



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for  
Advisory Opinion Concerning the Conduct  
of **Former Public Employee**, Administrator,  
Local Government Agency,  
State of Nevada,

**Request for Opinion No. 12-12A**

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

#### ABSTRACT OF OPINION

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

Former 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 past 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. Former Public Employee appeared at the hearing and provided sworn testimony.

After fully considering Former Public Employee's request and analyzing the facts, circumstances and testimony presented by Former Public Employee, the Commission deliberated and orally advised Former Public Employee of its decision, with three Commissioners voting against, that under the Ethics Law his private employment did not create a conflict of interest with his public position.<sup>2</sup>

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

---

<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 Lamboley, Esq., James Shaw and Keith Weaver, Esq.

---

<sup>2</sup> Commissioners Lamboley, Shaw, and Weaver voted against this determination.

## I. QUESTION PRESENTED

Former Public Employee<sup>3</sup> served as the Administrator for a local government agency (“Local Agency”). Former Public Employee questions whether his public position with Local Agency prevented him from also serving as a private consultant for a facility regulated by a division of State government (“State Division”).

## II. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

### A. ISSUES

Former Public Employee served as the Administrator for Local Agency. In his private capacity, he is a licensed administrator (“LA”) of certain facilities regulated by State Division and provides consulting services to such facilities. As required by Local Agency policy, he obtained his supervisor's approval to serve as a private consultant outside his normal business hours for Local Agency. At issue in this request is his private contract to provide interim management services to “XYZ”, a facility regulated by State Division, and to act as its Interim Administrator. In order to comply with Nevada's LA requirement, XYZ required Former Public Employee to

---

<sup>3</sup> At the time Former Public Employee filed his request for opinion, he was a public employee. Notwithstanding that he resigned his position shortly before the hearing of this matter, Former Public Employee seeks to obtain our advice to guide his possible future conduct.

be listed as its Administrator of record. State Division, and not Local Agency, regulates facilities such as XYZ.

Former Public Employee submitted this request for opinion after he was approached and questioned about having conflicts of interest by conducting private consulting work while serving as Local Agency's Administrator. As a public employee for Local Agency, the conflicts of interest provisions of the Ethics Law are applicable to Former Public Employee.

Under NRS Chapter 281A and the circumstances presented herein, the Commission now considers whether Former Public Employee's private consulting work constitutes a violation of the public trust, the acceptance of economic opportunities which would tend to improperly influence public duties, the improper use of his public position to benefit his private interests, the improper use of government time or property, or the consultation with or representation of private entities on issues pending before Local Agency.

### 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.

As the Administrator for Local Agency, Former Public Employee has specific public responsibilities to Local Agency that he must separate from his private interests in serving as a consultant and LA for facilities regulated by the State. The Administrator's primary duty is to control the administrative functions of Local Agency, including financial services, records, information technology, facilities management, and human resources. Although Local Agency has regulatory functions, Former Public Employee presented evidence showing that he had no personal involvement in those regulations, or direct control over staff members responsible for regulatory duties, and that Local Agency's authority did not extend to facilities such as XYZ. According to Former Public Employee, State Division, and not Local Agency, has exclusive authority to regulate XYZ.

Some Commissioners expressed concern that State Division and Local Agency work together too closely for Former Public Employee to avoid conflicts between his public job and his work for XYZ, and that Local Agency's authority over certain issues affecting similar facilities would subject XYZ to Local Agency's control in certain limited circumstances.

However, in Former Public Employee's substantial experience, he has never had any interaction

with Local Agency and that all matters involving regulation of facilities have been handled by State Division. Given that Former Public Employee's contract contemplated a short-term, temporary stint as the licensed LA for XYZ, and Former Public Employee's representation that issues affecting facilities in which Local Agency might become involved are uncommon, we conclude that Local Agency's authority with respect to such matters does not create a conflict of interest for Former Public Employee.

Based on the record before the Commission, a majority of the Commission finds no conflicts between Former Public Employee's private business activities and his position with Local Agency.<sup>4</sup> It

---

<sup>4</sup> Commissioners Lambole, Shaw and Weaver voted against this determination finding that Former Public Employee's arrangement with XYZ violated the public trust and implicated the improper use of his position as the Administrator for Local Agency. They noted that several years ago Former Public Employee sought approval from his supervisor to conduct outside "consulting" employment in compliance with Local Agency's policy regarding outside employment. The approval for such outside employment, based on the form signed by Former Public Employee and his supervisor, was specific to a particular engagement and expired at the conclusion of the employment. No specific application was submitted and no approval was obtained for Former Public Employee to serve as the LA for XYZ. Further, the engagement did not constitute the broad area of consulting, but rather involved responsibilities for interim management for the more specific administration of day-to-day operations of the facility as required by law. Observing that Former Public Employee was not the only person capable of serving as XYZ's LA, and that the roles of LA and Administrator were not as discrete as suggested, the Commissioners noted Former Public Employee may have been selected to act as LA because he was Local Agency's Administrator and given the evolving regulatory oversight of State Division in regulating these

appears that Former Public Employee has taken care to provide services only to those facilities under the control of State Division so as to avoid creating a conflict with respect to Local Agency. We nonetheless caution Former Public Employee that the separation between Local Agency and State Division is subject to change in the future, and that he must remain alert to the possibility that his outside work, in that situation, could indeed create a conflict between his public duties as the Administrator and his private interests.

**2) Seek/Accept Engagement Improperly Influencing Public Duties**

**NRS 281A.400(1), provides:**

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 faithful and impartial discharge of the public officer's or employee's public duties.

---

facilities. The Commissioners also noted that in revoking approval, Former Public Employee's supervisor expressed concern that the incident had the appearance of conflict and warranted re-examination of outside employment forms, policies and approvals. Finally, noting that Former Public Employee was no longer a public employee, the full Commission did not address the issue of jurisdiction to provide a response to the RFO.

Based on the information provided by Former Public Employee, Local Agency does not have any oversight over facilities regulated by State Division. Any oversight by Local Agency involving certain limited issues is rare and does not fall within the scope of work Former Public Employee provides as a consultant. Accordingly, a reasonable person in Former Public Employee's situation would not be improperly influenced to depart from the faithful discharge of his public duties.

**3) Use of Government Position to Secure Unwarranted Preferences**

**NRS 281A.400(2), provides:**

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.

No evidence exists to suggest that Former Public Employee has used his public position in any way to benefit his private consulting business. He does not seek these private engagements and in fact his consulting services have decreased since he has been employed by Local Agency.

#### **4) Use of Government Time or Property**

NRS 281A.400(7) provides, in relevant part:

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. . . .

Former Public Employee testified that, under his agreement with XYZ, the facility designated a person to oversee the facility's day-to-day operations and that person met with Former Public Employee during evenings and weekends to discuss operational concerns. He further testified that, as contemplated by the contract, he only conducted his services on nights and weekends, outside his normal working hours for Local Agency. Consequently, no evidence suggests that Former Public Employee used governmental time, property, equipment or other facility to benefit his personal interest.

#### **5) Representing or Counseling**

**NRS 281A.410(1)(a) provides, in relevant part:**

In addition to the requirements of the code of ethical standards:

1. If a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:

(a) Shall not accept compensation from any private person to represent or counsel the private person on any issue pending before the agency in which that public officer or employee serves, if the agency makes decisions[.]

Former Public Employee has testified that the regulation of facilities is addressed by State Division and not Local Agency. However, Local Agency does have potential oversight of limited matters affecting the local community. Former Public Employee has stated that neither of these issues has affected the entities for which he has provided consulting work. Therefore, Former Public Employee has not represented or counseled an entity on any issue pending before Local Agency.

### **III. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Former 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. On the record presented, Former Public Employee has no conflict of interest between his public duties and his private interests under NRS 281A.020(1).
4. No violation of NRS 281.400(1) was presented because a reasonable person in Former Public Employee' situation would not be improperly influenced to depart from the faithful discharge of his public duties.
5. No violation of NRS 281A.400(2) was presented because Former Public Employee has not used his public position to benefit his private consulting business.
6. No violation of NRS 281A.400(7) was presented because Former Public Employee has not used governmental time, property, equipment or other facility to benefit his personal consulting business.
7. No violation of NRS 281A.410(1)(a) was presented because Former Public Employee has not represented or counseled an entity on any issue pending before Local Agency.

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

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer  
Erik Beyer  
Chairman