



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request
for Advisory Opinion Concerning the
Conduct of **Ellen B. Spiegel**,
Assemblywoman, State of Nevada,

Request for Opinion No. **15-25A**

_____ Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Assemblywoman Ellen B. Spiegel ("Spiegel"), State of Nevada, requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1), regarding the propriety of her anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum¹ of the Commission heard this matter on May 6, 2015. Spiegel and her Legislative Counsel Bureau Attorney, Eileen O'Grady, Esq., appeared via teleconference and Spiegel provided sworn testimony.

Initially, Spiegel sought an opinion from the Commission regarding whether the provisions of NRS 281A.430 prohibiting certain government contracts applied to her circumstances, and if so, if she could be relieved from the strict application of the statute. Spiegel and her spouse own Strategems Consulting ("Strategems"), a Nevada Corporation, which performs consulting services relating to workers' compensation claims auditing. Strategems desires to enter into a contract to provide independent auditing services to the Nevada Insurance Guaranty Association ("NIGA").

The Executive Director and Commission Counsel issued an initial jurisdictional determination pursuant to NAC 281A.360 determining that NIGA is not a "state agency" as defined in NRS 281A.163, because it is not part of the Executive Department of the State of Nevada pursuant to the requirements of NRS 281A.163. Accordingly, the provisions of NRS 281A.430 are not applicable to Spiegel since they relate only to prohibited contracts with state or local agencies. Spiegel was referred to the provisions of NRS 281A.400(1) and (2), to focus her request for an advisory opinion upon the application of these provisions to her circumstances. Accordingly, the request as focused is before the Commission to issue an advisory opinion.

¹ The following Commissioners participated in this opinion: Chairman Lamboley, Vice-Chairman Gale and Commissioners Carpenter, Groover, Lau, and Shaw.

After fully considering Spiegel's request and analyzing the facts, circumstances and testimony presented by Spiegel, the Commission deliberated and orally advised Spiegel of its decision that the Ethics Law allows her, through her company Strategems, to enter into a contract with NIGA to perform independent auditing services.

The Commission now renders this formal written Opinion stating its findings of fact and conclusions of law.² After the hearing in this matter, Spiegel 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 Spiegel. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact set forth below, which were presented by Spiegel, are accepted as true. 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. QUESTION PRESENTED

Spiegel questions whether the Ethics Law set forth in NRS 281A.400(1) and (2) prohibits her, through her company Strategems, from entering into a contract to provide independent auditing services to the NIGA.

As a member of the Nevada Legislature, Spiegel is a public officer who must commit herself to avoid conflicts between her private interests and those of the general public which she serves. Spiegel has a duty to avoid actual and perceived conflicts of interest, and she may not use her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself or for any person to whom she has a commitment in her private capacity. NRS 281A.020 and NRS 281A.400(1) and (2).

III. FINDINGS OF FACT

1. Ellen B. Spiegel is an Assemblywoman in the Nevada State Legislature for District 20, covering part of Clark County. She was first elected to this position in November 2012. From November 2008 – November 2010, Spiegel was an Assemblywoman in the Nevada State Legislature for District 21, covering part of Clark County.
2. Spiegel is a primary sponsor of twelve bills before the 78th Session of the Nevada Legislature, and the co-sponsor of 34 bills. Spiegel is a member of the Assembly Committees on Government Affairs, Health and Human Services and Transportation.

² Any individual comments made by commissioners during the hearing or deliberations are not binding on or part of the Commission's final decision.

