



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
George Rapson, Member, City of
Mesquite City Council, State of
Nevada,

Request for Opinion No. **16-11C**
Request for Opinion No. **16-20C**
Consolidated

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Consolidated Third-Party Requests for Opinion (“RFOs”) Nos. 16-11C and 16-20C, before the Nevada Commission on Ethics (“Commission”), concerning George Rapson (“Rapson”), a Member of the Mesquite City Council for the City of Mesquite, Nevada, and serves as the final opinion in these matters.

2. **JURISDICTION**: At all material times, Rapson served as a City Council Member for the City of Mesquite, Nevada. As such, Rapson 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 Rapson in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about January 25, 2016, the Commission received RFO No. 16-11C, alleging that Rapson disclosed but failed to abstain from voting on agenda items during October 2015 City Council Meetings concerning an offer to purchase property from the City. Two prospective buyers presented offers at the meeting: 333 Eagles landing, which buyer is represented by Premier Properties, a real estate brokerage company where Rapson is a real estate agent; and Mesquite Group 118, a company represented by the Requester.

- b. On or about February 3, 2016, staff of the Commission provided Notice to Rapson of RFO No. 16-11C, stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1), 281A.400(1), (2) and (3) and 281A.420(3).
- c. On or about February 4, 2016, the Commission received RFO No. 16-20C, alleging that Rapson:
 - 1) Used nonpublic information acquired through his official position to further his own pecuniary interests or those of another person, in violation of NRS 281A.400(1), (2), (3), (5) and (6);
 - 2) Used his official position to seek other employment or contracts by acting with the members of the Mesquite City Council to improperly fund a non-profit company related to the sale of public land, which sale involved Premier Properties, in violation of NRS 281A.400(10);
 - 3) Failed to disclose and abstain from participation on an item heard by the City Council on October 27, 2015, in violation of NRS 281A.420(1) and (3); and
 - 3) Failed to file an Acknowledgment of Ethical Standards with the Commission pursuant to NRS 281A.500.
- d. On or about March 3, 2016, staff of the Commission notified the Requester that the Commission lacked jurisdiction to investigate the alleged violations because the RFO did not include any reliable evidence to support the allegations. The Notice also provided that a review of the Commission's records confirmed that Rapson had, in fact, timely filed his Acknowledgment of Ethical Standards.
- e. The Requester appealed the jurisdictional determination in RFO No. 16-20C ("Jurisdictional Appeal") and a Notice of Jurisdictional Appeal was issued on or about March 17, 2016 to both the Requester and Rapson.
- f. On or about April 11, 2016, Rapson, by and through his attorney of record, Rebecca Bruch, Esq. of Erickson, Thorpe & Swainston, Ltd., provided a written response to the allegations contained in RFO No. 16-11C.

- g. On or about May 2, 2016, Rapson, by and through his attorney of record, Rebecca Bruch, Esq. of Erickson, Thorpe & Swainston, Ltd., provided a written response to the Jurisdictional Appeal in RFO No. 16-20C.
- h. The Commission heard the Jurisdictional Appeal at its June 15, 2016 meeting and issued its Order on Jurisdiction on or about June 21, 2016, granting in part and denying in part the Jurisdictional Appeal and ordering that:
 - 1) Jurisdiction is accepted with regard to whether Rapson complied with the provisions of NRS 281A.020 (duty to avoid conflicts) and NRS 281A.420 (disclosure and abstention) associated with the City Council meeting held on October 27, 2015;
 - 2) The other alleged violations of the Ethics Law as presented in the RFO, which relate to NRS 281A.400(1), (2), (3), (5), (6) and (10), and NRS 281A.430/530 are not supported by credible evidence as required by NAC 281A.400(3) and (6) and are therefore dismissed for lack of jurisdiction; and
 - 3) The Commission's records determined that Rapson timely filed an Acknowledgement of Ethical Standards in compliance with the requirements of NRS 281A.500 and the allegations is therefore dismissed.
- i. On or about June 23, 2016, staff of the Commission provided Notice to Subject, stating that the Commission accepted jurisdiction of RFO No. 16-20C regarding potential violations of NRS 281A.020 and NRS 281A.420 associated with the City Council meeting held on October 27, 2015 and that, accordingly, the Commission will proceed with an investigation.
- j. Rapson waived his rights to a panel determination for both RFOs 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 and NRS 281A.420(3).

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4. **STIPULATED FACTS**: At all material times, the following stipulated facts were relevant to these matters:¹

- a. Rapson has served as a City Councilmember for the City of Mesquite since 2011. He is a public officer as defined in NRS 281A.160.
- b. The City of Mesquite is a political subdivision as defined in NRS 281A.145.
- c. Robert Sweetin, Esq. is a lawyer licensed in Nevada and is the City Attorney for Mesquite.
- d. Rapson is a licensed real estate agent in Nevada.
- e. On October 20, 2011, Rapson entered into an Independent Contractor Agreement with Premier Properties of Mesquite Nevada, LLC (“Premier Properties”).
- f. Pursuant to his Agreement with Premier Properties, Rapson receives no salary but is entitled to 80% of the commission collected by Premier Properties from real estate sales transactions closed by Rapson. Rapson does not receive any commission or other compensation for transactions made by the other real estate agents of Premier Properties.
- g. Pursuant to an agreement between Premier Properties and Legacy Homes, Rapson works full-time as a sales representative selling new homes at three Legacy Homes (“Legacy”) developments in Mesquite. He is the sole real estate sales agent for Legacy in Mesquite.
- h. Rapson is permitted to list homes as a Premier Properties agent, and he has done so approximately 5 times since 2011 for Legacy homeowners who were listing their homes for resale.
- i. Rapson works out of a sales office located in a Legacy model home, utilizing office supplies provided by Legacy and an assistant who is employed by Legacy.
- j. Rapson’s listings of new Legacy properties appear on the Premier Properties website, where he is identified as one of twenty agents of Premier Properties.

¹ Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- k. At the City Council's April 14, 2015 meeting, the Council approved a resolution finding that it was in the best interests of the City to sell certain city-owned real property consisting of approximately 104 acres in the Mesquite Technology and Commerce Center (hereafter "MTCC Property").
- l. Three entities approached the City to express interest in purchasing the MTCC Property:
 - 1) 333 Eagles Landing, LLC ("Eagles Landing");
 - 2) Mesquite Exit 118 Group, LLC; and
 - 3) Mr. Hae Un Lee.

October 13, 2015 City Council Meeting

- m. At the October 13, 2015 meeting, agenda items 15, 16 and 17 related to the sale of the MTCC Property and were noted on the agenda as follows:
 - 15. Consideration of the selection of a sales method for the sale of approximately 104 acres of city-owned land in the Mesquite Technology and Commerce Center (QPN: 002-23-411-002 and 002-23-411-001) and other matters properly related thereto.
 - 16. Consideration of Resolution 878 authorizing the sale of real property in accordance with NRS 268.062 (Public Auction) and other matters properly related thereto.
 - 17. Consideration of Resolution 879 authorizing the sale of real property in accordance with NRS 268.063 (Direct Sale for Economic Development purposes), possible sale of real property and other matters properly related thereto.
- n. Meeting materials included a Letter of Intent to purchase the MTCC Property from Eagles Landing, indicating that Premier Properties of Mesquite, NV was representing Eagles Landing and would receive a real estate brokerage fee from the seller (the City).
- o. Prior to the October 13, 2015 City Council meeting, City Attorney Sweetin advised Rapson that he would not be required to abstain from discussing or voting on agenda items 15, 16 or 17 so long as he made a proper disclosure regarding the nature of his relationship with Premier Properties.
- p. The minutes of the meeting reflect that Rapson provided the following disclosure before the City Council discussed agenda item 15:

One of the properties involved in here is listed or is represented by Premier Properties. I am a real estate agent working with my license hung at Premier Properties. I have no financial interest. I get no remuneration for this. I have no financial benefit. I have no benefit of any kind in this transaction – if either one of these transactions goes. I will not recuse, but I want to make it clear that I am a – I hang my license. I am an independent contractor. I get nothing out of any of these transactions tonight.

