



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Public Officer**, Public Entity,  
State of Nevada,

Advisory Opinion No.19-092A

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Former Public Officer. /

### ABSTRACT OPINION

#### I. STATEMENT OF THE CASE

Former Public Officer ("Public Officer") for Public Entity, State of Nevada requested this advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.675 regarding the propriety of Public Officer's 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 NAC 281A.352, 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 Public Officer that was affirmed as true, and publicly available information.

Public Officer sought an opinion from the Commission regarding the applicability of the "cooling-off" requirements and contracting restrictions under the Ethics Law pertaining to Public Officer's private business, which seeks to provide services, as an outside vendor, to Public Officer's former public employer, Public Entity.

After fully considering Public Officer's request and analyzing the facts and circumstances, the Commission deliberated and advised Public Officer of its decision that Public Officer's intended employment is not within the scope of conduct regulated by NRS 281A.550(5). Although the Commission determines that NRS 281A.550(5) does not apply to the presented circumstances, Public Officer is advised to otherwise comply with the prohibitions set forth in NRS 281A.550 in the context of other employment considerations, as applicable, and NRS 281A.410(1)(b) restricting paid representation or counseling on any issue that was under consideration by Public Entity during Public Officer's tenure of public service.

The Commission now renders this Abstract 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 Public Officer. 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 Public Officer presented. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.<sup>2</sup> Although the full written opinion

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

<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).

was served on Public Officer, for confidentiality reasons, this Abstract Opinion redacts certain Findings of Fact, provides a summary of issues and removes other identifying information to protect the confidentiality of the requester.

## **II. QUESTION PRESENTED**

Public Officer questions whether the “cooling-off” provisions of the Ethics Law set forth in NRS 281A.550(5) and NRS 281A.410(1)(b) prohibit Public Officer, for one year after Public Officer’s separation from service from providing services as an outside vendor for Public Officer’s former employer, Public Entity.

## **III. FINDING OF FACTS**

1. Public Officer was formerly employed by Public Entity in a senior level management position, which had public duties pertaining to purchasing and processing public bids and contracts for vendors.
2. Public Officer established a private business that provides services to clients and it could provide vendor contract services to Public Entity.
3. During Public Officer’s public employment for Public Entity, Public Officer did not market Public Officer’s private business to Public Entity.
4. Many months after separation from public service, Public Officer received an inquiry from Public Entity as to whether Public Officer’s company could become a contract vendor for Public Entity.
5. Public Officer, individually or through Public Officer’s private business, is not employed by and would not be providing contract-related services to another contract vendor for Public Entity.
6. Before seeking any work from Public Entity, Public Officer requests guidance from the Ethics Commission to assure compliance with the Ethics Laws and to maintain transparency between Public Officer and Public Officer’s potential client, Public Entity.
7. Public Officer acknowledges and will comply with the provisions of NRS 281A.410(1)(b), which restricts Public Officer, as a former public employee, from providing certain representation and consulting services for one-year after separation from public service on any issues that were under consideration by Public Entity during Public Officer’s tenure of public service.

## **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 Public Officer's former public service for the Public Entity, Public Officer seeks guidance on whether the "cooling-off" provisions contained in NRS 281A.550(5) or NRS 281A.410(1)(b) prohibit Public Officer, within 1 year after the termination of Public Officer's public service, from providing services as an outside vendor to Public Entity through Public Officer's private business.

This opinion focuses on the requirements associated with the "cooling-off" statutes. However, Public Officer, during Public Officer's public service, also was required to comply with the Code of Ethical Standards set forth in NRS 281A.400. The focus of the Code of Ethical Standards is the improper use of a public position to benefit a private pecuniary interest or private commitment. "The statutory provisions are analyzed based upon the facts presented and are not subject to relief or waiver by the Commission. So, public officers and public employees must comply with the Code of Ethical Standards set forth in NRS 281A.400 and maintain the integrity of public service by properly separating private interests from public duties in order to avoid actual conflicts or even an appearance of impropriety. NRS 281A.020." *In re Public Officer*, Comm'n Op. No. 19-009A (2019), at p. 3.

The Commission has determined in prior opinions that the improper use of a public position constitutes a violation of the Ethics Law when a public officer/employee used a current public position and associated relationships to assist with obtaining other employment for the public officer. See *In re McNair*, Comm'n Op. Nos. 10-105C, 10-106C, 10-108C, 10-109C, and 10-0115C (2011) and *In re Maurizio*, Comm'n Op. No. 09-40C (2010). In addition, the Commission has confirmed that a public officer/employee may not use a public position as a "selling point" in marketing future private services. See *In re Public Employee*, Comm'n Op. No. 16-72A (2016); *In re Hales*, Comm'n Op. No. 07-13A (2008).

Although Public Officer established the private business prior to separating from public service, the facts confirmed as true by Public Officer do not appear to demonstrate that Public Officer improperly used a public position to benefit or market Public Officer's private business interests. There is no evidence that Public Officer established Public Officer's private business and separated from public service with the expectation to become a contract vendor for Public Entity. If the facts were to the contrary, it would materially change the advice rendered in this opinion by the Commission given the requirements of NRS 281A.400.

## **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. “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, Public Entity 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 Public Officer regarding the one-year “cooling-off” provisions of NRS 281A.550(5) and whether the restrictions set forth in NRS 281A.410(1)(b) apply.

### **A. PUBLIC OFFICER’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.

Public Officer established Public Officer's private business before separating from public employment for the Public Entity. Public Officer ended Public Officer's employment with the Public Entity and many months thereafter Public Entity inquired whether Public Officer's private business was interested in becoming a contract vendor. Before accepting any work from the Public Entity, Public Officer sought guidance from the Ethics Commission to assure compliance with the Ethics Law.

The facts establish that Public Officer's private business and its clients had not previously been a party to or provided contract services to the Public Entity within the 12-month period preceding Public Officer's separation from public service. Further, Public Officer is not employed by and will not be providing contract-related services to another contract vendor for Public Entity, which employment is restricted by NRS 281A.550(5).<sup>3</sup> In *In re Public Officer*, Comm'n Op. No. 18-116A (2018) and in *In re Bader*, Comm'n Op. No. 19-080A (2019), 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). However, should Public Officer's circumstances change and Public Officer desires to seek employment during the one-year "cooling-off" period from a person or entity who was a contract vendor to the Public Entity within the scope of NRS 281A.550(5), Public Officer is advised to seek an advisory opinion based upon those circumstances before seeking or accepting such employment.

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

Public Officer is advised that the restrictions of NRS 281A.410(1)(b) are mandatory. The statute restricts Public Officer, for the one-year period following separation from Public Officer's public service with the Public Entity, from representing or counseling any private person (including Public Officer's own business) on any issue that was under consideration by the Public Entity during Public Officer'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.

Public Officer's prior public service for Public Entity placed Public Officer in a position to influence the award of contracts for services with Public Entity. However, Public Officer's private business has no prior contracts with Public Entity. In addition, from the facts provided by Public Officer, it does not appear that Public Officer's prior public duties involved preparing any solicitation for the subject services or that Public Entity sought vendors for these services during the year prior to Public Officer's separation from public service, or that Public Officer sought to provide or market the services of Public Officer's private business to the Public Entity prior to Public Officer's separation from public service.

Further, from the facts provided, it does not appear that Public Officer will be representing Public Officer's private business or its clients on issues that were under consideration by the Public Entity during Public Officer's public service. However, without

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<sup>3</sup> The Commission has opined that "employment" in the context of "cooling-off" statutes includes employment through a consulting firm and/or as an independent contract because this arrangement effectively establishes a relationship with the contract vendor. Employment may be established by the nature, scope and content of the engagement and statutory references to employment in NRS 281A.550 include engaging the services of a public officer/employee in any business form that is available. See *In re Public Officer*, Comm'n Op. No. 13-09A (2013).

information as to what issues were previously under consideration by the Public Entity 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 Public Officer to provide awareness of the issue for purposes of avoiding a statutory violation. The Commission perceives that Public Officer will comply with the statute because Public Officer has already recognized the restrictions on representing Public Officer's own business or any of its clients on matters that were under consideration by Public Entity during the tenure of Public Officer's employment. The Commission further advises Public Officer that an "issue under consideration" extends farther than to Public Officer's own public job duties for the Public Entity. It extends to all matters under consideration by the Public Entity during Public Officer's term of public service, whether Public Officer worked on the matter or participated on the issue under consideration, or it was acted upon by other public officers or employees of the Public Entity.

In conclusion, Public Officer's anticipated employment for Public Entity, based upon the circumstances as described herein, is not prohibited by NRS 281A.550(5), but it is governed by NRS 281A.410(1)(b). NRS 281A.410(1)(b) restricts Public Officer from representing any person, including Public Officer's own business and its clients on any issue that was under consideration by the Public Entity during Public Officer's term of public service. Consequently, Public Officer is advised to review each potential client matter on a case-by-case basis to determine whether it constitutes an "issue" under consideration to assure compliance with the one-year "cooling-off" period established in NRS 281A.410(1)(b). See *In re Public Employee*, Comm'n Op. No. 11-96A (2012). If there is any question, Public Officer may return to the Commission for an advisory opinion pursuant to NRS 281A.675, based upon the given set of facts.

## **VI. CONCLUSIONS OF LAW**

1. 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.460.
2. As a former employee for Public Entity, Public Officer 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).
3. Public Officer is advised that employment with Public Officer's private business is not within the regulatory timing and scope of NRS 281A.550(5) based upon the presented circumstances, which included, without limitation, that neither Public Officer's business nor its clients had been awarded a contract exceeding \$25,000 within the 12-month period prior to Public Officer's separation from public service.
4. Pursuant to NRS 281A.410(1)(b), Public Officer may not represent or counsel a private person or entity, including Public Officer's own business or its clients, for at least one year after the termination of Public Officer's public service on any issues that were under consideration by Public Entity during Public Officer's tenure. 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.

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 23<sup>rd</sup> 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  
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By: /s/ Kim Wallin  
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By: /s/ Barbara Gruenewald  
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By: /s/ Amanda Yen  
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