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BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request
for Opinion Concerning
the Conduct of JIM GIBBONS,
Governor, State of Nevada,**

Request for Opinion No. 08-37C

Subject. /

INTERVIEW OF WITNESS AND CERTIFICATION

Interview with John E. Marvel, witness in Request for Opinion No. 08-37C conducted at 217 Idaho Street, Elko, Nevada, on Thursday, August 21, 2008 at 5:00 p.m. With his permission the interview between Michel Vavra and John E. Marvel was recorded.

Michel Vavra, (Vavra), Investigator for the Nevada Commission on Ethics.

John E. Marvel, (Marvel), Attorney.

1 **Vavra:** First, uh [sic] if you don't mind, I am going to ask you a question about you. Tell me
2 about your educational background.

3 **Marvel:** I uh [sic], I don't know how far back you want to go. I graduated from Belmont High
4 School in 1969, graduated from the University Nevada Reno in 1973, graduated McGeorge
5 School of Law in 1978 and I've been practicing law ever since.

6 **Vavra:** Okay, so you've been practicing law since 1978.

7 **Marvel:** Uh huh.

8 **Vavra:** Would it be, in Elko or just...?

9 **Marvel:** Well, my main office has always been in Elko. Early in my career I had a part time
10 office in Battle Mountain where I would go once a week and spend a day, but that was just a
11 satellite office.



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1 **Vavra:** Do you have any special training involving land, real estate, agricultural assessment?

2 **Marvel:** I've been doing real estate transactions for 30 years, and I go to legal seminars on real
3 estate and a variety of topics, but I do a lot of, I go to a lot of real estate seminars when I can or
4 over the years I have. Because I have I grew up in a ranching family my primary focus of my
5 practice is ranching and mining and natural resources and water rights. I have a lot of ranching
6 clients I do lots of ranch leases I do all kinds of transactional work.

7 **Vavra:** Are you a member of the Nevada Tax Commission?

8 **Marvel:** Yes, I am.

9 **Vavra:** Do you remember when was your first appointment?

10 **Marvel:** Well, I have seen in the newspaper that I was appointed in 1990; I think I was
11 appointed in 1991 by Governor Miller. I could probably check with the Department of Taxation
12 and they could give me a set date. Because I took over a term of a member who had been
13 appointed and resigned. I was nominated/appointed by Governor Miller to finish the term and
14 then I've been reappointed every four years or whatever it is since then.

15 **Vavra:** You're right, it says 1990. So Governor Miller was the first one who appointed you,
16 right?

17 **Marvel:** Yes, uh huh.

18 **Vavra:** Who reappointed you?

19 **Marvel:** Well, you know what's embarrassing, but you are going to have to remind me of which
20 Governor's have we had. I think we've had Miller, we've had Guinn. This is embarrassing.

21 **Vavra:** If you don't remember, it's okay.

22 **Marvel:** I don't remember, all I know is the one's for sure is that we have had Miller and Guinn.
23 Those are the only two that I can recall right now, but again it has been over what 18 years? So
24 how ever many Governors we have had in that period of time. The only one who has not
25 appointed me recently is Governor Gibbons.

26 **Vavra:** That was my next question. So, Governor Gibbons never appointed you?

27 **Marvel:** Right.

28 **Vavra:** When does your current term expire?



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1 **Marvel:** You know, that's a good question. I don't pay attention to those things, I just do my
2 job and they tell me when it is my year to be reappointed. So I'm assuming, what is this it is
3 2008, gosh I guess it possibly..., I don't know, I don't know.

4 **Vavra:** That is fine if you don't know, not a problem.

5 **Marvel:** What's interesting is, oh, not that it matters, for almost 2/3 of the time up until maybe 5
6 years ago we got paid per diem. We did not even get paid it wasn't until the Legislature passed
7 the law just a few years ago that we started getting paid to serve on the Tax Commission, for
8 whatever that is worth.

9 **Vavra:** Can you describe the Commission's oversight over Assessors?

10 **Marvel:** There is general oversight, but it is definitely not a day to day thing. It is a matter of
11 the Nevada Tax Commission is the head, by statute, of the Department of Taxation and the
12 Department of Taxation has general oversight over the Assessors. But as far as any reviews or
13 day to day work with Assessors there is none as far as being a member of the Nevada Tax
14 Commission. I am not going to deny that the Nevada Tax Commission does have a lot of power
15 in the big picture over county Assessors but as far as any scrutiny or day to day involvement I
16 have no involvement. Other than for example I am the mining representative on the Nevada Tax
17 Commission. I have attended variety workshops dealing with net proceeds of minerals taxes and
18 the regulations that we have to consider adopting with respect with net proceeds of minerals. In
19 that context I have gone to workshops with the county Assessor here in Elko, for example Great
20 Basin College will video conference workshops sometimes from Carson City or wherever
21 workshops are being held. And, we had a couple of occasions where workshops were being
22 broadcast to Great Basin College here in Elko. But that has nothing to do with oversight; we
23 were both listening to the participation of people regarding the proposed regulations of net
24 proceeds of minerals.

25 **Vavra:** Now, question about Jim Gibbons. Describe your relationship with Jim Gibbons. How
26 long you know him?

27 **Marvel:** I have probably known him from my recollection is to actually know him and even
28 communicate with him more than just possibly a hello would be since I started representing him



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1 and Judge Whitehead in connection with this real estate transaction which would have been in
2 2007. So, I am thinking I've known him since the springtime of 2007.

3 **Vavra:** That was the first time you ever met? In private or professional...

4 **Marvel:** Uh huh, yeah, I mean...maybe over the last 20 or 30 years I may have said hello to
5 him, you know, where he has been a candidate for numerous offices. Perhaps I've said hello to
6 him, but I have never had any conversations with him whatsoever until I met him in connection
7 with this real estate transaction.

8 **Vavra:** So just about spring of 2007?

9 **Marvel:** Uh huh.

10 **Vavra:** How often do you see Jim Gibbons and under what circumstances?

11 **Marvel:** How often do I see him, gosh; I have talked to him over the phone several times since I
12 started representing him and Judge Whitehead. I have seen him here in my office two or three
13 times regarding the real estate transaction where he was briefly in and out, because he had other
14 commitments. But he would stop by here to check on the escrow or to sign escrow papers or
15 what have you, but it was all in context with this real estate transaction.

16 **Vavra:** Okay. Now, without disclosing any privileged information, which of course I
17 understand, did you represent Jim Gibbons before?

18 **Marvel:** Before this real estate transaction, no.

19 **Vavra:** How did you come to represent him on the sale of this property?

20 **Marvel:** I represented Judge Whitehead in past ranch matters, you know Judge Whitehead has a
21 large ranching operation in Lamoille. In conjunction with doing legal work for Judge
22 Whitehead I was asked to prepare a contract regarding this 40 acre parcel and as we started
23 putting the contract together and also a parcel map because we weren't going to be able to sell
24 this property unless there was an approved parcel map by the County. At that time Judge
25 Whitehead and Governor Gibbons agreed that it would be easier and less costly to have them
26 both hire me to represent both of them. Because it was an agreed upon consensual arrangement
27 between two clients that there would be no conflict. Because all I would do is represent the
28 parties in connection with the sale of this property and getting the map approved and then closing



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1 the transaction and part and parcel of closing the transaction I typically for all of my agricultural
2 work do file agricultural use assessment applications with respect to the agricultural property.

3 **Vavra:** Okay, does Jim Gibbons ever come to the Tax Commission?

4 **Marvel:** Over the last 20 years, I cannot recall seeing him...

5 **Vavra:** Did any governor?

6 **Marvel:** No, Governor's normally don't make appearances. I don't recall seeing any Governor
7 there. I've seen a few senators show up, you know and uh [sic], Senator Townsend he'll come in
8 there once and a while, my Dad stepped in there once in a while.

9 **Vavra:** Does the Governor have any say over your decisions at the Tax Commission?

10 **Marvel:** No, absolutely not.

11 **Vavra:** Have you ever discussed any Tax Commission issues with Jim Gibbons?

12 **Marvel:** Never.

13 **Vavra:** Now going to ask some questions regarding Jerry Carr Whitehead, how long you know
14 him?

15 **Marvel:** I've known Judge Whitehead for gosh maybe, I'm gonna guess 15 years. He has horses
16 and I have horses, we both have cutting horses. And, so I got to know him initially though the
17 cutting horses and then a few years ago he asked me to do some legal work for him in different
18 matters regarding his ranch properties, I don't recall how long ago within the last 10 years
19 probably.

20 **Vavra:** How often you see him and under what circumstances?

21 **Marvel:** I don't know I talk to him on the phone periodically; it depends on what kind of legal
22 matters. And sometimes he will go to cutting horse shows and I may see him at those. There is
23 no set amount of time, it's just if I have legal work I'm doing and most of our communications or
24 meetings or communications are by telephone. And so you know, I, [sic] he also is a mediator
25 and he has been used as a mediator on some client matters as well, so I see him also in that
26 context, but there is no any set times that I meet him, a number of times.

27 **Vavra:** The next question I was going to ask was how long have you been representing him, but
28 you said about 10 years and you known him about 15.



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1 **Marvel:** Yeah and these are really vague answers because I don't recall that many years ago, but
2 that is probably relatively close.

3 **Vavra:** Where you present during the sale of Whitehead's property to Jim Gibbons?

4 **Marvel:** Was I present?

5 **Vavra:** Yes.

6 **Marvel:** Well in the sense that I was involved in all of the legal work that was done, so yeah.

7 Like some documents would have been signed by sending documents to Reno and Judge
8 Whitehead would sign documents there or, I know when Governor Gibbons and his wife came to
9 sign documents to close the transaction I believe the documents were all at Stewart Title
10 Company. And they stopped here first and then went over to the title company close the
11 transaction at that time, after I reviewed the documents.

12 **Vavra:** Have you ever visited the property?

13 **Marvel:** Yes, I have.

14 **Vavra:** Do you usually visit the property when you are filing agricultural assessment
15 applications?

16 **Marvel:** Well, it is a situation where agricultural use assessment applications are really not like
17 a major deal they are pretty straight forward simple thing, a secretary can pretty much fill them
18 out with my supervision. As far as viewing the property it may or may not happen it just
19 depends. In this case I saw the property, about the time; oh I don't know around the time of the
20 closing just to get a general idea about the property, you know get feel for the generalities of it.
21 And then this year I have been out there two or three times now.

22 **Vavra:** Okay, now describe your relationship with Joe Aguirre, the Elko County Assessor.

23 **Marvel:** I've know Joe Aguirre for most of, I mean, and you know, just public members, I've
24 been practicing law for about 30 years I have seen him say he has been in the Assessor's office
25 for 27. I may have even known him before then because his family I think has been around this
26 community a long time. I have known him in the context of him being in the Assessor's office
27 for most of my 30 years of practicing law.

28 **Vavra:** How often do you see him and under what circumstances?



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1 **Marvel:** That would vary I would not have a lot of personal contact with him I have probably
2 had several phone contacts with him over the years. It's common to call the Assessor himself
3 and then he if he has certain questions he may have you talk to one of his deputies or one of the
4 other people in his office that he will refer you to. Or after a while you get to know certain
5 people that you contact in an office and so you might go directly to the property people or
6 whatever you know.

7 **Vavra:** Do you recall the first time you ever met him?

8 **Marvel:** No, he's been around, in my mind I've known him the entire time I've been in Elko.
9 I used to think we were friends, or at least that we had a friendly relationship. Up until this last
10 summer I didn't think there was a problem I thought we actually had a nice working relationship.
11 I treated him always with total respect on the Tax Commission whenever he has been before us
12 or whenever we were at workshops together I thought it was nice casual, informal relationship
13 we had. I did not realize that he did not like me. Now it is obvious that he does dislike me very
14 much.

15 **Vavra:** Describe the communications between you and Aguirre during the Gibbons application
16 process?

17 **Marvel:** Uhm, the only communication I had with Joe Aguirre, I had two communications with
18 him I never spoke with him one time. I had one letter in October of last year and another letter in
19 December of last year. And he responded to me after my first letter in October of last year.

20 **Vavra:** You never talked to him on the phone about the application?

21 **Marvel:** Never.

22 **Vavra:** Did you talk to anyone else in his office about Jim Gibbons' application?

23 **Marvel:** No, unequivocally not.

24 **Vavra:** Are you familiar with the 2004 Elko County Assessor's tax case before the Tax
25 Commission?

26 **Marvel:** I'm generally familiar with it I believe.

27 **Vavra:** Can you tell me what happened?

28 **Marvel:** All I remember I think it came before us a two or three of different times, it had to do
29 with a bankruptcy. See, when the media broke the story and Joe Aguirre started telling the world



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1 that I had, that the Tax Commission cost the Elko County Assessor \$65,000 I frankly didn't
2 know what he was talking about. So since then I have inquired and had other people on the Tax
3 Commission remind me what he was talking about. And it was a case that had something to do
4 with the Peppermill or one of the casinos I don't even know if it was the Peppermill. It was a
5 one of the casinos in Wendover and it was a refund case, and the Tax Commission ultimately
6 ruled that the Assessor made a mistake in the calculation in the collection of the tax. And the
7 taxpayer was owed a refund. The Tax Commission voted to uphold the refund. There are 8
8 members on the Nevada Tax Commission, of which I am only one, and I frankly don't even
9 know what the vote but my vague recollection was that it was probably unanimous. I did not
10 even know that Mr. Aguirre was mad or upset or felt that there was something hanging over his
11 head. Because, our job as members of the Tax Commission, if the Assessor is right it is our
12 obligation to uphold that decision and if the Assessor made a mistake, it is our obligation to rule
13 in favor of the taxpayer.

14 **Vavra:** Absolutely. If you voted on this issue, how did you vote?

15 **Marvel:** My recollection is that I voted in favor of the taxpayer.

16 **Vavra:** I know it has been a while.

17 **Marvel:** I quite frankly can't even remember all of the details.

18 **Vavra:** Okay. Did you have a conversation with Aguirre before the vote?

19 **Marvel:** I don't recall any conversations with him. I know there were none. I may have had
20 [sic] like, "How are you doing?" Whenever somebody from Elko shows up that I know I try to
21 be polite and say, "Hi how are you doing, but other than that."

22 **Vavra:** So there was no discussion about this matter?

23 **Marvel:** No, absolutely no discussion.

24 **Vavra:** Okay. How often you file the agriculture assessment applications?

25 **Marvel:** How often? Yeah, I have had that question and frankly it is a good question. I don't
26 have a good answer. Other than my recollection, for example, what I did when I was so upset
27 one time when I heard one of the interviews that Joe Aguirre did, that I had only done it like
28 three or four times in my entire career, or before him. Well, I went back this year alone I filed I
29 think five in March and April, I had five of them for other clients and that is just this year alone



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1 and over my career over 30 years in Elko County there is going to be 25 to 50. I also do ranch
2 work in White Pine, Lander, Humboldt, Eureka and Nye all the rural counties, I've had ranch
3 clients, so it would not be unusual for me to file agricultural assessment applications in any one
4 of those counties.

5 **Vavra:** How many were denied?
6

7 **Marvel:** I don't recall ever having one denied. Now, I have seen him make statements that I
8 asked something. And I can't remember what he is talking about. He's made a public statement
9 that I asked him about someone not qualifying and why or something about why do we have to
10 prove the income and I don't even know what he is talking about frankly.

11 **Vavra:** Who files the application is it you or is it your staff?

12 **Marvel:** Well, I typically sign the application either that or I will prepare the application for my
13 clients to sign, but it is going to be the purchaser, the buyer, the grantee under the contract who
14 will be signing. Either I sign for my client, the purchaser client, or it will be my client who will
15 prepare the document.

16 **Vavra:** Do you ever go to the Assessor's office with the applications?

17 **Marvel:** My secretaries go over there and drop them off.

18 **Vavra:** So you personally don't go?

19 **Marvel:** No.

20 **Vavra:** Did you personally fill in the submitted the application for Jim Gibbons?

21 **Marvel:** I directed that it be done. I am sure that I told my secretaries how to respond.

22 **Vavra:** How did you deliver the application to the Assessor's office?

23 **Marvel:** Well, that one would have either been, I know I had a letter to Mr. Aguirre with the
24 application whether it was mailed or hand delivered I don't know. A lot of times I have girls, my
25 secretaries, running to the courthouse everyday, so it is not uncommon to mail it or hand deliver
26 it.

27 **Vavra:** Is there any way to find out who that they gave it to who was the person receiving the
28 application?



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1 **Marvel:** No, as I recall the letter, I'm assuming you've seen it; it was probably addressed to Joe
2 Aguirre. No, I don't know how they process, how the mail is handled in his office, you know.

3 **Vavra:** Was the process any different from the applications you filed before?

4 **Marvel:** No.

5 **Vavra:** So what happened after you filed the application?

6 **Marvel:** He responded with a letter and I think that was in October.

7 **Vavra:** Did he ask for any additional documents?

8 **Marvel:** Well, he made a comment something about having to provide proof of income. I think
9 he had a comment in his letter, something about the property being carved out, I'd have to look
10 at the letter, but it being carved out of the bigger piece and it would have to stand on its own. I

11 didn't really agree with that and if you'd like I can explain all of that later, the statutes are very
12 straight forward. One thing I have learned is when you are dealing with bureaucrats, you know
13 with state or county agencies it is easier to play their game with them. I mean if you want proof
14 of income you just do it in this case I did that in December I sent him two checks. It is

15 interesting it turns out that, in my mind, giving him two checks from reputable people I thought
16 that was sufficient to show that the income and matched the \$5,000 that he was asking for.

17 However and maybe I'm getting ahead of myself, but I did not realize that he would have wanted
18 to see the backs of the checks as well as the fronts of the checks. That was never communicated
19 to me. I sent him a letter, which you've probably seen, in December enclosing the two checks.

20 That was the last time I heard from the Assessor until I started hearing news reports about how
21 bad the Governor and I are and that was in July of this year.

22 **Vavra:** So were you ever notified of the status of the application?

23 **Marvel:** I had no... I wasn't told anything. There was absolutely nothing said about the status of
24 the application.

25 **Vavra:** So you sent in the checks and that was it?

26 **Marvel:** Yes, I thought it was a done deal because these things are not rocket science, they are
27 very simple. When you don't hear from a county official, I, as an attorney, assumed that if the
28 county official is not happy with what he received he is going to ask for more information or tell
29 me it is not proper or do something, but nothing was said, nothing. Because see another thing,



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1 we had from the date that Gibbons closed on the sale which I believe was August 8 of last year
2 until June 1 of this year, of 2008. We had that period of time in which to file this application
3 because Judge Whitehead had already qualified the property from his operation as part of as
4 being properly assessed for agricultural use. And, so, uhm...

5 **Vavra:** So you sent in the checks and you never heard...?

6 **Marvel:** Never heard a word until I started reading stories in the newspapers.

7 **Vavra:** Okay, I have a question about the application. On the first page of the application there
8 is a statement that says "I/we certify that the gross income from the agricultural use of the land
9 during the preceding year was \$5,000 or more". You marked yes, right?

10 **Marvel:** Uh huh.

11 **Vavra:** And you then the next line reads "If yes, attach proof of income", which apparently you
12 didn't when you filed the application, can you explain why?

13 **Marvel:** Yes, because the prior year was qualified by Judge Whitehead. And so he basically
14 asking me to provide him with Judge Whitehead's information from a prior year when he already
15 had the information because he has already approved Judge Whitehead's application from years
16 before. So, why should we prove something that the Assessor already has the information
17 about?

18 **Vavra:** Okay, again, I'm not an expert.

19 **Marvel:** No, I'm just telling you. It is one of the application is flawed it shouldn't state
20 questions the way it did but the Assessor had better information that I did since Judge Whitehead
21 who owned the property before the sale and had used that property in his overall ranching
22 operation and his entire ranch is under the agricultural use assessment, then the Assessor knows
23 it qualifies.

24 **Vavra:** Speaking of the application, you said it is flawed, what's wrong with the application?

25 **Marvel:** Well, I mean, from the stand point, in fact I think they are using a new application now.
26 I think they were using an old application then and I thinking the Department of Taxation has
27 changed the format of it. But to me it s a bad question to ask because at the time of the purchase
28 the parties buying the property haven't operated it for agricultural, they intend to or leased it for
29 agricultural uses but they haven't operated it, so there is no way they could have generated
30 income for a prior year when they didn't owned the property. So it is a stupid question in the



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1 application. But again the bottom line is Judge Whitehead had qualified it and the Assessor had
2 those records.

3 **Vavra:** Do you know what is the classification of Jim Gibbons' property?

4 **Marvel:** The classification?

5 **Vavra:** Is it grazing land or pasture land?

6 **Marvel:** Yeah, it is grazing and pasture. In fact the pasture lands are some of the best pastures I
7 have seen in Elko County, they are some gorgeous pastures. And, this is what is interesting, the
8 Assessor didn't do his job in inspecting the property or he would know how good this property is
9 as far as agricultural use because it is gorgeous pasture. It is my understanding that the
10 Department of Taxation, based on the Assessor's records have already calculated, you know,
11 based on the Assessor's information have calculated the value and the classification of the
12 forage. And, the Assessor had under classified it, but the bottom line is it still easily supports the
13 amount of livestock that it would take to generate \$5,000 worth of income.

14 **Vavra:** Are there different classifications of grazing and pastures?

15 **Marvel:** Uh huh, yeah.

16 **Vavra:** Do you know which classification was assigned to Jim Gibbons's land?

17 **Marvel:** I think I would have to check I believe it was either, they either had it under 2nd or 3rd
18 class pasture, and a separate category for gosh 1st or 2nd class grazing, I would have to check that.

19 **Vavra:** Who determines the classification?

20 **Marvel:** The Assessor.

21 **Vavra:** Do you know if Jerry Whitehead is leasing the property from Jim Gibbons?

22 **Marvel:** Yes, absolutely, I have seen his cows on the entire 40 acres I had to drive through his
23 cows on the entire 40 acres one time.

24 **Vavra:** Is there a written agreement for the lease?

25 **Marvel:** Yes.

26 **Vavra:** Is it possible to obtain a copy of it?

27 **Marvel:** On that I would be happy to ask my client. What I would be happy to do or to suggest to
28 my client that we could do is to provide you with I call it a certification of lease or something
29 that could be a public record and just basically give you the essential elements, the term of the



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1 lease and the payment you know basic stuff something like that I could recommend often times
2 you record a notice of lease or something, something like that might be very appropriate and I
3 could ask them if that would be fine with them.

4 **Vavra:** Was the lease part of the sale?

5 **Marvel:** Uh huh, Judge Whitehead wanted to be able to lease the property back upon close [sic]
6 because this ground is uh [sic] well Judge Whitehead would have a lot of motivation to lease it
7 back. One of them is that meadow is gorgeous and it is all contiguous property it is right next
8 door to his other ranch property. As you know, well, maybe you don't know, he carved the 40
9 acres out in order to make the sale to Governor Gibbons. And so, it is part of... was formerly a
10 part of the Judge's ranch property and so in walking the property what you can observe is that
11 the Southern boundary is not fenced on line so what Judge Whitehead did is he had the
12 engineering company survey 40 acres for the sale and the back property the South portion is not
13 fenced on line.

14 **Vavra:** So you're saying now there is no fence all the way around it?

15 **Marvel:** Well, there is fence all the way around it but the 40 acres, in other words Governor
16 Gibbons has more acreage then 40 acres that is unfenced. I mean part of it is Whitehead's
17 ground; part of it is Gibbons' ground.

18 **Vavra:** So the entire Whitehead property is fenced, but let's say Gibbons' property is here and
19 there is no fence? (looking at map)

20 **Marvel:** Right, and so right here if we say this is Whitehead's property and there is no back
21 fence here and there is another fence here for example, but Whitehead would have had to build a
22 fence here to make it the 40 acres he was selling. But that wasn't a factor for Whitehead, plus
23 Whitehead there's water that comes off, Whitehead irrigates his neighboring property and there
24 was a potential that Whitehead would have to put a diversion ditch in or drainage ditch in to keep
25 water from going onto Gibbons' property, so that was another advantage to Whitehead. Plus
26 Gibbons, I don't know if you know anything about ranching, but Whitehead doesn't, he really
27 did not want, presumably Governor Gibbons could put his own cows out there or lease it to
28 somebody else to put their cows out there. And, if they put bulls in there and they weren't the
29 kind of bulls that Whitehead wants breeding his cows then they are next door to him and he



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1 doesn't want that because he wants to maintain the integrity of his cow herd. So, Whitehead had
2 all kinds of incentives to lease the property back, which he did.

3 **Vavra:** Do you know what kind of animals or how many are grazing on Jim Gibbons' land? And
4 again I'm not looking for an exact number.

5 **Marvel:** What Whitehead does, he has several hundred heads of cow and when I was out there I
6 believe it was in June I in discussions and I don't want to get into this I don't want to talk about
7 attorney client privilege things I don't know if this falls into that. In general I talked with Judge
8 Whitehead I think he had roughly 250 pairs of cows and calves in that area so in other words the
9 gates are open from Whitehead's pasture next door and they use the entire property.

10 **Vavra:** So there could be one and the next minute it could be fifteen?

11 **Marvel:** Yeah and the next it could be 250. And the important point and I'm gonna keep telling
12 somebody until they listen to me about how the law works. Because this is where the Assessor
13 doesn't even know what the law is. But if I, and I will show you that statute.

14 **Vavra:** Oh absolutely, I'd be glad to see it.

15 **Marvel:** Okay and, I get so passionate about this. NRS 361A.020 this lays out the statute. There
16 are two statutes that apply to justify the agricultural assessment here the first one is: "Land
17 devoted exclusively for at least 3 consecutive years immediately preceding the assessment date
18 to agricultural use." So, for 3 consecutive years and for 15, 20 for 100 years as long as they use it
19 for agricultural use, okay so that qualifies. Land leased by the owner to another person for
20 agricultural use and it's at least 7 acres of land and we have 40 acres here, so we meet that. Or it
21 could be contiguous to other property owned by the lessee, okay Whitehead is the lessee he is
22 contiguous so under this example not only is the land more than 7 acres it is also, it's
23 conjunctive, the "or", but it is both 7 acres and it is contiguous so if you have both of those
24 requirements, then it goes on to NRS 361A.030 if the business produced a minimum gross
25 income of at least \$5,000 during the immediate preceding calendar year by feeding, breeding
26 livestock. Okay, in this case Whitehead's business produced more than \$5,000 because he runs
27 several hundred head of cattle on this property and his adjoining property. So, as long as this
28 property is 7 acres or contiguous and Whitehead leases the property and this property is used as
29 part of that operation and Whitehead's business produces and he... from the sale of his cows



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1 every year because he raises calves to sell that's his income he sells his calves, so generally a
2 few hundred thousand dollars from the sale of his calves, that's obviously more than \$5,000. So
3 by definition, this property qualifies.

4 **Vavra:** So it is not about how Jim Gibbons ...?

5 **Marvel:** No, that is the point I wanted to make and this is where the Assessor doesn't know the
6 law apparently. Because this property does not have to stand on it's own it can and it will qualify
7 on that basis, and I will go through that in a second, but based on the lease alone if Whitehead is
8 generating more than \$5,000 gross income from the overall ranching operation which he
9 conducts and leases this little piece of ground, 40 acres. Gibbons does not have to make one
10 nickel of income and it will still qualify for the agricultural assessment that is what this law says.
11 So that is number one, number two is putting the lease aside looking at the land is it capable of
12 producing \$5,000 income a year and, the answer is yes. And I have had an appraiser look at this
13 for me and give me, you know, to consult with me and give me that in his opinion it easily
14 produces enough forage to generate \$5,000 of income per year and independently the
15 Department of Taxation, is my understanding, has also calculated it based on the Assessor's
16 numbers and concluded that it is somewhere from \$5,900 – \$9,000 of income based on what the
17 Assessor gave them that property by itself. So under either scenario...

18 **Vavra:** Which is not even the requirement as you said, right?

19 **Marvel:** Right exactly. So under either scenario though, this property qualifies and that is what I
20 cannot seem to convey to anybody who will understand the law. The media doesn't want it,
21 because they love to hear the Governor has screwed the state or the county.

22 **Vavra:** We don't care what anybody says.

23 **Marvel:** I know, I'm just telling you, but people ignore what the law says and I just want to
24 repeat that Gibbons doesn't have to make one cent. He could give Whitehead a free lease for as
25 long as he wants, well... 25 under Nevada law for agricultural use and the property will qualify.
26 And see I don't think Mr. Aguirre ever went through this with the Governor or even wanted to
27 understand it and he clearly, oh, it just infuriates me what he's done.



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1 **Vavra:** Oh, I understand, so my next question was: why was Jim Gibbons entitled to an
2 agricultural exemption, but you just explained it. Is it possible, or course it is public copy, but
3 can I have a copy of this page (referring to the statute) so that I can remember it?

4 **Marvel:** Sure. Yeah I'd be happy to do it for you, yeah, yeah. In fact you will see that it's not
5 really an issue here, but the Assessor really did not handle this right at all because his whole line
6 of attack here or his handling of it was that he did not want to make decision because he
7 disagreed he just let it happen. Well the statute says he has to either approve it or reject it, he
8 didn't do that, he just let it happen. So he didn't even do his job he also is supposed to record the
9 fact, he is supposed to record the application to show the world that it is in agricultural use and
10 he failed to do that too. I mean he messed his job up every which way on this and now he is
11 attacking me. But anyway, the law is what it is and under either scenario, either under the lease
12 to Whitehead or on its own, the property will generate \$5,000 on its own or with the lease to
13 Whitehead as long as Whitehead generates \$5,000 in his overall operation, it doesn't matter, it
14 doesn't have anything to do with this property, it is the overall operation.

15 **Vavra:** Well, I am glad you explained it to me because no one else did yet.

16 **Marvel:** Okay, well I hoped it helped and I would love to give you the story (inaudible). And
17 I've also been told that if Joe Aguirre would have calculated the numbers right, remember how
18 all the news reports said the Governor screwed the state and the county out of \$5,000. Well, the
19 amount calculated by the Department of Taxation is \$710.50 if this deferment didn't apply, so if
20 this law didn't apply the most that the Governor would owe is \$710.50 and not \$5,000.

21 **Vavra:** Now that is interesting.

22 **Marvel:** Now I hope that you will also listen to what Aguirre said on his NPR radio broadcast
23 and the Face to Face interview. And what he says is all the Governor did is go to him for advice
24 and I am the real culprit. Well I mean, when he said that this is that ethics thing, it seems to me
25 ridiculous. If the governor went to him for advice and that is the only communication he had, I
26 have a hard time seeing any intimidation, but then that is just me.

27 **Vavra:** Okay, alright, is there anything you would like to add that I did not?

28 **Marvel:** You know I could go on forever about the way I feel about this case. This has been a
29 waste of taxpayer's time and money taking the Governor's time away from his job. It has totally



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1 taken time away from my job and I don't appreciate the Assessor having lied and misrepresented
2 the facts and challenged people for doing their jobs. The thing that irritates the heck out of me is
3 there was never... I sent him two letters, I never did one thing to intimidate him, in fact, it didn't
4 even dawn on me and I told this to everybody. It didn't even dawn on me that when I do my
5 legal work as a lawyer, as an attorney representing the Governor and Judge Whitehead that I am
6 even a member of the Nevada Tax Commission. There is not a connection between those two
7 things in my mind. I work as a lawyer when I am representing my clients and when I go to
8 Carson or Vegas where we have Tax Commission meetings, that is when I'm on the Nevada Tax
9 Commission or when I go to workshops with Joe Aguirre and people like trying to decide about
10 adopting regulations. But, I'm sure in the heck not involved as a Tax Commissioner when I am
11 doing legal work.

12 **Vavra:** Well, I think that will do it.

13

14 Interview concluded on August 21, 2008 at 5:50 p.m.

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Dated:

8/29/2008

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Michel Vavra, Investigator



STATE OF NEVADA
Before the Nevada Commission on Ethics

In the Matter of the Request
for Opinion Concerning
the Conduct of JIM GIBBONS
Governor, State of Nevada,

Request for Opinion No.: 08-37C

Subject _____ /

CERTIFICATION

I, Michel Vavra an Investigator for Nevada Commission on Ethics certify:

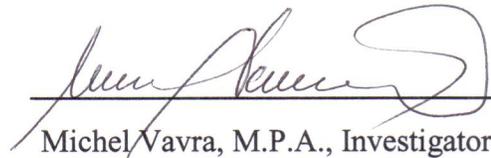
That on Thursday, August 21, 2008, at the hour of 5:00 p.m. of said day at 217 Idaho Street, Elko, Nevada, I was present and I conducted an interview with John E. Marvel, the Subject in Request for Opinion 08-37C.

I recorded the interview with Marvel's permission and thereafter transcribed the same into typewriting as herein appears.

The foregoing transcript consisting of pages 1 through 17 inclusive is a full, true and correct transcription of the recording of said interview.

Dated: _____

8/29/2008


Michel Vavra, M.P.A., Investigator



STATE OF NEVADA

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I placed a true and correct copy of the INTERVIEW OF WITNESS AND CERTIFICATION ON RFO#08-37C in an envelope and caused same to be hand delivered via Reno-Carson Messenger to the following:

**Michael A.T. Pagni, Esquire
McDonald Carano Wilson LLP
100 West Liberty Street
10th Floor
Reno, NV 89505-2670**

**The Hon. Jim Gibbons
Governor, State of Nevada
State Capitol
101 N. Carson Street
Carson City, NV 89701**

Dated: _____

Signed: _____
An employee, Nevada Commission on Ethics