



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Brian Garner, Member, Board of County
Commissioners, Lander County,
State of Nevada,

Request for Opinion No. **14-12C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-12C before the Nevada Commission on Ethics (“Commission”) concerning Brian Garner (“Garner”), member of the Board of County Commissioners in Lander County, Nevada (“Lander County Commission”), and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Garner served as an elected member of the Lander County Commission. As such, Garner is a public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A provides the Commission jurisdiction over public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Garner in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about January 30, 2014, the Commission received RFO No. 14-12C from Scott Bullock, the son of another member of the Lander County Commission, Dean Bullock, alleging that Garner’s failure to disclose his conflict of interest and abstain from participating in a matter before the Lander County Commission which affected his business interests violated NRS 281A.400(1), (2), (3), (9) and (10), NRS 281A.420(1) and (3), and NRS 281A.430.

- b. As required, the Commission gave Garner notice of the RFO by mail, and Garner was provided an opportunity to respond to the allegations. NAC 281A.410 and NRS 281A.440(3).
- c. Garner waived his right to submit a response to the allegations and his entitlement to a panel determination pursuant to NRS 281A.440. He acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations of his conduct implicating NRS 281A.400(1), (2) and (10) and NRS 281A.420(1) and (3).¹
- d. In lieu of a hearing, Garner now enters into this Stipulated Agreement acknowledging his duty as a public officer to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS**: The following events are relevant to this matter:

Parties

- a. Garner is an elected member of the Lander County Commission and as such, Garner is a public officer, as defined in NRS 281A.160.
- b. Dean Bullock² is an elected member of the Lander County Commission and, during the relevant timeframe, served as its Chairman. As such, Bullock is a public officer, as defined in NRS 281A.160.
- c. Scott Bullock is Dean Bullock's son.
- d. Scott Bullock held a contract with Lander County, a political subdivision, to provide services as the manager of the County's Mountain View Golf Course ("Golf Course").

Golf Course Management Contract - Renewal

- e. Scott Bullock's contract with Lander County to manage the Golf Course was set to expire in March 2014.
- f. The Lander County Commission, through the Public Works Department ("Public Works"), received two letters of intent to bid on the Golf Course management contract for the 2014 and 2015 seasons.

¹ Pursuant to NAC 281A.405, the Executive Director and Commission Counsel rejected jurisdiction regarding the allegations pertaining to NRS 281A.400(3) and (9) and NRS 281A.430 for lack of sufficient evidence to support the allegations as required by NAC 281A.400.

² See companion case, *In re Bullock*, Comm'n Opinion No. 13-85C (2013) for more background.

- g. On September 23, 2013, Fallon Hill ("Hill") submitted a letter of intent to Public Works.
- h. On October 1, 2013, Garner submitted a letter of intent to Public Works, which stated in pertinent part:

This letter is to inform you of my intent to bid for the management position of the Mountain View Golf Course Clubhouse for seasons 2014 and 2015.

I would like to be put on the Commissioners' meeting agenda to be considered for this position and to submit a proposed contract.

Signed by Brian Garner of Brian's B-Bque [*sic*] Pit.

- i. On or about September 30, 2013, Scott Bullock hand-delivered a letter to an employee of Public Works, requesting a renewal of his management contract and requesting an increase in fees.
- j. On October 1, 2013, another employee of Public Works emailed the Hill and Garner letters of intent to the Deputy Clerk for the Lander County Commission.
- k. After receiving the email with the letters, the Deputy Clerk met with the County Commission's agenda-setting committee, including Chairman Bullock, to determine whether the letters should be considered and placed on the next meeting agenda. The committee declined to add an agenda item to discuss the letters and informed the Deputy Clerk that the current Golf Course management contract provided Scott Bullock an opportunity to request a renewal.
- l. However, the contract's terms lacked any specific provisions that permitted a right of first refusal or unilateral right to request a renewal of the contract. Instead it stated:

Term: This Agreement shall remain in effect from the date it is approved by both parties to the 1st day of March 2014. Upon expiration of the term, this Agreement may be renewed for an additional two year period if agreed upon by both parties.

(Scott Bullock's Golf Course Contract)

- m. The meeting packet for the October 10, 2013 meeting agenda contained only Scott Bullock's September 30, 2013 letter requesting renewal of his contract to manage the Golf Course and requesting an increase in fees, and a copy of his contract that would expire on March 1, 2014.

October 10, 2013 Meeting - Golf Course Management Contract Renewal

- n. On October 10, 2013, Chairman Bullock called the agenda item for possible action pertaining to renewal of the Mountain View Golf Course Management contract between Lander County and Scott Bullock, d/b/a Bullock Management Services, and other matters properly related thereto.
- o. Scott Bullock then introduced himself to the Commission and stated that he wished to renew his contract to manage the Mountain View Golf Course.
- p. Commissioner Garner then asked whether the contract was going to be reopened for bids and Chairman Bullock replied that it was to be negotiated with the current contractor. Chairman Bullock then read a statement drafted by District Attorney Angie Elquist.

Pursuant to NRS 281A.420, I am disclosing that I have an interest in a private capacity in this decision because of my son is Scott Bullock, and his company has a lease with the golf course. Even though I have an interest in a private capacity in this matter, because my son is Scott Bullock, I believe my decision will not be affected by that interest. And any decision would not give me any more financial and/or personal gain or loss than anyone else that would be affected by this decision. Therefore, I will not be abstaining from this decision.

(Minutes of Lander County Commission meeting, October 10, 2013)

- q. Bullock continued his disclosure in response to Commissioner Garner's comment pertaining to opening the contract up for bids. Bullock stated:

It's no -- this -- now that I've said that. This is no different than the lawns, the airport, the janitorial. We give them to [sic] option to renew. And that's the way -- that's -- that's kind of the precedence [sic] that's been set. I mean, it's up to the Commission if they want to renew it or go back out for bids. That's why it's here.

(Minutes of Lander County Commission meeting of October 10, 2013)

- r. Discussion regarding the contract began between the Commissioners and Scott Bullock. Garner again brought up the renewal issue.

COMMISSIONER GARNER: But like -- all contracts we've had for grass and everything else, if anybody's interested in then we've put them back out the bid, correct?

CHAIRMAN BULLOCK: No. We've always give the contractor the option to renew.

COMMISSIONER GARNER: Since when?

CHAIRMAN BULLOCK: That's been set for years. I don't think anybody's bid the airport in I don't know how many years.

COMMISSIONER GARNER: But we've never had a letter of intent for anybody to bid it.

CHAIRMAN BULLOCK: Well, I know personally there was a letter of intent to do the lawns and that never got put out to the bid.

COMMISSIONER GARNER: Why not?

CHAIRMAN BULLOCK: Because that's just been the precedent. That's just what I'm saying. It's always been the option to give the contractor that option, unless there's -- there's problems. That's just been the way it -- the precedence [*sic*] has been set for years.

(Minutes p. 75, line 36 – p. 76, line 14)

- s. During the Commission discussion, Garner asked an employee attending the meeting: “Jake, how many letters of intent do we have?” Jake Edgar of Public Works responded, “Including Scott’s, three.” (Minutes p. 79, lines 9-11)
- t. Garner did not disclose that he had submitted one of the letters of intent to bid on the Golf Course contract, despite the numerous times the letters of intent were mentioned.
- u. Garner then took action to put the contract out to bid.

COMMISSIONER GARNER: I make a motion we put it back up to bid.

COMMISSIONER MASON: Put what back?

COMMISSIONER GARNER: Put it back out to bid.

SCOTT BULLOCK: Is that because of personal interest?

COMMISSIONER GARNER: No.

SCOTT BULLOCK: No?

COMMISSIONER STIENMETZ: County employees can't bid on it anyway.

SCOTT BULLOCK: There wasn't a letter submitted?

(Minutes p. 80, lines 31-40)

- v. Garner later moved to retract his motion to put the contract out for bid and changed it to a motion to deny the renewal. The motion failed.
- w. Chairman Bullock accepted a motion to renew Scott Bullock's contract with the proposed change in terms, and voted in favor of the motion. Garner voted against the motion.
- x. The motion passed.

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

- a. Each of the findings of fact enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. Garner holds a 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 Lander County).
- c. By statute, public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflict of interest provisions of the Ethics Law apply to Garner's conduct. Specifically, Garner must commit to avoid actual and perceived conflicts of interest, and is required publicly to disclose sufficient information concerning any matter before the Lander County Commission which involves his interests or those of persons to whom he has a commitment in a private capacity. As a public officer, Garner is also required to abstain from acting on matters in which such interests would clearly and materially affect the independence of judgment of a reasonable person in his position. See NRS 281A.420(1) and (3).
- d. A public officer must not use his position in government to: 1) seek any employment or economic opportunity which would tend to improperly influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties (NRS 281A.400(1)); 2) secure unwarranted privileges, preferences or advantages for himself (NRS 281A.400(2); or 3) seek other employment and/or contracts through his official position. See NRS 281A.400(10).

- e. Lander County Commissioner, Brian Garner, submitted a letter of intent to bid on the management contract of the Lander County Mountain View Golf Course on October 1, 2013, because the management contract was expiring. The management contract was held by Lander County Commission Chairman Dean Bullock's son, Scott Bullock ("Scott"). Garner perceived that Chairman Bullock would not place the management contract out for new bids, but rather would seek to have the contract renewed at the October 10, 2013 County Board Meeting. Therefore, Garner submitted his letter of intent in an attempt to convince his fellow Commissioners to place the management contract out for bid.
- f. In doing so, Garner created a conflict where none existed. While there may have been differing opinions whether the Golf Course contract automatically renewed or required a new request for proposal, those issues did not require Garner, a County Commissioner, to submit a letter of intent to bid on the contract to his own commission.
- g. Had Garner successfully convinced his colleagues to require an open competitive bid, and had Garner participated in that bidding process, he may have undertaken conduct that violated NRS 281A.400(1), (2) and (10); however, the mere act of submitting a letter of intent to bid did not go far enough to implicate those statutes.
- h. However, at the October 10, 2013 meeting, Garner, even if he believed that the letter was never to be considered by the Board, failed to disclose that he had submitted the letter of intent to bid on the Golf Course management contract. Additionally, Garner participated in the meeting, and failed to abstain from voting on whether to renew Scott Bullock's management contract. In short, Garner failed to disclose his conflict (his letter of interest in gaining the Golf Course management contract), and also failed to abstain from acting (voting whether to renew Scott Bullock's contract or to put the contract out for bid). Both actions have the appearance of affecting his potential pecuniary interest in the contract. Furthermore, when asked during the County Board meeting,

Garner denied any personal interest in putting the contract out to bid. (See Minutes of October 10, 2013 p. 80, Ln. 36)

- i. While the Commission acknowledges Garner's position that he never intended to actually bid on the contract, but instead hoped that the letter would force a discussion, submitting the letter of intent created a conflict of interest that required disclosure and his abstention from voting or otherwise acting in the matter.
- j. Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interest. The Ethics Law is concerned with situations involving public officers that create appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts to promote integrity in public service. As a member of the Lander County Commission, Garner holds a public office and must therefore commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves.
- k. Furthermore, Garner's actions at the October 10, 2013 meeting, where he actively opposed the renewal of Scott Bullock's contract, would indicate, in light of his letter of intent to bid, a significant interest in obtaining the Golf Course management contract. Such actions cannot be erased by alleging good intentions. NRS 281A.020(1)(b) states that "A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom [he] serves." Garner's actions violate this overarching provision of the Ethics Law.
- l. Disclosure is important to enhance the public's trust in the transparency of government officials. *In re Weber*, Comm'n Opinion No. 09-47C (2009):

In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. . . . Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.

- m. To promote integrity in public service the Ethics Law is concerned with situations involving public officers that create an appearance of impropriety, as well as actual impropriety and conflicts. (See *In re Maltman*, Comm'n Opinion No. 12-66A (2012)).
- n. The Commission recognizes that Garner intended only to shed light upon the Golf Course contract and a potential conflict of interest between another Commission member and the contract holder. However, through his activities, he created a conflict of interest for himself. This conflict created a requirement that Garner disclose his possible pecuniary interests in the Golf Course contract. Such a full and complete disclosure would have enlightened the public and clarified Garner's personal pecuniary interests at stake, if any, as well as highlighted the aspects of the renewal issues.
- o. Garner now fully understands that he should have disclosed sufficient information regarding his letter of intent to bid on the Golf Course contract to inform the public of the nature and extent of his relationship and interest in the contract. The disclosure should have also included information regarding the potential effect of Garner's action or abstention on the agenda items and the effect it may have had on his interests. See *In re Woodbury*, Comm'n Opinion No. 99-56 (1999) and *In re Derbidge*, Comm'n Opinion No. 13-05C (2013).
- p. As a public officer, Garner is prohibited from voting upon or advocating for or against the passage of a matter in which the independence of judgment of a reasonable person in his situation would be materially affected. In this case, the record reflects that his potential pecuniary interests could have been directly and significantly enhanced by a non-renewal of Scott Bullock's contract, worth over \$10,000 annually on its face.
- q. The nature of the benefits to Garner's potential pecuniary interests represents a clear case in which the independence of judgment of a reasonable person in Garner's position would be materially affected by voting on the matter. Accordingly, Garner should have abstained from participating and voting on any matter affecting the Golf Course contract under these circumstances.

- r. Garner now understands that he must abstain from voting upon matters that potentially impact his significant pecuniary interests.
- s. Garner failed to avoid conflicts of interest between his private relationships/interests and public duties and violated the provisions of NRS 281A.020 and NRS 281A.420(1) and (3) of the Ethics Law by failing to disclose the full nature and extent of his significant pecuniary interests and failing to abstain from voting during the October 10, 2013 Lander County Commission meeting regarding the contract pertaining to the Golf Course.
- t. Garner's actions during the October 10, 2013 meeting were willful, and the acts constitute a single course of conduct resulting in a single willful violation of the Ethics Law, implicating NRS 281A.020, and NRS 281A.420(1) and (3).
- u. Pursuant to NRS 281A.480, Garner is assessed a total civil penalty of \$500 to be paid not later than 90 days after his receipt of the fully executed Stipulated Agreement in this matter. Garner may pay the penalty in one lump sum or in monthly installment payments as he may negotiate with the Commission's Executive Director.
- v. This Stipulated 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 after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- w. This Stipulated 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 Garner.

6. **WAIVER:**

- a. Garner knowingly and voluntarily waives a full hearing before the Commission on the allegations in this RFO (No. 14-12C) 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 Procedure Act (NRS Chapter 233B), and the laws of the State of Nevada.

- b. Garner 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.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated 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 Stipulated Agreement during the regular meeting of Commission on June 11, 2014.

DATED this 8 day of July, 2014. Brian Garner
Brian Garner

The above Stipulated Agreement is approved by:

DATED this 15 day of July, 2014. Brent Kolvet
FOR BRIAN GARNER, Subject
Brent Kolvet, Esq.
Counsel for Subject

DATED this 17 day of July, 2014. Jill C. Davis
FOR CAREN CAFFERATA-JENKINS,
Executive Director, Commission on
Ethics
Jill C. Davis, Esq.
Associate Counsel

DATED this 17th day of July, 2014. Yvonne M. Nevarez-Goodson
FOR NEVADA COMMISSION ON
ETHICS
Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.³

DATED June 11, 2014.

By: /s/ Paul H. Lamboley
Paul H. Lamboley
Chairman

By: /s/ Gregory J. Gale
Gregory J. Gale
Co-Chairman

By: /s/ John C. Carpenter
John C. Carpenter
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: /s/ Cheryl A. Lau
Cheryl A. Lau
Commissioner

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver
Commissioner

³ Garner waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating by NRS 281A.220.