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,**

Subject. /

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

# INVESTIGATOR'S REPORT (Tab A):

## Introduction:

An ethics complaint was filed against Jim Gibbons (Gibbons), the Governor of the State of Nevada on July 21, 2008.

No dispute exist that Gibbons is a public officer, as defined by NRS 281A.160. Therefore, the Nevada Commission on Ethics has jurisdiction to render an opinion in this matter, pursuant NRS 281A.280 and NRS 281A.440.

This report is completed in a timely manner.

**Request for Opinion (Ethics Complaint) (Tab B):**

On July 21, 2008, a Request for Opinion (Ethics Complaint) was received from Travis Brock (Brock). The following is the summary of the allegations:

On August 8, 2007, Gibbons purchased 40-acre parcel in Elko County, Nevada and received an Agricultural Use Assessment reducing his property tax. Brock allege that the property had been part of much larger parcel, but after the purchase by Gibbons the land would have to qualify for Agricultural Use Assessment on its own under NRS 361A.

In addition, Brock alleged that Gibbons himself and through his agent John E. Marvel, Esq., (Marvel), a member of the Tax Commission, sought to use his authority and position to secure an unwarranted tax break.

**Response to Ethics Complaint (Tab C):**

On August 4, 2008, a written response was received from Gibbons. The following is the summary of his response:

Gibbons stated that the property in question had the Agricultural Use Assessment before he purchased the land and his intention was to continue this exemption.

Gibbons claims that he did not violate NRS 281A.400 .9 attempting to benefit his personal or financial interests through the influence of a subordinate. Gibbons hired attorney Marvel because he needed an experienced land lawyer in Elko County. Gibbons did not know that Marvel was a member of the Nevada Tax Commission at the time Gibbons hired Marvel.

In addition, Gibbons stated that there is lack of credible evidence to support the allegations. The complaint is nothing more than partisan attack on his reputation.

On September 2, 2008, a supplemental response was received Mike Pagni, Esq., on behalf of Gibbons.

**Investigation Summary (Tab D)**

I interviewed the following individuals and reviewed the following documents:

**Witnesses Interviewed:**

All interviews were recorded with the individuals' permission and thereafter transcribed by me and Tami DeVries, research analyst for the Nevada Commission on Ethics.

- Joe Aguirre, (Aguirre), Elko County Assessor (in person on August 21, 2008). (Exhibit 1).

- Travis Brock, requestor of the Ethics Complaint (in person on August 6, 2008). (Exhibit 2).

- Dino DiCianno, (DiCianno), Executive Director, State of Nevada Department of Taxation and Terry Rubald, (Rubald), Chief of Assessment Standards, Nevada Department of Taxation (via telephone on August 25, 2008). (Exhibit 3).

- Jim Gibbons, Governor of the State of Nevada (in person on August 22, 2008). (Exhibit 4).

- Jerry Carr Whitehead, (Whitehead), prior owner of the property (in person on August 22, 2008). (Exhibit 5).

- John E. Marvel, (Marvel), attorney-at-law for Gibbons (in person on August 21, 2008). (Exhibit 6).

  **Corrections:** Marvel called on September 2, 2008, and stated that after reviewing the interview transcripts, he would like to make some corrections to the transcripts.
  The corrections are as follows:
  Page 1, line 3 should read Battle Mountain High School, instead of Belmont High School.
  Page 13, line 26, where Marvel asked investigator, "I don't know if you know anything about ranching" should include pause before Marvel expressed another thought stating

that, "but Whitehead doesn't, he didn't..." As written here it may appear that Marvel was stating that Whitehead doesn't know anything about ranching, which was not his intention.
Page 14, line 25 should include the word pasturing before the word feeding.

**Documents:**

I obtained the following documents relevant to the investigation:

- Elko County Assessor's records
  - Original Application for Agricultural Use Assessment filled by Marvel. (Exhibit 7).
  - Letter from Marvel addressed to Aguirre dated October 23, 2007. (Exhibit 8).
  - Letter from Aguirre addressed to Marvel dated October 24, 2007. (Exhibit 9).
  - Letter from Marvel addressed to Aguirre dated December 26, 2007. (Exhibit 10).
  - Private file of Gibbons' property (includes copy of the application, pictures, and numerous e- mails and newspaper articles). (Exhibit 11).
  - Public file of Gibbons' property (includes maps and the classification of the property). (Exhibit 12).
  - Record of ownership #579379 for parcel # 007-080-129. (Exhibit 13).
  - Records of other parcel owners to determine if the same procedures were followed with Gibbons' application. (confidential, not attached).
  - Computer print out of classification of Gibbons' property received from Aguirre during my interview. (Exhibit 14).
  - Computer print out of number of applicants for Agricultural Use Assessment received from Aguirre during my interview. (Exhibit 15).
  - Copy of a blank Application for Agricultural Use Assessment obtained from Elko County Assessor's website (http://www.elkocountynv.net/assessor.htm). (Exhibit 16).

- Elko County Treasurer's records
  - Record #012748 of Gibbons' tax payment for parcel # 007-080-129. (Exhibit 17).

- Elko County Recorder's records
  - Sale deed # 579379 for parcel # 007-080-129. (Exhibit 18).

- Mike Pagni, Attorney for Gibbons
  - Copies of two checks (front and back) for payments made by Jerry C. Whitehead for lease of Gibbons' property. (Exhibit 19).

- Four photographs of Gibbons' property taken by me on August 22, 2008. (Exhibit 20).

- Timeline of events, Request for Opinion Nr. 08-37C. (Exhibit 21).

- Estimated production value spread sheet received via e-mail from Rubald. (Exhibit 22).

- Copy of an interview with Aguirre aired on TV show *Face to Face* with John Ralston on July 19, 2008, (video cd). (not attached but available).

- Copy of an interview with Aguirre aired on KNPR Radio show on July 17, 2008, (audio cd). (not attached but available).

- Nevada Department of Taxation hearing transcripts in the Matter of Generation 2000 LLC from March 3, April 5 and June 7, 2004 (examined for the purpose of confirming Aguirre's claim that he lost $65,000 to the Tax Commission. Transcripts are not included as they are irrelevant to this investigation).

**Investigative findings:**

The following are my investigative findings:

On August 2, 2007, Gibbons bought a 40-acre parcel from Whitehead in Elko County. The record of sale was recorded by Elko County Recorder on August 8, 2007. (Exhibit 18).

Elko County Assessor determined that the tax was $39.71 (Exhibit 17) based on an Agricultural Use Assessment; otherwise the tax would be $1,893.87. On the other hand, Department of Taxation calculated that if the Agricultural Use Assessment did not apply the tax will be about $710.50, (Exhibit 3, page 6, line 6).

Gibbons stated during our interview that his intention was to "buy it and at some point down the road build a residence and retire." (Exhibit 4, page 5, line 4). Both Gibbons and Whitehead agreed the land would be used as an agricultural property at the time. They entered into a written lease agreement about the property.

On October 18, 2007, Marvel filed an Application for Agricultural Use Assessment on Gibbons' behalf. (Exhibit 7). The application was received by Elko County Assessor probably around October 23 or 24, 2007 as Aguirre does not keep sufficient record of when are applications received (Exhibit 1, page 20, lines 15-25).

On October 24, 2007, in a letter addressed to Marvel, Aguirre requested a proof of income from the parcel in order to approve the tax deferment. (Exhibit 9). Copies of two checks for a total of $5,727.33 were sent to Aguirre on December 26, 2007. (Exhibit 10). Aguirre stated during my and other publicized interviews that he did not receive copies of the back side of the checks to show that checks were cashed. (Exhibit 1, page 22, line 25). However, Aguirre failed to request such from Marvel or Gibbons. Evidence produced by Gibbons' attorney shows the check for $1,500.00 was cashed on August 29, 2007 and the check for $4,227.33 was cashed on January 24, 2008. (Exhibit 16).

In addition, Aguirre claimed that he requested a copy of lease between Gibbons and Whitehead which contradicts his earlier statement. There were only two letters exchanged between him and Gibbons' attorney Marvel and neither letter mentioned the lease. Therefore, there is no evidence of such a request from Aguirre. (Exhibit 1, page 22, lines 15, 22 and 25).

Under NRS 361A, Aguirre had no reason to request copies of checks from Gibbons as the requirement of producing more than $5,000 is based on Whitehead's operations, not Gibbons'. In fact, Gibbons' property is not required to earn any income at all (Exhibit 3, line 19) as long as it is contiguous to Whitehead's agricultural property and unquestionably the property is.

Aguirre claimed that he felt "backed up into a corner," and had only two options: calling Marvel a liar or to approve the application (Exhibit 1, page 15, lines 3 and 4). However, during the same interview (Exhibit 1, page 15, line 26) he speaks of two options as calling Marvel liar or "let it go" meaning approving the application by default based on NRS 361A.120 .4. (Exhibit 1, page 15, line 15, page 16, line 16-17).

Furthermore, Aguirre claimed that he did not feel comfortable with the information provided but he made no effort to request additional documents. (Exhibit 1, page15, line 25).

Gibbons' application was kept in Aguirre's office as opposed to other applications stored in the file cabinet downstairs. Moreover, page 4 of the application used to record the date the application was received, the date of property being inspected, and the approval or denial status was never completed on Gibbons' application in contrast with other similar applications (Exhibit 1, page 17, lines 28-29).

Aguirre claimed that the property does not qualify (Exhibit 1, page 13, line 20, page 14, line 21) which is absolutely contradicting of NRS 361A. Gibbons property qualifies for the tax deferment under Agricultural Use Assessment as is meets all requirements in NRS 361A.1, 2, and 3. (Exhibit 3, page 3, line 11).

During the telephone interview with Rubald (Exhibit 3), Chief of Assessment Standards, Nevada Department of Taxation, she established that the property qualified based on NRS 361A.010 and NRS 361A.030 as follows:

1.) The property is contiguous to another agricultural property, which had historically been receiving the Agricultural Use Assessment on Whitehead's property. (Exhibit 3, page 3, line 8).

2.) The property has more than 7 acres. (Exhibit 13).

3.) The property had a lease agreement for grazing (there is an existing lease agreement between Whitehead and Gibbons).

4.) The property does not have to produce any income. The income had to be produced by the lessee, Whitehead, who earned more than $5,000 from his business. (Exhibit 3, page 5, lines 15-20).

5.) Although all the above requirements are sufficient to receive the Agricultural Use Assessment, the property is also able to produce between $6,444 and $8,524. (Exhibit 3, page 5, line 10). The calculation is based on classification made by Elko County Assessor as 20 acres of 3rd class pasture and 20 acres of 2nd class grazing. (Exhibit 1, page 10, line 31, page 11, line 1-3.).

**Investigative conclusions:**

The evidence does not support the allegations that Gibbons used his position in government to obtain unwarranted privileges. Gibbons' property meets all requirements under NRS 361A.020 and NRS 361.030.

In addition, the evidence does not support the allegations that Gibbons or Marvel pressured Aguirre. The only form of communication between Aguirre and Gibbons was Gibbons' short visit to inquire about the procedure. Like any citizen, Gibbons has the right to apply and to receive an Agricultural Use Assessment, if his land qualifies.

Dated 9/3/2008

Signed

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 INVESTIGATOR'S REPORT 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