

## **Hypothetical Advisory Opinion No. 89-1**

### **BEFORE THE NEVADA COMMISSION ON ETHICS**

#### **FACTS**

A state assemblyman (hereinafter assemblyman) is a member of an assembly subcommittee. He has co-sponsored a bill which will be heard by the subcommittee of which he is a member. This legislation creates a board to deal with water rights in a certain area of the state. The assemblyman has no intention of serving as a board member.

A relative of the assemblyman owns property in the affected area with surface water rights. Neither the assemblyman nor his wife own property in the affected area which has surface water rights. The assemblyman, however, has a business affiliation, specifically ranching, with this relative. Even though the assemblyman's relative owns property in the affected area, his land will not be treated any differently than any other land with surface water rights. As a result the assemblyman will not receive any specific benefit from passage of this legislation.

#### **QUESTION**

Would it be a conflict of interest for a state assemblyman to participate in the consideration of proposed legislation when a relative, whom he has a business relationship with, may receive a benefit from such legislation?

#### **ANALYSIS AND OPINION**

The assemblyman is a public officer and member of the legislative branch of government as defined in NRS 281.4365(1) and NRS 281.4355, respectively. According to the statutes, a public officer may not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for any business entity in which he has a significant pecuniary interest. See NRS 281.481(2). Additionally, no public officer may vote or abstain from voting on any matter in which he has a significant pecuniary interest without disclosing the full nature and extent of his interest. See NRS 281.481(3). This disclosure must be made before the time when he is to perform his duty or concurrently with that performance. If disclosure is required, it must be made to the chairman and other members of the body. A member of the legislative branch may participate in the consideration of a matter but, should not vote on a matter if his pecuniary interest is such that his judgment would be materially affected. See NRS 281.501(1). NRS 281.501(2) provides, "that a member of the legislative branch 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 business, profession, occupation or group, is not greater than that accruing to any other member of the business, profession, occupation or group."

Consequently, the assemblyman should not be prohibited from participating in the consideration of legislation previously discussed because of his family relationship and business association with his relative.

The relative's property and water rights will not benefit specially from passage of this legislation. All water right owners will be treated uniformly. All water right owners will be allowed to offer for sale to the water board any excess water rights within the district boundary. Any sale of water rights to the board must be made by a willing seller. Since the relative's ranch and water rights do not benefit in any special manner, the assemblyman cannot be accused of using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for any business entity in which he has a significant pecuniary interest. Nor may he be accused of securing any privilege of an individual rancher, as the benefits derived from this legislation will affect all ranchers with surface water rights equally.

The true beneficiaries of this legislation are the counties which make up the water district and the political subdivisions of this state which may purchase the excess water rights at some future date.

It is the conclusion of this Commission that the assemblyman would not be placing himself in a position of conflict if he were to vote on the legislation referred to herein. The assemblyman's family relationship and business association with this particular relative does not offend the provisions of NRS 281.481(2), 281.483(3) and 281.501(1) in the circumstances described in this opinion. This conclusion is reached because neither the relative nor his ranch will benefit any more than any other landowner in the affected area. Consequently, the assemblyman will not receive any specific benefit.

This opinion of the Commission on Ethics is advisory in nature. Given other facts and circumstances, the opinion of the Commission may differ.