



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

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

Request for Opinion No.: 09-30C

Subject. /

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

**Introduction:**

**Request for Opinion No. 09-30C (Ethics Complaint). (Tab B):**

On April 27, 2009, complainant Sandra Mathewson (Mathewson) filed an Ethics Complaint against public officer Jeffery McGowan (McGowan), the city attorney for the City of Fernley (Fernley), alleging that he violated NRS 281A.400(2) when he charged his personal meals and gasoline for his personal vehicle on the city-issued credit card. In addition, Mathewson alleges that McGowan personally benefitted from a city-related business trip to a conference in Mesa, Arizona.

**Jurisdiction:**

As the city attorney for Fernley, no dispute exists that McGowan is a 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:**

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3 The issues are whether McGowan violated:

- 4
- 5 **1.** NRS 281A.400(2), when on September 23, 2008, he charged \$33.88 on the city-issued  
6 credit card at the Texaco station in Yerington, NV, for gasoline for his personal vehicle.  
7
  - 8 **2.** NRS 281A.400(2), when on January 10, 2008, he charged \$31.42 on the city-issued  
9 credit card at La Fiesta Restaurant in Fernley for his personal meal.  
10
  - 11 **3.** NRS 281A.400(2), when on January 9, 2008, he charged a \$32.04 on the city-issued  
12 credit card at Taco Bell Restaurant in Fernley for his personal meal.  
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  - 14 **4.** NRS 281A.400(2), when on January 2, 2008, he charged \$21.83 on the city-issued credit  
15 card at La Fiesta Restaurant in Fernley for his personal meal.  
16
  - 17 **5.** NRS 281A.400(2), when between December 8, 2007 and December 14, 2007 allegedly  
18 personally benefitted from a city-business trip to a conference in Mesa, Arizona by  
19 arriving a day prior to and departing a day after the conference.  
20

21 **Response to Ethics Complaint. (Tab C):**

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23 On July 13, 2009, McGowan and his legal counsel Brent Kolvet, Esq. (Kolvet) filled with the  
24 Commission a response to the Ethics Complaint. Kolvet stated that McGowan did not violate any  
25 provisions of NRS 281A because all purchases were made in accordance with Fernley policies  
26 and McGowan's employment contract. (Exhibit 4).  
27

28 In addition, Kolvet objected to all allegations by stating that McGowan entered into a Stipulated

1 Agreement with the Commission in the Ethics Complaint #08-61C (RFO 08-61C). (Exhibit 8).  
2 Since the allegations in the underlying complaint (RFO 09-30C) pre-date RFO 08-61C, using  
3 them now would violate provision of said Stipulated Agreement between the Commission and  
4 McGowan. (Response, Tab C).

5  
6 Furthermore, Kolvet stated that the Commission had the opportunity to review all credit card  
7 statements and all charges made by McGowan during the investigation on RFO 08-61C.  
8 According to Kolvet, such charges were scrutinized by the Commission and McGowan would  
9 not have entered into the Stipulated Agreement had he known that additional charges from the  
10 same list would be brought against him later.

11  
12 **Investigation Summary:**

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14 I interviewed the following individuals and reviewed their responses:

15  
16 **Witnesses interviews and responses. (Tab D):**

- 17  
18
  - Sandra Mathewson via e-mail on June 22, 2009. (Exhibit 1).
  - Jeffery McGowan on July 13, 2009. (Response, Tab C).

19  
20  
21 **Documents. (Tab E):**

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

- 24  
25
  - Excerpt from Fernley Personnel Manual. (Exhibit 2).
  - Excerpt from Fernley Annual Budget for Fiscal Year 2007-2008. (Exhibit 3).
  - McGowan's Employment Contract. (Exhibit 4).
  - News articles reflecting January 5, 2008 flood in Fernley. (Exhibit 5).

- Fernley Ordinance #2001-0001. (Exhibit 6).
- Fernley Credit Card Policies effective June 1, 2003 and March 20, 2008. (Exhibit 7).
- Record of Fernley employees' overtime, January 2008. (Exhibit 8).

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

- NRS 281A.400(2).
- Commission's Opinion #01-08B.
- Stipulated Agreement In re McGowan, No. 08-61C.

**Investigative findings:**

**Background:**

McGowan is the city attorney for Fernley. He was hired on July 30, 2007 and his contract expired on June 30, 2009. At the time of completion of this report, it was unknown whether McGowan's contract was extended.

Mathewson is a Fernley resident who is fairly involved in the community's events, particularly in the City Council meetings. Kolvet stated that Mathewson's allegations appear to be continuation of harassment of Fernley officials that she has engaged in for some time. In addition, Kolvet stated that Mathewson is using the Commission to pursue a personal vendetta.

**Investigation:**

The complaint alleges that McGowan used the city-issued credit card for purchases of meals not

1 related to city business and purchase of gasoline for his personal vehicle. In addition, the  
2 complaint alleges that McGowan used a city business-related trip to a conference in Mesa,  
3 Arizona for his personal benefit by arriving a day prior and departing a day after the conference;  
4 therefore incurring unnecessary expenses to the taxpayers.

5  
6 Fernley Credit Card Policy notes that credit cards are issued to “effectively and efficiently  
7 provide for travel and training arrangements for city employees while on city business and to  
8 provide for the efficient purchase of city services and supplies ...” The policy further notes that  
9 credit cards are issued to the mayor, city council, city department heads and the municipal court  
10 judge and that “credit cards shall be used primarily for travel and training arrangements and may  
11 be used for the procurement of services, supplies, capital items, or other general expenditures  
12 only upon specific written advance authorization of the city manager ...”

13  
14 As the head of the City Attorney’s Office, McGowan was issued and authorized to use a city  
15 credit card. In addition, McGowan’s employment contract notes that McGowan “shall be  
16 provided with travel, training and other such expenses pursuant to the city’s annual budget.”  
17 (Exhibit 3), (Exhibit 4). Furthermore, the city manager has the authority to approve expenses up  
18 to \$10, 000 per City Ordinance. (Exhibit 6).

19  
20 Upon examining the available evidence, the result of the investigation is as follows:

- 21  
22 **1. Allegation one: On September 23, 2007, McGowan charged a \$33.88 on the city-  
23 issued credit card for a gasoline for his personal vehicle at Texaco station in Yerington,  
24 NV. The allegation is that McGowan was not working, since September 23, 2007 was  
25 Sunday; therefore, it was a personal use rather than city business.**

26  
27 McGowan stated that the charge was for a gasoline for his personal vehicle, but he was on a city  
28 business trip to discuss the Lyon County Jail. (Response, Tab C, page 6). McGowan explained

1 that he drove his personal vehicle and would have been entitled to a reimbursement of \$0.485 per  
2 mile for a total of \$48.50; however, he only purchased gasoline and did not ask for  
3 reimbursement, therefore saving not incurring an extra expense to the city.

4 As of the allegation that the gasoline purchase was not for city business since McGowan does not  
5 work on Sunday, I note that McGowan is the City attorney and a salaried employee and as such  
6 it is not unusual for him to work on weekends or evenings.

7  
8 McGowan stated that he met with Lyon County Sheriff Allen Veil (Veil). I spoke to McGowan's  
9 secretary Mary Hardisty (Hardisty) on June 22, 2009 and requested confirmation of McGowan's  
10 meeting with Veil. Hardisty attempted to contact Veil, but learned that he was on a vacation until  
11 August 8, 2009.

12  
13 Finally, in an e-mail dated April 1, 2008, Bonnie Duke, then-city treasurer, explained the proper  
14 procedure to McGowan on the purchase of gasoline. (Response, Tab C, pages 81-82). McGowan  
15 stated that after Duke's explanation, the practice of purchasing gas for his personal vehicle with  
16 the city-issued credit card was discontinued. (Response, Tab C, page 6, ¶3).

17  
18 **2. Allegation two:** On January 10, 2008, McGowan charged a \$31.42 on the city-issued  
19 credit card for the purchase of a meal in La Fiesta Restaurant in Fernley. The allegation  
20 is that McGowan was not traveling and he purchased a meal in Fernley, which is not  
21 allowed.

22  
23 At the time of the alleged conduct, the Fernley policy did not include a definition of travel or a  
24 specific policy allowing or disallowing the purchase of meals while in Fernley. McGowan  
25 explained that the meal was a city business-related lunch with Mayor Cutler to discuss January 5,  
26 2008 flood matters. (Response, Tab C, page 6), (Response, Tab C, page 50).

