



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

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

Advisory Opinion No. 20-021A

Public Employee. /

### **ABSTRACT OPINION**

#### **I. STATEMENT OF THE CASE**

Public Employee (“Public Employee”), 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 certain 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 considered this matter by submission, without holding an advisory-opinion hearing.<sup>1</sup> The Commission considered the request for an advisory opinion, a list of proposed facts that were affirmed as true by Public Employee and publicly available information.

Public Employee 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 for a specific private contract vendor for Public Entity (“Contract Vendor”). After fully considering Public Employee’s request and analyzing the facts and circumstances presented, the Commission deliberated and advises that the “cooling-off” provisions of NRS 281A.550(5) do not preclude Public Employee from seeking employment with Contract Vendor. However, Public Employee must comply with the one-year prohibition set forth in NRS 281A.410(1)(b) restricting the provision of paid representation or consulting services to a private person (including future employers such as the contract vendor) on any issues that were under consideration by Public Entity during the term of Public Employee’s 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 evidence provided by Public Employee. 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 Employee 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 a full written opinion was served on Public Employee, for confidentiality reasons, this Abstract Opinion redacts certain Findings of

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

Fact, provides a summary of issues and removes other identifying information to protect the confidentiality of the requester.

## **II. QUESTION PRESENTED**

Public Employee seeks guidance on the application of the Ethics Law to Public Employee's circumstances. Specifically, would the "cooling-off" provisions of the Ethics Law set forth in NRS 281A.550(5) or NRS 281A.410(1)(b) prohibit Public Employee from seeking and accepting employment after leaving public service with Public Entity's Contract Vendor. If NRS 281A.550(5) applies, Public Employee seeks relief from its strict application pursuant to NRS 281A.550(6).

## **III. FINDING OF FACTS**

1. Public Employee is employed by Public Entity.
2. Public Employee anticipates separating from public service and desires to seek employment with Contract Vendor to gain more management experience. The Contract Vendor currently works closely with staff of Public Entity.
3. Public Employee learned of the position with Contract Vendor because it was posted on-line and applied for the job. Public Employee has already interviewed for the position with Contract Vendor.
4. All of the contacts for the private employment position with Contract Vendor were done on Public Employee's personal time and no discussions took place with any Contract Vendor representative whom Public Employee knew or had contact with through Public Employee's public duties.
5. Contract Vendor is a private contract vendor for Public Entity, which contract was initially awarded several years ago, with associated contract extensions, the last of which was over 2 years ago.
6. As part of Public Employee's public duties, Public Employee did not take part in any matter associated with the contract award for Contract Vendor. Further Public Employee's position would not have allowed Public Employee's to do so or in any way influence the contract award.
7. In compliance with NRS 281A.410(1)(b), Public Employee pledges that Public Employee will not provide private representation or consultation to any person including the potential employer, Contract Vendor, or its clients for compensation regarding any issues that were under consideration by the agency during Public Employee's term of public service.
8. If the Commission determines that NRS 281A.550(5) applies, Public Employee requests relief be granted pursuant to NRS 281A.550(6), based upon the factual circumstances and because the potential employment with the Contract Vendor is not contrary to the best interests of the public, ethical integrity of the agency or the Ethics Law for the following reasons:
  - a. Public Employee had no actual influence and Public Employee's public position did not permit Public Employee to have any influence over

processing or awarding the vendor contract or associated extensions to Contract Vendor.

- b. As part of Public Employee's public duties, Public Employee interacts with Contract Vendor's representatives on a collaborate level pertaining to certain services.
- c. Public Employee pledges to comply with NRS 281A.410(1)(b) and not work on any issue or matter associated with Public Entity for one year after Public Employee's separation from public service, which would include Public Employee's refraining from providing services to Contract Vendor that relate to its vendor contract with Public Entity.
- d. Public Employee has applied for other positions in the past few years and has not secured a career advancement position.
- e. Public Employee has not used Public Employee's public position or public relationships with Contract Vendor to apply for the advertised position with Contract Vendor.
- f. The State of Nevada has a shortage of workers in Public Employee's area of expertise and it would benefit the public if Public Employee's training and degree would be utilized to benefit Nevada rather than other jurisdictions.

#### **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 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 Employee's public position, Public Employee is a public employee as that term is defined in NRS 281A.150. Public Employee seeks guidance from the Commission on whether NRS 281A.550(5) or NRS 281A.410(1)(b) restrict Public Employee's from pursuing employment endeavors with Contract Vendor, a private vendor for Public Entity. If NRS 281A.550(5) applies, Public Employee requests relief from the strict application pursuant to NRS 281A.550(6).

