



Confidentiality Waived for Opinion Only

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Lincoln Litchfield**, Member,
City Council, City of Carlin,
State of Nevada,

Advisory Opinion No.19-121A
CONFIDENTIAL

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Lincoln Litchfield ("Litchfield"), a Member of the City Council, City of Carlin, State of Nevada, requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.675, regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A. Pursuant to NAC 281A.352, 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, a list of proposed facts that were affirmed as true by Litchfield and publicly available information.

Litchfield sought an opinion from the Commission regarding the applicability of the disclosure and abstention requirements and other provisions of the Ethics Law, to his circumstances if he were to pursue and accept private employment within the marijuana industry for a particular cannabis establishment ("Cannabis Establishment"), which is anticipated to apply for and receive a business licenses to operate within the City of Carlin.

After fully considering Litchfield's request and analyzing the facts, circumstances and testimony presented by Litchfield, the Commission deliberated and advises Litchfield that he should be vigilant to separate any private employment or financial interests from his public duties and should disclose and possibly abstain on matters associated with his potential future employer in the marijuana industry to assure compliance with the Ethics Law. Further, the provisions of NRS 281A.410 of the Ethics Law require Litchfield to comply with certain limitations on representing or counseling private persons on matters pending before the City of Carlin, the agency he serves as a member of its local legislative body. The Commission now renders this formal written opinion stating its findings of fact and conclusions of law.

The facts in this matter were obtained from documentary evidence provided by Litchfield and public records. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below are accepted as true. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.²

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

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 an advisory 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).

II. QUESTIONS PRESENTED

In fulfilling his public duties as a City of Carlin councilmember, Litchfield seeks advice on his disclosure and abstention requirements associated with seeking or obtaining private employment with Cannabis Establishment, which business is anticipated to receive a business licenses in the near future as approved by the City Council, and also whether his seeking or acceptance of such employment implicates any other provisions of the Ethics Law including NRS 281A.400 and NRS 281A.410.

III. FINDINGS OF FACT

1. Litchfield is in his last term of public office as an elected councilmember for the City of Carlin, State of Nevada, and he currently serves as Vice-Mayor.
2. Carlin's Mayor and City Council act as the legislative body for the City of Carlin and adopt all ordinances and resolutions, determine the policies of the City, and adopt the budget and approve all associated expenditures.
3. On December 4, 2019, the City Council adopted an ordinance adding a new Chapter 12 to Title 5 of the City of Carlin Municipal Code to regulate Medical Cannabis Establishments and Cannabis Establishments, which are limited in number and must be registered and permitted by the State of Nevada under NRS Chapters 4523A and 453D, and providing for other matters properly related thereto (the "Ordinance").
4. Among other matters, the Ordinance provides for an exemption of certain acts from criminal prosecution and establishes land-use standards and licensing requirements for a Medical Cannabis Establishment or Cannabis Establishment, as those terms are defined in the Ordinance.
5. As part of the issuance of a business license to operate any type of cannabis establishment within the City of Carlin's jurisdictional limits, the applicant must waive and release the City of Carlin from all injuries, damages, and any other liability of any kind that results from arrest, prosecution or non-compliance with applicable regulations and laws.
6. The Ordinance establishes minimum standards and review criteria for the cannabis establishments including, without limitation, restrictions on location, product operations, display, security, public access and business signage. In particular, any proposed cannabis establishment has a duty to "work with the City of Carlin Fire Department to determine safe emergency access."
7. The Ordinance designates the permitted uses and zoning requirements and establishes the amount of the business licensing fee to include an annual base origination fee, plus quarterly fees based upon gross receipts.
8. The City of Carlin is expected to receive business license applications for the limited licenses available for a cannabis establishment, which, along with zoning or land use matters, are anticipated to be considered and voted on by the City Council.
9. Litchfield has significant knowledge pertaining to both retail and horticulture matters, and he would like to seek employment with the selected applicant,

Cannabis Establishment, to be located in the City of Carlin; however, he has not and will not pursue such employment pending issuance of this advisory opinion.

IV. STATEMENT OF ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

As a foundational principle, the provisions of the Ethics Law are interpreted and applied under the duty to avoid conflicts of interest established in NRS 281A.020. Two separate concepts are explored in this opinion, which are Litchfield's compliance obligations under the Ethics Law applicable to a private employer and whether there are any associated implications under the Ethics Law for a potential employer. As a Member of the Carlin City Council, Litchfield holds a public office and must therefore commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves. Whether there would be conflicts between his public duties as a councilmember and his private interests in employment or potential employment within the marijuana industry must be considered in light of the provisions set forth in NRS Chapter 281A, as interpreted by applicable Commission precedent. The applicability of the following provisions of the Ethics Law to Litchfield's circumstances are addressed in this opinion, as they pertain to the identified concepts:

1. The disclosure and abstention requirements set forth in NRS 281A.420(1) and (3) pertaining to a private employer (NRS 281A.065(4)) including associated private pecuniary interests such as Litchfield's salary and benefits. In addition, the opinion instructs on the applicability of the statutory disclosure and abstention requirements to a potential employer, i.e., Cannabis Establishment.
2. Application of the Code of Ethical Standards set forth in NRS 281A.400 to the circumstances, particularly NRS 281A.400(1), (2), and (10) relating to improper use of a public position to seek or obtain employment.
3. The restrictions set forth in NRS 281A.410 related to providing counseling or representation for compensation on issues pending before the City of Carlin or other government agencies.

Initially, the Commission advises that employment by Cannabis Establishment is not precluded by the Ethics Law based upon Litchfield's current circumstances. However, Litchfield must comply with: (1) the disclosure and abstention provisions as set forth in NRS 281A.420 both as required and as recommended in order to avoid conflicts between his public duties and private interests; (2) the Code of Ethical Standards set forth in NRS 281A.400 by maintaining proper separation between his public duties and private interests and commitments; and (3) NRS 281A.410, which statute precludes paid representation and counseling of any private person (including an employer) on any issue pending before the City of Carlin, with possible exceptions.³

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³ Since the Ethics Law does not require that Litchfield resign his position as a councilmember to seek private employment, the Commission does not address the one-year "cooling-off" requirements governing separation from public service, as set forth in NRS 281A.410(1)(b) or NRS 281A.550, because they currently do not apply to Litchfield's circumstances. In the future when Litchfield leaves public service, such statutes could apply depending upon the circumstances, and must be complied with by Litchfield.

B. RELEVANT STATUTES

1. Duty to Avoid Conflicts/Public Trust

NRS 281A.020 provides in pertinent part:

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. “Commitment in a private capacity” Defined.

NRS 281A.065 provides, in pertinent part:

“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:

- ...
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; ...

3. “Pecuniary interest” Defined.

NRS 281A.139 “Pecuniary interest” defined:

“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. Improper Conduct in Seeking or Accepting Employment

NRS 281A.400(1) provides:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity 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.

NRS 281A.400(2) provides:

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 to the interests of that person. As used in this subsection, “unwarranted” means without justification or adequate reason.

NRS 281A.400(10) provides:

A public officer or employee shall not seek other employment or contracts through the use of the public officer’s or employee’s official position.

5. Representing or Counseling on Pending Government Matters

NRS 281A.410(1)(a), (2) and (3) provide, 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:

(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...

* * *

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

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

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

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

(1) The best interests of the public;

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

(3) The provisions of this chapter.

6. Disclosure and Abstention

NRS 281A.420(1), (3) and (4) provide, in relevant part:

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.

* * *

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's significant pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of another person.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of another person, accruing to the other person, is not greater than that accruing to any other member of any general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the duty of the public officer to make a proper disclosure at the time the matter is considered and in the manner required by subsection 1.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer makes a proper disclosure at the time the matter is considered and in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

V. COMMISSION DECISION

A. PECUNIARY INTERESTS AND COMMITMENT IN A PRIVATE CAPACITY – EMPLOYMENT

The Legislature has deemed certain specific relationships to implicate conflicts of interest pursuant to NRS 281A.065, including a relationship with an employer. NRS 281A.065(4) establishes that Litchfield has a statutory commitment in a private capacity to the interests of his employer. See also *In re Public Officer*, Comm'n Op. No. 13-86A (2013). However, the definition of a commitment in a private capacity set forth in NRS 281A.065 does not extend to an employment relationship that has not yet been established. Employment may be established when there are facts confirming the existence of a current employment relationship or demonstrating that an employment relationship has been forged or established by any form of commitment to commence on a future date. In the employment context, Litchfield has a significant pecuniary interest in maintaining any associated salary and benefits. See NRS 281A.139.

As a result of an employment relationship, the interests of Litchfield's employer will be statutorily attributed to him to establish conflicts between his private interests and public duties. See *In re Brown*, Comm'n Op. No. 13-28A (2013). As explained in *Brown*, "The Ethics Law recognizes various conflicts or perceived conflicts between public duties and a person with whom public officers and employees have employment commitments." *Id.*, at 9. Accordingly, Litchfield must consider the implications of his employment relationships and related interests in addressing all associated public matters, including the disclosure and abstention requirements set forth in NRS 281A.420, representation and/or lobbying provisions set forth in NRS 281A.410 and other standards of conduct governing the improper use of his public position with regard to matters affecting his pecuniary interests or the interests of his employer, as set forth in NRS 281A.400, the Code of Ethical Standards.

With regard to a potential employer where employment has yet to be established, Litchfield may not have a private commitment to the employer under NRS 281A.065(4). Nevertheless, other provisions of the Ethics Law, particularly those set forth in NRS 281A.400, apply to prevent a misuse of a public position to secure or acquire a business opportunity or employment. Further, a proper disclosure and possibly abstention (See NRS 281A.420) are recommended by the Commission to provide transparency and potentially avoid an ethics violation, as detailed in this opinion.

B. DISCLOSURE AND ABSTENTION

1. Duty to Disclose

NRS 281A.420(1) requires disclosures in the following matters that are deemed by law to be conflicts: (1) in which a public officer or employee has accepted a gift or loan; (2) in which the public officer or employee has a significant pecuniary interest; (3) which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person; and (4) which relate to the representation of a private client within the preceding year. The conflicts listed in numbers (2) and (3) are implicated should Litchfield obtain employment or have an associated pecuniary interest, which would require Litchfield make a proper disclosure if any matter comes before him in his public capacity as a councilmember, which implicates either his own pecuniary interests or the interests of his employer, to whom Litchfield has a private commitment under NRS 281A.065(4).

Alternatively, if the facts confirm that Litchfield has no associated pecuniary interests or employment relationship or other commitment in a private capacity as set forth in NRS 281A.065 including, without limitation, that he is only considering potential employment, the requirements are different. NRS 281A.420(1) does not require disclosure of potential employment and associated pecuniary interests where there is no evidence of an actual or imminent employment relationship or pecuniary interest. However, disclosure certainly is advisable in such situations to avoid any appearance of impropriety under NRS 281A.020 and such a disclosure may serve to protect Litchfield from an ethics violation regarding improper use of his public office under the Code of Ethical Standards set forth in NRS 281A.400, which is discussed in greater detail below.

Litchfield has expressed an interest in pursuing employment in the marijuana industry given his experience with retail and horticulture prior to the end of his last term on the City Council. Disclosure of this interest serves to protect the public trust when public officers and employees are expected to approve business licenses and other related matters for Cannabis Establishment, from which Litchfield anticipates pursuing private employment.

A public officer/employee has an obligation to preserve the public trust and commit himself to avoid conflicts between his private interests and public duties. Where these conflicts arise in the context and consideration of public matters, the public officer/employee may, under certain circumstances, honor his obligations through appropriate disclosures and abstentions.

In re Public Officer, Comm'n Opinion No. 13-78A (2014), at pgs. 9-10.

The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed. The people have a right to expect that every public official and employee will conduct himself/herself in a manner that will preserve public confidence in and respect for the government that the public officer or employee represents. Such confidence and respect can best be promoted if every public official and employee uniformly avoids both actual and potential conflicts between their private self-interest and the public interest. Helping public officials and employees achieve these goals is one of the objectives of the Ethics Law...

In re Public Officer, Comm'n Opinion No. 13-86A (2014), at p. 8.

The Commission in *In re Public Officer*, Comm'n Opinion No. 13-71A (2014) cited *In re Weber*, Comm'n Opinion No. 09-47C (2009) stating that:

In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. ...Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.

Id., at p. 8.

In compliance with the Ethics Law and interpretive decisions, the Commission advises Litchfield that the Ethics Law imposes a continuing duty to properly disclose his pecuniary interests and private commitments associated with personal employment matters and the interests of his private employer, and the effect such interests have on the matter before City Council. Separately, if Litchfield seeks or pursues employment with a particular employer including Cannabis Establishment, the Commission recommends a proper disclosure on matters before City Council that affect the interests of the potential employer, in order to avoid any appearance of impropriety or an alleged violation of the Code of Ethical Standards set forth in NRS 281A.400.

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. Litchfield is reminded that a disclosure required by the Ethics Law during a public meeting must occur "at the time the matter is considered." NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. 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 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)).

2. Duty to Abstain

In the foundational *Woodbury* opinion, the Commission details the steps that a public officer must take whenever a matter that may materially affect the independence of judgment of a reasonable person in the public officer's situation comes before the public body he or she serves. *In re Woodbury*, Comm'n Op. No. 99-56 (1999). First, disclosure is required whenever a public officer's actions would "reasonably be affected by his [pecuniary interests or] private commitment." *Id.* Second, abstention is required when a reasonable person's independence of judgment in the public officer's situation is "materially affected" by that [pecuniary interest or] private commitment. *Id.*, at 2.

As is already recognized by Litchfield, the independence of judgment of a reasonable person in Litchfield's position would be materially affected by a matter before the City of Carlin if he establishes an employment relationship with Cannabis Establishment given the statutory commitment in a private capacity to an employer established in NRS 281A.065(4) and Litchfield's associated pecuniary interests. See *In re Cadwallader*, Comm'n Op. No. 09-04A (2009). Consequently, pursuant to NRS 281A.420(3), whenever matters affecting Litchfield's employer or his private employment pecuniary interests come before the City Council for action, Litchfield is advised to abstain from voting or otherwise acting on such matters unless he receives legal advice from the

City of Carlin's official counsel or obtains an opinion from the Commission confirming that Litchfield's participation on the matter would not materially affect his private pecuniary interests or commitments in a private capacity any more or less than the benefit or detriment accruing to any other member of the general business, profession, occupation or group that is affected by the matter. This presumption is set forth in NRS 281A.420(3) and (4) and must be analyzed on a case-by-case basis.⁴

In review of circumstances pertaining to Cannabis Establishment, as a potential employer, the Commission expresses concern because the public's perception will be that the potential employer has an expectation of allegiance from Litchfield as a councilmember to participate or vote in matters that favor or benefit the potential employer or industry given the licensing and operational restrictions imposed on Cannabis Establishment. As recommended, a proper disclosure may serve to alleviate public concerns related to a matter affecting the interests of Cannabis Establishment or any other potential employer. Furthermore, abstention is advisable and recommended when the matter to be considered by Litchfield in his public capacity implicates any provision of the Code of Ethical Standards set forth in NRS 281A.400, as more particularly detailed below.

If there are future questions on disclosure and abstention on specific matters, the Commission refers Litchfield to the legal counsel for the City of Carlin or, alternatively, he may seek another advisory opinion from the Commission.

C. USE OF GOVERNMENT POSITION – APPLICABILITY OF NRS 281A.400(1), (2) AND (10)

Litchfield intends to pursue private employment within the marijuana industry prior to completion of his term of office. Since the "cooling-off" provisions of NRS 281A.410(1)(b) and NRS 281A.550 do not apply to Litchfield's circumstances, the Ethics Law does not otherwise prohibit Litchfield from pursuing private employment while he serves as a public officer. However, the Ethics Law does apply to prohibit Litchfield from engaging in activities that improperly influence his public duties or create unwarranted or improper private benefits through the use of his public position. See Code of Ethical Standards set forth in NRS 281A.400. Specifically, Litchfield must not use his public position as a councilmember to:

1. Seek or accept any employment or economic opportunity which would tend to improperly influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties (NRS 281A.400(1)).
2. Secure unwarranted privileges, preferences, or advantages for himself or any person to whom he has a private commitment, including an employer (NRS 281A.400(2) and NRS 281A.065(4)).
3. Seek other employment and/or contracts through his official position. (NRS 281A.400(10)).⁵

⁴ Although Litchfield does not present a future anticipated agenda item or matter, the Commission expresses concern that the highly regulated and limited nature of the cannabis industry may cause issues in application of the presumption set forth in NRS 281A.420, which cannot be addressed without the applicable facts and effect on the involved interests.

⁵ The Commission encourages and prefers that public officers and employees seek a proactive advisory opinion **before** acting in order to protect public officer/employees from being the subject of an Ethics Complaint. *In re Woodbeck*, Comm'n Op. No. 09-71A (2012), at pgs. 5-6.

The Commission reviews a public officer's or employee's circumstances on a case-by-case basis to determine whether there has been an improper use of a public position to seek or gain a business opportunity or private employment. For example, the use of a public position to seek or gain a business opportunity or employment was found when public officers use their position to hire themselves and when a subordinate is asked to assist with obtaining private employment for the public officer. *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 may not use a public position as a "selling point" in marketing future private services. *In re Hales*, Comm'n Op. No. 07-13A (2008).

But, where the future employer reaches out to the Public Officer and there was no evidence that a public position was used to seek or gain the employment or contract, the Commission has indicated there is no violation. See *In re Frehner*, Comm'n Op. No. 07-48C (2008) (insufficient evidence showing public employee sought the employment contract through use of public position). However, even when the public officer or public employee does not specifically initiate the contact or reach out to seek the employment opportunity, other circumstances may be present warranting consideration under the Ethics Law.

These circumstances might include whether the job would have been provided but for the public position held or when the 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 her public position; however, caution was advised since there was insufficient evidence for an unequivocal finding) and *In re Public Employee*, Comm'n Op. No. 15-28A (2016)(concerns expressed regarding use of public position to seek post-termination consulting contract with employing public entity because anticipated private services were similar to Public Employee's assigned public duties). Also concerns would be present if a public officer or employee was reaching out to vendors or companies that have business relationships with the public entity served to seek or obtain future employment at the end of a term of office or public employment.

Accordingly, the Commission advises Litchfield to comply with NRS 281A.400 in seeking or obtaining private employment and to maintain proper separation between his public duties, which separation should consider a proper disclosure and abstention on matters affecting the potential private employer if they implicate NRS 281A.400, whether the matter occurs at a staff level or in a public meeting.

D. NRS 281A.410 - LIMITATIONS ON REPRESENTING OR COUNSELING

The Commission advises Litchfield to comply with all applicable provisions of NRS 281A.410. Specifically, NRS 281A.410(1)(a) precludes Litchfield from accepting compensation from a private person, including any employer in the form of any compensation (salary, wages or benefits) to counsel or represent the person on any issue pending before the City Council or the City of Carlin given his position as a councilmember.

Except as provided otherwise in NRS 281A.410(3), NRS 281A.410(2) permits State Legislators and members of public bodies whose public service requires less than half of his or her time, to represent or counsel a private person before an agency in which he or she does not serve. However, if the other local agency is within the territorial jurisdiction of the agency served, including any part of the applicable county, such representation or counseling is prohibited unless the Commission grants relief from the

strict application of the statute. The Commission may consider granting relief if the affected public officer files for an advisory opinion from the Commission pursuant to NRS 281A.675, and the Commission determines that the requested relief is not contrary to: (1) the best interests of the public; (2) the continued ethical integrity of each local agency affected by the matter; and (3) the provisions of NRS Chapter 281A.

VI. CONCLUSIONS OF LAW

1. Litchfield is a public officer as defined by NRS 281A.160.
2. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
3. Pursuant to NRS 281A.065, Litchfield has a significant pecuniary interest in his employment and a commitment in a private capacity to the interests of an employer.
4. Pursuant to NRS 281A.420(1) and (3), Litchfield must disclose sufficient information concerning his commitment in a private capacity to the interests of an employer if a matter related to the employer comes before the City Council for public action, unless he receives advice from the City of Carlin's official legal counsel or the Commission that confirms the presumption set forth in NRS 281A.420 applies to the matter.
5. NRS 281A.420 does not require disclosure or abstention on matters pertaining to a potential employer, including Cannabis Establishment; however, it is advisable. In protection of the public trust, the Commission recommends disclosure to avoid any appearance of impropriety or ethics violation. Furthermore, in order to avoid a violation of the Ethics Law, Litchfield should consider the extent of the pending matter affecting the marijuana industry or Cannabis Establishment to determine whether an abstention would serve to assure compliance with and avoid a violation of the Code of Ethical Standards set forth in NRS 281A.400.
6. Litchfield is advised to comply with NRS 281A.400, including NRS 281A.400(1), (2) and (10) when he seeks private employment or private economic opportunities and to properly separate his public duties from his private pecuniary interests and commitments in a private capacity.
7. Under the requirements of NRS 281A.410(1)(a), Litchfield is prohibited from representing or counseling for compensation any other person (including an employer) on any issue under consideration by the City Council, unless Litchfield's service as a Councilmember is less than half of his time and the affected agency is not within the territorial jurisdiction served. If the agency is within the territorial jurisdiction served, including the affected county, representing or counseling a private person for compensation is precluded unless Litchfield seeks and obtains relief from the Commission pursuant to NRS 281A.410(3).

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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 22nd day of January, 2020.

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