



STATE OF NEVADA

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In The Matter Of The Request For  
Advisory Opinion by JAMES LOPEY  
Assistant Sheriff of Operations,  
Washoe County Sheriff, State of Nevada.**

**Advisory Opinion No. 06-78**

**OPINION**

This matter came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (Commission) for hearing on January 24, 2007. The request for an advisory opinion pursuant to NRS 281.511.1 was filed by James Lopey (Lopey), Assistant Sheriff of Operations for the Washoe County Sheriff's office (Sheriff's Office). Lopey appeared in person and provided sworn testimony. The matter was properly noticed as a non-confidential matter.

Lopey sought an opinion from the Commission finding that either: (1) the provisions of NRS 281.236.3 do not apply to him regarding 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 in accordance with NRS 281.236.4.

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<sup>1</sup> The quorum consisted of Chairman Kosinski and Commissioners Capurro, Cashman, Flangas, Hsu, Hutchison, Jenkins and Keele.

After considering the request for an opinion, all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Lopey of its decision. The Commission issues this opinion.<sup>2</sup>

### **FINDINGS OF FACT**

1. At the time of the hearing, Lopey was the Washoe County Assistant Sheriff of Operations. Lopey was appointed to this position in November 1998 and planned to retire in March of 2007.
2. Lopey was the homeland security representative for the Sheriff's Office, overseeing homeland security operations.
3. The Sheriff's Office, the Las Vegas Metropolitan Police Department (Metro) and other public agencies are involved in various statewide security projects that focused on streamlining intelligence operations. Metro is the project lead agency for two of the projects, the TEWS and Statewatch projects. Lopey was the Northern Nevada coordinator for the TEWS and Statewatch projects.
4. After Lopey notified Metro that he was retiring from the Sheriff's Office, Metro offered Lopey employment as independent contractor as the Northern Nevada coordinator for the TEWS and Statewatch projects. He would be hired by CIO Collaborative (CIO), an independent contractor working with Metro. It is unknown whether CIO has had any dealings with the Sheriff's Office. Lopey would be responsible for assuring that the TEWS and Statewatch projects are carried out in Northern Nevada.

### **CONCLUSIONS OF LAW**

1. Lopey was a public employee, as defined by NRS 281.436.
2. The Commission has jurisdiction to render an advisory opinion in this matter,

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<sup>2</sup> Commissioners Flangas and Kosinski voted Nay.

pursuant to NRS 281.511.1 and NRS 281.521.

3. Lopey is relieved from the strict application of NRS 281.236.3 in accordance with NRS 281.236.4.

### **DISCUSSION**

The issue is whether Lopey is prohibited from employment with CIO as an independent contractor working with Metro on homeland security matters until one year following his retirement from the Sheriff's Office, pursuant to NRS 281.236.3. If the Commission determines that the statute is generally applicable, then is Lopey entitled to 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... 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

...

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.

The facts presented in this matter establish that Lopey was the homeland security representative for the Sheriff's Office, overseeing homeland security operations. In that

capacity, Lopey was also the coordinator for the TEWS and Statewatch security projects in Northern Nevada. Lopey planned to retire. When he advised Metro of this fact, Metro offered him employment on an independent contractor basis as the coordinator of the TEWS and Statewatch projects for Northern Nevada. Lopey would be hired by CIO, an independent contractor for Metro. There were no facts presented to show that Lopey's duties at the Sheriff's Office included the formulation of policy or whether CIO was governed by regulations of the Sheriff's Office. Further, no facts were presented as to whether CIO would be significantly affected by a decision or action taken by Lopey while at the Sheriff's Office.

### CONCLUSION

Based on his duties at the Sheriff's Office and the lack of information concerning how CIO may be affected by a decision made by Lopey, it is uncertain whether the provision of NRS 281.236.3 applies to Lopey. However, even if it did, the Commission determines that relief from the strict application of the one-year cooling off period is proper. Lopey's employment is not contrary to the best interests of the public, the continued integrity of state government and the Code of Ethical Standards prescribed in NRS 281.491.

In accordance with NRS 281.236.4, relief is granted to Lopey from the strict application of the one-year cooling off period found in NRS 281.236.3.

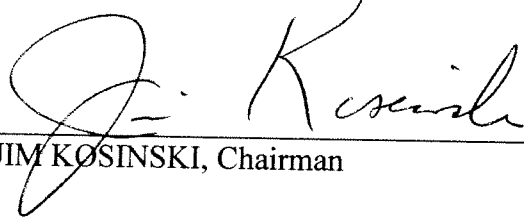
**NOTE: THIS MATTER IS A FIRST-PARTY ADVISORY OPINION REQUEST. FOR PURPOSES OF A FIRST-PARTY ADVISORY OPINION REQUESTED PURSUANT TO NRS 281.511.1 AND NRS 281.521, ALL FACTS IN THE MATTER ARE PROVIDED BY THE PUBLIC OFFICER REQUESTING THE ADVISORY OPINION. THE COMMISSION MAKES NO INDEPENDENT INVESTIGATION AS TO THE TRUTH OF THOSE FACTS. THE RECORD HEREIN, THEREFORE, CONSISTS SOLELY OF FACTS PROVIDED ON THE RECORD BY THE PUBLIC OFFICER. 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: December 21, 2007.

NEVADA COMMISSION ON ETHICS

By:

A handwritten signature in black ink, appearing to read "J. Kosinski", written over a horizontal line.

JIM KOSINSKI, Chairman