



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**, Economic Development  
Manager, Municipality, State of Nevada,

Request for Opinion No. 11-95A  
**CONFIDENTIAL**

\_\_\_\_\_ Public Employee./

**ABSTRACT OF OPINION**

**I. STATEMENT OF THE CASE**

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 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 quorum<sup>1</sup> of the Commission heard this matter on December 14, 2011. PUBLIC EMPLOYEE appeared and provided sworn testimony.

PUBLIC EMPLOYEE serves as the Municipality’s Economic Development Manager (“EDM”) and questions whether he may act in his official capacity to assist a private company to relocate its facilities to the Municipality, which will simultaneously benefit his private interests.

At the conclusion of the hearing, and after fully considering the facts, circumstances and testimony presented, the Commission deliberated and orally advised PUBLIC EMPLOYEE of its decision that he may assist the private company in his capacity as the EDM if he provides appropriate disclosures regarding his private interests.<sup>2</sup>

PUBLIC EMPLOYEE elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract in lieu of the full Opinion.

**II. QUESTION PRESENTED**

PUBLIC EMPLOYEE questions whether he may use his official position as the Municipality’s EDM to assist a private entity to bring its manufacturing facility to the Municipality.

<sup>1</sup> The following Commissioners participated in this opinion: Chairman Erik Beyer and Commissioners Timothy Cory, Gregory Gale, Magdalena Groover, Paul Lamboley and Keith Weaver.

<sup>2</sup> Commissioners Cory and Lamboley disagree with this conclusion and would instead find that the Ethics Law prohibits PUBLIC EMPLOYEE from conducting activities as the EDM which have significant and tangible effect on his private pecuniary interests.

### **III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES**

#### **A. ISSUES**

As a Public Employee, the conflicts of interest provisions of the Ethics Law are applicable to PUBLIC EMPLOYEE. In accordance with his public duties as the EDM for the Municipality, PUBLIC EMPLOYEE seeks to assist a private company to bring its manufacturing facilities to the Municipality. PUBLIC EMPLOYEE has introduced the private company to a private investment company to achieve the necessary financing to build its facilities and operate its business in the Municipality through capital investment as well as the sale or lease of certain private property for its facilities. PUBLIC EMPLOYEE has a significant business relationship with the private investment company and a financial/ownership interest in the property on which the development will be constructed. Therefore, PUBLIC EMPLOYEE's private interests may be affected by development on the property. Notably, several other efforts to bring the private company to the Municipality have failed and this opportunity which involves PUBLIC EMPLOYEE's private interests appears to be a last resort.

The private company's negotiations with the private investors to develop its facilities in the Municipality do not involve or require a contractual agreement or arrangement with the Municipality. However, if successful, the project will nonetheless provide significant economic resources to the Municipality, including increased job opportunities for its citizens. PUBLIC

EMPLOYEE's duties as the EDM would include assisting the private company to develop a comprehensive business plan and acquire the necessary state and local permits, entitlements and tax incentives for this type of economic development, a responsibility he undertakes for all other businesses interested in bringing their facilities and/or operations to the Municipality.

In performing his public duties as EDM by introducing the private company to the business opportunities in the Municipality, PUBLIC EMPLOYEE has simultaneously introduced his personal interests into the transaction by connecting the private company to the private investors with whom PUBLIC EMPLOYEE has extensive business relationships and financial interests. PUBLIC EMPLOYEE recognized this conflict of interest and immediately disclosed his private interests in all negotiations among the private company and the private investors. He also disclosed his private interests in the matter to his supervisors within the Municipality.

While PUBLIC EMPLOYEE has extensive pecuniary interests in any potential deal to be reached between the private company and the private investors, the Municipality has similar serious and far-reaching interests in pursuing economic development in its community. To the extent the private company requires PUBLIC EMPLOYEE's involvement as the Municipality's EDM to ensure proper government permits, entitlements and tax incentives, the Commission authorizes PUBLIC EMPLOYEE's involvement so long as he properly and fully discloses his personal interests to

all parties involved, including the private investors, the relevant members of the private company and his supervisors within the Municipality.

## **B. RELEVANT STATUTES**

### **1) Public Policy**

#### **NRS 281A.020(1), provides:**

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

The Ethics Law promotes the appropriate separation between public duties and private interests. As a member of the Municipality's management team, PUBLIC EMPLOYEE has specific public responsibilities governing business and industry development and job creation that he must separate from his private business/development interests.

By actively participating in private contract negotiations and specifications between the private company and the private investors, PUBLIC EMPLOYEE has the potential to significantly benefit his personal pecuniary interests. To the extent PUBLIC EMPLOYEE participates in these negotiations as a liaison for the Municipality, PUBLIC EMPLOYEE has a conflict of interest. However, proper disclosures mitigate this conflict where the interests of the Municipality are

significant and where the transaction is not negotiated with or directed by the Municipality.

### **2) Disclosure**

#### **NRS 281A.420(1) provides:**

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

- without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

The Commission appreciates the unique circumstance PUBLIC EMPLOYEE presents wherein a private project implicating his private interests also stands to significantly affect the Municipality by providing desperately needed economic development and job creation. Based on PUBLIC EMPLOYEE's testimony, this particular development proposal does not appear to be the type of situation where PUBLIC EMPLOYEE can disclose his interests and abstain from participating in the matter in his role as EDM. Rather, according to PUBLIC EMPLOYEE, he has special and unique qualifications regarding comprehensive business and economic development planning, including knowledge of the requirements for various government permits, entitlements and tax incentives to bring the private company to the Municipality.

Given the Municipality's indirect role in the negotiations for the private company's relocation yet significant stake in its success, the Commission finds that PUBLIC EMPLOYEE may participate in the project in his role as the EDM so long as he makes a detailed disclosure of his interests in the project as well as a disclosure regarding whether and how, if at all, his interests will be affected by his public role as the EDM in the process.

While speculative, for the sake of clarity the Commission advises PUBLIC EMPLOYEE to fully disclose the extent of his financial interests in the private investment group and his property interests, and how those interests may be impacted, including the extent to which PUBLIC EMPLOYEE anticipates

that the project may create a benefit or a detriment to his pecuniary interests.

The disclosure provisions of the Ethics Law apply equally to public officers and public employees. In this context, PUBLIC EMPLOYEE is therefore charged with the duty to disclose his private interests to his supervisor while engaging in activities on behalf of the Municipality that affect his private interests. Furthermore, PUBLIC EMPLOYEE must make the disclosures identified herein to the relevant shareholders of the private investors and the private company to ensure they understand his public role and duties and how the transaction may impact his private interests.

### **3) Ethical Standards**

**NRS 281A.400(1), (2), (3), (5) and (7) provide:**

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend to improperly to influence a reasonable person in the public officer's or employee's position to depart from faithful and impartial discharge of the public officer's or employee's public duties.

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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 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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3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

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5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.

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7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has

established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety . . . .

Based on the circumstances identified herein and with the appropriate disclosures as identified above, PUBLIC EMPLOYEE would not violate any of the provisions of NRS 281A.400 by assisting the private company in its efforts to bring its manufacturing facilities and operations to the Municipality. PUBLIC EMPLOYEE is nonetheless reminded of his obligations under these provisions and advised to conduct himself appropriately while engaging in his public duties.

#### **IV. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, PUBLIC EMPLOYEE was a "Public Employee," as defined by NRS 281A.150.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. Pursuant to NRS 281A.420(1), PUBLIC EMPLOYEE must disclose to his supervisor and the members of the private company and the private investment group the full nature and extent of his private and pecuniary interests in the investment group and real property as well as how or whether those interests will be affected by his efforts as the EDM in

assisting the private company's relocation to the Municipality. PUBLIC EMPLOYEE is further admonished that such disclosure be presented in its entirety at each point he is involved in negotiations.

4. PUBLIC EMPLOYEE's performance as EDM to assist the private company's relocation to the Municipality would not violate NRS 281A.400(1), (2), (3), (5) or (7) so long as he makes the appropriate disclosures of his pecuniary interests in the project.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

Dated this 13<sup>th</sup> day of December, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer  
Erik Beyer  
Chairman