

**Abstract of Opinion No. 99-06**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**  
**In the Matter of the Request for Opinion by a Public Officer**

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by Ms. A.. Ms. A serves as an officer for a utility district ("District"). Ms. A has a family member who has been employed with the District for many years prior to Ms. A's election to the District.

The issue presented by Ms. A is whether or not she can continue acting as officer for the District because, in certain situations, she would be responsible for supervising her relative's job performance and responsibilities.

A hearing on the opinion request was held on April 15, 1999. Ms. A appeared and presented testimony. She did not waive her statutory confidentiality, so the proceeding was not open to the public.

Based on the foregoing, the Commission makes the following Findings of Fact, Conclusions of Law, and Opinion.

**FINDINGS OF FACT**

1. Ms. A became a member of the District in the mid 1990's.
2. Ms. A has a relative who has been employed by the District since well before Ms. A became involved with the District.
3. When the President of the District is out of town, Ms. A assumes the President's duties and responsibilities.
4. These responsibilities may include supervising her relative and the duties performed for the District.
5. In the past, Ms. A has always disclosed and abstained from voting from any matter that directly or indirectly concerned her relative.

**OPINION**

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Ms. A is a public officer as defined in NRS 281.4365.

NRS 281.210 and NRS 281.501 contain the relevant statutory provisions in this matter. In pertinent part, NRS 281.210(1) states:

Except as otherwise provided in this section, it is unlawful for any person acting as a school trustee, state, township, municipal or county officer, or as an employing authority of the University and Community College System of Nevada, any school district or of the state, any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the State of Nevada, or any county, township, municipality or school district thereof, or the University and Community College System of Nevada, any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

However, in this instance, Ms. A's relative was employed by the District prior to her becoming a member of the District. As such, AGO 178 (August 31, 1960) states that a person, within the third degree of consanguinity or affinity to a member thereof, who was employed at the time of the election of his relative to the appointing authority, may continue in such employment. Therefore, NRS 281.210 does not pose a problem.

In pertinent part, NRS 281.501(3) states:

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. Except as otherwise provided in subsection 6, 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 President 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.

Throughout her tenure with the District, Ms. A has properly disclosed and abstained from any and all matters regarding her relative's work performance and responsibilities. This has included matters regarding compensation. As such, Ms. A has fulfilled the letter and the spirit of NRS 281.501.

Therefore, the ultimate question before the Commission is whether Ms. A should continue with her officer role for the District when the potential exists that she could ultimately, although remotely, find herself in the position of supervising her relative's work.

We find that in order to avoid placing herself in this type of situation, it would be best if Ms. A resigned her officer position for the District. However, this does not mean that Ms. A has to resign her position with the District. It simply means she should not serve as an officer for the District.

### **CONCLUSION**

The Commission finds that in order to alleviate the appearance of impropriety or an actual ethical violation, Ms. A should resign her officer position with the District. However, Ms. A will still be able to serve the District as an elected member. If Ms. A is not an officer for the District, she will not find herself in the position of supervising her relative when the President of the District is out of town or the President is unable to fulfill his duties.

### **COMMENT**

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of the NRS 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: January 24, 2000.

NEVADA COMMISSION ON ETHICS

By: Mario Recanzone, Vice Chairman