



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request
for Advisory Opinion Concerning the
Conduct of **Robert Murnane**,
City Manager, City of Henderson,
State of Nevada,

Request for Opinion No. **15-45A**
CONFIDENTIAL

Public Officer. /

REVISED CONFIDENTIAL OPINION

I. STATEMENT OF THE CASE

Robert Murnane ("Murnane"), as the newly appointed City Manager for the City of Henderson ("City"), State of Nevada, requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(2), 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 quorum¹ of the Commission heard this matter on December 16, 2015. Murnane appeared in person and provided sworn testimony. City Attorney, Josh M. Reid, Esq. appeared in a representative capacity on behalf of Murnane.

Murnane sought an opinion from the Commission regarding his responsibilities under the Ethics Law given his new role as the City Manager whose duties include acting as the chief executive officer of the City, with responsibility for employee collective bargaining negotiations, union agreement formulation, grievance review, and other employee management duties which may be associated with or relate to his nephew, who is employed as a police sergeant for the City.

After fully considering Murnane's request and analyzing the facts, circumstances and testimony presented by Murnane, the Commission deliberated and advised Murnane of its decision that, in accordance with the Ethics Law and opinions of the Commission, Murnane shall disclose his familial relationship with his nephew to the City of Henderson's local Ethics Committee, City Council, the Police Chief, his command staff and the public, as applicable, and abstain from participation, supervision or acting upon matters associated with his nephew, including employment, salary, benefits, personnel, grievance, special assignment, promotion, discipline, litigation or similar matters (collectively "Personnel Matters"). However, Murnane may delegate such matters to an

¹ The following Commissioners participated in this Opinion: Chair Lau, Vice-Chair Weaver and Commissioners Carpenter, Groover, Gruenewald and Stewart. Commissioner Stewart disclosed his recent service and resignation from the Planning Commission for the City of Henderson. He also disclosed that he anticipates seeking certain land use approvals from the City of Henderson in his private capacity in the near future; however, he did not believe the independence of judgment of a reasonable person in his situation would be materially affected in regard to Murnane's issue before the Commission based upon a possible future pecuniary interest in a land use matter. Further, given proper deference to the public policy of this State set forth in NRS 281A.420(4)(b) which favors the right of a public officer to perform the duties for which he was appointed, Commissioner Stewart, upon the advice of Commission Counsel, participated and voted in this matter. Murnane and his attorney both consented and had no objection to Commissioner Stewart's participation in this matter.

assistant city manager or other appropriate designee with the caveat that Murnane must advise the person to whom the matters are so delegated not to consult with him. Instead, the designee should be advised to consult with the independent office of the City Attorney. In addition, Murnane's duty to maintain a proper disclosure and to abstain on matters pertaining to his nephew, including associated Personnel Matters, in conformance with the Ethics Law and interpretive opinions, shall continue so long as Murnane serves in a public position with authority over his nephew's employment.

The Commission further advises that Murnane is not precluded from performing his official duties with respect to: (1) supervision of the Police Chief and budget administration for the Police Department; and (2) oversight, strategy, recommendations, communications, negotiations, contracts, grievances, arbitrations, litigations and associated matters of collective bargaining with recognized bargaining units (collectively "Collective Bargaining Matters"), including those associated with the public safety union of which his nephew is a member. However, if Murnane's official duties in this regard implicate the individual interests of his nephew, Murnane is advised to be vigilant and properly disclose and delegate the matter as indicated herein in consultation with the independent office of the City Attorney, and abstain from participation with respect to the matter.

The Commission now renders this revised and final written Opinion stating its formal findings of fact and conclusions of law.²

The facts for this Opinion were obtained from documentary and testimonial evidence provided by Murnane. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below accept as true those facts Murnane 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. QUESTIONS PRESENTED

As City Manager, Murnane is the Chief Executive Officer for the City of Henderson charged with certain administrative duties, responsibilities and control over the City, and its departments, officers, employees and associated budget. Murnane's nephew is employed by the Police Department as a sergeant with associated supervisory duties. Given the requirements of the Ethics Law, Murnane understands the need to properly disclose to the City of Henderson's local Ethics Committee, City Council, the Police Chief, his command staff and the public, as applicable, the full nature and extent of his familial relationship with his nephew, a person to whom he has a commitment in a private capacity, on any City matter that reasonably affects the private interests of his nephew, and abstain from involvement and participation on any matter that may materially affect the pecuniary or other private interests of his nephew, including Personnel Matters.

In particular, Murnane questions whether he may participate in certain important city management functions involving the Police Department including budget administration, supervision of the Police Chief and Collective Bargaining Matters with the City's public safety unions, one of which includes his nephew as a member. Additionally, Murnane requests guidance regarding his participation in personnel and grievance matters that are not related to his nephew, such as arbitrations and litigations involving the Police Department. These questions implicate the provisions of NRS 281A.020

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

(maintaining proper separation between public duties and private interests); NRS 281A.400(2) (use of government position to secure or grant unwarranted privileges, preferences, etc. to a person to whom the public officer has a commitment to in a private capacity); and NRS 281A.420 (disclosure of conflicts of interest and abstention).

III. FINDINGS OF FACT

1. On July 13, 2015, Murnane was appointed by the City Council as City Manager for the City of Henderson, and was sworn into office on August 4, 2015.
2. Prior to his appointment as City Manager, Murnane was employed by the City since April 1, 1996, most previously as Senior Director of Public Works, Parks and Recreation Department.
3. Murnane's nephew is currently employed as a police officer for the City. The nephew was hired by the City as a police officer approximately eight (8) years ago and has been recently promoted to the rank of sergeant.
4. Shortly after his appointment as City Manager, Murnane took the following actions:
 - a. Disclosed to the City's local Ethics Committee, City Council, and the Police Chief's command team the relationship with his nephew.
 - b. Indicated that as City Manager, he will refrain from participating in any manner on future employment actions, including appointments, assignments, discussions, discipline, decisions, appeals or other employment matters relating to his nephew and all such matters will be delegated to an Assistant City Manager.
5. During Murnane's term as City Manager, it is anticipated that his nephew may apply for specialty assignments and promotions which may provide pay increases and/or other associated benefits.
6. Pursuant to Section 1.090 of the Henderson City Charter ("Charter"), the City Manager appoints certain executive officers, including the Police Chief. The appointment of the Police Chief is subject to ratification by the City Council.
7. Pursuant to Section 3.020 of the Charter, the City Manager is the Chief Executive Officer of the City and shall perform such administrative and executive duties as the City Council may designate.
8. The City Council established the authority of the City Manager pursuant to Section 2.10.010 of the Henderson Municipal Code ("HMC") as follows:

2.10.010 - City Manager authority.

 - A. Pursuant to Section 3.020 of the City of Henderson Charter, the City Manager is the chief executive officer of the city and shall be responsible for administering the government of the city. The City Manager shall have general supervision and oversight over all departments and offices of the city, excluding the municipal court and the offices of executive officers appointed by the city council pursuant to the Henderson City Charter.

- B. The City Manager shall also perform such administrative and executive duties as the city council may designate through the Henderson City Charter, this chapter, other ordinances or resolutions, a City Manager's employment agreement and other city council action.
 - C. The City Manager shall also perform such duties required by a City Manager or chief executive officer of a city as may be set forth in the Nevada Revised Statutes.
9. The organizational duties of the City Manager are established in HMC 2.12.020, as follows:
- A. The City Manager shall have general supervision and oversight over all departments and offices of the city, excluding the municipal court and the offices of executive officers appointed by the city council pursuant to the Henderson City Charter.
 - B. From time to time the City Manager may:
 - (1) Establish new departments, combine existing departments, or make other adjustments to the departments. Any such action by the City Manager shall be effective immediately or when directed by the City Manager.
 - (2) Establish and adjust divisions, offices or other units within the various departments of the city, as well as offices and other units that are independent of those departments.
 - C. Pursuant to Henderson City Charter, Section 1.090(3), the City Manager shall appoint the following executive officers, subject to ratification of the city council:
 - (1) Chief of police.
 - (2) Assistant City Manager.
 - (3) Fire chief.
 - (4) Chief financial officer.
 - D. Pursuant to Henderson City Charter, Section 1.090, the City Manager also appoints all other executive officers of the City, with the exception of the City Attorney and City Clerk, and such executive officers perform their duties as designated by the City Manager.
10. Pursuant to HMC 2.10.040, the City Manager manages benefit plans and programs for the City and may also issue and administer personnel policies and directives in consultation with the Director of Human Resources and City Attorney. By ordinance, the City Manager, or his designee, shall act as the City's management representative for any collective bargaining units recognized by the City pursuant to NRS Chapter 288. Additionally, the City Manager is provided

authority to create job positions and approve or modify job descriptions, salary, compensation, and benefit matters for any City employee.

