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### Department of Business & Industry OFFICE OF THE LABOR COMMISSIONER

[www.LaborCommissioner.com](http://www.LaborCommissioner.com)

May 7, 2013

Jack Mallory  
Assistant Business Manager/Secretary Treasurer  
Director of Government Affairs  
IUPAT District Council 15

Re: Advisory Opinion of the Nevada Labor Commissioner  
Does NRS Chapter 608 Apply to Public Sector Employment?

Dear Mr. Mallory:

In response to your letter dated May 6, 2013 requesting an Advisory Opinion from the Nevada Labor Commissioner as to whether the provisions of Nevada Revised Statute (NRS) Chapter 608 cover public sector employment, the Office of the Labor Commissioner has conducted a comprehensive review of all relevant statutes along with some applicable Nevada Attorney General Opinions (AGO). It has been and it remains the position of the Labor Commissioner that the provisions of NRS Chapter 608 apply only to private sector employment.

#### **I. LEGISLATIVE INTENT**

In enacting the provisions of NRS Chapter 608, the Nevada Legislature set forth its intentions in its "Legislative Declaration" provision, NRS 608.005:

The Legislature hereby finds and declares that the health and welfare of workers and the **employment of persons in private enterprise** in this State are of concern to the State and that the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor. [Emphasis added.]

While addressing private employment matters under NRS Chapter 608 and related provisions, the Nevada Legislature enacted specific provisions concerning the employment of government employees under NRS Title 20, 21 and 23. [Discussed below.]

## **II. GOVERNMENT ENTITIES DO NOT FALL WITHIN NRS CHAPTER 608'S DEFINITION OF EMPLOYER**

It has been the position of the Labor Commissioner that governmental entities do not fall within NRS Chapter 608's definition of "employer."

NRS 608.011 defined "employer" to include "every **person** having control or custody of any employment, place of employment or any employee." [Emphasis added.]

NRS 0.039 specifically excludes government, governmental agency or political subdivisions of a government from the term "person".

Except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. **The term does not include a government, governmental agency or political subdivision of a government.** [Emphasis added.]

While the provisions of NRS Chapter 608 clearly apply to natural persons and other forms of business organizations (such as corporations, partnerships, etc.), "government, governmental agency or political subdivision of a government" are *specifically excluded*. As a result, the Labor Commissioner does not have authority to apply the provisions of NRS Chapter 608 to government entities in their capacity as an employer.

## **III. STATUTES AND REGULATIONS CONCERNING THE EMPLOYMENT OF GOVERNMENT EMPLOYEES FALL WITHIN VARIOUS OTHER NRS AND NAC CHAPTERS**

The Nevada Legislature has enacted specific legislation that addresses the employment of state and county employees. While those employees are afforded many of the same protections granted private employees, those protections are provided pursuant to the provisions of NRS Title 20 and related provisions (for counties), NRS Title 21 and related provisions (for cities and towns), and NRS Title 23 and related provisions (for the State of Nevada). Enforcement and oversight of those provisions does not rest with the Nevada Labor Commissioner.

#### **IV. ATTORNEY GENERAL OPINION (AGO 81-9)**

Reversing, in part, a previously issued Attorney General Opinion (Attorney General's Opinion (Nev.) No. 455, November 2, 1967.), the Nevada Attorney General issued a September 1981 Opinion (AGO 81-9) finding that the provisions of NRS Chapter 608 were "intended to control private employment only". In reaching that conclusion, the Attorney General looked not only at the legislative history of Nevada statutes that formed the origin for the current NRS Chapter 608, but also sought the input from Nevada's sitting Labor Commissioner who advised the Attorney General that the Office of the Labor Commissioner "has never construed Chapter 608 of NRS to be applicable to the State of Nevada in its capacity as an employer."

#### **CONCLUSION**

After a comprehensive review of all applicable statutes and authority, it has been and remains the position of the Nevada Labor Commissioner that the provisions of NRS Chapter 608 do not apply to public sector employment.

Sincerely,



Thoran Towler  
Nevada Labor Commissioner