



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Lynne Barker, Sustainability Manager,
City of Reno, State of Nevada,

Request for Opinion No. **17-06C**

Subject. /

PANEL DETERMINATION
NRS 281A.440(5); NAC 281A.440

The Nevada Commission on Ethics ("Commission") received Third-Party Request for Opinion ("RFO") No. 17-06C regarding the alleged conduct of Subject Lynne Barker, Sustainability Manager for the City of Reno, State of Nevada, associated with using governmental time and resources to assist her former employer, EcoDistricts, and other conduct relating to the Subject's oversight of and interaction with the City's waste companies/garbage haulers in violation of the Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"). Specifically, the RFO alleges that the Subject, given the duty to avoid conflicts set forth in NRS 281A.020, engaged in the following conduct in violation of the Ethics Law:

1. NRS 281A.400(1)(seeking or accepting gifts, favors or economic opportunity which would tend to improperly influence the impartial discharge of duties) – the Subject sent an email to the area manager for Waste Management asking whether the company would pay to send her to Waste Management's annual Sustainability Forum.
2. NRS 281A.400(2)(improper use of government position to secure unwarranted advantage) – the Subject ordered an unannounced inspection on certain waste/rubbish haulers who had opposed her recommendations to the City Council on a certain item associated with Waste Management.
3. NRS 281A.400(7)(improper use of government time, property or facilities) - the Subject used government time and resources to facilitate a research forum to benefit EcoDistricts' annual conference and accepted a waiver of the conference registration fee to attend the conference.
4. NRS 281A.420(1)(failure to disclosure conflict) – the Subject failed to disclose her prior employment with EcoDistricts during a City Council Meeting that included a presentation on sustainable communities that referenced EcoDistricts' sustainability endeavors as a model framework.

As the Sustainability Manager for the City of Reno, the Subject is a public employee as defined in NRS 281A.150. The Commission has jurisdiction over this matter pursuant to NRS 281A.280 because the allegations contained in the RFO relate to the Subject's conduct as a public employee, and has associated implications under the Ethics Law.

On June 17, 2017, pursuant to NRS 281A.440(5), an Investigatory Panel (“Panel”) consisting of Commissioners Barbara Gruenewald, Esq. and Lynn Stewart reviewed the following: 1) RFO; 2) RFO Supplemental Supporting Evidence; 3) Subject’s Response to the RFO; 4) Investigator’s Report; and 5) the Executive Director’s Recommendation to the Investigatory Panel.¹ Under NAC 281A.435, the Panel unanimously found and concluded that the presented facts do not establish credible evidence to support a determination that just and sufficient cause exists for the Commission to consider the alleged violations of the Ethics Law.

The record and investigation reveals that the Subject’s actions were in furtherance of and related to her public job duties as the City’s Sustainability Manager. In part, the Subject’s supervisor confirmed that the Subject had previously disclosed her former relationship with EcoDistricts and she was acting within the course and scope of her public job duties. Specifically, the evidence supported that the Subject’s request to head the Waste Management conference was approved as part of her job duties. Further, Subject’s private employment relationship with EcoDistricts had expired and her work on behalf of EcoDistricts was approved by the City as job-related and to off-set the costs for her to attend that conference as a representative of the City. Accordingly, the Panel determined that the credible evidence threshold had not been met and no further proceedings will be held with regard to this matter.

Nonetheless, the Panel takes this opportunity to educate public officers and employees in similar situations on certain aspects of the Ethics Law concerning: (1) the disclosure requirements of NRS 281A.420; and (2) the appearances of impropriety associated with accepting gifts or favors for conferences, events, meals or other training support from private companies, including non-profit entities (may be referred to as “gifts” or “travel on industry”), particularly from those entities that compete for the public agency’s business. Pursuant to NRS 281A.420(1), disclosures of conflicts must be “sufficient to inform the public of the nature of the potential effect of the action or abstention.” In other words, the public must be advised of the potential impact the private conflict has on the public matter, although the Commission may consider whether the disclosure to the supervisor is sufficient under particular circumstances. See *In re Murnane*, Comm’n Op. No. 15-45A (2016).

The Commission considers gift and travel on industry matters based upon the specific facts presented given their potential to implicate multiple provisions of the Ethics Law, including those statutes listed above. The law and Commission opinions recognize that care must be taken by public officers and employees to ensure the propriety of the gift or travel on industry assistance prior to its acceptance in order to maintain the public trust and statutory compliance with the Ethics Law. See NRS 281A.020; *In re Lopez*, Comm’n Op. No. 15-73C (2016) and *In re Schwartz*, Comm’n Op. No. 16-13A (2016).

The Commission has expressed concerns about travel on industry and gift implications associated with conflicts, *quid pro quo* arrangements and perceptions of impropriety, including partiality or favoritism, provided by a public officer or employee to a particular private company, given the complexity of private conflicts and the publically-regulated competitive business environment. *Id*; see also *In re Public Employee*, Comm’n Op. No. 11-36A (2012). Public agency establishment and regular updating of its administrative policies relating to gifts and travel on industry matters is encouraged by the Commission and such policies should be consistently applied to public officers and public

¹ All materials provided to the Panel represent part of the investigatory file, except the RFO, and remain confidential pursuant to NRS 281A.440(17).

employees throughout the public organization. Further, when matters arise that implicate the Ethics Law, public officers and public employees should seek legal advice from their official attorney or seek an advisory opinion from the Commission pursuant to its advisory opinion process prior to taking action on a matter implicating Nevada's Ethics in Government Law.

Dated: June 21, 2017

By: /s/ Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **PANEL DETERMINATION** regarding **RFO No. 17-06C** via electronic mail addressed to the Parties and the Requester, as an interested person, as follows:

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Dated: June 21, 2017.



Employee, Nevada Commission on Ethics