

ETHICS PROVISIONS OF THE NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

This outline is intended to provide a general overview of the “ethics” provisions of the Nebraska Political Accountability and Disclosure Act (the NPADA). All public officials and public employees in the State of Nebraska (except federal) are subject to the NPADA. However, different provisions of the NPADA apply only to certain categories of public officials or public employees. Therefore, this outline should not be considered to be an exhaustive examination of the NPADA and its application. When attempting to determine how the NPADA applies to a specific situation, reference should be made to the actual statutes or questions should be directed to the Nebraska Accountability and Disclosure Commission.

Interest in Government Contracts

Synopsis-In many states a public official or a public employee is absolutely prohibited from having an interest in a contract with the governmental entity which he or she serves. Nebraska approaches the matter somewhat differently. Nebraska law generally prohibits a public official or public employee from having an interest in a contract. However, this prohibition does not apply if certain steps are taken to insure that the interest is disclosed and that the interested official or employee does not participate in the process.

Key principles of Contractual Interests

1. Disclosure of interest by public official or public employee
2. Open public process for awarding contract when employee or official has interest
3. Abstention as to matters related to contract

Statutory Provisions Relating to Interest in Contracts

- I Contracts [§49-14,103.01] This section applies to “officers”. For the purposes of this section, the term “officer” means (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (c) any elected county, school district, educational service unit, city, or village official, and (d) a member of any board of directors or trustees of a hospital district as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-3501 to 23-3519.
 - A. An officer may not have an interest in a contract with the government body unless:
 1. The contract is an agenda item at a meeting of the government body;

2. The interested officer makes a declaration on the record of the government body of his or her interest in the contract. This disclosure must be made prior to the consideration of the matter by the government body. 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 person who normally keeps records for the governing body. NADC Form C-3 may be used for this purpose.
 3. The interested officer 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 officer, 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.
- C. Business Defined: 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. [§49-1407]

NOTE: The statute does not distinguish between for profit and non-profit entities. Either can be a “business”.

- D. Business Association Defined: A business in which the individual is a partner, limited liability company member, director, or officer; or a business in which the individual or immediate family member of the individual is a stockholder. If closed corporate stock, the stock must have a value of \$1,000 or more or represent more than a five percent equity interest. If publicly traded stock, the stock must have a value of \$10,000 or more or represent more than a ten percent equity interest. [§49-1408]

SCENARIO: The city council decides to build a storage shed in the city park. Jones is a member of the city council and owns the only lumberyard in the city. Jones agrees to sell the needed materials to the city for \$1,500. At an open public meeting the city council approves the contract. Jones abstains from participating or voting on the matter.

Violation: Yes. Jones failed to make a disclosure of his interest in the contract. He may make the disclosure at the meeting as long as it is made part of the record or by filing a written disclosure statement with the city clerk.

- E. There are exceptions to these requirements which are not noted in this outline.

NOTE: It is important to comply with the NPADA provisions relating to an interest in a contract. A contract entered into in violation of these provisions may be declared void by a court.

NOTE: A person required to disclose an interest in a contract pursuant to §49-14,103.01, is not required to disclose the same matter pursuant to §49-1499.03.

- II. **CONTRACTS- Other Public Officials and Public Employees Not Covered by §49-14,103.01**
- A. No public official or public employee, a member of that individual's immediate family or business with which the individual is associated shall enter into a contract valued at \$2,000 or more, in any one year, with a governmental body unless;
 - 1. The contract is awarded through an open and public process.
 - 2. The contract is not divided for the purpose of evading the \$2,000 limit. (Reference §49-14,102).
 - B. Such an interest in a contract renders the contract voidable. (Reference §49-14,103).
 - C. Be aware of any statutory provisions that apply specifically to your agency or political subdivision. Also be aware of your governmental entity's own rules and regulations on this subject.

Hiring of Family Members/Nepotism

Synopsis-Many states prohibit public officials and public employee from hiring family members. Nebraska law as applied to political subdivisions takes a different approach. It permits the hiring of family members if certain steps are taken. On the State level, the executive branch of State government prohibits the hiring of family members with limited exceptions.

Key Principles on Hiring Family Members-Political Subdivisions

1. Reasonable solicitation of applications
2. Disclosure of relationship
3. Approval by governing body

Hiring of an immediate family member (Political Subdivisions) Change references [§49-1499.04]

- A. An official or employee of a political subdivision of the State 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 governing body of the political subdivision either on the record or in writing. (NADC Form C-4 may be used); and
 4. The board of the governing body 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. [§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]

SCENARIO: Brown is a village board member who is in charge of hiring a summer grounds keeper. The main duty of this position is to keep the grass cut on village property. Brown's 18 year old son just graduated from high school and is looking for a summer job before he heads off to college in the fall. He is well qualified to perform the duties of the job. He has been maintaining the grounds around their farm for years using equipment similar to the village's equipment. Brown carefully researches the going rate locally for people performing similar duties so as to ensure that the pay is commensurate with the tasks performed. His son has been a reliable worker who has always worked hard at any job he has ever held. Brown hires his son and files a written statement with the village clerk disclosing that he hired his son.

Violation: Yes. Brown has violated the NPADA. He has done many things correctly. His son is qualified to do the job, is not being overpaid and Brown expects his son to actually perform the duties. In addition, Brown has filed a written statement disclosing this matter. However, he failed to make a reasonable solicitation of applications for the position and the hiring was not approved by the village board.

- D. In the event that an immediate family member was employed by the government body prior to the time that a public official was elected or

appointed, the official shall make the required disclosure as soon as reasonably possible after taking office. (Use NADC Form C-4) [§49-1499.04(4)]

SCENARIO: Johnson was recently elected to the county board. Her husband has been employed by the county road department for twenty years. On the day she takes office she files a written statement with the county clerk disclosing that her husband is employed by the county.

Violation: No. Johnson has complied with the law.

NOTE: A person required to make a disclosure pursuant to §49-1499.04, is not required to disclose the same matter pursuant to §49-14,103.01 or §49-1499.03.

Key Principles on Hiring Family Member- Executive Branch State Government

1. Hiring or supervising family member is prohibited
2. Agency Director may grant an exception for good cause

II. NEPOTISM- Executive Branch of State Government (Reference §49-1499.01)

- A. With certain exceptions, an official or employee in the executive branch of state government shall not engage in nepotism or act as a supervisor of a family member.
 1. Nepotism is the act of hiring, promoting, or advancing a family member in state government, including the initial appointment and transfer to other positions in state government.
 2. Supervisor is an individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline employees, responsibility to direct them and adjust their grievances or effectively recommend such action.
 3. Family member is a spouse, child, parent, brother, sister, grandchild, or grandparent by blood, marriage, or adoption.
- B. An official or employee of the executive branch of state government who becomes a supervisor to a family member (except by nepotism) shall notify the agency head within 7 days.
- C. The agency head may grant an exception to the nepotism prohibition upon a written showing of good cause filed with the Commission

SCENARIO: Smith supervises a crew of 7 individuals at a State facility in a remote part of Nebraska. Anderson is one of the crew members. Anderson begins dating Smith's daughter and eventually marries her. Smith finds himself the supervisor of a family member. Within a week of the marriage, Smith notifies the director of the agency of this situation.

Violation: There is no violation so far. Smith has properly notified the agency head of the situation within 10 days. The agency director must make some personnel change such that Smith is not the supervisor of Anderson. In the alternative, the director may grant an exception for good cause. In this case, the director grants an exception citing the following reasons: a) When Anderson was hired, he had no family relationship with Smith; b) Smith had been Anderson's supervisor for years and they had a well established professional relationship; c) The nearest facility to which Smith or Anderson could be transferred is more than 100 miles away; d) Because of its remote location, the agency has always had difficulty hiring qualified people to work in that geographic area. These finding and decision were reduced to writing and filed with the Commission.

Conflicts of Interest

Synopsis- Certain categories of public officials or public employees have a potential conflict of interest if they are faced with taking an official action or making an official decision which may result in a financial benefit or detriment to the official/employee, a member of his/her immediate family or a business with which he/she is associated.

V Other Conflicts of Interest [§49-1499.02 and 49-1499.03]

- A. This section does not apply if the provisions on interest in a contract or hiring of family members apply.
- B. Certain categories of public officials and public employees have a potential conflict of interest if faced with taking an official action or making an official decision which could result in a financial benefit or detriment to:
 - 1. The official or employee;
 - 2. A member of his or her immediate family; or
 - 3. A business with which he or she is associated.
- C. The financial benefit or detriment must be distinguishable from that experienced by the general public or a broad segment of it.
- D. If a public official or public employee to whom these provisions apply has a potential conflict of interest he or she is required to:
 - 1. Prepare a written statement describing the matter requiring action or decision and the nature of the potential interest;
 - 2. File a copy as described below; and

3. Abstain from participating or voting on the matter.

E. Place of filing written statement:

1. Mayors, city council members (except Lincoln and Omaha) and village board members, file with the city/village clerk
2. School board members file with the person who keeps records for the school district
3. All others file with the Commission

SCENARIO: At its next meeting the City Council will consider an application by the local chapter of the Order of the Puma, a fraternal organization, for a liquor license. John is the vice-president of the chapter. He is also a member of the City Council. Prior to the meeting John considers the matter thoroughly and concludes that the granting or denial of the application will have no financial effect on him. Therefore, he votes on the matter of granting the application.

Violation: John has violated §49-1499.03 which defines a conflict of interest as a situation in which the official is faced with taking an action or making a decision which could result in a financial benefit or detriment to the official, a member of his or her immediate family, or a business with which the he or she is associated. Section 49-1407 defines the term business. It does not distinguish between for profit and non-profit entities. Section 49-1408 provides in part that an individual has a business association with an entity if he is an officer or director of an entity. John, therefore, has a conflict of interest. He should have filed a written disclosure with the City Clerk and abstained from participating or voting on the matter. This scenario assumes that this is a city other than Omaha or Lincoln.

Use of Public Resources-General

The Nebraska Political Accountability and Disclosure Act generally prohibits the use of one's public office or public resources and funds by a public official or public employee for personal financial gain, that of an immediate family member, or business with which he or she is associated. It also generally prohibits the use of government resources for non-governmental purposes. [Reference §49-14,101.01].

SCENARIO: Brown is a County Board Member who owns a home which is set well back from the road. He has a long driveway which frequently drifts over during heavy snow. When this occurs he contacts the county employee who drives one of the county's snowplows. He instructs the employee to clear his driveway when he plows the road in front of his home. It normally takes the driver 15 to 30 minutes to clear Brown's driveway.

Violation: Brown has violated §49-14,101.01(1) which provides that government resources may be used for government purposes only and may not be used for

personal financial gain. This is also a use of government resources for non-government purposes.

Requirements: Government resources may only be used for personal purposes if they are available to the general public. A public official may use them on the same basis as any other citizen. Example: a county owned photocopy machine with which any member of the public may make a copy for a specified price per page.

Section 49-14,101.03 establishes the following specific exceptions to the restrictions of §49-14,101.01.

- I De minimis or incidental uses of government resources are not considered violations of §49-14,101.01.
- II Government vehicle used for personal use is permissible if:
 - A. The personal use is part of the public official's or public employee's compensation contract or a written policy approved by the government body;
 - B. The compensation is reported as required by the Internal Revenue Code and taxes, if any, are paid.
- III Government vehicles may be used by a public official or public employee to travel to a designated location or the home of the public official or public employee when
 - A. The primary purpose of the travel serves a government purpose, and
 - B. The use is pursuant to a written policy approved by the government body.
- IV Pursuant to a collective bargaining agreement
 - A. A public facility may be used by a bargaining unit to meet regarding activities of the bargaining unit or union.
 - B. The forgoing provision does not authorize the use of public resources to campaign for or against the nomination or election of a candidate or the qualification, passage or defeat of a ballot question
- V A public official or public employee may use his or her personal cellular telephone, electronic handheld device or computer to access a wireless network to which access is provided to the public by a government body.
- VI Use of Government Communication Devices

- A. A public official or public employee may use a telecommunication system, cellular telephone, electronic handheld device or computer under the control of a government body for email, text messaging, local calls, or long distance calls:
 - 1. To a child at home, a teacher, a doctor, a baby-sitter, a family member, or any other person
 - 2. For the purpose of informing the person of an unexpected schedule change or other essential personal business.
- B. The use must be kept to a minimum and may not interfere with the conduct of government business.
- C. The government body may:
 - 1. Provide for more restricted use pursuant to an employment contract, collective bargaining agreement, or written policy approved by the government body.
 - 2. Provide for payment or reimbursement to the government body by the public official or public employee of any charge resulting from the personal communication

Use of Public Resources- Political Campaigns

The Nebraska Political Accountability and Disclosure Act generally prohibits the use of public resources and funds in connection with political campaigns. [§49-14,101.02]

- I 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.
- II 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 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 employee under the direct 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 employee under the direct supervision of a public official may provide information in response to a request for information. [Reference:§49-14,101.02(5)]
- 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.

SCENARIO: John Jones is member of the city council. A statewide ballot question will be appearing on the general election ballot next month which changes the state constitution on the issue of property taxes. Jones believes city finances would be devastated if the ballot question were to pass. He goes home and uses his personal computer to compose a letter to the editor of the local newspaper. In the letter he gives 10 reasons to vote no on the ballot question. He urges readers to vote no on Election Day. Jones prints the letter off on his personal stationery. He signs it, John Jones, City Council Member. He mails the letter to the newspaper and sends a copy to the chairman of a citizens group which opposes the ballot question. He suggests to the chairman that the letter be used as the basis of a campaign brochure.

Violation: No. Just because he is a city council member, Jones does not lose his right to free speech. He may take any position he wishes. He may speak and write on the merits of the ballot question. **The prohibition is against using city resources, personnel, property or funds in opposing the ballot question. The use of personal resources is not prohibited.** Section 49-14,101.02(11) specifically provides that the prohibition against the use of public resources does not prohibit a public official or public employee from identifying himself or herself by his or her official title.

SCENARIO: The chairman of the pro-bond issue group calls School Superintendent Samantha Smith and asks to use the high school gym room for a meeting of the pro-bond issue group. The meeting room is frequently used for meetings of community groups. By written school district policy, the gym may be used by community groups. It is made available on a first come, first served basis with official school activities taking priority. Outside groups must make reservations with the high school secretary and pay a \$10.00 fee. Smith states that the group may use the gym. She directs the chairman to the high school secretary to make a reservation and advises him of the \$10.00 fee.

Violation: No, assuming that the gym would be made available under the same terms and conditions to the anti-bond issue group on request.

III Other Exceptions of Note

- A. A de minimis or incidental use of public resources by a public official or public employee is not a violation of §49-14,101.02.
- B. Section 49-14,101.02 does not prohibit the use of public resources to research and prepare materials to assist a government body in determining the effect of a ballot question on the government body.
 - 1. This applies to a public official of the government body or a public employee under the direct supervision of the public official.
 - 2. The public official or public employee must be acting in the normal course of his or her duties.
- C. Public records demonstrating the consequences of the passage or defeat of a ballot question affecting a government body may be placed on the existing websites of the government body.

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 certain provisions 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.

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