



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Opinion Concerning the Conduct of
PHIL SALERNO, Councilman,
Sparks City Council, State of Nevada,

Request for Opinion No. 08-05C

Subject.

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on October 9, 2008, pursuant to allegations in a Request for Opinion filed on March 6, 2008 by Harvey Whittemore. Additional issues beyond those in the Request for Opinion were added, pursuant to NAC 281A.415. A Commission panel found just and sufficient cause existed for the Commission to render an opinion whether Sparks City Council Member Phil Salerno (Salerno) violated the Ethics in Government Law.

Salerno was present at the hearing, represented by Mark Gunderson, Esq. and Courtney Sweet, Esq. and provided sworn

testimony. Harvey Whittemore appeared as the only witness, represented by Leif Reid, Esq. and Garrett Gordon, Esq. and provided sworn testimony.

The issues before the Commission were whether Salerno violated NRS 281A.420.4, when he allegedly failed to disclose his business relationships with the Sparks Nugget, Inc., and with the Peppermill Casinos Inc., (Peppermill) when the Sparks City Council (City Council) considered the Lazy 8 development project (Lazy 8) at certain meetings.

Further, whether Salerno violated NRS 281A.420.2, when he allegedly failed to abstain from voting on the Lazy 8 at certain City Council meetings.

After fully analyzing the facts and testimony presented as they relate to the allegations concerning the Peppermill, the Commission deliberated and orally advised Salerno of its decision in the matter. On the allegations concerning the Sparks Nugget Inc., the Commission and Salerno entered

¹ The following Commissioners participated in this opinion: Vice Chairman Cashman and Commissioners Beyer, Keele and Lambole. Commissioner Shaw disclosed and abstained from participating, pursuant to NRS 281A.420. Commissioners Hutchison and Moran served as the panel in this matter. Pursuant to NRS 281A.220.4, panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

into a stipulated agreement separate from this opinion. (Exhibit A). The Commission now renders this written Opinion on the allegations surrounding the Peppermill.

FINDINGS OF FACT

1. At all relevant times, Salerno was a public officer, as defined in NRS 281A.160.
2. In his private capacity, Salerno is part owner of Grand Abacus, Inc., doing business as Nevada Forms and Printing (Nevada Forms).
3. Nevada Forms does business with the Peppermill.
4. The Lazy 8 is a proposed development project for Sparks, Nevada brought before the City Council for approval.
5. Testimony at the hearing revealed that there was no relationship between Nevada Forms and the Peppermill during the dates at issue.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter, pursuant to NRS 281A.280 and NRS 281A.440.2(b).
2. Salerno did not violate subsections 2 or 4 of NRS 281A.420. Insufficient evidence exists to show that Nevada Forms had a relationship with the Peppermill during the dates at issue to warrant Salerno's disclosure and abstention on the Lazy 8.

DISCUSSION

The issue was whether Salerno violated subsections 2 and 4 of NRS 281A.420.

It was alleged that Salerno failed to disclose his private commitment to Nevada Forms which does business with the Peppermill, when the Lazy 8 was considered by the City Council during its August 23, 2006, September 20, 2006, and August 27, 2007 meetings (dates at issue).

It was also alleged that Salerno failed to abstain from voting on the Lazy 8 when it was considered by the City Council on the dates at issue.

NRS 281A.420.4 prohibits a public officer from taking any action upon any matter which would reasonably be affected by his pecuniary interest or his private commitment to a person with whom the public officer has a substantial and continuing business relationship.²

Insufficient evidence exists to show that the Lazy 8 would reasonably be affected by any commitment Salerno, through Nevada Forms, may have with the Peppermill. Testimony at the hearing revealed that Nevada Forms and the Peppermill had not done business since December of 2002. Thus, Nevada Forms had no relationship with the Peppermill during the dates at issue. No disclosure by Salerno was warranted. Therefore, this allegation was dismissed.

NRS 281A.420.2 prohibits a public officer from voting on a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by his pecuniary interest or his private commitment to a person with whom the public officer has a substantial and continuing business relationship.

