Retirement System. Legislative clarification, by way of statutory amendments, will be needed to eliminate the distinctions between the senior judges retired under PERS and the senior judges retired under the Judges' Retirement System.

FRANKIE SUE DEL PAPA
Attorney General

By: ROBERT L. AUER
Senior Deputy Attorney General

AGO 98-29 BOARDS AND COMMISSIONS; ETHICS; BOARD OF EXAMINERS; SECRETARY OF STATE: If an elected official who is a member of a board has filed all campaign contribution and expenditures reports, he does not need to disclose and abstain from voting when the contributor has an item before the board. The facts of each scenario relating to friendships and business relationships must be examined separately to determine if an elected official must disclose and abstain pursuant to the Ethics Code.

Carson City, November 5, 1998

The Honorable Dean Heller, Secretary of State, 101 North Carson Street, Suite 3, Carson City, Nevada 89701

Dear Mr. Heller:

You have requested an opinion from this office regarding when you, as a member of the Board of Examiners (Board), must disclose and abstain from voting on a matter before the Board based upon ethical considerations.

QUESTION ONE

When must an elected official who is a member of a board disclose campaign contributions given by a person or entity with an item before the board and abstain from voting on the matter?

ANALYSIS

You have presented two fact patterns which we will evaluate. Your question in each of these situations is: 1) must you disclose, and 2) if you disclose must you also abstain from voting on the matter. The first fact pattern is that your former employer has a contract before the Board for approval. You continue to have a retirement account with this former employer and the former employer has given you campaign contributions during previous campaigns, but to date has not contributed to your current campaign. You have not spoken to the former employer regarding its pending contract with the State of Nevada.

The second fact pattern is that former campaign contributors have contracts before the Board. You have not spoken to these contributors regarding their pending contracts with the State of Nevada.

During each of your election campaigns you filed the required contribution and expenditure reports.

Before evaluating these fact patterns, we will analyze the requirements governing the disclosure of campaign contributions. In the 1991 Legislature, the then chairman of the Commission on Ethics (Ethics Commission) defined campaign contributions as "public funds in the sense that they are solicited and received for a public purpose, the election to public office to serve the public. They are not solicited or given for private or personal use and, if used personally, that use converts the contribution to a personal gift." *Hearing on A.B. 190 Before the Senate Committee on Government Affairs*, 1991 Legislative Session, 15 (May 8, 1991). Campaign contributions are treated differently from "pecuniary interests" that may create a conflict of interest. A campaign contribution is considered a constitutional right on the part of the contributor to participate in the electoral process; whereas a pecuniary interest is afforded no protection at all in the ethical realm of government.

Only a pecuniary interest which amounts to a conflict of interest will require disclosure and abstention. NRS 281.501 defines when a pecuniary interest constitutes a conflict of interest and states in relevant part:

> 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 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.
>
> 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. 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.
>
> . . . .
>
> 6. After a member of the legislative branch makes a disclosure pursuant to subsection 3, he may file with the director of the legislative counsel bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the legislative counsel bureau. [Emphasis added.]

Had the Legislature intended for campaign contributions to trigger a possible conflict of interest, the Legislature could have included campaign contributions in NRS 281.501.

Disclosure was discussed in the 1997 Legislature where it was concluded one disclosure for legislators was sufficient because the disclosure was considered to be continuing. One member of the Senate Committee on Government Affairs stated:

> As legislators, I think we make very deliberate attempts, assiduously to make disclosures and I don't think we would be in a position where we ought to be required, every time the subject is discussed, to make a continuing disclosure. So I just want that part of the record. I don't want anybody tripped up in here because you come in on another day when something is being discussed and you have not again made a disclosure.

Hearing on S.B. 214 Before Senate Committee on Government Affairs, 1997 Legislative Session, 8 (June 2, 1997).

With regard to campaign contributions, once an elected official properly files his contribution and expenditure report, it becomes public information. Additional disclosure by the elected official is not therefore required. In the 1991 Legislature, a member of the Assembly Committee on Legislative Functions and Elections commented, "In Clark County when we file our disclosures or expenditures, the press is there. It's all open. The same day you file it, it appears in the newspaper." *Hearing on A.B. 190 Before Assembly Committee on Legislative Functions and Elections,* 1991 Legislative Session, 15 (March 14, 1991).

NRS 281.501(2) requires abstention when a member of a legislative branch's pecuniary interest, his commitment in a private capacity to the interest of others, or his acceptance of a gift or loan would materially affect the independence of judgment of a reasonable person in his situation. NRS 281.501(3) allows abstention if the public officer has accepted a gift or loan, if he would be reasonably affected by his commitment in a private capacity to the interest of others, or if he has a pecuniary interest. These sections enumerate the criteria for what conduct amounts to a conflict of interest leading to abstention and do not include campaign contributions as a criteria.

Although a campaign contribution may be a gift or loan pursuant to the definition of contribution in NRS 294A.007, if the campaign contribution is not used for personal use then it is not considered a gift or a loan to the individual under the ethics code. Abstention is not required unless a conflict of interest exists under NRS 281.501. Campaign contribution is defined in NRS 294A.007 which states:

> "Contribution" means a gift, loan, conveyance, deposit, payment, transfer or distribution of money or of anything of value other than the services of a volunteer, and includes:
> (a) The payment by any person, other than a candidate, of compensation for the personal services of another person which are rendered to a:
> (1) Candidate;
> (2) Person who is not under the direction or control of a candidate or group of candidates or of any person involved in the campaign of the candidate or group who makes an expenditure on behalf of the candidate or group which is not solicited or approved by the candidate or group;
> (3) Committee for political action, political party or committee sponsored by a political party which makes an expenditure on behalf of a candidate or group of candidates; or

(4) Person or group of persons organized formally or informally who advocates the passage or defeat of a question or group of questions on the ballot, without charge to the candidate, person, committee or political party.

(b) The value of services provided in kind for which money would have otherwise been paid, such as paid polling and resulting data, paid direct mail, paid solicitation by telephone, any paid paraphernalia that was printed or otherwise produced to promote a campaign and the use of paid personnel to assist in a campaign.

2. As used in this section, "volunteer" means a person who does not receive compensation of any kind, directly or indirectly, for the services he provides to a campaign.

The Legislature sought to keep conflicts of interest and campaign contributions separate in that they are governed by different sections of the NRS. In NRS 281.465, the Legislature limited the Ethics Commission's jurisdiction over campaign practices to matters involving the publication of false statements and willfully impeding a campaign. NRS 281.465 provides:

1. The commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of:

(a) This chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:

(1) The filing of a request for an opinion with the commission; or

(2) A determination of the commission on its own motion that there is just and sufficient cause to render an opinion concerning the conduct of that public officer or employee or former public officer or employee.

(b) NRS 294A.345 or 294A.346 in any proceeding commenced by the filing of a request for an opinion pursuant thereto.

2. The provisions of paragraph (a) of subsection 1 apply to a public officer or employee who:

(a) Currently holds public office or is publicly employed at the commencement of proceedings against him.

(b) Resigns or otherwise leaves his public office or employment:

(1) After the commencement of proceedings against him; or

(2) Within 1 year after the alleged violation or reasonable discovery of the alleged violation. [Emphasis added.]

Nevada public officials are regularly required to disclose any and all campaign contributions. NRS 294A.120 provides:

1. Every candidate for state, district, county or township office at a primary or general election shall, not later than:

(a) Seven days before the primary election, for the period from 30 days before the regular session of the legislature after the last election for that office up to 12 days before the primary election;

(b) Seven days before the general election, whether or not the candidate won the primary election, for the period from 12 days before the primary election up to 12 days before the general election; and

(c) The 15th day of the second month after the general election, for the remaining period up to 30 days before the next regular session of the legislature,

report the total amount of his campaign contributions on forms designed and provided by the secretary of state and signed by the candidate under penalty of perjury.

2. Except as otherwise provided in subsection 3, every candidate for a district office at a special election shall, not later than:

(a) Seven days before the special election, for the period from his nomination up to 12 days before the special election; and

(b) Thirty days after the special election, for the remaining period up to the special election,

report the total amount of his campaign contributions on forms designed and provided by the secretary of state and signed by the candidate under penalty of perjury.

3. Every candidate for state, district, county, municipal or township office at a special election to determine whether a public officer will be recalled shall report the total amount of his campaign contributions on forms designed and provided by the secretary of state and signed by the candidate under penalty of perjury, 30 days after the special election, for the period from the filing of the notice of intent to circulate the petition for recall up to the special election.

4. Reports of campaign contributions must be filed with the officer with whom the candidate filed the declaration of candidacy or acceptance of candidacy. A candidate may mail the report to that officer by certified mail. If certified mail is used, the date of mailing shall be deemed the date of filing.

5. Every county clerk who receives from candidates for legislative or judicial office, except the office of justice of the peace or municipal judge, reports of campaign contributions pursuant to subsection 4 shall file a copy of each report with the secretary of state within 10 working days after he receives the report.

6. Each contribution in excess of $100 and contributions which a contributor has made cumulatively in excess of that amount since the beginning of the first reporting period must be separately identified with the name and address of the contributor and the date of the contribution, tabulated and reported on the form provided by the secretary of state.

Additional disclosure requirements are found in NRS 294A.125, which requires disclosure of receipt of more than $10,000 in a year before the year of election. NRS 294A.350 requires a report to be filed even though no contributions were received or no expenses were incurred.

Case law from other states concludes that a conflict of interest does not necessarily exist where a board member has received a campaign contribution. In a Washington case, the court concluded an administrative decision maker's participation after receiving campaign contributions from an interested party does not necessarily violate the appearance of fairness doctrine pursuant to Wash. Rev. Code § 42.36.050 (1997). In *Snohomish County Improvement Alliance v. Snohomish County*, 808 P.2d 781 (Wa. 1991), the court held when two council members participated in a quasi-judicial proceeding after contemporaneously receiving campaign contributions from interested parties, they did not violate the appearance of fairness doctrine. In deciding this, the court stated: "Moreover, such participation by said Councilmembers was not a conflict of interest . . . . The mere receipt of campaign contributions by a councilmember does not constitute a 'direct or indirect substantial financial or familial interest," . . . ." *Id*. at 786. The court implied there may have been another result had there been a failure to report the campaign contributions. *Id.*

In *Woodland Hills v. City Council*, 609 P.2d 1029 (Cal.1980), the California court held that absent bribery or some significant conflict of interest, a campaign contribution is not sufficient to require recusal of a council member prior to a vote on projects of developers who gave the contributions. *Id*. at 1032. Although the trial court found the party before the council member had made substantial contributions of money to the campaign (exceeding $9,000), it found the petitioner was not denied a fair hearing. *Id.* The court concluded it was not improper for a member of the council to vote on the projects nor were they required to disqualify themselves in such circumstances because expression of political support by campaign

contribution does not prevent a fair hearing before an impartial city council when the contributions were lawfully made and received, and disclosed pursuant to laws governing campaign contributions. *Id*. at 1032. The campaign laws require disclosure instead of disqualification. *Id.*

However, the court noted an official would still be precluded from participating in a decision in which he has "a financial interest." *Id.* Campaign contributions are expressly excluded from the definition of financial interest. *Id*. at 1033. Hence, the court concluded the Political Reform Act deals comprehensively with problems of campaign contribution and conflict of interest and does not prevent a city council member from acting upon a matter involving the contributor. *Id*. The court discussed the importance of the political contribution in that it is an exercise of fundamental freedom protected by the First Amendment of the United States Constitution and article I, section 2 of the California Constitution. Because of this importance the court stated, "To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms." *Id.*

Florida examined the issue under circumstances involving a judge who received campaign contributions from a party before him. In *Honorable Mary Ann MacKenzie v. Super Kids Bargain Store,* 565 So.2d 1332 (Fla. 1990), the court concluded the judge was also not required to recuse herself because Florida's Code of Judicial Conduct together with Florida's statutory limitation on campaign contributions and the requisite public disclosure of such contributions, provide adequate safeguards against the concerns raised by the United States Supreme Court in *CSC v. Letter Carriers,* 413 U.S. 548 (1973): 1) the tendency or possibility to create a quid pro quo relationship and 2) the creation of an appearance of influence or corruption. *MacKenzie* at 1335.

Some states addressed the issue in statutes. Georgia puts the responsibility of reporting contributions on the person who makes an application to a board. If the applicant has given a campaign contribution of more than $250 to a board member within the previous two years, the applicant must file a disclosure report. Ga. Code Ann. § 36-67A-3 (1998).

In Montana, the rules of conduct for public officers provide that they may not accept a gift of substantial value or a substantial economic benefit tantamount to a gift that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duty. The statute then defines an economic benefit tantamount to a gift and excludes campaign contributions reported as required by statute. Mont. Code Ann. § 2-2-104 (1997).

Public policy strongly encourages the giving and receiving of campaign contributions. These contributions do not automatically create an appearance of unfairness or a conflict of interest. Adequate protection against corruption and bias is afforded through the disclosure statutes found in chapter 294A of the NRS. Therefore, without evidence of improper influence, additional disclosure should not be required outside the chapter 294A requirements.

In a previous decision by the Ethics Commission, a city councilman did not violate the Code of Ethics by placing on the council agenda an item to reopen a settlement agreement between the city and a business owned by two of the councilman's constituents who had contributed significantly to his campaign. There was an independent reason for reviewing the settlement agreement, and insufficient evidence that the councilman was improperly influenced by the campaign contributions at issue. *Matter of David A. Wood*, NCOE Opinion No. 95-51 (1997) (Wood Opinion). In this opinion, the councilman received a total of $4,240 from the constituents. Some of this money was given before the councilman discussed with the constituents their relationship with the city, including the way the constituents had been treated

in a settlement matter with the city, and some of the money was given after these discussions. The councilman then sought to reopen the settlement matter with the city for the contributing constituents. In finding no conflict of interest, the Ethics Commission stated proof of an improper correlation between the benefits conferred upon the councilman and the subsequent benefit he conferred upon them was needed. Although this matter presented a close question, the Ethics Commission could not find a violation. The Ethics Commission stated, "We agree that democracy, as practiced in the United States, allows citizens to actively participate in a candidate's candidacy through the donation of money or services and that this practice cannot be discouraged." *Id*. at 9.

In discussing whether the acceptance of a campaign contribution amounts to a gift, the Ethics Commission stated:

> We are not prepared to issue a blanket statement that properly disclosed campaign contributions will never qualify as a "gift . . . which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties." As the test makes clear, the question is not whether money is a "gift," but rather whether the money would improperly influence a reasonable man. It is conceivable that a campaign contribution could be deemed to improperly influence a reasonable man depending upon the amount of the contribution, the identity of the donor, the timing of the gift, and other such factors.

Id.

In light of the fact that the councilman's campaign received only 6 percent of his total budget from these constituents, it could not be inferred that the councilman was actually improperly influenced by the campaign contributions in issue. There was also no direct evidence of an express quid pro quo. The Ethics Commission also concluded the councilman did not confer unwarranted privileges, preferences, or advantages on the contributing constituents because there was an independent and colorable reason for reviewing the Settlement Agreement. *Id*. at 10.

In the present case, you received small contributions in previous campaigns from a party now before you as a member of the Board which you reported on your contribution and expenditure reports. No conversations occurred with regard to what, if anything, the contributor may have expected from you. Because these campaign contributions were given in previous years, and because the Board does not actually choose the recipient of the contract, but only approves the funding for the contract, the Wood Opinion should control this situation and one can reasonably conclude you would not violate NRS 281.481(1) or (2) by having accepted campaign contributions and thereafter voting to approve the funding on the contract awarded the contributor. Under the two fact patterns you presented above, you would not need to disclose that you received campaign contributions from the person or entity with an item before the Board because you filed the required campaign contribution and expenditure reports.

The facts you submitted include the question of whether you, as a member of the Board, may vote to approve a contract where your former employer is the recipient. The former employer is a bank where you also continue to have your retirement account. You have asked if this creates a conflict of interest which may require disclosure and abstention. NRS 281.481(2) and NRS 281.501(3) offers guidance. NRS 281.481 (2) states, "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 member of his household, any business entity in which he has a significant pecuniary interest, or any other person."

The analysis requires a determination of whether the approval of the contract is some sort of unwarranted privilege, preference, or advantage given to the former employer/bank in which you have a significant pecuniary interest. As the Ethics Commission states in the *Matter of Bob Miller*, NCOE Opinion No. 94-27/94-30 (1995) (Miller Opinion), the Board is simply in the position to approve a contract that has been previously awarded through a competitive process. The Board is not in the position to decide to whom to award the contract, just whether to approve the funds for the awarded contract. *Id*. at 9-10. Hence, since your former employer/bank has already prevailed in the competitive process and been awarded the contract, there does not appear to be any unwarranted privilege, preference or advantage given to the bank by the Board's approval of the funds for the contract. In addition, the vote may be warranted in that the bank is entitled to the funding as they have already been granted the contract. If the funding can be granted by the Board as in the regular course of business, then the bank has not received an unwarranted privilege. Wood Opinion at 10.

The next analysis needs to address whether the bank is a business entity in which you have a significant pecuniary interest because you have a retirement account at the bank The retirement account will continue to accrue as it always has according to the previously agreed upon contract between you as a private citizen and the bank. So you are not in a position to reap significant additional retirement monies if you vote to approve the funds for the previously awarded contract. The intent of the Legislature in NRS 281.481(2) is to avoid the public official voting on a matter wherein he is a stockholder in a corporation who is before the official on a matter that will potentially increase the value of the stock the official holds. (Where state officer held minimal interest in private corporation that contracted with state but did not participate in or directly benefit from transaction, he did not violate provisions of former NRS 281.220 or former provisions of 281.230 (cf. NRS 281.481), prohibiting conflicts of interest by state and other public officers, or any common law prohibition. Op. Nev. Att'y Gen. No. 16 (March 2, 1971).

We must also analyze these facts under NRS 281.501(3), and the issue is whether you are reasonably affected by your commitment in a private capacity to the interest of others, i.e., your former employer/current bank. In the *Matter of Richard Stone*, NCOE Opinion No. 96-32 (1998), the Ethics Commission concluded a General Improvement District trustee should have disclosed and abstained on a matter before him where the matter involved his current employer, who was not only a business colleague but personal friend for years as well. The Ethics Commission concluded because of this relationship a person in this trustee's position could not have helped but have his independence of judgment affected by his concerns about his employer, his future employment, and the welfare of his boss and friend. Because this case dealt with a current employer, it may be said that a former employer, which can neither offer nor receive a benefit from the public official, would not require disclosure and abstention because the public official would no longer be concerned with his future employment and the welfare of his former boss.

In the *Matter of Frank Hawkins, Jr.*, NCOE Opinion No. 94-05 (1995), the Ethics Commission decided an arm's length business relationship with one before the public body, such as a private business loan, does require disclosure but not abstention unless the relationship materially affects the independence of judgment of the public officer. In the present matter, the case can be made that if a private business loan only requires disclosure, then surely retention of a bank account, which involves something less than that relationship required for a loan, does not require disclosure. Essentially, the nature of a bank account is one at arm's length in that it does not require special permission to obtain or any sort of special attention such as a loan.

CONCLUSION TO QUESTION ONE

If an elected official who is a member of a board has filed all campaign contribution and expenditure reports required by law, the elected official does not need to disclose and abstain

from voting when a person or entity who has given a campaign contribution has an item before the board. The elected official also does not need to disclose and abstain from voting when a person or entity that is a former employer of the elected official, and with whom the elected official still maintains a retirement account, has an item before the board.

QUESTION TWO

Must an elected official who is a member of a board disclose a possible conflict of interest and abstain from voting because of a business relationship and friendship with a person who has an item before the board?

ANALYSIS

You have also presented the following facts for our analysis. Your personal accountant, who you also consider a friend, has a pending contract before the Board. You have not spoken with him regarding this pending contract.

The Ethics Commission addressed this issue in the Miller Opinion. Governor Miller asked the Ethics Commission whether he had a conflict of interest in voting as a member of the Board of Examiners on two contracts for advertising services with a company, the principal of which was a friend and political advisor.

The Ethics Commission concluded Governor Miller's friendship and business association with the principal of the company did not give Governor Miller a pecuniary interest of any type defined by law, nor did it concern a commitment in a private capacity to the interests of others as defined by law that would require Governor Miller to make a full disclosure. This conclusion was reached because Governor Miller did not receive discounted services from the company, was billed in the same manner as other clients, and had no ownership or financial interest in the company. There was no evidence to suggest that Governor Miller's actions in regard to this contract were reasonably affected by his relationship with the principal.

The Ethics Commission concluded Governor Miller was not required to abstain from voting on the contract because there was no evidence in the record regarding any pecuniary interest of or commitment to the interest of others by Governor Miller that would have materially affected the independence of judgment of a reasonable person in his situation. Governor Miller, as a member of the Board, did not choose this contractor to provide services to the state, but rather voted on spending the money appropriated by the legislature in this manner.

The facts you present are similar to those in the Miller Opinion. A person with whom you have a business relationship and a friendship has a contract before the Board for approval. You did not award this contract to your friend, but rather as a member of the Board will only be voting on whether to spend money appropriated by the Legislature in this manner. Therefore, under the guidance of the Miller Opinion, you do not need to disclose this relationship or abstain from voting on the matter.

The Attorney General's office examined a recent Ethics Commission opinion[57] dealing with personal relationships in Op. Nev. Att'y Gen. No. 98-27 (September 25, 1998) and stated:

> In seeking to qualitatively adjudge such relationships, the Ethics Commission interpreted NRS 281.501 to require a look at the substance of the relationship itself, rather than the label on it. In doing this, the Ethics Commission came up with four factors to analyze a personal relationships (sic) for conflict of interest

[57] *Matters of Yvonne Atkinson Gates, Myrna Williams, and Lance Malone*, NCOE Opinion Nos. 97-54, 97-59, 97-66, 97-53, and 97-52 (1998).

purposes. These factors are: 1) the length of a relationship, 2) the context of the relationship, 3) the substance of the relationship, and 4) the frequency of the relationship. Recognizing these personal relationships are difficult to adjudge, the Ethics Commission stated, "By legislative design, the determination of whether a given relationship would materially affect the independence of judgment of a reasonable person will always be a case-by-case examination."

You have provided the following facts regarding your personal relationship with your account/friend: the relationship has lasted for eight years on both a business and personal level; on the personal level, you see and visit with your friend at ballgames in which your children and his children participate and at the speedway where you are both participants. You do not socialize at any other time. In analyzing these facts against the four factors enumerated by the Ethics Commission, we come to the following conclusion: although your personal relationship has lasted for several years, the context and substance of the relationship is not such as would require disclosure and abstention. Outside of your business relationship, you only see your friend at sporting events you attend for the purpose of watching your children or participating yourself.

CONCLUSION TO QUESTION TWO

According to Nevada statutes, an elected official who is a member of a board must disclose a conflict of interest if a person with whom the elected official has a friendship and business relation has an item before the board and the elected official has accepted a gift or loan, has a pecuniary interest or would be reasonably affected by his commitment in a private capacity to the interest of his friend. An elected official in this situation must disclose and then abstain if the independence of judgment of a reasonable person in his situation would be materially affected by the acceptance of a gift or loan, by his pecuniary interest or by his commitment in a private capacity to the interest of his friend pursuant to Nevada law. This analysis must be done on a case by case basis and the facts you have presented do not necessitate either disclosure or abstention.[58]

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Deputy Attorney General

AGO 98-30 PAROLE AND PROBATION; AND PRISON: Nevada's Risk Assessment Team should take steps to have incorrect information removed from community notification files. Regardless, law enforcement officers may provide the public with notification concerning any person who poses a threat to public safety. The Team should provide all records of a sex offender, necessary to conduct an assessment, to the assessment team for the state where the offender has relocated.

Carson City, November 3, 1998

Toni Gillen, Unit Manager, Pre-Release Unit, State of Nevada, Department of Motor Vehicles and Public Safety, Division of Parole and Probation, 1445 Hot Springs Road, Suite 104, Carson City, Nevada 89706

[58] For a further analysis of this issue, *see* Op. Nev. Att'y Gen. No. 98-27 (September 25, 1998).