



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

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

Request for Opinion No. 09-19C

Public Employee.

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) during a public hearing on November 12, 2009, pursuant to NRS 281A.440(2).

Lowell Patton (“Patton”) was present at the hearing and provided sworn testimony. Brent L. Kolvet, Esq., of the law firm Thorndal, Armstrong, Delk, Balkenbush & Eisinger, represented Patton in this matter. The Commission heard testimony from four witnesses during the hearing.

On March 25, 2009, Sandra Mathewson filed a Request for Opinion (“RFO”) with the Commission alleging that Patton violated the Ethics in Government Law (Ethics Law) set forth in NRS 281A by

using the City of Fernley credit card to pay for various meals and shirts.

During the investigation, the Commission’s Executive Director discovered additional relevant issues and facts beyond those presented in the RFO. In accordance with NAC 281A.415(2), the Executive Director provided Patton with notice of the additional issues and facts and offered Patton the opportunity to respond.

Pursuant to NRS 281A.440(3) and (4), an investigatory panel of two Commissioners determined that just and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding each of the allegations.

After fully considering and analyzing the facts and circumstances presented in evidence, including witness testimony and documents, the Commission deliberated and

¹ The quorum consisted of Chairman George M. Keele, Esq. and Commissioners Gregory J. Gale, CPA, Paul H. Lamboley, Esq., John W. Marvel and J.T. Moran III, Esq.

orally advised Patton of its decision that, based on a preponderance of the evidence, Patton did not violate the Ethics in Government Law. The Commission now renders this written Opinion outlining its findings.

Facts and circumstances different from those presented to and considered by the Commission may result in a different opinion.

I. FINDINGS OF FACTS

1. At all relevant times, Patton was employed as the Public Works Director for the City of Fernley (“City”) in the state of Nevada.
2. The City issued a credit card for Patton to use for certain City-related expenses as governed by a written City policy (“Policy”). The Policy authorized credit card use for certain government-related travel and training arrangements and for the procurement of certain services, supplies, capital items, or other general expenditures upon specific advance written authorization of the City manager.
3. Although the Policy required written advance authorization from the City Manager for charges other than travel or training, the City Manager did not require such prior written authorization if the charges were related to City business.
4. The City has a budgetary process for prior approval of any City expenditures. Specifically, each department head submits a proposed budget by line item to the City Manager who prepares an overall recommended budget for approval by the City Council.

5. Between May 2007 and August 2008, Patton made four separate charges to the City credit card which are addressed in this Request for Opinion. The charges include:

- (a) \$38.01 – Lunch with City consultants at Bully’s Restaurant in Fernley, Nevada on May 10, 2007;
- (b) \$38.31 – Dinner with employees of Sierra Pacific Power Company at Buffalo Wild Wings Restaurant in Reno, Nevada on August 14, 2008;
- (c) \$266.00 – Logo design fee for the City Public Works Department purchased from Lands End on August 29, 2007; and
- (d) \$108.58 – Two shirts with City logo purchased from Lands End on August 31, 2007.

6. The lunch at Bully’s Restaurant constituted a business/lunch meeting between Patton and two employees of Camp, Dresser & McKee, the design firm hired by the City for the City’s water treatment facility, to discuss the design of the water treatment facility.
7. The dinner at Buffalo Wild Wings Restaurant constituted a business/dinner meeting between Patton and employees of Sierra Pacific Power Company to discuss the power source for the City’s water treatment facility.
8. At the conclusion of the business/dinner meeting at Buffalo Wild Wings Restaurant, Patton remained as a private patron of the restaurant with friends under a separate ticket. The restaurant did not charge Patton’s City credit card until he was ready to leave the restaurant

at nearly 8:30 p.m. However, the City credit card charges included only the expenses for the business/dinner meeting. Patton paid all expenses incurred after the business/dinner meeting on a separate bill with his own money.

9. The logo design and shirts purchased from Lands End constituted an expense for the City's Public Works Department for Patton and any other City Public Works employee to wear on official Department or City business, including presentations before various entities.
10. The City Manager verbally authorized each of Patton's credit card charges described herein.
11. The City Council subsequently approved and authorized each of the credit card charges through the City's budget process.

II. DISCUSSION

The Request for Opinion alleged that Patton violated the Ethics Law by using his position in government as the City's Public Works Director to secure unwarranted personal or financial privileges or advantages in the form of meals and clothing in violation of NRS 281A.400(2).

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

A public . . . employee shall not use the public . . . employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public . . . employee . . .

As a public employee, Patton was issued a City credit card to use for City-related purposes. He utilized the card to make the charges questioned in the RFO. Therefore, Patton used his position in government, through the use of the public credit card, to obtain the meals and shirts at issue.

Although Patton used his position in government to pay for the meals and shirts, the expenditures were warranted. As defined in NRS 281A.400(2)(b), a personal or pecuniary privilege or advantage obtained through the use of one's government position is "unwarranted" if it is "without justification or adequate reason."

Patton held two separate business meetings over meals to facilitate the progress of the City's water treatment facility and coordinate the schedules of the employees from the design firm and Sierra Pacific Power Company. In those meetings, Patton secured designs for the upgrade to the substation near Sage Street in Fernley, Nevada, and discussed an upgrade to the power line approaching the water treatment facility.

Patton purchased two shirts bearing the City Public Works Department logo for Patton and any other City Public Works employees to use only while on official City business, including various presentations concerning the Department.

In addition to conducting City business and benefitting the City, each of the charges at issue was authorized by the Fernley City Manager and City Council in accordance with regular practices and the City's budget process. Because the expenditures were related to City business, authorized by the City Manager and subsequently approved by the City Council, Patton did not violate NRS 281A.400(2).

While the evidence on the record identifies an arguable inconsistency between the Policy and the City Manager's practices related to credit card use, Patton's use of the credit card was authorized by the City Manager in accordance with the City Manager's practices and subsequently approved by the City Council. Deficiencies in City policies and practices cannot and do not create an ethics violation.

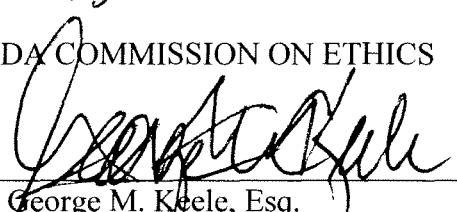
III. CONCLUSIONS OF LAW

1. At all times relevant to the request for opinion, Patton was a "public employee," as defined by NRS 281A.150.
2. Pursuant to NRS 281A.280 and 281A.440(2), the Commission has jurisdiction to render an opinion in this matter.
3. Patton did not violate NRS 281A.400(2) in 2007 or 2008 by charging various meals and purchases on the City credit card because each charge was approved by the City through the City Manager and by the City Council. Additionally, each expenditure related to the pursuit of City-related business. By the use of the credit card, Patton did not use his position in government to secure or grant an unwarranted privilege, preference, exemption or advantage for himself.

Dated this 13th day of October, 2010.

NEVADA COMMISSION ON ETHICS

By: _____


George M. Keele, Esq.
Chairman, November 12, 2009²

² Commissioner Keele was the Chairman of the Commission during the hearing in this matter.