



**CONFIDENTIALITY WAIVED FOR
OPINION ONLY**

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Michael Brown**, Executive Director,
Governor's Office of Economic Development,
State of Nevada,

Advisory Opinion No.22-064A
Confidential

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Michael Brown ("Brown") requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission"), regarding the propriety of his conduct as it relates to the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS"). Pursuant to NAC 281A.352, a quorum of the Commission considered this matter by submission, without holding an advisory-opinion hearing.¹ The Commission considered the request for an advisory opinion, a list of proposed facts that were affirmed as true by Brown and publicly available information.

Brown sought an opinion from the Commission regarding the applicability of the Ethics Law under circumstances involving his request as the Executive Director of the Governor's Office of Economic Development ("GOED") to attend a private industry organization conference in Washington D.C. on a government pass hosted by Benchmark Mineral Intelligence ("Benchmark"). After fully considering Brown's request and analyzing the facts, circumstances and testimony presented by Brown, the Commission deliberated and has advised Brown of its decision that the Ethics Law does not preclude Brown from seeking or accepting funds available to government attendees to support conference attendance.

The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law. The facts in this matter were obtained from documentary evidence provided by Brown. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below accept as true those facts Brown presented. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.²

II. QUESTION PRESENTED

As GOED's Executive Director, Brown questions whether seeking and accepting a sponsorship for conference fees to attend a private industry conference geared towards assisting government and other industry players to understand the lithium industry, which GOED is charged with developing in Nevada, would be precluded by the Ethics Law.

¹ The following Commissioners participated in this opinion: Chair Wallin, Vice-Chair Duffrin and Commissioners Gruenewald, Lowry, Oscarson, Towler, Sheets, and Yen.

² The Commission reserves its statutory authority should an ethics complaint be filed presenting contrary circumstances. See *In re Howard*, Comm'n Op. No. 01-36 (2002) (notwithstanding first-party opinion, public is not precluded from bringing ethics complaint) and *In re Rock*, Comm'n Op. No. 94-53 (1995) (reservation of right to review until time issue is raised).

III. FINDINGS OF FACT

1. Michael Brown (“Brown”) is the Executive Director for the Governor’s Office of Economic Development (“GOED”). He oversees GOED’s northern and southern Nevada operations.
2. GOED was created during the 2011 Session of the Nevada Legislature through a collaboration of the Nevada Governor’s Office and the Leadership of the Nevada State Senate and State Assembly under NRS Chapter 231.
3. GOED’s vision is “a vibrant, innovative, and sustainable economy with high-paying jobs for Nevadans. Its mission is “high-quality jobs for Nevadans.”
4. With its economic development partners, GOED’s objectives are to:
 - Establish a cohesive economic development operating system.
 - Increase opportunity through education and workforce development.
 - Catalyze innovation in core and emerging industries:
 - Advanced Manufacturing
 - Technology
 - Energy (Including Lithium)
 - Health
 - Operations Logistics
 - Startup/Venture Capital
 - Advance targeted sectors and opportunities in the region.
 - Expand global engagement.
5. Benchmark Mineral Intelligence (“Benchmark”) is hosting its Battery Gigafactory’s USA 2022 conference (“2022 Conference”) on June 23 and 24, 2022, which will be located at a venue in Washington D.C.
6. According to its website:

Benchmark is the world’s leading IOSCO-regulated price reporting agency (PRA), proprietary data provider, and market intelligence publisher for the lithium-ion battery to electric vehicle (EV) supply chain.

Our granular and expert focus on the entire supply chain makes us unique: from lithium and cobalt mining through to the manufacturing of cathode and anode functional materials, to battery cell and EV production.

At Benchmark, we set the lithium industry’s reference and benchmark pricing. Our series of price assessment and data methodologies allow us to collect our proprietary data from the source, creating data that is relied upon by the industry to make multibillion dollar investment decisions that accelerates the energy storage revolution.

Benchmark’s tireless and methodical data collection coupled with in-house expert analysis makes us entirely unique in the 21st century publishing space and the world’s most trusted service.

As a result, our services are relied upon by major actors in the EV supply chain, we have testified to the US Senate multiple times, advised The

White House, The Pentagon, and government agencies around the world.

7. The Lithium Sector in Nevada is a priority targeted by GOED's objectives. The conference is significant to the highly fragmented industry and will provide a better understanding of how it works along with opportunities for Director Brown to meet key leaders and stakeholders.
8. GOED does not regulate the operations of Benchmark. Further, Benchmark is not a current vendor for GOED, and it does not have any contracts with or receive grant funds from the agency.
9. Because GOED does not have the budget to send Brown to the conference, he inquired about attending on a US government registration and was informed that he qualified as a state official. This form of registration subsidizes only the regular registration fee and conference lunches. The regular registration fee is: \$3,310.00. In addition, participants must pay their own airfare and hotel.
10. Brown learned about the US government registration subsidy via a generic email promoting the event that was sent to Director Terry Reynolds at the Nevada Department of Business & Industry who forwarded it to his attention.
11. The 2022 Conference also aligned with Brown's pre-planned travel to Washington, D.C. to participate in the US Trade Administration's Select USA conference (June 27 & 28, 2022) where GOED has an exhibit. Brown will also be attending a two-day (June 25 & 26) meeting of the State Economic Development Executives Network (SEDE.)
12. Before completing the acceptance and making final arrangements, Brown is seeking advice from the Commission regarding accepting the free government registration. He will be covering his own housing costs since he has a home in Washington D.C. He will attend the informational and working sessions only and emphasizes that there will be no personal benefits from attending. Additionally, Brown sought the advisory opinion out of an abundance of caution because he is an appointed official of the Governor, with the obligation to file an annual disclosure with the Secretary of State. Brown requires all GOED employees to complete an annual ethics training session in cooperation with the Commission. Accordingly, Brown seeks advice from the Commission on the merits of these circumstances, including obtaining guidance on any disclosure obligation.

IV. STATEMENT AND DISCUSSION OF RELEVANT STATUTES AND ISSUES

A. OVERVIEW OF ISSUES

The Commission considers the implications under the Ethics Law where an Executive Director of a state agency would like to use a gift or subsidy to attend a conference hosted by a business that is motivated to expand its products into Nevada, for purposes of obtaining information about industry operations and providing key networking with established leaders and stakeholders.

Under NRS 281A.020, a public officer must commit himself to avoid actual and perceived conflicts of interest, and he must comply with those preclusions as established in the Ethics Law associated with seeking and accepting gifts and economic opportunities, which are set forth in NRS 281A.400(1) and (2).

B. RELEVANT STATUTES

1) Public Policy - NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a public trust and shall be held for the sole benefit of the people.
 - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2) Seeking Gifts or Economic Opportunity that would Improperly Influence a Public Officer to Depart from the Faithful and Impartial Discharge of Public Duties - NRS 281A.400(1) and (2) provide:

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 the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.
2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection, "unwarranted" means without justification or adequate reason.

V. COMMISSION DECISION

A. Prior Commission Opinions - Gifts for Conference Attendance

The Commission has issued fact-specific opinions addressing the propriety of receiving gifts or economic opportunities associated with educational conference fees, transportation, lodging and meals. In *In re Schwartz*, Comm'n Op. No. 16-13A (2016), the Commission applied its opinion precedent to confirm that Schwartz could accept funding from the Nevada Association of Realtors to attend a conference sponsored by the Association of Real Estate License Law Officials. Previously, in *In re Public Officer*, Comm'n Opinion No. 11-36A (2012), the Commission reviewed prior opinions and application of NRS 281A.400(1) and (2) to circumstances where a vendor, who had an existing contract³ with a State Agency, offered an expense-paid trip for an agency representative to attend a symposium sponsored by the vendor. The vendor invited clients to the annual symposium to receive feedback on its products and services and also to share perspectives and experiences relevant to industry trends. The Commission determined the symposium was directly related to the State's interests in administering and promoting its programs as the conference was educational in nature and, importantly, that the invitation would not tend to improperly influence a reasonable public servant to depart from his official duties. See NRS 281A.400(1).

³ At the time, Vendor had already been awarded the contract based upon competitive bidding statutes, so it was not offered as an incentive to contract.

The Commission has recognized that even under circumstances where the gift has an educational component and/or is beneficial to the public, there is a perceived quid pro quo. "Consequently, the Commission is careful to review requests for opinions regarding such invitations on facts specific to the request to ensure the propriety of the intended travel and to encourage agencies to adopt 'TOI' [Travel on Industry] policies appropriate to their needs." *Id.* at pgs. 4-6. The circumstances which were reviewed by the Commission in issuing its Opinion included: (1) the purpose of the conference; (2) whether the education provides insight into current and future issues facing the Agency and assists in fulfillment of public duties; (3) whether the gift is merely a show of appreciation; (4) whether the gift would influence a public officer to depart from his public duties; and (5) whether the gift is warranted rather than unwarranted and does not detract from maintaining appropriate industry relationships and avoids ethical concerns." *In re Schwartz*, at p.5.

In *In re Public Officer*, Comm'n Opinion No. 10-72A (2012), the Commission found no violation of NRS 281A.400(1) when an industry company offering programs to a regulatory agency offered to pay for attendance to an industry conference and opined that:

A review of the proposed program shows that the conference is intended to be a working conference, with little or no entertainment provided. In addition, no State money will be expended for the conference and COMPANY X's offer is limited to reimbursement of travel expenses and does not include any compensation to DEPUTIES. Payment of the expenses of any guest is also excluded.

We therefore conclude that PUBLIC OFFICER's acceptance of COMPANY X's invitation on behalf of DEPUTIES, and DEPUTIES' acceptance of the invitation, would not violate NRS 281A.400(1). The gift and/or economic opportunity of an all-expenses-paid trip to attend the conference, without payment of compensation or discretionary expenses, would not tend to improperly influence a reasonable person in the Public Officer or the Deputies' situations to depart from their official duties.

The Commission reviewed whether the public officer or his deputies used their public offices to secure unwarranted privileges or advantages for themselves pursuant to the provisions of NRS 281A.400(2) and determined from the evidence that the Company had offered to pay the conference expenses with the intent to further the State's interests relating to managing a new Nevada State Program and to offer training and collaborations related to the State's interests. The invitation was not an enticement or encouragement related to the vending contract or to extend the vending contract. Further, management of the vending contract was not directly under the authority of the agency. *Id.*

The Commission's opinions in *In re Looney and Crowley*, Comm'n Opinion No. 92-17 (1993), provides an important consideration when reviewing any gifts or reimbursements in that care should be taken not to permit private funding of public salaries and benefits. Although the facts as presented do not appear to implicate private funding of public salaries and benefits; nonetheless, the Commission reviewed these opinions to assure itself that there were no implications based upon the facts presented. The opinions instruct that:

The public policy, which is the premise of NRS 281.481(4) (now NRS 281A.400(4)), is that the publicly elected Board of Regents is charged with responsibility for the mission, goals, policies and administration of the

University of Nevada, its universities and community colleges. The execution of that responsibility requires the undivided and undiluted accountability of the officers and employees to the Board of Regents of the University. The jurisdiction to direct those officers and employees must be solely in the Board of Regents, just as must be the jurisdiction to pay, reward, and provide benefits to such officers and employees, whatever the original source of the funds to do so, whether public or private.

Implicit in this principle is the notion that just as the Regents have the duty to define the duties and policies of UNR officers and employees, the Regents retain the power to (i) judge and enforce their performance of such duties and policies, and (ii) determine the appropriate compensation, rewards and benefits for such performance, as distinct from a private party.

This is based upon the practice that only the government normally should compensate employees for government work, so that third parties do not reward, compensate, control or influence a government or public employee's decision or service. Accordingly, it is usual for the law to forbid a supplement to a public employee's salary from private or outside sources. It is this same principle which restricts, prohibits or requires disclosure of the receipt of gifts, honoraria or other economic benefits from others when given or paid for activity related to public or government employment. [Citing Northwestern University Law Review, Vol. 87 at page 57 (Fall 1982).

B. Acceptance of Gifts - NRS 281A.400(1)

In reviewing the record as presented, including the purpose for seeking sponsorship of conference fees available to the 2022 Conference government attendees, the Commission determines that the purpose of the conference is in furtherance of the established objectives GOED would like to apply to the Lithium Sector in Nevada. The sponsorship is available based upon pre-established qualifications. Further, the information about the sponsorship was not provided as a result of Benchmark seeking any accommodation from GOED, or quid pro quo. This minimizes quid pro quo concerns and demonstrates that there is no purposeful selection by Benchmark of Brown as the recipient for purposes of gathering support for its products in Nevada. The conference will assist GOED in obtaining information about the lithium industry, which directly impacts GOED's objectives relating thereto. Brown confirms the sponsorship only applies to the conference fees and does not pay for any private or personal recreational items, lodging, or air flights.

Accordingly, the central issue to be determined by the Commission is whether the conference sponsorship would constitute a gift which would create an appearance of impropriety or tend to influence a public officer to depart from the faithful and impartial discharge of his public duties in violation of NRS 281A.400(1). The 2022 Conference provides the opportunity for GOED, through its Executive Director, to obtain education about the lithium industry, and there is no stated or perceived quid pro quo or conditions associated with the conference fee sponsorship. The funding is specifically limited to conference expenses for the attending public official and is not for guests. Although the 2022 Conference may provide networking opportunities, there is no indication that the sponsorship is provided to seek favoritism or a quid pro quo with respect to Nevada providing any grants, support, tax abatements or other opportunities to Benchmark.

Based upon the record and the limitations placed upon the funding, the Commission determines that accepting the funding does not create an appearance of impropriety and would not violate NRS 281A.400(1) because, even though it is a gift or economic opportunity, the gift would not tend to improperly influence a reasonable person in the public official's situation to depart from his official duties.

C. Securing Unwarranted Privileges or Advantages

NRS 281A.400(2) mandates that a public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person.

Brown has not asked a Benchmark representative to provide the sponsorship. Instead, he located the sponsorship pursuant to a general email promoting the event that was forwarded to him from another agency. The Commission determines that Brown may apply for the sponsorship for the conference fees and such action would not violate the provisions of NRS 281A.400(2) because the funding is not sought for a private purpose, the conference is educational, related to GOED's mission and goals, is consistent with Brown's public duties, and the facts presented do not directly implicate quid pro quo concerns, such actions do not rise to the level of seeking an unwarranted privilege under the Ethics Law. NRS 281A.400(2) defines "unwarranted" as without justification or adequate reason, which is not demonstrated by these facts. Further, the record does not establish or reference the existence of the other types of relationships mentioned in NRS 281A.400(2).

D. Other Implicated Laws

Although the Commission is not charged with the enforcement of other State laws and regulations and is not required to reference such laws under NRS Chapter 281A, it may do so. Public officers and employees have an independent duty to determine the existence of other applicable laws, regulations and policies associated with their own situations. An advisory opinion issued by the Commission does not excuse the duty to comply with the requirements of the law. In this regard, the Commission references the existence of laws and regulations instituted by the State,⁴ separate from those set forth in NRS Chapter 281A, establishing certain protocols for acceptance of gifts by state agencies.

Separately, the Commission encourages Brown to establish internal agency policies and procedures for GOED in coordination with State Administration regarding travel funding for public officials and employees at the expense of private industry, including non-profits. Adoption of a travel-on-industry policy "would aid in balancing the overall interests of the agency, and that if its employees, in obtaining work-related skills and training with the agency's need to be informed of and maintain appropriate industry relationships and avoid ethical concerns outlined herein." See *In re Public Employee*, Comm'n Opinion No. 11-36A (2012).

⁴ This reference should not be deemed to be a complete search of applicable law and does not constitute legal advice.

VI. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Brown was a public officer as defined by NRS 281A.160.
1. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter and any such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
2. Pursuant to NRS 281A.400(1), the acceptance of the government pass to attend an industry conference hosted by Benchmark under these particular circumstances, within the limitations expressed in this opinion, does not create an appearance of impropriety and would not violate NRS 281A.400(1) because, even though it is a gift or economic opportunity, the gift would not tend to improperly influence a reasonable person in the public official's situation to depart from his official duties.
3. Brown may request a conference fee sponsorship from Benchmark without violating the provisions of NRS 281A.400(2) because the record establishes the direct connectivity of the conference to performance of public duties as well as the gift's detachment from any associated quid pro quo concerns. Therefore, Brown's action would not rise to the level of seeking an unwarranted privilege under the Ethics Law, which NRS 281A.400(2) defines as "without justification or adequate reason."

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law construed to constitute a Finding of Fact, is hereby adopted, and incorporated as such to the same extent as if originally so designated.

Dated this 16th day of June, 2022.

NEVADA COMMISSION ON ETHICS

By: /s/ Kim Wallin
Kim Wallin, CPA, CMA, CFM
Chair

By: /s/ James Oscarson
James Oscarson
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Vice-Chair

By: /s/ Damian R. Sheets
Damian R. Sheets, Esq.
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
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By: /s/ Thoran Towler
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By: /s/ Teresa Lowry
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