



Confidentiality Waived for Opinion Only

## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Michelle Romero**, Councilmember,  
City of Henderson, State of Nevada,

Advisory Opinion No. 19-059A  
CONFIDENTIAL

\_\_\_\_\_  
Public Officer. /

### CONFIDENTIAL OPINION

#### I. STATEMENT OF THE CASE

Michelle Romero (“Romero”), a member of the City Council for the City of Henderson, State of Nevada, requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675, regarding the propriety of her 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.<sup>1</sup> The Commission considered the request for an advisory opinion, information provided by Romero that she affirmed as true, and publicly available information.

Romero sought an opinion from the Commission regarding her disclosure and abstention obligations for matters before the City Council that are lobbied for or supported by an independent attorney/consultant who also provides contract services to Romero’s private employer, Union Village, LLC (“UV”). Romero understands that she has a commitment in a private capacity to her private employer and will, in consultation with the Henderson City Attorney’s Office, disclose and abstain on all matters related to the interests of her private employer. The focus of Romero’s inquiry pertains to the extent of her disclosure and abstention requirements for matters that are unrelated to her employer’s interests but for which the same attorney/consultant provides independent consulting and lobbying services to other clients, potentially implicating NRS 281A.065 and NRS 281A.420(1) and (3).

After fully considering Romero’s request and analyzing the facts and circumstances presented by Romero, the Commission deliberated and advised Romero of its decision that she has a pecuniary interest in maintaining her private employment with UV and she has a commitment in a private capacity to her employer under NRS 281A.065(4). Further, pursuant to NRS 281A.665, the Commission provides guidance to Romero on the disclosure requirements of NRS 281A.420.

<sup>1</sup> The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O’Neill and Wallin. Commissioner Yen disclosed that her husband, Jarrod L. Rickard, Esq., an attorney at the law firm of Semenza Kircher Rickard, is retained to provide legal services to UV, who is Romero’s private employer, and she abstained from participation in this matter pursuant to the requirements of NRS 281A.420.

The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law. The facts in this matter are based upon documentary evidence provided by Romero and public records. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below accept as true those facts Romero presented. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.<sup>2</sup>

## II. QUESTIONS PRESENTED

Romero questions whether her private commitment to her private employer extends to other clients represented by the same independent consultant who provides lobbying and legal services to her employer. The consultant's representation of other client's interests are presented as unrelated to the interests of Romero's private employer UV, and Romero seeks guidance on potential disclosure and abstention requirements in these particular matters.

## III. FINDINGS OF FACT

1. In her public capacity, Romero is a member of the City Council, representing Ward I, commencing her first-term of office on June 18, 2019. As a voting member of the City Council, Romero's duties include the consideration and approval of matters within the authority of the City Council, as established by applicable law.
2. Prior to her election, Romero worked for the City of Henderson ("City") for 25 years, retiring in 2016. In her private capacity, Romero has served as a consultant to UV since March 2017. UV is self-described as creating a vibrant, architecturally aesthetic, technologically innovative, and environmentally sustainable master-planned village offering a promenade of specialty retail and entertainment, restaurants, residential, and a world-class healthcare complex.
3. The City approved the sale of certain real property to UV in 2011, which became the location for the Henderson Hospital. UV has certain related agreements and has matters before the City.
4. UV has contracted with an independent, local attorney and lobbyist, John Marchiano ("Marchiano") to represent UV on a consultancy basis on matters pending before the City. Marchiano has other clients who also have matters that come before the City Council, some of which are unrelated to the interests of UV, Romero's private employer.
5. As part of her duties for UV, Romero often works closely with Marchiano; however, he does not represent her personally on any matters.
6. The City Attorney's Office has advised Romero to disclose and abstain on all UV matters pending before the City (the "UV Abstentions"). Romero affirms she will follow the advice for the UV Abstentions.

---

<sup>2</sup> 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).

