



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Keith Pearson**, Commissioner,
Board of County Commissioners,
Lincoln County, State of Nevada,

Advisory Opinion No. 24-123A
CONFIDENTIAL

Subject. /

OPINION

EXECUTIVE SUMMARY¹

TOPIC: CONTRACTS

Keith Pearson (“Pearson”), County Commissioner for Lincoln County, requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675, regarding the propriety of his conduct as it relates to the Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A. Pearson requests an advisory opinion regarding whether his private contracting company, Pearson and Sons, can continue to contract with the County without violating NRS 281A.430 or other provisions of the Ethics law. If contracting with the County would violate NRS 281A.430, Pearson seeks relief under NRS 281A.430(6).

After fully considering his request and analyzing the facts and circumstances as presented by Pearson, the Commission advises Pearson that the exception to NRS 281A.430’s contracting prohibition found in NRS 281A.430(4) for contracts awarded pursuant to a process controlled by the rules of open and competitive bidding and where the sources of supply are limited applies to allow Pearson and Sons to continue to contract with the County so long as Pearson strictly complies with a protocol as developed by the County Commission and District Attorney and the rules of competitive bidding, or its applicable exceptions, are followed.

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. Pearson is a current Commissioner on the Board of County Commissioners ("Board") for Lincoln County ("County"). Pearson was appointed to his seat in August 2019 and reelected to the position in 2020. Pearson is currently running unopposed for reelection to his position in November 2024.
- B. In his private capacity, Pearson is a general contractor and owns his own construction company, Pearson and Sons. The company is now run by Pearson's son, but Pearson continues to perform some work for the company.
- C. Pearson and Sons has performed work for the County for a number of years, including both prior to and since Pearson was appointed to the Board.
- D. Pearson and Sons performs work primarily in the area of new concrete, such as sidewalks, driveways, concrete pads for steel buildings, new homes, garages and modular homes. It has installed multiple concrete water crossings in the streets of Panaca, Nevada, as well as several pipelines and culverts.
- E. There are approximately four construction companies that hold licenses in the County. Lincoln County is remote with the nearest Nevada city with a population over 4,000 being Las Vegas, approximately two and a half hours away.
- F. When Pearson was appointed to the Board, the other seated County Commissioners implemented a protocol to allow Pearson and Sons to continue contracting with the County for construction work. According to Pearson, the protocol prohibited him from 1) being involved in the planning of any construction jobs, 2) voting on who would be awarded any construction jobs for which Pearson and Sons had placed a bid, and 3) from approving payments upon completion for work performed by Pearson and Sons. The District Attorney, Dylan Frehner, helped develop this protocol.
- G. Since Pearson's appointment to the Board, Pearson and Sons has performed the following work for the County pursuant to the protocol:
- New Roof on Rodeo Announcer Booth 10/1/20
 - New Ambulance Barn Doors 1/15/21
 - Concrete Water Crossings in Streets of Panaca 3/2/21
 - New Dumpster Site 7/28/21
 - Concrete Parking Lot at Fire Station 10/2021
 - Senior Center Handicap Ramp 3/14/22
 - Trap Shoot Renovation 5/19/22
- H. A question has been raised as to whether Pearson and Sons can continue to contract to perform work for the County without violating NRS 281A.430. Pearson requests an advisory opinion as to whether Pearson and Sons is permitted under the Ethics Laws to continue to contract for County work under the protocol previously established by the Board.
- I. If NRS 281A.430 would apply to prohibit contracts between Pearson and Sons and the County, Pearson requests relief under NRS 281A.430(6). Pearson notes that he has been a contractor for 45 years and lives in the community

and therefore does not have travel costs that would be passed on to the County. In the past, sometimes the only other contractor that could be found to bid on jobs for the County was from Utah. Pearson and Sons' contracts with the County are transparent, follow the protocol established by the Board and the District Attorney, and Pearson does not receive any special treatment or inside information.

- J. The Director of the County's Planning and Building Department, Cory Lytle ("Lytle"), submitted a letter indicating that there is limited interest from contractors that are willing or legally licensed to perform certain contracting work for the County. Lytle indicated that "reasonable, fair and equitable attempts to solicit bidders [other than Pearson and Sons] have been performed according to the NRS" and requested that the County be allowed to contract with Pearson and Sons where other bidders cannot be obtained for public works and facility-related management projects.

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.065—Commitment in a Private Capacity

"Commitment in a private capacity," with respect to the interests of another person, means a commitment, interest or relationship of a public officer or employee to a person:

- 4. Who employs the public officer or employee, the spouse or domestic partner of the public officer or employee or a member of the household of the public officer or employee;
- 5. With whom the public officer or employee has a substantial and continuing business relationship; or
- 6. With whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in subparagraphs 1 to 5, inclusive.

C. NRS 281A.139—Pecuniary Interest

"Pecuniary interest" means any beneficial or detrimental interest in a matter that consists of or is measured in money or is otherwise related to money, including, without limitation:

- 1. Anything of economic value; and
- 2. Payments or other money which a person is owed or otherwise entitled to by virtue of any statute, regulation, code, ordinance or contract or other agreement.

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D. NRS 281A.420(1)—Disclosure

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

- (a) Regarding which the public officer or employee has accepted a gift or loan;
- (b) In which the public officer or employee has a significant pecuniary interest;
- (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person; or

(d) Which would reasonably be related to the nature of any representation or counseling that the public officer or employee provided to a private person for compensation before another agency within the immediately preceding year, provided such representation or counseling is permitted by NRS 281A.410,

□ without disclosing information concerning the gift or loan, the significant pecuniary interest, the commitment in a private capacity to the interests of the other person or the nature of the representation or counseling of the private person that is sufficient to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's significant pecuniary interest, upon the person to whom the public officer or employee has a commitment in a private capacity or upon the private person who was represented or counseled by the public officer or employee. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

E. NRS 281A.420(3) and (4)—Abstention

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's significant pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of another person.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of another person, accruing to the other person, is not greater than that accruing to any other member of any general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the duty of the public officer to make a proper disclosure at the time the matter is considered and in the manner required by subsection 1.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer makes a proper disclosure at the time the matter is considered and in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.

F. NRS 281A.430—Contracting

1. Except as otherwise provided in this section and NRS 218A.970 and 332.800, a public officer or employee shall not bid on or enter into a contract between an agency and any business entity in which the public officer or employee has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board, commission or body may, in the ordinary course of his or her business, bid on or enter into a contract with an agency, except the board, commission or body on which he or she is a member, if the member has not taken part in developing the contract plans or specifications and the member will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with an agency, or may benefit financially or otherwise from a contract between an agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255...

4. Except as otherwise provided in subsection 2, 3 or 5, a public officer or employee may bid on or enter into a contract with an agency if:

(a) The contracting process is controlled by the rules of open competitive bidding or the rules of open competitive bidding or for a solicitation are not employed as a result of the applicability of NRS 332.112 or 332.148;

(b) The sources of supply are limited;

(c) The public officer or employee has not taken part in developing the contract plans or specifications; and

(d) The public officer or employee will not be personally involved in opening, considering or accepting offers.

If a public officer who is authorized to bid on or enter into a contract with an agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281A.420, shall disclose the public officer's interest in the contract and shall not vote on or advocate the approval of the contract.

5. A member of a local legislative body shall not, either individually or through any business entity in which the member has a significant pecuniary interest, sell goods or services to the local agency governed by his or her local legislative body unless:

(a) The member, or the business entity in which the member has a significant pecuniary interest, offers the sole source of supply of the goods or services within the territorial jurisdiction of the local agency governed by his or her local legislative body;

(b) The local legislative body includes in the public notice and agenda for the meeting at which it will consider the purchase of such goods or services a clear and conspicuous statement that it is considering purchasing such goods or services from one of its members, or from a business entity in which the member has a significant pecuniary interest;

(c) At the meeting, the member discloses his or her significant pecuniary interest in the purchase of such goods or services and does not vote upon or advocate the approval of the matter pursuant to the requirements of NRS 281A.420; and

(d) The local legislative body approves the purchase of such goods or services in accordance with all other applicable provisions of law.

III. CONCLUSIONS OF LAW

- A. In his capacity as a County Commissioner, Pearson is 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. Pearson has a significant pecuniary interest in his private business, Pearson and Sons, and any contracts or agreements between Pearson and Sons and the County.
- D. Pursuant to NRS 281A.065(4) and (5), Pearson has a commitment in a private capacity to his business, Pearson and Sons, and his business partners.
- E. Based upon the circumstances presented by Pearson, the contracting exception listed in NRS 281A.430(4) is applicable if Pearson strictly complies with the protocol established by the Board. Contracts between Pearson and Sons and the County are prohibited by NRS 281A.430 unless the services are sought and obtained through a competitive solicitation or meet the statutory requirements for an exception.
- F. Pursuant to NRS 281A.420(1), Pearson must make a proper public disclosure on all matters considered by the Board associated with his private interests or his private commitments, including matters pertaining to Pearson and Sons, detailing sufficient information concerning his private interests and commitments and their potential effect on Pearson's participation on the matter.
- G. Pearson is required by statute to abstain on all actions relating to Pearson and Sons captured by NRS 281A.420 that are associated with Pearson's private interests and commitments, as identified in this opinion, because the impartiality of a reasonable person under the same circumstances would be materially affected thereby.
- H. The Commission considered the request for an advisory opinion, a list of proposed facts that were affirmed as true by Pearson and publicly available information.

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- I. 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.²
- J. If in the future additional facts are obtained that relate to the application of the Ethics Law to his circumstances, Pearson may return to the Commission for education and guidance on the application of the Ethics Law by filing a new advisory request.
- K. 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.
- L. Pursuant to NAC 281A.352, a quorum of the Commission considered this matter by submission, without holding an advisory opinion hearing.³

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.

IV. COMMISSION DECISION

Nevada's Ethics Law mandates that public officers and employees hold public office for the public benefit and avoid conflicts of interest. NRS 281A.020.

A. PEARSON'S PECUNIARY INTEREST AND COMMITMENT IN A PRIVATE CAPACITY TO PEARSON AND SONS

1. Pearson Has a Significant Pecuniary Interest in Pearson and Sons

Pearson has an ownership interest in Pearson and Sons and has associated significant pecuniary interests in the company including receiving payments for work performed for the County. Pearson therefore has a significant pecuniary interest in Pearson and Sons as defined by the Ethics Law. See NRS 281A.139.

2. Pearson Has a Commitment in a Private Capacity to Pearson and Sons

NRS 281A.065 establishes certain relationships constituting commitments in a private capacity, which relationships are used to identify conflicts of interest. Pursuant to NRS 281A.065(4) and (5), Pearson has a private commitment to his private business, Pearson and Sons, and its partners, employees, and associates ("business relationships"). The Commission has confirmed that "[p]ursuant to NRS 281A.065, [a] public officer has both significant pecuniary interest in maintaining private employment and a commitment in a private capacity to the interests of the employer, including

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 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).

³ The following Commissioners participated in this opinion: Chair Scherer, Vice Chair Wallin and Commissioners Langton, Lowry, Reynolds and Yen.

associated clients and business interests.” *In re Public Officer*, Comm’n Op. No. 15-74A (2018), at p. 8.

The Commission has instructed in cases involving a statutory private commitment under NRS 281A.065 that the interests of the person to whom there is a private commitment, such as an employer, business affiliate or client, are statutorily attributed to the public officer based on the presumption that a person lacks independent judgment toward the interests of those persons to whom the public officer has such commitments. *See id.*; *In re Public Officer*, Comm’n Op. No. 13-71A (2014). This means that the interests of Pearson, Pearson and Sons, Pearson’s son who now primarily runs the business and Pearson and Sons’ business associates are statutorily attributed to Pearson for purposes of complying with the Ethics Law. *See also In re Public Officer*, Comm’n Op. No. 17-10A (2017), at p. 6.

B. NRS 281A.430 – CONTRACTING PROHIBITION

NRS 281A.430(1) establishes a broad restriction prohibiting “a public officer or employee, personally or through a business entity in which the public officer or employee has a significant pecuniary interest, from bidding on or entering into a contract with a public agency.” *In re Public Employee*, Comm’n Op. No. 16-61A (2016). Agency is defined in NRS 281A.035 to include any state or local agency.⁴

In *In re Public Employee*, Comm’n Op. No. 13-78A (2014), the Commission found that NRS 281A.430 generally prohibits a public officer or employee from engaging in government contracts in which the public officer or employee has a significant pecuniary interest, unless the contract is exempted by the statute. NRS 281A.430 has important public policy considerations when contracting with public agencies given the perception, if not the reality, of tax-payer money expended on contracts between government agencies and entities owned or operated by public officers or employees that work for governmental agencies. Such contracts do not appear to be transparent or fair to the public unless certain circumstances are present.

Pearsons and Sons, in which Pearson has a significant pecuniary interest, is therefore prohibited from entering into contracts with the County by NRS 281A.430(1) while Pearson is on the Board unless the protocol established by the Board falls within one of the contracting exceptions set forth in NRS 281A.430.

NRS 281A.430(2), (3), (4) and (5) provide various circumstances by which certain government contracts may be appropriate. NRS 281A.430(2) establishes an exception for members of boards, commissions or similar bodies that regulate the profession in which they are a member. NRS 281A.430(3) applies to full or part-time members or employees of the Nevada System of Higher Education, and NRS 281A.430(5) applies to members of local legislative bodies. None of these exceptions apply to contracts between Pearson and Sons and the County.

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⁴ The requirements of NRS 281A.430 are separately enforceable from the public purchasing laws or other laws established in various chapters of the Nevada Revised Statutes.

The exception in NRS 281A.430(4) applies to Pearson's circumstances. NRS 281A.430(4) indicates that a public officer or employee may bid on or enter into a contract with an agency if:

- (a) The contracting process is controlled by the rules of open competitive bidding, or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;
- (b) The sources of supply are limited;
- (c) The public officer or employee has not taken part in developing the contract plans or specifications; and
- (d) The public officer or employee will not be personally involved in opening, considering or accepting offers.

Central to the exception set forth in NRS 281A.430(4) is the requirement that the proposed contract is either subject to public bidding or an open, competitive process in which any other interested person/business was authorized to provide the services or products.

In a prior opinion, the Commission reviewed NRS 281A.430(4)'s contracting exception under circumstances where the Mayor of Elko provided plumbing and heating repair services on an "as needed" basis to the Elko Convention and Visitors Authority, to which he had the authority to appoint one member. *In re Johnson*, Comm'n Op. No. 12-68A (2013) ("*Johnson*"). The visitors' authority had purchased the repair services in an open and competitive process and there was not an exclusive contract for services. Importantly, the Mayor did not develop or specify the terms of the plumbing requirements, and he did not influence the open and transparent contracting process. Under these specific circumstances, the Commission determined that the appointment of a single member of the visitor's authority may have created some influence over its operations, but without other evidence, the appointment alone did not impact the determination of which plumbing contractor would be used for Elko's "as needed" services, which services were obtained pursuant to rules of an open, competitive process. *Johnson*, at p. 8.

The protocol for Pearson and Sons to contract with the County as established by the Board and the District Attorney, and as confirmed by the Director of the County's Planning and Building Department, meets all the requirements of the exception in NRS 281A.430(4): (1) the contracting process for Pearson and Sons' contracts with the County is controlled by the rules of open competitive bidding or else those rules are not applicable; (2) the supply of contractors willing and able to perform work for the County is limited; (3) Pearson does not take part in developing the contract plans or specifications for Pearson and Sons' contracts with the County; and (4) Pearson is not involved in voting on any contracts for which Pearson and Sons has placed a bid. Pearson and Sons may therefore bid on or enter into contracts with the County while Pearson serves on the Board so long as Pearson and Pearson and Sons strictly comply with the protocol as established by the Board because it complies with the requirements of NRS 281A.430(4).

C. NRS 281A.420 – DISCLOSURE AND ABSTENTION REQUIREMENTS

1. Conflicts Requiring Disclosure

NRS 281A.420(1) requires a proper disclosure when a public officer or employee is carrying out his public duties to approve, disapprove, vote, abstain or otherwise act upon a matter: (a) regarding a gift or loan, (b) in which he has a significant pecuniary interest, (c) which would reasonably be affected by his commitment in a private capacity

to the interests of another person, or (d) which would be related to any representation or counseling of a private person for compensation before another agency within the preceding year. If matters regarding Pearson and Sons' provision of contracting services to the County come before the Board, Pearson is required to make a proper disclosure and to abstain, as set forth below.

Pearson is reminded that the Ethics Law does not recognize a continuing disclosure or a disclosure by reference. Accordingly, each time a matter regarding Pearson and Sons and/or its provision of contracting services to the County comes before the Board, Pearson must disclose. The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests. Silence based upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred. *See In re Buck*, Comm'n Op. No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)). At a minimum, a disclosure should identify Pearson's personal interests and private commitments to his business, Pearson and Sons. The public should be informed whether an official matter has potential to be materially affected by Pearson's private financial interests and commitments.

The Commission advises that Pearson's disclosure on matters involving Pearson and Sons should be made as long as Pearson serves as a public officer with authority over his private interests and commitments. Further, if a matter affecting Pearson and Sons is considered by the Board, Pearson is advised to disclose his pecuniary interests, relationships and private commitments and the effect that these interests have on the matter to be considered given the provisions of NRS 281A.065 and NRS 281A.420, as required.

2. Abstention Requirements

NRS 281A.420(3) and (4) detail the abstention requirements to be considered after a proper disclosure has been made by the public officer. NRS 281A.420(3) mandates that a public officer shall not vote upon or advocate the passage or failure of a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the disclosed conflict. NRS 281A.420(4) creates a presumption against abstention in certain limited circumstances.

After a proper disclosure is placed in the public record, the presumption permits the public officer to participate if the matter would not result in any form of benefit or detriment accruing to the public officer (or persons/entities to whom he has a private commitment) that is greater or less than that accruing to any other member of the general business profession, occupation or group that is affected by the matter. For example, if the public officer is voting upon a general business license increase and his business would be subject to the increase and pay the same amount as other businesses similarly situated, he may make a proper disclosure and explain to the public why the legal presumption permits his participation. *In re Public Officer*, Comm'n Op. No 15-74A (2018), at pgs. 9-10.

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However, under the presented circumstances, approval by the Board of any matter associated with Pearson and Sons, such as bids, contracts, payments, reimbursements or other services, would materially affect or benefit Pearson and his private business interests and commitments. Pearson is therefore advised that the presumption does not apply to his circumstances. Consequently, Pearson must abstain on all matters before the Board which materially affect the interests of Pearson and Sons and any business affiliate or client. See *In re Derbidge*, Comm'n Op. No. 13-05C (2013).

Dated this 28th day of October, 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
Vice Chair

By: /s/ Absent
Stan Olsen
Commissioner

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

By: /s/ Terry J. Reynolds
Terry J. Reynolds
Commissioner

By: /s/ Teresa Lowry
Teresa Lowry, Esq.
Commissioner

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