



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **PATRICK WYNN**, Deputy Chief,
Investigations Division, Gaming Control Board,
State of Nevada,

Request for Opinion No. 10-70A

Public Officer. /

OPINION

Public employee Patrick Wynn requested a 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 NRS Chapter 281A. Wynn appeared before a quorum¹ of the Commission on November 9, 2010, and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission orally advised Wynn of its decision that, although the Ethics Law exempts

him from the cooling-off provisions of NRS 281A.550(3) regarding future employment, the exemption does not extend to NRS 281A.410(1)(b) and he is therefore prohibited from providing certain consulting services for one-year after terminating his public employment.

The Commission subsequently issued a letter to Wynn setting forth its Opinion. Wynn waived confidentiality with respect to this proceeding. Therefore, the Commission now publishes this letter as its written Opinion.²

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

² Section II, Discussion, in relevant form and substance, reproduces the Commission's letter to the requester.

I. QUESTION PRESENTED

Whether the cooling-off provisions set forth in NRS 281A.550(3) and 281A.410(1)(b) limit your ability to accept employment from an existing or prospective licensee regulated by the Gaming Control Board or to consult private persons or business entities before the Gaming Control Board or the Nevada Gaming Commission.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, upon retirement from your position as Deputy Chief of the Investigations Division of the Nevada Gaming Control Board ("Board"), from accepting employment from or providing consulting services to prospective or existing gaming licensees of the Board or the Nevada Gaming Commission ("NGC"). Specifically, you asked the Commission whether the cooling-off provisions set forth in NRS 281A.550(3) and 281A.410(1)(b) limit your ability to accept employment from an existing or prospective licensee regulated by the Board or to consult private persons or business entities as an enrolled agent or member of a compliance committee before the Board or NGC.

At the time of the hearing on this matter, you anticipated retirement at the end of 2010 and were considering private employment or consulting opportunities in your private capacity from businesses and industry regulated by the Board and NGC. As Deputy Chief, your duties included processing gaming license applications and reviewing the

attendant investigative reports for the Board and NGC.

The Commission determined that you are not subject to the one year cooling-off requirements set forth in NRS 281A.550(3). Specifically, NRS 281A.550(3) prohibits certain former public employees and officers of boards or commissions of the Executive Department of State Government (i.e., Gaming Control Board) from soliciting or accepting employment from a business or industry whose activities are governed by regulations adopted by the board or commission (i.e., gaming licensees or casinos) for one year after the termination of the public officer's or employee's service or period of employment. Such public employees and officers include those whose duties encompass formulation of policy in the regulations of the business or industry, performance of activities or control of agency actions which significantly affect the business or industry, or knowledge of trade secrets of direct business competitors.

The Legislature exempted from this one-year cooling-off provision (formerly NRS 281.236(3)) all affected officers or employees who were employed as of the date of enactment of the provision, or July 23, 1993. This exemption was transferred from NRS 281.236(3) to NRS 281A.550(3) during the 2009 legislative session. You were an employee of the Board prior to 1993 and therefore are exempt from the prohibitions against employment by the business or industry regulated by the Board. Accordingly, the Commission determined that you may accept employment from gaming licensees, including manufacturers and

distributors, after you retire from the Board.

Although you may immediately accept employment from any business or industry regulated by the Board, the Commission determined that NRS 281A.410(1)(b) prohibits you from providing certain consulting services. When the Legislature enacted NRS 281A.410(1)(b), it did not exempt existing public officers and employees from the one-year prohibition against accepting consulting agreements regarding issues that were before the public body or office while the officer or employee was employed. Specifically, NRS 281A.410(1)(b) prohibits a former public officer or employee of the Executive Department of State Government from representing and counseling a private person or business entity for compensation on any issue that was under consideration by the former agency during the officer's or employee's service.

As a result, the Commission determined that you may not, for compensation, represent or counsel (consult) a private person or business entity on any issue that was under consideration by the Board or NGC during your tenure with the Board. By way of example, the Commission suggested that issues under consideration by the Board would include pending gaming license applications, disciplinary complaints or licensing investigations. The Commission applied this restriction to any manner in which you might provide such consultation, including consultation as an enrolled agent before the Board or NGC, as a member of a compliance committee for a gaming licensee, or pursuant to a contract with an attorney who

represents a licensee. This restriction does not prohibit direct employment as described above.

The Commission further determined that you are not subject to the one-year cooling-off restriction for representation and counseling set forth in NRS 281A.410(1)(b) if the consulting involves an issue that was not under consideration by the Board or NGC during your employment, such as representing first-time gaming license applicants or existing licensees on issues that are submitted for consideration by the Board after your retirement.

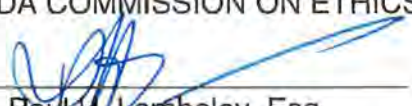
Finally, the Commission advised you to request further guidance from the Commission if you are uncertain whether a specific consulting arrangement may relate to an issue that was under consideration by the Board or NGC during your tenure with the Board.

The Commission's decision became effective on November 9, 2010.

Dated this 4th day of June, 2012.

NEVADA COMMISSION ON ETHICS

By:


Paul M. Lambole, Esq.
Vice Chair³

³ At the time this written opinion was issued, the presiding officer in this matter, then-Chair Moran, no longer served on the Commission. Current Chair Erik Beyer did not participate in this matter. Therefore, current Vice-Chair Paul Lambole signed this opinion on behalf of the participating Commissioners.

NRS 281A.550 Employment of certain former public officers and employees by regulated businesses prohibited; certain former public officers and employees prohibited from soliciting or accepting employment from certain persons contracting with State or local government; determination by Commission.

* * *

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

NRS 281A.410 Limitations on representing or counseling private persons before public agencies; disclosure required by certain public officers.

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.