##### **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 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 including the associated relationships acquired during public service and expertise obtained as a result of public duties.

The Commission considers whether NRS 281A.550(5) applies and, if applicable, whether Public Employee should be granted relief pursuant to NRS 281A.550(6).<sup>3</sup> Thereafter, the Commission provides Public Employee guidance on the mandatory provisions of NRS 281A.410(1)(b), which prohibit, for one-year providing paid counseling and representation on any issues under consideration by the agency during Public Employee’s public service.<sup>4</sup>

### A. THE COOLING-OFF PROVISIONS OF NRS 281A.550(5) DO NOT RESTRICT PUBLIC EMPLOYEE FROM SEEKING EMPLOYMENT WITH CONTRACT VENDOR UNDER THE CIRCUMSTANCES

As the Commission has explained: “[t]he Legislature has identified certain restrictions governing whether a public officer or employee may pursue future employment in the private sector so as not to dilute the public’s faith in government. Notably, the Legislature has limited future private employment opportunities that may

<sup>3</sup> NRS 281A.550(3) is not implicated by the presented circumstances because Contract Vendor is not regulated by the agency.

<sup>4</sup> Because the facts presented do not appear to implicate the Code of Ethical Standards set forth in NRS 281A.400, the Commission does not provide guidance thereon. However, the Commission does refer Public Employee to a prior opinion, *In re Public Employee*, Comm’n Op. No. 18-80A (2019) that provides direction on maintaining proper separation between public duties and private interests in seeking private employment, including refraining from seeking employment through the use of a public position.



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.

Contract Vendor is a private contract vendor for the agency, which original contract term was awarded years ago, with the last extension being approved in excess of two years previously. These facts confirm that Contract Vendor’s vendor contract extension was not awarded within the previous 12-month period. Further, Public Employee confirms that Public Employee’s public position does not have any public duties pertaining to processing or awarding vendor contracts. In particular, Public Employee verifies that Public Employee did not take part in any matter associated with the contract award for Contract Vendor nor would Public Employee’s position allow Public Employee to do so.

Based upon the circumstances presented, the Commission determines that NRS 281A.550(5) does not preclude Public Employee from seeking or obtaining future employment with Contract Vendor because all requirements of NRS 281A.550(5) are not present. Since NRS 281A.550(5) does not apply, the Commission need not determine whether relief is appropriate pursuant to NRS 281A.550(6).

**B. NRS 281A.410(1)(b) – COUNSELING OR REPRESENTING A PRIVATE PERSON FOR COMPENSATION ON ISSUES UNDER CONSIDERATION BY THE AGENCY**

NRS 281A.410(1)(b) restricts representing or counseling of 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 representing or counseling a private employer is encompassed in and often is precluded by the restriction. See *In re Sweeney*, Comm’n Op. No. 15-70C (2016), (violation found even where the former employee did not realize Public Employee’s counseling or representation of a private person (Public Employee’s private employer) was restricted by NRS 281A.410(1)(b)).

Except as specifically provided otherwise in NRS 281A.410(2) and (3), which are not applicable to these circumstances, the statutory restrictions are mandatory, not subject to relief, and apply even when the provisions of NRS 281A.550 do not apply. Accordingly, the Commission advises that Public Employee may not, for the one-year period following Public Employee’s separation from public service, represent or counsel

any private person for compensation on any issue that was under consideration by the agency during Public Employee's public service, which restriction would include any contract or other services provided to Public Entity by Contract Vendor. In other words, if the employment position of interest with Contract Vendor interacts with Public Entity to provide services under any vendor contract or extension thereto entered into during Public Employee's public service, Public Employee is restricted by NRS 281A.410(1)(b) from performing such duties as they could constitute representing the interests of Contract Vendor during the restricted 12-month period after Public Employee's separation from public service.

## **VI. CONCLUSIONS OF LAW**

1. Public Employee is a public employee as defined by NRS 281A.150.
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 Public Employee under NRS 281A.665.
3. Public Employee is not restricted by the one-year "cooling-off" prohibitions set forth in NRS 281A.550(5) from seeking or acquiring employment with the Contract Vendor because Contract Vendor's contract and related extensions with Public Entity were awarded in excess of 12 months ago and the position held by Public Employee did not permit nor provide Public Employee's the opportunity to influence the award of the contract.
4. Pursuant to NRS 281A.410(1)(b), Public Employee may not represent or counsel a private person or entity for compensation for at least one year after the termination of Public Employee's public service on any issues that were under consideration by the agency during Public Employee's tenure, including any services provided to Public Entity by Contract Vendor.

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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 25<sup>th</sup> 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