STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of ALAN ROWLEY, II, City Council Member, City of West Wendover, State of Nevada,

Subject.

Opinion No. 09-66C

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STIPULATED AGREEMENT

1. **PURPOSE**: The purpose of this stipulated agreement is to resolve Request for Opinion No. 09-66C concerning Alan Rowley, II before the Nevada Commission on Ethics (Commission) and render an opinion as stipulated in lieu of holding a hearing.

2. **JURISDICTION**: At all material times, Rowley was an appointed member of the West Wendover City Council in West Wendover, Nevada. NRS 281A.160 gives the Commission jurisdiction over elected and appointed public officers. Therefore, Rowley is a public officer subject to the jurisdiction of the Commission.

3. **PROCEDURAL STATUS AND HISTORY**:

The following timeline of events is relevant to the matter:

a. The West Wendover City Council appointed Rowley to fill a vacancy on May 20, 2008.

b. At all times relevant, Rowley was privately employed as the Security Manager of Montego Bay Casino Resort in West Wendover, Nevada. Montego Bay is owned by Peppermill Casinos, Inc.[1]

c. On August 10, 2009, the Commission received a Request for Opinion (RFO) alleging that Rowley violated certain provisions of the Ethics in Government Law governing disclosure and abstention (specifically subsections 4 and 2 of NRS 281A.420, as effective on March 3, 2009, including the amendments set forth in Section 9 of Senate Bill 160 of the 2009 Nevada Legislative Session).

d. Rowley acknowledges that the Commission provided him with notice of the allegations and an opportunity to file a written response. Rowley is fully advised of the allegations asserted in the RFO.

e. On October 16, 2009, Rowley's attorney filed a written response to the RFO.

f. The Commission's staff conducted an investigation regarding the allegations against Rowley and prepared reports and panel recommendations.

g. Pursuant to NRS 281A.440, on December 11, 2009, a two-member panel of the Commission reviewed the RFO, Rowley's written responses, the staff's reports and recommendations and other evidence. The panel determined that just and sufficient cause existed for the Commission to conduct a public hearing and render an opinion in this matter.

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[1] Councilmember Rowley provided substantial evidence that West Wendover is dominated by one major employer, Peppermill Casinos, Inc., and four of the five members of the Council are employed by Peppermill Casinos. As a result, multiple abstentions of the Council could occur which would result in no action being taken by the Council on numerous matters that potentially impact Peppermill Casinos. The Commission is mindful that Rowley desires to vote unless abstention is clearly required by law.

4. **RELEVANT STATUTES**: The following Nevada Revised Statutes are relevant to the allegations that give rise to this stipulated agreement:

a. Disclosure/Abstention NRS 281A.420(4); NRS 281A.420(2) and NRS 281A.420(8) (as effective on March 3, 2009, including the amendments set forth in section 9 of Senate Bill 160 of the 2009 Nevada Legislative Session) provided, in relevant part, as follows:

(1) NRS 281A.420(4) "A public officer or employee shall not . . . vote . . . upon any matter . . . which would reasonably be affected by his commitment in a private capacity to the interest of others . . . without disclosing sufficient information concerning the . . . commitment . . . to inform the public of the potential effect of the action . . . upon the person . . . to whom he has a commitment . . . . Such a disclosure must be made at the time the matter is considered."

(2) NRS 281A.420(2) "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 his situation would be materially affected by . . . his commitment in a private capacity to the interests of others. It must be presumed that the independence of judgment of a reasonable person would not be materially affected by . . . his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to . . . the other persons whose interest to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the . . . commitment in a private capacity to the interests of others."

(3) NRS 281A.420(8) "'Commitment in a private capacity to the interests of others' means a commitment to a person . . . who employs him or a member of his household."

b. Willfulness - NRS 281A.170, as effective on March 3, 2009, provided that a willful violation meant "the public officer or employee knew or reasonably should have known that his conduct violated this chapter."

5. **FINDINGS/STIPULATIONS OF FACT**:

a. Rowley was appointed to the West Wendover City Council to fill a vacancy on May 20, 2008. Rowley's term expires in November 2010.

b. At all relevant times, Rowley was privately employed as the Security Manager of Montego Bay Casino Resort in West Wendover, Nevada. Montego Bay is owned by Peppermill Casinos.

c. The March 3, 2009 West Wendover City Council Agenda included an action item proposing an amendment to the West Wendover City Code governing non-restricted gaming licenses. Specifically, City Code 3-5-4 (D) requires recipients of non-restricted gaming licenses to provide at least 150 rooms for sleeping accommodations. The proposed amendment sought to eliminate the room restriction to allow an applicant to obtain a non-restricted gaming license without concurrently being required to provide room accommodations.

d. Peppermill Casinos submitted documentation to the West Wendover City Council against the proposed amendment.

e. Before the March 3, 2009 meeting and during his regular working hours, Rowley met with a manager of Peppermill Casinos, at the request of the manager, to discuss the manager's private desire to defeat the proposed amendment.

f. On March 3, 2009, as a member of the West Wendover City Council, Rowley voted on the proposed amendment without disclosing his commitment to his employer, Peppermill Casinos.

g. It was widely known in the community of West Wendover that Rowley was employed by Peppermill Casinos. Moreover, the proponent of the agenda measure publicly announced at the meeting, prior to any vote of the Council, that Rowley was employed by Peppermill Casinos.

h. Rowley did not knowingly and intentionally fail to disclose his relationship to his employer before voting.

i. Within a week after the March 3, 2009 meeting, Rowley was made aware of his failure to disclose his commitment in a private capacity to the private interest of his employer, Peppermill Casinos, when he voted on the proposed amendment. On March 17, 2009, the City Council reconsidered the proposed amendment, and Rowley formally disclosed his employment with Peppermill Casinos and voted on the proposed amendment.

j. In a separate and independent prior action, on January 6, 2009, Rowley voted to impose a fine against Peppermill Casinos and experienced no adverse or retaliatory action from his employer, Peppermill Casinos.

6. **TERMS**: Rowley and the Commission agree as follows:

a. The facts outlined in paragraph 5 are deemed to be true and correct.

b. Rowley's actions as described herein constitute a violation of NRS 281A.420(4) (as effective on March 3, 2009, including amendments set forth in section 9 of Senate Bill 160 of the 2009 Nevada Legislative Session). While Rowley believed his employment relationship with Peppermill Casinos to be common knowledge in the community and understood that the proponent of the measure informed the public of Rowley's employer at the meeting, Rowley himself failed to disclose the nature of his commitment in a private capacity to the interests of his employer, Peppermill

Casinos, at the time the City Council voted on the proposed amendment in which Peppermill Casinos was interested.

c. Rowley's violation of NRS 281A.420(4) was willful under NRS 281A.170 (as effective on March 3, 2009)[2]. However, the many mitigating factors described in Paragraph 5 warrant a conclusion that Rowley's failure to disclose was neither knowing nor intentional. Nonetheless, Rowley reasonably should have known that his failure to make the required disclosure at the time the agenda item was considered would violate the requirements of chapter 281A. Rowley reasonably should have known that his employer, Peppermill Casinos, had a private interest in the outcome of the proposed amendment after a manager of Peppermill Casinos summoned Rowley to express his opinion on the proposed amendment. Similarly, Rowley reasonably should have known of his duty to disclose that his employer's interests created a real or apparent conflict of interest in the outcome of a matter before the City Council.

d. Rowley agrees to pay a civil penalty of $100.00 pursuant to NRS 281A.480. Rowley mitigated the harm to the public within two weeks of the initial vote. While Rowley did not disclose the interest "at the time the matter was considered" as required by law, he made a good faith effort to remedy the violation at the first available meeting by reconsidering the proposed amendment and disclosing his commitment to his employer before voting.

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[2] The law has changed substantially from the standard applicable to willful violations on March 3, 2009. At that time a willful violation was defined as a violation in which "the public officer . . . knew or reasonably should have known that his conduct violated" NRS 281A. Senate Bill 160 of the 2009 legislative session, effective May 28, 2009, amended the definition of willfulness to require that the public officer acted intentionally and knowingly, or intentionally and knowingly failed to act when NRS 281A imposed a duty to act. Thus, the effect of this stipulation regarding willfulness for conduct of public officers on or after May 28, 2009 will have no precedential value.

e. On or before February 12, 2011, Rowley agrees to attend an Ethics in Government Law training presentation provided by the Commission's Executive Director, or her designee, as set forth in NRS 281A.240(1)(e).

f. The Commission will **NOT** file a complaint in the appropriate court for removal of Rowley pursuant to NRS 283.440 upon the finding of the willful violation set forth above, as permitted under NRS 281A.480(4)(c)(1).

g. The actions of Rowley to vote on the proposed amendment as described above on March 3, 2009 and March 17, 2009 do not constitute a violation of the abstention provisions set forth in NRS 281A.420(2) (as effective on March 3, 2009, including amendments set forth in section 9 of Senate Bill 160 of the 2009 Nevada Legislative Session). Only two months prior to the vote, Rowley voted to impose a fine against Peppermill Casinos on a separate and independent matter and experienced no negative repercussions from his employer. Rowley could have concluded that a reasonable person in his position would have determined that voting on this matter, even contrary to his employer's expressed interests, would not materially affect his private employment. Accordingly, Rowley's act in voting upon the agenda item at the March 3, 2009 and March 17, 2009 meetings did not violate NRS 281A.420(2) and abstention was not required.

h. This agreement applies only to the specific facts, circumstances and law related to this Request for Opinion. Any facts and circumstances that differ from those contained in this agreement may create an entirely different resolution of this matter.

7. **WAIVER**:

a. Rowley has retained legal counsel in this matter and is fully aware of his right to a hearing before the Commission on the allegations against him and of any and all rights he may be accorded pursuant to NRS Chapter 281A (as amended by Senate Bill 160 of the 2009 Legislative Session), the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.

b. Rowley knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other provision of Nevada law.

8. **ACCEPTANCE**: We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during a regular meeting of the Commission on February 12, 2010. Once executed, this agreement shall be considered, adopted and incorporated into the Opinion of the Commission. This agreement will be the final disposition of this matter and shall be binding upon all parties.

DATED this 15 day of March, 2010.

Alan Rowley, II

DATED this 22nd day of Feb, 2010.

George Keele, Chairman
Nevada Commission on Ethics

The above Stipulated Agreement has been reviewed and approved by:

Gary E. Di Grazia, Esq.
Attorney for Alan Rowley, II

Yvonne M. Nevarez-Goodson, Esq.
Counsel for Commission