



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

**In the Matter of the Request for Opinion  
Concerning the Conduct of JAY ELQUIST,  
City Councilman, City of Elko,  
State of Nevada**

**Requests for Opinion Nos.: 11-41C**

**Subject. /**

**EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION**

The Executive Director bases the following report and recommendation on the staff's consideration and investigation of the Third-Party Request for Opinion ("RFO") filed regarding the conduct of Jay Elquist, a public officer, and on his written response to the RFO, attached as exhibits to this report and recommendation, and the other materials attached hereto. The Executive Director provides her Report and Recommendation and its exhibits for the consideration of the two-commissioner investigatory panel ("Panel"), pursuant to the requirements of NRS 281A.240.

**Facts:**

**The Relevant Parties:**

Barrick Gold Corporation operates its Cortez Hills mine in Lander & Eureka Counties. Barrick and Kinross Gold Corporation each have a 50% interest in the Round Mountain gold mine in Nye County, but Kinross operates the site.

Elko City **Councilman Jay Elquist** was first elected in July 2005, and re-elected in July 2009. He is an electrical engineer and owns High Energy Engineering, and has an 11% interest in Intermountain Electric Contractors LLC. Intermountain was placed on the list of approved contractors approximately three years ago. The only work Intermountain has done for Barrick has been as a subcontractor at the Cortez Hills site. It has performed some work at the Round Mountain site, but the contract was with Kinross.

**Joe Elquist**, Councilman Jay Elquist's brother, is also an electrical engineer, and is co-owner of Advanced Electrical Designs.

Pedro Ormaza owns **Ormaza Construction** which is the managing contractor of the Rabbit Brush Run apartment complex project. He also has a part ownership in the land on which the project is being constructed.

## **The Events:**

On **February 8, 2011**, at the regular meeting of the Elko City Council, agenda item VI. J. "Review, consideration and possible action to an appeal filed appealing the decision of the Elko City Planning Commission which conditionally approved Conditional Use Permit No 10-10 . . . .", was heard. The Conditional Use Permit, requested by Ormaza Construction regarding the Rabbit Brush Run apartment project, was approved by the Planning Commission with conditions on January 4, 2011. A group of citizens who opposed the project immediately filed a Notice of Appeal, and the matter was placed on the February 8 City Council agenda. At the February 8 meeting, the Council dismissed the appeal and approved the permit with the conditions imposed by the Planning Commission.

Around **February 15, 2011**, Ormaza Construction hired Joe Elquist to review the electrical design of the Rabbit Brush Run apartment project. He was paid approximately \$2,500. Plans that were posted on Ormaza's website and were available on April 24, 2011, showed Joe Elquist's approval, and were attached to the RFO. However, there is no indication that the documents posted in April were available prior to the February 8, 2011 agenda item before the City Council or the April 12 follow-up meeting.

On **April 12, 2011**, the City Council held another meeting, and under agenda item VI. Petitions Appeals and Communications, it considered a request from Gary D. Woodbury, Esq. (the Requester in this RFO) to delay issuing the City's building permits for the Rabbit Brush Run project pending litigation of the Conditional Use Permit and matters related thereto. The Council discussed the procedural aspects of the matter - not the merits - and no action was taken.

Later, the parties appeared before the Fourth Judicial District Court in Elko regarding Mr. Woodbury's Application for a Temporary Restraining Order, which the Court denied. The apartment project moved forward.

Not until September 2011 and December 2011, in two separate issues of Mining Quarterly magazine, was it publicly announced that Barrick was financing the apartment complex project. The Commission's investigation revealed no publicly available information that Barrick was involved in the project before that time.

## **Allegations:**

The main allegation is that Elko City Councilman Jay Elquist used his position in government to grant unwarranted privileges, preferences and/or advantages to his brother, Joe Elquist (a person to whom he has a commitment in a private capacity) and Barrick (an entity with which he has a business relationship) when he discussed, considered and ultimately voted on approval of Conditional Use Permit 10-10 at a February 8, 2011 City Council meeting. , implicating NRS 281A.020, 281A.400(1), (2) and (10) and NRS 281A.420(1) and (3).

## **Relevant Nevada Revised Statutes (NRS):**

### **NRS 281A.020 Legislative findings and declarations.**

1. It is hereby declared to be the public policy of this State that:
  - (a) A public office is a public trust and shall be held for the sole benefit of the people.
  - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

### **NRS 281A.160 "Public officer" defined.**

1. "Public officer" means a person elected or appointed to a position which:
  - (a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and
  - (b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:
    - (1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
    - (2) The expenditure of public money; and
    - (3) The administration of laws and rules of the State or any county, city or other political subdivision.

### **NRS 281A.400 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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

2. 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 used in this subsection:

- (a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

- (b) "Unwarranted" means without justification or adequate reason.

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

### **NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.**

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:
  - (a) Regarding which the public officer or employee has accepted a gift or loan;
  - (b) In which the public officer or employee has a pecuniary interest; or
  - (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others, without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a

private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

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3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of others.

### **Analysis:**

This Investigatory Panel must address whether sufficient credible evidence exists to support a finding that Councilman Elquist, by participating in the February and April Council meetings and voting regarding the conditional use permit and the request for delay in issuing the building permit, could have violated ANY provision NRS 281A.

### **NRS 281A.420 (1) and (3)**

The investigation showed that it is unlikely that Elquist was aware that his brother would be hired to review the electrical plans for the apartment complex. No credible evidence was submitted or uncovered that he knew of Ormaza's intention to have his brother review the plans. Further, no information was available for Elquist to discover who the financier of the project was until well after the matter came before the Council. As a result, Elquist could not have disclosed any conflict of interest he may have had due to his commitment in a private capacity to the interests of his own company or his brother on February 8, 2011. Based on the lack of information readily ascertainable, I recommend that this Panel find that the evidence is insufficient to meet the just and sufficient cause standard, and to dismiss the allegations related to NRS 281A.420 in their entirety.

### **NRS 281A.400 (1), (2) and (10)**

Because Elquist and his licensed company were properly qualified as an electrical engineering firm to perform work for Barrick, it is reasonable that he and his firm would be listed as an approved contractor. No evidence was presented or discovered that Elquist sought or accepted any gift, favor or economic opportunity by being listed, and because Elquist was not aware of Barrick's involvement in the project, and could not have known because that information was not publicly available his status with Barrick could not have improperly influenced him to depart from the faithful discharge of his duties on the City Council.

Although Elquist's company is listed among the approved contractors for Barrick projects, no credible evidence was presented that Elquist used his position in government to assist his company to gain any unwarranted benefit three years ago when it gained approved status. Finally, nothing other than allegation was presented and no credible evidence was uncovered that Elquist used his position on the Council to secure any unwarranted benefit his brother or his brother's company to get the job reviewing the electrical drawings for Ormaza or denying the appeal of the Conditional Use Permit.

**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 RFO 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 RFO 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.

**Conclusion and Recommendation:**

I recommend that the Panel find that **sufficient credible evidence is not present** to support a reasonable belief that the Commission should hear this matter and render an opinion regarding Jay Elquist's alleged violations of NRS 281A.020, NRS 281A.400(1), (2) and (10), and NRS 281A.420(1) and (3), and further recommend that the Panel should dismiss this RFO in its entirety.

**I respectfully provide my recommendation to this honorable panel.**

  
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Caren Jenkins, Esc.  
Executive Director

Date: February 9, 2012