



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Mike Lemich, Commissioner, Board of
County Commissioners, White Pine
County, State of Nevada,

Request for Opinion No. **14-79C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No.14-79C before the Nevada Commission on Ethics (“Commission”) concerning Mike Lemich (“Lemich”), Commissioner, White Pine County, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Mike Lemich served as a Commissioner of White Pine County. As such, Lemich was an elected 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 Lemich in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about November 24, 2014, the Commission received RFO 14-79C from Requester Cheryl Noriega, alleging that Lemich:
 - 1) Failed to sufficiently disclose a conflict of interest for which disclosure is required (NRS 281A.420(1)); and
 - 2) Failed to abstain from acting on a matter in which he had a conflict of interest (NRS 281A.420(3)).
- b. On or about December 3, 2014, the Commission issued a Notice to Subject of the RFO, which outlined the above allegations and included an additional

allegation that Lemich failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020).

- c. During the course of the investigation, Commission staff discovered a simultaneous pending civil action lawsuit before the Seventh Judicial District Court in White Pine County, Case No. CV-1307113, filed by Mike Lemich against Cheryl Noriega et al. on July 25, 2013, which included causes of action regarding similar issues and facts that are identified in the RFO. The Commission temporarily deferred its investigation and extended the time for a written response to the RFO by the Subject pending communication with the Court that the Commission would proceed with its investigation. The Commission exercised its jurisdiction on March 2, 2015, and initiated its investigation.
- d. On or about April 21, 2015, Lemich provided his response to the RFO.
- e. Lemich waived his rights to a 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).
- f. In lieu of a panel determination and a hearing, Lemich 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 stipulated facts were relevant to this matter:

Relevant Persons and/or Entities

- a. Mike Lemich was an elected Commissioner of the White Pine County Board of County Commissioners, a public officer as defined in NRS 281A.160.
- b. White Pine County is a political subdivision as defined in NRS 281A.145.
- c. Desert Mountain Realty, Inc., provides real estate services to White Pine County and all of Eastern Nevada, and provides a commission split of 70% to the realtor and 30% to Desert Mountain Realty.

- d. Sonja AlMBERG (“Sonja”) is a sales associate for Desert Mountain Realty and Lemich’s daughter. Sonja works as an independent contractor and has her own business license with the State of Nevada.
- e. Vivian AlMBERG is a broker for Desert Mountain Realty, and is Sonja’s mother-in-law.
- f. Kenna AlMBERG is the owner and a broker for Desert Mountain Realty, and is Sonja’s sister-in-law.
- g. White Pine County purchased the Old Ely Times Building for \$385,000 with Vivian AlMBERG representing the seller and Kenna AlMBERG representing the buyer in the transaction.
- h. White Pine Aquatics Center (“Aquatics Center”) was built next to the White Pine High School on land donated by Lemich approximately May 2003, and Lemich owns the property adjacent to the Aquatics Center.
- i. Midway Gold is a commercially traded mining company that owns two mining projects in White Pine County:
 - 1) The Pan project is an open pit mine located in western White Pine County, Nevada, approximately 22 miles southeast of Eureka, Nevada and 50 miles west of Ely, Nevada. (“Pan Project”)
 - 2) The Gold Rock project is an open pit mine located approximately 6.5 miles to the southeast of the Pan Project and approximately 64.6 miles from Ely, Nevada. (“Gold Rock Project”)
- j. On or about October 19, 2012, Midway Gold entered into a Purchase and Sale Agreement with Mike and his wife, Deloris Lemich, to acquire the Lemich’s well for the Gold Rock Project mine site.¹

Sale of Ely Times Building to White Pine County - Commission Meetings

- k. Desert Mountain Realty represented both the buyer, White Pine County and the seller of the Ely Times Building in the \$385,000 transaction.
- l. Sonja was not the agent for either the buyer or seller, and therefore did not directly profit from the sale of the Ely Times Building. However, Desert

¹ Mining is generally a water intensive endeavor with high water demands for extraction, processing and disposal. Midway Gold uses a heap leaching mining method that requires less water.

- Mountain Realty received 30% of the 6% commission earned on the sale of the building.
- m. Desert Mountain Realty's portion of the commission supports the administrative aspect of the business.
 - n. County Commission Meetings from January 9, 2013, through and including April 11, 2013, discussed the possible purchase of the Ely Times Building.
 - o. Lemich never disclosed that his daughter is a sales agent working as an independent contractor for Desert Mountain Realty, which represented both the buyer and the seller in the Ely Times Building sale transaction.
 - p. Lemich participated in the discussion of the agenda items at each meeting and voted for the purchase at the April 11, 2013 meeting.
 - q. Lemich recalls asking Deputy District Attorney Pickering whether his relationship to Sonja created a conflict.
 - r. At the January 9, 2013 Commission meeting, during an agenda item related to the County's purchase of the Ely Times Building, Pickering noted on the record that everyone could make a proper vote on the issue without the necessity of abstention.

Pool Project Commission Meetings

- s. Approximately May 2003, Lemich donated property to the County for the purpose of providing land for a County swimming pool. The County had approached Lemich for the land by the high school for a pool. The County initially sought an exchange, but the parties eventually agreed to a gift because the County was without funds or property to exchange.²
- t. Lemich owns the non-public land surrounding the swimming pool complex.
- u. White Pine County Commission Meeting of February 27, 2013 included three agenda items pertaining to the Aquatics Center regarding pool hours, and two items regarding payment of funds to the architecture firm on the pool project.
- v. Lemich participated in the Commission discussion regarding pool hours, but during the agenda items pertaining to architecture fees, Commissioner Carson

² Lemich was also asked by the Fair and Recreation Board for that location due to the high traffic numbers on the adjacent highway.

- stated on the record that Lemich should abstain because “his property is located nearby” and in response Lemich “noted that he had donated the ground so he will abstain.”
- w. The May 14, 2013 Special Commission Meeting agendaized a maximum price proposal for the pool. Lemich participated in the discussion and, just prior to voting, he “advised he will abstain, explaining that he donated the property 18 years ago, and doesn’t wish to create a conflict although that occurred many years before he became a Commissioner.”
 - x. The next agenda item dealt with approval to begin construction of the pool and Lemich abstained on the same basis as the prior agenda item.
 - y. The June 26, 2013 Commission Meeting included an agenda item regarding fire road access and additional parking for the pool, and Lemich participated in the discussion and motion, and voted on the matter.
 - z. The January 29, 2014 Commission Meeting discussed the job description of the Aquatics director and assistant director, and Lemich participated in the discussion and motion, and voted on the matter.
 - aa. The June 25, 2014 Commission Meeting discussed the transfer of the McGill Pool Operating Budget to the Aquatics Center budget, and Lemich participated in the discussion and motion, and voted on the matter.
 - bb. The August 27, 2014 Commission Meeting approved the Northern Nevada Aquatics Swim program and spectator fee at the Aquatics Center, and Lemich participated in the discussion and motion, and voted on the matter.
 - cc. The September 10, 2014 Commission Meeting discussed the high school’s use of the Aquatics Center, and Lemich participated in the discussion and motion, and voted on the matter.

Midway Gold Discussions at White Pine County Commission Meetings

- dd. At the March 27, 2013 County Commission meeting, Lemich disclosed his association with Midway Gold dealings, then noted that there would be a hearing in connection with the Pan Project and it would be appropriate to have a representative there.

- ee. At the April 10, 2013 County Commission meeting, the Commission approved an agenda item, "Discussion/Action/Possible Approval of Letters of Support RE: Mining Projects in White Pine County." Lemich took part in the general discussion and voted, without a disclosure or abstention regarding his association with Midway Gold.
- ff. At the same April 10, 2013 County Commission meeting, the Commission considered an agenda item, "Discussion/Action/Possible Approval of Request for Support on the Midway Gold Pan Project." The meeting minutes reflect:
- "Chairman John Lampros indicated a notice had been received from PLUAC from Midway Gold asking for public comment on the Pan Project's DEIS. He advised that the BLM is accepting written comments by mail, email, or in person at the BLM hosted public meetings on this, for a 45-day period. He advised the Board has already sent a letter of support for this project, and felt to send another one would be redundant. Commissioner Mike Lemich felt it would be appropriate to give some feedback on this to somebody, since we had been requested to place it on today's agenda. Commissioner Mike Coster made a motion that the Commission has recommended support of the Midway Gold Pan Project, and to send PLUAC a copy of the letter that was sent by the Board. Commissioner Mike Lemich seconded. Motion carried."
- gg. During Public Comment regarding Midway Gold at the April 11, 2013 County Commission Meeting, the meeting minutes reflect: "Commissioner Mike Lemich made a comment, that Mr. Kich 'hit the nail on the head' regarding mining bringing "lots of money, jobs and businesses back to the community."
- hh. At the April 23, 2013 County Commission Meeting, the Commission considered the following agenda item: "Discussion/Action/ Approval of Recommendation Submitted by PLUAC RE: Submission of Written Comment(s) by the Comment Submission Deadline of April 28, 2014 on the Second Notice For Scoping for the EIS on the Proposed Gold Rock Mine Project Located in the Southern Newark Valley and Northern Railroad Valley, WPC, Approximately 50 Miles West of Ely and 30 Miles SE of Eureka." Lemich abstained from the vote, explaining he had a personal interest in the Gold Rock

Project. Lemich's disclosure did not state that he had entered into an agreement to sell his well for the Gold Rock Project.

- ii. At the July 9, 2014 County Commission Meeting, the Commission considered the agenda item: "Discussion/Action/Approval to Send Comments to BLM Re: Socioeconomic Issues Related to the Gold Rock Mine Project." Lemich took an active role in the discussion including voting against the agenda item and continuing the discussion into public comment. Lemich's disclosure did not state that he had entered into an agreement to sell his well for the Gold Rock Project.
- jj. Lemich did not abstain on the matter.

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

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement are agreed to by the parties.³
- b. Lemich held public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada, and specifically the citizens of White Pine County.
- c. Lemich has a commitment in a private capacity to the interests of his daughter Sonja. See NRS 281A.065(3).
- d. Lemich has a commitment in a private capacity to the interests of Midway Gold through his agreement to sell his well for the Gold Rock Project, which constitutes a substantial and continuing business relationship. See NRS 281A.065(5).
- e. Lemich has a potential significant pecuniary interest in the pool. *In re Glenn*, Comm'n Opinion 01-15 (2002) and *In re Walker*, Comm'n Opinion No. 13-43C (2014).

³ Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17), as amended by Assembly Bill 60, 78th Session of the Nevada State Legislature, effective May 27, 2015. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- f. Lemich now understands that he should have disclosed sufficient information regarding his daughter's relationship with Desert Mountain Realty, his relationship with Midway Gold and his property surrounding the Aquatics Center to inform the public of the nature and extent of his relationships and pecuniary interests. The disclosures should have occurred at every County Commission meeting that involved any of the entities. See *In re Woodbury*, Comm'n Opinion No. 99-56, (1999), and *In re Derbidge*, Comm'n Opinion No. 13-05C (2013).
- 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. A public officer's disclosure is important even where the conflict is remote in some aspects. In *In re Weber*, Comm'n Opinion No. 09-47C (2009), the Commission held:
- 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.
- i. Although the nexuses between Lemich and Desert Mountain Realty and the WPC Aquatics Center were attenuated because the issues before the County Commission had peripheral impact on Lemich, the disclosure provisions of the

- Ethics Law still apply. It is the avoidance of conflict and appearance of impropriety, even though actual impropriety is lacking, that the Ethics Law requires. (See *In re Collins*, Comm'n Opinion No. 11-78A)). Therefore, Lemich should have disclosed the perceived conflict regarding Desert Mountain Realty, WPC Aquatics Center and Midway Gold.
- j. Abstention is only required when a reasonable person's independence of judgment must "...be materially affected by..." the public officer's significant pecuniary interest or commitment in a private capacity. NRS 281A.420 and *Woodbury*.
 - k. The evidence does not indicate that a reasonable person in Lemich's situation would be materially affected by his pecuniary interest or commitment in a private capacity as any interests are remote regarding the sale of the Ely Times Building or the pool project.
 - l. Lemich's daughter was not going to directly benefit from the sale of the Ely Times Building; votes regarding price to build the pool, pool hours, and architecture payments would not directly impact Lemich's property values as the land was donated to build a pool, and Lemich's contract with Midway Gold to sell his well for the Gold Rock Project was not impacted by his vote to not send comments to BLM regarding the Pan Project. (See *In re Glenn*, Comm'n Opinion 01-15 (2002))
 - m. However, Lemich had a contract with Midway Gold to sell his well for the Gold Rock Project and that created a continuing business relationship that required abstention. (See *In re Derbidge*, Comm'n Opinion No. 13-05C (2013))
 - n. Lemich'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).
 - o. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Lemich's violation in this case should be deemed "willful" pursuant to NRS 281A.170. The Commission took into consideration the following mitigating factors:

- 1) While there are inconsistencies in Lemich's disclosures, the gravity of the violation in each instance is not substantial, and Lemich did disclose when he was prompted to disclose. Furthermore, there is no evidence that Lemich's property in proximity to the Aquatics Center will be impacted to a greater extent, if at all, than other property in the vicinity by the building of a community pool next to White Pine High School. Additionally, Lemich's mining comments and votes at issue were not for specific projects but rather supported mining in White Pine County in general.
 - 2) Lemich has not previously been the subject of any violation of the Ethics Law. This is Lemich's first violation. He did not run for re-election and does not foresee running for public office in the future.
 - 3) Lemich has been diligent to cooperate with and participate in the Commission's investigation and analysis, as well as the resolution process.
 - 4) Lemich has not received any personal financial gain as the result of his conduct in this matter.
- p. Despite these mitigating factors and although Lemich did not intend to violate the Ethics Law, Lemich's violation of NRS 281A was willful because he acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.
- q. For an act to be intentional, NRS 281A.105 requires that Lemich acted voluntarily or deliberately. The definition further states that proof of bad faith, ill will, evil or malice is not required. Lemich's conduct was not accidental or inadvertent. Nevertheless, Lemich did not act in bad faith or with malicious intent to benefit his private interests.
- r. NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission." NRS 281A does not require that Lemich had actual knowledge that his conduct violated NRS 281A, but it does impose constructive knowledge on a public officer when other facts are present

that should put an ordinarily prudent person upon inquiry. See *In re Stark*, Comm'n Opinion 10-48C (2010).

- s. For the willful violation with mitigating factors, Lemich will pay a nominal civil penalty of \$500.00, pursuant to NRS 281A.480, not later than 120 days after his receipt of the fully executed Stipulated Agreement in this matter. Lemich may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- t. 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.
- u. 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 Lemich.

6. **WAIVER:**

- a. Lemich knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in RFO 14-79C 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. Lemich 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.

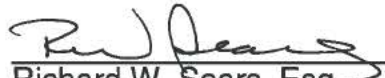
7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of the Commission on March 16, 2016.

DATED this 20 day of March, 2016.


Mike Lemich

The above Stipulated Agreement is approved by:

FOR MIKE LEMICH, Subject


Richard W. Sears, Esq.

FOR YVONNE M. NEVAREZ-GOODSON ESQ.,
Executive Director, Commission on Ethics

DATED this 21st day of February, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 25th day of February, 2016.


Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.⁴

DATED March 16, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

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

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

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

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner

⁴ Lemich waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed without a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.