



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Public Employee**,
Public Entity, State of Nevada,

Advisory Opinion No. 18-137A

Public Employee. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Public employee (“Public Employee”) is employed by a State of Nevada public entity (“Public Entity No. 1”) and requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675 regarding the propriety of 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”). Pursuant to Section 13 of the Commission’s approved regulation, LCB File No. R108-18, a quorum of the Commission considered this matter by submission, without holding an advisory-opinion hearing.¹ Materials provided for consideration by the Commission included the request for an advisory opinion, information received from Public Employee, certain publicly available information and a list of proposed facts that were affirmed as true by Public Employee.

Public Employee sought an opinion from the Commission regarding whether Public Employee may hold dual employment as a part-time elected public officer for Public Entity No. 2 and maintain his/her public employment for Public Entity No. 1. Specifically, Public Employee is concerned about the ethical implications of contemporaneously being a full-time public employee and serving in a part-time elected position given the two employers could have conflicting interests on certain matters affecting both of them.

After fully considering Public Employee’s request and analyzing the facts and circumstances presented by Public Employee, the Commission deliberated and advised Public Employee of its decision that Public Employee is not prohibited under the Ethics Law from simultaneously holding the employment position for Public Entity No. 1 and serving as a part-time elected public officer for Public Entity No. 2. The Commission nevertheless provides guidance regarding potential conflicts and compliance with the Code of Ethical Standards contained in NRS 281A.400 and the disclosure and abstention requirements of NRS 281A.420.

Public Employee has elected to retain confidentiality with respect to the Commission’s proceedings. Therefore, the Commission publishes this Abstract Opinion.

¹ The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O’Neill and Wallin. After consulting with Commission Counsel and in compliance with NRS 281A.420, Commissioner Yen disclosed that she is a partner with the law firm of McDonald Carano who represents a client associated with this advisory opinion request. Commissioner Yen abstained from participating on this Request for Advisory Opinion in order to avoid any appearance of impropriety and because the independence of judgment of a reasonable person in her situation could be materially affected by the private commitment under the legal standard established in NRS 281A.420.

The facts in this matter were obtained from documentary evidence provided by Public Employee and available public information related to the involved public entities. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact are set forth below. Facts and circumstances that differ from those presented in the record and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion. Although the full written opinion was served on Public Employee, for confidentiality reasons, this Abstract Opinion redacts Findings of Fact, provides a summary of issues, clarifies its analysis and removes other identifying information to protect the confidentiality of the subject.

II. QUESTION PRESENTED

Public Employee is currently employed by Public Entity No. 1 and is contemplating seeking election as a part-time elected official for Public Entity No. 2. Public Employee questions whether the simultaneous public service for two government entities is permissible given the requirements of the Ethics Law to maintain private interests separate from public duties and to properly avoid any perceived appearance of impropriety or conflicts of interest.

III. FINDINGS OF FACT

1. Public Employee is currently a public employee of Public Entity No. 1 and is within the definition of a "public employee" for application of the Ethics Law pursuant to NRS 281A.150.
2. Pursuant to NRS 281A.065(4), Public Employee has a commitment in a private capacity to the interests of the Public Entity No. 1, as the employer.
3. If elected to serve as a public officer for Public Entity No. 2, Public Employee would also have a commitment in a private capacity to Public Entity No. 2 pursuant to NRS 281A.065.
4. The qualifications to be elected as a public officer for Public Entity No. 2 have certain restrictions; however, the listed restrictions do not prohibit the public officer from holding employment with Public Entity No. 1.
5. Public Entity No.1 and Public Entity No. 2 are anticipated to have some issues of joint or mutual concern.
6. Public Entity No. 1 has a secondary employment policy that requires all permanent employees to obtain permission for secondary employment. Public Employee anticipates requesting approval for secondary employment before filing for public office to assure the duties for each position do not conflict. Upon receipt, Public Entity No. 1 would determine whether the secondary employment would create a conflict of interest under its policies and laws. The secondary employment policy establishes a conflict of interest for situations where an employee is or may be in a position to influence activities or decisions regarding Public Entity No. 1 in ways that would, or could, lead to personal gain for the employee and immediate family or give an improper advantage to a third party in dealings with Public Entity No. 1.
7. If elected, Public Employee acknowledges the ethical responsibility to maintain proper separation of public duties and government resources between the two employing governmental agencies. Public Entity No. 2 does not hold its meetings

during Public Employee's regular work hours for Public Entity No. 1. All public duties for Public Entity No. 2 would be conducted separate from and after the regular work hours for Public Entity No. 1. For any other duties for Public Entity No. 2, Public Employee would utilize leave time in the form of vacation, leave without pay or other available leave options.

8. In addition, Public Employee would segregate the use of government property, equipment, including phones and email, and resources to assure the resources of an agency are used for that agency's purposes and the public duties for each public employer are properly separated.

IV. ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

The Ethics Law promotes the appropriate separation between public duties and private interests. Public Employee is currently a public employee of Public Entity No. 1 and, if elected, will become also a public officer for Public Entity No. 2. As such, Public Employee has specific public responsibilities that must be separated from private employment interests and commitments in order to preserve the public trust.

As a threshold matter, the Commission takes notice that neither public entity imposes a duty to resign from either position under circumstances associated with this opinion. Public Employee confirms that the secondary employment policy for Public Entity No. 1 will be complied with should Public Employee seek election as a public officer for Public Entity No. 2. Any determinations associated with the secondary employment policy, other applicable policies or particular laws pertaining to Public Entity No. 1 are within the authority of that agency to administer. The Commission may consider but does not directly enforce government policies or other laws that implicate the Ethics Law. Further, the Commission does not interpret or enforce wage and hour laws, laws pertaining to Nevada's Public Employees Retirement System and other employment laws. Consequently, Public Employee must exercise personal due diligence with respect to any other laws or regulations applicable to the anticipated circumstances. This opinion is limited to application of the Ethics Law to the given facts.

Holding dual positions within any jurisdictional hierarchy creates challenging situations and may lead to impermissible situations when the same person holds a position that has authority and control over the other position given the requirements of the Ethics Law. Further, NRS 281A.065(4) establishes that public officers and employees have a commitment in a private capacity to their employer. The statute makes no distinction between private and public employers and the Commission has instructed that public officers or employees have a commitment in a private capacity to the interests of their public employers. *In re Public Officer*, Comm'n Op. No. 13-77A (2014) at p. 5; *In re Public Officer*, Comm'n Op. No. 14-33A (2014) at p. 4. Consequently, the employer's interests are deemed to be that of the public officer or employee for purposes of the Ethics Law.

In addition, the Ethics Law requires a proper disclosure in matters that would reasonably be affected by the public officer's or employee's commitment in a private capacity to an employer. See NRS 281A.420(1). A public officer or employee has a private interest in maintaining employment and salary as well as a private commitment to the interests of an employer. *In re Public Officer*, Comm'n Op. No. 15-74A (2018). Certainly two public employers could have divergent and conflicting interests. Concurrently holding

a private commitment to two employers may lead to conflict situations that must be recognized and navigated in compliance with the requirements of the Ethics Law, including the policy of the State of Nevada to avoid appearances of impropriety. NRS 281A.020.

B. RELEVANT STATUTES

1. Nevada Public Policy on Government Ethics

NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office 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. Definition of a Commitment in a Private Capacity

NRS 281A.065 provides:

“Commitment in a private capacity,” with respect to the interests of another person, means a commitment, interest or relationship of a public officer or employee to a person:

1. Who is the spouse or domestic partner of the public officer or employee;
2. Who is a member of the household of the public officer or employee;
3. Who is related to the public officer or employee, or to the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;
4. Who employs the public officer or employee, the spouse or domestic partner of the public officer or employee or a member of the household of the public officer or employee;
5. With whom the public officer or employee has a substantial and continuing business relationship; or
6. With whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in subsections 1 to 5, inclusive.

3. Use of Government Position

NRS 281A.400(1) provides:

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.

NRS 281A.400(2) provides:

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.

NRS 281A.400(7)

7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer or employee who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

↳ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

NRS 281A.400(9) provides:

A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

4. Disclosure and Abstention

NRS 281A.420(1), (3) and (4) provide, in relevant part:

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a significant pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person,

↳ without disclosing information concerning the gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of the person that is sufficient to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's significant pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

...

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's significant pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of another person.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of another person, accruing to the other person, is not greater than that accruing to any other member of any general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person in the manner required by subsection 1.

Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

V. DECISION

A. HOLDING DUAL POSITIONS UNDER THE CIRCUMSTANCES IS NOT AN IMPERMISSIBLE CONFLICT

Whether conflicts would exist between Public Employee's public duties, as an elected public officer for Public Entity No. 2, and the private interests in employment with Public Entity No. 1 must be considered in light of the provisions set forth in NRS Chapter 281A, as interpreted by applicable Commission precedent in similar circumstances. Each factual scenario is individually reviewed to determine whether an impermissible conflict exists.

Several Commission opinions relate to "boss of your boss" situations implicating the provisions of the Ethics Law, which might impede the ability to discharge public duties faithfully and impartially.² The most recent of which is *In re Reese*, Comm'n Op. No. 16-42A (2016), which describes the history of prior issued opinions of the Commission related to this issue.

Ms. Reese sought to simultaneously hold two public positions. Specifically, she was a candidate seeking election as a trustee for the Washoe County School District Board ("Board") while maintaining her employment as a teacher at a charter school. The Commission recognized the authority and oversight the Board had over the employing charter school, including whether the school could maintain its charter under circumstances where there were pending compliance issues. The facts in *Reese* exemplified a "boss of your boss" situation. Numerous inherent ethical conflicts existed as established by the record given the oversight and connectivity between the two positions, such that, Ms. Reese would be placed in a situation where simultaneously holding two public positions created an impermissible conflict requiring her to "disclose and abstain regularly on matters." Consequently, the Commission advised Ms. Reese that she certainly could campaign and be elected to the public position of trustee. However, if elected, she would have to make a choice, including whether to resign her teaching position. *Id.*

Conversely, in another opinion, the Commission concluded that holding dual positions was not precluded by the Ethics Law because it did not present a "boss of your boss" situation. *In re Public Employee/Public Officer*, Comm'n Op. No. 94-14 (1997). A caveat was explored in a later opinion in which the Commission explained that there are other ethical considerations in fulfilling public duties, which may not exemplify a "boss of your boss" situation, but would present the opportunity for the exchange of favors between interacting government officials benefitting private interests and commitments,

² Public officers or employees are directed to confer with any applicable local and State laws that may prohibit holding more than one public position, whether appointed or elected, as applicable. These laws may be amended by the Legislature or governing body, as it deems appropriate.

implicating NRS 281A.400(1) and (2). See *In re Collins*, Comm'n Op. No. 11-78A (2012) at p. 5. These considerations are more particularly addressed below.

The Commission weighs many factors when determining whether dual public roles create a conflict of interest including, but not limited to, the amount of oversight the public body has over the public employee's employment or superiors and whether the public employee, in an elected capacity, would have to abstain from participating on matters affecting the employer on a regular basis because of conflicts created by the dual public positions. See *In re Ancho*, Comm'n Op. No. 06-26 (2006). Under the specific facts and circumstances of this case, the Commission determines that there is no "boss of your boss" situation creating an appearance of impropriety or impermissible conflict precluding Public Employee from serving as a public officer for Public Entity No. 2 and working for Public Entity No. 1. If Public Employee is elected as a public officer for Public Entity No. 2, the duties of the elected position would not have any oversight over the public employment for Public Entity No. 1, which could impede the ability to discharge public duties faithfully and impartially.

B. USE OF GOVERNMENT POSITION AND DUTY TO AVOID CONFLICTS AND UNWARRANTED PREFERENCES

As a public employee of Public Entity No. 1 and an elected public officer of Public Entity No. 2, Public Employee must make a commitment to avoid conflicts between private interests and those of the general public served. In furtherance thereof, Public Employee has a duty to avoid actual and perceived conflicts of interest, and must avoid the use of a public position in government to secure or grant unwarranted privileges, favors, preferences, exemptions or advantages for oneself or for any person to whom there is a commitment in a private capacity, including employers. "Unwarranted" means without justification or adequate reason. NRS 281A.020 and NRS 281A.400(1) and (2).

Additionally, the duties of holding dual public positions, as they relate to use of property, time and resources owned by each agency, could create a conflict leading to or resulting in a violation of the Ethics Law. Concerns could be evident if the job duties and required interactions for an elected public position required significant time commitments to be conducted on a regular or recurring basis during the regular business hours of the other public employer. Consequently, the Commission reviews whether the proper separation of the anticipated duties for and resources held by each public employer could be fairly and adequately achieved in furtherance of protecting the public trust. The Commission's analysis is based upon the circumstances presented and the respective public duties and time commitments for the involved public entities.

Furthermore, even if Public Employee does not intend to use a public position to affect or influence a private matter in the future or to benefit either public employer, to whom there is a private commitment, holding the dual positions might allow Public Employee to do so. Even without actual impropriety, Public Employee is in an opportunistic position to dilute the public trust, which may lead to a violation of the Ethics Law. While holding an opportunity alone does not create a violation of the provisions of NRS 281A.400, it does create a duty to avoid conflicts of interest and prevent a violation of the Ethics Law. NRS 281A.020.

Public Employee correctly recognizes the duty to maintain a proper separation between an election campaign and the resulting role as a public officer for Public Entity No. 2 and employment with Public Entity No. 1 by acknowledging that there will not be any campaigning during Public Entity No. 1 work hours, including the use of government

property, resources or time. If elected, Public Employee will take appropriate employment leave to attend to any related business as an elected public officer. Public Employee will not use the public employment position to secure unwarranted privileges, preferences, or advantages for himself/herself, or improperly influence a subordinate to benefit a personal or financial interest, including those associated with the campaign. See *In re Antinoro*, Comm'n Op. No. 14-59C (2015). In addition, Public Employee is referred to *In re Augustine*, Comm'n Op. No. 04-47 (2004) pertaining to the improper use of government resources, time, property, equipment or facilities to support a private election campaign. Based upon and limited to the circumstances presented, the Commission is satisfied that proper separation of public duties for each public entity can be achieved through due diligence and vigilance to assure compliance with the Ethics Law.

Separately, Public Employee has not presented a future item anticipated to be considered by both public entities, which facts are required for the Commission's to ascertain whether the provisions of the Ethics Law would apply to the matter. Accordingly, the Commission advises Public Employee to be vigilant and well versed in the application of the Ethics Law in carrying out the duties of each public position. If a particular situation arises in the future, Public Employee is advised to seek the advice of the official attorney for the applicable agency or to seek an advisory opinion from the Commission based upon the identified conflict or circumstances.

C. DISCLOSURE AND ABSTENTION

Public Employee confirms there is not a direct hierarchy of authority over personnel matters between the two public entities, but identifies the potential for individual or joint meetings regarding other matters of mutual concern. However, without detailed facts on a particular item of mutual concern anticipated to be considered by the public entities, the Commission is not in the position to provide specific advice. Direction on application of the Ethics Law requires a given set of facts and circumstances. NRS 281A.680. Nevertheless, the Commission may confirm its prior advice on compliance with the disclosure and abstention requirements of the Ethics Law pursuant to NRS 281A.665. The Commission has concluded that:

The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed. The people have a right to expect that every public official and employee will conduct himself/herself in a manner that will preserve public confidence in and respect for the government that the public officer or employee represents. Such confidence and respect can best be promoted if every public official and employee uniformly avoids both actual and potential conflicts between their private self-interest and the public interest. Helping public officials and employees achieve these goals is one of the objectives of the Ethics Law...

In re Public Officer, Comm'n Op. No. 13-86A (2014) at pg. 8.

In *In re Public Officer*, Comm'n Op. No. 13-71A (2014), the Commission opined that "[a] Public Officer must commit to avoid actual and perceived conflicts of interest and must publicly disclose sufficient information concerning any private relationships and interests which would reasonably affect matters before the Governing Body served by Public Officer, including significant pecuniary interests and [private] commitments..." *Id.* at pg. 2. Further, a public officer must abstain from voting or otherwise acting on public matters in which private relationships and commitments would clearly and materially

affect the independence of judgment of a reasonable person in the public officer's position. Proper disclosures and compliance with the Ethics Law serves to promote the public trust:

In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. ...Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.

Id. at pg. 8, citing *In re Weber*, Comm'n Op. No. 09-47C (2009).

Specifically, NRS 281A.420 requires a proper disclosure when the public officer or employee is carrying out public duties to approve, disapprove, vote, abstain or otherwise act upon a matter: (a) regarding a gift or loan, (b) in which there is a significant pecuniary interest, (c) that would reasonably be affected by a commitment in a private capacity to the interests of another person, or (d) that would be related to any representation or counseling of a private person before another agency within the preceding year. Consequently, if Public Employee, in carrying out the public duties for either public entity, is presented with a matter that would directly affect Public Employee's commitment to an employer or Public Employee's own pecuniary interests, Public Employee should ascertain whether there is a duty to disclose and/or abstain on the matter. In doing so, Public Employee should recognize that public employees and public officers have different requirements, in that, an employee must disclose to the supervisory head of the organization and an elected public officer must make the disclosure to the public.

Public Employee is reminded that disclosure must be made at the time the matter is considered. The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the organization or public, as applicable, of the nature and extent of the conflict and the potential effect of the action or abstention on the public employee's/officer's private interests. Silence based upon a prior disclosure fails to properly inform the organization or public of the nature and extent of the conflict. (*See In re Buck*, Comm'n Op. No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)).

After completing a proper disclosure, Public Employee must determine whether, under the "reasonable person standard," the participation on the matter has potential to affect personal interests and private commitments. In other words, would the participation or vote of a reasonable person in Public Employee's situation be materially affected by the private interests or commitments? The abstention analysis includes whether it is appropriate for a public officer to apply the presumption set forth in NRS 281A.420(3) and (4) to relieve the public officer from the abstention requirements because the interests of the public officer, including the private commitment/conflict, are not affected to a lesser or greater degree than others similarly situated. In interpreting NRS 281A.420, the Commission confirmed that:

A proper disclosure acts as a condition precedent to recognition of the public policy attributes of NRS 281A.420(3) and (4), which instruct that appropriate weight and proper deference be given to the public policy of this State, which favors the right of a public officer to perform the duties for which

the public officer was appointed and to otherwise act upon a matter, provided the public officer has properly disclosed the public officer's commitment in a private capacity to the interests of another person in the manner required, and the independence of judgment of a reasonable person would not be clearly and materially affected by the private interests.

In re Public Officer, Comm'n Op. No. 15-74A (2018) at pgs. 9-10.

VI. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Public Employee was a public employee as defined by NRS 281A.150.
2. If elected, Public Employee also will be a public officer as defined in NRS 281A.160.
3. Pursuant to NRS 281A.665, the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.460.
4. The Ethics Law does not preclude Public Employee, as an employee of Public Entity No. 1, from campaigning for and being elected to serve Public Entity No. 2.
5. Under the Ethics Law, there is no appearance of impropriety or impermissible conflict between Public Employee's dual public service for the involved public entities because there is no "boss of your boss" situation.
6. Public Employee, as a public employee and a public officer, if elected, is subject to the disclosure and abstention provisions of NRS 281A.420. Therefore, as a Public Employee or a Public Officer, all required disclosures must be properly made pursuant to NRS 281A.420(1) and there is a duty to conduct the required abstention analysis pursuant to NRS 281A.420(3) and (4), and thereafter abstain from matters that are not excused by the presumption.
7. Although the Commission does not perceive an impermissible conflict in simultaneously holding the two public positions, it advises Public Employee to be vigilant to comply with the disclosure and abstention requirements of NRS 281A.420. If a future matter arises that would implicate a conflict between the employer and service as an elected official, Public Employee is encouraged to seek the advice of the official attorney for the applicable agency before he participates on the matter. Further, Public Employee should review the Ethics Law and the Commission's interpretation of the provisions of the Ethics Law, including its opinion *In re Woodbury*, Comm'n Op. No. 99-56 (1999), on disclosures and abstentions. Public Employee may also seek an advisory opinion from the Commission with respect to the particular circumstances.

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Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

The following Commissioners participated in this opinion:

Dated this 11th day of March, 2019.

NEVADA COMMISSION ON ETHICS

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Teresa Lowry
Teresa Lowry, Esq.
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Philip K. O'Neill
Philip K. O'Neill
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Kim Wallin
Kim Wallin
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: ABSTAINED
Amanda Yen, Esq.
Commissioner