



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Director, State Agency,**
State of Nevada,

Request for Opinion No. 11-93A

Public Officer. /

ABSTRACT OF OPINION

I. STATEMENT OF THE CASE

Public Officer, State Agency Director, requested a confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his past and 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 16, 2011. State Agency Director appeared at the hearing 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 State Agency Director of its decision that

¹ The following Commissioners participated in this opinion: Chairman Erik Beyer and Commissioners Tim Cory, Esq., Gregory J. Gale, CPA, Paul H. Lamboley, Esq., James M. Shaw, and Keith A. Weaver, Esq.

his acceptance of tickets to a fundraising event did not violate the Ethics Law.²

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

II. QUESTION PRESENTED

State Agency Director accepted two complimentary tickets to a fundraising dinner. State Agency Director asks the Commission whether he handled this gift properly by reimbursing the donor for the cost of the meals provided, and for guidance on his future conduct in similar situations.

² See Footnote 3. Commissioners Gale and Shaw voted against this determination on grounds that State Agency Director's actions, although not violative of the Ethics Law, created an appearance of a conflict pursuant to NRS 281A.400(1) under the facts and circumstances presented, and concluded that the complimentary tickets should not have been accepted.

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

State Agency Director is the recently appointed Director of a Nevada State Agency. Shortly after his appointment, he received an invitation to attend a fundraising dinner to benefit a charitable organization ("Charity"). A member of Charity's Board of Directors and friend of State Agency Director, offered him two free tickets to the event valued at \$800. State Agency Director accepted the tickets, but reimbursed the Board member \$150 for the value of the dinner provided at the event.

Charity is a service provider under contract with an organization which distributes federal funds to qualified programs. State Agency has no direct control of the federal funds, but does oversee that the organization adheres to federal guidelines governing the proper use of those funds.

State Agency Director sought advice from the Governor's Office about whether he would violate Executive Order 2011-02 governing gifts to public officers and employees if he were to accept the tickets, and he was advised that the gift was not prohibited. He then contacted the Commission's Executive Director concerning the requirements of the Ethics Law and submitted a written request for an advisory opinion. Although the Commission was unable to respond to State Agency Director's request prior to the event, State

Agency Director and his spouse attended the Charity benefit dinner.

In his new position as head of State Agency, State Agency Director expects to receive invitations to similar events in the future and asks the Commission for advice concerning the propriety of his actions in accepting the tickets for the Charity event, and also for guidance on his future conduct in similar situations.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020 provides in part:

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

(a) A public officer 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.

2. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interests. The Ethics Law is concerned with situations involving public officers that create appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts to promote the integrity in public service. As the Director of a State Agency, State Agency Director holds a public office and must therefore commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves. Whether there would be such conflicts between his public duties as the Director and his private interests must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances.

2) Charity Fundraiser Dinner

State Agency Director received the invitation to the Charity fundraising dinner just a few days before the event was held. In that time, he consulted both the Governor's Office and the Commission's Executive Director for advice on whether it would be proper for him to accept two complimentary tickets to the event. The Governor's Office provided State Agency Director guidance prior to the event, but the Commission was unable to convene on such short notice and thus evaluates his past conduct in this Opinion.

The Commission concludes that it was proper for State Agency Director to accept the tickets and attend the

benefit dinner. It appears to the Commission that State Agency Director's attendance at the dinner advanced the State's interests of publicizing State Agency and its role as an active participant in the community, and thus served a proper public purpose. In addition, the only benefit to State Agency Director personally was the meal provided and State Agency Director paid the donor the value of the meal upon receipt of the tickets. Further, the donor is a personal friend of State Agency Director's who had asked him to attend the same event as his guest a few years prior. Accordingly, the Commission determines that State Agency Director's acceptance of the tickets did not violate the Ethics Law.³

3) Future Events

State Agency Director's request also asked us to advise him with respect to future invitations he may receive. Without a given set of facts and circumstances, the Commission is only able to provide State Agency Director with general guidance concerning the ethical standards governing a public officer's acceptance of gifts. Should State Agency Director have specific questions in the future, we urge him to consult with the Deputy Attorney General assigned to provide advice to State Agency and also to seek an

³ Commissioners Gale and Shaw are concerned that a reasonable person in State Agency Director's position would be improperly influenced by the acceptance of a private gift (Charity dinner tickets) when the public agency provides regulatory oversight of the use of federal funds for Charity; thereby implicating the provisions of NRS 281A.400(1) and creating an appearance of impropriety.

opinion from this Commission prior to taking action.

The Commission advises State Agency Director that gifts to public officers implicate the following provisions of the Ethics Law. First, NRS 281A.020 sets forth the general policy that a public office is a public trust and therefore a public officer must avoid both appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts to promote the integrity in public service and preserve the public trust. When State Agency Director is offered a gift, he must therefore evaluate the circumstances surrounding the gift when determining whether acceptance is appropriate.

Further, NRS 281A.400(1) prohibits a public officer from accepting any gift or favor “which would tend improperly to influence a reasonable person in the public officer's position to depart from the faithful and impartial discharge of the public officer's . . . public duties.” We advise State Agency Director that the inquiry under this provision is not whether the public officer believes that his decision-making would be improperly influenced, but whether a “reasonable person” in the public officer's position would be so influenced. Finally, under NRS 281A.400(2), a public officer must not use his position in government “to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer” or others. State Agency Director

must therefore be mindful of whether a gift is intended to grant or secure unwarranted benefits for himself or others.

IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, State Agency Director was the Director of State Agency and as such is a “public officer” as defined by 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. Based on the facts before the Commission, State Agency Director's acceptance of two tickets to the Charity fundraising dinner did not violate NRS 281A.020, NRS 281A.400(1) or NRS 281A.400(2).

Dated this 4th day of October, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman