

Abstract of Advisory Opinion No. 98-71

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion of PUBLIC EMPLOYEE

This Opinion is in response to a first-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Mr. B, County y School District (School District) substitute teacher, seeking guidance from the Commission regarding whether an ethical conflict of interest exists to prevent him from being County y School District Board (School Board) member while simultaneously substitute teaching in the School District. A closed hearing was held by the Commission on February 18, 1999, in Reno, Nevada. The Commission received testimony from Mr. B. Mr. B 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 follow.

FINDINGS OF FACT

1. The Commission has jurisdiction over this matter pursuant to NRS 281.511 because Mr. B would be a public officer as defined in NRS 281.4365.
2. On average, Mr. B substitute teaches in the School District three times per week.
3. The requirements for placement on the substitute teachers list include obtaining a substitute teacher's license and registering with the School District. No contract of employment exists except in the event the substitute teaching assignment exceeds twenty days of uninterrupted employment.
4. Neither the School District nor the School Board approves the substitute teachers' employment. The substitute list is scrutinized by the Assistant Superintendent of Personnel of the School District. The Superintendent of Personnel (Superintendent) has final veto power. The School Board supervises the Superintendent and has the power to terminate Superintendent's employment.
5. Mr. B plans to run for a position of School Board Trustee for the School District in the 2000 election.

ANALYSIS AND OPINION

The issue before the Commission is whether Mr. B would violate NRS 281.230(1) and 281.481 (2) by maintaining his employment as a School Board substitute teacher while concurrently acting as a School Board Trustee.

NRS 281.230(1)(a) provides:

Except as otherwise provided in this section and NRS 218.605, the following persons **shall not**, in any manner, directly or indirectly, **receive any** commission, personal profit or **compensation of any kind resulting from any from any** contract or other **transaction in which the employing state, county, municipality, township district or quasi-municipal corporation is in any way**

interested or affected:

(a) State, county, municipal, district and township officers of the State of Nevada. ...(Emphasis added.)

Violation of NRS 281.230 would not only be an ethical violation, but also a criminal one. NRS 281.230(5).

NRS 281.481 (2) provides:

A public officer or employee shall not 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. (Emphasis added.)

The Commission determined that NRS 281.230(1) and NRS 281.481(2) expressly prohibit Mr. B from obtaining a position as School Board Trustee while concurrently employed as a substitute teacher for the School Board for the following reasons.

As a School Board Trustee, Mr. B would be in the untenable position of having the power to hire and fire the one person responsible for removing candidates from the substitute teacher's list, thereby being in the position to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself as a substitute teacher. This would be a violation of NRS 281.481(2) and would create the type of compensatory relationship prohibited by NRS 281.230(1).

The Commission in no way infers that Mr. B would use the position as School Board Trustee in order to unduly coerce or influence the Supervisor of Personnel regarding any aspect of his employment as a substitute teacher as prohibited by NRS 281.481(2). Nonetheless, the Commission takes the position that the mere opportunity for an employer to effect undue or unwarranted influence over a subordinate in order to advance his own pecuniary interests would create an appearance of impropriety; a hurdle that Mr. B would not be able to surpass unless he were to resign his employment as a substitute teacher.

Furthermore, NRS 281.230 is designed to keep public and private interests separate so that there is no question, hint or temptation for a public officer to compromise his public duty to benefit his private interests. Because Mr. B, as School Board Trustee, would be in the position to control the funds allocated for the School District's substitute teacher program, he would have the opportunity and means to benefit himself financially. Therefore he would be in the position to financially benefit from the concurrent positions of Administrator and employee of the same governmental entity.

This Commission recommends that Mr. B refrain from any activity that would create the appearance of impropriety. The mere act of being the "boss of the boss of himself" appears improper. He would be fair game for a host of accusations and complaints, both by the Superintendent if he thought Mr. B was using his position on the School Board to benefit his position as a substitute teacher, and by other substitute teachers who thought he was getting an unfair advantage by getting the jobs they wanted.

Because Mr. B's service on the School Board would place him in violation of NRS 281.230(1) and NRS 281.481(2), we must regretfully recommend that he either resign his employment with the School District or not

accept a seat on the School Board. He may not maintain both positions at the same time. Furthermore, NRS 281.230(1) makes no exception for a person such as Mr. B who is uniquely knowledgeable and who makes a fine public servant. We appreciate and acknowledge Mr. B's conscientiousness as evidenced by his willingness to seek our advice before executing his public service bid, especially where that advice means the end of that bid for public service.

CONCLUSION

Based upon the record, the Commission concludes that NRS 281.230(1) and NRS 281.481(2) require that Mr. B either resign his employment with the School District as a substitute teacher or not take a seat as a School District Trustee.

COMMENT

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

DATED: January 3, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO G. RECANZONE, Vice Chairman