



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

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

Advisory Opinion No. 09-21A

Public Officer.

OPINION

Pursuant to NRS 281A.440(1), this request for an advisory opinion by Sparks City Councilman Phil Salerno (Salerno) came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on April 9, 2009. Salerno appeared in person with his legal counsel, Assistant Sparks City Attorney Doug Thornley (Thornley), and provided sworn testimony.

Salerno sought an advisory opinion from the Commission on the propriety of his future conduct as it relates to the Ethics in Government Law (Ethics Law). Salerno sought guidance regarding voting on a proposed master plan amendment affecting the Lazy 8 project (Lazy 8).

After fully considering the request for advisory opinion and analyzing the facts

¹ The following Commissioners participated in this opinion: Vice Chairman Keele and Commissioners Beyer, Lambole, Marvel and Moran. Commissioner Shaw disclosed a conflict and abstained, pursuant to NRS 281A.420(2) and (4).

and circumstances and testimony presented, the Commission deliberated and orally advised Salerno of its decision in the matter. The Commission now renders this written Opinion.

FINDINGS OF FACT

1. In his public capacity, Salerno is a Sparks City Councilman. In his private capacity, Salerno is part owner of Grand Abacus, Inc., doing business as Nevada Forms and Printing (Nevada Forms).
2. Nevada Forms does business with the Sparks Nugget, Inc. (Sparks Nugget). The Sparks Nugget accounts for approximately 10% to 12% of Nevada Forms' yearly business.
3. The Sparks Nugget has been vehemently opposed to the Sparks City Council (City Council) approving the Lazy 8.

4. The Lazy 8 is a proposed development project for Sparks, Nevada. In recent years, the Lazy 8 came before the City Council for approval concerning zoning for the project. The zoning was ultimately approved. However, recently, the Sparks Planning Commission denied approval of a proposed master plan amendment for the Lazy 8.

CONCLUSIONS OF LAW

- 1. At all times relevant to the hearing of this matter, Salerno was a public officer, as defined by NRS 281A.160.
- 2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
- 3. Pursuant to NRS 281A.420(4), Salerno must disclose the relationship between Nevada Forms and the Sparks Nugget whenever matters affecting the Lazy 8 come before the City Council for action.
- 4. Pursuant to NRS 281A.420(2), Salerno must abstain from acting on matters affecting the Lazy 8 that come before the City Council for action.

DISCUSSION

The facts in this matter were provided by Salerno. Facts and circumstances that differ from those used by the Commission in this advisory opinion may result in a different opinion.

In October of 2008, as a result of an ethics complaint filed against Salerno, he entered into a stipulation with the Commission and admitted to one willful

violation of NRS 281A.420(4) and paid a civil penalty. That complaint alleged Salerno failed to disclose Nevada Forms' business relationship with the Sparks Nugget when Salerno voted on a zoning matter that affected the Lazy 8.

Recently, the Sparks Planning Commission denied approval of a proposed master plan amendment for the Lazy 8. As a result, the proposed master plan amendment issue may now come before the City Council for action.

Considering the prior stipulation entered into between the Commission and Salerno, Thornley advised Salerno to disclose Nevada Forms' business relationship with the Sparks Nugget and abstain from acting on the Lazy 8 master plan amendment. Out of an abundance of caution, Salerno sought this advisory opinion from the Commission.

The Commission agrees with Thornley's advice that Salerno must disclose his private interest and abstain.

NRS 281A.420(4) provides in relevant part:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

...

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others;² or

² "Commitment in a private capacity to the interest of others" means a commitment to a person:

...

(d) With whom he has a substantial and continuing business relationship...NRS 281A.420(8).

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the ...commitment or interest to inform the public of the potential effect of the action or abstention upon the person...to whom he has a commitment, or upon his interest. [S]uch a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body.

The business that Nevada Forms does with the Sparks Nugget, an entity that opposes the Lazy 8, accounts for approximately 10% to 12% of Nevada Forms' yearly business. Because this business relationship is substantial and continuing, pursuant to NRS 281A.420(8), Salerno has a commitment in a private capacity to the interest of the Sparks Nugget. Therefore, pursuant to NRS 281A.420(4), Salerno's disclosure of this business relationship is necessary whenever matters affecting the Lazy 8 come before the City Council for action.

Additionally, Salerno's abstention is also necessary.

NRS 281A.420(2) provides in relevant part:

[A] public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

...

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group.

...

Salerno has a private commitment to the interest of the Sparks Nugget in that Salerno's Nevada Forms and the Sparks Nugget share a substantial and continuing business relationship. Therefore, pursuant to NRS 281A.420(2), whenever matters affecting the Lazy 8 come before the City Council for action, Salerno must abstain from acting on such matters.

CONCLUSION

Therefore, by a unanimous vote, the Commission concluded that whenever matters affecting the Lazy 8 come before the City Council for action: (1) Salerno must disclose his business relationship with the Sparks Nugget; and (2) abstain from acting on such matters.

Dated this 27th day of May, 2009.

NEVADA COMMISSION ON ETHICS

By: 
George Keele, Vice Chairman