

Hypothetical Opinion No. 84-2

BEFORE THE EXECUTIVE ETHICS COMMISSION OF THE STATE OF NEVADA

The Nevada Executive Ethics Commission issues this opinion in accord with Nev. Rev. Stat. § 281.511(1)(b).

The appointed administrator of a division in the executive branch of state government has requested the advice of this Commission. The requester is a public officer within the meaning of Nev. Rev. Stat. § 281.431(11). The requester does not perform any legislative functions within the meaning of Nev. Rev. Stat. § 281.431(7) and therefore is a member of the executive branch as defined in Nev. Rev. Stat. § 281.431(8).

The requester has provided documents and testimony to the Commission that establish that the requester administers a division within state government which, among other matters, administers and enforces a program of occupational licensure for a certain profession. Applicants for licensure in this profession are required to provide certification that they have completed a prescribed course of instruction from a qualified instructor. Regulations promulgated by the requester's division provide that the requester is required to evaluate and approve the qualifications of any instructor in this prescribed course as part of the course accreditation process.

The requester has been offered paid employment during off-duty hours by the University of Nevada System to instruct one of these classes for potential licensees of the requester's occupational licensure program. This type of employment is not otherwise prohibited by law. See Nev. Rev. Stat. § 281.127(2)(b). Pursuant to the regulations discussed in the preceding paragraph, the requester is required to evaluate and approve his qualifications as an instructor in this course if the course is to receive official accreditation.

The ethical standard contained in Nev. Rev. Stat. § 281.481(6) does not allow a public officer or employee to use information gained in the performance of his public duties, which is not available to the public, to further his own economic interests. The circumstances described in the preceding two paragraphs conflict with the ethical standard contained in Nev. Rev. Stat. § 281.481(6). The requester, acting pursuant to regulation, would be required to evaluate and approve his qualifications as an instructor as part of the course accreditation procedure if he accepted employment from the university to instruct this course. This would constitute the use of evaluative information developed within the requester's division to further the requester's economic interests in secondary employment as an instructor.

The Commission may, in rendering an advisory opinion pursuant to Nev. Rev. Stat. § 281.511(1), give guidance to the requester on the issues enumerated in Nev. Rev. Stat. § 281.521. The Commission chooses to give this guidance in the circumstances of this request. The Commission concludes that if the division's regulations were amended to provide that course accreditation, including approval of instructors was to be performed by an agency, officer or employee independent from the requester, the conflict described in the preceding paragraph would be eliminated.

It is the opinion of the Commission that the proposed employment of the requester by the University of Nevada System to teach a course for which the requester must officially evaluate and approve his qualifications to instruct conflicts with the ethical standard contained in Nev. Rev. Stat. § 281.481(6).

DATED:

NEVADA EXECUTIVE ETHICS COMMISSION