



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 Commission, State of Nevada,

Request for Opinion No. 11-08A

Public Employee. /

**ABSTRACT OF OPINION**

A public employee ("PUBLIC EMPLOYEE") 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. PUBLIC EMPLOYEE appeared before a quorum<sup>1</sup> of the Commission on February 11, 2011, 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 PUBLIC EMPLOYEE of its decision that the Ethics Law does

not prohibit him from seeking or accepting a contract to sell, lease or license his property to certain private entities regulated by his public employer because his position with the State Commission does not have authority over decisions of regulated persons or entities. The Commission cautioned, however, that PUBLIC EMPLOYEE must protect the public trust and provide necessary disclosures to his supervisors regarding any contracts.

The Commission subsequently issued a letter to PUBLIC EMPLOYEE setting forth its decision. PUBLIC EMPLOYEE elected to retain confidentiality with respect to this proceeding pursuant to NRS 281A.440(1). Therefore, the Commission now publishes this abstract of the letter as its written Opinion.<sup>2</sup>

<sup>1</sup> The following Commissioners participated in this opinion: Vice-Chairman Erik Beyer, and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Paul H. Lamboley, Esq., and John W. Marvel.

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

## **I. QUESTION PRESENTED**

**Whether the Ethics Law prohibits you, as employee of a State Commission, from selling, leasing or licensing your private land to companies which may be regulated by that Commission.**

## **II. DISCUSSION**

You asked the Commission to determine whether the Ethics Law prohibits you, an employee of a State Commission ("STATE COMMISSION"), from selling, leasing or licensing your private land for use by companies interested in bringing their business to Nevada, some of which may include businesses regulated by STATE COMMISSION. The Commission rendered an opinion in this matter based on the documents presented in your request for opinion as well as your sworn factual testimony.

According to your testimony and documents, STATE COMMISSION regulates certain industry in Nevada. Specifically, STATE COMMISSION issues licenses and permits, conducts investigations, collects assessments to fund STATE COMMISSION's operations and performs audits. As an employee of STATE COMMISSION, you further testified that you have no discretion, authority or control over approvals, licenses, permits, investigations, collections, or audits. Rather, you testified that STATE COMMISSION has all final decision-making power pursuant to the NRS.

You further testified that while you do not have decision-making power regarding the permitting, licensing, inspections, assessments or audits of the regulated businesses, you do control the administrative functions of STATE COMMISSION, which may include discretion related to various matters and policies affecting the regulated industry in Nevada.

With regard to your private interests, you testified that you own a controlling interest and serve as a general partner in a limited partnership which owns real property in Nevada. You have been approached with a proposal to develop the property for various businesses interested in bringing their facilities to Nevada, some of which may include businesses regulated by STATE COMMISSION.

You first learned from a local development agency ("Agency") that several companies were interested in operating their businesses in Nevada and a professional site selector was hired to find an appropriate location. The original site sought for this project was located in another City. In the midst of negotiations with the other City, the interested companies learned they would be required to purchase the land and develop certain infrastructure. The proposal fell through when the requirements associated with the purchase of the property proved too expensive and cumbersome.

The companies remained interested in coming to Nevada and the site selector approached the Agency to

find a property in your City. The Agency was familiar with your land as appropriate for the companies' needs based on its zoning and infrastructure. After evaluating your land, the Agency contacted you regarding your interests. Upon learning of this potential interest in your property for this purpose, you contacted your supervisor with your concerns regarding potential conflicts of interest and he suggested that you obtain this opinion.

You testified that it was your understanding that certain of the companies interested in establishing their facilities on your property may be regulated by STATE COMMISSION. You also testified that you have had no knowledge of or contact with any businesses, regulated or not, which may be considering your land for the location of its facilities. In fact, you testified that the companies did not want to be identified and the Agency had not released that information.

Based on the information and testimony you provided, the Commission concluded that seeking or accepting a contract to sell, lease or license your property under the circumstances presented in your request would not violate the provisions of NRS 281A.020 or 281A.400(1) and (2). However, the Commission advised you to properly consider your duty to the public trust in your pursuit of such a contract and the disclosure and abstention provisions set forth in NRS 281A.420.

NRS 281A.020 provides the public policy of the State that all public officers and employees hold positions of public trust that must be protected and separated from their personal interests. The Commission counseled you regarding your obligation to consider any conflicts between your duty to the public regarding the regulated businesses and your interests in and commitments to your private property that has the potential to benefit from the regulated companies as you testified herein. Specifically, NRS 281A.020(1) states:

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.

To the extent that the public policy of the State reflects that there is a public trust and to the extent that you may have discretionary authority in various administrative or regulatory areas affecting the regulated businesses, the Commission recommends that you properly consider the nature of any future transaction and separate your private interests from your public duties to ensure that you do not act in any manner which improperly



benefits your private interests through the use of your public position.

NRS 281A.400(1) provides:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

The Commission determined that such a contract under the circumstances you described is not the type of "economic opportunity" that would tend to improperly influence you, or a reasonable person in your situation, to depart from the faithful and impartial discharge of your public duties as an employee of STATE COMMISSION. Based on the information you provided, your official duties do not include discretion or control related to assessing, licensing, investigating or regulating businesses in Nevada. Rather, the Commission accepted your testimony that your functions are administrative in nature and STATE COMMISSION has ultimate discretion and authority governing matters regulated by STATE COMMISSION. Therefore, the faithful discharge of your public responsibilities will not be impacted by the sale, lease or license of your private land for use by potential businesses regulated by STATE

COMMISSION. To the extent you may have discretion or authority in these areas, you should avoid conflicts through the disclosure and abstention provisions provided in NRS 281A.420 (see below).

NRS 281A.400(2) provides:

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 further determined that you would not be securing any unwarranted economic advantage or privilege through the use of your position by engaging in such a contract. By entering into a sale, lease or license of your private land under the record circumstances, it does not appear you would be using

your position as an employee to seek a personal, unwarranted economic advantage. Although you would likely secure a benefit for your pecuniary interests, there is no evidence that you have or would be using your position in any way to secure such a benefit, or that such a benefit would be unwarranted. Based upon the information you provided, the Agency (on behalf of the interested companies) approached you due to the location of your property. City X and the State of Nevada stand to attract business and industry in the State and create jobs. Your role as an administrator for STATE COMMISSION does not place you in a position to create an unwarranted benefit for your private interests because your role for STATE COMMISSION includes no final decision-making power governing the regulation of the industry.

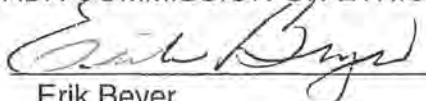
While the Commission has determined that you would not violate NRS 281A.400(1) or (2) by engaging in such a contract under the limited circumstances described in your testimony and other evidence, the Commission further advised you regarding your obligations concerning disclosure and abstention pursuant to NRS 281A.420. If a company regulated by STATE COMMISSION contracts with you for the use or purchase of your private property you should disclose your pecuniary interest in the arrangement to STATE COMMISSION, including a disclosure anytime such a company requires a decision or action, or is otherwise affected, by STATE COMMISSION on any matter. If any

such matter involves any discretion, control or action by you as an employee, you should delegate such matters to another member of your staff or to STATE COMMISSION.

The Commission's decision became effective on February 11, 2011.

Dated this 13<sup>th</sup> day of April, 2012.

NEVADA COMMISSION ON ETHICS

By:   
Erik Beyer  
Chairman<sup>3</sup>

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<sup>3</sup> At the time this written opinion was issued, the presiding officer in this matter, then-Vice-Chair Erik Beyer, had become the Chair of the Commission.