



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for
Opinion Concerning the Conduct of
GARY BACOCK, Former City Manager,
City of Fernley,
State of Nevada,

Request for Opinion No. 09-20C

Former Public Officer/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).

Gary Bacock (“Bacock”) was present at the hearing and provided sworn testimony. Brent L. Kolvet, Esq., of the law firm Thorndal, Armstrong, Delk, Balkenbush & Eisinger, represented Bacock 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 Bacock 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 by seeking and obtaining reimbursement for certain travel expenses.

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 Bacock with notice of the additional issues and facts and offered Bacock 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 Bacock of its decision that, based on a preponderance of the evidence, Bacock 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, Bacock was employed as the City Manager for the City of Fernley (“City”) in the state of Nevada.
2. The City issued a credit card for Bacock 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, Bacock, as City Manager, did not require such prior written authorization if the charges were related to City business. The City Council authorized Bacock, as City Manager, to approve certain credit card expenditures for City business without written authorization.
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. Like all department heads, the City Manager also submits a proposed line item budget for his office to the City Council for approval.

5. Between September 2007 and May 2008, Bacock made three separate charges to the City credit card which are addressed in this Request for Opinion. The charges include:
 - (a) \$36.91 – Lunch with Mayor Cutler, City Planning Commissioner Bill Clegg and City Lobbyist Allen Freemyer at the La Fiesta Restaurant in Fernley, Nevada on September 25, 2007;
 - (b) \$37.33 – Lunch with Councilman Monte Martin and Mayor Cutler at the Silverado Restaurant in Fernley, Nevada on May 21, 2008; and
 - (c) \$10.58 – Lunch with Mayor Cutler at the Wigwam Restaurant in Fernley, Nevada on January 6, 2008.
6. Each of the lunches constituted business/lunch meetings between Bacock and City employees and officers to discuss City business.
7. The City Council subsequently approved and authorized each of the credit card charges through the City’s budget process.
8. Bacock requested and obtained reimbursement for certain City-related mileage expenses he incurred during 2005, 2006 and 2007, in the combined amount of \$2,966.82. Bacock did not

seek reimbursement for these expenses until his separation from City employment in December 2008.

9. The City has a Personnel Policy Manual which contains a provision requiring employees to request mileage reimbursement within a reasonable time, at least annually.
10. Paragraph 7 of Bacock's employment contract with the City entitled Bacock to "Professional Development Dues and Expenses," which encompassed reimbursement for all mileage expenses at issue. The contract did not identify a time within which Bacock must submit mileage reimbursement requests.
11. The City determined that Bacock's mileage reimbursement was justified pursuant to his contract with the City.

II. DISCUSSION

The Request for Opinion alleged that Bacock violated the Ethics Law by using his position in government as the City Manager to secure unwarranted personal or financial privileges or advantages by funding his meals and mileage expenses in violation of NRS 281A.400(2).

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

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

A. Credit Card Use

As a public employee, Bacock 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, Bacock used his position in government, through the use of the public credit card, to obtain the meals at issue.

Although Bacock used his position in government to pay for the meals at issue, 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." Bacock conducted three separate meetings over meals to facilitate City business.

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

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

B. Mileage Reimbursement

Bacock's mileage reimbursement was governed by Bacock's employment contract with the City and is not an issue properly before the Commission. The Commission has no jurisdiction to, nor does it, interpret or regulate provisions of employment contracts. Further, the Commission will not construe a financial benefit which is controlled by an employment agreement as the use of a public officer's position in government to secure an unwarranted advantage.

III. CONCLUSIONS OF LAW

1. At all times relevant to the request for opinion, Bacock was a "public officer" as defined in NRS 281A.160 and 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.

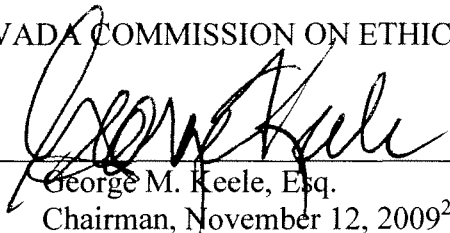
3. Bacock did not violate NRS 281A.400(2) in 2007 or 2008 by charging the cost of various meals on the City credit card because each charge was approved by the City through the City Manager's regular practices and by the City Council. Additionally, each expenditure related to the pursuit of City-related business. By his use of the credit card, Bacock did not use his position in government to secure or grant an unwarranted privilege, preference, exemption or advantage for himself.

4. Bacock did not violate NRS 281A.400(2) by requesting and receiving reimbursement for mileage expenses in accordance with the terms of his employment contract with the City. The Commission does not interpret or regulate provisions of employment contracts.

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.