

Abstract of Advisory Opinion No. 99-10

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Advisory Opinion of Public Officer

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by Ms. A. Ms. A serves as a Councilperson for a local city council ("Council"). Ms. A has entered into an employment situation with Business B. Business B is owned by Mr. B. Ms. A and Mr. B are old friends. Business B is a computer operations, hardware shop, and software provider to businesses. Business B also provides web page design, internet hosting, consulting and programming services. Currently, Business B does not conduct any business with Ms. A's local city council.

The issue presented by Ms. A is whether or not she can act as a sales representative for Business B and seek business clients from the private sector. Ms. A would not seek clientele from city or county businesses or other local government entities. Her contract with Business B states that her pay is specifically limited to the money that she generates by virtue of her sales contracts. Furthermore, Ms. A currently abstains from voting on matters relating to Business B or her personal clients. A hearing on the opinion request was held on April 15, 1999. Ms. A appeared and presented testimony. She did not waive her 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. Ms. A is a member of a local city council.
2. She is also a sales representative for Business B.
3. Business B is a full service computer operations, hardware shop, and software provider.
4. Her contract with Business B states that her pay is specifically limited to the money that she generates by virtue of her sales contracts.
5. Ms. A will not seek clientele from city or county businesses or other local government entities.
6. Furthermore, Ms. A abstains from voting on matters before the city council which relate to Business B or her personal clients.

OPINION

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Ms. A is a public officer as defined in NRS 281.4365.

NRS 281.230(1), the relevant statutory provision in this matter, provides in pertinent part that:

Except as otherwise provided in this section and NRS 218.605, the following persons shall not, in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other

transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way interested or affected:

- (a) State, county, municipal, district and township officers of the State of Nevada;
- (b) Deputies and employees of state, county, municipal, district and township officers; and
- (c) Officers and employees of quasi-municipal corporations.

The question before the Commission is whether Ms. A can continue as a sales representative for Business B if she does not solicit contracts from any city, county or other local governmental entities.

We find that it is not an ethical violation for Ms. A to be employed as a sales representative for Business B, particularly if Ms. A continues with the safeguards she testified that she uses by not seeking contracts from any local governmental agency and disclosing and abstaining from any matters which come before the city council concerning Business B or her personal clients.

CONCLUSION

We find that it is not an ethical violation for Ms. A to be employed as a sales representative for Business B as long as Ms. A continues with the safeguards she testified that she uses. Specifically, Ms. A should not seek contracts from any local governmental agency and she should disclose and abstain from any matters that come before her city council concerning Business B or her personal clients.

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: January 24, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ MARIO RECANZONE, Vice Chairman