

**Abstract of Opinion No. 99-63**

**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 NCOE by a public officer 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.

The public officer requested an Opinion from the NCOE regarding his ability to participate as a commissioner in the adjudication of matters pending before the commission on which he serves in three specific situations: (1) matters involving a business regulated by the commission on which he serves, the parent company of which employs the public officer's brother in another state; (2) matters which were pending before the commission on which he serves during his prior tenure as a staff member with the commission; and (3) matters in which the public officer previously participated while serving in an office of an entity which appeared before the commission.

The public officer appeared in person, was sworn, and presented testimony. An attorney for the commission was present by telephone.

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 was appointed to serve as a commissioner for a public commission.
2. Prior to his appointment as a commissioner, public officer served as a public officer and/or employee in a variety of other related and unrelated positions.
3. As a commissioner, public officer has recused himself from voting on matters before the commission in which he, in a former capacity, was even passively involved; and he has disqualified himself from participation in matters which he formerly actively investigated.
4. Business Entity is a business regulated by the commission. Public officer's brother is employed by the parent corporation of Business Entity in a capacity which will not bring the brother before the commission. As a business regulated by the commission, business entity may from time to time have matters before the commission; however, public officer does not expect that his brother will appear before the commission on such matters or provide testimony in connection therewith.

**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**

Issues identified at the beginning of this Opinion as (2) and (3) arise under NRS Chapter 233B, the Administrative Procedures Act, (specifically, NRS 233B.122). This NCOE has jurisdiction to render opinions only on issues arising under NRS Chapter 281, and it has no jurisdiction to render an opinion on an issue arising under NRS Chapter 233B. Therefore, the NCOE respectfully refers public officer to the analysis provided by the Legislative Counsel Bureau in their letter addressed to him and attached to his Opinion Request regarding those issues. Should public officer desire guidance and an opinion from the NCOE in the future on specific matters which may come before the commission on which public officer had substantive involvement in his prior capacities, he may bring those specific issues before this NCOE on a case-by-case basis to seek an opinion regarding whether or not his participation in voting on a specific matter may violate the provisions of NRS Chapter 281. Further, should public officer find himself in some other conflict of interest situation (e.g., if in one of the prior capacities he became strongly committed to a particular philosophy or position, and then a matter comes up before him as a commissioner, and he believes it is appropriate for him to disclose his strong private commitment which might affect his vote), he may wish to come before the NCOE and request guidance and an opinion on the implication of the provisions of NRS Chapter 281 to a specific situation. Public officer is respectfully referred for guidance to the disclosure/participation/abstention standards of NRS 281.501 (as modified by the Nevada Legislature in 1999 by S.B. 478) and the NCOE's construction of those standards in its [Opinion No. 99-56](#) (hereinafter the "*Woodbury Opinion*").

With regard to the issue identified at the beginning of this Opinion as (1), the NCOE again refers public officer to the provisions of NRS 281.501 (as modified by the Nevada Legislature in 1999 by S.B. 478) and the NCOE's construction of that statute's disclosure and abstention standards in the [Woodbury Opinion](#). NRS 281.501 and the [Woodbury Opinion](#) impose on public officers broad disclosure standards which require public officer, on issues which may come before the commission involving business entity (a business regulated by the commission and the parent corporation of which employs public officer's brother in another state), to disclose at the public hearing the sibling relationship between public officer and his brother and that his brother works for the parent company of the business entity before the commission. Further, the disclosure standards require public officer to disclose the effect, if any, the matter before the commission, and public officer's vote on that matter, will have on his brother and/or on public officer's relationship with his brother. If there is no such effect, public officer is required to so state. If there is an effect, then public officer is required to identify the effect and its extent. Further, once public officer has made that broad disclosure, he must, on a case-by-case basis, analyze whether the effect of the decision he is making as a commissioner is so material that it would affect a reasonable person's independence of judgment. Based on his own analysis, public officer must decide to vote or abstain.

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.

**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