



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of LOWELL PATTON,
Public Works Director, City of Fernley,
State of Nevada,

**Request for
Opinion No. 09-19C**

Subject.

**NOTICE OF HEARING
and
PANEL DETERMINATION**
NRS 281A.440(3), (8) and NAC 281A.450

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a hearing has been set to consider the allegations listed below against Lowell Patton (Patton) in accordance with Chapters 233B and 281A of the Nevada Revised Statutes and Chapter 281A of the Nevada Administrative Code.

The purpose of the hearing is to determine whether a violation of the Nevada Ethics in Government Law occurred. Further, if a violation is found, whether such violation is willful and whether any penalties will be imposed by the Commission, pursuant to NRS 281A.480.

THE HEARING WILL TAKE PLACE:

**August 12, 2009 beginning at 9:00 a.m., or as soon thereafter as the
Commission is able to hear the matter, at the following location:**

**Nevada Legislative Building
401 S. Carson Street
Room No. 3143
Carson City, NV.**

Patton must be present when this matter is called. If Patton is not present when this hearing is called, the Commission may consider as true the alleged violations specified in the Panel Determination below. Please direct any hearing scheduling matters to Patricia D. Cafferata, Executive Director, Esq., (775) 687-5469, ext. 222.

The hearing is open to the public under Nevada's Open Meeting Law. A record will be made by a certified court reporter. Patton has the right to appear, be represented by legal counsel, hear evidence presented, respond, and present evidence on his behalf.

Patton has the right to request that the Commission issue subpoenas on his behalf to compel witnesses to testify and/or produce evidence. In making this request, he may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other rights are found in NRS 281A, NRS 233B, and NAC 281A. A finding by the Commission of a violation of NRS 281A must be supported by a preponderance of the evidence.

PANEL DETERMINATION

Issues and Jurisdiction

An Ethics Complaint was filed against Patton alleging that he violated NRS 281A.400(2) when he used a City of Fernley credit card (credit card) to benefit himself, as described more fully below.

During the course of the investigation, additional facts and issues relating to alleged violations of NRS 281A.400(2) were discovered by the Investigator. Two separate Notices of Additional Issues and Facts were mailed to Patton and his legal counsel Brent Kolvet, Esq. These notices alleged additional violations of NRS 281A.400(2) when Patton used the city credit card to benefit himself, as described more fully below.

In his public capacity, at the time of the alleged conduct, Patton was the Public Works Director for the City of Fernley (Fernley), a public employee as defined in NRS 281A.150. Additionally, the allegations pertain to NRS 281A (Ethics in Government Law). Therefore, the Commission has jurisdiction over this matter.

Panel Proceeding

On May 7, 2009, pursuant to NRS 281A.440(3), a Panel consisting of Commissioners Erik Beyer and Jim Shaw reviewed the following: Ethics Complaint; Patton's response to the Complaint; Investigator's Report; Executive Director's Recommendation, and the evidence collected.

The following is the panel's unanimous conclusion:

- 1.) Just and sufficient cause exists for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about May 10, 2007, when he charged \$38.01 on the credit card at Bully's Restaurant in Fernley for lunch with consultants.

Therefore, this alleged violation is referred to the Commission for a hearing to render an opinion.

- 2.) Just and sufficient cause exists for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about August 14, 2008, when he charged \$38.31 on the credit card at Buffalo Wild Wings Restaurant in Reno for a meal with individuals from Sierra Pacific Power Company.

Therefore, this alleged violation is referred to the Commission for a hearing to render an opinion.

- 3.) Just and sufficient cause exists for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about August 29 and 31, 2008, when he charged \$266 and \$108.58 on the credit card for two shirts at Land's End.

Therefore, this alleged violation is referred to the Commission for a hearing to render an opinion.

- 4.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about September 16, 2008 when he charged \$36.48 on the credit card at Starbucks in Fernley for refreshments for a Water Treatment Plant meeting.

Therefore, this alleged violation is dismissed.

- 5.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about September 16, 2008, when he charged \$42.78 on the credit card at the Subway Restaurant in Fernley for refreshments for a Water Treatment Plant meeting.

Therefore, this alleged violation is dismissed.

- 6.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about August 13, 2008, when he charged \$47.93 on the credit card at Starbucks in Fernley for refreshments for a Community Development Block Grant workshop.

Therefore, this alleged violation is dismissed.

- 7.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about February 28, 2008, when he charged \$137.92 on the credit card at Starbucks in Fernley for refreshments for the Partnering meeting for the Water Treatment Plant.

Therefore, this alleged violation is dismissed.

- 8.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about July 20, 2007, when he charged \$30.86 on the credit card at the Wigwam Restaurant in Fernley for a meeting with individuals from Nevada Cement.

Therefore, this alleged violation is dismissed.

- 9.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about January 15, 2008, when he charged \$60.31 on the credit card for gasoline.

Therefore, this alleged violation is dismissed.

10-13.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), in September 2007, when he charged on the credit card \$723.53 for lodging and \$33.67, \$50.33 and \$10.77 for meals in San Antonio, Texas while attending the National Congress of the American Public Works Association.

Therefore, these allegations are dismissed.

14-16.) Just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on whether Patton violated NRS 281A.400(2), on or about July 23, 2007, when he charged on the credit card \$344.27 for a seminar, \$98.10 for lodging and \$260.80 for airfare to/from Las Vegas, Nevada related to the seminar.

Therefore, these allegations are dismissed.

The Request for Opinion is, therefore, REFERRED TO THE NEVADA COMMISSION ON ETHICS for hearing to render an opinion on the first, second, and third allegations as described above and whether Patton used his position to secure unwarranted privileges or advantages for himself, in violation of NRS 281A.400(2).

The fourth through sixteenth allegations, as described above, are dismissed.

The investigation materials that the Panel relied upon for reaching its conclusion was provided to Brent Kolvet, Esq., Patton's attorney on May 7, 2009.

Dated: May 18, 2009

Erik Beyer
Erik Beyer, Commissioner
Panel Member

Dated: May 18, 2009

James M. Shaw
Jim Shaw, Commissioner
Panel Member

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this 19th day of May, 2009, in Carson City, Nevada, I placed a true and correct copy of the **NOTICE OF HEARING AND PANEL DETERMINATION ON RFO No. 09-19C** in an envelope and caused same to be mailed via certified U.S. MAIL through the State of Nevada Mailroom to Patton and via Reno Carson Messenger to his counsel at the following addresses:

Lowell Patton, Public Works Director
City of Fernley
595 Silver Lace Blvd.
Fernley, NV 89408

Cert No. 7002 2030 0005 8442 3884

Brent T. Kolvet, Esq.
Thorndal, Armstrong, Delk, Balkenbush &
Eisinger, P.C.
6590 S. McCarran Blvd., Suite B
Reno, NV 89509

DATED: 05/19/09


An employee, Nevada Commission on Ethics

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this 19th day of May, 2009, in Carson City, Nevada, I placed a true and correct copy of the **NOTICE OF HEARING AND PANEL DETERMINATION ON RFO No. 09-19C** in an envelope and caused same to be mailed via certified U.S. MAIL through the State of Nevada Mailroom to the following address:

Sandra Mathewson, Complainant
PO Box 2619
Fernley, NV 89408

Cert No. 7008 2030 0005 8442 3891

DATED: 05/19/09

Margaret A. Eve

An employee, Nevada Commission on Ethics