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**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

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**In the Matter of the Request for Opinion
Concerning the Conduct of
RICHARD "DICK" GAMMICK,
District Attorney, Washoe County,
State of Nevada,**

Request for Opinion No.: 10-71C

Subject. /

INVESTIGATOR'S REPORT (Tab A)

Introduction

1. Request for Opinion No. 10-71C (Ethics Complaint). (Tab B):

On October 6, 2010, Requester Chris Wedge filed a Request for Opinion regarding public officer Richard "Dick" Gammick, Washoe County District Attorney, alleging that Gammick violated various provisions of the Ethics in Government Law set forth in NRS 281A including: 1) NRS 281A.020 when he failed to separate his public and private interests by using his position to benefit his reelection campaign, 2) NRS 281A.400(2) when he secured unwarranted privileges, preferences, exemptions or advantages for himself by using his position to benefit his reelection campaign, 3) NRS 281A.400(5) when he used information not available to the general public to benefit his reelection campaign, 4) NRS 281A.400(7) when he used governmental time, property, equipment or other facility to benefit his personal or financial interest, 5) NRS 281A.400(9) when he attempted to benefit his personal or financial interest through the influence of a subordinate, and 6) NRS 281A.520 when he caused a governmental entity (Washoe County) to incur an expense to support him as a candidate.

2. Jurisdiction:

The Nevada Commission on Ethics has jurisdiction over public officers and

1 public employees pursuant to NRS 281A.280. As the elected Washoe County District
2 Attorney, Gammick is a public officer as defined in NRS 281A.160. Therefore, the
3 Nevada Commission on Ethics has jurisdiction to investigate and take appropriate
4 action in this matter pursuant NRS 281A.280 and NRS 281A.440.

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6 **3. Issues:**

7 The issues are whether Gammick violated:

- 8
- 9 I. NRS 281A.020 when he failed to separate his public and private
10 interests, by using government resources to further his interest in
11 being reelected as the Washoe County District Attorney.
 - 12 II. NRS 281A.400(2) when he used his position in government to secure
13 unwarranted privileges, preferences, exemptions or advantages for
14 himself by using his position to benefit his reelection campaign.
 - 15 III. NRS 281A.400(5) when he used information not generally available
16 to the public to benefit his reelection campaign.
 - 17 IV. NRS 281A.400(7) when he used government resources to benefit his
18 personal or financial interest.
 - 19 V. NRS 281A.400(9) when he attempted to influence his subordinates to
20 benefit his personal or financial interest.
 - 21 VI. NRS 281A.520 when he caused governmental entity to incur an
22 expense or make expenditure to support his candidacy.
- 23

24 **4. Notices to Subject: (Tab C):**

25 The Commission issued a Notice to Subject of RFO 10-71C to Gammick on
26 October 8, 2010. A postal service record indicates that Gammick received the Notice
27 on October 13, 2010. (Tab C).

28

1 from a September 17, 2010 tailgate event at the University of Nevada Reno. Upon
2 further investigation, I learned that the recording was the final 28 seconds of a 1 hour
3 and 12 minute-long recording made by Sharon Spangler, alleged to be an
4 acquaintance of Gammick's opponent Roger Whomes. I obtained the recording in its
5 entirety and have attached it hereto as Exhibit 1¹.

6 Upon review of the recording, I found the following: After approximately 50
7 seconds, Gammick introduced himself to the audience and stated² that "I am here to
8 talk about the district attorney's office ... I am going to work little politics in ..." and
9 asked the audience to leave their questions for the end of his presentation. Gammick
10 spoke for about 25 minutes, familiarizing the audience with the office and its functions;
11 the speech was supported by a PowerPoint presentation operated by Gammick's office
12 employee Sharon Flanary. At 26:00³, Gammick offered the audience his education
13 credentials and a recitation of his work experience; up to this point, he had not made
14 any references to his campaign nor did he ask the audience for support. However, at
15 28:45, Gammick stated that "...I am going to ask you for your vote before we get out of
16 here ... I am going to ask you a couple of times before we get out of here tonight..." At
17 33:20, Gammick completed his presentation and asked the audience if they had any
18 questions. After responding to numerous questions, Gammick introduced his office
19 employees Kelly Cusanelli and Sharon Flanary, referred the audience to [unspecified]
20 literature on the table and stated "if you like, take a sign" most likely referring to his
21 campaign signs. (Exhibit 1, time 1:11:50).

22 It should be noted that Gammick's response indicated that: "this was not a
23 campaign event." (Response, Tab D, p. 2), (Interview with Gammick, Investigator's
24 Report, Tab A, pp. 10-11). During our interview, I specifically inquired if Gammick had
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26 ¹ The recording was downloaded from a portable hard drive owned by Sharon Spangler. The recording consisted of
27 8.3GB of data separated into 12 files in a .mts format. (A format used for the recording and playback of high
28 definition video in consumer video camcorders). The files were converted to a format viewable on a PC and
combined into one 1 hour and 12 minute long video. No parts of the recording were deleted or edited.

² Statements may not be verbatim and may include emphasis. The length of the recording does not correspond with
the length of the event.

³ Reference to 26:00 refers to 26th minute of the recording. (Exhibit 1).

1 asked the audience members to vote for him during his presentation. Gammick replied
2 that he had not and added that some members of the audience asked him campaign
3 related questions after the presentation.

4 The video recording appears to contradict Gammick's Response (Tab D) and
5 his statements to the investigator. The video clearly shows that he solicited votes at
6 28:45. Furthermore, the audience had a clear view of Gammick's campaign sign asking
7 to "Reelect Republican Richard "Dick" Gammick District Attorney" during the entirety of
8 the presentation. (Exhibits 1-2). Whether the event was advertised as a campaign
9 event or not, it certainly resembled one in many ways.

10 Furthermore, the Request for Opinion alleges that Gammick used his office
11 employees, county-owned laptop and a PowerPoint presentation developed by the
12 county to promote his reelection campaign during the August 30, 2010 event. Gammick
13 did not deny using of the PowerPoint presentation and the equipment; however, he
14 stated that the presentation was prepared long ago and was used numerous times
15 before the campaign. The PowerPoint was not created for campaign purposes.
16 Gammick also stated that his office employees Sharon Flanary and Kelly Cusanelli
17 attended the event voluntarily, and on their own time; Gammick did not direct them to
18 attend or to participate in his campaign. Both Flanary and Cusanelli stated under oath
19 that their participation was voluntary. (Investigator's Report, Tab A, pp. 11-12 and
20 Response, Tab D, pp. 21-25). Gammick stated that he traveled to the August 30, 2010
21 event in his county-issued vehicle; the use of county-issued vehicle is further discussed
22 on page 8 of this report.

23 The Request for Opinion packet included a pen with the words "Washoe County
24 District Attorney Richard A. Gammick" and a telephone number "(775) 328-3200." The
25 requestor alleged that Gammick distributed pens, manufactured at county expense, to
26 promote his campaign (Complaint, Tab B, p. 4). However, Gammick claims that the
27 pens were not related to his campaign; rather, they served the public by providing
28 information on how to contact the District Attorney's office and they had been

1 distributed to the public on regular basis since 2008. (Response, Tab D, p. 3).

2 As to Gammick's campaign website, the requester alleged that it was developed
3 by Paul Eckert, an employee of the Washoe County District Attorney's office. Eckert
4 testified that indeed, he built the website but did so on his own, rather than county time.
5 (Affidavit of Paul Eckert, Response, Tab D, pp. 31-32). The requester provided no
6 credible evidence showing that Eckert built Gammick's campaign website using county
7 time or used other county resources. The investigator could not establish the exact
8 time when Eckert worked on the website without examining Eckert's computer and
9 using of forensic software.

10 Among other evidence, the Request for Opinion included a copy of an e-mail
11 written by Gammick on August 19, 2010 (Complaint, Tab B, pp. 8-9), and a copy of a
12 facsimile message dated July 26, 2006. The requestor alleged that Gammick used a
13 county e-mail account and a facsimile machine during his work hours to benefit his
14 reelection campaign.

15 Indeed, the e-mail was sent on August 19, 2010 at 3:31 p.m., which is generally
16 considered working hours for public offices. However, Gammick's response indicated
17 that the county incurred no special charge for county e-mail and the use was permitted
18 under Acceptable Use Internet and Intranet Policy (Response, Tab D, pp. 9-15) and
19 Washoe County Code. (Response, Tab D, pp. 17-19) and (Exhibit 6). Furthermore, the
20 response indicated that "occasional use of office e-mail for personal and campaign
21 communication is normal and warranted." (Response, Tab D, p. 5, line 3). As to the
22 facsimile message sent on July 26, 2006, it appears the allegation is barred by the
23 statute of limitations as provided in NRS 281A.280.

24 The requester also alleged that Gammick used confidential information related
25 to allegations of misconduct by Judge Perry to advance his campaign. Gammick's
26 response (Tab D, p. 5) indicated that, "Mr. Wedge [the Requester] makes no attempt to
27 identify a specific section of the code that might apply to the conduct that he alleges.
28 That conduct, essentially the process for maintaining files on closed cases at the

1 Washoe County District Attorney's office, is not within the scope of the Nevada
2 Commission on Ethics' jurisdiction..."

3 While "the process of maintaining files" [by the District Attorney's office] may not
4 be in the Commission jurisdiction, using information not available to the general public
5 certainly is. (NRS 281A.400(5)). However, aside from a mere reference in the e-mail
6 exchange between Gammick and Don Kaplan on August 19, 2010 (Complaint, Tab B,
7 p. 8-9), evidence showing if, when and how Gammick used this information was not
8 found.

9 The requester also alleged improper use of the Disney character Mickey Mouse
10 on the District Attorney office's official seal. Whether the use of this character offends
11 the requester does not appear to fit within the Commission's jurisdiction. It is unclear
12 how Gammick benefitted from using Mickey Mouse on the office seal.

13 The largest portion of the complaint concerns the improper use of Gammick's
14 county-issued vehicle. The complaint included several photographs taken by Sharon
15 Spangler on September 17, 2010. The photographs depict what appears to be a silver-
16 colored Chevrolet Trailblazer with emergency lights mounted inside of the vehicle.
17 (Exhibit 5). In response to the allegation, Gammick indicated that his position requires
18 him to be on-call 24/7 and refers to Washoe County Code 5.340. However, Washoe
19 County Code 5.389 (Exhibit 6) is the code concerning the use of county vehicles. In
20 particular, section 5.389 provides that:

21
22 Activities and functions which are related to private enjoyment, political
23 activities or functions, or activities or functions which are primarily
24 designed in furtherance of private personal gain are not considered
public activities or functions. Nothing in this section is intended to
abrogate the requirements of NRS 281.481(7).

25 Gammick admitted attending the events of August 30, 2010 and September 17,
26 2010 using his county-issued vehicle but his response suggests the use was allowed.
27 (Response. Tab D, p. 6, ¶ 6). While no photograph of Gammick's vehicle at the August
28 30, 2010 event was provided, Exhibit 5 provides several photographs of Gammick's

1 county-issued vehicle at the September 17, 2010 "tailgate event" at UNR football
2 stadium. The photographs show Gammick's vehicle parked behind a small table with
3 miscellaneous items and two Gammick campaign signs. In addition, a closer view of
4 the photograph reveals several campaign signs stored inside the vehicle.

5 The adult female in the photograph⁴ is Sharon Flanary who according to her
6 testimony, volunteered to help Gammick with his campaign. (Investigator's Report, Tab
7 A, p. 12, interview with Flanary). Examination of the metadata⁵ of the photograph
8 shows the photographs were taken at 6:41 p.m.; i.e. after regular working hours.
9 However, the view of Gammick's county-issued vehicle loaded with campaign-related
10 materials parked in front of a campaign table staffed by a county employee is troubling.
11 As noted above, Gammick admitted arriving in his county-issued vehicle at the August
12 30, 2010 event but claims that the event was not a "campaign event."

13 Finally, the Complaint alleged that Assistant District Attorney John Helzer
14 attended "Bristlecone Treatment," a campaign-related event held on the evening of
15 September 26, 2010. (Complaint, Tab B, p. 7), (Response, Tab D, p. 6-7). The
16 allegation is that Helzer attended the event instead of Gammick, who appeared at a
17 different function at the same time. Helzer's attendance and the distribution of his office
18 business card alone does not appear to violate any provisions of the NRS 281A, as the
19 event was held after regular office hours and no evidence exists that Helzer was
20 directed by Gammick to attend.

21 **Interview with Requester Chris Wedge on November 15, 2010.**

22 I spoke to Requester Chris Wedge on November 15, 2010 and questioned him
23 as to the allegations in the Complaint. Wedge stated that he believed Gammick used
24 his position to benefit his campaign. Wedge was concerned that Gammick used county
25 resources to promote his campaign; mainly, his county-issued vehicle, computers,
26 pens, e-mail and his office staff. Wedge stated that he worked as the campaign
27

28 _____
⁴ The face of a female minor was purposely blurred for privacy purposes.

⁵ Metadata refers to "data about data," a digital information describing the content and context of the file (picture).

1 manager for Gammick's opponent Roger Whomes, and he does not know Gammick
2 personally.

3 **Interview with Subject Richard Gammick on November 22, 2010.**

4 I interviewed Gammick on November 22, 2010 and questioned him as to the
5 allegations brought by Wedge. Gammick stated that the Complaint is frivolous and
6 denied having used his office to benefit his reelection campaign. Gammick stated that
7 the complaint was politically motivated and the complainant was paid by his opponent
8 Roger Whomes, a candidate for the District Attorney.

9 I asked Gammick about the use of his vehicle during the August 30, 2010 and
10 September 17, 2010 events. Gammick admitted using his county-issued vehicle on the
11 dates above but denied using the vehicle improperly adding the vehicle is available to
12 him for county business 24/7. (Response, Tab D, p. 6).

13 As to the August 30, 2010 event, Gammick vehemently denied the event being
14 "a campaign event." Gammick stated that the Republican Jewish Coalition invited him
15 to attend and he provided an educational presentation concerning the functions of his
16 office. According to Gammick, the presentation was created long before his election
17 campaign and it was not campaign-related. The presentation solely provided
18 information about the District Attorney's office, rather than his campaign. Gammick
19 stated that during the question/answers period after the event, some audience
20 members may have asked questions related to his campaign. Gammick denied asking
21 the audience for support or soliciting votes during the presentation. However, the video
22 recording attached hereto as Exhibit 1 suggests differently. As noted earlier, at 28:45,
23 he asked the audience to vote for him. In addition, campaign signs were clearly visible
24 to the audience during the entire event.

25 As to the use of his office employees for his campaign, namely on August 30,
26 2010 and September 17, 2010, Gammick stated that all employees mentioned in the
27 Complaint volunteered. At no time, Gammick directed any employee to attend a
28 function or work on campaign-related tasks whether during work hours or on their own

1 time. Additionally, no employee was promised a pay raise, promotion or other
2 advantage in exchange for work on Gammick's campaign. (See Affidavits attached to
3 the Response, Tab D, pp. 21-25 and pp. 31-32).

4 Furthermore, as to the allegation of using county e-mail, alleged use of a county
5 IT employee to develop his campaign website, and the use of the Disney's Mickey
6 Mouse character on the office seal, no information beyond that in Gammick's
7 Response was gathered.

8 **Telephone interview with Sharon Spangler on November 17, 2010.**

9 I spoke to Sharon Spangler on November 17, 2010 and questioned her as to her
10 knowledge of the video recording and photographs attached to the Complaint. (Exhibits
11 1 and 2). Spangler stated that she attended the Republican Jewish Coalition event on
12 August 30, 2010 and recorded most of the event. The recording was made for the
13 purpose of planning the campaign strategy for Gammick's opponent Whomes who
14 Spangler supported. Spangler provided a copy of the entire recording, which is
15 attached hereto as Exhibit 1.

16 As to the September 17, 2010 "tailgate event" at the UNR stadium, Spangler
17 stated that she, along with few friends were walking through the parking lot when she
18 noticed Gammick's vehicle, his office employee and the table with Gammick's
19 campaign sign. Spangler stated that she was stunned by the sight as this was clearly
20 Gammick's county-issued vehicle being used for campaign purposes. I asked Spangler
21 how she could identify Gammick's vehicle. Spangler responded that she observed
22 Gammick in the same vehicle before and the vehicle's back gate was open and the
23 emergency lights mounted inside were visible. Spangler took several photographs
24 using her iPhone. (Exhibit 5).

25 **Telephone interview with witness Kelly Cusanelli on November 23, 2010.**

26 I spoke to Kelly Cusanelli, Washoe County District Attorney law office manager
27 on November 23, 2010. Upon inquiring the nature of his participation on Gammick's
28 campaign, Cusanelli stated that he volunteered his help upon learning Gammick's

1 interest in reelection; at no time he was required to attend or promised any advantages
2 in exchange for his participation. As to the August 30, 2010 Republican Jewish
3 Coalition event, Cusanelli stated that he attended the event on his own time. It is worth
4 noting that Cusanelli testified that he delivered campaign signs to the event, which
5 according to Gammick was "no campaign event."

6 **Telephone interview with witness Sharon Flanary on November 23, 2010.**

7 I spoke to Sharon Flanary on November 23, 2010 and questioned her as to her
8 involvement in Gammick's reelection campaign. Flanary stated that she is employed by
9 the Washoe County District Attorney's office as an administrative assistant with regular
10 work hours Monday to Friday 8 a.m. to 5 p.m. Flanary reiterated information in her
11 affidavit (Response, Tab D, pp. 21-22) and added that she offered her help with
12 Gammick's campaign; at no time Gammick pressured her nor did he offer any
13 privileges in exchange for her assistance. As to the Republican Jewish Coalition event
14 on August 30, 2010, Flanary stated that Gammick asked her if she was available that
15 evening and if she was willing to help with the presentation. Flanary agreed and she
16 attended the event running the PowerPoint presentation.

17 As to the September 17, 2010 tailgate event, Flanary stated that she offered her
18 help since she was interested to learn what a tailgate event was. At that event, Flanary
19 staffed a table with water, a few food items and brochures related to Gammick's
20 campaign; she also offered information to the public regarding Gammick's campaign
21 and the services provided by District Attorney's office.

22 I asked Flanary if she reviewed the photographs attached to the Complaint and
23 if she can confirm that the vehicle depicted on the photographs is the same vehicle
24 issued by the county to Gammick. Flanary stated that indeed, the vehicle on the
25 photograph was the vehicle used by Gammick. In addition, I asked Flanary if the items
26 on the table were unloaded from the same county-issued vehicle. Flanary stated that
27 few items were but did not recall which ones.

28

1 **Telephone interview with witness Paul Eckert.**

2 Not applicable. Eckert was unavailable at the time of completion of this report.
3 However, he submitted an Affidavit. (Response, Tab D, pp. 31-32).

4 **Telephone interview with witness John Helzer.**

5 Not applicable. Helzer was unavailable at the time of completion of this report.
6

7 **1. Allegation one**⁶: At all times relevant to this matter, and particularly
8 on August 19, 2010, August 30, 2010, September 17, 2010 and
9 September 26, 2010, among other dates, Gammick violated NRS
10 281A.020 when he failed to separate his private and public interests
11 by using his county-issued vehicle, equipment, time and employees
12 to further his interest in being reelected as the Washoe County
13 District Attorney.

- 14
- 15 ■ NRS 281A.020(2) provides, in relevant part:
 - 16 1. It is hereby declared to be the public policy of this State that:
 - 17 (a) A public office is a public trust and shall be held for the sole
 - 18 benefit of the people.
 - 19 (b) A public officer or employee must commit himself or herself to
 - 20 avoid conflicts between the private interests of the public officer or
 - 21 employee and those of the general public whom the public officer or
 - 22 employee serves.
 - 23 2. The Legislature finds and declares that:
 - 24 (a) The increasing complexity of state and local government, more
 - 25 and more closely related to private life and enterprise, enlarges the
 - 26 potentiality for conflict of interests.
 - 27 (b) To enhance the people's faith in the integrity and impartiality of
 - 28 public officers and employees, adequate guidelines are required to show
 - the appropriate separation between the roles of persons who are both
 - public servants and private citizens.

24 As to the allegation that Gammick failed to separate his private and public
25 interests on at least four different dates, the evidence is as follows:

26 **August 19, 2010**, the allegation of use of a county e-mail account during regular
27

28 ⁶ **To clarify the dates of allegations, the dates are as follows:** August 19, 2010: e-mail correspondence between Gammick and Kaplan. August 30, 2010: Republican Jewish Coalition event. September 17, 2010: tailgate event at UNR stadium. September 26, 2010: Bristlecone Treatment - attendance by Assistant DA John Helzer.

1 work hours for campaign related correspondence:

2 Gammick's response to the allegation provided that the use was minimal and as such,
3 allowed per Washoe County Internet and Intranet Acceptable Use Policy (Response,
4 Tab D, pp.9-15) and Washoe County Code 5.340 (Exhibit 6).

5 **August 30, 2010**, the allegation of use of county equipment (office laptop),
6 county materials (PowerPoint presentation), office employees and county issued
7 vehicle for campaign related activities at the Republican Jewish Coalition event:

8 Gammick maintains that the event was not a campaign event; rather, it was an
9 educational presentation with the purpose of familiarizing the public with the functions
10 of his office. During our interview, Gammick testified that during the presentation, he
11 did not ask the audience for support or to vote for him. However, the examination of the
12 video recording suggested otherwise. At 28:45, Gammick asked the audience to vote
13 for him. In addition, the audience had a clear view of Gammick's campaign signs during
14 the entirety of the event. (Exhibits 1-2). Gammick's office employee Cusanelli testified
15 that he brought Gammick's campaign signs to the event, while Gammick maintains the
16 event was a no campaign event.

17 The alleged use of county employees during this even does not appear to be
18 violating any provisions of the NRS 281A. The employees testified that their
19 attendance was voluntary and at no time Gammick neither directed them to attend nor
20 did he offered any advantages in exchange for their help. (Affidavits of Cusanelli and
21 Flanary, Response, Tab D, p. 21-25). As to the use of PowerPoint presentation
22 developed by the county and use of his office laptop, Gammick's response to the
23 allegation provided that the use was minimal and as such, allowed per Washoe County
24 Internet and Intranet Acceptable Use Policy (Response, Tab D, pp. 9-15) and Washoe
25 County Code 5.340 (Exhibit 6).

26 **September 17, 2010**, the allegation of using county a vehicle, county employee time
27 and distributing pens bearing the contact information of Washoe County District
28 Attorney office:

1 There is no doubt as to the identity of the vehicle; both Gammick and Flanary
2 testified that the vehicle depicted on the photograph attached hereto as Exhibit 5 is the
3 same county vehicle issued to Gammick. However, Gammick denied that the vehicle
4 was used in an improper manner adding that “the fact the vehicle could appear in the
5 proximity of his campaign materials or event is unremarkable and predictable.” As to
6 the distribution of pens, Gammick stated that he has been handing out the same pens
7 to the public on regular basis since 2008, and the practice complies with NRS
8 281A.520(4) as the information is not campaign related and it provided only contact
9 information to the general public.

10 **September 26, 2010**, the allegation that Assistant District Attorney John Helzer
11 attended the “Bristlecone Event” to support Gammick’s campaign; no evidence was
12 provided suggesting that Gammick directed Helzer to attend the campaign event.
13 Furthermore, the event was held after the regular office hours and Helzer's attendance
14 and distribution of his office business cards alone does not appear to violate any
15 provisions of the NRS 281A.

16
17 **2. Allegation two: At all times relevant to this matter, and particularly**
18 **August 30, 2010 and September 17, 2010 Gammick violated NRS**
19 **281A.400(2) when he secured unwarranted privileges, preferences**
20 **exemption or advantages for himself by using his county-issued**
21 **vehicle, office equipment and employees to benefit his reelection**
22 **campaign.**

- 23 ▪ NRS 281A.400(2) provides, in relevant part:

24 A public officer or employee shall not use the public officer’s or
25 employee’s position in government to secure or grant unwarranted
26 privileges, preferences, exemptions or advantages for the public officer
27 or employee, any business entity in which the public officer or employee
28 has a significant pecuniary interest, or any person to whom the public
 officer or employee has a commitment in a private capacity to the
 interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has
the meaning ascribed to “commitment in a private capacity to the
interests of others” in subsection 8 of NRS 281A.420.

(b) “Unwarranted” means without justification or adequate reason.

1 As to the allegation that Gammick used his position to secure unwarranted privileges,
2 preferences exemptions or advantages for himself, the evidence is as follows:

3 **August 30, 2010**, the allegation of unwarranted use of county equipment (office
4 laptop), county materials (PowerPoint presentation), and the county-issued vehicle for
5 the Republican Jewish Coalition event:

6 Gammick maintains that the event was not a campaign event. Rather, it was an
7 educational presentation with the purpose of familiarizing the public with functions of
8 his office. During our interview, Gammick testified that during the presentation, he did
9 not ask the audience for support or to vote for him. However, the examination of the
10 video recording suggested otherwise. At 28:45, Gammick asked the audience to vote
11 for him. In addition, the audience had a clear view of Gammick's campaign signs during
12 the entirety of the event. (Exhibits 1-2). Gammick's office employee Cusanelli testified
13 that he brought Gammick's campaign signs to the event, while Gammick maintains the
14 event was a no campaign event.

15 As to the use of a PowerPoint presentation developed by the county and use of
16 his county laptop, Gammick's response to the allegation provided that the use was
17 minimal and as such, allowed per Washoe County Internet and Intranet Acceptable
18 Use Policy (Response, Tab D, pp. 9-15) and Washoe County Code 5.340 (Exhibit 6).

19 **September 17, 2010**, the allegation of using his county vehicle, a county employee
20 and distributing pens bearing the contact information of Washoe County District
21 Attorney office:

22 There is no doubt as to the identity of the vehicle; both Gammick and Flanary
23 testified that the vehicle depicted on the photograph attached hereto as Exhibit 5 is the
24 same county-issued vehicle used by Gammick. However, Gammick denied that the
25 vehicle was used in an improper manner adding that "the fact the vehicle could appear
26 in the proximity of his campaign materials or event is unremarkable and predictable."

27 As to the distribution of pens, Gammick stated that he has been handing out the same
28 pens to the public on regular basis since 2008, and the practice complies with NRS

1 281A.520(4) as the information is not campaign related and provides only contact
2 information to the general public.

3
4 **3. Allegation three:** At all times relevant to this matter, and particularly
5 on August 19, 2010, Gammick violated NRS 281A.400(5) when he
6 used information not available to the public to benefit his campaign
7 and further his interest in being reelected as the Washoe County
8 District Attorney.

- 9 ■ NRS 281A.400(5) provides, in relevant part:

10 If a public officer or employee acquires, through the public officer's or
11 employee's public duties or relationships, any information which by law
12 or practice is not at the time available to people generally, the public
13 officer or employee shall not use the information to further the pecuniary
interests of the public officer or employee or any other person or
business entity.

14 As to the allegation that Gammick used information not available to the public
15 to benefit his campaign, the allegation is as follows:

16 In the e-mail exchange between Gammick and Don Kaplan (Response, Tab D,
17 pp. 27-28), Gammick wrote that "[t]he Judge Perry issue has been discussed ad
18 nauseum and I am certain the Judge is not happy about Whomes continually raising it.
19 If anyone would like to see the report I will be happy to show it." The requester alleged
20 that Gammick offered to disclose confidential information to the public (Complaint, Tab
21 B, p. 5, ¶ 3). However, aside from a mere reference in the August 19, 2010 e-mail, no
22 evidence was provided showing if, when and how Gammick used such information to
23 benefit his campaign.

24
25 **4. Allegation four:** At all times relevant to this matter, and particularly
26 on August 19, 2010, August 30, 2010, September 17, 2010 and
27 September 26, 2010 Gammick violated NRS 281A.400(7) when he
28 used governmental time, property and equipment to benefit his
personal or financial interest.

- 1 ▪ NRS 281A.400(7) provides, in relevant part:

2 Except for State Legislators who are subject to the restrictions set forth in
3 subsection 8, a public officer or employee shall not use governmental
4 time, property, equipment or other facility to benefit the public officer's or
5 employee's personal or financial interest. This subsection does not
6 prohibit:

7 (a) A limited use of governmental property, equipment or other facility
8 for personal purposes if:

9 (1) The public officer who is responsible for and has authority to
10 authorize the use of such property, equipment or other facility has
11 established a policy allowing the use or the use is necessary as a result
12 of emergency circumstances;

13 (2) The use does not interfere with the performance of the public
14 officer's or employee's public duties;

15 (3) The cost or value related to the use is nominal; and

16 (4) The use does not create the appearance of impropriety;

17 (b) The use of mailing lists, computer data or other information
18 lawfully obtained from a governmental agency which is available to
19 members of the general public for nongovernmental purposes; or

20 (c) The use of telephones or other means of communication if there
21 is not a special charge for that use.

22 If a governmental agency incurs a cost as a result of a use that is
23 authorized pursuant to this subsection or would ordinarily charge a
24 member of the general public for the use, the public officer or employee
25 shall promptly reimburse the cost or pay the charge to the governmental
26 agency.

27 As to the allegation that Gammick used county time, property, equipment or
28 other facility to benefit his personal or financial interest, the evidence is as follows:

August 19, 2010, the allegation of use of his county e-mail account during
 regular work hours for campaign related correspondence:

 The allegation is that Gammick wrote an e-mail to Don Kaplan. Gammick therefore
 used county time and equipment for campaign purposes. Gammick's response to the
 allegation provided that the use was minimal and as such, allowed per Washoe County
 Internet and Intranet Acceptable Use Policy (Response, Tab D, pp. 9-15) and Washoe
 County Code 5.340 (Exhibit 6).

August 30, 2010, the allegation of use of county equipment (office laptop),
 county materials (PowerPoint presentation), and a county-issued vehicle for the
 Republican Jewish Coalition event:

1 As described in the investigative findings above, Gammick attended Republican
2 Coalition Event on August 30, 2010. Gammick admitted using his county-issued
3 vehicle to attend the event, using county-owned laptop and the presentation developed
4 by the county. However, Gammick maintains that the event was not a campaign event;
5 rather, it was a presentation related to the functions of his office and as such, the use
6 did not violate any provisions of NRS 281A. It should be noted that Gammick asked the
7 audience to vote for him (Exhibit 1, time 28:45) and placed his campaign signs in plain
8 view in the same room the presentation was being delivered. (Exhibit 2).

9 **September 17, 2010**, the allegation of using county vehicle, county employee
10 and distributing pens bearing the contact information of Washoe County District
11 Attorney office:

12 There is no doubt as to the identity of the vehicle during the tailgate event.
13 Furthermore, both Gammick and Flanary testified that the vehicle depicted on the
14 photograph attached hereto as Exhibit 5 is the same county-issued vehicle used by
15 Gammick. However, Gammick denies that the vehicle was used in an improper manner
16 adding that “the fact the vehicle could appear in the proximity of his campaign materials
17 or event is unremarkable and predictable.” As to the distribution of pens, Gammick
18 stated that he has been handing out the same pens to the public on regular basis since
19 2008, and the practice also complies with NRS 281A.520(4) as the information is not
20 campaign related and provides only contact information to the general public.

21 **September 26, 2010**, the allegation that Assistant District Attorney John Helzer
22 attended the “Bristlecone Event” to support Gammick’s campaign; no evidence was
23 provided suggesting that Gammick directed Helzer to attend the campaign event and
24 as such Gammick used county time, property or equipment. Helzer's attendance and
25 distribution of his office business cards alone does not appear to violate any provisions
26 of the NRS 281A. Finally, no evidence was found suggesting that Gammick’s
27 campaign website was developed by using county time or other resources. Paul
28 Eckert, an employee of Gammick’s office testified that he developed the website on his

1 own time using no county resources. (Response, Tab D, Affidavit of Paul Eckert, pp.
2 31-32).

3
4 **5. Allegation five:** At all times relevant to this matter, and particularly
5 on August 30, 2010, September 17, 2010 and September 26, 2010,
6 Gammick violated NRS 281A.400(9) when he attempted to influence
7 his subordinates to benefit his personal or financial interest.

- 8
9 ■ NRS 281A.400(9) provides, in relevant part:

10 A public officer or employee shall not attempt to benefit the public
11 officer's or employee's personal or financial interest through the influence
12 of a subordinate

13 As to the allegation that Gammick attempted to influence county employees to
14 benefit his personal or financial interest on the dates above, the allegation is as follows:
15 As described in the investigative findings and in the allegations above, no evidence
16 was provided suggesting that Gammick attempted to influence county employees to
17 benefit his personal or financial interest. (Response, Tab D), (Investigator's Report,
18 Tab A, interviews).

19
20 **6. Allegation six:** At all times relevant to this matter, and particularly on
21 August 19, 2010, August 30, 2010, September 17, 2010 and
22 September 26, 2010, Gammick violated NRS 281A.520 when he
23 caused governmental entity to incur an expense or make expenditure
24 to support his candidacy.

25 Except as otherwise provided in subsections 4 and 5, a public officer or
26 employee shall not request or otherwise cause a governmental entity to incur
an expense or make an expenditure to support or oppose:

27 (a) A ballot question.

(b) A candidate.

28 2. For the purposes of paragraph (b) of subsection 1, an expense
incurred or an expenditure made by a governmental entity shall be
considered an expense incurred or an expenditure made in support of a
candidate if:

1 (a) The expense is incurred or the expenditure is made for the creation or
2 dissemination of a pamphlet, brochure, publication, advertisement or
3 television programming that prominently features the activities of a current
4 public officer of the governmental entity who is a candidate for a state, local
5 or federal elective office; and

6 (b) The pamphlet, brochure, publication, advertisement or television
7 programming described in paragraph (a) is created or disseminated during
8 the period specified in subsection 3.

9 3. The period during which the provisions of subsection 2 apply to a
10 particular governmental entity begins when a current public officer of that
11 governmental entity files a declaration of candidacy or acceptance of
12 candidacy and ends on the date of the general election, general city election
13 or special election for the office for which the current public officer of the
14 governmental entity is a candidate.

15 4. The provisions of this section do not prohibit the creation or
16 dissemination of, or the appearance of a candidate in or on, as applicable, a
17 pamphlet, brochure, publication, advertisement or television programming
18 that:

19 (a) Is made available to the public on a regular basis and merely
20 describes the functions of:

21 (1) The public office held by the public officer who is the candidate; or

22 (2) The governmental entity by which the public officer who is the
23 candidate is employed; or

24 (b) Is created or disseminated in the course of carrying out a duty of:

25 (1) The public officer who is the candidate; or

26 (2) The governmental entity by which the public officer who is the
27 candidate is employed.

28 5. The provisions of this section do not prohibit an expense or an
expenditure incurred to create or disseminate a television program that
provides a forum for discussion or debate regarding a ballot question, if
persons both in support of and in opposition to the ballot question participate
in the television program.

6. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television
programming" includes, without limitation, a publication, a public service
announcement and any programming on a television station created to
provide community access to cable television. The term does not include:

(1) A press release issued to the media by a governmental entity; or

(2) The official website of a governmental entity.

21 As to the allegation that Gammick caused a governmental entity to incur an expense or
22 make an expenditure to support his candidacy, the evidence is as follows:

23 As described in investigative findings and in the allegations above, Gammick
24 used his county-issued vehicle on two different occasions: August 30, 2010, and
25 September 17, 2010, to attend what the requester believed to be campaign events.
26 Gammick denied having used the vehicle improperly, arguing the August 30, 2010 was
27 not a campaign event and the September 17, 2010 event was somewhat allowed as
28 the vehicle is available to Gammick 24/7. (Response, Tab D, p. 6, #6). The evidence

1 provided to the Commission is attached hereto as Exhibit 1 and 2, and it is described
2 on several occasions above.

3 As to the use of his office laptop and the office e-mail, it does not appear that
4 the county incurred any expense by such use. As to the use of PowerPoint
5 presentation and distribution of pens with District Attorney office's information, no
6 sufficient evidence exist suggesting that both were produced at the county expense
7 with the intent to support Gammick's campaign. Finally, no evidence was found
8 suggesting that county incurred an expense from developing of Gammick's campaign
9 website. (Response, Tab D, Affidavit of Paul Eckert, pp. 31-32).

10
11 Dated this 29 day of November 2010.

12 NEVADA COMMISSION ON ETHICS

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16 Mike Vavra, MPA, Investigator
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