



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 Agency,
State of Nevada,

Request for Opinion No. 11-36A

Public Employee. /

ABSTRACT OF OPINION

A public employee ("PUBLIC EMPLOYEE") requested an 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 Officer appeared before a quorum¹ of the Commission on May 20, 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 preclude her from accepting an

expenses-paid trip to attend a symposium sponsored and paid for by a State contractor for her agency even though she played a direct role in awarding contracts to the contractor. The Commission, however, strongly encouraged the agency to adopt an appropriate "travel on industry" policy to govern future travel.

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 an expenses-paid trip to attend a symposium sponsored and paid for by a State contractor that provides services to your agency.

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibits you, an employee of a State Agency ("AGENCY"), from accepting an expense-paid invitation to attend a symposium in Washington D.C. The symposium is sponsored by VENDOR, an entity which contracts with the State of Nevada to serve as AGENCY's contracted entity to provide certain services. The invitation includes payment of travel expenses by VENDOR but does not include any gifts, compensation or remuneration to PUBLIC EMPLOYEE for attending the event.

Facts:

As stated in your request for opinion, VENDOR invites its clients to attend its annual symposiums so it may solicit feedback regarding its products and services and allow its clients to share perspectives and experiences relevant to industry trends.

In addition to the information provided in your request, on the record you informed the Commission that your primary responsibilities for AGENCY include drafting requests for proposals (RFP's) for certain AGENCY

contracts, evaluating proposals submitted by vendors and assisting in the selection of vendors. In that capacity, you drafted the RFP's for AGENCY governing the contract ultimately awarded to VENDOR during the last two contract cycles. The contracts have substantial dollar values. You acknowledged that you participated in drafting the RFP's to evaluate and select the proposals. You testified the contracts were awarded to VENDOR on various grounds, including its positive partnership with AGENCY during weak and strong economic climates, its services plan and its exceedingly beneficial cost proposals. Likewise, you stated that no other bidders had included in their proposals all required services for a single fee (no hidden administrative or other fees).

Although VENDOR has invited you to attend its symposium in previous years, you declined those offers due to concerns about the appearance of impropriety. However, upon learning more about the upcoming symposium from its brochure and considering how its content may benefit AGENCY, you would like to attend this year if your participation does not violate the Ethics Law. VENDOR invited you to the symposium this year after it was awarded the contract with AGENCY.

AGENCY has no formal "travel on industry" ("TOI") policy regarding employees attending industry-sponsored educational events in which a contracting industry extends a limited number of invitations to certain persons and offers to pay all expenses. Your supervisor supports your attendance at the symposium

in the interest of and for the benefit of AGENCY.

Existing Commission Opinion

The Commission recently addressed another confidential first-party request for advisory opinion which presented facts similar to your situation and addressed the applicability of relevant provisions of NRS 281A. *In re Public Officers*, RFO 10-72A, involved a public employee who was invited to attend a conference in Washington D.C. hosted by a private contractor of the State. The contractor provided certain services to a program sponsored by the State and administered by the public employee's agency.

The contractor hosted the conference to bring together its clients in various industries to market the clients' services and products to one another and otherwise discuss the changing climates affecting such industries and products. The contractor would pay the employee's travel expenses such that no State money would be expended to attend the conference. The contractor offered only travel expense reimbursement, but no compensation.

The Commission determined that the purpose of that conference was directly related to the State's interests in administering and promoting its program. The conference was intended to educate clients regarding certain topics directly related to the public employee's official duties and the State's interests. Moreover, the

public employee would have an opportunity to meet and collaborate with other states' attendees regarding current and future topics directly related to the program.

Accordingly, the Commission concluded that the employee's acceptance of the invitation by the contractor would not violate NRS 281A.400(1) because, even if it was considered a gift and/or economic opportunity, an expense-paid trip to attend such a conference, without payment of "compensation" or discretionary expenses, would not tend to improperly influence a reasonable person in the public employee's situation to depart from his official duties. 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 found that the conference was work-related with few, if any, recreational activities available. Further, the contractor had already been granted the contract with the State and the conference invitation was neither an effort by the contractor to entice the State, or encourage the State employee to entice the State, to enter into an agreement with the

contractor for services, nor was it an attempt to extend the already existing contract.

