Nevada Commission on Ethics
REQUEST FOR OPINION
No. 11-55C

NEVADA COMMISSION ON ETHICS
THIRD PARTY REQUEST FOR OPINION
(ETHICS COMPLAINT)
NRS 281A.440.2
Please print or complete online.

3

1. Provide the name, title, public agency, address, and telephone number for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS 281A. ***(If more than one public officer or employee is alleged to have violated the law, use a separate form for each individual.)***

Name & Title:	Anita Wood, North Las Vegas City Councilwoman		
Public Agency:	City of North Las Vegas		
Address:	2222 Constitution Way		
City, State, Zip:	North Las Vegas, NV 89030	Telephone:	702-633-1500

2. Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. ***(You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)***

Check here ☑ if additional pages are attached.

Documentation and Narrative Attached.

3. Identify all persons who might have knowledge of the facts and circumstances you have described, *as well as* the nature of the testimony the person will provide. Include the address and telephone number for each person.

Check here ☐ if additional pages are attached.

Name & Title:	Anita Wood, North Las Vegas City Councilwoman		
Address:	2222 Constitution Way	Telephone:	702-633-1500
City, State, Zip:	North Las Vegas, NV 89030		
Nature of Testimony:	Voted on improper procedures.		

4. Attach two copies of all documents or items you believe provide credible evidence to support your allegations. NRS 281A.440.2(b)(1) requires you to submit all related evidence to support your allegations. NAC 281A.435.3 defines credible evidence as a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made within the complaint. Credible evidence does not include a newspaper article or other media report if the article or report is offered by itself.

State the total number of additional pages attached (including evidence) _____.

REQUESTER'S INFORMATION:

NAME: North Las Vegas Police Supervisors Association	E-MAIL: Cardinalel@nlvpsa.com
ADDRESS: 3525 W. Cheyenne ste. 102	
CITY, STATE, ZIP: North Las Vegas, NV 89032	
TELEPHONE 702-633-2900	CELL PHONE: 702-556-9968

By my signature below, I do affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief and I am willing to provide sworn testimony if necessary regarding these allegations.

Lorraine Cardinale
Signature

July 7, 2011
Date

Print Name: North Las Vegas Police Supervisors Association

Please return an original signed form, two copies of the form, and three copies of the supporting documents and evidence to:

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Forms submitted by facsimile will not be considered as properly filed with the Commission.
NAC 281A.255.3

NORTH LAS VEGAS
POLICE SUPERVISORS ASSOCIATION

LEONARD CARDINALE
PRESIDENT

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Ste. 204
Carson City, Nevada 89703

July 07, 2011

Re: Ethics Complaints

- Wade Wagner defeated Richard Cherchio by one vote during the General Election. During the June 15, 2011, City Council meeting it was explained that one voter in Ward 4, precinct 4306 voted out of precinct.

- The June 15, 2011 North Las Vegas City Council agenda showed, canvass the vote. During the meeting, outside counsel was brought in to advise the North Las Vegas Mayor and City Council. One option was to canvass and certify the vote. Another option was for the City Council to vote for another election and to perhaps, limit the election to the specific precinct where a vote came into question (Ward 4, Precinct 4306).

- During the June 15 meeting, Councilwoman Anita Wood disclosed that she gave money to Richard Cherchio for his campaign, her husband hung signs and she spent time making phone calls for the Richard Cherchio campaign. She specifically pointed out that she did not use her position as an elected official to influence voters. Councilman Robert Eliason also admitted that he gave Cherchio money for his campaign. Mayor Shari Buck disclosed that she gave money to Richard Cherchio's opponent, Wade Wagner's campaign and that her husband worked for Wagner during his campaign.

- Citing an abundance of caution, Mayor Buck excused herself from the proceedings. Councilwoman Wood and Councilman Eliason, at the advice of their outside counsel, decided to stay and vote on whether to canvass the election results or vote for a new election. Councilman William Robinson did not disclose any involvement in the campaign process for Ward 4. There is a question regarding whether or not three out of five council members satisfies the quorum required by law to enact any business at a local government meeting.

- During the June 15 meeting, rather than use the option to canvass and certify the election results, Councilwoman Wood and Councilman Eliason decided to order a new election and to limit that new election to Ward 4, Precinct 4306. This appears to be a violation of NRS 293.397.

- A complaint was filed by a citizen because the agenda for June 15, 2011, did not match the content of the meeting. At least that is our understanding of the complaint. As a result, another meeting was scheduled for June 30, 2011 regarding the election in Ward 4. This meeting was a carbon copy of the June 15th meeting; however, several citizens came forward during the public commentary, many of which felt the election was not in line with the will of the citizens in Ward 4.

- The law is clear on how to proceed under these circumstances:

  - **NRS 293.397 Prohibitions against withholding certificate of election or commission.**

  - *A certificate of election or commission must not be withheld from the person having the highest number of votes for the office because of any contest of election filed in the election or any defect or informality in the returns of any election, if it can be ascertained with reasonable certainty from the returns what office is intended and who is entitled to the certificate or commission.*

- The proper procedure for an election contest is set forth under NRS 293.403 (inclusive):

  - **NRS 293.403 Recount of Vote; Demand; advance deposit of costs.**

  - *1. A candidate defeated at any election may demand and receive a recount of the vote for the office for which he or she is a candidate to determine the number of votes received for the candidate and the number of votes received for the person who won the election if within 3 working days after the canvass of the vote and the certification by the county clerk or city clerk of the abstract of votes the candidate who demands the recount:*

  (a) Files in writing a demand with the officer with whom the candidate filed his or her declaration of candidacy or acceptance of candidacy; and

  (b) Deposits in advance the estimated costs of the recount with that officer.

- Councilwoman Wood and Councilman Eliason refused to canvass and certify the vote. By voting for a new election in lieu of voting for a recount procedure, they are preventing and circumventing the election recount process for which the candidate they are supporting (Richard Cherchio) would have to pay the costs. By their conduct, Councilwoman Wood and Councilman Eliason are forcing the citizens of North Las Vegas to pay for the costs of a new election, rather than following the law.

- The appearance of impropriety is strong in this case. We believe NRS 293.397 and NRS 293.403 are clear in this case. The lawful procedure was to canvass and certify the election in the manner the citizens had cast their votes. Wade Wagner should have been certified as the winner in Ward 4. Following the certification, Richard Cherchio would have had several options depending on his position to challenge the election and or the election process, and Richard Cherchio should bare the costs or said procedures.

- With regard to NRS 281A.420, Section 1(b), where is talks about, "pecuniary interests" and or1(c) where is states, "Which would be reasonably affected by the public officer's or employee's commitment in a private capacity to the interest of others," may apply to this situation, however, we would defer to the Ethics Commission's expertise on the application of the law with regard to ethical conduct by a public official.

- If you require additional information, please feel free to contact me by e-mail at Cardinalel@nlvpsa.com or by phone 702-556-9968.

We appreciate your time and attention in this matter.

Sincerely,

Leonard Cardinale

Leonard Cardinale
President, NLVPSA

2

NRS 293.397 Prohibitions against withholding certificate of election or commission. A certificate of election or commission must not be withheld from the person having the highest number of votes for the office because of any contest of election filed in the election or any defect or informality in the returns of any election, if it can be ascertained with reasonable certainty from the returns what office is intended and who is entitled to the certificate or commission.

NRS 293.403 Recount of vote: Demand; advance deposit of costs.

1. A candidate defeated at any election may demand and receive a recount of the vote for the office for which he or she is a candidate to determine the number of votes received for the candidate and the number of votes received for the person who won the election if within 3 working days after the canvass of the vote and the certification by the county clerk or city clerk of the abstract of votes the candidate who demands the recount:

(a) Files in writing a demand with the officer with whom the candidate filed his or her declaration of candidacy or acceptance of candidacy; and

(b) Deposits in advance the estimated costs of the recount with that officer.

2. Any voter at an election may demand and receive a recount of the vote for a ballot question if within 3 working days after the canvass of the vote and the certification by the county clerk or city clerk of the abstract of votes, the voter:

(a) Files in writing a demand with:

(1) The Secretary of State, if the demand is for a recount of a ballot question affecting more than one county; or

(2) The county or city clerk who will conduct the recount, if the demand is for a recount of a ballot question affecting only one county or city; and

(b) Deposits in advance the estimated costs of the recount with the person to whom the demand was made.

2

CITY COUNCIL MEETING

June 15, 2011

Verbatim Excerpt Transcript No. V1311

15. CANVASS OF THE JUNE 7, 2011 MUNICIPAL GENERAL ELECTION RESULTS.

Acting City Manager Maryann Ustick: Let's return to the Business Section of the agenda. Item No. 15, Canvass of the June 7, 2011 Municipal General Election Results. Mr. Vaskov?

Acting City Attorney Nicholas Vaskov: Mayor, members of Council, as you know by now last Thursday at about 4:45 p.m. I received a, I had a visit from Larry Lomax who's the Registrar of Voters for the Election Department. Larry informed me of an irregularity in the Ward 4 Election. After gathering some initial facts, I determined that in order to protect the integrity of the election and to avoid any appearance of impropriety on the part of the City, my office or myself, that it was necessary to, for the Council to have the benefit of outside independent Counsel advice on this matter. By about 9:00 that evening, I retained Matt Griffin to do that work. Matt Griffin is the former Chief of Elections for the Secretary of State's Office. He is currently a partner in the law firm of Griffin, Rowe and Nave. He has a wealth of knowledge in Election Law and I am confident that he will serve this Council well tonight. So, with that said, I am, have effectively recused myself from providing advice on this matter and I will invite Larry to come up and tell you a little bit more about the irregularity.

Councilwoman Wood: Mayor, before we get to that, I need to make a disclosure.

Mayor Buck: Okay.

Councilwoman Wood: I need to disclose that my campaign did make contribution to Councilman Richard Cherchio's campaign, that my husband did put up signs for him and that I did make phone calls in support of him. I have reviewed my involvement, both with Karen Jenkins, who is the AD of the Nevada Commission on

Ethics as well as the outside legal counsel for the City Council and have been advised that my actions were all within my rights as an individual to do and that they do not rise to the level to allow me to abstain. I did not use my office to alter or affect the outcome of this election and that I understand the issue before me and can maintain independence of judgement that will not be materially affected by that involvement.

Mayor Buck: Thank you. Councilman Eliason.

Councilman Eliason: Your Honor, I also, I have to disclose that I have made a campaign contribution to Councilman Cherchio's campaign and I also believe it will not affect my right to vote.

Clark County Registrar of Voters
Larry Lomax: Is that it?

Mayor Buck: Yes. Wait, just stop.

Larry Lomax: Good evening. I'm Larry Lomax. I'm the Registrar of Voters in Clark County. I've been asked to come before you tonight and give a summary or review of what happened and make sure you, are thoroughly familiar and if you have any questions, obviously you can ask them, I mean, that's why I'm here. I did present an affidavit earlier, I think there's a copy of it that's been provided to you, but that's really what I'm gonna summarize, what's in the affidavit. The General Election, as you know, took place on June 7th. The Election went fine, initially, as far as we could tell. After every Election we conduct an audit. We do this for every precinct. We do it for what occurred during Early Voting or what occurred in mail ballots or absentee voting and then what occurred on Election Day. In the course of conducting this audit, we found no problems were in the mail ballots. We found no problems or discrepancies in the Early Voting. However, on Election Day voting, in a single polling place, we found an individual, who was properly registered to vote in Ward 3, showed up at a polling place in Ward 4 and presented to the person in charge of the polling place, identification showing that he had moved to a residence in Ward 4. And, the polling place he was in was the

correct polling place for his new address. The person in charge of the polling place asked this individual if he had updated his address on his registration records. And the individual stated that he had not. At this point, the individual in charge of the polling place should have directed the voter to his old polling place because Nevada law requires you to vote at the polling place, at the address for which you are currently registered. And this individual had stated, he was not, had not updated his registration address. The poll worker, incorrectly, allowed the voter to fill out a change of address form and then enter his name on a supplemental page in the roster book. The roster book, I think you're familiar with, if you vote on Election Day, is a pre-printed book and in that are the names of everyone in the precinct eligible to vote at that polling place on Election Day. This individual's name, needless to say, was not in it. It was in a roster book back in Ward 3. In the back of the roster book is a page, which I don't expect you to be able to see from there. It's a page where an entry can be made if an individual has been inadvertently, and by that I mean a mistake has been made on the part of the Election Department, and an individual has been left out of the roster book. This does occur. An example would be such as, I have a son who has the same name as I do. We're both registered to vote. My son, might leave Nevada and move to another State in pursuit of a job. A worker in my department might mistakenly cancel me and leave my son in because we have the same name. These kind of things occur. And that's the purpose of this page. However, printed in one-inch font on this page, it says, "before making an entry on this page, you must have the Election Department's approval." There is also a column in which you must enter the name of the Election Department Official that authorized you to enter this individual onto this form. This did not occur. And the person in charge of the polling place admits he failed to do this. He allowed the voter to enter his name, sign it and allowed the voter to vote. Thus, we found that one extra ballot and this is the only discrepancy in this, unfortunately, in this contest, there is a vote that was cast, that should not have been cast. If you're not familiar with the way our equipment works, part of the way democracy in America works, is you all guarantee the privacy of your ballot. You can go in and vote for anyone you want and no one will ever know

who you vote for. And what that means is, we have no way to go back and pull that ballot out of the Election. Once that ballot is cast, it's thrown in with the other ones. It can not be attached to the voter. So, we can not withdraw it. It's in there and we have no way of knowing how that individual actually voted. There were two undervotes on Election Day, meaning, 50 voters showed up and voted and that's including this individual. 48 votes were cast in this particular contest. So, it is true that two people did not cast, or did not vote in that particular race. I assume they voted for the Judge race only. Does anyone have any questions?

Mayor Buck: What I'd like to do, Mr. Lomax, if we can, is jump forward, Matt, with canvassing, or talking about the two other races and then we'll come, call Mr. Lomax back, ask any questions of that particular race.

Matt Griffin
Law Firm of
Griffin, Rowe and Nave: Sure, Madam Mayor. For the purpose of the record, my name is Matt Griffin and as previously discussed and agreed to, I think it's necessary to separate the Ward 4 race out and then canvass the rest of the General Election from 2011. There's been no record led by Mr. Lomax of any infirmities in that. I believe it's ready for your consideration to canvass today.

Mayor Buck: Council Members, you have any questions of Mr. Griffin on that portion?

Councilman Cherchio: Just a, would I be allowed to vote on the Ward 2 and also on the Judge?

Mayor Buck: Yes.

Matt Griffin: Yes.

Councilman Cherchio: Okay.

Mayor Buck: Okay, then, is there a motion to....

Mayor Pro Tempore Robinson: So moved, for Ward 2.....

Councilman Eliason: Second.

Mayor Pro Tempore Robinson: .....and the Judges.

Councilman Eliason: Second.

Mayor Buck: And there's a motion to approve and certify Ward 2 and the Judge race and a second. Cast your vote. I say yes. Motion carries. Now, before we go further, Matt, I need to make a statement. And I want to make sure that this Election is fair and everything is on the up and up and I want to be very cautious in this, so, let me just disclose that I donated to a campaign that would not preclude me from voting on this. However, a member of my family worked on a campaign and was paid, and so, therefore, to be very cautious, I will abstain tonight. I want to avoid any appearance of impropriety. However, I do believe that this Council will make the right decision and do what's prudent for all of the voters in this City. So, right now, Mayor Pro Tem will run the portion of this meeting and I will actually, excuse myself from this portion.

Mayor Pro Tempore Robinson: Okay, Council.

Matt Griffin: Thank you, Mayor Pro Tem. Yes? Councilman Cherchio?

Councilman Cherchio: Question?

Matt Griffin: Yes?

Councilman Cherchio: Do you want me to leave or stay?

Matt Griffin: That is wholly up to you. I know that you've, you've retained private Counsel in this matter and they were going to consult with you on that. That the standard that will be adjudicated if ever adjudicated in this matter, is whether or not you participated in the deliberation of this hearing and there has been past cases in the State of Nevada where nods of the head or body gestures have been found to be deliberations, so, I would advise, in the abundance of caution, so that those allegations can not be made.

Councilman Cherchio: Oh, absolutely no problem. I'll just leave. That's fine.

Matt Griffin: Thank you, Mayor Pro Tem, and again for the sake of the record, my name is Matt Griffin. As Mr. Vaskov stated, I've been retained by the City Attorney's Office to help advise and assist the City of North Las Vegas in the Ward 4 canvass today and the issues that Mr. Lomax just laid out for the Council. As all of you are aware, I've, over the course of this week, I've discussed this issue in detail, with each of you and outlined various options. And based upon those discussions and for the purposes of the record and for the benefit of any proceedings hereafter, I'm just going to focus this presentation today, on what I believe are two viable legal options that this Council can proceed with today. As noted, Mr. Lomax said for, and essentially, the underlying infirmity of this Election is that an invalid vote was cast and of course, as always it seems, is cast in a one vote race. With that, I want to make very clear, that I am not aware of any, nor have I heard of anybody make any allegation that any fraudulent conduct occurred on the part of either the voter or on the part of the poll worker. All indications that I have, and I believe all of the City Attorney's Staff has, is that it was just, clearly a mistake and mistakes do occur whenever you have people operating elections. The essential issue for this Council to address today is whether an improper vote has been included in the official tally of the Ward 4 Election. But that vote can not be ascribed to a particular canvass total and because that tally reflects, because the tally reflects a one vote advantage for Mr. Wagner, the invalid vote could have affected the result of this Election. The primary, remedial choice for this situation is whether to admit the Election to stand undisturbed, or whether to order a new Election in the affected precinct. The outcome of this meeting today will depend, in part, on whether you think the existence of an unknown, invalid vote in a one vote race has prevented an Election from occurring. There are two statutes for you to consider and the resolution of this matter will depend on your conclusion. If you're conclusion, is, excuse me, under NRS 293.387 and NRS, or NRS 293C.387 and NRS 293C.710. I'll first discuss the authority under law today, for you to canvass this Election and I will next conclude my presentation today with the authority under State law

that allows you to put the precinct 4306 in the Ward 4 Election to a new Election from the people therein. Pursuant to Nevada law, you may properly canvass a vote as it appears before you today. Nevada Revised Statutes 293.387 governs the canvass and requires the returns of a General City Election must be delivered to the City Council for a canvass of the vote. It further provides that in completing the canvass of the return, the governing body shall note any clerical errors that have been discovered and take account for the changes resulting from the discovery of those errors so that the canvass reflects the true result of the vote cast. Nevada law does not permit the City Council or any board canvassing election to pass its own judgement on the veracity or legality of the votes cast therein, and this Council does not have authority to hear today, go in and verify the status of individual voters as they cast their ballot. Rather, the purpose of a canvass is to certify results of an Election and essentially to make the results of an Election official. Which in turn, allows the City Clerk to issue an Election Certificate to the candidate receiving the most votes. In this matter it has been shown that one valid vote has been, one invalid vote has been cast. And although that vote could affect the outcome of this Election, the precise affect of that vote is properly reserved for judicial review. I say that because the Statutes of Nevada have already contemplated a scenario that is before you today. No Election is perfect and every Election is with some degree of imperfection. The practical difficulties in administering Elections means that they are not flawless. The error of this Election could be considered de minimus. There is no mechanism by which this Council could determine who the invalid vote was cast for. And the new Election offers no insurance that similar errors will not occur in any new Election ordered today. Additionally, a new Election may cause additional delay and inefficiency in the vote. In recognition of these irregularities as I mentioned earlier, the Nevada Legislature has codified two procedures by which an aggrieved candidate can seek full relief. First, after the canvass of the vote, a losing candidate can demand that the vote be recounted and any errors in the count can be corrected. Second, and after a canvass by the Council, an aggrieved candidate may contest an Election. And of the grounds available to a

candidate to contest an Election in Nevada, it includes the inclusion of an illegal vote in the final tally of the vote. Nevada law also provides for a contest of Election after the canvass when errors were made sufficient to change the result of the Election as due any person who has been declared elected. By canvassing the vote today, you will reserve the rights, or preserve the rights of the statutory revenues available to the candidate receiving the least number of votes. The existence of these remedies is evidence of the Legislature's acceptance of a certain amount of errors that will include an Election. And by canvassing today, you allow this matter to proceed to full resolution. The second option and the reason therefore that you can proceed today, is by ordering a new Election. And I now will provide you the reasons under which you can order a new Election under the State of Nevada. You may conclude today that a new Election is necessary.

