STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

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

Public Officer.
_____/

Request for Opinion No. 10-79C

PANEL DETERMINATION

NRS 281A.440(5); NAC 281A.440

Facts and Jurisdiction

The Nevada Commission on Ethics has received a Request for Opinion (RFO) from a citizen regarding conduct of STEVEN HORSFORD, Senator, State of Nevada, alleging certain violations of the Ethics in Government Law set forth in Nevada Revised Statutes Chapter 281A. At the time of the alleged conduct, Senator Horsford was, and still is, a member of the Nevada Senate, an elected public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of elected public officers pursuant to NRS 281A.280. Therefore, facially it appears that the Commission may have jurisdiction in this matter.

However, on further review, Senator Horsford allegedly undertook all of the conduct in his capacity as the President of a committee for political action known as the "Victory 2010 PAC". The activities of such political action committees (PAC) are subject to a specific regulatory regime set out in NRS Chapter 294A, the administration and enforcement of which is the responsibility of the Office of the Secretary of State. Since the Nevada Legislature has established a comprehensive and detailed regulatory framework over activities of campaign practices and political action committees under NRS Chapter 294A, implemented by regulations adopted by the Secretary of State in NAC Chapter 294A, it appears that the Legislature intended that conduct alleged in this RFO be governed by NRS Chapter 294A rather than NRS Chapter 281A, and that the Secretary of State, rather than the Ethics Commission, is specifically and preemptively vested with the duty to ensure compliance with the statutes and regulations governing registration and reporting, solicitation, expenditure and use of contributions, and the code of fair campaign practices.

Therefore, the Investigatory Panel dismisses the RFO for lack of Commission authority to exercise jurisdiction over the subject matter, the alleged conduct of Senator Horsford and the Victory 2010 PAC.

Despite the fact that the RFO allegations relate solely to NRS Chapter 294A, and assuming for the sake of argument that the Commission had regulatory jurisdiction under NRS Chaper 281A based upon the acts alleged that Senator Horsford used his public position to seek or secure (a) a gift or economic opportunity for influence, (b) an unwarranted privilege or advantage for an entity in which he had a significant pecuniary interest, or (c) compensation for his duties as a public officer, the Investigatory Panel undertook a brief analysis as follows:

In the summer of 2010, Senator 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 meals or receptions to meet with various Democratic legislative leaders and Senate committee chairpersons. The larger the contribution, the smaller and more "private" of an event 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 received and returned all donations received in response to the letter. No access to Senate Democratic leaders was provided in exchange for any contribution pledged or received.

Commission staff presented the Investigatory Panel with the allegations in the RFO as follows:

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 denied 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 argued that 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 claimed that no contributions to the PAC flowed to him as extra compensation for the performance of his duties as state Senator or Majority Leader, nor were they intended to. No evidence exists that Horsford accepted any compensation from any private source for performing his public duties.

Panel Proceeding

On January 13, 2011, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Paul Lamboley and Erik Beyer reviewed the following: (1) Request for Opinion; (2) Mr. Horsford's response to the Request for Opinion, and (3) the Executive Director's Report and Recommendation. The following are the Panel's unanimous findings and conclusions as to each of the allegations:

1. The Nevada Commission on Ethics lacks jurisdiction to review the conduct alleged in the Request for Opinion, as all of the alleged conduct appears to be regulated by NRS Chapter 294A not NRS Chapter 281A, over which the the Office of the Secretary of State, not the Commission, has regulatory authority and jurisdiction.

2. Assuming, arguendo, the Commission had jurisdiction of the alleged conduct, credible evidence does not exist to support a finding of just and sufficient cause for the Commission to render an opinion whether Horsford violated NRS 281A.400 subsections (1), (2) or (4) by soliciting contributions on behalf of a Political Action Committee. The panel found that a minimum level of reliable and competent evidence did not exist to support a reasonable belief that the solicitation by Senator Horsford on behalf of Victory 2010 PAC were for other than campaign-related contribution to a political action committee or would otherwise qualify as a gift or economic opportunity, unwarranted advantage or compensation for public duties that would trigger application of provisions of NRS 281A.400. Nor is there any evidence that Senator Horsford had or would receive had any personal benefit or pecuniary interest in the proceeds of the solicitation by Victory 2010. Therefore, even if there were a basis for exercising jurisdiction, the Investigatory Panel would not refer the RFO allegations to the Commission for a hearing and the rendering of an opinion, and the RFO would be and is dismissed for lack of just and sufficient cause to do so.

Dated: January 24, 2011

Caren Jenkins

Caren Jenkins, Esq.
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I placed a true and correct copy of the **PANEL DETERMINATION in Request for Opinion No. 10-79C**, in an envelope and caused same to be mailed via certified mail, return receipt requested, through the State of Nevada Mailroom to Steven Horsford's counsel, Bradley Schrager, Esq., and a true and correct copy of the **PANEL DETERMINATION in Request for Opinion No. 10-79C** to Steven Horsford, and the Requester, Dennis Johnson, via regular mail through the State of Nevada Mailroom addressed as follows:

Bradley Schrager, Esq.
Jones Vargas Attorneys at Law
3773 Howard Hughes Parkway
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Las Vegas, NV 89169

Article No. 7010 0780 0001 0973 7963

Steven Horsford
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Las Vegas, NV 89032

U. S. Mail

Dennis Johnson
2489 Rockbridge Drive
Carson City, Nevada 89706

U. S. Mail

DATED: 1/29/2011

An employee, Nevada Commission on Ethics