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FROM THE DESK OF:
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REPLY TO RENO OFFICE

January 25, 2011

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JAN 26 2011

COMMISSION
ON ETHICS

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Via U.S. MAIL

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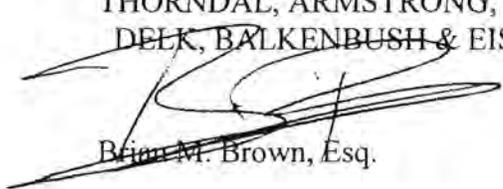
Re: Don Parsons Opinion Nos. 10-26C, 10-27-C and 10-42C

Dear Commission:

Enclosed please find the executed *Stipulated Agreement* in the above reference matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER


Brian M. Brown, Esq.

BMB/rmw

Enclosed: As stated

RECEIVED

JAN 26 2011

COMMISSION
ON ETHICS



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of **DON PARSONS**,
City Councilman,
City of Fernley,
State of Nevada,

**Requests for Opinion Nos.
10-26C, 10-27C and 10-42C**

Subject.

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement is intended to resolve Requests for Opinion Nos. 10-26C, 10-27C and 10-42C before the Nevada Commission on Ethics ("Commission") concerning Don Parsons and render an opinion as agreed.

2. **JURISDICTION:** At all material times, Parsons served as an elected member of the Fernley City Council ("City Council") in Fernley, Nevada, 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, Parsons 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. Parsons was elected to the City Council in November 2008 and assumed office in February 2009. His term expires in 2012.
- b. In his private capacity, Parsons is employed as a project manager by Hydrotech, Inc. (“Hydrotech”), a company based in Fernley, Nevada.
- c. On April 23, 2010, the Commission received two identical third-party requests for opinion regarding Parsons filed by Fred Turnier, the City’s Community Development Director who oversees the City Building Department, among others, and Jeff Ball, a City Building Inspector, stating that Parsons violated the Ethics in Government Law set forth in NRS 281A by allegedly using his position as a City Councilman to seek favors or services and influence his subordinates, two City building inspectors, to use City time and property to inspect and condemn a privately-owned local building for sale in an effort to negotiate a better purchase price of the building on behalf of Parsons’ employer, Hydrotech.
- d. On May 13, 2010, the Commission received another third-party request for opinion regarding Parsons filed by the Lyon County District Attorney, on behalf of the Fernley City Attorney, stating that Parsons violated the Ethics in Government Law set forth in NRS 281A by allegedly using his position as a City Councilman to: 1) seek favors from the City’s Building Department to assist him on private matters before regular working hours; 2) seek favors from the City’s Building Department to re-zone

- his daughter's property; and 3) secure unwarranted privileges, preferences or advantages by obtaining a discount on his water bill from the City.
- e. The Commission consolidated the requests for opinion for purposes of a single investigation (hereafter referred to as "the requests for opinions" or "RFOs").
 - f. The Commission provided Parsons with proper notice of the allegations and an opportunity to file a written response. Parsons is fully advised of the allegations asserted in the RFOs.
 - g. On June 29, 2010, Parsons' legal counsel filed a written response to the RFOs.
 - h. The Commission's staff investigated the allegations and provided reports and recommendations to the Commission's investigatory panel.
 - i. Pursuant to NRS 281A.440, on August 12, 2010, a two-member panel of the Commission reviewed the RFOs, Parsons' written response, the staff reports and recommendations and other evidence. The Panel determined that just and sufficient cause did exist for the Commission to conduct a public hearing and render an opinion regarding the allegations that Parsons used his position in government to seek favors or services and influence his subordinates to use government time and property to inspect and condemn a private building for Parsons' private employer in violation of NRS 281A.400, subsections (1), (2) (7) and (9). However, the Panel determined that just and sufficient cause did not exist for the Commission to conduct a public hearing and render an opinion regarding the allegations that Parsons: 1) sought favors from City employees to assist him in private matters before regular working hours in violation of NRS 281A.400(1); 2) sought favors from the City's Building Department

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

a. **Parsons' Public Interests:**

- (1) Parsons was elected to the Fernley City Council in November 2008 and assumed office in February 2009. His term expires in 2012.
- (2) Parsons holds a public office which constitutes a public trust held for the sole benefit of the people of Fernley.

b. **Parsons' Private Interests:**

- (1) Parsons is privately employed as a project manager for Hydrotech and compensated for his services. Accordingly, Parsons has a pecuniary interest in and a commitment in a private capacity to the interests of Hydrotech, as his employer. *See* NRS 281A.420(8).
- (2) At all times relevant to this matter, Hydrotech was interested in purchasing a privately-owned building in Fernley located close to its existing facilities. The building had been unoccupied for a period of time, including a winter season in which frozen pipes caused significant damage to the building, including the fire sprinkler system.
- (3) The seller of the building was prepared to discount the price of the building by the sum of the costs to repair the damage. Hydrotech received greatly disparate estimates from private companies to repair the damage and therefore Parsons, on behalf of his employer, sought an independent inspection from the City Building Department and local Fire Department. As a matter of common practice,

to rezone his daughter's home in violation of NRS 281A.400(1); and 3) secured privileges from the City when he received an unwarranted discount on his water bill in violation of NRS 281A.400(2).

- j. In lieu of a hearing regarding his alleged violations of NRS 281A, Parsons enters into this stipulation acknowledging his duty to commit to avoid conflicts between his private interests and those of the public he serves. Accordingly, Parsons agrees that an appearance of impropriety and a conflict of interest exist between using his position as a City Councilmember to seek favors from City employees or using government time and property to secure unwarranted privileges, for his private employer. *See* NRS 281A.020.

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

- a. NRS 281A.400(1) – Seek/Accept Favor Which Would Improperly Influence a Person to Depart from Public Duties:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

- b. NRS 281A.400(2) – Use of Official Position to Secure Unwarranted Privileges:

A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

c. NRS 281A.400(7) – Using Government Time:

Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

- If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

d. NRS 281A.400(9) – Attempt to Influence Subordinate:

A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

members of the public routinely ask for courtesy inspections of private property from City Building inspectors.

c. Parsons' Actions:

- (1) On April 9, 2010, at approximately 11:00 a.m., Parsons contacted the City's Building Department and asked to speak with one of the City Building Inspectors, Jeff Ball. Parsons asked Ball to meet with him that morning at the building to conduct an inspection and identify any damage to the building.
- (2) Parsons likewise contacted the local Fire Chief for a similar inspection of the fire sprinkler system in the building at the same time.
- (3) Parsons sought to secure information regarding the extent of damage to the building and necessary improvements for occupation, which potentially could affect the purchase price for the building.

d. Inspection:

- (1) Ball, as a courtesy to the City Councilman, made some adjustments to his City schedule and met with Parsons at the building at approximately 11:30 a.m. On his own initiative, Ball brought another City Building Inspector, Ron Wise, to the inspection. Together, Ball and Wise walked through the building with Parsons and provided an oral informal inspection of the building. Because Hydrotech was not currently occupying the building and did not have a building permit, Ball and Wise would not provide a formal inspection, nor was a formal inspection requested by Parsons. Ball and Wise reported that Parsons had also

asked them to condemn the building so he could negotiate a substantially lower price, which both refused to do. Parsons denies making such a request.

(2) At the conclusion of the meeting and inspection with Ball and Wise, the North Lyon County Acting Fire Chief, Scott Huntley, arrived and the four men conducted another walk through and discussed the same requirement to Parsons that the building be occupied and have a permit before a formal inspection could take place. However, the Fire Chief orally and informally noted some problems with the fire sprinkler system. The Fire Chief has denied that Parsons ever suggested or requested that the building be condemned.

6. **TERMS:** Based on the foregoing, Parsons and the Commission agree as follows:

- a. Each of the facts enumerated in section 5 is deemed to be true and correct.
- b. Parsons acknowledges Ball may have felt influenced to change his City schedule and meet with him and inspect the subject building for Parsons' interest in securing information for his private employer, Hydrotech. However, Parsons' intent was to request a courtesy inspection as a private citizen. Ball rearranged his schedule to accommodate this visit and inspection for Parsons, a City Councilman, thereby using his work hours (governmental time) and City property to provide information for Parsons' private interests.
- c. Parsons acknowledges that Ball is a subordinate and further acknowledges Ball may have felt that Parsons wanted an unwarranted privilege, preference or advantage

through the use of his position as a City Councilman. However, Parsons claims that never was his intention.

- d. The parties agree, consistent with the Commission's prior opinions, that "regardless of whether the employee was five to seven management levels subordinate to the [City Council], 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.
- e. Parsons' acts of seeking assistance from a subordinate to secure an inspection of the building (and using government time and property) for his private interests, despite his intentions to seek a courtesy inspection as a private citizen, constitutes a single course of conduct which amounts to a single violation of the Ethics in Government Law (implicating NRS 281A.400(1), (2), (7) and (9)). Parsons' conduct was not willful. Parsons did not knowingly and intentionally seek to influence a subordinate or seek or secure favors or services for his private interests. He believed such services were available to all members of the public. Ball confirms that he would have conducted a similar inspection as a courtesy for other members of the public. However, such inspections would have been conducted subject to Ball's City-related business schedules and at his discretion.
- f. The Commission finds insufficient evidence to conclude that Parsons sought condemnation of the building to secure a better negotiating price. Although Ball and Wise claim that Parsons specifically requested condemnation, this claim is contrary to

the recollections of the City Building Department employees or the Fire Chief.

Accordingly, the Commission dismisses each allegation concerning condemnation.

- g. This agreement applies only to the specific facts, circumstances and law related to these RFOs. 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:**

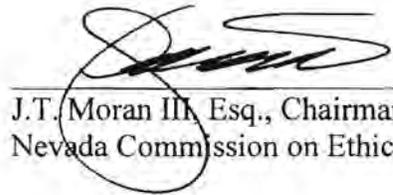
- a. Parsons retained legal counsel in this matter and knowingly waived a full hearing before the Commission on the allegations against him and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. Parsons 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 a regular meeting of the Commission on November 9, 2010.

DATED this 15 day of Jan, 2010.


Don Parsons

DATED this 17TH day of NOVEMBER, 2010.


J.T. Moran III, Esq., Chairman
Nevada Commission on Ethics

The above Stipulated Agreement is approved:


Brian M. Brown, Esq.
Thorndal Armstrong Delk
Balkenbush & Eisinger
Attorney for Don Parsons


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