

Advisory Opinion No. 75-9

QUESTION:

Whether an executive director of a program which receives some of its funding from the Division and thus, in the event of the utilization of the section of the law regarding applications were to come up while he is on the Board, he would be in the roles of both plaintiff and judge in his own case, would he be in conflict of interest by being on the Board?

RESPONSE:

Again, as above, the law requires the presence of persons having an interest in the services to be on the Board. The Executive Director is not in conflict by his mere presence on the Board. Obviously, where he or his program were the object of the decisions to be made by the Board he would be bound to: (1) abstain from voting or taking action upon the matter by reason of the provisions of Section 24.1 of the Nevada Ethics in Government Law and also by sections 21.3 & 21.5, unless of course, he could in some way justify the application to himself of the provisions of Section 24.3 (a) (1) to (3); however, the provisions of 24.3 would probably never apply to the Board in question unless it were a question of having a quorum; since Section 24.3 refers only to the instance in which action could not be taken without the participation of the person in conflict. (2) In the case of the situation of the application for certification applying to himself, the said Executive Director would also, and perhaps, more importantly than the abstention from voting, be bound to refrain from "attempting to influence in any way" (Section 24.1) his fellow board members. The Commission wishes to point out that this latter requirement of "not attempting to influence" fellow board members may be much more important in order not to "adversely affect the confidence of the people in the impartiality of their public officers and employees." (Section 21.5). Therefore the Executive Director may retain his position on the Board, but in the case of the procedures for the application for certification, or with his program as applicant, he must: 1) refrain from voting unless under special circumstances the provisions of Section 24.3 apply and 2) must always with no provisions to the contrary refrain from attempting to influence fellow board members or any other public officer in regard to the matter. (Sections 24.1 & .3 (a) (3).

November 6, 1975.