

Hypothetical Opinion No. 84-1

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of Hypothetical Opinion Request of Public Officer

The Nevada Ethics Commission issues this opinion in accord with NRS 281.511(1)(b).

One member of a multi-member state body has requested the advice of this Commission. The requester is a public officer within the meaning of NRS 281.431(11). The requester does not perform any legislative functions within the meaning of NRS 281.431(7) and therefore is a member of the executive branch as defined in NRS 281.431(8).

The requester has provided documents and testimony to the Commission that establish that the requester is a member of a multi-member state body which administers a program of grants to individuals, organizations and institutions for programs and services that further the objectives of the state body. The requester has been employed in a salaried management capacity by a private nonprofit concern which is not presently eligible for grants from the state body. The private nonprofit concern may become eligible for grants from the state body at a future date. Initial capitalization for this private nonprofit concern came from two other private organizations. One of these organizations received a special grant from the state body which could not and was not used to partially capitalize the private nonprofit concern. The second organization received no grants from the state body. The requester's employment with the private nonprofit concern is presently scheduled to end before the concern becomes eligible for grant assistance from the state body.

The documents provided the Commission also establish that the state body has established internal policies regarding conflict of interest which prohibit a member of that body from submitting a grant application to that body. These internal guidelines allow participation by members of the state body in activities funded by the state body's grants but prohibit members from receiving remuneration from grant funds administered by grant recipients of this state body. A member of the state body with a conflict of interest must not participate in any discussion, deliberation or action on a grant application for which the member has a conflict of interest.

The Commission finds that the requester's employment, as presently scheduled, by the private nonprofit concern does not contravene the guide for conduct contained in NRS 281.481(1) because it expires prior to the private nonprofit concern's becoming eligible to apply for and receive grants from the state body which would fund the salary paid to an employee of this private nonprofit concern employed in the requester's management capacity.

The Commission may, in rendering an advisory opinion pursuant to NRS 281.511(1), give guidance to the requester on the issues enumerated in NRS 281.521. The Commission chooses to give this guidance in the circumstances of this request. The Commission concludes that if the state body were to change its present grant guidelines to make the private nonprofit concern immediately eligible to apply for and receive a grant from the state body or if the private nonprofit concern extended the requester's salaried employment into the concern's eligibility period for such grants and the private nonprofit concern applied for a grant from the state body under either of these circumstances, a conflict would occur within the meaning of NRS 281.521(1), (2), and (3) if the requester were to participate as a member of the state body in the decision on such a grant. Participation by the requester in the state body's decision on a grant in the circumstances described in the preceding sentence which resulted in approval of the grant which was to be used in whole or in part to fund the requester's salary received from the private nonprofit concern would be contrary to NRS 281.481(1) and the internal guidelines of the state body issued on this point which the Commission finds in this respect to be no less restrictive than NRS 281.421(1). See, NRS 281.541(1).

It is the opinion of the Commission that the employment of the requester by the private nonprofit concern and concurrent membership on the state body does not contravene the provisions of NRS 281.481(1) given the scheduled duration of that employment and the existing grant guidelines of the state body which render the private nonprofit concern ineligible to apply for and receive a grant from the state body which could be used to defray all or part of the requester's salary during the scheduled period of employment. This opinion is subject to modification as described in the preceding paragraph if any of the conditions described in that paragraph occur.

