



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
For Opinion Concerning the Conduct of
Gary Lambert, Vice Chairman, Nevada
Commission on Off-Highway Vehicles,
State of Nevada,

Request for Opinion No. **14-15C**

Public Officer. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-15C before the Nevada Commission on Ethics (“Commission”) concerning Gary Lambert (“Lambert”), Vice Chairman of the Nevada Commission on Off-Highway Vehicles, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Gary Lambert served as a commissioner of the Nevada Commission on Off-Highway Vehicles. As such, Lambert is an appointed public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed 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 Lambert in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about February 19, 2014, the Commission received this RFO from Paul Jackson, the Chairman of the Nevada Commission on Off-Highway Vehicles, alleging that Lambert, by advocating for his non-profit organization before the Nevada Commission on Off-Highway Vehicles used governmental time, property, equipment or other facility to benefit his personal or financial interest (NRS 281A.400(7)) and attempted to benefit his personal or financial interest through the influence of a subordinate (NRS 281A.400(9)). The Commission

issued a Notice to Subject of the RFO, which outlined these allegations and included additional allegations of possible violations that Lambert:

- 1) Failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020);
 - 2) Sought or accepted a gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties (NRS 281A.400(1));
 - 3) Used his position to secure or grant unwarranted privileges, preferences or advantages for himself or a business entity in which he has a significant pecuniary interest, or a person to whom he has a commitment in a private capacity to the interest of that person (NRS 281A.400(2));
 - 4) Participated as a government agent in negotiating a contract between the government and a business entity in which he has a significant pecuniary interest (NRS 281A.400(3));
 - 5) Sought other employment or contracts through his official position (NRS 281A.400(10));
 - 6) Failed to sufficiently disclose a conflict of interest for which disclosure is required (NRS 281A.420(1));
 - 7) Failed to abstain from acting on a matter in which he had a conflict of interest (NRS 281A.420(3)); and
 - 8) Engaged in contracts in which he has a private interest (NRS 281A.430).
- b. As required by NAC 281A.410, the Commission provided Lambert with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Lambert was provided an opportunity to respond to the RFO.
- c. Lambert waived his rights to a written response and panel determination pursuant to NRS 281A.440, and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.020(1) and NRS 281A.420(1) and (3). The allegations pertaining to violations of NRS 281A.400(1), (2), (3), (7), (9) and (10), and NRS 281A.430 lack sufficient evidence to support a

violation by a preponderance of the evidence and are therefore dismissed through this Stipulated Agreement.

- d. In lieu of a panel determination and a hearing, Lambert now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS**: At all material times, the following events were relevant to this matter:

Relevant Persons and/or Entities

- a. Gary Lambert (“Lambert”) is a Commissioner for the State of Nevada Commission on Off-Highway Vehicles and, during the relevant timeframe, served as Vice-Chairman. As such, Lambert is an appointed public officer, as defined in NRS 281A.160.
- b. The Nevada Commission on Off-Highway Vehicles (“NCOHV”) is a state agency as defined in NRS 281A.163.
- c. Paul Jackson (“Jackson”) is a Commissioner for the NCOHV and, during the relevant timeframe, served as Chairman. As such Jackson is an appointed public officer, as defined in NRS 281A.160.
- d. Scott Gerz (“Gerz”) is a former employee of NCOHV, and is an officer of Nevada Trail Stewards (“NTS”), a non-profit organization dedicated to off-highway interests.
- e. NTS was co-founded by Lambert and Gerz in 2010, and both men were officers of NTS during the relevant timeframe.
- f. William Geddes, Esq. is a licensed Nevada attorney and, during the relevant timeframe, was employed as a Deputy Attorney General and served as counsel to the NCOHV.

NCOHV Background

- g. The NCOHV was established in January, 2012.
- h. The NCOHV is funded through off-highway vehicle registration fees collected by the Nevada Department of Motor Vehicles.

- i. The funds collected by NCOHV are to be distributed pursuant to NRS 490.069 for projects related to trails, including mapping, land acquisition, construction/maintenance, and safety training.
- j. NCOHV is mandated to distribute funds following the statutory format. (See *Id.*)
- k. In order to comply with the mandatory distribution of funds, the NCOHV formed a Grant Committee to formulate grant procedures to distribute the funds to worthy organizations.
- l. The first grant applications were submitted in December 2013, and placed on the agenda for the NCOHV Meeting of January 31 – February 1, 2014.

NTS Grant Applications

- m. On behalf of NTS, in their capacity as officers for NTS, Lambert and Gerz drafted the following three (3) NTS grant applications for the NCOHV grant funds.
 - 1) NTS Mobile Education Outreach grant application for \$47,250.
 - 2) NTS Mobile Trail Mapping grant application for \$60,000.
 - 3) NTS Mobile Trail Support grant application for \$60,000.
- n. Lambert signed all 3 grant applications as Chairman of NTS, even though he was President of NTS.

NCOHV Meeting January 31, 2014 and February 1, 2014

- o. Agenda Item 10 entitled “Clarification of Financial Interest Disclosure for Grants” stated as follows:

The NCOHV Commission will discuss the approved language concerning the disclosure of any financial interest of a Commissioner that would exclude the Commissioner from voting on a grant proposal. It is proposed that if the Commissioner has any other interest, i.e. officer or member of any organization that is seeking a grant, the Commissioner can and should advocate for any grant request they are passionate about. Possible action might include approving the clarification of the disclosure rule allowing the Commissioner to advocate for any grant request they are passionate about.

- p. Chairman Jackson drafted the language for Agenda Item 10 without prior approval by Counsel Geddes, and Jackson orally encouraged all commissioners, including Lambert, to advocate on behalf of any organization for which the commissioners held an interest.
- q. When Agenda Item 10 was discussed, Counsel Geddes for the NCOHV focused on whether any commissioner had a pecuniary interest, and advised that any commissioner with a pecuniary interest had to disclose and not vote on the matter. When asked whether a commissioner could present the grant applications of his/her non-profit entity, Counsel Geddes advised that the commissioner must disclose the relationship and could present the grant application to the commission if he/she did not have a pecuniary interest in the grant.
- r. When the NTS grant applications came before the NCOHV, Lambert stepped off the dais and presented the grants to the NCOHV, as directed by Jackson.
- s. Lambert failed to disclose his interests in NTS, and only acknowledged his general ties to NTS.
- t. Although Lambert did not fully disclose his relationship with NTS at the January 31, 2014 meeting, other Commissioners made remarks denoting and recognizing their prior knowledge of the relationship.
- u. Lambert referred to NTS as his “brain child” at the February 1, 2014 meeting, but failed to make any attempt to fully disclose his relationship with NTS.
- v. At both meetings, Lambert stated that he would not vote on the NTS grant applications based upon his relationship with NTS.
- w. Lambert’s limited disclosures at the time of the presentation of the grants failed to contain information regarding Lambert’s relationship with NTS as an officer, an entity to which he had a commitment in a private capacity as a substantial and continuing business relationship. The disclosure did not inform the public of the nature and extent of the relationship, NTS’s interests in the NCOHV grant, or the potential effect of Lambert’s action or abstention on the agenda items and the effect it may have had on NTS’s interests.

- x. Lambert used phrases such as “I believe” and “I think” when he presented the grant applications based upon the direction of Chairman Jackson.
- y. The NTS grant applications were denied based upon Commission discussion of ethical questions pertaining to Lambert’s presentation of the applications.
- z. Furthermore, based upon the ethical issues raised in this matter, no grant applications were awarded funding during the January 31 and February 1, 2014 meetings, and the grant process was revamped to comply with the Ethics Law.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Lambert 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. Lambert holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada.
- c. Lambert had a commitment in a private capacity to the interests of NTS. The Commission has previously determined in several opinions that a public officer’s role as a director of a nonprofit entity establishes a relationship that is substantially similar to a substantial and continuing business relationship. (See *In re Public Officer*, Comm’n Opinion No. 12-04A (2012) (*citing to In re Public Employee*, Comm’n Opinion No. 10-66A (2012), *In re Public Officer*, Comm’n Opinion No. 11-84A (2012) and *In re Public Officer*, Comm’n Opinion No. 12-15A (2012)). Therefore, a public officer’s volunteer service on the Board of Directors of a nonprofit organization constitutes a commitment in a private capacity to the interests of that organization. (See *Id.*) The Commission concluded that people who volunteer their time and efforts to a nonprofit organization are interested in and committed to the goals of the organization, serve as a fiduciary to the organization, and have a commitment in a private capacity to the interests of the organization and its members. (See *Id.*)
- d. Lambert failed to avoid the conflict of interest between his public duties as a member of the NCOHV and private interests in NTS by failing to fully disclose

- his relationship with NTS and then advocating for the award of the grants to NTS before the NCOHV in violation NRS 281A.020, and NRS 281A.420(1) and (3).
- e. Lambert failed to properly disclose his relationship with NTS on January 31, 2014, and February 1, 2014. Although Lambert characterized NTS as his “brain child” at the February 1, 2014 meeting, and stated he would not vote on the NTS grants based upon his relationship with NTS at the January 31, 2014 meeting, Lambert did not specify the nature or scope of his relationship with NTS at the time of the grant presentations. The discussion by other commissioners acknowledging Lambert’s relationship with NTS does not satisfy Lambert’s duty to disclose. Instead, Lambert relied upon the prior knowledge of the Commissioners who were aware of the relationship and acknowledged the same.
 - f. Lambert now understands that he should have disclosed sufficient information regarding his relationship with NTS, an entity to which he had a commitment in a private capacity, to inform the public of the nature and extent of his relationship. The disclosure should have occurred at every meeting in which NTS’s grant proposals were considered.
 - g. Disclosures required by the Ethics Law must occur “at the time the matter is considered.” (NRS 281A.420(1)) The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer’s private interests. Silence based upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred. (See *In re Buck*, Comm’n Opinion No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure, even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)).

- h. The disclosure should have also included information regarding the potential effect of Lambert's action or abstention on the agenda items and the effect it may have had on NTS's interests. See *In re Woodbury*, Comm'n Opinion No. 99-56 (1999), and *In re Derbidge*, Comm'n Opinion No. 13-05C (2013).
- i. Lambert acknowledges that he advocated for the award of the grants to NTS in violation of NRS 281A.420(3). While Lambert did abstain from voting for NTS's applications, he nevertheless advocated for the award of grant funding. In the Commission's seminal case regarding improper advocacy verses allowed participation *In re Kubichek*, Comm'n Opinion No. 97-07A (1997), the Commission determined that a public officer could provide informational facts as any other citizen with respect to a matter regarding which the public officer maintained an interest. However, the Commission opined that statements beginning with "in my opinion...", "I think...", "I believe...", "I would hope...", would be signals that the statement might be more advocacy than informational. (See *id.*) The Commission clarified further that "...the intent of advocacy is to get the hearer to believe the same as the speaker, and where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument, but because of the speaker's position itself." (See *id.*) Additionally, the Commission characterized the line between statements of fact and advocacy as "razor thin." (See *id.*) Further, "[b]ecause the consequences of crossing the line will always rest upon the elected official proffering the statement, the best general rule we can give is that an elected official who has already disclosed and abstained from a matter ... should always consider whether what she has to say really needs to be said, and if she thinks so, then she must be very careful with what she says and how she says it." (See *id.*) The Commission interpreted NRS 281.501(2) (now 281A.420) to allow participation by an otherwise conflicted official "as a citizen applicant before the elected body and by participating as a provider of factual information." (See *id.*)
- j. When a public officer steps off the dais and advocates for the awarding of a grant to a non-profit organization for which he serves as an officer, the public

officer's actions carry authority because of his position and, as such, violate NRS 281A.420(3).

- k. Lambert received unclear legal advice and flawed direction from the Chair of the NCOHV pertaining to presenting and advocating the NTS grant applications.
- l. Lambert's actions constitute a single course of conduct resulting in a single violation of the Ethics Law, implicating NRS 281A.020(1) and NRS 281A.420(1) and (3).
- m. The allegations pertaining to violations of NRS 281A.400(1), NRS 281A.400(2), NRS 281A.400(3), NRS 281A.400(7), NRS 281A.400(9), NRS 281A.400(10) and NRS 281A.430 lack sufficient evidence to support a violation by a preponderance of the evidence and are therefore dismissed through this Stipulated Agreement.
- n. Lambert agrees to facilitate an Ethics in Government Law training session for the NCOHV as Lambert's actions were indicative of the general misdirection that Chairman Jackson issued to the NCOHV.
- o. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475 and other mitigating circumstances presented in this matter, the Commission concludes that Lambert's violation in this case should not be deemed a "willful violation" pursuant to NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for reasons that follow:
 - 1) Lambert has not previously been the subject of any violation of the Ethics Law.
 - 2) Lambert has not received any personal financial gain as the result of his conduct in this matter.
 - 3) Lambert has been diligent to cooperate with and to participate in the Commission's investigation and resolution of this matter.
 - 4) Lambert relied in good faith upon legal counsel's advice that he could present the NTS grants to the NCOHV.

- 5) Lambert relied upon flawed direction from the Chair of the NCOHV pertaining to presenting and advocating the NTS grant applications.
 - 6) Lambert now fully understands his obligations regarding disclosure and advocacy involving matters before the NCOHV affecting his private interests and he agrees to facilitate an Ethics in Government Law training session for the NCOHV as Lambert's actions were indicative of the general misdirection that Chairman Jackson issued to the NCOHV.
- p. 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.
 - q. 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 Lambert.

6. **WAIVER:**

- a. Lambert knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in this RFO (No. 14-15C) and of any and all rights he may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Lambert knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other applicable provisions of 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 the Commission on March 18, 2015.

DATED this 25 day of March, 2015.

[Signature]
Gary Lambert

The above Stipulated Agreement is approved by:

FOR GARY LAMBERT, Subject

DATED this 8th day of April, 2015.

[Signature]
Adam Honey, Esq.
Counsel for Subject

FOR NEVADA COMMISSION ON ETHICS

DATED this 13th day of April, 2015.

[Signature]
Jill C. Davis, Esq.
Associate Counsel, on behalf of
Executive Director

DATED this 14th day of April, 2015.

[Signature]
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.¹

DATED March 18, 2015.

By: /s/ Gregory J. Gale
Gregory J. Gale
Vice-Chair

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

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

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

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: ABSTAIN
Keith A. Weaver
Commissioner

¹ Lambert 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 in this Stipulated Agreement pursuant to NRS 281A.220. Commissioner Weaver disclosed a conflict of interest and abstained from participating and voting on this matter. Chairman Lambley and Commissioner Groover were excused from this proceeding.