



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, City Councilmember,
City of Ely, State of Nevada,

Request for Opinion No. 13-68C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Third-Party Request for Opinion (“RFO”) No. 13-68C before the Nevada Commission on Ethics (“Commission”) concerning Dale Derbidge (“Derbidge”), Ely City Councilmember, 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. As such, Derbidge 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 Derbidge in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about August 5, 2013, the Commission received this RFO from a private citizen alleging that by failing to abstain from participating in matters before the Ely City Council (“City Council”) concerning JCR, a company owned by a business associate, Derbidge violated NRS 281A.020 and NRS 281A.420(3).¹

¹ The Commission’s Executive Director and Commission Counsel made an additional jurisdictional determination alleging that Derbidge violated NRS 281A.420, by failing to sufficiently disclose the same relationship.

- b. As required by NAC 281A.410, the Commission mailed Derbidge notice of the RFO. Pursuant to NRS 281A.440(3), Derbidge was provided an opportunity to respond and submitted a written response dated October 18, 2013.
- c. Based on facts developed from the RFO, Derbidge's response, and the Commission's investigation, pursuant to NRS 281A.440(4), the Commission's Executive Director provided a report and recommendation to a two-member Investigatory Panel consisting of Commissioners Magdalena Groover and Gregory Gale. The report recommended a finding that credible evidence established just and sufficient cause to forward the allegations implicating NRS 281A.020 and NRS 281A.420(1) and (3) to the Commission for a hearing and opinion.
- d. On February 12, 2014, the Investigatory Panel adopted the Executive Director's recommendation, and forwarded the allegations implicating 281A.020 and NRS 281A.420(1) and (3) to the Commission to hold a hearing and render an opinion.
- e. The Commission notified Derbidge of the time and place set for a Commission hearing in this matter.
- f. In lieu of participating in a hearing, Derbidge now enters into this stipulated agreement acknowledging his duty as a public officer to commit himself to protect the public trust.

4. **STIPULATED FACTS:**

a. **Relationship between Derbidge and Jones**

- (1) Derbidge maintains shared interests in two business ventures in Ely, Nevada with Jerry Jones; the Sagebrush 66 Investment Company, Inc. ("Sagebrush 66") and Jones Derbidge Development, LLC ("JDD").
- (2) Derbidge co-owns Sagebrush 66 in thirds with Lyle Norcross and Jerry Jones. While Jones is not listed as the managing member, all three partners own the land, in equal shares, where the business is located.
- (3) Derbidge and Jones co-own JDD, but the entity currently has no business activities.

(4) Additionally, Jones and Derbidge have known each other for 39 years and both have business interests in Sagebrush 66 and JDD.

(5) Jones is co-owner of JCR Construction.

b. Prior RFOs Regarding Derbidge (RFOs 12-70N and 13-05C)

(1) In August 2012, JCR Construction placed a bid for approximately \$450,000 to build a portion of the City of Ely's Center Street Water and Sewer Project ("Water Project"). Under the City's open, competitive bidding process, the City must award contracts to the lowest competitive bidder. JCR submitted the lowest bid for the contract in accordance with the City's open, competitive bidding process.

(2) On August 23, 2012, the City Council held a Joint Special Meeting with the City's Municipal Utility Board and together they heard 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 bidding entities (Jones/JCR) and abstained from participating and voting on the Water Project contract. At that same meeting, Derbidge did not disclose his business relationships with Jones in Sagebrush 66 or JDD, and he voted with the remaining members of the City Council and Municipal Utility Board to approve the contract award to JCR.

(3) The contract authorized the City to impose a financial penalty if the Water Project was not timely completed. In October 2012, JCR sought an extension of time to complete the Water Project.

(4) Before the October 25, 2012 City Council vote to approve the Water Project deadline extension, 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.

(5) During the October 25, 2012 meeting, Derbidge failed to disclose his business relationships with Jones, and the City Council, including Derbidge, voted unanimously to grant the extension to JCR with no financial penalty.

- (6) At Derbidge's request, City Attorney Briggs sought clarification from the Commission regarding Derbidge's obligation to abstain from voting on matters relating to JCR and Jones.
- (7) On December 12, 2012, City Attorney Briggs filed a First-Party Request for Opinion (RFO 12-70N) with the Commission seeking guidance regarding Derbidge's concern related to abstention on JCR matters. However, the Commission denied jurisdiction of the First-Party Request for Opinion because it was not filed by Derbidge regarding his own conduct.
- (8) Shortly after receipt of the letter denying Briggs' First-Party RFO 12-70A, Briggs spoke with the Executive Director regarding Derbidge's concerns on or about January 22, 2013. Although the Executive Director did not opine on Derbidge's circumstances or provide legal advice regarding the particular situation, the Executive Director discussed general requirements for disclosure and abstention and provided the opportunity for Derbidge to file an RFO regarding his own conduct.
- (9) In response to Derbidge's ethical question, Briggs presented general advice regarding disclosure and abstention to the City Council, as a whole, on January 24, 2013.
- (10) However, before the Ely City Council meeting on January 24, 2013, the Commission received a Third-Party Request for Opinion (RFO 13-05C) on January 14, 2013 alleging that Derbidge violated NRS 281A.420(1) and (3) by failing to disclose and abstain from voting on the August 23, 2012 and October 25, 2012 Ely City Council Agenda items pertaining to JCR and the Water Project.²
- (11) Derbidge drafted a written response to RFO 13-05C prior to the January 24, 2013 City Council Meeting. In the response, he stated that, "City Attorney Kevin Briggs advised me not to vote on anything regarding JCR

² During the Commission's meeting on June, 19, 2013, Derbidge stipulated with the Commission to one willful violation for the combined August 23, 2012 and October 25, 2012 actions. Derbidge signed the stipulation approximately one month later, on July 16, 2013.

Development. When the vote to extend the completion date on the project was taken I simply forgot that I should have abstained.”

- (12) On or about June 19, 2013, Derbidge and the Commission executed a Stipulated Agreement finding that Derbidge violated NRS 281A.420(1) and (3) for failing to disclose his commitment to Jones and abstain from voting on the matter involving JCR Development.

c. Facts Relevant to Present Matter

Ely City Council Meeting of January 24, 2013

- (1) At the January 24, 2013 Regular Meeting of the Ely City Council, City Attorney Kevin Briggs advised the City Council that:

...NRS 281A does have a presumption that you do not have a conflict of interest; in fact, abstentions should be rare. If there is an item on an agenda that you may have some kind of association with, then you should disclose that on the record and if a reasonable person believes you can address the issue fairly, then you should still vote.

(See Ely City Council Minutes of January 24, 2013)

- (2) Derbidge knew that Briggs sought advice from the Commission on his ethical situation, therefore he interpreted the general advice to apply to his specific circumstances pertaining to Jones and JCR matters.
- (3) Derbidge understood Briggs' general advice on disclosure and abstention to permit future voting on JCR matters if he believed a reasonable person in his situation would not be financially affected by his commitments in a private capacity to Jones, and, therefore, would be able to fairly address the issue on the agenda. Derbidge believed that because he had no financial interest in the JCR agenda item he could vote as long as he disclosed his association with JCR/Jones.

Ely City Council Meeting of May 9, 2013

- (1) At the May 9, 2013 Meeting of the Ely City Council, Section 5(2) of the Agenda listed for discussion/possible action, as recommended by the Utility Board, “Approval, Acceptance and Completion of the Center Street

Water and Sewer Project.” This agenda item sought to approve final completion of JCR’s work under the contract for the Water Project.

- (2) When the agenda item regarding the Water Project came before the City Council on May 9, 2013, Derbidge disclosed that he was “in business with one of the partners of JCR in another business, but [did] not own any part of JCR.” (See Ely City Council Minutes of May 9, 2013, Item 5(3))
- (3) Derbidge voted with the unanimous City Council to approve completion of the Water Project.
- (4) Derbidge’s disclosure and vote occurred before the Stipulated Agreement for RFO 13-05 was executed.

Ely City Council Meeting of June 13, 2013

- (1) At the June 13, 2013 Meeting of the Ely City Council, Agenda Section 7(2) discussed the payment of City bills, including the payment owed JCR pursuant to the contract for the Water Project.
- (2) Derbidge disclosed he was “a partner with one of the members of JCR Construction in another business, but [did not] own any of JCR.” (See Ely City Council Minutes of June 13, 2013, Item 7(2))
- (3) Derbidge moved for the City Council to pay the bills and voted with the unanimous City Council to approve the motion.
- (4) Derbidge’s disclosure and vote occurred before the Stipulated Agreement for RFO 13-05 was executed

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 4 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, a person with whom he shares substantial and continuing business relationships,

- as Jones and Derbidge are shareholders, officers and directors in Sagebrush 66 and JDD. See NRS 281A.065(5)
- d. Derbidge failed to avoid conflicts of interest between his private relationships/interests and public duties and violated the provisions of NRS 281A.020 and 281A.420(1) and (3) of the Ethics in Government Law by failing to fully disclose the full nature and extent of his conflicts and failing to abstain from voting during the May 9, 2013 and June 13, 2013 City Council meetings regarding the City's Water Project contract with JCR which affected Jones' interests, albeit in business ventures unrelated to the Sagebrush 66 or JDD.
 - e. At the time of his actions on May 9, 2013 and June 13, 2013, Derbidge had not yet finalized the terms of the stipulated agreement in RFO 13-05C which required disclosure and abstention on JCR matters, and he misinterpreted City Attorney Kevin Briggs' general advice concerning disclosure and abstention offered on January 24, 2013. However, Derbidge was aware at the time of his votes that his relationship with Jones was the subject of another third-party request for opinion questioning his disclosure and abstention obligations, and rather than heeding Briggs' specific advice to Derbidge regarding abstention on Jones/JCR matters, Derbidge applied his incorrect interpretation of Briggs' general advice and made an insufficient disclosure of his conflict and voted on the JCR matters.
 - f. Derbidge now fully understands that he should have disclosed sufficient information regarding his Sagebrush 66 and JDD business relationships with Jones, 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 and Jones' interests in the Water Project. The disclosure should have also included information regarding the potential effect of Derbidge's action or abstention on the agenda items and the effect it may have had on Jones' interests. See *In re Woodbury*, Comm'n Opinion No. 99-56, (1999) and *In re Derbidge*, Comm'n Opinion No. 13-05C (2013).

- g. Derbidge also understands that he must abstain from voting upon matters regarding Jones and/or JCR based upon his commitment in a private capacity to Jones' interests.
- h. Derbidge's actions during the May 9, 2013 and June 13, 2013 meetings were willful, and the acts constitute a single course of conduct resulting in a single willful violation of the Ethics in Government Law, implicating NRS 281A.020, NRS 281A.420(1) and (3).
- i. Pursuant to NRS 281A.480, Derbidge will pay a total civil penalty of \$2,000 on or before 90 days after his receipt of the fully executed stipulated agreement in this matter. Derbidge may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- j. This agreement depends on and applies only to the specific facts, circumstances and law related to this RFO 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.
- k. 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. 13-68C) 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 Procedure Act (NRS Chapter 233B), and the laws of the State of Nevada.


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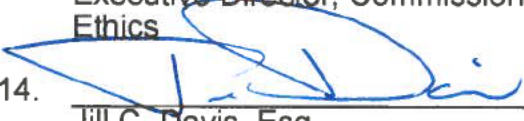
b. Derbidge knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 233B or any other provision of Nevada law.

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 Commission on March 19, 2014.

DATED this 17 day of APRIL, 2014. 
Dale Derbidge

The above stipulated agreement is approved by:

DATED this 17th day of APRIL, 2014. 
FOR DALE DERBIDGE, Subject
Richard Sears, Esq.
Counsel for Subject

DATED this 21 day of April, 2014. 
FOR CAREN CAFFERATA-JENKINS,
Executive Director, Commission on
Ethics
Jill C. Davis, Esq.
Associate Counsel

DATED this 22nd day of April, 2014. 
FOR NEVADA COMMISSION ON
ETHICS
Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel

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The above stipulated agreement is accepted by the Commission.³

DATED March 19, 2014.

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

By: PANEL MEMBER
Gregory J. Gale
Vice-Chairman

By: /s/ John C. Carpenter
John C. Carpenter
Commissioner

By: PANEL MEMBER
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

³ Pursuant to NRS 281A.220, members of the Investigatory Panel are precluded from participating in any further proceedings of the Commission relating to this matter. Accordingly, Commissioners Gale and Groover did not participate in the resolution of this Stipulated Agreement.