

Abstract of Advisory Opinion No. 91-1

BEFORE THE NEVADA COMMISSION ON ETHICS

This opinion is in response to the request of a member of a school board. The Nevada Commission on Ethics takes jurisdiction in this matter pursuant to NRS 281.511.[\[1\]](#)

This matter came before the commission, meeting in executive session, in Carson City, on May 8, 1991, at which time the commission heard testimony from the school board member. The commission thereafter met for deliberations in executive session on that same day. Based upon the foregoing, the commission makes these Findings of Fact and issues the opinion that follows.

FINDINGS OF FACT

1. The school board member first took her position in January, 1991.
2. She is a licensed practical nurse (LPN) at a local hospital. Her salary makes up half the income for her family.
3. There are three schools in the district, one elementary school, one junior high school and one high school.
4. Her husband is an employee at the local high school. As such he is a classified employee of the school district. His salary for this position makes up the remaining 50 percent of the income for their household. His salary appears as a line item in the budget that is prepared on behalf of the high school. The principal of the high school is the husband's direct supervisor.
5. The member's husband serves as an employee representative for classified employees when an employee has a grievance with the school in which he or she works. The grievance process may include an appeal to the school board if the employee or employer is not satisfied with the result of the grievance process through the principal of the school and the superintendent of the school district. The member's husband will represent the employee in an appeal to the school board, should the employee desire to appeal to that body.
6. The board for the school district divides the work of the board into committees. One committee, comprised of board trustees as well as management of the school district, is the negotiating team for collective bargaining for the district. The classified school district employees make up one collective bargaining unit within the school district. The other collective bargaining unit within the school district consists of the certified or professional employees of the district. He serves on the negotiating team for classified employees when negotiating salary, working conditions and benefits. The school board member does not serve on the trustee's negotiating committee. The trustee's member's husband's committee is responsible for negotiating with both the classified and certified collective bargaining units in the district. After a negotiated agreement is struck between the bargaining teams, the contracts are presented to the full school board for approval. The school board may approve or disapprove the conditions of the agreement.

OPINION

I. Generally

Based on the Findings of Fact, the commission concludes that the school board member is a public officer as defined by NRS 281.4365(1). She performs a legislative function when voting on items which come before the school board in appropriating funds.

The Legislative Declaration and Findings which express the public policy of the Nevada Ethics in Government Law appear at NRS 281.421:

281.421 Legislative declaration and findings.

1. It is hereby declared to be the public policy of this state that:

(a) A public office is a public trust and shall be held for the sole benefit of the

people.

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

2. The legislature finds that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interest.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

The Ethics in Government Law is designed to assist public employees and officials in the appropriate discharge of their public duties by providing certain guidelines and standards governing the conduct of the public official or employee. These provisions should not be construed to prevent people from participating in public service, rather they should be viewed as a tool which must be used to foster openness and dedication to the duties which are part of public service. It is this goal which serves as the axiom upon which the opinions of the commission are based.

Consistent with that policy and the specific provisions of the Code of Ethical Standards (NRS 281.481 - 281.511, inclusive) the opinions of the commission may include guidance to the public official pursuant to NRS 281.521(1):

1. The commission's opinions may include guidance to a public officer or employee on questions of whether:

(a) A conflict exists between his personal interest and his official duty.

(b) His official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter.

(c) The conflict would materially affect the independence of the judgment of a reasonable person in his situation.

(d) He possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision.

(e) it would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal interest or pursue some other designated course of action in the matter.

II. DISCLOSURE

The standards to which public officers and employees must conform their conduct are found at NRS 281.481.

NRS 281.481 General Requirements

2. No public officer or employee may use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

3. No public officer or employee may approve, disapprove, vote, abstain from voting, or otherwise act upon any matter in which he has a significant pecuniary interest without disclosing the full nature and extent of his interest. Such disclosure must be made before the time when he is to perform his duty or concurrently with that performance. If the officer or employee is a member of a body which makes decisions, he shall make disclosure to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds appointive office, he shall make disclosure to the supervisory head of his organization or if he holds an elective office, to the general public in the area from which he is elected.

1. Salary of the spouse of the school board member.

Disclosure is required if the public official or employee has a significant pecuniary interest in the matter pending before him or her. Such a significant pecuniary interest must be personal to the public official or employee. In the instant matter the school board member benefits from the salary that her husband makes as an employee for the high school. When the particular subject of classified employee salaries arises in the context of her duties as a school board member, she should disclose the full nature of her interest in the matter. The commission suggests she disclose her relationship to her husband, an employee in the classified service of the school district and the percentage of the total household income her husband's pay constitutes.

The same analysis does not hold true for the discussion of the remainder of the budgetary process for the school district. The school board member does not have a personal significant pecuniary interest in the certified employees collective bargaining process and eventual contract, nor does she possess a personal significant pecuniary interest in the budgets of the schools in the district. Her husband's salary appears as a line item in the budget of the school in which he works. It is one of many components to the budget of that particular school. When the school board votes approval of that budget, her interest in the budget is so attenuated that it does not rise to the level of a significant pecuniary interest such that disclosure is necessary.

2. The participation of the trustee's spouse in collective bargaining for classified employees.

The school board member has indicated that she does not participate in the negotiations for either classified or professional staff on behalf of the school board. As stated previously, the collective bargaining process for classified employees is conducted separately from the full budgetary process.

The school board approves or disapproves what is negotiated during the collective bargaining process. The school board member's involvement in that process is not active as she merely reviews the bargained agreement for approval. The commission has determined that she must disclose the full nature and extent of her interest in that agreement because it directly affects the salary of her husband and her interest therein. The same analysis does not apply to the collective bargaining process for professional employees of the district. She possesses no personal significant pecuniary interest in that agreement or in any agenda item wherein the salaries for professional employees is discussed. Such a personal interest must exist for the disclosure or abstention requirements to be triggered.

3. Employees represented by the trustee's spouse on appeals from grievance proceeding.

The school board member is faced with the occasional representation by her husband of employees with grievances that have been appealed to the school board. The standard governing disclosure requires disclosure only when the officer or employee has a significant pecuniary interest in the matter pending. She has indicated that her husband receives no additional compensation for assisting individuals when their appeals come before the school board. Chapter 281 of the NRS does not require disclosure of these facts. The school board member has no significant pecuniary interest in appeals by employees which would require disclosure. NRS 281.481 (until October 1, 1991) does not require disclosure of a commitment in a private capacity to the interest of another (her spouse), which may require abstention from voting as discussed later.

III. Abstention

Additional standards govern the conduct of members of the legislative branch when performing a legislative function. NRS 281.501 states in pertinent part:

1. In addition to the general requirements of the Code of Ethical Standards, a member of the legislative branch should not vote upon but may otherwise participate in the consideration of the 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 pecuniary interest; or
 - (c) His commitment in a private capacity to the interest of others.

1. Salary of the spouse of the trustee.

In the instant matter, the school board member is a member of the legislative branch in her capacity as a member of the school board. She is required to abstain from voting on a matter when her commitment in a private capacity to the interest of others or her personal pecuniary interest in the matter would materially affect the independence of judgment of a reasonable person in her position. It is reasonable to conclude that the independence of judgment of a reasonable person would be materially affected by the interest in 50 percent of the income for school board member's household. As such, it prevents her from voting on an agenda item which focuses directly upon classified employee salaries.

2. Participation: Collective bargaining of the trustee's spouse for classified employee's negotiating team.

The same conclusion applies to the trustee's abstention from voting on the negotiation of the collective bargaining agreement for classified employees. Once this element of the budget for the various schools within the school district is settled, her participation in review of the budgetary process is no longer restricted. She holds no direct pecuniary interest in the budget of the high school in which her husband works, nor does her interest in her husband's salary affect the district budget as a whole. As the budgetary process moves toward final adoption of the complete district budget, her interest in the line item which represents her husband's income diminishes and the commission can only conclude that such an attenuated interest would not materially affect the independence of judgment of a reasonable man such that it would prevent her from voting.

Turning to the second applicable standard which must be reviewed in the present situation, the commission must explore whether the school board member is committed in a private capacity to the interest of another, such that it materially affects the independence of judgment of a reasonable man and prevents her from voting. A similar analysis to the one recited above is equally applicable here. When it comes to a direct vote on the line item which represents her husband's salary, or when voting on the classified employees collectively bargained agreement, she is committed in a private capacity to the interest of another, by virtue of a marital relationship to her husband. This commitment in a private capacity to her husband would materially affect the independence of judgment of a reasonable person in her position so as to prevent her from voting on these matters. Her interest nevertheless becomes too weakened when reviewing other matters in the budget such as the total budget for the high school or the district budget as a whole to prevent her from voting on those matters.

3. Representation by the spouse of employee on appeal from the grievance proceeding.

Regarding the factual situation wherein the school board member's husband represents individual employees when their grievances are appealed to the board, the commission must also apply the standards discussed above. Again, due to the fact that her husband receives no remuneration for his assistance, the school board member has no pecuniary interest in employee appeals when they come before her as a board member. However, due to the marital relationship, she is committed in a private capacity to the interest of another, namely her husband. Whether that commitment would materially affect the independence of judgment of a reasonable person in her position (when considering a third party appeal) is the question before the commission. More simply put, if a reasonable person could not separate the interest of the third party in his or her appeal from the interest of her husband in representing that person to the best of his ability, then the independence of judgment of that reasonable person would be materially affected so as to require abstention. In the instant matter, it appears that due to the nature of the appeal process, in that the school board member's husband appears directly before the school board on behalf of an employee, a reasonable person would not be able to set aside his or her personal loyalty to his or her spouse and thus must abstain from participating in that matter.

Individual matters which come before her as a board member should be reviewed on a case-by-case basis in light of the standards set forth above to determine the impact of her relationship to her husband on her independence of judgment and whether she must disclose and/or abstain from voting on those matters based upon either her personal significant pecuniary interest or her commitment in a private capacity to the interests of another. The simple existence of her relationship to her husband should not create a barrier to her participation in all matters which come before her as a trustee. That spousal relationship must be evaluated on an individual basis in light of the particular matter which comes before her.

By: /s/ THOMAS R. C. WILSON, II, Chairman

[\[1\]](#) This opinion is advisory in nature only. It is limited solely to the facts presented. Given other facts, the opinion of the Commission could differ. Additionally, this opinion is drafted pursuant to chapter 281 of the NRS as codified prior to October 1, 1991