



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Andrew Hillyer**, Member, Board of
Trustees, Humboldt County School
District, Humboldt County, Nevada,

Request for Opinion No. 10-63A

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Public officer Andrew Hillyer (“Hillyer”) requested this confidential advisory opinion¹ 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”). A quorum² of the Commission heard this matter on September 9, 2010.

Hillyer 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 Hillyer of its decision that the Ethics Law prohibits him from contracting for employment as a teacher while serving on the school board. 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 Hillyer. The Commission’s findings of fact set forth below accept as true those facts presented by Hillyer for the purposes of the advice offered in this Opinion. Facts and

¹ Hillyer waived confidentiality with respect to this request for opinion.

² The following Commissioners participated in this opinion: Chairman John T. Moran, III, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Paul H. Lambolely, Esq., John W. Marvel, and James M. Shaw.

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

Andrew Hillyer is a member of the Board of Trustees of the Humboldt County School District. Hillyer questions whether he may enter into a contract for employment as a teacher with the school district during his term of office.

III. FINDINGS OF FACT

1. Andrew Hillyer currently serves as a member of the Humboldt County School District (“HCS D”) Board of Trustees (“School Board”) and is presently seeking re-election.
2. School Board members are involved in numerous activities and issues, the vast majority of which involve teachers, including developing policies, allocating funds, developing curriculum, negotiating collective bargaining agreements, and establishing compensation and benefits.
3. Hillyer plans to earn a bachelor’s degree in education in the near future. Upon obtaining his bachelor’s degree and teaching certificate, Hillyer anticipates he will seek employment as a teacher with HCS D.
4. HCS D employs teachers pursuant to written contracts subject to annual renewal. The

School Board ratifies teaching contracts.

5. Hillyer indicates that he may or may not become a member of the collective bargaining group that is the exclusive bargaining representative for teachers employed by HCS D.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Hillyer is a member of the Humboldt County School District Board who is currently seeking re-election. He plans to further his education and, upon earning a bachelor’s degree, intends to seek employment as a teacher in the HCS D. He questions whether under the Ethics Law he may continue to sit on the School Board while employed as a teacher with the HCS D.³

Hillyer’s question raises an issue of first impression before this Commission. In cases prior to this, the Commission examined whether a teacher or other employee could seek a position on the governing board of the public entity which employs them. *See Matter of Public Employee*, RFO No. 98-71 and *In re Bell*, RFO No. 10-10. Here we face the opposite scenario and consider

³ Hillyer’s RFO poses various questions which we are unable to answer because they concern matters outside the scope of the Commission’s jurisdiction. Our Opinion is therefore limited to matters pertaining to the Ethics Law.

whether a board member can seek an employment contract with the public entity which they govern.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020(1) provides:

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.

Hillyer serves as a Trustee on the School Board, and is therefore a public officer who must commit himself to avoid conflicts of interest between his private interests and those of the general public whom he serves. If employed as a teacher with HCSD while serving on the School Board, Hillyer's employment status could potentially cause conflicts with his public responsibilities in violation of the public trust. Whether there would be such a conflict between his private employment interests and his role as a School Board member must be considered in light of the provisions set forth in NRS 281A and as interpreted by applicable Commission precedent in similar circumstances.

We evaluate dual capacity scenarios based on the distinct factual merits of each case. *See In re Ancho*,

RFO No. 06-26. Here, the Commission concludes, based on the facts presented, that the Ethics Law would prohibit Hillyer from becoming employed as a teacher with HCSD while he is a member of the School Board.

First, we note that the School Board is the governing body of HCSD. Hillyer, as a School Board member, would therefore have oversight over his own potential employment which could affect his ability to act impartially in violation of NRS 281A.400(1). Second, as a School Board member, Hillyer has control over HCSD's hiring practices and thus has the opportunity to exert undue influence in seeking a teaching position with HCSD in violation of NRS 281A.400(2). Third, Hillyer testified that 85% of the School Board's agenda concerns matters that affect teachers. As a result, his continuing service on the School Board while employed as a teacher would give rise to frequent conflicts of interest in violation of NRS 281A.020(1). Finally, as explained below, Hillyer would violate NRS 281A.430(2) if he enters into an employment contract with HCSD while he holds a seat on the Board.

Hillyer, as a public officer, is obligated under NRS 281A.020(1) to avoid conflicts of interest. If Hillyer were to serve HCSD in a dual capacity as teacher and Board member, conflicts of interest between his dual roles would be unavoidable. Consequently, the Commission advises Hillyer that he if he desires to secure a teaching

position with HCSD, he must first resign from the School Board.

2) Contract with Board Member

NRS 281A.430(2) provides:

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board, commission or body may, in the ordinary course of his or her business, bid on or enter into a contract with any governmental agency, except the board, commission or body on which he or she is a member, if the member has not taken part in developing the contract plans or specifications and the member will not be personally involved in opening, considering or accepting offers.

NRS 281A.430 places limits on a public officer's ability to enter into contracts with governmental entities. Specifically, under NRS 281A.430(2) a Board member, who is a member of a profession or occupation regulated by his or her own Board, may contract with any governmental agency except the Board on which he or she is a member. We have considered Hillyer's specific circumstances and conclude that NRS 281A.430(2) applies to his situation.

According to Hillyer's testimony, HCSD requires teachers to enter into written employment contracts, which contracts are ratified by the School Board and subject to annual renewal. Hillyer must therefore contract with the School Board in

order to acquire a teaching position. Also, once Hillyer becomes a teacher with HCSD, he will then be subject to the School Board's regulations. In these circumstances, Hillyer, as a teacher with HCSD, would be engaged in a profession or occupation regulated by the School Board on which he serves and, as a School Board member, would be contracting with the Board on which he is a member in violation of NRS 281A.430(2).

The Ethics Law does allow for exceptions from the prohibitions on contracts with governmental agencies. Specifically, NRS 281A.430(4) authorizes public officers to bid on or enter into such contracts in certain circumstances. By its express language, however, NRS 281A.430(4) does not apply to public officers described in NRS 281A.430(2). Hillyer, being a public officer described in NRS 281A.430(2), does not qualify for the exception and is therefore not authorized under the Ethics Law to enter into an employment contract with HCSD.

V. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Hillyer was a "public officer," as defined by 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. As a public officer, Hillyer has a duty under NRS 281A.020 to avoid conflicts between his public duties and his private interests. Because his anticipated employment with HCSD would conflict with his public duties in violation of NRS 281A.400(1) and (2), NRS 281A.020 prohibits him from serving HCSD in a dual capacity as teacher and Trustee of the School Board.

4. Hillyer would violate NRS 281A.430(2) if he were to contract with the School Board for employment as a teacher while serving as a Trustee of the School Board. His resignation from the School Board would be required prior to his employment as a teacher.

Dated this 20th day of June, 2012.

NEVADA COMMISSION ON
ETHICS

By: 
Erik Beyer
Chairman⁴

⁴ At the time this written opinion was issued, then-Chair Moran no longer served on the Commission. Current Chair Beyer signs this opinion on behalf of the Commission.