



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Requests  
for Opinion Concerning the Conduct of  
**Theodore Fuller** and **Bea Epstein**, Former  
Trustees, Incline Village General Improvement  
District, State of Nevada,

**Requests for Opinion Nos. 12-72C  
12-74C**

Subjects. /

### STIPULATED AGREEMENT

1. **PURPOSE**: This stipulated agreement resolves certain allegations set forth in Third-Party Requests for Opinions ("RFOs") Nos. 12-72C and 12-74C concerning Theodore Fuller ("Fuller") and Bea Epstein ("Epstein"), (collectively referred to hereafter as "Subjects"), Former Trustees of the Incline Village General Improvement District ("IVGID") Board of Trustees ("Board"), before the Nevada Commission on Ethics ("Commission") and serves as the final opinion in this matter with respect to those allegations.

2. **JURISDICTION**: At all material times, Subjects formerly served as Trustees of the Board. The Board was formed pursuant to Nevada Revised Statute ("NRS") 318.080. NRS 318.082 provides that the trustees of a general improvement district are elected officials. The Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law") gives the Commission jurisdiction over former elected and appointed public officers for conduct which occurred within two years preceding the

filing of the RFO. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Subjects in these requests.

3. **FINDINGS OF FACT:**

The following events are relevant to the matter:

- a. Fuller is a former member of the IVGID Board and served two nonconsecutive four-year terms; the first term from 2000 to 2004, and the second term from 2008 to 2012.
- b. Epstein is a former member of the IVGID Board, having served two consecutive four-year terms from 2004 to 2012.
- c. According to its website ([www.ivgid.org](http://www.ivgid.org)), IVGID maintains various departments, including, without limitation, the Parks and Recreation Department.
- d. IVGID's Parks and Recreation Department offers programs in the following categories: Youth; Teen; Day Camps; Family and Special Events; Aquatics; Sports; and Senior.
- e. The Senior Program encompasses several groups, including, without limitation: 55+ Senior Transportation Program; Conversation Café; Veterans' Club; and The Incliners.
- f. The Incliners is IVGID's first Senior Program providing social and educational opportunities for seniors which is open to any resident of Incline Village who is 49 years of age and over. Members of The Incliners pay annual membership dues in the amount of \$19. The Incliners conducts its meetings free of charge at the Chateau, an IVGID-owned event facility. The Incliners meets at the Chateau from 5:30 p.m. to 9:00 p.m. on the first Tuesday of each

month for a potluck dinner and bingo, and from 5:30 p.m. to 9:00 p.m. on the third Tuesday of each month for a catered dinner and dancing. Members attending the catered dinners must make reservations and payment for the cost of the catered dinners in the amount of \$24 per person before each dinner to *The Incliners*, mailed to *The Incliners'* Post Office Box in Incline Village.

- g. IVGID may authorize the use of the Chateau free of charge on any day for its government-sponsored recreational programs.
- h. *The Incliners* was formerly registered as an independent non-profit Nevada corporation. *The Incliners* dissolved its status as a private business entity in August 2010. Currently, *The Incliners* is neither a private entity (e.g., non-profit), nor a formal incorporated department of IVGID. *The Incliners* is treated as an IVGID-sponsored recreational program.
- i. No records are available concerning any discussion, consideration or vote by the IVGID Board to establish *The Incliners* as an IVGID Senior Program or other formal or incorporated division or department of IVGID.
- j. *The Incliners* maintain a bank account separate from IVGID.
- k. IVGID staff supports activities of *The Incliners* and creates and distributes advertising materials and flyers for *The Incliners'* programs.
- l. Information concerning *The Incliners* is posted on a page within IVGID's website ([www.inclinerecreation.com](http://www.inclinerecreation.com)), which is created and maintained by IVGID.

- m. Fuller is over the age of 49 and has been an Incline Village resident for over 16 years. Fuller was a member of *The Incliners* while he served as a Trustee for IVGID.
- n. Epstein is over the age of 49 and has been an Incline Village resident for over 17 years. Epstein was a member of *The Incliners* while she served as a Trustee for IVGID.
- o. On September 14, 2011, Item J.1. on the IVGID Board Meeting Agenda requested the Board's approval of a "*Purchase Order with Crosby's Grille Pub Casino in the amount of not to exceed \$40,000.00 for the service of approximately nine to ten meals, including non-alcoholic beverages, from October 1, 2011 through June 30, 2012 for the District's Incliners Senior Program.*" Although this agenda item sought authorization for an expenditure of up to \$40,000.00, in reality, IVGID never intended to, nor did it, actually expend any public funds for the catered meals and services because the Incliners would pay IVGID for the costs of the catered meals *before* IVGID forwarded payment to Crosby's Grille Pub. The IVGID Board voted unanimously (5-0) to approve the purchase order. The Subjects voted to approve the purchase order without disclosing that they were members of *The Incliners*, or that they could obtain a pecuniary benefit (in the form of a reduced cost meal) if they voted in favor of the agenda item. They did, however, later in the meeting disclose that they were members of *The Incliners*. The vote on the item was unanimous (5-0) and thus the item would have been approved regardless of the Subjects' votes.

- p. By making its catering purchases through IVGID, *The Incliners* were not subject to payment of Washoe County sales tax in the amount of 7.725%. Assuming that the Incliners purchased meals up to the authorized sum of \$40,000.00 through June 30, 2012, the savings to the members of *The Incliners* would be approximately \$3,090.00.
- q. The vote and approval of the September 14, 2011 agenda item resulted in savings to the members of *The Incliners* of approximately \$1.85 on each \$24.00 meal purchased.
- r. *The Incliners* accepts reservations and payments for the catered dinners and orders the respective meals from Crosby's. *The Incliners* issues a check from its separate bank account to IVGID for payment of the meals to the caterer. IVGID thereafter issues payment to Crosby's Grille Pub Casino under the approved purchase order.
- s. During the period encompassed by Agenda Item J.1 (October 1, 2011 to June 30, 2012), Trustee Epstein attended one (1) *Incliners* catered function. As a result of her favorable vote on Agenda Item J.1, she obtained a cost savings of approximately \$1.85.
- t. During the period encompassed by Agenda Item J.1 (October 1, 2011 to June 30, 2012), Trustee Fuller attended three (3) *Incliners* catered functions. As a result of his favorable vote on Agenda Item J.1, he obtained a cost savings of approximately \$5.55.

- u. Prior to the period encompassed in Agenda Item J.1, Subjects were both entitled to a \$10.00 refund from *The Incliners* for registration fees which they had previously paid. Neither accepted the refund to which they were entitled.

4. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about December 24, 2012 (approximately one week prior to the expiration of Subjects' terms), the Commission received RFO Nos. 12-72C and 12-74C from a private citizen alleging that approximately 15 months previous thereto, Subjects voted on a public matter in which IVGID would provide its tax exemption for certain catering costs incurred by *The Incliners*, without disclosing their private/pecuniary interests as members of *The Incliners*. Through their respective affirmative votes and failures to disclose, the RFOs alleged that Subjects: 1) failed to avoid conflicts between their private interests and public duties (NRS 281A.020); 2) sought or accepted gifts which improperly influenced their public duties (NRS 281A.400(1)); 3) used their positions in government to secure or grant unwarranted benefits to themselves or to persons/entities to whom they have a commitment in a private capacity (NRS 281A.400(2)); 4) used governmental resources to further a personal or pecuniary interest (NRS 281A.400(7)); and 5) failed to properly disclose their interests and abstain from participating in the IVGID matters related to those interests (NRS 281A.420(1) and (3)).
- b. Specifically, the RFOs alleged that *The Incliners* was a private organization, and Subjects failed to disclose their memberships in the organization and/or pecuniary interests in a matter authorizing *The Incliners* to utilize IVGID's tax

exempt status for the purchase of catered meals and beverages, resulting in a savings to *The Incliners* and a corresponding savings to the members who paid for the meals. Subjects voted to approve the matter. In addition to the specific allegations regarding failures to disclose and abstain, the RFOs alleged that the affirmative votes by Subjects constituted improper gifts and use of governmental resources and secured an unwarranted discount to the members of *The Incliners* for their individual catered dinner costs, a privilege not available to the general public.

- c. As required by NAC 281A.410, the Commission provided Subjects with notice of the RFOs by mail. Pursuant to NRS 281A.440(3), Subjects were provided an opportunity to respond to the RFOs, and submitted written responses through their counsel, Thomas P. Beko, Esq., of the Erickson, Thorpe & Swainston, Ltd. law firm in Reno, Nevada.
- d. Pursuant to NRS 281A.440, on April 17, 2013, a two-member Investigatory Panel consisting of Chairman Lamboley and Commissioner Carpenter reviewed the RFOs, Subjects' responses, the Executive Director's report and recommendation and other evidence. The Panel was concerned about what appeared to be a \$40,000.00 expenditure of public funds for a select private organization, as well as the overall propriety of the Board's vote to allow *The Incliners* to benefit through IVGID's tax exempt status. Therefore, the Panel voted to forward the RFOs to the Commission for a hearing and opinion in the matters.

- e. The Commission now enters this Stipulated Agreement regarding the allegations concerning NRS 281A.020, NRS 281A.400(1), (2) and (7) and NRS 281A.420(3). However, the Commission addresses the allegations regarding NRS 281A.420(1) concerning disclosure in a separate decision.

5. **TERMS / CONCLUSIONS OF LAW:** In lieu of a full hearing regarding these allegations and based on the foregoing, Fuller, Epstein and the Commission agree as follows:

- a. Each of the findings of fact enumerated in section 3 is deemed to be true and correct.
- b. Subjects each held a public office which constituted a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Incline Village, Nevada).
- c. The parties agree that the Commission does not have jurisdiction to consider the propriety of the IVGID Board's decision to allow the Incliners to utilize IVGID's tax exempt status, but rather, the Commission's jurisdiction extends only to the questions of whether the actions of Trustee Fuller and/or Epstein violated the Ethics Law. Thus, the Commission lacks any jurisdiction to render any decision on the propriety of IVGID's decision to afford a private group tax exempt status under IVGID's umbrella.
- d. The parties agree that the potential pecuniary interest at stake in the agenda item for the purchase order was nominal. If Subjects chose to attend every dinner within the relevant time frame, the total pecuniary interest would have been \$16.65, and the evidence reflected that Subjects did not regularly attend



the catered dinners. During the time frame affected by the matter, Fuller attended three (3) dinners for a total pecuniary benefit of \$5.55 and Epstein attended one (1) dinner for a total pecuniary benefit of \$1.85.

- e. The parties further agree that Subjects did not have a "commitment in a private capacity to the interests of" *The Incliners* as defined by NRS 281A.420(8).<sup>1</sup> The Commission has previously interpreted memberships in various private entities as "commitments in a private capacity" only when the public officer or employee serves as a fiduciary to the entity or has some other affiliation with the entity which is substantially similar to a substantial and continuing business relationship. See *In re McCoy*, Comm'n. Opinion No. 09-58A (2012)(Public officer's membership in private association for \$20 per year without role on Board of Directors did not constitute commitment to the association); *In re Public Officer*, Comm'n. Opinion No. 11-84A (2012)(Public officer's membership in private association along with his service on various governing committees of the association constituted a commitment) and *In re Public Officer*, Comm'n Opinion No. 12-04A (2012)(Public officer's volunteer service on the Board of Directors of private association constituted commitment to association). No evidence was presented that Subjects had any affiliation with *The Incliners* beyond their general membership costing approximately \$19 per year.

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<sup>1</sup> NRS 281A.420(8) was revised and replaced in revision with a new section of NRS 281A by Sections 19 and 41 of Senate Bill 228 of the 77<sup>th</sup> Legislative Session, effective June 13, 2013 (Chapter 551, Statutes of Nevada 2013).

f. Finally, the parties agree that the undisputed evidence does not support any finding by the Commission that Fuller or Epstein:

(1) Sought or accepted improper gifts as prohibited by NRS 281A.400(1).

No evidence was presented that the potential, nominal pecuniary interest amounted to a gift that would improperly influence a reasonable person in the Subjects' position to depart from the faithful discharge of his public duties.

(2) Used their official positions to secure unwarranted benefits as prohibited by NRS 281A.400(2). The Commission has no position regarding whether IVGID's determination to share its tax exempt status with *The Incliners*, a government-sponsored program, was unwarranted. NRS 281A.400(2) applies only where a public officer has used his position to secure or grant unwarranted benefits to himself, a business entity in which he has a significant pecuniary interest, or a person to whom he has a commitment in a private capacity. Because Subjects had neither a significant pecuniary interest nor a commitment in a private capacity to the interests of *The Incliners*, they did not violate NRS 281A.400(2).

(3) Used governmental resources to further personal interests as prohibited by NRS 281A.400(7). A preponderance of evidence does not support a determination that *The Incliners'* use of the Chateau constituted the Subjects' use of governmental property or facility to benefit a personal or financial interest where IVGID may authorize the use of the Chateau free

of charge on any day for its government-sponsored recreational programs.

(4) Breached their duty to abstain on the matter presented as required by NRS 281A.420(3). The potential, nominal pecuniary interest at stake does not constitute a pecuniary interest that would materially affect the independence of judgment of a reasonable person in Subjects' situation.

- g. Therefore, the parties agree to a dismissal, with prejudice, of all allegations regarding NRS 281A.020, NRS 281A.400(1), (2) and (7) and NRS 281A.420(3), for lack of a preponderance of evidence.<sup>2</sup>
- h. 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 a different resolution of these matters.
- i. This agreement applies only to these matters 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 Fuller and Epstein.

6. **WAIVER:**

- a. Subjects knowingly and voluntarily waive a full hearing before the Commission on the allegations in these RFOs (No. 12-72C and No. 12-74C) regarding NRS 281A.020, NRS 281A.400(1), (2) and (7) and NRS 281A.420(3) and of any and all rights they may be accorded pursuant to NRS


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<sup>2</sup> The Commission addresses the allegations concerning NRS 281A.420(1) regarding disclosure in a separate decision.

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. Subjects knowingly and voluntarily waive their right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other provision of Nevada law.

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 31<sup>st</sup> day of August, 2013.   
Theodore "Ted" Fuller  
Former Trustee  
Incline Village General Improvement  
District

DATED this 31<sup>st</sup> day of August, 2013.   
Bea Epstein  
Former Trustee  
Incline Village General Improvement  
District

DATED this 27<sup>th</sup> day of August, 2013.

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

By: /s/ James Shaw  
James Shaw  
Commissioner


By: /s/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: /s/ Keith Weaver  
Keith Weaver  
Commissioner

By: /s/ Cheryl Lau  
Cheryl Lau  
Commissioner

The above Stipulated Agreement is approved by:

DATED this 28<sup>th</sup> day of August, 2013.



Thomas P. Beko, Esq.  
Counsel for Theodore Fuller and  
Bea Epstein

DATED this 9<sup>th</sup> day of September, 2013.



Yvonne M. Nevarez-Goodson, Esq.  
Commission Counsel