



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**, Public
Agency, State of Nevada,

Request for Opinion No. **17-08A**

_____ Public Officer. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Public Officer ("Public Officer") a member of the governing body of a public agency in the State of Nevada ("Public Agency"), 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, present and future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). A quorum of the Commission heard this matter.¹ Public Officer appeared in person and provided sworn testimony. Public Officer was represented by the Public Agency's counsel.

Public Officer sought an opinion from the Commission regarding relief from the strict application of the contracting provisions set forth in NRS 281A.430, which may be implicated by a proposed contract between Public Officer and another public entity within the jurisdiction of Public Agency ("Public Entity").

The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law. Public Officer has elected to retain confidentiality with respect to the Commission's proceedings. Therefore, the Commission publishes this Abstract Opinion.

Although Findings of Fact were included in the written opinion served on Public Officer, for confidentiality reasons, this abstract provides a summary of issues rather than detailing the specific Findings of Fact and removes other identifying information.

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 abstract of the Opinion, the Commission's findings of fact accept as true those facts Public Officer 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 issued by the Commission.

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¹ The following Commissioners participated in this Opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, O'Neill and Stewart.

II. QUESTION PRESENTED

Public Officer questions whether Public Officer may be relieved from the strict application of NRS 281A.430 in Public Officer's role as a member of a governing body of Public Agency regarding a proposed contract between the Public Entity and a private business owned by Public Officer. Public Officer also seeks guidance on the implications associated with other provisions of the Ethics Law set forth in NRS 281A.400(1), (2) and (10).

III. FINDINGS OF FACT – (Synopsis Form to Protect Confidentiality)

Public Officer is a member of the governing body of Public Agency. Under its statutory authority, Public Agency created Public Entity, which is controlled by an independent board. Public Agency retained certain statutory controls over Public Entity which include, without limitation, appointments and statutorily required approvals.

Public Entity sought a contract with Public Officer's private business. Public Agency has no direct interest in or control over the proposed contract. The form of the contract would not require public bidding and would be approved by Public Entity, and not Public Agency.

IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. OVERVIEW OF ISSUES

Public Officer has a duty to avoid any actual or perceived conflicts of interest, and Public Officer may not use his/her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for him/herself or for any person to whom there is a commitment in a private capacity. See NRS 281A.020 and NRS 281A.400(1) and (2).

The Ethics Law further prohibits a public officer/employee from using an official position to seek government contracts for personal purposes and precludes any public officer or employee from entering into contracts with a governmental entity regarding which he or she has a significant pecuniary interest, unless the contracting process is governed by open, competitive bidding, and the public officer or employee has not participated in the contracting process. NRS 281A.430. Furthermore, a public officer who is a member of certain legislative bodies is prohibited from selling goods or services to the agency that is governed by such goods unless the goods or services are the sole source of supply within the jurisdiction and the purchase is made in an open, public meeting with the appropriate disclosures and abstentions by the public officer. NRS 281A.430(5).

If the contract is prohibited under NRS 281A.430, the Commission may grant relief from the strict application of the provisions under NRS 281A.430(6), including consideration of whether the proposed contract will benefit the public and the extent of oversight Public Agency has over the operations of the Public Entity. In addition, other provisions of the Ethics Law, including NRS 281A.400(1), (2), (3) and (10), are implicated by the proposed contract, as discussed below.

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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.

2. Ethics Code of Conduct - NRS 281A.400(1), (2), (3) and (10) provide:

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.
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.
3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

10. 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.

3. Prohibited Contracts - NRS 281A.430 provides:

1. Except as otherwise provided in this section and NRS 218A.970 and 332.800, a public officer or employee shall not bid on or enter into a contract between an agency and any business entity in which the public officer or employee has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board, commission or body may, in the ordinary course of his or her business, bid on or enter into a contract with an agency, except the board, commission or body on which he or she is a member, if the member has not taken part in developing the contract plans or specifications and the member will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with an agency, or may benefit financially or otherwise from a contract between an agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. Except as otherwise provided in subsection 2, 3 or 5, a public officer or employee may bid on or enter into a contract with an agency if:

(a) The contracting process is controlled by the rules of open competitive bidding or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;

(b) The sources of supply are limited;

(c) The public officer or employee has not taken part in developing the contract plans or specifications; and

(d) The public officer or employee will not be personally involved in opening, considering or accepting offers.

↳ If a public officer who is authorized to bid on or enter into a contract with an agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281A.420, shall disclose the public officer's interest in the contract and shall not vote on or advocate the approval of the contract.

5. A member of a local legislative body shall not, either individually or through any business entity in which the member has a significant pecuniary interest, sell goods or services to the local agency governed by his or her local legislative body unless:

(a) The member, or the business entity in which the member has a significant pecuniary interest, offers the sole source of supply of the goods or services within the territorial jurisdiction of the local agency governed by his or her local legislative body;

(b) The local legislative body includes in the public notice and agenda for the meeting at which it will consider the purchase of such goods or services a clear and conspicuous statement that it is considering purchasing such goods or services from one of its members, or from a business entity in which the member has a significant pecuniary interest;

(c) At the meeting, the member discloses his or her significant pecuniary interest in the purchase of such goods or services and does not vote upon

or advocate the approval of the matter pursuant to the requirements of NRS 281A.420; and

(d) The local legislative body approves the purchase of such goods or services in accordance with all other applicable provisions of law.

6. The Commission may relieve a public officer or employee from the strict application of the provisions of this section if:

(a) The public officer or employee requests an opinion from the Commission pursuant to subsection 1 of NRS 281A.440; and

(b) The Commission determines that such relief is not contrary to:

(1) The best interests of the public;

(2) The continued ethical integrity of each agency affected by the matter; and

(3) The provisions of this chapter.

4. Other Implicated Laws - NRS 281.230 provides, in relevant part:

1. Except as otherwise provided in this section and [NRS 218A.970](#), [281A.530](#) and [332.800](#), the following persons shall not, in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other significant transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way directly interested or affected:

(a) State, county, municipal, district and township officers of the State of Nevada;

(b) Deputies and employees of state, county, municipal, district and township officers; and

(c) Officers and employees of quasi-municipal corporations. . . .

4. A public officer or employee . . . may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, the public officer or employee has not taken part in developing the contract plans or specifications and the public officer or employee will not be personally involved in opening, considering or accepting offers. . . .

5. A person who violates any of the provisions of this section shall be punished as provided in [NRS 197.230](#) and:

(a) Where the commission, personal profit or compensation is \$250 or more, for a category D felony as provided in [NRS 193.130](#).

(b) Where the commission, personal profit or compensation is less than \$250.

V. COMMISSION DECISION

A. INTRODUCTION

Public Officer must separate public duties from private interests and personal relationships in order to preserve the public trust. NRS 281A.020. In this matter, Public Entity seeks to contract with Public Officer's private business. Public Officer has a significant pecuniary interest in the private business pursuant to NRS 281A.139. Public Officer also has a commitment in a private capacity to the interests of the private business and other owners under NRS 281A.065. NRS 281A.065(5); See also *In re McCoy*, Comm'n Op. 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). Therefore, the contracting prohibitions set forth in NRS 281A.430 and certain provisions of NRS Chapter 281A.400 are implicated by Public Officer's circumstances and trigger concerns about conflicts of interest and appearances of impropriety.

B. CONTRACTING PROHIBITION AND APPROPRIATENESS OF GRANTING RELIEF FROM ITS STRICT APPLICATION

In *In re Public Employee*, Comm'n Op. No. 13-78A (2014), the Commission found that "NRS 281A.430 generally prohibits a public officer or employee from engaging in government contracts in which the public officer or employee has a significant pecuniary interest." However, the anticipated contract involving Public Officer's private interests is not with the Public Agency. Instead, the proposed contract is with Public Entity. Public Entity was created by Public Agency, but is controlled by a separate board in conducting the majority of its operations. Further, the Public Entity has independent authority to approve the contract. Given these circumstances, the Commission considers the following areas:

1. Contracting Prohibition - Whether the contracting prohibition applies to Public Officer given the Public Entity's independent statutory authority allowing it to enter into and approve the contemplated contract without further approval from Public Agency;
2. Contracting Exceptions – Whether the proposed contract falls within any of the listed exceptions in NRS 281A.430(4); and
3. Relief from Prohibition - Whether it is appropriate to grant relief under the application of the guidelines contained in NRS 281A.430(6).

In doing so, the Commission reviews the statutory language of NRS 281A.430, prior Ethics opinions, the relationship between Public Agency and the Public Entity and the nature of the contemplated contract.

1. Contracting Prohibition

Public Officer contends that the provisions of NRS 281A.430 should only apply to contracts entered into with the employing agency, which is Public Agency not Public Entity. In support, Public Officer asserts the Public Agency has no interest or authority over the proposed contract and has limited authority to control the actions of the Public Entity.

In considering the breadth of the application of NRS 281A.430, the Commission reviews the plain language of the statute. In application of statutory directives, "[a] statute should be given [its] plain meaning and must be construed as a whole and not read in any way that would render words or phrases superfluous or make a provision nugatory." *Mangarella v. State*, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (internal quotations omitted). The express language of NRS 281A.430 does not qualify or otherwise limit its application to only the employing agency.² Instead, the statutory language clearly establishes a broad-based contract prohibition which pertains to any "agency." The term

² For purposes of this opinion, the "employing" agency is Public Agency.

“agency” is defined by NRS 281A.035 to specifically include “any state agency or local agency,” which are further defined by NRS 281A.163 and NRS 281A.119, respectively.

Furthermore, if the Legislature had intended that the contracting prohibition set forth in NRS 281A.430 be limited to the employing agency, it would have included this language in enacting the statute. See *Washoe Medical Ctr. v. Second Judicial Dist. Ct.*, 122 Nev. 1298, 1308, 148 P.3d 790, 797 (2006) (“If the Legislature wanted to make such filing void, or provide that such filing would not toll the applicable statute of limitations, it could have done so.”). The assumption of purposeful omission applies and the absence of an express provision limiting the contract prohibition to the employing agency must be presumed to be what was intended by the Legislature. See *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008). Also, the Commission has previously applied the restrictions of NRS 281A.430 to a contract with another agency located within the same county. See *In re Wilson*, Comm’n Op. No. 13-81C (2014) (member of Fire District Board improperly contracted under NRS 281A.430 with public hospital to house hospital’s EMS staff.)

Accordingly, given the plain language of NRS 281A.430, the Commission determines that the contracting prohibition applies to the proposed contract, is not limited in its application to only the employing agency and the prohibition extends to any state or local agency as defined in NRS 281A.035. In reaching this determination, the Commission is mindful of NRS 281.230, a criminal statute prohibiting contracts between a public officer/employee and the “employing agency.”³ The Commission does not have authority to enforce NRS 281.230; however, the Legislature employed specific limiting language in NRS 281.230 connecting the contracting prohibition to the employing agency. Similar language was not utilized in NRS 281A.430, which evidences a purposeful omission by the Legislature – a choice to maintain application of the contracting prohibition to any public agencies.

2. Contracting Exceptions

The Commission next considers whether the circumstances fall within any of the contracting exceptions set forth in NRS 281A.430. NRS 281A.430(2), (3), (4) and (5) provide various circumstances by which certain government contracts may be appropriate.

NRS 281A.430(4) is the only exception that might apply to the present circumstances. Central to the exception set forth in NRS 281A.430(4) is the requirement that the proposed contract is either subject to public bidding or an open, competitive process in which any other interested person/business was authorized to provide the services or products. In addition, the public officer or employee must not have a role in developing the contract specifications or considering the offers. See *Johnson*, supra; *In re Harris*, Comm’n Op. No. 02-08 (2002); *In re Public Officer*, Comm’n Op. No. 12-13A (2012); *In re Blackburn*, Comm’n Op. No. 09-90A (2009); and *Bid opinions: In re Public Officers*, Comm’n Op. Nos. 99-34 and 99-35 (2000).

In *In re Public Officer*, Comm’n Op. No. 01-16 (2001), the Commission determined that a violation of former NRS 281.505 (currently NRS 281A.430), or at least an appearance of impropriety, was implicated when the public officer, while serving as a public officer, used information and his/her position as a public officer to negotiate or execute a contract with the public agency, thereby securing or granting to himself/herself

³ NRS 281.230 establishes a criminal Class D felony for a public officer/employee to enter into a contract with the employing agency under specified circumstances.

and a limited liability company in which public officer had a “significant pecuniary interest” an unwarranted privilege, preference, exemption or advantage. The Commission confirmed that a 50% equity interest in a limited liability company was a “significant pecuniary interest”. *Id.* The Commission recognized that the Ethics Law prohibits a public officer from bidding on or entering into a contract between a governmental agency and any private business in which public officer has a significant pecuniary interest, unless all of the following are met: (a) the contracting process is controlled by rules of open competitive bidding; (b) the sources of supply are limited; (c) public officer has not taken part in developing the contract plans or specifications; and (d) public officer will not be personally involved in opening, considering or accepting offers. *Id.* See also *In re Public Employee*, Comm’n Op. No. 15-28A (2016).

In another prior opinion, the Commission reviewed the contract exception under circumstances where the Mayor of Elko provided plumbing and heating repair services on an “as needed” basis to the Elko Convention and Visitors Authority. *In re Johnson*, Comm’n Op. No. 12-68A (2013) (“*Johnson*”). The Commission discussed that the City of Elko has control over its visitor’s authority and considered, in the context of a contract issue implicating NRS 281A.430, whether an appearance of impropriety was created solely by virtue of the authority to appoint a board member. The visitor’s authority had purchased the repair services in an open and competitive process and there was not an exclusive contract for services. Importantly, the Mayor did not develop or specify the terms of the plumbing requirements and he did not influence the open and transparent contracting process. Under these specific circumstances, the Commission determined that the appointment of a single member of the visitor’s authority may have created some influence over its operations, but without other evidence, the appointment alone did not impact the determination about which plumbing contractor to utilize for its “as needed” services, which services were obtained pursuant to rules of an open, competitive process. *Id.* at 8.

Here, the circumstances presented are distinguishable from *Johnson*. Significantly, the proposed contracting process is not subject to an open, competitive process. The Public Entity contacted Public Officer directly to discuss the proposed contract and certain planning occurred in relation thereto. In addition, Public Agency has greater control over the appointment of members of the Public Entity and certain other matters pertaining to the operations of Public Entity.

The record does not demonstrate that all of the conjunctive requirements of NRS 281A.430(4) have been met. The contracting process is not controlled by rules of open, competitive bidding and contract discussions have occurred to develop the terms of the contract, including advertising and profit sharing arrangements. Accordingly, since the requirements of NRS 281A.430(4) are in the conjunctive and all have not been satisfied in this matter, Public Officer would be prohibited from entering into the proposed contract unless the Commission determines it is appropriate to issue relief from the strict application of the provisions of NRS 281A.430 pursuant to NRS 281A.430(6).

3. Relief from the Contracting Prohibition

NRS 281A.430(6) authorizes the Commission to grant relief from the strict prohibition of government contracting by public officers for good cause. In order to grant relief from the strict contracting prohibition, the Commission must determine that such relief would not be contrary to all of the following:

- (1) The best interests of the public;

- (2) The continued ethical integrity of each agency affected by the matter;
and
(3) The provisions of this chapter.

In determining the appropriateness of granting relief from the strict prohibition of government contracting in this matter, the Commission is mindful of the significant public policy of the Ethics Law which requires public officers and employees to preserve the public trust and commit to avoid conflicts between their public duties and private interests. NRS 281A.020. Under the rules of statutory construction, the Commission must and does interpret the provisions of the Ethics Law consistent with the recognized and declared public policy set forth in NRS 281A.020. See *Colello v. Administration of Real Estate Div.*, 100 Nev. 344, 347, 683 P.2d 15 (1984) (“Where the purpose of the legislation is expressly stated, that purpose is a factor to be considered in interpreting a given statute.”) (Citing *Alper v. State ex rel. Dep’t Hwys.*, 96 Nev. 925, 621 P.2d 492 (1980) and *Sheriff, Washoe County v. Smith*, 91 Nev. 729, 542 P.2d 440 (1975)); see also, *Hotel Employees & Restaurant Employees Int’l Union v. State*, 103 Nev. 588 (1987) (Reversed in part on other grounds, 984 F.2d 1507 (9th Cir. 1993)). Accordingly, the Commission considers the standards for relief in the context of the overriding public policy requiring public officers and employees to preserve the public trust and avoid conflicts of interest.

After consideration of the entire record, the Commission determines that relief is not warranted given application of the public policy considerations set forth in NRS 281A.430(6). Members of a governing body have a duty to avoid private conflicts of interest implicating public duties, especially when they have control over all appointments to a subordinate body, the proposed contract is not subject to an open process, and the contract establishes a profit sharing or joint venture arrangement serving to market or advertise a private business interest. The proposed contract also implicates several provisions of NRS 281A.400, as discussed below.

Although Public Officer is commended for seeking this advisory opinion, the concern is that a public officer in a similar situation may use the authority of public position or will have the opportunity to exercise the authority of a public position to impliedly or directly pressure a certain result or juxtapose himself or herself into the public contracting process. These implications, including the impact on the integrity of each involved agency, combined with the potential to impact the public trust, serve as cause to deny relief from the strict application of the contracting prohibition.

D. IMPROPER USE OF GOVERNMENT POSITION

Several sections of NRS 281A.400 apply to or limit private contracts between a public officer/employee and a public entity, including:

- NRS 281A.400(1) -- seeking or accepting engagement or economic opportunity which improperly influences public duties.
- NRS 281A.400(2) -- using public position to secure unwarranted privilege/advantage.
- NRS 281A.400(3) -- participation as agent of government on private contract in which one holds a significant pecuniary interest.
- NRS 281A.400(10) -- seeking employment/contracts through use of public position.

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 such private endeavors to ensure the public officer maintains the appropriate separation between private matters and the official position held and commensurate public duties. Central to each of these provisions is the improper use of a public position to acquire a private or personal gain. Unless authorized by statutory language, these statutory provisions are analyzed based upon the facts presented and are not subject to relief or waiver by the Commission. So, care must be taken by public officers/employees to comply with these provisions and maintain the integrity of public service by avoiding actual conflicts or even an appearance of impropriety by properly separating private interests from public duties. NRS 281A.020.

Here, Public Officer and the Public Entity have already coordinated certain matters associated with the proposed contract. Yet, it does not appear from the circumstances that Public Officer has utilized the authority of a public position to seek or secure a private benefit for Public Officer or anyone else to whom there is commitment in a private capacity. Instead, in an endeavor to comply with the Ethics Law, Public Officer properly sought this advisory opinion.

However, by virtue of the public position held, Public Officer is in a position of authority, has the opportunity or potential to influence decisions of the Public Entity through appointment and other controls Public Agency has over Public Entity. Even if no actual impropriety is evidenced, there is considerable potential for a public officer in Public Officer's situation to control and influence the contracting and award process, especially due to the fact that the contract process is not an open and competitive process. Further, Public Officer has access to persons, information and opportunities that are not made available to the public. At a minimum, an appearance of impropriety associated with failing to separate private interests from public duties is implicated and a public officer/employee has an affirmative duty to avoid such a conflict. See NRS 281A.020. Accordingly, the Commission advises Public Officer not to proceed with the proposed contract given the implications of the statutes identified herein.

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 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. Based upon the record presented, the contracting exceptions listed in NRS 281A.430 are not applicable. Consequently, the contracting prohibition set forth in NRS 281A.430 prohibits Public Officer from entering into the proposed contract with the Public Entity.
4. Pursuant to the requirements of NRS 281A.430(6), the Commission concludes that relief from the strict application of the contracting prohibition is not warranted based upon the record presented.
5. The Commission advises Public Officer that the proposed contract further implicates other provisions of the Ethics Law including, without limitation, NRS 281A.400(1), (2), (3) and (10).

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 majority of Commissioners participated and approved this Opinion:

Dated this 30th day of August, 2017.

THE NEVADA COMMISSION ETHICS

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

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

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

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

SEPARATE STATEMENT:

The following Commissioners respect the opinion of the majority from a statutory construction, legal and public policy perspective. However, in a practical sense, the specific circumstances present only a remote possibility of abuse of power and the contract is in the best interests of the public. Therefore, the Commissioners do not concur in the opinion. The purpose of this separate statement is to bring to the Legislature's attention the current restrictive parameters of the contracting prohibition set forth in NRS 281A.430 that apply the prohibition broadly to any "agency" rather than utilizing the more narrow terms such as an agency located within the same jurisdiction or "employing agency" as do the provisions of NRS 281.230. If it deems it to be appropriate, the Legislature will determine policy for the State of Nevada in this regard and the parameters of amendments to existing law will address defined terms and any perceived inconsistencies between various statutory requirements.

Dated this 30th day of August, 2017.

THE NEVADA COMMISSION ETHICS

By: /s/ Philip K. O'Neill
Philip K. O'Neill
Commissioner

By: /s/ Lynn Stewart
Lynn Stewart
Commissioner