11. With the exception of the Police Chief, the City Manager is usually not part of the selection process for promotional and duty assignments within the Henderson Police Department. Those matters are within the authority of the Police Chief.
12. As the Chief Executive Officer of the City, the City Manager supervises the Police Chief, who is part of the manager's team of executive officers, who carry out the policy directives of the City Council under the direction and management of the City Manager.
13. Interference by City Council with the operations of the executive branch of the City are restricted under Section 3.140 of the Charter, which states:

1. No Council Member or Mayor may direct or request the appointment of any person to, or his or her removal from, office by the City Manager or by any of his or her subordinates, or, except as otherwise provided in section 1.090, in any manner take part in the appointment or removal of Executive Officers and employees unless the removal is authorized pursuant to section 3.150.

2. Except for the purpose of inquiry, the Council and its members shall deal with employees solely through the City Manager, City Attorney or City Clerk, as applicable, or their designees. Neither the Council nor any member thereof may give orders to any subordinate of the City manager, City Attorney or City Clerk, either publicly or privately.

14. The City Manager is part of the process detailed in NRS Chapter 288, the Local Government Employee-Management Relations Act, and in that capacity his duties include formulation and establishment of the City's management policies and associated administration of such policies and programs.
15. The City Manager is responsible for oversight, strategy, recommendations, communications and negotiations with recognized bargaining units on matters of collective bargaining, which pursuant to NRS 288.033 is defined as:

"Collective bargaining" means a method of determining conditions of employment by negotiation between representatives of the local government employer and employee organizations, entailing a mutual obligation of the local government employer and the representative of the local government employees to meet at reasonable times and bargain in good faith with respect to:

1. Wages, hours and other terms and conditions of employment;
2. The negotiation of an agreement;
3. The resolution of any question arising under a negotiated agreement; or
4. The execution of a written contract incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or require the making of a concession.

16. Murnane's nephew is a current member of the Henderson Police Supervisory Association ("HPSA"), a recognized employee organization under NRS 288.067. He is a former member of the Henderson Police Officers' Association.
17. In Henderson, there are three public safety unions, the International Association of Firefighters Local 1883, the Henderson Police Officers' Association and HPSA, each of which has entered into a Collective Bargaining Agreement with the City. Agreements are subject to negotiation and modification under the direction of the City Manager and with the approval of the City Council at a public hearing.
18. The Collective Bargaining Agreement ("CBA") with the "HPSA" currently applies to 65 employees. The City is currently in protracted negotiations with the HPSA on a new CBA. Changes during the 2015 Legislative Session and a recent decision by the Nevada Employee-Management Relations Board have complicated negotiations, which could require the City and the HPSA to go to arbitration in order to finalize a new CBA. Murnane has been advised by the City Attorney that the Ethics Law does not preclude him from performing his duties as City Manager as they relate to the negotiation of a new CBA with the HPSA, and that he may participate in the negotiations, either directly or indirectly, after the conflict of interest has been properly disclosed. Nevertheless, out of an abundance of caution, Murnane has not participated directly in these negotiations due to his nephew's membership in HPSA and pending the Commission's issuance of this advisory opinion on associated implications under the Ethics Law.
19. Murnane's nephew is not currently one of the six HPSA representatives who represent the interests of the HPSA and sit at the bargaining table for the purpose of negotiations under Article 30 (HPSA Representation) of the CBA and he is not currently a member of the Labor/Management Review Board established in Article 29 (Grievance Procedure) of the CBA.
20. Pursuant to the CBA, the City retains all management rights and other exclusive rights as determined by NRS 288.150 and the terms of the CBA, including the right to operate the Police Department, with such operational chain of command to include the Police Chief and the City Manager.
21. The Police Chief, or his designee, is the operational head of the department, and determines assignments, including specialty assignments, such as the selection of officers to work out of class with associated pay increases known as "acting pay," approval of unpaid leave and authorization of overtime, disciplinary matters and termination and grievance matters under the terms of the CBA.
22. The CBA also indicates that the City Manager, or his designee, has designated contract duties consistent with being the Chief Executive Officer of the City. In synopsis, these include:
 - A. Approving leaves of absence;
 - B. Waiving or shortening certain notice periods on the recommendation of the Police Chief.
 - C. Holding discussions with a member of the HPSA prior to any disciplinary action, including termination, being taken under Article 22 of the CBA.
 - D. Processing grievances – see below.

23. With respect to procedures established under the CBA for a grievance, which is any dispute arising regarding an interpretation, application or alleged violation of the CBA or applicable policy or procedure, the following general steps are provided for processing a grievance, with resolution possible at Step 2 or later:

STEP 1 - The Grievance Committee: upon receiving a written grievance, the HPSA Grievance Committee shall determine if a grievance exists. If it is determined not to exist, the employee has certain arbitration rights he or she may pursue with the City.

STEP 2 – Police Chief Review: If the grievance exists, the HPSA Grievance Committee provides it to the Police Chief or designee for adjustment.

STEP 3 – Meetings: The Police Chief, or designee has authority to investigate and meets with the HPSA Grievance Chair and HPSA President then responds in writing to grievance.

STEP 4 – City Manager Review: If not resolved, the grievance proceeds to the City Manager through the Manager of Labor Relations or Human Resources Director to make a determination.

STEP 5 – Arbitration: If not resolved, the grievance may be referred to a mutually agreed upon arbitrator or Labor/Management Review Process for final determination.

STEP 6 – Arbitrator Selection Process: If a mutually agreed upon arbitrator is not determined, the CBA has a process established for selection of the arbitrator

STEP 7 – Jurisdiction of the Arbitrator: The CBA defines the parameters of the arbitrator’s jurisdiction to hear and decide grievances.

STEP 8 – Decision of Arbitrator: CBA confirms the decision is final and binding and provides for associated fees and costs.

24. Under the established grievance procedures, the City Manager, or designee, has authority to issue determinations, negotiate with authorized HPSA representatives, and manage the process before the Arbitrator, on behalf of the City.
25. The CBA has a defined length or term and, pursuant to NRS 288.230, negotiations and informal discussions between a local government employer (i.e., the City Manager or his designee) and an employee organization to amend/modify/extend a collective bargaining agreement are not subject to any provision of NRS that requires a meeting to be open or public (“Open Meeting Law”); however, any new, extended or modified collective bargaining agreement between a local government employer and an employee organization must be approved by the City Council at a properly noticed public hearing pursuant to NRS 288.153.
26. NRS 288.153 states: “[a]ny new, extended or modified collective bargaining agreement or similar agreement between a local government employer and an employee organization must be approved by the governing body of the local government employer at a public hearing. The chief executive officer of the local

government shall report to the local government the fiscal impact of the agreement.”

27. As the Chief Executive Officer of the City, the City Manager recommends a budget for approval by the City Council for each fiscal year, which budget includes operational funding for the employees and operations and programs of the Henderson Police Department. In addition, the City Manager has authority over the fiscal year’s annual budget implementation, oversight and administration for all City departments.
28. Pursuant to NRS Chapter 354, the City follows an established budget process that includes preparation and submission of a tentative budget under the direction of the City Manager, as well as noticing and holding a public hearing before the City Council for consideration and annual adoption of a final budget.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

The citizens of Nevada have a right to be assured to the fullest possible extent that the private financial dealings of their governmental representatives present no conflict of interest between public trust and private gain. The Ethics Law promotes the appropriate separation between public duties and private interests. The Commission has long maintained the intent of the Ethics Law, currently set forth in NRS Chapter 281A, as follows:

The apparent intent of the provisions of NRS Chapter 281 [now NRS Chapter 281A]...is to prevent public officers and employees from becoming involved in situations generating conflicts between private and public interests so as to preserve and enhance impartiality of public office and faith in the integrity of government. Policy objectives for ethics in government laws in general include:

- Impartiality, fairness and equality of treatment toward those dealing with government.
- Assurance that decisions of public importance will not be influenced by private considerations.
- Maintenance of public confidence in government (wherein enters the matters of appearances).
- Prevention of use of public office for private gain.

A conflict of interest (either actual or potential) is a situation requiring a public officer to serve two masters, presenting a potential; rather than an actuality, of wrongdoing. The wrongdoing does not have to actually occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in danger of doing wrong. It is avoiding even the potential of doing wrong which is the focus of ethics in government laws.

For this purpose, ethics in government laws identify certain types of conflicts of interest and prohibit conduct by public officials that would allow these conflicts to affect decisions of the public official...

Advisory Opinion No. 99-57 (2000), at p. 3, cited by *In re Dressler*, Comm'n Opinion 00-12 (2000), Advisory Opinion No. 01-14 (2001) and Advisory Opinion No. 02-01 (2002).

In this Opinion, the Commission advises on the disclosure and abstention requirements set forth in NRS 281A.420 applicable to Murnane, as City Manager, to ensure that proper separation is maintained between his public duties and his private interests and commitment in a private capacity to his nephew, with whom he has a familial relationship within the third degree of consanguinity and who is a police sergeant employed by the Henderson Police Department. The Commission appreciates Murnane's recognition of these potential conflicts and the City Attorney's careful consideration and advice to his client regarding the ethics implications under NRS Chapter 281A.

B. RELEVANT STATUTES

1) Declared 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) Using Position in Government to Secure or Grant Unwarranted Privileges, Preferences, Exemptions or Advantages

NRS 281A.400(2) and (9) provide:

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 has a commitment in a private capacity to the interests of that person. As used in this subsection, "unwarranted" means without justification or adequate reason.

...

9. A public officer or employee shall not attempt to benefit a significant personal or pecuniary interest of the public officer or employee through the influence of a subordinate.

3) Commitment in a Private Capacity to Interests of Others

NRS 281A.065 provides:

"Commitment in a private capacity," with respect to the interests of another person, means a commitment, interest or relationship of a public officer or employee to a person:

1. Who is the spouse or domestic partner of the public officer or employee;
2. Who is a member of the household of the public officer or employee;

3. Who is related to the public officer or employee, or to the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;

4. Who employs the public officer or employee, the spouse or domestic partner of the public officer or employee or a member of the household of the public officer or employee;

5. With whom the public officer or employee has a substantial and continuing business relationship; or

6. With whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in subsections 1 to 5, inclusive.

4) Disclosure and Abstention

NRS 281A.420(1), (3) and (4) provide, in relevant part:

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 significant pecuniary interest; or

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

↳ without disclosing information concerning the gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of the person that is sufficient 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 significant pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such a 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 in public 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.

...

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's significant pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of another person.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of another person, accruing to the other person, is not greater than that accruing to any other member of any general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

V. DECISION

A. A *Per Se* Conflict Exists Warranting Vigilance to Avoid Use of Government Position to Secure or Grant Unwarranted Preferences

The requirements of NRS 281A.400(2) instruct that Murnane may not use his public position to secure or grant unwarranted privileges, preferences, exemptions or advantages (collectively "preferences") to any person to whom he has a commitment in a private capacity to the interests of that person.

The Commission has confirmed that "a public officer has a *per se* commitment in a private capacity to the interests of a person to whom he is related within the third degree of consanguinity or affinity." *In re Public Officer*, Comm'n Advisory Opinion No. 10-35A (2010), at p. 3. The relationship with a nephew is a familial relationship within the "third degree of consanguinity" encompassed in the definition of a "commitment in a private capacity," as set forth in NRS 281A.065.

Murnane's nephew, as would any employee, has an interest in furthering his career with the Henderson Police Department, including receiving special assignments, promotions, compensation and benefits for such employment. Murnane appropriately recognizes that given his official duties as City Manager, including authority over the Police Department and Personnel Matters with respect to his nephew, he has a *per se*

conflict of interest between his private commitment to his nephew and his public duties as City Manager.³

Murnane must remain vigilant to avoid this conflict and to fulfill his duties to the public. In doing so, Murnane pledges, in accordance with the Ethics Law and interpretive opinions,⁴ to properly disclose the full nature and extent of his familial relationship as it relates to any City matter for which he is responsible as the City Manager and abstain on any actions or decisions that materially affect his nephew, including all associated Personnel Matters.

Further, as a check and balance, to ensure proper separation between Murnane's private interests and public duties, Murnane should delegate such matters to an appropriate designee and instruct that person not to consult with Murnane. Instead, Murnane should instruct the designee to consult with the independent office of the City Attorney. In addition, Murnane's duty under the Ethics Law to properly disclose and maintain abstention with regard to his nephew and associated Personnel Matters shall continue as long as Murnane serves in a public position with authority over his nephew. Proper disclosure should include disclosure to the City of Henderson's local Ethics Committee, City Council, the Police Chief, his command staff and the public, as applicable.

