



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Public Officer**, Public Entity,  
State of Nevada,

Advisory Opinion No. 21-055A

\_\_\_\_\_ Public Employee. /

### ABSTRACT OPINION

#### I. STATEMENT OF THE CASE

Public Officer requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") regarding the propriety of Public Officer's conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). Pursuant to NAC 281A.352, a quorum of the Commission considered this matter by submission, without holding an advisory-opinion hearing.<sup>1</sup> The Commission considered the request for an advisory opinion, a list of proposed facts that were affirmed as true by Public Officer and publicly available information.

Public Officer sought an opinion from the Commission regarding the applicability of the cooling-off provisions of NRS 281A.410 and 281A.550(5) because Public Officer separated from public service and accepted employment with a contract vendor for Public Entity. In particular, Public Officer requests guidance on whether Public Officer may help an employer to provide contract deliverables for a contract awarded by Public Entity after the date of separation from public service under the requirements of the Ethics Law, including NRS 281A.410 and NRS 281A.550(5).

After fully considering Public Officer's request and analyzing the facts, circumstances and testimony presented by Public Officer, the Commission deliberated and advised that the acceptance of employment with the contract vendor was not precluded by the "cooling-off" provisions of NRS 281A.550(5) because the date of the contract award was after Public Officer's separation from public service. However, Public Officer must comply with the mandatory prohibitions of NRS 281A.410(1)(b) against representing or consulting for compensation any person including the contract vendor on any issue that was under consideration by the Public Entity during the term of Public Officer's public service.

The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below accept as true those facts Public Officer confirmed to be accurate. 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.<sup>2</sup> Although a full written opinion was properly served, for

---

<sup>1</sup> The following Commissioners participated in this opinion: Chair Wallin, Vice-Chair Duffrin and Commissioners Gruenewald, Lowry, Oscarson, Towler and Yen.

<sup>2</sup> The Commission reserves its statutory authority should an ethics complaint be filed presenting contrary circumstances. See *In re Howard*, Comm'n Op. No. 01-36 (2002) (notwithstanding first-party opinion, public

confidentiality reasons, this abstract opinion redacts certain findings of fact, provides a summary of issues, and removes other identifying information to protect the confidentiality of the requester.

## **II. QUESTIONS PRESENTED**

Public Officer questions whether the “cooling-off” provisions of the Ethics Law set forth in NRS 281A.550(5) prohibit him, for one year after separation from public service, from providing private services to Public Officer’s former public employer, the Public Entity, pursuant to a contract with Contract Vendor, which contract was approved after Public Officer’s separation from public service.

## **III. FINDINGS OF FACT**

1. Public Officer was employed by Public Entity at a management level and has provided a job description detailing the essential job duties performed including duties associated with overseeing staff members.
2. Prior to separating from public service, Public Officer interviewed with a business that became a contract vendor for Public Entity, which contract was awarded after Public Officer left the job.
3. At all times during which Public Officer interviewed with and was hired by the contract vendor, the Public Entity did not have any contracts with the contract vendor.
4. Public Officer was not involved with the process utilized by Public Entity to seek the services of the contract vendor and was not privy to any negotiations or contract terms.
5. Public Officer was hired by the contract vendor after separating from public service and has been assigned work that does not relate to services provided to Public Entity.
6. Within a short time after Public Officer’s separation, Public Entity awarded a contract to the contract vendor that had hired Public Officer.
7. Thereafter, the contract vendor asked Public Officer if it was possible for Public Officer to provide services on the recent contract awarded by the Public Entity, and Public Officer has performed some duties for the employer relating to the contract with Public Entity.
8. Public Officer asks the Ethics Commission whether Public Officer may help an employer to provide deliverables under a certain vendor contract awarded after separation from public service and confirms that Public Officer will abide by the direction provided by the Commission on such matters.

---

is not precluded from bringing ethics complaint) and *In re Rock*, Comm’n Op. No. 94-53 (1995) (reservation of right to review until time issue is raised).

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

### **A. OVERVIEW OF ISSUES**

The Ethics Law promotes public integrity through the appropriate separation between public duties and private interests by Nevada's public officers and employees. In furtherance of that mission, the Ethics Law imposes a one-year "cooling-off" requirement applicable to public officers and employees to prevent these government employees from using any proprietary or regulatory information or relationships belonging to the public to create competitive disadvantages or otherwise misuse government information in the private sector regulated by or contracting with the governmental entity. See NRS 281A.550 and NRS 281A.410(1)(b).

NRS 281A.550(5) prohibits a public officer/employee from soliciting or accepting employment from certain vendors that have contracts with the public employer for a period of one-year, and NRS 281A.410(1)(b) restricts providing representation or consulting services on matters that were pending with the employing public agency for a period of one-year. Further, while serving the public, public officers and public employees must comply with the provisions of NRS 281A.400 precluding the improper use of a public position to assure the faithful discharge of public duties.

### **B. RELEVANT STATUTES**

#### **1. Duty to Avoid Conflicts of Interest**

**NRS 281A.020(1) provides:**

1. It is hereby declared to be the public policy of this State that:
  - (a) A public office is a public trust and shall be held for the sole benefit of the people.
  - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

#### **2. Improper Use of Public Position**

**NRS 281A.400(1), (2), (5) and (10) provide:**

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity, for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity, 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. As used in this subsection, "unwarranted" means without justification or adequate reason.

\*\*\*

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further a significant pecuniary interest of the public officer or employee or any other person or business entity.

\*\*\*

10. A public officer or employee shall not seek other employment or contracts for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity through the use of the public officer's or employee's official position.

### **3. "Cooling-Off" – Accepting Employment**

**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.

### **4. "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. DECISION

Public Officer's circumstances relate to the "cooling-off" prohibitions of the Ethics Law set forth in NRS 281A.550(5) and NRS 281A.410(1)(b). The Legislature has identified limited circumstances in which a public employee may be restricted in future employment endeavors in the private sector so as not to dilute the public's faith in government. Notably, the Legislature, in enacting the distinct and separately enforceable restrictions in NRS 281A.550 and NRS 281A.410, has not prohibited all future private income or employment opportunities. Each statute has a varied focus, but similarly serves to protect the public trust and associated relationships acquired during public service, or expertise obtained as a result of public duties.

The Commission considers whether NRS 281A.550(5) applies and provides instruction on the mandatory provisions of NRS 281A.410(1)(b), which prohibit the provision of paid counseling and representation on issues under consideration by the Public Entity during Public Officer's public service, for a period of one-year after separation from public service.

### A. NRS 281A.550(5) DOES NOT APPLY TO THE SUBJECT CONTRACT

NRS 281A.550(5) prohibits seeking or accepting employment with a private entity that contracts with the State or a political subdivision if the contract amount exceeds \$25,000, the contract was awarded within the 12 months immediately preceding the termination of public service, and the position held by the former public officer or employee at the time of the contract award allowed the former public officer or employee to affect or influence the award of the contract. (Emphasis added). All conjunctive requirements of NRS 281A.550(5) must be present for the one-year "cooling-off" prohibition to apply to restrict the employment.

Two of the three statutory requirements of NRS 281A.550(5) are present, which are: (1) the contract exceeds \$25,000, and (2) Public Officer's position would have allowed Public Officer to influence the contract award. However, the facts establish that the Public Entity did not award the contract within the 12 preceding months before Public Officer's separation from public service.

Even though the statute does not apply based upon the circumstances presented, the Commission takes this opportunity to express its concern that the timing and chain of circumstances creates the impression that Public Officer was in the position to set up a lucrative contract for Public Officer's future employer. However, Public Officer has affirmed to be true specific facts that Public Officer did not have any discussions or have any involvement with the vendor contract. Specifically, Public Officer confirms that Public Officer did not assist in the contract process nor is Public Officer aware of how Public Entity negotiated or obtained the contract with the contract vendor.

The Commission determines that in applying the requirements of NRS 281A.550(5) to the facts, not all of the requirements are present because the contract was not awarded within the 12-month period prior to Public Officer's separation from public service. Therefore, the statutory restrictions of NRS 281A.550(5) do not apply to restrict the employment. Nevertheless, Public Officer must comply with the provisions of NRS 281A.410, as discussed below.

## B. NRS 281A.410(1)(b) LIMITATIONS

The limitations established in NRS 281A.410(1)(b) preclude representing or counseling a private person (including an employer) for compensation on any matter that was an “issue under consideration” during a public officer/employee’s term of service. Consequently, Public Officer is advised that pursuant to NRS 281A.410(1)(b), Public Officer may not, for the one-year period following separation from public service represent or counsel any private person (including Public Officer’s employer, or any other contract vendor for Public Entity, or other business entities) on any issue that was under consideration during Public Officer’s tenure for the Public Entity.

NRS 281A.410(1)(b) broadly defines “issue” to include a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative measures or administrative regulations. In *In re Sweeney*, Comm’n Op. No. 15-70C (2016), the Commission found a violation even where the former employee did not realize her counseling or representation of a private person (her employer) was restricted by NRS 281A.410(1)(b). The Commission reiterates that NRS 281A.410(1)(b) applies to private consulting or service firms even when the ultimate service benefits a public entity because the former employee will receive a salary from the firm for advising it and representing its interests in providing client services associated with a contract for the applicable public entity. See *In re Public Employee*, Comm’n Op. No. 18-029A (2018).

Clearly, the statutory restrictions apply to all matters that were under consideration by the Public Entity during Public Officer’s public service. Here, Public Officer seeks particular direction on whether Public Officer may participate in rendering services to assist the employer in a current contract with the Public Entity awarded after separation from public service. The Commission determines that from the facts presented, it is not discernable when the Public Entity first contemplated or considered exploring these contract services.

Given the short timing between Public Officer’s separation and the Public Entity’s award of the contract, the Commission is not in a position to make a definitive finding that the statutory restrictions do not apply. Instead, the Commission believes the restriction likely would apply based upon the reasonable observation that the contract services were most likely an issue under consideration prior to Public Officer’s separation. This conclusion is bolstered by the fact that the Public Entity had used Public Officer’s employer to provide contract services in the past.

Consequently, even though Public Officer may have been unaware or removed from the contracting process and was not employed at the time of the contract award, if the Public Entity held any internal consideration of options and related discussions, outreach, or negotiation of the contract occurred during the 12 months preceding Public Officer’s separation, the provisions of NRS 281A.410(1)(b) would apply to the contract.

Under such circumstances, the statute imposes a one-year restriction precluding Public Officer from providing services to assist the employer with the contract deliverables to the Public Entity. The Commission recognizes that Public Officer has been providing services to the Public Entity under this contract. Since the Commission has insufficient information, and the purpose of advisory opinions is to secure preventative compliance with the Ethics Law, the Commission is not making any specific finding that NRS 281A.410(1)(b) has been violated.



Nevertheless, Public Officer is well counseled to reach out to Public Officer's employer or the Public Entity to determine when the initial discussions commenced on obtaining the contract services, and until these facts are confirmed to permit Public Officer to assist the Public Entity under the contract, Public Officer should fully comply with the provisions of NRS 281A.410(1)(b). Further, even if Public Officer is permitted to provide some services under the contract, Public Officer still must comply with NRS 281A.410(1)(b) on any specific plan review or any other services provided for a project, issue or matter that was under consideration during Public Officer's public employment for the Public Entity.

In synopsis, the requirements of NRS 281A.410(1)(b) are mandatory and apply to Public Officer's situation even though the employment was not restricted by NRS 281A.550(5). Given the mandatory requirements imposed by NRS 281A.410(1)(b), the Commission advises Public Officer that for a one-year period after separation from public service, the statute prohibits providing representation to or counseling for compensation to a private person or entity on any "issue under consideration" during Public Officer's term of public service for Public Entity, including all contracts, operational and other issues, and any matters before the Public Entity. If there is a question or concern, Public Officer may utilize the advisory opinion process established in NRS 281A.675.

## **VI. CONCLUSIONS OF LAW**

1. Public Officer is a public officer as defined by NRS 281A.160.
2. Pursuant to NRS 281A.680(1), the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to Public Officer under NRS 281A.665.
3. Under the circumstances as presented, Public Officer's employment is not restricted by NRS 281A.550(5) because the timing of the Public Entity's contract award did not occur during the 12-month period prior to Public Officer's separation from public service.
4. Pursuant to NRS 281A.410(1)(b), Public Officer may not represent or counsel a private person or entity, including Public Officer's employer for one year after the termination of public service on any issues that were under consideration by the Public Entity during Public Officer's tenure, which prohibition applies to all issues under consideration by the Public Entity. Although Public Officer does not have information about the timing of the vendor contract, the short time between Public Officer's separation and the contract award, demonstrates that Public Entity was considering the contract services and the processing and award of the contract before the date of separation. Therefore, the contract and associated deliverables likely constitute an issue under consideration during Public Officer's public service and are subject to the restrictions set forth in NRS 281A.410(1)(b).
5. Public Officer is advised to avoid this conflict by obtaining additional information about the Public Entity's consideration of options, the contract and associated contracting process, as instructed in this opinion. Further, Public Officer must review each issue or other matter that was before the Public Entity prior to Public Officer's separation and comply with the one-year restriction established by NRS 281A.410(1)(b).

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.

Dated this 2<sup>nd</sup> day of November, 2021.

NEVADA COMMISSION ON ETHICS

By: /s/ Kim Wallin  
Kim Wallin, CPA, CMA, CFM  
Chair

By: /s/ James Oscarson  
James Oscarson  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Vice-Chair

By: Absent  
Damian R. Sheets, Esq.  
Commissioner

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

By: /s/ Thoran Towler  
Thoran Towler  
Commissioner

By: /s/ Teresa Lowry  
Teresa Lowry, Esq.  
Commissioner

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner