



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Subject**, Member of Public Body
and Public Employee of Public Entity,
State of Nevada,

Advisory Opinion No.19-052A

Subject. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Subject, who contemporaneously serves as an elected member of a public body ("Public Body") and a public employee of a separate public entity ("Public Entity"), State of Nevada, requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.675 regarding the propriety of Subject's 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 based upon information provided by Subject that was affirmed as true and available public information.

Subject sought an opinion from the Commission regarding Subject's responsibilities under the Ethics Law, including Subject's disclosure and abstention obligations as a member of Public Body regarding matters before Public Body affecting Subject's separate employment interests with Public Entity. Specifically, Subject seeks advice regarding matters considered by both agencies. After fully considering Subject's request and analyzing the facts, circumstances and information presented, the Commission deliberated and advises Subject that, in performing Subject's public duties as a member of the Public Body, Subject must comply with all disclosure and abstention requirements of NRS 281A.420, which may include consideration of the presumption set forth in NRS 281A.420(3) and (4).

Subject 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 Subject 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 Subject, for confidentiality reasons, this Abstract opinion redacts

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

certain Findings of Fact, provides a summary of issues and removes other identifying information to protect the confidentiality of the subject.²

II. QUESTIONS PRESENTED

As a member of Public Body and a full-time public employee for Public Entity, Subject requests the Commission's advice on Subject's disclosure and abstention requirements under the Ethics Law pertaining to matters affecting Public Entity.

III. FINDINGS OF FACT

1. Subject is a member of Public Body and is a public officer pursuant to NRS 281A.160.
2. Subject is simultaneously employed by Public Entity as a full-time employee.
3. Public Body and Public Entity are separate public agencies.
4. As a member of Public Body, Subject anticipates considering certain matters affecting Public Entity.
5. Subject has not previously participated in matters anticipated to be considered by Public Body that affect Public Entity.
6. Subject's public duties as an employee for Public Entity may include gathering certain information to assist this government employer in addressing matters before Public Body or that could affect the interests of Public Body.
7. However, in Subject's private employment for Public Entity, Subject does not have the authority to make any decisions regarding Public Entity's determinations of matters affecting Public Body, but Subject may be called upon to respond to questions.

IV. ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

Subject simultaneously serves as a public officer (NRS 281A.160) and a full-time public employee (NRS 281A.150). In fulfilling the duties and obligations of public service to both agencies, Subject must comply with the applicable requirements of the Ethics Law. In this opinion, the Commission confirms that Subject has a significant pecuniary interest in employment for Public Entity and has private commitments to both public employers, Public Body and Public Entity, pursuant to NRS 281A.065(4). The Commission provides guidance regarding the application of NRS 281A.420 and applicable provisions of NRS 281A.400.

Subject is advised to take proper measures to comply with the disclosure and abstention requirements of NRS 281A.420 and the Code of Ethical Standards set forth in NRS 281A.400 to maintain the integrity of public service by avoiding actual conflicts of

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).

interest or even appearances of impropriety by properly separating private interests from public duties. See NRS 281A.020. To support compliance, the Commission advises Subject to obtain advice from the official legal counsel to obtain safe-harbor protections for legal advice rendered that is consistent with the requirements of NRS 281A.790(5). In addition, should questions arise in the future, the Commission's advisory opinion process is available to assist in interpreting and applying the Ethics Law. See NRS 281A.665 to NRS 281A.690.

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.

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) Pecuniary Interest

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.

4) 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.

5) Abstention Requirements

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.

6) Improper Use of Public Position

NRS 281A.400(1), (2), (3), (5), (9) 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.

5. If a public officer or employee acquires, through the public officer’s or employee’s public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further a significant pecuniary interest of the public officer or employee or any other person or business entity.

9. A public officer or employee shall not attempt to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity through the influence of a subordinate.

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.

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 these statutes serve to assist in determining the boundaries of prohibited conduct where conflicts of interest are presented between public duties and personal interests. In particular, the Ethics Law has disclosure and abstention obligations applicable to public officers and employees that must be complied with when a matter affects the public officer’s or employee’s significant pecuniary interests or commitments in a private capacity.

Under the Ethics Law a “pecuniary interest” is defined under NRS 281A.139 as:

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.

The Merriam-Webster dictionary defines “significant” as having or likely to have influence or effect, important or probably caused by something other than mere chance. Merriam-Webster’s Collegiate Dictionary 1159 (11th ed. 2003). Similarly, *The American*

Heritage College Dictionary 1268 (3rd ed. 1997) defines “significant” as “meaningful” or “important.” The statute, as originally enacted, did not contain the word “significant.” The term was added by the Nevada Legislature in 2013 with the enactment of Senate Bill (“SB”) 228. The Commission’s Executive Director at the time testified that “significant” was being added to several subsections of the Ethics Law, to eliminate a *de minimis* interest from being seen as a true conflict. See Exhibit C submitted at Hearing on SB 228 before the Assembly Legislative Operations & Elections Comm., 77th Leg. (Nev. May 14, 2013). Therefore, a significant pecuniary interest means that the associated benefits or detriments are important and not incidental, trivial or *de minimis*

Separately, NRS 281A.065 defines the types of relationships that constitute a commitment in a private capacity to the interests of others. Of relevance is NRS 281A.065(4), which confirms that a relationship with an employer constitutes a private commitment. Subject has employment relationships with two public employers, Public Body and Public Entity. In addition to these relationship-based employment conflicts, Subject has a significant pecuniary interest in the salary and benefits associated with these positions. If Subject’s pecuniary interests or the interests of either public employer are affected by the matter to be considered, the law, at a minimum, requires disclosure.

Based upon the facts presented, the Commission determines that Subject has a significant pecuniary interest in the associated salary and benefits received from both public employers pursuant to NRS 281A.139. Subject also has private commitments to both public employers pursuant to NRS 281A.065(4). As the Commission has opined, there may be challenges for any person holding two public positions contemporaneously, which create:

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

In re Public Employee, Comm’n Op. No. 18-137A (2019), at 3.

A. DISCLOSURE REQUIREMENTS

NRS 281A.420 requires a proper disclosure when the public officer or employee is carrying out any public duties to approve, disapprove, vote, abstain or otherwise act upon a matter: (a) regarding a gift or loan, (b) in which a public officer or employee has a significant pecuniary interest, (c) which would reasonably be affected by public officer’s or employee’s 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.

In detailing the public trust aspects associated with a proper disclosure, the Commission explained in *In re Subject*, Comm’n Op. No. 13-71A (2014), citing *In re Weber*, Comm’n Opinion No. 09-47C (2009):

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. 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 in which he has a significant pecuniary interest [or a private commitment].

To affect a proper disclosure, the public officer or employee must make the disclosure each time public duties are affected by a private commitment or significant pecuniary interest. The Commission has stated that NRS 281A.420(1)(d) requires that a public officer/employee make a proper public disclosure at the time each matter is considered detailing sufficient information concerning the potential effect of public officer's/employee's participation on the matter:

...[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 Subject*, 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)). Next, the Commission details the difference between the disclosure and abstention requirements for Subject serving Public Entity as a public employee, verses serving the public as a member of Public Body.

1) Disclosure and Abstention Requirements - Employee of Public Entity

Subject anticipates Public Body and Public Entity may hold public meetings or consider matters that affect both public agencies. Each time Subject's public duties for Public Entity converge with or relate to matters affecting Public Body, Subject must make a proper disclosure to the supervisory head of Public Entity pursuant to NRS 281A.420(1). As a public employee, Subject must disclose the nature of the relationship with both public employers and the full effect of the matter on the involved employers. It makes no difference whether the effect constitutes a benefit or a detriment because the requirement established in NRS 281A.420(1) is one of proper disclosure.

In addition to disclosure to the supervisory head of the organization, Subject is advised of the requirement in NRS 281A.420 to make a public disclosure in certain circumstances given Subject's potential duties to appear and represent/present matters at a public meeting of Public Entity. Should the matter be considered in a public meeting of Public Entity, the disclosure must be sufficient to inform the public about the potential effect of the matter to Subject's pecuniary interests and private commitments. See *In re Murnane*, Comm'n Op. No. 15-45A (2016) (requiring City Manager Murnane, as an appointed public officer, to make a written disclosure to the Henderson City Council to be included in the agenda packet available to the public, when certain matters affecting his private commitments were considered in a public meeting before the City Council). The

requirement to inform the public applies to all public officers and employees irrespective of the varied statutory requirements identifying to whom the disclosure is required to be made based upon type of positions held (public officer vs. public employee) if the public officer/employee is appearing, presenting or representing matters at the public meeting. Whether a public disclosure is required for public employee depends on whether there is an associated appearance during the public meeting in a representative capacity on the matter. *Id.*

2) Disclosure Requirements - Member of Public Body

NRS 281A.420(1) requires that a public officer, who is a member of a governing body, provide a proper disclosure in each public meeting in which the public officer is carrying out any public duties to approve, disapprove, vote, abstain or otherwise act upon a matter in which the public officer holds a commitment in a private capacity to the interests of another person (including public employers) or a significant pecuniary interest. When matters are considered by Public Body that affect Subject's employment interests for Public Entity, Subject is advised to properly disclose by explaining to the public what affect, either as a benefit or detriment, the matter has on Subject's private interests and commitments with Public Entity.

B. ABSTENTION REQUIREMENTS

Subject has detailed facts to confirm there is a significant private pecuniary interest in Subject's employment for both public employers. Accordingly, the Commission advises Subject on the abstention requirements under NRS 281A.420, with respect to one matter identified by the Subject as often jointly considered by both employers. In reviewing whether abstention is required for that matter, the Commission considers the public policy attributes of NRS 281A.420(4) ("presumption"), which instruct that appropriate weight and proper deference be given to the public policy of this State, which favors the right of a public officer to perform the duties for which the public officer was appointed and to otherwise act upon a matter. In order to avail oneself of the presumption, the public officer or employee must properly disclose the public officer's/employee's significant pecuniary interests and commitments in a private capacity to the interests of another person, in the manner required. Then, Subject must conduct the analysis of whether the judgment of a reasonable person in Subject's situation would be materially affected by the private interests and commitments.

At its elementary level, both Public Entity and Public Body have separate significant monetary and operational interests in the matter. Certainly, additional interests and effects could be identified once the matter is slated for decision by either public entity. Nevertheless, unless the matter affects Subject's pecuniary interests and/or the interests of Subject's employers the same as others to be affected by the matter, the Commission concludes that a reasonable person's judgment in Subject's position when participating on the matter, would be materially affected given the magnitude of the involved interests. Accordingly, the Commission recommends that Subject consult with the official legal advisor for the public agencies to complete due diligence on the matter to be considered, or other associated matters as they arise, for purposes of determining whether there are sufficient facts that would support application of the presumption.³ NRS 281A.790(5) could provide Subject "safe harbor" from a willful violation if advice is sought from official legal counsel and received prior to participation on the matter, preferably in writing, in

³ A contemporaneous review must be conducted to ascertain whether a particular item also implicates the provisions of NRS 281A.400.

accordance with the provisions of NRS 281A.790(5). If there is any doubt, the Commission recommends Subject abstain on matters affecting either of Subject's public positions.

C. ADVOCACY VS. PARTICIPATION IN PROVIDING FACTUAL INFORMATION

Subject may appear before Public Entity (full-time public employer) to provide facts or recommendations pertaining to a matter affecting Public Body. However, Subject does not anticipate similar appearances before Public Body. If Subject is called upon to provide factual information, rather than recommendations or opinions, to Public Entity in Subject's capacity as an employee for Public Entity, the Commission emphasizes that the boundary between advocating or participating on a matter verses providing factual information should be carefully reviewed prior to doing so. In *In re Brown*, Comm'n Op. No. 13-28A (2014), at p. 13, the Commission cautioned against the practice by advising:

...Brown's desire to otherwise provide factual information, i.e., participate, is laced with serious, potential public trust implications. See *In re Kubichek*, Comm'n Opinion No. 97-07 (1997) ("an elected official who has already disclosed and abstained from a matter because of a disabling conflict of interest should always consider whether what she has to say really needs to be said, and if she thinks so, then she must be very careful with what she says and how she says it. Prudential forethought, common sense, and concern for appearances of impropriety will be the best prophylaxis"); see also *In re Buck*, Comm'n Opinion No. 11-63 (Public officer's assertion of factual information in matter regarding which she had conflict of interest and disclosed and abstained was determined to constitute advocacy in violation of Ethics Law). Brown should be aware that his efforts to convey what he believes to be factual information related to these matters may be construed as advocacy by virtue of his personal stake in the matter.

Under the circumstances presented, it appears that Public Entity has other employees who can provide the factual background for the matter affecting Public Body. Therefore, the conflict and associated appearances of impropriety are avoidable. However, if Subject is the only person able to provide the needed factual data, Subject should consult the official legal advisor for Public Entity on how best to proceed, including compliance with the disclosure and abstention obligations of NRS 281A.420 and take affirmative steps to secure the "safe-harbor" protections in order to avoid a willful violation, which protections are available upon compliance with NRS 281A.790(5).

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

Subject has a duty to avoid actual and perceived conflicts of interest, and Subject may not use any public position in government to seek or accept improper economic opportunities or secure or grant unwarranted privileges, preferences, exemptions or advantages for Subject or for any person to whom Subject has a commitment in a private capacity. See NRS 281A.020, NRS 281A.065 and NRS 281A.400(1) and (2).

Subject is commended for recognizing that the circumstances present either an actual or potential conflict situation. The primary intent of the Ethics Law is to keep public officers grounded in public policy and to confirm that a public office is a public trust to be held for the sole benefit of the people. See NRS 281A.020. Subject is seeking to avoid any improper use of either public position affecting or influencing matters pertaining to the

public employers or to further the associated private interests and commitments held by Subject because holding two public positions simultaneously places Subject in an opportunistic position to do so. While holding an opportunity alone does not violate the provisions of NRS 281A.400 (Code of Ethical Standards), it does create a duty to avoid conflicts of interest and prevent a violation of the Ethics Law. See *also* NRS 281A.020.

Subject has not presented other specific matters associated with potential private conflicts pertaining to the public employers. Accordingly, Subject is generally advised to refrain from using either public position in any manner that could be construed as: (1) providing Subject or Subject's employers with an unwarranted private benefit, including benefits sought or realized through influencing subordinates; (2) persuading either public entity's decisions that directly affect the other government employer; (3) using otherwise nonpublic information to benefit any private interest or commitment, or (4) improperly seeking contracts for oneself or a person to whom Subject has a private commitment under NRS 281A.065. See NRS 281A.400(1), (2), (5), (9) and (10). Based upon Subject's awareness of these conflicts and Subject's preemptive act in seeking this opinion and in the future obtaining representation from an official legal counsel for the public employers, the Commission is satisfied that Subject realizes these responsibilities and will dedicate Subject's conduct to preserve the public trust. Regarding the application of the Code of Ethical Standards to other or future factual situations, the Commission's advisory opinion process is available to assist Subject in navigating the compliance requirements of the Ethics Law on any given fact pattern.

VI. CONCLUSIONS OF LAW

1. Subject is a member of Public Body and a public officer as defined by NRS 281A.160.
2. Subject is simultaneously a public employee of Public Entity as defined by NRS 281A.150.
3. Public Body and Public Entity are separate and distinct public agencies.
4. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter and the opinion may include guidance to Subject from the Commission pursuant to NRS 281A.665.
5. Subject has a commitment in a private capacity to both public employers pursuant to NRS 281A.065(4).
6. Pursuant to NRS 281A.139 and based upon the presented circumstances, Subject has a significant pecuniary interest in Subject's employment for Public Entity.
7. Pursuant to NRS 281A.420(1), Subject must make a proper public disclosure at the time any matter pertaining to Subject's significant private financial and employment interests are considered, detailing sufficient information concerning Subject's personal interests and private commitments and their potential effect on Subject's participation on the matter.
8. Pursuant to NRS 281A.420(3) and (4), abstention should be considered in future matters affecting Subject's pecuniary and employment interests. Specifically, Subject is advised that, on any matter affecting both Public Body and Public Entity, Subject is required to make a proper disclosure and should abstain on the item,

unless Subject receives legal advice in accordance with NRS 281A.790(5) or from this Commission permitting application of the presumption set forth in NRS 281A.420.

9. Subject is directed to comply with the Code of Ethical Standards set forth in NRS 281A.400 in order to avoid any appearance of impropriety or conflict by properly separating public duties from Subject's private interests and commitments.

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 11th day of December, 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
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By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
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By: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner