



STATE OF NEVADA

## BEFORE THE NEVADA COMMISSION ON ETHICS

**In The Matter Of The Request For  
Advisory Opinion by LOUIS F. ROGGENSACK  
Former employee, Division of Insurance,  
Life and Health Section, State of Nevada**

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**Advisory Opinion No. 06-60**

### OPINION

This matter came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (“Commission”) for hearing on October 11, 2006 on the request for an advisory opinion pursuant to NRS 281.511.1. Louis F. Roggensack (“Roggensack”), former employee, Nevada Division of Insurance, Life and Health Section (“Division”) filed the request.

The matter was properly noticed as a non-confidential matter. Roggensack appeared in person and provided sworn testimony. Roggensack sought an opinion from the Commission finding that either (1) the provisions of NRS 281.236.3 do not apply to him with regard to the one-year “cooling off period;” or (2) if those provisions do apply, he is entitled to relief from the strict application of the provisions of NRS 281.236.4.

After considering the request for an advisory opinion and considering all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised

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<sup>1</sup> The quorum consisted of then Chair Jenkins and Commissioners Capurro, Cashman, Flangas, Hsu, Hutchison and Keele. Commissioner Kosinski was absent and excused.

Roggensack of its decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

### **FINDINGS OF FACT**

1. Roggensack was employed with the Division from July 3, 1995 to September 8, 2006. Prior to his employment with the Division, Roggensack held an insurance agent license and sold insurance.

2. Roggensack's duties with the Division included:

- a. Reviewed insurance companies' form and rate filings for approval;
- b. Responded to consumers, industry representatives, elected officials, the general public and any other interested parties on inquiries regarding life and health insurance;
- c. Analyzed proposed legislative bills, drafted regulations and represented the Division at hearings, workshops, boards and health committees;
- d. Reviewed complex complaints on life and health matters and coordinated resolutions.

3. Roggensack wishes to solicit and sell life and health insurance to the general public through his Producer of Insurance (insurance agent) license. He would have independent sales contracts with insurance companies for this purpose.

4. Roggensack's business plan does not include lobbying efforts on behalf of any insurance company. He would not be involved in policy making on behalf of any insurance company.

5. Roggensack does not possess any non-public information that he learned through duties with the Division that allows him to target or identify potential customers.

6. Roggensack did not use any resources available to him while at the Division to begin to build his insurance sales business.

### **CONCLUSIONS OF LAW**

1. Roggensack is a former public employee as defined by NRS 281.436.
2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511.1 and NRS 281.521.
3. The prohibitions under NRS 281.236.3 apply to Roggensack. However, he is entitled to relief from the strict application of the one-year “cooling off” period pursuant to NRS 281.236.4.

### **DISCUSSION**

The issue is whether, pursuant to NRS 281.236.3, Roggensack is prohibited from commencing employment as an independent contractor selling life and health insurance until one year following his resignation from the Division. Should the Commission determine the statute is generally applicable, Roggensack requests a waiver of the statute’s strict application in accordance with NRS 281.236.4.

NRS 281.236.3 and .4 provide:

3. [A] business or industry whose activities are governed by regulations adopted by a department, division or other agency of the executive branch of government shall not, except as otherwise provided in subsection 4, employ a former public officer or employee of the agency, except a clerical employee, for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year, he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

4. A public officer or employee may request the commission on ethics to apply the relevant facts in his case to the provisions of subsection 3 and determine whether relief from the strict application of the provision is proper. If the commission on ethics determines that relief from the strict application of the provisions of subsection 3 is not contrary to:

- (a) The best interests of the public;
- (b) The continued integrity of state government; and
- (c) The code of ethical standards prescribed in NRS 281.481,

It may issue an order to that effect and grant such relief. The decision of the commission on ethics in such a case is subject to judicial review.

In *NCOE Opinion 00-44*, the Commission recognized the legislature's intent when enacting NRS 281.236:

"One goal of the Nevada Legislature in enacting subsection 3 of NRS 281.236 was to significantly reduce the temptation for a public officer or employee to compromise public duties in favor of possible employment opportunities within the business or industry which the public officer or employee regulated. Public suspicions arise about the integrity of government and the ethical standards of public officers and employees, if a regulator is permitted to accept such employment immediately after concluding one's public service."<sup>2</sup>

The facts presented in this matter establish that Roggensack sold insurance prior to his employment with the Division. He now wishes to sell life and health insurance as an independent contractor. Based on his duties at the Division, the provisions of NRS 281.236.3 do apply to Roggensack. The Commission must therefore determine whether relief from the strict application of the provisions is proper.

There is nothing in the facts presented to suggest that, prior to his retirement from the Division, Roggensack did anything contrary to Chapter 281A of NRS (Ethics in Government Law) such as to use government resources available to him to begin to build his insurance sales business. Roggensack's business plan is not contrary to the best interests of the public. Nothing in the plan would be contrary to the continued integrity of state government. Further, Roggensack's business plan does not violate the Code of Ethical Standards prescribed in NRS 281.481. However, the Commission cautions Roggensack that should his business plan change

to include representation or counseling insurance companies on issues that were pending during his service with the Division, he must follow the proscriptions under NRS 281.491.<sup>3</sup>

Therefore, relief is granted to Roggensack from the strict application of the one-year “cooling off” period found in NRS 281.236.

**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: 12-26-07. NEVADA COMMISSION ON ETHICS

By:   
MARK HUTCHISON, Vice Chairman

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<sup>2</sup> See, *Matter of Judy Sheldrew*, NCOE Opinion 00-44.

<sup>3</sup> NRS 281.491.1 states, “A . . . 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.)