



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Advisory Opinion by **SANDRA FOLEY**,
Former Public Employee,
City of Las Vegas,
State of Nevada,

Advisory Opinion No. 10-39A

Former Public Employee.

OPINION

Former public employee, Sandra Foley (Foley), 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. Foley appeared in person and provided sworn testimony. At the conclusion of the hearing, Foley waived her right to keep the Commission's opinion confidential.

Foley sought an advisory opinion from the Commission on the propriety of her future conduct as it relates to the Ethics in Government Law (Ethics Law) set forth in chapter 281A of the Nevada Revised Statutes (NRS). Foley served as the former manager and operator of a City-managed tennis center. The City issued a request for

proposals (RFP) to privatize the management and operation of the tennis center. Foley asks the Commission to determine whether her pursuit of an employment position or partnership with a private firm or individual interested in bidding on the RFP would have any consequences under the Ethic Law.

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

The facts in this matter were provided by Foley. 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: Chairman Moran and Commissioners Beyer, Gale, Groover, Lamboley, Marvel and Shaw.

I. FINDINGS OF FACT

1. Sandra Foley is a former public employee of the City of Las Vegas ("City"). Foley was employed by the City as the Leisure Services Coordinator at the Amanda & Stacy Darling Memorial Tennis Center ("Tennis Center"). Foley was responsible for the management and operation of the Tennis Center.
2. In response to budget constraints, the City announced its decision to privatize the operation and management of the Tennis Center. On April 30, 2010, while Foley was still employed, the City posted the RFP for "qualified firms or individuals to submit written proposals to enter into a professional services contract to operate and manage the Darling Tennis Center" The privatization of the Tennis Center came as a surprise to Foley because of the Center's renowned financial success and reputation as a high quality tennis program.
3. As a result of its intention and effort to privatize the operation and management of the Tennis Center, the City gave Foley notice of its intent to terminate her employment as of June 1, 2010. However, Foley accepted an early separation agreement and terminated her employment on May 14, 2010.
4. The content of the City's RFP and the submittal process was prepared and will be administered by the City's Purchasing Department. Foley was not contacted or consulted regarding the development or administration of the RFP.
5. After the RFP was publicly posted, at least two individuals or firms contacted

Foley and expressed interest in pursuing a partnership with her to submit a proposal to manage and operate the Tennis Center, presumably based on Foley's prior experience with the Tennis Center. At least one of these contacts was made while Foley was still an employee. Acknowledging the City's prohibition concerning employees entering into contracts with the City, Foley accepted an early separation from the City on May 14, 2010 before pursuing the RFP in a private capacity.

6. After leaving her City position, Foley partnered with other individuals to create a limited liability company ("LLC") to submit a bid for the RFP. Foley will participate in the LLC as a principal by operating and managing the Tennis Center and the other members will contribute capital.

II. DISCUSSION

As a former public employee, Foley is subject to the "cooling off" provisions of the Ethics Law. Specifically, the Ethics Law prohibits, for a period of one year, certain employment, contracts and representations by former public employees or officers in their private capacity as it relates to their former public service.

In response to increasing budgetary constraints, the City is attempting to privatize the management and operation of various City-funded facilities and programs through an RFP process, including the Tennis Center. As a result of the privatization, many City employees are being separated from public employment.

By virtue of the expertise or experience public employees obtained from public service in the same industry, many of the

former public employees may or are expected to bid on the private operation or management of the facilities or programs or to apply for employment from the private entities who are awarded the contracts.

Generally, the “cooling-off” provisions are intended to discourage former public employees from benefitting from their former public service in their private capacity. Under limited circumstances, where the separation from public service is due to no actions of the employee, such as the circumstances presented by Foley, the Ethics Law does not prohibit such private endeavors.

A. 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 RFP and contract for private management and operation of the Tennis Center was an “issue” under consideration by the City while Foley was still employed by the City. However, the RFP was undertaken by the Purchasing Department of the City, an agency separate from the Tennis Center. Foley was never informed of or consulted about the existence or content of the RFP before it was posted.

In addition, Foley does not intend to represent or counsel any private persons for compensation regarding the proposed contract. During the short period between April 30, 2010, the date the RFP was posted, and her last day of employment on May 14, 2010, Foley was approached by at least one private individual or firm interested in partnering with Foley to submit a bid for the RFP. However, Foley ultimately declined that offer.

Instead, recognizing that the RFP signified the end of her public employment and acknowledging her special qualifications and knowledge of the Tennis Center, Foley accepted early termination from City employment to pursue private endeavors and to bid on the RFP. Foley is creating a limited liability company in partnership with other individuals and has not received any compensation or offered any counseling or representation for purposes of the bid. In her capacity for the LLC, Foley intends to serve as the manager of the Tennis Center and not represent or counsel anyone otherwise interested in managing and operating the Center.

The Ethics Law, in particular NRS 281A.410(1)(b), does not prohibit Foley from bidding on the RFP and entering into a

contract with the City to operate and manage the Tennis Center or serve as an employee of any entity which is otherwise awarded the contract. This provision is not intended to prohibit public employees whose service is terminated by a public entity in pursuit of privatization from pursuing contracts or employment in the private sector.

B. 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.

As a result of the timeline for the RFP, NRS 281A.550 is not applicable. The bids were not due to the City until June 15, 2010, after the termination of Foley's employment.

Therefore, the contract had not been awarded within the 12-month period immediately preceding the termination of Foley's employment and Foley was not in a position to affect or influence the awarding of the contract. 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 Foley's circumstances.

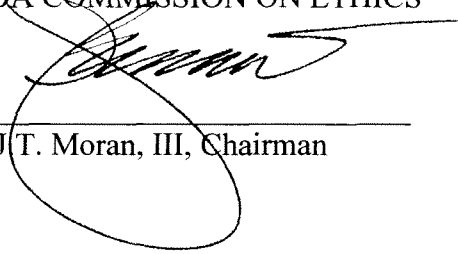
III. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Foley was a "former public employee," as defined by NRS 281A.160 and 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. Based on the language and intent of the "cooling off" provisions set forth in NRS 281A.410(1)(b) and 281A.550(5), Foley would not violate the Ethics Law by bidding on or entering into a Professional Services Agreement with the City. Likewise, if Foley is not awarded the contract in a principal business capacity, the statute does not restrict Foley from being employed by any entity which is otherwise awarded the contract.
4. Foley's efforts to bid on and enter into a contract in which she will serve as the manager and operator of the Tennis Center do not constitute representing or counseling a private person for compensation regarding the contract under consideration by the City while Foley was employed by the City. Therefore, Foley's efforts would not violate NRS 281A.410(1)(b).

5. The contract was not issued within the 12-month period immediately preceding the termination of Foley's service with the City, and, because the contract had not been awarded, Foley was not in a position to affect or influence the awarding of the contract. Therefore, NRS 281A.550 is inapplicable to Foley's circumstances.

Dated this 14TH day of October, 2010.

NEVADA COMMISSION ON ETHICS

By: 
J.T. Moran, III, Chairman