



**STATE OF NEVADA
COMMISSION ON ETHICS**
<http://ethics.nv.gov>

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

September 19, 2012 and September 20, 2012

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts of the open sessions are available for public inspection at the Commission's office in Carson City.

The Commission on Ethics held a public meeting on Wednesday, September 19, 2012 at 8:30 a.m. at the following location:

**Gaming Control Board
Room 2450
555 E. Washington Avenue
Las Vegas, NV 89101**

1. Call to Order, Roll Call and Pledge of Allegiance to the Flag.

Chairman Erik Beyer called the meeting to order and introduced the Commissioners at 8:35 a.m. on Wednesday, September 19, 2012.

The following persons appeared in Las Vegas, Nevada: Chairman Erik Beyer, Commissioners James M. Shaw, Keith A. Weaver, Magdalena Groover, Tim Cory, Gregory Gale and John Carpenter. Also present in Las Vegas were Executive Director Caren Cafferata-Jenkins, Commission Counsel Yvonne Nevarez-Goodson, Esq., Senior Investigator Michael E. Lawrence and Senior Legal Researcher Janet Jacobsen.

Vice Chairman Paul Lamboley was excused from this meeting.

The Pledge of Allegiance was conducted.

2. Open Session for Public Comment.

Senator Joe Hardy appeared before the Commissioners and stated that he has known Roger Tobler, Boulder City Mayor and Vicki Mayes, Boulder City Manager, for a very long time and fully supports both of them. He stated that he does not believe they acted in collusion or intended to violate the law. Senator Hardy stated that he believes the Ethics Commission

should be focused more on teaching rather than catching individuals who violate the Ethics Laws.

Roxanne Day, resident of Boulder City, appeared before the Commission to offer that she believes the Mayor and City Manager did nothing wrong and that if a violation is found, it may deter good people from serving their communities.

Peggy Caspar, resident of Boulder City, appeared before the Commission and offered her support to both Mayor Tober and Vicki Mayes, stating that they are both trusted and valued individuals.

Phillip Esser, resident of Boulder City, appeared before the Commission to offer his comments that Mayor Tobler is a very ethical and honest public officer, and that there will always be people "out to get even" with the powers that be.

Executive Director Caren Cafferata-Jenkins noted that Staff had received written public comment from Aaron Katz regarding RFO 11-94C. Mr. Katz was unable to appear in Las Vegas and requested that the Commission have his comments prior to the hearing regarding Mr. Fuller scheduled for September 20, 2012.

3. Open Session pursuant to NRS 281A.440(8) to hear testimony, receive evidence, deliberate and render an opinion regarding Consolidated Third-Party Requests for Opinion Nos. 11-76C and 11-77C, regarding the conduct of Roger Tobler, Mayor, Boulder City, and Vicki Mayes, City Manager, Boulder City, submitted pursuant to NRS 281A.440(2).

Commissioner Gale was excused from participating in this agenda item as he served on the Investigatory Panel for 11-76C and 11-77C.

Chairman Beyer ordered that the Commission go into closed session at 8:55 a.m. This portion of the meeting was confidential and unavailable to the public.

Chairman Beyer called the meeting back into open session at 9:12 a.m.

Roger Tobler, Mayor of Boulder City and Vicki Mayes, Boulder City Manager appeared before the Commission with their counsel of record David Duncan, Esq. and Scott Marquis, Esq. of the law firm Marquis Aurbach Coffing.

Chairman Beyer discussed the process of the Third-Party hearing and introduced the additional witnesses as follows: Scott Hansen, P.E., Gary Poindexter, Michael Noa, Sergio Solis-Savri and Jim Schumacher.

Mr. Duncan stated that his clients would not be calling Jim Schumacher but would like to call David Olson, City attorney for Boulder City as an additional witness to testify later in the day.

The witnesses and the Subjects, Roger Tobler and Vicki Mayes, were sworn under oath by the Court Reporter. The witnesses were then asked to leave the hearing room until called to testify.

Mr. Duncan presented to the Commission his Motion in Limine requesting the exclusion of certain documents that were included in the Pre-hearing Statement submitted by Executive Director, Caren Cafferata-Jenkins, Esq.

Ms. Caren Cafferata-Jenkins, Esq. offered her comments regarding the Motion in Limine.

A discussion ensued regarding the Motion in Limine.

Commissioner Cory moved to deny the Motion in Limine to exclude certain evidence, but suggested that after the conclusion of the evidence the Commission affirmatively evaluate the weight and the value of the evidence identified in the Subjects' Motion and in rendering its decision. Commissioner Shaw seconded the Motion. The Motion was put to a vote and carried unanimously.

