



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning
the Conduct of **Public Employee**,
High Level Attorney,
State Regulatory Body,

Request for Opinion No. 09-80A

Public Employee. /

OPINION

I. STATEMENT OF THE CASE

Public Employee requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his 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 quorum¹ of the Commission heard this matter on November 23, 2009. Public Employee 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 Public Employee of its decision that the

Ethics Law prohibits him from accepting employment with an entity regulated by State Regulatory Body within one year after leaving public employment.

Public Employee elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract in lieu of the full opinion.

II. QUESTION PRESENTED

Public Employee serves as a high level attorney for State Regulatory Body ("SRB"). He requests an opinion from the Commission regarding whether he may apply for and accept employment from a company regulated by SRB prior to the statutorily mandated one-year cooling-off period.

¹ The following Commissioners participated in this opinion: Chairman George M. Keele, Esq., and Commissioners Erik Beyer, Gregory J. Gale, CPA, John W. Marvel, and John T. Moran, III, Esq.

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Public Employee serves as a high level attorney for SRB and, as such, is involved in virtually all legal matters before SRB. He is interested in pursuing employment with Regulated Company, an entity regulated by SRB which has numerous and various matters pending before SRB at any time. Public Employee questions whether, under the Ethics Law, it is proper for him to apply for and accept a legal position with Regulated Company without complying with the one-year cooling-off period requirement. If he is subject to the cooling-off period of NRS 281A.550(3), Public Employee asks whether he is entitled to relief from the strict application of that provision.

B. RELEVANT STATUTES

1) Cooling-Off – Soliciting/ Accepting Employment

NRS 281A.550(3) provides:

3. In addition to the prohibitions set forth in subsections 1 and 2, and except as otherwise provided in subsections 4 and 6, a former public officer or employee of a board, commission, department, division or other agency of the Executive Department of State Government, except a clerical employee, shall not solicit or accept employment from a business or industry whose activities are governed by regulations adopted by the board, commission, department, division or other

agency for 1 year after the termination of the former public officer's or employee's service or period of employment if:

(a) The former public officer's or employee's principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year, the former public officer or employee 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 the former public officer or employee; or

(c) As a result of the former public officer's or employee's governmental service or employment, the former public officer or employee possesses knowledge of the trade secrets of a direct business competitor.

The Commission concludes that Public Employee is subject to the one-year cooling-off provision of NRS 281A.550(3). With the nature of his duties and responsibilities as a high level attorney, Public Employee directly performs activities, and also controls or influences decisions, that have a significant effect on both Regulated Company and the industry regulated by SRB. He holds a position with a high level of responsibility at SRB and, although the members of the SRB make the ultimate decisions, the legal advice he provides has substantial impact on those decisions, including numerous matters involving Regulated Company. Consequently, his activities are within the purview of NRS 281A.550(3)(b) and he therefore may not seek employment with

Regulated Company at this time or within one year after terminating his employment with SRB.

2) Cooling-Off – Soliciting/ Accepting Employment (EXCEPTION)

The Ethics Law provides for an exception from the one-year cooling-off provision of NRS 281A.550(3) in certain circumstances. Under NRS 281A.550(6), the Commission may grant relief from the strict application of NRS 281A.550(3) if it determines that such relief is not contrary to the best interests of the public, the ethical integrity of the State government, and the Ethics Law.

NRS 281A.550(6) provides:

6. A current or former public officer or employee may request that the Commission apply the relevant facts in that person's case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of subsection 3 or 5, as applicable, is not contrary to:

(a) The best interests of the public;

(b) The continued ethical integrity of the State Government or political subdivision, as applicable; and

(c) The provisions of this chapter,

- it may issue an opinion to that effect and grant such relief. The opinion of the Commission in such a case is final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held

in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the current or former public officer or employee.

The Commission determines that, due to his high level responsibilities at SRB, it is not in the public interest for Public Employee to resign from SRB and become employed by Regulated Company before the expiration of the one-year cooling-off period. Nor does such an arrangement promote the continued ethical integrity of State Government. Moreover, such an arrangement is contrary to the provisions of the Ethics Law, specifically NRS 281A.410(1)(b), which would prohibit Public Employee from representing or counseling Regulated Company upon any issues which were under consideration by SRB during Public Employee's employment. We therefore decline to grant Public Employee relief from the strict application of NRS 281A.550(3).

IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Public Employee 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. Public Employee's solicitation and/or acceptance of employment by Regulated Company before the expiration of the one-year cooling-

off period would violate NRS 281A.550(3).

4. Public Employee does not meet the exception requirements of NRS 281A.550(6).

Dated this 15th day of August, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman²

² At the time this written opinion was issued, then-Chair Keele no longer served on the Commission. Chairman Beyer signs this opinion on behalf of the participating commissioners.