

## **Abstract of Advisory Opinion No. 99-31**

### **BEFORE THE NEVADA COMMISSION ON ETHICS In the Matter of the Request for Advisory Opinion of Public Officer**

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by a public officer, Ms. A. Ms. A is an elected official and serves as Chairperson of a governmental committee ("Committee"). Ms. A is also an attorney who is a partner in a private law firm.

During the 70th Session of the Nevada Legislature, Mr. B introduced a bill that dealt with some of Ms. A's clients (Bill B). Pursuant to properly enacted rules, Ms. A's Committee has jurisdiction over all bills concerning this type of matter. As such, this bill was properly referred to Ms. A's committee.

As chair of the Committee, Ms. A was responsible for scheduling hearings on all bills before the Committee, including Bill B. Accordingly, Bill B was scheduled for a hearing. During that meeting, Ms. A disclosed that her law firm had two partners that represented this type of client but that she felt it would not affect her ability to participate in the matter.

The Committee held a work session where Bill B was discussed. Prior to the work session, Ms. A learned that a proposed amendment to Bill B would create a conflict of interest for her. As such, before the Committee heard any testimony on Bill B, Ms. A stated on the record that her law firm represented many clients of this nature, some of whom might be negatively affected by Bill B. Furthermore, Ms. A indicated that she would not be participating in the consideration of, discussion, or voting on the bill. After doing this, Ms. A turned the meeting over to the Vice-Chairman of the Committee and left the hearing room.

The Committee held another work session where Bill B was discussed. Before any discussion began on Bill B, Ms. A stated that she would not be voting on the proposed amendments as they created a conflict for her and that the Vice-Chairman would be handling this portion of the work session. During this meeting, however, Ms. A participated in discussing and voting on portions of Bill B that did not create a conflict for her. When a vote was taken on the entire bill, due to her conflict, Ms. A did not vote. When the Committee's recommendation to amend and do pass Bill B was reported to the full Senate, Ms. A disclosed that the bill could benefit two of her clients and she abstained from voting upon the amendment recommended by the Committee since the amendment contained issues causing Ms. A the conflict.

Subsequently, Bill B was read a third time and considered for final passage. At that time, Ms. A again disclosed the nature of her conflict and abstained from voting on the bill. The bill passed unanimously.

Specifically, Ms. A asked whether her actions in participating in portions of Bill B that she did not have a conflict with violated any provision contained in NRS 281.501.

A hearing on the opinion request was held on July 16, 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 is an elected official and Chairperson of a governmental committee ("Committee").
2. She is also a partner in a private law firm.

3. Mr. B introduced a bill (Bill B) dealing with some clients that Ms. A and her firm represented. This bill was properly referred to Ms. A' Committee.
4. Ms. A learned that an amendment was being proposed to Bill B that would create a conflict of interest for her.
5. When the proposed amendments to Bill B were going to be discussed, Ms. A disclosed her conflict and abstained from any participation by turning the matter over to the Vice-Chairman and leaving the room.
6. Another work session transpired. Before any discussion began on Bill B, Ms. A stated that she would not be voting on the proposed amendments and that the Vice-Chairman would be handling this portion of the work session. During this meeting, however, Ms. A participated in discussing and voting on portions of Bill B that did not create a conflict for her. When a vote was taken on the entire bill, due to her conflict, Ms. A did not vote.
7. When the Committee's recommendation to amend and do pass Bill B was reported to the full Senate, Ms. A disclosed that the bill could benefit two of her clients and she abstained from voting upon the amendment recommended by the Committee since the amendment contained issues causing Ms. A the conflict.
8. Bill B was read a third time and considered for final passage. At that time, Ms. A again disclosed the nature of her conflict and abstained from voting on the bill. The bill passed unanimously.

## 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 281.501 (2) and (3) contain the relevant statutory provisions in this matter. They provide:

(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 or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interest to which the member is committed in a private capacity 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. 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 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 question before the Commission is whether Ms. A participated in any portion of Bill B when she realized that certain portions of the proposed amendment created a conflict of interest for her.

In this specific incident, we find that Ms. A's actions did not constitute a technical violation of NRS 281.501(2) and (3). Furthermore, the Commission commends Ms. A for seeking advice from this Commission. However, the Commission wishes to make it abundantly clear that, in the future, it is going to take broad views of the terms "matter" and "participation" as used in NRS 281.501.

In other words, a bill should be viewed in its entirety, including any and all proposed amendments. Government officials cannot, and should not, pick and choose which portions of a bill they wish to discuss and vote upon. A bill should be viewed as a whole rather than a sum of its parts. If a portion of a bill, including any proposed amendment, creates a conflict, it must be disclosed and the government officials must not participate in, or vote on any matter having to do with the entire bill. This would include the scheduling of hearings and work sessions regarding the bill.

### **CONCLUSION**

In this specific incident, we find that Ms. A's actions did not constitute a technical violation of NRS 281.501 (2) and (3). However, the Commission wishes to state that a broad and expansive reading of NRS 281.501 is required in this type of situation. If a portion of a bill, including any proposed amendments creates a conflict, the government official must disclose the conflict and must refrain from participating with anything having to do with the matter.

### **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.

Commissioner Bernhard did not participate in this matter.

DATED: February 5, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman