

## Abstract of Opinion No. 94-14

### BEFORE THE NEVADA COMMISSION ETHICS IN THE MATTER OF THE OPINION REQUEST REGARDING A PUBLIC EMPLOYEE/PUBLIC OFFICER

This Opinion is in response to a request filed on April 21, 1994, with the Nevada Commission on Ethics (Commission) by Public Officer A, a city public officer, concerning the future conduct of Public Officer B, a former union steward representing the county, and presently employed as a city public officer and a county public employee. Public Officer A requested that the Commission examine the propriety of Public Officer B's public position in light of the relationship between Public Officer B and a city employee with whom Public Officer B has cohabited since approximately 1987.

Public Officer A's request for an opinion was reviewed by the Commission and the Commission determined it had jurisdiction over the subject matter of the request pursuant to NRS 281.511(2).

The Commission held a just and sufficient cause hearing to determine whether to conduct a full hearing on the merits of the opinion request and issue an opinion pursuant to the provisions of NRS 281.511(2) and (5). Public Officer B was present with her counsel. Also present was the opinion requester, Public Officer A. Public Officer B stipulated to the existence of just and sufficient cause and requested that the Commission immediately proceed with the matter as a hearing on the merits. The hearing was confidential pursuant to the provisions of NRS 281.511(4) and (9) and therefore, not open to the public. The Commission now issues the Findings and Conclusion which follow.

#### FINDINGS OF FACT

1. Both the City and the County are "local government employers" as defined in NRS 288.060.[\[1\]](#)
2. For several years, Public Officer B has been employed as a secretary by the County. In that capacity, she attends County Commission meetings.
3. Six or seven years ago, Public Officer B participated in the formation of an employee organization to represent County employees in collective bargaining.[\[2\]](#) The employees of County and the employees of City and City firefighters are represented by Union Local. City firefighters and City employees union contracts are negotiated separately from County union contract.
4. Until approximately six months ago, Public Officer B served as union steward for County employees, and still pays monthly union dues as a County employee. Public Officer B's duties as union steward consisted of collecting all those complaints that County employees had concerning their employment and relaying them to the supervisor or the business representative for the union. Though primarily acting as an intermediary, she also participated in union salary negotiations for County employees with the County Commission on behalf of the union.
5. Two years ago, Public Officer B was elected to the City Council. Public Officer B also currently serves as Mayor *pro tem* of the city.
6. The Council may organize, regulate and maintain a fire department and prescribe the duties of the fire chief. NRS 266.310 (1) and (2).
7. The governing board of any incorporated city may establish, by contract or otherwise, and administer a disability pension plan or disability insurance program for the benefit of any city fireman who is disabled, to any degree, by an injury arising out of and in the course of his employment. NRS 268.406(l).
8. Prior to one year ago, City employees were not represented by a collective bargaining agent[\[3\]](#) or working as a collective bargaining unit.[\[4\]](#) Approximately one year ago, the City formally recognized the Union as the collective bargaining agent for City employees pursuant to the Local Government Employee-Management Relations Act. See NRS 288.160. The collective bargaining unit which represents City employees negotiates with City representatives concerning the employees' salaries, wage increases and benefits on a yearly basis. Though the City had not yet

entered into any negotiations or bargaining with the Union, from the time of Unit recognition forward the City could not offer or approve any wage or benefit increases to such employees without including the bargaining unit in discussions and negotiations, although the Council could continue to approve performance appraisals for non-appointed City employees. Performance evaluations and possible pay increases for appointed City employees, however, could be considered by the Council in the absence of a collective bargaining agent.

9. Each local government employer that has recognized at least one employee organization shall determine, after consultation with the recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating. The primary criterion for that determination must be the community of interest among the employees concerned. NRS 288.170(1). Fire department employees make up one collective bargaining unit within the City.

10. City collective bargaining contracts are presented to the Council for approval; County collective bargaining contracts are presented for approval to the County Commissioners. The City or County may ratify or deny any part of the negotiations contained in their respective agreements.

11. Though Union Local's business representatives for both County and City employees are the same, the union contracts for each are negotiated separately with no cooperative efforts.

12. There are approximately 35 persons employed by the City. Of these, six are appointed City officials in upper management who are exempt from the City Union. There are approximately 21 City employees who are members of the Union, five of whom are firefighters employed by the City Fire Department. Five other City employees have not joined the Union.

13. All City employee personnel matters come before the Council. Approximately 35% of Council business pertains to Union matters. This percentage of business includes the topics of personnel policy, general working conditions, closed personnel sessions, performance evaluations, merit wage increases, and employment benefits (including sick leave, funeral leave, insurance contributions, holidays and longevity compensation). The Council also considers City contracts and financial negotiations with the County concerning public safety and fire protection. NRS 277.045(1) authorizes use of Cooperative Agreements between political subdivisions for the performance of governmental functions and provisions of budget for expenses.

14. Several employee disciplinary matters have been brought before the Council by Union representatives. Public Officer B has been present during City personnel sessions of the Council which have involved Union members when Union stewards have been used. Public Officer B does not attend City Union meetings.

15. For approximately the last eight years, Public Officer B has cohabited with Mr. X, a fireman employed by the City Fire Department who has actively and successfully worked to organize employees of the City Fire Department and other City workers for Union Local, the same Union that represents County employees. Mr. X is a member of the Union for the City Fire Department and City employees and since the end of last year has served as Union steward for the City firefighters.

16. Public Officer B and Mr. X are not married. They keep their personal expenses separate and maintain separate checking accounts. Each of the children the couple have from prior marriages are raised separately and their expenses are paid separately. With the exception of money spent for groceries, there is no commingling of their separate funds. On his Public Employees Personnel Retirement System (PERS) form, Mr. X designated Public Officer B as his life insurance beneficiary, identifying her address as the same as his and describing her relationship to him as "spouse." On the same form, Mr. X reported his marital status as both "divorced" and "single." The addresses for both Public Officer B and Mr. X appear individually in the City telephone directory at the same residence.

17. Last year, the Council reviewed the personnel evaluation for Mr. Y, an employee of the City Engineering Department, and considered whether to grant him a pay increase. Public Officer B voted against any salary increase for Mr. Y, stating that although he had been doing a good job for the City, she has never been in favor of individual merit increases, instead favoring a position that all employees should get raises when pay increases were granted. A motion to approve Mr. Y's evaluation and a recommended two-step increase in salary was carried with a 3-2 decision.

18. On the same day last year, the Council reviewed the annual performance evaluation for Mr. Z, another City employee, and considered whether to grant him a wage increase. Public Officer A stated that the evaluation recommended that Mr. Z receive a two-step salary increase. Public Officer B stated she was not in favor of giving a merit increase and moved that the Council return the matter to City Board for further consideration. The motion died for lack of a second.

19. At the time of the Council's meeting the following month, the employee's Union had filed a complaint against the City based on the City's alleged failure to ratify its previously approved performance appraisals and wage increase recommendations for three employees of City Department, **following** the City's recognition of the Union.

20. During that Council meeting, the Council considered approval of performance evaluations and possible pay increases for five employees of City Department. City Attorney and City Manager explained that the Council could approve employees' evaluations but could not vote on the issue of pay increases without including the collective bargaining unit. Consequently, the Council made unanimous decisions to approve the personnel evaluations for these five employees and place them in the employees' personnel files as part of their records, but the Council did not offer any further wage or benefit increases pending discussions with the Union. However, at the same meeting the Council considered and approved the evaluation and pay increase for a sexton for the City cemetery, because he was an appointed employee and thus not subject to the discussions between the City and the Union. Public Officer B agreed that the sexton was doing a very good job, but noted she would not agree to any pay increase because she was against the award of individual merit increases. The Council thereupon voted in a 2-1 decision to grant the sexton a one-step salary increase.

21. Fourteen days later, the Council considered the approval of the personnel evaluation of Municipal Court Judge and whether to grant Judge a pay increase retroactive to the first of the month. The motion to do so was seconded by Public Officer B who voted with all other members of the Council to approve the evaluation and grant Judge a pay raise.

22. Approximately a month and a half later, the Council considered whether to approve the Union's proposed contract for a pay increase for Union Local of the Operating Engineers for City firefighters for the fiscal year. City Attorney informed the Council that in spite of the Union's complaint against the City, ongoing negotiations between City firefighters and the Union had continued. The offer that had been made by the Union that was discussed during these negotiations included the following terms:

The City will increase the pay of all fire department bargaining unit employees on [the first day of the fiscal year], 3% and the City will give an additional 2% increase on [the following January 1]. This proposal is a tentative agreement and subject to a settlement of all fire department bargaining unit employees issues negotiated and agreed to between the operating engineers local and the City. This agreement shall be in full force and effect, effective July 1, and continue in force until June 30 the following year.

City Attorney explained that although he had signed-off on the agreement as the negotiator of the City, the agreement was not final until approved by the Council. City Attorney explained that if the City could not resolve the issue of wages, pursuant to law, the City would have to engage in fact finding.<sup>[5]</sup> City Attorney stated that the proposal represented what the City had been doing with their employees over the past several years on a yearly basis and did not appear to be offensive in terms of the numbers nor the percentages that were being offered. Acceptance of the proposal would eliminate the necessity of bringing a fact finder to City at the cost to both the City and the Union of \$400 or more per day. City Attorney recommended that the Council approve the proposal.

23. Councilman made a motion to accept the contract proposal from Union Local of the Operating Engineers for the firemen for the City. The motion was seconded and unanimously approved by members of the Council, including Public Officer B. Public Officer B disclosed that although she resided with one of the firemen, because the issue pertained to a **group** of employees and not him individually, she would go ahead and vote "yes" to approve the proposal.

24. Two weeks later, the Council considered approval of the contract for a pay increase for Local Union of the Operating Engineers for City firefighters for the fiscal year. City Attorney informed the Council that his review of the contract resulted in his belief that it accurately reflected the elements of negotiation between the City and Union Local. City Attorney therefore recommended to the Council that it approve the contract. The motion to approve the

contract was carried with Public Officer B abstaining from the vote. The Council minutes do not reflect, however, that Public Officer B disclosed her relationship with Mr. X at the time the matter was considered.

25. Almost two months later, the Council considered ratification of the subject firefighters' contract with Union Local of the Operating Engineers. City Attorney informed the Council that he had recommended that Public Officer B abstain from voting on the contract because she was currently a Union steward with the same Union for the County. Mr. Olsen explained that but for the fact that the same Union was involved, he would not have provided such advice to any other Councilman. Public Officer B accordingly disclosed that she would abstain from voting on ratification of the contract because of a possible "conflict of interest" and refrained from participation in Council discussion of the matter. Public Officer B did explain that she would not have abstained but for City Attorney's recommendation. The agreement between the City and Union Local of the Operating Engineers was approved by the Council 3-1 with Public Officer B abstaining.

26. Approximately one month later, the Council considered the annual performance evaluation of and possible wage increase for City Fire Chief. City Manager recommended that Fire Chief receive a 5% step increase due to the results of his performance appraisal and a 5% merit increase because Fire Chief had under spent his estimated current fiscal year budget by 14.6% (equating to a savings of \$42,141.00). Public Officer B informed the Council that although she belonged to a Union affiliated with the City's firefighters, she still intended to vote on the instant agenda item and that she did not agree with merit increases. A motion to approve Fire Chief's evaluation and approve 5% step and merit increases carried with a 3-2 vote, Public Officer B voting against the recommendations.

27. At the Council meeting earlier this month, at which the Council considered a City contract with both firefighters and City employees in general, Public Officer B testified before the Commission that although she had abstained from voting on the firefighters' portion of the contract, she had voted on the remainder of the contract which was applicable to all City employees generally.

28. At the Commission hearing of this matter, the Union for the County was paying for the legal representation provided to Public Officer B by Attorney. Attorney does not, however, generally act as legal counsel to the Union.

## ANALYSIS AND OPINION

### I. General Ethical Principles

The Commission takes jurisdiction in this matter pursuant to NRS 281.511(2). Public Officer B is a public employee as defined by NRS 281.436 and a public officer as defined in NRS 281.4365.

NRS 281.481(1) provides that "a public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties." Moreover, NRS 281.481(2) provides that "a public officer shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person." Additionally, NRS 281.230(1) provides that "no state, county municipal district or township officer of the State of Nevada shall in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way interested or affected." Finally, NRS 268.384(1) provides that it is unlawful for any city officer to be interested in any contract made by him.

### II. Disclosure and Abstention

NRS 281.501(2) and (3)<sup>[6]</sup> provide the standards public officers must follow in discussing, advocating, voting, or otherwise acting on a matter. A financial or personal interest or commitment to the interest of another triggers disclosure or abstention requirements. With regard the issue of disclosure, NRS 281.501(3) specifies that a public officer or employee who is a member of a body which makes decisions, shall disclose his pecuniary interest or commitment in his private capacity to the interest of another at the time the matter is considered. NRS 281.501(5) specifically provides that if a member of the legislative branch is voting on a matter which affects **public employees**, he shall make a full public disclosure of any personal pecuniary interest which he may have in the matter. The

disclosure must be made in public to the chairman and other members of the body.

With regard to the issue of abstention, however, NRS 281.501(2) provides that a member of the legislative branch of government (which includes city councils) is required to abstain from voting on a matter only when her pecuniary interest, or her commitment in a private capacity to the interest of others, would **materially affect the independence of judgment of a reasonable person in her situation**. Thus while disclosure is required upon the action of any matter in which the public officer has a pecuniary interest or which would reasonably be affected by his commitment in a private capacity to the interest of others, abstention is not required as well unless the impartiality or independence of judgment of a reasonable person under those same circumstances would be **materially affected** by the officer's financial interest or commitment in a private capacity to the interest of others. The test is an objective test, not one which is personal or subjective to the individual.

#### **A. Public Officer B's Dual Public Capacities as City Councilwoman and County Employee/Union Member**

A threshold matter to resolve is whether an inherent and prohibited conflict-of-interest exists resulting from Public Officer B's simultaneous service as both a City officer and County employee. The Commission takes notice that neither the City charter nor the City Code imposes a duty upon a City official to resign her elective office under the circumstances of this Opinion request. Further, though NRS 266.410 forbids a city councilwoman from holding any other **city** office during her term,<sup>[7]</sup> there is no specific provision in Nevada law that prohibits a city councilwoman from holding any office or employment which may be affiliated with the County. Furthermore, NRS 216-255 provides that the only qualifications for the election of a city councilwoman are that she be a qualified voter within the city and within her ward.

We conclude that there is no *per se* conflict of interest resultant from Public Officer B's simultaneous service as both an elected City councilwoman and a member of the County Union as a County employee and former union steward. Union membership is not a legal disqualification for a city councilwoman. Instead, the extent to which Public Officer B's Union affiliation and relationship to Mr. X may affect her participation on the Council must be examined only on a case-by-case basis.

#### **B. The Effect of Public Officer B's Relationship With Mr. X**

The next issue is what effect Public Officer B's relationship with Mr. X will have upon her consideration of and voting upon matters before the City council.

In Opinion No. 91-1, we interpreted the Ethics Code provisions as they applied to conflict of interest questions involving a school board member and her spouse, who was a teacher in the same school district. The Commission determined that the impact of the spousal relationship upon the board member's ability to act with independence of judgment must be evaluated on an individual, case-by-case basis in light of the particular matter to be addressed. The Commission concluded that the "simple existence" of the school board member's relationship to her husband should not create a barrier to her participation in all matters which came before her as a trustee. The trustee would be required to disclose and abstain from voting on issues only in those particular instances where her spousal relationship would materially affect her independence of judgment, such as discussions and votes concerning the teacher-spouse's salary.

The Commission concludes that the decade long relationship between Public Officer B and Mr. X, especially where the couple lives together, results in Public Officer B having a pecuniary interest in Mr. X's employment, salary, benefits and earnings. That Mr. X maintains his money in a separate account does not alter our analysis. In Opinion 93-11, we opined on a situation involving a husband and wife where the wife's earnings were kept in an account separate from the husband's. In Opinion No. 93-11 we stated as follows:

That the Board Member's spouse may deposit her salary in a separately maintained bank account by itself does not render her earnings her separate property. Even if it did, or if the parties were to agree that her earnings are her separate property, her earnings constitute her ability to contribute to the support of the marital community and remain available to the community during the marriage. As such the Board Member has and maintains a pecuniary interest in her employment, salary, and earnings.

Therefore, despite any agreement by Public Officer B and Mr. X to maintain separate checking accounts, we conclude under the circumstances of this Opinion that Public Officer B has a significant pecuniary interest in Mr. X's

employment, salary, benefits, and earnings. The Code of Ethics does not mandate any particular legal relationship between a public official and another person; instead, the Code of Ethics focuses on the substance of the relationship rather than its legal status. Though we have determined previously that the relationship of husband and wife creates a commitment in a private capacity to the interest of another,<sup>[8]</sup> we have also found that the relationships of brother to sister,<sup>[9]</sup> brother to brother,<sup>[10]</sup> and cousin to cousin<sup>[11]</sup> create the commitment in a private capacity to the interest of another.

Discussing first Public Officer B's obligation to disclose pursuant to NRS 281.501(3), we conclude that when Public Officer B acts as a City councilwoman, she must disclose her pecuniary interests in the salary, benefits and earnings of Mr. X as well as her commitment in a private capacity to his interests whenever a matter involving Mr. X or the collective bargaining process with City firefighters comes before her. Such matters include, but are not limited to, the topics of labor management, collective bargaining agreements, negotiations or discussions on salaries, wage modifications, job duties, employment benefits, pension plans, disciplinary matters, grievances, arbitrations, general terms and conditions of employment, and personnel policy issues. The requirement that Public Officer B disclose the full nature and extent of her commitment and interest as a public officer of the City applies at all levels of consideration of these matters. Such disclosure is required not only prior to voting or abstaining on such issues in accordance with the discussion below, but at **each and every time** the matter is discussed or considered.

The same analysis does not hold true, however, for Council discussion of employment-related matters affecting those City employees not subject to any collective bargaining agreement or the collective bargaining process for **other** City bargaining units of the Union (those which do not specifically represent the interests of City firefighters) or the budgetary process for City employees as a whole. When considering City employment-related issues on a general basis, we find that Public Officer B's interest in the budget is so attenuated that it does not rise to the level of a significant pecuniary interest or commitment in a private capacity to the interest of others such that disclosure is mandated.

The analysis of whether and when Public Officer B must abstain from participating in a Council matter pursuant to NRS 281.501(2) must be more detailed. Our focus in such an analysis is whether "the independence of judgment of a reasonable person in [Public Officer B's] situation would be materially affected by [her] acceptance of a gift or loan, [her] pecuniary interest, or [her] commitment in a private capacity to the interests of others." NRS 281.501(2). NRS 281.501(1) allows that Public Officer B may vote upon a matter if the benefit or detriment accruing to her as a result of the decision either individually or in a representative capacity as a member of general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

The Commission has made previous rulings concerning the impact of familial relationships upon a reasonable person's ability to act with independence of judgment.<sup>[12]</sup> In Opinion No. 90-5 we concluded that whether such commitment materially affects the independence of judgment of a reasonable person in the public official's position must be decided on a case-by-case basis. "The analysis of when a familial relationship materially affects the independence of judgment is not limited to the nature of the relationship. It must be evaluated in light of the context in which the relationship may impact the judgment of the individual." Opinion No. 90-5.

We find that both Public Officer B's pecuniary interest and her commitment in a private capacity to the interest of Mr. X, whether together or separately, are circumstances which would materially affect the independence of judgment of a reasonable person in her situation, thereby invoking the restrictions of NRS 281.501(2) and (5). Though the couple is not married, their relationship reasonably appears to us as likely to induce the same partiality and emotional commitment that they would have if they were married. Because a reasonable person's objectivity and independence of judgment in Public Officer B's circumstances would thus be so impaired or compromised when considering Mr. X's individual employment relationship with the City, or business concerning the bargaining unit of the Union representing City firefighters of whom Mr. X both belongs and represents as its steward, NRS 281.501(2) and (5) apply to require that in her capacities of City public officer, Public Officer B must abstain from voting upon, or advocating the passage or failure of, any such matter. Public Officer's obligation to abstain would include such matters and decisions as the topics of labor management, collective bargaining agreements, negotiations or discussions on salaries, wage modifications, job duties, employment benefits, pension plans, disciplinary matters, grievances, arbitrations, general terms and conditions of employment, and personnel policy issues.

Simply stated, NRS 281.501(2) prohibits Public Officer B from voting, deliberating, or otherwise taking action or

using the influence of her office, formally or informally, to effect Mr. X's livelihood. To determine otherwise would permit Public Officer B to have a beneficial interest in a contract made by, through, or under her official authority, thereby sanctioning potential use of her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for both herself and long-term housemate in violation of NRS 281.481(2).

We do not view the presumption contained NRS 281.501(2) to be applicable to Public Officer B's consideration of matters involving the City's firefighters because the class of City firefighters is sufficiently small with a specialized interest within the industry that special gain or loss would occur to each member of the class as a result of City action which affects that class. The nexus between Public Officer B's position on the Council and her personal pecuniary interests in Mr. X's employment, as well as her commitment in a private capacity to his interests, would materially affect the independence of judgment of a reasonable person in her circumstances when voting upon issues which specifically and directly affect all City firefighters.

Public Officer B need not abstain on matters of general budgetary appropriations for City employees and where the result of official action provides no special advantage or particular benefit to either herself or Mr. X, but will impact upon all City employees in the same manner. In such instances, the presumption contained in NRS 281.501(2) is applicable. Because the class of City employees as a whole is large enough whereby Public Officer B and Mr. X would derive no greater gain or loss than that accruing to any other member of the class, we reason that with regard to the consideration of matters in common to all City officers and employees, including those of Mr. X and Public Officer B herself, Public Officer B's interests therein do not rise to the level of a significant pecuniary interest such that abstention is necessary and that her commitment in a private capacity to Mr. X under these circumstances would not materially affect the independence of judgment of a reasonable person.

The record before us demonstrates that Public Officer B has previously acted in conformance with these foregoing standards at the time she abstained from voting on those provisions of a City contract applicable to firefighters, while voting on those portions relevant to City employees, generally. We expect that she will continue to act in accordance with this Opinion.

### **C. The Effect of Public Officer's Membership in the Union which Represents County and City Employees**

The final matter to be determined by the Commission is whether Public Officer B's membership in the County Union affects her acts as a City councilwoman. Though Public Officer B stated at the hearing that the County Union had no interest in our proceedings, evidence before the Commission established that the County Union was paying for her legal representation at the hearing. It is thus reasonable to infer that the collective bargaining unit which represents County employees has concerns which may be affected by our conclusions concerning Public Officer B's actions on the Council.

We find that Public Officer B's service as a member of the Council may, in fact, conflict with her commitment to the County Union of which she is a member. As a County employee and member (and former steward) of the County Union, Public Officer B is directly benefited by the County Union's collective bargaining and agreements with the County. The same Union represents some of the City's employees. While the City's and the County's agreements with the Union may be different in some respects, we must acknowledge the reality that the two contracts are *not* independent. Benefits negotiated by the Union with one entity will certainly be known to the other entity. The result is that if, for example, the City negotiates and resolves certain issues with the Union, the Union may insist on the same or similar resolutions with the County. Thus, Public Officer B, when acting as a City councilwoman, might vote for certain concessions with the City's Union knowing that similar concessions might accrue to her benefit in the County Union's negotiations with her employer, the County. That such a situation is conceivable means that we must address it.

Whether Public Officer B is required to disclose her pecuniary interest in, and personal commitment to, her County Union, or is required to both disclose and abstain from voting on various issues in which the County Union may be implicated, depends upon what questions come before the Council. Public Officer B must both disclose and abstain from voting in the negotiation of City collective bargaining agreements, or any other City Union-related matters, whether they pertain to employees of the City Fire Department or any other City employees who are members of that unit of the Union which represents City employees. With regard to less obvious circumstances, Public Officer B, as both a County Union member and City councilwoman, must ask herself on a case-by-case basis whether she has commitments to or friendships in the Union which are equally influencing. If any of those commitments, friendships,

or interests would compromise the ability of a reasonable person in her situation to vote in an objective manner on such issues, she must disclose her interest and abstain from participation and voting on the issue.

## CONCLUSION

The Commission concludes with regard to this Opinion Request that:

1. The Nevada Ethics in Government Law and related statutes do not *per se* prohibit Public Officer B, as a City public officer from serving as a County Union steward or maintaining membership in a Union which represents County employees;
2. NRS 281.501(3) and (5) prohibit Public Officer B from approving, disapproving, voting, or otherwise acting upon (a) any matter directly or indirectly affecting Mr. X's employment by the City (including the general terms and conditions of employment, labor management, collective bargaining agreements, negotiations or discussions on salaries, wage modifications, job duties, employment benefits, pension plans, disciplinary matters, grievances, arbitrations, or personnel policy issues), (b) Mr. X's membership in the class of City firefighters, and (c) those employment relationships of the class of firefighters where there is classification of firefighters as against all other City personnel. In such matters, Public Officer B must publicly disclose the full nature and extent of her interest in and commitment to Mr. X; and
3. To the extent that the interests of County employees and their Union are not directly and definitely affected, NRS 281.501(2), does not prohibit Public Officer B from voting upon, or advocating the passage or failure of, any matter affecting the entire class of city employees or any other matter with respect to which the independence of judgment of a reasonable person in her situation would *not* be materially affected by either her pecuniary interest in and commitment to Mr. X or her pecuniary interest in her own County employment and commitment to the Union to which she is a member.

## COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The statutory provisions quoted and discussed above must be applied on a case-by-case basis with results which may vary depending on the specific facts and circumstances involved.

DATED: April 14, 1997.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY BOETSCH, Chairwoman

---

[1] "Local government employer" means any political subdivision of the state or any public or quasi-public corporation organized under the laws of this state and includes, without limitation, counties, cities, unincorporated towns, school districts, hospital districts, irrigation districts and other special districts.

[2] "Collective bargaining" means a method of determining conditions of employment by negotiation between representatives of the local government employer and employee organizations, entailing a mutual obligation of the local government employer and the representative of the local government employees to meet at reasonable times and bargain in good faith with respect to:

1. Wages, hours and other terms and conditions of employment;
2. The negotiation of an agreement;
3. The resolution of any question arising under a negotiated agreement; or
4. The execution of a written contract incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or require the making of a concession. NRS 288.033.

[3] "Bargaining agent" means an employee organization recognized by the local government employer as the exclusive representative of all local government employees in the bargaining unit for purposes of collective bargaining. NRS 288.027.

[4] "Bargaining unit" means a group of local government employees recognized by the local government employer as having sufficient community of interest appropriate for representation by an employee organization for the purpose of collective bargaining.



[5] "Fact finding" means the formal procedure by which an investigation of a labor dispute is conducted by one person, a panel or a board at which: (1) Evidence is presented; and (2) A written report is issued by the fact finder describing the issues involved and setting forth recommendations for settlement which may or may not be binding as provided in NRS 288.200. NRS 288.045.

[6] NRS 281.501(2) and (3) provide as follows:

2. In addition to the requirements of the code of ethical standards, a member of the legislative branch 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 where the resulting benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. 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 the full nature and extent of the gift, loan, commitment or 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. If the officer or employee is not a member of such 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.

[7] NRS.266.410 provides as follows:

Except as otherwise provided in subsection 4 of NRS 266.405 for the clerk and treasurer, in cities of the first and second class [a first-class city having 20,000 or more inhabitants and a second-class city having more than 5,000 but less than 20,000 inhabitants (see NRS 266.055)], a mayor, councilman, clerk, auditor, attorney or treasurer shall not hold any other office under the city government during his term of office.

[8] Opinion Nos. 89-07, 91-01, and 93-11.

[9] Opinion No. 90-04.

[10] Opinion No. 90-04.

[11] Opinion No. 90-05.

[12] See Opinion Nos. 89-07, 90-04, 90-05, 91-01, and 93-11.