

Abstract of Advisory Opinion No. 03-03
IN THE MATTER OF THE REQUEST FOR ADVISORY OPINION OF
PUBLIC OFFICER, Member, a State Commission.

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on the confidential request for advisory opinion filed pursuant to NRS 281.511, Subsection 1, by Public Officer, Member, a State Commission.

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 was sworn and presented testimony. The Advisory Opinion in this matter is confidential pursuant to NRS 281.511, Subsection 5(c).

Public Officer requests the Commission's advisory opinion determining whether he may, while serving as a member of the a State Commission, apply for the position of executive director of that commission and, if offered the position, accept it without violating the provisions of NRS Chapter 281. Public Officer understands that he may not concurrently serve as both a member of the commission and its executive director.

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 an appointed member of the State Commission. He has served in that capacity for almost three years.
2. The members of the State Commission are all appointed by the Governor. Statute defines specific qualifications for each member of the State Commission.
3. The members of the State Commission appoint the commission's executive director, who serves in the unclassified service of the state and at the pleasure of the State Commission.
4. The position of executive director for the State Commission is presently vacant and has been vacant for approximately one year.
5. Public Officer would like to apply for, and, if selected, accept the position of executive director for the State Commission.

CONCLUSIONS OF LAW

1. In his capacity as an appointed member of the State Commission, Public Officer is a "public officer" pursuant to NRS 281.4365.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and unanimously approved, the Commission renders the following Opinion:

OPINION

Although the Ethics in Government law and other provisions of NRS Chapter 281 are intended to prevent public officers and employees from becoming involved in situations generating conflicts between private and public interests so as to preserve and enhance impartiality of public officers and faith in the integrity of government (see, NRS 281.421), and certain specific provisions of NRS 281.481 prohibit a public officer from using his public office for private gain (see, e.g., NRS 281.481, Subsections 2 & 10), nothing in NRS Chapter 281 expressly prohibits a public officer from being a candidate for appointment to another public position while serving as a public officer.

Further, although NRS Chapter 281 includes provisions requiring a "cooling-off" period under certain circumstances when a person leaves public office (see, NRS 281.236), the clear objective of that statute is to prohibit public officers from capitalizing on their public role to further private sector employability. In considering the provisions of NRS 281.236, the Commission has previously opined that it would appear that public employment of a former public officer would actually benefit and even further the public interest by bringing to the position depth of background, experience, and expertise. See, Commission Advisory Opinion No. 01-05.

Therefore, Public Officer's candidacy for the position of executive director of the State Commission while simultaneously serving as a member of the body that appoints the executive director (the State Commission) would not appear to violate NRS 281.236 or any other specific provision of NRS Chapter 281 under the specific facts herein. However, it may create the appearance of impropriety and put Public Officer's public duties into conflict with his private interests.

If Public Officer desires to submit himself as a candidate for the staff position of executive director of the State Commission, he must first resign his position as a member of State Commission.

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: May 3, 2003.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman