



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Frank R. Woodbeck**, Director of
Las Vegas Operations, Nevada Commission
on Economic Development,

Request for Opinion No. 09-71A

Public Employee. /

OPINION

I. STATEMENT OF THE CASE

Public employee Frank R. Woodbeck ("Woodbeck") requested this confidential advisory opinion¹ from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his present and anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum² of the Commission heard this matter on November 12 and December 11, 2009. Woodbeck appeared in person and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission deliberated and orally advised Woodbeck of its decision that he did not violate the Ethics Law when he accepted full-time employment with a state agency while working under contract for another state agency, but cautioned him that any changes to his employment situation may result in future ethical violations.³ The Commission now renders this formal written Opinion stating its findings of fact and conclusions of law.

¹ After the hearings in this matter, Woodbeck waived the confidentiality of this Opinion.

² The following Commissioners participated in this opinion: Chairman George M. Keele, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, Paul H. Lamboley, Esq., John W. Marvel, and John T. Moran, III, Esq.

³ See Footnote 6. Commissioner Lamboley voted against the majority's determination on grounds that the evidence before the Commission established a nexus between Woodbeck's duties for the two state agencies; therefore, the continuation of his contractual arrangement would violate the Ethics Law while he served as a public employee.

The facts in this matter were obtained from documentary and testimonial evidence provided by Woodbeck. The Commission's findings of fact set forth below accept as true those facts presented by Woodbeck for the purposes of the advice offered in this Opinion. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this Opinion.

II. QUESTION PRESENTED

Woodbeck was working for a state agency through a contract with a private employment agency when he accepted employment with another state agency. He questions whether his employment situation creates any conflicts if he were to continue working for both agencies.

III. FINDINGS OF FACT

1. Frank Woodbeck is a former public officer who served as a Commissioner on the Nevada Commission on Economic Development ("NCED"), a part-time position.
2. While he was a Commissioner, Woodbeck started working for the Department of Employment Training and Rehabilitation ("DETR") in a temporary position for which he developed the job specifications.
3. Woodbeck works for DETR through a contract with the private employment agency Manpower. Woodbeck works for Manpower as a W-2 employee, thus DETR does not directly employ him.
4. Woodbeck's duties for DETR include the solicitation of grants, planning and training initiatives in green and renewable energy and the establishment of public/private partnerships which will bring the private sector employers in close alliance with DETR, NCED and the Nevada System of Higher Education, in order to solve the unemployment problems facing the State and move toward the green economy of the future.
5. Woodbeck later resigned from public office as a Commissioner to accept a full-time position with NCED as the Director of the Las Vegas Operations and Workforce Initiative.
6. As the Director of Las Vegas Operations for NCED, Woodbeck oversees all NCED Las Vegas operations including the Nevada Film Office, Federal Government Procurement Opportunities outreach to companies in Nevada, and the State office of Protocol and Global Investment. Specifically, he recruits companies to Nevada with an emphasis on green and renewable energy to southern Nevada and positions assets in southern Nevada for these companies, including tax abatements and deferrals and workforce training which requires working with each company to assess the specific skills needed for the Nevada workforce they will hire.
7. NCED and DETR are unrelated state agencies in the Executive Branch, and Woodbeck's duties for NCED have no connection to

the services he performs for DETR.

8. Woodbeck submitted his RFO to the Commission after he resigned as a NCED Commissioner and before starting work as an employee for NCED. The Commission held two hearings and issued its oral ruling after Woodbeck became employed by NCED.
9. Woodbeck currently works for both NCED and DETR and the Director of each agency is fully aware of and supportive of the continuation of this arrangement.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Woodbeck works for two state agencies simultaneously via different employment status.⁴ He first began performing work for the State pursuant to a contract between Manpower and DETR by accepting a temporary position as a Manpower employee to perform specific duties for DETR. He later accepted a full-time position with NCED. He continues to work for DETR through Manpower while serving on the staff of NCED. Woodbeck submitted an RFO asking the Commission to advise him concerning the possible ethical implications of this employment situation.⁴

⁴ During the hearing of this matter, the Commission learned that Woodbeck was a Commissioner for NCED when he started working for DETR, that he was responsible for writing the job specifications for the DETR position, and that he worked for several months at DETR before

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020(1) provides:

1. It is hereby declared 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.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interest. The Ethics Law is concerned with situations involving public officers that create appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts, to promote integrity in public service. Accordingly, the Ethics Law requires the appropriate separation between public duties and private interests. Woodbeck, by virtue of his position with the State government, has specific public responsibilities that he must separate from his private interests to preserve the public trust. Whether conflicts exist between his public duties and his private

resigning as a Commissioner to accept full-time employment with NCED. Because Woodbeck's RFO did not seek advice regarding these activities, this Opinion offers no analysis of their ethical implications. Commissioner Lamboley believes those record facts are relevant and material to conclusions in this case.

employment interests must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances.

