



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request  
for Advisory Opinion Concerning the  
Conduct of **A Public Officer and Two  
Deputy Public Officers**, State Agency,  
State of Nevada,

**Request for Opinion No. 10-72A**

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Public Officers. /

**ABSTRACT OF OPINION**

**I. STATEMENT OF THE CASE**

A Public Officer ("PUBLIC OFFICER") and two Deputy Public Officers ("DEPUTIES") in the same State Agency requested a confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of their anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in chapter 281A of the Nevada Revised Statutes. They appeared before a quorum of the Commission on October 18, 2010, and provided sworn testimony.<sup>1</sup> At the conclusion

of the hearing, and after full consideration of the facts, circumstances, and testimony presented, the Commission orally advised the public officers of its decision that the Ethics Law would allow the two deputies to attend an out-of-state conference at the expense of COMPANY X.

The Commission rendered a written Opinion to the public officers setting forth its formal findings of fact and conclusions of law. The public officers elected to retain confidentiality with respect to this proceeding. Therefore, the Commission now publishes this Abstract of the full Opinion.

<sup>1</sup> The following Commissioners participated in this opinion: Chairman John T. Moran, III, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, George M. Keele, Esq., John W. Marvel, and James M. Shaw. Commissioner Paul H. Lambolely disclosed a conflict of interest and

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abstained from participating in this matter pursuant to NRS 281A.420.

The facts in this matter were obtained from documentary and testimonial evidence provided by the public officers. The Commission's findings of fact set forth below accept as true those facts presented by the public officers for the purposes of the advice offered in this Opinion. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this Opinion.

## II. STATEMENT OF ISSUES

A State Public Officer and two Deputy Public Officers seek a confidential advisory opinion regarding whether the Public Officer may authorize, and the Deputy Public Officers may accept, an all-expenses-paid trip for the two deputies to attend a conference hosted and paid for by COMPANY X, the program manager for a Nevada State Program. COMPANY X has offered to pay for transportation, housing, meals, and program costs for the conference. No state monies will be expended for the deputies to attend the conference and COMPANY X will not provide any compensation or discretionary expenses. In addition to the conference's instructional nature, the conference will serve to launch a new Nevada State Program nationally.

## III. FINDINGS OF FACT

1. PUBLIC OFFICER is the head of a State Agency. DEPUTIES are both state public officers employed by PUBLIC OFFICER.

2. The directors of certain statewide programs contracted with COMPANY X to act as program manager for a new program ("State Program"). Although PUBLIC OFFICER's agency administers State Program, COMPANY X reports directly to the program's directors and not to PUBLIC OFFICER.
3. COMPANY X invited DEPUTIES to an out-of-state conference. PUBLIC OFFICER must approve their attendance.
4. COMPANY X has offered to pay for DEPUTIES' attendance at the conference, and will cover their expenses for transportation, housing, meals, and program costs. Guests are not included in the invitation or encouraged to attend the conference, but may attend at their own expense. No state monies will be expended for attendance at the conference.
5. The stated purpose of the conference is to bring together industry colleagues and COMPANY X's clients to discuss issues affecting them. It is a working conference with little or no entertainment provided.
6. In addition to the instructional nature of the program, COMPANY X intends to use the conference as its national launch of the Nevada State Program, to demonstrate its partnership with Nevada with respect to that program, and to

market the program to conference attendees.

7. The State is paid a percentage of the fees COMPANY X earns from the program, but cannot receive more or less as a result of COMPANY X's paying the Conference attendees' costs.

#### **IV. DISCUSSION OF RELEVANT STATUTES AND ISSUES**

The question before the Commission is whether the Ethics Law permits PUBLIC OFFICER to authorize, and DEPUTIES to accept, COMPANY X's offer of an all-expenses-paid trip to an out-of-state conference.

##### **A. Acceptance of a gift or economic opportunity**

##### **NRS 281A.400(1) provides:**

1. 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 the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

We first consider whether the authorization or acceptance of this invitation would tend to improperly influence a reasonable person in the Public Officer and Deputies' positions to depart from the faithful and impartial discharge of their duties. The Commission finds it unlikely that a reasonable person

would be so influenced by the proffered gift or economic opportunity.

The conference brings together COMPANY X's clients in various industries to allow them to market their services and products and otherwise discuss issues affecting such industries and products. COMPANY X's interest in having PUBLIC OFFICER's representatives in attendance is so that it may jointly promote the new State Program to conference attendees and publicize COMPANY X's partnership with Nevada. DEPUTIES' attendance at the conference would thus be directly related to the State's interest in administering and promoting the State Program. Additionally, PUBLIC OFFICER's agency will benefit from the opportunities offered at the conference and become better informed on topics directly related to the agency's work.

A review of the proposed program shows that the conference is intended to be a working conference, with little or no entertainment provided. In addition, no State money will be expended for the conference and COMPANY X's offer is limited to reimbursement of travel expenses and does not include any compensation to DEPUTIES. Payment of the expenses of any guest is also excluded.

We therefore conclude that PUBLIC OFFICER's acceptance of COMPANY X's invitation on behalf of DEPUTIES, and DEPUTIES' acceptance of the invitation, would not violate NRS 281A.400(1). The gift and/or economic opportunity of

an all-expenses-paid trip to attend the conference, without payment of compensation or discretionary expenses, would not tend to improperly influence a reasonable person in the Public Officer or the Deputies' situations to depart from their official duties.

### **B. Securing unwarranted privileges or advantages**

#### **NRS 281A.400(2) provides:**

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee 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.

The Commission next considers whether PUBLIC OFFICER or DEPUTIES are using public office to secure unwarranted privileges or advantages for themselves. As noted above, the evidence presented shows that it was COMPANY X who offered to pay the conference expenses and that its intent in doing so was to further the

State's interests related to managing a new Nevada State Program. It is clear that the invitation was neither an effort by COMPANY X to entice the State, nor to encourage DEPUTIES to entice the State, to enter into an agreement with or to extend an already existing contract with COMPANY X. The State Program directors had awarded COMPANY X the contract prior to the invitation, and the agency had no involvement with the contract award process. Also, COMPANY X reports directly to the State Program directors – not the agency – regarding the program.

Rather than providing a personal benefit to PUBLIC OFFICER or DEPUTIES, the primary purposes of the conference are to further the State's interests regarding the State Program administered by the agency, and to offer training, opportunities, and collaboration related to the State's interests. An all-expenses-paid conference for these purposes is not an unwarranted privilege because it will offer training and collaboration related to the State's interests rather than any type of reward by COMPANY X for contracting for its services.

Neither PUBLIC OFFICER, if he were to authorize COMPANY X's invitation, nor DEPUTIES, if they accepted the invitation, would be seeking or obtaining any unwarranted economic advantage through the use of their positions. Consequently, the Commission concludes that PUBLIC OFFICER's authorization and DEPUTIES' acceptance of an all-expenses-paid

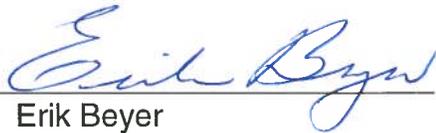
trip to the conference would not violate NRS 281A.400(2).

#### V. CONCLUSIONS OF LAW

1. At all times relevant to this matter, PUBLIC OFFICER and DEPUTIES were "public officers" as defined by NRS 281A.160. The Commission has jurisdiction over public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. Acceptance of the all-expenses-paid trip from COMPANY X would not tend to improperly influence PUBLIC OFFICER or DEPUTIES to depart from the faithful and impartial discharge of their public duties and therefore would not violate NRS 281A.400(1).
4. PUBLIC OFFICER and DEPUTIES will not secure an unwarranted privilege or advantage, therefore their acceptance of the trip would not violate NRS 281A.400(2).

Dated this 21<sup>st</sup> day of May, 2012.

NEVADA COMMISSION ON ETHICS

By:   
Erik Beyer  
Chairman<sup>2</sup>

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<sup>2</sup> At the time this written opinion was issued, the presiding officer in this matter, then-Chair Moran, no longer served on the Commission. Therefore, current Chair Beyer signed this opinion on behalf of the participating Commissioners.