



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Public Officer**, Member, Public Body,
State of Nevada,

Request for Opinion No. **16-49A**

Public Officer. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Public Officer ("Public Officer"), a member of a public body for the State of Nevada ("Public Body"), requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of Public Officer's past, current and 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 and Public Officer appeared with legal counsel and provided sworn testimony.

Public Officer sought an opinion from the Commission regarding the applicability of the disclosure and abstention requirements and the "cooling-off" provisions of the Ethics Law to Public Officer's circumstances wherein Public Officer, prior to separation from public service, accepted private employment with a non-profit organization ("Employer"), which is anticipated to provide future funding for a public program administered under the authority of the Public Body ("Public Program").

After fully considering Public Officer's request and analyzing the facts, circumstances and testimony presented by Public Officer, the Commission deliberated and orally advised Public Officer that Public Officer should be vigilant to separate Public Officer's private interests from Public Officer's public duties and should disclose and abstain on matters associated with Employer. Further, NRS 281A.410 requires Public Officer to comply with the limitations on representing or counseling private persons on any issue under consideration by the Public Body or any entity under the authority of Public Body during Public Officer's service for one year after conclusion of public service.

Public Officer elected to retain confidentiality with respect to the Commission's proceedings. Therefore, the Commission publishes this Abstract of the Opinion.

The facts in this matter were obtained from documentary and testimonial evidence provided by Public Officer. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact have been in part redacted to protect confidentiality and were determined from the testimony and facts presented in the record of proceedings

¹ The following Commissioners participated in this Opinion: Chair Cheryl Lau, Vice-Chair Keith A. Weaver and Commissioners Magdalena Groover, Barbara Gruenewald, James Shaw and Dan H. Stewart. However, the term of office for Commissioner Shaw expired prior to the issuance of this Abstract Opinion.

before the Commission. 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

Public Officer seeks advice regarding Public Officer's disclosure and abstention requirements associated with Employer, a non-profit organization that is anticipated to provide funding for a Public Program administered under the authority of the Public Body for which Public Officer serves and also whether Public Officer's prior acceptance of the position with Employer implicates any other provisions of the Ethics Law including the "cooling-off" provisions of NRS 281A.410 and 281A.550(5).

III. FINDINGS OF FACT

1. Public Officer currently serves as an elected member of the Public Body. Public Officer's term of office will expire in the near future, and Public Officer is not seeking another term.
2. Employer is a 501(c)(3) nonprofit corporation which is anticipated to provide funding for a Public Program administered under the authority of the Public Body.
3. The Employer and representatives of the Public Body, including Public Officer, met with one another to discuss the proposed funding for the Public Program before Public Officer was employed by Employer.
4. The Director of Employer ("Director") sent a letter to Public Officer regarding guidelines associated with the Public Program and related funding to be provided by Employer for consideration by the Public Body. The proposal involves substantial funding for a specific duration of time under the authority of the Public Body.
5. Employer also presented the Public Program funding opportunity to an advisory committee, under the authority of Public Body, both of which Public Officer serves as a member.
6. The Public Body approved a certain matter associated with seeking the proposed funding from Employer for the Public Program. In this regard, Public Officer and other members of the Public Body voted in favor of the matter.
7. Sometime after the Public Body's approval of the matter to seek the proposed funding from the Employer, the Director unexpectedly asked whether Public Officer would be interested in working for Employer. Public Officer had no knowledge of the opening prior to this time and had not made any prior outreach or inquiry seeking employment.
8. Public Officer accepted full-time employment with Employer in a management level position, which reports to the Director. The position has responsibilities associated with all of Employer's program services.
9. Employer's funding of the Public Program is a small portion of the overall duties of Public Officer. With regard to Public Program, Public Officer has indicated, if needed, that those duties can be assigned to another employee.

10. The first meeting between Employer and entity representatives after Public Officer's acceptance of employment with Employer, Public Officer announced that Public Officer would no longer participate in any meetings regarding the Public Program because of Public Officer's employment with Employer.
11. Thereafter, the Public Body voted to adopt its final budget, including funding for future implementation of the Public Program, provided that funding is received by the Employer. Public Officer was not present at the meeting and therefore did not vote and Public Officer did not otherwise participate on this agenda item.
12. Public Officer has stated that Public Officer will continue to disclose Public Officer's connection with Employer and abstain from voting on any matter associated with the Public Program while Public Officer is employed by Employer.

IV. STATEMENT OF ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

As a member of the Public Body, Public Officer holds a public office and must therefore commit himself/herself to avoid both actual and perceived conflicts between Public Officer's private interests and those of the public whom Public Officer serves. Whether there would be conflicts between Public Officer's public duties as a member of the Public Body and Public Officer's private interests in maintaining employment with the Employer must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances. The provisions of the Ethics Law applicable to Public Officer's circumstances and addressed in this Opinion are:

1. The disclosure and abstention requirements set forth in NRS 281A.420(1) and (3) given Public Officer's private pecuniary interests associated with employment and Public Officer's commitment in a private capacity to Employer;
2. Application of the code of ethical conduct set forth in NRS 281A.400(1), (2) and (10) to Public Officer's circumstances relating to improperly seeking or obtaining employment which tends to influence departure from the faithful performance of public duties or improper use of public position to obtain employment; and
3. The application of the "cooling-off" provisions governing local government officers set forth in NRS 281A.550(5) and NRS 281A.410(1)(b) to Public Officer's circumstances.

The provisions of the Ethics Law are interpreted and applied under the duty to avoid conflicts of interest established in NRS 281A.020. See *In re Matson*, Comm'n Op. No. 14-70C (2016).

In this Opinion, the Commission advises that: (1) the disclosure and abstention requirements set forth in NRS 281A.420 apply to Public Officer and Public Officer must be vigilant to avoid conflicts and any appearance of impropriety between Public Officer's public duties and private interests, which includes Public Officer's pecuniary interests in private employment and commitment in a private capacity to Employer, and must properly disclose and abstain on all matters relating to Employer; (2) under the specific circumstances presented, Public Officer has not violated the provisions of NRS 281A.400(1), (2) and (10); and (3) although the cooling-off provisions of NRS 281A.550(5)

do not apply to the circumstances as presented, Public Officer must still comply with the one-year limitation on representing or counseling private persons regarding any issue that was under consideration by the Public Body or any entity under the authority of Public Body during Public Officer's service as required by NRS 281.410(1)(b).

B. RELEVANT STATUTES

1. Duty to Avoid Conflicts/Public Trust

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. "Commitment in a private capacity" Defined.

NRS 281A.065 provides, in pertinent part:

"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:

- ...
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;

3. "Pecuniary interest" Defined.

NRS 281A.139 "Pecuniary interest" defined:

....."Pecuniary interest" means 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. Payments or other money which a person is owed or otherwise entitled to by virtue of any statute, regulation, code, ordinance or contract or other agreement.

4. Improper Conduct in Seeking or Accepting Employment

NRS 281A.400(1) provides:

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:

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.

NRS 281A.400(10) provides:

A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

5. 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.

6. Cooling-Off – Employment Restrictions

NRS 281A.550(5) provides:

5. Except as otherwise provided in subsection 6, a former public officer or employee of the State or a political subdivision, except a clerical employee, shall not solicit or accept employment from a person to whom a contract for supplies, materials, equipment or services was awarded by the State or political subdivision, as applicable, for 1 year after the termination of the officer's or employee's service or period of employment, if:

- (a) The amount of the contract exceeded \$25,000;
- (b) The contract was awarded within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment; and
- (c) The position held by the former public officer or employee at the time the contract was awarded allowed the former public officer or employee to affect or influence the awarding of the contract.

7. “Cooling-Off” – Representing or Counseling

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

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

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

* * *

(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. COMMISSION DECISION

A. PECUNIARY INTERESTS AND COMMITMENT IN A PRIVATE CAPACITY – EMPLOYMENT

As a public officer, Public Officer must commit himself/herself to avoid actual and perceived conflicts of interest between Public Officer’s public duties and personal interests (NRS 281A.020) and ensure that Public Officer will not use Public Officer’s position in government to secure private economic opportunities (including acceptance of gifts or favors) or gain unwarranted privileges, preferences, exemptions or advantages for himself/herself, or for any business entity in which Public Officer has a significant pecuniary interest, or any person to whom Public Officer has a commitment in a private capacity to the interests of that person (NRS 281A.400(1) and (2)).

The Legislature has deemed certain specific relationships to implicate conflicts of interest, including relationships with one’s employer. NRS 281A.065(4). In this case, Public Officer has a statutory commitment in a private capacity to the interests of Employer. *See In re Public Officer*, Comm’n Op. No. 13-86A (2013). In addition, Public Officer has a private pecuniary interest in maintaining Public Officer’s salary and associated benefits. NRS 281A.139.

As a result of the employment relationship, the interests of Public Officer’s employer are statutorily attributed to Public Officer to establish conflicts between Public Officer’s private interests and public duties. *In re Brown*, Comm’n Op. No. 13-28A (2013). As explained in *Brown*, “The Ethics Law recognizes various conflicts or perceived conflicts between public duties and a person with whom public officers and employees have employment commitments.” *Id.* at 9. Accordingly, Public Officer must consider the implications of this relationship in addressing all associated public matters, including the disclosure and abstention requirements set forth in NRS 281A.420, representation and/or lobbying provisions set forth in NRS 281A.410(1)(b) and other standards of conduct governing the improper use of Public Officer’s position with regard to matters affecting Public Officer’s private employer as set forth in various sections of NRS 281A.400.

B. DISCLOSURE AND ABSTENTION

1. Duty to Disclose

The Ethics Law requires disclosures in matters: (a) in which a public officer or employee has accepted a gift or loan; (2) in which the public officer or employee has a significant pecuniary interest; or (3) which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person. NRS 281A.420(1). The latter two matters are implicated by these circumstances.

The Commission has emphasized that the preservation of the public trust is paramount in disclosure and abstention matters:

A public officer/employee has an obligation to preserve the public trust and commit himself to avoid conflicts between his private interests and public duties. Where these conflicts arise in the context and consideration of public matters, the public officer/employee may, under certain circumstances, honor his obligations through appropriate disclosures and abstentions.

In re Public Officer, Comm'n Op. No. 13-78A (2014) at pgs. 9-10.

The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed. The people have a right to expect that every public official and employee will conduct himself/herself in a manner that will preserve public confidence in and respect for the government that the public officer or employee represents. Such confidence and respect can best be promoted if every public official and employee uniformly avoids both actual and potential conflicts between their private self-interest and the public interest. Helping public officials and employees achieve these goals is one of the objectives of the Ethics Law. . . .

In re Public Officer, Comm'n Op. No. 13-86A (2014) at p. 8.

The Commission further stated in *In re Public Officer*, Comm'n Op. No. 13-71A (2014), citing *In re Weber*, Comm'n Op. No. 09-47C (2009), that:

In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. ...Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.

Id. at p. 8.

In compliance with the Ethics Law and interpretive decisions, the Commission advises Public Officer that the Ethics Law imposes a continuing duty to properly disclose Public Officer's pecuniary and private interests associated with personal employment matters and the interests of Public Officer's private employer. Here, any matter before the Public Body involving the Public Program and/or the Employer would reasonably affect the private interests of Public Officer and Public Officer should not act in Public Officer's official capacity as a Member to vote on such matters.

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. Public Officer is reminded that a disclosure required by the Ethics Law during a public meeting must occur "at the time the matter is considered." NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. Silence based upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred. (See *In re Buck*, Comm'n Op. No. 11-63C (2011)(holding that incorporation by reference of Public Officer's prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)).

2. Duty to Abstain

In its *Woodbury* opinion, the Commission detailed the steps that a public officer must take whenever a matter that may affect the independence of judgment of a reasonable person in the public officer's situation comes before the public body in which he or she serves. *In re Woodbury*, Comm'n Op. No. 99-56 (1999). First, disclosure is required whenever a public officer's actions would "reasonably be affected by his private commitment." *Id.* Second, abstention is also required when a reasonable person's independence of judgment is "materially affected" by that private commitment. *Id.* at 2.

As is already recognized by Public Officer, the circumstances presented confirm that the independence of judgment of a reasonable person in Public Officer's position would reasonably be affected by Public Officer's commitment to Employer and to Public Officer's own pecuniary interests in maintaining Public Officer's employment. Accordingly, the Commission advises that the independence of judgment of a reasonable person in Public Officer's position would be materially affected by Public Officer's commitment to Employer because there is a certain allegiance that an employee owes to an employer. *In re Cadwallader*, Comm'n Op. No. 09-04A (2009). Because of this allegiance, the public may perceive that Employer has an expectation of such allegiance in the form of Public Officer's authority as a member of the Public Body and any participation or vote in matters that favor or benefit Employer. So, pursuant to NRS 281A.420(3), whenever matters affecting Employer, including the Public Program, come before the Public Body for action, Public Officer must abstain from voting or otherwise acting on such matters.

If there are future questions on disclosure and abstention on specific matters, the Commission refers Public Officer to the legal counsel for the Public Body or, alternatively, Public Officer may seek another First-party Advisory Opinion from the Commission.

C. USE OF GOVERNMENT POSITION – APPLICABILITY OF NRS 281A.400(1), (2) AND (10)

Unless prohibited by the "cooling-off" provisions, the Ethics Law does not otherwise prohibit Public Officer from pursuing private employment while serving as a public officer. However, the Ethics Law prohibits Public Officer from engaging in activities that improperly influence Public Officer's public duties or create unwarranted or improper private benefits through the use of Public Officer's public position. Specifically, Public Officer must not use Public Officer's public position as a member of the Public Body to: (1) seek any employment or economic opportunity which would tend to improperly influence a reasonable person in Public Officer's position to depart from the faithful and impartial discharge of Public Officer's public duties (NRS 281A.400(1)); (2) secure unwarranted privileges, preferences, or advantages for himself/herself or any person to whom Public Officer has a private commitment, including an employer (NRS

281A.400(2)); or (3) seek other employment and/or contracts through Public Officer's official position. (NRS 281A.400(10)).²

In prior Commission opinions issued in this area, the Commission has reviewed the public officer's or employee's circumstances on a case-by-case basis to determine whether there has been a use of a public position to seek or gain a business opportunity or private employment. For example, the use of a public position to seek or gain a business opportunity or employment was found when public officers use their position to hire themselves and when a subordinate is asked to assist with obtaining private employment for the public officer. See *In re McNair*, Comm'n Op. Nos. 10-105C, 10-106C, 10-108C, 10-109C, and 10-115C (2011) and *In re Maurizio*, Comm'n Op. No. 09-40C (2010). In addition, the Commission has confirmed that a public officer may not use a public position as a "selling point" in marketing future private services. *In re Hales*, Comm'n Op. No. 07-13A (2008).

But where the future employer reaches out to the Public Officer and there is no evidence that a public position is used to seek or gain the employment or contract, the Commission has indicated that there may be no violation. See *In re Frehner*, Comm'n Op. No. 07-48C (2008)(insufficient evidence showing public employee sought the employment contract). However, even when the public officer or public employee does not specifically initiate the contact or reach out to seek the employment opportunity, other circumstances may be present warranting consideration under the Ethics Law.

These circumstances might include whether the job would have been provided but for the public position held or when the employment or contract closely relates to the public duties of the public officer or employee. See *In re Cegavske*, Comm'n Op. No. 05-16A (2005)(concerns about whether public officer would have been provided the business opportunity but for Public Officer's public position; however, caution was advised since there was insufficient evidence for an unequivocal finding) and *In re Public Employee*, Comm'n Op. No. 15-28A (2016)(concerns expressed regarding use of public position to seek post-termination consulting contract with employing public entity because anticipated private services were similar to Public Employee's assigned public duties). Also concerns would be present if a public officer or employee was reaching out to vendors or companies that have business relationships with the public entity served to seek or obtain future employment at the end of a term of office or public employment.

Here, the Commission looked for these concerns and confirmed through testimony that Public Officer did not in any manner use Public Officer's public position to acquire the job. The record demonstrates Public Officer had no prior outreach or inquiry regarding employment opportunities and did not intend to seek the employment offer when Public Officer told Employer that Public Officer was not pursuing another term of office. The employment offer was unexpected and Public Officer had no knowledge that an employment opportunity even existed with Employer. The circumstances occurred by happenstance rather than through use of a public position.

Further, there is no evidence indicating that the job offer would not have been made but for Public Officer's holding the public position as a member of the Public Body. There also is no evidence indicating the employment would tend to cause Public Officer

² The Commission encourages and prefers that public officers and employees seek a proactive advisory opinion **before** taking action in order to protect public officers/employees from being the subject of a Third-Party Complaint. *In re Woodbeck*, Comm'n Op. No. 09-71A (2012) at pgs. 5-6. Nonetheless, Public Officer is commended for seeking advice concerning Public Officer's employment situation.

to depart from the faithful duties of Public Officer's public office. Care was taken by Public Officer to separate the private interests in employment from public duties. Since accepting employment with Employer, Public Officer has maintained proper separation between Public Officer's public duties and private interests by disclosing and recusing herself from participation in any matters associated with Employer, whether the matter occurs at a staff level or in a public meeting. Accordingly, based upon the facts and sworn testimony provided by Public Officer, there is no indication that Public Officer's conduct has violated NRS 281A.400(1), (2) or (10).

D. THE "COOLING-OFF" PROVISIONS OF NRS 281A.550(5)

The Commission recognizes that pursuant to NRS 281A.550(5), a former public officer or employee of the State or a political subdivision, except a clerical employee, is prohibited from accepting employment from a person to whom a contract for supplies, materials, equipment or services was awarded by such government entities, for a 1-year period after termination if the following conditions for application of the restriction are present:

- (a) The amount of the contract exceeds \$25,000.
- (b) The contract was awarded within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment.
- (c) Whether the position held by the former public officer or employee at the time the contract was awarded allowed the former public officer or employee to affect or influence the awarding of the contract.

The Commission does not need to analyze these conditions given the presented circumstances because NRS 281A.550(5) specifically applies to *former* public officers and employees. Accordingly, because Public Officer was a current public officer when accepting employment with Employer, the cooling-off provisions of NRS 281A.550(5) do not apply to Public Officer's specific circumstances. Nonetheless, Public Officer's acceptance of private employment with Employer while Public Officer held the position as a member of the Public Body are more properly analyzed under other provisions of the Ethics Law, which analysis has been completed by the Commission throughout this Opinion.

E. NRS 281A.410 - "COOLING-OFF" LIMITATIONS ON REPRESENTING OR COUNSELING

Public Officer is advised that for one year after Public Officer's term as a member of the Public Body expires, Public Officer is prohibited from representing or counseling for compensation Employer or any other person upon any issue that was under consideration by the Public Body or any entity under the authority of the Public Body during Public Officer's service as a member pursuant to NRS 281A.410(1)(b). See *In re Public Employee*, Comm'n Op. No. 11-96A (2012). The provisions of NRS 281A.410(1)(b) are mandatory and the limitations to representation or counseling apply to all issues under consideration by the Public Body, including but not limited to those issues related to Employer.

VI. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Public Officer 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. Pursuant to NRS 281A.065 and 281A.139, Public Officer has a commitment in a private capacity to the interests of Employer and a significant pecuniary interest in Public Officer's employment.
4. Pursuant to NRS 281.420(1) and (3), Public Officer must disclose sufficient information concerning Public Officer's commitment in a private capacity to the interests of Employer if a matter related to Employer comes before the Public Body for public action. Furthermore, Public Officer must abstain from voting on all matters involving Employer.
5. Based upon the language and intent of the provisions set forth in NRS 281A.400(1), (2) and (10), and given the facts as presented, Public Officer has not used Public Officer's position as a member of the Public Body to seek private economic opportunities which would influence Public Officer's public duties or to secure unwarranted preferences for Public Officer's pecuniary and business interests.
6. The "cooling-off" prohibitions set forth in NRS 281A.550(5) do not apply because Public Officer was a current public officer when accepting employment with Employer.
7. Under the requirements of NRS 281A.410(1)(b), Public Officer is prohibited from representing or counseling for compensation Employer or any other person upon any issue that was under consideration by the Public Body or other entity under Public Body's authority during Public Officer's service as a member of the Public Body for a period of one year after the end of Public Officer's term.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law 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 31st day of August, 2016.

NEVADA COMMISSION ON ETHICS

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

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

By: /s/ Keith A. Weaver
Keith A. Weaver
Vice-Chair

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

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

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