

Hypothetical Advisory Opinion No. 89-5

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE OPINION REQUEST REGARDING AN ASSEMBLYMAN

FINDING OF FACTS

1. On November 8, 1988, an individual was elected to the Nevada Assembly for the 1989 legislative session. At the time of his election, the individual was employed by a private business.
2. After his election, the assemblyman wrote a letter to the president of his company (employer) requesting an unpaid leave of absence due to his election to the Nevada Legislature. The employer responded by denying the assemblyman's request.
3. In January of 1989, the assemblyman requested reconsideration of the employer's decision. The assemblyman received a response from his supervisor granting his request based on written company policy, which encourages employees to seek public office. In mid-session, the assemblyman received another communication from his supervisor, reversing the company's decision to grant unpaid leave based on an unwritten policy which provides that no unpaid leave of absence will be given to employees who are elected to public office.
4. Also in January of 1989, the assemblyman was informed by his employer that he was required to have a medical certificate by the end of that month and that until he received the physical and provided the certificate, he would not be scheduled to work.
5. The earliest appointment available with a physician for a physical exam was February 7, 1989, which the assemblyman scheduled and advised his employer of the date.
6. Based on the employer's directive that he could not work, the assemblyman believed he would not be scheduled to work until after his physical examination on February 7, 1989.
7. On February 2, 1989, the employer scheduled the assemblyman to work. The assemblyman failed to appear for work on that day. On February 3, 1989, the assemblyman was contacted by his immediate supervisor inquiring as to why he failed to appear for work as scheduled. The assemblyman was required by letter to inform his employer of his intentions concerning his employment, including an explanation of his reasons for failing to appear for work on February 2, 1989.
8. On March 17, 1989, the assemblyman was placed on disciplinary leave, pending full investigation, for failing to appear for work. The assemblyman appealed the employer's decision. The assemblyman also considered legal action against his employer for the adverse action taken concerning his employment status.

CONCLUSIONS OF LAW

1. The assemblyman was a public officer as defined in NRS 281.4365(1).
2. The assemblyman was a member of the legislative branch of government as defined in NRS 281.4355.
3. The assemblyman advised the Commission that he would be in the position of considering assembly bills pending during the 1989 legislative session which addressed the issues of monetary damages and proposed limitations

thereon in cases of wrongful discharge from employment.

4. The applicable statutory provisions of the Code of Ethical Standards in the context of this opinion are NRS 281.481(3) and NRS 281.501(3).

NRS 281.481(3) provides in pertinent part that 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 he is to perform his duties or commensurate with that performance. If disclosure is required, it must be made to the chairman and other members of the decision making body, either the committee or the full assembly.

NRS 281.501(3) provides in pertinent part that a member of the legislative branch shall not vote on, 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.

5. Since the assemblyman was contemplating legal action, including a demand for punitive damages against his employer for imposing a disciplinary suspension and possible discharge, he had a significant pecuniary interest in legislation seeking to contain monetary damage awards in wrongful termination of employment cases.

OPINION

Monetary damages awards were not limited under Nevada law. Legislation seeking a specific limitation on the amount of monetary damage awards or eliminating them entirely in wrongful termination cases would restrict an otherwise unrestricted area of tort law. This type of legislation specifically affected the assemblyman's dispute with his employer.

NRS 281.501(2) permits a legislator to vote upon a matter if the benefit or detriment to him is not greater than that accruing to any other member of his occupational class. This was a large class, and his fellow employees were all subject to the same rules. Ordinarily, it would be permissible for the assemblyman to vote on legislation affecting the whole class. In this case the assemblyman was precluded from voting, not because of his occupation, but because he was an employee of a company with a pending grievance giving rise to a personal interest in the outcome of the legislation.

Taking a voting position on this type of legislation would have been justified if the impact on the assemblyman were more remote or conjectural. But in this case the impact of the employer's action was real and immediate. And because it was real, immediate and of significant financial impact upon the assemblyman, it was the determination of the Commission that a reasonable person's judgment (the objective standard followed by the Commission) would be affected. Bias would result, and a clear and direct conflict of interest would exist between his personal financial situation and the impartial discharge of his public duties.

The assemblyman was required to disclose the full nature and extent of the conflict he had in the tort reform legislation. Once he disclosed, the assemblyman was also directed that he must abstain from voting on the legislation, or any derivative legislation on the same subject.

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

Dated: April 20, 1989

NEVADA COMMISSION ON ETHICS

By: /s/ CARL F. DODGE, Chairman

NOTE: As originally issued, Opinion 89-5 referenced NRS 281.503(3). However, this statutory cite was erroneous. Pursuant to the 1987 edition of *Nevada Revised Statutes*, under which the opinion was issued, the correct statutory cite as amended herein should have been NRS 281.501(3). This was corrected on June 20, 2005.