STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of ROGER TOBLER, Mayor, Boulder City, State of Nevada

Subject. /

Request for Opinion No. 11-76C

PANEL DETERMINATION

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

Facts and Jurisdiction

The Nevada Commission on Ethics received a Third-Party Request for Opinion (RFO) regarding the conduct of Roger Tobler, Mayor, Boulder City, Nevada, a public officer, alleging certain violations of the Ethics in Government Law set forth in NRS 281A. Commission staff presented the Investigatory Panel with the allegations in the Request for Opinion that Subject violated:

1) NRS 281A.020 by failing to avoid conflicts between his private interests and those of the general public whom he served.

2) NRS 281A.400(2) by using his public office to seek and later to accept unwarranted privileges, preferences or advantages for himself and his family's business by requesting the enforcement of an unwritten informal policy that the City spread purchases evenly between his store and another hardware store in Boulder City.

3) NRS 281A.400(7) by using government time to request the City Manager to research the expenditures at the local hardware stores and assure him that the unwritten equal expenditures policy was being followed, after noting a decline in his store's sales to Boulder City.

4) NRS 281A.400(9) by using his position as Mayor to influence the City Manager, his subordinate, to enforce the informal policy on his behalf.

5) NRS 281A.420(1) and (3) by failing to make a proper disclosure and undertake the abstention analysis before voting or otherwise acting in 23 instances when

the Boulder City Council approved payments for purchases during the 2 years immediately preceding the filing of this Request for Opinion.[1] In one instance, Mr. Tobler disclosed his financial interest on the record, and, in another instance, he was absent from the meeting.

At the time of the alleged conduct, Mr. Tobler was the Mayor of Boulder City, a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers pursuant to NRS 281A.280. Therefore, the Commission has jurisdiction in this matter.

Panel Proceeding

On November 2, 2011, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Gregg Gale and John Marvel reviewed the following: 1) Ethics Request for Opinion, 2) Tobler's response to the Ethics Request for Opinion and 3) The Executive Director's Report and Recommendation, including the results of the Commission's investigation of this matter. The following are the Panel's unanimous findings and conclusions as to each of the allegations:

Based upon a finding of credible evidence, the Panel concludes that **just and sufficient cause exists** for the Commission to render an opinion whether Tobler violated **NRS 281A.020; NRS 281A.400(2), (7) and (9); and NRS 281A.420(1) and (3).**

With regard to the allegations related to **NRS 281A.530**, the Panel requests the full Commission deliberate the applicability of this statute based upon evidence adduced at the hearing that may supplement or differ from the information presented in Mr. Tobler's RFO No. 11-51A[2] in which Tobler sought the Commission's advice regarding the propriety of his hardware store continuing to be a vendor to the City of Boulder City.

As for the **rest and remainder** of the allegations expressed in the RFO, the Panel determined a lack of credible evidence or a lack of jurisdiction to address the allegations that implicate statutes or laws other than NRS 281A, which comprises the entirety of the jurisdiction of the Commission on Ethics. For those reasons, each of the remaining allegations hereby is **dismissed.**

Dated: November 3, 2011

Caren Jenkins, Esq.
Executive Director

[1] NRS 281A.280 imposes a 2-year limitations period on allegations of ethics misconduct by a public officer.
[2] Tobler sought a confidential first-party advisory opinion, but waived the confidentiality of that opinion by referring to the request and the Commission's advice in his response to this RFO.

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. 11-76C**, in an envelope and caused the same to be mailed via certified mail, return receipt requested, through the State of Nevada Mailroom to Tobler's counsel, David Olsen, Esq., and a true and correct copy to Tobler, and the Requester, Strickland, via regular First Class mail through the State of Nevada Mailroom addressed as follows:

David Olsen, City Attorney
Boulder City Attorney's Office
City Hall
401 California Ave.
Boulder City, Nevada 89005

Certified Mail No. 7010 0780 0001 0973 5174

Counsel for Subject

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Subject

Linda Strickland
1022 Nevada Highway, #128
Boulder City, NV 89005

First Class Mail

Requester

DATED: November 3, 2011

Valerie Carter

Valerie Carter, Nevada Commission on Ethics