Mayor Pro Tempore Robinson: Counsel, when you said new Election you mean new Election for that particular precinct.

Matt Griffin: Yes.

Mayor Pro Tempore Robinson: Okay, let's establish that.

Matt Griffin: As I indicated, I think, if you proceed on a new Election, the only geographical area in which you can proceed is the precinct, Precinct 4306. And I think State law requires that it is all eligible voters in that precinct would be allowed to participate in a new Election. And just to be clear and to State the inverse, I do not believe there's statutory authority to order a new Election for the entire Ward and I do not believe there's statutory authority to order a new Election for just those voters that showed up on Election Day. I believe it has to be for precinct wide. Nevada Revised Statutes 293C.710 states that any Election that is prevented in any precinct, for any cause, the Election Official will make an affidavit setting forth that fact and deliver it to this body. I believe you've been delivered from Mr. Lomax an affidavit earlier that was sent to the City Attorney's Office and provided to you that essentially is the written version of what he has testified to today and it is a signed and sworn and notarized affidavit for your consideration. While the invalid voter issue here, as

I've mentioned, is not an unusual occurrence. In this instance, it is rather unusual because we have a one vote Election. A new Election is not uncommon in Nevada and in fact, in my years, since I've been involved in Elections, I have overseen at least, or been involved in some capacity with new Elections ordered in Lyon County, Douglas County and Washoe County and in addition as the Council, I think is aware, this jurisdiction, North Las Vegas had a new Election ordered in 1996 and 1999. It is not a new occurrence. It is not a foreign occurrence. It is, in fact, a way the Nevada law allows you to address what is before you. Based on the uncertainty of the results, if you, as a Council, can not, if you as a Council decide that you can not perform your duty under NRS 293.387 sub 2b, which states that you must take into account the changes so that the result declared represents the true vote cast, you are prevented from canvassing the vote today. The Nevada Supreme Court has stated that the canvass is an integral and to use their language, indispensable part of the Election. And without a canvass being conducted today, under 293C.710, an Election will be prevented for purposes of that statute. And because of that you have the authority to proceed with a new Election. Hopefully, and at this point, I want to conclude. If there's any question on the substance of it, I'm more than happy to address those questions. But I also want to conclude with at least a little bit of guidance of how we can proceed from here. Not knowing how the Council's going to vote, there may be a need to take two votes in this matter. First of all, if the Council determines that they are able to proceed with the canvass today, that is the only vote that needs to be held. A yah vote on canvass, the Election becomes official and the statutory remedies will then be available to the losing candidate that he can proceed either a contested Election or recount of Election. If the Council believes that they can not canvass the Election today, then you must also hold a second vote. And in that second vote, you must order that a new Election be conducted in Precinct 4306 to remedy the problem in the 2011 General City Election. In that new Election, a couple of things will need to occur so that it's done properly and correctly. We would request that if you're inclined to order a new Election that you order the City Attorney's Office and Mr. Lomax to work together to set

forth the parameters of that Election so that the most people can be allowed an opportunity to participate and that that concern can be balanced against the need to have a final resolution to this matter. We would be happy to bring that to the Council by next week for your approval and then from that point, we can begin the process of recapturing the vote in Precinct 4306. And as I stated, and just to stress one last time, the only lawful new Election that can be ordered in this matter is for Precinct 4306 regardless of whether the person voted in the underlying Election or not. They must be allowed to vote in the new Election. I'm happy to take any questions.

Mayor Pro Tempore Robinson: Council? I don't have the light, so, feel free to ask questions or comments.

Councilman Eliason: Do we have any kind of, if we was to order a new Election for that precinct, do we, I mean, is there a time frame or anything that has to be.....

Matt Griffin: There's not. I would recommend and I think any proposal that you would receive would allow for absentee ballots to be cast. And whenever you're gonna use absentee ballots, you have to at least, give a certain timeframe for the person to request....

Councilman Eliason: But that comes back to us, right?

