



**Confidentiality Waived for Opinion Only Pursuant to Stipulated Agreement issued on November 2, 2021. This Opinion issued August 13, 2019 supersedes Abstract Opinion *In re Public Officer*, Comm'n Op. No. 19-049A issued November 25, 2019.**

## BEFORE THE NEVADA COMMISSION ON ETHICS

In re **James Alworth**, Councilmember,  
City of Ely, State of Nevada,

Advisory Opinion No.19-049A  
CONFIDENTIAL

\_\_\_\_\_  
Public Officer. /

### OPINION

#### I. STATEMENT OF THE CASE

James Alworth ("Alworth"), a member of the Ely City Council, State of Nevada, requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.675, regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). Pursuant to Section 13 of the Commission's approved regulation, LCB File No. R108-18, 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, information provided by Alworth that he affirmed as true and publicly available information.

Alworth sought an opinion from the Commission regarding his responsibilities under the Ethics Law, including his disclosure and abstention obligations as a councilmember, associated with his continuing volunteer affiliation with the Ely Volunteer Fire Department ("Department"), which commendably includes approximately 36 years of volunteer service.

After fully considering Alworth's request and analyzing the facts, circumstances and information presented, the Commission deliberated and advises Alworth that, in performing his public duties as a member of the Ely City Council, he must comply with all disclosure and abstention requirements of NRS 281A.420, which may include consideration of the presumption, as set forth in NRS 281A.420(3) and (4). The Commission now renders this formal written opinion stating its findings of fact and conclusions of law.

The facts in this matter were obtained from documentary evidence provided by Alworth and public records. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below are accepted as true. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.<sup>2</sup>

<sup>1</sup> The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O'Neill, Wallin 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 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).

## **II. QUESTION PRESENTED**

As a councilmember for the City of Ely and a volunteer for the Ely Volunteer Fire Department, Alworth requests guidance on his disclosure and abstention requirements under the Ethics Law pertaining to legislative and administrative matters affecting the Department, which could include ordinances, contracts, budgets and administrative or personnel matters.

## **III. FINDINGS OF FACT**

1. Alworth is a newly elected member of the Ely City Council and pursuant to NRS 281A.160, Alworth is a public officer.
2. In his private capacity, Alworth has, for the past 36 years, served as a volunteer for the Department and is provided stipends, insurance coverage, training and other benefits for such service.
3. The Department was organized pursuant to Ely's Municipal Code, Title 7, and consists of a Fire Chief, Assistant Fire Chiefs, and not less than twenty (20) nor more than seventy five (75) members, including a secretary-treasurer and a captain for each twenty five (25) members or fraction thereof. Ely Municipal Code, Title 7, Sections 7-1-1 and 7-1-3.
4. The Department offers services to the public including fire suppression, emergency medical services, rescue and extrication, hazardous materials response, education and Fire Code inspections in both the incorporated City limits, as well as, the unincorporated County through an interlocal Agreement between White Pine County, the White Pine County Fire District and the City of Ely.
5. The Fire Chief has authority over all actions of the entire Department, supervises all career and volunteer personnel and assures fire apparatus is in working order and ready for use. Ely Municipal Code, Title 7, Section 7-1-4.
6. The Assistant Fire Chiefs assist the Fire Chief in discharge of his duties, which include responsibility for all operating, maintenance and inspection functions of a fire station, response to fire alarms, and in absence of the Fire Chief, assumes command in emergency situations and trains and supervises volunteer personnel. Ely Municipal Code, Title 7, Section 7-1-5.
7. Operating Engineers, Local 3, AFL-CIO, is the recognized union that is the exclusive bargaining agent for the Assistant Fire Chiefs and all classifications beneath that grade as defined for purposes of collective bargaining (may be referred to as "career staff").
8. As a member of the Ely City Council, Alworth anticipates considering ordinances, contracts (including collective bargaining agreements for career staff), budgets, administrative and personnel matters and other matters pertaining to the Ely Volunteer Fire Department and all of its staff.
9. Depending on whether the personnel is employed as career staff or utilized as a volunteer, the involved personnel matters could pertain to stipends or salary and wage rates, leaves of absence, insurance benefits, working hours and days, safety, training and work conditions, grievances or discipline matters, and other matters associated with working conditions.

10. Alworth recognizes that he must disclose and abstain pursuant to NRS 281A.420 on any personnel matters affecting his status and working conditions as a volunteer and questions whether he should disclose and abstain on matters affecting the Fire Department and Volunteer Department directly or indirectly.

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

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

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

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

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

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

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

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

In this opinion, the Commission advises on the disclosure and abstention requirements set forth in NRS 281A.420 applicable to Alworth, as a member of the Ely City Council, to ensure that proper separation is maintained between his public duties and his private interests and commitments in a private capacity to the Department.

## **B. RELEVANT STATUTES**

### **1. Public Trust and Duty to Avoid Conflicts of Interest**

**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. Misusing Public Position for Personal Purpose**

**NRS 281A.400(1), (2), (3), (9) and (10) provided:**

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.

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 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.

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

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. Disclosure**

#### **NRS 281A.420(1) provides:**

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;

(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; or

(d) Which would reasonably be related to the nature of any representation or counseling that the public officer or employee provided to a private person for compensation before another agency within the immediately preceding year, provided such representation or counseling is permitted by NRS 281A.410,

↳ without disclosing information concerning the gift or loan, the significant pecuniary interest, the commitment in a private capacity to the interests of the other person or the nature of the representation or counseling of the private 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, upon the person to whom the public officer or employee has a commitment in a private capacity or upon the private person who was represented or counseled by the public officer or employee. 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.

#### **4. Abstention**

##### **NRS 281A.420(3) and (4) provide:**

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 duty of the public officer to make a proper disclosure at the time the matter is considered and in the manner required by subsection 1.

(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 makes a proper disclosure at the time the matter is considered and 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.

#### **5. "Commitment in a Private Capacity" Defined.**

##### **NRS 281A.065 provides:**

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

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

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

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

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

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

## V. COMMISSION DECISION

### A. DISCLOSURE REQUIREMENTS

NRS 281A.420 requires a proper disclosure when the public officer or employee is carrying out his public duties to approve, disapprove, vote, abstain or otherwise act upon a matter: (a) regarding a gift or loan, (b) in which he has a significant pecuniary interest, (c) which would reasonably be affected by his commitment in a private capacity to the interests of another person, or (d) which would be related to any representation or counseling of a private person for compensation before another agency within the preceding year.

In detailing the public trust aspects associated with a proper disclosure, the Commission explained in *In re Public Officer*, Comm'n Op. No. 13-71A (2014), citing *In re Weber*, Comm'n Opinion No. 09-47C (2009):

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. NRS 281A.420(1) requires a proper disclosure when the public officer or employee is carrying out his public duties to approve, disapprove, vote, abstain or otherwise act upon a matter in which he has a significant pecuniary interest.

As with any required disclosure, the disclosure must inform the public attending each meeting at which an implicated matter is on the agenda. (NRS 281A.420(1)). The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests. Silence based upon a prior disclosure at a prior meeting fails *to inform the public* of the nature and extent of the conflict. See *In re Buck*, Comm'n Opinion No. 11-63C (2011)(holding that incorporation by reference of a prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)).

## **B. SIGNIFICANT PECUNIARY INTEREST AND COMMITMENTS IN A PRIVATE CAPACITY**

Under the Ethics Law a “pecuniary interest” is defined under NRS 281A.139 as “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.”

The Merriam-Webster dictionary defines “significant” as having or likely to have influence or effect, important or probably caused by something other than mere chance. Merriam-Webster’s Collegiate Dictionary 1159 (11<sup>th</sup> ed. 2003). Similarly, *The American Heritage College Dictionary* 1268 (3rd ed. 1997) defines “significant” as “meaningful” or “important.” The statute, as originally enacted, did not contain the word “significant.” The term was added by the Nevada Legislature in 2013 with the enactment of Senate Bill (“SB”) 228. The Commission’s Executive Director at the time testified that “significant” was being added to several subsections of the Ethics Law, to eliminate a *de minimis* interest from being seen as a true conflict. See Exhibit C submitted at Hearing on SB 228 before the Assembly Legislative Operations & Elections Comm., 77th Leg. (Nev. May 14, 2013). Therefore, a significant pecuniary interest means that the associated benefits or detriments are important and not incidental, trivial or *de minimis*.

In addition, the Legislature has identified relationships that establish the type of private commitments that implicate conflicts of interest. Based upon the facts presented, the Commission reviews the application of NRS 281A.065(4) (employer relationship) and NRS 281A.065(6) (substantially similar relationship), which establish a private commitment to employers and those relationships that are substantially similar thereto.

Alworth confirms that volunteers have certain salary and benefits funded or provided by the City of Ely and the provisions of the Ely Municipal Code establishes operational oversight for the volunteers by the Fire Chief and Assistant Fire Chiefs. Therefore, by virtue of Alworth’s service as a volunteer of the Department he has a significant pecuniary interest in his employment. Further, there are sufficient attributes of an employment relationship for Alworth to have a commitment in a private capacity to the Department and its personnel (career and volunteer) pursuant to NRS 281A.065(4).

Even if the volunteer service could be asserted to differ from a traditional employment relationship, it certainly has articulable corollaries making it substantially similar to the employment relationship to constitute a commitment in a private capacity under NRS 281A.065(6). Based upon a comparable fact pattern, the Commission determined that a member of the Lander County Board of Commissioners held a commitment in a private capacity under NRS 281A.065(6) to the Lander County Sheriff’s Search and Rescue team by virtue of a 10-year volunteer relationship with the organization.

Therefore, the Commission determines that Alworth has a significant pecuniary interest as a volunteer for the Department by virtue of the stipends, training and other received benefits and he also has a commitment in a private capacity to the Department,

which commitment encompasses career personnel and volunteer colleagues pursuant to NRS 281A.065(4) or NRS 281A.065(6).<sup>3</sup>

### **C. ANALYSIS ON DISCLOSURE AND ABSTENTION PERTAINING TO PRESENTED CIRCUMSTANCES**

Alworth has verified that he intends to make full disclosures and abstain pursuant to NRS 281A.420 on any matter affecting his status and working conditions as a volunteer such as payment of the Fire Hall for meetings, stipend amounts, training and equipment purchases. The Commission agrees that pursuant to NRS 281A.420(1), these and any other personnel matters affecting Alworth's volunteer service would materially affect the judgment of a reasonable person in his situation so as to require abstention pursuant to NRS 281A.420(3) and (4). See *In re Murnane*, Comm'n Op. No. 15-45A (2016), in which, the Commission identifies a number of personnel matters that constituted a significant pecuniary interest, including employment, salary, benefits, personnel, grievances, special assignments, promotions, discipline, litigation or similar matters affecting the public employee, either as a benefit or detriment. If there is a question in the future, the Commission advises Alworth to seek the advice of the legal counsel for the City or request another advisory opinion from the Commission, based upon the applicable given set of facts.

NRS 281A.420(1) further requires a proper disclosure when the public officer or employee is carrying out his public duties to approve, disapprove, vote, abstain or otherwise act upon a matter in which he holds a commitment in a private capacity to the interests of another person. The Commission has determined that Alworth holds a private commitment to the Department and its personnel. In reviewing this issue, the Commission considers the public policy attributes of NRS 281A.420(4), which instruct that appropriate weight and proper deference is to be given to the public policy of this State, which favors the right of a public officer to perform the duties for which the public officer was appointed and to otherwise act upon a matter. The public officer must properly disclosed the public officer's commitment in a private capacity to the interests of another person to avail himself of the presumption. The Commission now considers the application of the disclosure and abstention requirements of NRS 281A.420 to personnel matters affecting the Department's career and volunteer personnel, Department budget matters and any ordinances, contracts or other matters pertaining to the Department that may be considered by the City Council.

#### **1) Personnel Matters for Career and Volunteer Fire Personnel**

The Ely Fire Chief is employed by the City Council and has statutory duties of supervision over the volunteer personnel of the Ely Volunteer Fire Department pursuant to the Ely Municipal Code. Alworth's private commitments to the Ely Volunteer Fire Department and significant pecuniary interests in his volunteer employment raise similar issues to those discussed by the Commission in *Murnane. Id.* In *Murnane*, the Commission advised the City Manager to be vigilant and properly disclose and abstain from participation with respect to his private commitment to his nephew who was also employed by the City. The commitment means that the interests of the nephew are imputed to the public officer or employee for purposes of the Ethics Law. Similarly, the interests of the Department are imputed to be those of Alworth under the Ethics Law.

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<sup>3</sup> Further, Alworth has a commitment to the City of Ely as his employer in the elected position he serves as a Council Member for the City of Ely. As in *Mills*, the commitment does not prevent his volunteer service to the Ely Volunteer Fire Department because of his elected position as a member of the Ely City Council under the Ethics Law.

Therefore, the Commission advises that a full disclosure is required on all matters that would affect Alworth's commitments to the Ely Volunteer Fire Department and its supervisors, including personnel matters and any matters affecting career and volunteer personnel. It is difficult to imagine that any reasonable person in Alworth's situation would not be materially affected by participation on personnel matters affecting one's own supervisors and colleagues.

In particular, the Commission recommends a proper disclosure and abstention on all personnel matters, including salary and benefits, grievances, personnel issues, litigation and similar matters associated with the Ely Volunteer Fire Department that affect either career personnel or volunteers, unless he is entitled to the presumption detailed below. Without specific facts, the Commission does not perceive many circumstances where the presumption would alleviate abstention in these personnel matters. Nevertheless, it does not have a specific set of facts on which to provide guidance in this area. It is further advised that the provisions of NRS 281A.420 do not extend to govern a personal bias. If there is a personal bias associated with participating on a personnel matter, it likely would be governed by other laws and legal advice should be obtained before any participation on the matter.

## **2) Budget of the Ely Volunteer Fire Department**

With respect to administering the City budget, which could include matters that directly implicate Alworth's pecuniary interests as a volunteer or the direct pecuniary interests of his supervisors and colleagues, the Commission does not perceive any situations where abstention would not be required on Alworth's own salary and benefit matters because such monetary interests are so personal in nature that a reasonable public officer's participation on the matter would be materially affected. However, Alworth will need to conduct an abstention analysis for other budget matters affecting the pecuniary interests of career personnel and volunteers, which interests are not related to Alworth's own pecuniary interests and may be properly characterized as general in nature. To assist him in this endeavor, Alworth is advised to seek legal direction from the official legal counsel to determine whether his present circumstances require only a disclosure or also abstention.

Alworth may be able to avail himself of the presumption set forth in NRS 281A.420(3) and (4) after he makes a proper public disclosure, depending on what type of budget matter and associated funding allocations are contained in the budget. The presumption permits participation on an item if 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.

This determination must be made based upon the facts and extent that the matter affects private interests and commitments. To be entitled to the presumption, Alworth will need to explain and confirm for the public that his participation on the matter would not provide a greater or lesser benefit or a detriment to himself as a volunteer of the Department or to his career and volunteer colleagues. Once the public is informed, Alworth should advise the public that under these circumstances, he is entitled to the presumption, and explain the presumption to the public. Then, Alworth would be entitled to participate on the matter. If the advice of legal counsel for the agency is obtained prior

to assist in these matters, the law provides what is referred to as a “safe harbor.” Pursuant to NRS 281A.790(5), a public officer or employee is provided certain protections from a willful violation of the Ethics Law provided he relies in good faith upon the advice of legal counsel retained by his public agency or public employer and if the legal advice is provided prior to the act or omission and based upon a reasonable legal determination premised upon the requirements of the Ethics Law and associate opinion. In addition, the Commission’s advisory opinion process is available to Alworth, as a public officer.