- q. Rapson voted with three other City Council members to approve the selection of a direct sales method for the sale of the MTCC Property.
- r. Agenda item 16 was withdrawn and not discussed by the City Council.
- s. The City Council discussed agenda item 17, but voted to move the item forward and place it on a future agenda.

October 27, 2015 City Council Meeting

- t. At the October 27, 2015 meeting, agenda item 15 related to the sale of the MTCC Property and was noted on the agenda as follows:

15. Consideration of Resolution 879 authorizing the sale of real property in accordance with NRS 268.063 (Direct Sale for Economic Development purposes), possible sale of real property and other matters properly related thereto.

- u. Prior to the October 27, 2015 City Council meeting, City Attorney Sweetin advised Rapson that he would not be required to abstain from discussing or voting on agenda item 15 so long as he made a proper disclosure regarding the nature of his relationship Premier Properties.
- v. The minutes reflect that Rapson provided the following disclosure before discussion on agenda item 15 began:

The last meeting I did not recuse, but I disclosed that I am a licensed real estate agent, and I hang my license with Premier Properties. I sit at a model, a new home model; I sell new homes. I have no pecuniary interest whatsoever in this deal. I have – well, let me just get the legalese that was put in front of me. Rapson is an employee – I'm not an employee; I'm an independent contractor. I hang my license there. And that may not be for long. Substantial pecuniary interest, I do not have. I have no interest financially in this, none whatsoever. I don't get one dime out of it if it goes to either party, it makes no difference to me. Has a commitment of private capacity, is employed by, I am not. I have a continued relationship in the sense

that I hang my license, broker salesman license there, but I have no relationship other than that. Let's see, this is a legal document that was handed – let's see here, which also I will address – it states Rapson has a commitment in a private capacity in obtaining a lucrative real estate – I don't even know where that comes from. I have no commitment in a private capacity to do anything with these people, either one. I get nothing out of their brokerage fee. I get nothing.

So I don't know whether this is coming from, but apparently somebody thinks I have a conflict. I don't believe I do. I've talked to counsel, I don't believe I do. And he does not believe I do. So I am not recusing, but I am disclosing. And then I've also heard, once again, that I'm friends with some of the parties. As I said before at the last meeting, I've known the Bowlers for 20 years that I've been here. And I've known one or two of the members in this group, not the principles, not the people who are actually doing the deal, but two of the related people in the real estate business, for the same length of time. So on that level, it's a level playing field, I know both parties, except actually I don't know these guys that well. I just met them. So thanks.

- w. Rapson voted with two other City Council members to approve Resolution 879, amending the Resolution to award the sale of city-owned property to 333 Eagles Landing and directing City staff to negotiate a Sales and Purchase Agreement which was to include a commission on the land sale to be paid by the City.

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

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Rapson holds 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 Mesquite).
- c. Rapson has a substantial and continuous business relationship with Premier Properties and each agent of Premier Properties sufficient to create private commitments to the interests of each other under NRS 281A.065(5). *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Rapson's status as an

- independent contractor does not negate the business relationship shared between him and his business associates, the other agents of Premier Properties. *Id.* The Commission has determined that independent contractors have a commitment in a private capacity to those who hire them as independent contractors, and the same analogy applies to independent contractors who are partners and/or business associates in a company. *In re Public Officer*, Comm'n Op. No. 11-54C (2011).¹
- d. By statute, public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflicts of interest provisions of the Ethics Law apply to Rapson's conduct. Specifically, Rapson must commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning any private relationships and pecuniary interests which would reasonably affect his decision on matters before the City Council. See NRS 281A.420(1). As a public officer, Rapson is also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in his position. See NRS 281A.420(3).
 - e. Rapson relied upon the advice of the City Council's attorney, Sweetin, regarding his disclosure and abstention duties at the October 13, 2015 and October 27, 2015 City Council meetings.
 - f. Rapson's disclosures at the October 13, 2015 and October 27, 2015 meetings satisfied the requirements of NRS 281A.420(1) because he disclosed sufficient information to inform the public of the full nature and extent of his conflict. See *In re Woodbury*, Comm'n Op. No. 99-56 (1999) and *In re Wilson*, Comm'n Op. No. 13-81C (2014).
 - g. Rapson understands that he must disclose his substantial and continuous business relationship with Premier Properties and each agent of Premier Properties whenever a matter involving Premier Properties comes before the City Council. Disclosures required by the Ethics Law must occur "at the time the matter is considered." See NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. 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 Op. 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). Such disclosures must also inform the public of the potential effect of his action or abstention on the interests of Premier Properties.

- h. As a public officer, Rapson is also 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 by his commitment to Premier Properties or an agent of Premier Properties. NRS 281A.420(3)(c). However, it is presumed that the independence of judgment of a reasonable person is not materially affected if the resulting benefits or detriments to the public officer, or the person to whom the public officer has a commitment in a private capacity, are not more or less than those accruing to any other member of the group affected by the matter. NRS 281A.420(4)(a). Accordingly, NRS 281A.420(3) did not require Rapson to abstain from voting on agenda items at the October 13, 2015 meeting related to the method of sale of the MTCC Property because there is no evidence that the matters considered at this meeting would have affected Premier Properties any more or less than any member of the group affected by the matters. In particular, Rapson's vote on the method of sale affected all potential buyers and related real estate agents equally.
- i. Rapson failed to avoid the conflict of interest between his public duties as a member of the Mesquite City Council and his private interests by failing to abstain at the October 27, 2015 meeting from discussion and vote on a resolution resulting in a decision to begin negotiations for the sale of City property to Eagles Landing, a buyer represented by a Premier Properties real estate agent.
- j. Although Rapson understood the impact of his vote regarding his lack of any pecuniary interest in a real estate transaction involving a client of Premier

Properties, he did not fully appreciate the impact of his votes on a matter involving an entity with whom he shares a substantial and continuous business relationship. Even if there was no profit sharing arrangement or pecuniary gain to Rapson, the associates of Premier Properties still have a commitment in a private capacity as business associates. See *In re Public Officer*, Comm'n Op. No. 13-71A (2014).

- k. Rapson's conduct alleged in the two RFOs constitute a single violation of the Ethics Law, implicating NRS 281A.020 and 281A.420(3).
- l. However, the allegations pertaining to NRS 281A.400(2) and (3) and NRS 281A.420(1) are not supported by sufficient, credible evidence under NRS 281A.480(9) and are therefore dismissed through this Stipulated Agreement.
- m. 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 Rapson'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 the reasons that follow:
 - 1) Rapson has not previously been the subject of any violation of the Ethics Law.
 - 2) Rapson has not received any personal financial gain as the result of his conduct in this matter.
 - 3) Rapson has been diligent to cooperate with and to participate in the Commission's investigation and resolution of this matter.
 - 4) Rapson relied in good faith upon the advice of legal counsel provided before he acted or failed to act.
- n. This Stipulated Agreement depends on and applies only to the specific 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 this matter.

o. 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 Rapson.

6. **WAIVER:**

a. Rapson knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in RFOs (No. 16-11C and No. 16-20C) 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. Rapson knowingly and voluntarily waives his right to any judicial review of this matter 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 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 agreement during the regular meeting of the Commission on October 19, 2016.

DATED this 2ND day of November, 2016.


George Rapson

The above Stipulated Agreement is approved by:

FOR GEORGE RAPSON,
Subject

DATED this 14TH day of November, 2016.


Rebecca Bruch, Esq.
Counsel for Subject

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

DATED this 16th day of November, 2016. Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form:

DATED this 16th day of November, 2016. Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.²

DATED October 19, 2016.

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

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

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

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Dan Stewart
Dan Stewart
Commissioner

ⁱ This citation was administratively corrected after execution of the Stipulated Agreement.

² Subject 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.