3. In her private capacity, Spiegel is a business consultant in partnership with her husband in the business entity Strategems Consulting, a Nevada corporation.
4. Spiegel is the listed officer for the positions of President, Secretary, Treasurer, and Director for Strategems, and she and her husband are the only two employees.
5. Strategems performs workers' compensation claims audits and other consulting and training services related to workers' compensation claims.
6. Spiegel's responsibilities in the corporation include sales and marketing, business development, office administration, training programs and oversight of some large audits.
7. Spiegel's husband is a recognized expert in workers' compensation claims, having provided expert witness testimony in Nevada, California and Pennsylvania and in a federal bankruptcy case, and he primarily handles the technical work relating to workers' compensation claims.
8. Bruce Gilbert, Executive Director of NIGA, recently contacted Spiegel's husband regarding performing a portion of NIGA's annual claims audit of all insurance lines. Mr. Gilbert indicated he was having difficulty finding a qualified vendor to perform the workers' compensation portion of the audit.
9. Mr. Gilbert and Spiegel's husband have a long-term personal and professional relationship. They have known each other since the late 1990s/early 2000s, when Mr. Gilbert was working for a private insurance group and Spiegel's husband performed claims audits in his office. Through the years, Spiegel's husband has performed various claims audits in Mr. Gilbert's offices (including NIGA); however, the work has always been arranged through other entities.
10. Spiegel and Mr. Gilbert have worked directly on some insurance industry events together, where Spiegel presented legislative updates at the Southern Nevada Claims Association ("SNCA") meeting on June 10, 2009, and at the Risk and Insurance Management Society ("RIMS"), Las Vegas chapter meeting on June 16, 2009. Spiegel also worked with Mr. Gilbert when she did not hold an elected office and coordinated a policy-related panel for the 2011 RIMS Western Regional Conference in Las Vegas. Spiegel did not receive compensation for any of this work, nor did any additional business for Strategems arise from this work.
11. It is anticipated that the proposal will seek an independent third-party provider that is not a member insurer of NIGA for the consulting project. It is anticipated that the request for proposal, or other legally available method to contract, may be issued shortly and the response will be due within approximately two (2) weeks thereafter.

12. Spiegel's husband has communicated with Mr. Gilbert about this potential project. Spiegel has not met with or discussed this project with Mr. Gilbert or any other representative of NIGA.
13. NIGA was created by the Legislature in 1971 as the Nevada Insurance Guaranty Association Act, part of a bill creating the Nevada Insurance Code, and becoming NRS Chapter 687A, and is a nonprofit unincorporated legal entity that provides insurance benefits to consumers in Nevada whose insurers have become insolvent. NRS 687A.040.
14. NRS 687A.050 established the exercise of NIGA's powers through a Board of Directors, which serves at the discretion of the Nevada Commissioner of Insurance ("Commissioner"). Pursuant to NRS 687A.070, a plan of operation was created and approved by the Commissioner, to ensure a fair, reasonable and equitable administration of NIGA, and in which all member insurers must comply in order to transact any insurance business in Nevada applicable to NRS 687A.
15. The Board of Directors consists of five to nine persons, a majority of which must be representatives of member insurers and the Commissioner considers whether all member insurers are fairly represented.
16. NIGA is subject to examination and regulation by the Commissioner and the Board is required to submit an annual financial report to the Commissioner. NIGA is funded primarily through assessments contributed by member insurers as required by NIGA's plan of operation and is not subject to the State Budget Act nor funded with any money from the State of Nevada.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

Currently, Spiegel serves in the Nevada State Legislature as an Assemblywoman for District 20 covering part of Clark County. In Spiegel's private capacity, she and her husband own Strategems Consulting. She asks the Commission whether her public role as an assembly member under the Ethics Law would prohibit her, through her private business, from entering into a contract with NIGA to perform independent auditing services for worker's compensation claims. In answering this question, the Commission considers whether NRS 281A.400(1) and (2) apply to Spiegel's circumstances.

B. RELEVANT STATUTES

1. Public Trust/Avoiding Conflicts

NRS 281A.020 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. The Legislature finds and declares that:
 - (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.
 - (b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.
 - (c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators serve as "citizen Legislators" who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.
 - (d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interests. The Ethics Law is concerned with situations involving public officers that create appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts to promote the integrity in public service.

As a member of the Nevada Legislature, Spiegel holds a public office and must therefore commit herself to avoid both actual and perceived conflicts between her private

interests and those of the public she serves. Whether there would be such conflicts between her public duties as a member of the Nevada Legislature and her private interests in pursuing a private consulting contract with NIGA must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances.

NRS 281A.400(1) provides:

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

NRS 281A.400(2) provides:

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee 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.

2. "Commitment in a private capacity" Defined.

NRS 281A.065

"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 or 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 subparagraphs 1 to 5, inclusive.

V. COMMISSION DECISION

A. INTRODUCTION

As a public officer, Spiegel must commit herself to avoid actual and perceived conflicts of interest between her public duties and personal endeavors (NRS 281A.020) and ensure that she will not use her position in government to gain unwarranted privileges, preferences, exemptions or advantages for herself, or for any business entity in which she has a significant pecuniary interest, or any person to whom she has a commitment in a private capacity to the interests of that person (NRS 281A.400(1) and (2)).

B. COMMITMENT IN A PRIVATE CAPACITY

As an elected member of the Nevada Legislature, Spiegel is a public officer who has a duty to separate her public duties from her private interests and relationship to preserve the public trust. NRS 281A.020. Pursuant to NRS 281A.065, the Legislature has deemed certain relationships to establish the type of private commitments that implicate certain conflicts of interest.

Under the facts presented, Spiegel clearly has a commitment in a private capacity to Strategems. See *In re McCoy*, Comm'n Opinion No. 09-58A (2012) (A person who serves on the board of directors of a corporation, whether non-profit or for-profit, has a fiduciary obligation to the corporation, which is a commitment to the interest of others). Spiegel also has a commitment in a private capacity with respect to the interests of her spouse. NRS 281A.065.

Spiegel is not only the owner and principle officer of Strategems, her relationship with her spouse, both personally and as an employee of Strategems, reaches the level of a commitment in a private capacity and triggers concerns about conflicts and appearances of impropriety when matters involve Strategems.

C. USE OF GOVERNMENT POSITION

NRS 281A.400(1), in part, instructs that a public officer shall not seek or accept any employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

The Ethics Law does not prohibit a public officer from pursuing private interests and engagements; however, it does set limitations on the nature and extent of the same to ensure the public officer maintains the appropriate separation between his or her private matters and public duties. See *In re Collins*, Comm'n Opinion No. 11-78A ("*Collins*"). In *Collins*, the Commission advised Collins that he should decline to accept the proposed engagements due to the nexus between Collin's public duties as a Clark County Commissioner and his proposed activities to lobby in his private capacity before certain local government entities that were interrelated with the Clark County Commission both operationally and through a shared constituency, given the provisions of subsections (1) and (2) of NRS 281A.400.

In interpreting the application of the Ethics Law to the present matter, the Commission provided appropriate weight and proper deference to the public policy of this State set forth in NRS 281A.020(2)(c), which highlights that "State Legislators serve as 'citizen Legislators' who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted."

With regard to NRS 281A.400(2), this statute does not prohibit a public officer from acting in a manner consistent with her personal interests. (See *In re Public Officer*, Comm'n Opinion No. 12-15A (2012)). However, the provisions of NRS 281A.400(2) would prohibit a public officer from using his or her position as a public officer to secure for herself, her corporation, or her husband any privilege, preference, exception or advantage, for which there is no justification or adequate reason.

Based upon the facts and sworn testimony provide by Spiegel, there exists a commitment in a private capacity to the interests of others with respect to both her husband and business entity. Even though such commitment exists, there is no evidence, nor can any inference be drawn from the sworn testimony presented, to indicate that Spiegel used her position as Assemblywoman to secure for herself, her husband, or Strategems, a business entity in which she has a significant pecuniary interest, an unwarranted privilege, preference, exemption or advantage. To the contrary, Spiegel did not contact NIGA for purposes of seeking work for Strategems and she has not met with or discussed this project with Mr. Gilbert or any other representative of NIGA.

Mr. Gilbert, the Executive Director of NIGA, was having difficulty in locating a provider for the workers' compensation portion of the audit because the firm NIGA had been utilizing to complete the work no longer provided services in the workers' compensation field. Spiegel testified that there are few providers in Nevada that provide audit services in the narrow niche of the workers' compensation claims industry that was needed to complete this portion of the NIGA audit.

Spiegel's company, given her husband's expertise, provides such consulting services. Mr. Gilbert had contacted Spiegel's husband to inquire if he was interested in

providing services for the project. Mr. Gilbert and Spiegel's husband have a long-term personal and professional relationship. They have known each other since the late 1990s/early 2000s, when Mr. Gilbert was working for a private insurance group and Spiegel's husband performed claims audits in his office. Through the years, Spiegel's husband has performed various claims audits in Mr. Gilbert's offices (including NIGA); however, the work has always been arranged through other entities.

Spiegel and Mr. Gilbert have worked together on certain insurance industry events, where Spiegel presented legislative updates at the SNCA meeting on June 10, 2009, and at the RIMS Las Vegas chapter meeting on June 16, 2009. Spiegel also worked with Mr. Gilbert when she did not hold an elected office and coordinated a policy-related panel for the 2011 RIMS Western Regional Conference in Las Vegas. The legislative updates to industry groups were provided in her capacity as a member of the Legislature. Spiegel did not receive compensation for any of this work, nor did any additional business for Strategems arise from this work.

Spiegel had contacted the Legislative Counsel Bureau for the State of Nevada and confirmed that NIGA does not receive any funds from the State of Nevada and that NIGA's budget is not part of the executive biennial budget. Certainly, there is connectivity between NIGA and the Insurance Commissioner as set forth in NRS Chapter 687A; however, the Commission determines that such connectivity is remote.

Spiegel further inquired with the Legislative Counsel Bureau about whether the provisions of NRS 218A.970, applicable to members of the Nevada Legislature, precluded her company from seeking or entering into a contract with NIGA. Spiegel was advised by the Legislative Counsel Bureau that the provisions of NRS 218A.970 did not apply because NIGA doesn't receive any money from the Legislature.

The Commission determined that the facts and sworn testimony provided in this matter do not demonstrate that there is potential for violation of provisions of NRS 281A.020 or NRS 281A.400(1) and (2) because Spiegel did not use her position as a member of the Legislature to benefit her private interests or influence NIGA's process in seeking a consultant for project.

D. OTHER MATTERS

In issuance of its decision, the Commission confirmed the Jurisdictional Determination issued by the Executive Director and Commission Counsel with respect to the application of the provisions of NRS 281A.430 since NIGA does not meet the definition of a "state agency" contained in NRS 281A.163 for application of the provisions of NRS 281A.430. In its deliberations, the Commission referenced NRS 281A.400(8) pertaining to the prohibition against the use of governmental time, property, equipment and facilities for a nongovernmental purpose and advised Spiegel of these requirements as a precautionary matter.

Further, unless specifically restricted by statute, public officers generally are not prohibited from engaging in outside employment or pursuing other interests. The consulting relationship created if Strategems is awarded the contract with NIGA may in the future implicate Spiegel's duties as a member of the Legislature should pending bills or other matters come before her for comment, decision or vote. Accordingly, the Commission advised Spiegel to determine if there are applicable disclosure and/or abstention requirements on matters that come before the Legislature that relate to her, including her husband or business entity's pecuniary relationship with NIGA. Spiegel testified she would do so.

Finally, the reference contained in NRS 281A.430 to NRS 218A.970 allows the Commission to determine if a public officer or employee may bid on or enter into a contract between an agency and business entity in which the public officer or employee has a significant pecuniary interest in the context of the Nevada Ethics in Government Law. However, such reference does not provide the Commission with direct authority to enforce or grant relief from the provisions of law set forth in NRS Chapter 218A, including NRS 218A.970, which may otherwise apply to a future contract between Strategems and NIGA. Accordingly, the Commission advised Spiegel to seek an appropriate legal opinion regarding such provisions.

VI. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Spiegel was a public officer as defined by NRS 281A.160 and 281A.180.
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 requirements set forth in NRS 281A.400(1) and (2) apply to Spiegel's circumstances. Accordingly, Spiegel's company Strategems may enter into a contract with NIGA to perform claims auditing services without violating NRS 281A.020, NRS 281A.400(1) and (2) because there does not appear to be evidence of a conflict of interest and she has not and would not use her position as a legislator to improperly obtain that contract.
4. The Commission concurs with the finding of the Executive Director and Commission Counsel that NRS 281A.430 is not applicable to this contract since NIGA is not a "state agency" as that term is defined in NRS 281A.163.
5. Although the Commission does not render advice on compliance with NRS 218A.970, the Commission does not interpret its provisions inconsistent with other provisions of law and it is recognized that Spiegel has confirmed with the Legislative Counsel Bureau for the State of Nevada that her company Strategems would not violate such statute by entering into a contract with NIGA.

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 and approved this Opinion:

Dated this 11th day of June, 2015.

THE NEVADA COMMISSION ETHICS

By: /s/ Paul H. Lamboley
Paul H. Lamboley, Esq.
Chairman

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Gregory J. Gale
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