



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, State of Nevada,

Request for Opinion No. 10-66A

Public Employee. /

ABSTRACT OF OPINION

I. STATEMENT OF THE CASE

Public Employee requested a confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of her 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 October 18, 2010. Public Employee appeared 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 under

the Ethics Law she did not have a conflict of interest that would preclude her from accepting a position on the Board of a nonprofit organization.

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 is employed as the Acting Manager of the Public Services Division ("PSD"). Public Employee questions whether the Ethics Law would preclude her from serving on the Board of Directors of a nonprofit organization that is funded in part by grant monies administered by the PSD.

¹ The following Commissioners participated in this opinion: Vice-Chairman Erik Beyer and Commissioners Gregory J. Gale, CPA, George M. Keele, Esq., Paul H. Lamboley, Esq., John W. Marvel, and James M. Shaw.

III. DISCUSSION OF RELEVANT STATUTES AND ISSUES

A. ISSUES

Public Employee is a public employee for a Nevada government, serving as the Acting Manager of the PSD. PSD administers grant funds to nonprofits for certain services. In the past, PSD had administered such funds to the nonprofit "NPO" and NPO is expected to apply for additional funds in the future. In her private capacity, Public Employee is interested in serving on NPO's Board of Directors and questions whether it is proper for her to do so under the Ethics Law.

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.

The Ethics Law promotes the appropriate separation between public duties and private interests. As a public employee, Public Employee has public responsibilities

that she must separate from her private interests. Whether an improper conflict arises between her public duties as Acting Manager of PSD and her private interests in serving on NPO's Board must be considered in light of the provisions set forth in NRS 281A and as interpreted by applicable Commission precedent in similar circumstances.

2) Disclosure

NRS 281A.420 provides in pertinent part:

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

- without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure

must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

A person who sits on the Board of Directors of a corporation, whether non-profit or for-profit, has a fiduciary obligation to the corporation, which is a commitment to the interest of others. See *In re McCoy*, RFO No. 09-58A (2012); see also, *Matter of the Opinion Requests of Wishart and Sims*, Opinion No. 92-11 (1993). The Commission has determined that, under the facts and circumstances presented, the Ethics Law would not preclude Public Employee from serving as a volunteer member of the Board of Directors of NPO. If Public Employee ultimately does accept appointment to the Board of this nonprofit organization, however, she must disclose her service on the Board to the supervisory head of PSD. The disclosure must be in accord with the requirements of NRS 281A.420(1) whenever her department processes a request for funding NPO.

Public Employee indicated that certain funding requests by nonprofit entities are directly processed by her subordinates. Because NPO intends to apply for such funds in the future, the Commission recommends that Public Employee ensure that an internal mechanism is in place that allows for a similar disclosure of her potential conflict of interest to her subordinates.

3) Unwarranted Privileges or Advantages

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.

The Commission advises Public Employee that she must be cognizant that NRS 281A.400(2) prohibits her from using her public position to grant unwarranted privileges, preferences, exemptions or advantages for NPO. Because Public Employee's subordinates directly process certain funding requests, Public Employee must be proactive to avoid the perception that she is in a position to steer funding towards NPO. In this regard, the Commission recommends that Public Employee discuss with her superiors how best to ensure via internal policies and procedures that she is not involved in the final approval of requests from NPO for such funding and that checks and balances are in place to avoid that potential conflict.

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. If Public Employee accepts a position on the Board of Directors for NPO, she will have a commitment in a private capacity to the interests of NPO pursuant to NRS 281A.420(8).
4. Under NRS 281A.420(1), Public Employee must disclose her commitment in a private capacity to the interests of NPO to her

supervisor, and to whomever else may be the supervisory head of the PSD when matters involving NPO are pending before the Division, including requests for funding.

5. Under NRS 281A.400(2), Public Employee is advised to avoid situations in which she is deemed to be using her position with PSD to grant unwarranted preferences or advantages for NPO to the extent NPO seeks funding from the PSD.

Dated this 15th day of August, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman