



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Advisory Opinion by **Vincent G. Pirozzi, III**,
Fire Battalion Chief, Carson City Fire Department,
Carson City,
State of Nevada,

Advisory Opinion No. 10-32A

Public Employee.

OPINION

Public employee, Vincent G. Pirozzi, III (Pirozzi), requested this advisory opinion (Advisory Opinion) from the Nevada Commission on Ethics (Commission) pursuant to NRS 281A.440(1). A quorum¹ of the Commission heard this matter on June 10, 2010. Pirozzi appeared in person and provided sworn testimony. At the conclusion of the hearing, Pirozzi waived his right to keep the Commission's opinion confidential.

Pirozzi sought this Advisory Opinion from the Commission concerning the propriety of his past, present and future conduct as it relates to the Ethics in Government Law (Ethics Law) set forth in chapter 281A of the Nevada Revised Statutes (NRS). Pirozzi serves as a Fire Battalion Chief for the Carson City Fire Department ("Fire

Department") and plans to retire in approximately one month. Pirozzi questioned whether his development of a software program for use by the Fire Department during the term of his employment and pursuit of a contract with Carson City for use of the software after his retirement would have any consequences under the Ethics Law.

After fully considering Pirozzi's request and analyzing the facts, circumstances and testimony presented, the Commission deliberated and orally advised Pirozzi of its decision in the matter. The Commission now renders this written Opinion.

The facts in this matter were provided by Pirozzi. Facts and circumstances that differ from those considered by the Commission in this Advisory Opinion may result in a different opinion.

¹ The following Commissioners participated in this opinion: Vice Chairman Beyer and Commissioners Gale, Groover, Lamboley, Marvel and Shaw.

I. FINDINGS OF FACT

1. Vincent G. Pirozzi, III (Pirozzi), is a public employee of Carson City serving as a Fire Battalion Chief for the Carson City Fire Department.
2. Pirozzi will retire from employment on or about July 9, 2010.
3. During his employment with the Fire Department, Pirozzi developed, maintained and administered a software program which the Department implemented and utilizes for its daily staffing and record-keeping purposes.
4. Pirozzi developed, maintained and administered the software program at the request of the City, during his personal time and with his own equipment. Pirozzi received no remuneration for these services.
5. The software program tracks and reports employee schedules and payroll, including staff assignments, premium pay schedules and overtime for the entire Fire Department. The program is designed for the specialized and unique needs of the Fire Department, and is not transferable to another City department or any other general fire department.
6. Without the use of Pirozzi's software program, the Fire Department would need to purchase a new software program at a substantial cost, likely in excess of \$75,000.
7. Pirozzi estimates that his software program has a value of \$7,500 to \$10,000 and is willing to offer it to the City for \$7,500 plus the cost of its administration provided by Pirozzi in the future.

8. When the City asked Pirozzi to develop and administer the program, it anticipated purchasing the program upon Pirozzi's separation from public service. With his approaching retirement, the City, through the Fire Department, began to inquire about Pirozzi entering into a contract to sell the program and to agree to administer the program for the Department after his retirement.

II. DISCUSSION

Pirozzi requested advice as it relates to his past and present conduct as a public employee and his future conduct as a former public employee after retirement. Pirozzi developed the software program during his personal time with his own equipment and received no remuneration from the City for this service. Pirozzi is interested in selling his software program to the City. However, he does not expect to negotiate the terms or enter into the contract until after he retires. Consequently, Pirozzi requested advice regarding any provisions of the Ethics Law which may affect his actions or intentions regarding the contract.

Because Pirozzi received no remuneration for developing and administering the software program with his personal time and equipment and is not currently negotiating or entering into the contract, no past or present actions by Pirozzi implicate the Ethics Law. However, after his retirement, Pirozzi will be a former public employee subject to the "cooling off" provisions of the Ethics Law. The Ethics Law prohibits, for a period of one year, certain employment, contracts and representations by a former public employee or officer in his private capacity as it relates to former public service.

Generally, the “cooling-off” provisions are intended to discourage former public employees from benefitting from their public service in a private capacity. Under limited circumstances, such as those presented by Pirozzi, the Ethics Law does not prohibit private endeavors.

A. Past Conduct

Pirozzi is a public employee who has developed and administered a software program for use by the Fire Department. However, Pirozzi voluntarily performed this service during his personal time and with his own equipment. Pirozzi was not required to develop the program or administer it for the Department and has not received any remuneration or special benefits for his services related to the software program.

Over the course of several years, Pirozzi customized the program for the specialized needs of the Fire Department, separate and distinct from a program that could be used by any other City department or any other general fire department. Pirozzi’s past conduct of developing and administering the software program does not violate any provisions of the Ethics Law because Pirozzi received no benefit in his private capacity by virtue of his public position.

B. Present Conduct

Recognizing Pirozzi’s pending retirement, the Department acknowledged its reliance on the software program and asked Pirozzi to enter into a contract to sell the program and continue to administer it for the City. Pirozzi has neither negotiated the terms nor entered into the contract while serving as a public employee. Instead, Pirozzi intends to negotiate the terms and engage in the contract after his separation from public service. Therefore, Pirozzi has not violated

the prohibitions against public employees negotiating or entering into contracts with governmental entities set forth in NRS 281A.400(3) or 281A.430(1).

1. Negotiating/Executing Contract with Government

NRS 281A.400(3) provides:

A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

Pirozzi testified that he did not intend to negotiate or execute any contract with Carson City until after he retires from City service. At the time of the expected negotiations concerning the purchase and administration of Pirozzi’s software program, Pirozzi will be a former public employee and no longer will serve as an agent of government. Therefore, Pirozzi is not presently negotiating or executing a contract as an agent of government in violation of NRS 281A.400(3).

2. Prohibited Contracts

NRS 281A.430(1) provides, in relevant 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.**

Again, Pirozzi does not intend to enter into a contract with the City to sell or administer his software program until after he leaves public service. Therefore, Pirozzi has not entered into a contract with a governmental entity and has not violated NRS 281A.430(1).

C. Future Conduct

Pirozzi's future intentions and actions concerning contracting with the City to sell his software program and administer the program during his retirement are governed by the cooling-off provisions.

1. Cooling Off – Representing or Counseling

NRS 281A.410(1)(b) provides, in relevant part:

In addition to the requirements of the code of ethical standards:

1. If a **public** officer or **employee serves in** a state agency of the Executive Department or an **agency of any** county, **city** or other political subdivision, **the public** officer or **employee: . . .**

(b) **If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer's or employee's service.** As used in this paragraph, **"issue"** includes a case, proceeding, application, **contract** or determination, but does not include the proposal or consideration of

legislative measures or administrative regulations.

The contract to sell and administer Pirozzi's software program is an "issue" under consideration by the City while Pirozzi is employed by the City. However, Pirozzi does not intend to represent or counsel any private persons for compensation regarding the contract. Rather, Pirozzi will sell the program and personally administer the program on behalf of the Fire Department. Therefore, NRS 281A.410(1)(b) does not prohibit Pirozzi from entering into a contract with the City to sell and administer his software program.

2. Cooling Off – Accepting Employment

NRS 281A.550(5) provides:

Except as otherwise provided in subsection 6, a **former public officer or employee of** the State or **a political subdivision**, except a clerical employee, **shall not solicit or accept employment** from a person to whom a **contract for supplies, materials, equipment or services was awarded by the State or political subdivision**, as applicable, for **1 year after the termination of the officer's or employee's service or period of employment, if:**

(a) The amount of the contract exceeded \$25,000;

(b) The **contract was awarded** within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment; **and**

(c) The position held by the former public officer or employee **at the time the contract was awarded** allowed the former public officer or **employee to affect or influence the awarding** of the contract.

Based on Pirozzi's estimate, the software program is worth less than \$10,000, far short of the required \$25,000 to be subject to this statute. However, even if the ultimate value of the program or terms of the contract exceed the minimum \$25,000 requirement, Pirozzi and the City do not intend to enter into the contract until after the termination of Pirozzi's employment.

As a result, the contract will not have been awarded within the 12-month period immediately preceding the termination of Pirozzi's employment and Pirozzi will not have been in a position to affect or influence the awarding of the contract through his position with the City. The provisions of the statute are conjunctive and the requirements of paragraphs (b) and (c) are not satisfied. Therefore, this statute does not apply to Pirozzi's circumstances.

III. CONCLUSIONS OF LAW


1. At all times relevant to the hearing of this matter, Pirozzi was a "public employee," as defined by NRS 281A.160. With respect to advice regarding his future conduct after retirement, Pirozzi will be a "former public employee," as defined in NRS 281A.180.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. Pirozzi's past conduct of developing and administering the software program do not violate any provisions of the Ethics Law because Pirozzi did not benefit in his private capacity by virtue of his public position. Pirozzi performed the services voluntarily during his personal time with his own equipment and did not receive any remuneration from the City.
4. Because Pirozzi intends to delay negotiating and engaging in the contract until after his separation from public service, Pirozzi has not presently violated the provisions which prohibit public employees from negotiating or entering into contracts with governmental entities, as prohibited by NRS 281A.400(3) or 281A.430(1).
5. Based on the language and intent of the "cooling-off" provisions set forth in NRS 281A.410(1)(b) and 281A.550(5), Pirozzi would not violate the Ethics Law by entering into a contract with the City to sell and administer his software program for the Fire Department after his retirement.
6. Pirozzi's intentions to enter into a contract with the City to sell and administer his software program to the Fire Department do not constitute representing or counseling a private person for compensation. Therefore, Pirozzi's intended services would not violate NRS 281A.410(1)(b).
7. The amount of the contract is not intended to exceed \$25,000. However, even if the amount of the contract does ultimately exceed this minimum requirement, the contract will not be issued within the 12-month period immediately preceding the termination of Pirozzi's service with the City, and,

because the contract will not have been awarded, Pirozzi will not have been in a position to affect or influence the awarding of the contract. Therefore, NRS 281A.550 is not applicable to Pirozzi's circumstances.

Dated this 18th day of October, 2010.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer, Vice-Chairman
Presiding Officer