



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**, Member, Board of
County Commissioners, State of Nevada,

Request for Opinion No. 11-27A

Public Officer. /

ABSTRACT OF OPINION

A public officer ("PUBLIC OFFICER") 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 OFFICER appeared before a quorum¹ of the Commission on April 14, 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 OFFICER of its decision that the Ethics Law allows

him to accept free parking privileges from PUBLIC ENTITY while engaged in government business.

The Commission subsequently issued a letter to PUBLIC OFFICER setting forth its decision. PUBLIC OFFICER 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.²

I. QUESTION PRESENTED

Whether the Ethics Law prohibits you from accepting a gift of free parking from a public entity.

¹ The following Commissioners participated in this opinion: Chairman Erik Beyer, and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, 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.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, a member of a Board of County Commissioners ("Board"), from accepting a gift of free parking from PUBLIC ENTITY. PUBLIC ENTITY offered you, and all other State and local government officials, free parking privileges for the calendar year while engaged in government business. You have asked whether accepting this parking privilege would violate any of the provisions of NRS 281A.

The Commission determined that you may accept the free parking privileges while engaged in government business. NRS 281A.400(1) prohibits you from accepting a gift which would tend to influence a reasonable person in your position to depart from the faithful discharge of his public duties. The Commission found that PUBLIC ENTITY has provided this benefit to all public officials for a number of years and the free parking privilege was intended solely as a convenience to public officials to be used exclusively while engaged in government business. Therefore, the Commission determined that the parking privileges would not improperly influence you, or a reasonable person in your situation, to depart from carrying out your official duties.

The Commission also determined that accepting the free parking privileges would not constitute the improper use of your position to secure an unwarranted benefit, privilege, exemption or advantage

pursuant to NRS 281A.400(2). The parking pass was offered to assist all public officials to fulfill their public duties and to facilitate their activities related to matters that affect the public. Therefore, the Commission declared that the privilege was not unwarranted. The Commission further opined that the parking privilege benefits the County. If PUBLIC ENTITY did not offer the parking privilege, you and other officials would be entitled to seek reimbursement of the expense of parking while engaged in government business from the County. As such, the parking privilege is a benefit to the County rather than a personal benefit.

The Commission also reviewed the provisions of NRS 281A.400(4) which prohibit a public officer from accepting any salary, retainer, expense allowance or other compensation from any private source for the performance of his public duties. The record reflected that, in part, you requested this advisory opinion based on information provided by counsel questioning whether PUBLIC ENTITY was actually a "nonpublic" entity. Accordingly, you were concerned that accepting parking privileges from a nonpublic or private entity would implicate NRS 281A.400(4).


The Commission concluded that PUBLIC ENTITY is not private. As a result, accepting the parking privilege does not constitute accepting any compensation or expense from a private source in violation of NRS 281A.400(4).

As a final matter, the Commission explored the potential for matters affecting PRIVATE ENTITY coming before the Board. NRS 281A.420(1) requires a public officer to disclose sufficient information concerning any matter regarding which he has accepted a gift. Therefore, the Commission advised you to consider any matters that may come before the Board affecting PUBLIC ENTITY and determine whether the matter implicates the gift of free parking and make an appropriate disclosure. In such circumstances, the Commission further advised you to undertake the abstention analysis on the record to determine whether the independence of judgment of a reasonable person in your position would be materially affected by the acceptance of the gift in voting on the matter. If you do not believe a reasonable person could act independently from the interest, you are advised to abstain from voting.

The Commission's decision became effective on April 14, 2011.

Dated this 4th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman

NRS 281A.400 General requirements; exceptions.

A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. 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.

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.

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4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee.

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