Matt Griffin: Yeah. Yeah, it'll come back, if you order a new Election it would come back to you next week. And I think the idea would be, you'd have to allow a certain amount of either a week or two weeks for a person to request an absentee ballot and allow a week after that for them to return it. So, two to three weeks out, I think, would be a reasonable time to have the polls open and close at a polling location.

Councilman Eliason: Then, that brings up the next question. If we went that way, then you're talking two weeks, July 1st is here....

Matt Griffin: At a minimum.

Councilman Eliason: Are we sitting as a four member Board?

Matt Griffin: Well, it, and candidly, I think the realities of what we're discussing today. If the vote is canvassed today, by State law and by 293C, the person receiving the most votes must be issued their Certificate of Election. Unless it can be showed, with this quote, unquote, reasonable certainty that they did not receive the vote. It's anticipated at least, from my perspective advising the Council, I wouldn't say it's a long shot that a law suit follows whatever occurs today. And with that law suit, I would not be surprised to see an injunction to prevent anybody from taking that seat. So, I think, *(unintelligible)* yes, somebody would be seated, but I think, practically there might be something to stop that.

Councilman Eliason: One way for sure is, or, if we canvass there's a possibility of him being seated....

Matt Griffin: Yes....

Councilman Eliason: If we.....

Matt Griffin: Unless someone stops it, they will be seated.

Councilman Eliason: Right. If we order a new vote, there's, just the timeframe does not allow for the July 1st and would the current City Councilman sit until that's completed or does he leave June 30th?

Matt Griffin: In all candor, I'm not positive with when new officers would be sworn in under your City Charter. But if it's July 1st when the new officers are sworn in, you're correct. The sitting officer now would not, would be relieved of his duty as a sitting Council Member after July 1st. And I can't imagine, in all candor, a scenario in which if this was litigated that a court would order that he stay in his Council seat until....

Councilman Eliason: Some of the concern is we got to run business as a City. And there's a reason there's five of us.

Matt Griffin: And that's a valid concern. I think it's a legitimate concern that that seat could remain vacant until this reaches final resolution.

Mayor Pro Tempore Robinson: Councilwoman Wood?

Councilwoman Wood: Now, Matt, there were some questions about disenfranchising the voters. So, I guess my question is, if the Council were to order the re-vote, it would just be in the precinct so I'm assuming that the current number of votes that were from that precinct would be taken out of the count and replaced by the new count.

Matt Griffin: Yes. And what we have done is we'd advised Mr. Lomax not knowing what direction the Council's going to go in, is the existing results from Precinct 4306 have been preserved and will be locked away and will be available for any evidentiary purposes down the road. If you order a new Election, those results, unless a judge were to order so, would not be included in any canvass that would come before you again. Whatever the results of the new Election are, would be the results submitted to you for you to certify and make official as the records of the Election.

Mayor Pro Tempore Robinson: What's your pleasure, Council?

Councilwoman Wood: Well, I mean, I'll speak up as far as my concern. I do agree both with Mr. Lomax and with you that this is not really what I would declare an illegal vote so much as just an invalid vote. I do not believe that there was any intent to circumvent the Election or to alter the Election. I mean, I think it was just whether you call it a clerical error or something along that line, I mean, I truly believe that that's what it was. I am concerned about disenfranchising the voters. And for me, and believe me, I have been through this and all these laws and all this more times than I can tell you in the past three days. My problem is, it does tell us that we need to note the clerical errors and that we need to take account of the clerical errors resulting from that discovery so that the result declared represents the true vote cast. And the problem is, I'm not sure I know what that is. And from there, we are declaring the result of the canvass and being that this vote was in fact, only one vote in a race where the difference was one vote, I don't know for certain, one way or the other, whether it changed the results of the Election or not. And that makes it very, very difficult to know where to go from this point on. I do know that if we canvass, we tell our City Clerk to issue a Certificate of Election and she may

be smarter than I am, but I'm just not sure who that goes to at this point. I mean, the idea of voting to canvass seems to me to be an automatic assumption that the vote was for Councilman Cherchio and that Mr. Wagner won by a two point lead, because we're certifying the Election and that would in fact, certify him the winner and that's the assumption therefore, being made. So, I am concerned about moving forward with that, because I have to be honest and say that as Council person, I'm elected to make decisions on behalf of my constituents. And I get to make all sorts of votes on land use and financial and all these things that are part of my job and I take that as my responsibility. But I have a real problem because I truly to the bottom of my heart feel that the one job that I do not get, the one vote that I do not get to make, is the vote of who sits in this seat or any of these seats. That is the voters. The voter decides who sits here. And I don't get to usurp that, that decision. That has to me, to be made by the voters. And that, just to me, voting to me is the primary responsibility, the primary right and the primary duty of every American and every citizen of North Las Vegas in this case. And granted, there's a lot of us that throw that away and don't use it and shame on us for that. But for us to sit here and say that I for sure know what the outcome of this Election is, I don't. I don't. And I don't want to, and I don't think I have the right or any of us on Council have the right to say that we are going to decide the outcome of this Election as opposed to the voters. So, I truly believe, to make that decision, would in fact, be disenfranchising the voters. So, I would support not going forward with the canvassing, going forth with the new Election in 4306, Precinct, because I think that's the only fair thing to do. That puts it back in the hands of the voters so that the voters decide who will sit in the Ward 4 seat.

Mayor Pro Tempore Robinson: Was that a motion or was that just your comments?

Councilwoman Wood: I will make that a motion.

Mayor Pro Tempore Robinson: Is there a second, Councilman? I just second it. Cast your votes. Post. Motion carries.

Matt Griffin: Mr. Mayor Pro Tem, if I could. Fair and for all circumstances today, NRS 293C.710, you have an affidavit set forth in front of you. Mr. Cherchio, through his Counsel, Bradley Shrager, has provided the required application for this new Election to be ordered, so I'd like to at least, at this point submit this to the Council and make this part of the record of this proceeding.

Mayor Pro Tempore Robinson: Do we need to see that. Let us see that.

Councilwoman Wood: And I believe we need to do a follow up to call for...

Mayor Pro Tempore Robinson: Council, let's look at this first. Okay, now that you've had the opportunity to see that affidavit, what was your comment?

Councilwoman Wood: Well, I think that we need some idea from Mr. Lomax and what kind of timeframe that a new Election in 4306, is it?

Mayor Pro Tempore Robinson: I need to state this, though. The timeframe will be that Ms. Brown will be the person that will be serving in the Ward 2 seat, so Pamela you come aboard with a fire storm. I'm going out with one and you come in with one, but you can handle it.

Matt Griffin: And if we could, we would like to at least, and I know that there's no regularly scheduled meeting like next week, but sometime next week, we would like to have Mr. Lomax come back, after consulting with the City Attorney's Office and submit a proposal to on public record, for the citizens to see of when a new Election will be held. When Early and Absentee Voting would be held, or not Early, but Absentee Voting would be held and what kind of notices that the residents would be receiving under this.

Councilwoman Wood: Karen, what's the earliest that you can....

City Clerk Karen Storms: Earliest we can post a meeting would be for next Thursday.

Mayor Pro Tempore Robinson: Is there any further comments, Council?

Councilwoman Wood: I think that we need to make an official motion.

Councilman Eliason: Well, that's what... Matt, didn't you say if we went that way there had to be two motions.

Matt Griffin: At least, however the Council feels comfortable doing it, but I just want at least, an order from the Council to require us to return next Thursday with a proposal and to consult with you and have your input on the proposal before we get here next Thursday.

Mayor Pro Tempore Robinson: So moved.

Councilwoman Wood: Second.

Mayor Pro Tempore Robinson: Cast your votes. Post. Motion carries.

Matt Griffin: Thank you.

ACTION: JUNE 7, 2011 GENERAL ELECTION RESULTS CANVASSED FOR COUNCIL MEMBER, WARD 2 AND MUNICIPAL COURT JUDGE, DEPARTMENT 1; COUNCIL MEMBER WARD 4 RESULTS WERE NOT CANVASSED; APPROVED NEW ELECTION IN PRECINCT 4306

Transcript Requested by: Sergeant Leonard Cardinale
Transcript Prepared by: Marie Purcell
Date: June 30, 2011