



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

<p>REQUEST FOR OPINION No. 04-24 SUBJECT: BARBARA MYERS, MEMBER STATE BOARD OF EDUCATION</p>
<p>REQUEST FOR OPINION No. 04-25 SUBJECT: JOHN HAWK, MEMBER STATE BOARD OF EDUCATION</p>
<p>REQUEST FOR OPINION No. 04-26 SUBJECT: GARY WATERS, MEMBER STATE BOARD OF EDUCATION</p>
<p>REQUEST FOR OPINION No. 04-27 SUBJECT: JOHN GWALTNEY, MEMBER STATE BOARD OF EDUCATION</p>
<p>REQUEST FOR OPINION No. 04-28 SUBJECT: MARCIA WASHINGTON, MEMBER STATE BOARD OF EDUCATION</p>
<p>REQUEST FOR OPINION No. 04-32 SUBJECT: BARBARA MYERS, MEMBER STATE BOARD OF EDUCATION</p>

A. JURISDICTION:

The subjects of the requests for opinion are elected members of the State Board of Education and therefore, are public officers as defined by NRS 281.005 and NRS 281.4365. As such, the Commission has jurisdiction over the complaints.

Pursuant to the provisions of NAC 281.101, the complaints have been consolidated for the purposes of the panel proceeding.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion #04-24 and subject's response (see Tab B).
- Reviewed Request for Opinion #04-25 and subject's response (see Tab C).
- Reviewed Request for Opinion #04-26 and subject's response (see Tab D).
- Reviewed Request for Opinion #04-27 and subject's response (see Tab E).
- Reviewed Request for Opinion #04-28 and subject's response (see Tab F).
- Reviewed Request for Opinion #04-32 and subject's response (see Tab G).
- Reviewed minutes of Nevada State Board of Education meetings and its Subcommittee meetings from September 2002 through September 2003.
- Interviewed Keith Rheault, Superintendent, Nevada Department of Education; and Ed Irvin, Deputy Attorney General, Counsel for the Nevada State Board of Education and the Nevada Department of Education

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion in these matters relating to the provisions of:

- NRS 281.501(4).

SPECIFIC REASON:

No allegation or credible evidence of any fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUESTS FOR OPINION

The complaints which are the subject of this consolidated report are identical complaints filed by the same person against five separate members of the Nevada State Board of Education alleging failure to disclose private commitments and pecuniary interests created either by the member's

employment or a spouse's employment by a school district within Nevada. The alleged failure to disclose involves all meetings of the State Board and its Subcommittees during the time period of September 2002 through September 2003. The specific allegations for each subject are as follows:

RFO 04-24: Alleges Barbara Myers has been an employee of the Churchill County School District since election to the state Board in 2000, and that she has not disclosed private commitments and pecuniary interests created by this employment relationship in matters before the state Board 'which implicate the Churchill County School District.' (See Tab B.)

RFO 04-25: Alleges John Hawk and his wife Wendi Hawk have been employees of the Clark County School District since his election to the state Board in 2000, and that he has not disclosed private commitments and pecuniary interests created by these employment relationships in matters before the state Board 'which implicate the Clark County School District.' (See Tab C.)

RFO 04-26: Alleges Gary Waters' wife has been an employee of the Clark County School District since autumn 2002, and that he has not disclosed private commitments and pecuniary interests created by this employment relationship in matters before the state Board 'which implicate the Clark County School District.' (See Tab D.)

RFO 04-27: Alleges John Gwaltney's wife has been an employee of the Washoe County School District since his election to the state Board in 2000, and that he has not disclosed private commitments and pecuniary interests created by this employment relationship in matters before the state Board 'which implicate the Washoe County School District.' (See Tab E.)

RFO 04-28: Alleges Marcia Washington has been an employee of Las Vegas Channel 10, owned by the Clark County School District, since election to the state Board in 2000, and that she has not disclosed private commitments and pecuniary interests created by this employment relationship in matters before the state Board 'which implicate the Clark County School District.' (See Tab F.)

RFO 04-32: Alleges Barbara Myers has been an employee of the Lyon County School District since election to the state Board in 2000, and that she has not disclosed private commitments and pecuniary interests created by this employment relationship in matters before the state Board 'which implicate the Lyon County School District.' (See Tab G.)

E. SUMMARY OF SUBJECT'S RESPONSE

RFO 04-24: Barbara Myers provided supporting documentation corroborating the she has not been an employee of the Churchill County School District since July 23, 2001 – more than one year prior to the period specified in the complaint. (See Tab B.) Barbara Myers also had a conversation with John Wagner, who filed the complaint, and provided him with this

information. When Mr. Wagner found out Ms. Myers presently works for the Lyon County School District, he filed RFO 04-32 regarding her employment with LCSD.

RFO 04-25: John Hawk states he was not been employed by the Clark County School District during the time period of the complaint. He clarifies that he is an employee of the Southern Nevada Regional Professional Development Program. He does not dispute that his wife, Wendi Hawk, is an employee of Clark County School District in her capacity as Assistant Principal of Keller Middle School. He contends the foundation of the complaint is without merit, and that neither his employment nor that of his wife has had a material effect on his ability to make reasonable and independent decisions as a member of the State Board. (See Tab C.)

RFO 04-26: Gary Waters was engaged to be married on February 14, 2003, and married his fiancée on July 4, 2003. He did not share a residence with his wife prior to their marriage. The position his wife holds within the Clark County School District is within a federally funded program which is governed and regulated by federal grant regulations. To his knowledge, no issues related to his wife's employment have ever come before the state Board, and he could find no reference or connection to any program, service, or activity in which his wife is involved in the minutes provided with the complaint. (See Tab D.)

RFO 04-27: John Gwaltney married his wife in January of 2003. He provides he was advised by the Attorney General's office to state a potential conflict of interest only at times when his wife was directly affected by the outcome of a vote. He contends that none of the votes included in the complaint would have directly affected his spouse. (See Tab E.)

RFO 04-28: Marcia Washington has been an employee of the Clark County School District for 22 years, and states she has never tried to hide the fact. She contends she has never voted on any issues that would be beneficial to her as an employee of the Clark County School District. She further provides that votes on salary increases or anything that would relate to a pecuniary interest created by her employment do not come before the state Board; rather, such items are issues before the Nevada Legislature. Upon advice of counsel, she has not found it necessary to disclose her employment at any time during her service on the Board. She further contends she has acted appropriately in all matters that have come before her. (See Tab F.)

RFO 04-32: Barbara Myers has been an employee of the Lyon County School District since her initial campaign and election to the state Board in 2000. As a speech language pathologist, she contends very few decisions come before the state Board which would require her to disclose her employment. She states she disclosed and/or abstained on the few times she felt her employment created a potential effect on her actions or vote. She further provides she could find no issue before the state Board which would have created a material or pecuniary interest during the time period of the complaint. (See Tab G.) Barbara Myers had a conversation with John Wagner, who filed RFO 04-24, and clarified she worked for the Lyon County School District - not the Churchill County School District. When Mr. Wagner found out Ms. Myers presently works for the Lyon County School District, he filed RFO 04-32 regarding her employment with LCSD.

F. PERTINENT STATUTES AND REGULATIONS

NRS 281.501

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 a 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 in a timely manner.

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8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

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NAC 281.101 Consolidation of matters. The Commission may consolidate, in whole or in part, two or more matters into one hearing if the Commission determines that the matters share common facts and issues.

G. RESULTS OF INVESTIGATION

After reviewing the State Board of Education minutes and its Subcommittee minutes for the period of September 2002 through September 2003, the Executive Director could find no issue that was before the state Board which would monetarily affect employees of local school districts.

The Executive Director discussed the duties and functions of the state Board and the types of issues that come before the Board with Keith Rheault, Superintendent of the Nevada Department of Education, and Ed Irvin, Deputy Attorney General, Counsel for the Nevada State Board of Education and the Nevada Department of Education. Both confirmed the concept that the state Board does not receive or act on issues which affect funding in local school districts. The Nevada Legislature provides the Department with funds, and the Department distributes such funds to school districts as authorized by the Legislature. Neither could think of any issue that had been before the state Board between September 2002 and September 2003 which would have created a potential conflict between a Board member's public office and any potential pecuniary interest created by a Board member's employment within a local school district.

At the request of the Executive Director, Mr. Rheault specifically reviewed the agendas of the State Board and its Subcommittees for the time period between September 2002 and September 2003. Mr. Rheault did not find any issue on such agendas before the state Board between September 2002 and September 2003 which would have created a potential conflict between a Board member's public office and any potential pecuniary interest created by a Board member's employment within a local school district.

The Executive Director did not find a nexus between any issue raised in the complaint and the employment of the individual subjects of the complaint (or their spouses). Absent more specific evidence of such a nexus, credible evidence does not exist to further investigate the complaints.

Further, the Executive Director found:

- RFO 04-24 has no merit as Barbara Myers did not work for Churchill County School District during the time period specified in the complaint.
- RFO 04-26 would only be applicable to Gary Waters during the actual time he was married, beginning July 4, 2003.
- RFO 04-27 would only be applicable to John Gwaltney during the actual time he was married, beginning in January of 2003.

Additionally, the Executive Director considered the provisions of NRS 281.501(1), which specify:

“NRS 281.501(1):

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.”

No credible evidence was provided with the complaints or found which would substantiate the allegation that the subjects would have benefited greater than any other employee within a local school district based solely on their participation as a member of the state Board. Further, no credible evidence was provided or found that would substantiate either a need or a failure to disclose on the part of the subjects.

Therefore, the Executive Director believes sufficient credible evidence does not exist to substantiate any potential violation of Nevada's Ethics in Government law with regard to any of the complaints herein.

H. CONCLUSION

The Executive Director hereby recommends that the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations that the subjects violated NRS 281.501(4), and further that the allegations be dismissed.

DATED: July 9, 2004

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR