



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Public Employee**, Teacher,
County School District, State of Nevada,

Request for Opinion No. 10-73A

Public Employee. /

ABSTRACT OF OPINION

I. STATEMENT OF THE CASE

Public Employee requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum¹ of the Commission heard this matter on November 9, 2010. Public Employee appeared and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission deliberated and orally advised Public Employee of its decision that the Ethics Law prohibits him from

simultaneously serving on the school board and as a teacher in the school district. Furthermore, if serving on the school board, Public Employee must comply with the disclosure and abstention requirements with respect to matters affecting his spouse's employment.

Public Employee elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract in lieu of the full opinion.

II. QUESTION PRESENTED

Public Employee is a teacher in a County School District ("CSD"). Public Employee questions whether he may hold public office as a member of the School District Board of Trustees while employed as a teacher in the school district. He also asks for guidance concerning the conflicts which may arise due to his spouse's employment with the school district.

¹ The following Commissioners participated in this opinion: Chairman John T. Moran, III, Esq., and Commissioners Gregory J. Gale, CPA, George M. Keele, Esq., Paul H. Lamboley, Esq., John W. Marvel, and James M. Shaw.

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Public Employee is a teacher with CSD who is seeking to serve on the School Board. If elected to the School Board, Public Employee desires to maintain his employment with CSD. His spouse also works for CSD, but in a non-teaching position. Public Employee questions whether the Ethics Law would preclude him from holding a position on the School Board while he and his wife maintain their employment with CSD. He also asks for advice concerning the ethical implications that their employment would have in the event of his successful election to the School Board.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

The intent of the ethical standards provided in NRS Chapter 281A 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 the impartiality of those serving the public and the public's faith in the integrity of government. In performing their public duties, therefore, public officers and employees must be mindful of NRS 281A.020 and conduct themselves to avoid conflicts between their private interests and those of the general public whom they serve.

The Commission has examined many situations where an employee of a public entity seeks election or appointment to the governing body of that entity.² In those cases, we have invariably concluded that nothing in the Ethics Law precludes a public employee from seeking election to a body which regulates or oversees his or her public employer. Thus we have not discouraged participation in the electoral or recruitment process for these public offices. Once the employee is elected, however, then the Ethics Law requires the employee to choose between service on the governing body or retaining his or her public employment.

Our prior opinions recognize that serving a single public body in a dual capacity is fraught with ethical dilemmas. Of primary concern is the heightened likelihood of conflicts of interest and appearances of impropriety that occur when a public

² For example, RFO No. 98-71 (substitute teacher running for School Board); RFO No. 06-05 (adult education coordinator seeking seat on School Board); and RFO No. 10-10 (hospital IT manager accepting appointment to Hospital Board).

employee, by virtue of his or her election to a governing board, becomes the “boss of his boss” and/or the “boss of himself.” Our opinions also stress that such dual service to a single body is not well advised because the public officer in this situation is also likely to be subject to third-party ethics complaints due to this relationship.

Reviewing the specific facts of Public Employee’s situation, we reach the same conclusion as we did in our earlier cases. Public Employee’s election to the School Board would give him oversight over his own employment as a teacher with the CSD and over his superiors in the school where he is employed. As we have said before, this “boss of boss” and “boss of himself” situation implicates NRS 281A.400(1) because a reasonable person in Public Employee’s situation would be impeded in his ability to discharge his public duties faithfully and impartially, as well as NRS 281A.400(2) because Public Employee would have the opportunity to effect undue or unwarranted influence over a subordinate in order to advance his own pecuniary interests. (See *In re Hillyer*, RFO 10-63A (2012) and *In re Bell*, RFO 10-10A (2010))

Moreover, CSD teachers all enter into employment contracts and are also covered by a collective bargaining agreement. Public Employee’s service on CSD’s Board would therefore also implicate NRS 281A.430(2) which prohibits board members from contracting with the board on which they serve. See

Hillyer, RFO 10-63A (2012). Regarding this last point, NRS 386.305 prohibits school board trustees from being financially interested in any contract made by the board of which he or she is a member. Although this Commission does not enforce this statute, it may also be implicated should Public Employee contract with CSD while serving on the School Board.

Serving in both capacities is fraught with the very real potential for a myriad number and variety of conflicts of interests that cannot be alleviated through the disclosure and abstention process of NRS 281A.420. Public Employee cannot avoid obvious repetitive and continuing conflicts and would not be able to effectively maintain both positions at the same time.

The Commission therefore advises Public Employee that he is permitted under the Ethics Law to campaign for election to the CSD Board of Trustees while he is employed as a school teacher with CSD. Following his election to the Board, however, his continued employment with CSD would give rise to ethical conflicts and the appearance of impropriety. Consequently, the Ethics Law would require him to resign his teaching position prior to taking the oath of office and assuming his seat on the Board.

2) Disclosure and Abstention

Public Employee has informed the Commission that his spouse is also employed with CSD. She holds a

non-teaching position which is within a collective bargaining agreement separate from the teachers. Unlike Public Employee's own employment status, the Ethics Law does not preclude Public Employee's service on the Board due to his spouse's employment. Thus, if elected to the School Board, it is proper for Public Employee to serve on the Board and for his spouse to retain her school district employment. Nevertheless, because conflicts of interest will arise from this situation, the disclosure and abstention provisions of NRS 281A.420 are implicated.

If Public Employee serves on the School Board, he will be a public officer who is subject to the disclosure and abstention requirements of the Ethics Law. We have provided detailed guidance to others in Public Employee's particular situation in our decisions in *Matter of Louritt and Roman*, RFO Nos. 03-43/03-44 and the Abstract of Advisory Opinion No. 91-1, which discuss the disclosure and abstention standards specifically as they relate to school board members whose spouses are classified employees.

We advise Public Employee that, at the very least, NRS 281A.420(1) would require him to publicly disclose his spouse's employment status when the School Board considers issues that concern his spouse and her employment with the school district, particularly matters that directly affect or focus on the terms and conditions of her employment. Public Employee will also have a duty to conduct an abstention analysis under NRS

281A.420(3), and must abstain from acting on matters in which the independence of judgment of a reasonable person in his position would be affected. In particular, we advise Public Employee that he clearly has an obligation to abstain when the School Board considers the terms and conditions of his spouse's employment, including the collective bargaining agreement that is related to her position.

IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Public Employee was a "public employee," as defined in NRS 281A.150.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. The Ethics Law does not preclude Public Employee, as an employee of the County School District, from campaigning for election to the County School District Board of Trustees.
4. NRS 281A.020 prohibits Public Employee from simultaneously serving as a member of the School District Board of Trustees and maintaining his employment as a teacher with the School District. Consequently, if elected to the Board, Public Employee must resign his teaching position prior to taking office.

5. If elected to the School Board, Public Employee will be a public officer subject to the disclosure and abstention provisions of NRS 281A.420 and must therefore make the disclosures required of him under NRS 281A.420(1) regarding his spouse's employment with the School District and conduct the required abstention analysis pursuant to NRS 281A.420(3) and thereafter abstain from matters which directly affect or focus on the terms, conditions, and employment of his spouse.

Dated this 15th day of August, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Paul H. Lamboley
Paul H. Lamboley
Vice-Chair³

³ At the time this written opinion was issued, then-Chair Moran no longer served on the Commission. Therefore, current Vice-Chair Lamboley, who participated in this opinion, signs it on behalf of the Commission.