



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR ADVISORY OPINION OF
BARBARA SMITH CAMPBELL, Chairman,
Nevada Tax Commission**

Advisory Opinion No. 05-58

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on November 9, 2005, on the request for advisory opinion filed with the Commission pursuant to NRS 281.511(1) by Barbara Smith Campbell, an appointed member and Chairman of the Nevada Tax Commission.

The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511(5). Ms. Campbell appeared in person with her legal counsel, Thomas R. C. Wilson. Ms. Campbell was sworn and presented testimony. This advisory opinion is confidential pursuant to NRS 281.511(5).

Ms. Campbell seeks an advisory opinion from the Commission determining whether the provisions of NRS 281.491 allow her to establish a private business designed to offer consulting services to private businesses in need of advice and guidance in participating in and complying with the regulatory process of NRS Chapter 233B (the Nevada Administrative Code) and the regulations and taxes administered by the Nevada Department of Taxation upon her retirement from the Nevada Tax Commission.

After full consideration of the request for an advisory opinion and considering all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Ms. Campbell of its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. Ms. Campbell was, at the time of the hearing, a member of the Nevada Tax Commission, having been appointed to the Commission by former Governor Richard Bryan in 1986. She had been reappointed to the Tax Commission for five (5) consecutive terms. Ms. Campbell served as Chairman of the Tax Commission from 1996 through her retirement on November 30, 2005.
2. The Nevada Tax Commission was established pursuant to NRS 360.010. It consists of eight members appointed by the Governor, who designates one of the members to serve as Chairman of the Commission. Each commissioner serves an initial four-year term, and can serve more than one term. Members of the Nevada Tax Commission are required to possess certain qualifications and experience to guide the deliberations of the Commission. The Governor is an ex-officio, nonvoting member of the Commission.
3. The Nevada Tax Commission supervises the administration and operations of the Nevada Department of Taxation. The Tax Commission adopts regulations, adopts enforcement and audit policies, and approves forms and procedures used by the Department of Taxation. The Commission also hears taxpayer appeals of hearing decisions, and under statutory authority, makes decisions to ensure the consistent application of taxes among taxpayers and among various taxes.

4. In her capacity as a member of the Nevada Tax Commission, Ms. Campbell's duties included the formulation of policy contained in regulations governing business and industry in general, and she directly performed activities and influenced audits, decisions, investigations, and other actions which significantly affected business and industry. Ms. Campbell was not involved in regulating a specific business or industry, nor did she gain knowledge of the trade secrets of a direct business competitor.
5. Ms. Campbell's service as a member of the Nevada Tax Commission was part-time. Prior to July 1, 2005, Ms. Campbell's compensation for her service consisted of \$80.00 for each day committed to the work of the Commission, plus reimbursement for per diem and travel expenses related to the business of the Commission at the rate provided for State officers and employees generally. Beginning July 1, 2005, Ms. Campbell was compensated \$27,500.00 per annum as the Chairman of the Commission.
6. In her private capacity, Ms. Campbell is employed full-time as the Vice President of Finance for MGM Grand Resorts Development.
7. Ms. Campbell retired from the Nevada Tax Commission on November 30, 2005, after nearly 20 years of service.
8. Ms. Campbell seeks to establish a private business designed to offer consulting services to businesses in need of guidance in complying with the provisions and regulatory process of NRS Chapter 233B (the Nevada Administrative Code) and the regulations and taxes administered by the Nevada Department of Taxation. Specifically, Ms. Campbell intends to engage in the following activities:

- Review and monitor the administrative processes of Nevada's general taxing authority, with specific focus on the Department of Taxation;
- Attend regulatory workshops involving broad-based general taxes or fees having a financial or administrative impact on taxpayers;
- Provide education to individual and business clients on general compliance with tax laws and regulations and developing internal administrative processes for the accrual, collection and remittance of taxes;
- Address the impact, if any, of adopted regulations for the administration of Nevada taxes under Title 32 of the Nevada Revenue and Taxation Code;
- Attend and participate in the general public's comment and review sessions during regulatory workshops of the Department of Taxation, a process that affords an opportunity for taxpayers and their representatives and consultants to interact proactively with the Nevada Tax Commission in developing Nevada's tax and revenue regulations;
- Attend and participate in the general public's comment and review sessions for the adoption of tax regulation at the Nevada Tax Commission;
- Represent and counsel a private person concerning the proposal or consideration of legislative measures or administrative regulations; and
- Attend the Legislative Commission final review process for adoption of the tax and revenue regulations and, when appropriate, seek

reconsideration or amendment of proposed tax and revenue regulations.

CONCLUSIONS OF LAW

1. At the time of the hearing, Ms. Campbell was a public officer as defined by NRS 281.4365.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511(1) and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved by a five-to-one vote, the Commission renders the following Opinion:¹

OPINION

The issue in this opinion concerns the propriety of Ms. Campbell's proposed consulting activities in view of the restrictions contained in NRS 281.491. Subsection 1 of NRS 281.491 provides:

A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. *Any such officer or employee who 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 his service.* As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations. (Emphasis added.)

¹Commissioners James Kosinski, George Keele, Rick Hsu, Randall Capurro and Mark Hutchison voted to approve the motion, while Commissioner William Flangas voted nay. Chairman Caren Jenkins did not attend the meeting, and Commissioner Timothy Cashman withdrew from participation in this matter due to a perceived conflict of interest.

As a member of the Nevada Tax Commission, Ms. Campbell is prohibited for one year after her retirement from the Commission, from representing or counseling for compensation a private person or business upon any “issue” that was under consideration by the Commission during her term of service. Because Ms. Campbell has been a member of the Nevada Tax Commission for almost 20 years, she is effectively precluded from rendering advice or guidance to private clients concerning any “issue” considered by the Commission during that time. “Issue” is defined in NRS 281.491(1) to include “a case, proceeding, application, contract, or determination” but specifically excludes “the proposal or consideration of legislative measures or administrative regulations.”

According to the testimony presented by Ms. Campbell at the hearing in this matter, she intends to establish a consulting business that would offer guidance to businesses in complying with the regulatory provisions and process of the Nevada Department of Taxation and facilitating their participation in the administrative rule-making process. She does not intend to offer representation to private clients relating to any issue pending before the Nevada Tax Commission at the time of her retirement. Additionally, Ms. Campbell testified that she has not formulated a list of prospective business clients to whom she intends to solicit her consulting services. For one year after her retirement from the Tax Commission, Ms. Campbell will limit her activities to those specifically excluded under NRS 281.491(1).

While it appears that Ms. Campbell is cognizant of proscriptions contained in NRS 281.491(1), this Commission seeks to emphasize that for a period of one year after her retirement from the Tax Commission, Ms. Campbell’s proposed consulting services cannot involve any representation or counsel to private clients concerning an “issue” which was under consideration by the Tax Commission during Ms. Campbell’s entire tenure, not just those matters pending at the time of Ms. Campbell’s retirement. Further, the Commission concludes that the provisions

of NRS 281.491(1) do authorize Ms. Campbell to engage in consulting services relating to the proposal or consideration of legislative measures or administrative regulations; however, it is this Commission's position that such activities must be confined to the proposal or consideration of prospective legislative measures and prospective administrative regulations only.

Finally, the Commission notes that Ms. Campbell's proposed consulting services may also implicate certain provisions of NRS 281.236,² however, this Commission has not been asked to apply the provisions of NRS 281.236 to Ms. Campbell's proposed consulting services and is rendering no opinion in that regard. Ms. Campbell is encouraged to return to the Commission for an opinion interpreting and applying the provisions of NRS 281.236 to her circumstances if she finds it appropriate.

NOTE: THIS MATTER IS A FIRST-PARTY ADVISORY OPINION REQUEST. FOR PURPOSES OF A FIRST-PARTY ADVISORY OPINION REQUESTED PURSUANT TO NRS 281.511(1) AND NRS 281.521, ALL FACTS IN THE MATTER ARE PROVIDED BY THE PUBLIC OFFICER REQUESTING THE ADVISORY OPINION, AND THE COMMISSION MAKES NO INDEPENDENT INVESTIGATION AS TO THE TRUTH OF THOSE FACTS. THE RECORD HEREIN, THEREFORE, CONSISTS SOLELY OF FACTS PROVIDED ON THE RECORD BY THE PUBLIC OFFICER, AND THIS OPINION IS BASED SOLELY UPON THOSE FACTS. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE PROVIDED BY THE PUBLIC OFFICER IN THIS ADVISORY OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: February 24, 2006.

NEVADA COMMISSION ON ETHICS

By: 

MARK A. HUTCHISON, Vice Chairman

² NRS 281.236 imposes a one year restriction upon a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the Executive Branch of government from employing certain former public officers or employees of the agency after termination of service or employment. The statute also permits such public officers or employees to seek relief from the strict application of the statute.