



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,
Regulatory Body, State of Nevada,

Request for Opinion No. 11-79A

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 September 13, 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 to grant him an exemption from strict application of the one-year "cooling off" requirement because his anticipated employment is unrelated to the matters he regulated as a part-time member of a regulatory body, provided that he and his future employer adhere to certain specified conditions.

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

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. Lambole, Esq., John W. Marvel, James M. Shaw, and Keith A. Weaver, Esq.

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

I. QUESTION PRESENTED

Whether under NRS 281A.550(6) you are entitled to relief from strict application of the one-year cooling-off requirement of NRS 281A.550(3).

II. DISCUSSION

You asked the Commission to determine whether the Ethics Law prohibited you, upon resignation from your position as a member of a State REGULATORY BODY, from accepting employment from an entity regulated by the REGULATORY BODY. 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.

Though you acknowledge that the "cooling-off" provisions set forth in NRS 281A.550(3) limit your ability to accept employment from a regulatee of the REGULATORY BODY for one year after the termination of your public service, you requested relief from the strict application of the "cooling-off" provisions pursuant to NRS 281A.550(6) because your prospective employment with BUSINESS ENTITY would not involve any matter related to the business of BUSINESS ENTITY regulated by the REGULATORY BODY. In particular, your prospective employment involves implementing and/or managing an employee benefit program offered to the staff of BUSINESS ENTITY.

You resigned from your public position with the REGULATORY

BODY, and you are presently considering private employment from BUSINESS ENTITY. Under the limited circumstances presented in your request for opinion and as described herein, the Commission determined that you are not subject to the one year cooling-off requirement if you solicit or accept employment from BUSINESS ENTITY to manage this employee benefit program.

Specifically, NRS 281A.550(3) prohibits certain former public officers of agencies of the Executive Department of State Government (e.g., REGULATORY BODY) from soliciting or accepting employment from a business or industry whose activities are governed by regulations adopted by the agency (e.g., BUSINESS ENTITY) for one year after the termination of the public officer's service. Such public officers include those whose duties, like those of members of REGULATORY BODY, encompass the formulation of policy in the regulations of the business or industry, the performance of activities or control of agency actions which significantly affect the business or industry, or the knowledge of trade secrets of direct business competitors.

However, the Nevada Legislature provided the Commission with discretion to exempt certain public officers from the strict application of this one-year cooling-off provision where such relief would not be contrary to the best interests of the public as well as the continued ethical integrity of State Government and the provisions of Chapter 281A

of NRS. Because your anticipated employment involves implementing and/or managing an employee benefit program entirely unrelated to the matters regulated by the REGULATORY BODY, and you and BUSINESS ENTITY have expressly conditioned your future employment activities to insulate you from involvement in any of its regulated matters, the Commission determined that you may immediately accept such limited employment from BUSINESS ENTITY.

The Commission conditioned its approval on the following criteria:

- 1) You will not provide any information, recommendation or input to BUSINESS ENTITY regarding any regulated activities;
- 2) You will not disclose any information learned or obtained from your public service on the REGULATORY BODY; and
- 3) You will be barred from access to any of BUSINESS ENTITY's regulatory-related information.

The record likewise reflected BUSINESS ENTITY's commitment to honor these conditions.

The Commission also granted such approval on the premise that serving as a member of the REGULATORY BODY constituted a part-time public service (meeting approximately once per month) unrelated to your private professional qualifications and

endeavors related to the proposed employment, which you have been pursuing on a full-time basis as an on-going business activity while serving as a part-time member on the REGULATORY BODY. When such part-time public service involves regulatory authority over an industry, the public policy should not prohibit a former public officer from professional pursuits unrelated to the regulation of the business or industry where there are sufficient safeguards to ensure the public trust is preserved, as presented under the facts herein.

Dated this 4th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer
Chairman

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

* * *

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.