



Confidentiality Waived for Opinion Only

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Brian Knudsen**, Councilmember,
City of Las Vegas, State of Nevada,

Advisory Opinion No.19-055A
CONFIDENTIAL

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Brian Knudsen (“Knudsen”), Councilmember for the City of Las Vegas, requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675 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”). Pursuant to Section 13 of the Commission’s approved regulation, LCB File No. R108-18, effective August 30, 2018, a quorum of the Commission considered this matter by submission, without holding an advisory-opinion hearing.¹ The Commission considered the request for an advisory opinion, information provided by Knudsen, publicly available information and a list of proposed facts that were affirmed as true by Knudsen.

Knudsen sought an opinion from the Commission regarding a potential conflict of interest between his public position as a councilmember and his private interests as the owner of a private consulting business, BP2 Solutions LLC, which offers strategic planning and fundraising services to various nonprofit organizations in southern Nevada to better serve the community. Knudsen seeks advice on whether, under the Ethics Law, he may continue offering his services to help such nonprofit organizations raise public funds. Currently, Knudsen is transitioning away from consultation for one of his nonprofit clients and moving into a non-paid board member position to expand private funding opportunities.

The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law. The facts in this matter were obtained from documentary and other evidence provided by Knudsen. For the purposes of the conclusions offered in this opinion, the Commission’s findings of fact set forth below are either based upon or accept as true the facts Knudsen presented. Facts and circumstances that differ from those

¹The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O’Neill and Wallin. Commissioner Yen disclosed and abstained from any participation on this matter to avoid any appearance of impropriety or bias in compliance with NRS 281A.065(5), NRS 281A.420 and Rule 2.11 of the Code of Judicial Conduct. Specifically, Commissioner Yen is a partner at McDonald Carano and disclosed that the City of Las Vegas is a client. Since the judgment of a reasonable person in Yen’s situation would be materially affected by the disclosed relationship, Yen abstained from participation in any proceeding pertaining to this matter.

presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.²

II. QUESTIONS PRESENTED

Knudsen is seeking advice on conflicts of interest and the ethical implications associated with his private consulting business, which provides strategy and fundraising services to nonprofit clients, and his public duties as a councilmember. Specifically, Knudsen inquires whether the Ethics Law applies differently if he serves as a non-paid board member for a nonprofit organization to assist it in private and public fundraising efforts and other matters.

III. FINDINGS OF FACT

1. Knudsen is a City of Las Vegas City Councilmember representing Ward 1.
2. In his private capacity, Knudsen owns a private consultation firm, BP2 Solutions LLC ("BP2"), which provides management consulting, advocacy, strategic planning and fundraising services to nonprofit entities that serve the community providing assistance to those in need within the Nevada.
3. BP2 provides consulting services to the Adoption Exchange, a 501(c)(3) organization. BP2 also provides consulting services for the CEO Exchange, a collection of nonprofit organizations offering services to citizens of Las Vegas, Nevada (the United Way of Southern Nevada acts as the fiscal agent).
4. The Adoption Exchange has offices located in Aurora, Colorado, Las Vegas, Nevada and Salt Lake City, Utah. Its services include providing connection and adoption services between families seeking to adopt and children within the foster care systems of State agencies.
5. Prior to his election and appointment, Knudsen was retained by the Adoption Exchange to coordinate meetings between the Nevada Department of Health and Human Services ("DHHS") and Clark County, and members of the Adoption Exchange, in order to expand public funding opportunities for both recruitment services and adoption placements.
6. Knudsen is transitioning from a paid consultant for the Adoption Exchange to one of its non-paid board members, where he will focus his efforts on expanding private funding opportunities on behalf of the nonprofit.
7. The CEO Exchange, is a collection of approximately 12 local nonprofits that cooperatively advocate for stronger policies and funding mechanisms for indigent Southern Nevadans to achieve a higher-level of self-sufficiency and success. The CEO Exchange does not advocate on behalf of any one local nonprofit, but rather, acts to increase collaboration and coordination among those entities to provide such services to Southern Nevadans in need

² The Commission reserves its statutory authority should an ethics complaint be filed presenting contrary circumstances. See *In re Howard*, Comm'n Op. No. 01-36 (2002) (notwithstanding first-party opinion, public is not precluded from bringing ethics complaint) and *In re Rock*, Comm'n Op. No. 94-53 (1995) (reservation of right to review until time issue is raised).

8. On behalf of its nonprofit clients, BP2 seeks to coordinate a shared data pool relating to assist battered women and affected children, so that the county, and public may freely access and research this information in a uniform manner ("Shared Data Pool").
9. Prior to his election and appointment, Knudsen was retained by the CEO Exchange (via a contract through United Way of Southern Nevada) to facilitate and coordinate meetings between DHHS and Clark County officials for items relating to mental healthcare, transportation and housing for the impoverished population in Southern Nevada. He also facilitated meetings among community leaders and public officials and employees at Clark County School District ("CCSD"), Southern Nevada Regional Housing Authority ("SNRHA"), Regional Transportation Commission ("RTC"), and the cities of North Las Vegas and Henderson, all relating to improving outcomes for people in poverty.

IV. ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

As a public officer, Knudsen must commit himself to avoid actual and perceived conflicts of interest between his public duties and private pecuniary interests and commitments (NRS 281A.020) and ensure that he will not use his position in government to gain unwarranted privileges, preferences, exemptions or advantages for himself, for any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person (NRS 281A.400). The Commission does not have jurisdiction to preclude Knudsen from accepting an unpaid position as a member of the Board of Directors for the Adoption Exchange. Rather, the Commission has jurisdiction to advise Knudsen regarding his obligations under the Ethics Law as a public employee while holding a non-paid private position for a nonprofit agency. In this regard, Knudsen is seeking advice on whether he may, on behalf of the CEO Exchange and for compensation between August 1, 2019 and July 30, 2020:

- i. Facilitate three (1.5 hour) meetings amongst officials at DHHS, Clark County, CCSD, RTC, SNRHA, City of North Las Vegas, and City of Henderson for items relating to mental healthcare, transportation, and housing for the impoverished population in Southern Nevada;
- ii. Coordinate meetings between the Division of Child & Family Services ("DCFS") and Clark County for the purpose of establishing a shared data pool relating to assist battered woman and affected children, so that the state, county, and public may freely access and statistically research this information in a uniform manner;
- iii. Coordinate meetings between Nevada Medicaid, low income housing experts, homeless service providers, and managed care organization providers, to assist Medicaid policy on targeted case management and the execution of that policy as new housing complexes are built;
- iv. Coordinate meetings with Nevada Medicaid to help establish a centralized data gathering process and depot as Medicaid renegotiates new contracts with managed care organizations; and

- i. Coordinate meetings between Nevada Medicaid, low income housing experts, homeless coordinate meetings with Richard Whitley-Director of DHHS-on developing an assessment center concept.

The Commission will examine the relationships established by law to be private commitments and the interplay between a nonprofit organization and its requests for public funding, grants or other benefits that can be obtained through or afforded by the public agency served by the public officer. Knudsen particularly seeks advice regarding any restrictions pursuant to NRS 281A.410 on his ability to privately facilitate and coordinate meetings with public representatives of local and State public agencies, in the context of paid business-client services.

NRS 281A.410 imposes restrictions on representing or counseling private persons before public agencies. A public officer serving a local legislative body may request that the Commission grant relief from the statutory restrictions pursuant to NRS 281A.410(3) based upon the stated public interest factors. Otherwise, the restrictions set forth in NRS 281A.410 are mandatory. In addition, the Code of Ethical Standards set forth in NRS 281A.400 and the disclosure and abstention requirements of NRS 281A.420 apply to Knudsen's situation should he represent a nonprofit, either as a business client for compensation or as a volunteer board member on matters before the City of Las Vegas.

B. RELEVANT STATUTES

1) Duty to Avoid Conflicts of Interest

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) Commitments 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) Improper Use of Public Position

NRS 281A.400(1) and (2) provide:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity, for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity, 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.

2. 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. As used in this subsection, "unwarranted" means without justification or adequate reason.

4) Limitations on representing or counseling private persons before public agencies

NRS 281A.410 provides:

In addition to the requirements of the code of ethical standards and the other provisions of this chapter:

1. If a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:

(a) Shall not accept compensation from any private person to represent or counsel the private person on any issue pending before the agency in which that public officer or employee serves, if the agency makes decisions; and

(b) If the public officer or employee 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 the public officer's or employee's service. As used in this paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. Except as otherwise provided in subsection 3, a State Legislator or a member of a local legislative body, or a public officer or employee whose public service requires less than half of his or her time, may represent or counsel a private person before an agency in which he or she does not serve.

3. A member of a local legislative body shall not represent or counsel a private person for compensation before another local agency if the territorial jurisdiction of the other local agency includes any part of the

county in which the member serves. The Commission may relieve the member from the strict application of the provisions of this subsection if:

(a) The member files a request for an advisory opinion from the Commission pursuant to NRS 281A.675; and

(b) The Commission determines that such relief is not contrary to:

(1) The best interests of the public;

(2) The continued ethical integrity of each local agency affected by the matter; and

(3) The provisions of this chapter.

4. For the purposes of subsection 3, the request for an advisory opinion, the advisory opinion and all meetings, hearings and proceedings of the Commission in such a matter are governed by the provisions of NRS 281A.670 to 281A.690, inclusive.

5. Unless permitted by this section, a public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.

5) Disclosure

NRS 281A.420(1) provides:

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;

(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; or

(d) Which would reasonably be related to the nature of any representation or counseling that the public officer or employee provided to a private person for compensation before another agency within the immediately preceding year, provided such representation or counseling is permitted by NRS 281A.410,

↳ without disclosing information concerning the gift or loan, the significant pecuniary interest, the commitment in a private capacity to the interests of the other person or the nature of the representation or counseling of the private 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, upon the person to whom the public officer or employee has a commitment in a private capacity or upon the private person who was represented or counseled by the public officer or employee. 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.

6) Abstention

NRS 281A.420(3) and (4) provide:

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 duty of the public officer to make a proper disclosure at the time the matter is considered and in the manner required by subsection 1.

(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 makes a proper disclosure at the time the matter is considered and 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

Nevada's Ethics Law mandates that public officers and employees hold public office for the public benefit and avoid conflicts of interest. NRS 281A.020. The Code of Ethical Standards set forth in NRS 281A.400 and other requirements of the Ethics Law are applicable to public officers and employees, and the Commission interprets these provisions to assist Knudsen in the navigation of the boundaries of prohibited conduct.

As a councilmember, Knudsen is a public officer who must commit himself to avoid conflicts between his private interests or commitments and those of the general public whom he serves. In furtherance thereof, Knudsen has a duty to avoid actual and perceived conflicts of interest, and he may not use his position in government to seek or accept improper economic opportunities or secure or grant unwarranted privileges, preferences, exemptions or advantages for himself or for any person to whom he has a commitment in his private capacity. NRS 281A.020, NRS 281A.065 and NRS 281A.400. Knudsen has disclosure and abstention requirements associated with significant pecuniary interests and private commitments under NRS 281A.420 and he must comply with the limitations on representing or counseling private persons before public agencies, as required by NRS 281A.410.

A. RELATIONSHIPS WITH NON PROFIT ORGANIZATIONS

Knudsen identifies two types of relationships with nonprofit organizations, which constitute a commitment in a private capacity pursuant to NRS 281A.065. The first relationship is the continuing business relationship that Knudsen's for-profit private consulting business has with nonprofit clients. The clients pay for Knudsen's consulting services. This type of relationship is for-profit and constitutes a substantial and continuing business relationship pursuant to NRS 281A.065(5).

The second identified relationship is Knudsen's service as an unpaid member of the Adoption Exchange Board. Knudsen is changing his role from a paid consultant for the Adoption Exchange to an unpaid member of the Board. The Adoption Exchange is a 501(c)(3) organization providing connection and adoption services between families seeking to adopt and children within the foster care systems of State agencies. The Commission has consistently determined that a person who sits on the Board of Directors of a corporation, whether nonprofit or for-profit, has a fiduciary duty to that corporation, which constitutes a commitment to the interest of others. See *In re Cornwall, McDowell and Leighton*, Comm'n Op. No. 91-6 (1991); *In re McCoy*, Comm'n Op. No. 09-58A (2012); *In re Public Officer*, Comm'n Op. 10-66A (2012); *In re Public Officer*, Comm'n Op. No.12-04A (2012); *In re Bagwell*, Comm'n Op. No. 17-47A (2017).

In *Bagwell*, the Commission emphasized prior opinion precedent to confirm that "a public officer's private commitment as a volunteer serving on the board of directors of a nonprofit entity establishes a relationship that is substantially similar to a substantial and continuing business relationship," which constitutes a private commitment under NRS 281A.065(6). *Id.* at p. 7.

In addition, the Commission in *Bagwell* and other opinion precedent has recognized that a hybrid of public-private interests may exist wherein the nonprofit is organized and operated to provide public services on behalf of the public body. *Id.*; *In re Mirchandani*, Comm'n Op. No. 14-64C (2015); *In re Fuller*, Comm'n Op. No. 11-94C (2012). Public officers and public employees may be appointed to serve on the board of a nonprofit by virtue of holding a certain public position, in accordance with contracts approved by a public entity or bylaws established with input from the public entity. This relationship and associated characteristics creates nuances that must be weighed and applied by the Commission in the interpretation and enforcement of the Ethics Law.

Unquestionably, each relationship with a nonprofit organization must be assessed based upon the circumstances presented. Here, the Adoption Exchange may assist in adoptions through coordination of its efforts with public agencies associated with the

foster care systems. However, no facts indicate the Adoption Exchange was established by the City of Las Vegas to assist it in providing services to the public and Knudsen is not being appointed to serve on the Adoption Exchange Board by virtue of holding a public position. Accordingly, the nature of the relationship is determined to be a voluntary member of a nonprofit board, which is similar to a substantial and continuing business relationship pursuant to NRS 281A.065(6). The facts presented do not evidence a hybrid situation, so the associated nuances associated therewith need not be considered.

B. NRS 281A.410 RESTRICTIONS ON REPRESENTING OR COUNSELING A PRIVATE PERSON FOR COMPENSATION

NRS 281A.410(1)(a) establishes mandatory restrictions on public officers and employees from accepting any compensation from any private person to represent or counsel the private person on any issue pending before the agency that the public officer serves, if the agency makes decisions. The importance of this restriction is the protection of the public trust and prevention of favoritism through misuse of a public position. At no time should a public officer or employee advocate for a private person's interests for compensation before their own agency. If the restriction applies to the circumstances, the conduct is statutorily precluded and not subject to relief. In his position as a councilmember, Knudsen serves on the governing body of the agency and is elected to make decisions on behalf of the City of Las Vegas. Even without actual impropriety, the authority that Knudsen holds as a councilmember requires the Commission to advise that he must comply with the restrictions set forth in NRS 281A.410(1)(a) pertaining to providing paid representation or counseling before the City of Las Vegas.

Nevertheless, Knudsen's inquiry is in part focused on providing paid consulting services to nonprofits in the venues of other local agencies, Clark County and the cities of North Las Vegas and Henderson, all of which are included in the territorial jurisdiction of Clark County, in which the City of Las Vegas is located. Knudsen also inquires whether he may provide representation for compensation before any State agency of the Executive or Legislative Department.

1. Paid Consultation or Representation before Local Agencies within Jurisdictional Territory of same County

The Commission reviewed circumstances associated with paid counseling or representation before local jurisdictions with the same County where a public officer serves in *In re Collins*, Comm'n Op. No. 11-78A (2012). Collins served as a member of the Clark County Commission and sought to provide paid consulting services to lobby for his client's interests before various regional agencies and local municipalities located in Clark County. In its considerations, the Commission confirmed that "[t]he Ethics Law does not prohibit a public officer from pursuing private employment; however, it does set limitations on the nature and extent of such employment to ensure that the public officer maintains the appropriate separation between his private engagements and his public duties." *Id.* at 4. The Commission did not authorize the activity and concluded that the nexus between Collins' public duties as a County Commissioner and his proposed activities before local regional agencies and municipalities, implicated the provisions of NRS 281A.400(1) and NRS 281A.400(2). *Id.* at 5.

In the 2013 Legislative Session, the Nevada Legislature passed Senate Bill 228 (Chapter 551, 2013 Statutes of Nevada), effective January 1, 2014, to codify many of the principles discuss in *Collins*. NRS 281A.410(3) states:

A member of a local legislative body shall not represent or counsel a private person for compensation before another local agency if the territorial jurisdiction of the other local agency includes any part of the county in which the member serves. The Commission may relieve the member from the strict application of the provisions of this subsection if:

- (a) The member files a request for an advisory opinion from the Commission pursuant to NRS 281A.675; and
- (b) The Commission determines that such relief is not contrary to:
 - (1) The best interests of the public;
 - (2) The continued ethical integrity of each local agency affected by the matter; and
 - (3) The provisions of this chapter.

In application of the required ethical duties set forth in NRS 281A.400(1) and (2), which the Commission emphasized in *Collins*, the Legislature deemed it appropriate to adopt direct statutory language regarding a paid consultant before local regional agencies. Knudsen's proposed activities in facilitating and coordinating meetings as a paid consultant before officials and employees serving the other regional agencies including the DHHS, DCFS, Clark County, CCSD, RTC, SNRHA, City of North Las Vegas, the City of Henderson present a paid consulting scenario that is now directly restricted by NRS 281A.410(3), unless relief is granted based upon the stated public interest factors.

In considering relief associated with the local jurisdictions only, the Commission recognizes the public interest implications associated with the particular paid consulting services associated with a Shared Data Pool to assist battered women and affected children, so that the county, and public may freely access and research this information in a uniform manner. Representing nonprofits for matters associated with research and the Shared Data Pool, based upon the presentments, does not involve the exchange of money or personnel and does not implicate grant fund requests or other public funding to support Knudsen's clients' operations. The private representation also does not appear to be an unwarranted benefit or a matter that would cause a reasonable person in Knudsen's situation to depart from his public duties. Provided that the City of Las Vegas does not have a policy restricting this activity and such matters would not implicate the pecuniary or operational interests of the nonprofits, the Commission determines that relief is appropriate with respect to representation associated with the Shared Data Pool. Relief is further conditioned upon Knudsen clearly identifying that his services are in a private capacity and not a public capacity and maintaining proper separation between his private interests and commitments and public duties.

With regard to facilitating meetings amongst local jurisdiction officials at Clark County, CCSD, RTC, SNRHA, City of North Las Vegas, and City of Henderson for items relating to mental healthcare, transportation, and housing for the impoverished population in Southern Nevada (collectively may be referred to as issues affecting the impoverished population), it is unclear given the general nature of the description, whether the nonprofit clients of Knudsen are seeking public-private partnerships or to provide services pursuant to a contractual or memorandum of understanding arrangement or are competing for grant funding opportunities or facilities to assist with these important issues. The Commission recognizes the importance of these issues to the public and citizens of the local jurisdictions. However, the Commission expresses legitimate concerns should any underlying purpose of the meetings be associated with providing any nonprofit, to which Knudsen has a private commitment, unwarranted opportunities to market services to the public agencies, which could result in pecuniary benefits provided to Knudsen's private clients. As stated in *Collins*, concerns of this type implicate NRS 281A.400(1) and (2).

Therefore, the Commission declines to grant relief regarding issues affecting the impoverished population based upon concerns implicating the Ethics Law and the continued ethical integrity of each local agency affected by the matter.

2. Paid Consultation or Representation before State Executive and Legislative Branch Agencies

NRS 281A.410(5) imposes a separately enforceable restriction, by stating: “[u]nless permitted by this section, a State Legislator or member of a local legislative body, or public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.” Nevertheless, NRS 281A.410(2) permits the paid representation or counseling of a person before a State executive or legislative branch agency by a person who serves as a member of local legislature (Knudsen) if the public officer’s public service requires less than half of his or her time. The Commission has not been presented with a particular facts to confirm whether Knudsen’s service as a councilmember for the City of Las Vegas requires less than half of his time. Moreover, the statute does not afford authority for the Commission to grant relief based upon public interest considerations.³

Therefore, the Commission advises that if Knudsen’s public service as a councilmember exceeds half of his time, then the statute would preclude him from providing paid consulting services before any state agency of the Executive or Legislative branch. If his public service requires less than half of his time, Knudsen may provide paid representation or counseling to a person before a State executive or legislative branch agency if he complies with the provisions of NRS 281A.400 and all other provisions of the Ethics Law to assure proper separation between his public duties and private business endeavors and related commitments.

C. USE OF GOVERNMENT POSITION

The Code of Ethical Standards set forth in NRS 281A.400 must be followed by public officers and employees to ensure the ethical integrity of public service. Several sections of NRS 281A.400 apply to or limit private contracts between a public officer/employee and a government entity, including:

1. NRS 281A.400(1) -- seeking or accepting engagement, economic opportunities, improperly influencing public duties;
2. NRS 281A.400(2) -- using public position to secure unwarranted privilege/advantage;
3. NRS 281A.400(3) -- participating as agent of government on private contracts in which one holds a significant pecuniary interest;

³ The paid consulting services that Knudsen anticipates providing his clients pertain to coordinating and attending meetings with representatives of Nevada Medicaid, low income housing experts, homeless service providers, and managed care organization providers to assist Medicaid policy on targeted case management. During the execution phase of that policy, as new housing complexes are built; Knudsen seeks to coordinate meetings with Nevada Medicaid to help establish a centralized data gathering process and depot as Medicaid renegotiates new contracts with managed care organizations; and coordinating meetings with Richard Whitley-Director of DHHS-on developing an assessment center concept. Many of these issues likely pertain to grant fund requests, contracts or MOUs, or exchange of services or personnel, which cause concerns should the Commission have authority to consider relief.

4. NRS 281A.400(5) -- using information obtained through public duties or relationships to further a significant pecuniary interest; and
5. NRS 281A.400(10) -- seeking employment/contracts through use of public position.

Central to each of these provisions is the improper use of a public position to benefit a private pecuniary interest or private commitment. The statutory provisions are analyzed based upon the facts presented and are not subject to relief or waiver by the Commission. Accordingly, the Commission advises Knudsen to comply with the requirements of NRS 281A.400 and properly separate his public duties as a councilmember from his private business interests and commitments in a private capacity. So, care must be taken by public officers and public employees to comply with the Code of Ethical Standards set forth in NRS 281A.400 and maintain the integrity of public service by avoiding actual conflicts or even an appearance of impropriety by properly separating private interests from public duties. NRS 281A.020.

D. DISCLOSURE AND ABSTENTION REQUIREMENTS

Although Knudsen does not specifically indicate whether any of his nonprofit clients or the Adoption Exchange would have matters before the City of Las Vegas, the Commission takes this opportunity to provide education on the associated disclosure and abstention requirements. The Ethics in Government Law imposes disclosure and abstention obligations on public officers and employees, including disclosures of private interests which would reasonably affect public decisions. See NRS 281A.420(1).

Certain of the required disclosures identified in NRS 281A.420(1) require an abstention analysis and determination of whether abstention is required pursuant to NRS 281A.420(3). In conducting this analysis, it must also be determined whether the presumption favoring participation set forth in NRS 281A.420(4) should be applied. It is noted that a proper disclosure is a prerequisite to application of the presumption, and abstention is required in any matter in which the independence of judgment of a reasonable person in same situation would be materially affected. NRS 281A.420(3).

