



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Todd Hess**, Former Superintendent,
Storey County School District,
State of Nevada,

Advisory Opinion No. 24-062A
CONFIDENTIAL

Subject. /

OPINION

EXECUTIVE SUMMARY¹

TOPIC: COOLING OFF

Todd Hess (“Hess”), retired Superintendent of the Storey County School District (“SCSD”), requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675, regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A. Hess requests an advisory opinion regarding whether the “cooling off” prohibitions of the Ethics Law would apply to prohibit him from entering into a contract, through an LLC, to provide consulting services to SCSD to assist in oversight of the construction of a long-planned “one-site” school campus which will provide enhanced safety for SCSD students and staff.

After fully considering his request and analyzing the facts and circumstances as presented by Hess, the Commission advises Hess that the “cooling off” prohibitions contained in NRS 281A.410 and NRS 281A.550(5) do not apply to his circumstances. Hess is nonetheless advised to maintain proper separation between his public duties and his commitments in a private capacity and to comply with all requirements of the Ethics Laws.

¹ This executive summary constitutes no part of the opinion of the Commission. It has been prepared by Commission staff for the convenience of the reader.

I. FINDINGS OF FACT

- A. Todd Hess (“Hess”) is the former Superintendent of the Storey County School District (“SCSD”). Hess retired from the position of Superintendent on July 13, 2024, at the end of the 2023-2024 school year, after holding it for 8 years. In total, he worked for SCSD for 30 years.
- B. SCSD is currently in the process of building a new “one-site” school campus for the purpose of enhanced school safety.
- C. Hess began advocating to the SCSD School Board (“Board”) and capital improvement projects team to build a one-site campus approximately seven years ago. He has attended town hall speaking engagements throughout Storey County detailing the vision and scope of the new school site construction project and spoken to the Storey County Commissioners numerous times.
- D. Hess has not been involved in or assisted with the RFP process for the construction of the new school site, nor did he serve on or select the members of the Construction Manager at Risk (“CMAR”) committee for the construction project².
- E. Lumos Engineering assisted SCSD with the CMAR process and the Board ultimately approved contracts with H&K Architects, Lumos Engineering and Miles Construction for the construction of the new school site at the January 10, 2024 Board Meeting. Hess did not affect or influence the awarding of these contracts and did not have influence over or supervise anyone who awarded the contracts.
- F. Construction is scheduled to begin in early Fall 2024 and finish in August of 2026. SCSD is currently in the pre-construction phase.
- G. The Board has asked Hess to provide consulting services to SCSD during the construction of the new school site. Hess has unique historical background knowledge regarding the scope of the project and certain important related issues, such as bonds that have been issued to fund the project. The Board therefore believes that it is in SCSD’s best interest for Hess to consult on portions of the project.
- H. Hess and the Board have not discussed any specifics of his consulting pending a determination by the Commission that it would not violate the Ethics Law, but any agreement would need to be approved by the Board in an open public meeting.
- I. Hess’s consulting for SCSD would be limited to work related to the construction of the new school site, would have a definitive start and end date based on the timeline of the construction, and Hess would be an independent contractor working through a limited liability company (“LLC”) that he anticipates creating for the sole purpose of consulting for SCSD.

² In CMAR projects, a selection review committee is appointed by the owner to review qualification requests, rank proposers, and recommend a CMAR contractor. CMAR is a project delivery method that allows public entities to award contracts for public works construction.

- J. Hess requests guidance regarding whether accepting consulting work with SCSD under these circumstances would be a violation of the Ethics Law's "cooling off" prohibitions.

II. RELEVANT STATUTES

A. NRS 281A.020(1)—Duty to Avoid Conflicts of interest

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.

B. NRS 281A.410—"Cooling-Off"—Representing or Counseling Private Person

1. Except as otherwise provided in NRS 678A.360, if a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:

- (b) If the public officer or employee 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 the public officer's or employee's service. As used in this paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

C. NRS 281A.550(5)—Accepting Employment with Contract Vendor

5. Except as otherwise provided in subsection 6, a former public officer or employee of the State or a political subdivision, except a clerical employee, shall not solicit or accept employment from a person to whom a contract for supplies, materials, equipment or services was awarded by the State or political subdivision, as applicable, for 1 year after the termination of the officer's or employee's service or period of employment, if:

- (a) The amount of the contract exceeded \$25,000;
- (b) The contract was awarded within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment; and
- (c) The position held by the former public officer or employee at the time the contract was awarded allowed the former public officer or employee to affect or influence the awarding of the contract.

D. NRS 281A.550(6)—Relief from Strict Application of "Cooling-off"

6. A current or former public officer or employee may file a request for an advisory opinion pursuant to NRS 281A.675 concerning the application of the relevant facts in that person's case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of subsection 3 or 5, as applicable, is not contrary to:

- (a) The best interests of the public;
 - (b) The continued ethical integrity of the State Government or political subdivision, as applicable; and
 - (c) The provisions of this chapter,
- it may issue an advisory opinion to that effect and grant such relief.

III. CONCLUSIONS OF LAW

- A. In his capacity as the Superintendent of SCSD, Hess was a public officer as defined by NRS 281A.160.
- B. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter.
- C. Pursuant to NRS 281A.410(1)(b), Hess may not represent or counsel a private person or entity for compensation for at least one year after the termination of his public service on any issues that were under consideration by SCSD during his tenure. This restriction does not apply to compensation from a public agency such as SCSD.
- D. NRS 281A.550(5) does not apply to Hess's presented circumstances because Hess is already retired from SCSD and has not yet created an LLC to contract with SCSD.
- E. The Commission considered the request for an advisory opinion, a list of proposed facts that were affirmed as true by Hess and publicly available information.
- F. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact are accepted as true. 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.³
- G. If in the future additional facts are obtained that relate to the application of the Ethics Law to his circumstances, Hess may return to the Commission for education and guidance on the application of the Ethics Law by filing a new advisory request.
- H. An advisory opinion does not protect a public officer or employee from an investigation or adjudication based on an ethics complaint submitted pursuant to NRS 281A.710(b)(2) regarding past conduct addressed in the advisory opinion.
- I. Pursuant to NAC 281A.352, a quorum of the Commission considered this matter by submission, without holding an advisory opinion hearing.⁴

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

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³ 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 this advisory opinion, a member of the public is not precluded from bringing an ethics complaint); *In re Rock*, Comm'n Op. No. 94-53 (1995) (Commission reservation of right to review until time issue is raised).

⁴ The following Commissioners participated in this opinion: Chair Scherer, Vice Chair Wallin and Commissioners Langton, Lowry, Olsen, Reynolds and Yen.

IV. COMMISSION DECISION

The Legislature has identified limited circumstances in which a public employee may be restricted in future private employment endeavors so as not to dilute the public's faith in government. Notably, the Legislature, in enacting the distinct and separately enforceable restrictions in NRS 281A.410 and NRS 281A.550, has not prohibited all future private income or employment opportunities. Each statute has a varied focus, but similarly serves to protect the public trust including the associated relationships acquired during public service and expertise obtained as a result of public duties.

A. NRS 281A.410(1)(b) DOES NOT APPLY TO SERVICES PROVIDED FOR COMPENSATION TO PUBLIC AGENCIES

NRS 281A.410(1)(b) restricts representing or counseling of any private person (including an employer or other business entity) for compensation on any issue that was under consideration by the employing agency during the employment of a public officer or employee for one year following his termination of public employment. See *In re Public Employee*, Comm'n Op. No. 18-015A (2018), at pgs. 8-9; *In re Public Officer*, Comm'n Op. No. 16-58A (2016), at pgs. 8-9. The facts provided by Hess relate to providing consulting services to a public agency, rather than a private person. Therefore, NRS 281A.410 does not apply to prohibit his employment with SCSD to consult on the school site construction.

Hess should be aware, however, that NRS 281A.410(1)(b) prohibits him from representing or counseling any private person or entity before SCSD, including anyone involved in the construction or funding of the new school site, for compensation on any issue that was under consideration by SCSD during his employment, which includes construction of the new school site, for one year following his retirement from SCSD.

B. NRS 281A.550(5) DOES NOT APPLY TO HESS'S CIRCUMSTANCES

"[T]he Legislature has limited future private employment opportunities that may derive, in part, out of public experiences, including through relationships acquired during public service or expertise obtained in a particular field earned as a result of public duties. The Legislature has tackled unique employment engagements that directly signal impropriety as a result of specific positions or ability to influence public duties that necessarily interact with private employment opportunities." *In re Durski*, Comm'n Op. No. 18-118A (2018), at p. 9.

In particular, NRS 281A.550(5) prohibits seeking or accepting employment with a private entity that contracts with the State or a political subdivision if the contract amount exceeds \$25,000, the contract was awarded within 12 months immediately preceding the termination of public service, and the position held by the former public officer or employee allowed the former public officer or employee to affect or influence the award of the contract. All conjunctive requirements of NRS 281A.550(5) must be present for the one-year "cooling-off" prohibition to apply to restrict the employment.

Hess confirms that he has not yet created an LLC to contract with SCSD and through which he will provide contracting services for the school district. Therefore, the restrictions found in NRS 281A.550(5) have not been triggered under the circumstances provided by Hess because no contract was awarded to the LLC at issue within the 12-month period immediately preceding the termination of Hess's employment with SCSD. Therefore, NRS 281A.550(5) does not apply under the circumstances as presented by Hess.

C. NRS 281A.550(6) – RELIEF FROM NRS 281A.550(5) NOT NECESSARY

Because the Commission has determined that NRS 281A.550(5) does not apply to Hess’s circumstances, it is not necessary for the Commission to consider or grant relief from the strict application of NRS 281A.550(5).

Dated this 13th day of August, 2024

NEVADA COMMISSION ON ETHICS

By: /s/ Scott Scherer
Scott Scherer, Esq.
Chair

By: /s/ Absent
John T. Moran, III, Esq.
Commissioner

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

By: /s/ Stan Olsen
Stan Olsen
Commissioner

By: /s/ Michael E. Langton
Michael E. Langton, Esq.
Commissioner

By: /s/ Terry J. Reynolds
Terry J. Reynolds
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By: /s/ Teresa Lowry
Teresa Lowry, Esq.
Commissioner

By: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner