

**Abstract of Advisory Opinion No. 98-59**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion of a PUBLIC EMPLOYEE**

This Opinion is in response to a request filed on October 14, 1998 with the Nevada Commission on Ethics (Commission) by Mr. Administrator, Administrator of a public agency, concerning the conduct of Mr. Chief, one of his employees. Because the matter involved questions by Mr. Administrator regarding his and Mr. X's conduct, this matter was treated as a first-party request. Thus, a confidential hearing was held on January 15, 1999. At its hearing on January 15, 1999, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings and Fact and Opinion.

**FINDINGS OF FACT**

1. Mr. Administrator is the Administrator of public regulatory agency (Agency). Mr. Chief, Jr. is an inspector for the Agency. Mr. Chief, Sr., Mr. Chief, Jr.'s father, is the Chief Enforcement Officer for the Agency, and as such, is Mr. Chief, Jr.'s supervisor.
2. The Agency is statutorily empowered to regulate the operation of an industry in, inter alia, Clark County.
3. As an inspector, Mr. Chief, Jr. inspects for and regulates the condition of certain property. Mr. Chief, Jr. also assures that the property has the proper licenses to be where the property is located at the times, places, and conditions allowed by those licenses. Mr. Chief, Jr. also handles consumer complaints.
4. As Chief Enforcement Officer, Mr. Chief, Sr. supervises all of the Agency's inspectors, including Mr. Chief, Jr. As Chief Enforcement Officer, Mr. Chief, Sr. also prosecutes his inspectors' citations before the Agency's administrative proceedings. Mr. Chief, Sr. routinely does not prosecute his son's citations.
5. Mr. Chief, Jr. and Mr. Partner have applied with the Agency for licenses to serve a municipality under the name ABC. Mr. Chief, Jr. will own 49% of the shares of ABC; Mr. Partner will own 51% of the shares of ABC. Mr. Partner is the principal in another company that is already licensed by the Agency.
6. On September 4, 1998, the Agency granted ABC a temporary two-year certificate which became effective October 1, 1998. After the temporary certificate was granted, Mr. Chief, Jr. resigned his employment with the Agency. At the hearing before the Agency, Mr. Chief, Jr. and Mr. Partner explained that Mr. Chief, Jr. would work as an employee of ABC and that at some time in the future, Mr. Chief, Jr. would be allowed to purchase Mr. Partner's interest in ABC when Mr. Chief, Jr. was capable of managing the business himself.
7. On September 8, 1998, Mr. Chief, Sr. submitted a memorandum to Mr. Administrator in which Mr. Chief, Sr. proposed the following:

I respectfully request that Senior Investigator [expunged] be assigned the duties of overseeing anything to do with ABC, to include any and all phone calls to this Agency

by the applicants concerning [expunged] industry business, including but not limited to, 24 hour notices, [expunged], complaints, [expunged], show cause complaints and applicants for that company.

I understand that a decision has been made regarding a compliance enforcement sister agency, in that if an employee remains aloof from certain companies owned by a relative/relatives, there should be no problem with his employment. In view of this, I too wish to remain aloof from ABC so that there will be no problem with my employment at the [expunged] Agency.

8. On November 4, 1998, Mr. Administrator issued a memorandum to all Agency supervisors and employees informing them that complaints regarding certificate holders would be referred directly to him, but that complaints regarding individual drivers would continue to be referred to and handled by the existing procedure. This change in policy was intended to assure that complaints regarding the certificate holders would never cross Mr. Chief, Sr.'s desk and would, instead, be handled by Mr. Administrator.

9. Even in light of the above resolution proffered by Mr. Chief, Sr., he technically remains the chief inspector of Mr. Chief, Jr.'s business, the business of Mr. Chief, Jr.'s collaborator (Mr. Partner), and Mr. Chief, Jr.'s competitors. Mr. Chief, Sr.'s duties include supervising the other inspectors and prosecuting citations in the Agency's administrative hearing system.

### **ANALYSIS AND OPINION**

The last time this Commission visited a matter similar to this matter (*Matter of Robert Flaven*, NCOE [Opinion #97-25](#)), we concluded as follows:

We conclude that during the pendency of Mr. Flaven Jr.'s application, Mr. Anselmo must assure that Mr. Flaven Sr. and Mr. Flaven Jr. have no communication with other Authority employees regarding Mr. Flaven Jr.'s application. We further conclude that if Mr. Flaven Jr.'s application is granted, Mr. Anselmo will be required to transfer or terminate Mr. Flaven Sr. because Mr. Flaven Sr.'s continued employment with the Authority would constitute an actual violation of NRS 281.481(1) and an insoluble and ongoing potential for violations of NRS 281.481(2).

The facts before this Commission differ from the facts presented in the other similar matter. First, Mr. Chief, Sr. participated in this hearing, whereas in the Flaven matter Mr. Flaven Sr. did not participate, so this Commission was able to question Mr. Chief, Sr. about his job duties and whether his duties could be made discreet from involvement in his son's business. Second, Mr. Chief, Sr. has made a statement of policy and how he will conduct himself in the future regarding the Agency's regulation of his son's business. Third, Mr. Chief, Jr. is not the controlling interest in the business as it has been presently approved and cannot become the controlling interest in the business without his certificate having to again be reviewed and approved by the Agency. Fourth, Mr. Administrator, through his memorandum of November 4, 1998, has taken definitive action to assure that certificate holder complaints are processed by Mr. Administrator, not Mr. Chief, Sr. Fifth, because Mr. Chief, Sr. participated in this matter, he was able to present considerable evidence that he has a reputation for conducting himself honestly, fairly, and without bias.

Our analysis in the Flaven matter is not entirely applicable to the present circumstances. This Commission remains convinced that the potential for Mr. Chief, Sr. to commit or to be perceived as having committed a violation of NRS 281.481 (1) or (2) is extremely high in view of the scrutiny he and the Agency receive from the industry. It appears in the present matter, though, that Mr. Chief, Sr.'s proposed policy, if it is rigorously followed, will assure that Mr. Chief, Sr. will not violate NRS 281.481 (1) or (2). It must be stressed that Mr. Chief, Sr. is and will remain in a precarious position because the actions of the Agency, and thus of Mr. Chief, Sr., are closely monitored and noted by the industry. In an atmosphere of concern and watchfulness, if Mr. Chief, Sr. is other than absolutely unbiased in his decision-making regarding ABC's competitors, this Commission will likely be informed. We urge Mr. Chief, Sr. to follow the letter and spirit of his proposed policy, and we urge him to use his best judgment, prudence, and utmost fairness in his decisions regarding ABC's competitors to avoid even the appearance of impropriety. We will not, though, suppose or assume that Mr. Chief, Sr. will act otherwise, and absent proof of actual favoritism, we cannot find that Mr. Chief, Sr.'s proposed policy will necessarily result in, allow, or constitute a violation of the Ethics in Government Law.

### **CONCLUSION**

Based upon the record, the Commission concludes that Mr. Chief, Sr. may remain employed by the Agency subject to strict compliance with his proposed policy dated September 8, 1998. Mr. Administrator should impose such conditions and restrictions as he deems necessary and proper to assure that Mr. Chief, Sr. complies with this policy. If the letter and spirit of the policy are rigorously followed, Mr. Chief, Sr.'s continued employment by the Agency will not violate NRS 281.481(1) or (2).

### **COMMENT**

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes 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: June 30, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman