

Abstract of Opinion No. 99-51

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE OPINION REQUEST OF FORMER PUBLIC EMPLOYEE

This matter came before the Nevada Commission on Ethics (hereinafter "Commission") for hearing in a closed session on Thursday, November 18, 1999, on the first-party opinion request filed by Former Public Employee. Notice of the hearing was properly served. Opinion No. 99-51 is confidential pursuant to NRS 281.511(5).

Former Public Employee is a private consultant formerly employed by a regulatory agency of the State of Nevada. Former Public Employee's unclassified employment with the state regulatory agency was involuntarily terminated as a result of a change in administration.

In a previous Opinion, the Commission instructed Former Public Employee to seek the Commission's guidance and advice on a case-by-case basis regarding applicability of NRS 281.236 (the "cooling off" statute) to potential contracts which would involve compensation from certain companies certified in Nevada at the time of Former Public Employee's termination of employment with the State of Nevada. Pursuant to that previous Opinion, Former Public Employee requested the Commission's opinion on whether NRS 281.236 prohibits him from accepting consulting work from Corporation, a start-up company interested in entering the local market in rural county.

Former Public Employee appeared in person, was sworn, and presented testimony.

The Commission, after full consideration of the testimony, evidence, and argument, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Former Public Employee was previously employed in an unclassified position with a regulatory agency of the State of Nevada for a period of approximately three and one-half years. Former Public Employee intended to remain so employed, however the state regulatory agency terminated Former Public Employee's employment unexpectedly, involuntarily, and due to a change in administration.
2. Former Public Employee's primary duties for the state regulatory agency included preparation of comments and testimony on behalf of the regulatory agency, managing other employees, and regulatory and market analyses for the state regulatory agency (including, but not limited to, prospective restructuring of industries regulated by the agency and analysis of the traditional market structure and regulatory regime). Former Public Employee's duties did not include auditing or directly advising the state regulatory agency in its decision-making role. Former Public Employee never had authority to render final decisions on issues before the state regulatory agency, nor did he directly advise its commissioners in their decision-making role.
3. Thereafter, Former Public Employee became a self-employed economic consultant offering his services to (a) public and private consumers of services produced in and outside Nevada (not regulated by the state regulatory agency), and (b) services providers which were either regulated by the state regulatory agency at the time Former Public Employee's employment with the agency was terminated or which could become licensed under the state regulatory agency within the year following Former Public Employee's employment termination.
4. Former Public Employee's technical expertise and related competitive policy issues has received national and international recognition, some of which was prior to his employment with the state regulatory agency, including several speaking engagements at national and international workshops.

5. Corporation desires to retain Former Public Employee's services as a consultant on technical issues and competitive policy issues related to Corporation's desire to enter the local market in a rural county in Nevada.
6. County is currently served by a county-owned company which is regulated by a county board, not the state regulatory agency.
7. Corporation is a start-up company, presently in the development stage. No services provided by Corporation, or service prices, are within the jurisdiction of the state regulatory agency, nor were they during Former Public Employee's employment with the state regulatory agency.
8. The only matters before the state regulatory agency involving Corporation were routine matters which did not involve Former Public Employee's independent judgment or discretion, and they were limited to three instances:
 - a. In Year X, Former Public Employee's division routinely reviewed, among dozens of others, Corporation's initial application. The review consisted of comparing the application to a checklist and required no independent judgment or discretion. The state regulatory agency routinely approved Corporation's application.
 - b. In Year X, Corporation petitioned the state regulatory agency for a ruling. However, jurisdiction was in question and Corporation withdrew its petition prior to litigation.
 - c. In Year Z, Corporation applied with the state regulatory agency on Issue Q. The application was routinely reviewed by staff in Former Public Employee's division. Such applications are routine and rarely denied by state-regulatory agency. State regulatory agency voted on Corporation's application after Former Public Employee received notification of his employment termination.
9. Former Public Employee has never reviewed data considered proprietary to competitor company, nor has he ever had the opportunity to review such proprietary data.

CONCLUSIONS OF LAW

1. Former Public Employee is a former public employee as defined by NRS 281.436.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511(1).

WHEREFORE, on motion duly made, seconded, and approved by unanimous vote, the Commission renders the following Opinion:

OPINION

The facts in this matter do not implicate the type of situation contemplated by NRS 281.236(3). In no instance did Former Public Employee (a) formulate policy governing Corporation or the industry, nor was such included in Former Public Employee's principal duties at state regulatory agency; (b) control or influence a decision, investigation or other action which significantly affected Corporation or the industry; or (c) obtain knowledge of, or have access to, the trade secrets of a direct business competitor of Corporation.

Therefore, the contractual relationship with Corporation contemplated by Former Public Employee is not subject to the restraints of NRS 281.236(3).

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES WHICH DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: November 30, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman