

## **Hypothetical Advisory Opinion No. 88-1**

### **BEFORE THE NEVADA COMMISSION ON ETHICS**

#### **FACTS**

1. A member of the legislative branch of government developed an idea for a new product line which could be marketed successfully to business entities doing business in an industry that is regulated by the state.
2. This public officer formed a corporation to pursue the development and marketing of this new product line.
3. One of the new corporation's directors is an individual who is an officer in two business entities already doing business in the regulated industry.
4. A legislative proposal comes before the public officer's legislative body which, in its initial form, would have deregulated the industry with which the public officer's new corporation would do business.
5. Before the public officer can legally participate in the consideration of the legislative proposal, it is amended to continue existing regulation of the industry.
6. The corporate director in the public officer's corporation, who is also employed in the regulated industry, opposes deregulation of the industry in which he is employed.
7. The public officer participates in the consideration of the legislative proposal, as amended, and acts to preserve the existing regulatory scheme.
8. The public officer's corporation never has pursued the development and marketing of the new product in any manner.
9. The corporation can be characterized as a "shell corporation."
10. The public officer was not aware of the legislative proposal until it came before him in a form that preserved the existing regulatory plan.
11. The public officer did not discuss the legislative proposal with the public officer's corporate director who was employed in the regulated industry.

#### **OPINION**

The requestor is a public officer as defined in NRS 281.4365(1) and a member of the legislative branch as defined in NRS 281.4355.

The key factor in this circumstance is that the public officer's corporation never pursued the economic activity within the regulated industry for which the corporation was formed. That being the case, the public officer has no pecuniary interest, significant or otherwise, that would materially affect the independence of judgment of a reasonable person in his situation. Therefore abstention or public disclosure by this officer was not required. This public officer's conduct with respect to this legislative proposal, as amended, is consistent with the ethical standard contained in NRS 281.501(2). That standard provides that a member of the legislative branch may vote upon a matter if the benefit or detriment accruing to him or in a representative capacity as a member of a business or occupation is not

greater than that accruing to any other member of the business or occupation.

The commission notes, for the guidance of this public officer, that the conclusion stated in the previous paragraph could change if the public officer or his corporation were to pursue the economic activity in the regulated industry for which the public officer's corporation was formed initially at some future time. If this future activity produced a significant pecuniary interest, the public officer would be required to make disclosure of his pecuniary interest in accord with NRS 281.481(3) in all matters which would affect the regulated industry. In addition, he could not undertake any activity reasonably characterized as using his public office to secure or grant unwarranted privileges, preferences, exemptions for his business venture or the business entities with which he was doing business in the regulated industry. See NRS 281.481(2). Finally, this public officer may have ~abstain from voting on matters of this nature in accord with NRS 281.501(1) if the significance of his pecuniary interest could be characterized as one that would affect the independence of judgment of a reasonable person in his circumstance. However, as stated at the outset of this paragraph, these observations are made for the future guidance of this public officer. There is nothing in the record that supports a conclusion that the potential situation just described will occur.

### **CONCLUSION**

The public officer's actions in the factual circumstances of this opinion were proper under the ethical standard codified in NRS 281.501(2). However, if the public officer were to pursue this economic activity within the regulated industry at some future time, while a member of the legislative branch, the officer would have to be cognizant of and conform his legislative activities to the ethical standards contained in NRS 281.481(2) and (3) as well as NRS 281.501(1) with respect to legislative matters affecting his business entity or the business entities within the regulated industry with which he may do business.

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

NEVADA COMMISSION ON ETHICS

By: Chairman