7. The City Attorney's Office has also advised Romero to disclose UV's ongoing business relationship with Marchiano on matters that come before the City that are unrelated to UV when Marchiano is representing the applicant or a party on those unrelated matters (the "Marchiano Disclosures"). This advice was based on *In re Mack*, Comm'n Op. No. 03-40 (2003) ("*Mack*").
8. Romero has followed the above-described advice and makes the Marchiano Disclosures on items that are unrelated to UV. Examples of a Marchiano Disclosure are part of the record for certain agenda items heard by the City Council on July 2, 2019.
9. Romero seeks guidance from the Commission concerning whether the Marchiano Disclosures are necessary given that the disclosures are being made only on the basis of the direct business relationship between UV and Marchiano, not because of a business relationship between Romero and Marchiano.

#### **IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES**

##### **A. ISSUES**

As a public officer, Romero must commit herself to avoid actual and perceived conflicts of interest between her public duties and private interests. NRS 281A.020. Specifically, NRS Chapter 281A prohibits Romero from using her position in government to secure unwarranted privileges, preferences, exemptions or advantages for herself or any person to whom she has a commitment in a private capacity (NRS 281A.400(2)) or acting as an agent of government in the negotiation or execution of a contract between the City of Henderson and any person to whom she has a commitment in a private capacity (NRS 281A.400(3)). Romero is also required to disclose any commitments in her private capacity to the interests of certain persons or entities which reasonably affect matters under consideration by the City Council, and abstain from voting or otherwise acting on such matters in which those commitments would clearly and materially affect the independence of judgment of a reasonable person in her position. See NRS 281A.420(1) and (3).

##### **B. RELEVANT STATUTES**

###### **1. Public Trust/Avoiding Conflicts**

###### **NRS 281A.020 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. The Legislature finds and declares that:
  - (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.
  - (b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show

the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators serve as “citizen Legislators” who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.

(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

### **1. “Commitment in a private capacity” Defined**

#### **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 or 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 subparagraphs 1 to 5, inclusive.

### **2. “Pecuniary interest” defined**

#### **NRS 281A.139 provides:**

“Pecuniary interest” means any beneficial or detrimental interest in a matter that consists of or is measured in money or is otherwise related to money, including, without limitation:

1. Anything of economic value; and
2. Payments or other money which a person is owed or otherwise entitled to by virtue of any statute, regulation, code, ordinance or contract or other agreement.

### **3. Disclosure Requirements**

#### **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.

## **V. COMMISSION DECISION**

### **A. INTRODUCTION**

The Ethics Law mandates that public officers hold public office for the sole benefit of the public and avoid conflicts of interest, both actual and perceived. NRS 281A.020. Romero is concerned that such conflicts might exist between her public position and her private employment with UV when participating as a member of the Henderson City Council on certain matters represented by the same consultant who represents her employer but that are unrelated to her employer's interests. Specifically, her employer is represented by an independent consultant, Marchiano, who also represents other client's interests before the City Council on certain matters unrelated to UV. The Commission confirms that this opinion is limited to the facts provided and, if other pertinent facts exist, they could change the direction issued in the opinion.

## B. COMMITMENT IN A PRIVATE CAPACITY

NRS 281A.065 establishes certain relationships which implicate conflicts of interest. Pursuant to NRS 281A.065(4), Romero has a private commitment to her employer, UV. This means that UV's and its owners' interests are statutorily attributed to Romero. See *In re Public Officer*, Comm'n Op. No. 17-10A (2017) at 6. "Employers of public officers and employees are included among the statutorily recognized relationships regarding which the Ethics Law establishes per se conflicts because of the obvious and tangible interests in maintaining employment for professional and pecuniary reasons." *In re Public Officer*, Comm'n Op. No. 13-77A (2014) at 5. Romero recognizes her pecuniary interests in her private employment and associated commitment in a private capacity to her employer UV and confirms that she will properly disclose and abstain on all matters affecting her employer's interests. It is noted that these interests could be far-reaching given the scale and intricacies of UV's business interests. Romero will need to be vigilant and keep apprised of the full nature and extent of her employer's private interests, which includes making fair inquiry and conducting due diligence. See *In re Kim*, Comm'n Op. No. 09-11C (2012).

As part of her private employment duties for UV, Romero works closely with Marchiano and they have a relationship as co-workers. However, Romero and Marchiano do not have a substantial and continuing business relationship. Rather, Marchiano has a substantial and continuing relationship with UV. The relationship between Romero and Marchiano does not constitute any other identified relationship in NRS 281A.065. If Romero had a substantial and continuing business relationship with Marchiano, the nature of the relationship could require disclosure for matters reasonably affecting Marchiano's private interests, which might properly extend to any of his business endeavors and other clients. See *In re Public Officer*, Comm'n Op. No. 15-74A (2018).

Romero indicates that Marchiano's consulting services for other clients are unrelated to the interests of UV and questions whether she must disclose or abstain on these matters. Romero has been making disclosures on every item on which Marchiano appears before the City Council representing other clients, based upon the City Attorney's review of the Commission's findings in *Mack*. The factual background for *Mack* relates to then Councilmember Mack's duty to disclose that he had retained Puoy Premsrirut, Esq., an attorney with the law firm of Goodman, Brown and Premsrirut, to represent him on personal matters. Another lawyer in the same law firm often appeared in a representative capacity before the City Council on matters unrelated to Councilmember Mack's private legal services. The Commission advised Councilmember Mack that he should have made a proper public disclosure regarding the attorney-client relationship he held with the law firm and Mr. Premsrirut, Esq., when any member of the law firm appears in a representative capacity before the City Council. The disclosure must identify the nature of the relationships and provide sufficient information to inform the public of the potential effect on his private interest and private commitments. Without a proper disclosure, neither the Las Vegas City Attorney nor the Commission, had sufficient information to ascertain whether abstention would be required. In *Mack*, there was a commitment in a private capacity pursuant to NRS 281A.065(5), based upon the substantial and continuing business relationship between Councilmember Mack and the law firm and its attorneys, including Puoy Premsrirut, Esq.

The Commission determines that the relationship between Marchiano and Romero is distinguishable from the relationship presented in *Mack*. Specifically, Romero does not hold any form of relationship with Marchiano which would constitute a private commitment under NRS 281A.065. In *Mack*, the legal relationship between the councilmember and

the law firm formed the basis of the conflict requiring disclosure and/or abstention for the matters affecting the law firm. Here, the relationship at issue is one between Romero's employer and Marchiano, not Romero and Marchiano. So, Marchiano's interests that are unrelated to UV are not imputed to Romero.

The area of concern with regard to Marchiano extends to matters reasonably related to the interest of her employer, UV. Accordingly, the Commission is hesitant to issue a blanket waiver governing future matters without a thorough review of the involved interests and the matter under consideration. Without reasonable due diligence and a thorough evaluation of the involved interests and the nature of the item to be considered, the Commission is not in a position to opine on any individual matter. See NRS 281A.680 (confirmation advisory opinions must be rendered on a given set of facts). For example, the Commission has determined that even without a current business relationship, a Public Officer's long-standing personal relationships, including prior business relationships, were so extensive that they were similar to familial relationships. See *In re Public Officer*, Comm'n Op. No. 11-65A (2012). Also, in *In re Public Officer*, Comm'n Op. No. 17-10A (2017), the Commission determined that the relationship with the employer extended to the separate business interests of its owners and advised:

The Ethics Law requires Public Officer to disclose Public Officer's private commitments and relationships with the Private Employer and its owners. A public officer's disclosure is important even where the conflict is remote in some aspects. In *In re Weber*, Comm'n Op. No. 09-47C (2009), the Commission held: 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 7. Romero relies, in part, on her determination that past matters involving Marchiano's other clients have not affected the interests of UV. However, as discussed herein, every matter will have to be reviewed to ascertain whether UV's interests are at stake.

Consequently, if there is any question regarding disclosure, the best course of action is always to properly disclose to protect the public trust. Even though Romero has not provided a particular item anticipated to be considered, which involves another client of Marchiano, the Commission identifies statutory provisions and prior opinions to assist Romero and the Henderson City Attorney in guiding her conduct on future matters in the next section. The Commission's advisory opinion process is likewise available to assist based upon a given set of facts. See NRS 281A.675.

### **C. ADVICE ON DISCLOSURE REQUIREMENTS – NRS 281A.665; NRS 281A.420**

In issuance of an advisory opinion, the Commission may include guidance regarding the nature of conflicts. See NRS 281A.665. As a public officer, Romero has a duty to avoid conflicts of interest. See NRS 281A.020. Thus, Romero is required to commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning any private relationships and pecuniary interests which would reasonably affect her decision on matters before the City Council. See NRS 281A.420(1). The Ethics Law requires disclosure in matters: (1) in which a public officer or employee

has accepted a gift or loan; (2) in which the public officer or employee has a significant pecuniary interest; (3) 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 (4) which would reasonably be related to the nature of any representation or counseling provided to a private person for compensation before another agency within the preceding year. NRS 281A.420(1).

The Commission has issued many opinions associated with disclosure and abstention requirements of NRS 281A.420 and these opinions are searchable on its official website. Opinions addressing the requirements of NRS 281A.420 rest upon the facts and circumstances presented because the statutory analysis involves both consideration of the involved pecuniary interests and private commitments and the effect the matter to be considered would have on such interests. Consistent with *Mack*, the Commission has determined that in cases involving substantial and continuous business relationships, the interests of a business affiliate or client are statutorily attributed to the public officer based on the presumption that a person lacks independent judgment toward the interests of a person with whom the public officer shares an important business relationship. *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Thus, a public officer must abstain on all matters before the public body which materially affect the interests of his business affiliate or client, including interests unrelated to the specific business shared with the public officer. *In re Derbidge*, Comm'n Op. No. 13-05C (2013).

Here, there is no business relationship between Romero and Marchiano as they are simply co-workers. Therefore, issues affecting Marchiano's clients are not imputed to Romero. Instead, Romero will want to appropriately evaluate whether her employer's interests are reasonably or materially affected by Marchiano's other clients. It is possible that the interests of Marchiano's other clients would reasonably relate to UV's private interests, especially since UV is developing a master planned community and has a substantial number of local assets.

By way of example, the Commission has long-standing line of cases indicating that the nature and quality of a nearby development could reasonably have an effect upon the uses and value of UV's holdings. See *In re Scheffler*, Comm'n Op. Nos. 95-21, 95-23 and 95-37 (1996); *In re Weber*, Comm'n Opinion No. 09-47C (2012); *In re Johnson*, Comm'n Op. No. 11-42C (2012), *In re Dortch*, Comm'n Op. No. 13-54A (2014); and *In re Brown*, Comm'n Op. No. 13-28A (2014). The business and development interests associated with comparable properties, zoning and other land use issues for Marchiano's other clients should be considered to ascertain whether they would also affect the interests of UV. Accordingly, depending on the facts, it is possible that the interests of Marchiano and his other clients could be attributable to be the interests of UV.

However, to trigger disclosure requirements, the matter under consideration must affect a significant pecuniary interest or be "reasonably affected" by the private commitment. See NRS 281A.420; *In re Public Officer*, Comm'n Op. No. 12-15A (2012). But, even if the nexus is remote, the Commission advises to properly disclose such interests in keeping with the public trust. In those instances where it can be confirmed, after completion of all reasonable due diligence, that the interests of UV are not reasonably related to the interests of Marchiano's other clients, disclosure would not be required under NRS 281A.420(1). However, making such a disclosure may best inform the public of the lack of a private interest to be affected by the matter. The Commission cautions against singularly reviewing the nature of the relationship without ascertaining whether the interests of UV are implicated by the matter to be considered by the City



Council, in consultation with the City Attorney, to avail oneself of the “safe harbor” provisions of NRS 281A.790(5).

## VI. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Romero 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 and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
3. Pursuant to NRS 281A.139 and NRS 281A.065(4), Romero has both a significant pecuniary interest in maintaining her employment with UV and a commitment in a private capacity to the interests of her employer. Romero does not have a commitment in a private capacity to the interest of Marchiano.
4. Disclosure under NRS 281A.420 require an identification of the nature and extent of the conflict and whether the matter under consideration affects a significant pecuniary interest or is “reasonably affected” by the private commitment.
5. Romero is appropriately disclosing and abstaining on issues before the City Council that reasonably and materially affect the interests of her employer. Further, Romero should disclose issues affecting Marchiano’s other clients that reasonably affect her employer and abstain on such issues if her employer’s interests are materially affected by Marchiano’s other clients.

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.

The following Commissioners participated in this opinion:

Dated this 3<sup>rd</sup> day of September, 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: ABSTAIN  
Amanda Yen, Esq.  
Commissioner