



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion  
Concerning the Conduct of JACK CLARK  
Former Councilman, City of Henderson,  
Clark County,  
State of Nevada

Request for Opinion No.: 09-53C

Subject. /

**INVESTIGATOR'S REPORT (Tab A):**

**Introduction:**

**Request for Opinion No. 09-53C (Ethics Complaint). (Tab B):**

On July 6, 2009, complainant Bruce Cutler (Cutler) filed an Ethics Complaint against public officer Jack Clark (Clark), a former councilman of the City of Henderson (Henderson), alleging that he violated NRS 281A.420(3), when he failed to abstain from voting on funding of the Henderson Space and Science Center. (HSSC).

**Jurisdiction:**

As a former councilman of Henderson, no dispute exists that Clark is a former public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to investigate and take appropriate action in this matter, pursuant NRS 281A.280 and NRS 281A.440.

1 **Issues:**

2  
3 The issue is whether Clark violated:

- 4  
5 **1.** NRS 281A.420(3), when on June 9, 2009, he voted to approve funding for the HSSC.

6  
7 **Response<sup>1</sup> to Ethics Complaint. (Tab C):**

8  
9 On August 10, 2009 a response to the Ethics Complaint was received from Clark and his legal  
10 counsel Ann Wilkinson, Esq. (Wilkinson). Wilkinson stated that Clark has no personal or  
11 professional pecuniary interest in this matter and his commitment in his capacity as HSSC  
12 member did not affect his judgment in this matter. In addition, Wilkinson stated that the result of  
13 Clark's vote on June 9, 2009 was not one of a personal pecuniary interest and Clark did not  
14 receive a benefit greater than that accruing to the general group affected by the matter. Finally,  
15 Wilkinson stated that no benefit or detriment was conferred to Clark, his business associates, his  
16 household or his family and he was not required to abstain under NRS 281A.420(3). (Response,  
17 Tab C, pages 5-6).

18  
19 **Investigation Summary:**

20  
21 I interviewed the following individuals and reviewed their responses:

22  
23 **Witnesses interviews and responses. (Tab D):**

- 24  
25
  - Jack Clark, (Response, Tab C). Supplemental questionnaire received via e-mail  
26 on August 31, 2009. (Exhibit 1).

27  
28 <sup>1</sup> Pages 7 to 107 of Clark's response were numbered by the investigator for easier identification. Pages are numbered by prefix "NCOE page" followed by the appropriate number.

- Bruce Cutler, via e-mail on August 20, 2009. (Exhibit 2).

**Documents. (Tab E):**

I obtained and reviewed the following documents and materials relevant to the investigation:

- June 9, 2009 Henderson City Council meeting agenda and minutes. (Exhibit 3).
- July 7, 2009 Henderson City Council meeting agenda and minutes. (Exhibit 4).
- City of Henderson Ordinance 2807. (Exhibit 5).
- May 19, 2009 Henderson City Council agenda and HSSC Bylaws. (Exhibit 6).
- Nevada Secretary of State, business entity registration. (Exhibit 7).
- HSSC timeline. (Exhibit 8).
- HSSC brief description as posted on Henderson city website. (Exhibit 9).
- Commission's Jurisdictional Determination RFO No. 09-52C. (Exhibit 10).

**Relevant Statutes and Commission's Opinions. (Tab F):**

- NRS 281A.420(3),(4) and (8).
- Commission's Opinion In re Atkinson-Gates No. 93-06.

**Investigative findings:**

**Background<sup>2</sup>:**

Clark is a former councilman of Henderson. He served as a councilman from July 1, 1993 to June 16, 2009. (Response, Tab C, page 1), (Exhibit 1).

---

<sup>2</sup> Also see the HSSC timeline in Exhibit 7.

1 In 2004, Henderson began exploring the possibility of developing HSSC. In 2007, the City  
2 issued a Request for Proposal for a museum consulting company and subsequently hired AMS  
3 Planning and Research Corporation to develop a museum study. (Response, Tab C, page 16).

4  
5 On March 17, 2009, Henderson City Council (City Council) adopted Ordinance 2807, which  
6 established the HSSC Board of Directors. (HSSC Board). (Exhibit 5). At the same meeting, the  
7 City Council appointed 10 members of the HSSC Board, one of which was Clark. (Response,  
8 Tab C, page 42). During the HSSC Board meeting on April 28, 2009, Clark was appointed as a  
9 vice-president of HSSC. (Response, Tab C, page 46).

10  
11 On May 19, 2009, the HSSC Board adopted Bylaws and filed Articles of Incorporation with the  
12 Secretary of State on May 22, 2009. The HSSC is currently registered as a non-profit  
13 corporation. (501c (3)). (Exhibit 7).

14  
15 On June 9, 2009, the City Council voted on Resolution 3863, approving a donation of \$21  
16 million from the City's Land Fund for development and construction of HSSC. (Exhibit 3).  
17 (Exhibit 4).

18  
19 **Investigation:**

20  
21 **1. Allegation one: Clark violated NRS 281A.420(3) by failing to abstain**  
22 **from voting on approval of funding of the HSSC.**

23  
24 The allegation is that Clark failed to abstain from voting on funding for the HSSC, since he was  
25 both councilman of Henderson and HSSC Board vice-president at the time of the vote, an alleged  
26 conflict of interest.

1 The NRS 281A.420(3) and (4) provides that<sup>3</sup>:

2  
3 **3.** Except as otherwise provided in this section, in addition to  
4 the requirements of subsection 1, a public officer shall not vote upon or advocate the  
5 passage or failure of, but may otherwise participate in the consideration of, a matter with  
6 respect to which the independence of judgment of a reasonable person in the public  
7 officer's situation would be materially affected by:

- 8 (a) His acceptance of a gift or loan;  
9 (b) His pecuniary interest; or  
10 (c) His commitment in a private capacity to the interests of others.

11 **4.** In interpreting and applying the provisions of subsection 3:

12 (a) It must be presumed that the independence of judgment of a reasonable person in the  
13 public officer's situation would not be materially affected by his pecuniary interest or his  
14 commitment in a private capacity to the interests of others where the resulting benefit or  
15 detriment accruing to him, or if he has a commitment in a private capacity to the interests  
16 of others, accruing to the other persons, is not greater than that accruing to any other  
17 member of the general business, profession, occupation or group that is affected by the  
18 matter. The presumption set forth in this paragraph does not affect the applicability of the  
19 requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest  
20 or commitment in a private capacity to the interests of others.

21 (b) The Commission must give appropriate weight and proper deference to the public  
22 policy of this State which favors the right of a public officer to perform the duties for  
23 which he was elected or appointed and to vote or otherwise act upon a matter, provided  
24 he has properly disclosed his acceptance of a gift or loan, his pecuniary interest or his  
25 commitment in a private capacity to the interests of others in the manner required by  
26 subsection 1. Because abstention by a public officer disrupts the normal course of  
27 representative government and deprives the public and the public officer's constituents of  
28 a voice in governmental affairs, the provisions of this section are intended to require  
abstention only in *clear cases* where the independence of judgment of a reasonable  
person in the public officer's situation would be materially affected by his acceptance of  
a gift or loan, his pecuniary interest or his commitment in a private capacity to the  
interests of others. (Emphasis added).

HSSC Board Bylaws, Article IV, Section L (Compensation) provides that:

Members of the Board of Directors and advisory directors, as such, *shall not receive any stated salaries for their services, but by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board*, but nothing herein contained shall be construed to preclude any member of the Board of Directors or advisory director from serving the corporation in some other capacity and receiving compensation therefor as determined by the Board of Directors. (Emphasis added).

---

<sup>3</sup> Version amended by SB 160. (Effective May 28, 2009). The entire NRS 281A.420 with changes illustrated in color is available under Tab F.

1 The NRS 281A. 020(1)(b) provides that:

- 2           1. It is hereby declared to be the public policy of this State that:  
3           (b) A public officer or employee must commit himself to avoid conflicts between his  
4           private interests and those of the general public whom he serves.

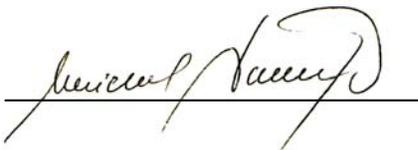
5 The complainant is alleging a conflict of interest and indirectly implies that Clark "voted on his  
6 own salary" by stating "[h]ow can you vote on something that benefits yourself," referring to a  
7 vote on funding (constructing) of HSSC and the fact that Clark is on the HSSC Board.

8  
9 Clark currently serves as the vice-president of HSSC. However, he does not receive any  
10 compensation related to his position on the HSSC Board. (Exhibit 1). At this time, there is no  
11 resolution of the HSSC Board regarding the "*fixed sum and expenses of attendance*" as noted in  
12 Article IV, section L of the HSSC Bylaws (Exhibit 6), (Response, Tab C, page 3, ¶12), nor is  
13 there any evidence of Gibson receiving compensation for serving the corporation in some other  
14 capacity as allowed by this provision.

15  
16 It is this investigator's opinion that the mere fact that Clark may, sometime in the future, receive  
17 compensation for attending HSSC Board meetings cannot be construed at this time as a  
18 pecuniary interest.

19  
20 Dated this 28 day of August 2009.

21  
22 NEVADA COMMISSION ON ETHICS

23  
24  
25 

26 By: Mike Vavra, Investigator.