



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion Concerning
the Conduct of JEFF MCGOWAN,
City Attorney, City of Fernley,
State of Nevada,**

Request for Opinion No. 08-61C

Subject.

STIPULATED AGREEMENT

1. **PURPOSE:** The purpose of this Stipulated Agreement is to resolve Request for Opinion No. 08-61C (RFO 08-61C) concerning Jeff McGowan (McGowan) and render an opinion as stipulated in lieu of holding a hearing.
2. **JURISDICTION:** At all material times, as Fernley City Attorney, McGowan was a public employee subject to the jurisdiction of the Commission, pursuant to NRS 281A.150.
3. **STIPULATED FACTS:**
 - a. On September 15, 2008, a request for opinion (RFO 08-61C) was filed with the Commission alleging McGowan violated NRS 281A.400(2) when he made unauthorized purchases using a city-issued credit card.

- b. McGowan acknowledges that the Commission provided him with notice of the allegations asserted against him in RFO 08-61C and an opportunity to file a written response.
- c. On October 13, 2008, McGowan filed with the Commission his written responses to the allegations against him. The charges that are at issue were authorized by City officials; and McGowan did not believe that the transactions violated any state, federal or local law, policy or ordinance. Further, McGowan believed the transactions were authorized under his contract with the City of Fernley, and that the transactions inured to the benefit of the City of Fernley.
- d. On January 8, 2009, pursuant to NRS 281A.440(3), a Panel of two Commissioners reviewed RFO No. 08-61C and all documents pertaining thereto and determined that just and sufficient cause exists for the Commission to conduct a hearing on RFO 08-61C. Nevertheless, the parties agree to enter into this Stipulated Agreement in lieu of proceeding to a full hearing.
- e. The Panel determined that just and sufficient cause exists for the Commission to conduct a hearing on the allegations that McGowan violated:
 - 1. NRS 281A.400(2) when on May 7, 2008, McGowan used the city-issued credit card charging \$3.09 for a beverage at a gas station.
 - 2. NRS 281A.400(2) when on February 13, 2008, McGowan used the city-issued credit card charging \$8.93 for dinner in Fernley, Nevada.
 - 3. NRS 281A.400(2) when on March 14, 2008, McGowan used the city-issued credit card charging \$28.00 for lunch in Fernley, Nevada.
 - 4. NRS 281A.400(2) when on May 6, 2008, McGowan used the city-issued credit card charging \$37.42 for lunch in Fernley, Nevada.
 - 5. NRS 281A.400(2) when on April 21, 2008, McGowan used the city-issued credit card charging \$7.01 for lunch in Fernley, Nevada.

f. Having retained legal counsel in this matter, McGowan is fully aware of his right to a hearing before the Commission on the allegations against him and of any and all rights he may be accorded pursuant to the Ethics in Government Law (NRS 281A), the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS 233B), and the laws of the State of Nevada, and he freely and voluntarily waives these rights, except as they apply to the rights and responsibilities of the parties under this Stipulated Agreement.

4. RELEVANT STATUTES: The following statutes are relevant to the allegations which give rise to this Stipulated Agreement:

NRS 281A.170 provides:

“Willful violation” means the public officer or employee knew or reasonably should have known that his conduct violated this chapter.

NRS 281A.400(2) provides in part:

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself...

(b) “Unwarranted” means without justification or adequate reason.

NRS 281A.480(3) provides:

If the Commission finds a violation of a provision of this chapter, by a public officer or employee or former public officer or employee has resulted in a realization of a financial benefit by the current or former public officer or employee or another person, the Commission may, in addition to other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

5. TERMS: McGowan and the Commission agree as follows:

a. McGowan committed one violation of NRS 281A.400(2); but the violation was not willful.

- b. The Commission imposes a civil penalty, pursuant to NRS 281A.480(3), of eighty-four dollars and forty-five cents (\$84.45) as the sole and exclusive civil penalty in this matter.
- c. McGowan shall satisfy the civil penalty imposed herein by remitting payment of said amount to the City of Fernley within 30 days from the date this Stipulated Agreement is signed by the Commission Chair.
- d. McGowan waives his right to any judicial review of this matter as provided in NRS 233B.130 or any other provision of Nevada state law.
- e. This Stipulated Agreement applies only to the specific facts, circumstances and law related to RFO 08-61C. Any facts and circumstances that differ from those contained in this Stipulated Agreement may create an entirely different resolution of the matter.

6. CONTINGENCY:

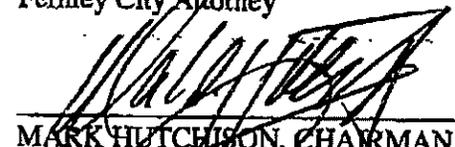
- a. This Stipulated Agreement, entered into pursuant to NAC 281A.275(2), is subject to final approval by the Commission in an open public meeting. Once approved, this Stipulated Agreement shall be adopted as the Opinion of the Commission. This Stipulated Agreement will be the final disposition of this matter and shall be binding upon all parties.
- b. Should this Stipulated Agreement not be approved by the Commission, this matter will proceed to a full hearing before the Commission and this Stipulated Agreement shall be of no force or effect, nor will it be admissible, in part or whole, in such hearing.

7. ACCEPTANCE: We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby.

DATED: 2/17/09

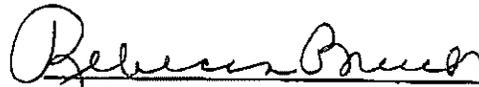

JEFF MCGOWAN
Fernley City Attorney

DATED: ~~01/20/09~~ 2/28/09


MARK HUTCHISON, CHAIRMAN
Nevada Commission on Ethics

The above Stipulated Agreement has been reviewed by:

DATED: 2/20/09


REBECCA BRUCH
Attorney for Jeff McGowan

DATED: 2/28/09


ADRIANA G. FRALICK
Commission Counsel