

Opinion No. 93-13

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Regarding MATTHEW Q. CALLISTER

This opinion is in response to an opinion request filed on March 15, 1993 with the Nevada Commission on Ethics ("Commission") by Senator Robert Ryan concerning Nevada State Senator Matthew Q. Callister.

Senator Callister waived his right to a preliminary hearing to determine whether just and sufficient cause existed for the Commission to render an opinion in response to the request filed in this matter. A hearing on the merits of the request was held on August 6, 1993 in Las Vegas, Nevada. Senator Callister waived confidentiality in the matter and the proceeding was therefore open to the public.

Former Senator Bob Ryan and Senator Matthew Callister were present and testified at the hearing. Legislative Counsel, Lorne Malkiewich, was present and responded to Commission questions but was not representing Senator Callister in the matter.

Following the hearing, the Commission deliberated in open session on August 6, 1993 and on November 3, 1993.

The commission has jurisdiction over this matter pursuant to NRS 281.511 (2).

Based on the foregoing, the Commission makes the following Findings of Facts and renders the following Opinion.

FINDINGS OF FACT

1. Senator Matthew Q. Callister is a licensed attorney in the State of Nevada and is engaged in the private practice of law in Las Vegas, Nevada.
2. Senator Callister is an elected State Senator and as such served as a member of the Senate Finance Committee during the 1993 Legislative Session.
3. Senator Callister has appeared and in the future may again appear before the Nevada Supreme Court in his private capacity as an attorney representing clients on appeals of district court judgments.
4. Senator Callister voted on the Nevada Supreme Court budget in the Senate Finance Committee and in the Senate when the budget was approved by the State Senate during the 1993 legislative session, without disclosing that he was an attorney licensed to practice law in the State of Nevada. His license to practice law in the courts of the State of Nevada is a matter of public record.

OPINION

Based on the above-stated findings of fact, the Commission concludes that Senator Callister is a public officer in his capacity as a Nevada State Senator pursuant to NRS 281.4365. Senator Callister is an attorney licensed to practice law in the State of Nevada in his capacity as a private citizen.

The question presented by Senator Bob Ryan, the Requestor in this matter, is whether Senator Callister, while performing his public responsibilities as a legislator, was prohibited from discussing, advocating or voting with respect to the Nevada Supreme Court budget because, in his private capacity, he is a practicing attorney in the

State of Nevada. The standards provided by NRS 281.501(2) & (3) are relevant to this matter. That statute provides in pertinent part:

NRS 281.501 Additional standards: voting by members of legislative branch and other public officers or employees; effect of abstention from voting on quorum; required disclosures.

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2. In addition to the requirements of the code of ethical standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, 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:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest where that resulting benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting, or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest,

without disclosing the full nature and extent of the gift, loan, commitment or interest. Such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the 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.

The language of NRS 281.501(2) and (3) provides the standards a legislator must follow in discussing, advocating or voting on legislative measures in which he may have a conflict of interest in relation to the measure because of (i) his acceptance of a gift or loan, (ii) his pecuniary interest, or (iii) his commitment in a private capacity to the interests of others. In relation to the Supreme Court budget, the relevant questions are whether, (i) there was in fact such a conflict which should have been disclosed and, if so, (ii) whether such conflict required Senator Callister to abstain from voting on or advocating the passage or failure of the Nevada Supreme Court budget during the 1993 legislative session.

The specific question is whether Senator Callister had a conflict of interest in voting on the Supreme Court budget simply because he has occasion in his private capacity to appear before the Supreme Court as an attorney representing a client in a case on appeal from a district court judgment. It is also noted that the Nevada Supreme Court has authority and control over the licensing of attorneys who practice law in Nevada. SCR 69. Under the Code of Ethical Standards, cited above, however, these circumstances in and of themselves do not constitute a conflict of interest. NRS 281.501(2) and (3) requires specific circumstances with respect to the pending matter which require disclosure and which would require abstention if such would materially affect the independence of judgment of a reasonable person. The question of whether disclosure and abstention are required depend in these general circumstances upon whether he (i) had a pecuniary interest which was affected by the matter or (ii) a commitment in

his private capacity to the interests of others which was affected by the matter. There is no evidence in the administrative record with respect to any such, pecuniary interest or commitment to the interests of others on the part of Senator Callister which was affected by the Nevada Supreme Court budget.

The question of a conflict of interest raised by this request suggests broadly that a legislator, who in a private capacity is an attorney who may appear before the Supreme Court representing a client on appeal, would therefore be influenced to vote in support of the Supreme Court budget or in the alternative, that the legislator's vote on the Supreme Court budget would affect the court's decision on the appeal in which the legislator is involved in his private capacity as an attorney. Such an inference requires some basis in evidence that the decisions of one or more members of the Supreme Court would be influenced as a direct result of the attorney/legislator's vote on the budgetary matter. The drawing of such inferences from these general circumstances is not supported by any evidence.

The fact that the Supreme Court has jurisdiction over the admission to practice and to license attorneys by itself does not give rise to a conflict.

Because there is no evidence of conflict as defined in the foregoing circumstances, and those circumstances by themselves do not present an inference of such a conflict as defined and discussed above, there is no violation of NRS 281.501(2) or (3).

CONCLUSION

A specific conflict of interest must be apparent from the circumstances or established by sufficient evidence in order to justify a finding that the Code of Ethical Standards has been violated. Such conflict is neither apparent from the circumstances nor established by the evidence. Accordingly, no violation by Senator Matthew Callister is found to have occurred in voting or otherwise discussing or advocating a position on the Nevada Supreme Court budget during the 1993 legislative session.

COMMENT

It is specifically noted that the foregoing opinion applies only to these specific circumstances, and may not apply to other circumstances. The provisions of NRS 281.501 quoted and discussed above must be applied on a case-by-case basis, with results which will vary depending on the specific facts and circumstances involved.

DATED: December 30, 1993.

NEVADA COMMISSION ON ETHICS

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