



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**, Administrator,
Division, State Department, State of Nevada,

Request for Opinion No. 11-30A

Former Public Employee. /

ABSTRACT OF OPINION

A former 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 her 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 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 EMPLOYEE of its decision to exempt her from strict

application of the one-year "cooling off" requirements of the Ethics Law, but cautioned her to undertake an evaluation applying NRS 281A.410(1)(b) if an issue that was pending during her public employment should arise in the future.

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.²

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.

I. QUESTION PRESENTED

Whether you may accept employment with a private company prior to expiration of the one-year cooling off period because your duties in your former public employment related to that company's business.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, as the former Deputy Administrator of a State agency, from accepting employment with a certain private sector company. Specifically you asked whether you may accept employment from PRIVATE COMPANY prior to the expiration of the statutory one year "cooling-off" requirement set forth in NRS 281A.410(1)(b) and NRS 281A.550(3), (5) and (6).

Based on the information you provided, the Commission determined that it had insufficient information to determine the extent NRS 281A. 410(1)(b) applies, if at all. No information arose that an issue was pending before the Division while you were the Deputy Administrator that would impact your responsibilities with PRIVATE COMPANY. However, the Commission cautioned that should such an issue come to your attention, it would be incumbent on you to undertake an evaluation applying NRS 281A.410(1)(b).

The Commission further determined that based on the information provided, NRS 281A.550(5) does

not apply. It had no information regarding any contract awarded to PRIVATE COMPANY by the State of Nevada or the DIVISION for supplies, materials, equipment or services.

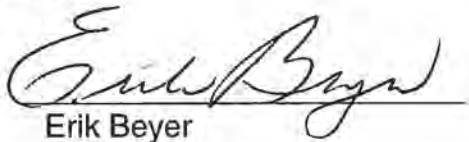
However, the Commission found that NRS 281A.550(3) does apply in that your duties as the former Deputy Administrator included the formulation of policy and regulations related to the business of PRIVATE COMPANY. The Commission did not extend NRS 281A.550(3)(c) to your facts in that no issue regarding the possession of trade secrets of a direct business competitor arose.

Finally, the Commission applied NRS 281A.550(6) and held that relief from the strict application of NRS 281A. 550(3) is warranted because your employment with PRIVATE COMPANY is not contrary to the best interests of the public, the continued ethical integrity of state government or the provisions of the Ethics in Government Law.

This opinion became effective on April 14, 2011.

Dated this 13th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman

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.

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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.

* * *

5. 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.

6. A current or former public officer or employee may request that the Commission apply the relevant facts in that person's case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of

subsection 3 or 5, as applicable, is not contrary to:

- (a) The best interests of the public;
- (b) The continued ethical integrity of the State Government or political subdivision, as applicable; and

(c) The provisions of this chapter, it may issue an opinion to that effect and grant such relief. The opinion of the Commission in such a case is final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the current or former public officer or employee.

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