

## Hypothetical Advisory Opinion No. 87-4

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### FACTS

1. The requester is a public employee of a state agency.
2. The requester is the supervisor of a division of a state agency, hereinafter referred to as "Supervisor."
3. The division regulates certain functions of approximately 1200 businesses operating within the state.
4. Regulation of this function of business entails licensing and inspection to assure compliance with state statutes and regulations for the protection of the public.
5. Employees supervised by Supervisor conduct inspections to assure compliance with state statutes and regulations.
6. Supervisor reviews the results of inspections conducted by employees of the division.
7. Supervisor does not have the authority to make decisions as to whether a particular business will remain open or be closed.
8. Supervisor does not have the authority to promulgate regulations which affect businesses.
9. Supervisor does not have the authority to make the final decisions regarding whether a business that has allegedly violated a state statute or regulation will be subject to administrative, civil or criminal prosecution.
10. After an inspection is conducted, Supervisor does have the authority to notify the business of alleged violations and to request compliance with the state statute or regulation within a certain period of time.
11. A business may appeal the results of an inspection and notification given pursuant to paragraph 10 herein to an administrative board.
12. In the future, Supervisor may want to circulate resumes, interview and negotiate for employment with businesses which are regulated by the division which he supervises.
13. Supervisor is not a member of the gaming commission, gaming control board or public service commission.

#### OPINION

Supervisor is a public employee of the executive branch of state government. NRS 281.436. As such, he is subject to the conditions of employment set forth in state statutes, regulations and policies of the state agency which employs him.

The commission on ethics is required by law to render an opinion interpreting the statutory ethical standards set forth in NRS 281.481 *et seq.* upon request from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. NRS 281.511(1). However, the commission does not have the jurisdiction to render opinions regarding the interpretation of other state

statutes, regulations or policies which might apply. Therefore, we confine our opinion to the statutory ethical standards except to advise supervisor that we are of the opinion that 1987 Nev. Stat. ch. 266, which restricts employment of members of the public service commission, gaming commission and gaming control board by persons who are regulated by said agencies, clearly does not apply to Supervisor.

Supervisor has requested our opinion regarding the propriety of circulating resumes, interviewing and negotiating for employment with businesses which are regulated by the division which he supervises. Persons employed by the state cannot be absolutely prohibited from seeking other employment. As we have stated above, certain conditions may be attached by statute, regulation or policy to that employment.

The 1987 Legislature elected not to restrict the employment opportunities of public officers and employees of the particular state agency which employs Supervisor, as it did in the case of members of the gaming control board, gaming commission and public service commission. It is our opinion that the code of ethical standards contemplates that public officers and employees of the executive branch would seek employment in the same field in which that person has gained experience while in state employment.

NRS 281.491(1) provides, in pertinent part, that no member of the executive branch or public employee of the executive branch "who leaves the service of the agency may represent or counsel a private person upon any issue which was under consideration by the agency during his service." Therefore, if a public officer or employee accepts employment with a private person or business, that officer or employee may not share the information that was acquired by him during his service with a particular agency as to issues which were under consideration by that agency during his service. We construe this to mean that he should not divulge information to his private business employer which would be detrimental to the State of Nevada, either financially or in a regulatory or enforcement capacity.

Additionally, a public officer or employee, during his employment by government or thereafter, may not use information acquired through his public duties or relationships, which is not available to people generally, to further his own pecuniary interests or that of any other person or business entity. NRS 281.481(6).

A most important provision of the code of ethical standards which applies to the situation at hand is NRS 281.481(1). This statute provides as follows:

No public officer or employee may seek or accept any gift, service, favor, employment, engagement or economic opportunity which would tend improperly to influence a reasonable person on his position to depart from the faithful and impartial discharge of his public duties. (Emphasis added.)

Critical, to our way of thinking, is whether seeking or accepting employment with a person or business regulated by the agency would tend improperly to influence a person in the position of the officer or employee to depart from the faithful and impartial discharge of his public duties. In the case of a public officer, there is an increased risk of potential for abuse and likelihood for violation of the ethical standards. However, in the case of a public employee, the employee has a lesser degree of decision-making authority and ability to exercise discretion which diminishes those possibilities.

Here, Supervisor is a public employee whose decisions are not final in that they are reviewed by others and may be appealed to other authorities. It is our opinion that Supervisor may circulate resumes and participate in interviews with businesses regulated by the agency by which he is employed. However, in order to decrease the likelihood of a conflict of interest arising, we recommend that as soon as any negotiations for employment commence, Supervisor must disclose to his superior that he is negotiating for employment, and must disclose the names of the business entity or entities involved. Additionally, Supervisor should abstain from all decisions and review of regulatory actions,

subject to approval of the appointed or elected official who ultimately is responsible for final decisions, with reference to that entity or entities until such time as he no longer has an interest.

This advisory opinion is rendered based upon the facts presented. Given other facts, the opinion of the commission may differ.

COMMISSION ON ETHICS

By: Chairman