The Commission discussed the need to address the arguments presented in the Subjects' Pre-Hearing Statement regarding claims of administrative res judicata, and decided to address the matter when the commission deliberates and renders and opinion.

Executive Director Caren Cafferata-Jenkins presented an opening statement for the Commission.

Mr. Duncan, Counsel for Roger Tobler and Vicki Mayes, offered an opening statement to the Commission.

A recess was taken at 10:19 a.m., and the hearing reconvened at 10:29 a.m.

The Commission's Executive Director called the first witness to testify, Vicki Mayes, City Manager, Boulder City and Subject of RFO 11-76C. Ms. Mayes was questioned by the Executive Director and the Commissioners and cross-examined by her counsel Mr. Marquis.

A discussion ensued regarding additional documents that were provided to staff prior to the hearing which included attachments to emails already submitted by the Executive Director, as well as an Affidavit of David Olson, City Attorney, Boulder City.

Commissioner Cory moved to admit into evidence all documents and exhibits submitted to the Commission for the hearing.

Commissioner Weaver seconded the Motion. The Motion was put to a vote and carried unanimously.

The hearing recessed for lunch at 12:02 p.m., and reconvened at 12:51p.m.

Ms. Cafferata-Jenkins called witness Roger Tobler, Mayor, Boulder City and Subject of RFO 11-77C. Mayor Tobler was questioned by the Executive Director and the Commissioners, and cross-examined by his counsel Mr. Marquis.

The hearing recessed at 2:09 p.m., and reconvened at 2:21 p.m.

The Commission called witness Scott Hansen, P.E., Public Works Director, Boulder City. Mr. Hansen was questioned by the Executive Director and the Commissioners, and cross-examined by Mayor Tobler's and Vicki Mayes' counsel Mr. Duncan.

The Commission called witness Gary Poindexter, Public Works Superintendent, Boulder City. Mr. Poindexter was questioned by the Executive Director and the Commissioners, and cross-examined by Mr. Duncan.

The hearing recessed at 3:37 p.m., and reconvened at 3:57 p.m.

Mr. Marquis, attorney for the Subjects, called witness David Olsen, City Attorney, Boulder City. Mr. Olsen was questioned by Mr. Marquis, Executive Director Caren Cafferata-Jenkins and the Commission.

The hearing recessed at 4:15 p.m., and reconvened at 4:43 p.m.

Commission Counsel Yvonne Nevarez-Goodson, Esq. reported that the Commission and the Subjects have agreed to enter into a settlement and the parties agree to close the evidence in light of the settlement agreement.

Mr. Marquis, counsel for Roger Tobler and Vicki Mayes, agreed.

All witnesses were released from their subpoenas and service.

Commission Counsel stated that the parties have agreed to enter into a nonbinding settlement in which a preponderance of evidence has not been found that Mayor Tobler had violated NRS 281A.400(2)(9), and therefore those allegations will be dismissed. Similar allegations are dismissed related to Ms. Mayes.

Additionally, the parties agreed that a preponderance of evidence was not proven that Mayor Tobler had violated NRS 281A.020 and 281A.400(2)(9). It was also Stipulated that Mr. Tobler had willfully violated the provisions of NRS 281A.420 (1) regarding his failure to disclose on the consent agendas claims paid lists. Counsel noted that while the finding is of a willful violation, the Commission agrees to impose no sanction.

The Executive Director requested that both sides work expeditiously and in good faith to determine the language of the Stipulated Agreement and to finalize these Requests for Opinion.

Commissioner Weaver moved to accept the agreed-upon terms. Commissioner Cory seconded the Motion. The Motion was put to a vote and carried as follows:

Commissioner Groover:	Aye.
Commissioner Cory:	Aye.
Commissioner Shaw:	No.
Commissioner Weaver:	Aye.
Commissioner Carpenter:	Aye.
Commissioner Beyer:	Aye.

Chairman Beyer announced a recess at 4:56 p.m. until the following morning, September 20, 2012 at 8:30 a.m.

The Commission on Ethics continued its public meeting on Thursday, September 20, 2012 at 8:30 a.m. at the following locations:

**Grant Sawyer State Building
Room 4412
555 E. Washington Avenue
Las Vegas, NV 89101**

and via video-conference to

**Nevada Legislative Building
Room 3143
401 S. Carson Street
Carson City, NV 89701**

Chairman Beyer called the continued meeting to order at 8:30 a.m. Present in Las Vegas, Nevada were Chairman Erik Beyer, Commissioners John C. Carpenter, James M. Shaw, Magdalena Groover, Gregory J. Gale and Tim Cory. Also present in Las Vegas were Executive Director Caren Cafferata-Jenkins, Commissioner Counsel Yvonne Nevarez-Goodson, Esq., Senior Investigator Michael E. Lawrence and Senior Legal Researcher Janet Jacobsen.