1           **3. Allegation three:** On January 9, 2008, McGowan charged a \$32.04 on a city-issued  
2           credit card for the purchase of a meal in Taco Bell Restaurant in Fernley. The allegation  
3           is that McGowan was not traveling and he purchased a meal in Fernley, which is not  
4           allowed.

5  
6           At the time of the alleged conduct, the Fernley policy did not include a definition of travel or a  
7           specific policy allowing or disallowing the purchase of meals while in Fernley. McGowan  
8           explained that the meal was for the city staff who was working overtime due to the January 5,  
9           2008 flood. (Exhibit 8). Allegedly, the purchase was agreed to by a management but purchased  
10          with McGowan's credit card. (Response, Tab C, page 49), (Response, Tab C, page 6 and 14).  
11          Information about the January 5, 2008 flood is available in Exhibit 5. There is no evidence of an  
12          unwarranted benefit to McGowan.

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14          **4. Allegation four:** On January 2, 2008, McGowan charged a \$21.83 on a city-issued  
15          credit card for a purchase of a meal in La Fiesta Restaurant in Fernley. The allegation is  
16          that McGowan was not traveling and he purchased a meal in Fernley, which is not  
17          allowed.

18  
19          At the time of the alleged conduct, the Fernley policy did not include a definition of travel or a  
20          specific policy allowing or disallowing the purchase of meals while in Fernley. McGowan  
21          explained that the meal was allegedly purchased as part of a meeting with Mayor Cutler. The  
22          meeting was set to evaluate McGowan's performance and other city -related matters. (Response,  
23          Tab C, page 6 and 14). I note that no record of this meeting is available.

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25          **5. Allegation five:** McGowan attended a seminar in Mesa, AZ, between December, 9  
26          2007 and December 13, 2007. The allegation is that McGowan incurred unnecessary  
27          expenses to the taxpayers because he arrived a day prior and departed a day after the  
28          seminar.

1 McGowan attended the Government Civil Practice Seminar in Mesa, Arizona between December  
2 9, 2007 and December 13, 2007. The seminar was scheduled to begin on December 9, 2007 at  
3 11:30 a.m. and end on December 13, 2007 at 11:30 a.m. McGowan departed Reno, Nevada on  
4 December 8, 2007 at 9:30 a.m. and arrived in Phoenix, AZ at 12:18 p.m.

5  
6 An argument is made that McGowan could have traveled to Mesa on December 9, 2007, the day  
7 of the seminar. A search for flight availability revealed that the only flight that would get  
8 McGowan to Mesa on time was departing Reno at 6:10 a.m. on December 9, 2007. Considering  
9 the approximate 40 mile distance from Fernley to Reno and the time required to check-in,  
10 McGowan would have had to depart Fernley at around 4:00 a.m. on December 9, 2007.

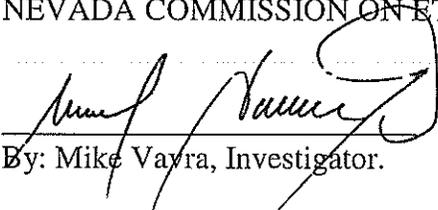
11 Therefore, it does not appear unreasonable that McGowan arrived to the seminar the day prior to  
12 when it started. There is no evidence of an unwarranted benefit to McGowan.

13  
14 McGowan stated that the reason he departed the day after the seminar was his intention to  
15 engage in "relationship building activities" with other attendees of the seminar, which he  
16 believed could be beneficial to the city. However, McGowan stated that he spent the entire  
17 afternoon and early evening of December 13, 2007 working on city-related documents that were  
18 due on December 14, 2007. (Response, Tab C, page 4).

19  
20 Furthermore, McGowan stated that he did not request reimbursement for the purchase of fuel for  
21 his vehicle used to travel to the Reno airport and did not request reimbursement for all the meals  
22 he was entitled to. Finally, McGowan stated that he saved the City money rather than incurring  
23 unnecessary expenses as alleged by the complainant. (Response, Tab C, pages 3-5).

24  
25 Dated this 22 day of July 2009.

26 NEVADA COMMISSION ON ETHICS

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28   
By: Mike Vayra, Investigator.