



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Public Officer**, Member,
Board of a Public Entity,
State of Nevada,

Advisory Opinion No.22-079A

_____ Public Officer. /

ABSTRACT OPINION

I. STATEMENT OF THE CASE

Public Officer requested this advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.675, regarding certain compliance obligations under Nevada's 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 Public Officer and publicly available information.

The Commission now renders this abstract opinion. Although a full written opinion was properly served, for confidentiality reasons, this abstract opinion redacts certain findings of fact that were affirmed as true by Public Officer, provides a summary of issues, and removes other identifying information to protect the confidentiality of Public Officer. Facts and circumstances that differ from those presented to and relied upon by the Commission in this opinion may result in different findings and conclusions than those expressed in this opinion.²

II. QUESTION PRESENTED

As a member of a board of a Public Entity ("Board"), Public Officer asks whether the position held is within the definition of a public officer set forth NRS 281A.160 and if Public Officer is required to comply with the Ethics Law including without limitation the filing of an Acknowledgment of Ethical Standards Form pursuant to NRS 281A.500.

III. FINDING OF FACTS

1. Public Officer is a member of the Board.
2. The Board, the positions of its members, and their public duties were created by state statute by the Nevada Legislature. Its members are not compensated but are entitled to certain reimbursements for travel and expenses.

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).

3. The duties of the Board are partially advisory in nature; however, some of the duties involve budgetary and legislative matters independent from the advisory functions, including establishing policy for the board.

IV. STATEMENT AND DISCUSSION OF RELEVANT STATUTES AND ISSUES

A. OVERVIEW OF ISSUES

The Ethics Law applies to public officers and public employees as defined in NRS 281A.150, NRS 281A.160, NRS 281A.180 and NRS 281A.182, and serves to promote public integrity through the appropriate separation of public duties and private interests by Nevada's public officers and employees.

Public Officer's circumstances relate to the application of the definition of a "public officer" set forth in NRS 281A.160, and whether the public position held by Public Officer falls within the exclusion set forth in NRS 281A.160(3) applicable to members of a board, commission, or other body whose function is advisory.

B. RELEVANT STATUTES

1. Duty to Avoid Conflicts of Interest

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. "Public Officer" – Defined

NRS 281A.160 provides:

1. "Public officer" means a person who is:
 - (a) Elected or appointed to a position which:
 - (1) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and
 - (2) Involves the exercise of a public power, trust or duty; or
 - (b) Designated as a public officer for the purposes of this chapter pursuant to NRS 281A.182.
2. As used in this section, "the exercise of a public power, trust or duty" means:
 - (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
 - (b) The expenditure of public money; and
 - (c) The administration of laws and rules of the State or any county, city or other political subdivision.
3. "Public officer" does not include:
 - (a) Any justice, judge or other officer of the court system;

- (b) Any member of a board, commission or other body whose function is advisory;
 - (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
 - (d) A county health officer appointed pursuant to NRS 439.290.
4. "Public office" does not include an office held by:
- (a) Any justice, judge or other officer of the court system;
 - (b) Any member of a board, commission or other body whose function is advisory;
 - (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
 - (d) A county health officer appointed pursuant to NRS 439.290.

V. DECISION

The Commission addresses whether Public Officer, as a member of the Board, is a public officer under NRS 281A.160. In relevant part, the definition of "public officer" requires that the position be established by a statute or ordinance and involves the exercise of a public power, trust, or duty. Exercise of power, trust, or duty means the public officer has authority to act in an official capacity in the formulation of policy, expend money, or administer the laws and rules of the state. Additionally, NRS 281A.160(3)(b) excludes those officers who serve on bodies whose functions are advisory in nature from the definition of a public officer. To be entitled to the exclusion, the body's function must be solely advisory. A body is not purely advisory if it possesses legislative or fiscal authority. See *Hantges v. City of Henderson*, 121 Nev. 319, 325 (2005); *In re Public Officer*, Comm'n Op. No. 11-54A (2012).

Public Officer's public position as a board member and associated duties were established by state statute. It is apparent from the circumstances, the Board will at times function in an advisory capacity. However, it contemporaneously has independent fiscal, and policy decision-making authority. The Board may make determinations to direct budget expenditures in furtherance of its statutory duties, and it may seek legislative measures separate from those on which it may make recommendations.

Therefore, the Commission concludes that the purpose and duties of the Board are not solely advisory in nature, and the exemption from the definition of public officer set forth in NRS 281A.160(3)(b) does not apply to the circumstances. Therefore, Public Officer is not within this exclusion and is a "public officer" as defined by NRS 281A.160, who is under the jurisdiction of the Ethics Commission. This means that Public Officer is subject to and must comply with the Ethics Law including without limitation, the requirements to file an Acknowledgment of Ethical Standards Form pursuant to NRS 281A.500. To assist Public Officer in understanding the requirements of the Ethics Law, the Commission encourages training that is available on its website. In addition, training may be scheduled with the Commission's Executive Director.

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VI. CONCLUSIONS OF LAW

1. Pursuant to NRS 281A.680(1), the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
2. As a member of the Board, Public Officer is a “public officer” under the jurisdiction of the Ethics Commission, as defined by NRS 281A.160.
3. Public Officer is subject to the Ethics Law applicable to public officers for actions taken as a Board member, including the requirement to file an Acknowledgment of Ethical Standards Form pursuant to NRS 281A.500.

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 3rd day of August 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.
Commissioner

By: /s/ Thoran Towler
Thoran Towler, Esq.
Commissioner

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

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