



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, Director,
State Commission, State of Nevada,

Request for Opinion No. 11-62A

Public Employee./

ABSTRACT OF OPINION

Public Employee requested this 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 Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum¹ of the Commission heard this matter on August 12, 2011. Public Employee appeared at the hearing and provided sworn testimony.

After fully considering Public Employee's request and analyzing the facts, circumstances, and testimony presented, the Commission deliberated and orally advised Public Employee of its decision that the Ethics Law does not prohibit him from traveling on public business at the

expense of a private entity, and that the law allows him to accept gifts of nominal value in connection with the travel.

Public Employee elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract of this opinion.

I. QUESTION PRESENTED

Public Employee is employed by a State Commission. Public Employee questions whether he may accept an expenses-paid trip to a foreign country from a private entity. If he may accept the trip, Public Employee also asks whether he may also accept any gifts that may be proffered to him in connection with that travel.

¹ The following Commissioners participated in this opinion: Chairman Erik Beyer, and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., and Keith A. Weaver, Esq.

II. DISCUSSION OF RELEVANT STATUTES AND ISSUES

A. ISSUES

Public Employee, as part of his duties for State Commission, has been working with "ABC" company. The company has invited him to tour its facilities in a foreign country at the company's expense. During the trip, Public Employee anticipates that he will be presented with gifts, entertainment, and/or tours to locations of interest. He requests an advisory opinion from the Ethics Commission regarding whether the Ethics Law would allow him to accept the trip or other offerings.

The Ethics Law prohibits Public Employee from: 1) seeking or accepting any gift or economic opportunity which tends to influence the faithful and impartial discharge of his public duties (NRS 281A.400(1)); 2) using his position in government to secure unwarranted benefits for himself (NRS 281A.400(2)); or 3) accepting an expense allowance or other compensation from a private source in the performance of his public duties (NRS 281A.400(4)).

B. RELEVANT STATUTES

NRS 281A.400(1), (2) and (4) provide:

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.

* * *

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.

1) Sponsored Travel

The State Commission and Public Employee have been working with ABC over several months in connection with its interaction with Nevada. A visit to ABC's overseas

facilities would allow Public Employee to observe ABC's international operations, allowing for a better understanding of how State Commission can benefit from ABC's plans for Nevada.

Public Employee's interactions with ABC are in furtherance of State Commission's statutory role and are directly related to the business of State Commission and his public position. The evidence presented to the Commission shows that ABC has the potential to be very important to Nevada's economy and that its offer of an expenses-paid trip overseas, and related activities, accords with its foreign business culture. The Commission therefore concludes that the proposed travel will benefit the State of Nevada and further State Commission's goals.

Based on the facts and circumstances presented to the Commission, and in accordance with our decisions in *In re Public Officers*, RFO No. 10-72A and *In re Public Employee*, RFO No. 11-36A, the Commission finds that Public Employee, by accepting ABC's invitation, would neither be improperly influenced in the discharge of his public duties nor be deemed the receipt of unwarranted benefits. Consequently, Public Employee may accept the proffered industry-sponsored travel without violating NRS 281A.400(1) or (2).

Further, we conclude that the acceptance of the travel would not violate NRS 281A.400(4) because ABC is not compensating Public Employee directly or indirectly.

Money or reimbursement from industry or other private sources for costs related to travel for appropriate public purposes does not constitute compensation or expense allowances.

2) Acceptance of Gifts

NRS 281A.400(1) prohibits a public employee from accepting any gift which would tend improperly to influence a reasonable person in the public employee's position to depart from the faithful and impartial discharge of the public employee's public duties. The Ethics Law does not prohibit a public employee from accepting a gift on behalf of the public body for which the employee serves. The public employee, however, has no power to dispose of the gift or otherwise direct how it is used and must therefore deliver the gift to the public body which will make the determination of how the gift should be used. See *In re Eastley*, Advisory Opinion No. 07-51A.

Public Employee explained to the Commission that he expects to be offered gifts in the course of his travels. The Commission concludes that gifts of nominal value, such as mementos and trinkets, are not the sort of gifts that would tend improperly to influence a reasonable person in Public Employee's position and therefore determines that NRS 281A.400(1) would not preclude him from accepting such gifts in connection with the trip. See *Matter of Gonzales*, RFO No. 97-33 (June 30, 1999) (casual and inexpensive gifts, without more, would not tend

improperly to influence a reasonable person).

The same cannot be said, however, of more valuable gifts. A public employee's acceptance of certain gifts could very well improperly influence a reasonable person to depart from the faithful and impartial discharge of his public duties depending on the gift's value, the donor's identity, the timing of the gift, and other such factors. See *Matter of Wood*, Amended RFO No. 95-51 (June 6, 1997). On the other hand, the Commission is mindful that the refusal of a gift may be interpreted as an insult in certain cultures.

The Commission therefore determines that Public Employee may accept gifts that are more substantial than mementos and trinkets so as not to offend ABC or others, but that he may do so only in his official capacity as a representative of State Commission. The Ethics Law requires that he deliver all gifts he accepts on behalf of State Commission to the appropriate person at State Commission for a determination of how the gift will be used. The Commission further determines that any gift of material value would tend improperly to influence a reasonable person in Public Employee's position. Public Employee must therefore refuse any such gift, whether offered to him personally or as State Commission's representative.

III. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Public Employee was a "public employee" as defined by NRS 281A.150. The Commission has jurisdiction over public employees pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. Public Employee's acceptance of the all-expenses-paid trip from ABC and related tours and entertainment would not violate NRS 281A.400(1), (2) or (4).
4. Public Employee's acceptance of gifts of nominal value in connection with the travel would not violate NRS 281A.400(1), provided that they are accepted on behalf of and delivered to the agency for its determination of how the gifts will be used. Acceptance of gifts of material value would violate NRS 281A.400(1) and must be refused.

Dated this 15th day of August, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer
Erik Beyer
Chairman