

State of Nebraska

Accountability and Disclosure Commission

P.O. BOX 95086
Lincoln, Nebraska 68509
www.nadc.nebraska.gov



Centre Terrace, 1225 L St. #400
Phone (402) 471-2522
Fax (402) 471-6599

Synopsis of Case #17-08 Action Taken September 13, 2019

Respondent: Timothy Moore

The Respondent, Timothy Moore, is a former member of the Madrid Village Board in Perkins County, Nebraska. The Complainant, David Peterson is a resident of Madrid. On April 3, 2017 Peterson filed a complaint against Moore making a number of allegations involving payments to Moore by the Village for work Moore was doing for the Village. A preliminary investigation was commenced on April 24, 2017. On December 1, 2017, following the investigation, the Commission found probable cause to believe that one or more of the alleged violations had occurred. On April 20, 2018, the Commission found probable cause as to alleged additional violations. An evidentiary hearing was held before Hearing Officer Robert Bartle on November 15, 2018. The Hearing Officer submitted his recommended findings of fact and conclusions of law on March 27, 2019. The record of the hearing and the recommendations of the Hearing Officer were submitted to the Commissioners.

On September 13, 2019, based upon the record of the hearing, the Commission issued Findings of Fact, Conclusions of Law and an Order in which it found violations of the Nebraska Political Accountability and Disclosure Act (NPADA) by the Respondent as follows:

That the Respondent violated §49-14,103.01(5) of the NPADA as alleged in Counts 3, 4, 5, 6, 7, 8, 9, 10, and 11.

The Commission found no violation and dismissed Counts #1 and #2, use of public office for personal financial gain in violation of §49-14,101.01 of the NPADA.

The Commission's Findings of Fact, Conclusions of Law and Order was entered with eight Commissioners concurring, no Commissioners dissenting and no Commissioners abstaining.

Civil Penalty: \$500.00

Attorney for the Commission: Neil B. Danberg

Attorney for the Respondent: James R. Korth, Ogallala, Nebraska

Synopsis Prepared by: Frank Daley
Executive Director
Nebraska Accountability & Disclosure Commission
P.O. Box 95086
Lincoln, NE 68509
402-471-2522

BEFORE THE NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

In re Timothy Moore,

Case No. 17-08

Respondent.

2019 SEP 13 PM 1:23

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

I

STATEMENT OF THE CASE

This case concerns the compensation and associated claims paid to the Respondent, Timothy Moore, former chair of the Village Board of Trustees of Madrid, Nebraska, who sought and received certain monthly stipends relative to requests submitted by him for additional hourly work required by the certain circumstances facing the village during 2014-2016.

The Nebraska Accountability and Disclosure Commission alleged 11 violations by Moore relative to the additional compensation he received. Counts 1 and 2 allege that in years 2015 and 2016, Moore violated Neb. Rev. Stat. §49-14,101.1(1), relative to his receipt of compensation while holding public office other than that allowed by law. The Commission further alleged in counts 3-11 that in the years 2014, 2015, and 2016, Moore held an interest in certain contracts or claims presented to the village which he failed to include as agenda items at village board meetings, failed to declare his interest in contracts, and failed to abstain from voting to approve payment under the contracts, all in violation of Neb. Rev. Stat. §§49-14,103.01(5).

Following various procedural hearings, discovery disputes, and motions, the final hearing in this case occurred in Kearney, Nebraska on November 15, 2018, before hearing officer Robert F. Bartle. The Commission and Moore presented evidence. Post-hearing briefs followed through January and February 2019, by way of written final arguments and proposed findings of fact presented by counsel. The hearing officer submitted his recommended findings of fact, discussion, and conclusions of law. The Commission, having reviewed the record and considered the recommendations of the hearing officer, **finds and orders as follows:**

II

FINDINGS OF FACT

1. Between 2014 and 2016, Moore was the Chairman of the Board of Trustees for the village of Madrid, Nebraska.
2. Moore was a public official and an officer as defined in the Nebraska Political Accountability and Disclosure Act (the "Act").
3. Moore's salary was set by ordinance or resolution. In January 2015, the village board passed a resolution which provided Moore with a salary of \$300 per monthly meeting, plus an additional \$300 for additional meetings attended at the request of the village board.

4. During the year 2016, for a period of 42 full days and an additional 21 partial days, David Steinwart, the village's utilities superintendent, was on medical leave.

5. In May 2016, the village experienced a failure in its wastewater treatment facility.

6. In September 2016, the village board authorized attorney Joel Phillips to work with Moore on appropriate legal action, including negotiation and litigation, to complete the wastewater plant repairs.

7. Each month during the relevant time period, Moore submitted a request for payment of claims for additional work and expenses for his time expended for village activities. These monthly requests for compensation were in addition to Moore's salary as set by the village board.

8. Moore's additional work was to perform maintenance necessary as a result of the utility superintendent's absence, and to perform work required to deal with the wastewater treatment plant issues.

9. Moore's requests for additional compensation were listed by whole hours of reported time. For the additional work, Moore was paid at a rate of \$20 per hour (in 2014) and \$25 per hour (in 2015 and 2016).

10. When Moore's claims for additional compensation were considered by the village board, Moore did not make any public declaration of the nature and extent of any conflict of interest resulting from his claims for compensation.

11. When Moore's claims for additional compensation were considered by the village board, Moore did not abstain from voting, and also signed each claim signifying his approval of the claimed compensation requested.

12. The village board approved each of Moore's claims for payment in their entirety, and he was in fact paid the full amount of each claim.

13. Moore did not enter into any formal written contracts with the village board, but rather presented claims requesting payment for services that he rendered with the expectation of receiving payment.

III DISCUSSION

The Commission's alleged violations of the Act may be divided into two categories. The first two counts allege that in 2015 and 2016, Moore violated the Act with respect to his actions taken as a public official in receiving compensation beyond that which is allowed. At all times relevant, Moore was a member of the village board, whether or not he was performing additional responsibilities due to the absence of the utilities superintendent. Therefore, if he received compensation beyond that established by ordinance, the Commission alleges that he violated Neb. Rev. Stat. §49-14,101.01.

The remaining counts relate to those additional duties that Moore performed, beyond the work required of him as a member of the village board. For example, he

performed work that ordinarily would have been the responsibility of the utilities superintendent, had he not been absent for medical reasons. Further, Moore was dealing with issues related to the wastewater treatment plant and working with counsel to seek a resolution of the related problems. The question here is whether Moore violated the Act by failing to include his additional compensation requests as agenda items at village board meetings, by failing to declare a conflict of interest, and by failing to abstain from voting on his own compensation claims.

Moore does not contest the specific facts underlying the alleged violations. Rather, Moore claims that the instances of his receiving additional compensation were “seasonal work” or “emergency work,” exceptions regarding the limitation on compensation as set by ordinance. However, the work performed by Moore does not appear to be emergency in nature. There were no advance requests to the village board for emergency work, nor was there any suggestion of an emergency until Moore submitted documentation after the fact. As far as “seasonal” work, there was no showing that the claims for additional compensation were limited to a particular season. What Moore appeared to be doing was “stepping up” in a situation where a village employee was recovering from an illness. It is not known whether he had another motive for the actions taken, but his compensation for additional work is clearly beyond the limitations of the village ordinance and the Act.

However, the Commission has not proven a clear violation of Neb. Rev. Stat. §14-14,101.01(1), which provides in relevant part:

A public official or public employee shall not use or authorize the use of his or her public office...to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

The statute applies in a situation where an official misuses or abuses the power of his or her office in such a way as to obtain some type of reward or financial gain beyond the particular duties or compensation of the officer. The apparent purpose of the statute is to prevent officials from abusing the power of their office; in construing the statute, we must attempt to recognize its apparent purpose. *Baker’s Supermarkets, Inc., v. State Dept. of Agriculture*, 248 Neb. 984 (1995). That purpose does not relate to the factual scenario in this case. Moore was completely open and public with his specific requests for reimbursement, whether characterized as expenses or as extraordinary duties necessitated by an unexpected situation arising, such as the illness of an employee or the problems with the wastewater facility. Especially in a situation where criminal penalties are imposed for a violation of the statute, the statute must be construed strictly and require a clear burden of proof. The Commission has not met that burden with respect to counts 1 and 2.

The next question is whether Moore had a contract with the village which he failed to disclose, make an agenda item, and refrain from voting upon. If he did not have a contract with the village, then was he acting as an employee of the village with respect to the additional work? We find that he was not an employee. Moore performed his work in an effort to fulfill his perceived duty as a member of the village board. At no time did he ask for a leave of absence from the village board so that he could act as an employee, nor did he present claims for payment or reimbursement in any capacity as a part-time or temporary employee. Moore’s claims were straightforward requests for payment

submitted on the basis of work which he completed as a benefit to the village; Moore made no showing of any particular change in his status or relationship to the village board at any time that he completed the work or submitted claims for payment. Further, while not dispositive of the issue, the village board's procedure of issuing IRS Forms 1099 to Moore for his claims—rather than withholding income taxes from payments as an employer would typically do for a garden variety employee—suggests that Moore was acting in his independent capacity as a professional and as a member of the village board. Moore's actions in this matter are the actions of a board member performing tasks as a board member and a professional.

Likewise, when Moore was assisting counsel in negotiations and meetings regarding the wastewater facility issues, he was clearly called upon for such assistance in his capacity as a board member and as a representative of the village knowledgeable about the problem, not as a wage-earning employee of the village.

Did Moore have a contract with the village for the work that he performed? Contracts may be implied in law from the conduct and circumstances of the case, whether they be verbal or written. In this case, a contract is implied by way of the parties' conduct. *See Clark v. Schimmel Hotels Corp*, 194 Neb. 810 (1975). While the term "contract" is not defined in the Act, the Act does define compensation as including "any other form of recompense." *See Neb. Rev. Stat. §49-1414*. A claim is a demand for compensation, and here Moore did submit, in writing, claims for compensation relative to work performed. In view of the overall circumstances of this case, Moore and the village had a contract for Moore to perform the services that he did.

Moore did a contract with the village board, and he did fail to disclose the conflict of interest created by the contract under the procedures outlined in Neb. Rev. Stat. §49-14,103.01(5). For this reason, the Commission has clearly established the violations set forth in each of counts 3-11. Although there is no evidence of financial injury to the village, Moore failed to disclose conflicts and failed to abstain from voting on his own contracts, therefore violating the applicable provisions of the Act.

IV CONCLUSIONS OF LAW

1. At all relevant times, Moore was a public official and an officer as defined in the Act.
2. Moore performed certain additional work and submitted claims to the village board for payment at an hourly rate. His requests were approved and paid. The compensation he received was beyond his compensation as set by village ordinance.
3. Moore's payment requests and the payment for additional work were presented and approved in a public forum and he did not obtain financial gain by abusing his office; therefore, he did not violate the provisions of Neb. Rev. Stat. §49-14,101.01(01).
4. Moore's presentation of claims and receipt of payment constituted compensation for contracts or claims.

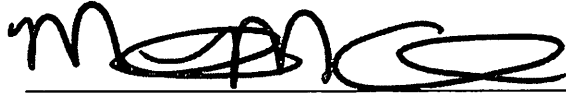
5. Moore failed to make a declaration of his conflicts of interest and failed to abstain from voting on his own reimbursement requests in violation of Neb. Rev. Stat. §49-14,103.01(5). The Commission has proved this violation by a preponderance of the evidence.

V
ORDER

WHEREFORE, with 8 Commissioners concurring, no Commissioners dissenting, and no Commissioner abstaining, the Commission adopts the Findings of Fact and Conclusions of Law set forth above, and specifically finds: that with respect to count 1 and count 2, Timothy Moore, an elected member of the village board of trustees of Madrid, Nebraska, did *not* use his office to obtain financial gain in violation of the Act; and further that with respect to counts 3, 4, 5, 6, 7, 8, 9, 10, and 11, Timothy Moore, an elected member of the village board of trustees of Madrid, Nebraska, did fail to disclose a conflict of interest pursuant to the provisions of the Act and did fail to abstain from voting on contracts in which he had a conflict of interest pursuant to the provisions of the Act.

WHEREFORE, with 8 Commissioners concurring, no Commissioners dissenting, and no Commissioners abstaining, the Commission orders that Timothy Moore be assessed a civil penalty of \$500.

Dated September 13, 2019.



Matthew M. Enenbach
Chair, Nebraska Accountability and
Disclosure Commission

Certificate of Service

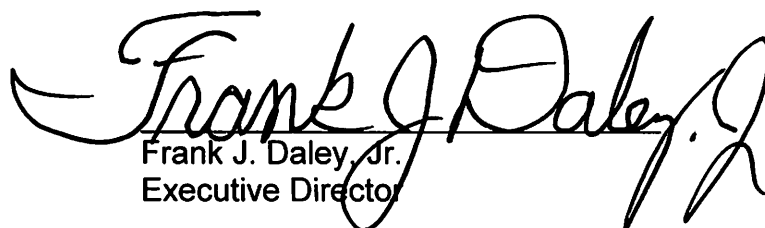
A copy of the Commission's Findings of Fact, Conclusions of Law and Order was sent by Certified U. S. Mail, postage prepaid and return receipt requested, on the 13th day of September, 2019 to the following person or persons at the following address or addresses:

David Peterson
111 S. Ames Avenue
Madrid, NE 69150

Timothy Moore
P.O. Box 93
Madrid, NE 69150

A copy of the Commission's Findings of Fact, Conclusions of Law and Order was sent by regular U. S. Mail, postage prepaid, on the 13th day of September, 2019 to the following person at the following address:

James R. Korth
Reynolds Korth Samuelson
1401 W 1st Street
Ogallala, NE 69153


Frank J. Daley, Jr.
Executive Director