2) Contracting with Governmental Entity

The Ethics Law places certain restrictions on public employees with respect to other types of employment and contracts with governmental entities. NRS 281A.400(10) specifically prohibits a public employee from using his official position to "seek other employment or contracts." Also, NRS 281A.430 provides in pertinent part:

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

In addition, public employees face other constraints which may be implicated when they enter into a contract or employment relationship with one agency of the government while holding a position with another agency. Specifically, the Ethics Law prohibits public employees from: 1) seeking or accepting employment or economic opportunities which tend to influence the faithful discharge of their public duties (NRS 281A.400(1)); 2) using their position in government to secure unwarranted benefits for themselves (NRS 281A.400(2)); 3) accepting a salary or other compensation from a private source

for the performance of their public duties (NRS 281A.400(4)); or 4) using information acquired through their public duties or relationships to further their own pecuniary interests or that of their business (NRS 281A.400(5)).

Having considered Woodbeck's particular situation, we conclude that his actions did not violate either NRS 281A.430 or the enumerated provisions of NRS 281A.400. It appears to the Commission that Woodbeck did not technically become a public employee for purposes of the Ethics Law until he accepted full-time employment with NCED as a Director. He entered into the contract with DETR (through Manpower) before he was a public employee; therefore, the restrictions of NRS 281A.430(1) are not implicated.⁵

Although we held in our prior opinion *Matter of Bennett*, RFO No. 07-04A, that contracts entered into before becoming a public employee are not prohibited and can continue after a person commences public employment, the Commission is unwilling to allow Woodbeck to circumvent the strictures of the Ethics Law solely because of his indirect employment relationship with DETR (through Manpower). Accordingly, now that Woodbeck is serving as a Director for NCED while simultaneously providing services to DETR, if there is a nexus between his duties for NCED and DETR, the pre-existing contractual relationship would

⁵ See Footnote 3 – The Commission does not determine whether Woodbeck committed any ethical violations by entering into this contract while serving as a NCED Commissioner (a public officer).

be prohibited. Based on Woodbeck's assurances to the Commission that there is absolutely no connection between his duties at NCED and the services he performs for DETR, we find no such nexus and thus conclude that Woodbeck's employment arrangements are permissible.⁶

The Commission nonetheless cautions Woodbeck that despite our ruling that his current employment arrangement does not violate the Ethics Law, any changes to his situation may have ethical implications. In particular, we advise Woodbeck that even though his current indirect contractual relationship with DETR may continue, he is not at liberty to modify the existing arrangement or enter into new employment terms with DETR because he would now be serving as a public employee for NCED while entering into an employment-contractual relationship with a governmental entity (DETR – albeit through Manpower). The Commission therefore warns Woodbeck that if the services he provides to DETR change in any way to create any connection whatsoever to his duties as a public employee for NCED, this situation would then be prohibited by NRS 281A.430(1) and NRS 281A.400(10).

⁶ See Footnote 2. Commissioner Lamboley voted against this determination, instead finding a sufficient nexus between Woodbeck's duties as a Director for NCED and services to DETR in the areas of economic and business development and job creation/retention in Nevada which are interconnected such that his target responsibilities and objectives for each position are the same. Woodbeck serves as the common link between NCED and DETR activities governing attraction, training and retention for new business in Nevada.

3) Safe Harbor

NRS 281A.480(5) provides:

5. An action taken by a public officer or employee or former public officer or employee relating to this chapter is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that the public officer or employee satisfied all of the following requirements:

(a) The public officer or employee relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281A.290;

(b) The public officer or employee was unable, through no fault of the public officer or employee, to obtain an opinion from the Commission before the action was taken; and

(c) The public officer or employee took action that was not contrary to a prior published opinion issued by the Commission.

From the Commission's perspective, it would have been preferable for Woodbeck to have awaited our hearing of this matter before moving ahead and accepting public employment with NCED. We nonetheless commend Woodbeck for seeking our advice concerning the ethical implications of his employment situation. However, had the Commission found that such an

employment relationship with NCED and DETR were impermissible under the Ethics Law, Woodbeck could have been subject to an ethics complaint alleging a willful violation of the Ethics Law. Woodbeck may have been able to satisfy the criteria of the safe harbor provisions protecting him from a willful violation as provided in NRS 281A.480(5).

The Commission hereby encourages all public employees and officers to submit requests for advisory opinions concerning their past, present or future conduct. We also remind them that their proactive requests for ethical guidance remain confidential and may also afford them protections under the safe harbor provisions of NRS 281A.480(5), if they satisfy the requirements of relying upon the advice of the public entity's legal counsel or upon the Ethic's Manual published by the Commission, obtaining an opinion from the Commission **before** the action is taken, and not acting contrary to a prior published opinion issued by the Commission. (Emphasis added).

V. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Woodbeck was a "public employee" as defined by NRS 281A.150.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. Woodbeck's simultaneous employment with DETR and NCED does not violate NRS 281A.430 or any of the provisions of NRS 281A.400, because Woodbeck was not a public employee at the time he indirectly contracted to perform services for DETR and there is no nexus between his current or past duties at NCED and his position with DETR.

Dated this 18th day of July, 2012.

NEVADA COMMISSION ON ETHICS

By: Erik Beyer
Erik Beyer⁷
Chairman

⁷ At the time this written opinion was issued, then-Chair Keele no longer served on the Commission. Therefore, current Chair Beyer signs this opinion on behalf of the Commission.