



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of TODD CUTLER,
Former Fernley Mayor and Former Public
Employee for Lyon County School District,
State of Nevada,

Request for Opinion No.: 09-64C

Subject./

**EXECUTIVE DIRECTOR'S RECOMMENDATION
AND APPROVAL OF INVESTIGATOR'S REPORT**

The following is the Executive Director's recommendation based on consideration of the Commission Investigator's Report regarding his investigation of the acts of TODD CUTLER ("Subject"), former mayor of the City of Fernley, and former public employee of the Lyon County School District (LCSD). This recommendation is also based on the Complaint and the Subject's written response to the Complaint. That Report is approved and is attached for the consideration of this two-commissioner panel.

Allegations:

The Complaint alleges that Cutler violated NRS 281A.400(2) by accepting a salary for his employment with LCSD while simultaneously performing duties as the mayor of Fernley. The Complaint also alleges that on numerous occasions Cutler used a City of Fernley credit card for food purchased when he was not performing mayoral duties but rather when he was on duty as a LCSD employee, which violated NRS 281A.400(7).

Nevada Revised Statutes (NRS) and case law:

- The applicable statutes are NRS 281A.400(2) and (7):
 2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself As used in this subsection:
 - (b) "Unwarranted" means without justification or adequate reason.
 7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. . . .

Recommendation:

After reviewing the evidence and NRS 281A.400(2) and (7), I recommend that the Panel find just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on any of the allegations in the Complaint.

Analysis:

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 complaint **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 complaint 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.

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself. Unwarranted is defined as without justification or adequate reason. Because Cutler's contract with his employer allowed him great flexibility with no restriction on the time or place the work should be performed, and, due to the City of Fernley's rather ambiguous credit card policies and the ratification by the City's fiscal officers of Cutler's actual use of the Fernley credit card, I recommend that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the 11 allegations that Cutler violated NRS 281A.400(2).

A public officer or employee is prohibited from using governmental time to benefit his personal or financial interest. However, Mr. Cutler had a very flexible agreement with his government employer, such that it was impossible to determine what hours of the day might be considered “government time” during which he may have been deemed to be benefitting his personal interest. Therefore, I recommend that the Panel find that, due to a lack of credible evidence that might define Mr. Cutler's “government time”, just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on whether Todd Cutler violated NRS 281A.400 (7).

Conclusion:

The Recommendation is that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission render an opinion on any of the allegations against TODD CUTLER including all of the alleged violations of NRS 281A.400 (2) and NRS 281A.400 (7).

I hereby approve the attached Investigator's Report and provide this, my recommendation, to this honorable panel.



Caren Jenkins, Esq.
Executive Director

Date: 1/7/10