

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion of PUBLIC OFFICER

This Opinion is in response to a first-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Mr. Q seeking guidance from the Commission regarding whether he should disclose or abstain from participating in and voting upon matters in which his child's law firm represents applicants appearing before Mr. Q as a Some County Commissioner. A confidential hearing was held by the Commission on October 22, 1998, in Las Vegas, Nevada. The Commission received testimony from Mr. Q. Mr. Q did not waive statutory confidentiality, so the proceeding was not open to the public. The Commission now issues the Findings of Fact and Opinion which follows.

FINDINGS OF FACT

1. At all times pertinent to this matter, Mr. Q was a commissioner serving on the Some County Commission. In his private capacity, Mr. Q is an attorney.
2. Mr. Q's child is also an attorney. The child worked at the law firm of ABC in the summer of 1998 as a clerk and was to be hired as an associate by this firm if he/she passed the Nevada State Bar examination in October 1999. Some of the partners in the law firm were former partners of Mr. Q's. The law firm represents clients before the Some County Commission once or twice a year.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.465(1)(a) and 281.511(2)(b) because Mr. Q is a public officer as defined in NRS 281.4365.

Mr. Q acknowledged that NRS 281.501(3) would require that he disclose his child's employment with the law firm any time that the law firm represented a client before the Some County Commission. Mr. Q presented excellent reasons why he believed that he should not be required to abstain from participation in or voting upon such matters. As well reasoned as Mr. Q's arguments were, we think that abstention is required under NRS 281.501(2).

NRS 281.501(2) requires that a public officer abstain from participating in or voting upon any matter in which the "independence of judgment of a reasonable person in his situation would be materially affected by: ...(c) His commitment in a private capacity to the interests of others." In NCOE Opinion No.86-6, this Commission determined that the relationship of a county commissioner to his father required disclosure pursuant to NRS 281.501(3) and abstention pursuant to NRS 281.501(2) when a matter involving the father's property came before the son sitting on a planning commission. In NCOE Opinion 93-11, this Commission determined that a regulatory board member must disclose his relationship to his wife and her law firm pursuant to NRS 281.501(3) whenever she or members of her firm represented a client before the husband's regulatory board. In this opinion, the Commission also determined that the husband would be required pursuant to NRS 281.501(2) to abstain from participating in or voting upon any matter in which the wife or members of her law firm represented clients before

the husband's regulatory board.

This Commission believes that NCOE Opinion 86-6 and NCOE Opinion 93-11 are readily applicable to address Mr. Q's question. The relationship of father to child will always be deemed to materially affect the independence of judgment of a reasonable person under NRS 281.501(2). As NCOE Opinion 93-11 decided, the material affect also extends to the law firm in which the family member is employed. This Commission finds compelling the rationale that a reasonable person could not help but desire the success of his child and that that desire would extend to the child's employer because one of the most meaningful sources of the child's success is the child's employer.

Thus, we must conclude regarding any matter in which Mr. Q's child or his child's law firm represents a client that Mr. Q must disclose his relationship to his child and his child's relationship to the law firm pursuant to NRS 281.501(3) and must abstain from participating in or voting upon that matter pursuant to NRS 281.501(2). Based upon Mr. Q's testimony, this opinion will not work much hardship upon Mr. Q or the Some County Commission because his child's law firm rarely represents clients before the Some County Commission. Mr. Q is to be commended for conscientiously seeking this Commission's counsel regarding his question.

CONCLUSION

Based upon the record, the Commission concludes that regarding any matter in which Mr. Q's child or his child's law firm represents a client Mr. Q must disclose his relationship to his child and his child's relationship to the law firm pursuant to NRS 281.501(3) and must abstain from participating in or voting upon that matter pursuant to NRS 281.501(2).

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: May 7, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman