

## Hypothetical Advisory Opinion No. 89-2

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### FACTS

A state senator (hereinafter "senator") is director of a professional society and serves at the pleasure of the board of directors of the professional society. The senator has a four-year employment contract with the professional society which may be automatically extended for one year if notice to terminate is not given by either party prior to a specified date. Either party may terminate the contract by giving 30-day's notice. The senator's salary from the professional society comprises 35 to 40 percent of his personal income.

The senator provides a minimum number of hours of service to the professional society, which is reduced during a legislative session. His duties include representing the professional society to the public, community and governmental agencies; coordinate activities with city, county and state governments; advise the board in the area of politics; and, understand the Nevada political process.

The president and board of the professional society often take positions with regard to proposed legislation and lobby on behalf of those positions. The senator is a member of a legislative committee which will be listening to testimony given by members of the professional society on behalf of their position concerning certain proposed legislation.

#### QUESTION

Would it be considered a conflict of interest for a state senator to vote on bills which his employer has taken a position?

#### ANALYSIS AND OPINION

The senator is a public officer and member of the legislative branch as defined in NRS 284.4365(1) and 281.4355, respectively. According to the statutes, no public officer may use his position in government to secure or grant any unwarranted privileges, preferences, exemptions or advantages for any business entity in which he has a significant pecuniary interest. See NRS 281.481(2). Since the senator derives a substantial percentage of his personal income from his position as director of the professional society, he has a significant pecuniary interest in proposed legislation concerning medical malpractice and punitive damages or other legislation in which his employer has an interest. 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. 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. See NRS 281.481(3).

Members of the legislative branch must also be aware of NRS 281.501(1), which provides that, "...a member of the legislative branch should not vote upon but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by...his pecuniary interest...."

Given the senator's duties as director of the professional society, the terms of his contract and the board's position concerning proposed legislation in several areas, a contrary position taken by the senator could result in the board terminating the senator's contract. The standard of conduct which governs whether the senator may vote is not

whether his personal judgment would be affected, a subjective standard, but whether a reasonable person's judgment may be affected, an objective standard.

Consequently, a significant pecuniary interest exists and the senator should disclose the full nature and extent of this interest to the chairman and other members of the appropriate committee, as well as the full Senate before matters of the nature previously discussed come to a vote. Accordingly, the senator should abstain from voting on these or other issues in which the professional society has taken a position.

The opinion of this commission rests squarely on the terms and conditions of the senator's contract with the professional society. The mere fact that the senator serves at the pleasure of the board leaves him no apparent autonomy on issues confronting him as a legislator when the professional society takes a position on these issues. The senator has a clear conflict of interest. It is also clear the senator must exercise great caution when considering other issues of interest to the professional society. In the future, should this conflict arise again, the senator should disclose the full nature and extent of the conflict before taking any action and should abstain from voting on such issues.

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