

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING THE CONDUCT OF  
MICHAEL MONTANDON, Mayor, City of North Las Vegas**

This matter came before a quorum of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on June 21, 2001, pursuant to allegations in a Request for Opinion submitted in proper form to the Commission on March 8, 2001, under NRS 281.511, Subsection 2, and a Commission panel determination entered May 3, 2001, finding just and sufficient cause for the Commission to render an opinion in this matter on the following two issues:

1. Whether Michael Montandon, in violation of NRS 281.481, Subsection 2, used his position as Mayor, City of North Las Vegas, to secure an unwarranted benefit for himself in connection with a Logandale real estate investment opportunity with Mr. Shawn Lampman.
2. Whether Mayor Montandon, in violation of the provisions of NRS 281.501, Subsections 2 and/or 3, failed to disclose a commitment in a private capacity to the interest of a person with whom he had a "substantial and continuing business relationship" [see, NRS 281.501(8)(d)] at the time he considered and acted upon zoning matters before the North Las Vegas City Council in September 2000 and February 2001 concerning a casino project in which Mr. Shawn Lampman had a financial interest.

Notice of the hearing was properly posted and served. Mayor Montandon was present with his counsel, Richard A. Wright, Esq., of the law firm Wright, Judd and Winckler, and provided sworn testimony. Mr. Shawn Lampman, Mayor Montandon's alleged friend and business partner, was also present and provided sworn testimony.

The Commission, after full consideration of the record in this matter, makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Michael L. Montandon is the elected Mayor of North Las Vegas, Nevada. He was elected to that office in 1997. The office of Mayor of North Las Vegas is a part-time position and the term of office is four years.
2. Mayor Montandon filed campaign contribution and expense reports with the North Las Vegas City Clerk's Office on April 22, 1997, May 20, 1997, August 15, 1997, and March 27, 2001. Mr. Lampman has never been a contributor to any political campaign of Mayor Montandon.
3. Prior to his election as Mayor, Mr. Montandon lived in North Las Vegas and was a real estate appraiser with Bank of America. After being elected Mayor, Mr. Montandon left his position with Bank of America and became the sales and marketing representative for Nevada Construction Services, a construction control company.
4. Since about 1997, Mayor Montandon and his wife considered buying land in Logandale, Nevada, for the purpose of eventually constructing a house where they intended to reside. Their interest in eventually moving to Logandale was renewed each year when they traveled in that direction for the county fair.
5. In or about 1998, the Montandons and friends of theirs made a joint offer on an eight-acre parcel of land in Logandale, a portion of which would be owned by the Montandons and on which they would eventually build a home. Before the land purchase was finalized, however, the Montandons' friends changed their plans and the offer was withdrawn. Thereafter, the Montandons continued their interest in and search for land in Logandale.
6. Shawn Lampman is a licensed real estate broker who has represented the investment efforts of Las Vegas Gaming Investments, LLC, [\[1\]](#) since 1994. Mayor Montandon met Mr. Lampman in 1997 after a City Council meeting that Mr. Lampman attended. During their conversation that evening, Mayor Montandon and Mr. Lampman discovered they both enjoy riding motorcycles. Since that time, Mayor Montandon and Mr. Lampman meet about

once a month to ride their motorcycles together and they have played golf together on one occasion.

7. During one of their motorcycle rides together near the end of 1998, Mayor Montandon told Mr. Lampman about his interest in finding a parcel of land in or near Logandale and about a 20-acre parcel of land there on which he had seen a for-sale sign. Mr. Lampman told Mayor Montandon that Logandale was a good place to invest in real estate, and the two discussed the idea of purchasing property there together.

8. In 1998, Mayor Montandon and his wife owned a part interest in an industrial building. Mayor Montandon's in-laws owned the remaining interest in the building. The building was on the market for sale. The Montandons expected to sell the building and receive their share of the proceeds by early 1999.

9. While looking at the 20-acre parcel in Logandale that Mayor Montandon told him about, Mr. Lampman found a 30-acre parcel of land nearby. The 30-acre parcel was owned by Nevada Electric Investment Company, a Nevada corporation, and was being offered at a below-market price. On December 21, 1998, Mr. Lampman entered into a contract on behalf of C.A.K., Ltd.<sup>[2]</sup> to purchase the land. Shortly thereafter, Donald Nelson and Robert Cohen, two of the individual members of Las Vegas Gaming Investments, LLC (a Nevada limited liability company of which C.A.K., Ltd., is a minority member), agreed to purchase 20 of the 30 acres and Mr. Lampman and Mayor Montandon agreed to form a Nevada limited liability company (MMSL, LLC) to purchase the remaining 10 acres. A Grant, Bargain, Sale Deed was executed on January 26, 1999, dividing the property into two parcels ("Parcel I" and "Parcel II") and transferring Parcel II from Nevada Electric Investment Company to MMSL, LLC, a Nevada Limited Liability Company, and Parcel I to Donald Eugene Nelson, an unmarried man, and Robert Cohen, an unmarried man (an undivided 50% interest to each as tenants in common).

10. On February 4, 1999, Mr. Lampman and Mayor Montandon executed the Operating Agreement of MMSL, LLC, and filed the Articles of Organization of MMSL, LLC, with the Nevada Secretary of State.

11. Under the terms of the Operating Agreement, Shawn Lampman held a 66.66% membership interest in MMSL, LLC, and, in consideration of a Promissory Note<sup>[3]</sup> for his initial capital contribution, Mayor Montandon held a 33.34% membership interest in MMSL, LLC. Mayor Montandon intended to satisfy his Promissory Note obligation to Mr. Lampman with the proceeds he expected to receive from the anticipated sale of the industrial building.

12. On its face, the Promissory Note allowed Mr. Lampman to declare the note in default should Mayor Montandon fail to comply with its express terms. It also provided that should Mayor Montandon fail to properly cure any such default, all of his membership interest in MMSL, LLC, would revert to Mr. Lampman.

13. Ultimately, Mayor Montandon and his in-laws were unable to sell the industrial building and it was subsequently leased out. Without the cash proceeds he had anticipated from selling the building, Mayor Montandon could not meet the terms of the Operating Agreement of MMSL, LLC, and the Promissory Note, and he told Mr. Lampman that he couldn't come up with the money and he was going to have to default on the Promissory Note.

14. On September 4, 1999, pursuant to a written Notice of Default dated August 4, 1999<sup>[4]</sup>, and signed by Mr. Lampman and Mayor Montandon, all of Mayor Montandon's legal interest in and rights with regard to MMSL, LLC, terminated in favor of Mr. Lampman.

15. At the time of Mayor Montandon's default, the value of his interest in the Logandale property, the sole asset of MMSL, LLC, exceeded his obligation to Mr. Lampman under the terms of the Promissory Note.

16. Due to inadvertence, Mr. Lampman neglected to file with the Nevada Secretary of State the change in membership for MMSL, LLC, and the records on file with the Nevada Secretary of State continued to reflect Mayor Montandon as a member and as resident agent for MMSL, LLC, until early 2001. In January 2000, Mayor Montandon received and signed the Annual List of Members and returned it to the Secretary of State's office with the \$85.00 filing fee (for which he was reimbursed by Mr. Lampman). When in January 2001 Mayor Montandon again received the Annual List of Members for MMSL, LLC, which continued to reflect his name as a member and as resident agent, he forwarded the list to Mr. Lampman. In February and/or March 2001, Mr. Lampman amended the Articles of Organization for MMSL, LLC and filed documents with the Nevada Secretary of State removing Mayor Montandon's name from its list of members and as resident agent and changing the name of the company from MMSL, LLC, to SPL1, LLC. Mayor Montandon neither expected nor ever received any compensation from MMSL,

LLC, or Mr. Lampman for his services as resident agent.

17. Mayor Montandon has been involved in no business relationship with Mr. Lampman other than with regard to MMSL, LLC.

18. Mayor Montandon's residence is located on Craig Road near Gowan and Martin Luther King Blvd., about one-half mile from certain land known as "Nev-Star" and close to land known as "Craig Ranch." Both properties are somewhat visible from the second floor window of Mayor Montandon's home, which is located in a subdivision of about 750 homes. Nev-Star and Craig Ranch are situated catty-cornered from each other at Coralee and Martin Luther King Blvd. The Nev-Star land is owned by Station Casinos. Craig Ranch was owned by Stimson Enterprises, Inc, and was being purchased by Las Vegas Gaming Investments, LLC.

19. Nev-Star is zoned commercial. Craig Ranch, which is bordered on three sides by a golf course and on one side by a one-hundred-foot arterial, is located in an area designated on the city's master plan as "open space." The City of North Las Vegas intended to limit the area in which Nev-Star and Craig Ranch are located to non-gaming commercial uses. However, by court order, [\[5\]](#) Nev-Star is designated as a gaming enterprise zone.

20. Understanding that because of the court order the City of North Las Vegas had no choice but to allow a casino development on Nev-Star, in or about September, 2000, Stimson Enterprises, Inc., and Las Vegas Gaming Investments, LLC, on behalf of the property owner, Stimson Enterprises, Inc., petitioned the North Las Vegas City Council for an amendment to the City's comprehensive plan which would change the designation of Craig Ranch from "open space" to "regional commercial" in anticipation of switching the gaming enterprise zone designation from Nev-Star to Craig Ranch. [\[6\]](#) After a very lengthy and arduous process involving work by the city planning commission, numerous public hearings, and citizen petitions delivered to the city council with the signatures of thousands of local citizens favoring Craig Ranch over Nev-Star for the casino development, the zoning change from "open space" to "regional commercial" for Craig Ranch was approved by the North Las Vegas City Council. In approving the zoning change, the city made a clear and specific record that the commercial zoning for Craig Ranch did not anticipate a second gaming enterprise zone. Mayor Montandon participated in and voted on the Craig Ranch re-zoning matter.

21. Mr. Lampman and Bob Borgerson initiated and conducted the process of soliciting signatures from citizens on petitions favoring Craig Ranch as the gaming enterprise zone to be presented to the North Las Vegas City Council. Mayor Montandon was not involved in any way with the creation, planning, or implementation of the petition idea or process.

22. In February 2001, Craig Ranch brought a gaming enterprise petition before the North Las Vegas City Council requesting that the gaming enterprise zone be switched from Nev-Star to Craig Ranch conditioned on a Nev-Star deed restriction precluding any future gaming enterprise on that site. Station Casinos agreed to the Nev-Star deed restriction. The City Council voted unanimously to approve the petition. Mayor Montandon disclosed his former business relationship with Mr. Lampman and thereafter participated in and voted on the matter.

23. Subsequently, a group of citizens appealed the City Council's February 2001 approval of the Craig Ranch gaming enterprise petition to the Nevada Gaming Control Board. In a split decision, the Gaming Control Board overturned the North Las Vegas City Council's action with regard to creating a new gaming enterprise zone at Craig Ranch. The City of North Las Vegas did not appeal the decision of the Gaming Control Board. The Nev-Star deed restriction was thereafter withdrawn and Nev-Star continues to be designated a gaming enterprise zone.

## **CONCLUSIONS OF LAW**

1. Mayor Montandon is a public officer as defined by NRS 281.005 and NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465, Subsection 1(a); and NRS 281.511, Subsection 2(b).

WHEREFORE, the Commission renders the following Opinion:

## **OPINION**

**A. NRS 281.501, Subsections 2 and 3, issues.**

NRS 281.501, Subsection 2, provides:

...[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:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) 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 pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests 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 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

NRS 281.501, Subsection 3, provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
  - (b) Which would reasonably be affected by his commitment in a private capacity to the interests of others; or
  - (c) In which he has a pecuniary interest,
- without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest...[S]uch a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body...This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

NRS 281.501, Subsection 3, expressly does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 in a timely manner. Mayor Montandon timely reported his campaign contributions pursuant to NRS 294A.120, including the campaign contributions referenced in the request for opinion. Therefore, NRS 281.501(3) imposed no disclosure obligation on Mayor Montandon with regard to those campaign contributions and that issue is not before the Commission.

However, NRS 281.501, Subsections 2(c) and 3(b), do impose disclosure and/or abstention obligations when a public officer has a “commitment in a private capacity to the interests of others.”<sup>[7]</sup> NRS 281.501, Subsection 8, lists various relationships that constitute a “commitment in a private capacity to the interests of others” for purposes of NRS 281.501.<sup>[8]</sup> The Commission’s focus in this matter is limited to that provided in NRS 281.501(8)(d): a public officer’s commitment to a person with whom he has a “substantial and continuing business relationship.”

The question the Commission must answer, therefore, to determine whether Mayor Montandon violated the disclosure provisions of NRS 281.501, Subsection 3, and/or the abstention provisions of NRS 281.501, Subsection 2, as alleged in the request for opinion, is whether Mayor Montandon had a “substantial and continuing business relationship” with Mr. Shawn Lampman and, therefore, a “commitment in a private capacity” to Mr. Lampman’s interests at the time he considered and acted upon zoning matters before the North Las Vegas City Council in



September 2000 and February 2001 concerning a casino project in which Mr. Shawn Lampman had a financial interest.

All of Mayor Montandon's interest in MMSL, LLC, pecuniary or otherwise, legally terminated and was surrendered to Mr. Lampman effective September 4, 1999. That the form changing the resident agent wasn't filed with the Secretary of State until some time later does not alter the legal effect of the default that terminated Mayor Montandon's legal interest in MMSL, LLC. After September 4, 1999, Mayor Montandon had no legally enforceable interest in MMSL, pecuniary or otherwise, and, therefore, no "substantial and continuing business relationship" or any other relationship with Mr. Lampman within the NRS 281.501 definition of "commitment in a private capacity to the interests of others."

The Commission is always concerned about the danger of elected public officials being used for economic advantage. However, unless specifically disqualified therefrom, public officers have a public duty to consider and act on matters that come before them. To require otherwise would deprive the public of its elected or appointed representation. As the Commission noted in a prior opinion:[\[9\]](#)

[T]he public (and an elected official's constituents) have an interest in matters which come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would materially affect one's independence of judgment. Compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and independent judgment. And, in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority. The burden, therefore, is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a reasonable person's independence of judgment would be materially affected by those private commitments.

Based on the absence of evidence of any substantial and continuing business relationship between Mr. Lampman and Mayor Montandon at the time Mayor Montandon considered and acted upon zoning matters before the North Las Vegas City Council in September 2000 and February 2001 concerning a casino project in which Mr. Shawn Lampman had a financial interest, the Commission finds that Mayor Montandon violated neither the provisions of NRS 281.501, Subsections 2, nor the provisions of NRS 281.501, Subsection 3, as alleged in the request for opinion.

**B. NRS 281.481, Subsection 2, issues.**

NRS 281.481, Subsection 2, prohibits a public officer or employee from using "his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person." As used in NRS 281.481(2), "unwarranted" means "without justification or adequate reason." NRS 281.481, Subsection 2.

On its face, NRS 281.481, Subsection 2, reasonably appears to require the Commission to find by a preponderance of the evidence an intention by a public officer to secure or grant a benefit by using his position in government before the Commission may declare the public officer has violated the statute.[\[10\]](#)

There is no evidence that Mayor Montandon used his position as Mayor of the City of North Las Vegas to secure for himself the Logandale real estate investment opportunity with Mr. Lampman. To the contrary, through their common interest in motorcycle riding they developed a friendship and it was that environment in which their business relationship developed for purposes of buying real estate in Logandale. Further, when Mayor Montandon was subsequently unable to sell the industrial building and it became clear that he would be unable to meet his promissory note obligation to Mr. Lampman, Mayor Montandon forthwith acknowledged default under the terms of the promissory note, surrendering to Mr. Lampman all interest he may have had in MMSL, LLC, and the Logandale

property.

There is no evidence in this matter, nor can any inference be drawn from the sworn testimony presented herein, to support the allegation that, with regard to the circumstances surrounding the Logandale real estate investment opportunity, Mayor Montandon used his position as Mayor of North Las Vegas in any way to secure a benefit for himself. Therefore, the Commission finds that Mayor Montandon's conduct with regard to the Logandale real estate investment opportunity did not violate the provisions of NRS 281.481, Subsection 2.

## CONCLUSION

Mayor Montandon's conduct as alleged herein did not violate NRS 281.501(2), NRS 281.501(3), or NRS 281.481(2).

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: December 14, 2001.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

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[1] The members of Las Vegas Gaming Investments, LLC, include Robert Cohen, Donald Nelson, Thomas Lohse, and minority member C.A.K., Ltd. C.A.K., Ltd. is a general partnership of which Mr. Lampman is the general partner and the Lampman Grandchildren Educational Trust is the sole limited partner. Neither Mayor Montandon nor any of his family members has any financial or business interest of any kind in or with Las Vegas Gaming Investments, LLC, C.A.K., Ltd., Robert Cohen, Donald Nelson, or Thomas Lohse.

[2] See, footnote 1 above.

[3] Mr. Lampman personally advanced the cash to cover Mayor Montandon's capital contribution to MMSL, LLC, to purchase the 10 acres of land, and Mayor Montandon executed a Promissory Note payable to Mr. Lampman to secure the loan. Under the terms of the Promissory Note, Michael L. Montandon (borrower) agreed to pay to Shawn Lampman (lender) the principal amount of \$31,000, with interest at the rate of 10% per annum. The Promissory Note required quarterly interest payments of \$775.00 (or as may be periodically adjusted based upon any reduction of principal) beginning May 4, 1999.

[4] Under the terms of the PROMISSORY NOTE, Mayor Montandon had the right to cure the default within 30 days of notice thereof.

[5] Approximately 20 years ago, the area that includes the Nev-Star land was designated on the city master plan as a "gaming enterprise zone." The City of North Las Vegas later decided to reserve that area for non-casino commercial development. When the owners of Nev-Star appealed a decision by the North Las Vegas City Council to deny its application for a casino site, the Court reversed the City Council's decision based upon the Nev-Star owners' detrimental reliance on the earlier master plan "gaming enterprise zone" designation and ordered the City of North Las Vegas to approve Nev-Star as a casino site.

[6] The owners of both properties were agreeable to the switch and, if approved, Station Casinos would build their casino on Craig Ranch and deed-restrict its Nev-Star property to prevent future competition prior to selling that land.

[7] NRS 281.501, Subsections 2 and 3, also impose disclosure and/or abstention obligations in matters (1) regarding which a public officer has "accepted a gift or loan" [NRS 281.501(2)(a); NRS 281.501(3)(a)] and (2) in which a public officer has a pecuniary interest [NRS 281.501(2)(b); NRS 281.501(3)(c)]. However, there are no allegations that implicate either situation in this matter.

[8] NRS 281.501(8) provides: "As used in [NRS 281.501], "commitment in a private capacity to the interests of others" means a commitment to a person (a) Who is a member of his household; (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) Who employs him or a member of his household; (d) With whom he has a substantial and continuing business relationship; or (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described herein." The relationship in question in this matter is that between Mayor Montandon and his friend and real estate broker, Mr. Shawn

Lampman. There is no allegation that (a) Mr. Lampman is “a member of Mayor Montandon’s household” [NRS 281.501(8)(a)], or that (b) Mr. Lampman is related to Mayor Montandon “by blood, adoption or marriage within the third degree of consanguinity or affinity” [NRS 281.501(8)(b)], or that (c) Mr. Lampman employs Mayor Montandon or a member of his household [NRS 281.501(8)(c)], or that (d) any other commitment or relationship substantially similar to the foregoing exists between Mayor Montandon and Mr. Lampman [NRS 281.501(8)(e)].

[\[9\]](#) See, Commission Opinion No. 99-56, *In the Matter of the Opinion Request of Bruce L. Woodbury*, dated December 22, 1999.

[\[10\]](#) “A public officer...shall not **use** his position in government...” (emphasis added). NRS 281.481, Subsection 2.