

Abstract of Opinion No. 99-52

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF A 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. 99-52 is confidential pursuant to NRS 281.511(5).

Former Public Employee was recently employed for a brief period (less than 4 months) with State Regulatory Agency. He has applied for prospective employment with Company A, a company regulated by State Regulatory Agency, and he seeks an opinion from the Commission finding either (a) that the provisions of NRS 281.236(3) do not apply to the circumstances as outlined in his request for opinion; or (b) if the provisions of NRS 281.236(3) are found to apply, that relief from strict application thereof is warranted pursuant to NRS 281.236(4).

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 employed by State Regulatory Agency for less than four months.
2. Former Public Employee was not a regulator nor was he a policymaker for State Regulatory Agency.
3. Former Public Employee was primarily involved in work related to internal administrative and organizational matters, efforts to learn about utility regulation, and limited other matters. He did not learn any confidential information or trade secrets.
4. Former Public Employee resigned his position with State Regulatory Agency to relocate to another state with his family. However, his family's relocation plans changed and he returned to Nevada.
5. While searching for employment in the Reno/Carson City area, Former Public Employee contacted Individual X regarding using him as a professional reference. Former Public Employee worked directly with Individual X for approximately six years in the private sector. Thereafter, Individual X went to work for Company A, a company regulated by State Regulatory Agency. Individual X agreed that Former Public Employee could use him as a reference and then asked Former Public Employee if he would be interested in a position which had recently opened with Company A.
6. The prospective position does not involve regulatory matters or matters pertaining to regulated operations, nor is it a part of Company A's regulatory divisions.
7. The prospective position is not related to Former Public Employee's former public employment. It is related to his prior private sector employment.
8. Former Public Employee has submitted his application for the position.

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). During the less than four months that he was employed by State Regulatory Agency, Former Public Employee neither (a) formulated policy to regulate Company A, nor was such included in his principal duties, nor did he represent State Regulatory Agency on any matter; nor (b) directly performed activities, or controlled or influenced a decision, investigation or other action, which significantly affected Company A or its industry; nor (e) obtained knowledge of, or had access to, the trade secrets of a direct business competitor, or potential competitor, of Company A.

Therefore, Former Public Employee is not subject to the restraints to NRS 281.236(3) should he accept an offer of employment from Company A, if such an offer is made to him. Because the restraints of NRS 281.236(3) are not implicated in this situation, consideration of the NRS 281.236(4) factors for relief from the strict application of NRS 281.236(3) is irrelevant.

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