



**STATE OF NEVADA
COMMISSION ON ETHICS**

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE REQUEST
FOR AN ADVISORY OPINION OF
LAURAYNE MURRAY, Town Board Member
Pahrump Town Board**

Advisory Opinion No. 06-03

This matter came before the Nevada Commission on Ethics (hereinafter the “Commission”) for a hearing on March 9, 2006, on the request for an advisory opinion filed with the Commission by Laurayne Murray, Town Board Member, Pahrump Town Board (hereinafter “Town Board”).

The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511(5). Ms. Murray appeared in person, was sworn, and presented testimony. After the hearing, Ms. Murray waived confidentiality with regard to this matter.

Ms. Murray sought an opinion from the Commission determining whether the provisions of NRS 281.501 prevent her from participating and voting on matters relating to the Pahrump Valley Fire and Rescue Service (hereinafter “PVFRS”) that come before the Pahrump Town Board.

After full consideration of the request for an advisory opinion and considering all of the facts and circumstances presented, the Commission deliberated and orally advised Ms. Murray of

its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. At the time of the hearing, Ms. Murray was serving as a member of the Town Board.
2. The Town Board establishes the town budget and disburses tax revenues for the unincorporated Town of Pahrump. Part of the Town Board's responsibility includes making decisions regarding expenditures for PVFRS.
3. Ms. Murray's husband, Timothy Murray, is employed by PVFRS as an Emergency Medical Technician/Fire Fighter.
4. Mr. Murray serves as Vice-President of the International Association of Fire Fighters (IAFF) Local #4068.
5. On behalf of the union (IAFF), Mr. Murray is on the negotiation team for the labor agreement between PVFRS and the Town of Pahrump. On behalf of the Town of Pahrump, a representative for the Town of Pahrump and the Town Attorney are on the negotiation team for the same labor agreement.
6. The Town Board has the final authorizing vote for the labor agreement with the IAFF Local #4068 but is not part of the negotiation team.

CONCLUSIONS OF LAW

1. At the time of the hearing, in her capacity as Town Board member, Ms. Murray was a public officer as defined in NRS 281.4365.
2. The Commission has jurisdiction over this matter pursuant to NRS 281.511(1) and NRS 281.521.

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

OPINION

The principal issue in this opinion is whether NRS 281.501 (“the disclosure and abstention provisions”) prevents Ms. Murray from participating and voting on matters related to PVFRS that come before the Town Board. Additionally, the Commission opines as to the propriety of Ms. Murray’s participation in confidential meetings pertaining to collective bargaining as it relates to PVFRS.

Participation in Open Meetings:

The Ethics in Government Law provides that public officers must adequately disclose private interests, and where appropriate, pursuant to NRS 281.501, abstain from acting on a matter.

NRS 281.501, subsection 1 provides:

Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

NRS 281.501, subsection 2 provides, in part:

...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.¹

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

¹ NRS 281.501(8) defines “commitment in a private capacity to the interest 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.

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 4 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.

The Commission, in interpreting these provisions, has set out the steps that a public officer must take when making disclosure and abstention decisions. In the Commission on Ethics Opinion 99-56 (the “Woodbury Opinion”) the Commission opined that Mr. Woodbury, a Clark County commissioner, whenever his son or his son’s employer would come before the Clark County Commission, would have to take the following steps:

“In some cases, Commissioner Woodbury's detailed disclosures may show the appropriate separation between his role as a County Commissioner and his role as a father. In other cases, however, abstention may also be required...[D]isclosure is required whenever a public officer's actions

would "*reasonably* be affected by his [private] commitment" to the interests of others, ... while a reasonable person's independence of judgment must "...be *materially* affected by..." that private commitment before abstention is also necessary.

The Commission further addressed the dangers of using abstention as a safe harbor:

“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.” (Original emphasis.)

As a member of the Town Board, Ms. Murray is a public officer who must commit herself to avoid conflicts between her private interests and those of the general public whom she serves. With that in mind, when she makes disclosure and abstention decisions whenever her husband or the PVFRS appears in a representative capacity before the Town Board, the burden is on Ms. Murray to follow the necessary steps outlined in the Woodbury Opinion.

In addition to being guided by the disclosure and abstention standards of NRS 281.501, as interpreted by the Woodbury Opinion, Ms. Murray should consult with legal counsel for the Town Board whenever possible.²

Ms. Murray's disclosure, which must be made at the time a matter is being considered, is required whenever her actions would “reasonably” be affected by her commitment to her husband. However, the matter of abstention must be assessed by Ms. Murray on a case-by-case basis. Ms. Murray's abstention is mandatory whenever a reasonable person's independence of judgment would be “materially” affected by her commitment to the interest of her husband. In other words, she must disclose and abstain where the resulting benefit or detriment accruing to

² NRS 281.551(5) provides: “An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements: (a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471; (b) He was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and (c) He took action that was not contrary to a prior published opinion issued by the Commission.

her husband is greater than that accruing to any other member of the general business, profession, occupation or group.

Although there is a presumption under NRS 281.501(2) that the independence of judgment of a reasonable person would not be materially affected by his private interest where the resulting benefit or detriment accruing to him or his private interest is not greater than that accruing to any other member of the profession, occupation or group, this does not mean that the public officer doesn't have to disclose his interests. Therefore, if a matter is before the Town Board and the resulting benefit or detriment accruing to Ms. Murray or Mr. Murray is not greater than that accruing to any other member of the profession, occupation or group, Ms. Murray would not need to abstain but she would still have to disclose her interest.

However, specifically, whenever the matter of the collective bargaining between PVFRS and the Town of Pahrump comes before the Town Board, the Commission advises Ms. Murray to disclose her interest and abstain. This is consistent with the Commission on Ethics Opinion 03-43/03-44 and its guidance to two school board members whose spouses were school district employees:

“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.”

Participation in Confidential Collective Bargaining Meetings:

Mr. Murray is Vice-President of the IAFF Local #4068 which represents the interests of the fire fighters at the PVFRS. Mr. Murray is also the representative for the IAFF on the

negotiation team for the labor agreement between the PVFRS and the Town of Pahrump. Essentially, in negotiations, Mr. Murray sits across the table from the Pahrump representative and the Pahrump Town Attorney. The Pahrump representative and the Town Attorney conduct informative meetings with the Town Board where matters concerning the ongoing labor negotiations are discussed.

Although nothing in the record suggests that Ms. Murray has breached her duty of confidentiality, Ms. Murray's participation in confidential meetings discussing the ongoing labor negotiations with the IAFF while Mr. Murray is on the negotiation team, would, at the very least, give the appearance of impropriety. To avoid this appearance, the Commission recommends that Ms. Murray refrain from participation in such confidential meetings. One of the ways to do so would be not to attend at all. This recommendation is consistent with the legislature's declaration when enacting the Ethics in Government Law that "it is 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. A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves."³

Therefore, with regard to open meetings of the Town Board, the Commission advises Ms. Murray to be guided by the abstention and disclosure provisions of the Ethics in Government Law as interpreted by the Woodbury Opinion whenever issues pertaining to the PVFRS come before the Town Board. However, whenever the issue of collective bargaining between the Town of Pahrump and the PVFRS is before the Town Board, the Commission advises Ms. Murray to disclose her interest and abstain. With regard to Ms. Murray's participation in confidential meetings regarding the collective bargaining negotiations between

³ See, NRS 281.421.

Pahrump and PVFRS, the Commission recommends that Ms. Murray refrain from participation due to the appearance of impropriety.

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: October 20, 2006.

NEVADA COMMISSION ON ETHICS

By: [Caren Jenkins](#)
Caren Jenkins, Chairman