



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of **MORSE ARBERRY, JR.**,
Former Assemblyman, Clark County District 7
State of Nevada.

Request for Opinion No. 10-80C

Subject.
_____ /

PROPOSED STIPULATED AGREEMENT

1. **PURPOSE:** This proposed stipulated agreement is intended to resolve Request for Opinion No. 10-80C before the Nevada Commission on Ethics ("Commission") concerning Morse Arberry, Jr. ("Arberry") and render an opinion as agreed.

2. **JURISDICTION:** At all material times, Arberry served as an elected member of the Nevada Assembly for Clark County District 7, making him a public officer pursuant to NRS 281A.160. Nevada Revised Statute ("NRS") 281A.280 gives the Commission jurisdiction over elected and appointed public officers. Therefore, Arberry is a public officer subject to the jurisdiction of the Commission.

3. **PROCEDURAL STATUS AND HISTORY:**

The following events are relevant to the matter:

- a. Arberry was elected to the Nevada Assembly in November 1984 and assumed office in January 1985. Due to term limits, Arberry's final term was to conclude at the end of 2010. However, he resigned his position as a Legislator on August 31, 2010.
- b. At all times relevant to this matter, in his private capacity, Arberry owned or managed several limited liability companies, including Titan Partners, LLC ("Titan"), established on June 21, 2010.
- c. On October 25, 2010, the Commission received a third-party request for opinion (RFO) regarding Arberry filed by Jacob Hafter, a private citizen. The RFO claimed that Arberry violated the Ethics in Government Law set forth in NRS 281A by allegedly using his position as a State Legislator to negotiate and engage in a lucrative lobbying contract with the Eighth Judicial District Court in Clark County, Nevada ("the Court") in violation of NRS 281A.400(1), (2), (5) and (10) and NRS 281A.430.
- d. The Commission provided Arberry with proper notice of the allegations and an opportunity to file a written response. Arberry was fully advised of the allegations asserted in the RFO and chose not to file a written response to the allegations.
- e. The Commission's staff investigated the allegations and provided a report and recommendation to its investigatory panel.
- f. Pursuant to NRS 281A.440, on January 13, 2011, a two-member panel of the Commission reviewed the RFO, the staff report and recommendation and other evidence.

- g. The Panel determined that just and sufficient cause existed for the Commission to conduct a public hearing and render an opinion whether Arberry: 1) sought an economic opportunity to become a contract lobbyist for the Court that would tend improperly to influence a reasonable person in his position to depart from the faithful discharge of his public duties by negotiating and entering into the contract while still a Legislator in violation of NRS 281A.400(1); 2) sought unwarranted benefits for himself or his business interest by seeking and negotiating a contract to be employed as a lobbyist following his legislative term in violation of NRS 281A.400(2); 3) used his position as a State Legislator to seek outside employment or contracts in violation of NRS 281A.400(10); and 4) bid on or entered into a contract with a governmental entity (the Court) in violation of NRS 281A.430.
- h. The Panel determined that just and sufficient cause did not exist for the Commission to conduct a public hearing and render an opinion whether Arberry used non-public information of which he became aware in his legislative role to engage in the opportunity to seek employment as the Court's lobbyist in violation of NRS 281A.400(5).
- i. In lieu of a hearing regarding these alleged violations of NRS 281A, Arberry now enters into this proposed stipulation acknowledging his duty as a former State Legislator to commit to avoid conflicts between his private interests and those of the public he served. Accordingly, Arberry agrees that an appearance of impropriety and a conflict of interest arose from seeking the lobbying contract with the Court while he was still a State Legislator. See NRS 281A.020.

4. **RELEVANT STATUTES:** The following excerpts from Nevada Revised Statutes are relevant to the allegations giving rise to this proposed stipulated agreement:

a. **NRS 281A.020** – Public Policy / Legislative Declaration

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. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators serve as "citizen Legislators" who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.

(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

b. NRS 281A.430 – Entering into Contracts with Governmental Entities

1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any business entity in which the public officer or employee has a significant pecuniary interest.

c. NRS 281A.170 - Willfulness

“Willful violation” means a violation where the public officer or employee:

1. Acted intentionally and knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter.

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

a. Arberry’s Public Interests:

- (1) Arberry was elected to the State Assembly in November 1984 and assumed office in January 1985.
- (2) Due to term limits, Arberry’s term was to expire at the end of 2010. However, Arberry voluntarily resigned his position as a Legislator on August 31, 2010.
- (3) Arberry held a public office which constituted a public trust held for the sole benefit of the people of the State of Nevada.

b. Arberry’s Private Interests/Conduct:

At all times relevant to this matter:

- (1) On June 21, 2010, Arberry incorporated Titan by filing incorporation papers with the Nevada Secretary of State. On August 27, 2010, he filed a separate “Disclosure of Ownership/Principals” for Titan acknowledging that he served as the managing member and 100 percent owner of Titan.

- (2) Arberry organized Titan for the purpose of engaging in lobbying contracts with various entities, including the Court.
- (3) Arberry began negotiations with Judge Ritchie, Chief Judge of the Court, on or about June 21, 2010 to enter into a contract between Titan and the Court in which Arberry would provide the Court with lobbying services before the Nevada Legislature between September 1, 2010 and June 30, 2012.
- (4) Arberry signed the contract on August 26, 2010, while he was a member of the Nevada Assembly.
- (5) The Clark County Board of Commissioners posted an agenda on or about August 31, 2010 with an action item to consider and approve the contract between the Court and Titan. However, the Board disapproved the contract on September 7, 2010.

6. **TERMS:** Based on the foregoing, Arberry and the Commission agree as follows:
- a. Each of the facts enumerated in section 5 is deemed to be true and correct.
 - b. Arberry admits that he negotiated and bid on the lobbying contract with the Court on behalf of his limited liability company, Titan, while he was still serving as a Nevada Assemblyman.
 - c. Arberry's acts of negotiating and bidding on the lobbying contract with the Court for his private interests constitutes a single course of conduct which amounts to a single violation of NRS 281A.430(1) of the Ethics in Government Law.

- d. Arberry's violation of NRS 281A was willful under NRS 281A.170. Arberry knowingly and intentionally negotiated and bid on a contract with the Court, even though the contract was ultimately rejected by the Clark County Board of Commissioners.
- e. Arberry agrees to pay a total civil penalty (sanction) of \$750.00 pursuant to NRS 281A.480 on or before August 31, 2011, in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- f. This agreement applies only to the specific facts, circumstances and law related to this RFO. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create an entirely different resolution of this matter.

7. **WAIVER:**

- a. Arberry knowingly and voluntarily declined to retain legal counsel in this matter and waives a full hearing before the Commission on the allegations against him and of any and all rights he may be accorded pursuant to NRS Chapter 281A, 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. Arberry knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, 233B or any other provision of Nevada law.

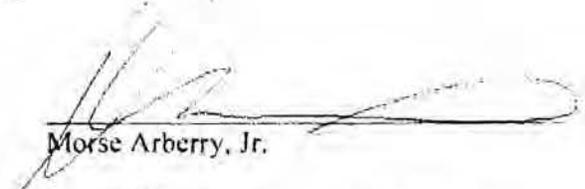
8. **CONTINGENCY:**

- a. This proposed stipulated agreement is subject to discussion in a closed meeting of the Commission and to final approval by the Commission in an open public meeting.

- b. If approved, the terms of the proposed agreement shall be adopted into a formal stipulated agreement and considered the Opinion of the Commission. The adopted stipulation will be the final disposition of this matter and shall be binding upon all parties.
- c. Should the Commission fail to approve this proposed agreement, this matter will proceed to a full hearing before the Commission. This agreement shall be of no force or effect and will not be admissible, in part or whole, in such hearing.
- d. If the parties agree to this proposed agreement (with or without changes to be decided during a closed session of the Commission), the contingency provision will be removed, language referring to "proposed" agreement will be eliminated and the following provision will be added:

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 the regular meeting of the Commission on February 11, 2011.

DATED this 2 day of Feb, 2011.


Morse Arberry, Jr.

DATED this 2 day of February, 2011.


Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel
Nevada Commission on Ethics