² NRS 281A.420.8 defines "commitment in a private capacity to the interest of others" to include a commitment to a person with whom the public officer has a substantial and continuing business relationship.

Since there was no relationship between Nevada Forms and the Peppermill that would warrant Salerno's disclosure, Salerno was not required to abstain from voting on the Lazy 8 on the dates at issue. Therefore, this allegation was dismissed.

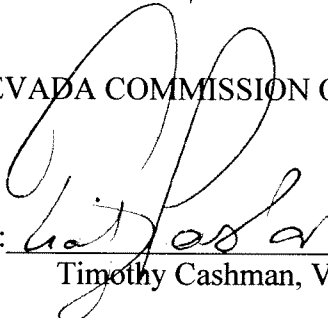
CONCLUSION

WHEREFORE, based upon a preponderance of the evidence, by a unanimous vote, the Commission found that Salerno did not violate subsections 2 or 4 of

NRS 281A.420. Therefore, the allegations were dismissed.

DATED: 12/2/08.

NEVADA COMMISSION ON ETHICS

By: 

Timothy Cashman, Vice Chairman

EXHIBIT A



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Request for Opinion
Concerning the Conduct of PHIL SALERNO,
Councilman, City of Sparks,
State of Nevada,

**Request for
Opinion No. 08-05C**

Subject.

_____ /

STIPULATION

1. PURPOSE: This Stipulation is to resolve Request for Opinion No. 08-05C concerning Phil Salerno (Salerno) that is before the Nevada Commission on Ethics (Commission).
2. JURISDICTION: At all material times, Salerno was a member of the Sparks City Council (City Council), a public officer as defined in NRS 281A.160 and subject to the jurisdiction of the Commission.
3. TERMS: Salerno and the Commission agree as follows that:
 - a. Salerno agrees as a part of the settlement that he committed one (1) willful violation of NRS 281A.420.4 when he failed to disclose sufficient information concerning his pecuniary interest in Grand Abacus, Inc., doing business as Nevada Forms and Printing and his commitment in a private capacity to the interests of the Sparks Nugget, Inc., when he voted on the Lazy 8 development project during the August 23, 2006 Sparks City Council meeting only.
 - b. For the violation described in 3(a) above, Salerno will pay a civil penalty in the sum of \$5,000 within thirty (30) days of the date this Stipulation is signed by the Vice Chairman of the Commission.

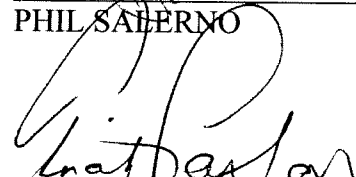
- c. The Commission, as a part of this settlement, shall dismiss all remaining allegations against Salerno pertaining to Request for Opinion No. 08-05C.
 - d. Both Salerno and the Commission acknowledge that this Stipulation has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in regard to this agreement.
 - e. Salerno freely and voluntarily waives his right to judicial review of this matter as provided in NRS 233B.130 or any other provisions of Nevada state law.
 - f. This Stipulation shall be the final disposition of this matter and shall be binding upon all parties.
4. ACCEPTANCE: We, the undersigned parties, have read this Stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED this 27 day of OCT., 2008.



PHIL SALERNO

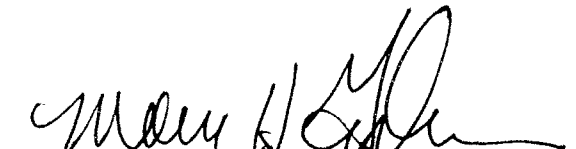
DATED this 20th day of OCTOBER, 2008.



TIM CASHMAN, VICE CHAIRMAN
Nevada Commission on Ethics

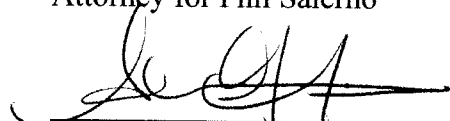
The above Stipulation has been reviewed by:

DATED this 22 day of October, 2008.



MARK H. GUNDERSON, ESQ.
Attorney for Phil Salerno

DATED this 27th day of October, 2008.



ADRIANA G. FRALICK, ESQ.
Commission Counsel