



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion  
Concerning the Conduct of TODD CUTLER,  
Former Fernley Mayor and Former Public  
Employee for Lyon County School District,  
State of Nevada,

Request for Opinion No.: 09-64C

Subject. /

**INVESTIGATOR'S REPORT (Tab A)**

**Introduction**

**1. Request for Opinion No. 09-64C (Ethics Complaint). (Tab B):**

On August 26, 2009, requestor Joe Specchio filed an Ethics Complaint against public officer and public employee Todd Cutler, former mayor of the City of Fernley, and former public employee of the Lyon County School District (LCSD), alleging that Cutler violated NRS 281A.400(2) by accepting a salary for his employment with LCSD while simultaneously performing duties as the mayor of Fernley. In addition, the complaint alleged that Cutler used a City of Fernley credit card for food purchased when he was not performing mayoral duties but rather when he was on duty as a LCSD employee. In summary, the complaint alleges that Cutler did not and could not perform two different jobs at the same time and, in his attempt to do so, he used government time for his own benefit and received a salary and purchased meals he was not entitled to.

1       **2. Jurisdiction:**  
2

3           As the former mayor of Fernley and a former public employee of Lyon County School  
4 District, no dispute exists that Cutler is a public officer as defined in NRS 281A.160, and a  
5 public employee as defined in NRS 281A.150. Therefore, the Nevada Commission on Ethics has  
6 jurisdiction to investigate and take appropriate action in this matter pursuant NRS 281A.280 and  
7 NRS 281A.440.  
8

9       **3. Issues:**  
10

11 The issues are whether Cutler violated:  
12

- 13           **I.**    NRS 281A.400(2) by accepting a salary from LCSD for work on February 5, 2008,  
14 to which he was not entitled, and NRS 281A.400(7) when he used government time  
15 for his personal benefit.
- 16           **II.**    NRS 281A.400(2) by accepting a salary from LCSD for work on February 27,  
17 2008, to which he was not entitled, and NRS 281A.400(7) when he used  
18 government time for his personal benefit.
- 19           **III.**   NRS 281A.400(2) by accepting a salary from LCSD for work on March 7, 2008, to  
20 which he was not entitled, and NRS 281A.400(7) when he used government time  
21 for his personal benefit.
- 22           **IV.**    NRS 281A.400(2) by accepting a salary from LCSD for work on March 11, 2008,  
23 to which he was not entitled, and NRS 281A.400(7) when he used government time  
24 for his personal benefit.
- 25           **V.**    NRS 281A.400(2) by accepting a salary from LCSD for work on April 14, 2008, to  
26 which he was not entitled, and NRS 281A.400(7) when he used government time  
27 for his personal benefit.  
28

- 1       **VI.** NRS 281A.400(2) by accepting a salary from LCSD for work on April 16, 2008, to  
2       which he was not entitled, and NRS 281A.400(7) when he used government time  
3       for his personal benefit.
- 4       **VII.** NRS 281A.400(2) by accepting a salary from LCSD for work on April 18, 2008, to  
5       which he was not entitled, and NRS 281A.400(7) when he used government time  
6       for his personal benefit.
- 7       **VIII.** NRS 281A.400(2) by accepting a salary from LCSD for work on April 21, 2008, to  
8       which he was not entitled, and NRS 281A.400(7) when he used government time  
9       for his personal benefit.
- 10       **IX.** NRS 281A.400(2) on April 25, 2008 by using a City of Fernley credit card to  
11       purchase a meal to which he was not entitled.
- 12       **X.** NRS 281A.400(2) on May 19, 2008 by using a City of Fernley credit card to  
13       purchase a meal to which he was not entitled.
- 14       **XI.** NRS 281A.400(2) on June 24, 2008 by using a City of Fernley credit card to  
15       purchase a meal to which he was not entitled.

16  
17       **4. Response to Ethics Complaint. (Tab C):**

18  
19       Cutler's response to the Ethics Complaint was submitted by his legal counsel, Bret  
20       Kolvet, Esq. on December 11, 2009. The response and subsequent interview indicated that, on  
21       numerous occasions, Cutler's LCSD work calendar and his mayoral duties overlapped. However,  
22       since the LCSD contract did not require Cutler to work specific hours or appear for work in  
23       specific locations, Cutler argued that he did not violate any provisions of Ethics in Government  
24       laws.

25  
26       **Investigation Resources:**

27  
28       I interviewed the following individuals and reviewed their responses:

1       **1. Witnesses interviews and responses. (Tab D):**

- 2
- 3       • Todd Cutler on December 11 (Response, Tab C).
  - 4       • Todd Cutler via telephone on December 22, 2009 (Telephone conversation only).
  - 5       • Caroline McIntosh, Lyon County School District superintendent, on December 21, 2009
  - 6       (Telephone conversation only).
  - 7       • Wade Johnson, Lyon County School District director of finance, via e-mail on October
  - 8       20, 2009 (Exhibit 1).
  - 9       • Roy Casey, Western Nevada Regional Training Program director, via e-mail on October
  - 10      12, 2009 (Exhibit 2).
  - 11      • Bonnie Castiglione, Lyon County School District human resources administrative
  - 12      assistant, via e-mail on September 15, 2009 (Exhibit 3).
  - 13      • Joe Specchio, Requestor, on August 27, September 1, and September 22, 2009, and
  - 14      numerous other times (Telephone conversations only).

15

16       **2. Documents. (Tab E):**

17

18      I obtained and reviewed the following documents and materials relevant to the investigation:

- 19      • E-mails from Mary Hardisty, City of Fernley legal secretary, received December 14 and-
- 20      31, 2009. (Exhibit 4).
- 21      • Cutler's work calendar, contract and payroll information received from LCSD on
- 22      September 28, 2009. (Exhibit 5).
- 23      • Assembly Bill 560, effective May 28, 2009. (Exhibit 6).
- 24      • Memorandum issued by LCSD Superintendent McIntosh on February 24, 2009. (Exhibit
- 25      7).
- 26      • Brief history of Regional Training Programs in Nevada (compiled by the Investigator).
- 27      (Exhibit 8).
- 28      • Excerpt from the City of Fernley Municipal Code, Title 1, Chapter 11. (Exhibit 9).

- Fernley Credit Card Policy effective March 20, 2008 and July 1, 2003. (Exhibit 10).
- Notice to Subject of Request for Opinion, In re Cutler, RFO No. 09-64C. (Exhibit 11).

**3. Relevant Statutes and Commission's Opinions. (Tab F):**

- NRS 281A.400(2) and (7).
- NRS 266.190

**Investigative findings:**

Cutler first entered a contract with Lyon County School District (LCSD) via the Western Nevada Regional Training Program (WNRTP) to serve as a school improvement analyst<sup>1</sup> on July 1, 2006. His contract renewed on July 1, 2007 and July 1, 2008. (Response, Tab C, pp. 6-8). In addition to the contract, WNRTP and LCSD signed a Memorandum of Understanding on August 22, 2006. (Exhibit 5, p.4). Essentially, the Memorandum of Understanding provided that, although his employment contract was with LCSD, Cutler and his services were "on loan" to WNRTP, a state funded program. He received his compensation from LCSD; however WNRTP reimbursed LCSD for Cutler's salary and benefits. (Exhibit 2, ¶5). Based on the Memorandum of Understanding, Cutler's immediate supervisor was Roy Casey, director of WNRTP. Cutler's contract was not renewed for 2009-2010 school year since WNRTP was eliminated by the 2009 Legislature. (Exhibit 6).

Cutler is the former mayor of Fernley. He was elected during the November 2006 general election to serve from his swearing in on January 2, 2007 through December 2010; however, Cutler resigned effective July 31, 2009 so he could relocate and accept employment as superintendent of the Lassen County School District in Susanville, California.

---

<sup>1</sup> The LCSD/Cutler contract does not reflect the name of Cutler's position as noted hereto; this information is based on my interview with Cutler.

1 I interviewed Cutler on December 22, 2009 to expand on his December 11, 2009 written  
2 response. Cutler explained that his contract with LCSD has no provisions directing him to work  
3 during specific hours or at specific locations. (Response, Tab C, p.2), (Response, Tab C, pp. 6-8  
4 ¶9.) The only provision was to complete 220 workdays per year, which he claims he did.  
5 According to Cutler, his immediate supervisor Roy Casey was aware that he often worked out of  
6 his home office or during spare time while traveling on his business as Fernley mayor.

7  
8 I interviewed Casey on October 6, 2009 and received a written response to my questions  
9 on October 12, 2009. (Exhibit 2). For the most part, Casey's responses confirm Cutler's; Cutler  
10 had no set hours or specific locations for his work. (Exhibit 2, ¶ 9). As to the claim that Cutler  
11 worked on his WNRTP assignments while on functions as Fernley mayor, Casey stated that he  
12 was aware that Cutler worked on WNRTP assignments during a March 5-8, 2008 trip to  
13 Washington DC. However, Casey stated that he was not aware of any other dates where Cutler  
14 worked on WNRTP assignments and his mayoral duties at the same time.

15  
16 I interviewed LCSD Superintendent McIntosh on December 14, 2009. Although  
17 McIntosh believed that Cutler's mayoral duties conflicted with his LCSD schedule, she admitted  
18 that the contract was so vague and poorly constructed that it allowed Cutler to work at  
19 unspecified times and unspecified locations. I referred McIntosh to ¶9 of the contract "[t]he  
20 services of the employee are to commence at such time and are to be performed in such schools  
21 and such position or positions and such place or places as may be designated by the  
22 superintendent or principal," and asked her if Cutler was given any "designated" times or  
23 locations for his work. McIntosh replied that there were not. I questioned McIntosh about the  
24 Requestor's prior complaint from September 2008, alleging a conflict between Cutler's LCSD  
25 work calendar and his activities as Fernley mayor. McIntosh stated that she had a meeting with  
26 Cutler on September 22, 2008 and thereafter placed the item on the LCSD agenda for the  
27 February 24, 2009 meeting. (Exhibit 7), (Exhibit 5, p.11). However, McIntosh stated that  
28 following the February 24, 2009 meeting, no investigation was undertaken and there was no

1 finding of any wrongdoing by Cutler. Furthermore, McIntosh explained that the LCSD stopped  
2 inquiring into the allegations since the WNRTP was to be discontinued and because the contract  
3 was so vague. She added: "We had nothing on him."  
4

5 I interviewed Wade Johnson, the LCSD finance director on October 20, 2008. (Exhibit  
6 1). Johnson indicated that if Cutler did not complete the contracted 220 days, an appropriate sum  
7 would be deducted from his pay. Johnson added that he had no indication that Cutler worked  
8 less than 220 days.  
9

10 Based on my interviews with Casey, McIntosh and Johnson and evaluating the terms of  
11 the contract, which does not specify any times and locations, there is no basis for the claim that  
12 Cutler worked less than was required or received compensation for work not completed.  
13

14 After reviewing the evidence, I find as follows:  
15

16 ➤ NRS 281A.400(7) provides, in relevant part:  
17

18 A public officer or employee, other than a member of the Legislature, shall not  
19 use governmental time, property, equipment or other facility to benefit his  
20 personal or financial interest. This subsection does not prohibit:

21 (a) A limited use of governmental property, equipment or other facility for  
22 personal purposes if:

23 (1) The public officer who is responsible for and has authority to  
24 authorize the use of such property, equipment or other facility has established a  
25 policy allowing the use or the use is necessary as a result of emergency  
26 circumstances;

27 (2) The use does not interfere with the performance of his public duties;

28 (3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

29 As to the claim that Cutler used government time for his own benefit and violated NRS  
30 281A.400(7), neither the contract nor the Memorandum of Understanding specified any place or  
31 time in which Cutler was to perform his duties. There is no evidence that Cutler used  
32 government time for his own benefit by using "LCSD time" to perform his mayoral duties.  
33

1 Similarly, there is no evidence that Cutler used "Fernley time" to work on his LCSD  
2 assignments. As mayor of Fernley, Cutler was not required to work a certain number of hours.  
3 Therefore, work out of his home office or work during spare time while traveling as the Fernley  
4 mayor does not appear to violate his LCSD contract or conflict with his duties as mayor. As a  
5 result, insufficient evidence supports any alleged violation of NRS 281A.400(7).

6  
7 ➤ NRS 281A.400(2) provides:

8 A public officer or employee shall not use his position in government to secure  
9 or grant unwarranted privileges, preferences, exemptions or advantages for  
10 himself, any business entity in which he has a significant pecuniary interest, or  
11 any person to whom he has a commitment in a private capacity to the interests  
12 of that person. As used in this subsection:

13 (a) "Commitment in a private capacity to the interests of that person" has the  
14 meaning ascribed to "commitment in a private capacity to the interests of  
15 others" in subsection 8 of NRS 281A.420.

16 (b) "Unwarranted" means without justification or adequate reason.

17 As to the claim that Cutler used his position to receive unwarranted benefits in the form  
18 of credit card purchases and salary he was not entitled to:

19 **1. Allegation one:** Cutler violated NRS 281A.400(2) by accepting a salary from LCSD  
20 for work on February 5, 2008. The allegation is that Cutler was not working and he was  
21 not entitled to a salary for this day.

22 The complaint alleges that Cutler traveled to Washington DC on February 5, 2008;  
23 therefore, he was not working for the LCSD. (Complaint, Tab B, p.5.) There is no doubt that  
24 Cutler traveled to Washington DC to attend a conference in his capacity as Fernley mayor  
25 (Exhibit 4, p.3). Cutler departed on February 5, 2008 at 8:35 p.m. from Reno; however, he  
26 claims to have worked on LCSD assignments before the departure. (Exhibit 4, p.22).

27 A conflict of dates arises between Cutler's flight schedule and his receipt from the parking  
28 garage in Reno-Tahoe Airport. Cutler offered no explanation why the arrival date on his flight

1 schedule and the date his vehicle exited the airport parking garage are different. A receipt from  
2 Hartsfield-Jackson International Airport in Atlanta, GA, shows that Cutler was still traveling on  
3 February 8, 2008; therefore he could not have been in Reno to retrieve his vehicle on February 7,  
4 2008. However, February 6 to 8, 2008 are marked as "non-working days" on his LCSD work  
5 calendar and these dates are not at issue in the complaint. Therefore, his exact arrival date,  
6 although conflicting, plays no role in this allegation.

7  
8 **2. Allegation two: Cutler violated NRS 281A.400(2) by accepting a salary from LCSD**  
9 **for work on February 27, 2008. The allegation is that Cutler was not working and he**  
10 **was not entitled to a salary for this day.**

11  
12 The complaint alleges that Cutler traveled to Honolulu, Hawaii on February 27, 2008;  
13 therefore, he was not working for the LCSD. (Complaint, Tab B, p.3). The credit card statement  
14 of former City Manager Bacock indicated a charge of \$15 for apparent airfare to Honolulu with a  
15 note, "Todd Cutler<sup>2</sup>", included. Cutler stated that he did not travel to Honolulu on this date and  
16 he is not aware what the charge is for. It is highly unlikely that a \$15 charge was for airfare to  
17 Honolulu. (Exhibit 4, pp.25-30). No receipts or other evidence show that Cutler was in Honolulu  
18 on February 27, 2008. (Complaint, Tab B, p.3), (Response, Tab C, page 9).

19  
20 **3. Allegation three: Cutler violated NRS 281A.400(2) by accepting a salary from LCSD**  
21 **for work on March 7, 2008. The allegation is that Cutler was not working and he was**  
22 **not entitled to a salary for this day.**

23  
24 The complaint alleges that Cutler traveled to Washington DC; therefore, he was not  
25 working for the LCSD on March 7. (Complaint, Tab B, p.3). Cutler stated that he indeed traveled  
26 to Washington DC, he explained his work schedule (Response, Tab C, p. 10), and provided  
27

28 <sup>2</sup> Cutler did not have a credit card issued at this time; therefore Bacock's was regularly used for Cutler's travel expenses. See allegation No. 3.

1 receipts that appear to confirm his statements. (Exhibit 4, pp. 6-7). Payment for the air travel was  
2 charged on Bacock's credit card since Cutler had not been issued one. Cutler returned on March  
3 11, 2008.

4  
5 **4. Allegation four:** Cutler violated NRS 281A.400(2) by accepting a salary from LCSD  
6 for work on March 11, 2008. The allegation is that Cutler was not working and he was  
7 not entitled to a salary for this day.

8  
9 The complaint alleges that Cutler traveled to Washington DC; therefore, he was not  
10 working for the LCSD on March 11. (Complaint, Tab B, p. 3). This allegation is related to  
11 allegation No.3. Cutler travelled to Washington DC on the evening of March 7, 2008 and  
12 returned on March 11, 2008. March 8, 2008 (Saturday) and March 9, 2008 (Sunday) were non-  
13 working days. As noted on the LCSD work calendar, Monday, March 10, 2008 was marked as  
14 Cutler's non-working day as well. Cutler's immediate supervisor Casey stated that he was aware  
15 that Cutler worked on his WN RTP assignments while traveling.

16  
17 **5. Allegation five:** Cutler violated NRS 281A.400(2) by accepting a salary from LCSD  
18 for work on April 14, 2008. The allegation is that Cutler was not working and he was  
19 not entitled to a salary for this day.

20  
21 The complaint alleges that Cutler travelled to Reno for legal deposition; therefore, he was  
22 not working for the LCSD. (Complaint, Tab B, p.11). Cutler agreed that he traveled to Reno on  
23 April 14, 2008. The deposition was originally scheduled for April 16, 2008 but due to a conflict,  
24 Cutler had his counsel reschedule the date to April 14, 2008. (Response, Tab C, p.11), (Exhibit 4,  
25 p. 10). Cutler further explained his activities in his response (Response, Tab B, pp. 11-12).

1           **6. Allegation six:** Cutler violated NRS 281A.400(2) by accepting a salary from LCSD for  
2           work on April 16, 2008. The allegation is that Cutler was not working and he was not  
3           entitled to a salary for this day.

4  
5           The complaint alleges that Cutler travelled to Washington DC; therefore, he was not  
6 working for the LCSD on April 16. (Complaint, Tab B, p.11). Cutler stated that on the afternoon  
7 of April 16, 2008, he departed from Reno to Washington DC via Dallas, TX. (Exhibit 4, p. 12),  
8 (Complaint Tab B, p. 11). Cutler provided a detailed schedule of his activities in his response.  
9 (Response, Tab C, p. 11).

10  
11           **7. Allegation seven:** Cutler violated NRS 281A.400(2) by accepting a salary from LCSD  
12           for work on April 18, 2008. The allegation is that Cutler was not working and he was  
13           not entitled to a salary for this day.

14  
15           The complaint alleges that Cutler travelled to Washington DC; therefore, he was not  
16 working for the LCSD on April 18. (Complaint, Tab B, p.11). This allegation is related to  
17 allegation No. 6 as it occurred during the same trip. Cutler travelled to Washington DC on April  
18 16, 2008 and returned on April 18, 2008 at 10:55 a.m. His work schedule provided in his  
19 response indicates his WNRTP related activities. (Response, Tab C, p.11).

20  
21           **8. Allegation eight:** Cutler violated NRS 281A.400(2) by accepting a salary from LCSD  
22           for work on April 21, 2008. The allegation is that Cutler was not working and he was  
23           not entitled to a salary for this day.

24  
25           The complaint alleges that Cutler travelled from Fernley to Reno; therefore, he was not  
26 working for the LCSD on April 21. (Complaint, Tab B, p.11). Cutler travelled to Reno in the  
27 afternoon of April 21, 2008 to attend a settlement conference. A schedule of his activities during  
28 the day is provided in his response. (Response, Tab C, pp. 11-12).

1           **9. Allegation nine:** On April 25, 2008, Cutler violated NRS 281A.400(2) by using a  
2           Fernley credit card to purchase a meal in China Chef restaurant in Yerington for  
3           \$19.18. He was not working in his capacity as Fernley mayor; therefore he was not  
4           entitled to this expense.

5  
6           The complaint alleges that Cutler was in Yerington working for the LCSD; therefore, he  
7           was not working for Fernley and should not use the Fernley credit card to purchase a meal.  
8           (Complaint, Tab B, p.12). Cutler provided schedule of his daily activities and stated that he met  
9           with Lyon County Emergency Manager Jeff Page (Page) to discuss flood-related issues.  
10          (Response, Tab C, pp.11 and 16). An e-mail from Page confirms that he had numerous lunch  
11          meetings with Cutler including the one at China Chef restaurant. (Exhibit 4, pp.24 and 26). The  
12          expense appears to be approved by the City as it bears "paid" stamp and a number of the budget  
13          account used. (Complaint, Tab B, p.12). Fernley credit card policies are available in Exhibit 10.

14  
15          **10. Allegation ten:** On May 19, 2008, Cutler violated NRS 281A.400(2) by using Fernley  
16          credit card to purchase a meal in Copper Creek Grill restaurant in Yerington for \$35.35.  
17          He was not working in his capacity as Fernley mayor; therefore he was not entitled to  
18          this expense.

19  
20          The complaint alleges that Cutler was in Yerington working for the LCSD; therefore,  
21          he was not working for Fernley and should not use the Fernley credit card to purchase a meal.  
22          (Complaint, Tab B, p.12). Cutler provided schedule of his activities for April 19, 2008 and stated  
23          that he met Lyon County Sheriff Alan Veil (Veil) for lunch. (Response, Tab C, pp.12 and 15).  
24          An e-mail from Veil confirms that he had a lunch with Cutler at Copper Creek Grill to discuss  
25          law enforcement services in Fernley, but does not recall the date. (Exhibit 4, p. 21). The expense  
26          appears to be approved by the City as it bears "paid" stamp and a number of the budget account  
27          used. (Complaint, Tab B, p.12). Fernley credit card policies are available in Exhibit 10.

1           **11. Allegation eleven:** On June 24, 2008, Cutler violated NRS 281A.400(2) by using the  
2           Fernley credit card to purchase a meal at the In-N-Out restaurant in Sparks for \$5.29.  
3           He was not working in his capacity as Fernley mayor; therefore he was not entitled to  
4           this expense.

5  
6           The complaint alleges that Cutler was in Sparks working for the LCSD; therefore, he  
7 was not working for Fernley and should not use the Fernley credit card to purchase a meal.  
8 (Complaint, Tab B, p.17). Cutler's stated that the lunch was in fact in his capacity as Fernley  
9 mayor. Although he worked most of the day on his LCSD assignments, he also attended a  
10 "forklift competition" in Reno in his capacity as Fernley mayor. (Response, Tab C, p.12),  
11 (Exhibit 4, pp. 17-20). The expense appears to be approved by the City (Exhibit 4, p.20),  
12 (Complaint, Tab B, p.17).

13  
14           It appears that Cutler's contract with LCSD allowed him great flexibility with no  
15 restriction on time and/or locations where the work should be performed. Further, the City of  
16 Fernley's credit card policies and the ratification by the City's fiscal officers of the charges  
17 provide a basis for Cutler's use of the Fernley credit card. Based on the totality of  
18 circumstances, the 11 allegations that Cutler violated NRS 281A.400(2) do not appear to be  
19 supported by sufficient evidence.

20  
21 Dated this 31 day of December 2009.

22  
23 NEVADA COMMISSION ON ETHICS

24  
25   
26

27  
28 Mike Vavra, MPA  
Investigator