

# State of Nebraska

## Accountability and Disclosure Commission

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### ADVISORY OPINION #206

**Subject:** Conflicts of Interest; Business association by reason of employment

**Requested by:** David Derbin, Lancaster County Chief Administration Officer on behalf of Lancaster County Commissioner Christa Yoakum

**Question presented:** Does a County Board Member have a business association with a private, non-profit corporation because she is employed by the corporation?

**Conclusion:** No

**Analysis:** Christa Yoakum is a member of the Lancaster County Board. She is employed as a Senior Welcoming Coordinator Immigrants and Communities by Nebraska Appleseed Center in the Public Interest (Nebraska Appleseed).

As a member of the Lancaster County Board, Commissioner Yoakum anticipates being faced with taking actions or making decisions regarding Nebraska Appleseed. These could include applications for grants, contracts and claims arising out of contracts.

By way of example, Nebraska Appleseed has applied for a grant from KENO proceeds in order to fund its intake line. The grant application is first considered by the Joint Budget Committee (the JBC) which consists of two Lancaster County Commissioners, two Lincoln City Council Members and a representative of the Lincoln Mayor's office. The JBC makes recommendations on the application. It then forwards its recommendations to the appropriate governing body. For this application the appropriate governing body is the City Council. Commissioner Yoakum serves as one of the county's representatives on the JBC. As a member of the JBC considering the grant application of Nebraska Appleseed, she is functioning as a County Commissioner.

Commissioner Yoakum wishes to know if she has a "business association" with Nebraska Appleseed such that she is subject to the provisions of §49-14,103.01 and §49-1499.03 of the Nebraska Political Accountability and Disclosure Act (NPADA) and thereby restricted in her official activity as to Nebraska Appleseed.

Section 49-14,103.01 of the (NPADA) generally prohibits certain categories of public officials (including a county board member) from having an interest in a contract with their governing bodies unless certain requirements are met.

A county board member is considered to have an interest in a contract with the county if the board member, the board member's parent, spouse or child **or a business association** of any of them will receive a payment under the contract. See §49-14,103.01(4) of the NPADA.

An elected county official who has an interest in a contract with his or her governing body is required to disclose the interest and abstain from participating or voting on matters related to the contract.

Section 49-1499.03 of the NPADA provides that an official of a political subdivision designated in section 49-1493 (including an elected county official) has a potential conflict of interest if he or she is faced with taking an official action or making an official decision which may result in a financial benefit or detriment to: a) the public official; b) a member of his or her immediate family; or c) **a business with which he or she is associated**. This benefit or detriment must be distinguishable from that experienced by the general public or a broad segment of it. Any financial effect must be reasonably foreseeable.

An elected county official who has a conflict of interest is required to file a written statement describing the matter with the Nebraska Accountability and Disclosure Commission and take such action as the Commission prescribes. If the Commission determines that there is a conflict of interest, the elected county official is directed to abstain from participating or voting on the matter.

There is no indication that interactions between Lancaster County and Nebraska Appleseed will have any effect on Commissioner Yoakum personally or upon any of her family members. The issue is whether her employment by Nebraska Appleseed constitutes a business association. If yes, Commissioner Yoakum is subject to the restrictions and obligations imposed by §49-14,103.01 and §49-1499.03.

Section 49-1407 of the NPADA defines the term business as "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."

It should be noted that the definition of business does not distinguish between for profit entities and non-profit entities. Both can fit the definition of business.

By this definition, Nebraska Appleseed, a non-profit corporation, is a business.

Section 49-1408 of the NPADA defines the term "business association" in part as a business in which the individual is "...a partner, limited liability company member, director, or officer." We are advised that Commissioner Yoakum is not a partner, limited liability company member, director or officer of Nebraska Appleseed.

Section 49-1408 also provides that holding certain levels of stock may result in a business association. Since Nebraska Appleseed does not issue stock, this portion of the statute does not apply and will not be examined.

It is our opinion that mere employment does not rise to the level of a business association.

A review of the legislative history of §49-1408 may be helpful.

The Nebraska Political Accountability and Disclosure Act was enacted by the Legislature in 1976 and took effect in 1977. In the original version of the NPADA, §49-1408 provided in part as follows:

Business with which the individual is associated shall mean a business: (1)  
in which the individual is a partner, director, officer, or **employee** ...

The original version of §49-1408 went on to provide that an individual is an employee if he or she is "a regularly salaried employee for whom the business withholds income tax or pays social security."

In 1986 the Legislature passed LB 548. LB 548 amended the provisions of §49-1408. The bill struck the word "employee" from the definition of business association. It also struck the language regarding a salaried employee, the withholding of income tax and the payment of social security. Since 1986 there has been no reference to employees in §49-1408. The Legislature has shown a clear intent to exclude employment from the definition of business association.

Mere employment does not rise to the level of a business association as defined by the NPADA. Accordingly, Commissioner Yoakum does not have a business association with Nebraska Appleseed. She would not have an interest in contracts between Nebraska Appleseed and Lancaster County. She would not have a conflict of interest as to matters coming before the County Board or Joint Budget Committee based solely on her employment with Nebraska Appleseed. She may participate and vote on these matters as she sees fit.

This opinion addresses only the issue of whether employment, by itself, creates a business association. We recognize that there may be situations in which a person's continued employment or level of compensation may be affected by the action of a government body. By way of example, a situation could occur in which, but for the government funding of the employer, the person's employment would be eliminated or compensation affected. Under such circumstances, the action would have a financial effect on the individual and he or she would be subject to the restrictions of §49-14,103.01 and §49-1499.03. This opinion is not intended to address such situations.

**Summary:** Mere employment does not rise to the level of a business association as defined by the NPADA. A County Commissioner does not have a business association with a non-profit corporation based solely on her employment by the corporation. She does not have an interest in contracts between the corporation and Lancaster County. She does not have a conflict of interest as to matters before the County Board or the Joint Budget Committee which would have a financial effect on the corporation. She may participate and vote on these matters as she sees fit.

ADOPTED as an Advisory Opinion pursuant to Section 49-14,123(10) R.R.S 2010 and Title 4, Chapter 1, Rules of Practice and Procedure. As provided in Section 49-14,123(10), this Advisory Opinion shall be binding upon the Commission unless amended or revoked, concerning the person or public body who requested the opinion and acted in reliance thereon in good faith unless material facts were omitted or misstated by the person in the request for the opinion.

DATED this 20<sup>th</sup> day of January 2023

NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

  
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Kate Sullivan, Chair