



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. /

**INTERVIEW OF WITNESS AND CERTIFICATION**

1 Interview with Dino DiCianno and Terry Rubald, witnesses in Request for Opinion 08-37C,  
2 conducted via telephone on Monday, August 25, 2008 at 2:00 p.m.

3

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

5 **Dino DiCianno, (DiCianno)**, Executive Director, Nevada Department of Taxation.

6 **Terry Rubald, (Rubald)**, Chief of Assessment Standards, Nevada Department of Taxation.

7

8 Dicianno granted permission to record the interview via telephone, and notified Rubald on  
9 August 25, 2008.

10

11 **Vavra:** Can you hear me?

12 **DiCianno:** Yes.

13 **Vavra:** All right. Ok, I have lot of questions...maybe not a lot, but...is Ms. Terry there?

1 **DiCianno:** Yes, Terry is here.

2 **Vavra:** Ok, Ms. Terry this is Mike Vavra, I am an Investigator for Commission on Ethics.

3 **Rubald:** Hello, how are you?

4 **Vavra:** I got few questions, and I was just wondering if you can clarify the NRS 361A,  
5 specifically the NRS 361A.020?

6 **DiCianno:** Let me grab the statutes.

7 **Rubald:** Did you get my e-mail?

8 **Vavra:** Yes. I printed it out and...I have no idea what it means, but I got it, yes, I printed it out.

9 **Rubald:** Ok. Is (unintelligible) discussion of what ag property is?

10 **Vavra:** Correct. Yes. You know, the reason I am calling...there is this little issue with  
11 Governor's property...

12 **Rubald:** Right.

13 **Vavra:** And I have different answers from different people, and I am sure you are the person  
14 who can give me the right answer. If you look on NRS 361A.020...

15 **DiCianno:** I don't know if it is fair to say you gonna get the right answers from us, but we  
16 understand.

17 **Vavra:** Ok. I am hoping. If you look under (subsection) 1(a), it says, "The land devoted  
18 exclusively for at least 3 consecutive years." Ok ...If I apply the scenario to the Governor's  
19 property, does it mean that his property has to be devoted for 3 years or the entire  
20 property...because his property is actually just a little chunk in a corner of somebody else's  
21 property.

22 **Rubald:** Right.

23 **Vavra:** The other person has been using the property for agricultural use ...you know...for years  
24 and years.

25 **Rubald:** The parcel was split from 720 acre parcel.

26 **Vavra:** Correct.

27 **Rubald:** All that had been previously used for agriculture?

28 **Vavra:** Correct.

29 **Rubald:** So, from the bases of 1 (a), it had been at least 3 consecutive years immediately  
30 preceding the assessment. It does not say that it had to be by that owner.

31 **Vavra:** Ok.

32 **Rubald:** But under 2...or 1(b) has two conditions.

1 **Vavra:** Ok.

2 **Rubald:** One, it has to be at least 7 acres so, we know it meets that condition.

3 **Vavra:** That's about 40, ok.

4 **Rubald:** And, it has to be (unintelligible) contiguous.

5 **Vavra:** Ok.

6 **Rubald:** Ag property owned by lessee...in fact, it meets that condition also.

7 **Vavra:** Which is...?

8 **Rubald:** Because that 40 acres is contiguous to the other real agricultural property owned by the  
9 lessee, who is Mr. Whitehead.

10 **Vavra:** Correct. Ok.

11 **Rubald:** So, in terms of all 3 of those conditions in 1(a) and (b), it meets all of those conditions.

12 **Vavra:** Now, 361.030, under 1, about...one, two, three...where it talks about the \$5,000  
13 right...so, does it mean, if I understood correctly, that the Governor's property does not have to  
14 earn the \$5,000 or does it?

15 **Rubald:** No. Not the Governor's property but with the conjunction with the entire...

16 **Vavra:** Right, with Mr. Whitehead.

17 **Rubald:** (Unintelligible)...ranch...Thorpe Creek Ranch...

18 **Vavra:** So...

19 **Rubald:** But on the safe side...the spread sheet I sent you here, is to show that even just the  
20 acres could have the capacity to produce \$5,000.

21 **Vavra:** So...

22 **Rubald:** So, whether it is just alone or in conjunction with the rest of the ranch, it appears to  
23 have the ability to produce at least \$5,000.

24 **Vavra:** Because...according to what I found from the Elko County Assessor, Mr. Gibbons has  
25 20 acres of 3<sup>rd</sup> class pasture and 20 acres of 2<sup>nd</sup> class grazing.

26 **Rubald:** I believe it is 3<sup>rd</sup> class pasture.

27 **Vavra:** Yes, it is. 3<sup>rd</sup> class pasture and 2<sup>nd</sup> class grazing.

28 **Rubald:** Correct.

29 **Vavra:** 20 and 20. So, it would produce \$5,000 on its own, right?

30 **Rubald:** Right, the spread sheet I sent you...

31 **Vavra:** Hm...

32 **Rubald:** If you don't mind, let's just walk through it.

1 **Vavra:** Yes. I got it in the front of me, sure.

2 **Rubald:** Ok. I don't know what kind of cattle is Mr. Whitehead running on that land, but what  
3 we have here...the results would be depending on what is actually running. But, let's say he's  
4 just running cow/calf pairs.

5 **Vavra:** He's got cows, calf and he's got some bulls as well.

6 **Rubald:** Ok. Well, for the moment, let's just say he is running cow/calf...just to run through this  
7 example. Then...the first thing we have to look at is how much feed would cow/calf require from  
8 3<sup>rd</sup> class pasture.

9 **Vavra:** Ok.

10 **Rubald:** And...that number .21 you see there...we obtained it in (unintelligible), actually printed  
11 it in our ag bulletin...but we obtained it from UNR and USDA (unintelligible). So, that is not a  
12 magic number, it's just something we obtained from research.

13 **Vavra:** Ok.

14 **Rubald:** So, we know that there's 20 acres in 3<sup>rd</sup> class pasture so, we multiply those two  
15 numbers together, and that gives us an idea of how many cow/calf pairs that 20 acres will  
16 support, which is 4.2. So, I rounded it up...you can't have .2 cows.

17 **Vavra:** I know...

18 **Rubald:** It could support up to 5 cow/calf pairs or up to 4 bulls or 6 (unintelligible). Now, there  
19 is a requirement in a statute that you only have to provide half of the feed, and that comes from  
20 (NRS) 361A.030 (b), and it says that it has to be sufficient size and capacity to produce more  
21 than one half of the required...

22 **Vavra:** Right.

23 **Rubald:** What I did, is, I took the number that (unintelligible) and I doubled it because  
24 supposedly we only have to provide...that land had to only provide for a half, so we had 5 pairs  
25 cow/calf, now we're talking about 10.

26 **Vavra:** Ok.

27 **Rubald:** The next thing I did, I tried to estimate the weight of a cow/calf pair, and that was kind  
28 of tough to come up with...certainly I am not in business of ranching, but I did find the report  
29 from USDA livestock slaughter that the pounds you see there is what the USDA is saying across  
30 the country.

31 **Vavra:** Ok.

1 **Vavra:** So, now we know the weight, the approximate weight of cow/calf pair, and if you have  
2 10 of them...I am sorry (unintelligible)...you know the weight is 945 lb, you divide it by 100 so,  
3 you have it per hundred weight. So, we basically multiply H times I (referring to spread sheet  
4 print out cattle/feed calculations (Exhibits) is \$9.45 per hundred weight... about ninety dollars  
5 and you get \$852 per cow/calf pair. And since we know back in (Exhibit F) all together we can  
6 expect to support 10 cow/calf pairs that means that... that 40 acres potentially generates up to  
7 \$8,524.

8 **Vavra:** Okay.

9 **Rubald:** So, since I didn't know what is actually been running you said they're cow/calf pairs  
10 and bulls presumably it's gonna be somewhere between \$6,444 and \$8,524. So, it isn't much  
11 beyond \$5,000, I mean it certainly wouldn't support a family but that's not a requirement, the  
12 requirement is only that (unintelligible) be able to have the capacity to produce that much, but  
13 the 40 acres alone apparently does that.

14 **Vavra:** Okay.

15 **Rubald:** But, you wouldn't even go through this exercise if you interpret the statute that \$5,000  
16 was to come from that ranch.

17 **Vavra:** Correct, which apparently nobody did because everybody is complaining about the  
18 \$5,000... you know not being a lawyer but when you read through it the way I see it Mr.  
19 Gibbons doesn't have to produce a penny.

20 **Rubald:** No. The lessee does. Whoever is in the agriculture lease does.

21 **Vavra:** Okay.

22 **Rubald:** But the \$5,000 reported in the press is little confusing to me because when they're  
23 referring how much of gross income has to come in because I don't see how the actual tax would  
24 ever come that high.

25 **Vavra:** That was actually my next question because I got also confusing numbers from different  
26 people... what would the tax be actually on his property if it wasn't in ag?

27 **Rubald:** To be sure... the expert one that question would be the County Assessor, but here's the  
28 way I would look at it. We know that from the County records that on Mr. Whitehead's ranch he  
29 was \$720 and.. I am sorry... 679 acres that are in various stages of deferred ag on one acre of  
30 farmstead. So, that one acre of farmstead when you look on the record...had an assessed value  
31 of \$700.

32 **Vavra:** Okay.

1 **Rubald:** That translates to about at \$2,000 of taxable value, so if we say for the amount that the  
2 farmstead land is representative of the value of land, that is not in deferred ag classification.  
3 Then you could multiply the... acreage so let me take an amount... if you use the \$700 of  
4 assessed value per acre, and you multiply it by the 40 acres then divided by... I am sorry don't  
5 divide it because it's already assessed value... divide by 100 and then multiply by tax rate which  
6 was \$2.5375, I come up with a tax of about \$710.50. But it all depends what the Assessor was  
7 similarly situated property value (unintelligible) I only observed that the farmstead was \$700 of  
8 assessed per acre. If the Assessor has used other values (unintelligible) in ag, that would be a  
9 different calculation, but I was using \$700 for farmstead so I make that assumption  
10 (unintelligible).

11 **Vavra:** If I can go back to the tax rate, what was the number again? Because he gave me  
12 number \$2.5767 and that's not what you said.

13 **Rubald:** The tax rate for the 08-09 year in that calculation... and that was 2.5375. He perhaps  
14 gave you a number for a different year... I don't know.

15 **Vavra:** Because he did it, he came up with a tax of \$1,893.87, which is not even close to  
16 \$710.50. Is that possible?

17 **Rubald:** Who you talking about?

18 **Vavra:** The Elko County Assessor.

19 **Rubald:** Well, I would certainly take his numbers over mine, because I was just shooting in the  
20 dark as the way he has the land (unintelligible). We would have to know what he put... what  
21 similarly situated property would be going for, and I only guessed.

22 **Vavra:** Okay. All right, thank you then... and that's pretty under what I need from you and  
23 thank you a lot... and I am going to ask Mr. Dino some questions now... if you don't mind.

24 **DiCianno:** Go ahead.

25 **Vavra:** Okay, I am gonna ask some personal questions... I mean not really personal!

26 **DiCianno:** Wait a minute, personal? (laughter)

27 **Vavra:** Not really personal.

28 **DiCianno:** Okay.

29 **Vavra:** First, I want to know what is your title?

30 **DiCianno:** I am the Executive Director of the Department of Taxation.

31 **Vavra:** Okay. How long have you been in your position?

32 **DiCianno:** Since March 2006.

1 **Vavra:** Who appointed you for this position?  
2 **DiCianno:** Governor Guinn did and then I was reappointed by the current Governor.  
3 **Vavra:** Reappointed by Jim Gibbons, okay. What is your educational background?  
4 **DiCianno:** (Laughter) I have bachelor's degree in mathematics and master's degree in  
5 economics.  
6 **Vavra:** Oh, wonderful.  
7 **DiCianno:** That's what I thought at that time.  
8 **Vavra:** That sounds exciting.  
9 **DiCianno:** Well, pretty boring stuff.  
10 **Vavra:** Okay, I am gonna ask you some questions about Jim Gibbons. Describe your  
11 relationship to Jim Gibbons. How long you know him, how often you see him, what are the  
12 circumstances?  
13 **DiCianno:** Well, he's the Governor of the State, he appointed me, he's my boss and I see him  
14 only at cabinet meetings which occur once a month.  
15 **Vavra:** Okay. Does Jim Gibbons come to Tax Commission for meetings?  
16 **DiCianno:** No.  
17 **Vavra:** Did any previous Governor?  
18 **DiCianno:** No, not that I am aware of.  
19 **Vavra:** Okay. What authority the Governor has over the Tax Commissioners?  
20 **DiCianno:** Well, he appoints the members to the Commission.  
21 **Vavra:** Can he review their actions?  
22 **DiCianno:** No. He is ex-officio member he has no vote.  
23 **Vavra:** So, he cannot veto their decisions?  
24 **DiCianno:** No.  
25 **Vavra:** So, the Commissioners are appointed by the Governor?  
26 **DiCianno:** That's correct.  
27 **Vavra:** Can he terminate their appointment?  
28 **DiCianno:** He can do that, yes.  
29 **Vavra:** Did Jim Gibbons ever do?  
30 **DiCianno:** Not that I am aware of.  
31 **Vavra:** Any previous Governors?  
32 **DiCianno:** No.

1 **Vavra:** Okay. Can Governor impose any sanctions against Commissioners?  
2 **DiCianno:** That I do not know.  
3 **Vavra:** Okay. That's fine. What are the requirements for someone to serve on a Tax  
4 Commission? I believe it's in a statute it says to... what field of ... what's the right word...  
5 **Rubald:** Expertise.  
6 **DiCianno:** Expertise... thank you Terry.  
7 **Vavra:** Okay. Can you briefly explain the issue between the Tax Commission and Elko County  
8 Assessor in 2004, what was this case about?  
9 **DiCianno:** The case was about a... it was Generation 2000 which was affiliated with Peppermill  
10 at that time. My understanding of the case was that Generation 2000 felt that they had double  
11 paid their personal property taxes. They requested a refund got a refund and then requested  
12 interest on that money that was refunded to them that was held by Elko County.  
13 **Vavra:** Okay. Do you remember who was the Governor at the time? Was it Guinn?  
14 **DiCianno:** It would be Governor Guinn, yes.  
15 **Vavra:** Did he have any vote in making decision?  
16 **DiCianno:** No.  
17 **Vavra:** Do you know who was on the Commission during the decision?  
18 **DiCianno:** That should be in the materials provided to you... or the transcripts... they show it to  
19 you.  
20 **Vavra:** Okay.  
21 **DiCianno:** I believe it would have been Tom Sheets...is on the Commission, Barbara Campbell  
22 who's no longer on the Commission, was the chair at that time...I think Bob Barengo was there,  
23 George Kelesis, Joe Lambert, John Marvel, David Turner and I believe Hank Vogler was on that  
24 time.  
25 **Vavra:** In the paperwork I got from you, isn't going to tell me show voted how or was it  
26 unanimous?  
27 **DiCianno:** It will indicate to you vote by [sic] each member.  
28 **Vavra:** Okay. Does the Tax Commission has any authority over the County Assessor?  
29 **DiCianno:** That's very good question. I believe they do. I believe that's even more possible  
30 now under the passage of 392. Which occurred, I believe 2005 Session.  
31 **Vavra:** Who sets the policies that the Assessor follows in their practice?  
32 **DiCianno:** Commission.

1 **Vavra:** Okay. All right, I think that will do it.

2 **DiCianno:** Okay.

3 **Vavra:** Thank you.

4 **DiCianno:** Thank you.

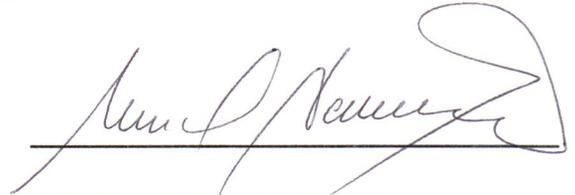
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6 Interview concluded on August 25, 2008 at 2:30 p.m.

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9 Dated: 8/29/2008

  
Michel Vavra, Investigator

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**Before the Nevada Commission on Ethics**

**Request for Opinion No.: 08-37C**

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

Subject /

**CERTIFICATION**

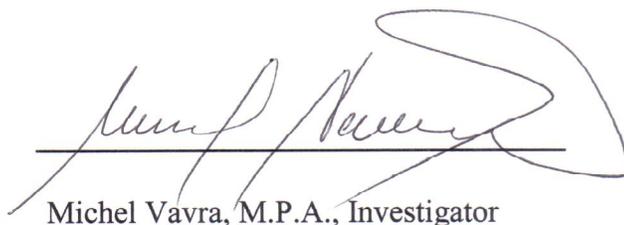
I, Michel Vavra an Investigator for Nevada Commission on Ethics certify:

That on Thursday August 22, 2008, at the hour of 2 p.m. of said day at 2030 E. Flamingo Road, Las Vegas, Nevada, I was present and I conducted an interview via telephone with Dino DiCianno and Terry Rubald, witnesses in Request for Opinion 08-37C.

I recorded the interview with DiCianno's and Rubald's permission and the foregoing transcript consisting of pages 1 through 9 inclusive is a full, true and correct transcription of the recording of said interview, which was transcribed by Tami DeVries, Research Analyst, Nevada Commission on Ethics.

Dated:

8/29/2008

  
Michel Vavra, M.P.A., Investigator

**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 WITNESSES 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  
10<sup>th</sup> 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