



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Requests
for Opinion Concerning the Conduct of
Paul Murphy, Member, Board of
Directors, Fernley Swimming Pool District
State of Nevada,

Request for Opinion No. **15-02C**
Request for Opinion No. **15-07C**
Request for Opinion No. **15-08C**

Public Officer. /

CONSOLIDATED STIPULATED AGREEMENT

1. **PURPOSE**: This Consolidated Stipulated Agreement resolves Third-Party Requests for Opinion (“RFOs”) Nos.15-02C, 15-07C and 15-08C before the Nevada Commission on Ethics (“Commission”) concerning Paul Murphy (“Murphy”), Member, Board of Directors, Fernley Swimming Pool District, State of Nevada, and serves as the final opinion in these matters.

2. **JURISDICTION**: At all material times, Paul Murphy served as a Member of the Fernley Swimming Pool District Board of Directors. As such, Murphy is 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 Murphy in these matters.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

a. On or about February 2, 2015, the Commission received RFO No.15-02C from Martha J. Hanna, alleging that Murphy:

- 1) Failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020);
- 2) 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));
- 3) Used non-public information to further a significant pecuniary interest of the public officer or any other person (NRS 281A.400(5));
 - 4) Suppressed a governmental report or other official document because it might tend to affect unfavorably a significant pecuniary interest of the public officer. (NRS 281A.400(6));
 - 5) Failed to sufficiently disclose a conflict of interest for which disclosure is required (NRS 281A.420(1)); and
 - 6) Failed to abstain from acting on a matter in which he had a conflict of interest (NRS 281A.420(3)).
- b. On or about February 9, 2015, the Commission received RFO No. 15-07C from Kathy McClellan, alleging that Murphy:
- 1) Failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020);
 - 2) 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));
 - 3) Attempted to benefit a significant personal or pecuniary interest through the influence of a subordinate (NRS 281A.400(9));
 - 4) Failed to sufficiently disclose a conflict of interest for which disclosure is required (NRS 281A.420(1));
 - 5) Failed to abstain from acting on a matter in which he had a conflict of interest (NRS 281A.420(3)); and
 - 6) Failed to file acknowledgement of statutory ethical standards (NRS 281A.500).
- c. On or about February 9, 2015, the Commission received RFO No. 15-08C from Dena Lopez, alleging the same allegations of violations as RFO No. 15-07C.
- d. As required by NAC 281A.410, the Commission provided Murphy with notice of the RFOs by mail. Pursuant to NRS 281A.440(3), Murphy was provided an

opportunity to respond to the RFOs, and did so through his interview on May 5, 2015.

- 1) Murphy 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) and NRS 281A.500. The allegations pertaining to violations of NRS 281A.400(2), (5), (6) and (9) lack sufficient evidence to support a violation by a preponderance of the evidence and are therefore dismissed through this Consolidated Stipulated Agreement.
- 2) In lieu of a panel determination and a hearing in these matters, Murphy now enters into this Consolidated Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to NRS Chapter 281A.

4. **STIPULATED FACTS**: At all material times, the following stipulated facts were relevant to these matters:

Relevant Persons and/or Entities

- a. Paul Murphy was an elected Member of the Fernley Swimming Pool District Board of Directors (“Board”), a public officer as defined in NRS 281A.160.
- b. The Fernley Swimming Pool District (“Pool District”) is a political subdivision as defined in NRS 281A.145.
- c. Jennifer Murphy (“Jennifer”) was an employee of the Pool District, in a supervisor position, a public employee as defined in NRS 281A.150.
- d. Paula Kerr (“Kerr”) was an elected Member of the Board, a public officer as defined in NRS 281A.160.
- e. Jann Van Horn (“Van Horn”) was an elected Member and Chair of the Board, a public officer as defined in NRS 281A.160.
- f. Lyon County is a political subdivision as defined in NRS 281A.145 and provides fee-for-services support for the Pool District.
- g. Christie Reeder (“Reeder”) was the Director of Human Resources (“HR”) for Lyon County, a public employee as defined in NRS 281A.150.

- h. Josh Foli (“Foli”) was the Lyon County Comptroller, a public employee as defined in NRS 281A.150.
- i. Stephen B. Rye, Esq. (“DA Rye”) was the elected Lyon County District Attorney, a public officer as defined in NRS 281A.160.

January 20, 2015 Fernley Swimming Pool District Meeting

- j. Murphy was elected in November 2014 and attended his first Board meeting on January 20, 2015.
- k. Murphy requested the following agenda items for the January 20, 2015 Board Meeting:
 - 10. For Possible Action to restructure the current job classifications: elimination of the Cashier, Senior Supervisor, and Office Assistant classifications.
 - 11. For Possible Action to implement a certification incentive program for District staff.
- l. Prior to the January 20, 2015 Pool Board meeting, Kerr contacted Lyon County HR¹ because she was concerned that Murphy’s agenda items for the January 20, 2015 Pool Board Meeting violated the ethics law.
- m. Kerr was concerned that Jennifer, employed as one of the supervisors at the Pool, could benefit financially through the restructuring of pool staff and merit pay for lifeguard certifications.
- n. Lyon County HR Director Reeder contacted DA Rye to request an opinion regarding Murphy’s proposed agenda items in regard to his wife’s employment interests.
- o. DA Rye drafted a memorandum to Reeder and Foli dated January 16, 2015, that opined: “In summary, if the action involves Board Member Murphy’s spouse, even remotely, it is my recommendation that he disclose in a public meeting and abstain from voting or participation.”
- p. Murphy received and read DA Rye’s memorandum a few minutes prior to the January 20, 2015 Board Meeting.

¹ Lyon County provides Human Resources services and support for the Pool District as part of its fee-for-services.

- q. After the agenda item was announced, Murphy disclosed that his wife Jennifer was employed by the Pool District, and proceeded to propose and discuss his agenda items.
 - r. The agenda item was not open to public comment² or vote based upon the direction of the Pool District Chairperson Van Horn.
 - s. Murphy failed to file a Nevada Acknowledgement of Ethical Standards for Public Officials form (“Ethics Acknowledgement form”) with the Commission by January 15, 2015, as required by NRS 281A.500.
5. **TERMS / CONCLUSIONS OF LAW**: Based on the foregoing, Murphy and the Commission agree as follows:
- a. Each of the stipulated facts enumerated in section 4 of this Consolidated Stipulated Agreement are agreed to by the parties.³ For purposes of the Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.
 - b. Murphy holds 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 people within the Pool District in Fernley.
 - c. Murphy has a commitment in a private capacity to the interests of his wife, Jennifer Murphy. See NRS 281A.065(1).
 - d. Murphy failed to properly disclose his relationship with Jennifer Murphy at the January 20, 2015 Pool Board meeting. Although Murphy stated on the record that Jennifer Murphy was his wife, the disclosure should have also included information regarding the potential effect of Murphy’s action or abstention on the agenda items and the effect it may have had on Jennifer’s interests. See *In re Woodbury*, Comm’n Opinion No. 99-56 (1999), *In re Hawk*, Comm’n Opinion NO. 04-34 (2004), *In re Derbidge*, Comm’n Opinion No. 13-05C (2013).
 - e. Murphy acknowledges that he advocated and participated in the discussion of Agenda Items 10 and 11, which could potentially benefit his wife in violation of

² Public Comment was provided during the meeting pursuant to the requirements of NRS Chapter 241.

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 Consolidated Stipulated Agreement.

- NRS 281A.420(3). See *In re Wilson*, Comm'n Opinion No. 13-81C (2014) (*advocating and matter tabled*) and *In re Kubichek*, Comm'n Opinion No. 97-07A (1997) (*advocating*).
- f. Murphy failed to file an Ethics Acknowledgment form in violation of NRS 281A.500.
 - g. Murphy's actions constitute a single course of conduct resulting in a single violation of the Ethics Law, implicating NRS 281A.020(1), 281A.420(1) and (3) and 281A.500.
 - h. The allegations pertaining to violations of NRS 281A.400(2), (5), (6) and (9) lack sufficient evidence to support a violation by a preponderance of the evidence and are therefore dismissed through this Consolidated Stipulated Agreement.
 - i. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Murphy's violation in this case should be deemed "willful" pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 is appropriate in these matters. The Commission took into consideration that:
 - 1) The January 20, 2015 Board Meeting was Murphy's first meeting as an elected public officer. Murphy has not previously been the subject of any violation of the Ethics Law.
 - 2) Murphy has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process.
 - j. Pursuant to NRS 281A.480, Murphy will pay a total civil penalty of \$500 not later than one (1) year after his receipt of the fully executed Consolidated Stipulated Agreement in these matters. Murphy may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
 - k. This Consolidated Stipulated Agreement depends on and applies only to the stipulated facts, circumstances and law related to these RFOs 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 these matters.

- i. 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 Murphy.

6. **WAIVER:**

- a. Murphy knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in these RFOs (Nos. 15-02C, 15-07C and 15-08C) and of any and all rights he may be accorded with regard to these matters 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. Murphy knowingly and voluntarily waives his right to any judicial review of these matters as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Consolidated 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 Consolidated Stipulated Agreement during the regular meeting of the Commission on July 15, 2015.

DATED this 24th day of July, 2015.

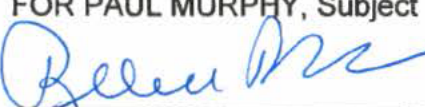


Paul Murphy

The above Consolidated Stipulated Agreement is approved by:

FOR PAUL MURPHY, Subject

DATED this 3rd day of August, 2015.



Rebecca Bruch, Esq.
Counsel for Subject

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

DATED this 4 day of August, 2015.




Jill C. Davis, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 4th day of August, 2015.



Tracy L. Chase, Esq.
Commission Counsel

The above Consolidated Stipulated Agreement is accepted by the Commission.⁴

DATED July 15, 2015.

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

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

⁴ Murphy waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, no Commissioner was precluded from participating in this Consolidated Stipulated Agreement pursuant to NRS 281A.220.