

Hypothetical Advisory Opinion No. 87-1

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Advisory Opinion of Public Officer

You have asked us for an advisory opinion in your dual capacity as a legislator and as Executive Director of a nonprofit association (Association), as follows:

1. As a result of your position as Executive Director of the Association, is there a potential for conflict of interest while serving in the Legislature?
2. If so, what can you do to avoid a conflict of interest?
3. Would it be a violation of the code of ethics to continue drawing a part-time salary and accruing benefits from your employer while serving in the Legislature?
4. Would a conflict of interest exist if you supported legislation benefiting state employees when your spouse is a state employee?

FINDINGS OF FACT

You serve as Executive Director of a nonprofit community agency (Association) which receives state and federal funds. You have filed a statement of financial disclosure with the commission indicating that you receive ten percent or more of your gross income from the Association.

You have been elected to the Legislature and intend to remain employed on a part-time basis by the Association during the legislative session. The Association will compensate you for performing your duties as agency executive director for approximately eight to ten hours per week, and your sick leave and annual leave benefits will continue to accrue at a full-time rate.

Your spouse is an employee of the state. In your financial disclosure statement you have acknowledged that your spouse's income due to state employment constitutes ten percent or more of your gross income.

QUESTION NUMBER ONE

As a result of your position as Executive Director of the Association, is there a potential for conflict of interest while serving in the Legislature?

The answer to this is yes. There may be times when your personal interest or gain may be incompatible with your public trust. Therein lies an inherent potential for conflicts of interest.

The Code of Ethical Standards is set forth in NRS 281.481. A careful reading of this code will indicate to you that the heart of this conflict of interest statute deals with self-serving motivations involving personal financial or economic benefit which are not compatible with public duty.

Public officials are chosen to make decisions best for the public, impartially according to justice and equity. The public is deprived of that legitimate expectation when an official uses his position to further his own material or self-interest or the interests of family or business associates.

In your case, the self-interest would center around financial proposals for the Association which would tend to secure or enhance your personal income or that of the Association. The potential conflict of interest would arise with regard to bills which offered state aid for existing or expanded Association activities. If you serve on committees other than Ways and Means, you would seldom be confronted with this situation. The exception would be where the bill contains a fiscal note indicating it needs to be referred to Ways and Means. Absent a fiscal note, you should be able

to forcefully participate in discussions and voting on committee bills without fear of a conflict of interest.

QUESTION NUMBER TWO

What can you do to avoid a conflict of interest?

If you are a member of a committee considering legislation which your Association supports or opposes, you should determine whether you have a financial interest that would be affected as a result of the proposed legislation. Financial interest is defined in NRS 281.4335 as follows:

1. Ownership of 10 percent or more of the capital stock or assets of any business entity, directly or through a member of the interested person's household.
2. Income amounting to 10 percent or more of the gross income of the interested person.

If you have a financial interest, you must disclose the nature and extent of this interest to the chairman and other members of the committee prior to approving, disapproving, voting, abstaining or otherwise acting upon the matter. NRS 281.481(3).

Members of the legislative branch have imposed additional ethical standards upon themselves. These additional standards are set forth in NRS 281.501 which requires, in pertinent part, that a member of the legislative branch not vote upon "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 private financial interest; or (c) His commitment in a private capacity to the interest of others."

NRS 281.501 would permit limited participation in the discussion and consideration of a matter. However, we feel the extent of the participation should be to enlighten the committee about the merits or demerits of the legislation and to suggest constructive amendments. Participation should not include active lobbying or pressuring a bill and then abstention from voting. Otherwise, it would not be a purifying procedure. Instead, it would leave a taint of hypocrisy.

If the bill comes before the Assembly for approval, this being a different body than the committee, you should follow the same procedure as you did in the committee about disclosure and voting or abstaining. NRS 281.481(3) and 281.501.

As we have previously indicated, if you are not a member of the Ways and Means Committee, your exposure to conflict situations is greatly reduced since the budget decisions made by that committee concerning financial aid, directly or indirectly to your Association, would never involve you in any way.

We do not think you would need to abstain from voting for the final legislative appropriations measure. That budget contains many thousands of items and many millions of dollars. Any items benefiting your Association would be a very minor part of the total. Everyone votes for the final budget product, benefited or not. You should not be expected to be on record against or abstaining on this all important document because of a *de minimis* budget benefit. By the same reasoning, you are not expected to vote against initial and subsequent bills appropriating money to operate the legislature, including your own salary and per diem.

One other caveat. You should not sponsor or co-sponsor legislation proposing pecuniary benefits, directly or indirectly, to your Association. See generally, NRS 281.481(2). Such sponsorship can come home to haunt you.

QUESTION NUMBER THREE

Would it be a violation of the code of ethics to continue drawing a part-time salary and accruing benefits from your employer while serving in the legislature?

The answer to this is no. This is solely a matter between you and your Association. Your executive committee permitted you to run for the Assembly and has approved an arrangement providing leave without full pay during the legislative session. This has resulted in substantial salary savings to the Association while you are committed to

continue your ultimate administrative responsibility during the legislative session on a partial pay basis. This is a good arrangement all around. In addition, you, as a part-time legislator, are not expected to give up your personal livelihood.

QUESTION NUMBER FOUR

Would a conflict of interest exist if you supported legislation benefiting state employees when your spouse is a state employee?

As we have previously discussed in question number three, you must disclose the full nature and extent of your interest prior to approving, disapproving, voting, abstaining or otherwise acting upon any matter in which you have a financial interest. NRS 281.481(3).

Since your spouse's income from state employment constitutes ten percent or more of your gross income, you have a financial interest in legislation which benefits state employees. See NRS 281.4335. Therefore, you must disclose this interest prior to taking any action.

However, NRS 581.501(2) permits you to vote upon a matter benefiting state employees since your spouse receives no special gain, but only benefits in the same manner as all other state employees.

This advisory opinion is rendered based upon the facts presented. Given other facts, the opinion of the commission may differ.

NEVADA COMMISSION ON ETHICS

By: CHAIRMAN