

**Opinion No. 93-20 (Amended)**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion Regarding LORI LIPMAN BROWN**

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

A hearing on the merits of the request was held on August 6, 1993, in Las Vegas, Nevada. Senator Brown was represented by Lorne Malkiewich, Legislative Counsel. Former Senator Bob Ryan and Assemblywoman Chris Guinchigliani were present and testified in the matter. Senator Brown waived statutory confidentiality in the matter and the proceeding was therefore open to the public.

Thereafter, the Commission met for deliberations on August 6, 1993 and again 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 Fact and renders the following Opinion.

**FINDINGS OF FACT**

1. Senator Brown is employed as a public school teacher by the Clark County School District in Las Vegas, Nevada, where she is an elementary education teacher.
2. While serving as State Senator during the 1993 Legislative Session, Senator Brown was on unpaid leave of absence from her employment with the Clark County School District.
3. Senator Brown is an elected Senator for the State of Nevada and served during the 1993 Legislative Session.
4. The Senate Finance Committee ("Committee") reviewed and voted on the executive budget submitted and recommended by Governor Miller prior to reporting it to the full Senate for consideration and action. The executive budget included budget recommendations for all state departments, divisions and agencies for the appropriation of funding levels, including the recommended state education budget.
5. Classroom teachers' salaries generally, which included that of Senator Brown, did not appear as a separate line item in the recommended state education budget which was considered and voted on by the Committee or by the Senate during the 1993 Legislative Session.
6. The executive budget was reviewed and voted on by both the State Senate and the State Assembly and the money committees of both houses of the legislature.
7. The Nevada Legislature did not allocate funds directly for teachers' salaries when it voted on the executive budget or on that component which was the state education budget.
8. The State Department of Education budget is based on a "per-pupil" funding cost approved by the legislature. Legislatively appropriated education funds are deposited in a distributive school account from which distributions are made to the school districts of the entire state pursuant to a "wealth equalization formula." School districts receive state funding allocations based on a criteria which identifies each district's ability to meet the per-pupil funding level

set by the state legislature.

9. The State Department of Education does not budget or otherwise allocate funds specifically for teachers' salaries. Each local school district sets aside a portion of its funds within its total school district budget for teachers' salaries. In each school district, salaries are determined by negotiations in the collective bargaining process between the local school district administrators and the classroom teachers' representatives.

10. The Senate voted and approved a three-percent (3%) reduction of the per-pupil funding level for the state education budget, as compared to the five-percent (5%) reduction recommended by the Governor in the executive budget.

11. During the 1993 Legislative Session, while sitting as a member of the Senate, Senator Brown consistently and publicly disclosed her employment as a public school teacher prior to participating in discussions, debates or in voting on any issue relating to the state education budget or relating to any other state education issues.

12. Senator Brown solicited and on June 3, 1993, was provided a legal opinion from the Legislative Counsel Bureau advised her that (i) she should disclose her position as a school teacher prior to voting on educational funding issues; (ii) that she may vote and otherwise engage in committee hearings and Senate floor action related to educational funding and (iii) that she may advocate for her position on funding with legislative colleagues.

## OPINION

Based on the above-stated findings of fact, the Commission concludes that Senator Brown is a public officer in her capacity as a Nevada State Senator as defined by NRS 281.4365 and a member of the legislative branch as such is defined by NRS 281.4355. Senator Brown is also a public employee in her capacity as a public school teacher pursuant to NRS 281.436.

The questions presented by the requestor in this matter are summarized as whether Senator Brown, while performing her public responsibilities as a legislator, was prohibited from discussing, advocating, voting or otherwise acting on educational funding issues based on her employment as a public school teacher. The standards found in NRS 281.501(2) and (3) are relevant to this matter. This 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.**

....

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.

NRS 281.501(2) and (3) provides the standards legislators must follow in discussing, advocating, voting, or otherwise acting on a legislative matter with respect to which the independence of judgment of a reasonable person in his or her situation would be materially affected by the acceptance of a gift or loan, a pecuniary interest, or a commitment in a private capacity to the interest of others. The relevant questions are whether, in relation to educational funding measures, Senator Brown for anyone of the foregoing reasons was required to disclose such reason and, additionally, to abstain from discussing or voting on such measures during the 1993 legislative session.

### **A. Disclosure**

With respect to the first question, as a public education school teacher, Senator Brown had a pecuniary interest in the state budget provisions which provided funding for education, because her salary as a teacher is paid with public funds, the level of which could at least have been indirectly affected by the education budget funding levels. Senator Brown also had a commitment to others in her private capacity as a school teacher namely, to the school district for which she worked, fellow classroom teachers and her students.

Since her pecuniary interest and her commitment to others existed in her private capacity as a public school teacher, Senator Brown was required to disclose such interest and commitment when educational funding issues came before any committee or subcommittee of which she was a member or before the Senate itself. NRS 281.501(3) requires that such disclosure be made publicly to the chairman and other members of the public body at the time the matter is considered. Senator Brown made appropriate public disclosure of both her pecuniary interest and her commitment to others when educational funding matters came before her during the 1993 Legislative Session. She, therefore, did not violate NRS 281.501(3).

### **B. Voting**

The next question is whether either Senator Brown's pecuniary interest or her commitment to others in her private capacity as a public school teacher would have materially affected the independence of judgment of a reasonable person in her situation, which would require that she abstain from voting on state education funding measures under the provisions of NRS 281.501(2).

In addressing this question, the commission considers relevant the evidence presented at the hearing regarding the state education budget allocation process. Under that system of funding and the distribution of funds to the various school districts, the state Department of Education receives the state budget appropriation for education which is ultimately approved by both the Governor and the Nevada State Legislature. The statewide education budget is based on a "per-pupil" cost of the education of all students in Nevada from kindergarten through the 12th grade, excluding capital improvements expenditures. Teachers' salaries make up an included but unquantified portion of the per-pupil cost which are not a separate line item expenditure in the state education budget. Salaries and all other expenditures are included in the total budget expressed in the "per-pupil" cost multiplied by the total number of

students.

Once appropriated by the legislature, the education funds for kindergarten through 12th grade are deposited in the Department of Education's Distributive School Account. The Department then applies a "wealth equalization formula" to compensate for districts with greater need and fewer resources and allocates the funds accordingly to the various school districts throughout the state. The funds are deposited in each of the local school district's general school fund account, from which the local school boards determine the district budgets and authorize expenditures based on district needs and programs and the level of funding.

From the funding distributed to each district, each local school district determines the level of funding for teacher's salaries. Annual salaries for teachers are determined by negotiation in each district through a collective bargaining process involving both the local school district administration and the teachers' association. The resulting financial package for salaries and benefits is collectively negotiated is then subject to ratification by both the school board and by vote of the teachers' association.

In view of the foregoing process of determining the actual amount of each local school teacher's salary, the Commission finds that under NRS 281.501(2), there is far too much attenuation between Senator Brown's vote on the state education budget as a member of the Senate on the one hand, and her salary as ultimately determined by the local public school district, on the other, to materially affect the independence of judgment of a reasonable person in her situation when voting on the general matter.

The Nevada Legislature is a "citizen legislature" implicit in which is a recognition of the fact that each member has an occupation during the 18 months when the legislature is not in session. The Commission cannot under NRS 281.501(2) conclude that a legislator may not advocate or vote on a matter related to his or her occupation without determining on sufficient facts shown that the "independence of judgment" of a "reasonable person" would be "materially affected" by a pecuniary interest or a commitment in her private capacity to the interests of others, however indirect or attenuated. There must be a sufficiently direct and strong correlation between such a pecuniary interest and/or a commitment to the interests of others in a private capacity that a reasonable person's independence of judgment is materially affected. That is to say, a pecuniary interest or a commitment to the interests of others by itself does not mean that one's judgment is no longer independent. The evidence must demonstrate that one's independence of judgment has been materially affected by those circumstances.

The facts of this matter differ from the facts in [Opinion No. 90-2](#) issued by this Commission in which Nevada Assemblywoman Jan Evans was employed by the University of Nevada Medical School as a fund developer and was also a member of the Assembly Ways and Means Committee ("Committee"). Unlike this case, Assemblywoman Evans' salary appeared as a separate line item in the University of Nevada Medical School budget which was a component part of the University of Nevada-Reno budget which in turn was a component part of the University of Nevada System budget reviewed by the Committee and Assembly. The operational and capital improvements budgets of the University of Nevada-Reno were also component parts of the University of Nevada System budget. The Assembly Ways and Means Committee in that case, independently reviewed the University budget and its component parts. At each level of the budgetary process, the component schools and colleges which made up the University System budget competed with each other for available funding from the legislature. The Commission determined that Assemblywoman Evans' pecuniary interest in her salary and her commitment to the School of Medicine as a fund developer, were sufficiently significant private interests which, based on an objective standard, would materially affect the independence of judgment of a reasonable person voting on matters related to the University of Nevada System budget.

The evidence submitted at this administrative hearing was not equally strong or sufficient to establish that Senator Brown was prohibited by NRS 281.501(2) from voting on the state education budget based on her position as a public school teacher.

## **CONCLUSION**

Lori Lipman Brown, while serving as a Nevada State Senator, did not violate the Code of Ethical Standards by discussing, advocating or voting on the state education budget.

## **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: February 11, 1994.

NEVADA COMMISSION ON ETHICS

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