



## 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**, Local Government,  
State of Nevada,

Request for Opinion No. 12-06A

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

#### **ABSTRACT OF OPINION**

##### **I. STATEMENT OF THE CASE**

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 Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum<sup>1</sup> of the Commission heard this matter on March 21, 2012. Public Employee appeared at the hearing and provided sworn testimony.

After fully considering Public Employee's request and analyzing the facts, circumstances and testimony she presented, the Commission deliberated and orally advised Public Employee of its decision that the Ethics Law prohibits her from entering into a contract with the local government to provide services related to a program involving certain medical information of its employees.<sup>2</sup>

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

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

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<sup>2</sup> Commissioners Gale and Weaver voted against this determination.

## **II. QUESTION PRESENTED**

Public Employee is employed by a local government, serving as Secretary to an elected official ("Elected Official"). Public Employee questions whether "ABC", a corporation in which she has an ownership interest, may enter into a contract with the government to provide certain services (collecting information) in furtherance of a program which involves the medical information of government employees ("Government Program"), a function that bears no relation to her public duties.

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

### **A. ISSUES**

As a public employee, the conflicts of interest provisions of the Ethics Law apply to Public Employee. Specifically, the Ethics Law prohibits Public Employee from contracting with governmental entities unless certain criteria are met. Public Employee's private interests in contracting with the government for which she also serves as a public employee trigger these prohibitions.

### **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 public employee, Public Employee has public responsibilities that she must separate from her private interests. By serving as a government employee and the owner of ABC, Public Employee has a potential conflict of interest that could violate the public trust by entering into a contract with the government to benefit her company.

Whether an improper conflict arises between her public duties as Secretary to Elected Official and her private interests in ABC must be considered in light of the provisions set forth in NRS Chapter 281A, and those provisions as applied in applicable Commission precedent in similar circumstances.

At the outset, the Commission notes that it was not provided with a copy of the local government's existing policy related to the Program nor was it provided details regarding an expected new policy. In addition, the Commission has grave concerns about providing an advisory opinion that would permit a public employee to enter into a contract with a public

entity to provide services for a program that has yet to be adopted. Without a sufficient factual basis, the Commission cannot determine, for example, what role the Elected Official's Office might play in the new program, whether Elected Official's employees would be subject to the program, and thus whether it would be appropriate for an employee of Elected Official to provide services for the program.

Further, the Commission expressed serious concerns about allowing a public employee, acting through her privately owned business, to be involved in a program which collected private medical information of fellow employees. Although Public Employee explained that ABC only collected the medical information and did not evaluate it in any way, or even know what it meant, it was clear from Public Employee's testimony that ABC would immediately obtain the information by virtue of the services it would provide. The Commission finds it disturbing that ABC, and thus Public Employee, would be privy to such information. Without in any way questioning the integrity or professionalism of Public Employee or ABC or addressing any provision of NRS 281A, the Commission questions whether public policy or privacy interests of employees could be adequately safeguarded in this situation.

## **2) Contracts in which public officer or employee has interest prohibited; exceptions**

**NRS 281A.430(1) and (4) provide, in relevant part:**

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

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4. A public officer or employee, other than a public officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if:

(a) The contracting process is controlled by the rules of open competitive bidding or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;

(b) The sources of supply are limited;

(c) The public officer or employee has not taken part in developing the contract plans or specifications; and

(d) The public officer or employee will not be personally involved in opening, considering or accepting offers.

NRS 281A.430(1) prohibits a public employee from entering into a contract with a governmental entity and any business entity in which the public employee has a pecuniary interest. However, NRS 281A.430(4) contains an exception under which a public employee may enter into such contracts.

The jurisdiction has indicated that it incurs substantial costs to operate its current program, and that these costs will significantly increase when the program expands. If ABC provided the collection services, the government would realize significant savings. The government, however, provided no information concerning the process it intends to use to award the contract to ABC, how the plans and specifications for the contract were developed, or whether the Public Official's Office or Public Employee will or has taken part in developing the plans for the contract. Such information is necessary for a determination whether ABC's contemplated contract would fit the exception in statute.

Although it appears that ABC is the sole provider of such services located in the jurisdiction, and that the contract may benefit the government by containing the costs of its program, the Commission finds that, without additional information, Public Employee would violate the Ethics Law by entering into the contract. Based on the record before us, the Commission finds that the exception set forth in NRS 281A.430(4) is inapplicable. Therefore NRS 281A.430(1) prohibits Public Employee and her business, ABC,

from entering into a contract with the local government.

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

1. At all times relevant to the hearing of this matter, as Secretary to the Elected Official, 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.430(1), Public Employee is prohibited from contracting with the local government to provide services for the Program which involves medical information of certain the public employees.
4. The exception provided in NRS 281A.430(4) is inapplicable to Public Employee's proposed contract.

Dated this 15<sup>th</sup> day of August, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer  
Erik Beyer  
Chairman