



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gary Wilson, Board Member, McDermitt
Fire District, Humboldt County, State of
Nevada,

Request for Opinion No. **13-81C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 13-81C before the Nevada Commission on Ethics (“Commission”) concerning the conduct of Gary Wilson (“Wilson”), member of the McDermitt Fire District Board in Humboldt County, Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Gary Wilson served as an elected member of the McDermitt Fire District Board. As such, Wilson is a 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 the Chapter. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Wilson in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about November 18, 2013, the Commission received this RFO from a private citizen alleging that Wilson’s failure to disclose a conflict of interest and to abstain from participating in matters before the McDermitt Fire District Board which affected his pecuniary interests violated NRS 281A.020, NRS 281A.400(2), (3), (5), (6) and (7), NRS 281A.420(1) and (3), NRS 281A.430 and NRS 281A.500.

- b. As required by NAC 281A.410, the Commission mailed Wilson notice of the RFO. Pursuant to NRS 281A.440(3), Wilson was provided an opportunity to respond to the RFO.
- c. Wilson waived both his right to submit a response and his entitlement to a panel determination pursuant to NRS 281A.440, and now acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.020 and 281A.420(1) and (3) and 281A.430 (in part).¹ The remaining allegations are dismissed through this Stipulated Agreement.²
- d. In lieu of a hearing, Wilson now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to maintain the public trust in government and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:**

The following events are relevant to this matter:

Parties

- a. Gary Wilson is an elected member of the McDermitt Fire District Board and, during the relevant timeframe, served as its Secretary. As such, Wilson is a public officer, as defined in NRS 281A.160.
- b. The McDermitt Fire District is a local agency as defined in NRS 281A.119.
- c. Mike Macdonald, Esq. is a licensed Nevada attorney employed as the District Attorney for Humboldt County, Nevada.
- d. Bill Deist is the County Administrator for Humboldt County.
- e. Brenda Willey is an administrative assistant for Humboldt County.
- f. Humboldt General Hospital (“HGH”) is a governmental entity.

¹ Pursuant to NAC 281A.405, the Executive Director and Commission Counsel rejected jurisdiction regarding the allegations related to NRS 281A.400(3), (5), (6) and (7) and NRS 281A.500 for lack of evidence to support the allegations as required by NAC 281A.400.

² NRS 281A.400(2) prohibits a public officer or employee from using his position in government to gain an unwarranted benefit or advantage and NRS 281A.430 prohibits a public officer or employee from engaging in contracts with a governmental entity. Based on the Commission’s investigation, the alleged violations of NRS 281A.400(2) and NRS 281A.430 with regard to the Community Development Block Grant (contractual) negotiations were not supported by sufficient, credible evidence and are therefore dismissed in this Stipulated Agreement. However, the allegations implicating NRS 281A.430 with regard to Wilson’s contractual lease agreement with HGH remain subject to this Stipulated Agreement.

Background and Humboldt County CDBG Application

- g. The Community Development Block Grant (“CDBG”) Program administered by the U.S. Department of Housing & Urban Development (“HUD”) made approximately \$3 million available for grants for community facilities, planning and capacity building, economic development, micro-enterprise programs, and housing rehabilitation for Nevada in 2013. These grants were available on a competitive basis to Nevada’s 26 non-entitlement cities and counties, including Humboldt County.
- h. In 2010, the McDermitt Fire District secured United States Department of Agriculture funding to expand the McDermitt Fire Station to create adequate space to house a Humboldt County Sheriff substation as well as provide storage and office space for McDermitt’s general improvement district. That expansion was set for 2012, but due to unforeseen variables in construction costs, the project fell short \$27,723 and could not be completed.
- i. McDermitt also faced an Emergency Medical Services (“EMS”) issue when its Ambulance service license was suspended on September 14, 2012.
- j. The loss of the local McDermitt ambulance service placed stress on HGH’s ambulance service system, the only hospital in the immediate area to serve McDermitt residents. Therefore, HGH’s Board of Trustees voted on September 25, 2012, to establish an ambulance presence in McDermitt. However, HGH lacked funding to build an ambulance substation in McDermitt.
- k. As a temporary solution, HGH contracted with Wilson to rent his furnished house at 335 Jaca Road, McDermitt, Nevada, for \$1,100 per month to accommodate the EMS staff and ambulance. The lease began on October 22, 2012.
- l. On November 13, 2012, Humboldt County and the McDermitt Fire District jointly applied for a CDBG grant in the amount of \$305,183 to expand the fire station in McDermitt, Nevada, to house fire, police, ambulance and general improvement district services (“Multiplex”), in which \$25,000 was designated to remodel the shared space for the Sheriff and EMS staff as follows:

Shared space remodel - \$25,000. The Humboldt County Sheriff's Office and Humboldt General Hospital EMS Rescue will share space for their on-site officers/ crews. Both agencies need sleeping, eating and exercise facilities. The Sheriff's Office also needs a one-room detention facility for those persons awaiting transport to Winnemucca. This funding will help expand the space currently used by the Sheriff's Office to include crews with HGH EMS Rescue.

(Page 6 of CDBG Application Form 2013)

- m. On the CDBG application, Wilson was listed as the McDermitt Fire District Board Chairman and contact person.
- n. The proposed expansion, as stated by the contract, would eliminate the need for HGH to rent Wilson's house for lodging for its EMS staff.
- o. However, of the \$305,183 grant money requested to expand the fire station in McDermitt, Nevada, only \$233,000 was awarded on June 28, 2013.
- p. Based upon the failure to obtain all of the funding requested, the Multiplex project had to be re-examined by all parties.

October 4, 2013 McDermitt Fire District Board Meeting

- q. Prior to the October 4, 2013 McDermitt Fire District Board Meeting, Wilson met with Humboldt County District Attorney, Mike Macdonald ("DA Macdonald), Humboldt County Administrator Bill Deist ("Administrator Deist") and Humboldt County Administrative Assistant Brenda Willey to discuss the CDBG award and the Multiplex plans.
- r. DA Macdonald and Administrator Deist advised Wilson not to bring the contract before the Fire District Board at that point because the scope of work in the proposed contract was vague and would likely cause an expensive engineering undertaking which could not be supported by the funds awarded.
- s. The October 4, 2013 McDermitt Fire District Board meeting minutes reflect:

Gary made a motion that the Board not sign an agreement until it has been determined what the additional costs will be in regards to scope of work, engineering fees, etc. in completing the Community Services Multiplex, and what source of funds will pay for it, due to the fact that the Fire District does not have the funds. Bruce seconded, 3-0 approved.

(Minutes of McDermitt Fire District Board meeting, October 4, 2013)

- t. Wilson did not disclose his house rental contract with HGH at either his meeting with Humboldt County or at the Fire District meeting.
- u. Additionally, Wilson failed to abstain from voting on the matter at the Fire District Board meeting.

October 10, 2013 McDermitt Fire District Board Meeting

- v. On October 10, 2013, Agenda Item Number 6 of the McDermitt Fire District Board Meeting called for the review of the revised Agreement for Engineering and Construction Design Services with Iridium Consulting, LLC (Bret Dowty) for the scope of work stated in the CDBG application Statement of Qualifications as advertised in the Humboldt Sun, and additional costs to complete the McDermitt Community Services Multiplex.
- w. In addition to the Fire District Board, in attendance at the meeting were, among others: Sheriff Kilgore, HGH CEO Jim Parrish, Jim French, Pat Songer, Bret Dowty (Iridium), Louis Jaca, Marlene Brissenden, Dale Hartley and Brenda Willey of Humboldt County (via phone).
- x. The October 10, 2013 McDermitt Fire District Board meeting minutes reflect:

Discussion only on McDermitt Community Multiplex Project: Bret showed a design of possible living quarters in the Sheriff's Department with upstairs, and access door through West wall into bays that are in place now. Everyone agreed that this would be a good way to go for a future expansion project. The Fire Board wanted to know who is going to do the Environmental Review? Jim French stated that if CDBG requires one, this is something that Brenda can do, and Marlene Brissenden agreed. The Fire Board inquired what the next step would be on reducing the scope of work to exclude the shared space remodel section of the CDBG Grant. Brenda will check with Des Craig, Director of Rural Community Development and find out if this can be done. Bret (Iridium Consulting LLC) will submit a revised Agreement for Engineering and Design Services, which excludes the Environmental Review. Bruce made a motion to table further discussion on this until the next meeting, Hank seconded.

(Minutes of McDermitt Fire District Board meeting, October 10, 2013)

- y. Again, Wilson did not disclose his contract with HGH to house its EMS staff or abstain from participating in the discussion.

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

- a. Each of the findings of fact enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. Wilson holds a 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 McDermitt).
- c. 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 Wilson's conduct. Specifically, Wilson must commit to avoid actual and perceived conflicts of interest, including not entering into contracts with governmental entities (NRS 281A.430), and publicly disclosing sufficient information concerning any private relationships and pecuniary interests which would reasonably affect his decision on matters before the Fire District Board (NRS 281A.420(1)). As a public officer, Wilson 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 (NRS 281A.420(3)).
- d. By entering into a contract with HGH, a governmental entity, to lease his property, Wilson violated the prohibitions against government contracting set forth in NRS 281A.430 and Wilson now understands his responsibility as a public officer to avoid such governmental contracts unless they comply with the statutory exceptions.
- e. During the October 4, 2013 McDermitt Fire District Board meeting, Wilson made a motion that the McDermitt Fire District Board not sign the Agreement for Engineering & Construction Design Services with Iridium Consulting, LLC ("Iridium Agreement") regarding the scope of work as stated in the CDBG application for the Multiplex. (October 4, 2013 agenda) Wilson made the motion based upon the advice of Humboldt District Attorney Michael Macdonald, Esq. DA Macdonald advised Wilson not to sign the Iridium Agreement because the costs of the scope of work were not fully delineated in

- the Iridium Agreement. However, Wilson failed to discuss with DA Macdonald that a delay in the Multiplex would benefit his significant pecuniary interest by extending his rental agreement to house the HGH EMS staff. Wilson did not disclose his interests before making the motion and voting on the matter.
- f. At the October 10, 2013 McDermitt Fire District Board meeting, Wilson did not disclose his interests in the lease agreement with HGH before participating in the Board's discussion regarding a reduction in the scope of the Multiplex project, including the potential elimination of the HGH personnel quarters. The matter was tabled until the next meeting to consider a revised proposal from Iridium Consulting.
 - g. To promote integrity in public service, the Ethics Law is concerned with situations involving public officers that create the appearance of impropriety as well as actual impropriety and conflicts of interest. (See *In re Maltman*, Comm'n Opinion No. 12-66A (2012)).
 - h. Disclosure is important even in cases where the conflict is remote in some aspects. *In re Weber*, Comm'n Opinion No. 09-47C (2009):

In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials. . . . Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.
 - i. The Commission recognizes that Wilson's votes on the matter may have served the best interests of the Fire District. However, Wilson still had a conflict between his own pecuniary interest in renting a house to HGH to quarter its EMS staff, and his vote against the Iridium Agreement regarding the scope of work as stated in the CDBG application. This conflict required Wilson to disclose his pecuniary interests. A full and complete disclosure would have enlightened the public and clarified the pecuniary issues at stake in Wilson's individual capacity, as well as highlighted the aspects of the Iridium Agreement that could impact HGH's section of the Multiplex.

- j. While the agenda items on both October 4, 2013 and October 10, 2013 did not specifically address his rental contract with HGH, the matters impacted his significant pecuniary interest, which created a conflict of interest that mandated disclosure. (NRS 281A.420(1))
- k. Wilson now fully understands that he should have disclosed sufficient information regarding the rental of his property to HGH to inform the public of the nature and extent of his relationship and interest in the rental contract. (NRS 281A.420(1)) The disclosure should have also included information regarding the potential effect of Wilson's action or abstention on the agenda items and his interests. (See *In re Woodbury*, Comm'n Opinion No. 99-56, (1999), *In re Derbidge*, Comm'n Opinion No. 13-05C (2013) and NRS 281A.420(1)).
- l. As a public officer, Wilson 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. (NRS 281A.420(3)) In this case, the record reflects that his pecuniary interests benefit directly and significantly from HGH renting his property to house the EMS staff and ambulance because the rental agreement is for \$1,100 per month, and his vote effectively extended his ability to collect rent from HGH.
- m. Wilson's pecuniary interest represents a clear case in which the independence of judgment of a reasonable person in Wilson's position would be materially affected by voting on the matter. Accordingly, Wilson should have abstained from participating and voting on any matter which had the effect of extending his rental contract, including a vote to delay construction of the Multiplex.
- n. Wilson now understands that he must abstain from voting in similar matters. (NRS 281A.420(3)).
- o. Wilson failed to avoid conflicts of interest between his private relationships/interests and public duties and violated the provisions of NRS 281A.020, NRS 281A.430 and NRS 281A.420(1) and (3) of the Ethics in Government Law by entering into a contractual agreement with a governmental entity and later failing to disclose the full nature and extent of his conflicts and

failing to abstain from voting during the October 4, 2013 and October 10, 2013 McDermitt Fire District Board meetings regarding the Multiplex.

- p. Wilson's actions to lease his property to HGH and then vote on matters affecting that contract without disclosing his interests during the October 4, 2013 and October 10, 2013 meetings were intentional and knowing, and the acts constitute a single course of conduct resulting in a single wilful violation of the Ethics in Government Law, implicating NRS 281A.020, 281A.430 and NRS 281A.420(1) and (3).
- q. However, based on the Commission's investigation, the allegations pertaining to NRS 281A.400(2) and NRS 281A.430 with regard to the Community Development Block Grant (contractual) negotiations were not supported by sufficient, credible evidence and are therefore dismissed through this Stipulated Agreement.
- r. Pursuant to NRS 281A.480, Wilson is assessed a total civil penalty of \$1,000 to be paid not later than 90 days after his receipt of the fully executed Stipulated Agreement in this matter. Wilson may pay the penalty in one lump sum or in monthly installment payments as negotiated with the Commission's Executive Director.
- s. This Stipulated 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 are different from those contained herein may create a different resolution of this matter.
- t. This Stipulated Agreement applies only to these matters before the Commission and is not intended to apply to or create any admission of liability for any other proceeding, whether administrative, civil, or criminal regarding Wilson.

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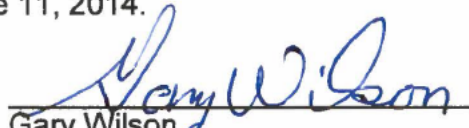
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6. **WAIVER:**

- a. Wilson knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in this RFO (No. 13-81C) 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 any other applicable provisions of law.
- b. Wilson knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 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 Stipulated Agreement during the regular meeting of the Commission on June 11, 2014.

DATED this 17 day of July, 2014.

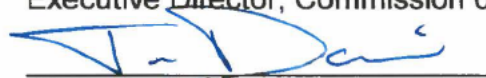


Gary Wilson

The above Stipulated Agreement is approved by:

FOR CAREN CAFFERATA-JENKINS,
Executive Director, Commission on Ethics


DATED this 22 day of July, 2014.



Jill C. Davis, Esq.
Associate Counsel

FOR NEVADA COMMISSION ON ETHICS

DATED this 22nd day of July, 2014.



Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.³

DATED June 11, 2014.

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

By: /s/ Gregory J. Gale
Gregory J. Gale
Co-Chairman

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

By: /s/ Magdalena Groover
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 Wilson 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.