STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of CAL STARK, Councilman, City of Wells, State of Nevada,

Subject. /

Request for Opinion No.: 10-30C

INVESTIGATOR'S REPORT (Tab A)

Introduction.

1. Request for Opinion No. 10-30C (Ethics Complaint). (Tab B):

On April 28, 2010, Requester David Linge filed an Request for Opinion against public officer Cal Stark, a member of the City of Wells City Council, alleging that Stark violated various provisions of the Ethics in Government Law set forth in NRS 281A, including: 1) NRS 281A.400(1), when he sought an economic opportunity which would tend to improperly influence a reasonable public officer to depart from the faithful discharge of his duties by applying for and receiving earthquake-related compensation to which he was not entitled, 2) NRS 281A.400(2) when he received an unwarranted privileges, preferences, exemptions or advantages by receiving compensation for earthquake-related damages on his house to which he was not entitled, and 3) NRS 281A.400(9) when he attempted to influence subordinate Jolene Supp to assist him to file an insurance claim.

2. Jurisdiction:

The Nevada Commission on Ethics has jurisdiction over public officers and public employees pursuant to NRS 281A.280. As a City of Wells councilman, Stark is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics has jurisdiction to investigate and take appropriate action in this matter pursuant

NRS 281A.280 and NRS 281A.440.

3. Issues:

The issues are whether Stark violated:

1. NRS 281A.400(1) by seeking an economic opportunity which would tend to improperly influence a reasonable public officer to depart from the faithful discharge of his duties by applying for and receiving earthquake-related compensation to which he was not entitled.
2. NRS 281A.400(2) by receiving an unwarranted privileges, preferences, exemptions or advantages by accepting compensation for earthquake-related damages on his house to which he was not entitled to.
3. NRS 281A.400(9) by attempting to influence subordinate Jolene Supp to assist him with filing an insurance claim.

4. Notices to Subject: (Tab C):

The Commission issued a Notice to Subject of RFO 10-30C on May 7, 2010. A postal service record indicates that Stark received the Notice on May 12, 2010. (Tab C).

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

Stark's legal counsel, Rebecca Bruch Esq., of Erickson, Thorpe et al., submitted a response to the Ethics Complaint on July 12, 2010. The response indicated that Stark did not violate any provisions of NRS 281A as he did not seek or receive any compensation to which he was not entitled. Stark stated that he applied for financial help through the local Earthquake Committee and through Nevada Department of Emergency Management (DEM) after his home was damaged in a February 2008 earthquake. He received a payment from the Earthquake Committee but assistance

from Nevada DEM was not granted as his property did not qualify. (Response, Tab D, p.2). As to the allegation of influencing City Manager Supp, Stark denied the allegation. He claims he never pressured or attempted to influence anyone; he only asked for assistance with filing the proper documents as many other residents did.

Investigation Resources:

I interviewed the following individuals and reviewed their responses:

1. Witnesses interviews and responses. (Tab E):

- Cal Stark, subject, telephone interview on August 16, 2010. (Investigator's Report, Tab A, pp. 4-5), and Response, Tab D.
- David Linge, requester, telephone interview on August 9, 2010. (Investigator's report, Tab A, p. 5).
- Jolene Supp, witness, telephone interview on August 16, 2010. (Investigator's Report, Tab A, p. 5).

2. Documents. (Tab F):

I obtained and reviewed the following relevant documents and materials:

- City of Wells Resolution 08-04. (Exhibit 1).
- Letter from City Manager Supp to Nevada Department of Emergency Management dated May 5, 2008. (Exhibit 2).
- Minutes from the Wells Earthquake Committee on May 12, 2008 and June 2, 2008. (Exhibit 3).
- Minutes from the City of Wells Council meeting on June 10, 2008. (Exhibit 4).

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

- NRS 281A.400(1), (2), and (9).

Investigative findings:

Cal Stark is a member of the City of Wells City Council; he was first elected in 2000 and his current term expires in 2012.

The Complaint alleged that Stark used his public position to apply for and receive financial compensation for damage caused by a February 21, 2008 earthquake. According to the Complaint, Stark was not entitled to the compensation he received. In addition, Stark allegedly used his position to influence City Manager Jolene Supp to assist him with filing an earthquake-related claim with the Nevada Department of Emergency Management.

As to the compensation Stark received, the allegation is that the amount of more than $ 13,000 did not comply with the guidelines set by the City of Wells Resolution 10-84. (Complaint, Tab B p. 3), (Exhibit 3). However, the subject offered a different perspective, claiming that although the Resolution called for compensation up to $ 5,000, it also stated that the amount "may be greater if special circumstances warrant." (Exhibits 1, 3 and 4). Because his home was considered a total loss, Stark argued that his circumstances were special; the Earthquake Committee agreed and the City Council made the final approval. (Exhibits 3 and 4).

Telephone Interview with Cal Stark on August 16, 2010.

I spoke to Cal Stark on August 16, 2010 and questioned him as to the allegations. Stark denied any wrongdoing and stated that he properly applied for compensation with the Earthquake Committee; the matter was voted on and approved. Stark stated that he received more than the maximum $5,000 because of special circumstances.[1] In addition, he was not awarded funds and did not receive assistance

[1] The complaint failed to disclose that the requester received compensation of approximately $ 15,000 from the same Committee.

from Nevada DEM because his property did not qualify. (Response, Tab D, pp. 2-4).

Telephone Interview with David Linge on August 9, 2010.

I spoke to David Linge on August 9, 2010 and asked him about the allegations against Stark. Linge reiterated the allegations in the Complaint and stated that Stark was not entitled to the amount of payment he received and that he used his public position to influence City Manager Supp to apply for additional benefits through Nevada DEM.

Telephone Interview with Jolene Supp on August 16, 2010.

I interviewed Supp on August 16, 2010 and asked her about her involvement in Councilman Stark's claim. Supp stated that she only assisted Stark to apply for funds from the Nevada Department of Emergency Management by writing a letter and added that she did the same for other residents whose property was damaged. However, Stark's claim was denied by the Nevada DEM, therefore, he did not receive any benefits as was alleged. He received compensation from the Earthquake Committee but the matter was discussed, voted on and approved by that entity; Supp had no influence on that decision. (Exhibits 3 and 4).

1. **Allegation one:** Between May 5, 2008 and June 10, 2008[2], Stark violated NRS 281A.400(1) when he sought earthquake-related compensation to which he was not entitled which would tend to improperly influence a reasonable public officer to depart from the faithful discharge of his duties.

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

> A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from

[2] The period from May 5, 2008 to June 10, 2008 refers to the following: May 5, 2008: date of letter to Nevada DEM. May 12, 2008 and June 2, 2008: the Earthquake Committee meetings. June 10, 2008: Final approval of reimbursements proposed by the Earthquake Committee.

> the faithful and impartial discharge of the public officer's or employee's public duties.

As to the allegation that Stark sought an improper economic opportunity, the evidence is as follows:

The Complaint alleged that Stark asked City Manager Supp to assist him with filing a claim for earthquake-related compensation with the Nevada Department of Emergency Management. Subsequently, the complaint somewhat implies that because of Supp's assistance, Stark would be influenced to favor Supp in the discharge of his public duties. Stark asked for assistance with filing the claim with Nevada DEM but so did many other residents of Wells. The evidence shows that Stark did not receive any compensation from Nevada DEM, as his property did not qualify.

Furthermore, the compensation Stark received from the Earthquake Committee appears to have been awarded under the proper procedures and there is no evidence that Stark or anyone else influenced the Committee to approve Stark's claim or grant him any special consideration.

2. **Allegation two:** Between May 5, 2008 and June 10, 2008, Stark violated NRS 281A.400(2) by using his position in government to secure unwarranted privileges, preferences and exemptions by filing a claim with Nevada DEM and Earthquake Committee.

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

> 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 to the allegation that Stark applied for and received unwarranted compensation from Nevada DEM and Earthquake Committee, the evidence is as follows:

Stark received no compensation from Nevada DEM. The Earthquake Committee appears to have followed the proper procedure and there is no evidence that Stark or anyone else influenced the Committee to approve Stark's claim or grant him any special consideration affecting the outcome or the size of his award.

3. **Allegation three:** On May 5, 2008, Stark attempted to influence subordinate Jolene Supp by requesting assistance with filing an earthquake-related claim with Nevada DEM.

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

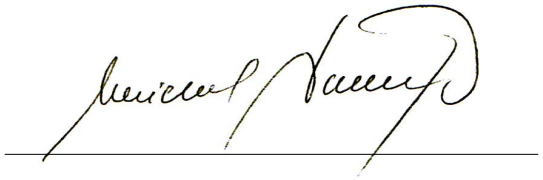
> A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

As to the allegation that Stark attempted to influence City Manager Jolene Supp requesting her to assist his filing of an earthquake-related claim with the Nevada DEM, the evidence is as follows:

Stark vehemently denies pressuring or any way influencing Supp into filing his claim with Nevada DEM. Stark stated that he and many other residents asked for Supp's assistance to ensure they followed the proper filing procedure. Importantly, Supp denied being pressured or influenced by Stark in any way; she stated that assisting residents in need was her public duty and Stark was only one of many who asked her for assistance.

Dated this 31 day of August 2010.

NEVADA COMMISSION ON ETHICS



Mike Vavra, MPA, Investigator