

## Advisory Opinion No. 01-14

### BEFORE THE NEVADA COMMISSION ON ETHICS IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF PUBLIC OFFICER, County Public Administrator/Public Guardian

This matter came before a quorum<sup>[1]</sup> of the Nevada Commission on Ethics (hereinafter the "Commission") on the confidential request for advisory opinion filed by Public Officer 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 in person and with his attorney. Public Officer was sworn and presented testimony. This Opinion is confidential pursuant to NRS 281.511, Subsection 5(c).

Public Officer seeks the Commission's opinion concerning:

1. The propriety of his continued employment in a personal capacity in matters to which he was appointed as trustee, personal representative or guardian before he was elected Public Administrator/Public Guardian;
2. The propriety of his undertaking the duties of fiduciary in a personal capacity in cases where he was nominated by a decedent in his individual/personal capacity before he was elected Public Administrator/Public Guardian and the decedent died after he assumed public office;
3. The propriety of his undertaking the duties of trustee in his personal capacity in cases where he was nominated as successor trustee of a trust in his individual/personal capacity by the settlor or a prior trustee of the trust before he was elected Public Administrator/Public Guardian and the trust became ready for administration after he assumed public office;
4. The propriety of his undertaking the duties of guardian of persons and/or property in cases where he was nominated in his individual/personal capacity by the family of a proposed ward after he was elected Public Administrator/Public Guardian and assumed public office.

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. In his public capacity, Public Officer presently serves as County Public Administrator/Public Guardian. He was elected to that position effective Year A. For his services, Public Officer receives a salary set by statute and/or county code. By statute, Public Officer's term as Public Administrator/Public Guardian is four years. Public Officer also previously served as County Public Administrator/Public Guardian for eight years during Years B-C.
2. After losing his bid for re-election to the office of County Public Administrator/Public Guardian in Year C, Public Officer established a private fiduciary business in which he solicited business from attorneys and others in the community, seeking referrals and appointments to serve as guardian of estates, guardian of persons, executor/personal representative of estates, and trustee of trusts.
3. After assuming public office as County Public Administrator/Public Guardian in Year A, Public Officer closed his private business and has not since solicited election to or acquired any new private fiduciary obligations. However, he is in the process of closing, and continues to administer in a private capacity, various matters for which he acquired personal fiduciary responsibility prior to his most recent election as County Public Administrator/Public Guardian. Further, he is named as executor/personal representative, trustee, or guardian in a few other matters of which he has knowledge; and he may be named as executor/personal representative, trustee, or guardian in other matters of which he has not yet been advised.
4. Since Public Officer assumed public office as County Public Administrator/Public Guardian, family

acquaintances and others have named him, or have expressed a desire to name him, in his individual/personal capacity as trustee, personal representative or guardian in trust, testamentary, guardianship, or other such documents.

5. When working in his private capacity on outstanding fiduciary matters, Public Officer uses no resources of the office of the County Public Administrator/Public Guardian. If his private fiduciary obligations require his time during normal County business hours, he either makes up the time after regular business hours or records the time as personal or vacation time.

6. The office of the County Public Administrator/Public Guardian has no jurisdiction or authority over matters relating to administration of estates or guardianships outside of those estates and those guardianships being administered by the Public Administrator/Public Guardian pursuant to statute.

### **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**

The Nevada Legislature, in 1977 when it enacted the Nevada Ethics in Government Law in NRS Chapter 281 declared it to be the public policy of this state that (a) a public office is a public trust and shall be held for the sole benefit of the people; and (b) a public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves. NRS 281.421, Subsection 1. Further, in creating the Nevada Ethics in Government Law, the Nevada Legislature found that "(a) [t]he increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests;" and "(b) [t]o enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens." N-RS 281.421, Subsections 2(a) and (b).

A conflict of interest (either actual or potential) is a situation requiring a public officer to serve two masters, presenting a potential, rather than an actuality, of wrongdoing. The wrongdoing does not have to actually occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in danger of doing wrong. It is avoiding even the potential danger of doing wrong which is the focus of ethics in government law.<sup>[2]</sup>

The Commission is charged with the responsibility of evaluating matters before it in light of public perception and commitment to the public trust, cautioning public officers of conduct which may undermine the public trust and holding public officers accountable when they fail to place public interest and public trust ahead of his private and/or personal pecuniary interests.

Although unless specifically restricted by statute, public officers are generally not prohibited from engaging in outside employment or pursuing other interests in a personal capacity, the functions Public Officer proposes to perform in a personal capacity as defined herein (for which he would receive a pecuniary benefit) are essentially identical to the functions he performs as a public officer. The Commission is, therefore, concerned about the potential for conflicts between his public duty and his personal interests and the appearance to the public of impropriety.

Nothing before the Commission in this matter suggests that Public Officer, while serving a County Public Administrator/Public Guardian, has in any way acted unethically or with impropriety. However, the situations that he has identified herein are fraught with potential for irreconcilable conflicts between public duty and private interest and the perception by the public that a person in Public Officer's public position could abuse the public trust by using his public office to further his private pecuniary interest.

Therefore, the Commission imposes on Public Officer the following guidelines:

1. Public Officer may, without violating the provisions of NRS Chapter 281, continue his employment and complete the fiduciary obligations for which he assumed responsibility in a personal capacity as trustee, personal representative or guardian before he was elected Public Administrator/Public Guardian and assumed public office.
2. Public Officer may, without violating the provision of NRS Chapter 281, undertake fiduciary duties as executor or personal representative in a personal capacity in those cases where he was nominated in a will in his individual/personal capacity before he was elected Public Administrator/Public Guardian and the decedent died after he was elected and assumed public office as Public Administrator/Public Guardian.
3. Public Officer may not, without violating the provision of NRS Chapter 281, undertake the duties of trustee in his personal capacity in cases where he was nominated as successor trustee of a trust in his individual/personal capacity by the settlor or a prior trustee of the trust before he was elected Public Administrator/Public Guardian and the trust became ready for administration after he assumed public office. The settlor or prior trustee could have named another trustee after Public Officer was elected Public Administrator/Public Guardian and before the trust became ready for administration, and Public Officer can decline to serve as trustee and the law or the trust document ostensibly provides a means to name an alternate trustee.
4. Public Officer may not, without violating the provision of NRS Chapter 281, undertake the duties of guardian of persons and/or property in cases where he was nominated in his individual/personal capacity by the family of a proposed ward after he was elected Public Administrator/Public Guardian and assumed public office.

Public Officer potentially faces a difficult choice: (a) continue in public service as County Public Administrator/Public Guardian, or (b) benefit his private interest and/or honor his personal obligation to family and friends. His choice to continue to serve as County Public Administrator/Public Guardian will require that he decline future opportunities to provide like services in a private capacity for pecuniary benefit.

**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 29, 2001

NEVADA COMMISSION ON ETHICS

By: PETER C. BERNHARD, Chairman

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

[\[2\]](#) See, Abstract of Commission Advisory Opinion No. 99-57, dated May 19, 2000.