

Opinion No. 00-19

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of DAVE COOK, a public officer.

STIPULATION

WHEREAS, on June 13, 2000, a complaint was filed with the Nevada Commission on Ethics (hereinafter the "Commission") alleging that on June 9, 2000, Dave Cook, as a member of the State of Nevada Board of Education, voted on amended agenda item 6a "adoption of permanent regulation language, NAC 389, Content/Performance Standards for Health Education (LCB File R032-00)" in violation of Commission Advisory Opinion No. [98-70](#); and

WHEREAS, Mr. Cook acknowledges that the Commission has provided him with notice of the allegations against him and an opportunity to file a written response thereto and that he is fully advised as to the allegations asserted against him in the complaint; and

WHEREAS, on June 23, 2000, Mr. Cook filed with the Commission his written response to the allegations against him; and

WHEREAS, pursuant to NRS 281.511, the Commission's Executive Director, investigated the complaint and rendered a written recommendation that just and sufficient cause exists for the Commission to conduct a hearing and render an opinion in this matter; and

WHEREAS, on June 30, 2000, a two-member Commission panel reviewed the complaint, the written response thereto filed by Dave Cook, and the recommendation of the Executive Director, and determined that just and sufficient cause exists for the Commission to conduct a hearing and render an opinion in this matter; and

WHEREAS, Mr. Cook represents that he is fully aware of his right to a hearing before the Commission on the allegations against him and that he is fully aware of any and all rights he may be accorded pursuant to Chapter 281 of the Nevada Revised Statutes (NRS), the regulations of the Commission, the Nevada Administrative Code (NRS Chapter 233B), and the laws of the state of Nevada; and

WHEREAS, Mr. Cook hereby freely and voluntarily waives his right to a hearing and any and all rights which he may be accorded herein by NRS Chapter 281, the regulations of the Commission, and the laws of the state of Nevada; and

WHEREAS, this stipulation is for the purpose of the opinion to be rendered on the specific facts and circumstance of this matter before the Commission and no inferences regarding the findings or statutes quoted herein may be drawn to apply generally to any other facts and circumstances;

NOW, THEREFORE, in consideration of the foregoing, the Nevada Commission on Ethics (hereinafter the "Commission") and Dave Cook do hereby stipulate to the following Findings of Fact, Conclusions of Law, and Opinion in this matter:

FINDINGS OF FACT

1. Dave Cook is an elected member of the State of Nevada Board of Education and one of the Board's eleven (11) members.
2. Mr. Cook's fiancée, Robinette Bacon, is a classified employee of the State of Nevada, Department of Education.

3. On November 5, 1998, Mr. Cook requested from the Commission a confidential Advisory Opinion (Opinion No. [98-70](#)) addressing the question of whether the fact that his fiancée, Robinette Bacon, works in the Department of Education for the State of Nevada while he serves on the Board of Education for the State of Nevada creates an ethical conflict of interest.
4. On May 17, 1999, the Commission rendered Confidential Advisory Opinion No. [98-70](#), which concluded:

"Based on the record, the Commission concludes that in order for Mr. Cook to comply with NRS 281.501 and NRS 281.481(2) he should disclose and abstain, at the least, from voting on all issues pertaining to the Superintendent, her performance evaluations and budgetary issues involving his fiancée's program within the Department as outlined in the opinion above. Mr. Cook must be mindful that there may be other issues which require disclosure and/or abstention using the foregoing analysis."
5. Subsequently, the status of Advisory Opinion No. [98-70](#) changed from confidential to non-confidential pursuant to the provisions of Subsection 5 of NRS 281.511.
6. In 1997, the Legislature created the Council to Establish Academic Standards in Public Schools (hereinafter the "Standards Council"). The 1997 Legislature also mandated that "the state board [State Board of Education] **shall** adopt the standards of content and performance established by the council," which mandate was not changed by the 1999 Legislature. Based upon that mandate, the Nevada Attorney General's Office, on November 29, 1999, issued an opinion to the Superintendent of Public Instruction concluding that "the recourse of Board [of Education] members who find standards developed and approved by the Standards Council to be unapprovable is to: (1) resign from office if the member cannot in good faith act to adopt standard that are repugnant to him or her; (2) carry out the command of the legislation under public protest; (3) make an effort to influence the results of the work of the Standards Council, before the Standards Council makes its decision; (4) if after the fact, request the council to reconsider its decision; and (5) seek relief from the next legislative session."
7. Ms. Bacon facilitated one of the Standards Council Health and Physical Education Writing for Academic Standards teams, which wrote some of the standards the Board of Education was mandated to approve.
8. At the March 18, 2000, Board of Education meeting, Ms. Bacon reviewed for the Board of Education the changes to the Health Standards approved by the Standards Council.
9. At the March 18, 2000, Board of Education meeting, Mr. Cook and all other Board members voted unanimously to adopt the revisions to regulation, NAC 389, Content and Performance Standards for Health, Physical Education, and Computer and Technology Education.
10. Following the vote, Mr. Cook made the following statement:

"Because I am under an ethics ruling and, under other circumstances I would have abstained since Robinette Bacon was a facilitator of the health team. However, I think the overriding consideration is that the Legislature mandated that we vote to accept these standards. I don't want to send the wrong message or a confusing message, but I do want to make a public record note that I am mindful of my ethics obligation. I think the overriding consideration was their [the Legislature's] mandate to approve."
11. At the June 9, 2000, Board of Education meeting, Mr. Cook and all other Board members voted unanimously to approve the standards approved by the Standards Council as Board of Education regulations. After the vote, Mr. Cook stated:

"For the record, again following the ethics ruling from a year ago, I recognize my obligations in

terms of those programs affecting my fiancée. However, as I stated in March, I feel compelled to vote positively based upon the obligation the Legislature placed upon us to support these, with that disclaimer."

CONCLUSIONS OF LAW

1. Dave Cook is a public officer as defined by NRS 281.005 and NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465(1)(a) and NRS 281.511(2)(b).

OPINION

1. Mr. Cook is required, pursuant to the Commission's Advisory Opinion [98-70](#), to analyze issues as they come before the Board and "make a reasonable determination as to whether his relationship with Ms. Bacon would tend to influence his vote-making decision or whether there would be an appearance that his vote would be influenced by his private relationship with her."
2. Mr. Cook was required, pursuant to Subsection 3 of NRS 281.501, to disclose sufficient information" about Ms. Bacon's participation as a facilitator for one of the Standards Council Health and Physical Education Writing for Academic Standards teams, which wrote some of the standards the Board of Education was mandated to approve, and his relationship with Ms. Bacon, to inform the public of the potential effect, if any, of Mr. Cook's action upon Ms. Bacon, at the time the matter was considered by the Board.
3. Mr. Cook failed to comply with the disclosure requirements of Subsection 3 of NRS 281.501 on March 18, 2000, and June 9, 2000, at the time the Board was considering the adoption of the standards approved by the Standards Council.
4. Mr. Cook's failure to comply with the disclosure requirements of Subsection 3 of NRS 281.501 was not willful in that he made a good faith effort to comply with the Commission's Advisory Opinion No. [98-70](#), but the matter was complicated by the Legislature's mandate that he, as a member of the State Board of Education, vote to adopt the standards approved by the Standards Council. Further, Mr. Cook relied on the November 29, 1999, opinion letter issued by the Attorney General's office in deciding that the requirements of the Commission's Advisory Opinion No. [98-70](#) did not apply to the matter of adopting the standards approved by the Standards Committee as mandated by the Legislature.
5. The Commission's Advisory Opinion No. [98-70](#) did not require Mr. Cook to abstain from voting on adoption of the standards approved by the Standards Council at the March 18, 2000, and June 9, 2000, Board of Education meetings because the matter before the Board did not pertain "to the Superintendent, her performance evaluations and budgetary issues involving his fiancée's program with the Department as outlined in [Opinion [98-70](#)]."

CONTINGENCY

This stipulation is subject to the approval of the Nevada Commission on Ethics in open meeting. If the Commission does not adopt this stipulation as its Opinion, the matter will proceed to a hearing before the Commission and this stipulation shall be of no force or effect for either party, nor shall it be admissible for any purpose.

ACCEPTANCE

I have read the above Stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED: August 1, 2000.

/s/ DAVE COOK, Member, State of Nevada Board of Education

/s/ MELANIE MEEHAN-CROSSLEY, Deputy Attorney General, State of Nevada, Government Affairs Section,
Attorney for the State Board of Education

ADOPTION BY COMMISSION

The foregoing Stipulation is adopted as the Findings of Fact, Conclusions of Law and Opinion of the Nevada Commission on Ethics in this matter and shall become effective on the 11th day of August, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman