



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the First-Party Request for  
Advisory Opinion Concerning the  
Conduct of **Allan S. Litman**, Member,  
Mesquite City Council,

Request for Opinion No. 11-52A

\_\_\_\_\_  
Public Officer. /

**OPINION**

**I. STATEMENT OF THE CASE**

Public officer Allan S. Litman ("Litman") requested a confidential advisory opinion<sup>1</sup> 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 quorum<sup>2</sup> of the Commission heard this matter on August 11, 2011. Litman appeared in person 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 Litman of its decision that his existing contractual relationship with the City of Mesquite does not violate the Ethics Law because he entered into the contract before his election to the City Council; however, he must satisfy the exemption criteria of NRS 281A.430(4) before entering into a new or modified contract. The Commission now renders this formal written Opinion stating its findings of fact and conclusions of law.

The facts in this matter were obtained from documentary and testimonial evidence provided by Litman. The Commission's findings of fact set forth below accept as true those facts presented by Litman for the purposes of the advice offered in this Opinion.

<sup>1</sup> Litman waived confidentiality with respect to this request for opinion.

<sup>2</sup> The following Commissioners participated in this opinion: Chairman Erik Beyer and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., James M. Shaw, and Keith A. Weaver, Esq.

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. QUESTION PRESENTED**

Litman asks the Commission whether NRS 281A.430 prohibits him from continuing to perform under a contract with the City of Mesquite now that he is a member of its governing body.

## **III. FINDINGS OF FACT**

1. Allan S. Litman is a member of the Mesquite City Council ("City Council").
2. For several years prior to taking office on July 1, 2011, Litman has contracted with the City of Mesquite ("City") to teach fitness classes at the Mesquite City Recreation Center.
3. Litman works a minimum of eight hours per week for which he receives less than \$300 per month (approximately \$8.00 per hour).
4. Since taking office, Litman has taught the classes for free pending the outcome of this RFO.

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

### **A. ISSUES**

Litman is a recently elected member of the Mesquite City Council. In a private capacity, he is a fitness

instructor at the City Recreation Center. He has been teaching classes for several years pursuant to a contract with the City of Mesquite, working a minimum of eight hours weekly. He receives less than \$300 a month for his services, which equates to approximately \$8.00 per hour. Since taking office on July 1, 2011, Litman has taught the classes without compensation. He asks the Commission to advise him whether his existing contract with the City violates NRS 281A.430 now that he serves on the City Council.

## **B. RELEVANT STATUTES**

### **1) Contracts Between Public Officer and Governmental Entity**

Two provisions of the Ethics Law specifically address contracts between a public officer and a governmental or other entity. NRS 281A.400(10) prohibits a public officer from "seek[ing] . . . contracts through the use of the public officer's . . . official position." Likewise, NRS 281A.430(1) provides that "a public officer . . . shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer . . . has a significant pecuniary interest." Under these provisions, a public officer is prohibited from entering into contracts through the use of the public officer's official position or entering into contracts with any governmental entity unless he meets the conditions set forth in NRS 281A.430(4).

A public officer's actions are similarly constrained by NRS 281A.400(1), prohibiting a public officer from seeking or accepting "employment" or an "economic opportunity" which may improperly influence the public officer, and also by NRS 281A.400(2), barring a public officer's use of his position in government "to secure or grant unwarranted privileges . . . or advantages for the public officer."

Contracts formed before an individual becomes a public officer, however, are not prohibited and can continue while the individual holds public office. See *Matter of Bennett*, RFO No. 07-04A (public officer who entered into a long-term contract with the general improvement district before her election as a board trustee did not violate NRS 281A.400(10) or NRS 281A.430); and *In re Public Employee*, RFO 09-71A (public employee allowed to continue contract work for another state agency because the contract predated his public employment and there was no nexus between the two positions) Nonetheless, because the contractual relationship may give rise to conflicts between the public officer's private interests and his public duties, the public officer must apply the disclosure and abstention standards as required in NRS 281A.420.

The Commission notes that Litman contracted with the City prior to becoming a public officer. Consequently, his existing contract to provide fitness instruction is not prohibited under NRS 281A.400(1), (2), (10) or NRS 281A.430. The Commission therefore advises Litman

that he may continue to perform under the existing contract and receive compensation for his services as a fitness instructor. The Commission further advises Litman regarding the need for his disclosure and possible abstention on matters pertaining to his contract that may come before the City Council and refers him to our opinion in *Woodbury*, RFO No. 99-56, and the provisions of NRS 281A.420 governing disclosure and abstention.

Although Litman's existing contract may continue, this does not mean that he may enter into a new contract with the City or modify the terms of his current fitness contract. Now that he holds public office, the Ethics Law's restrictions on contracting with governmental entities apply to Litman. Accordingly, the Commission advises Litman that he cannot enter into a new contract for services with the City, unless the exemption criteria of NRS 281A.430(4) are satisfied. In other words, Litman may bid on or enter into a contract with the City if: the contract is competitively bid or is exempt by law from the competitive bid process; the sources of supply are limited; Litman has no part in developing the contract plans or specifications; and he is not personally involved in opening, considering or accepting offers.

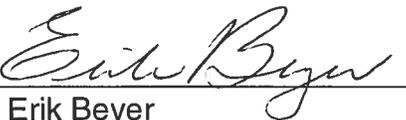
## **V. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Litman was a "public officer," as defined in NRS 281A.160.

2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. There is no violation of NRS 281A.400(1), (2) or (10) or NRS 281A.430 because Litman did not enter into a contract with the City while serving as a member of the City Council. However, any modification of the existing contract or Litman's entering into a new contract with the City is prohibited unless the criteria of NRS 281A.430(4) are met.
4. Litman may continue to perform instructional services under his existing fitness contract with the City and receive compensation for those services while serving as a member of the City Council.

Dated this 8<sup>th</sup> day of July, 2012.

NEVADA COMMISSION ON ETHICS

By:   
Erik Beyer  
Chairman