

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION OF PRADEEP K. SIRCAR, a former public employee

This matter came before the Nevada Commission on Ethics ("Commission") in open session on Thursday, July 20, 2000, for hearing on the opinion request filed with the Commission on June 23, 2000, by Pradeep K. Sircar, a former public employee, pursuant to Subsections 3 and 4 of NRS 281.236. Notice of the hearing was properly served.

Until June 15, 2000, Mr. Sircar was employed by the Public Service Commission (PSC) as a Manager of Resource Analysis, an unclassified position. Mr. Sircar's unclassified employment with PUCN was unexpectedly and involuntarily terminated effective June 15, 2000. Mr. Sircar is actively pursuing local employment opportunities for which he is qualified in the utility industry and seeks the Commission's advisory opinion that either (1) the provisions of NRS 281.236, Subsection 3, do not apply to his circumstances; or (2) if those provisions do apply to him, he is entitled to relief from strict application thereof pursuant to the provisions or NRS 281.236, Subsection 4.

Mr. Sircar appeared by telephone, was sworn in as a witness, presented the facts and circumstances surrounding his advisory opinion request, and answered the Commission's questions.

The Commission, after full consideration of the request for advisory opinion and all of the facts and circumstances presented by Mr. Sircar, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Sircar was employed in a technical capacity in an unclassified position by the Public Utilities Commission of Nevada (PUCN) and by the Public Service Commission (PSC) from March 30, 1998, until June 15, 2000, when his employment was unexpectedly and involuntarily terminated. During his employment with PUCN and PSC, it was Mr. Sircar's intention to remain a public employee.
2. During his employment with PUCN and PSC, Mr. Sircar's principal duties included technical research, technical data analysis and assessment, forecasting, and database development. Mr. Sircar also recruited and trained staff. Mr. Sircar was never involved in any capacity in the formulation of policy contained in the regulations governing the utilities industry, nor in any policy decision activities or decision-making processes.
3. During the year immediately preceding the termination of his employment with PUCN and PSC, Mr. Sircar did not directly perform any activities, or control or influence an audit, decision, investigation or other action, which significantly affected the industries or the businesses where he might be seeking future employment.
4. During his employment with PUCN and PSC, Mr. Sircar had access only to publicly available data and information and data provided by utilities as routine filings of information to PUCN or PSC. He did not acquire or possess any business trade secrets, proprietary information or competitive intelligence of any business whose activities are governed by the regulations adopted by PUCN and PSC.
5. Mr. Sircar is actively seeking employment in the utilities industry in the Reno and Carson City areas, where he and his family reside, work, and go to school. Family health issues render it undesirable for Mr. Sircar to relocate his family to another jurisdiction. Further, appropriate employment opportunities for Mr. Sircar, a utility economist, outside the utility industry, are limited.

CONCLUSIONS OF LAW

1. Mr. Sircar is a former public employee as defined by NRS 281.436.

2. NRS 281.236, Subsection 4, authorizes the Commission to render an opinion in this matter.

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

OPINION

In pertinent part NRS 281.236(3) and NRS 281.236(4) state:

3. ...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, except as otherwise provided in subsection 4, employ a former public officer or employee of the agency, except a clerical employee, for 1 year after the termination of his service or period of employment if.

(a) His principal duties included the formulation or 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.

4. A public officer or employee may request the commission on ethics to apply the relevant facts in his case to the provisions of subsection 3 and determine whether relief from the strict application of the provisions is proper. If the commission on ethics determines that relief from the strict application of the provisions of subsection 3 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,

it may issue an order to that effect and grant such relief. The decision of the commission on ethics in such a case is subject to judicial review.

Based upon the Commission's review of Mr. Sircar's opinion request, and Mr. Sircar's testimony and answers given to the Commission's questions, the Commission finds that Mr. Sircar's duties with the PUCN and PSC did not involve the types of activities identified in NRS 281.236(3). Therefore, he may seek employment within the regulated business and industry without being in violation of that statute. Even if his activities were within the scope of NRS 281.236(3), the Commission finds good cause under NRS 281.236(4), to grant relief from strict application of the provisions of NRS 281.236(3), so Mr. Sircar may apply for such employment.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN TMS 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: August 1, 2000.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman

