

R E C E I V E D

AUG 04 2008

COMMISSION  
ON ETHICS

August 4, 2008

**VIA HAND DELIVERY**

Patricia D. Cafferata, Esq.  
Executive Director, Nevada Commission on Ethics  
3476 Executive Pointe Way, Suite 10  
Carson City, Nevada 89706

**RE: File No. 08-37C**

Dear Director Cafferata,

Pursuant to NRS 281A.440(3) and NAC 281A.410(3), I hereby respond to the ethics complaint (Commission File No. 08-37C) filed against me by Mr. Travis Brock on behalf of the Nevada Democratic Party.

**I. Waiver of Confidentiality**

As the instant ethics complaint is nothing more than a partisan attack on my reputation, and as the allegations made in the ethics complaint are baseless, I believe it is imperative that the public be able to observe all facets of this matter. I thereby authorize the Commission to make all files, material and information (including this response) related to the ethics complaint publicly available pursuant to NRS 281A.440(6).

**II. NRS 281A.400(2)**

The first allegation in the ethics complaint claims that NRS 281A.400(2) was violated. That statute provides, in pertinent part, that a public officer "shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself . . ."

*a. Use of Official Position*

As an initial matter, I did not use my position in government to obtain an agricultural use assessment. In addition to being a public officer, I am also a landowner and a taxpayer, just as are many other public officers. When I purchased land in Elko County, I learned that the land I purchased had historically received an agricultural use property tax assessment. I contacted the Elko County Assessor's Office to ask how to go about continuing the pre-existing assessment. I believe that any taxpayer would do the same thing. That one conversation was the only time I personally communicated with the Elko County Assessor's Office. A single question asked of the assessor cannot be reasonably construed to be "pressure." The assessor never stated that I personally communicated with him after that initial question, nor did the Governor's Office ever communicate with him. The assessor did not even claim that I argued with him at that one meeting. I certainly did not make any threats nor did I even make any innuendos concerning any repercussions concerning his decision. I simply asked what any other new

landowner would ask: namely, what was required to continue the existing agricultural exemption. Asking one question of the person in charge of making such a decision is not improper nor is it applying "pressure."

I did not get a clear answer from the Elko County Assessor. I therefore asked Mr. John Marvel, a local land attorney in Elko County, to assist with an application for the agricultural use assessment. Mr. Marvel previously represented both the seller and myself in the land sale. Mr. Marvel then prepared my application for the agricultural use assessment. Mr. Marvel wrote two letters to the Elko County Assessor: one letter requested the exemption and one was in reply to a question posed by the Elko County Assessor. Writing those two letters was the extent of his involvement. Note that those letters were on his usual letterhead, not on any official state government stationery. He was acting in his usual capacity as an attorney. That, too, is not in any way applying any "pressure" or using my position as Governor to secure any unwarranted benefit. It was an attorney acting for a client.

I was never formally notified by the Elko County Assessor whether the continued agricultural use assessment was granted. The only way I knew my property received the continued agricultural assessment was when I received my property tax bill. I had no indication that the Elko County Assessor had any reservations whatsoever about the assessment until he began speaking to various media sources. Once Mr. Marvel replied to the only question raised by the assessor, neither he nor I had any additional contact from him. He never asked for any additional information or documentation. He never, in fact, contacted either of us and we did not initiate any additional contacts with him.

In sum, I had very little contact with the Elko County Assessor and I find the allegations made in the ethics complaint to be both surprising and disappointing.

*b. Lack of Credible Evidence*

It is interesting to note that the "evidence" submitted by Mr. Brock to support this allegation consists entirely of four newspaper articles, a video of a political television show and an audio recording of a radio station interview. NAC 281A.400(1) states that an ethics complaint "must be accompanied by evidence which supports the allegation that the subject has violated a statutory ethical standard set forth in the ethics complaint . . ." (emphasis added). The term "evidence which supports the allegation" specifically excludes "a newspaper article or other media report if the article or report is offered by itself." NAC 281A.400(6). Mr. Brock even acknowledges this deficiency in the ethics complaint, but proceeds to brush it aside as if it had no meaning. I believe that rule exists for a very important purpose. It exists to prevent partisan ethics complaints, such as this one, that are based on nothing more than wild hearsay and unsupported accusations, and designed to do nothing more than grab cheap headlines and damage the reputations of public officials. The regulation specifically requires credible evidence, other than media reports, and that evidence has not been provided. This aspect of the ethics complaint fails for this additional reason as well.

c. *"Unwarranted" Privilege*

As a further matter, the statute also requires that an "unwarranted" privilege, preference, exemption or advantage occur. As with the requirement that public office be used, this element also has no evidentiary support.

Mr. Brock states (in a prominently underlined sentence) that the lease payments I receive for my land do not "bear any relation to the current market for such leases on similar land in Nevada." (Ethics Complaint, Page 4). No evidence whatsoever is provided for this statement. Mr. Brock goes on, however, to state that "[g]razing leases on similar land garner, if lucky, about \$250 per year per cow." (Id.). Again, no evidence whatsoever is provided for this statement. He seems to believe that my land is scrubby sagebrush, instead of the pastureland it is. The amount of land needed to feed cattle depends on the quality of the land and its ability to grow feed. Nothing in the complaint addresses the land in question and its quality, which determines its ability to provide enough feed for cattle. The complaint must fail at this point as well due to a lack of evidence.

Regardless, I urge the Commission to recall that the property in question had the agricultural use assessment on it before I purchased it. I continued to use Mr. Marvel to assist with my application for the same assessment. The Assessor did not deny the application, although he certainly could have (and should have if he felt it was unwarranted). I find it odd that the Assessor would claim (after the fact) to be uncomfortable with having granted the assessment, yet he seemed to find no discomfort speaking to various media sources. It would seem that an individual willing to repeatedly and publicly criticize an elected official would also be willing to deny an assessment that he felt was inappropriate.

He also stated publicly that he was uncomfortable with the proof sent to him (copies of the checks) because they only showed the fronts of the checks but that he was uncomfortable asking for copies of the backs of the checks to provide proof that they had been cashed. Of course, I never knew that until his public interviews as he never contacted me or Mr. Marvel requesting any further documentation. I wish he would have asked Mr. Marvel for the copies of the backs of the checks as well, as we would have provided him the same copies that were later provided to the media.

Ultimately, the Assessor is the individual who makes the decision on whether the assessment is granted or not and in this case, he decided to treat the property consistently with the way it was treated before. The Assessor's statements to the contrary are a reflection on the way he does his job, not on the way we acted in requesting the continuation of the agricultural assessment. The fact that my request for the agricultural use assessment made him uncomfortable reflects on him, not me, as he gives no reasons why my actions caused him discomfort.

For all of these reasons, there is nothing to suggest the agricultural use assessment on my property was "unwarranted."

**III. NRS 281A.400(9)**

Mr. Brock claims that because Mr. Marvel is a gubernatorial appointee (he was appointed to the Tax Commission by two prior Governors) there was a violation of NRS 281A.400(9). That statute provides

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that a public officer "shall not attempt to benefit his personal or financial interest through the influence of a subordinate." As an initial matter, I retained Mr. Marvel because I needed an experienced land lawyer in Elko County, and Mr. Marvel is exactly that. I certainly did not retain Mr. Marvel in his capacity as a member of the Nevada Tax Commission. Being a member of the Tax Commission does not preclude Mr. Marvel from also following his profession as an attorney, and I retained him for his legal expertise, much as many residents of Elko County do.

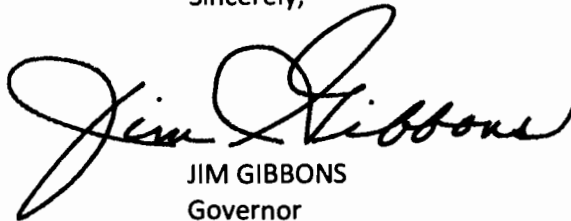
Moreover, to claim that a member of the Tax Commission is a "subordinate" is a tortured definition of that term. Tax Commissioners are appointed to four year terms and may only be removed from office if found "guilty of malfeasance of office or neglect of duty." NRS 360.030(3). A gubernatorial appointment to an independent body like the Tax Commission can hardly be said to create a "subordinate" relationship between a Tax Commissioner and a Governor.

#### **IV. Conclusion**

I strongly believe that all Nevada's taxpayers should be treated equally and fairly. The ethics complaint lacks merit and it lacks evidence. It is a purely partisan attack designed to get media attention. There is no evidence that I acted in any way differently than any other landowner would act: I bought a piece of property that had an agricultural use assessment, and I applied to continue that assessment, which it is entitled to receive. The complaint gives no evidence that the assessment was improperly requested or that it should not have been granted. It cites no examples of similar parcels with similar quality and similar use being denied the assessment. I can only hope that the Ethics Commission will see this complaint for what it is and summarily dismiss it without undue delay.

I also, as noted earlier, waive any right to privacy on this as I believe that Nevadans have the right to know that I acted properly, ethically, and in accordance with Nevada law in all my dealings with this issue. I further reserve the right to raise any other defenses to this ethics complaint should this matter proceed any further.

Sincerely,



JIM GIBBONS  
Governor