

**Advisory Opinions No. 03-43 and 03-44**  
**IN THE MATTER OF THE REQUESTS FOR ADVISORY OPINION OF**  
**JOHN LOURITT and KEITH ROMAN, Members, Douglas County School Board**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on Thursday, November 13, 2003, on the requests for advisory opinion filed pursuant to NRS 281.511, Subsection 1, by John Louritt and Keith Roman, Members, Douglas County School Board. The requests for advisory opinion were consolidated for purposes of hearing and rendering an opinion on the matter.

The matter was properly noticed. Mr. Louritt and Mr. Roman expressly waived the confidentiality provisions of NRS 281.511(5) and requested that this matter be public. Mr. Louritt and Mr. Roman appeared in person and were sworn and presented testimony. Also present in person was Michael Smiley Rowe, Esq., counsel to the Douglas County School Board, who provided a statement and information.

Mr. Louritt and Mr. Roman request the Commission's advisory opinion addressing the same issue: Do the provisions of NRS 281.501 require him to abstain from participating in deliberations and voting on collective bargaining agreements because his spouse is a member of the collective bargaining unit being discussed and/or voted upon?

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. In his public capacity, Mr. Louritt is an elected member of the Douglas County School Board.
2. In his public capacity, Mr. Roman is an elected member of the Douglas County School Board.
3. The Douglas County School Board consists of seven elected members and is the governing body of the Douglas County School District, a local government employer.
4. Mr. Louritt's wife is employed by the Douglas County School District as a classified staff member. She is represented by the Douglas County Support Staff Organization, a collective bargaining unit.
5. Mr. Roman's wife is employed by the Douglas County School District as a certified teacher. She is represented by the Douglas County Professional Education Association, a collective bargaining unit.
6. The Douglas County Support Staff Organization and the Douglas County Professional Education Association negotiate with the Douglas County School Board collective bargaining agreements on behalf of the members they represent. The collective bargaining agreements include salaries, benefits, and grievance procedures for all members of the collective bargaining units.
7. Collective bargaining agreements between the Douglas County School Board and the collective bargaining units are negotiated by the Douglas County Human Resources Department and approved by the Douglas County School Board in executive session.
8. When a matter comes before the Douglas County School Board that concerns issues involving a collective bargaining agreement affecting Mr. Louritt's wife, it is Mr. Louritt's practice, on advice of counsel for the Douglas County School Board, to disclose his marital relationship and his abstention in the matter and leave the room during

the board's discussion and vote on the matter.

9. Mr. Louritt believes that, as an elected member of the Douglas County School Board, he should be allowed to remain in the room during the board's discussion and action on a matter involving a collective bargaining agreement (even if the collective bargaining agreement before the Douglas County School Board affects his wife) so that he may, after disclosing his marital relationship, represent his constituents by participating in the board's discussion of the collective bargaining agreement, but abstain from voting thereon.

10. When a matter comes before the Douglas County School Board that concerns issues involving a collective bargaining agreement affecting Mr. Roman's wife, it is Mr. Roman's practice, on advice of counsel for the Douglas County School Board, to disclose his marital relationship and his abstention in the matter and leave the room during the board's discussion and vote on the matter.

11. Mr. Roman believes that, as an elected member of the Douglas County School Board, he should be allowed to remain in the room during the board's discussion and action on a matter involving a collective bargaining agreement (even if the collective bargaining agreement before the Douglas County School Board affects his wife) so that he may, after disclosing his marital relationship, represent his constituents by participating in the board's discussion of the collective bargaining agreement and voting on the matter.

### **CONCLUSIONS OF LAW**

1. In their capacities as elected members of the Douglas County School Board, Mr. Louritt and Mr. Roman are both "public officers" pursuant to NRS 281.4365.

2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and unanimously approved, the Commission renders the following Opinion:

### **OPINION**

In general, the Nevada Legislature's declaration of public policy concerning Nevada's Ethics in Government Law (NRS 281.411-281.581) offers important guidance to public officers.

In enacting Nevada's Ethics in Government Law, the Nevada Legislature 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.

The apparent intent of the ethical standards provided in NRS Chapter 281 is to prevent public officers and employees from becoming involved in situations generating conflicts between private and public interests so as to preserve and enhance impartiality of public officers and faith in the integrity of government.

In performing their public duties, therefore, public officers must be mindful of the Nevada Legislature's public policy declarations of NRS 281.421 and conduct themselves to avoid conflicts between their private interests and those of the general public whom they serve.

NRS 281.501 requires public officers to adequately disclose private interests and commitments when considering matters before them and, as appropriate, refrain from advocating the passage or failure of matters<sup>[1]</sup> and abstain from voting on matters when the independence of judgment of a reasonable person in their position would be materially affected by such personal commitments and/or interests.

NRS 281.501, Subsection 2, provides:

...in addition to the requirements of the code of ethical standards, a public officer 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 interests 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. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

NRS 281.501, Subsection 4, provides:

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 sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his 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. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

NRS 281.501(8) defines "commitment in a private capacity to the interests of others" as a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

In its Abstract of Opinion No. [91-1](#), the Commission addressed the disclosure and abstention standards of NRS 281.501 specifically as they related to a member of a school board whose spouse was a classified employee of the local school district. In that opinion, the Commission held:

- When the matter of approval/disapproval of a negotiated collective bargaining agreement for school district classified employees comes before the school board, a member of the school board whose spouse is a school district classified employee must disclose the full nature and extent of the school board member's interest in the collective bargaining agreement, i.e., the spousal relationship with a classified school district employee, the percentage of the total household income the spouse's salary constitutes, and the school board member's fifty percent community property interest therein. The school board member must also abstain from voting on the matter.
- When the subject of approval/disapproval of a negotiated collective bargaining agreement for school district certified employees comes before the school board, a member of the school board whose spouse is a school district professional employee must disclose the full nature and extent of the school board member's interest in the collective bargaining agreement, i.e., the spousal relationship with a classified school district employee, the percentage of the total household income the spouse's salary constitutes, and the school board member's fifty percent community property interest therein. The school board member must also abstain from voting on the matter.
- When the matter of approval/disapproval of a school district's budget comes before the school board, a school board member whose spouse is employed by the school district as a classified or certified employee is not required to make a disclosure and is not restricted from participating in and voting on the matter. The salary of the school board member's spouse appears merely as a line item in the individual school's budget, in which the school board member holds no direct pecuniary interest, and the school board member's interest in the spouse's salary does not affect the school district budget as a whole.
- When the matter of approval/disapproval of the budget line item which represents the salary of the spouse of a member of the school board, the school board member must disclose the spouse relationship (a commitment in a private capacity to the interest of another) affecting the independence of judgment of a reasonable person in that position and abstain from participating in and voting on the matter.

Although the 1999 Legislature made minor changes to the abstention provisions of NRS 281.501, the Commission's guidance in Abstract of Opinion [91-1](#) is relevant to Mr. Louritt's and Mr. Roman's circumstances as members of the Douglas County School Board with spouses employed by the Douglas County School District when matters concerning collective bargaining agreements affecting classified and/or certified school district employees and/or school district budgets come before them. Mr. Louritt and Mr. Roman are also referred to the Commission's more recent published opinions<sup>[2]</sup> interpreting and applying the disclosure, participation, and abstention standards of NRS 281.501 since the 1999 legislative changes for general guidance.

Specifically, however, pursuant to the requirements of NRS 281.501(2), when a collective bargaining agreement that affects Mr. Louritt's spouse (who is as a classified employee of the Douglas County School District) and/or Mr. Roman's spouse (who is employed as a certified teacher for the Douglas County School District) comes before the Douglas County School Board, Mr. Louritt or Mr. Roman, as the case may be, must, after making a proper disclosure pursuant to NRS 281.501(4) and the Commission's published opinions interpreting those disclosure standards, (a) refrain from advocating the passage or failure of the matter and (b) abstain from voting on the matter.

<sup>[3]</sup>

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT 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: January 22, 2004.

NEVADA COMMISSION ON ETHICS

By: /s/ RICK HSU, Acting Chairman

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[1] The Commission previously distinguished impermissible advocacy from permissible participation as follows: “Our analysis, therefore, must seek to discern between those acts that would constitute impermissible advocacy and those acts that would be permissible participation. We think the line is most evident through illustration. For example, if [public officer] were an applicant for a permit before her own County Commission, she would be required by NRS 281.501(2) and (3) to disclose her interest and abstain from voting on or advocating for the passage of her permit **as a County Commissioner**, but she could step out into the audience and testify regarding her permit **as the applicant**. We see nothing in NRS 281.501(2) and (3) or elsewhere in the Ethics in Government Law that would compel the conclusion that once [public officer] became a County Commissioner, she became barred for the remainder of her term from participating in the ordinary processes of...county government as any other citizen would. Such a conclusion would be absurd and would severely restrict the pool of potential candidates for any office.” Nevada Commission on Ethics Opinion No. 97-07.

[2] See, e.g., Nevada Commission on Ethics Advisory Opinions No. [99-56](#) (Woodbury) and No. [03-34](#) (Boggs-McDonald). All of the Commission’s published opinions are available on the Commission’s website, <http://ethics.state.nv.us>.

[3] The provisions of NRS 281.501 do not require a public officer who is refraining from participating in the discussion of, and abstaining from voting on, a particular matter to leave the room while the public body considers and votes on the matter.