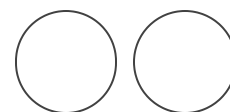




# Offer, Acceptance, Ethics Violation: Understanding the Contracting Limitations In Nevada's Ethics Law



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The Nevada Ethics Law sets various limitations on public officials and their ability to contract in their private lives. Some of those limitations are clear and easy to follow while others have layers of analysis. We'll talk through those limitations here.

## Quick Review of Contract Specific Rules

NRS 281A.400(3) - public official can't act as agent of government in negotiation or execution of contract between government and themselves, their business entity, or others where they have a commitment in a private capacity.

NRS 281A.400(10) - public official can't seek other employment or contracts for themselves or others they have a commitment in a private capacity to using their public position.

NRS 281A.430(1) - public official can't enter into a contract between any business in which the public officer has a significant pecuniary interest and **any** government agency.

NRS 281A.430(5) - public official who sits on a local legislative body shall not sell goods or services to that local legislative body.

### Why a Prohibition?

Contracting poses ethical issues in that if those in government who are making decisions about government spending are permitted to negotiate or execute contracts between the government and themselves or those to whom they owe a **private commitment**, there is risk they could direct public funds to their own pockets, their companies or those entities of individuals they owe a commitment in a private capacity to. Similarly, if a public official is acting on behalf of the public in a contract negotiation but stands to financially benefit on the other side of the transactions, it is doubtful the public officer will be fighting for the best contractual deal for the public.



### How Does the Rule Work?

Of the contract rules there are really two varieties of restriction - self-dealing and use of influence and position. For purposes of this article let's make up a public officer who works as a director for a city department, we'll name him Henry (after Nevada's first Governor) and let's say

Henry owns a business, we'll call it Nevada Co. We'll first go over how the rule works and then review the exemptions and requests for relief.

### *Self-Dealing*

A public official can't self-deal, that is they can't become a contractor or sell good to their own agency. NRS 281A.430 provides various prohibitions on contracting with your own agency as well as others. This means that Henry cannot have Nevada Co enter into a contract with his City agency. For example, if Nevada Co is a painting company, it cannot be hired on a contract to repaint City buildings.

The self-dealing prohibition of NRS 281A.400(3) also stops Henry from acting as the City's negotiator on a contract in which he has an private interest. For example, if his daughter Clementine owns Elko Inc and Elko Inc wants to contract with the City, Henry must not negotiate or execute the contract on behalf of the City.

Members of local legislative bodies are additionally prohibited from selling any goods or services to the agency governed by the local legislative body or the body itself. If Henry was on the City Council for example, he could not have Nevada Co. sell surplus paint to the City Council or any of its agencies. That specific prohibition can be found in NRS 281A.430(5).

### *Use of Position*

In addition to self-dealing prohibitions, the Ethics Law also restricts a public official's ability to use their position to secure contracts. There is influence, information, and power that comes with holding public office and it must not be used to secure contracts for yourself. We've talked about how Henry can't enter into a contract with his city but NRS 281A.430 applies to contracts with all government entities. Henry cannot have Nevada Co. enter contract with the neighboring city government, the county agencies in his community or even the State of Nevada. **When you are a public official, business contracts with all other government entities are prohibited.**

Other use of position to seek or secure contracts or employment is prohibited by NRS 281A.400(10). Note that this provision includes "seeking" and just by bidding on a project or taking other action to seek out a contract - like if Henry used City staff or technology accounts or his influence as a city director to seek or secure contracts for himself, Nevada Co, or someone he has a commitment in a private capacity to (like his daughter Clementine) he runs afoul of the Ethics Law.

## Exceptions in NRS 281A.430

Although the Ethics Law places prohibitions and scrutiny on public officials contracting with public entities, there are exemptions that permit certain contracts in limited situations. Whether a situation meets the exception is highly fact dependent and public officials are encouraged to consult their agency's legal counsel before starting down the path of contracting with government entities.

**The Board & Regulated Industry Exception** (NRS 281A.430(2)) - members of boards or commissions who are engaged in the profession regulated by the board may bid or enter into a contract with an agency (except the board or commission they sit on) if:

1. the member did not take part in developing the contract; AND
2. the member will not be involved in opening, considering, or accepting offers and bids.

**The NSHE Faculty or Employee Exception** (NRS 281A.430(3)) - a faculty member or employee of the Nevada System of Higher Education may enter into a contract with an agency if it complies with policies established by the Board of Regents.

**General Contracting Exception** (NRS 281A.430(4)) - in general, a public official may bid or enter into a contract if the four following conditions are met:

1. The contract process is controlled by an open competitive bidding process; AND
2. The sources of supply are limited; AND
3. The public official has not taken part in developing the contract plans or specifications;  
AND
4. The public official will not be involved in opening, considering, or accepting offers;

**Local Legislative Body Exemption** (NRS 281A.430(5)) - Members of local legislative bodies may sell goods or services to their local body or agencies only if:

1. The member is the sole source of supply within the territorial jurisdiction of the body;  
AND
2. Public notice and agenda for meeting where purchase is considered includes a "clear and conspicuous" statement that it is considering the purchase; AND

3. At the meeting the member properly discloses their interest and does not advocate for or vote on the purchase; AND
4. The approval of the purchase follows all other applicable laws.

For example, if Henry sat on the City Council and he was only seller of Dutch Pink paint in his city and a project requires Dutch Pink paint, he could sell the paint to the City so long as the agenda for the meeting about the project makes it clear he is the potential seller, and as long as Henry properly discloses his conflict and does not advocate for the purchase or vote on it and the City followed all other purchasing or other rules, he could sell the City his Dutch Pink paint without violating the Ethics Law.



## Asking for Relief

The Ethics Law recognizes that not all contracting situations truly raise ethical concerns. For that reason, a public official can ask for relief from some of the contracting restrictions through our [advisory opinion process](#).

Restrictions eligible for relief include NRS 281A.410 (lobbying before public agencies) and NRS 281A.430 (contracts with public agencies). The standard test for relief is the same in each instance. The Commission may, but is not required to, grant relief if the relief is not contrary to:

1. The best interest of the public;
2. The continued ethical integrity of each agency affected by the matter; and
3. The provisions of the Ethics Law

When thinking about the best interest of the public, the Commission will look at public safety, health, or other critical government functions. "Because I really want to make this money" will not be considered "in the best interests of the public."

## No Exemptions or Relief for Certain Restrictions

While there are exemptions and the ability to ask for relief found in NRS 281A.430 - there are no such exemptions or avenues for relief when it comes to NRS 281A.400(3) (acting as the agent in a contract negotiation) or NRS 281A.400(10) (using position to seek or secure contracts).

## Helpful Case Examples

*In re K. Alford*

- [https://nvethics.pdi.online/cm/pubdocs/Stipulated%20Agreement/2022/6/40879\\_In%20re%20Alford,%20Stipulated%20Agrmnt%20No.22-038C%20\(2022\).pdf](https://nvethics.pdi.online/cm/pubdocs/Stipulated%20Agreement/2022/6/40879_In%20re%20Alford,%20Stipulated%20Agrmnt%20No.22-038C%20(2022).pdf)

*In Re Cassinelli*

- [https://nvethics.pdi.online/cm/pubdocs/Published%20Opinion/2025/2/52135\\_In%20re%20Cassinelli,%20Commn%20Op.%20No.%2024-185A%20\(2025\).pdf](https://nvethics.pdi.online/cm/pubdocs/Published%20Opinion/2025/2/52135_In%20re%20Cassinelli,%20Commn%20Op.%20No.%2024-185A%20(2025).pdf)

*In re Public Employee*

- [https://nvethics.pdi.online/cm/pubdocs/Published%20Opinion/2024/5/47581\\_In%20re%20Public%20Employee,%20Commn%20Op.%20Case%20No.%2024-011A%20.pdf](https://nvethics.pdi.online/cm/pubdocs/Published%20Opinion/2024/5/47581_In%20re%20Public%20Employee,%20Commn%20Op.%20Case%20No.%2024-011A%20.pdf)

*In re Horton, et. al.*

- [https://nvethics.pdi.online/cm/pubdocs/Published%20Opinion/2022/5/40815\\_In%20re%20Horton%20et%20al,%20Commn%20Op.%202022-17A%20et%20al%20\(2022\).pdf](https://nvethics.pdi.online/cm/pubdocs/Published%20Opinion/2022/5/40815_In%20re%20Horton%20et%20al,%20Commn%20Op.%202022-17A%20et%20al%20(2022).pdf)

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