



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

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

Advisory Opinion No. 20-004A

Former Public Officer. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Public Officer ("Public Officer"), formerly with Public Entity ("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 anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes. Pursuant to NAC 281A.352, a quorum of the Commission reconsidered 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 Public Officer and publicly available information.

Public Officer sought an opinion from the Commission regarding the applicability of the Ethics Law and its "cooling-off" requirements set forth in NRS 281A.550(5) and NRS 281A.410(1)(b) to a proposed employment opportunity with a particular contract vendor ("Contract Vendor") of Public Entity. After fully considering Public Officer's request and analyzing the facts and circumstances Public Officer presented, the Commission issued its opinion advising that the "cooling-off" provisions of NRS 281A.550(5) and NRS 281A.410(1)(b) were applicable to the proposed employment with Contract Vendor, and relief from NRS 281A.550(5) was not provided pursuant to NRS 281A.550(6).

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 evidence provided by Public Officer. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below accept as true those 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.² Although a full written opinion 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.

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

II. QUESTION PRESENTED

Public Officer seeks guidance on the application of the Ethics Law to Public Officer's circumstances. In particular, Public Officer seeks direction on the application of NRS 281A.550, NRS 281A.550(9) and NRS 281A.410(1)(b) and whether these statutes would prohibit employment with the Contract Vendor.

III. FINDING OF FACTS

1. Public Officer is a former employee of Public Entity.
2. Public Officer desires to seek employment with Contract Vendor, a consultant that works closely with certain staff of Public Entity, including Public Officer.
3. Contract Vendor was awarded a contract with Public Entity within the preceding 12 months that exceeds \$25,000. In addition, the position held by Public Officer would have permitted Public Officer to influence the award of the applicable contract.
4. Public Officer would like to explore the possibility of private employment with the Contract Vendor, which duties would not include providing services on any matters before the Public Entity.
5. While discussing matters related to Contract Vendor's services to Public Entity, Contract Vendor informed Public Officer of its interest in hiring Public Officer upon Public Officer's separation from public service. Public Officer did not initiate the conversation and had no intent to seek or apply for a job with Contract Vendor at that time. During the discussion, Contract Vendor did not offer any specific employment opportunity or discuss any salary or other terms of potential employment, however, it was indicated that there was an interest in future employment and any arrangements related thereto would be open for future discussion.
6. Thereafter, another conversation occurred between Public Officer and Contract Vendor in furtherance of Public Officer's public duties. Once again, the Contract Vendor brought up the possibility of future employment with Public Officer. However, in this conversation, no specific employment arrangement was sought, offered or accepted. No promises were made and there was no discussion of any specific (or even general) terms of future employment.
7. Public Officer has not had any other discussions regarding potential employment with the Contract Vendor and Public Officer is waiting for the Commission's advisory opinion to decide whether to proceed with seeking such employment. Public Officer sought this advisory opinion out of an abundance of caution in the event that the potential or hypothetical opportunity with the Contract Vendor became a viable possibility for Public Officer.
8. In compliance with NRS 281A.410(1)(b), Public Officer, if employed by Contract Vendor, pledges not to provide private representation or consultation for compensation to any person including Contract Vendor for one year after Public Officer's separation from public service on any issues that were under consideration by Public Entity during the term of Public Officer's public service.

9. If the Commission determines that NRS 281A.550(5) applies, Public Officer requests relief from strict application based upon the factual circumstances and because the potential employment with the Contract Vendor would not be contrary to the best interests of the public, ethical integrity of the Public Entity or the Ethics Law based upon the following reasons for relief, as more particularly set forth in the written opinion served on Public Officer and which are redacted for purposes of this Abstract Opinion:
 - a. NRS 281A.550(3) does not apply to this situation because the Contract Vendor is not a business or industry whose activities are governed by regulations adopted by the Public Entity.
 - b. To Public Officer's knowledge, the Contract Vendor does not represent any clients who are regulated by Public Entity.
 - c. Public Officer did not anticipate leaving public service and Public Officer was not looking for employment during the same period of time as the contract formation.
 - d. Public Officer's informal conversations with the Contract Vendor regarding potential or hypothetical employment were not initiated by Public Officer and such discussion was ancillary to discussions of matters related to Public Entity. Public Officer does not believe the informal conversations constituted solicitation of employment from the Contract Vendor because the conversations were hypothetical and arose out of informal, friendly questions posed to Public Officer.
 - e. While Public Officer met and got to know Contract Vendor's representative during Public Officer's tenure while performing public duties for Public Entity, Public Officer did not in any way use Public Officer's public position with the Public Entity to solicit future employment.
 - f. Public Officer and Contract Vendor have noted that, if the currently hypothetical employment is pursued at some time in the future, it would be unlikely to occur, if at all, until the end of the Contract Vendor's current contract with Public Entity, and the outcome of this pending advisory opinion.

IV. STATEMENT AND DISCUSSION OF RELEVANT ISSUES AND STATUTES

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. In furtherance of that mission, the Ethics Law imposes a one-year "cooling-off" requirement against former public officers and employees from accepting certain employment in the private sector to prevent these government actors from using any proprietary or regulatory information or relationships belonging to the public to create competitive disadvantages or other misuse of government information in the private sector contracted with or regulated by the governmental entity.

Based upon Public Officer's former service for the Public Entity, Public Officer is a public officer as that term is defined in NRS 281A.160 and NRS 281A.180. Public Officer

seeks direction on whether NRS 281A.550(5) restricts employment with the Contract Vendor for a 12-month period after Public Officer's separation from public service, and if so, regarding whether the Commission will grant relief from the restriction pursuant to NRS 281A.550(6). The Commission does not grant relief for a number of reasons, one of which related to the Commission's determination that Public Officer had solicited the employment, which is restricted by NRS 281A.550(9). The opinion also advises Public Officer about the mandatory provisions of NRS 281A.410(1)(b) that restrict Public Officer for one year after separating from the Public Entity from providing services through employment with Contract Vendor on issues that were before the Public Entity during Public Officer's tenure.

B. RELEVANT STATUTES

1. Duty to Avoid Conflicts of Interest

NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a public trust and shall be held for the sole benefit of the people.
 - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. "Cooling-Off" – Representing or Counseling

NRS 281A.410(1)(b) provides:

- In addition to the requirements of the code of ethical standards:
1. If a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:
...
 - (b) If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer's or employee's service. As used in this paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

3. "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.

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

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

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

(a) The best interests of the public;

(b) The continued ethical integrity of the State Government or political subdivision, as applicable; and

(c) The provisions of this chapter,

↳ it may issue an advisory opinion to that effect and grant such relief. {

7. For the purposes of subsection 6, the request for an advisory opinion, the advisory opinion and all meetings, hearings and proceedings of the Commission in such a matter are governed by the provisions of NRS 281A.670 to 281A.690, inclusive.

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

9. For the purposes of this section:

(a) A former member of the Public Utilities Commission of Nevada, the Nevada Gaming Control Board or the Nevada Gaming Commission; or

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

V. DECISION

This matter signifies concerns triggering the "cooling-off" prohibitions of the Ethics Law under NRS 281A.550(5) and NRS 281A.410(1)(b). The Legislature has identified limited circumstances in which a public officer or employee may be restricted in future employment endeavors in the private sector so as not to dilute the public's faith in government. Notably, the Legislature, in enacting the distinct and separately enforceable restrictions in NRS 281A.550 and NRS 281A.410, has not prohibited all future private income or employment opportunities. Each statute has a varied focus, but similarly serves to protect the public trust and associated relationships acquired during public service, or expertise obtained as a result of public duties.

A. NRS 281A.550(5) – VENDOR CONTRACT

As the Commission has explained: “...the Legislature has limited future private employment opportunities that may derive, in part, out of public experiences, including on relationships acquired during public service or expertise obtained in a particular field earned as a result of public duties. The Legislature has tackled unique employment engagements that directly signal impropriety as a result of specific positions or ability to influence public duties that necessarily interact with private employment opportunities.” *In re Durski*, Comm’n Op. No. 18-118A (2018), at p. 9.

In particular, NRS 281A.550(5) prohibits seeking or accepting employment with a private entity that contracts with the State or a political subdivision if the contract amount exceeds \$25,000, the contract was awarded within the 12 months immediately preceding the termination of public service, and the position held by the former public officer or employee at the time the of the contract award allowed the former public officer or employee to affect or influence the award of the contract. All conjunctive requirements of NRS 281A.550(5) must be present for the one-year “cooling-off” prohibition to apply to restrict the employment. In prior opinions, the Commission has confirmed that even without any actual impropriety, the reach of NRS 281A.550(5) extends to those contracts where the position held by the public officer/employee has the ability or potential to influence the contract award. Influence without actual impropriety is therefore sufficient for application of NRS 281A.550. See also *In re Public Employee*, Comm’n Op. No. 18-137A (2019), at p. 8; *In re Public Employee*, Comm’n Op. No. 16-61A (2016).

Based upon the circumstances presented, the Commission confirms that NRS 281A.550(5) applies to the contract because the contract’s award date was within the 12 month period prior to Public Officer’s separation from public service, the contract amount exceeds \$25,000, and the position held by Public Officer would have allowed Public Officer to influence the contract award. Therefore, the Commission determines that the one-year “cooling-off” restriction applies to Public Officer’s proposed employment with the Contract Vendor, commencing on the date of Public Officer’s separation from public service with the Public Entity, and the Commission determines that relief is not appropriate pursuant to NRS 281A.550(6), as explained more fully herein.

B. NRS 281A.550(9) – STATUTORY DEFINITION OF CONDUCT CONSTITUTING SOLICITING AND ACCEPTING PRIVATE EMPLOYMENT

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

Prior to discussing whether relief is appropriate pursuant to NRS 281A.550(6), the Commission considers whether Public Officer solicited employment with the Contract

Vendor, which is restricted by NRS 281A.550(9).³ Public Officer indicates that Public Officer did not intend to pursue or solicit employment with the Contract Vendor and that the conversations about future employment were adjunct to the purpose of the discussions related to public matters, and the employment inquiries were initiated by Contract Vendor, not Public Officer. The Commission must consider whether Public Officer's response to Contract Vendor's suggestions that Public Officer work for Contract Vendor and related communications constitute solicitation of employment, even though the facts do not demonstrate that employment was actually obtained, but instead was left open for future discussion.

NRS 281A.550(9) does not specifically require that definitive employment terms exist or that employment be obtained for there to be a solicitation of employment. Black's Law Dictionary, 10th Edition, defines "solicitation" to be the act of or an instance of requesting or seeking to obtain something. The 2010 Ballentine's Law Dictionary, 3rd Edition, defines "solicit" as to entreat, implore, ask, attempt, or try to obtain. The Meriam-Webster's Collegiate Dictionary, 11th Edition, defines "solicit" as to promote, approach with a request, urge or entice. The term "sought" is the past tense of "seek" meaning "in search of," "look for," or "ask for." *Meriam-Webster's Collegiate Dictionary*, 11th Edition.

The Legislature's consistency in use of these terms confirms that the statute does not necessarily require the employment to be obtained or specific employment terms to be agreed to with the potential employer. Under the plain meaning rule, the statute's references to terms "solicit" and "sought" must be provided reasonable interpretation based upon their plain meaning, which captures conduct properly characterized as asking for or trying to obtain employment from a potential employer -- an attempt. As further clarification, the statute's reference to any oral or written agreement in NRS 281A.550(9) captures everything from written employment agreements with definite terms to an oral agreement relating to employment, even if it is to occur in the future.

Based upon the statutory language and plain meaning of key terms, the Commission determines the plain meaning of the term "soliciting" in NRS 281A.550(9) is to approach, ask, request, attempt or try to obtain employment, which associated conduct will be viewed on a case-by-case basis. In application of NRS 281A.550(9), the Commission has been consistent in utilizing the plain meaning of the referenced common words. The Commission has found that, even when a public employee had no knowledge about the requirements of NRS 281A.550(9), accepted employment and then in mitigation retracted the acceptance to obtain an advisory opinion, such conduct implicated NRS 281A.550(9). *In re Public Employee*, Comm'n Op.No.19-051A (2019), at p. 8.

Conversely, the Commission has determined that solicitation of employment does not occur when the public employee properly seeks the advisory opinion from the Commission prior to holding any discussions with the potential employer. *In re Public Employee*, Comm'n Op. No. 18-032A (2018), at p. 5. The Commission also found there was no solicitation of employment when a public employee was approached for employment and that employee declined to consider the employment. *In re Public Employee*, Comm'n Op. No. 19-068A (2019), at p. 8.

Here, the focus is whether the conduct is within the scope of soliciting employment. Although, the employment was adjunct to the purpose of the discussions, the facts

³ The Commission has confirmed that seeking employment prior to obtaining relief "is at one's peril. At a minimum, the restricted conduct hinders and could serve to preclude the ability of the Commission to grant relief from the "cooling-off" prohibition pursuant to NRS 281A.550(6)." *In re Public Employee*, Comm'n Op. No. 18-80A (2019), at p.7.

establish that future employment was discussed and agreed to be revisited in the future. Although employment terms were not finalized, the employment opportunity was left on the table for continued discussion, the employment was not declined. Instead of stopping the discussion about employment, Public Officer and Contract Vendor agreed to continue the discussion and keep each other informed about their mutual interest in future employment. More than one discussion occurred about future employment with similar confirmations. Additional discussions were not inadvertent nor unexpected and kept open the employment opportunity.

Based upon the nature of these discussions and the continued consideration of future employment, the Commission interprets these actions as solicitation of employment within the context of NRS 281A.550(9). The Commission recognizes that Public Officer does not believe Public Officer was seeking or trying to obtain employment. Public Officer's actions would have better supported this conclusion if Public Officer had refrained from keeping open the possibility of employment with the Contract Vendor and did not attempt to maintain the opportunity. However, for purposes of this opinion, the Commission will provide Public Officer the benefit of the doubt because the employment discussions stopped upon the filing of the request for the advisory opinion. Nevertheless, even if the Commission did not interpret the conduct to amount to solicitation of employment as prohibited under NRS 281A.550(9), the Commission does not find sufficient circumstances to otherwise grant relief.

C. NRS 281A.550(6) – RELIEF FROM NRS 281A.550(5) NOT GRANTED

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

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

"The intent of the exemption statute is to facilitate beneficial moves from the public to private sectors so long as the moves do not endanger either the public or private sectors and so long as there is nothing otherwise unethical in the way that the employment relationship occurred." *In re Public Officer*, Comm'n Op. No. 11-96A (2012); *see also In re Public Employee*, Comm'n Op. No. 13-29A (2013). Included in any consideration of whether relief should be granted under the statutory standards is whether there is any potential impropriety or actual impropriety associated with certain employment relationships involving contract vendors and public duties.

Notably, NRS 281A.550(6) does not include a specific exception permitting employment by virtue of a promise not to work on agency matters when hired by a contract vendor. That exception, if it had been enacted by the Legislature, would by its very nature swallow the "cooling-off" provisions. However, anticipated duties for the contract vendor (including abstaining on agency matters for the one-year period) are properly considered in granting relief but are not controlling. The Commission reviews the full circumstances to determine whether or not it will render the required findings set forth in NRS 281A.550(6) to grant relief from the strict application of the "cooling-off" prohibition. *See In re Public Officer*, Comm'n Op. No. 15-74A (2016).

Public Officer requests relief be granted for a number of reasons as more fully detailed in the full written opinion and which are redacted for this Advisory Opinion, which are: (1) Public Officer will fully comply with NRS 281A.410(1)(b); (2) Public Officer did not in any way use Public Officer's public position with the Public Entity to solicit employment; (3) Public Officer did not anticipate leaving public service and Public Officer was not looking for employment during the same period of time as the contract formation; (4) the Contract Vendor initiated future employment discussions; and (5) Public Officer and Contract Vendor's representative have decided that, if employment with the Contract Vendor is pursued it is unlikely to occur until the conclusion of the current vendor contract with the Public Entity and pending this advisory opinion.

The vendor's contract is well within the restrictions set forth in NRS 281A.550(5). In reliance on Public Officer's sworn facts, the Commission determines that the employment opportunity was discussed in tandem with work-related matters. Even if the Commission did not find that Public Officer solicited the employment opportunity, it was discussed during work time and at a minimum left open the opportunity. The facts demonstrate marked connectivity between public duties and private interests in seeking future employment. Public Officer's public position provided unique access to Vendor Contractor's representatives and contract deliverables, including certain restricted information. Indeed, Public Officer's public duties required Public Officer to communicate with Contract Vendor about such matters.

Even without an actual violation of the Ethics Law, there is an appearance of impropriety when a public officer/employee utilizes public relationships to ascertain whether there are future employment opportunities. See *In re Cegavske*, Comm'n Op. No. 05-16A (2005) (consideration relating to whether public officer would have been provided the business opportunity but for the current public position). Similarly, Contract Vendor's initiation of the discussion about a future employment opportunity was while he was representing Public Entity during Public Officer's public working hours. The facts do not demonstrate that separation was maintained between public duties and private interests in future employment. Public Officer's relationship with Contract Vendor was obtained solely as a result of Public Officer's public duties.

Public officers and employees have a personal interest in seeking future gainful employment within the private sector. In furtherance thereof, the Ethics Law imposes a duty to avoid actual and perceived conflicts of interest, and a public position may not be used to secure or grant unwarranted privileges, preferences, exemptions or advantages for a public officer or employee, or for any person to whom the public officer/employee has a commitment in a private capacity. See NRS 281A.020 and NRS 281A.400(1) and (2). A perceived conflict is presented when private employment discussions take place during work hours when the public officer/employee is representing the public agency, even with the benefit of the doubt the Commission provides that Public Officer did not intend these discussions to be considered solicitation. Discussions about private employment while on the taxpayer time and carrying out public duties present a slippery slope. See *In re Public Employee*, Comm'n Op. No. 18-080A (2019) (appearance of impropriety or actual impropriety exists when public officer/employee fails to maintain proper separation and holds future private employment discussions with regulated industry (or contract vendor) while performing public duties).

The catch-22 for public officers/employees is they, not the potential employer, must assure proper separation between private interests and public duties to comply with the Ethics Law (NRS 281A.400 and NRS 281A.550). *Id.*, at p. 8. The duty to avoid conflicts does not always rise to the level of a violation of the Ethics Law and the Commission does not so find in this advisory context. However, lack of separation between public duties

and private interests is contrary to the foundational principles of the Ethics Law (NRS 281A.020) and places the public officer/employee in a position of having to defend or at a minimum explain why private employment was being discussed during work hours when representing the public employer, especially when there is more than one discussion about the private employment that encourages its possibility.

Further, preservation of the ethical integrity of the Public Entity must be considered in determining whether relief is appropriate under NRS 281A.550(6). Here, there are factors that create concern in maintaining the ethical integrity of Public Entity. The Commission has found that the integrity of a public agency might be preserved by isolating the conflict associated with a potential employer if the public officer/employee abides by a pledge to exclude and refrain from providing any services of any nature on projects for a public agency for a period of one-year after leaving public service and full compliance with NRS 281A.410(1)(b). See *In re Public Employee*, Comm'n Op. No. 19-068A (2019). Public Officer has provided this pledge with the best of intentions. However, it is not reasonable for the Commission to conclude that Public Officer, under the circumstances could maintain such proper separation. The concern is not premised upon the integrity of Public Officer, which is not in question, but rather on other circumstances outside the control of Public Officer that are not yet developed. Public Officer may seek an opinion from the Commission when facts become more developed in the future on this issue.

In synopsis, the Commission reviewed the circumstances under the Ethics Law pursuant to the required findings, which precepts are based upon protection of the public trust, the ethical integrity of the involved agency and the Ethics Law, which requirements are founded on maintaining proper separation between private interests and public duties. In the *Durski* opinion, the Commission granted relief because it was satisfied that Durski did not use his public position, relationships or information to compromise the public trust to seek a private position. *In re Durski*, Comm'n Op. No. 18-118A (2018); See also *In re Theobald*, Comm'n Op. No. 13-44A (2013). Here, the facts demonstrate connectivity between public duties and private employment interests rather than detachment. Further, Public Officer may seek other employment that is not restricted by NRS 281A.550(5) as Public Officer has marketable skills. In review of all facts presented, the Commission is not satisfied that relief should be granted.

Therefore, the Commission does not grant relief because it is not able to make the findings that employment with the Contract Vendor would not be contrary to the: (1) Ethics Law, (2) ethical integrity of the Public Entity, and (3) the best interests of the public. Specifically, the Commission does not grant relief for employment with the Contract Vendor prior to the expiration of the 12-month "cooling-off" period established in NRS 281A.550(5).

D. NRS 281A.410(1)(b) – COUNSELING OR REPRESENTING A PRIVATE PERSON FOR COMPENSATION ON ISSUES UNDER CONSIDERATION BY PUBLIC ENTITY

NRS 281A.410(1)(b) restricts representing or counseling any private person (including an employer or other business entity) for compensation on any issue that was under consideration by the employing agency during the employment of a public officer or employee. See also *In re Public Employee*, Comm'n Op. No. 18-015A (2018), at pgs. 8-9 and *In re Public Officer*, Comm'n Op. No. 16-68A (2016), at pgs. 8-9. An issue under consideration includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations. See NRS 281A.410(1)(b). Further, private employment duties associated

with a public officer/employee representing or counseling a private employer is representing the interests of others for compensation and is encompassed in the restriction. See *In re Sweeney*, Comm'n Op. No. 15-70C (2016), (violation found even where the former employee did not realize Public Officer's counseling or representation of a private person (Public Officer's private employer) was restricted by NRS 281A.410(1)(b)).

Except as specifically provided otherwise in NRS 281A.410(2) and (3), the statutory restrictions are mandatory, not subject to relief, and apply even when the provisions of NRS 281A.550 do not. Accordingly, the Commission advises Public Officer that Public Officer may not, for the one-year period following Public Officer's separation from public service, represent or counsel any private person for compensation on any issue that was under consideration by the Public Entity during Public Officer's public service, including the services provided to Public Entity by Contract Vendor.

VI. CONCLUSIONS OF LAW

1. Public Officer is a public officer as defined by NRS 281A.160 and NRS 281A.180.
2. Pursuant to NRS 281A.675 and NRS 281A.550(6), the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
3. Public Officer is subject to the one-year "cooling-off" prohibitions set forth in NRS 281A.550(5) restricting employment with Contract Vendor because the contract is in excess of \$25,000, was awarded in the preceding 12-months prior to Public Officer's separation from public employment, and the position held by Public Officer provided Public Officer the opportunity to influence the award of the contract.
4. Pursuant to NRS 281A.550(6), relief from the strict application of the "cooling-off" restriction is not appropriate under the circumstances because the Commission cannot affirmatively find that all of the required conditions set forth in NRS 281A.550(6) are met. Accordingly, the Commission declines to grant relief.
5. Pursuant to NRS 281A.410(1)(b), Public Officer may not represent or counsel a private person or entity for compensation for at least one year after the termination of Public Officer's public service on any issues that were under consideration by the Public Entity during Public Officer's tenure including services provided by Contract Vendor to Public Entity.

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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 24th day of June, 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/ Kim Wallin
Kim Wallin, CPA
Vice-Chair

By: /s/ Philip K. O'Neill
Philip K. O'Neill
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Damian R. Sheets
Damian R. Sheets, Esq.
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner