



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for  
Advisory Opinion Concerning the Conduct  
of **Patricia Mulroy**, Member, Nevada  
Gaming Commission, State of Nevada,

Request for Opinion No. 15-40A

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Public Officer. /

### OPINION

#### I. STATEMENT OF THE CASE

Member of the Nevada Gaming Commission ("Gaming Commission"), Patricia Mulroy ("Mulroy"), requested this 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 September 16, 2015. Mulroy appeared in Las Vegas and provided sworn testimony. Mulroy was represented during the Commission proceedings by legal counsel, Peter C. Bernhard, Esq. and Ryan Daniels, Esq., of the Nevada law firm, Kaempfer Crowell.

Mulroy sought an opinion from the Commission regarding the applicability of the "cooling-off" prohibitions under the Ethics Law if she were to serve as an Independent Director for Nevada gaming licensee, Wynn Resorts, Limited ("Wynn Resorts"), within one year of her separation from public service.

After fully considering Mulroy's request and analyzing the facts, circumstances and testimony presented by Mulroy, the Commission deliberated and orally advised Mulroy of its decision that the "cooling-off" prohibitions are applicable to her circumstances. However, the Commission also advises Mulroy that the "cooling-off" provisions are not an absolute bar and, given the circumstances presented by Mulroy, she may accept the Independent Director position with Wynn Resorts. The record substantiates that Wynn Resorts sought Mulroy's service solely for her water management and water resource expertise, not her limited gaming experience, and her role as an "Independent Director" will not impact the regulated gaming activities of Wynn Resorts or its competitors. This decision is also supported by and conditioned upon Mulroy's pledge to recuse herself, for a period of one year, from participating on any Nevada gaming matters for Wynn Resorts

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<sup>1</sup> The following Commissioners participated in this opinion: John Carpenter, Timothy Cory, Magdalena Groover, Cheryl Lau, James Shaw and Keith Weaver. Chair Paul Lamboley and Vice Chair Gregory Gale disclosed personal interests related to Wynn Resorts Limited and abstained from participating in this matter.

or appearing before the Gaming Commission or Gaming Control Board on any gaming matters.

The Commission now renders this final written Opinion stating its findings of fact and conclusions of law.<sup>2</sup>

At the hearing in this matter, Mulroy waived confidentiality with respect to the Commission's proceedings. Therefore, the Commission publishes this Opinion.

The facts in this matter were obtained from documentary and testimonial evidence provided by Mulroy. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below accept as true those facts Mulroy presented. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this Opinion.

## **II. FINDINGS OF FACT**

Based upon Mulroy's written submissions and testimony, the Commission finds as follows:

1. In her public capacity, Mulroy serves<sup>3</sup> as a member of the Nevada Gaming Commission. She has held this position since July 2014.
2. The Gaming Commission is an independent agency of the Executive Branch in the State of Nevada. The Commission consists of five members appointed by the Governor to four-year terms, with one member acting as the Chair. Members of the Gaming Commission may hold outside employment, as the hourly commitment for the commission is only part-time. The primary responsibilities of the Gaming Commission include acting on the recommendations of the Gaming Control Board ("Board") in licensing matters and ruling upon work permit appeal cases. The Gaming Commission is the final authority on licensing matters, having the ability to approve, restrict, limit, condition, deny, revoke or suspend any gaming license. The Gaming Commission is also charged with the responsibility of adopting regulations to implement and enforce the State laws governing gaming. When the Board believes discipline against a gaming licensee is appropriate, the Board acts in the prosecutorial capacity, while the Gaming Commission acts in the adjudicatory capacity to determine whether any sanctions should be imposed.
3. Mulroy did not obtain proprietary information of Wynn Resorts' competitors during her Gaming Commission tenure. In her role as a member of the Gaming Commission, Mulroy's primary responsibility is to act on the recommendations of the Gaming Control Board in licensing matters and rule upon work permit appeal

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<sup>2</sup> The individual comments made by any commissioner during the hearing are not binding on the Commission's final opinion.

<sup>3</sup> After the hearing in this matter, Mulroy resigned from the Gaming Commission. Therefore, at the time of issuance of this written opinion, Mulroy is now a former public officer.

cases. She does not investigate or audit gaming businesses, collect gaming taxes or fees, or enforce gaming laws and regulations, unless the Gaming Control Board prosecutes a complaint to the Gaming Commission. Unlike the members of the Gaming Control Board, the nature of Mulroy's position limits her access to proprietary information that could provide Wynn Resorts a competitive advantage over other gaming businesses in Nevada.

4. During Mulroy's tenure on the Gaming Commission, Wynn Resorts did not appear before the Gaming Commission agenda for any major licensing or disciplinary matters. Mulroy did not have access to any proprietary, confidential or sensitive information about Wynn Resorts in her Gaming Commission capacity. Although Wynn Resorts did not appear on a major licensing or disciplinary matter, Mulroy reviewed the Gaming Commission records to confirm if there were any other appearances by Wynn Resorts and confirms that it only appeared twice before the Gaming Commission during Mulroy's tenure. One matter was a routine issue on the consent agenda and Mulroy was absent from the Gaming Commission's meeting during its consideration of the other matter.
5. Similarly, competitors of Wynn Resorts have not appeared before the Gaming Commission during Mulroy's tenure on matters involving proprietary, confidential or sensitive information about those competitors.
6. Currently, in addition to her position as a member of the Gaming Commission, Mulroy serves as the Senior Fellow for Climate Adaptation and Environmental Policy at the University of Nevada, Las Vegas' ("UNLV") Brookings Mountain West, a joint research and policy development center created by Nevada's largest institute of higher education and the internationally renowned Brookings Institution. She also holds a faculty position at the Desert Research Institute ("DRI"), where she serves as a Maki Distinguished Faculty Associate. Mulroy is also a senior fellow of the Brookings Institution's Metropolitan Policy Program.
7. At UNLV's Brookings Mountain West and DRI, Mulroy's focus is helping communities in water-stressed areas throughout both the American Southwest and the world develop strategies to address increased water resource volatility and identify solutions that balance the needs of all stakeholders. In her faculty role at DRI, Mulroy explores the use of technology in optimizing the availability of water resources.
8. Prior to Mulroy's appointment to the Gaming Commission, Mulroy served as a public official with Clark County, the Las Vegas Valley Water District and the Southern Nevada Water Authority ("SNWA"), with a combined public service of more than 30 years. During her tenure in the water positions, she worked to protect the public interest in water management and resource issues for Clark County and Nevada. The SNWA is the regional agency responsible for acquiring, treating and delivering water to two million Southern Nevadans and 40 million annual visitors. Mulroy was a principal architect of the SNWA, helping to guide Southern Nevada

through an unprecedented period of growth and one of the worst droughts in the history of the Colorado River.

9. Previously, as general manager of SNWA, one of the country's most progressive water agencies, Mulroy was exceptionally active in regional and national water issues. During her long tenure, she negotiated numerous agreements with neighboring Colorado River Basin States and the country of Mexico. Her reach in the water community extends far beyond the desert Southwest. She previously served on the board of the National Water Resources Association and was a member of the American Water Works Association. Additionally, she served as the original chairperson of the Western Urban Water Coalition, the immediate past president of the Association of Metropolitan Water Agencies, and a member of the Colorado River Water Users Association's Board of Directors.
10. In those water-related capacities, Mulroy met Stephen A. Wynn ("Wynn") in 1990 and oversaw various Wynn Resorts projects, such as Treasure Island and Bellagio, and worked to protect and preserve water supply and quality on issues raised by those projects. Mulroy, in many instances, opposed Wynn when she deemed his water uses to be inconsistent with the best interests of Clark County and its water regulatory process.
11. Mulroy, as the chief arbiter of water in the southern part of the State, prohibited Wynn from developing additional water features when he was building Treasure Island and wanted to build the water-based pirate battle. Wynn, instead, agreed to build a reuse facility in the basement of the parking garage and double plumb the entire hotel.
12. On August 12, 2015, Wynn contacted Mulroy to determine if she would consider joining the Wynn Resorts Board of Directors ("Board") as an independent board member ("Independent Director") based on her water expertise.
13. Wynn's call was unsolicited and unexpected and unrelated to Mulroy's service as a Gaming Commissioner.
14. Mulroy did not discuss the matter further with Wynn, but rather came straight to the Commission for its opinion on the matter.<sup>4</sup>
15. Mulroy has served on the Gaming Commission for a limited time and is not an expert on gaming but rather a preeminent authority on water issues.
16. In general, an Independent Director of a public company such as Wynn Resorts consults with management regarding the strategic and operational direction of the company, monitors company performance, and works to reduce the company's costs, primarily on a going-forward basis.

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<sup>4</sup> At the time this matter was heard, Wynn Resorts had not made an offer of employment and Mulroy confirmed she would not entertain such an offer prior to the Commission rendering its oral decision at the hearing.

17. In Wynn Resort's Corporate Governance Guidelines, it has adopted the definition of "Independent Director" under NASDAQ Rule 5605(a) (2). In addition, Wynn Resorts requires all of its independent directors to meet the heightened criteria applicable under audit committee standards. If Wynn Resorts "employed" an Independent Director, such "employment" would destroy the independence required by securities laws and regulations. According to NASDAQ Rule 4200(a) (15) (A), an "Independent Director" cannot be employed by the company or by any parent or subsidiary of the company.
18. Further, under securities law, the Independent Director must have no relationship which would "interfere with the exercise of independent judgment" in carrying out director responsibilities. Similarly, the NYSE Listed Company Manual defines an "Independent Director" as one who has no "material relationship" with the company either directly or as a partner, shareholder or officer of an organization that has a relationship with the company. An Independent Director is immediately disqualified if the Director is, or has been within the last three years, an employee of the company (or if an immediate family member of the director is, or has been within the last three years, an executive officer of the company).
19. Thus, according to the Wynn Resort Corporate Governance Guidelines, NASDAQ and NYSE Rules, if Mulroy accepted a position as an Independent Director, she could not be "employed" by Wynn Resorts.
20. As an Independent Director, Mulroy would have fiduciary duties to Wynn Resorts and its shareholders.
21. If Mulroy receives an offer and accepts a position from Wynn to be an Independent Director, she pledged, as a condition of being granted relief, to "disclose to the Wynn Resorts Board and recuse herself from participating in any matters coming before the Wynn Resorts Board that involve any issues that came to her attention during her tenure on the Gaming Commission involving any matters of Wynn Resorts that are subject to Nevada gaming regulatory proceedings, including any matters of any competitors of Wynn Resorts that are subject to Nevada gaming regulatory proceedings." Also for one year following her resignation from the Commission, she further pledged she would not meet with, lobby, or otherwise appear before the Nevada gaming regulators or staff in any matters pertaining to Wynn Resorts.
22. If Mulroy accepts a position as Independent Director, she will appropriately coordinate with the Governor prior to resigning her public position.

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### **III. QUESTIONS PRESENTED**

Based on the testimony presented during the hearing and the factual record of written submissions, including a legal brief, Mulroy requests a Commission opinion concerning the applicability of the statutory “cooling-off” requirements to her potential service as an Independent Director for Wynn Resorts.

Mulroy questions whether an Independent Director for Wynn Resorts, a Nevada gaming licensee, is an “employee” within the scope of NRS 281A.550(2) and, therefore, subject to the one year “cooling-off” provisions of the Ethics Law.

Specifically, Mulroy questions whether the restrictive “cooling-off” provisions set forth in NRS 281A.550(2) apply to an Independent Director for Wynn Resorts, a Nevada gaming licensee. Mulroy concedes that the restrictive “cooling-off” provisions in NRS 281A.410(1)(b) will apply to her as an Independent Director for Wynn Resorts.

### **IV. STATEMENT OF ISSUES AND RELEVANT STATUTES**

#### **A. STATEMENT OF ISSUES**

For the reasons set forth below, the Commission concludes that Mulroy’s services as an Independent Director are within the confines of the “cooling-off” restrictions of the Ethics Law. However, given Mulroy’s pledge, her anticipated work as an Independent Director will not include duties associated with or pertaining to gaming and is anticipated to focus mainly on water issues. Specifically, Mulroy has pledged and provided assurances that she will neither participate in gaming matters for the first year as an Independent Director nor will she appear before the Gaming Commission or Nevada Gaming Control Board. Furthermore, she will respect and comply with the one-year restriction on “representing” or “counseling” for compensation any private person on any issue that was under consideration by the Gaming Commission during her service.

#### **B. RELEVANT STATUTES**

##### **1. Nevada Public Policy on Government Ethics**

**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.



## **2. “Cooling-Off” – Accepting Employment**

**NRS 281A.550(2) provides:**

2. A former member of the State Gaming Control Board or the Nevada Gaming Commission shall not:

(a) Appear before the State Gaming Control Board or the Nevada Gaming Commission on behalf of a person who holds a license issued pursuant to chapter 463 or 464 of NRS or who is required to register with the Nevada Gaming Commission pursuant to chapter 463 of NRS; or

(b) Be employed by such a person,  
→ for 1 year after the termination of the member's service on the State Gaming Control Board or the Nevada Gaming Commission.

## **3. Exception to “Cooling-Off” Requirements for Employment – Relief from Strict Application**

**NRS 281A.550(6) provides:**

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.

## **4. “Cooling Off” – Representing or Counseling**

**NRS 281A.410(1)(b) provides:**

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:

\* \* \*

(b) If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer's or employee's service. As used in this paragraph, “issue” includes a case, proceeding, application, contract or determination, but does not include

the proposal or consideration of legislative measures or administrative regulations.

## V. DECISION

### A. A Gaming Commissioner is a “public officer” under NRS 281A.160 and is therefore subject to the one year “cooling-off” provisions of the Ethics Law under NRS 281A.550(2)

The Commission has original jurisdiction to interpret and enforce the provisions of the Ethics Law to a given set of facts and circumstances. NRS 281A.200, 281A.280, 281A.290 and 281A.440. Because the context of the “cooling off” questions at issue in this RFO involve Mulroy’s service as a member of the Gaming Commission, the Commission is within its authority to conduct statutory interpretation, in accordance with its interpretive opinions, to determine whether the provisions of NRS 281A.550(2) apply to Mulroy’s circumstances. Previously, the Commission has opined as follows:

The Commission does not interpret the provisions of NRS 281A.550(2) or (3) prohibiting private employment by a regulated entity as an absolute bar. Rather, the Commission recognizes that there are permissive activities that can be pursued unrelated to the regulated activity and limited by the prohibitions set forth in NRS 281A.410.

(Emphasis added). *In re Public Officer*, Comm’n Opinion No. 13-09 (2013).

NRS 281A.550 prohibits a public officer from securing favors in the public sector for the return of a favor in the private sector. As the Commission has confirmed:

Concepts of “cooling-off” and “revolving-door” are integral to principles of ethics in government. The Nevada legislative history notes several concerns that prompted its adoption: (a) efforts to lobby, persuade, or gain favor of former colleagues in regulatory matters; (b) public investment and training in expertise for regulatory service; (c) return of public confidence for investment and training in expertise; (d) access to proprietary, confidential, sensitive or beneficial internal information or technology regarding competitors in a regulated industry; (e) eliminate the perception or appearance of impropriety in regulated matters; (f) keep, maintain or restore public confidence in public service as well as regulatory structure; and (g) prevent a regulator from using information and public service merely for private gain or profit. See Minutes, Senate Bill No. 329, Senate Committee on Judiciary, April 13, 1987 and Assembly Committee on Government Affairs, May 11, 13 and 20, 1987, 64<sup>th</sup> Nevada Legislative Session, and Minutes, Assembly Bill No. 90, Assembly Committee on Government



Affairs, January 28, 1993 and March 10 and 25, 1993 and Senate Committee on Government Affairs, May 10, 1993 and July 1, 1993, 67<sup>th</sup> Nevada Legislative Session.

*See Id.*

The aforementioned legislative concerns are not evident in the circumstances presented by Mulroy. Further, the provisions of NRS 281A.550(2) are not interpreted to prohibit former government officials responsible for regulatory matters from obtaining any or all future employment in areas not related to the State regulation, so long as it is not sought for improper purposes or acquired through improper public resources, and the circumstances herein support that gaming regulation or compliance duties will not be part of the future employment.<sup>5</sup> *See Id.* In this instance, the Commission relies on prior Commission Opinions, including Comm'n Opinion No. 13-09A and references the public policy considerations contained in NRS 281A.550(6).

**B. Service as an Independent Director qualifies as employment within the meaning of the one-year “cooling-off” provisions of the Ethics Law under NRS 281A.550(2)**

As a member of the Gaming Commission, Mulroy questions whether the one-year “cooling-off” requirements of the Ethics Law set forth in NRS 281A.550(2) would apply to her if she were to resign as a Gaming Commissioner to serve as an Independent Director for Wynn Resorts. Mulroy asserts she would not be an “employee” of Wynn Resorts pursuant to SEC rules and questions whether this legal status is distinguished from “being employed by” a licensee or registrant of the Nevada Gaming Control Board or Gaming Commission under the provisions of NRS 281A.550. In other words, as the Commission considered in Comm'n Opinion No. 13-09A, Mulroy likewise contends that an Independent Director is excluded from any statutorily required “cooling-off” period because an engagement as an “Independent Director” creates a relationship and status distinct from that of an “employee” in the context of “being employed by” an entity, as those specific terms are used in the statute.

The Commission disagrees and concludes that the “cooling-off” provisions of NRS 281A.550(2) apply to anticipated future activities as an “Independent Director” based upon the same analysis set forth in Comm'n Opinion 13-09A (2013), which held that an independent contractor is an “employee” under the Ethics Law. *See Id.*

In Comm'n Opinion 13-09A, the Commission was concerned with “exalting form over substance” in defining “employed by” and “employed from” in the interpretation of NRS 281A.550(2). The Commission considers the nature, scope, and content of the relationship to be determinative, rather than the “status of the technical form, character or limiting term of the relationship.” (*See id.*) In considering the nature, scope and content of

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<sup>5</sup> The statutory limitations of NRS 281A.550(3) provides additional considerations which may form the basis for restriction of employment if relief from the strict application of the law is not provided under NRS 281A.550(6). However, NRS 281A.550(3) is not applicable to this decision.

the relationship, the Commission has determined that the term “employed by” “[is] intended to have plain meaning and be construed as to make use of, to use or engage the services of, to work for, or to work, in any form of service or agency on behalf of another for a purpose which implies a request and contract for compensation in the ordinary affairs of business or personal life” (Internal quotations omitted).

The Board of Wynn Resorts is comprised primarily of Independent Directors. Independent Directors must act solely in the best interests of the company, independent of management. Independent Directors are free from conflicts with management, and may take a position in opposition to management based upon their independent judgment. While Independent Directors are not engaged in the day-to-day management of the company, the Board as a whole oversees the company on a macro level. In this aspect, an Independent Director oversees the company and ensures the best interests of the shareholders. The fiduciary obligations to the company and its shareholders establish an “employment” relationship through the Independent Director’s service to the corporation.

Further, Independent Directors have a duty of care, duty of loyalty and duty of disclosure to the corporation and its shareholders. These duties create an “employment” relationship where the services of the Independent Director are utilized for the corporate good. Furthermore, the “employment” relationship is enhanced because Independent Directors are compensated for their service by receiving a sitting fee and, in the case of Wynn Resorts, stock options. The service, duties and compensation trigger the Ethics Law under the common term of “employment.”

The Ethics Law is concerned with the nature of the relationship and not the formal title or securities law definition of “employment” as it pertains to ethical standards of public servants. In Comm’n Opinion No. 13-09A, the Commission incorporated the service of an independent contractor into the Ethics Law, and this Opinion will do the same for an Independent Director.

**C. NRS 281A.550(2) is not Absolute and Permitting Mulroy’s Qualified/Restricted service as an Independent Director serves the Best Interests of the Public, the Ethical Integrity of the Government, and the Provisions of NRS 281A.**

In Comm’n Opinion No. 13-09, the Commission “[did] not interpret the provisions of NRS 281A.550(1), (2) or (3) prohibiting private employment by a regulated entity as an absolute bar” and recognized that “there are permissive activities that can be pursued unrelated to the regulated activity and limited by the prohibitions set forth in NRS 281A.410.” Although NRS 281A.550(6) does not have direct application to NRS 281A.550(2), the Commission nevertheless has utilized its policy considerations in viewing the extent of the prohibition contained in NRS 281A.550(2). See *In re Public Officer*, Comm’n Opinion, No. 13-09A (2013).

While noting the legislative concerns regarding the “cooling off” provisions, the Commission, in determining whether private employment is prohibited or absolutely barred by NRS 281A.550(2), has reviewed the circumstances and applied the same policy considerations set forth in NRS 281A.550(6) to ascertain whether such employment is contrary to: (a) the best interests of the public; (b) the continued ethical integrity of the State Government; and (c) the provisions of the Ethics Law. The Commission, in reviewing specific application of these public policy considerations/factors, has instructed that one “intent of the exemption statute is to facilitate beneficial moves from the public to private sectors so long as the move does not endanger either the public or private sectors and so long as there is nothing otherwise unethical in the way that the employment relationship occurred.” (*Id. and Also See In re Public Officer*, Comm’n Opinion No. 11-96A (2012), citing *In re Former Public Officer*, Comm’n Opinion No. 95-61 (1996)).

Mulroy is not leaving State service to assist a future employer in any manner with its gaming operations or to navigate the complexity of and compliance with State gaming laws and regulations. Certainly compliance or regulation assistance is prohibited by NRS 281A.550(2) and is not consistent with the public policy considerations. Given Mulroy’s prior executive level employment experiences in the public sector regarding water, nothing in this record suggests she is attempting to improperly “parlay” her public service as a regulator into a lucrative private sector opportunity in gaming.

While there could be a perception that Wynn contacted Mulroy based upon her membership on the Gaming Commission, her testimony and history with Wynn confirms that their connection is through water management. Mulroy was the chief arbiter of water management in the southern part of the State for approximately 26 years. In that role, she worked with Wynn on his former Las Vegas Strip projects, the Treasure Island and Bellagio water features. When Wynn was building Treasure Island and wanted to build the water based pirate battle, Mulroy advised “no more water features.” Wynn then agreed to build a reuse facility in the basement of the parking garage and double plumb the entire hotel. Mulroy and Wynn’s relationship began and remains with water.

Mulroy is one of the newest members of the Gaming Commission and has limited experience in gaming. Her limited gaming experience is another indicator that Wynn is not soliciting Mulroy for her gaming knowledge or relationships, but rather her water expertise. Wynn is seeking water management and sustainability prowess and Mulroy is one of the few people in Nevada who can provide the know-how, proficiency and competence in water management and resource sustainability.

The public will benefit significantly from Wynn Resort’s proper management of its water resources. Through Mulroy’s service as an Independent Director, Wynn Resorts will gain expertise on water use and conservation. Mulroy has been lionized for espousing water conservation while pioneering progressive urban water use. Wynn Resorts seeks these qualities from Mulroy endeavoring to make the best use of Nevada’s water resources. Mulroy’s expertise in managing and conserving Nevada’s precious limited water resources will assist to shape Nevada’s future growth through corporate

responsibility. Any concern about *quid pro quo* or competitive advantage resulting from Mulroy's limited tenure as a gaming regulator is trumped by her consent to abstain from participating in gaming matters for one year. If this pledge is not maintained, pursuant to NRS 281A.280, the Commission has, and specifically retains its, jurisdiction to consider a third-party complaint appropriately filed or has independent authority to initiate a third-party complaint under NRS 281A.440.

Certainly, the "cooling-off" provisions are intended to prevent *quid quo pro* wherein a public servant leaves the State regulatory agency to accept a position in the private industry of a regulated entity related to the state regulation. See *In re Public Officer*, Comm'n Opinion No. 11-79A (2012). However, Mulroy's factual situation is unique in that, although she is a member of the Gaming Commission, it is her water expertise that is desired by a regulated entity, not her limited gaming knowledge. There is no evidence that Mulroy has any inside gaming knowledge or relationships that will be of use to Wynn Resorts based upon Mulroy's limited time on the Gaming Commission, the limited role of the Gaming Commission, and her lack of a gaming background prior to her appointment on the Gaming Commission. Rather, her expertise includes 25 years of water-resource management in Nevada, which can be extrapolated world-wide.

Consistent with the legislative history of NRS 281A.550 and the Commission's published opinion, *In re Public Officer*, Comm'n Opinion, No. 13-09A (2013), the Commission determines that NRS 281A.550(2) does not act as an absolute bar to prohibit Mulroy's proposed employment which is voluntarily restricted by her pledge. Further, it is in the best interests of the State for Mulroy to continue her commitment to water management and conservation, even though the future employer is a prominent gaming enterprise, because protecting Nevada in establishing standards for best practices in water conservation has potential to protect these resources for all of its citizens and businesses, including gaming establishments. Water conservation is essential to Nevada's future. Nevada can only grow to the limits of its water availability and, with over 40 million visitors to Las Vegas each year, part of Nevada's growth is tied to the casino industry. Mulroy's water expertise presents significant value for Wynn Resorts, and supports the resort industries' growth for the benefit of the public.

Accordingly, the Commission approves and advises Mulroy that she may accept the position of Independent Director for Wynn Resorts, which approval is specifically limited to these facts and conditioned upon Mulroy's pledge to not participate in any Nevada gaming issues before the Wynn Resorts Board of Directors and to not appear in any capacity before the Gaming Commission or Gaming Control Board for one year after leaving service on the Nevada Gaming Commission, as detailed below. Furthermore, the Commission confirms that Mulroy's private employment will be necessarily restricted by the provisions of NRS 281A.410.

#### **D. Ethical Limitations on Mulroy as an Independent Director for Wynn Resorts**

While the Commission interprets the provisions of NRS 281A.550(2) not to prohibit Mulroy's intended service as an Independent Director, the law imposes certain limitations and Mulroy consents to voluntarily restrict her role as an Independent Director for Wynn Resorts to eliminate gaming matters. The restrictions are safeguards that provide added protection to the State of Nevada and the integrity of its public officials and agencies.

Mulroy's service on the Wynn Resorts Board of Directors, for one year, will be on matters unrelated to Wynn Resorts' Nevada gaming operations. As an Independent Director, she would not represent or counsel Wynn Resorts on any issues that were under consideration by the Gaming Commission during her tenure, nor would she appear before the Gaming Commission or Gaming Control Board or lobby their respective members or staff for a one-year period following her Gaming Commission tenure. (NRS 281A.550(2) and 281A.410).

##### **1. Voluntary Recusal of Gaming Issues on Wynn Board**

In this case, Mulroy, as an Independent Director for Wynn Resorts, has agreed not to participate on any gaming issues during her first year of service as an Independent Director and will disclose to the Board and abstain from participating or voting on any matter relating to Wynn Resorts' gaming activities in Nevada. This recusal is material to the relief provided in this decision. Furthermore, Mulroy will disclose and abstain from participating or voting on any matters that are reasonably related to any issues that were under consideration by the Gaming Commission during Mulroy's tenure as a member of the Gaming Commission. Additionally, Mulroy will disclose and abstain for one year from participating or voting on any Nevada matters involving Wynn Resorts' competitors. These safeguards provide added protection to the State of Nevada and the integrity of its public officials and the Gaming Commission.

##### **2. No Representing/Counseling Wynn Resorts on Matters that were before Gaming Commission**

While the Commission approves the private employment of Mulroy at Wynn Resorts as an Independent Director, it necessarily restricts the employment pursuant to NRS 281A.410, which limits the types of consulting and representation that may be undertaken and as otherwise indicated in this Opinion. Specifically, NRS 281A.410(1)(b) temporarily (one year) prohibits private representation and counseling regarding issues that were under consideration by the Gaming Commission during Mulroy's tenure.

Although a former public officer (regulator) is prohibited, for one year, from representing or counseling a private person for compensation upon any issue that was under consideration by the agency during the regulator's service, NRS 281A.410(1)(b) specifically excludes the proposal or consideration of legislative measures or administrative regulations from the types of issues that are precluded. However, NRS



281A.410(1)(b) precludes a former regulator from participating in a private engagement involving the proposal or consideration of a legislative matter or administrative regulation that was under consideration by the agency during the regulator's tenure if the legislative matter or administrative regulation is reasonably related to a separate and distinct regulatory issue (i.e., a specific case, proceeding, application, contract or other determination) that was considered during the regulator's tenure. (*See In re Public Officer*, Comm'n Opinion No. 13-09A (2013). "For example, if the legislative measure or administrative regulation considered by the agency was prompted by a separate agency issue that was under consideration during the public officer's tenure, that measure or regulation is likewise off limits for one year." *Id.* at pgs. 15-16.

The one-year "cooling-off" requirement, therefore, precludes, for one year, participation on any issue that was under consideration before the former agency, including participation on issues related to a specific case or matters before the Legislature on "legislation" or the agency on "regulations" dealing with that same issue.

To construe the exception otherwise would swallow the general prohibition and allow future participation in the same issue under the guise that the representation/counseling merely involved the consideration of legislation and/or administrative regulations. Such an outcome would enhance the former regulator's active advantage or influence on the same issue in both old and new forums, and defeat the intent to reduce and remove the former regulator's advantage or influence on the same issue for a 12-month period of time.

*Id.* at pg. 9.

Therefore, the Commission reminds Mulroy that for the first year that she serves as an Independent Director for Wynn Resorts, she is bound by the restrictions in NRS 281A.410(1)(b), even with the waiver otherwise granted pursuant to this Opinion.

### **3. No Appearance before Gaming Commission for One Year**

NRS 281A.550(2)(a) remains binding such that Mulroy may not personally appear before the Nevada Gaming Commission for one year after the termination of her public service. Mulroy testified candidly that she did not intend to and would not appear before either the Nevada Gaming Commission or Gaming Control Board, or lobby any gaming regulators or staff during this period.

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## **VI. CONCLUSIONS OF LAW**

Based on the evidentiary record provided by Mulroy, the Commission makes the following Conclusions of Law:

1. At all times relevant to the hearing of this matter, Mulroy was a public officer as defined by NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. The provisions of NRS 281A.550(2) apply to Mulroy's anticipated employment as an Independent Director for Wynn Resorts.
4. NRS 281A.550(2)(a) does not establish an absolute bar to employment for work that falls outside the regulatory duties of the industry. Therefore, Mulroy may serve as an Independent Director with Wynn Resorts provided she maintains her pledge to disclose and abstain from any Nevada gaming matters considered by Wynn Resort's Board of Directors for one year after the termination of her public service; and, she does not appear before the Nevada Gaming Commission or Nevada Gaming Control Board on any matter for one year after the termination of her public service.
5. Pursuant to NRS 281A.410(1)(b), Mulroy may not represent or counsel Wynn Resorts, or any other private person, for at least one year after the termination of her public service, on any issues that were under consideration by the Gaming Commission during her tenure. In her future role as an Independent Director, Mulroy has further agreed to voluntarily disclose and abstain from participating or voting on any Nevada gaming matters involving any competitors of Wynn Resorts.

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.

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Pursuant to the requirements of NRS 281A.420(5), the necessary quorum of the Commission to act upon the matter is reduced as though an abstaining member is not a member of the body. The Following Commissioners Participated in this Opinion, with a majority of the reduced-quorum (or four Commissioners) voting in favor and two Commissioners voting against the relief sought by Mulroy:<sup>6</sup>

Dated this 12<sup>th</sup> day of May, 2016.

#### THE NEVADA COMMISSION ETHICS

By: ABSTAINED  
Paul H. Lamboley, Esq.  
Chairman

By: /s/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: ABSTAINED  
Gregory J. Gale  
Vice-Chairman

By: /s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Commissioner

By: /s/ John C. Carpenter  
John C. Carpenter  
Commissioner

By: /s/ James M. Shaw  
James M. Shaw  
Commissioner

By: /s/ Timothy Cory  
Timothy Cory, Esq.  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver, Esq.  
Commissioner

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<sup>6</sup> As of the issuance of this written opinion, Chair Paul H. Lamboley, Vice-Chair Gregory J. Gale and Commissioner Timothy Cory no longer serve on the Commission. Commissioners Carpenter, Groover, Lau and Shaw voted in favor of the opinion. Commissioners Cory and Weaver voted against the opinion.