STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of STEVE ROSS, Member, Las Vegas City Council, State of Nevada,

Subject. /

Request for Opinion No.: 09-10C

INVESTIGATOR'S REPORT (Tab A):

Introduction:

On February 26, 2009, an Ethics Complaint was filed against Steve Ross (Ross), member of the City of Las Vegas Council (City Council), alleging that he voted to approve various projects to benefit the Southern Nevada Building and Construction Trades Council (SNBCTC), his employer.

Jurisdiction:

As the member of the City of Las Vegas Council, no dispute exists that Ross is a public officer as defined by NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to investigate and take appropriate actions in this matter, pursuant NRS 281A.280 and NRS 281A.440.

Issues:

The first issue is whether Ross violated NRS281A.420(2) when he failed to abstain on various construction projects. The second issue is whether Ross violated NRS 281A.420(4) when he failed to disclose his pecuniary interest before voting on certain construction projects.

Request for Opinion No. 09-10C (Ethics Complaint). (Tab B):

On February 26, 2009 an Ethics Complaint was filed by Tyson Wrensch (Wrensch), Steve Hecht (Hecht) and Renée Lella (Lella). The allegations are that Ross violated:

1.) NRS 281A.420(4) when he failed to disclose his pecuniary interest in SNBCTC before voting on various constructions projects between September 19, 2007 and February 18, 2009.
2.) NRS 281A.420(2) when he failed to abstain from voting on various construction projects between September 19, 2007 and February 18, 2009.

On April 23, 2009 additional allegations related to alleged violations of NRS 281A.420(2) and (4) were received from complainant Wrensch. The allegations are that Ross violated:

1.) NRS 281A.420(4) when he failed to disclose his commitment in a private capacity to SNBCTC, his employer, before voting on various constructions projects between September 5, 2007 and April 15, 2009.
2.) NRS 281A.420(2) when he failed to abstain from voting on various construction projects between September 5, 2007 and April 15, 2009.

Notice of Additional Issues and Facts. (Tab C):

During the course of investigation, additional facts and issues related to the alleged violations of NRS 281A.420(2) and (4) were discovered by the Investigator. A Notice of Additional Issues and Facts was mailed to Ross and his legal counsel Brad Jerbic, Esq. (Jerbic), on May 6, 2009.

First response to Ethics Complaint. (Tab D):

On April 9, 2009 a response to an Ethics Complaint was received from Ross' legal counsel Brad Jerbic Esq. (Jerbic). Ross stated he did not violate any provisions of NRS 281A.420, and that acted in his authority and responsibility. In addition, Ross stated that he has been mindful of the Advisory Opinion he received from the Commission on April 21, 2008, and he has complied with the advice. Furthermore, Ross stated that the complaint was characterized as "dirty politics" during his campaign. (Tab D, page 4).

Second response to Ethics Complaint and Notice of Additional Issues and Facts . (Tab E):

A second response from Ross was received on May 15, 2009. Ross explained his position with SNBCTC and the nature of the relationship between the trade unions and the SNBCTC. (Tab E, page 3-4, questions 3-5). In addition, Ross explained how the City Council members vote on consent agenda items. (Tab E, page 4, question 7).

Investigation Summary:

I interviewed, or attempted to interview, the following individuals:

Witnesses interviews and responses (Tab F):

- City of Las Vegas Mayor Oscar Goodman, on May 21, 2009. (Exhibit 1).
- City of Las Vegas Council Member Ricky Barlow, on May 21, 2009. (Exhibit 1).
- City of Las Vegas Interim Council Member David Steinman, on May 21, unable to respond by the time of completion of this report.
- City of Las Vegas Council Member Gary Reese, on May 21, 2009. (Exhibit 1).
- City of Las Vegas Council Member Steve Wolfson, unable to respond by the time of completion of this report. (Exhibit 1).
- City of Las Vegas Council Member Tarkanian, unable to respond by the time of completion of this report.
- Steve Ross, subject of the Ethics Complaint No.09-10C, on May15, 2009. (Included under Tab E, Second response to Ethics Complaint and Notice to Additional Issues and Facts).
- Greg Paulk, President of TAB Contractors, on May 12, 2009. (Exhibit 2).
- Don Davis, President of Contri Construction, on May 8, 2009. (Exhibit 3).
- Steve Hecht, requestor of the Ethics Complaint No.09-10C, on April 6, 2009. (Exhibit 4).
- Tyson Wrensch, requestor of Ethics Complaint No. 09-10C, on March 20, 2009. (Exhibit 5).
- Renée Lella, requestor of an Ethics Complaint No. 09-10C, on March 20, 2009. (Exhibit 6).
- David Rocchio, President of Capriati Construction, response not received at the time of completion of this report.
- Guy Wells, President of Wells Cargo Inc., response not received at the time of completion of this report.
- Mike Peek, President of Williams Brother Inc., response not received at the time of completion of this report.

- Jay Smith, President of Las Vegas Paving, response not received at the time of completion of this report.
- Pat Ward, President of Frehner Construction and Southern Nevada Paving, response not received at the time of completion of this report.
- Ezam Khazeni, President of Southwest Ironworks, response not received at the time of completion of this report.
- Joe Catania, President of LVI Environmental, response not received at the time of completion of this report.
- Paul Schmitt, President of Whiting-Turner Contracting, response not received at the time of completion of this report.

Documents. (Tab G):

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

- E-mail from the City of Las Vegas Attorney Brad Jerbic, dated May 19, 2009. (Exhibit 7).
- E-mail from Complainant Wrensch, dated May 18, 2009. (Exhibit 8).
- Agenda and Consent Agenda Summary Pages from Las Vegas City Council meetings from September 5, 2007 to April 15, 2009. (Only agendas relevant to the complaint are included). (Exhibit 9).
- Relevant parts of transcript from the February 18, 2009 City Council meeting, agenda item #59. (Exhibit 10). (Pages 61-63 only, the entire transcript is available on City of Las Vegas website).
- Transcript from the February 18, 2009 City Council meeting, agenda item #56. (Exhibit 11).

- Relevant parts of transcript from the September 19, 2007 City Council meeting, agenda item #129 and #132. (Exhibit 12). (Pages 167-169 only, the entire transcript is available on City of Las Vegas website).
- Transcript from the May 9, 2007 Nevada Commission on Ethics' hearing on Advisory Opinion, In re Ross, 07-25A. (Exhibit 13).
- Nevada Commission on Ethics Advisory Opinion, In re Ross, 07-25A. (Exhibit 14).
- Video recordings and transcripts of all relevant meetings not included, but available at the City of Las Vegas website: http://www.lasvegasnevada.gov/government/council.htm under "meetings and agendas".

Relevant Statutes and Commission's Opinions (Tab H):

- Opinion, In re Woodbury, 99-56A, and Opinion, In re Kubichek, 97-07A.
- NRS 281A.420(2), (4) and (8).

Investigative findings:

The following are my investigative findings:

Ross was first elected to the City Council during the 2005 election and re-elected on April 2009 to his second term. Ross represents the City of Las Vegas Ward 6. In addition to his position on the City Council, Ross holds a private position with the SNBCTC as the secretary-treasurer. He was elected as the SNBCTC secretary-treasurer on July 2007 and receives compensation for this position. SNBCTC is an organization representing an array of construction trades such as electricians, plumbers and painters. However, before making the decision to pursue private

employment as a secretary-treasurer in SNBCTC, Ross sought an advisory opinion from the Nevada Commission on Ethics.

Advisory Opinion 07-25A.

On April 30, 2007, Ross asked the Commission for an advisory opinion. (Opinion 07-25A). The question Ross asked was whether he would violate the Ethics in Government Law by holding the position of the secretary-treasurer with SNBCTC, while simultaneously serving on the City Council. Ross stated that he was advised by the City of Las Vegas attorney's office that if elected as a SNBCTC secretary-treasurer, he would have to make full disclosure of his position on SNBCTC and abstain on any matters involving the City of Las Vegas and the SNBCTC. (Exhibit 14, page 2).

During the May 9, 2007 hearing, the Commission concluded that Ross' employment with the SNBCTC while simultaneously serving on the City Council alone would not create an impermissible conflict of interest, but conflicts of interest may arise in a myriad of ways. The Commission advised Ross to seek direction from his counsel to ensure that he complies with the Nevada Ethics in Government Law and the Commission's opinions to ensure his compliance with these laws and opinions. (Exhibit 13, page 56, line 21). In addition, the Commission provided Ross with advice on disclosure and abstention. (Exhibit 13, pages 57-62).

Allegation one: "Kyle Canyon."

On September 19, 2007, the City Council voted unanimously to approve a Special Use Permit for a proposed non-restricted gaming facility and a request to amend a portion of the Centennial Hills Sector Plan of the General Plan. Ross did not disclose his position in SNBCTC, nor did he abstain from voting. (Exhibit 12, page 167-169). However, there is no evidence that Ross' vote to approve the Special Use Permit or the Amendment to the General Plan would benefit Ross or the SNBCTC.

Allegation two, three and four: The new City Hall project.

The first meeting on the City Council on the new City Hall occurred on November 19, 2008. Under agenda item #59, the City Council engaged in a discussion to seek an approval to issue tax-exempt bonds in an amount not to exceed $267,000,000 evidenced by a lease-purchase agreement. Thereafter, the agenda item was approved by the City Council's unanimous vote. Ross did not disclose his position in SNBCTC, nor did he abstain from voting. (Exhibit 9, page 11).

The second meeting related to a new City Hall occurred on December 3, 2008. Under agenda item #50, the City Council engaged in a discussion on a Resolution of Intent authorizing the issuance and calling for a public hearing for the City to finance for a new City Hall. Thereafter, the agenda item was approved by the City Council's unanimous vote. Ross did not disclose his position in SNBCTC, nor did he abstain from voting. (Exhibit 9, page 9).

The third meeting on a new City Hall was held on February 18, 2009. During the agenda item #59, the City Council engaged in a discussion on a Resolution to authorize a lease-purchase agreement for a new City Hall. This meeting was attended by a large public audience including an estimated 300 unemployed laborers showing their support for a new City Hall. (Tab B, page 20). Ross disclosed his relationship in SNBCTC before the vote. (Exhibit 10, page 62, line 1753). As to the allegation related to his abstention, Ross asked for advice from the City Attorney Jerbic, who replied by stating: "I don't think there's a conflict of interest in you voting." (Exhibit 10, page 62, line 1758).

Allegation five: Horse Drive and US 95 Interchange.

On February 18, 2009, under agenda item #56, the City Council discussed the proposed bid

awarded to Capriati Construction Corporation (Capriati). The bid was on the construction of an interchange in the area of Horse Drive and US 95. (Exhibit 9, page 3).

Frehner Construction Corporation (Frehner) submitted a protest citing that both Capriati and the apparent third applicant, Meadow Valley Contractors (Meadow Valley), "have failed to meet the specific requirements and therefore cannot be considered responsible bidders." (Tab B, page 143).

During the February 18, 2009 City Council meeting, Ross engaged in discussion with the City staff and asked how long this project would be delayed if it is re-bid (Exhibit 11, page 42 line 1161). After the discussion between Ross, the City staff and the City Council, Ross moved to approve the bid award to Capriati. He did not disclose his position in SNBCTC, nor did he abstain from voting. (Exhibit 11, page 52, line 1422).

Allegation six to twenty six: Voting on consent agendas between September 5, 2007 and April 15, 2009.

On April 23, 2009, complainant Wrensch submitted additional allegations against Ross. The allegations are that Ross voted and failed to disclose his commitment in a private capacity to SNBCTC before voting on numerous projects benefiting alleged "members" of SNBCTC. Detailed information on each allegation is included in the Notice of Additional Issues and Facts. (Tab C). The review of video recording showed that Ross did not disclose his position in SNBCTC nor did he abstain from voting on any of the items in question.

Apparently, the complainants discovered a list of contractors on the SNBCTC website, and assumed that such contractors are "members" of SNBCTC (Tab C, Exhibit C). The contractors included on a list in question are not members of SNBCTC, nor do they pay membership fees to

SNBCTC (Tab E, page 4). They are merely listed on the website for informational purposes. Therefore, all allegations related to the consent agenda items are without merit.

Dated this 21 day of May 2009.

NEVADA COMMISSION ON ETHICS
Patricia D. Cafferata, Esq.
Executive Director

By: Mike Vavra, Investigator.