STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of GARY BACOCK, Former City Manager, City of Fernley, State of Nevada,

Subject. /

Request for Opinion No.: 09-20C

INVESTIGATOR'S REPORT (Tab A):

Introduction:

On March 25, 2009, an Ethics Complaint was filed against Gary Bacock, (Bacock), the then city manager of the City of Fernley, State of Nevada (Fernley), alleging that he used the city issued credit card for his personal benefit, and received mileage reimbursement he was not entitled to receive.

Jurisdiction:

As the former city manager, no dispute exists that Bacock was a public officer at the time the alleged violations took place as defined by NRS 281A.160. The complaint was filed within the one year statute of limitation in NRS 218A.280 (2)(b).Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to render an opinion in this matter, pursuant NRS 281A.280 and NRS 281A.440.

Issues:

The first issue is whether Bacock violated NRS 281A.400(2), when he allegedly used the city issued credit card for personal expenses. The second issue is whether Bacock violated NRS 281A.400 (2), when he requested mileage reimbursement he was allegedly not entitled to receive.

Request for Opinion No. 09-12C (Ethics Complaint). (Tab B):

On March 25, 2009 an Ethics Complaint was filed by Sandra Mathewson (Mathewson). The following is the summary of the allegations:
Between September 2007 and May 2008, Bacock violated NRS 281A.400(2) when he used the city issued credit card to benefit himself, and violated NRS 281A.400.2 on or about December 17, 2008 when he requested and received mileage reimbursement he was not entitled to.

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

During the course of investigation, additional facts and issues relating to alleged violations of NRS 281A.400(2) were discovered by the Investigator. A Notice of Additional Issues and Facts was mailed to Bacock and his legal counsel Brent Kolvet, Esq. (Kolvet), on April 20, 2009.

Response to Ethics Complaint. (Tab D):

A response to the Ethics Complaint was received on April 9, 2009. Bacock's legal counsel Kolvet stated that Bacock did not violate any provisions of NRS 281A because all expenses incurred while Bacock was on the city business. A second response to the Notice of Additional Issues and Facts was received on April 24, 2009.

Investigation Summary:

I interviewed the following individuals and reviewed the following documents:

Witnesses interviews and responses (Tab E):

- Gary Bacock, Subject of the Ethics Complaint No.09-20C, via e-mail on April 24, 2009. (Questionnaire included in Tab D, response received April 24, 2009).
- Sandra Mathewson, requestor of Ethics Complaint No. 09-20C, via e-mail on April 23, 2009. (Exhibit 1).

Documents. (Tab F):

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

- Copy of a check issued to Gary Bacock by Fernley, on April 18, 2009. (Exhibit 2).
- Fernley credit card statements received from Sandra Mathewson on April 17, 2009. (Exhibit 3).
- E-mail with Hospitality & Civic Function Guidance attachment received from Sandra Mathewson on April 3, 2009. (Exhibit 4).
- Updates and revisions to the City of Fernley Travel Expenses Policy, received from Sandra Mathewson on April 2, 2009. (Exhibit 5).
- Letter from the Fernley City Attorney Jeff McGowan to Gary Bacock, dated February 10, 2009. (Exhibit 6).
- Excerpt from minutes of the City of Fernley Council Meeting on January 21, 2009. (Exhibit 7).

- Excerpt from minutes of the City Council meeting on December 17, 2008. (Exhibit 8).
- Bacock's mileage log and request for mileage reimbursement dated December 15, 16 and 17, 2008. (Exhibit 9).
- Audio recordings from the October 15, 2008 City of Fernley Council Meeting. (Not included but available on line at http://www.cityoffernley.org/documentcenterii.asp).
- Excerpt from the City of Fernley Personnel Manual sections 5.1 to 6.2. (Exhibit 10).
- City of Fernley Credit Card Policies effective March 20, 2008. (Exhibit 11).
- City of Fernley Credit Card Policies effective July 1, 2003. (Exhibit 12).

Investigative findings:

The following are my investigative findings:

Bacock was employed as the city manager of the City of Fernley from July 1, 2001 until his resignation on December 19, 2008. (Tab D, response received April 24, 2009).
Per City of Fernley Credit Card Policy, a written authorization of the city manager is required for credit card purchases. (Exhibits 11 and 12). Since Bacock was the city manager, it appears that he was able authorize his own credit card purchases. Bacock explained his understanding of the Credit Card Policies in his response. (Tab D, response received on April 24, 2009).
However, I note that the Fernley Personnel Manual section 5.16 refers to travel expenses that are necessary, reasonable and directly related to the performance of assigned duties. (Exhibit 10).

Bacock explained his meal expenses as follows:

The $ 37.33 purchase on May 21, 2008 in Silverado Restaurant in Fernley was related to city business. Bacock further explained that he, Councilman Monte Martin and Mayor Todd Cutler attended "the City of Fernley Chamber of Commerce Luncheon" and he used his credit to pay for three meals. (Tab D, response received April 9, 2009).

On January 6, 2008, Bacock used his city issued credit card to purchase a $10.58 meal in the Wigwam Restaurant in Fernley. The purchase was a "business lunch" with the Mayor to discuss flood issues. (Tab D, response received April 24, 2009).

Further, Bacock justified his $36.91 meal purchase on September 25, 2007 at the La Fiesta restaurant in Fernley as a business lunch with the Mayor and other city employees. (Tab D, response received on April 9, 2009).

Finally, Bacock explained his $6.81 breakfast purchase on November 7, 2007 in the Wigwam Restaurant in Fernley, as "a business meeting with Fernley Builders Association." In addition, Bacock stated that "this was not my breakfast; it was Mayor Todd Cutler's breakfast."

Two days Before Bacock resigned on December 17, 2008 he submitted a request for mileage reimbursement in the total of $2,966.88. The request included reimbursements for FY05-06, FY 06-07 and FY 08-09. The request appears to be a part of the December 17, 2009 agenda item Nr. 3A "address payment of vouchers" and it was unanimously approved by the City of Fernley Council. A check for the $2,966.88 was issued to Bacock on December 18, 2008. (Exhibit 2).

On January 21, 2009, the Council discussed their dissatisfaction with Bacock's reimbursement during agenda item Nr. 7. (Exhibit 7, page #8). According to Councilman Cal Eilrich, the Council received the mileage reimbursement request on the day of the meeting, and they had no chance to review it. Allegedly, Bonnie Duke then-the City of Fernley Financial Director/Treasurer did not bring this issue to the Council's attention and allowed them "blindly"

vote on the consent agenda where Bacock's reimbursement was listed. At the end of the agenda item Nr. 7, Councilmember Kelly Malloy moved to request reimbursement from Bacock, and such was discussed during a recess for a legal briefing initiated by the City Attorney McGowan (McGowan). After the recess the Council voted to request reimbursement of the $2, 966.88 payment Bacock received. (Exhibit 7, page #8).

In a questionnaire received with Bacock's response on April 24, 2009, Bacock explained that his contract has no specific language that limits mileage reimbursement. The City of Fernley Personnel Manual, however, requires that "all claims with required receipts for travel expenses are to be submitted to the Department Director for approval within ten (10) working days following a trip." (Exhibit 10). However, Bacock's employment contract in § 7 states that "travel, training and other such expenses are and shall be provided pursuant to the City's annual budgets."

On February 10, 2009, McGowan notified Bacock that based on the January 21, 2009 City Council meeting, Fernley was requesting the return of $2,583.61. McGowan explained that Bacock was eligible for the reimbursement of mileage for FY08-09 in the amount of $383.21, but the remaining money must be returned to Fernley. Bacock responded to McGowan's letter on February 20, 2009 with statement, "I will not reimburse the City for the mileage."

According to McGowan's letter, the city followed the language in Bacock's contract and agreed to reimburse him according to the Fernley's annual budget and found that Bacock's request for reimbursement for previous fiscal years was inappropriate. Bacock explained in his April 24, 2009 response that he was "too busy to prepare my reimbursement forms timely due to many reasons," and this case is only based on hostile politics and has nothing to do with ethics.

The allegations related to a trip to Washington DC on March 8 to March 11, 2008 appears to have no merit. (Tab D, response received April 24, 2009). Bacock did not travel to Washington

DC, Mayor Todd Cutler (Cutler) made the trip. Bacock explained that Cutler did not have credit card at the time, therefore the $968.33 for lodging was charged on Bacock's card. The March 11, 2008 receipt from Embassy Suites in Washington DC bears Cutler's name. (Tab D, response received April 24, 2009).

Investigative conclusion:

Considering Bacock's experience and the totality of circumstances, I conclude that Bacock violated the Ethics in Government Laws on dates noted in this report.

The evidence DOES support the claim that on dates as alleged in the complaint, Gary Bacock violated NRS 281A.400(2). After reviewing the evidence and NRS 281A.400, the recommendation is that the Panel find just and sufficient cause EXIST for the Commission to render an opinion on the allegation that the Gary Bacock used his position to obtain unwarranted privileges when:

a.) Used the Fernley credit card to benefit himself on:

1. May 21, 2008, for the $37.33 charge at the Silverado Restaurant in Fernley.
2. May 6, 2008, for the $10.58 charge at the Wigwam Restaurant in Fernley.
3. November 7, 2007, for the $6.81 charge at the Wigwam Restaurant in Fernley.
4. September 25, 2007, for the $36.91 charge at the La Fiesta Restaurant in Fernley.

b.) Received mileage reimbursement he was not entitled to receive on:

1. December 18, 2008, when, upon his request, he received a check for $2,966.88 although he was entitled to only receive $383.21.

On the other hand, the evidence DOES NOT support the claim that on March 11, 2008, Gary Bacock violated NRS 281A.400(2). After reviewing the evidence and NRS 281A.400, the recommendation is that the Panel find just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on the allegation that the Gary Bacock used his position to obtain unwarranted privileges when he used the Fernley credit card to benefit himself on:

1. March 11, 2008, for the $968.33 charge at the Embassy Suites Hotel in Washington DC.

Therefore, on the allegation in Ethics Complaint No. 09-01C, I conclude that just and sufficient cause DOES NOT exists for the Commission to render an opinion on whether Gary Bacock violated NRS 281A.400(2) on the date noted above.

Dated this 28 day of April 2009.

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

By: Mike Vavra, Investigator.