



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Opinion Concerning the Conduct of
LAURAYNE MURRAY, Member,
Pahrump Town Board, Nye County,
State of Nevada,**

**Request for Opinion
No. 08-07C**

Subject.

_____ /

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on June 30, 2008, pursuant to allegations in a Request for Opinion (ethics complaint) filed on March 31, 2008 and a Commission panel finding just and sufficient cause for the Commission to render an opinion on whether Pahrump Town Board member Laurayne Murray (Murray) violated the Ethics in Government Law (Ethics law).

Murray was present and provided sworn testimony. The following witnesses appeared and provided sworn testimony: John McDonald, Vice Chair for the Pahrump Town Board; Carl Joerger, Legal Counsel for the Pahrump Town Board; Dan Sprouse, Pahrump Town Board member; Dan Rust, Pahrump Town Board member.

The issues before the Commission are whether: (1) Murray violated NRS 281A.400.2, when she allegedly used her position to benefit herself and/or her husband when she attended a closed session of the March 11, 2008 Pahrump Town Board (Board) meeting; (2) Murray violated NRS 281A.420.2 and/or NRS 281A.420.4 for allegedly failing to comply with the requirement to disclose her private commitment to her husband and abstain from participating at

the March 11, 2008 Board meeting on matters where the independence of judgment of a reasonable person in her situation would be materially affected by her private commitment; and (3) Murray failed to comply with a previous binding Commission advisory opinion (Opinion No. 06-03), pursuant to NRS 281A.440.1(a).² Opinion No. 06-03 advises Murray to refrain from participating in confidential meetings concerning collective bargaining negotiations between the Town of Pahrump and the Pahrump Valley Fire and Rescue Service's (PVFRS) local union, the IAFF.

After fully analyzing all of the facts and testimony presented, the Commission deliberated and orally advised Murray of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. Murray is a member and the current chair of the Pahrump Town Board.
2. Tim Murray (Tim), Murray's husband, is a fire fighter. Additionally, Tim is the president of the local IAFF and the representative for the PVFRS.
3. In 2006, Murray sought an advisory opinion from the Commission as to whether the Ethics law prohibited her from participating or voting on matters relating to the PVFRS that come before the Board.
4. The Commission, in Opinion No. 06-03, under the section titled "participation in confidential collective bargaining meetings," opined:

Murray's participation in confidential meetings discussing the ongoing labor negotiations with the IAFF while Tim 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.
5. Murray interprets "collective bargaining meetings" as used in Opinion No. 06-03 as meetings that discuss the labor contract itself and not negotiations dealing with other labor matters such as disciplinary actions or settlement thereof.

6. Tim was scheduled to make a presentation at the closed session of the March 11, 2008 Board meeting. Murray was aware that the presentation was not concerning the PVFRS labor contract itself.
7. Prior to the March 11, 2008 Board meeting, Murray sought the opinion of the Board's legal counsel on whether Murray could attend the closed session portion of the meeting.
8. Carl Joerger (Joerger), the Board's legal counsel, advised Murray that Opinion No. 06-03 did not prohibit Murray from attending the closed session of the March 11, 2008 Board meeting.
9. Prior to going into the closed session of the March 11, 2008 Board meeting, Murray publicly disclosed her private interests to Tim.
10. During the closed session of the March 11, 2008 Board meeting, Tim, as representative for the IAFF made a presentation to the Board. The purpose of Tim's presentation was to relay a settlement offer from the IAFF to the Board on a disciplinary matter involving two PVFRS employees. The settlement offer was to settle the disciplinary matter to avoid arbitration costs associated with it.
11. After Tim left the closed session of the March 11, 2008 Board meeting, the Board members in attendance at the closed session received guidance from Joerger on the settlement offer made by Tim.

CONCLUSIONS OF LAW

1. As a member of the Pahrump Town Board, Murray is a public officer, as defined by NRS 281A.160.
2. Murray did not violate NRS 281A.400.2. Insufficient evidence exists to support the allegation that Murray used her position in government to benefit herself or her husband.
3. Murray did not violate NRS 281A.420.4, as she publicly disclosed her private commitment to Tim prior to attending the closed session of the March 11, 2008 Board meeting.

4. Murray did not violate NRS 281A.420.2 by failing to abstain from voting because no vote was taken.

5. Murray did not fail to comply with Opinion No. 06-03. Murray understood that she was to abstain from participating in closed meetings dealing solely with the labor contract itself.

DISCUSSION

It should be noted that this opinion applies only to the specific facts and circumstances described herein. Facts and circumstances that differ from those in this opinion may result in an opinion different from this opinion.

The first issue is whether Murray violated NRS 281A.400.2 during the March 11, 2008 Board meeting when she allegedly used her position as Pahrump Town Board Chair to benefit herself and/or her husband.

NRS 281A.400.2 provides:

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection: (a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420. (b) "Unwarranted" means without justification or adequate reason.

Insufficient evidence exists to show Murray used her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself or for her husband at the March 11, 2008 Board meeting. Therefore, this allegation is dismissed.

The second issue is whether Murray violated NRS 281A.420.2 and/or NRS 281A.420.4, during the March 11, 2008 Board meeting, by failing to disclose her private commitment to her husband and/or by failing to abstain from acting on a matter in which a reasonable person in her position would be materially affected by her private commitment.

NRS 281A.420.4 provides in relevant part:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

...
(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...commitment or interest to inform the public of the potential effect of the action or abstention upon the person...to whom he has a commitment, or upon his interest...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.

Prior to going into the closed session of the March 11, 2008 Board meeting, Murray publicly disclosed her private commitment to her husband, Tim, who was going to be making a presentation concerning PVFRS employees. Therefore, Murray complied with the disclosure requirement in NRS 281A.420.4. The allegation surrounding NRS 281A.420.4 is dismissed.

NRS 281A.420.2 provides in relevant part:

[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:

...
(b) His pecuniary interest; or
(c) His commitment in a private capacity to the interests of others.

Prior to the March 11, 2008 Board meeting, Murray sought legal advice from Joerger, the Board's legal counsel, as to whether Opinion No. 06-03 prohibited her from participating in the closed session of the meeting. Joerger advised Murray that Opinion No. 06-03 would not prohibit her from participating in the closed session. After the closed session, the Board took no action on the matter discussed in the closed session. Murray did not violate NRS 281A.420.2 by failing to abstain from voting because no vote was taken. Therefore, the allegation surrounding NRS 281A.420.2 is dismissed.

The final issue is whether Murray failed to comply with Opinion No. 06-03, pursuant to NRS 281A.440.1(a). When Murray requested advisory Opinion No. 06-03, the Commission

applied the facts as provided by Murray to the Ethics law. Murray specifically inquired as to whether she would be precluded from participating in confidential closed meetings where labor negotiations pertaining to the labor contract between Pahrump and the IAFF were considered and where her husband was part of those negotiations. In Opinion No. 06-03, the Commission advises Murray to not attend such meetings. The Commission reiterates this advice.

Murray should not attend closed meetings where her husband, representing the labor union, sits across the table from her on matters pertaining to collective bargaining, which encompasses contract negotiations as well as disciplinary matters. This conduct creates at least the appearance of impropriety. Since Murray understood that she was to abstain from participating in closed meetings dealing only with the labor contract itself, the Commission finds that Murray did not fail to comply with Opinion No. 06-03. The allegations surrounding NRS 281A.440.1(a) are dismissed.

CONCLUSION

WHEREFORE, based upon a preponderance of the evidence, by a unanimous vote, the Commission finds that Murray did not violate NRS 281A.400.2, NRS 281A.420.2 or NRS 281A.420.4. Further, Murray did not fail to comply with Opinion No. 06-03. Therefore, the allegations in the ethics complaint are dismissed.

DATED: 8/6/08

NEVADA COMMISSION ON ETHICS

By: 
TIMOTHY CASHMAN, Vice Chair

¹ The following Commissioners participated in this opinion: Vice Chair Cashman and Commissioners Hsu, Kosinski and Moran. Commissioners Keele and Lamboley served as the panel in this matter. Pursuant to NRS 281A.220.4, panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

²NRS 281A.400.1(a) provides: The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances... from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee...the opinion of the Commission is: (a) Binding upon the requester as to his future conduct.