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2
3 **STATE OF NEVADA**
4 **BEFORE THE NEVADA COMMISSION ON ETHICS**

5 **In the Matter of the Request for Opinion**
6 **Concerning the Conduct of JOLENE SUPP,**
7 **Manager, City of Wells,**
8 **State of Nevada,**

Request for Opinion No.: 10-28C

9 **Subject. /**

10 **INVESTIGATOR'S REPORT (Tab A)**

11 **Introduction.**

12 **1. Request for Opinion No. 10-28C (Ethics Complaint). (Tab B):**

13 On April 28, 2010, Requester David Linge filed an Request for Opinion against
14 public officer Jolene Supp, manager of the City of Wells, alleging that Supp violated
15 various provisions of the Ethics in Government Law set forth in NRS 281A, including:
16 1) NRS 281A.400(1) when she accepted an economic opportunity for Humboldt
17 Environmental and Renewable Technologies (H.E.A.R.T.) a corporation in which she
18 has a pecuniary interest, 2) NRS 281A.400(2) when she used her position in
19 government to further the interest of H.E.A.R.T, 3) NRS 281A.400(3) when she
20 participated as an agent of government in the negotiation of a contract between the
21 City of Wells and H.E.A.R.T, 4) NRS 281A.400(7) when she used governmental time,
22 property, equipment or other facility to benefit her personal and financial interest as the
23 president of H.E.A.R.T, 5) NRS281A.400(9) when she attempted to influence a
24 subordinate to further H.E.A.R.T's interest, 6) NRS 281A.400(10) when she used her
25 position in government to seek contract on behalf of H.E.A.R.T, 7) NRS 281A.410
26 when she failed to file a disclosure of representation of a private person before public
27 agency, 8) NRS 281A.420(1) when she failed to disclose her pecuniary interest in
28 H.E.A.R.T. during numerous City council meetings, 9) NRS 281A.420(3) when she

1 failed to abstain from H.E.A.R.T-related discussions during numerous City council
2 meetings and 10) NRS 281A.430 when she, on behalf of H.E.A.R.T. entered into a
3 contract with the City of Wells.

4
5 **2. Jurisdiction:**

6 The Nevada Commission on Ethics has jurisdiction over public officers and
7 public employees pursuant to NRS 281A.280. As the City of Wells manager, Supp is a
8 public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on
9 Ethics has jurisdiction to investigate and take appropriate action in this matter pursuant
10 NRS 281A.280 and NRS 281A.440.

11
12 **3. Issues:**

13 The issues are whether Supp violated:

- 14
15 **1.** NRS 281A.400(1) by accepting an economic opportunity in Humboldt
16 Environmental and Renewable Technologies (H.E.A.R.T.), which
17 would tend to improperly influence a reasonable public officer to
18 depart from the faithful discharge of her duties.
- 19 **2.** NRS 281A.400(2) by using her position in government to further
20 interest of H.E.A.R.T.
- 21 **3.** NRS 281A.400(3) by participating as an agent of government in the
22 negotiation of a contract between the City of Wells and H.E.A.R.T.
- 23 **4.** NRS 281A.400(7) by using governmental time, property, equipment
24 or other facility to benefit her personal and financial interest as the
25 president of H.E.A.R.T.
- 26 **5.** NRS 281A.400(9) by attempting to influence a subordinate to further
27 her interest in H.E.A.R.T.
- 28

1 6. NRS 281A.400(10) by using her position in government to seek
2 contract on behalf of H.E.A.R.T.

3 7. NRS 281A.410 by failing to file disclosure of representation of a
4 private person before public agency.

5 8. NRS 281A.420(1) by failing to disclose her pecuniary interest in
6 H.E.A.R.T during numerous City council meetings.

7 9. NRS 281A.420(3) by failing to abstain from H.E.A.R.T- related
8 discussion during numerous City council meetings.

9 10. NRS 281A.430 by entering into a contract with the City of Wells on
10 behalf of H.E.A.R.T.

11
12 **4. Notices to Subject: (Tab C):**

13 The Commission issued a Notice to Subject of RFO 10-28C to Supp on May 7,
14 2010. A postal service record indicates that Supp received the Notice on May 14, 2010.
15 (Tab C).

16
17 **5. Response to Ethics Complaint. (Tab D):**

18 Supp's legal counsel, Rebecca Bruch Esq., of Erickson, Thorpe et al. submitted
19 a response to the Ethics Complaint on July 12, 2010. The response indicated that
20 Supp did not violate any provisions of NRS 281A and that the allegations are barred by
21 the two-year statute of limitations as provided in NRS 281A.280. (Response, Tab D).

22
23 **Investigation Resources:**

24 I interviewed the following individuals and reviewed their responses:

25
26 **1. Witnesses interviews and responses. (Tab E):**

- 27 • David Linge, requester, telephone interview on August 9, 2010.
28 (Investigator's Report, p. 8).

- Jolene Supp, subject, telephone interview on August 16, 2010, (Investigator's Report, pp. 8-9) and response, Tab D.

2. Documents. (Tab F):

I obtained and reviewed the following relevant documents and materials:

- Nevada Secretary of State Records, H.E.A.R.T. (Exhibit 1).
- Nevada Secretary of State Records, ARM Tire Center. (Exhibit 2).
- Jolene Supp, Financial Disclosure Statement dated January 15, 2010. (Exhibit 3).
- Letter from Supp to the Nevada Department of Emergency Management dated May 5, 2008. (Exhibit 4).
- City of Wells Resolution 08-04. (Exhibit 5).
- Response to RFO 10-30C. (Exhibit 6).
- Minutes from the relevant City Council meetings included in the Complaint. (Tab B).

3. Relevant Statutes and Commission Opinions. (Tab G):

- NRS 281A.280
- NRS 281A.400(1), (2), (3), (7), (9) and (10)
- NRS 281A.410
- NRS 281A.420(1), (3) and (8)
- NRS 281A.430

Investigative findings:

Jolene Supp is the manager of the City of Wells Nevada; the City council appointed her in 1999 and has remained in her position as of the time of completion of this report. Aside of her public position, Supp is the president of the now-defunct Humboldt Environmental and Renewable Technologies (H.E.A.R.T.), a domestic

1 corporation established in 2004 to recycle used tires. In addition, Supp is a partner in
2 the family-owned ARM Tire Center. (Exhibit 2).

3 The rather complex and voluminous Complaint (comprising of nearly 200 pages
4 of supporting documents) alleges that Supp violated numerous provisions of NRS
5 281A, mostly by using her public position to further her interest in H.E.A.R.T. It also
6 alleges that Supp used her public position to gain unwarranted benefits for a City
7 Council member and for Supp's father-in-law.

8 The allegations date back to 2002, when Patrick Barney brought the idea of tire
9 recycling to the City's attention. According to the Complaint, Barney came to Wells
10 stating that his recycling idea had not been welcomed in other communities and as
11 such, he sought support in Wells. The City of Wells became interested and welcomed
12 the idea as an economic and employment opportunity. The City had hoped to
13 participate financially in the project. However, after several months of exploring this
14 possibility, City officials realized that the City itself cannot own stock in a privately-
15 owned corporation and that Barney was unsuccessful in raising funds to realize his
16 project.

17 During the November 25, 2003 City council meeting, Supp reported that due to
18 Barney's financial issues, a group of individuals would be forming a corporation to
19 pursue the project. However, Supp did not disclose that she was a leading member of
20 the group. The following meeting, December 9, 2003 Supp reported that "a local
21 corporation for the tire recycling project has been formed" and it will be called
22 H.E.A.R.T; still, Supp did not disclose that she was the leader of the group.
23 Furthermore, Supp stated that the group was meeting with legal counsel to prepare
24 and file necessary corporate documents with Nevada Secretary of State. H.E.A.R.T.
25 became registered with Nevada Secretary of State on January 9, 2004. (Exhibit 1).

26 At the February 10, 2004 City council meeting, Supp announced that a "mailer"
27 was sent to local residents inviting them to invest in H.E.A.R.T. (Complaint, Tab B,
28 pp.11-13), and that H.E.A.R.T. board of directors, including Supp would be traveling to

1 Canada to research the project. Apparently, negative comments related to travel
2 expenses surfaced during the City meeting on February 24, 2003 but the allegations
3 were refuted by Mayor Rusty Tybo who assured the public that the City did not fund the
4 trip and that Supp used her annual leave for the travel. In the following months of 2004,
5 the City engaged in numerous discussions related to the project; Supp disclosed her
6 interest in H.E.A.R.T. and abstained from the discussion related to a proposed land
7 sale agreement between the City and H.E.A.R.T. on April 13, 2004. (Complaint, Tab B,
8 p. 49). However, she participated in discussions on numerous occasions thereafter
9 without disclosing that she was the president of H.E.A.R.T. or that she had an
10 ownership interest in the corporation.

11 On June 22, 2004, the City council approved a Land Sale to H.E.A.R.T. and
12 discussed payment installments. The agreement was amended during September 28,
13 2004 meeting (Complaint, Tab B, p. 63).

14 The main allegation is that in late 2004, the City allowed H.E.A.R.T to use
15 offices in the City Hall completely free of charge due to an alleged "ruling" that the tire
16 recycling project "fits under economic development." No evidence of any "ruling" was
17 provided by the requester or by the subject. (Complaint, Tab B, p.10), (Interview with
18 Supp, Investigator's Report, Tab A, p.8). H.E.A.R.T. used the City-owned office space
19 until 2005, when it moved to its own building, where it remained until 2007, when it
20 ceased its business activities due to a lack of funds. An audit of the City financial
21 records presented during the December 11, 2007 meeting noted that H.E.A.R.T. failed
22 to make agreed-upon payments to the City for the land purchase. (Complaint, Tab B,
23 p.71).

24 Supp claims that although H.E.A.R.T. used City offices, the equipment in those
25 offices was purchased and owned by H.E.A.R.T. (Response, Tab D, p.1); however, the
26 requester claims otherwise but did not provide evidence to support his claim. Even if
27 such evidence existed, the two-year statute of limitation in NRS 281A.280 prevents any
28 further action on this matter; the acts took place in 2005 and expired by the end of

1 2007. Furthermore, the limitations period does not seem to be extended by the
2 "reasonable discovery" clause provided in the same statute because the requester was
3 aware of the facts years before filing the Complaint.

4 The Complaint also alleges that Supp used her position to grant an unwarranted
5 privilege to Cal Stark, a member of the Wells City council, when she assisted him with
6 an insurance claim for his mobile home. (Complaint, Tab B, p. 9). In addition, the
7 requester alleges that Stark received over \$13,000 after a February 21, 2008
8 earthquake destroyed his mobile home and that his claim did not fit under the
9 "guidelines" established by the Earthquake Committee. (Complaint, Tab B, p. 9),
10 (Exhibit 5).

11 Supp stated that she wrote a letter to Nevada Department of Emergency
12 Management asking for assistance for Stark; however, she did the same for other
13 residents. Mainly, Stark's claim was rejected because his mobile home was not
14 considered real property. (Exhibit 6, p.2), (Response, Tab D, p. 2). Stark also applied
15 for relief funding through the local Earthquake Committee, and he was granted the
16 amount. (Exhibit 6, pp. 4, 5, 20, 23, and 26). I found that no evidence was that Supp
17 granted any special privileges to Stark.

18 Finally, the Complaint alleges that following the February 2008 earthquake,
19 Supp engaged in efforts to provide City funds for repairs to "Hangar 13" owned by her
20 father-in-law Bud Supp. The requester alleges that repairs to a concrete floor were
21 made; however, the requester himself provides contradicting evidence by stating that
22 "[a] few days later Jolene told me that she had talked with [the insurance adjuster] and
23 they were going to drop hangar # 13/Bud's from the claim." (Complaint, Tab B, p.149).
24 As it appears, the hangar in need of repairs was incorrectly marked by the inspectors
25 as the hanger belonging to Bud Supp; however, Bud Supp's hangar does not fit the
26 description of hangar 13 mainly because his hangar has no concrete floor; it has a
27 gravel and dirt floor. (Response, Tab D, pp. 2-3).