### **3) Contracts and Ordinances affecting the Department**

Without being provided the context of a proposed ordinance or contract, the Commission is only able to provide general advice and refer Alworth to his official legal counsel. On all ordinances or contracts directly affecting his status as a volunteer and his associated significant pecuniary interests, disclosure and abstention are required. The law would not distinguish the type of matter, i.e., contract or ordinance, as an exclusion to the requirements of NRS 281A.420.

For any other contract or ordinance that has an effect, whether it be a benefit or detriment, on the Department, a proper disclosure would be required. Thereafter, the Ethics Law requires Alworth to conduct the abstention analysis set forth in NRS 281A.420(3) and (4), including detailing the item’s effect on Alworth’s private commitments. In other words, Alworth must ascertain and explain to the public whether the item to be considered provides either a benefit or detriment to Alworth’s commitment in a private capacity and whether the private interests and commitments of the group would be affected any differently than Alworth’s private interests and commitments. If the effect on the matter is the same, the Ethics Law presumes that the public officer will be independent in judgment. Therefore, he would be permitted to participate on such a matter. For example, should Alworth, in his public capacity, approve a mutual aid agreement with another jurisdiction, he could explain he is a volunteer for the Department and how the terms of the contract apply to all those affected equally and do not provide any particular benefit or detriment that is greater or less to any person or group affected by the contract.

## **D. USE OF GOVERNMENT POSITION**

As Alworth is a newly elected member of the Ely City Council, the Commission takes this opportunity to commend Alworth for his early recognition and appreciation of the Ethics Law, and to generally advise him about the requirements of NRS 281A.400 pertaining to improper use of a public position. A review of this statute will assist Alworth in properly performing his public duties. For example, NRS 281A.400(2) does not prohibit a public officer from acting in a manner consistent with his personal interests. Rather, the intent of this statute prohibits a public officer from acting in a manner that creates unwarranted privileges, preferences or advantages for his personal interests and private commitments, including non-profits or other persons to whom he has a commitment in a private capacity. See *In re Public Officer*, Comm’n Opinion No. 12-15A (2012). If a specific matter creates a question in the future, Alworth may seek legal advice from the City’s official counsel or he is welcome to present the circumstances to and seek an advisory opinion from the Commission.

## VI. CONCLUSIONS OF LAW

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 in a manner that will tend to preserve public confidence in and respect for the government he 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 interests and the interests of the public. Helping public officials and employees achieve these goals is one of the objectives of the Ethics Law and therefore the Commission concludes:

1. Alworth is a public officer as defined by NRS 281A.160.
2. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.460.
3. Alworth has a significant pecuniary interest in his status as a volunteer and associated personnel matters.
4. Pursuant to NRS 281A.065(4) or (6) and based upon the record before the Commission, Alworth has a commitment in a private capacity to the City of Ely and its Volunteer Fire Department, including career and volunteer personnel and supervisors.
5. Pursuant to NRS 281A.420(1), Alworth must make a proper public disclosure, at the time each matter pertaining to his significant private interests and private commitments is considered, detailing sufficient information concerning his personal interests and private commitments and their potential effect on his participation on the matter.
6. Pursuant to NRS 281A.420(3) and (4), abstention should be considered in future matters affecting Alworth's private commitments depending on the scope of the issue before City Council. Specifically, Alworth is advised to abstain from participation on matters involving decisions that affect his direct pecuniary interests and personnel matters and the personnel matters of other career and volunteer staff of the Department. For other matters, he should consider whether it is appropriate, based on the nature of the issue, to conduct the abstention analysis in consultation with the agency's legal counsel to determine if he is entitled to avail himself of the presumption set forth in NRS 281A.420(3) and (4).

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Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

Dated this 13<sup>th</sup> day of August, 2019.

NEVADA COMMISSION ON ETHICS

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

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

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

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

By: /s/ Brian Duffrin  
Brian Duffrin  
Commissioner

By: /s/ Kim Wallin  
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By: /s/ Barbara Gruenewald  
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Commissioner

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