



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of THOMAS MOORE,
Member, Douglas County School District Board
of Trustees, Douglas County,
State of Nevada

Request for Opinion No.: 09-45C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

Request for Opinion No. 09-45C (Ethics Complaint). (Tab B):

On June 19, 2009, complainant Chris Sullivan (Sullivan) filed an Ethics Complaint against public officer Thomas Moore (Mr. Moore), a member of Douglas County School District Board of Trustees (DCSD Board), alleging that he violated NRS 281A.420(1), when during the June 17, 2009 DCSD Board meeting, he failed to disclose his commitment in a private capacity to his wife Carolyn Moore (Mrs. Moore), an employee of DCSD. In addition, the allegation is that Mr. Moore violated NRS 281A.420(3), when he failed to abstain from voting during the same meeting.

Jurisdiction:

As a member of the DCSD Board, no dispute exists that Mr. Moore is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to investigate and take appropriate action in this matter, pursuant NRS 281A.280 and NRS

1 281A.440.

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3 **Issues:**

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5 The issues are whether Mr. Moore violated:

- 6
7 **1.** NRS 281A.420(1), when on June 17, 2009, during the DCSD Board meeting, he failed to
8 disclose his commitment in a private capacity to his wife Mrs. Moore, an employee of
9 DCSD and subordinate to DCSD Superintendent Carol Lark. (Lark).
10
11 **2.** NRS 281.420(3), when on June 17, 2009, during the DCSD Board meeting, he failed to
12 abstain from voting on a contract renewal for Lark.

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14 **Response to Ethics Complaint. (Tab C):**

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16 On July 29, 2009, a Response to the Ethics Complaint¹ was received from Mr. Moore and his
17 legal counsel Rick Hsu, Esq. (Hsu). Hsu stated that Mr. Moore did not violate the disclosure
18 requirements in the Nevada Ethics in Government Law and referred to Commission's Opinions
19 In re Louritt and Roman Nos. 03-43 and 03-44 and In re Eisele 07-40A. (Response, Tab C, page
20 10, ¶3). In addition, Hsu responded to the allegations of violation of NRS 281A.400(2) and (5).
21 (Response, Tab C, pages 7-9, ¶¶1-2). However, the Commission's Notice to Subject does not
22 include these allegations and said allegations were not included in the Commission's
23 Jurisdictional Determination. (Exhibit 3).
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27 ¹ Investigator's note: Subject's response from pages 18 to 62 were numbered by the investigator for easier
28 identification. Pages are numbered with prefix "NCOE" followed by a page number.

1 **Investigation Summary:**

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3 I interviewed the following individuals and reviewed their responses:

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5 **Witnesses interviews and responses. (Tab D):**

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 - Thomas Moore, via mail on July 29, 2009. (Response, Tab C).
 - 8 • Thomas Moore questionnaire, via e-mail on August 11, 2009. (Exhibit 1).
 - 9 • Chris Sullivan, via e-mail on August 10, 2009. (Exhibit 2).

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11 **Documents. (Tab E):**

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13 I obtained and reviewed the following documents and materials relevant to the investigation:

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 - Commission's Notice to Subject In re Moore RFO No.09-45C. (Exhibit 3).

16
17 **Relevant Statutes and Commission's Opinions. (Tab F):**

- 18
19 I. NRS 281A.420
- 20 II. Statutes cited by Moore in Response to Complaint
- 21 III. Commission's Opinion In re Eisele RFO No. 07-40A, and Stipulated Agreement
- 22 In re Eisele 08-38C.
- 23 IV. Commission's Opinion In re Klosowski-King RFO No. 06-05.
- 24 V. Commission's Opinion In re Louritt and Roman RFO Nos. 03-43 and 03-44.
- 25 VI. Commission's Opinion In re Public Officer RFO No. 02-01. (Abstract).
- 26 VII. Commission's Opinion In re Woodbury RFO No. 99-56.
- 27 VIII. Commission's Opinion In re Public Officer RFO No. 98-71. (Abstract).
- 28

1 **Investigative findings:**

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3 **Background:**

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5 Mr. Moore is a member of DCSD Board of Trustees. He was appointed on May 16, 2007 to fill a

6 trustee vacancy as a result of the death of a fellow trustee. Mr. Moore was elected in November

7 2008 to serve the balance of the unexpired term. (Exhibit 1, page 1 ¶1). Mrs. Moore has been

8 employed by DCSD since November 1996, and served as a secretary to both the superintendent

9 and the Board of Trustees since August 2, 2005. (Response, Tab C, page 32).

10

11 In deciding to serve as a DCSD Board member, Mr. Moore consulted with DCSD's legal counsel

12 and received an approval to serve on the DCSD Board from the Superintendent of Public

13 Instructions, Keith Rheault. (Response, Tab C, page 19), (Response, Tab C, page 2).

14

15 **Investigation:**

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17 The complaint alleges that during the June 17, 2009 DCSD Board meeting, Mr. Moore failed to

18 disclose his commitment in a private capacity to Mrs. Moore, an employee of DCSD, and failed

19 to abstain from voting during the said meeting; therefore, violating the provisions of NRS 281A.

20 The meeting was held for the sole purpose of evaluating Lark's performance. In addition, Lark

21 requested an extension of her contract for additional year after the expiration of the existing on

22 June 30, 2010.

23

24 In his response filed with the Commission, Mr. Moore's counsel Hsu argued that during the

25 Commission's hearing on advisory opinions In re Louritt and Roman, the Commission held that

26 when matters concerning collective bargaining agreements affecting the spouse of said Board

27 members come before the Board, they must disclose the relationship to their spouse and abstain.

1 Furthermore, Hsu referred to In re Eisele and noted that the Commission advised Eisele that
2 "whenever matters affecting his daughter-in-law's employment with IHGID [Indian Hills
3 General Improvement District] are before the Board, he must disclose his relationship to her ..."
4 (Response, Tab C, page 11). In addition, Hsu stated that the Commission held In re Eisele that on
5 matters affecting the [g]eneral manager's employment, Eisele should disclose the relationship to
6 his daughter-in-law since she reports directly to the general manager. (Response, Tab C, page
7 11).

8
9 Moreover, Hsu stated that in the past, Moore disclosed and abstained on voting to raise his Mrs.
10 Moore's salary consistent with the In re Louritt and Roman opinions; however, in this case, his
11 wife's employment was not affected by matters concerning Superintendent Lark's contract and
12 performance evaluation. Hsu added that Mrs. Moore's employment is not "at will" but may be
13 terminated for "failure to perform in a manner satisfactory to the employer." The evidence shows
14 that her evaluations, completed by Lark, were at the highest level through the tenure of her
15 employment with DCSD. (Response, Tab C, pages 36-48).

16
17 Finally, Hsu stated that "[a]lthough it may have been recommended, preferable, or desirable
18 for Mr. Moore to disclose his wife's employment at DCSD, a fact known to all Trustees ... it
19 was it was clearly not mandated under NRS 281A.420(1)." (Response, Tab C, page 13, line 4).

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21 As to the allegation of failure to abstain from voting, Hsu stated that Mr. Moore did not violate
22 the abstention requirements, and referred to Commission's Opinion In re Woodbury No. 99-56,
23 and In re Eisele No. 07-40A. (Response, Tab C, page 13, ¶4). In re Woodbury required
24 abstention where a reasonable person in a public officer's position would be materially affected
25 by the commitment in a private capacity to the interest of others. In re Eisele required the public
26 office to abstain on case-by-case basis, based on the law in the Woodbury opinion.
27 Moore had a commitment in a private capacity to the interest of his wife.

1 Upon examining the available evidence, the result of the investigation is as follows:
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3 **1. Allegation one:** On June 17, 2009, Mr. Moore violated NRS 281A.420(1), when
4 during the DCSD Board meeting, he failed to disclose his commitment in a private
5 capacity to his wife Mrs. Moore.
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7 The allegation is that Moore failed to disclose his commitment in a private capacity to his wife
8 Mrs. Moore, the secretary to Lark. The evidence shows, that Mr. Moore did not disclose that his
9 wife is employed by the DCSD as Lark's secretary and as the secretary to the DCSD Board.
10 (Response, Tab C, pages 52-62), (Audio recording, Response, Tab C, page 51).
11

12 **2. Allegation two:** Moore violated NRS 281A.420(3), when on June 17, 2009, during the
13 DCSD meeting, he failed to abstain from voting on a contract renewal for Lark.
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15 The allegation is that Moore failed to abstain from voting on Lark's contract renewal. The
16 evidence shows that Mr. Moore did not abstain from voting. (Response, Tab C, pages 52-62).
17 (Audio recording, Response, Tab C, page 51).
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20 Dated this 13 day of August 2009.
21

22 NEVADA COMMISSION ON ETHICS
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26 By: Mike Vavra, Investigator.
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