

## **CONFLICTS, CONTRACTS and CAMPAIGNS School Districts**

The Nebraska Political Accountability and Disclosure Act includes conflict of interest laws which are applicable to school board members. The following scenarios show how the NPADA applies to school boards. 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 school boards. It merely highlights the applicability of the Act in certain types of situations.

### I Three General Categories

- A. Hiring of immediate family members
- B. Interests in a contract (including changes in a family member's employment contract)
- C. Other conflicts

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

- A. An official or employee of a school board 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 in a written statement filed with the appropriate school official or employee. You may use NADC Form C-4. **Do not file this statement with the Commission;** and
  - 4. The school 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. [§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 school 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 school district 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 appropriate school district official 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 school board.

**Attachment #1-** Sample Employment of Immediate Family Members Disclosure Statement

D. In the event that an immediate family member was employed by the school board prior to the time that a school board member 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 school board. Her husband has been employed by the school district for twenty years as a maintenance person. On the day she takes office she files a written statement with the appropriate school district official disclosing that her husband is employed by the school district.

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.

III Contracts/Doing Business with the School District [§49-14,103.01]

A. Any time the school district buys or sells goods or services there is a contract even if it is not in writing. An elected school board member may not have an interest in a contract with the school district unless:

1. The contract is an agenda item at a school board meeting;
2. The interested official makes a declaration on the record of the school board of his or her interest in the contract. This disclosure must be made

prior to the consideration of the matter by the school 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 appropriate school official. 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 school board member, 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 school board decides to build a storage shed near the high school football field. Jones is a member of the school board and owns the only lumberyard in the area. Jones agrees to sell the needed materials to the school district for \$3,500. At an open public meeting the school board 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 minutes or by filing a written disclosure statement with the appropriate school official.

#### **Attachment #2-** Sample Contractual Interest Statement

- E. Receiving deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of a school district is not considered a contract for the purposes of this section. [§49-14,103.01(5)]

- F. If a school board member's parent, spouse or child is an employee of the school district, the board member may vote on all issues of the contract which are generally applicable to (1) all employees or (2) all employees within a classification and do not single out his or her parent, spouse, or child for special action. [§49-14,103.01(6)]

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.

#### IV Open Contracts/Frequently Doing Business with a School District

- A. School districts often deal with a series of small transactions or purchases with the same business. Each transaction is a separate contract.
- B. If a school board member has an interest in such a contract, he or she must comply with section III, above, as to each transaction unless the school district enters into an open contract with the business. An open contract allows the school district to make purchases from the business as needed. If the contract is "non-exclusive" the school district is making it clear that it can seek the same goods or services from other sources. It permits the school 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 school board places the matter on the agenda of a board meeting.
  - 2. The school board member with the interest discloses the interest as set forth in section III.
  - 3. The school board votes to enter into the open contract and the interested member abstains.
  - 4. During the life of the open contract the interested member abstains from voting on any payment under the contract.

NOTE: The school board may exempt from these provisions contracts with a value of \$100 or less. [§49-14,103.06]

#### **Attachment #3-** Sample disclosure of Open Contract

V Other Conflicts of Interest [§49-1499.03]

- A. This section does not apply if either section II (Hiring of Family Members) or section III (Contracts) apply.
- B. A school 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 school board member;
  - 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 the school board member 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. Use NADC Form C-2A;
  - 2. Deliver a copy to the appropriate school official or employee; and
  - 3. Abstain from participating or voting on the matter.

NOTE: The school board member may apply to the Commission for an opinion as to whether he or she has a conflict of interest.

**SCENARIO:** At its next meeting the school board will decide whether it wishes to continue its membership and pay the annual dues to the Nebraska Association of School Boards. John is a school board member. He is also a member of the board of directors of the NASB. Prior to the meeting John considers the matter thoroughly and concludes that the approval or denial of the payment 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 appropriate school official or employee and abstained from participating or voting on the matter.

## **Attachment #4- Potential Conflict of Interest Statement**

**Advisory Opinion #203:** Commission Advisory Opinion #203 issued in 2017 states that: a) a school board member may not vote to pay for reimbursement of expenses to himself or herself; and b) a school board member who is also a member of the board of directors Nebraska Association of School Boards may not, as a school board member, vote on matters that have a financial effect on the association.

**Advisory Opinion #204:** Commission Advisory Opinion #204 issued in 2018 states: a) a county board member who also serves on the board of directors of the Nebraska Association of County Officials may vote on a county budget even if the budget includes an appropriation for dues which could later be used to pay dues to NACO; and b) a county board member who also serves on the board of directors of the Nebraska Association of County Officials may not vote to pay dues to NACO.

### **Use of Public Resources**

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:** Jon Brown is a school board member who owns a home which is set well back from the road. His property is also adjacent to the high school parking lot. He has a long driveway which frequently drifts over during heavy snow. When this occurs he contacts the school employee who clears the parking lots and walkways of all school facilities. He instructs the employee to clear his driveway when he plows the parking lot. It normally takes the driver 15 to 30 minutes to clear Brown's driveway.

**Violation:** Jon 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 school 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 vehicles 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:
  - A. When 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 personnel 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

### **Participation in 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 school board. 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 school district's 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, School Board 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 school board 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 school district 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 auditorium for a meeting of the pro-bond issue group. The auditorium is frequently used for meetings of community groups. By written school district policy, the auditorium 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 auditorium. 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 auditorium would be made available under the same terms and conditions to the anti-bond issue group on request.

Case Note: Vokal v. Nebraska Accountability and Disclosure Commission, 276 Neb. 988 (2009)- After an administrative evidentiary hearing, the Commission found that Vokal, the respondent, had used public resources for campaign purposes. James Vokal was an Omaha City Council Member seeking reelection. He had a campaign video produced, part of which was filmed in the city office assigned to him. On appeal, the Nebraska Supreme Court found that the production of a video portraying Vokal in his office did not constitute a "use" of public resources. This decision predates the enactment the current version of §49-14,101.03 and the current version of §49-14,101.02.

### 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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