



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
a Confidential Advisory Opinion by EMPLOYEE,
Division of Insurance,
Department of Business & Industry,**

Abstract of Opinion No. 09-43A

Public Employee.

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on June 25, 2009. State employee (Employee), an employee with the Division of Insurance in the Department of Business & Industry (Division) participated by telephone and provided testimony.

Employee requests the Commission determine whether he is subject to the proscription in NRS 281.236² which requires a 1 year cooling-off period for employment. If so, he asks the Commission grant him relief from the strict application of said cooling-off period.

¹ The following Commissioners participated in this opinion: Commissioners Hutchison, Lamboley, Moran and Shaw.

² NRS 281.236 was repealed and incorporated into NRS Chapter 281A in the 2009 legislative session but is yet to be codified. Therefore, this Opinion will cite to NRS 281.236. See S.B. 160, 75th Leg. (NV 2009).

After fully considering Employee's request and analyzing the facts and circumstances and testimony presented, the Commission deliberated and orally advised Employee of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. Employee's duties at the Division include:

a. Establishing or reviewing insurance rates for appropriateness and compliance with statutes and regulations;

b. Reviewing rate filings to determine an insurance company's financial soundness and ensuring compliance with state and federal insurance.

c. Interpreting and applying statutes and regulations to form and rate filings, testifying at regulation hearings, analyzing cost stabilization methods, and representing the Division at legislative hearings on proposed legislation.

2. An insurance company (Insurance Co.) that operates in states other than Nevada offered Employee employment. The position offered is that of an administrator located outside Nevada.

3. This position is responsible for providing leadership in the management and administration of underwriting. Employee will manage underwriters who underwrite for states other than Nevada.

4. Employee testified that in his new position he will not be involved with any Nevada insurance policies. Employee further testified that he has informed Insurance Co. that he would be prohibited by law from involvement in Nevada-related insurance activities and that Insurance Co. has agreed to insulate Employee from any such involvement.

CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Employee was a public employee, as defined by NRS 281A.150.

2. The Commission has jurisdiction to render an opinion in this matter, pursuant to NRS 281.236(6).

3. Employee is subject to the 1 year cooling-off period, pursuant to NRS 281.236(3).

4. Employee is granted relief from the strict application of the 1 year cooling-off period, pursuant to NRS 281.236(6).

DISCUSSION

All the facts in this matter were provided by Employee. Facts and circumstances that differ from those used by the Commission in this opinion may result in a different opinion.

The Commission first determined whether Employee is an employee subject to the 1 year cooling-off period, pursuant to NRS 281.236(3).

NRS 281.236(3) states in relevant part:

[A] former public officer or employee of a board, commission, department, division or other agency of the Executive Department of State Government, except a clerical employee, shall not solicit or accept employment from a business or industry whose activities are governed by regulations adopted by the board, commission, department, division or other agency for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year, he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

Employee's duties at the Division include those listed in NRS 281.236(3)(a)-(c). Therefore, the Commission found that he is subject to the 1 year cooling-off period.

Next, the Commission determined whether relief from the strict application of the cooling-off period is proper.

NRS 281.236(6) states:

A current or former public officer or employee may request that the Commission apply the relevant facts in his case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of subsection 3 or 5, as applicable, is not contrary to:

(a) The best interests of the public;

(b) The continued ethical integrity of State Government or political subdivision, as applicable; and

(c) The provisions of this chapter,
→ it may issue an opinion to that effect and grant such relief. The opinion of the Commission in such a case is final subject to judicial review pursuant to NRS 233B.130,

except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the current or former public officer or employee.

As a general rule, the Commission is reluctant to grant relief from the cooling-off period unless circumstances warrant it.

In Employee's case, his acceptance of Insurance Co.'s offer of employment is not contrary to the best interests of the public. Additionally, it is not contrary to the continued integrity of state government or contrary to the provisions of NRS Chapter 281A.

Employee is moving out of Nevada for employment with Insurance Co. Employee testified that his job duties at Insurance Co. will differ from the work he did at the Division. Further, recognizing prohibitions of NRS 281A.410(1), he testified that he will not work on insurance matters that involve Nevada and that Insurance Co. has agreed to insulate Employee from any such involvement.

Therefore, relief from the strict application of the cooling-off period is proper in this instance.

As a final note, Employee took it upon himself to seek an advisory opinion which action the Commission appreciates and encourages to ensure the integrity of public service.

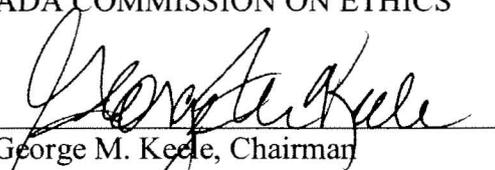
CONCLUSION

By a unanimous vote, by a preponderance of the evidence, the

Commission concludes that Employee is subject to the 1 year cooling-off period, pursuant to NRS 281.236(3). However, pursuant to NRS 281.236(6), the Commission grants Employee relief from the strict application of said cooling-off period because in this case, relief is not contrary to the best interests of the public, the continued integrity of State Government, and the provisions of NRS Chapter 281A.

DATED: 14 August 2009

NEVADA COMMISSION ON ETHICS

By: 
George M. Keele, Chairman