the interests of the union members he represents as Secretary-Treasurer of BCTC before participating in LVCC deliberations on November 19, 2008, and December 3, 2008, when the City Hall financing resolutions came before the LVCC, and again on February 18, 2009, when the highway interchange project came before the LVCC. The Commission unanimously found that Ross did not violate his obligation to disclose his BCTC relationship with respect to the LVCC deliberations on November 19, 2008, and the deliberations on the highway interchange project on February 18, 2009. A majority of the Commission also found, however, that Ross violated NRS 281A.420(4) on December 3, 2008, by failing to disclose his commitment to union members.

Second, the Commission considered whether, due to his relationship with BCTC, Ross violated NRS 281A.420(2), as that statute existed at the time of the alleged violations, by failing to abstain from voting on the City Hall financing resolutions on November 19, 2008, December 3, 2008, and February 18, 2009, and also on the highway interchange project on February 18, 2009. The Commission unanimously found that a preponderance of the evidence before the Commission did not support a finding that Ross violated NRS 281A.420(2) on November 19, 2008, by voting on the City Hall

financing issue. Further, the Commission unanimously found that Ross did not violate NRS 281A.420(2) on February 18, 2009, by voting on the highway interchange contract award. A majority of the Commission also found, however, that Ross' votes on the City Hall financing resolutions before the LVCC on December 3, 2008, and February 18, 2009 violated NRS 281A.420(2).

Third, the Commission considered whether Ross' three acts constituting violations were willful under NRS 281A.170 and NRS 281A.480(5). The Commission unanimously found that the violations were not willful, and therefore no sanction or penalty in the matter was warranted.

The Commission's deliberations on all of these issues were governed by the standard of proof set forth in NRS 281A.480(9), which requires Commission findings of ethical violations by a public officer to be supported by a preponderance of the evidence.

## **V. DISCUSSION OF RELEVANT STATUTES AND ISSUES**

### **A. Disclosure**

NRS 281A.420(4) provides:

4. 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; or

(c) In which he has a pecuniary interest,  
- without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such 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. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.

At the time of the alleged violations, NRS 281A.420(4) prohibited a public officer from voting on any matter that would reasonably be affected by his commitment in a private capacity to the interest of others, including an employer, without first disclosing sufficient information to inform the public of the potential effect of the vote on those to whom he has that commitment.

## **1. The Highway Interchange Project.**

As noted above, the Commission unanimously found that Ross did not violate NRS 281A.420(4) by failing to disclose his commitment to the interests of the union members he represented as Secretary-Treasurer for the BCTC, when he voted to approve the highway interchange construction contract award to a non-union contractor on February 18, 2009. During the LVCC deliberations on that matter, a procedural question arose regarding the bidding process. Ross expressed concern over this bidding issue and inquired about the feasibility of re-bidding the project. The RFO had suggested that Ross' motivation for so doing may have been to provide an opportunity for a union, rather than a non-union, contractor to obtain the award. There was insufficient evidence before the Commission, however, to establish that Ross' inquiry regarding a re-bid was motivated by anything other than a concern about the bidding process. No evidence before the Commission established that his actions or vote on the contract was affected by his commitment to the union members or the potential of the contract to employ members of the union. In fact, Ross ultimately made the motion for the LVCC to approve the contract award to the non-union bidder and, as noted, then voted in favor of awarding the contract to Capriati.

**2. The City Hall Financing Deliberations of November 19, 2008.**

The Commission found unanimously that a preponderance of the evidence did not support a finding that Ross violated NRS 281A.420(4) by failing to disclose his commitment to the interests of the union members he represented as Secretary-Treasurer for the BCTC, when he voted for the financing resolution on the City Hall project. Although there was testimony that BCTC had become aware sometime in November 2008 of pending or impending labor agreement negotiations between the BCTC and Forrest City regarding the City Hall project, there was not sufficient evidence that on November 19, 2008, Ross was aware of the negotiations such that his vote or participation in the financing deliberations would have been reasonably affected by his commitment to union members represented by BCTC.

**3. The City Hall Financing Deliberations of December 3, 2008.**

A majority of the Commission found that Ross violated NRS 281A.420(4) by failing to disclose his commitment to the interests of the union members he represented as Secretary-Treasurer for the BCTC, when he voted for the financing resolution on the City Hall project on December 3, 2008. Ross had a commitment to the union members represented by BCTC, and the City Hall construction project could have utilized public funds to employ members of the union. A majority of the Commission found by a preponderance

of the evidence that Ross and the BCTC were aware on December 3, 2008 that Forrest City would be negotiating a labor agreement with BCTC on behalf of the union members when and if the City Hall project was confirmed. Thus, a majority of the Commission found that Ross' vote on the financing resolution would have been reasonably affected by his commitment in a private capacity to the interest of the union members.<sup>5</sup>

**B. Abstention**

NRS 281A.420(2) provides:

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, 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. The

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<sup>5</sup> Commissioner Gale voted against finding a violation. See Dissent.

presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

At the time of the alleged violations, NRS 281A.420(2) prohibited a public officer from voting on 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 his commitment in a private capacity to the interests of others.

1. **The Highway Interchange Project.**

The Commission unanimously found that Ross did not violate NRS 281A.420(2) by failing to abstain from voting on February 18, 2009, to award the construction contract to Capriati because his vote was not affected by his commitment to union members as Secretary-Treasurer of BCTC. Ross merely inquired about the feasibility of re-bidding the project on the basis of a procedural question about the bidding process, a concern that was first articulated by a deputy city attorney. Moreover, Ross actually made the motion and voted to award the contract to Capriati, the non-union contractor that was the low bidder. Thus, there was insufficient evidence to establish that Ross' vote was materially affected by his commitment to union members as Secretary-Treasurer of the BCTC.

2. **The City Hall Financing Deliberations of November 19, 2008.**

The Commission unanimously found that a preponderance of the evidence did not support a finding that Ross violated NRS 281A.420(2) by failing to abstain from voting on the resolution to issue tax exempt bonds for financing the new City Hall. The evidence was not sufficient to establish that Ross' vote was materially affected by his commitment to union members or his knowledge of any actual or impending labor agreement negotiations between the BCTC and Forrest City relating to construction of the City Hall.

3. **The City Hall Financing Deliberations of December 3, 2008.**

A majority of the Commission found that Ross violated NRS 281A.420(2) by failing to abstain from voting on the resolution authorizing financing for the new City Hall because of the material affect the resolution had on Ross' independent judgment due to his commitment to the BCTC union members and the potential for the construction project utilizing public funds to employ members of the union.<sup>6</sup> A majority of the Commission found that there was sufficient evidence on which to conclude that Ross knew on December 3, 2008, that the labor agreement negotiations involving union members represented by BCTC were pending or impending between BCTC and Forrest City involving the City Hall project.

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<sup>6</sup>Commissioner Gale voted against finding a violation. See Dissent.

4. **The City Hall Financing  
Deliberations of  
February 18, 2009.**

A majority of the Commission found that Ross violated NRS 281A.420(2) by failing to abstain from voting on the February 18, 2009 lease-purchase financing resolution because of the material effect on Ross' independent judgment due to his commitment to the union members represented by BCTC and the potential for the construction project utilizing public funds to employ members of the union.<sup>7</sup> A majority of the Commission found that sufficient evidence supported a conclusion that Ross knew at the time of this vote that labor agreement negotiations involving union members represented by BCTC were pending or impending between BCTC and Forrest City involving the City Hall project.

**C. Willfulness**

The Commission next considered whether Ross' violations were willful. At the time of the alleged violations, NRS 281A.170 defined a willful violation as conduct that a public officer "knew or reasonably should have known" violated any of the provisions of NRS Chapter 281A. The Commission found that Ross knew or should have known that his conduct on the three specified occasions violated NRS 281A.420. Nonetheless, the Commission further found, unanimously, that sufficient evidence established that Ross' violations were not willful under NRS 281A.480(5) (the "safe-harbor" provisions).

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<sup>7</sup>Commissioner Gale voted against finding a violation. See Dissent.

NRS 281A.480(5) provides that a violation is not willful if: (a) the public official relied in good faith upon the advice of legal counsel retained by the public body that the public official represents; (b) the public official was unable, through no fault of his own, to obtain an opinion from the Commission before the action is taken; and (c) the public official's actions were not contrary to a prior published opinion issued by the Commission.

In this matter, the Commission found that Ross: (1) relied in good faith on the advice of Las Vegas City Attorney Brad Jerbic, who represents the LVCC; (2) was unable to obtain further advice from the Commission prior to taking the actions at issue; and (3) did not act in a manner clearly contrary to a prior, published opinion of the Commission. Thus, the Commission found that Ross' violations were not willful and that no sanctions or penalties were warranted.

**VI. CONCLUSIONS OF LAW**

1. At all times relevant to this matter, Ross was a "public officer" as defined by NRS 281A.160. The Commission has jurisdiction over public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(2)(b) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. A preponderance of the evidence before the Commission does not establish that Ross violated NRS 281A.420(4) on November 19, 2008, by failing to disclose his relationship with BCTC and his

- resulting commitment to union members before voting on the City Hall financing resolution before the LVCC.
4. A preponderance of the evidence does not establish that Ross violated NRS 281A.420(2) on November 19, 2008, by failing to abstain from voting on the City Hall financing resolution before the LVCC.
  5. A preponderance of the evidence does not establish that Ross violated NRS 281A.420(4) on February 18, 2009, by failing to disclose his relationship with BCTC and his resulting commitment to union members before inquiring about rebidding the project or voting to award the contract to Capriati, a non-union contractor, for construction of a highway interchange.
  6. A preponderance of the evidence does not establish that Ross violated NRS 281A.420(2) on February 18, 2009, by voting to award a contract to Capriati, a non-union contractor, for construction of a highway interchange.
  7. Ross violated NRS 281A.420(4) on December 3, 2008, by failing to disclose his relationship with BCTC and his resulting commitment to union members before voting on the City Hall financing resolution before the LVCC.

8. Ross violated NRS 281A.420(2) on December 3, 2008, by failing to abstain from voting on the City Hall financing resolution before the LVCC.
9. Ross violated NRS 281A.420(2) on February 18, 2009, by failing to abstain from voting on the City Hall financing resolution before the LVCC.
10. Ross' disclosure violation and his two abstention violations were not willful under NRS 281A.480(5). Accordingly, no sanctions or other penalties are warranted.

Dated this 7<sup>th</sup> day of June 2012.

NEVADA COMMISSION ON ETHICS

By: Erik Beyer  
 Erik Beyer, Chairman<sup>8</sup>

**Commissioner Gale, concurring in part, and dissenting in part:**

I agree that a preponderance of the evidence does not establish that Respondent Ross violated NRS 281A.420(4) and (2) on November 19, 2008 with regard to the City Hall financing deliberations, and on February 18, 2009 with regard to the highway interchange project deliberations. Accordingly, I concur and

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<sup>8</sup> At the time this written opinion was issued, then-Chair Moran no longer served on the Commission. Therefore, current Chair Beyer signs this opinion on behalf of the Commission.

join in that part of the Opinion that pertains to those allegations.

I do not agree, however, that a preponderance of the evidence establishes that Ross violated NRS 281A.420(4) and (2) on December 3, 2008 with regard to the City Hall financing deliberations, or that he violated NRS 281A.420(2) on February 18, 2009 with regard to the City Hall financing deliberations.

The BCTC President initially testified at the Commission hearing of December 10, 2009, that Ross knew sometime in November 2008 that the President had entered negotiations, pursued or had intended to pursue a labor agreement with Forrest City that would ultimately benefit the unions and their affiliates. I place greater weight than does the majority, however, on the President's second day of testimony, in which he attempted to clarify his testimony and recollections of the previous day. Specifically, he testified on December 11, 2009, that following his earlier testimony, he reviewed a telephone bill and other documents on his computer and, as a result, he was able to recall more clearly that the BCTC's work on a project labor agreement with Forrest City relating to the City Hall project did not commence until April 2009. Therefore, because I find the President's second day of testimony to be persuasive to a higher degree than does the majority, I dissent from that part of the Opinion relating to the violations that were alleged to have occurred in December 2008, and February 2009.

  
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Commissioner Gregory Gale