Present via video-teleconference from Carson City, Nevada was Executive Assistant Valerie Carter.

Commissioners Keith Weaver and Paul Lamboley were excused from the continued portion of the meeting.

The pledge of allegiance was conducted.

5. Open Session pursuant to NRS 281A.440(8) to hear testimony, receive evidence, deliberate and render an opinion regarding Third-Party Request for Opinion No. 11-94C, regarding the conduct of Theodore Fuller, Chairman, Incline Village General Improvement District, and Member, Washoe County Debt Management Commission, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order.

Commissioner Shaw and Commissioner Groover were excused from this agenda item as they participated in the investigatory panel hearing in this matter.

Present in Carson City were Theodore Fuller and his counsel Mr. Paul Lipparelli.

Chairman Beyer noted that Staff had received written public comment from Aaron Katz regarding RFO 11-94C. Mr. Katz was unable to appear in Las Vegas and wanted the Commission to have his comments prior to the hearing regarding this agenda item. Copies of this public comment were given to each Commissioner in advance of the hearing.

Chairman Beyer noted that he had worked as an engineer for IVGID in the distant past, but did not know Mr. Fuller and believes he has no conflict and thus, participated in the remainder of the agenda item.

Mr. Fuller was sworn under oath.

Executive Director Caren Cafferata-Jenkins, Esq. and Mr. Lipparelli presented opening statements to the Commission.

Ms. Cafferata-Jenkins questioned the Subject, Mr. Fuller, followed by a cross examination by Mr. Lipparelli and various Commissioners.

A recess was taken at 10:05 a.m., and the hearing reconvened at 10:14 a.m.

Executive Director Caren Cafferata-Jenkins offered a closing statement to the Commission, followed by a closing statement by Mr. Lipparelli.

Commissioners and Commission Counsel clarified a few issues and a discussion ensued regarding Mr. Fuller's alleged conduct.

A recess was taken at 11:15 a.m., and the hearing reconvened at 11:58 a.m.

Commissioner Cory moved that the Commission find no violation of NRS 281A.420 (1) or (3) by Mr. Fuller. Commissioner Gale seconded the motion.

The motion was put to a vote and carried unanimously.

4. Open Session for consideration and approval of Minutes of prior Commission Meetings: July 18, 2012 Commission meeting and August 15, 2012 Commission meeting.

This agenda item was called out of order.

Commissioner Gale offered two grammatical changes to the Minutes. Commissioner Carpenter moved to approve the Minutes with Commissioner Gale's suggested changes. Commissioner Cory seconded the Motion.

The Motion was put to a vote and carried unanimously.

6. Open Session for presentation by Executive Director and Commission Counsel, including, without limitation, a report on agency operations, procedural issues and pending matters.

Executive Director reported to the Commission on the final budget requests that went into Items for Special Consideration for the 2013 – 2015 biennium. She stated on September 4, 2012 she was notified these requests had been rejected by the Governor. Ms. Cafferata-Jenkins then gave a brief overview of the Minutes and Action Report of the Legislative Commission's Sunset Subcommittee.

The Executive Director also introduced the Commission's final Bill Draft Request which included SB 391, R1 which was developed last biennium, as well as the additional changes and language approved by the full Commission.

The Executive Director explained the 2014-2015 Activity Budget submitted to the Governor, including the agency's performance measures and how they will be determined.

Ms. Cafferata-Jenkins also reported that she has withdrawn from her efforts to appear before the Board of Examiners and/or the Interim Finance Committee before the legislative session. Those programs and funds will instead be requested from the 2013 Legislature.

7. Open Session for Commissioner comments on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

Ms. Cafferata-Jenkins requested direction from the Commissioner regarding the temporary role of "Associate Counsel" she had played in the Third-Party Hearings. The Commissioners were generally complimentary.

8. Open Session for Public Comment.

No public comment.

9. Closed Session to discuss potential or pending litigation. This portion of the meeting will not be available to the public.

This portion of the meeting was confidential and unavailable to the public.

10. Adjournment.

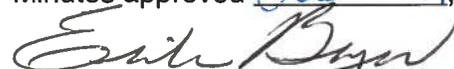
Chairman Beyer adjourned the meeting at 12:19 p.m.

Minutes prepared by:



Valerie Carter
Executive Assistant

Minutes approved October 17, 2012:



Erik Beyer
Chairman