



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
James Parrish, Chief Executive Officer
and Administrator, Humboldt County
Hospital District, Humboldt County,
State of Nevada,

Request for Opinion No. 12-64C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Third-Party Request for Opinion ("RFO") No. 12-64C before the Nevada Commission on Ethics ("Commission") concerning James Parrish ("Parrish"), Chief Executive Officer ("CEO") and Administrator of the Humboldt County Hospital District ("Hospital") in Winnemucca, Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Parrish served as CEO and Administrator of the Hospital. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A gives the Commission jurisdiction over current elected and appointed public officers and employees for conduct which is alleged to have violated the provisions of NRS Chapter 281A and which occurred within two years preceding the filing of the RFO. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Parrish in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about November 7, 2012, the Commission received a Third-Party Request for Opinion ("RFO") from a private citizen alleging that Parrish had caused the Hospital, a governmental entity, to incur expenses in support of a candidate for office to the Hospital Board of Trustees in violation of NRS 281A.520 by authorizing a Hospital expenditure for the creation, purchase and distribution of a flyer which prominently featured a current member of the Board who was also a candidate for election.
- b. As required by NAC 281A.410, the Commission provided Parrish with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Parrish was provided an opportunity to respond to the RFO and submitted a written response through the Hospital's legal counsel, O. Kent Maher, Esq.
- c. Based on the facts developed from the Commission's investigation, the Commission's Executive Director provided a report to a two-member Investigatory Panel of the Commission pursuant to NRS 281A.440(4), consisting of Commissioners Cheryl Lau and Keith Weaver, recommending that credible evidence established just and sufficient cause for the Investigatory Panel to forward the allegation implicating NRS 281A.520 to the full Commission for a hearing and opinion.
- d. Pursuant to NRS 281A.440, on March 20, 2013, the Investigatory Panel reviewed the RFO, Parrish's response, the Executive Director's report and recommendation and other evidence. The Panel adopted the Executive

Director's recommendation described in paragraph "c" herein and forwarded the allegation to the Commission to hold a hearing and render an opinion.

- e. The Commission notified Parrish of the time and place set for a Commission hearing in this matter. In lieu of a full hearing regarding the outstanding allegation, Parrish now enters into this stipulation acknowledging his duty as a public officer to commit to protect the public trust by ensuring that government resources are not expended to support a candidate through any publication which prominently features the activities of a current public officer who is also a candidate for office. See NRS 281A.020 and 281A.520.

4. **FINDINGS OF FACT:**

The following events are relevant to the matter:

- a. Parrish serves as the CEO and Administrator of the Hospital, appointed by the Hospital Board of Trustees. He has served in this position for approximately 8 years.
- b. Private citizen Ed Hopfer ("Hopfer") filed his candidacy for a position on the Hospital Board of Trustees for the 2012 general election.
- c. Prior to the election, the position sought by Hopfer became vacant due to the unexpected resignation of the sitting member. Hopfer was the only person who submitted an application to fill the unexpired term, and in June 2012, the Humboldt County Board of Commissioners appointed Hopfer to serve the unexpired term. Accordingly, Hopfer became the incumbent candidate for the position during the pending election.

- d. Shortly after Hopfer was appointed to serve as a Board member, several Board members and Parrish attended an annual symposium for trustees. This symposium gave Parrish the idea to provide the Humboldt County community with better information regarding the Hospital Board and its activities. Parrish discussed his idea with the Hospital's Director of Community Education and Development, Marketing and Advertising, Nicole Maher, regarding community outreach efforts to inform the public of Hospital information and activities.
- e. Maher suggested to Parrish that the Hospital distribute a "direct mail piece," or flyer, highlighting each new Board member and publish Hospital informational updates in newsletters, press releases and other publications. Because Hopfer was the newest Board member from his recent appointment, Maher suggested to Parrish that they initiate the flyer with information concerning Hopfer. Parrish approved the suggestion and Maher requested the necessary purchasing funds through the normal course of business to develop and print the flyers and pay for postage.
- f. As the CEO of the Hospital, Parrish reviewed the funding request and approved the cost for the purchase and distribution of the flyers. However, Maher independently designed the flyer solely with the intention of introducing Hopfer to the public, and she included information about Hopfer's present status as a candidate in the interest of transparency. She did not consider that including such information would be deemed a governmental expenditure

in support of a candidate. Parrish approved the concept of the flyer, but he did not review or approve its content. Parrish was aware that Hopfer was a public officer and a candidate for election and understood the flyer would prominently feature information and activities of Hopfer as a newly appointed Hospital Board member, but he did not understand the Ethics Law prohibition against prominently featuring information and activities of a candidate for office.

- g. The total cost of the flyer for its purchase and postage amounted to \$1,155.83.
- h. Parrish intended a similar flyer to be distributed for all newly appointed or elected Hospital Board members as a community outreach effort and not an effort to promote the candidacy of any individual.
- i. During his tenure as CEO, Parrish has participated and/or been made aware of various Hospital Trustees' and employees' involvement in matters before the Commission implicating the Ethics Law. While he has not personally been the subject of any prior request for opinion, he has had significant awareness and involvement in the applicability of the Ethics Law to the Hospital.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Parrish and the Commission agree as follows:

- a. Each of the findings of fact enumerated in section 4 is deemed to be true and correct.

- b. Parrish holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Humboldt County).
- c. Parrish, in his capacity as a public employee, authorized the expenditure of public funds to prepare and distribute between the time of filing for office and the general election a mailed publication (flyer) which described and prominently featured activities of a current public officer of the governmental entity who had filed a declaration of candidacy for office.
- d. In his role as CEO and Administrator of the Hospital, Parrish's approval of the governmental expenditure for a flyer involving a public officer who was also known by Parrish to be a candidate for office represents a willful act; he intentionally and knowingly approved the concept and governmental expenditure of a flyer which prominently featured a public officer who was also a candidate for office of Hospital trustee together with the public officer's comment on why he chose to serve. The fact that Parrish did not design or review the final content of the flyer does not absolve him of his duty to protect the public trust and ensure that governmental resources are not used for improper purposes.
- e. Parrish's conduct in these circumstances constitutes a single violation of NRS 281A.520(1)(b), (2), and (3), for causing a government entity, the Hospital, to incur expenses in producing the flyer.

- f. Although Parrish's conduct in approving the governmental expenditure for the flyer is deemed intentional and knowing, the Commission is obligated to determine whether by reason of mitigating factors his conduct constitutes a "willful violation" of the Ethics Law pursuant to NRS 281A.170, as amended by Section 32.5 of Senate Bill No. 228 adopted by the 77th Session of the Nevada Legislature, effective on June 13, 2013 and Section 27.5 of Senate Bill No. 228 adopted by the 77th Session of the Nevada Legislature, effective on June 13, 2013 (Sections 27.5 and 32.5 of chapter 551, Statutes of Nevada 2013, at pages ____), for the purposes of imposing sanctions under NRS 281A.480.
- g. The Commission concludes that Parrish's conduct should not be deemed a "willful violation" based on the consideration and application of the mitigating factors set forth in Section 27.5 of Senate Bill No. 228 adopted by the 77th Session of the Nevada Legislature, effective on June 13, 2013 (Section 27.5 of chapter 551, Statutes of Nevada 2013, at page ____) to the circumstances of this case for the following reasons:
- (i) The violation resulting in the improper expenditure of public funds, though serious, is of such a nature, circumstance, extent or gravity as to be deemed as a part of a well-intentioned, good faith effort to promote the Hospital through a series of publications to generally inform the community, and was based on an idea conceived as a result

of a leadership conference attended, and not to promote the candidacy of a particular trustee.

- (ii) Parrish has no personal history as a subject of any previous violation of the Ethics Law.
 - (iii) The flyer was distributed only one time such that the violation of NRS 281A.520 was not repeated and Parrish cooperated with the Commission in resolving the RFO and understanding his obligations under the Ethics Law.
 - (iv) Parrish received no financial gain as a result of the violation.
 - (v) Because of Parrish's cooperation in the proceeding, the Commission incurred limited cost to investigate the violation and no cost to hold a hearing.
 - (vi) The flyer made a single reference to the candidacy in an effort to provide transparency and was intended to familiarize the public about a newly appointed Board member, a proper governmental purpose, and there is no evidence that Parrish intended for the flyer to promote a candidacy or provide unwarranted governmental resources to the incumbent candidate.
- h. Although he did not evidently intend to violate the Ethics Law or expend governmental resources in support of a candidate, Parrish's conduct nevertheless did result in an improper use of public resources for which an incumbent candidate may have benefitted. However, based on the nature of

the violation as well as the Commission's efforts to educate Parrish regarding his duties under NRS 281A.520, a statute not regularly or recently interpreted by the Commission, justice is best served with a determination of a single non-willful violation.

- i. In its efforts to offer outreach and education regarding the applicability and importance of NRS 281A.520, the Commission impresses upon Parrish, and those similarly situated, the public trust implicated by the statute and represented by the circumstances identified herein. NRS 281A.520 ensures independence from government interference or influence during an election. A representative democracy guarantees the right of the people to govern through elected representatives, the integrity of which is voiced through the electoral process where elected representatives are held accountable. Inherent in the electoral process are guarantees of free, open and equal participation by the voters, including assurance that government remains neutral in the process and allows all candidates a fair and equal chance to win, free of manipulation from public money, power or influence. NRS 281A.520 represents one effort to enhance the public's trust in the electoral process. While government resources should not be used to support any candidate during an election, the law specifically ensures that an incumbent candidate should not receive unwarranted or unfair benefits (free advertising) during an election through the use of public resources to promote his candidacy. The Legislature secures government neutrality in elections by

regulating the conduct of public officers and employees who are entrusted with public resources to ensure that the election process is not manipulated through the use of public resources or other influence. As the public employee/fiduciary of the Hospital entrusted with the authority over its public funds and resources, Parrish had an obligation to ensure that the Hospital remained neutral during the course of the election and that any incumbent candidate would not unfairly benefit through its public support. In this case, the Commission is satisfied that Parrish did not intend for the flyer to promote a candidacy and he has been diligent to cooperate and educate himself regarding the Ethics Laws. However, the Commission encourages Parrish, and those similarly situated, to actively prevent governmental actions or resources from interfering in matters affecting an election. Although Parrish has no history of previous violations with the Ethics Law, the Commission notes that various public officers and employees of the Hospital have recently had significant experience and interaction with the Commission and Ethics Law in the form of First-Party Requests for Opinion and Third-Party Requests for Opinion during Parrish's tenure as the CEO. Accordingly, Parrish has a unique opportunity to learn from the Hospital's past ethical challenges and promote a renewed public trust in the entity and its public officers and employees consistent with the Ethics Law policies stated in NRS 281A.020.

- j. This agreement depends on and applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any

facts or circumstances that may come to light later that are in addition to or differ from those contained in this agreement may create a different resolution of this matter.

- k. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Parrish.

6. **WAIVER:**

- a. Parrish knowingly and voluntarily waives a full hearing before the Commission on the allegations in this RFO (No. 12-64C) and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A) and the Nevada Administrative Procedures Act (NRS Chapter 233B).
- b. Parrish knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other provision of Nevada law.

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7. **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 August 21, 2013.

DATED this 22nd day of AUGUST, 2013.


James Parrish

DATED this 21st day of August, 2013.

By: /s/ Paul Lamboley
Paul Lamboley
Chairman

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Gregory Gale
Gregory Gale
Vice-Chairman

By: /s/ James Shaw
James Shaw
Commissioner

By: /s/ John Carpenter
John Carpenter
Commissioner

The above Stipulated Agreement is approved by:

DATED this 22nd day of August, 2013.


O. Kent Maher, Esq.
Counsel for James Parrish

DATED this 27th day of August, 2013.


Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel