



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of
TODD CUTLER, Mayor,
City of Fernley
State of Nevada,

Request for Opinion No.: 09-36C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

Request for Opinion No. 09-36C (Ethics Complaint). (Tab B):

On May 15, 2009, complainant Sandra Mathewson (Mathewson) filed an Ethics Complaint against public officer Todd Cutler (Cutler), the mayor of the City of Fernley (Fernley), alleging that he violated NRS 281A.400(2), when requested reimbursements for his personal meals and directed other employees to use public funds to purchase items not approved by the City of Fernley Council (City Council). In addition, the complaint alleges that Cutler charged his wife's airline tickets on the City issued credit card and that he used public funds to promote himself. Mathewson submitted additional evidence on June 12, 2009 (Exhibit 2), and May 22, 2009. (Exhibit 3).

Jurisdiction:

As the mayor of Fernley, no dispute exists that Cutler is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to

1 investigate and take appropriate action in this matter, pursuant NRS 281A.280 and NRS
2 281A.440.

3
4 **Issues:**

5
6 The issues are whether Cutler violated:

7
8 **1.** NRS 281A.400(2), when on or about April 4, 2008, he submitted a reimbursement report
9 related to his trip to a conference in New Orleans, LA, from November 12 to November
10 17, 2007. The City policy requires receipts to be submitted 10 days after the trip. Cutler
11 received a \$320 cash advance for this trip on November 7, 2007; the expenses were \$256
12 and Cutler did not return the remaining \$64 to the City.

13 (Additional allegation brought by the complainant on June 12, 2009). (Exhibit 2).

14
15 **2.** NRS 281A.400(2), when on January 23, 2008, he purchased a meal for \$13.93 in
16 Quiznos restaurant in Fernley. Subsequently, Cutler requested and received
17 reimbursement for this expense.

18 (Alleged in initial complaint on May 15, 2009). (Tab B).

19
20 **3.** NRS 281A.400(2), when on June 21, 2007, he purchased food for \$150 in Brim's Café in
21 Fernley.

22 (Additional allegation brought by the complainant on May 22, 2009). (Exhibit 3).

23
24 **4.** NRS 281A.400(2), when on June 21, 2007, he purchased food for \$ 301.80 in Brim's
25 Café in Fernley.

26 (Additional allegation brought by the complainant on May 22, 2009). (Exhibit 3).

- 1 **5.** NRS 281A.400(2), when on July 18, 2007 he voted to fund a dinner using an estimated
2 \$5,000 to \$7,000 from public funds.
3 (Alleged in initial complaint on May 15, 2009). (Tab B).
4
- 5 **6.** NRS281A.400(2), when on July 20, 2007, he directed Fernley employee Leslieann
6 Hayden (Hayden) to purchase lapel pins from Blue Moon company for \$1,109.83.
7 (Alleged in initial complaint on May 15, 2009). (Tab B).
8
- 9 **7.** NRS 281A.400(2), when on July 23, 2007, he directed Fernley employee Keith Penner
10 (Penner) to charge \$243.30 on the City issued credit card for an airline ticket for his wife.
11 (Alleged in initial complaint on May 15, 2009). (Tab B).
12
- 13 **8.** NRS 281A.400(2), when on August 11, 2007, he directed Fernley employee Penner to
14 charge \$100.00 on the City issued credit card for an airline ticket for his wife.
15 (Alleged in initial complaint on May 15, 2009). (Tab B).
16
- 17 **9.** NRS 281A.400(2), when on August 11, 2007, he directed the Fernley employee Penner
18 to purchase candy from See's Company for \$758.99.
19 (Alleged in initial complaint on May 15, 2009). (Tab B).
20
- 21 **10.** NRS 281A.400(2), when on August18, 2007, he purchased food for \$35.94 in Scholari's
22 Food and Drug Company.
23 (Additional allegation brought by the complainant on May 22, 2009). (Exhibit 3).
24
- 25 **11.** NRS 281A.400(2), when on September 11, 2007, he directed Fernley employee Hayden
26 to purchase candy from See's Company for \$600.
27 (Alleged in initial complaint on May 15, 2009). (Tab B).
28

1 **12.** NRS 281A.400(2), when on October 5, 2007, he directed Fernley employee Penner to
2 charge \$ 338.10 on the City issued credit card for an airline ticket for his wife.
3 (Alleged in initial complaint on May 15, 2009). (Tab B).

