

**Abstract of Advisory Opinion No. 01-04**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**  
**IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF**  
**PUBLIC OFFICER, Member, Regulatory Board**

This matter came before a quorum<sup>[1]</sup> of the Nevada Commission on Ethics (hereinafter the "Commission") on April 19, 2001, on the request for advisory opinion filed by Public Officer, Member of a Nevada regulatory board (hereinafter the "Board"), pursuant to NRS 281.511, Subsection 1. The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511, Subsection 5. Public Officer appeared by telephone, was sworn and presented testimony. The Advisory Opinion is confidential pursuant to NRS 281.511, Subsection 5(c).

Public Officer, in an abundance of caution, seeks an opinion from the Commission (a) advising him whether certain of his responsibilities associated with his recent appointment as a member of a Nevada regulatory board, in light of his former employment with a company whose activities are regulated by the board (hereinafter the "Company"), may result in any violation of NRS Chapter 281, Nevada's Ethics in Government Law; and (b) providing guidance on how to handle matters involving the Company that may come before the Board.

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

**FINDINGS OF FACT**

1. Public Officer is presently a member of the Board.
2. The Board regulates an industry in Nevada.
3. The Company is subject to regulation by the Board. The Company has a number of competitors in its lines of business which are subject to regulation by the Board.
4. Public Officer was previously employed by the Company in various positions.
5. At no time during his employment with the Company was Public Officer an officer or director of the Company or any of its subsidiaries that are regulated by the Board.
6. During the time Public Officer was employed by the Company, he received certain options to purchase shares in the company, participated in a company-sponsored 401(k) and Profit-Sharing Plan through which he beneficially owned shares in the Company, and directly purchased and held for his own account certain shares in the Company.
7. Prior to becoming a member of the Board, Public Officer sold all Company shares he owned and options he held, and neither Public Officer nor any member of his household currently owns any interest in the Company, beneficial or otherwise.
8. Prior to becoming a member of the Board, Public Officer rolled his interest in the the Company Profit-Sharing and 401(k) plans into a personal Individual Retirement Account (hereinafter "I.R.A."). The assets in his I.R.A. do not include shares in the Company or any other company regulated by the Board.
9. The Board's Chairman has asked Public Officer to oversee a Board Division which may have jurisdiction over the Company.
10. In his capacity of overseeing the Division, Public Officer (a) may be involved in making decisions regarding resolution of problems discovered by the Division relating to the business of the Company, and (b) could take actions specifically relating to the business of the Company.

**CONCLUSIONS OF LAW**

1. Public Officer is a public officer as defined by NRS 281.005 and NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

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

### OPINION

Although NRS Chapter 281 prohibits certain private-sector employment by a former public employee, it does not impose any prohibition against a former private-sector employee being employed in a public capacity by a State agency which regulates the activities of the private business.

Further, nothing in the facts, circumstances, or testimony provided in this matter implicates any impropriety, conflict, or violation of any provision of Nevada's Ethics in Government Law, NRS Chapter 281, simply because Public Officer is an appointed member of the Board and oversees a Board Division, both of which regulate the Public Officer's former employer.

Nor do the facts, circumstances, and testimony in this matter provide any basis on which the Commission believes that Public Officer may be inclined in use his position on the Board to favor the Company. Rather, to the contrary, Public Officer's testimony suggests that, if anything, he may be tempted to be more demanding on the Company with regard to its issues before the Board than on other regulated businesses with issues before the Board, to avoid appearances of impropriety.

However, conduct disadvantaging another can create an appearance of impropriety much the same as conduct advantaging another. Public Officer is, therefore, cautioned to be aware of that danger. Public Officer is further cautioned to be aware of the potential for creating a perception of impropriety from conduct and activities in official and social settings or otherwise involving former Company colleagues and/or others in the industry. Finally, Public Officer is advised to be extremely cautious in the use of information that he may acquire in his official, public capacity that may not be available to the general public, so that such information is not communicated and/or used in violation of the provisions of NRS 281.481(5).

**NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT 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: June 4, 2001.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman

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[1] Commission members Skip Avansino, Bill Flangas, Richard Hsu, Jim Kosinski, Vice Chairman Todd Russell, and Chairman Peter Bernhard constituted the quorum. Commission members Lizzie Hatcher and Hal Smith were absent.