



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

**In the Matter of the Request for Opinion
Concerning the Conduct of RUSTY TYBO,
Mayor, City of Wells,
State of Nevada,**

Request for Opinion No.: 10-29C

Subject. /

INVESTIGATOR'S REPORT (Tab A)

Introduction.

1. Request for Opinion No. 10-29C (Ethics Complaint). (Tab B):

On April 28, 2010, Requester David Linge filed an Request for Opinion against public officer Rusty Tybo, mayor of the City of Wells, alleging that Tybo violated various provisions of the Ethics in Government Law set forth in NRS 281A, including: 1) NRS 281A.400(2), when he used his position in government to grant unwarranted privileges and advantages to Humboldt Environmental and Renewable Technologies (H.E.A.R.T.) by allowing private business to use the City-owned emergency generator, 2) NRS 281A.400(7), when he used governmental time, property, equipment and other facility by arranging for the City-owned generator to be moved to private property by city employees, and 3) NRS281A.400(9) when he attempted to influence a subordinate Dennis Calton by requesting him to move the City-owned emergency generator to H.E.A.R.T. property.

2. Jurisdiction:

The Nevada Commission on Ethics has jurisdiction over public officers and public employees pursuant to NRS 281A.280. As the elected mayor of Wells, Tybo is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on

1 Ethics has jurisdiction to investigate and take appropriate action in this matter pursuant
2 NRS 281A.280 and NRS 281A.440.

3
4 **3. Issues:**

5 The issues are whether Tybo violated:

- 6
7 **1.** NRS 281A.400(2) by using his position in government to grant
8 unwarranted privileges and advantages to H.E.A.R.T. by allowing the
9 private business to use the City-owned emergency generator.
10 **2.** NRS 281A.400(7) by using governmental time, property, equipment
11 or other facility by arranging for the City-owned generator to be
12 moved to private property by city employees.
13 **3.** NRS 281A.400(9) by attempting to influence a subordinate Dennis
14 Calton by requesting him to move the City-owned emergency
15 generator to H.E.A.R.T. property.
16

17 **4. Notices to Subject: (Tab C):**

18 The Commission issued a Notice to Subject of RFO 10-29C to Tybo on May 7,
19 2010. A postal service record indicates that Tybo received the Notice on May 14, 2010.
20 (Tab C).
21

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

23 Tybo's legal counsel, Rebecca Bruch Esq., of Erickson, Thorpe et al., submitted
24 a response to the Ethics Complaint on July 12, 2010. The response indicated that Tybo
25 did not violate any provisions of NRS 281A and that the allegations are barred by the
26 two-year statute of limitation as provided in NRS 281A.280. (Response, Tab D).
27
28

1 **Investigation Resources:**

2
3 I interviewed the following individuals and reviewed their responses:

4
5 **1. Witnesses interviews and responses. (Tab E):**

- 6 • Rusty Tybo, subject, telephone interview on August 16, 2010,
7 (Investigator's Report, Tab A, p.4) and Response, Tab D.
- 8 • David Linge, requester, telephone interview on August 9, 2010.
9 (Investigator's Report, Tab A, p.4).
- 10 • Dennis Calton, witness, on August 10, 2010. (Investigator's Report, Tab A,
11 p.5).

12
13 **2. Documents. (Tab F):**

14 I obtained and reviewed the following relevant documents and materials:

- 15
16 • Nevada Secretary of State Records, H.E.A.R.T. (Exhibit 1).
- 17 • City of Wells, Nevada: contact list. (Exhibit 2).

18
19 **3. Relevant Statutes and Commission Opinions. (Tab G):**

- 20 • NRS 281A.280
- 21 • NRS 281A.400(2), (7), and (9).

22
23 **Investigative findings:**

24 Rusty Tybo is the mayor of the City of Wells, Nevada. He was first elected in
25 2000 and his current term expires in November 2010.

26 The Complaint alleges that Tybo, a "H.E.A.R.T. employee and investor" directed
27 city employee Dennis Calton to move a City-owned emergency generator to the
28 property of H.E.A.R.T., a privately owned corporation. By his actions, Tybo is alleged to

1 have used his public position to grant unwarranted privileges to his employer,
2 H.E.A.R.T., used government time, property and equipment, and influenced a
3 subordinate by asking Calton, a city employee, to move the generator.

4 The Complaint incorrectly describes Tybo as an employee of H.E.A.R.T.
5 H.E.A.R.T. never employed Tybo and he was never on the board of directors.
6 (Response, Tab D, p.2). Rather, he and his wife invested \$2, 000 in the corporation.

7 In addition, the Complaint alleges that the conduct occurred "sometime in
8 spring/early summer of 2007. (Complaint, Tab B, p.3). Based on the two-year statute of
9 limitation provided in NRS 281A.280, the Commission's ability to inquire into this
10 allegation would have expired "sometime in spring/early summer" of 2009.

11
12 **Telephone interview with Rusty Tybo on August 16, 2010.**

13 I spoke to Tybo on August 16, 2010, and asked him about the allegations. Tybo
14 stated that he knew a generator was located at the H.E.A.R.T. property but has no
15 recollection of directing anyone to move the generator there. As to his relation to
16 H.E.A.R.T., Tybo reiterated his Response (Response, Tab D) stating that he was never
17 employed by H.E.A.R.T. and that he only assisted in the initial stages of the project but
18 earned no compensation.

19
20 **Telephone Interview with David Linge on August 9, 2010.**

21 I spoke to the Requester, David Linge, on August 9, 2010 and asked him about
22 the allegations against Tybo. Linge stated that although he has no first-hand
23 knowledge, Calton had told him that Tybo directed him to move the City-owned
24 generator to H.E.A.R.T. property. Furthermore, I asked Linge if he was aware of the
25 alleged misconduct at the time of its occurrence and if so, why he hadn't filed the
26 Complaint earlier. Linge stated that he thought about filing the complaint and in fact, he
27 went to Nevada Attorney General's office; however, he changed his mind as he was
28 concerned that his city employment would be terminated after filing a complaint.

1 **Telephone Interview with Dennis Calton on August 10, 2010.**

2 I interviewed Calton on August 10, 2010 and asked him about the allegation that
3 Tybo directed him to move the City-owned generator to the H.E.A.R.T. building. Calton
4 stated that he had no independent recollection of such request and that he had nothing
5 further to add.

- 6 **1. Allegation one:** During spring or early summer of 2007, Tybo
7 violated NRS 281A.400(2) by using his position in government
8 to grant unwarranted privileges, preferences, exemptions or
9 advantages to his employer H.E.A.R.T. by allowing them to use
10 the City-owned emergency generator.

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

12 A public officer or employee shall not use the public officer's or
13 employee's position in government to secure or grant unwarranted
14 privileges, preferences, exemptions or advantages for the public
15 officer or employee, any business entity in which the public officer or
16 employee has a significant pecuniary interest, or any person to whom
17 the public officer or employee has a commitment in a private capacity
18 to the interests of that person.

19 As noted above, Tybo was never employed by H.E.A.R.T.; he was only minor
20 investor. In addition, the key witness who Tybo allegedly directed to move the
21 generator has no recollection of such event. Finally, even if the allegations are deemed
22 true, they would be most likely barred by the two-year statute of limitation.

23 NRS 281A.280 provides in relevant part:

24 The Commission has jurisdiction to investigate and take appropriate
25 action regarding an alleged violation of this chapter by a public officer
26 or employee or former public officer or employee in any proceeding
27 commenced by:

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

- 2. Allegation two:** During spring or early summer of 2007, Tybo
 violated NRS 281A.400(7) by using governmental time,
 property, equipment or other facility by arranging for a city
 employee to move the City-owned generator to privately-owned
 property.

1
2 NRS 281A.400(7) provides in relevant part:

3 a public officer or employee shall not use governmental time, property,
4 equipment or other facility to benefit the public officer's or employee's
5 personal or financial interest. This subsection does not prohibit:

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

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

12 (2) The use does not interfere with the performance of the public
13 officer's or employee's public duties;

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

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

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

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

21
22 Other that the allegation, no evidence that Tybo used governmental time,
23 property, equipment or other facility to move the City-owned generator to privately-
24 owned property was discovered. Additionally, based on the date of occurrence, the
25 allegation appears to be beyond the two-year statute of limitation as provided by NRS
26 281A.280.

27
28 **3. Allegation three: During spring or early summer of 2007, Tybo
violated NRS 281A.400(9) by attempting to influence
subordinate Dennis Calton by requesting him to move the City-
owned emergency generator to H.E.A.R.T. property**

NRS 281A.400(9) provides in relevant part:

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.

As to the allegation that Tybo attempted to influence a subordinate, no evidence
was discovered. Additionally, based on the date of occurrence, the allegation appears
to be beyond the two-year statute of limitation as provided by NRS 281A.280.

1 Dated this 31 day of August 2010.

2

3 NEVADA COMMISSION ON ETHICS

4

5

6

A handwritten signature in black ink, appearing to read "Mike Vavra", is written over a horizontal line. The signature is cursive and somewhat stylized.

7

8

Mike Vavra, MPA
Investigator

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30