



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

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

Advisory Opinion No. 19-051A

_____ Public Employee. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Public Employee ("Public Employee") employed by a public agency ("Public Agency"), State of Nevada, requested this advisory opinion from the Nevada Commission on Ethics ("Commission"), regarding the propriety of Public Employee's past, present and 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 The Commission considered the request for an advisory opinion, information provided by Public Employee that was affirmed as true by Public Employee, and publicly available information.

Public Employee sought an opinion from the Commission regarding the applicability of or relief from the strict application of the "cooling-off" requirements under the Ethics Law if employment was sought and accepted from a private consulting firm ("Contract Vendor") that provided contract services to Public Agency. The original contract for services ("Contract") was awarded in excess of 12 months prior to Public Employee's anticipated departure date from public service; however, the Public Agency recently approved a contract amendment ("Amendment").

After fully considering Public Employee's request and analyzing the circumstances presented by Public Employee, the Commission advises that the anticipated employment with Contract Vendor is prohibited by the one-year "cooling-off" provisions of NRS 281A.550(5) because Public Employee's public position afforded the opportunity or ability to influence the award of the Amendment and the Commission declines to grant relief under NRS 281A.550(6). In addition, the mandatory provisions of NRS 281A.410(1)(b) apply to all public officers and employees of the State of Nevada and its local jurisdictions and serve to prohibit Public Employee, for one year, from providing representation or consulting services to a private person or entity for compensation, including Contract Vendor or any future employer, on any issue that was under consideration by Public Agency during the term of Public Employee's public service.

¹ The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O'Neill, Wallin and Yen.

Public Employee has elected to retain confidentiality with respect to the Commission's proceedings. Therefore, the Commission publishes this Abstract Opinion. The facts in this matter were obtained from documentary evidence provided by Public Employee and available public information. 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 certain Findings of Fact, provides a summary of issues and removes other identifying information to protect the confidentiality of the subject.²

II. QUESTION PRESENTED

Public Employee questions whether the "cooling-off" provisions of the Ethics Law set forth in NRS 281A.550(5) and NRS 281A.410(1)(b) prohibit the solicitation or acceptance of employment from a private contract vendor for Public Agency. If the prohibitions of NRS 281A.550(5) apply, Public Employee seeks relief from the strict application of those provisions under NRS 281A.550(6).

III. FINDING OF FACTS

1. Public Employee is an employee of Public Agency as defined by NRS 281A.150.
2. Public Agency entered into the Contract with a Contract Vendor in excess of 12 months prior to the Public Employee's anticipated date of separation from Public Agency. Public Agency approved an Amendment, which approval was within the 12 months preceding Public Employee's anticipated date of separation. The amount of the Contract and Amendment each exceeded \$25,000.
3. Public Employee confirms the public duties assigned to Public Employee included the ability to influence or participate in the selection and award of the Contract and the Amendment to the Contract Vendor.
4. In providing its vendor services to Public Agency, Contract Vendor made frequent visits to Public Agency including frequently visiting with staff.
5. Public Employee held a general discussion with Contract Vendor during one of its visits at Public Agency in which Public Employee indicated an intent to separate from public service. Contract Vendor offered and Public Employee accepted an employment opportunity to commence after separation from public service.
6. Thereafter, Public Employee was advised by Public Agency's legal counsel on the implications under the Ethics Law associated with seeking or accepting the employment with the Contract Vendor.
7. Public Employee was not previously aware of the regulatory requirements of NRS 281A.550(5), but promptly contacted Contract Vendor and terminated the employment offer until the Commission could consider this advisory opinion.

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. Public Employee questions the applicability of NRS 281A.550 and, if applicable, seeks relief from the prohibitions set forth in NRS 281A.550(5), based upon a number of factors, including without limitation, the following:
 - a) Public Employee is a member of the professional staff and should be permitted to work in the profession.
 - b) The Contract with Contract Vendor was awarded in excess of 12 months prior to Public Employee's anticipated date of separation from public service.
 - c) Public Employee can properly protect the integrity of Public Agency and isolate the conflict through self-imposed work restrictions such as refraining from acting on any contracts or services between Contract Vendor and Public Agency that implicate NRS 281A.550(5).
 - d) Contract Vendor has agreed that Public Employee's duties, if required, would not include providing services to Public Agency for one year past Public Employee's separation from public service.
 - e) Nevada currently has a shortage of professionals in Public Employee's field of expertise and it would benefit the public to retain these qualified professionals in Nevada.
 - f) If Public Employee is permitted to seek and accepts employment with Contract Vendor, Public Employee understands, acknowledges and will comply with the mandatory provisions of NRS 281A.410 restricting, for one year, representing and counseling private persons for compensation on any issues that were under consideration during the tenure of Public Employee's public employment with Public Agency.

IV. STATEMENT AND DISCUSSION OF RELEVANT STATUTES AND ISSUES

A. OVERVIEW OF ISSUES

The Ethics Law promotes public integrity through the appropriate separation of public duties and private interests by Nevada's public officers and employees. In furtherance of that mission, the Ethics Law, in two distinct statutes, imposes a one-year "cooling-off" requirement to prevent former public officers and employees from using any proprietary or regulatory information, access or relationships belonging to the public to create competitive disadvantages or other misuse of government information in the private sector regulated by the governmental entity. See NRS 281A.550 and NRS 281A.410(1)(b).

The Commission considers whether the Contract and the Amendment are governed by NRS 281A.550(5), given their amount, date of award and whether the position held by Public Employee afforded the opportunity to influence the award of the Contract. If applicable, the Commission then considers whether it will grant relief from the strict application of the one-year "cooling-off" period pursuant to NRS 281A.550(6). In addition, the Commission details the provisions of NRS 281A.400 that could apply to Public Employee's circumstances and advises of the mandatory requirements of NRS 281A.410, which establish a one-year prohibition against representing or counseling a private entity on any matters that were under consideration by Public Agency during Public Employee's tenure.

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. Improper Use of Public Position

NRS 281A.400(1), (2), (3) and (10) 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.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and 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.

10. A public officer or employee shall not seek other employment or contracts for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity through the use of the public officer's or employee's official position.

3. "Cooling-Off" – Accepting Employment

NRS 281A.550(5) provides:

5. Except as otherwise provided in subsection 6, a former public officer or employee of the State or a political subdivision, except a clerical employee, shall not solicit or accept employment from a person to whom a contract for supplies, materials, equipment or services was awarded by the

State or political subdivision, as applicable, for 1 year after the termination of the officer's or employee's service or period of employment, if:

- (a) The amount of the contract exceeded \$25,000;
- (b) The contract was awarded within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment; and
- (c) The position held by the former public officer or employee at the time the contract was awarded allowed the former public officer or employee to affect or influence the awarding of the contract.

4. Relief from Strict Application of "Cooling-off" Requirements

NRS 281A.550(6), (7), (8) and (9) provide:

6. A current or former public officer or employee may file a request for an advisory opinion pursuant to NRS 281A.675 concerning the application of the relevant facts in that person's case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of subsection 3 or 5, **as applicable**, is not contrary to:

- (a) The best interests of the public;
 - (b) The continued ethical integrity of the State Government or political subdivision, as applicable; and
 - (c) The provisions of this chapter,
- ↳ it may issue an advisory opinion to that effect and grant such relief. {

7. For the purposes of subsection 6, 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.

8. The advisory opinion does not relieve the current or former public officer or employee from the strict application of any provision of NRS 281A.410.

9. For the purposes of this section:

- (a) A former member of the Public Utilities Commission of Nevada, the Nevada Gaming Control Board or the Nevada Gaming Commission; or
 - (b) Any other former public officer or employee governed by this section,
- ↳ is employed by or is soliciting or accepting employment from a business, industry or other person described in this section if any oral or written agreement is sought, negotiated or exists during the restricted period pursuant to which the personal services of the public officer or employee are provided or will be provided to the business, industry or other person, even if such an agreement does not or will not become effective until after the restricted period.

5. "Cooling-Off" – Representing or Counseling

NRS 281A.410(1)(b) provides, in relevant part:

In addition to the requirements of the code of ethical standards and the 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.

V. DECISION

A. APPLICATION OF NRS 281A.550(5) TO THE CONTRACT AND AMENDMENT

As the Commission has explained: "[t]he Legislature has identified certain restrictions governing whether a current or former public officer or employee may pursue future employment in the private sector so as not to dilute the public's faith in government. Notably, the Legislature has limited future private employment opportunities that may derive, in part, out of public experiences, including on relationships acquired during public service or expertise obtained in a particular field earned as a result of public duties. The Legislature has tackled unique employment engagements that directly signal impropriety as a result of specific positions or ability to influence public duties that necessarily interact with private employment opportunities." *In re Durski*, Comm'n Op. No. 18-118A (2018), at p. 9.

In particular, NRS 281A.550(5) prohibits public officers and employees from seeking or accepting employment with a private entity that contracts with the State or a political subdivision if the contract amount exceeds \$25,000, the contract was awarded within the 12 months immediately preceding the termination of public service, and the position held by the public officer or employee at the time the of the contract award allowed the former public officer or employee to affect or influence the award of the contract.³ All conjunctive requirements of NRS 281A.550(5) must be present for the one-year "cooling-off" prohibition to apply to restrict the employment.

1. The Contract

The Contract was awarded by the Public Agency in excess of 12 months prior to Public Employee's anticipated separation and had an amount exceeding \$25,000. In addition, Public Employee confirms that the position held at the time of the contract award provided the ability to influence the contract award.⁴ Public Employee further acknowledges actual influence over the awarding of the Contract. Therefore, the Contract

³ NRS 281A.550(5) applies to both public officers and public employees as those terms are defined by NRS 281A.160 and NRS 281A.150, respectively.

⁴ NRS 281A.550(5) applies to public officer and employees of State government or a political subdivision, with the exception of clerical employees. The position held by Public Employee is not a clerical position. Further, NRS 281A.550(5) does not restrict its application to only the final decision-maker that awards a contract.

meets two of the three requirements set forth in NRS 281A.550(5). However, Public Employee's date of separation from public service will be after the prohibitive 12-month period prescribed by statute. Therefore, the Commission determines that the Contract does not trigger the "cooling-off" requirements of NRS 281A.550(5).

2. The Amendment

Black's Law Dictionary defines "contract" to be "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." Black's Law Dictionary (10th ed. 2004), at p. 389. Therefore any amendments or modifications, which are more than slight wording changes to a contract, qualify as separate contracts for application of NRS 281A.550(5). Here, the Amendment was negotiated, added compensation in excess of \$25,000, extended the term of the original Contract, and was approved and awarded within the 12-month period prior to Public Employee's anticipated date of separation from Public Agency. Therefore, the Amendment qualifies as an award of a contract for application of NRS 281A.550(5). Moreover, Public Employee was in a position to and did influence the award of the Amendment. Consequently, NRS 281A.550(5) prohibits Public Employee from seeking or accepting employment with Contract Vendor, unless the Commission grants relief.

B. NRS 281A.550(6) – OVERVIEW OF STATUTORY REQUIREMENTS FOR GRANTING RELIEF

Public Employee requests that the Ethics Commission grant relief from the strict application of the one-year "cooling-off" provisions. Pursuant to NRS 281A.550(6), the Commission may grant relief from the strict application of NRS 281A.550(5) if it determines that such relief is not contrary to the best interests of the public, the ethical integrity of the state government or the Ethics Law. "The intent of the exemption statute is to facilitate beneficial moves from the public to private sectors so long as the moves do not endanger either the public or private sectors and so long as there is nothing otherwise unethical in the way that the employment relationship occurred." See *In re Public Officer*, Comm'n Op. No. 11-96A (2012); *In re Public Employee*, Comm'n Op. No. 13-29A (2013).

Historically, when the Commission has granted relief, the review has included and been subject to heightened scrutiny or sensitivity to ensure the Legislature's prohibition is maintained and relief is provided in unique and qualifying circumstances that protect the public trust. To grant relief from "cooling-off" under NRS 281A.550(6), the Commission must affirmatively find that the circumstances are not contrary to:

- (a) The best interests of the public;
- (b) The continued ethical integrity of the State Government or political subdivision, as applicable; and
- (c) The provisions of the Ethics Law.

Notably, NRS 281A.550(6) does not include a specific exception permitting employment by virtue of a promise not to work on Agency or Nevada-specific matters when hired by a contract vendor or the regulated industry. That exception, if it had been enacted by the Legislature, would by its very nature swallow the "cooling-off" provisions. However, future anticipated duties for the regulated industry or contract vendor (including abstaining on Agency or Nevada matters for the one-year period) are properly considered in granting relief, but are not controlling.

The Commission reviews the full circumstances on a case-by-case basis to determine whether or not it will render the required findings set forth in NRS 281A.550(6) to grant relief from the strict application of the “cooling-off” prohibition. See *In re Public Officer*, Comm’n Op. No. 15-74A (2016). Prior to discussing whether relief is appropriate, the Commission first assesses whether Public Employee solicited, accepted or otherwise acquired employment from the Contract Vendor pursuant to NRS 281A.550(9).

C. NRS 281A.550(9) – STATUTORY REQUIREMENTS PERTAINING TO SEEKING OR ACCEPTING EMPLOYMENT

In 2017, the Legislature amended NRS 281A.550 to clarify restricted conduct associated with soliciting or accepting private employment from a contract vendor or the regulated industry. NRS 281A.550(9) establishes that a public officer/employee “is employed by or is soliciting or accepting employment from a business, industry or other person described in [NRS 281A.550] if any oral or written agreement is sought, negotiated or exists during the restricted period pursuant to which the personal services of the public officer or employee are provided or will be provided to the business, industry or other person, even if such agreement does not or will not become effective until after the restricted period.” The Legislature’s amendment verifies that public officers/employees may not solicit, accept or otherwise acquire employment in the regulated industry or from a contract vendor prior to obtaining relief from the strict application of NRS 281A.550. To do otherwise is at one’s peril. At a minimum, the restricted conduct hinders, and in this case, serves, in part, to preclude the ability of the Commission to grant relief from the “cooling-off” prohibition under NRS 281A.550(6).

Admittedly, Public Employee applied for and accepted the position with Contract Vendor at a time when Public Employee did not have knowledge regarding the requirements of NRS 281A.550 or NRS 281A.410(1)(b). Once the statutory requirements were realized, Public Employee retracted the acceptance and now seeks relief in order to finalize Public Employee’s employment with Contract Vendor. Public Employee contends that NRS 281A.550(5) or (9) would not apply given the timing of these matters. Specifically, the Contract was awarded in excess of 12 months prior to acceptance of employment with Contract Vendor and the Public Agency had not yet awarded the Amendment.

The Commission finds that Public Employee’s timing contention is a distinction without a difference to the end result. The Commission has confirmed NRS 281A.550(5) applies to the Amendment and Public Employee’s employment discussions with Contract Vendor continued after the Amendment was being processed by Public Agency. Public Employee is recognized for mitigation efforts by retraction of the acceptance of the job offer and confirmation that such employment will only be accepted if authorized by the Commission. Unfortunately, Public Employee’s conduct associated with seeking employment from Contract Vendor continued through the processing and award of the Amendment, thereby implicating the definition of soliciting or accepting employment as set forth in NRS 281A.550(9) and will be considered for purposes of granting relief, which analysis is set forth below.⁵

⁵ The Commission does not make any findings or conclusions associated with a violation of the Ethics Law in this advisory opinion. Those determinations are properly made within the context of an Ethics complaint case. See NRS 281A.710-281A.790.

D. NRS 281A.550(6) – RELIEF IS NOT GRANTED REGARDING COMPLIANCE WITH NRS 281A.550(5) IN THESE CIRCUMSTANCES

In its consideration of relief from the strict application of NRS 281A.550(5), the Commission does so in the context of the Amendment rather than the Contract. The Commission initially clarifies that lack of knowledge of the requirements of the Ethics Law does not present an excuse or defense to support relief. The provisions of NRS 281A.550 have been statutory, in various forms, since their enactment in 1993. See former NRS 281.236 (cf. NRS 281A.550). The Ethics Law does not require specific knowledge about the requirements of its statutes for the law to apply to the conduct of public officers and public employees. The law simply requires either an omission or an intentional, as opposed to unintentional, act associated with a duty imposed by the Ethics Law on the public officer or employee. See NRS 281A.170.

The Ethics Law provides for relief from the one-year “cooling-off” provisions of NRS 281A.550(5) under certain limited circumstances. Pursuant to NRS 281A.550(6), the Commission may grant relief from the strict application of NRS 281A.550(5) if it determines that such relief is not contrary to the best interests of the public, the ethical integrity of the State government or the Ethics Law. Affirmative findings for each of these foundational conditions will support the grant of relief. Among the potential impropriety of certain employment relationships involving contract vendors, is the appearance that a public officer or employee who is instrumental in influencing lucrative contracts for the public agency in a competitive business environment will be unduly influenced to benefit a particular vendor over promises of future employment with that vendor.

Public Employee presents several reasons why relief should be granted, including: 1) a pledge not to work on Contract Vendor contracts with Public Agency for at least one year; 2) the integrity of Public Agency can be preserved by isolating the conflict associated with Contract Vendor; and 3) the shortage of professionals in the industry in Nevada. In order of its review, the Commission considers Public Employee’s reasons for relief and whether the circumstances are not contrary to the: (1) Ethics Law, (2) ethical integrity of the involved public agency, and (3) best interests of the public.

1. Ethics Law

In considering the merits of Public Employee’s request and record before it, the Commission is required to review the circumstances and make affirmative findings that the circumstances are not contrary to the Ethics Law. The Ethics Law includes a Code of Ethical Standards as set forth in NRS 281A.400. Public Employee, as any public employee, must be committed to avoid conflicts between private interests and those of the general public served. Public Employee has a personal interest in future gainful employment within the private sector. In furtherance thereof, Public Employee has a duty to avoid actual and perceived conflicts of interest, and may not use a public position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for Public Employee or for any person to whom there is a commitment in a private capacity. See NRS 281A.020 and NRS 281A.400(1) and (2).

Although governments may include provisions in their contracts restricting solicitation of its public officers and employees by a contract vendor, the Ethics Law does not govern the potential employer who is a contract vendor or part of the regulated industry. Instead, it imposes restrictions on public officers and employees to protect the public trust. The practices of a public officer or employee in using a public position and acquired relationships to improperly or affirmatively seek a job position with a contract vendor or within the regulated industry, at a minimum, creates an appearance of

impropriety and potentially places the public officer or employee in the unfortunate position of having to defend allegations that the public trust has been compromised in violation of the Ethics Law. Without limitation, the following provisions of the Ethics Law are implicated by this conduct:

- NRS 281A.400(1) – seeking or accepting employment or economic opportunity which would tend improperly to influence a reasonable person to depart from public duties.
- NRS 281A.400(2) – using public position to secure unwarranted privilege/advantage.
- NRS 281A.400(10) – seeking employment/contracts through use of public position.
- NRS 281A.550(3), (5) and (9) – prohibiting soliciting or accepting employment with regulated industry or contract vendor without first obtaining relief from the “cooling-off” restrictions pursuant to NRS 281A.550(6).

Unquestionably, serving the public and protecting the public trust while being recruited by a contract vendor is fraught with ethical dilemmas. The dilemma for the public officer/employee is compliance with the Ethics Law by maintaining the proper separation between public duties and private interests when seeking to secure future employment in the private sector. The dilemma for the employing public entity is to maintain the integrity of its project management and contract oversight by requiring its employees to properly separate their private interests from public duties in furtherance of assuring that proper contract compliance is instituted without bias or personal interest. See *In re Public Employee*, Comm’n Op. No. 18-080A (2019) (comparable dilemmas evident when seeking employment within regulated industry, given requirements of NRS 281A.550(3)).

The Commission has determined in prior opinions that the improper use of a public position constitutes a violation of the Ethics Law when a public officer/employee used a current public position and associated relationships to assist with obtaining employment for the public officer. See *In re McNair*, Comm’n Op. Nos. 10-105C, 10-106C, 10-108C, 10-109C, and 10-0115C (2011) and *In re Maurizio*, Comm’n Op. No. 09-40C (2010). In addition, the Commission has confirmed that a public officer/employee may not use a public position as a “selling point” in marketing future private services. See *In re Public Employee*, Comm’n Op. No. 16-72A (2016); *In re Hales*, Comm’n Op. No. 07-13A (2008). Indeed, the offer of employment from Contract Vendor came during an official visit between Contract Vendor and Public Employee in relation to the Amendment at which time Public Employee informed Contract Vendor of the intention to separate from public service. Notably, these conversations occurred while Public Employee was overseeing work performed by the Contract Vendor and while the Amendment was being processed by Public Agency under the stewardship of Public Employee.

The Commission also considers whether the job would have been provided but for the public position held or whether the private employment or contract closely relates to the public duties of the public officer or employee. See *In re Cegavske*, Comm’n Op. No. 05-16A (2005) (concerns about whether public officer would have been provided the business opportunity but for the current public position; however, caution was advised since there was insufficient evidence for an unequivocal finding).

Public Employee's anticipated duties for Contract Vendor are substantially similar to Public Employee's public duties for Public Agency. Initially, in discussing future employment, Public Employee and Contract Vendor discussed Public Employee assisting the Contract Vendor with regard to its contracts with Public Agency. After Public Employee's later review of NRS 281A.410(1)(b), Public Employee confirmed that Contract Vendor would not assign Public Employee to contracts with Public Agency for a period of one-year after Public Employee's separation from government service.

Nevertheless, the Commission expresses legitimate concerns because Public Employee utilized relationships obtained through a public position to seek future private employment that would have had substantially similar duties as performed for Public Agency. The "cooling-off" provisions of the Ethics Law are intended to prohibit and discourage such circumstances and appearances of impropriety, and otherwise protect the public employer and the public served from the improper use of public resources.

2. Ethical Integrity of Public Agency

The record confirms Public Employee sought and accepted a job with Contract Vendor during a period when the Public Agency prepared and processed the Amendment. The Public Agency was placed in a position where its employee was processing an important contract amendment for Contract Vendor, while contemporaneously seeking and obtaining a private job with the same contract vendor. The Commission is not presented with facts relating to whether Public Employee disclosed the personal relationship with Contract Vendor to the organizational head of Public Agency while continuing to perform public duties associated with the Contract and Amendment. See NRS 281A.420.

Public Employee's efforts to secure an agreement from Contract Vendor to isolate future assignments may serve as mitigation of the recognized conflict; however, this self-imposed condition does not fully alleviate past conduct and associated timing considerations. The timing associated with Public Employee's public duties pertaining to the Contract and Amendment, while conducting private employment discussions with Contract Vendor, cannot be overlooked. These circumstances implicate the improper use of a public position, or a "pay to play" scenario creating, at a minimum, an appearance of impropriety or bias in favor of a future employer, which possibly could lead to a departure from public duties.

3. Best Interests of the Public

Public Employee presents a number of facts that support that the employment with Contract Vendor is not contrary to the public's best interests. Among these facts are Public Employee's experience as a professional, the shortage of professionals Nevada is experiencing in this profession and compliance with NRS 281A.410(1)(b). If the two other foundational conditions pertaining to the Ethics Law and ethical integrity of the affected public agency, as set forth in NRS 281A.550(6), did not cause concern, the Commission would be in a position to provide these factors significant weight in consideration of granting relief. Further, the record is devoid of facts that indicate Contract Vendor is the only private entity that provides the professional services or that Public Employee could not otherwise provide such services through another employer that is or was not in contract with Public Agency.

Given the requirements of NRS 281A.550(6), the Commission must weigh each foundational consideration separately and all three affirmative findings must be made in order to grant relief under NRS 281A.550(6) with respect to employment with Contract

Vendor within the restricted one-year period set forth in NRS 281A.550(5). It is unfortunate that the Commission has been placed in a position where it simply is unable to make the affirmative findings that Public Employee's employment with Contract Vendor would not be contrary to the Ethics Law and the ethical integrity of the employing public agency. In attempts to dissuade this type of result, the Commission routinely advises in published opinions for public officers and employees to seek advice of the Ethics Commission prior to seeking future employment through use of a public position or which affects contract vendors and matters pertaining to the regulated industry. For example, a recent opinion issued by the Commission states:

The Legislature's amendment verifies that public officers/employees may not solicit, accept or otherwise acquire employment in the regulated industry prior to obtaining relief from the strict application of NRS 281A.550. To do otherwise is at one's peril. At a minimum, the restricted conduct hinders and could serve to preclude the ability of the Commission to grant relief from the "cooling-off" prohibition pursuant to NRS 281A.550(6).

In re Public Employee, Comm'n Op. No. 18-80A (2018), at 7.

Therefore, after review of the record and consideration of applicable law, the Commission determines that it is unable to make the affirmative findings that relief would not be contrary to the Ethics Law, the integrity of the employing public agency or the best interests of the public. Consequently, relief is not granted under NRS 281A.550(6) and the one-year "cooling-off" period established in NRS 281A.550(5) from seeking or accepting employment with Contract Vendor applies to Public Employee's circumstances.

E. NRS 281A.410(1)(b) - LIMITATIONS

The provisions of NRS 281A.410(1)(b) are mandatory even when NRS 281A.550 does not apply to the circumstances. NRS 281A.550(8). NRS 281A.410(1)(b) prohibits representing or counseling a private person, which includes future employers or other entities, for at least one year after termination of public service on any issues that were under consideration by the employing public agency during the applicable term of public service.

Here, the prohibition in NRS 281A.410(1)(b) includes vendor contracts with Public Agency and any other "issues under consideration" by Public Agency during Public Employee's public tenure. See *In re Sweeney*, Comm'n Op. No. 15-70C (2016) (an ethics violation was found even where the former employee did not realize her counseling or representation of a private person (her private employer) was restricted by NRS 281A.410(1)(b)). Accordingly, the Commission advises Public Employee that he/she may not, for the one-year period following separation from public service, represent or counsel any private person (including Contract Vendor) on any issue that was under consideration by the Public Agency during Public Employee's public service.

VI. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Public Employee was a public employee as defined by NRS 281A.150.
2. Pursuant to NRS 281A.680(1), 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. Public Employee is subject to the one-year “cooling-off” prohibitions set forth in NRS 281A.550(5) restricting employment with Contract Vendor because the Amendment constitutes a separate contract in excess of \$25,000, the Amendment was awarded in the preceding 12 months prior to Public Employee’s separation from public employment and the position held by Public Employee provided the opportunity to influence the award of the Amendment.
4. The relief sought from the strict application of the “cooling-off” provisions is not appropriate under the circumstances presented pursuant to NRS 281A.550(6) because the Commission cannot affirmatively find that all of the required conditions set forth in NRS 281A.550(6) are met. Accordingly, the Commission declines to grant relief.
5. Pursuant to NRS 281A.410(1)(b), Public Employee may not represent or counsel a private person or entity for compensation for at least one year after the termination of public service on any issues that were under consideration by the Public Agency during Public Employee’s tenure.

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 7th day of October, 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