Specifically, NRS 281A.420(1) requires a proper disclosure when the public officer or employee is carrying out his public duties to approve, disapprove, vote, abstain or otherwise act upon a matter: (a) regarding a gift or loan, (b) in which he has a significant pecuniary interest, (c) which would reasonably be affected by his commitment in a private capacity to the interests of another person, or (d) which would be related to any representation or counseling of a private person for compensation before another agency within the preceding year.

The first three disclosure requirements are applicable whenever the Las Vegas City Council considers a matter associated with Knudsen's nonprofit clients and the Adoption Exchange because he holds a private commitment to these persons and entities pursuant to NRS 281A.065. In addition, the Commission directs Knudsen to the provisions of NRS 281A.420(1)(d), because Knudsen has confirmed he has represented nonprofit clients during the immediate preceding year, including the Adoption Exchange.

NRS 281A.420(1)(d) requires public disclosure when there has been any representation or counseling of a person during the immediate year and when the represented person is beneficially interested in the matter to be determined. The disclosure promotes the purpose of the Ethics Law to avoid conflicts of interest and

maintain the public's trust in its representative government. See NRS 281A.420. See also *In re Jones*, Comm'n Op. No. 19-003A (2019).

Therefore, on the pending matters or other items that affect the private interests of any nonprofit client Knudsen currently represents or has represented in the preceding year, he must make a proper public disclosure and comply with the applicable abstention requirements of NRS 281A.420, if applicable. In advising on proper disclosures, the Commission has opined:

...[T]he 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 public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests. Silence based upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred.

See *In re Public Officer*, Comm'n Op. No. 15-74A (2018), citing *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)).

Once a proper disclosure is made, the public officer must provide for the public's benefit, his position regarding the abstention analysis. To do so, details of the particular matter to be reviewed to ascertain whether the independence of judgment of a reasonable person in the public officer's situation would be materially affected by participating or voting on the matter. Generally, if the effect on the matter does not provide a benefit or detriment that is greater than to other members of the affected group, the public officer may be entitled to utilize the presumption favoring participation, which is referenced in NRS 281A.420(3) and (4).

The Commission consistently recommends, in applying the requirements of the Ethics Law, the public officer should seek assistance of the legal counsel retained by his agency to avail himself of the safe harbor protections set forth in NRS 281A.790. The Commission's advisory opinion process is also available to assist Knudsen in compliance obligations under the Ethics Law.

VI. CONCLUSIONS OF LAW

1. Knudsen is a public officer as defined by NRS 281A.160.
2. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter.
3. Knudsen has a commitment in a private capacity to his non-profit clients, as continuing and substantial business associates under NRS 281A.065(5), and to the Adoption Exchange, as a relationship substantially similar thereto under NRS 281A.065(6).
4. On any issue pertaining to Knudsen's private consulting business that is considered by the City of Las Vegas, Knudsen is advised that NRS 281A.410(1)(a) establishes mandatory restrictions on him from representing or counseling any private person on any issue pending before the agency.

5. With respect to Knudsen's anticipated consulting services before other local jurisdictions, Knudsen is advised that NRS 281A.410(3) prohibits such activities, unless relief is granted based upon the stated public interest factors.
6. The Commission determines with respect to Knudsen's paid counseling and representation services pertaining to the Shared Data Pool, as defined herein, that relief is appropriate based upon the public interest factors set forth in NRS 281A.410(3). However, Knudsen must maintain proper separation between his private interests and commitments and public duties as required by NRS 281A.400, as detailed in this opinion.
7. With regard to other identified consulting services affecting the impoverished population, the Commission is unable to make the requisite findings that the consulting services would not be contrary to the Ethics Law and the continued ethical integrity of each local agency affected by the matter to grant relief under NRS 281A.410(3); therefore, relief is not granted.

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

Dated this 13th day of August, 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: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner