



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of **FRANK MAURIZIO**,
Member, Pahrump Town Board,
Nye County, State of Nevada,

**Request for
Opinion No. 09-40C**

Subject.

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STIPULATED AGREEMENT

1. **PURPOSE:** The purpose of this stipulated agreement is to resolve Request for Opinion No. 09-40C concerning Frank Maurizio 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, Maurizio was a public officer, serving as an appointed member of the Town Board of Pahrump in Pahrump, Nevada. Nevada Revised Statute (“NRS”) 281A.160 gives the Commission jurisdiction over elected and appointed public officers. Therefore, Maurizio 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 Governor appointed Maurizio to fill a vacancy on the Pahrump Town Board on December 22, 2008 and Maurizio’s term expires in December 2010.

- b. On June 1, 2009, the Commission received a third-party Request for Opinion (RFO) alleging that Maurizio violated certain provisions of the Ethics in Government Law governing the attempt to benefit personally or financially through the influence of a subordinate and use of his official position to seek other employment (specifically subsections 9 and 10 of NRS 281A.420).
- c. Maurizio acknowledges that the Commission provided him with notice of the allegations and an opportunity to file a written response. Maurizio is fully advised of the allegations asserted in the RFO.
- d. On July 7, 2009, Maurizio filed a written response to the RFO.
- e. On July 28, 2009, Maurizio retained Jeff Pitegoff, Esq. as his counsel, who on September 17, 2009 submitted a second response.
- f. The Commission's staff investigated the allegations against Maurizio and prepared reports and recommendations for the Commission panel.
- g. Pursuant to NRS 281A.440, on October 7, 2009, a two-member panel of the Commission reviewed the RFO, Maurizio'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.
- h. On November 23, 2009, Maurizio replaced his former counsel with Nancy Lord, Esq., to represent him for the remainder of the Commission's proceedings.

4. **RELEVANT STATUTES:** The following Nevada Revised Statutes are relevant to the allegations that give rise to this stipulated agreement:
- a. **Code of Ethical Standards** - NRS 281A.400(9) and NRS 281A.400(10), as effective in January and February 2009, provided, in relevant part:
 - (1) **NRS 281A.400(9)** “A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.”
 - (2) **NRS 281A.400(10)** “A public officer or employee shall not seek other employment or contracts through the use of his official position.”
 - b. **Willfulness** - NRS 281A.170, as effective in January and February 2009, defined a willful violation of the Ethics in Government Laws as a violation in which “the public officer or employee knew or reasonably should have known that his conduct violated this chapter.”

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

- a. Maurizio was appointed to the Pahrump Town Board by the Governor to fill a vacancy on December 22, 2008. Maurizio’s term expires in December 2010.
- b. The Pahrump Town Board approves the Pahrump Valley Fire Department budget and the labor negotiations with the Pahrump Valley Fire and Rescue Service’s local union, which include employee disciplinary provisions.
- c. The Pahrump Town Board appoints the Town Manager. The Town Manager appoints the Pahrump Valley Fire Chief.
- d. Between mid-January and early February 2009, Maurizio asked the Pahrump Valley Fire Chief, on two separate occasions during recesses of Town Board Meetings, to assist him to obtain private employment.

6. **TERMS:** Maurizio and the Commission agree as follows:
- a. The facts outlined in section 5 are deemed to be true and correct.
 - b. Maurizio's two separate acts of seeking assistance from his subordinate, the Pahrump Valley Fire Chief, constituted a course of conduct which amounted to a single violation of two provisions: NRS 281A.400(9) and NRS 281A.400(10). The Commission finds, consistent with its prior opinions, that "regardless of whether the employee was five to seven management levels subordinate to the [Town Board], an employee may very well feel undue pressure to follow instructions given by an elected official regardless of the number of management levels between the employee and the elected governing body on which the official serves." See *In re Boggs-McDonald*, NCOE Opinion 04-77.
 - c. Maurizio's violations of NRS 281A.400(9) and 281A.400(10) were willful under NRS 281A.170 (as effective in January and February, 2009)¹. Maurizio reasonably should have known that seeking assistance from a subordinate to obtain private employment constituted an attempt to influence a subordinate or to seek employment through the use of his official position in violation of NRS 281A.

¹ The law has changed substantially from the standard applicable to willful violations in January and February, 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.

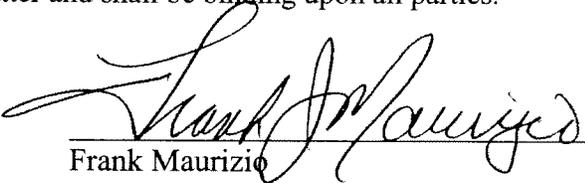
- d. Except as otherwise provided in paragraph (f) of this section, Maurizio agrees to pay a total civil penalty (fine) of \$1,000.00 pursuant to NRS 281A.480 for the two violations of NRS 281A.400.
- e. On or before February 11, 2011, Maurizio agrees to attend an Ethics in Government Law training presentation provided by the Commission's Executive Director, or her designee, as set forth in NRS 281A.240(1)(e).
- f. If Maurizio timely attends the training presentation required pursuant to paragraph (e), the Commission will forgive \$800.00 of the \$1,000.00 fine set forth in paragraph (d). Maurizio shall pay the remaining \$200.00 to the Commission on or before February 11, 2011, in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director. If Maurizio does not attend the training presentation required pursuant to paragraph (e), Maurizio must remit the remaining \$800.00 fine to the Commission not later than March 11, 2011.
- g. The Commission will **NOT** file a complaint seeking removal of Maurizio from office, as permitted under NRS 281A.480(4)(c)(1), upon the finding of the willful violations set forth above.
- h. This agreement applies only to the specific facts, circumstances and law related to this Request for Opinion. 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. Maurizio has retained legal counsel in this matter and knowingly waived 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 (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. Maurizio 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. 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, 2010. Once executed, this agreement shall be considered adopted and incorporated into the Opinion of the Commission. Subject to the provisions of section 6(h) set forth herein, this agreement will be the final disposition of this matter and shall be binding upon all parties.

DATED this 10 day of April, 2010.


Frank Maurizio

DATED this 17th day of March, 2010.


George Keele, Chairman
Nevada Commission on Ethics

The above Stipulated Agreement is approved:


Nancy Lord, Esq.
Attorney for Frank Maurizio


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