



**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 OFFICER**,  
Political Subdivision,  
State of Nevada,

**Request for Opinion No. 10-35A**

Public Officer.  
\_\_\_\_\_ /

**OPINION**

Public Officer requested this confidential advisory opinion (Advisory Opinion) from the Nevada Commission on Ethics (Commission) pursuant to NRS 281A.440(1) regarding the propriety of his future conduct as it relates to the Ethics in Government Law (Ethics Law) set forth in chapter 281A of NRS. A quorum<sup>1</sup> of the Commission heard this matter on June 10, 2010. Public Officer appeared in person and provided sworn testimony.

Public Officer, an elected official in a political subdivision of the State of Nevada, is charged with carrying out certain duties on behalf of the political subdivision. Public Officer questions whether hiring his sibling-in-law as a member of his staff would violate the Ethics Law.

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

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

**I. FINDINGS OF FACT**

1. Public Officer is an elected official for a political subdivision of the State of Nevada. Public Officer is charged with carrying out certain duties for the political subdivision.

<sup>1</sup> The following Commissioners participated in this opinion: Beyer, Gale, Groover, Lamboley, Marvel and Shaw.

2. Pursuant to State law, the governing body of the political subdivision fixes Public Officer's compensation. As further authorized by State law, Public Officer may retain fees paid for certain services provided by Public Officer's Agency to pay for certain expenses of the Agency.
3. Pursuant to State law, the clerical and administrative employees of the Agency are employees of the political subdivision.
4. In addition to supervising the Agency's "political subdivision employees," Public Officer hires separate contract employees ("non-political subdivision employees") to carry out certain duties of the Agency, hereafter referred to as "Agency Contract Employees." These employees are not employed by the political subdivision. Rather, they are contract employees and serve within Public Officer's sole discretion to hire, discipline and terminate their employment. The Agency pays these employees through the fees generated by the services they provide to the Agency, including compensation and benefits.
5. Public Officer developed an internal policy whereby once each year Agency Contract Employees may bid on certain services they would prefer to be assigned. These employees enter their bids based on seniority.
6. The compensation for each Agency Contract Employee is based strictly and solely upon the amount of services he/she performs during a given pay period. Such employees may have more opportunity to perform services based upon the assignments, which may result in higher compensation.
7. Public Officer's sibling-in-law (spouse's sibling) is seeking a position as an Agency Contract Employee. As such, the sibling-in-law would be required to perform job duties in the same manner and be held to the same standards as all other similarly situated employees, including bidding on certain preferred services based on seniority and being available and accountable to perform those services.

## **II. DISCUSSION**

The Commission considers whether Public Officer would have a conflict of interest or create an appearance of impropriety if he hired his sibling-in-law. Specifically, the Commission determines whether Public Officer would provide an unwarranted privilege, preference or advantage to his sibling-in-law, a person to whom he has a commitment in a private capacity, by hiring him/her to serve as an Agency Contract Employee for compensation.

The Commission is mindful of the provisions outside of its jurisdiction which prohibit public officers from employing, in any capacity on behalf of the public entity served by the public officer, any person related to that officer. Thus, the Commission cautions Public Officer to separately consider the interpretation and effect of any anti-nepotism statute on his circumstances.

## A. Public Policy

NRS 281A.020(1), provides the relevant public policy of the Ethics Law as follows:

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.

Based on the literal language and public policy of the statute, Public Officer would violate the provisions of NRS 281A.020(1)(b) if he hired his sibling-in-law because it would constitute a conflict of interest between his private interests in securing employment and income for a person to whom he has a commitment in a private capacity, and the interests of the general public for whom the Public Officer has been elected to serve and ensure that Agency duties are carried out and public funds are used fairly and impartially. Therefore, under the provisions of this statute, the Commission advises Public Officer not to hire his sibling-in-law.

## B. Unwarranted Preferences/Privileges

NRS 281A.400(2) provides:

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or

employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

### 1. Commitment in Private Capacity

Pursuant to NRS 281A.420(8), a public officer has a *per se* commitment in a private capacity to the interests of a person to whom he is related within the third degree of consanguinity or affinity. To be related by affinity means to be related through a legal relationship such as marriage. Here, the sibling-in-law is the sibling of Public Officer's spouse and therefore is related to Public Officer through marriage.

NAC 281A.310 defines and calculates relationships by affinity (marriage) within the third degree. The degree of relationship to the public officer by affinity is the same as the degree of relationship to the public officer's spouse by blood relationship. In this case, the sibling of Public Officer's spouse is related to the spouse within the second degree of consanguinity and is therefore related to Public Officer within the second degree of affinity. Thus, Public Officer has a commitment in a private capacity to the interests of his spouse's sibling.

In the circumstances presented, the sibling-in-law has an interest in obtaining employment and receiving compensation

and benefits for such employment. Due to Public Officer's commitment to his sibling-in-law's interests, Public Officer is prohibited from using his position as the Public Officer to secure an unwarranted privilege, preference or exemption for his sibling-in-law.

## **2. Use of Government Position to Secure Unwarranted Privilege**

Public Officer has the authority to hire, discipline and terminate the employment of any Agency Contract Employee. While the Public Officer maintains a list of individuals interested in serving as Agency Contract Employees, Public Officer alone has full authority to offer that employment. Further, Public Officer establishes and maintains the policies which authorize the manner in which work is assigned to Agency Contract Employees. Therefore, Public Officer's authority regarding hiring, discipline, termination and internal policies establishes that Public Officer would use his position in government to hire an Agency Contract Employee.

Public Officer offered no facts to justify why his sibling-in-law was a more appropriate or reasonable candidate than any other person who has applied for the position. Public Officer would have a direct conflict of interest and would create an appearance of impropriety by hiring his relative.

Due to Public Officer's unilateral authority to set policies governing assignments and to hire, discipline and fire Agency Contract Employees, Public Officer would improperly use his position as Public Officer to provide an unwarranted privilege to a person to whom he has a commitment in a private capacity. Therefore, Public Officer

would be in violation of NRS 281A.400(2) if he hired his sibling-in-law.

## **C. Anti-Nepotism Statute**

NRS 281.210 provides, in relevant part:

1. Except as otherwise provided in this section, it is unlawful for any person acting as a school trustee, state, township, municipal or county officer, or as an employing authority of the Nevada System of Higher Education, any school district or of the State, any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the State of Nevada, or any county, township, municipality or school district thereof, or the Nevada System of Higher Education, any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

...

3. Nothing in this section:

(a) Prevents any officer in this State, employed under a flat salary, from employing any suitable person to assist in any such employment, when the payment for the service is met out of the personal money of the officer.

Nevada law generally prohibits public officers from employing certain relatives. While the Commission does not have jurisdiction to interpret or enforce this law, it appears to the Commission that Public Officer's proposed actions of hiring his sibling-in-law would implicate the provisions of this anti-nepotism law and the Commission therefore advises Public Officer to seek declaratory relief or legal advice from the appropriate authority

regarding the propriety of hiring his sibling-in-law pursuant to this statute.

In seeking an opinion from the appropriate authority, the Commission notes that NRS 281.210 formerly fell under the Commission's jurisdiction. During that time, the Commission issued two opinions addressing the anti-nepotism provision in *Abstract Opinion RFO 02-13* and *In re Nevin, RFO 95-58*. The Commission determined that a person who had ultimate hiring authority for a public entity violated NRS 281.210 if he employed a person that fell within the third degree of consanguinity or affinity of that person.

Additionally, in *Attorney General Opinion No. 2000-26* it was observed that the anti-nepotism law was designed by the Legislature in order to avoid "packing of state employment with relatives for those having the appointing power."

The provisions of NRS 281.210 impose criminal sanctions separate and distinct from any administrative sanctions imposed by the Commission for willful violations of the Ethics Law. Consequently, even if the Commission found the proposed action of the Public Officer hiring his relative to be permissible under the Ethics Law, the Commission is not inclined to authorize conduct pursuant to the Ethics Law which is otherwise prohibited by Nevada law.

### **III. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Public Officer was a "public officer," as defined in NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.

3. Pursuant to NRS 281A.420(8) and NAC 281A.310, Public Officer has a commitment in a private capacity to the interests of his sibling-in-law (spouse's sibling), who is related to him/her within the third degree of affinity.
4. Public Officer would violate NRS 281A.020(1) if he hired his sibling-in-law as an Agency Contract Employee because such employment creates a conflict of interest between Public Officer's private interests in securing employment for his relative and the interests of the public in carrying out public duties and ensuring public funds are used fairly and impartially.
5. Public Officer would violate NRS 281A.400(2) if he hired his sibling-in-law to be an Agency Contract Employee because he would be using his position as Public Officer to provide an unwarranted privilege to a person with whom he has a commitment in a private capacity.

Dated this 15<sup>th</sup> day of Dec., 2011.

NEVADA COMMISSION ON ETHICS

By:   
Erik Beyer, Chairman  
Presiding Officer