



**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. /

**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 Rusty Tybo, Mayor of the City of Wells, NV ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached to the Investigator's Report. I hereby approve that Report and attach it for the consideration of the two-commissioner investigatory panel.

Allegations:

The request for opinion, filed April 28, 2010, alleges that in the late spring or early summer of 2007, Tybo violated:

1. NRS 281A.400(2) by using his position in government to grant unwarranted privileges and advantages to a private company by allowing it to use a City-owned emergency generator.
2. NRS 281A.400(7) by using governmental time, property, equipment or other facility by moving the City-owned generator to private property.
3. NRS 281A.400(9) by attempting to influence subordinate Dennis Calton by requesting him to move the City-owned emergency generator to private property.

Recommendation:

After reviewing the evidence, NRS 281A.280, and NRS 281A.400(2), (7) and (9), I recommend that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the allegations that Tybo violated the Ethics in Government Laws because the conduct complained of allegedly took place outside of the Commission's two-year limitations period.

Analysis:

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.

NRS 281A.280 provides in relevant part:

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

(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).

On consideration of only the emphasized portion of NRS 281A.280, i.e., the Commission has jurisdiction in any proceeding commenced by the filing of a request within 2 years after the alleged violation, the panel must conclude that the conduct allegedly took place in mid-2007. The request did not allege that the conduct could not have been reasonably discovered at the time it was undertaken.

As a result, the Commission's "statute of limitations" removes the alleged acts from the Commission's jurisdiction because it expired in mid-2009.

Conclusion:

I recommend that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission render an opinion on all of the above allegations against Rusty Tybo, including the alleged violations of NRS 281A.400(2), (7) and (9).

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

 _____ Date: 9/2/10
Caren Jenkins, Esq.
Executive Director