



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,
Former Public Officer**

Advisory Opinion No. 06-24

This matter came before the Nevada Commission on Ethics (“Commission”) for hearing on May 19, 2006 on the request for an advisory opinion filed with the Commission pursuant to NRS 281.511(1) by Barbara Smith Campbell, a former 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, Esq. Ms. Campbell was sworn and presented testimony. At the conclusion of the hearing, Ms. Campbell waived confidentiality both of this matter and the advice provided in her prior Request for Advisory Opinion number 05-58 (“Opinion 05-58”).

Ms. Campbell returns to the Commission after receiving Opinion 05-58, rendered in November of 2005. Ms. Campbell had requested the Commission opine whether the provisions of NRS 281.491 allowed her, upon her retirement from the Nevada Tax Commission, to offer

consulting services to private businesses in need of advice and guidance with regard to the regulatory process of the Nevada Administrative Code and the regulations and taxes administered by the Nevada Department of Taxation.

In Opinion 05-58, the Commission opined that Ms. Campbell was subject to the one-year cooling-off period and her proposed consulting services could not involve any representation or counsel to private clients concerning any issue under consideration by the Tax Commission during Ms. Campbell's entire tenure. However, Ms. Campbell could engage in consulting services relating to the proposal or consideration of legislative measures or administrative regulations.

Ms. Campbell now seeks an advisory opinion regarding the following:

1. Whether any provisions of NRS Chapter 281 prohibit Ms. Campbell from serving as a consultant to the Nevada Commission on Economic Development and the Nevada Department of Taxation; and
2. Whether Ms. Campbell's proposed consulting services to the Commission on Economic Development and the Department of Taxation conform to this Commission's prior opinion issued to Ms. Campbell in November of 2005.

After fully considering 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. The Nevada Tax Commission is the appointed body which heads the Nevada Department of Taxation. Ms. Campbell was a member of the Nevada Tax

Commission from 1986 to 2005. She served as the Chairman of the Commission from 1996 to 2005.

2. After her retirement from the Nevada Tax Commission on November 30, 2005, Ms. Campbell established a private consulting business.
3. Ms. Campbell's proposed consulting plan for the Department of Taxation involves assisting in managing and implementing new technology in the department, and amending, updating and codifying chapters of the Nevada Administrative Code.
4. Ms. Campbell's proposed consulting plan for the Commission on Economic Development involves assisting it to conduct regulatory workshops and amending various chapters of the Nevada Administrative Code.

CONCLUSIONS OF LAW

1. At the time of the hearing, Ms. Campbell was a former 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 unanimously, the Commission renders the following Opinion:

OPINION

The issues in this opinion are the propriety of Ms. Campbell's proposed consulting activities and whether those activities conform to the Commission's prior opinion issued to Ms. Campbell in Opinion 05-58.

With regard to the first issue presented, nothing in the Ethics in Government Law (NRS 281.411-NRS 281.581) prohibits Ms. Campbell from serving as a consultant to the Commission on Economic Development and the Department of Taxation. The Commission also determined that Ms. Campbell is exempt from NRS 281.236(3), the "one-year cooling-off" provision, as it relates to this request for opinion. NRS 281.236(3) 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, but not a government entity, 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 Commission from the strict application of the statute.¹ Ms. Campbell's proposed consulting plan is for the government agencies themselves and not the industries they regulate. Further, even if such an industry was employing Ms. Campbell, she is exempt from NRS 281.236(3) because the statute became effective after Ms. Campbell had been appointed to the Commission.²

¹ See, NRS 281.236(4).

² Statutes of Nevada, 1993 Nev. Stat. 281.236, sec. 2 provides: "The provisions of subsection 3 of section 1 of this act do not apply to the service or employment of a public officer or employee who is serving or is employed by an agency, division or department of the executive branch of government on the effective date of this act, unless on or after that date, that person is appointed to serve as an officer or retained as an employee of another agency, division or department of the executive branch of government for which subsequent employment is restricted pursuant to subsection 3 of section 1 of this act." Ms. Campbell was serving on the Tax Commission when this act became effective on July 12, 1993. Therefore, Ms. Campbell is exempt from NRS 281.236(3).

With regard to the second issue before the Commission, the Commission determined that Ms. Campbell's proposed consulting services to the Commission on Economic Development and the Department of Taxation conform to this Commission's prior opinion issued to Ms. Campbell.

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.)

Based on documents Ms. Campbell submitted to the Commission and her testimony on the record, her proposed consulting for the Department of Taxation involves assisting in managing and implementing new technology in the department and amending, updating and codifying chapters of the Nevada Administrative Code. Similarly, Ms. Campbell will consult with the Commission on Economic Development on conducting regulatory workshops and amending various chapters of the Nevada Administrative Code.

While NRS 281.491(1) prohibits Ms. Campbell from representing or counseling "private" clients on issues that were under consideration by the Tax Commission during her tenure,³ under the proposed consulting plan with the Department of Taxation and the Commission on Economic Development, Ms. Campbell will not be representing private individuals or entities. Instead, Ms.

³ See, CEO 05-58 (2-24-06).

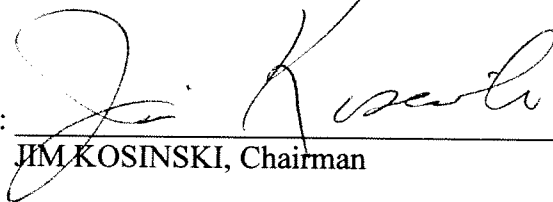
Campbell will be representing the public agencies themselves. Under these facts, Ms. Campbell's activities would violate either NRS 281.491(1) or Opinion 05-58.

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 AND USED BY THE COMMISSION 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: March 1, 2007.

NEVADA COMMISSION ON ETHICS

By:



JIM KOSINSKI, Chairman