

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE OPINION REQUEST OF A PUBLIC OFFICER**

This matter came before the Nevada Commission on Ethics (hereinafter "NCOE") on Friday, January 21, 2000, for hearing on the first-party opinion request filed with the Commission by Public Officer, a member of a public board of commissioners (hereinafter "Board"), pursuant to Subsection 1 of NRS 281.511. Notice of the hearing was properly served. The hearing was closed pursuant to NRS 281.511, Subsection 5.

Public officer requested an Opinion from the NCOE regarding his personal active involvement, and that of his wife, in various interested organizations in light of NRS 281.501.2(c) and NRS 281.481.2, as recently modified by S.B. 478.

Public officer appeared in person, was sworn, and presented testimony.

The NCOE, after full consideration of the request for opinion, the testimony, and the evidence makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Public Officer is a member of the Board. He was appointed to the Board based on his active involvement in activities in which the Board is interested. The Board was created by statute and its composition is defined by statute. Its members are appointed by the governor.
2. The Board is an arm of a department of the State of Nevada created by statute to establish broad policy and adopt regulations for a division within the department. As part of its responsibilities, the Board makes decisions which involve the exercise of administrative discretion in the formulation of public policy, the expenditure of public money, and the enforcement of laws and rules of the State of Nevada within its specific area of responsibility.
3. As a member of various related organizations, public officer and his wife have been, and currently are, actively involved in efforts related to the Board's responsibilities for several years. Public officer's wife is President of a local chapter of one of the organizations and sits on a national policy setting board for that organization. These organizations have had in the past, and may have in the future, issues before the Board.
4. Some of these organizations have received grant money from the Board for specific projects. The grants are funded by the interest earned on trust account funded by license fees paid by individuals interested in participating in specific activities. In the past, if an organization in which public officer is a member has applied to the Board for a grant, public officer has disclosed his membership in the organization and abstained from voting.
5. The organizations in which public officer is involved come before the Board from time to time with recommendations for policies concerning their particular areas of interest.
6. At times an organization's position on an issue has been in conflict with that of the Department under which the Board functions. In the past, the Board's vote on such issues has been both with and against the organization.
7. Public officer has been asked to accept the chairmanship for an organization, providing assistance to local chapters with banquets, grant requests, work projects, etc.
8. In his leadership position with the organization, the Public Officer receives no salary or other compensation, but the organization will reimburse public officer for the cost of his airfare to the national convention. Public officer

receives no per them from the organization for such trips.

9. Many other members of the Board are also members of, and actively participate in, related organizations. They attend the organizations' banquets; they make cash contributions to the organizations; they donate time and things of value to the organizations. As specified Board members, their participation in such organizations is essential to understanding the various needs and issues of the activities within their responsibility.

10. Occasionally, Board members are the guests of an organization for lunch or dinner after a meeting of the organization or in connection with a field trip. Public officer has received no gift of significant value from any of the organizations in which he is a member.

### **CONCLUSIONS OF LAW**

1. Public officer is a public officer as defined by NRS 281.005 and NRS 281.4365.
2. The NCOE has jurisdiction to render an opinion in this matter pursuant to NRS 281.511(1).

**WHEREFORE**, on motion duly made, seconded, and approved by unanimous vote, the NCOE renders the following Opinion:

### **OPINION**

The Nevada Legislature has declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the role of persons who are both public servants and private citizens." NRS 281.421.

In that regard, the NCOE recently issued a comprehensive opinion on the disclosure, participation and abstention standards of public officers in light of legislative changes to NRS 281.501, which, effective October 1, 1999, defines a public officer's "commitment in a private capacity to the interests of others." See, Nev. Comm'n. on Ethics Opinion [No. 99-56](#), *In The Matter of the Opinion Request of Bruce L. Woodbury (hereinafter "Woodbury Opinion")*. The *Woodbury Opinion* is instructive on the NRS 281.501 disclosure, participation and abstention standards. Public officer is, therefore, referred to the [Woodbury Opinion](#) (a copy of which is attached hereto) for further guidance when faced with potential private/public conflict of interest decisions.

Public officer is cautioned that when, as a member of the Board, he makes a disclosure in accordance with NRS 281.501 and the [Woodbury Opinion](#), he must disclose (a) his membership, and/or that of his wife, in the particular organization or organizations to which he and/or she belong; and (b) the potential effect which the decision he is making as a public officer will have on those organizations and on him and/or his wife as a member or members of those organizations. After making such proper disclosure, on a case-by-case basis, public officer must then determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment, or that of his wife, to the organization or organizations affected by the decision being made and under the circumstances presented in the particular matter before the Board. If so, public officer must also refrain from advocating the passage or failure of the matter and abstain from voting upon the matter. Public officer's decision regarding abstention will, of course, necessarily vary depending on what issue is before the Board, the effect of public officer's vote on the organization or organizations, and public officer's private interests, and/or those of his wife, related to the organization or organizations.

As the NCOE stated in the [Woodbury Opinion](#):

Abstention in all such cases would be a safe harbor for public officers and employees. However, the public ... (and an [appointed official's appointing authority]) have an interest in matters which come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would *materially* affect one's independence of judgment. Compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and independent judgment. And, in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority. The burden, therefore is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a reasonable persons' independence of judgment would be materially affected by those private commitments." Nev. Comm'n. on Ethics, Op. [No. 99-56](#), at page 8.

Public officer is also advised to continue to exercise caution in accepting any financial benefits (e.g., meals, gifts, accommodations, etc.) offered to him by the various organizations to which he and/or his wife belong so as not to compromise his integrity and his ability to exercise his duty as a Board member to make impartial and fair-minded decisions.

**NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES WHICH DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.**

DATED: February 25, 2000

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman