



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Mike Cottingim**, Member,
Amargosa Valley Town Board,
Nye County, State of Nevada,

Ethics Complaint
Case No. **19-039C**

Subject. /

**DEFERRAL AGREEMENT
NRS 281A.740**

1. On September 18, 2019, a Review Panel authorized the Executive Director of the Nevada Commission on Ethics (“Commission”) and Mike Cottingim (“Cottingim”), a member of the Amargosa Valley Town Board (“Town Board”), to develop this Deferral Agreement (the “Agreement”) to address the alleged conduct at issue in Ethics Complaint No. 19-039C (“Complaint”) instead of referring the Complaint to the Commission for further proceedings.

2. At all material times, Cottingim served as a member of the Town Board and was a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over Cottingim as an elected public officer for conduct alleged to have violated the provisions of NRS Chapter 281A within 2 years of the filing of the complaint. See NRS 281A.280.

3. This Agreement is entered into based upon the September 18, 2019, Review Panel Determination that Cottingim’s alleged conduct may be appropriately addressed through the terms and conditions of a deferral agreement instead of referring the Complaint to the Commission for further proceedings.

4. The Review Panel Determination was based on facts establishing sufficient evidence to support just and sufficient cause for the Commission to render an opinion in the matter. The facts relied upon by the Review Panel to make its determination are summarized in Appendix A (“Facts Relied Upon by the Review Panel”).¹

¹ The Facts Relied Upon by the Review Panel do not constitute part of the “Investigative File” as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Agreement.

5. The parties acknowledge that no findings have been made by the Review Panel or the Commission that Cottingim violated the Ethics Law, and it is understood that this Agreement does not constitute an admission by Cottingim of any violation of the Ethics Law.

6. As authorized by NRS 281A.785(2), publication of this Agreement serves as a public admonishment, expressing the Review Panel's disapproval of Cottingim's conduct in this matter for failure to disclose and/or abstain from acting or voting on issues before the Town Board affecting the interests of his employer.

Procedural History

7. On or about May 15, 2019, the Commission received Ethics Complaint No. 19-039C from a member of the public ("Requester").

8. On July 1, 2019, the Commission issued an *Order on Jurisdiction and Investigation* directing the Executive Director to conduct an investigation regarding Cottingim's alleged violations of the following provisions of the Ethics Law:

NRS 281A.400(2) - Using his public position to secure or grant unwarranted privileges, preferences or advantages to benefit himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity.

NRS 281A.420(1) - Failing to sufficiently disclose acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person that is reasonably affected by an official matter.

NRS 281A.420(3) - Failing to abstain from acting on an official matter which is materially affected by accepting a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.

9. On July 1, 2019, the Executive Director provided a *Notice of Complaint and Investigation* pursuant to NRS 281A.720 and NAC 281A.410² and provided Cottingim with an opportunity to submit a response to the allegations.

10. On August 5, 2019, Cottingim provided a written response through his legal counsel, Brian R. Hardy, Esq., of Marquis Aurbach Coffing.

²See Approved Regulation of the Commission on Ethics, LCB File No. R108-18, effective August 30, 2018.

11. On September 4, 2019, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.725.

12. A Panel Determination issued on September 18, 2019 concluded that:

- There is NOT sufficient credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding violations of NRS 281A.400(2);
- There is sufficient credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding violations of NRS 281A.420(1) and (3); and
- Cottingim's conduct may be appropriately addressed through corrective action under the terms and conditions of a deferral agreement instead of referring this Complaint to the Commission for further proceedings.

Terms and Conditions

13. This Agreement shall be in effect for a period of two years (the "Deferral Period") from the date of approval by the Review Panel.

14. Cottingim must comply in all material respects with the provisions of NRS Chapter 281A during the Deferral Period without being the subject of another ethics complaint arising from an alleged violation which occurs during the Deferral Period and for which the review panel determines that there is just and sufficient cause for the Commission to render an opinion in the matter.

15. Cottingim must present the deferral agreement to the Town Board and/or issue a public apology by either in person testimony presented during public comment at a public meeting of the Town Board, or formal letter to be read into the record during public comment at a public meeting of the Town Board, as authorized and approved by the Executive Director. Cottingim must provide evidence to the Executive Director of his compliance with this requirement on or before January 16, 2020.

16. The Executive Director shall monitor Cottingim's compliance with this Agreement. Should the Executive Director discover that Cottingim has not complied with any term or condition of this Agreement, the Executive Director shall:

- a. Inform the Commission of any alleged failure of Cottingim to comply with the Agreement;
- b. Give Cottingim written notice of any alleged failure to comply with the Agreement; and
- c. Allow Cottingim not less than 15 days to respond to such a notice.

17. Although Cottingim has left public office, the Commission acknowledges that Cottingim may serve as a public officer or employee during the term of this Agreement, and the Commission retains jurisdiction over Cottingim for purposes of ensuring compliance with this Agreement.

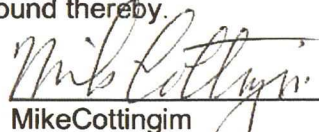
18. The Commission may vacate this Agreement and conduct further proceedings in the matter, including an adjudicatory hearing, if the Commission finds that there is substantial evidence that Cottingim failed to comply with the terms and conditions of the Agreement.

19. If Cottingim complies with the terms and conditions of this Agreement, the Commission shall dismiss the matter with prejudice.

20. This Agreement applies only to the alleged conduct related to this Complaint.

Acceptance: We, the undersigned parties, have read this Agreement, understand each and every provision therein, and agree to be bound thereby.

DATED this 10th day of October 2019.



Mike Cottingim

FOR MIKE COTTINGIM,
Subject

DATED this 10th day of October 2019.

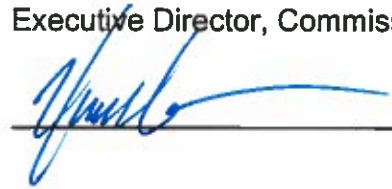


Brian R. Hardy, Esq.
Counsel for Subject

The above Deferral Agreement is approved by:

YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 14th day of October, 2019.



Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 14th day of , 2019.

/s/ Tracy L. Chase

Tracy L. Chase, Esq.
Commission Counsel

The above Deferral Agreement is approved by the review panel.

DATED October 14, 2019.

By: /s/ Brian Duffrin

Brian Duffrin
Commissioner/Presiding Officer

By: /s/ Amanda Yen

Amanda Yen, Esq.
Commissioner

By: /s/ Teresa Lowry

Teresa Lowry, Esq.
Commissioner

Appendix A – Facts Relied Upon by the Review Panel

At all times relevant to the allegations in Ethics Complaint 19-039C:

- A. Cottingim was a member of the Amargosa Valley Town Board (“Town Board”), Nye County, State of Nevada.
- B. In his private capacity, Cottingim was the Operations Manager of Acres Cultivation, the only marijuana cultivation facility located in Amargosa Valley, Nevada.
- C. Cottingim was acting as the Chair of the Town Board during its April 25, 2019 public meeting.
- D. The Agenda for the Town Board’s April 25, 2019 meeting included the following Agenda Items:
 - i. Item 9-H - For Possible Action- Discussion and deliberation – ACTION IS: (MOTION IS:) 1) Adopt, Amend or reject Amargosa Bill 2019-03, A bill proposing to Amend Amargosa Valley Code, Chapter 5:32 – entitled Marijuana and Medical Marijuana Licensing, and provide for the severability, constitutionality and effective date thereof: and other matter relating thereto, and 2) set an effective date.
 - ii. Item 9-I - For Possible Action- Discussion and deliberation – ACTION IS: (MOTION IS:) Hire Attorney Arlette Newvine as Town Attorney – set up funding account and fund the account at a Public Hearing on 05/29/2019.
- E. The proposed Amargosa Bill 2019-03 (“Marijuana Bill”) would create a new chapter in the Amargosa Town Code pertaining to the licensing and operations of marijuana and medical marijuana establishments in the Town of Amargosa Valley.
- F. The video of the April 25, 2019 Town Board meeting (https://www.youtube.com/watch?v=h854_bgg6Mc at 10:58 in the video) indicates that Cottingim made a motion at the beginning of the meeting to pull a number of agenda items from section 9 (General Business) of the Town Board’s agenda, including Agenda Item 9-H related to the Marijuana Bill.
- G. After Board Member Dolby objected to Cottingim’s motion to pull certain agenda items, specifically objecting to his suggestion to pull Agenda Item 9-H, Cottingim’s motion was passed by the Town Board.
- H. Cottingim did not disclose that he was employed by Acres Cultivation before he made the motion to pull certain agenda items, including Agenda Item 9-H related to the proposed Marijuana Bill.
- I. The video of the April 25, 2019 Town Board meeting (https://www.youtube.com/watch?v=h854_bgg6Mc at 57:10 in the video) indicates that the discussion of Agenda Item 9-I, related to the hiring of Attorney Arlette Newvine (“Newvine”), included a presentation by Newvine and numerous comments from the public regarding the pros and cons of hiring a Town Attorney.

- J. During her presentation to the public and the Town Board members for Agenda Item 9-I, Newvine stated that she understood the issues related to marijuana cultivation in Amargosa Valley. She also made reference to the residents dealing with the smell of marijuana caused by marijuana cultivation and the need for appropriate zoning regulations.
- K. Public comments received for Agenda Item 9-I were related to the fact that Newvine could review the marijuana issues that were facing Amargosa Valley and its residents.
- L. Cottingim was one of two Town Board members who voted against Agenda Item 9-I, which failed to pass with a 2-2 vote by the Board.
- M. Cottingim voted against Agenda Item 9-I without disclosing that he was an employee of Acres Cultivation.
- N. On or about July 9, 2019, Cottingim resigned from his service on the Town Board.