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MAR 15 2010

COMMISSION ON ETHICS

NEVADA COMMISSION ON ETHICS

REQUEST FOR OPINION

(ETHICS COMPLAINT)

NRS 281A.440.2

Please print or complete online.

Nevada Commission on Ethics
REQUEST FOR OPINION
No. 10-12C

1. Provide the name, title, public agency, address, and telephone number for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS 281A. (If more than one public officer or employee is alleged to have violated the law, use a separate form for each individual.)

Name & Title:	Andrew "Butch" Borasky, Nye County Commissioner		
Public Agency:	Nye County		
Address:	101 Radar Road		
City, State, Zip:	Tonopah, NV 89049	Telephone:	775-482-8191

2. Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. (You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)

Check here  if additional pages are attached.

As my Memo to File dated October 8, 2008 alleges Commissioner Borasky directed me to investigate and design flood openings for two garages located at 4671 W. Dyer and 4701 W. Dyer. Commissioner Borasky required me to design flood openings to correct a FEMA violation. Commissioner Boarsky was hired by Nationwide Homes to develop the foundations for two mobile homes and garages. Mr. Borasky did not elevate the garages sufficiently to comply with FEMA requirements. He required me to design flood opening so the garages would comply with FEMA requirements.

3. Identify all persons who might have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Include the address and telephone number for each person.

Check here  if additional pages are attached.

Name & Title:	John Lohman, Nye County Planning Director		
Address:	250 N. Highway 160, Suite 1	Telephone:	775-751-4033
City, State, Zip:	Pahrump, NV 89060		
Nature of Testimony:	Confirm all allegations.		

4. Attach two copies of all documents or items you believe provide credible evidence to support your allegations. [NRS 281A.440.2\(b\)\(1\)](#) requires you to submit all related evidence to support your allegations. [NAC 281A.435.3](#) defines credible evidence as a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made within the complaint. Credible evidence does not include a newspaper article or other media report if the article or report is offered by itself.

State the total number of additional pages attached (including evidence) 12.

**REQUESTOR'S INFORMATION:**

NAME: Richard Johnson	E-MAIL: rjohnson@pahrumpp.com
ADDRESS: 5021 N. Jerry Avenue	
CITY, STATE, ZIP: Pahrump, NV 89060	
TELEPHONE 702-537-2005	CELL PHONE: 702-595-3213

**By my signature below, I do affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief and I am willing to provide sworn testimony if necessary regarding these allegations.**

  
Signature \_\_\_\_\_  
Print Name: Richard N. Johnson

3/12/10  
Date \_\_\_\_\_

**Please return an original signed form, two copies of the form, and three copies of the supporting documents and evidence to:**

**Executive Director  
Nevada Commission on Ethics  
3476 Executive Pointe Way, Suite 10  
Carson City, Nevada 89706**

Ethics complaints submitted by facsimile will not be considered as properly filed with the Commission.  
[NAC 281A.255.3](#)

An internal County investigation found him in violation of NRS 281A.400. However, since County employees work for the commissioners he needs to be counseled by the Nevada Commission on Ethics.

Attachment:

Memo to File  
BoCC letter dated February 2, 2010



## MEMO TO FILE

October 8, 2008

On September 25, 2008 I received a call from Michael Colbert, President of Nationwide Homes. Mr. Colbert told me that he had submitted elevation certificates to HUD for two mobile homes with garages located at 4671 W. Dyer and 4701 W. Dyer. HUD stated that the two properties failed to qualify for HUD loans because the buildings were not properly elevated. He told me Commissioner Borasky had the contract for the pads and asked if I could look at the properties and find out what the problem was.

Shortly after talking with Michael Colbert, I received a call from Commissioner Borasky stating that there was a problem with the elevation of the pads he put in at 4671 W. Dyer and 4701 W. Dyer and asked if I could go out and look at the properties and fix the problem.

On September 26, 2008 I visited the subject properties and determined that the detached garages were two feet below the AO-2 zone. I called Mr. Colbert and explained the problem and also pointed out problems with how the elevation certificates were prepared.

On October 2, 2008 I received new elevation certificates that were properly filled out and I signed off, subject to meeting FEMA requirements for the two garages. I emailed Mr. Colbert the information packet on correcting the FEMA deficiencies on the garages.

On October 3, 2008 when I was in Tonopah on an inspection, I received a call from Commissioner Borasky wanting to know what needed to be done to correct the problem with the garages. I told him that I had emailed the information to Mr. Colbert.

On October 6, 2008 Commissioner Borasky called at 1:00 p.m. and said that he wanted me to outline with him the corrective measures for the garages and review this information with him before 5:00 p.m. I told him I had sent the information to Nationwide and it was their responsibility to read the information and take corrective action. Commissioner Borasky told me that Nationwide did not understand that stuff and I was to stop what I was doing and work everything out for him before 5:00 p.m. because he had a BOCC meeting on October 7<sup>th</sup> and then he was going out of town. I told him I was overloaded with County work and it is the builder's responsibility to do this engineering. Commissioner Borasky told me to stop what I was doing and provide him this engineering information.

I stopped doing County work and researched the FEMA requirements. I then went out to 4671 W. Dyer and 4701 W. Dyer and measured the two garages. I calculated that the effected surface area of each garage was 2' x 24' or 48 square feet. Based upon this calculation, the flood openings on each side of the garage need to be 48 square inches. I made up a drawing showing the two flood openings on each side of the garage door that need to be 24 square inches (4" high x 6" long) on each side, at the front and rear of the buildings. I called Commissioner Borasky at 4:00 p.m. when I completed the work. He came into the Planning Department and I reviewed everything with him. The engineering study and review with Commissioner Borasky took 3 ½ hours.

Richard N. Johnson  
Manager of Building Safety and Code Compliance



**Board of County Commissioners  
Nye County  
Tonopah, Nevada**

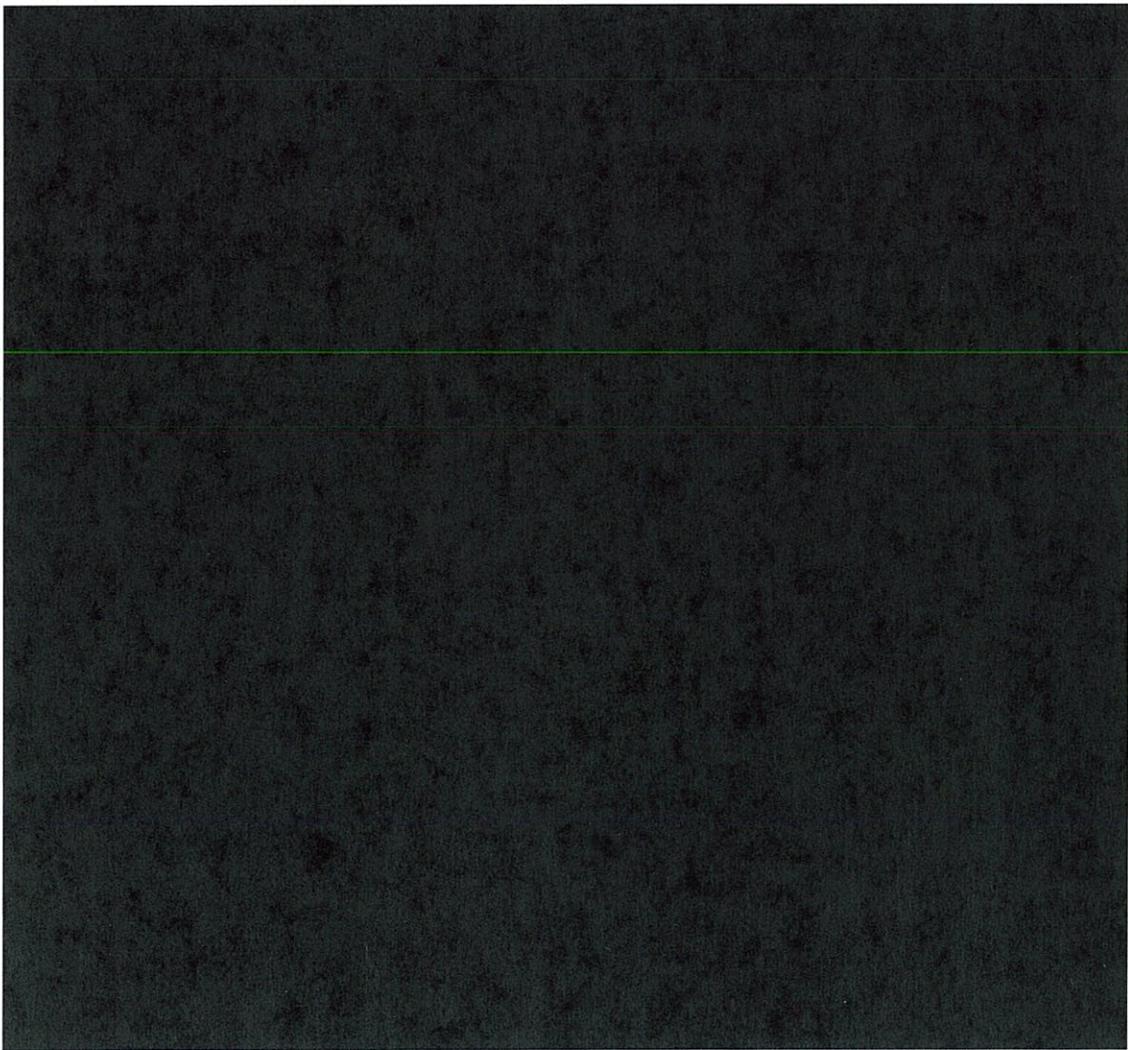
Tonopah Office  
Nye County Courthouse  
William P. Beko Justice Facility  
PO Box 153  
Tonopah, NV 89049  
Phone (775) 482-8191  
Fax (775) 482-8198

February 2, 2010

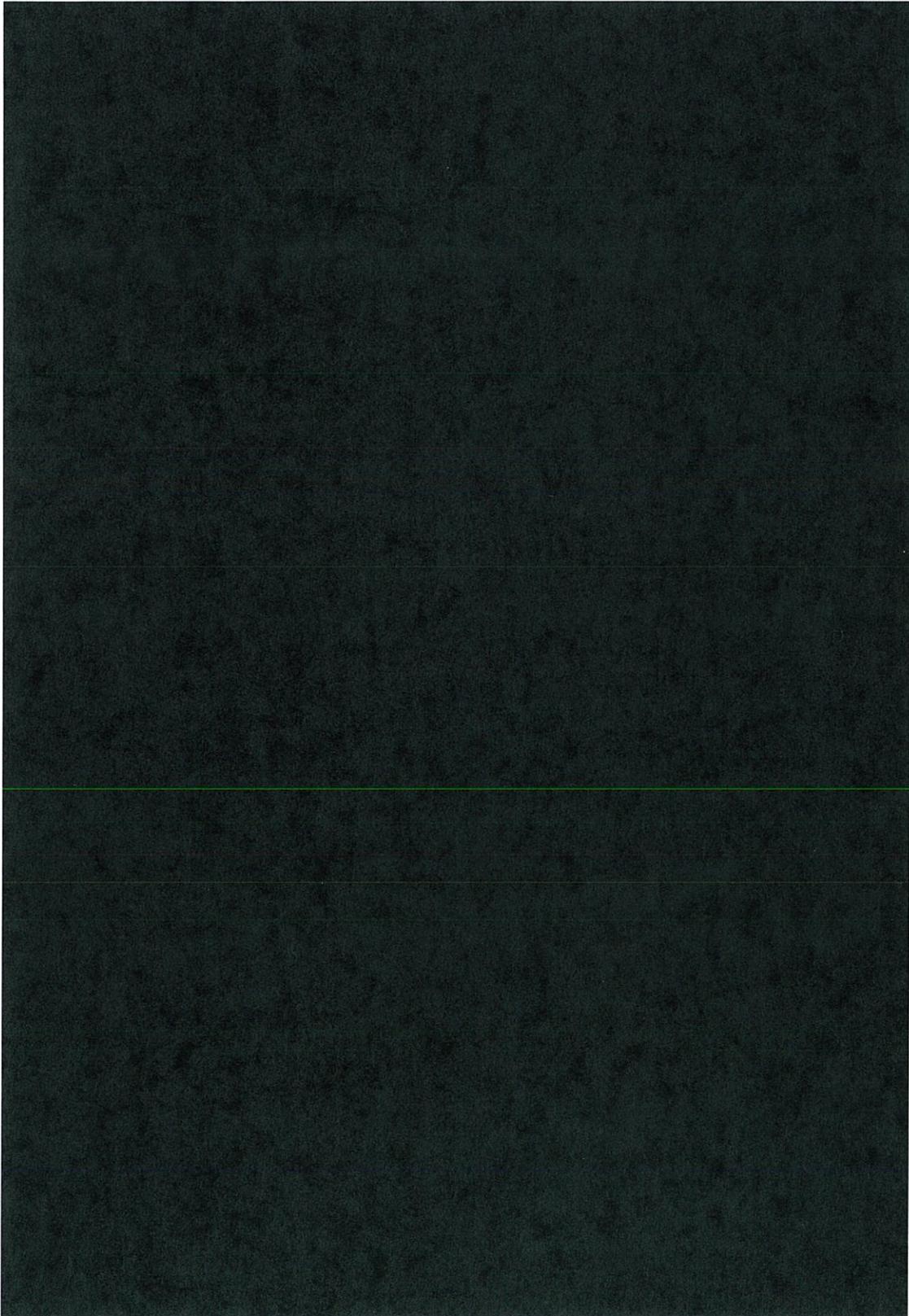
Richard Johnson  
5021 Jerry Avenue  
Pahrump, NV 89060

Dear Mr. Johnson:

Bonnie Drinkwater, Esq., (on behalf of Nye County) conducted an investigation regarding complaints of alleged harassment, intimidation, retaliation, threats and hostility by you against **County Manager Rick Osborne** and Commissioner **Andrew "Butch" Borasky** and **Gary Hollis**.



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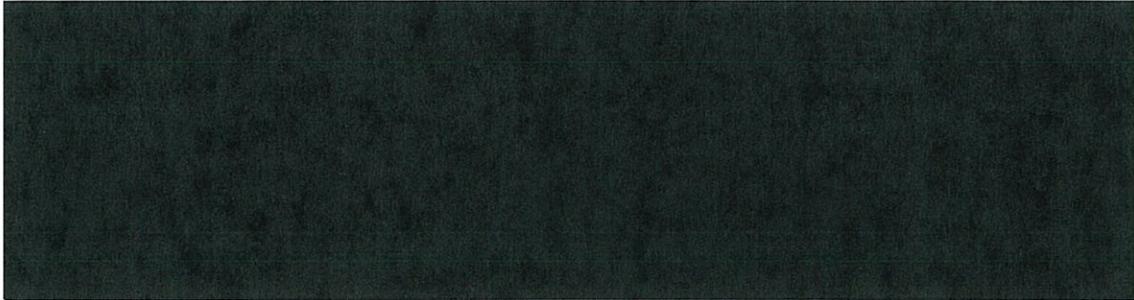


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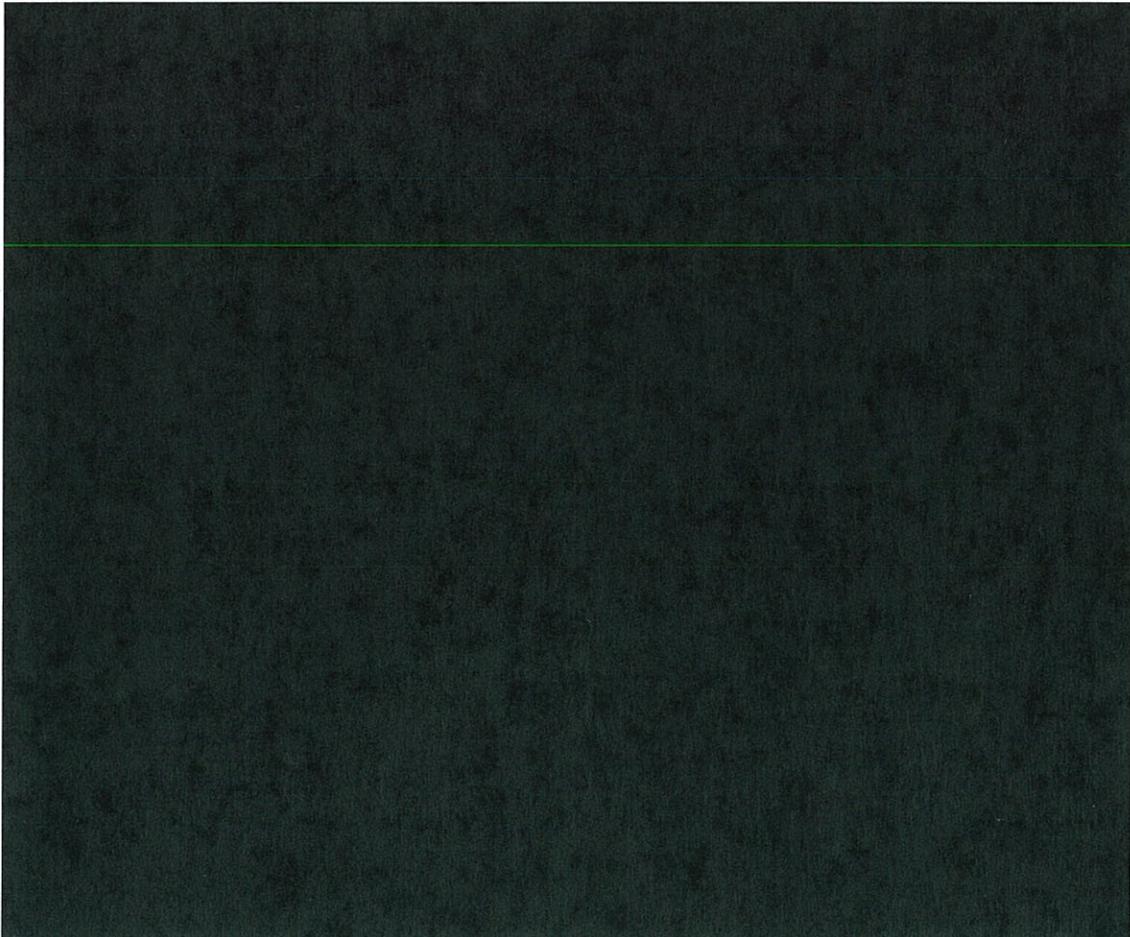
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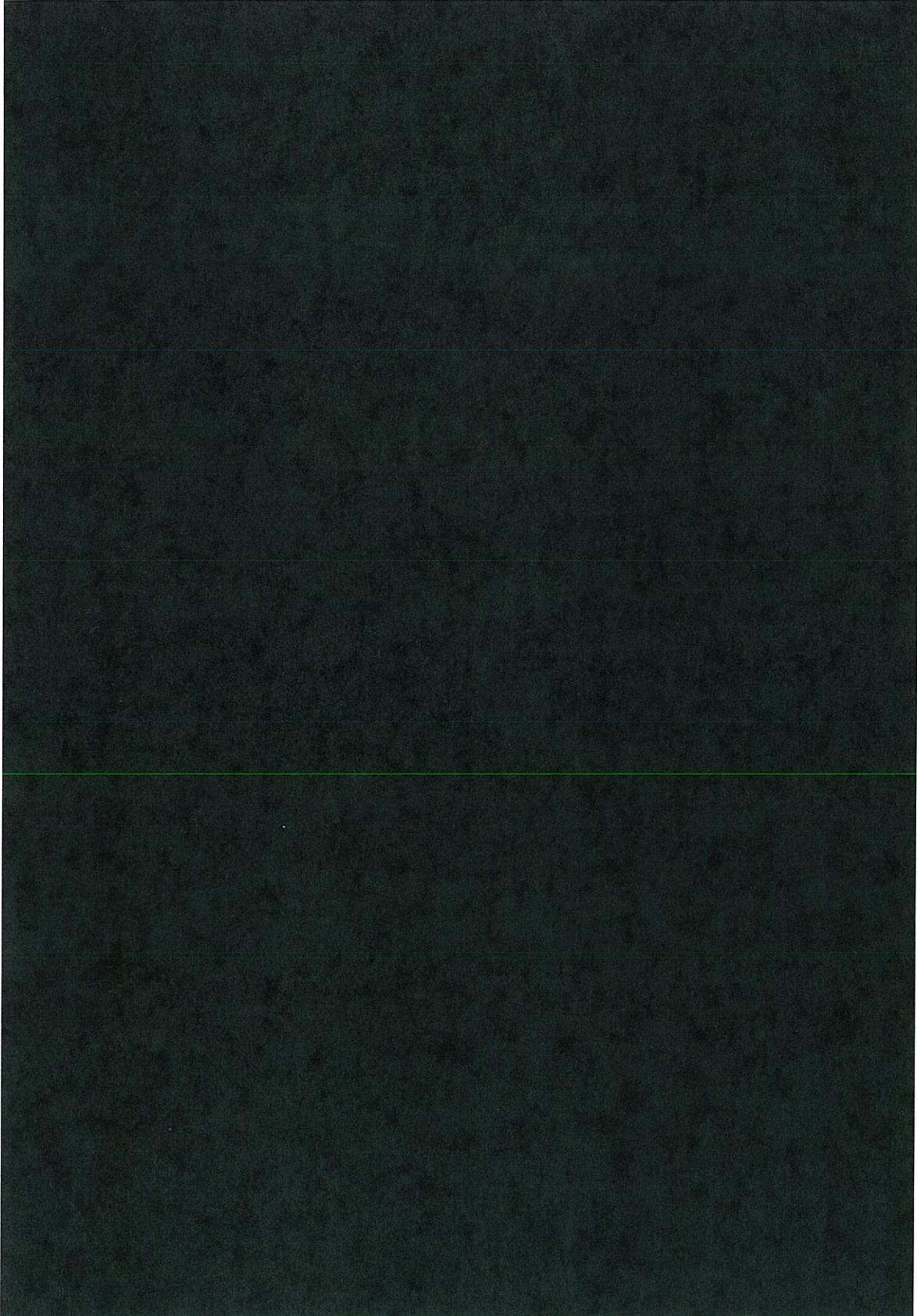


**Complaint 8 - Inappropriate Request:** You allege in a memo to file dated October 8, 2008 that Commissioner Borasky asked you to look at and fix a problem with the elevation of garage pads he installed at 4671 and 4701 West Dyer. You evaluated the problem and provided the builder with the necessary engineering information to fix it. You then allege that Commissioner Borasky called again demanding that you stop what you were doing and provide him with the same information. You allege the engineering study and subsequent review with the commissioner took 3 ½ hours.

***Findings:*** This request appears to be a violation of NRS 281A.400. Commissioner Borasky will be counseled that this type of request could be considered illegal and cautioned not to make requests like this in the future.



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Respectfully Submitted,

A handwritten signature in cursive script that reads "Joni Eastley".

Joni Eastley  
Nye County Board of Commissioners

je/ds  
Enclosure

**NRS 281A.400 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of [NRS 281A.420](#).

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

↳ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A member of the Legislature shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of his public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the Legislator or legislative employee to perform his official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

(Added to NRS by 1977, 1105; A 1987, 2094; 1991, 1595; 1993, 2243; 1997, 3324; [1999, 2736](#); [2003, 3388](#))—(Substituted in revision for NRS 281.481)