



STATE OF NEVADA

**BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion  
Concerning the Conduct of ANDREW  
BORASKY, Commissioner, Nye County,  
State of Nevada,**

**Request for Opinion No.: 10-12C**

**Subject.**

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**EXECUTIVE DIRECTOR'S RECOMMENDATION  
AND APPROVAL OF INVESTIGATOR'S REPORT**

The following is the Executive Director's recommendation based on consideration and investigation of the Ethics Complaint filed against ANDREW "BUTCH" BORASKY ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached to the Investigator's Report. That Report is approved and is attached for the consideration of the two-commissioner investigative panel.

**Allegations:**

The main allegation is that Commissioner Borasky, who had performed certain work as an excavation sub-contractor in his private business, used his position in government to further his personal interest in pleasing his former client and limiting his personal liability by having County personnel inspect and suggest corrections to a condition at a former job site.

**Facts:**

The main parties involved are the Subject, Nye County Commissioner Borasky; the Requester, Richard Johnson, Nye County's Building Safety and Compliance Manager; and Michael Colbert, president of Nationwide Homes. Requester Johnson alleges the following:

Mr. Johnson received a telephone call from Mr. Colbert at his County office in which Colbert posed questions about two garage pads on W. Dyer Road that did not seem to meet the required elevation standards. Mr. Colbert told Mr. Johnson that Commissioner Borasky had excavated the area for the pads. Thereafter, Commissioner Borasky called Mr. Johnson and directed him to inspect the pads on W. Dyer Road and report to Borasky what corrections, if any, were required. Mr. Johnson declined, stating he was swamped with County business, but Borasky insisted that his request interrupt Johnson's other tasks. Johnson claims that he stopped his normal work, inspected the pads and met with Borasky that day, using 3 ½ hours of his workday to address Borasky's issues.

## Nevada Revised Statutes (NRS) and case law:

The applicable statutes are NRS 281A.400 (2), (7) and (9).

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

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee 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.

7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's 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 the public officer's or employee's 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.

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

## Recommendation:

After reviewing the evidence and **NRS 281A.400(2)**, I recommend that the Panel find just and sufficient cause **EXISTS** for the Commission to render an opinion on the allegations that Commissioner Borasky used his position in government to secure unwarranted preferences for himself and his business interests, as well as for the benefit of his commitment in a private capacity to the interests of Nationwide Homes, his former client.

After reviewing the evidence and **NRS 281A.400(7)**, I recommend that the Panel find just and sufficient cause **EXISTS** for the Commission to render an opinion on the allegations that Commissioner Borasky caused the use of governmental time, property, equipment or other facility to benefit his personal financial interest.

After reviewing the evidence and **NRS 281A.400(9)**, I recommend that the Panel find just and sufficient cause **EXISTS** for the Commission to render an opinion on the allegations that Commissioner Borasky influenced a subordinate to benefit the Commissioner's private interests.

**NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)**

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics complaint **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics complaint must be unanimous.

3. As used in this section, **“credible evidence” means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

Based upon the Investigator’s findings, the independent investigation conducted by Nye County’s contract investigator (Attorney Drinkwater), and the evidence presented in the Request for Opinion, I recommend that the Panel find that reliable and competent evidence is present to support a reasonable belief that the Commission should hear the matter and render an opinion on whether Commissioner Borasky violated NRS 281A.400 (2), (7) and/or (9).

**I hereby approve the attached Investigator’s Report and provide this, my recommendation to this honorable panel.**

\_\_\_\_\_/s/\_\_\_\_\_  
Caren Jenkins, Esq.  
Executive Director

Date: May 4, 2010