B. Supervision over the Police Chief and Police Department Budget Administration

Both the Commission and Murnane appropriately recognize that Murnane should not be involved in matters associated with his nephew because such participation not only has an appearance of impropriety, it creates an impermissible conflict under the Ethics Law. Separately, the Commission and Murnane have identified that Murnane's supervision of the Police Chief likewise has potential for conflicts and should be evaluated under the Ethics Law.⁵

In reviewing this issue, the Commission recognizes the public policy attributes of NRS 281A.420(4), which instruct that appropriate weight and proper deference is to be given to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was appointed and to otherwise act upon a matter, provided the public officer has properly disclosed the public officer's commitment in a private capacity to the interests of another person in the manner required.

Accordingly, the Commission determines that Murnane is not prohibited under the Ethics Law from supervising the Police Chief, which is an official duty of the City Manager. However, if Murnane's official duties implicate the specific interests of his nephew more or less than any other HPSA union members similarly situated, Murnane is advised to be vigilant and properly disclose, delegate the matter as indicated in consultation with the

³ This Opinion applies to "unwarranted" preferences. If a matter arises in the future with an issue as to whether the preference is warranted, Murnane may seek an advisory opinion from the Commission.

⁴ The Commission's published opinions interpreting disclosure requirements include, but are not limited to, *In re Woodbury*, Comm'n Opinion No. 99-56 (1999), Advisory Opinion 13-86A (2014), Advisory Opinion No. 13-78A (2014), Advisory Opinion No. 13-72A (2014), citing *In re Weber*, Comm'n Opinion No. 09-47C (2009).

⁵ The Commission advises that this request for advisory opinion is distinguishable from and rejects as precedent its prior opinion, *In re Flaven*, Comm'n Opinion No. 97-25, in which a regulatory agency employing a father, who was already his son's boss, would be required to terminate that employment in the event his son opened a regulated business.

independent office of the City Attorney, and abstain from participation with respect to such matter.

With respect to administering the budget of the Police Department, unless the budget of the Police Department provides a preference to or otherwise directly implicates his nephew or associated Personnel Matters which require disclosure and abstention under the Ethics Law, Murnane is advised that his present circumstances relating to the budget of the Police Department require disclosure; however, it does not appear that such circumstances would materially affect the independence of judgment of a reasonable person in Murnane's situation so as to require abstention under the provisions of NRS 281A.420(3). Murnane's participation in budget administration and related matters, including budget recommendations to City Council, appear to pertain to the overall budget rather than the singular salary and benefit package for his nephew. Further, the City Council has final authority over the tentative and adopted final budgets of the City pursuant to the requirements of NRS Chapter 354.

With respect to those matters associated with a public meeting that implicate the disclosure requirements of NRS 281A.420(1), a public officer or employee, who is not a member of the public body, must make the disclosure to the supervisory head of the public officer's employee's organization. However, where the public officer or employee is the supervisory head of the organization, the statute is silent regarding to whom the supervisory head of the organization must report such conflict. Murnane, as the City Manager, is the Chief Executive Officer and supervisory head of the organization under Section 3.020 of the Henderson City Charter. Disclosure to oneself is not reasonable because it does not provide a proper disclosure to inform "the public" of the potential effect of the action or abstention upon the person to whom Murnane has a commitment in a private capacity, which is required by NRS 281A.420(1).

The City's overall and individual police department budgets are under the authority of and considered by the City Council in noticed public meetings. Additionally, the Council as a whole, rather than its individual members, has authority over Murnane's employment and related contract.

Accordingly, the Commission advises that given the duty under NRS 281A.020 to avoid conflicts and to assure compliance with the language and intent of NRS 281A.420, the Commission advises Murnane to make the disclosure in the public to the Mayor and other members of the City Council during the public meeting at which such matters are considered. The disclosure must inform the public attending each meeting at which an implicated matter is on the agenda. (NRS 281A.420(1)). The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests. Silence based upon a prior disclosure at a prior meeting fails *to inform the public* of the nature and extent of the conflict. See *In re Buck*, Comm'n Opinion No. 11-63C (2011)(holding that incorporation by reference of a prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)).

Alternatively, the Commission advises that given the duty under NRS 281A.020 to avoid conflicts and to assure compliance with the language and intent of NRS 281A.420 and consistency in providing the disclosure to the Mayor and Council Members, Murnane should provide a written disclosure to the Mayor and all other members of the City Council, each time the police department or other matter which implicates his Nephew is considered by the City Council in a public meeting. Although Murnane is not a member

of a public body that makes decisions, the written disclosure should be included as part of the public meeting packet for the related agenda item to properly inform the public.

C. Collective Bargaining with HPSA Police Union

The Commission has previously addressed the disclosure and abstention standards with respect to a public officer's approval/disapproval of a negotiated collective bargaining agreement when a spouse, who is related within the third degree of consanguinity, is affected. See, *In the matter of John Louritt and Keith Roman*, Comm'n Advisory Opinions No. 03-43 and 03-44 (2003) (hereafter "School District Opinions"), citing *In re Public Officer*, Comm'n Abstract Opinion No. 91-1 (1991). Although the Commission issued the School District Opinions prior to amendments to the Ethics Law, the foundational reasoning of the opinions remains sound because they were issued to members of the school board who held a pecuniary interest⁶ in the salary of their spouses who were members of their households.⁷ Further, the School District Opinions remain instructive with respect to disclosure under the Ethics Law given the current requirements of NRS 281A.400(2) and NRS 281A.420(1) and (3). Instructively, the Commission previously held:

- When the matter of approval/disapproval of a negotiated collective bargaining agreement for school district classified employees comes before the school board, a member of the school board whose spouse is a school district classified employee must disclose the full nature and extent of the school board member's interest in the collective bargaining agreement, i.e., the spousal relationship with a classified school district employee, the percentage of the total household income the spouse's salary constitutes, and the school board member's fifty percent community property interest therein. The school board member must also abstain from voting on the matter.
- When the subject of approval/disapproval of a negotiated collective bargaining agreement for school district certified employees comes before the school board, a member of the school board whose spouse is a school district professional employee must disclose the full nature and extent of the school board member's interest in the collective bargaining agreement, i.e., the spousal relationship with a classified school district employee, the percentage of the total household income the spouse's salary constitutes, and the school board member's fifty percent community property interest therein. The school board member must also abstain from voting on the matter.

Id at p. 4.

In the School District Opinions as well as the current circumstances, there exists conflicts of interest based upon familial relationships within the third degree of consanguinity that must be disclosed. However, in the School District Opinions, the members of the school board had a pecuniary interest in the salary received by a spouse

⁶ NRS 281A.139 defines "pecuniary interest" to include "any beneficial or detrimental interest in a matter that consists of or is measured in money or is otherwise related to money, including, without limitation: 1. Anything of economic value, and 2. Payment or other money which a person is owed or otherwise entitled to by virtue of any statute, regulation, code ordinance or contact or other agreement."

⁷ NRS 281A.100 defines "household" to include "an association of persons who live in the same home or dwelling and who are related by blood, adoption, marriage or domestic partnership."

and held final authority over the approval or disapproval of collective bargaining agreements.

After reviewing the totality of Murnane's circumstances, with respect to the abstention requirements of NRS 281A.420(3), it is determined that the circumstances are distinguishable. Based upon Murnane's testimony and the record presented, Murnane does not contribute to or benefit from his nephew's income, his nephew is not one of the HPSA representatives who represents the interests of the HPSA, and he does not sit at the bargaining table for purpose of negotiations under Article 30 (HPSA Representation) of the CBA. Further, his nephew is not a member of the Labor/Management Review Board established in Article 29 (Grievance Procedure) of the CBA.

Based upon these unique circumstances, Murnane's conflict is more remote than those presented in the School District Opinions. With respect to Collective Bargaining Matters associated with the HPSA, Murnane may carry out his duties as City Manager in this arena without compromising the public trust. See *In re Murray*, Comm'n Opinion No. 06-03A (2006), in which the Commission advised disclosure and abstention on Collective Bargaining Matters, including participation in confidential meetings, under circumstances where the Town Board member's spouse was the Vice-President of the union and on the negotiating team.

Similar to the analysis regarding the budget of the Police Department, unless the Collective Bargaining Matters implicate the specific interests of his nephew more or less than any other HPSA union members similarly situated, Murnane is advised to properly disclose the full nature and extent of his relationship and the effect on his nephew's interest with respect to such matters. However, since the present circumstances do not implicate a member of the household, a pecuniary interest, or an unwarranted preference, they would not reasonably affect the independence of judgment of a reasonable person in Murnane's situation so as to require abstention under the provisions of NRS 281A.420(3). Murnane's participation in Collective Bargaining Matters, including recommendations to City Council, relates to the overall collective bargaining agreement and other personnel matters, rather than the particular salary and benefits and/or Personnel Matters associated with his nephew. Further, the City Council has final authority over associated policy decisions and consideration and approval of CBA contractual provisions and approval of amendments to a CBA has an established public hearing notice and process as required by NRS 288.153.

As a precaution, Murnane is reminded to refrain from participation in Collective Bargaining Matters if the matter affects his nephew to a lesser or greater extent than the other members of the union and/or associated Personnel Matters, and to properly disclose and abstain pursuant to the requirements of NRS 281A.420. In addition, should Murnane's nephew in the future hold a leadership role with respect to HPSA, such as an HPSA board member, a representative of HPSA for purposes of collective bargaining negotiations, a member of the Labor/Management Review Board or similar position, Murnane is referred to the Ethics Law and issued opinions, including *In re Murray*, Comm'n Opinion No. 06-03A (2006), for guidance.

D. Collective Bargaining with other Public Safety Unions

With respect to participation by the City Manager in other Collective Bargaining Matters with public safety and other unions of which his nephew holds no membership, the disclosure and abstention requirements of NRS 281A.420 do not appear to be similarly implicated. The private interests of his nephew are not affected by these

negotiations and Collective Bargaining Matters and therefore, Murnane does not have a conflict of interest as the City Manager in performing his official duties.

VI. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Murnane 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. Given his official duties as City Manager, including authority over Personnel Matters associated with his nephew, Murnane has a *per se* conflict of interest between his private commitment to his nephew, who is related within the third-degree of consanguinity, and his public duties as City Manager.
4. Pursuant to NRS 281A.420(1), Murnane must disclose the full nature and extent of the familial relationship between Murnane and his nephew and the associated effect of any actions to be taken by Murnane in his official capacity on his nephew's private interests, including Personnel Matters. Such disclosure must be made at the time the matter is under consideration or heard, and should include, at a minimum, disclosure to the City of Henderson's local Ethics Committee, City Council, the Police Chief and his command team, and the public, as applicable.
5. Pursuant to NRS 281A.420(3) and (4), Murnane must also abstain from participating in any Personnel Matters that affect his nephew's private interests.
6. Murnane should delegate his public duties with regard to Personnel Matters to a designee, in consultation with the independent office of the City Attorney, and instruct the designee not to consult with Murnane.
7. Murnane's duty to properly disclosure and maintain abstention on Personnel Matters in conformance with the Ethics Law and interpretive opinions shall continue so long as Murnane serves in a public position with authority over his nephew.
8. With the exception of his nephew's Personnel Matters, which require disclosure and abstention under the Ethics Law, the Commission concludes that Murnane is not prohibited from supervising the Police Chief or participating and administering the budget for the Police Department.
9. With the exception of Personnel Matters associated with his nephew or in the event his nephew holds a leadership role with HPSA, Murnane must properly disclose his relationship with his nephew; but Murnane may participate in HPSA Collective Bargaining Matters given that the City Council has final authority over policy decisions with respect to and consideration of amendments associated with collective bargaining agreements and that approval of associated contractual terms requires a notice of public hearing and compliance with the public process established by NRS 288.153.
10. Murnane is advised to be vigilant and refrain from participation in Personnel Matters and HPSA Collective Bargaining Matters which implicate the specific interests of his nephew more or less than any other HPSA union members similarly situated, and to properly disclose, delegate the matter as indicated in consultation with the

independent office of the City Attorney, and abstain from participation with respect to such matter as required by NRS 281A.420.

11. With respect to participation in Collective Bargaining Matters associated with public safety and other unions, of which his nephew holds no membership, the disclosure and abstention requirements of NRS 281A.420 do not apply because there is no associated commitment in a private capacity to the interests of his nephew that will be affected by Murnane, as the City Manager, performing his official duties.

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.

The Following Commissioners Participated in this Opinion:

Dated this 11th day of August, 2016.

NEVADA COMMISSION ON ETHICS

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

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

By: /s/ Keith A. Weaver
John C. Carpenter
Vice-Chair

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner