



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Advisory Opinion by Elizabeth A. Jacobson,
Environmental Scientist III, Nevada Division of
Environmental Protection, State of Nevada.**

Advisory Opinion No. 07-19A

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on July 19, 2007 on Nevada Division of Environmental Protection (NDEP) employee Elizabeth A. Jacobson's (Jacobson) request for an advisory opinion, pursuant NRS 281A.440.1.² Jacobson appeared in person and provided sworn testimony. Pursuant to NRS 281A.440.5 requests for advisory opinion are confidential unless the requester waives confidentiality. Jacobson waived confidentiality of this matter.

Jacobson sought an opinion from the Commission regarding: (1) whether Jacobson violated the Ethics in Government Law when she performed consulting work for GeoSciences; and (2) whether future, similar consulting work would violate the Ethics in Government Law.

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

¹ The quorum consisted of then Chairman Kosinski and Commissioners Capurro, Cashman, Flangas, Hsu, Hutchison, Jenkins and Keele.

² Formerly NRS 281.511 of the Ethics in Government law. The Ethics in Government law has been re-codified and is now Chapter 281A of NRS. This opinion cites to the re-codified statutes.

of its decision in the matter. The Commission now renders this written Opinion stating its decision.

FINDINGS OF FACT

1. At all relevant times, Jacobson was an employee of the Federal Facilities Bureau (Federal Facilities) within NDEP. Federal Facilities is primarily concerned with the Nevada Test Site (Test Site) in Southern Nevada. Jacobson analyzes and evaluates water flow models to determine potential ground water contamination at the Test Site.
2. The Bureau of Corrective Actions (Corrective Actions) is also within the NDEP. Corrective Actions is concerned with ground contamination by and removal of underground storage tanks. Jacobson, in her capacity as a public employee, worked with Corrective Actions once for approximately two hours. However, nothing that Jacobson did for Corrective Actions involved Federal Facilities.
3. Lahontan GeoSciences (GeoSciences) is a private company located in Northern Nevada that on one occasion hired Jacobson as an independent contractor.
4. GeoSciences does business with Corrective Actions. However, nothing that Jacobson has done or contemplates doing for GeoSciences involves Federal Facilities.
5. Jacobson prepared information for GeoSciences that was analyzed by another consultant and ultimately submitted by that consultant on behalf of GeoSciences and its client to the Nevada Division of Water Resources (NDWR) and the State Engineer.
6. NDWR and NDEP are two separate and distinct agencies under the umbrella of the Nevada Department of Conservation and Natural Resources.
7. NDEP has no policy prohibiting employees from performing outside work on their personal time.

8. When Jacobson worked for GeoSciences, she used personal time during evenings and weekends. Jacobson did not use government equipment or facilities when she conducted consulting work.

9. Jacobson's supervisor at NDEP approved Jacobson doing outside consulting work for GeoSciences.

CONCLUSIONS OF LAW

1. At the time of the hearing, Jacobson was a public employee as defined by NRS 281A.150.

2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281A.440.1 and NRS 281A.460.

3. The work Jacobson did for GeoSciences did not violate the Ethics in Government Law. Future, similar work would not violate the Ethics in Government Law, provided Jacobson follows the parameters set forth in this Opinion.

DISCUSSION

The issues are: (1) whether Jacobson violated the Ethics in Government Law when she performed consulting work for GeoSciences; and (2) whether future, similar consulting work would violate the Ethics in Government Law.

The focus of the Ethics in Government Law is for public employees to commit themselves to avoid conflicts between their private interests and those of the general public whom they serve.³ To that end, the Code of Ethical Conduct⁴ provides guidelines to show the

³ See NRS 281A.020, Legislative findings and declarations.

⁴ The Code of Ethical Conduct provides:

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

appropriate separation between the roles of persons who are both public servants and private citizens.

The Code of Ethical Conduct prohibits public employees from misusing their public employment for personal gain. Additionally, NRS 281A.410.⁵ prohibits employees in the

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "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 any private business in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

...

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

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

⁵ NRS 281A.410 provides: In addition to the requirements of the code of ethical standards:

1. 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.

2. A member of the legislative branch, or a member of the executive branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he

executive branch of government from *representing or counseling*, for compensation, private persons on any issue pending before the agency⁶ in which the employee serves. Further, NRS 281A.410.2 prohibits full-time executive branch employees from *representing* clients before any state agency.

The facts presented in this matter established that Jacobson's supervisor approved Jacobson's consulting work with GeoSciences. When Jacobson performed work for GeoSciences, she did not utilize government time, equipment or facilities. No evidence was presented that Jacobson misused her public employment to personally benefit her or GeoSciences. Therefore, Jacobson did not violate the Code of Ethical Standards with the work she performed for GeoSciences.

Additionally, no evidence was offered that Jacobson violated NRS 281A.410.1. Nothing that Jacobson has done or contemplates doing for GeoSciences as an independent consultant involves the agency in which she serves, namely: Federal Facilities. Further, no evidence was offered that Jacobson violated NRS 281A.410.2. Jacobson did not represent GeoSciences or any of its clients before any state agency. Jacobson was several steps removed from the representation of GeoSciences and its client before the NDWR and the State Engineer. Further, it was only until the eve of Jacobson's hearing before the Commission on this matter that she was informed by GeoSciences that the information she provided to GeoSciences was ultimately submitted to the State Engineer. The Commission advised Jacobson that if she decides to do similar consulting work in the future, she is required to comply with the Code of Ethical Standards NRS 281A.400 and NRS 281A.410.

does not serve. **Any other member of the executive branch or public employee shall not represent a client for compensation before any state agency** of the Executive or Legislative Branch of government. (Emphasis added.)

⁶ NRS 233B.031 "Agency" defined. "Agency" means an agency, bureau, board, commission, department, division, officer or employee of the Executive Department of the State Government authorized by law to make regulations or to determine contested cases.

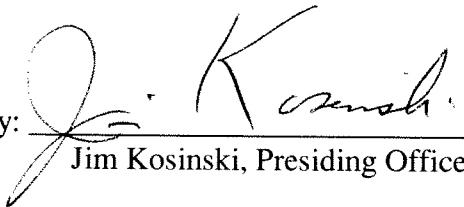
CONCLUSION

The Commission unanimously concluded that Jacobson did not violate the Ethics in Government Law by working as an independent consultant for GeoSciences. Further, in the future, Jacobson may engage in similar consulting work provided that: (1) she follow the parameters set forth in this Opinion; and (2) adhere strictly to NRS 281A.400 and NRS 281A.410 while engaging in such consulting activity.

NOTE: this matter is a first-party advisory opinion request. For purposes of a first-party advisory opinion requested pursuant to NRS 281A.440.1 and NRS 281A.460, all facts in the matter are provided by the public officer requesting the advisory opinion. Facts and circumstances that differ from those provided and used by the commission in this advisory opinion may result in an opinion contrary to this opinion.

DATED: 4/21/08.

NEVADA COMMISSION ON ETHICS

By: 
Jim Kosinski, Presiding Officer