

**Advisory Opinion No. 01-17**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF**

**MICHAEL ALBIN, Tax Administrator I, Nevada Department of Motor Vehicles and Public Safety**

This matter came before a quorum<sup>[1]</sup> of the Nevada Commission on Ethics (hereinafter the "Commission") in open session on May 17, 2001, on the request for advisory opinion filed by Michael Albin, Tax Administrator 1, Nevada Department of Motor Vehicles and Public Safety (hereinafter "DMVPS"), pursuant to NRS 281.236, Subsections 3 and 4. NRS 281.236 makes no provision for a confidential hearing. Notice of the hearing was properly served and posted in accord with the Nevada Open Meeting Law.

Mr. Albin intends to resign his position with DMVPS and seeks an advisory opinion from the Commission regarding whether the provisions of NRS 281.236, Subsection 3, would prohibit him from accepting an employment opportunity offered to him by Lockheed Martin Corporation.

Mr. Albin appeared in person, was sworn in as a witness, and testified before the Commission.

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. At the time he filed a request for an advisory opinion with the Commission, Mr. Albin was employed by DMVPS's Fuel Tax and Licensing Units as a Tax Administrator I. The Fuel Tax Unit collects all special fuel taxes in Nevada. The Licensing Unit licenses all motor vehicles over 26,000 pounds in Nevada. Mr. Albin worked for DMVPS continuously from December 1984 to May 4, 2001, when he left the employ of the DMVPS.
2. Lockheed Martin Corporation is engaged in the conception, research, design, development, manufacture, integration and operation of advanced technology systems, products and services. Under contract with DMVPS, Lockheed Martin Corporation is a vendor which supplies to DMVPS computer technology, equipment, and service (including contracts involving a fuel tracking system for the Fuel Tax Unit, a system for electronic credentialing for the Licensing Unit, a financial interface for accounting systems, and the Motor Carrier Division's registration system).
3. Mr. Albin's responsibilities as Tax Administrator I with DMVPS included delegating work assignments to staff, interpreting policies and procedures, making minor changes to operating procedures to increase efficiency, following federal and state regulations, statutes, and department guidelines. He also had supervision responsibility for the fuel tracking system, the system for electronic credentialing, and the financial interface between Lockheed Martin and the department's accounting systems.
4. Mr. Albin was not involved in the negotiation or execution of any contract between DMVPS and Lockheed Martin.
5. DMVPS does not in any way regulate the operations of Lockheed Martin.
6. Lockheed Martin's corporate headquarters are located in Washington, D.C. The corporation's Aerospace Division has an office in Fallon, Nevada; and its Information Management Services Division has an office in Phoenix, Arizona.
7. On April 17, 2001, Mr. Albin was offered employment by Lockheed Martin Corporation's Information Management Services Division in Phoenix, Arizona. Mr. Albin's proposed employment will begin May 21, 2001, and will involve the marketing of a motor fuel tracking system. Lockheed Martin Corporation's Information Management Services Division has no presence in Nevada.

## CONCLUSIONS OF LAW

1. Mr. Albin 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

NRS 281.236, Subsection 3, prohibits a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the executive branch of government from employing a former public officer or employee of the agency, except a clerical employee, for one (1) year after the termination of his service or period of employment if- (a) his principal duties included the formulation of 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.

NRS 281.236, Subsection 4, allows a public officer or employee otherwise prohibited from subsequent employment pursuant to NRS 281.236, Subsection 3, to request the Commission 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 and, if so, authorizes the Commission to issue an opinion to that effect and grant such relief.

The facts presented in this matter establish that Lockheed Martin Corporation's activities are not regulated by the Nevada Department of Motor Vehicles and Public Safety (DMVPS). Therefore, the proposed employment arrangement between Mr. Albin, a former employee of DMVPS, and Lockheed Martin Corporation's Information Management Services Division in Phoenix, Arizona, does not fall within the provisions of, and is not prohibited by, NRS 281.236, Subsection 3.

Further, even if the facts of this matter did implicate the provisions of NRS 281.236, Subsection 3, it appears that those provisions would not apply to Mr. Albin because he was employed by DWPS (a department of the executive branch of government) on or before July 12, 1993, and did not thereafter serve as an officer or employee of another agency, division or department of the executive branch of government for which subsequent employment is restricted pursuant to NRS 281.236, Subsection 3. (See, Chapter 597, Statutes of Nevada 1993, which contains the "grandfather" provision language not included in NRS.)

**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 20, 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.