

Abstract of Advisory Opinion No. 02-01
IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF
Public Officer, Member, State Board

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") on February 7, 2002, on the request for advisory opinion filed by Public Officer, member of a State 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 in person, was sworn and presented testimony. The underlying Advisory Opinion herein is confidential pursuant to NRS 281.511, Subsection 5(c).

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Public Officer is a member of a State Board (the "Board").
2. The State of Nevada has announced an open competitive recruitment for a full-time position in a State of Nevada Department (the "Department").
3. Public Officer holds a valid license in Nevada and meets the qualifications for the advertised position and is considering applying for the position.
4. The position in question works under the direction of one of the Department's Directors.
5. The Director reports to one of the Department's deputy administrators.
6. The Department's deputy administrators are appointed by and report to the Department's administrator.
7. The Department's administrator executes, directs, and supervises the administrative, technical and procedural activities of the Department in accordance with policies prescribed by the Board.
8. The Board appoints the administrator and evaluates the administrator's performance. The Board may remove the administrator from office for good cause.
9. The Board approves all personnel positions for the Department.
10. The Board proposes the Department's annual budget.
11. The Board has the power to revoke relevant licenses.

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 majority vote, the Commission renders the following Opinion:

OPINION

It is the Commission's opinion that should Public Officer choose to seek the advertised position with the Department,

both her candidacy and, if she is selected as the successful candidate, her appointment to that position may implicate one or more of the prohibitions of the provisions of NRS Chapter 281, Nevada's Ethics in Government Law. [\[1\]](#)

Nevada's Ethics in Government Law is concerned with situations involving public officers and public employees that create appearances of impropriety and conflicts of interest as well as actual impropriety and conflicts.[\[2\]](#) The specific circumstances proposed by Public Officer herein create the potential for her to become the boss (i.e., a member of the Board) of the boss (i.e., the administrator) of the boss (i.e., a deputy administrator) of her boss (i.e., a Department director) – a situation which could put Public Officer at risk of creating at least an appearance of impropriety and/or a conflict of interest and the potential for third-party allegations against Public Officer of ethical violations under NRS Chapter 281.

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: March 21, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

[\[1\]](#) The Commission notes particularly the provisions of [NRS 281.230\(1\)](#) and [NRS 281.481\(2\)](#). NRS 281.230 prohibits a State of Nevada public officer from receiving, in any manner, directly or indirectly, personal profit or compensation of any kind resulting from any contract or other significant transaction in which the employing public entity is in any way directly interested or affected. NRS 281.481(2) prohibits a public officer from seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to department from the faithful and impartial discharge of his public duties. By serving as both a member of the Board and an employee of the Department, Public Officer may create the type of compensatory relationship prohibited by NRS 281.230(1) and could be perceived as using his/her position on the Board to affect his/her interests in the position with the Department in violation of NRS 281.481(2). See also, NCOE [Opinion No. 98-71](#).

[\[2\]](#) See, NCOE [Abstract of Advisory Opinion No. 99-57](#).