

Abstract of Advisory Opinion No. 98-05

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Advisory Opinion of State Employee

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by Attorney A, who sought relief from the application of NRS 281.236 so that s/he could resign her/his position as a staff counsel for the Public Utilities Commission of Nevada (PUCN) to take a position with a telephone utility company.

The issue presented is whether the "cooling-off" statute (NRS 281.236) prohibits Attorney A from commencing her/his new employment for one year following termination of her/his public employment, and, if so, whether circumstances exist to provide relief from the strict application of NRS 281.236. At the time Attorney A submitted her/his request for an opinion, s/he had not commenced her/his new employment.

A hearing on the opinion request was held on March 5, 1998 via a telephone conference. Attorney A appeared and presented testimony. S/he did not waive statutory confidentiality, so the proceeding was not open to the public.

Based on the foregoing, the Commission makes the following Findings of Fact, Conclusions of Law, and Opinion.

FINDINGS OF FACT

1. Attorney A has been employed as an Assistant General Counsel for the PUCN. Before that, Attorney A was an administrative attorney assigned to a PUCN Commissioner.
2. Attorney A's duties for the PUCN include advising the PUCN on legal matters and representing the PUCN in litigation, which is primarily in the form of petitions for judicial review and oversight of the PUCN's involvement in cases before the Federal Energy Regulatory Commission. Attorney A's duties do not include the formulation of policy because policy is formed by the PUCN commissioners. Attorney A's duties have never involved her/his in the PUCN's regulation, investigation, or auditing of the telecommunications industry. Instead, Attorney A's duties have involved PUCN cases regarding the regulation of the electricity and gas industries.
3. Attorney A has been offered a position by a telecommunications company regulated by the PUCN, among other agencies nationwide. Attorney A's duties with this company would relate to its operations in Washington and Oregon. Attorney A would not represent the company regarding its operations in Nevada.

OPINION

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Attorney A is a public employee as defined in NRS 281.436.

NRS 281.236(3), the relevant statutory provision in this matter, provides in pertinent part that:

[A] business or industry whose activities are governed by regulations adopted by a department, division or other agency of the executive branch of government shall not...employ a former public officer or employee of the agency...for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

Pursuant to NRS 281.236(4), the Commission may grant relief from the strict application of the provisions of NRS 281.236(3) if it finds that the former state employee's employment is not contrary to:

(a) The best interests of the public;

(b) The continued integrity of state government; and

(c) The code of ethical standards prescribed in NRS 281.481.

The questions before the Commission are whether NRS 281.236(3) applies to Attorney A's employment as an Assistant General Counsel for the PUCN, and, if so, whether the Commission should grant Attorney A relief from the strict application of NRS 281.236(3) under the facts and circumstances of this particular matter.

We find that Attorney A's employment with the PUCN does not fall within NRS 281.236(3) because although Attorney A's duties clearly pertained to the regulation of utilities by the PUCN, her/his personal duties never included the regulation of the telecommunications industry. That the PUCN regulates the telecommunications industry cannot be imputed to Attorney A personally because the focus of NRS 281.236(3) is upon the activities of the employee within the employing agency, not the general activities of the employing agency.

We further find that even had Attorney A's employment qualified under NRS 281.236(3), her/his proposed employment by a telecommunications company would be entitled to special relief under NRS 281.236(4). Attorney A's employment is in the best interests of the public and the continued integrity of state government because it in no way threatens the telecommunication company's competitors nor gives it any unfair advantage or knowledge. Attorney A's employment with the PUCN has not involved the telecommunications industry, so s/he could have no special knowledge of that industry as a result of her/his employment. The evil intended to be prevented by NRS 281.236 -- namely that a public official or employee cannot be allowed to use her/his position in the government to benefit a future private employer -- is not invoked with Attorney A's circumstances. As we stated in NCOE [Opinion 95-61](#), NRS 281.236(4) "was intended to facilitate such beneficial moves from the public to private sectors so long as the moves do not endanger either the public or private sectors and so long as there is nothing otherwise unethical in the way that the employment relationship occurred."

CONCLUSION

The Commission finds that Attorney A's proposed employment by a telecommunications company would not be prohibited by NRS 281.236(3). Furthermore, even if her/his employment by a telecommunications company was

prohibited by NRS 281.236(3), then pursuant to NRS 281.236(4) the Commission would grant relief to Attorney A from strict application of NRS 281.236(3). Attorney A may immediately work for the telecommunications company.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific circumstances. The provisions of the NRS quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: March 9, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman