

CONFLICT OF INTEREST LAWS – COUNTY BOARDS

The Nebraska Political Accountability and Disclosure Act includes conflict of interest laws which are applicable to county officials holding elective office. The following outline addresses common situations coming before the Nebraska Accountability and Disclosure Commission involving county officials holding elective office. It should be understood that this synopsis is not an exhaustive examination of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to county officials holding elective office. It merely highlights the applicability of the Act in certain types of situations. It should be noted that the term county official holding elective office refers to elected county officials and a county official holding a county office normally filled by election even if the official was appointed to the position.

I STATEMENTS OF FINANCIAL INTERESTS

- A. File on or March 1st of each year and within 30 days after leaving office. It should be filed with the Nebraska Accountability and Disclosure Commission (NADC).
- B. A Statement of Financial Interests, like a tax return, always covers the prior calendar year. EXAMPLE: The Statement due on March 1, 2019 covers calendar year 2018.
- C. Be Accurate. The press and public look at these.
- D. Common Errors
 - 1. Failing to show the correct calendar year
 - 2. Failing to disclose county salary as a source of income
 - 3. Failing to write none in a category in which there is nothing to report

II CONFLICTS OF INTEREST

- A. Definition of Potential Conflict of Interest- A county board member has a potential conflict of interest if he or she is faced with taking an official action or making an official decision which could result in a financial benefit or detriment to: 1) the public official or employee; 2) a member of his or her immediate family; or 3) a business with which he or she is associated.
- B. Definition of immediate family- a child residing in an individual's household, a spouse of an individual, or an individual claimed by the individual or the individual's spouse as a dependent for federal income tax purposes.

- C. Definition of business- Any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, activity, or entity. NOTE: This definition does not distinguish between for profit and non-profit entities.
- D. Definition of business association- A business: 1) in which the individual is a partner, limited liability company member, director, or officer, or 2) in which the individual or member of the individual's immediate family is a stockholder of closed corporate stock worth \$1,000 or more at fair market value or which represents more than a 5% equity interest or is a stockholder of publicly traded stock with a value of \$10,000 or more at fair market value or represents a 10% equity interest.
- E. What to do if I have a conflict of interest
1. Prepare a written statement describing the matter requiring action or decision and the nature of the potential interest (Use NADC Form C-2);
 2. Deliver a copy to the Commission; and
 3. Take such action as the Commission shall prescribe to remove himself or herself from influence over the matter.

NOTE: This provision contemplates that the written statement shall be filed sufficiently in advance such that the Commission has time to respond in writing. If the Commission determines that there is a conflict of interest, it will typically require the official to abstain from participating or voting on the matter.

III Hiring of an immediate family member [§49-1499.04]

- A. An official or employee of a county may hire, supervise the hiring of, or recommend the hiring of an immediate family member if:
1. He or she does not abuse his or her official position;
 2. He or she makes a reasonable solicitation and consideration of applications for employment.
 3. He or she discloses the matter to the county board either on the record or in writing (You may use NADC Form C-4. **Do not file this statement with the Commission**); and
 4. The county board approves the employment or supervisory position.
- B. The term immediate family member means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual

or that individual's spouse as a dependent for federal income tax purposes. [State Statute §49-1425]

- C. Abuse of official position includes, but is not limited to, employing an immediate family member who:
 - 1. Is not qualified for and able to perform the duties of the position;
 - 2. Is paid an unreasonably high salary; or
 - 3. Is not required to perform the duties of the position. [§49-1499.05]
- D. In the event that an immediate family member was employed by the county prior to the time that a county board member was elected or appointed, the county board member shall make the required disclosure as soon as reasonably possible after taking office. (Use NADC Form C-4) [§49-1499.04(4)]

IV Contracts [§49-14,103.01]

- A. An elected county official (including someone appointed to an office normally filled by election) may not have an interest in a contract with the county unless:
 - 1. The contract is an agenda item at a board meeting;
 - 2. The interested official makes a declaration on the record of the county board of his or her interest in the contract. This disclosure must be made prior to the consideration of the matter by the board. It may be made at the meeting as long as the disclosure is made part of the minutes of the meeting. It may be made in writing and filed with the county clerk. (You may use NADC Form C-3 for this purpose) **Do not file this with the Commission.**
 - 3. The interested official does not vote on the matters of granting the contract, making payments pursuant to the contract, accepting performance under the contract, or similar matters relating to the contract.
- B. The prohibition against having an interest in a contract only applies when the county official, his or her spouse, parent or child has a business association as defined in §49-1408 or will receive a fee or commission as the result of the contract.

V Open Contracts

- A. Counties often deal with a series of small transactions or purchases with the same business. Each transaction is a separate contract.
- B. If a county official holding elective office has an interest in such a contract, he or she must comply with section IV, above, as to each transaction unless the county board enters into an open contract with the business. An open contract allows the county board to make purchases from as business as needed. If the

contract is “non-exclusive” the board is making it clear that it can seek the same goods or services from other sources. It permits the county official with the interest to avoid the process of making a separate disclosure for each small transaction.

C. To enter into an open contract:

1. The county board places the matter on the agenda of a board meeting.
2. The county official with the interest discloses the interest as set forth in paragraph IV.
3. The county board votes to enter into the open contract and the interested member abstains.
4. During the life of the open contract the interested official abstains from voting on any payment under the contract.

VI Use of Government Resources for Non-Government Purposes [§49-14,101.01]

- A. A public official or public employee shall not use or authorize the use of personnel, property, resources or funds under his or her official care and control for the purpose of obtaining personal financial gain for himself or herself, a member of his or her immediate family, or a business with which he or she is associated.
- B. A public official or public employee shall not use public resources except in accordance with law.
- C. A de minimis or incidental use of a public resource shall not constitute a violation of §49-14,101.01. See §49-14,101.03.

VII A public official or public employee shall not use or authorize the use of personnel, property, resources or funds under his or her official care and control for the purpose of:

- A. Campaigning for or against the nomination or election of a candidate; or
- B. Campaigning for or against the qualification, passage or defeat of a ballot question [Reference: §49-14,101.02].

VIII Exceptions:

- A. Public facilities may be made available for campaign purposes if the identity of the candidate or the support or opposition to the ballot question is not a factor

in making the government facility available or a factor in determining the cost or conditions of use.

- B. A governing body may discuss and vote upon a resolution supporting or opposing a ballot question.
- C. A public official (or public employee under the supervision of a public official) may respond to specific inquiries from the press or the public regarding his or her opinion of a ballot question. A public official may provide information in response to a request for information.
- D. A public official a public official or public employee in the normal course of his or her duties may use public resources to research and prepare materials to assist the government body in determining the effect of a ballot question on the government body.
- E. A public employee may engage in campaign activities except during his or her government work time or when otherwise engaged in his or her official duties.
- F. A de minimis or incidental use of public resources is not a violation of §49-14,101.02. See §49-14,101.03.

INTERLOCALS

By law, entities created under the Nebraska Interlocal Cooperation Act are government entities. Many county board members are also on the boards of such entities. It is important to remember that certain provisions of the Nebraska Political Accountability and Disclosure Act apply to county board members in connection with their activities as members of boards created pursuant to the Nebraska Interlocal Cooperation Act.

CIVIL PENALTIES AND CRIMINAL PENALTIES

Violations of the provisions of the Nebraska Political Accountability and Disclosure Act can result in civil penalties being assessed by the Commission or in criminal penalties upon conviction by a court of competent jurisdiction.

1. Civil penalties- The Commission can assess up to \$2,000 for each violation.
2. Criminal penalties- The penalties for violations of the act range from a Class V Misdemeanor to a Class IV Felony.

OPINIONS FROM THE COMMISSION

It is the policy of the Nebraska Accountability and Disclosure Commission to assist public officials and public employees in complying with the provisions of the NPADA. A public official or public employee should always feel free to contact the Commission office if he or she has a question about any part of the Nebraska Political Accountability and Disclosure Act. The Commission staff can provide information or advice over the telephone. The staff can also provide written staff opinions. The Commission, acting as a body, can issue formal Advisory Opinions. Forms are available by calling or writing to the Commission. Forms may also be obtained through the Commission's website.

Nebraska Accountability and Disclosure Commission
P.O. Box 95086
Lincoln, NE 68509
402-471-2522

Office Location: 1225 L Street, Suite 400

Website: www.nadc.nebraska.gov

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