



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR ADVISORY OPINION OF
PUBLIC OFFICER, Member,
A Nevada Commission**

**Abstract of Confidential
Advisory Opinion No. 05-58**

This matter came before the Nevada Commission on Ethics (hereinafter the “Commission”) for hearing on November 9, 2005, on the request for advisory opinion filed with the Commission pursuant to NRS 281.511(1) by Public Officer, an appointed member of a Nevada Commission (hereinafter “Nevada Commission”).

The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511(5). Public Officer appeared in person with Public Officer’s legal counsel. Public Officer was sworn and presented testimony. This advisory opinion is confidential pursuant to NRS 281.511(5).

Public Officer seeks an advisory opinion from the Commission determining whether the provisions of NRS 281.491 allow Public Officer to establish a private business designed to offer consulting services to private businesses in need of advice and guidance in participating in and complying with the regulatory process of NRS Chapter 233B (the Nevada Administrative Code) and with administrative regulations of a State Department upon Public Officer’s retirement from the Nevada Commission.

After full consideration of the request for an advisory opinion and considering all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Public Officer of its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. Public Officer was, at the time of the hearing, a member of the Nevada Commission, having been appointed to that Commission by a former Governor and serving on the Nevada Commission for five (5) consecutive terms.
2. The Nevada Commission was established pursuant to Nevada Statute. It consists of eight members appointed by the Governor. Each commissioner serves an initial four-year term, and can serve more than one term. Members of the Nevada Commission are required to possess certain qualifications and experience to guide the deliberations of the Commission.
3. The Nevada Commission supervises the administration and operations of a State Department. The Nevada Commission adopts regulations, adopts enforcement policies, and approves forms and procedures used by the State Department. The Nevada Commission also hears appeals of hearing decisions.
4. In Public Officer's capacity as a member of the Nevada Commission, Public Officer's duties included the formulation of policy contained in regulations governing business and industry in general, and Public Officer directly performed activities and influenced decisions, investigations, and other actions which significantly affected business and industry. Public Officer was not involved in

regulating a specific business or industry, nor did Public Officer gain knowledge of the trade secrets of a direct business competitor.

5. Public Officer's service as a member of the Nevada Commission was part-time.
6. In Public Officer's private capacity, Public Officer is employed full-time as an executive for a corporation.
7. Public Officer retired from the Nevada Commission in 2005, after nearly 20 years of service.
8. Public Officer seeks to establish a private business designed to offer consulting services to businesses in need of guidance in complying with the provisions and regulatory process of NRS Chapter 233B (the Nevada Administrative Code) and the regulations administered by the State Department. Specifically, Public Officer intends to engage in the following activities:
 - Review and monitor the administrative processes, with specific focus on the State Department;
 - Attend regulatory workshops involving fees having a financial or administrative impact on the public;
 - Provide education to individual and business clients on general compliance with laws and regulations and developing internal administrative processes;
 - Address the impact, if any, of adopted regulations;
 - Attend and participate in the general public's comment and review sessions during regulatory workshops of the State Department, a process that affords an opportunity for the public and their

representatives and consultants to interact proactively with the Nevada Commission in developing Nevada's regulations;

- Attend and participate in the general public's comment and review sessions for the adoption of regulations at the Nevada Commission;
- Represent and counsel a private person concerning the proposal or consideration of legislative measures or administrative regulations; and
- Attend the Legislative Commission final review process for adoption of the regulations and, when appropriate, seek reconsideration or amendment of proposed regulations.

CONCLUSIONS OF LAW

1. At the time of the hearing, Public Officer was a public officer as defined by NRS 281.4365.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511(1) and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved by a five-to-one vote, the Commission renders the following Opinion:¹

¹Commissioners James Kosinski, George Keele, Rick Hsu, Randall Capurro and Mark Hutchison voted to approve the motion, while Commissioner William Flangas voted nay. Chairman Caren Jenkins did not attend the meeting, and Commissioner Timothy Cashman withdrew from participation in this matter due to a perceived conflict of interest.

OPINION

The issue in this opinion concerns the propriety of Public Officer's proposed consulting activities in view of the restrictions contained in NRS 281.491. Subsection 1 of NRS 281.491 provides:

A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. *Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service.* As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations. (Emphasis added.)

As a member of the Nevada Commission, Public Officer is prohibited for one year after Public Officer's retirement from the Nevada Commission, from representing or counseling for compensation a private person or business upon any "issue" that was under consideration by the Nevada Commission during Public Officer's term of service. Because Public Officer has been a member of the Nevada Commission for almost 20 years, Public Officer is effectively precluded from rendering advice or guidance to private clients concerning any "issue" considered by the Nevada Commission during that time. "Issue" is defined in NRS 281.491(1) to include "a case, proceeding, application, contract, or determination" but specifically excludes "the proposal or consideration of legislative measures or administrative regulations."

According to the testimony presented by Public Officer at the hearing in this matter, Public Officer intends to establish a consulting business that would offer guidance to businesses in complying with the regulatory provisions and process of the State Department and facilitating their participation in the administrative rule-making process. Public Officer does not intend to

offer representation to private clients relating to any issue pending before the Nevada Commission at the time of Public Officer's retirement. Additionally, Public Officer testified that Public Officer has not formulated a list of prospective business clients to whom Public Officer intends to solicit Public Officer's consulting services. For one year after Public Officer's retirement from the Nevada Commission, Public Officer will limit Public Officer's activities to those specifically excluded under NRS 281.491(1).

While it appears that Public Officer is cognizant of proscriptions contained in NRS 281.491(1), this Commission seeks to emphasize that for a period of one year after Public Officer's retirement from the Nevada Commission, Public Officer's proposed consulting services cannot involve any representation or counsel to private clients concerning an "issue" which was under consideration by the Nevada Commission during Public Officer's entire tenure, not just those matters pending at the time of Public Officer's retirement. Further, the Commission concludes that the provisions of NRS 281.491(1) do authorize Public Officer to engage in consulting services relating to the proposal or consideration of legislative measures or administrative regulations; however, it is this Commission's position that such activities must be confined to the proposal or consideration of prospective legislative measures and prospective administrative regulations only.

Finally, the Commission notes that Public Officer's proposed consulting services may also implicate certain provisions of NRS 281.236,² however, this Commission has not been asked to apply the provisions of NRS 281.236 to Public Officer's proposed consulting services and is rendering no opinion in that regard. Public Officer is encouraged to return to the

² NRS 281.236 imposes a one year restriction upon a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the Executive Branch of government from employing certain former public officers or employees of the agency after termination of service or employment. The statute also permits such public officers or employees to seek relief from the strict application of the statute.

Commission for an opinion interpreting and applying the provisions of NRS 281.236 to Public Officer's circumstances if Public Officer finds it appropriate.

NOTE: THIS MATTER IS A FIRST-PARTY ADVISORY OPINION REQUEST. FOR PURPOSES OF A FIRST-PARTY ADVISORY OPINION REQUESTED PURSUANT TO NRS 281.511(1) AND NRS 281.521, ALL FACTS IN THE MATTER ARE PROVIDED BY THE PUBLIC OFFICER REQUESTING THE ADVISORY OPINION, AND THE COMMISSION MAKES NO INDEPENDENT INVESTIGATION AS TO THE TRUTH OF THOSE FACTS. THE RECORD HEREIN, THEREFORE, CONSISTS SOLELY OF FACTS PROVIDED ON THE RECORD BY THE PUBLIC OFFICER, AND THIS OPINION IS BASED SOLELY UPON THOSE FACTS. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE PROVIDED BY THE PUBLIC OFFICER IN THIS ADVISORY OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: February 24, 2006.

NEVADA COMMISSION ON ETHICS

By: _____/s/_____
MARK A. HUTCHISON, Vice Chairman