4
5 **13.** NRS 281A.400(2), when on or about October 18, 2007, Cutler submitted a request for
6 payment that included \$60 for the registration fee for his wife Deanna at the Embassy
7 Suites hotel in New Orleans, LA.
8 (Additional allegation brought by the complainant on June 12, 2009). (Exhibit 2).

9
10 **14.** NRS 281A. 400(2), when on November 7, 2007, he purchased food for \$ 31.96 in
11 Scholari's Food and Drug Company.
12 (Additional allegation brought by the complainant on May 22, 2009). (Exhibit 3).

13
14
15 **Notice of Additional Issues and Facts. (Tab C):**

16
17 During the course of investigation, additional facts and issues relating to alleged violations of
18 NRS 281A.400(2) were discovered by the Investigator. A Notice of Additional Issues and Facts
19 was mailed to Cutler and his legal counsel Brent Kolvet, Esq. (Kolvet), on June 30, 2009. (Tab
20 C).

21
22 **Response to Ethics Complaint and Notice of Additional Issues and Facts. (Tab D):**

23
24 A response to the Ethics Complaint was received from Cutler and Kolvet, on June 9, 2009.
25 Kolvet stated that Cutler did not violate any provisions of NRS 281A because he followed the
26 proper procedures. In addition, Kolvet stated that Mathewson's personal view of what the City
27 and its elected officials should do, does not set standards on how they should operate. Finally,
28 Kolvet stated that Cutler did not receive any undue benefit.

1 **Investigation Summary:**

2
3 I interviewed the following individuals and reviewed their responses:

4
5 **Witnesses interviews and responses. (Tab E):**

- 6
7
 - Todd Cutler, via mail, on July 9, 2009, (Response, Tab D), and via telephone on
 - 8 July 8, 2009.
 - 9 • Sandra Mathewson, via e-mail on June 22, 2009. (Exhibit 1).

10
11 **Documents. (Tab F):**

12
13 I obtained and reviewed the following documents and materials relevant to the investigation:

- 14
15
 - Letter from Mathewson, received on June 12, 2009. (Exhibit 2).
 - 16 • Letter from Mathewson, received on May 22, 2009. (Exhibit 3).
 - 17 • Excerpt from the City of Fernley Personnel Manual. (Exhibit 4).
 - 18 • City of Fernley Credit Card Policy effective March 20, 2008. (Exhibit 5).
 - 19 • City of Fernley Credit Card Policy effective July 1, 2003. (Exhibit 6).
 - 20 • Excerpt form the City of Fernley Annual Budget for the fiscal year July 1, 2007 to
 - 21 June 30, 2008. (Exhibit 7).
 - 22 • City of Fernley Ordinance #2001-0001. (Exhibit 8).

23
24 **Relevant Statutes and Commission's Opinions. (Tab G):**

- 25
26
 - NRS 281A.400(2).

1 **Investigative findings:**

2

3 **Background:**

4

5 Cutler is the mayor of the City of Fernley. He was elected into his position after the November

6 2006 general election and sworn into office on January 2, 2007. His current term expires in

7 December 2010. In addition to his elected position, Cutler is employed full-time by the Lyon

8 County School District. (Response, Tab D, page 2).

9

10 Mathewson is a City of Fernley resident who is fairly involved in the community's events,

11 particularly in the City Council meetings. Cutler stated that Mathewson initiated numerous civil

12 actions against the City, Open Meeting Law complaints, and Ethics Complaints. (Response, Tab

13 D, page 8, ¶2). Allegedly, Mathewson's actions are a result of her unsuccessful opposition to a

14 water treatment facility currently constructed near her residence.

15

16 **Investigation:**

17

18 I interviewed Cutler via telephone on July 8, 2009, and received his response on July 9, 2009.

19 After reviewing the evidence, my finding are as follows:

- 20
- 21 **1. Allegation one: On or about April 4, 2008, Cutler submitted reimbursement report**
- 22 **related to his trip to a conference in New Orleans, LA, from November 12 to November**
- 23 **17, 2007. The City policy requires receipts to be submitted 10 days after the trip. Cutler**
- 24 **received \$320 a cash advance for this trip on November 7, 2007; the expenses were**
- 25 **\$256 and Cutler did not return the remaining \$64 to the City.**

26

27 Cutler attended the National League of Cities conference in New Orleans, LA from November

28 12 to November 17, 2007. On November 7, 2007, Cutler received a \$320 cash advance. (Exhibit

1 2, page 8). On or about April 4, 2008, Cutler submitted a reimbursement report for his trip to the
2 New Orleans conference, which reflects expenses of \$256 and a remainder of \$64.

3
4 Cutler noted in his response that the \$64 was reimbursed to the City. However, Cutler explained
5 that there is no check issued for this amount; the City accounting staff combined several trips
6 together, and the result was combined into one transaction. After reconciliation of all trips and
7 related expenses, Cutler did not owe any money to the City, the City owed him. As a result, a
8 check for \$51.51 was issued to Cutler on May 8, 2008. (Response, Tab D, page 54). In addition
9 Cutler stated that Mathewson viewed his reimbursement file, and was aware of the process of
10 combining reimbursements into one transaction. (Response, Tab D, page 4).

11
12 I note that the Fernley Personnel Manual section 5.16 requires that “all claims with required
13 receipts for travel expenses are to be submitted to the department director for approval within ten
14 (10) working days following the trip.” (Exhibit 4). However, Cutler stated that the policy applies
15 to employees, not to elected officials. (Response, Tab D, page 9, ¶5). Examination of the Fernley
16 Personnel Manual revealed that the policies are applicable to all Fernley employees; however,
17 the Fernley Personnel Manual section 7 defines the term “employee” and notes that the term
18 excludes department heads. (Exhibit 4).

19
20 Cutler stated that he relied upon the City staff to process the necessary paperwork and notify him
21 if any amount was due. (Response, Tab D, page 4). The alleged delay in reimbursement appears
22 to be a result of accounting procedures as noted above. The City accounting staff combines
23 several trips together; after reconciliation, a reimbursement of a payment to the City is requested
24 or the City issues a check if payment to the individual, in this case Cutler, was due. Finally, the
25 reimbursement report was approved on April 11, 2008 by then-City Manager Gary Bacock
26 (Bacock). (Exhibit 2, pages 7-8).

1 **2. Allegation two:** On January 23, 2008, Cutler purchased a meal for \$13.93 in Quiznos
2 restaurant in Fernley. Subsequently, Cutler requested and received reimbursement for
3 this expense. The allegation is that Cutler should not have used public funds for his
4 meal since the purchase took place in Fernley and he was not traveling.

5
6 Cutler stated in his response that the purchase was for the city- business related lunch. Cutler and
7 the Lyon County Emergency Manager Jeff Page (Page) met in Quiznos on January 23, 2008, to
8 discuss January 5, 2008 flood issues. In addition, Cutler stated that the reimbursement check
9 erroneously bears the name of the City Attorney McGowan. Allegedly, this was due to a clerical
10 error because both share the same first name Jeff. (Response, Tab D, page 3, ¶1).According to
11 Cutler, the expense was approved by Bacock. (Complaint, Tab B, pages 5-7).

12
13 I note that the Fernley Personnel Manual section 5.16 refers to “reasonable, authorized and
14 necessary travel expenses and expenses that follow commonly accepted standards of sound
15 judgment and good taste.” (Exhibit 4). However, at the time the alleged violation occurred, the
16 City had no definition of travel status. In addition, as noted above, the purchase was approved by
17 Bacock. According to the Fernley Ordinance #2001-0001, section I, if the funds are provided by
18 the budget, the City manager has the authority to approve purchases of \$10, 000 or less without
19 the approval of the City Council. (Exhibit 8). The purchase was coded under budget account
20 100-412-580. (Complaint, Tab B, page 5-6), (Exhibit 7).

21
22 **3. Allegation three:** On June 21, 2007, Cutler purchased food for \$150 from Brim’s Café
23 in Fernley. The allegation is that Cutler held a “private party” and public funds should
24 not have been used.

25
26 During to our telephone conversation on July 8, 2009, Cutler explained that “coffee with the
27 mayor” is a meeting held monthly with the intent to discuss the City issues with local residents.

1 In addition, Cutler stated that the meeting is usually hosted by a sponsor; however, the expense
2 for the June 21, 2007 was paid by the City.

3
4 Furthermore, Cutler stated in his response that he plays no part in the purchase of food.
5 (Response, Tab D, page 6, ¶5). Apparently, the City had an account with now-closed Brim's
6 Café; after the food was purchased, the City issued the \$150 check. (Exhibit 3, page 2). The food
7 purchase was allegedly approved by Bacock. (Exhibit 3, pages 2-3).

8
9 According to the Fernley Ordinance #2001-0001, section I, if the funds are provided by the
10 budget, the City manager has the authority to approve purchases of \$10, 000 or less without the
11 approval of the City Council. (Exhibit 8). The purchase was coded under budget account 100-
12 411-600. (Exhibit 3, pages 2-3), (Exhibit 7). I note that the there is no evidence of Bacock's
13 approval; however, there is no evidence that Cutler played any part in this purchase.

14
15 **4. Allegation four: On June 21, 2007, Cutler purchased food for \$301.80 from Brim's**
16 **Café in Fernley. The allegation is that the food was purchased for an "employee**
17 **meeting" and public funds should not have been used.**

18
19 Although Cutler did not offer explanation of the "employee meeting" in question, he stated that
20 he plays no part in purchase of food. (Response, Tab D, page 6, ¶5). Apparently, the City had an
21 account with now-closed Brim's Café. After food was purchased, the city issued a check to
22 Brim's. The food purchase was allegedly approved by Bacock. (Exhibit 3, pages 2-3).

23
24 According to the Fernley Ordinance #2001-0001, section I, if the funds are provided by the
25 budget, the City manager has the authority to approve purchases of \$10, 000 or less without the
26 approval of the City Council. (Exhibit 8). The purchase was coded under budget account 100-
27 411-600. (Exhibit 3, pages 2-3), (Exhibit 7). I note that the there is no evidence of Bacock's
28 approval; however, there is no evidence that Cutler played any part in this purchase.

1 **5. Allegation five:** On July 18, 2007, Cutler voted to fund a dinner using an estimated
2 \$5,000 to \$ 7,000 from public funds.

3
4 Examination of the minutes from the City of Fernley Council Meeting on July 18, 2007 did not
5 revealed any evidence of a vote on the expenditure of funds for the dinner in question. There was
6 a discussion on the subject; however, no vote was taken as alleged in the complaint.

7
8 Cutler stated that his involvement was simply to preside over the meeting and provide any
9 pertinent information. (Response, Tab D, page 6, ¶4). Furthermore, Cutler stated that the
10 allegation that the “true cost” was hidden from the public is untrue; all documentation related to
11 this event is a public record. The report of the total expenses is available in the complaint on
12 pages 29-32.

13
14 **6. Allegation six:** On July 23, 2007, Cutler directed employee Hayden to purchase lapel
15 pins from Blue Moon Company for \$1,109.83.

16
17 The complaint alleges a “blatant and willful violation” because “the City Council voted no to
18 purchase of any trinkets.” (Complaint, Tab B, page 3, ¶3). The minutes from the Fernley Council
19 meeting on July 18, 2007 show that the vote was specifically referring to the purchase of writing
20 pens, not to “trinkets” as alleged.

21
22 Cutler explained that he plays no part in such decisions, and he did not request Hayden to make
23 this purchase. Such purchases are arranged by the City manager’s office (Response, Tab D, page
24 5, ¶3). According to the City of Fernley Ordinance #2001-0001, section I, if the funds are
25 provided by the budget, the City manager has the authority to approve purchases of \$10, 000 or
26 less without the approval of the City Council. (Exhibit 8). The purchase was coded under budget
27 account 100-413-550. (Complaint, Tab B, page 13-14), (Exhibit 7). I note that there is no
28 evidence that the purchase was directed or approved by Cutler as alleged.

1 **7. Allegation seven:** On July 23, 2007, Cutler directed Fernley employee Penner to
2 charge \$243.30 on a City issued credit card for his wife’s airline tickets.

3
4 The Fernley individual credit card statement issued to Penner shows a charge in the amount of
5 \$243.30 for an airline ticket for Cutler and his wife Deanna, dated July 23, 2007. (Complaint,
6 Tab B, page 8). Cutler stated that at the time of this purchase, he did not have a City-issued credit
7 card; therefore, the purchase was made with Penner’s credit card. However, Cutler stated that he
8 did not direct Penner to make such purchase, Bacock did.

9
10 The allegation is that Cutler did not reimburse the City for the \$243.30 for his wife’s airline
11 tickets. (Complaint, Tab B, page 3, ¶2). However, the evidence shows that Cutler reimbursed the
12 City on September 19, 2007, prior to taking his trip. (Response, Tab D, page 3, ¶2). I note that
13 the City of Fernley Credit Card Policy states that “personal expenditures are generally prohibited
14 [A] the only exception for personal expenditures is a situation in which travel or training
15 arrangements are “package” purchases including family. Under these “package” situations, the
16 employee must obtain a written authorization from the city manager and must immediately
17 reimburse the City for [sic] personal portion of the expenditure upon making [sic] reservation.”
18 The evidence shows that Cutler reimbursed the City prior to taking his trip.

19
20 **8. Allegation eight:** On August 11, 2007, Cutler directed the City of Fernley employee
21 Penner to charge \$100 on a City issued credit card for his wife’s airline tickets.

22
23 The Fernley individual credit card statement issued to Penner shows a charge in the amount of
24 \$100 for an airline ticket for Cutler and his wife Deanna, dated August 11, 2007. (Complaint,
25 Tab B, page 10). Cutler stated that at the time of this purchase, he did not have City-issued credit
26 card; therefore, the purchase was made with Penner’s credit card. In addition, Cutler stated that
27 the \$100 charge was not for an airline ticket, it was a charge that resulted from rescheduling. The
28 travel arrangements were made prior to staff being aware of another engagement in Carson City,

1 therefore an additional fee was assessed. Furthermore, Cutler stated that he did not direct Penner
2 to make such purchase, Bacock did.

3
4 The allegation is that Cutler did not reimburse the City for the \$100 for this charge. (Complaint,
5 Tab B, page 3). Cutler stated that he reimbursed the City for the airline tickets (allegation #7),
6 but he was not requested to reimburse the City for this fee because as noted above, the fee was
7 due to rescheduling. (Response, Tab D, page 3, ¶2).

8
9 **9. Allegation nine:** On August 11, 2007, Cutler directed the City of Fernley employee
10 Penner to purchase candy from See's company for \$758.99.

11
12 Cutler explained that he plays no part in such decisions, and he did not request Penner to make
13 this purchase. Such purchases are arranged by the City manager's office (Response, Tab D, page
14 5, ¶3). According to the Fernley Ordinance #2001-0001, section I, if the funds are provided by
15 the budget, the City manager has the authority to approve purchases of \$10, 000 or less without
16 the approval of the City Council. (Exhibit 8). There is no evidence that the purchase was directed
17 or approved by Cutler as alleged.

18
19 **10. Allegation ten:** On August 18, 2007, Cutler purchased food for the "Coffee with
20 Mayor" event from Scholari's Food and Drug Company for \$35.94.

21
22 Cutler stated that "Coffee with the Mayor" is a meeting held monthly with the intent to discuss
23 the City issues with local residents. Cutler stated that he plays no part in the purchase of food.
24 Apparently, the City had an account with Scholari's Food and Drug. After food was purchased,
25 the city issued a \$35.94 check to Scholari's. The food purchase was approved by Penner and it
26 was coded under budget account 100-412-600. (Exhibit 3, pages 6-7), (Exhibit 7). There is no
27 evidence that the purchase was directed or approved by Cutler as alleged.

1 **11. Allegation eleven:** On September 11, 2007, Cutler directed the City of Fernley
2 employee Hayden to purchase candy from See’s Company for \$600.

3
4 Cutler stated that he did not direct Hayden to make such purchase. Cutler explained that he plays
5 no part in such decisions, and he did not request Hayden to make this purchase. Such purchases
6 are arranged by the City manager’s office (Response, Tab D, page 5, ¶3). According to the
7 Fernley Ordinance #2001-0001, section I, if the funds are provided by the budget, the City
8 manager has the authority to approve purchases of \$10, 000 or less without the approval of the
9 City Council. (Exhibit 8). The purchase was allegedly authorized by Bacock, and it was coded
10 under budget account 100-412-600. (Complaint, Tab B, page 11-12), (Exhibit 7). There is no
11 evidence that the purchase was directed or approved by Cutler as alleged.

12
13 **12. Allegation twelve:** On October 5, 2007, Cutler directed the City of Fernley employee
14 Penner to charge \$338.10 on a City issued credit card for his wife’s airline tickets.
15 Cutler did not reimburse the City for this expense.

16
17 The City of Fernley individual credit card statement issued to Penner shows charge in the
18 amount of \$338.10 for an airline ticket issued for Cutler and his wife Deanna, dated October 5,
19 2007. Cutler stated that at the time of this purchase, he did not have a City-issued credit card;
20 therefore, the purchase was made with Penner’s credit card. However, Cutler stated that he did
21 not direct Penner to make such purchase, Bacock did.

22
23 The allegation is that Cutler did not reimburse the City for the \$338.10 for his wife’s airline
24 tickets. (Complaint, Tab B, page 3, ¶2). However, the evidence shows that Cutler reimbursed the
25 City on November 20, 2007. (Response, Tab D, page 3, ¶2). I note that the City of Fernley
26 Credit Card Policy states that “personal expenditures are generally prohibited [A] the only
27 exception for personal expenditures is a situation in which travel or training arrangements are
28 “package” purchases including family. Under these “package” situations, the employee must

1 obtain a written authorization from the city manager and must immediately reimburse the City
2 for [sic] personal portion of the expenditure upon making [sic] reservation.” The evidence
3 shows that Cutler reimbursed the City.
4

5 **13. Allegation thirteen:** On or about October 18, 2007, Cutler submitted a request for
6 payment that included a \$60 registration fee for his wife Deanna at the Embassy Suites
7 hotel in New Orleans, LA.
8

9 The evidence shows that the \$60 registration fee was paid from the City’s funds. However,
10 Cutler stated that he reimbursed the City on December 20, 2007. Cutler issued a check for \$115,
11 which included the \$60 registration fee and \$55 for meals for a guest. (Response, Tab D, page 3,
12 ¶2). I note that the City of Fernley Credit Card Policy states that “personal expenditures are
13 generally prohibited [A] the only exception for personal expenditures is a situation in which
14 travel or training arrangements are “package” purchases including family. Under these
15 “package” situations, the employee must obtain a written authorization from the city manager
16 and must immediately reimburse the City for [sic] personal portion of the expenditure upon
17 making [sic] reservation.” The evidence shows that Cutler reimbursed the City.
18

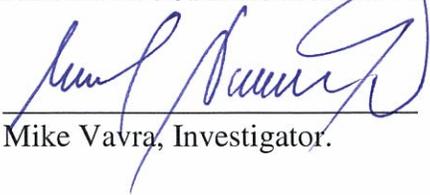
19 **14. Allegation fourteen:** Cutler purchased food fro the City Council meeting from
20 Scolari’s Food and Drug Company for \$31.96.
21

22 Cutler stated that he plays no part in the purchase of food. Apparently, the City had an account
23 with Scholari’s Food and Drug. After food was purchased, the city issued a check to Scholari’s.
24 The food purchase was for the City Council meeting and it was approved by Penner. The
25 purchase was coded under budget account 100-412-600. (Exhibit 3, pages 4-6), (Exhibit 7).
26 There is no evidence that the purchase was directed or approved by Cutler as alleged.
27
28

1 Dated this 13 day of July 2009.

2

3 NEVADA COMMISSION ON ETHICS

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5 _____
6 Mike Vavra, Investigator.

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