



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Dale Derbidge, Councilman, City of Ely,
and Chair, William Bee Ririe Hospital
Board of Trustees, State of Nevada,

Request for Opinion No. 13-05C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Third-Party Request for Opinion ("RFO") No. 13-05C before the Nevada Commission on Ethics ("Commission") concerning Dale Derbidge ("Derbidge"), Councilman, City of Ely, and Chair, William Bee Ririe Hospital Board of Trustees, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Derbidge served as a member of the Ely City Council in Ely, Nevada and the Chair of the William Bee Ririe Hospital Board of Trustees ("Board"). Pursuant to Nevada Revised Statute ("NRS") 266.015, the government of all incorporated cities is vested in a mayor and city council. NRS 281A.280 gives the Commission jurisdiction over current elected and appointed public officers for conduct which occurred within two years preceding the filing of the RFO. Accordingly, the Commission has jurisdiction over Derbidge in this matter.

3. **FINDINGS OF FACT:**

The following events are relevant to the matter:

- a. Derbidge was elected to the City Council in 2011.
- b. Derbidge owns and/or operates several private business ventures in the City of Ely. Derbidge co-owns the Sagebrush 66 Investment Company, Inc. ("Sagebrush 66"), a local gas station/convenience store, with Lyle Norcross ("Norcross") and Jerry Jones ("Jones"). Derbidge and Jones also co-own Jones Derbidge Development LLC ("JDD"). At all times relevant to this matter, JDD was not an active business.
- c. In his public capacity, Norcross serves as the Chairman of the Ely Municipal Utility Board.
- d. Jones owns JCR Development ("JCR"), a private development company operating in Ely. Derbidge has no legal or employment interests in JCR.
- e. In August, 2012, JCR submitted a bid for approximately \$450,000 on a construction contract for the City of Ely to complete a portion of Ely's "Center Street Water and Sewer Project" ("Water Project"). Under the City's open, competitive bidding process, the City must award such a contract to the lowest competitive bidder. JCR submitted the lowest bid for the contract in accordance with the City's open, competitive bidding process.
- f. On August 23, 2012, the City Council held a Joint Special Meeting with the City's Municipal Utility Board and together they considered an agenda item for the "Consideration to award bid for the Center Street Water and Sewer Project." Although the contract award was conducted under the City's open,

- competitive bidding process, Norcross, in his capacity as the Chairman of the Municipal Utility Board, disclosed his business relationship in Sagebrush 66 with one of the contractors (Jones/JCR) who submitted a bid for the Water Project and abstained from participating and voting on the matter. Derbidge did not disclose his business relationships with Jones in Sagebrush 66 and JDD, and he voted with the remaining members of the City Council and Municipal Utility Board to approve the contract award to JCR.
- g. In October 2012, JCR sought, and the City Council granted, an extension of time to complete the Water Project with no financial penalty. The contract authorized the City to impose a financial penalty if the Water Project was not timely completed. The City Council, including Derbidge, voted unanimously to approve the October 25, 2012 contract deadline extension.
 - h. Before the October 25, 2012 City Council vote to approve the Water Project deadline extension, the Ely City Attorney, Kevin Briggs, Esq., advised Derbidge to disclose his business relationships with Jones and abstain from voting on any City Council matters involving JCR.
 - i. During the October 25, 2012 meeting at which the City Council voted to extend JCR's deadline to complete the contracted services without incurring a financial penalty, Derbidge failed to make a public disclosure of his business relationships with Jones and voted to approve the matter. Although the City Attorney had previously advised him to disclose and abstain on matters involving JCR, Derbidge expected the City Attorney to remind him of the advice at the time of any such vote. The City Attorney did not remind

Derbidge of the advice at the time of the vote on October 25, 2012, and Derbidge forgot to make the appropriate disclosure and abstention.

4. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about January 14, 2013, the Commission received a Third-Party Request for Opinion (“RFO”) from a private citizen alleging that Derbidge had a conflict of interest in voting on matters affecting JCR, used his official position to secure unwarranted benefits for JCR and failed to appropriately disclose his business relationship with Jones and abstain from voting on matters affecting Jones/JCR.
- b. As required by NAC 281A.410, the Commission provided Derbidge with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Derbidge was provided an opportunity to respond to the RFO and submitted a written response.
- c. Based on the facts developed from the Commission’s investigation, the Commission’s Executive Director provided a report to an Investigatory Panel pursuant to NRS 281A.440(4) recommending that credible evidence established just and sufficient cause for the Investigatory Panel to forward the following allegations implicating various provisions of NRS 281A to the full Commission for a hearing and opinion:

- (1) Derbidge’s alleged failure to commit himself to avoid conflicts between his private interests (his relationships to Jones and Jones’ private interests) and those of public whom he serves, implicating NRS 281A.020(1)(b);

- (2) Derbidge's alleged failure to adequately disclose his commitment in a private capacity to the interests of Jones, his business associate, before voting on a public matter affecting Jones, implicating NRS 281A.420(1); and
- (3) Derbidge's alleged failure to abstain from voting on public matters affecting Jones, implicating NRS 281A.420(3).
- d. The Executive Director further recommended that the Investigatory Panel dismiss the allegation that Derbidge violated NRS 281A.400(2) by using his official position to secure unwarranted benefits for Jones/JCR, a person to whom he has a commitment in a private capacity as a substantial and continuing business associate, albeit an associate in enterprises separate from JCR. The Executive Director noted that the open, competitive contract bidding process and award requirements inherently prevented any member of the City Council from influencing decisions respecting the contract award or creating unwarranted benefits for any bidder and that no evidence was presented or found that the contract extension was unwarranted.
- e. Pursuant to NRS 281A.440, on April 22, 2013, a two-member Investigatory Panel of the Commission consisting of Commissioners Magdalena Groover and James Shaw reviewed the RFO, Derbidge's response, the Executive Director's report and recommendation and other evidence. The Panel adopted the Executive Director's recommendations described in paragraphs "c" and "d" herein and forwarded the surviving allegations to the Commission to hold a hearing and render an opinion.

- f. The Commission notified Derbidge of the time and place set for a Commission hearing in this matter, and Derbidge retained Richard W. Sears, Esq. as his legal counsel in this matter.
- g. In lieu of a full hearing regarding the outstanding allegations, Derbidge now enters into this stipulation acknowledging his duty as a public officer to commit to avoid conflicts between his private interests and those of the public he serves and properly disclose his private commitments and relationships to his business associates who may be affected by matters before the City Council, and abstain from voting when appropriate. See NRS 281A.020 and 281A.420(1) and (3).

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

- a. Each of the findings of fact enumerated in section 3 is deemed to be true and correct.
- b. Derbidge 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 the City of Ely).
- c. Derbidge has a commitment in a private capacity to the interests of Jones, as a relationship/commitment to a person with whom he shares substantial and continuing business relationships as shareholders, officers and directors in Sagebrush 66 and JDD. See NRS 281A.420(8)(a)(4).
- d. Derbidge failed to avoid conflicts of interest between his private relationships/interests and public duties and violated the Ethics in

Government Law by failing to disclose and abstain during the August 23, 2012 and October 25, 2012 City Council meetings regarding the City's Water Project contract issues with JCR, which affected Jones' interests, albeit in business ventures unrelated to the Sagebrush 66 or JDD.

- e. As he was advised by the Ely City Attorney, Derbidge should have disclosed sufficient information regarding his business relationships with Jones via Sagebrush 66 and JDD, a person to whom he had a commitment in a private capacity as a substantial and continuing business associate, to inform the public of the nature and extent of his relationship with Jones and Jones' interests in the Water Project. The disclosure should have also included information regarding the potential effect of Derbidge's public action or abstention on Jones' interests. *See In re Woodbury*, Comm'n Opinion No. 99-56, (1999).
- f. Derbidge likewise should have abstained from voting on matters with respect to which the independence of judgment of a reasonable person in Derbidge's situation would be materially affected by his commitments in a private capacity to the interests of others, including matters affecting Jones' private interests in the substantial Water Project contract.
- g. Derbidge's actions during the August 23, 2012 and October 25, 2012 meetings constitute a single course of conduct, resulting in one willful violation of the Ethics in Government Law, implicating NRS 281A.020 and NRS 281A.420(1) and (3).

- h. For the willful violation, Derbidge will pay a total civil penalty of \$1,000.00 pursuant to NRS 281A.480 on or before December 31, 2013, in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- i. This agreement applies only to the specific facts, circumstances and law related to this RFO. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create a different resolution of this matter.
- j. This agreement applies only to these matters 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 Derbidge.

6. **WAIVER:**

- a. Derbidge knowingly and voluntarily waives a full hearing before the Commission on the allegations in this RFO (No. 13-05C) and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. Derbidge knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other provision of Nevada law.

7. **ACCEPTANCE**: We, the undersigned parties, have read this 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 June 19, 2013.

DATED this 16 day of July, 2013.



Dale Derbidge

DATED this 19th day of June, 2013.

By: /s/ Paul Lamboley
Paul Lamboley
Chairman

By: /s/ Cheryl Lau
Cheryl Lau
Commissioner


By: /s/ Gregory Gale
Gregory Gale
Vice-Chairman

By: /s/ Keith Weaver
Keith Weaver
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner


The above Stipulated Agreement is approved by:

DATED this 16th day of July, 2013.



Richard W. Sears, Esq.
Counsel for Dale Derbidge

DATED this 22nd day of July, 2013.



Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel