



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion
Concerning the Conduct of ROBERT WHITE,
Captain, Carson City Sheriff's Office,
Carson City, Nevada,**

Request for Opinion No.: 10-18C

Subject. /

**EXECUTIVE DIRECTOR'S REPORT
AND RECOMMENDATION TO INVESTIGATORY PANEL**

The following is the Executive Director's report and recommendation based on consideration and investigation of the Ethics Complaint filed against Captain BOB WHITE of the Carson City Sheriff's Office ("Subject"), a public employee, and on the Subject's written response to the Complaint, attached to the Investigator's Report. That Report is approved and is attached as an exhibit hereto for the consideration of the two-commissioner investigatory panel.

Allegations:

The main allegation is that Captain White used his official vehicle and wore his official uniform to further his interest in being elected as Carson City Sheriff by driving and wearing the same to a lunch meeting where he gave a campaign speech. The Complaint alleges that White caused government equipment, his police cruiser, to benefit his private interest in being elected and that wearing his uniform was a means to secure an unwarranted privilege or advantage.

Facts:

The parties involved are Captain Bob White, his supervisor Chief Deputy Ray Saylo of the Carson City Sheriff's Office ("CCSO"), and Pete Livermore, a city supervisor who attended the luncheon speech. Captain White admits having worn his uniform and having driven his government vehicle to the meeting and giving the speech; however, White explained that an "incident" called him in from his pre-approved day off for the speech, and that he was entitled to wear his uniform and drive his vehicle during lunch breaks.

Nevada Revised Statutes (NRS) and case law:

The applicable statutes are:

- NRS 281A.400(2) – when he used his position in government to secure unwarranted privileges, preferences, exemptions or advantages by giving a campaign-related speech during his work hours, using his department-issued vehicle as a transportation to the speech

location and using his department-issued uniform to further his interest in his campaign for election as the Carson City Sheriff;

- NRS 281A.400(7) – using government resources to further a personal interest by delivering a campaign-related speech during his work hours, using his department-issued vehicle as personal transportation and wearing his department-issued uniform to conduct personal business; and

- NRS 281A.400(10) when he used his public office to seek employment by delivering a campaign speech during work hours while wearing a department-issued uniform.

1. Discussion of Unwarranted Benefit NRS 281A.400(2):

Captain White had made arrangements in advance to provide the campaign speech on a day off. Had he not responded to his public duty, he would likely have driven his personal vehicle to the luncheon and worn something other than his uniform to give the speech at Grandma Hattie's. He had called to attempt to re-schedule the speech, but was unable to do so. He continued with his duty to his department. It was moments before noon that he found himself able to accommodate his personal business upon the conclusion of his official duty, and he believed he was entitled to rush over to the pre-arranged luncheon and deliver the speech, despite the activities of the day.

Captain White could not have known that he would be required to work on his approved time off, although his position as head of the SWAT team requires his attention 24/7. As a result, White had no intention to use his position in government to travel to the speech in his cruiser or wear his uniform; instead, he intended to take the day off and focus on his campaign, but was interrupted by the call to duty.

The evidence presented that White's supervisor had approved the time off, that White was called in to attend to an incident, and found himself able to keep his pre-arranged commitment despite the incident is uncontradicted. (In fact, the benefit may have accrued to the City's side of the equation!) Therefore, I recommend that the panel find that just and sufficient cause **DOES NOT EXIST** to forward the allegations regarding NRS 281A.400(2) for a hearing by the Commission, as, pursuant to NAC 281A.435, the available **evidence is insufficient** to form a reasonable belief that the matter should proceed to hearing.

2. Discussion of Use of Government Resources NRS 281A.400(7)

Captain White is among the class of management level officers in the Carson City Sheriff's Office to whom a vehicle is issued for take-home use. While the policies of the CCSO certainly apply to that use, they are of no consequence in this proceeding. The Commission must determine whether the statutory exceptions to the personal use of government resources apply to Captain White's use of his vehicle for transport to the campaign luncheon.

NRS 281A.400(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;

This fact-based determination is not addressed in the materials provided by the investigation; however, Captain White's understanding of the allowable uses of his vehicle for lunch breaks and for community lunch meetings unrelated to his duties to the CCSO infers that in this instance, such use is permitted. However, I recommend that whether the use of his vehicle was necessary due to emergency circumstances or whether the use created the appearance of impropriety are determinations that should be made by the full Commission. Therefore, I recommend a finding that just and sufficient cause DOES EXIST to forward this allegation regarding NRS 281A.400(7) for a determination by the Commission.

3. Discussion of Use of Public Office to Seek Employment NRS 281A.400(10)

This allegation is far from clear. Other than perhaps referring to his rank as a Captain in the Sheriff's office as a foundation for his qualifications to serve as Sheriff, no facts are presented that Captain White used his position on government to attempt to gain employment.

As a result, I recommend that the panel find that just and sufficient cause **DOES NOT EXIST** to forward the allegation related to NRS 281A.400(10) for determination by the Commission in a hearing, as the evidence is insufficient to form a reasonable belief that the allegation has merit.

The report of Investigator Vavra, the Subject's thorough Response and the materials filed with the Complaint support these recommendations.

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

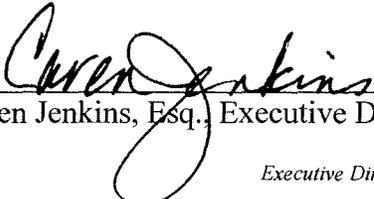
1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics complaint **must be based on credible evidence.**

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.

Therefore, I recommend that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on whether Captain BOB WHITE violated NRS 281A.400(2) and (10) for the reasons stated above. However, I recommend that this investigatory panel forward the allegation related to NRS 281A.400(7) to the Commission to render an opinion.

I hereby approve the attached Investigator's Report and provide my recommendations to this honorable investigatory panel.


Caren Jenkins, Esq., Executive Director

Date: June 3, 2010