



In the Matter of the Request for Opinion
Concerning the Conduct of
STEVEN HORSFORD, Senator,
State of Nevada,

Request for Opinion No.: 10-79C

Subject. /

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The following is the Executive Director's recommendation based on consideration and investigation of the Request for Opinion attached as Tab B hereto regarding Senator Steven Horsford ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached as Tab D. Additional information compiled by the Commission's Investigator is attached for the Investigatory Panel's consideration.

Facts:

In the summer of 2010, Senator Steven Horsford signed a letter printed on letterhead from the "Victory 2010" Political Action Committee ("PAC") as its President, soliciting financial support for the PAC's articulated mission to support democratic candidates for State Senate. The PAC shares an address with Horsford's district office. The letter announced that donors at various levels would be thanked with various levels of benefits, including private dinners, receptions, luncheons or other time to meet with various Democratic legislative leaders and Senate committee chairpersons. The larger the contribution, the smaller and more "private" of an event with legislators was offered to the donor.

Shortly thereafter, the letters became public. The media responded vehemently arguing that Horsford had attempted to improperly influence lobbyists to "pay to play" - - that the letter delivered an ultimatum that to gain access to Senate Democrats, a donation to the PAC would be required in a *quid pro quo* arrangement.

Although the letter did not threaten to withhold access without a contribution or infer that Democrat legislators would shun those who did not donate, in response to the media feedback, Senator Horsford and Victory 2010 PAC rescinded the letter and discontinued the solicitation program to avoid the appearance of any impropriety. Victory 2010 cancelled all pledges made to the program and returned all donations that had already been received in response to the letter. No access to Senate Democratic leaders was provided in response to the contributions pledged or received.

Allegations and Subject's response:

The main allegations are:

1. NRS 281A.400(1) - that Senator Horsford sought and accepted a gift or economic opportunity by selling access to high ranking legislative leaders. NRS 281A.400(1) states that "a public officer or employee shall not seek or accept any gift . . . or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties."

Senator Horsford denies that access to him or other legislators ever was conditioned on contributions to the PAC. He did not seek or accept any contribution in his personal or public capacity; rather he solicited contributions on behalf of a bona fide PAC. Additionally, political and campaign contributions have never been considered gifts or even a pecuniary interest under NRS 281A.400.

2. NRS 281A.400(2) - that Senator Horsford used his position as Senate Majority Leader to secure unwarranted privileges, preferences or advantages for himself and for Victory 2010, and its beneficiaries, who include his fellow Senate Democrats. NRS 281A.400(2) provides "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. . . . "Unwarranted" means without justification or adequate reason."

Senator Horsford denies having any pecuniary interest in the non-profit PAC, and he neither secured nor accepted any unwarranted benefit for himself or the PAC by using his position as an elected official or as the future Majority Leader of the Nevada Senate.

3. NRS 281A.400(4) - that donations to Victory 2010 PAC were to be personal augmentation or compensation to Senator Horsford from a private source for the performance of the senator's public duties. NRS 281A.400(4) states "a public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee."

In his response, Horsford claims that political contributions to the PAC did not flow to Senator Horsford for extra compensation for the performance of his duties as state Senator or Majority Leader, nor were they intended to be. No evidence exists that Horsford accepted any compensation from any private source for performing his public duties.

Analysis and Recommendation:

While the solicitation letter from Victory 2010 caused quite a media stir, no credible evidence was provided to support the allegation that Senator Horsford sought or accepted any donation or gift for his own benefit through the letter or the PAC. All solicitation was made on behalf of the PAC, which appears to be a legitimate vehicle to solicit contributions to support democratic candidates. In addition, the letter made no threats that a failure to donate would result in a lack of access to legislative leaders, nor was there a promise that a donor would receive any unwarranted or extra benefit from a legislator as a "thank you." The only benefit offered was an invitation to a small or large event at which legislative leaders would be in attendance. Nothing more.

Had the pledges and donations been accepted by the PAC and then were directed to Senator Horsford, or had access been provided only to donors to the PAC, or any of several other scenarios, then the allegations in this RFO may have more merit; however, the PAC rescinded the program, returned the donations and cancelled the pledges before any violations of NRS 281A might have occurred. Speculation about what might have happened had the program moved forward is an inappropriate undertaking for the Commission or this Panel.

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.

After reviewing the evidence, NRS 281A.400 and the related subsections, I recommend that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the allegations that Senator Steven Horsford acted in violation of NRS 281A.400(1), NRS 281A.400(2) or NRS 281A.400(4), as the minimal level of any reliable and competent form of proof was not provided, and the material that was provided was insufficient to support a reasonable belief that the Commission should hear the matter and render an opinion.


Caren Jenkins, Esq.
Executive Director

Date: January 4, 2011