



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Leonard Lance Gilman, Member,
Board of County Commissioners,
Storey County, State of Nevada,

Request for Opinion No. **14-73C**

Public Officer. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-73C before the Nevada Commission on Ethics (“Commission”) concerning Leonard Lance Gilman (“Gilman”), Storey County Commissioner, and serves as the final opinion in this matter.
2. **JURISDICTION:** At all material times, Gilman served as a member of the Storey County Board of Commissioners (“Board”). As such, Gilman is an elected public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A provides 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 Gilman in this matter.
3. **PROCEDURAL HISTORY BEFORE COMMISSION:**
 - a. On or about October 23, 2014, the Commission received this RFO from Gerald Antinoro, the Sheriff of Storey County, alleging that Gilman:
 - 1) Failed to avoid conflicts of interest between his public and private interests by using his office to favor his private business interests (NRS 281A.020(1));
 - 2) Used his position as County Commissioner to gain an unwarranted advantage for himself by furthering his private business interests (NRS 281A.400(2));

- 3) Used governmental time and resources in his capacity as County Commissioner to further his private business interests (NRS 281A.400(7)); and
 - 4) Caused a governmental entity to incur an expense to oppose a candidate (NRS 281A.520).¹
- b. As required by NAC 281A.410, the Commission sent notice of the RFO to Gilman on November 4, 2014.
 - c. Gilman submitted his response to the RFO on November 24, 2014. After retaining legal counsel, Gilman submitted a supplemental response to the RFO on April 1, 2015.
 - d. Pursuant to NRS 281A.440, on July 15, 2015, a two-member Investigatory Panel of the Commission reviewed the RFO, Gilman's responses, the Executive Director's recommendation, and other evidence.
 - e. A Panel Determination issued on July 20, 2015 concluded that:
 - i. Just and sufficient cause existed for the Commission to conduct a public hearing and render an opinion regarding the allegations implicating NRS 281A.020(1) and 281A.400(2).
 - ii. Just and sufficient cause did not exist for the Commission to conduct a public hearing and render an opinion regarding the alleged violation of NRS 281A.400(7). Accordingly, this allegation was dismissed.
 - f. Gilman filed a Motion to Dismiss on October 1, 2015, seeking dismissal of all allegations.
 - g. In lieu of a hearing on the Motion to Dismiss, Gilman and the Commission now enter into this Stipulated Agreement finding no violation of NRS 281A.020(1) or NRS 281A.400(2).
 - h. This RFO presented a case of first impression for the Commission with respect to a public official providing public comment on a private matter and this Stipulated Agreement provides an opportunity for the Commission to promote

¹ Pursuant to NAC 281A.405, the Commission Counsel and Executive Director determined that the Commission did not have jurisdiction to consider allegations implicating NRS 281A.520 for lack of sufficient evidence to support the allegations.

and clarify the goals of the Ethics Law and to educate all public officers similarly situated to Gilman.

4. STIPULATED FACTS: At all material times, the following stipulated facts² were relevant to this matter:

- a. Leonard Lance Gilman (“Gilman”), as one of three elected members of the Storey County Board of Commissioners, is a public officer as defined in NRS 281A.160.
- b. The Storey County Board of Commissioners (“Board”) is a political subdivision as defined in NRS 281A.145.
- c. Gerald Antinoro (“Antinoro”) is the elected Storey County Sheriff, a public officer as defined in NRS 281A.160.
- d. Storey County is a rural county with a population of approximately 3,942 people.
- e. The Mustang Ranch is a brothel and private business entity owned by Gilman and located in Storey County.³
- f. Sheriff Antinoro was quoted in the Lockwood Area Blog (“Blog”) on Monday June 2, 2014. The Blog included the following statement:

There had been an incident at the Mustang Ranch brothel near Patrick that we also talked about. Two sex workers were working without the necessary medical clearance the law demands. Sheriff Antinoro fined the brothel even though it is owned by a highly placed County official who seems to have expected special considerations that were not forthcoming. Sheriff Antinoro summed this up by saying, “I enforce the law

² Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17), as amended by Assembly Bill 60, 78th Session of the Nevada State Legislature, effective May 27, 2015. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

³ Brothels are a heavily regulated industry pursuant to state and local law. Brothels in Storey County are regulated by a Brothel Licensing Board, which consists of the Board of County Commissioners and the Sheriff of Storey County, and has the power to issue and revoke a brothel license. Storey County Code, Chapter 5.16. All applicants for a brothel license must file the application with the sheriff’s office and pay a non-refundable three thousand dollar (\$3,000.00) investigation fee. Brothel licenses must be renewed annually. As a condition of the brothel license, licensed operations must provide the sheriff access at any time for the purposes of inspection to ensure compliance with Storey County Ordinance. Every prostitute working at a licensed brothel must obtain a work card and have a weekly medical exam to maintain her work card, which is issued by the Storey County Sheriff.

evenly as possible to everyone. No exceptions.” The other candidates have also said as much; favoritism is root cause of past misdeeds in our county[.]

(Hereinafter “Mustang Ranch Statement”)

- g. Most readers of the Blog would have known that Sheriff Antinoro’s reference to the County official owning the Mustang Ranch was a reference to County Commissioner Gilman.
- h. After learning about the Mustang Ranch Statement, Gilman addressed his belief that the statement falsely impugned him as an elected Board member and businessman and negatively reflected on Storey County government as a whole in a public meeting of the Board.
- i. At the October 21, 2014 Storey County Commission Meeting (“Meeting”), during Agenda Item 14 entitled “BOARD COMMENT (No Action – No Public Comment),” Gilman read the following written statement into the record from his Commissioner’s seat rather than utilizing the agenda item for public comment:

I am addressing the Commission today as a Storey County resident, a Storey County business owner with approximately (10) ten business licenses county wide, and as the Storey County Commissioner representing District 3 including Lockwood, TRI, Painted Rock, and Mark Twain.

I am hereby requesting that an item be entered into the next Storey County Commission meeting agenda for a vote of censure against Sheriff Antinoro, as the Storey County Sheriff, and a county department head, for making knowingly false statements which reflect negatively in a significant way on Storey County.

My complaint stems from a Lockwood area blog report dated June 2, 2014, entitled “Conversation with our Sheriff’s Office and update.” The report contains the following quote from an interview with Sheriff Gerald Antinoro. I quote: “There had been an incident at the Mustang Ranch brothel near Patrick that we also talked about. Two sex workers were working without the necessary medical clearance the law demands. Sheriff Antinoro fined the brothel even though it is owned by a highly placed County official who seems to have

expected special considerations that were not forthcoming. Sheriff Antinoro summed this up by saying, "I enforce the law evenly as possible to everyone. No exceptions." The other candidates have also said as much; favoritism is the root cause of past misdeeds in our county."

Several statements in this quote are complete fabrications. The incidents never happened.

- 1) There was no incident where Sheriff Antinoro or his deputies found a "sex worker" working without necessary medical clearance.
- 2) There was no incident where Sheriff Antinoro fined the brothel. Furthermore the Sheriff has no legal authority to fine a brothel.
- 3) The third statement implies that I, as a highly placed county official, expected special consideration on complying with medical clearance laws. This is just plain false. I have never even discussed medical clearance records with Sheriff Antinoro.

I request that a neutral investigator, outside the chain of command of the Sheriff, be commissioned to interview Sheriff Antinoro and Deputy Mendoza, who was reportedly present at the time of these statements, to determine whether these specific statements are true or not true. If they are found to be not true I request a vote be taken to censure the Sheriff for these statements. Censure is called for and proper in this circumstance as his statements specifically refer to me in my capacity as a County Official, and reflect poorly on the County Government as a whole.

That concludes my official statement. Let me just add a personal comment if I might. The senior law enforcement official in the county made this cavalier, false statement about a business that has been a great corporate citizen in paying taxes and has a long track record of giving and charitable contributions in this county.

More importantly, this business employs around 80 people, many of whom have been there many years. A good number of these 80 people have families. These workers depend on this business for their income, so they can pay rent, make their car payment, and buy Christmas presents for their kids. In my personal view, this conduct and attempt to seriously injure my business is inexcusable.

- j. Board Comment was not designated as an action item on the agenda and the Board did not take any action with regard to Gilman's comments at the Meeting. Nor did the Board ever place this matter on a future agenda or authorize an investigation of the truth or falsity of the Sheriff's statements.
- k. Gilman did not receive any private financial or pecuniary gain as the result of his statements made at the Meeting.

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

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. Gilman 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 Storey County.
- c. Gilman and all other public officers must commit themselves to avoid conflicts between their personal interests and their public duties (NRS 281A.020). This commitment extends to any statements made by public officers in their official capacity while participating in public meetings.
- d. As a public officer, the conflict of interest provisions of the Ethics Law apply to Gilman's conduct. Specifically, Gilman must not use his position in government to secure or grant unwarranted privileges, preferences or advantages for himself or any business in which he has a significant pecuniary interest (NRS 281A.400(2)).
- e. Gilman made a statement during the Board Comment portion of the agenda which included a personal statement regarding his private business interests implicating concerns regarding NRS 281A.400(2). However, this is a case of first impression and, therefore, the Commission reviews for the first time the implications of NRS Chapter 281A to a public officer's public comment on private matters during a public meeting. Gilman stated that he was addressing the Commission as both a Storey County resident and a Storey County Commissioner. Gilman contends that all his comments preceding the sentence,

“that concludes my official statement,” were official in nature to bring attention to alleged false statements by the Sheriff which specifically referred to him in his “capacity as a County Official, and reflect poorly on the County Government as a whole.”

- f. Nevertheless, statements made in a private capacity should be separated from statements made in a public capacity to avoid an appearance of impropriety or possible conflict, and the rural and casual nature of the Board’s meetings may have led to an unintentional lapse in protocol associated with a public official providing public comment on a private matter. However, based on the foregoing and the absence of any evidence of Board or public action responding to Gilman’s public statement or any financial or pecuniary gain to him resulting therefrom, the allegations implicating NRS 281A.020(1) and NRS 281A.400(2) lack sufficient evidence to support a violation by a preponderance of the evidence and therefore are dismissed through this Stipulated Agreement.
- g. Although the Commission finds no violation of the Ethics Law in this matter, the Commission takes this opportunity for outreach and education to advise Gilman and other similarly situated public officers regarding the implications of the Ethics Law in the context of public statements made at public meetings. Public officers should not make statements during the “Board Comment” or similar agenda item reserved for official business to secure or grant unwarranted privileges, preferences, exemptions or advantages for themselves, their business interests, or persons to whom they have a commitment in a private capacity. Such conduct violates NRS 281A.400(2). The clear intent of this statute is to prohibit a public officer from acting in a manner which creates unwarranted privileges, preferences or advantages for a personal interest. (*In re Public Officer*, Comm’n Opinion No. 12-15A (2012)). Comments by public officials about personal matters or private business during agenda items devoted to board business or Board Comment directly implicate NRS 281A.400(2) because such comments may be afforded greater significance or weight when they are delivered by a public official, especially when referencing his public position or acting in an official capacity. Public officials should be

vigilant to avoid an appearance of impropriety and should utilize the Public Comment portion of a public meeting to make statements concerning personal or private matters. Further, public officials should make public comment of a private matter from the location at the meeting that is designated for members of the public, not from the public official's seat of authority. Moreover, to avoid any appearance of impropriety, a public official should refrain from using his authority as a public official to seek or facilitate any action by the Board to benefit his private interests and comply with applicable requirements of the Ethics Law. Finally, the Commission's First-Party Opinion process is available to public officials to provide guidance on such matters.

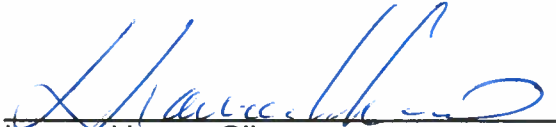
- h. This Stipulated Agreement applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- i. This Stipulated 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 Gilman.

6. WAIVER:

- a. Gilman knowingly and voluntarily waives his right to a hearing before the Commission on the allegations in this RFO (No. 14-73C) and 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. Gilman knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada 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 Commission on April 20, 2016.


DATED this 22 day of April, 2016.


Leonard Lance Gilman

The above Stipulated Agreement is approved by:

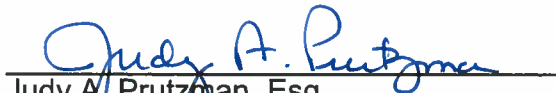
FOR LEONARD LANCE GILMAN, Subject

DATED this 22d day of April, 2016.


Rick R. Hsu, Esq.

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics


DATED this 27th day of April, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 27th day of April, 2016.


Tracy L. Chase, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.⁴

DATED April 20, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner

⁴ Vice-Chair Weaver and Commissioner Groover participated in the Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4). Commissioner Carpenter recused himself from participation in Panel Proceedings. Therefore, pursuant to NRS 281A.220, the necessary quorum to act on this matter is reduced.