1 **Telephone Interview with David Linge on August 9, 2010.**

2 I spoke to David Linge on August 9, 2010 and asked him about the allegations
3 against Supp. Linge reiterated the allegations in Complaint and stated that Supp has
4 been using her public office to benefit her own interest for several years and that she
5 started H.E.A.R.T. "out of the City hall" using governmental time and property. I asked
6 Linge if he was aware of the alleged misconduct at the time of its occurrence and if so,
7 why he didn't file the Complaint earlier. Linge stated that he thought about filing the
8 complaint before and in fact, he went to the Nevada Attorney General's office;
9 however, upon entering the premises he changed his mind as he was concerned that
10 his City of Wells employment would be terminated if he filed a complaint.

11
12 **Telephone Interview with Jolene Supp on August 16, 2010.**

13 I interviewed Supp on August 16, 2010 and asked her about the multiple
14 allegations of violations of Ethics in Government Law. Supp vehemently denied any
15 wrongdoing and stated that the Complaint could be retribution for "personnel issues"
16 related to the requester. I asked Supp to explain the "ruling" that allowed H.E.A.R.T. to
17 use the City-owned office space without charge. (Complaint, Tab B, p.10). Supp claims
18 that before H.E.A.R.T. was allowed to use the City hall, she called Nevada
19 Commission on Ethics and discussed the matter with an individual believed to be Stacy
20 Jennings/Woodbury. No record of this conversation was found and no Request for
21 Advisory Opinion was filed. Supp also stated that she spoke to the Wells City attorney,
22 Robert Goicoechea, who advised her that the use of the City offices was possible
23 under "economic development." However, Supp stated that no written document shows
24 H.E.A.R.T. was given permission.

25 As to the allegation that Supp assisted Councilman Stark to apply and receive
26 unwarranted funds from the Nevada Department of Emergency Management (DEM)
27 and the Wells-based Earthquake Committee, the evidence is as follows: Supp stated
28 that she only wrote a letter to Nevada DEM and she did the same for other residents.

1 Stark's claim was denied by the Nevada DEM; therefore, he did not receive any alleged
2 unwarranted benefits. Finally, there is no evidence that Supp had any influence on
3 Earthquake Committee decision; the matter was discussed, voted on, and Stark
4 received financial assistance as many other residents (including the requester) did.

5 Finally, as to the allegation related to "hangar 13," Supp stated that the
6 requester made an assumption that repairs to a concrete floor were done on her
7 family's hangar, which is impossible as the hangar owned by Bud Supp has no
8 concrete floor.

- 9 **1. Allegation one: Between September 2002 and November 2007,**
10 **Supp violated NRS 281A.400(1) by accepting an economic**
11 **opportunity for Humboldt Environmental and Renewable**
12 **Technologies (H.E.A.R.T.) a corporation in which she has a**
pecuniary interest.

13 The allegation appears to be barred by the statute of limitations.

14 NRS 281A.280 provides in relevant part:

15 The Commission has jurisdiction to investigate and take appropriate
16 action regarding an alleged violation of this chapter by a public officer
17 or employee or former public officer or employee in any proceeding
18 commenced by:

- 19 (a) The filing of a request for an opinion with the Commission; or
20 (b) The Commission on its own motion,
21 **within 2 years after the alleged violation** or reasonable discovery of
22 the alleged violation. (Emphasis added).

- 23 **2. Allegation two: Between September 2002 and November 2007,**
24 **Supp violated NRS 281A.400(2) by using her position in**
25 **government to further the interest of H.E.A.R.T.**

26 The allegation appears to be barred by the statute of limitations provided
27 in NRS 281A.280.

- 28 **3. Allegation three: On May 5, 2008, Supp violated NRS 281A.400(2)**
by using her position in government to secure an unwarranted
insurance privilege, preference and exemption for Councilman Cal
Stark.

1 NRS 281A.400(2) provides in relevant part:

2 A public officer or employee shall not use the public officer's or
3 employee's position in government to secure or grant unwarranted
4 privileges, preferences, exemptions or advantages for the public
5 officer or employee, any business entity in which the public officer or
6 employee has a significant pecuniary interest, or any person to whom
7 the public officer or employee has a commitment in a private capacity
8 to the interests of that person.

9
10 As to the allegation that Supp assisted Councilman Stark in applying for and
11 receiving unwarranted insurance benefits, no evidence of such conduct exists beyond
12 the Complaint itself.

13
14 **4. Allegation four:** Following the February 21, 2008 Wells
15 earthquake, Supp violated NRS 281A. 400(2) by using her position
16 in government to secure an unwarranted insurance privileges,
17 preferences and exemptions to her father-in-law Bud Supp.

18 As to the allegation that Supp secured an unwarranted privileges for her father-
19 in-law Bud Supp in contravention of NRS 281A.400(2), the evidence is as follows:

20 The Complaint alleges that repairs to a concrete slab in Bud Supp's hangar
21 were made using by City funds. The evidence refutes the allegation as the hangar in
22 question has no concrete slab and does not fit the description noted. Further, the
23 statute of limitations bars action on this allegation, under NRS 281A.280.

24
25 **5. Allegation five:** Between April 13, 2004 and March 14, 2006 Supp
26 violated NRS 281A.400(3) by participating as an agent of
27 government in the negotiation of a contract between the City of
28 Wells and H.E.A.R.T.

The allegation appears to be barred by the statute of limitations provided
in NRS 281A.280.

6. Allegation six: Between 2004 and 2005, Supp violated NRS
281A.400(7) by using governmental time, property, equipment or
other facility to benefit her personal and financial interest as the
president of H.E.A.R.T.

1 The allegation appears to be barred by the statute of limitations provided
2 in NRS 281A.280.

3
4 **7. Allegation seven: Between September 2002 and November 2007,**
5 **Supp violated NRS 281A.400(9) by attempting to influence a**
6 **subordinate to further her interest in H.E.A.R.T.**

7 The allegation appears to be barred by the statute of limitations provided
8 in NRS 281A.280.

9
10 **8. Allegation eight: Between September 2002 and November 2007,**
11 **Supp violated NRS 281A.400(10) by using her position in**
12 **government to seek a contract on behalf of H.E.A.R.T.**

13 The allegation appears to be barred by the statute of limitations provided
14 in NRS 281A.280.

15
16 **9. Allegation nine: Between September 2002 and November 2007,**
17 **Supp violated NRS 281A.410 by failing to file disclosure of**
18 **representation of a private person before public agency.**

19 The allegation appears to be barred by the statute of limitations provided
20 in NRS 281A.280.

21
22 **10. Allegation ten: Between September 2002 and November 2007,**
23 **Supp violated NRS 281A.420(1)¹ by failing to disclose her**
24 **pecuniary interest in H.E.A.R.T. during numerous City council**
25 **meetings.**

26 The allegation appears to be barred by the statute of limitations provided
27 in NRS 281A.280.

28

¹ NRS 281A.420(4) at the time of the alleged conduct

1 **11. Allegation eleven:** Between September 2002 and November
2 2007, Supp violated NRS 281A.420(3)² by failing to abstain from
3 H.E.A.R.T-related discussion during numerous City council
4 meetings.

5 The allegation appears to be barred by the statute of limitations provided
6 in NRS 281A.280.

7 **12.** Between June 22, 2004, Supp violated NRS 281A.430 by entering
8 into a contract between H.E.A.R.T. and the City of Wells.

9 The allegation appears to be barred by the statute of limitations provided
10 in NRS 281A.280.

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12 Dated this 31 day of August 2010.

13
14 NEVADA COMMISSION ON ETHICS

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19 Mike Vavra, MPA
20 Investigator

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² NRS 281A.420(1) at the time of the alleged conduct