Furthermore, in RFO 10-72A, the Commission determined that the public employee was not seeking any unwarranted economic advantage through the use of his/her position by accepting the expense-paid trip to attend the conference. 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.

Rather than a personal benefit, the conference sponsored by the contractor was intended to further the State's interests regarding the program administered by a State

agency. An all-expense paid conference for this purpose was not an unwarranted privilege to the public employee because it offered training and collaboration related to the State's interests rather than any type of reward by the contractor for contracting for its services.

Conclusion

While the determination in RFO 10-72A was relevant to the Commission's consideration of your request, neither the public employee nor his/her agency in RFO 10-72A had any role in awarding the contract to the contractor. In contrast, you played a direct and extensive role in awarding the contracts to VENDOR. Accordingly, the Commission related its on-going concern regarding "TOI" policies and the participation and travel by public employees and officers for work-related seminars at the expense of private industry contractors, particularly when the public officer or employee has a significant role in drafting the RFP and evaluating and selecting the contract vendor. The Commission has serious concerns about "TOI" and the related perception of impropriety, including partiality or favoritism reflected by an agency to a particular private company in a competitive environment or by a private company to certain agency officers or employees when such events are sponsored and paid by industry.

Regardless of whether such an industry-paid invitation is educational and/or beneficial to the public, it carries with it a perception of a *quid pro quo* for awarding the

contract or an incentive to award future contracts. In the absence of a clear "TOI" policy, public officers and employees have little guidance on work-related educational events offered at a contracting entity's expense or in determining who may be eligible to participate. Such policies are especially needed when agency budget resources that might otherwise be available are severely limited. Moreover, such meetings and seminars frequently have a recruitment aspect that may be presumptively unfair and compromising. Consequently, the Commission is careful to review requests for opinions regarding such invitations on the facts specific to the request to ensure the propriety of the intended travel and to encourage agencies to adopt "TOI" policies appropriate to their needs.

Based on the information you provided and consistent with the Commission's opinion in RFO 10-72A, the Commission has determined that accepting the invitation to attend the symposium with VENDOR's offer to pay your travel expenses would not violate NRS 281A.400(1) or (2). The purpose of the symposium is directly related to the beneficial interests of the State of Nevada and specifically to your role for AGENCY administering VENDOR's services. You indicated that if your agency had the resources, your supervisor would deem it necessary and appropriate for you to attend this event at the agency's expense.

Furthermore, although VENDOR is not compensating you directly or indirectly for attending the

symposium held during the work week, your regular State compensation will continue for workdays spent for event travel and attendance. Consequently, one may infer that AGENCY expects to receive a substantial benefit in having you attend this event.

The Commission understood and specified that your attendance at the symposium at the expense of the contractor entity, VENDOR, is not the type of "economic opportunity" or "gift" 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. The purpose of the symposium is directly related to your public responsibilities. The symposium provides you the opportunity to consult with others in the same or similar positions regarding the products and services VENDOR provides. Past contracts were awarded to VENDOR based on competitive proposals. Likewise, the symposium can provide valuable insight into current and future issues regarding AGENCY, which may assist you in the fulfillment of your public duty.

By accepting the invitation you would not be using your position to seek a personal, unwarranted economic advantage. VENDOR has offered to pay the cost of your travel expenses to attend a symposium to further the State's and the public's interests in a cost-effective and higher quality program. Additionally, the payment of travel expenses to attend the symposium is not unwarranted because it is intended

to improve VENDOR's delivery of products and customer service to the State. Finally, the symposium provides the opportunity for education and collaboration related to the State's interests in connection with your public duties, rather than merely a show of appreciation to you and AGENCY for contracting with VENDOR.

As a final matter, the Commission encourages you to work with your agency to establish internal policies and procedures regarding travel by public employees at the expense of private industry. Adoption of such "TOI" policies would aid in balancing the overall interests of the agency, and that of its employees, in obtaining work-related skills and training with the agency's need to be informed of and maintain appropriate industry relationships and avoid the ethical concerns outlined herein.

Dated this 3rd day of May, 2012.

NEVADA COMMISSION ON
ETHICS

By: Erik Beyer
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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