



**Confidentiality Waived for Opinion Only**

**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Christopher Bader**, former Mechanic,  
Department of Public Works, Carson City,  
State of Nevada,

Advisory Opinion No.19-080A  
**CONFIDENTIAL**

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

**OPINION**

**I. STATEMENT OF THE CASE**

Christopher Bader (“Bader”), a former Mechanic employed by the Carson City Public Works Department, State of Nevada (“Carson City”), requested this advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675 regarding the propriety of his 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.<sup>1</sup> The Commission considered the request for an advisory opinion, information provided by Bader that he affirmed as true, and publicly available information.

Bader sought an opinion from the Commission regarding the applicability of or relief from the strict application of the “cooling-off” requirements and applicability of the contracting restrictions under the Ethics Law pertaining to his private business, which seeks to provide mobile welding and repair services as an outside vendor to Carson City, Bader’s former public employer.

After fully considering Bader’s request and analyzing the facts and circumstances presented by Bader, the Commission deliberated and advised Bader of its decision that his employment with his own business established after separation from public service is not within the scope of conduct regulated by the provisions of NRS 281A.550(5). Although the Commission determines that NRS 281A.550(5) does not apply to the presented circumstances, Bader is advised that he must otherwise comply with the prohibitions set forth in NRS 281A.550 in the context of other employment considerations, as applicable, and the restrictions set forth in NRS 281A.410(1)(b) pertaining to any issue that was under consideration by Carson City during his tenure of public service.

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 Bader. 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 Bader presented. Facts and circumstances that differ from those

<sup>1</sup> The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O’Neill and Wallin.

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. QUESTION PRESENTED

Bader questions whether the “cooling-off” provisions of the Ethics Law set forth in NRS 281A.550(5) or NRS 281A.410(1)(b) prohibit him, for one year after his separation from service as a Mechanic for Carson City, from providing mobile welding and repair services as an outside vendor for his former public agency. If the prohibitions of NRS 281A.550(5) apply, Bader seeks relief from the strict application of those provisions under NRS 281A.550(6).

## III. FINDING OF FACTS

1. Bader is a former Mechanic for the Public Works Department for Carson City, Nevada (“may be referred to as the “City”). Bader commenced his public service with the City in September 2014 and separated from public service in May 2019.
2. Bader’s public duties as a Mechanic for the City included: small and large truck repair, specialty equipment repair and maintenance, heavy equipment repair and maintenance and welding repair and fabrication. In furtherance of Bader’s public duties, he provided both on and off-site repairs.
3. After separating from public service, Bader established his own business entitled “Iron Armor Welding Service” providing welding and repair services to the public.
4. Iron Armor Welding Services has not previously had a vendor contract with the City.
5. Bader contacted the City’s Public Works Department to determine whether he was eligible to provide outside contract vending services to the City and was advised he should seek an opinion of the Ethics Commission to confirm that he is in compliance with the “cooling-off” restrictions and contracting requirements of the Ethics Law with respect to his proposed vendor services.
6. If Bader is subject to the “cooling-off” provisions of NRS 281A.550(5), he requests the Commission grant him relief pursuant to NRS 281A.550(6) because:
  - a. The City’s fleet department has been understaffed and the department has trouble finding people to work on specialty equipment repairs.
  - b. Hiring outside vendors is a beneficial cost-saving measure for the City because it need not hire and train public employees to perform all types of repair work, thereby saving taxpayer dollars.
  - c. Bader understands the City’s protocols in assuring that repairs on equipment are correctly performed, which require that the repair job must be neat and clean and all parts installed must be logged by the Fleet department for inventory purposes. Iron Armor Welding Services will professionally perform

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<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).

the contract services and hold the City's interests in high regard, if chosen to be a contract vendor.

- d. Bader does not perceive any reason why the proposed vendor services would be contrary to Ethics law.

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

##### **A. OVERVIEW OF ISSUES**

The Ethics Law promotes public integrity through the appropriate separation between public duties and private interests by Nevada's public officers and employees. NRS 281A.020. In furtherance of that mission, the Ethics Law governs the conduct of former public officers and employees in the context of the "cooling-off" requirements to ensure that former public officers and employees do not use former information, relationships, or experiences acquired from their public service, which belong to the public, to benefit them or a regulated business or industry in a private capacity.

As a result of his former public service as a Mechanic for the City, Bader is a public employee as that term is defined in NRS 281A.150 and NRS 281A.180. Bader seeks guidance on whether the "cooling-off" provisions contained in NRS 281A.550(5) or NRS 281A.410(1)(b) prohibit him, within 1 year after the termination of his public service, from providing mobile welding and repair services as an outside vendor to the City through the business he established after his separation from public service. If NRS 281A.550(5) applies, Bader seeks relief from the strict application of the statute to permit him to seek a vendor contract with the City.

##### **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. "Cooling-Off" – Accepting Employment with Contract Vendor**

**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.

### **3. Relief from Strict Application of “Cooling-off” Requirements**

**NRS 281A.550(6) provides:**

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.

### **4. “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:

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:

...

(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**

The Commission provides guidance to Bader regarding whether his current circumstances subject him to the one-year “cooling-off” provisions of NRS 281A.550(5) and whether the restrictions set forth in NRS 281A.410(1)(b) apply. Only if NRS 281A.550(5) applies will the Commission consider relief from its strict application based upon the public policy considerations established in NRS 281A.550(6).

**A. THE “COOLING-OFF” PROVISIONS OF NRS 281A.550(5) APPLY TO BADER AS A FORMER PUBLIC EMPLOYEE FOR CARSON CITY; HOWEVER, BADER’S PRIVATE BUSINESS IS NOT WITHIN THE REGULATORY SCOPE OF NRS 281A.550(5)**

NRS 281A.550(5) establishes a one-year “cooling-off” period for public officers and employees of the State and its political subdivisions that restricts solicitation or acceptance of employment from a contract vendor if the amount of the contract exceeds \$25,000, the contract was awarded in the preceding 12-month period prior to termination of employment and the public position held by the public officer or employee placed them in the position to affect or influence the award of the contract. The statutory requirements are in the conjunctive and all must be present for the restriction to apply.

After separation from public employment for the City, Bader established Iron Armor Welding Service, which provides mobile welding and repair services. Bader contacted the City, his former public employer, to ascertain whether his business could become an outside vendor for the City. Bader was advised to seek an opinion from the Ethics Commission before continuing discussions regarding the potential vendor contract.

The circumstances establish that Iron Armor Welding Service had not previously been a party to or provided contract services to the City within the 12-month period preceding Bader’s separation from public service. In *In re Public Officer*, Comm’n Op. No. 18-116A (2018), the Commission confirmed that NRS 281A.550(5) does not apply when no vendor contract existed within the applicable period to prompt the statutory requirements. Therefore, the statutory requirements are not met because no contract existed within the regulatory timing and scope of NRS 281A.550(5). Since NRS 281A.550(5) does not apply to a proposed future vendor contract yet to be negotiated and awarded between the City and Armor Welding Service, the Commission need not consider relief from its strict application pursuant to NRS 281A.550(6). However, should Bader’s circumstances change and he desires to seek employment during the one-year “cooling-off” period from a person or entity who was a contract vendor to the City, he would be subject to the requirements of NRS 281A.550(5) and is advised to seek an advisory opinion based upon those circumstances before seeking or accepting such employment.

**B. NRS 281A.410(1)(B) LIMITATIONS**

Bader is advised that the restrictions of NRS 281A.410(1)(b) are mandatory. The statute restricts Bader, for the one-year period following separation from his public service with the City, from representing or counseling any private person (including his own business) on any issue that was under consideration by the City during Bader’s tenure of public service. NRS 281A.410(1)(b) defines “issue” to include a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

In *In re Public Employee*, Comm’n Op. No. 18-015A (2018), the Commission applied the mandatory restrictions of NRS 281A.410(1)(b) to a public employee’s anticipated employment with a private vendor providing contract services to the State and separately representing other public agencies on matters before the public employer. In *In re Sweeney*, Comm’n Op. No. 15-70C (2016), the Commission approved a Stipulated Agreement wherein it confirmed that even though the employment was not prohibited by NRS 281A.550, Sweeney was nevertheless prohibited, for one year following her public employment, from representing or counseling her current employer or any other private person on any issues that were under consideration during her term of public

employment. *Id.*, at 7. As a practical matter, Bader seeks to provide welding services for equipment owned or operated by the City. It is difficult to envision a circumstance in which these services could be construed as issues that were under consideration by the City while Bader was employed there.

Further, from the facts provided by Bader, it does not appear that he will be representing his own business or its clients on issues that were under consideration by the City during his public service. However, without information as to what issues were previously under consideration by the City and details of what, if any, connection exists between those issues and the proposed vendor contract, the Commission is only in a position to provide general information on the application of the statute to Bader so he is aware of the issue and can therefore avoid a potential statutory violation. Bader recognizes that he may not represent his own business or any of its clients in matters that were under consideration by his prior public employer, the City. The Commission further advises Bader that an “issue under consideration” extends farther than just Bader’s own public job duties as a Mechanic for the City. It extends to all matters under consideration by the City during his term of public service, whether he worked on the matter or participated on the issue under consideration, or it was acted upon by other public officers or employees of the City.

In conclusion, Bader’s employment for his own private business is not prohibited by NRS 281A.550(5), but it is governed by NRS 281A.410(1)(b). NRS 281A.410(1)(b) restricts Bader from representing any person, including his own business and its clients on any issue that was under consideration by the City during his term of public service. However, if the matter does not constitute an “issue” under consideration, NRS 281A.410(1)(b) would not apply. Consequently, Bader is advised to review each potential client matter on a case-by-case basis to determine whether it constitutes an “issue” under consideration to which the one-year “cooling-off” period established in NRS 281A.410(1)(b) would apply. See *In re Public Employee*, Comm’n Op. No. 11-96A (2012). If there is any question, Bader may return to the Commission for an advisory opinion pursuant to NRS 281A.675.

## **VI. CONCLUSIONS OF LAW**

1. As a former Mechanic for Carson City, Bader is a public employee as defined by NRS 281A.150 and NRS 281A.180.
2. Pursuant to NRS 281A.675 and NRS 281A.550(6), 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. As a former Mechanic for Carson City, Bader is subject to the “cooling-off” provisions of the Ethics Law and its restrictions prohibiting, for a period of one year, certain employment, contracts and representations by former public officers and employees in their private capacity as it relates to their prior public service. See NRS 281A.550(5) and NRS 281A.410(1)(b).
4. Bader is advised that employment with his own business established after his separation from public service is not within the regulatory timing and scope of NRS 281A.550(5) because the business had not been awarded a contract exceeding \$25,000 within the 12-month period prior to his separation from public service.

5. Facts and circumstances relating to relief pursuant to NRS 281A.550(6) from the strict application of the “cooling-off” provisions are not germane since NRS 281A.550(5) does not currently apply. If such facts develop in the future, Bader may seek an advisory opinion from the Commission pursuant to NRS 281A.675.
6. Pursuant to NRS 281A.410(1)(b), Bader may not represent or counsel a private person or entity, including his own business, for at least one year after the termination of his public service on any issues that were under consideration by Carson City during his tenure.

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

Dated this 8<sup>th</sup> 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  
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By: /s/ Kim Wallin  
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