

OPEN SESSION
MINUTES OF THE MEETING OF THE
NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

Friday, January 20, 2023

State Capitol Room 1510

Lincoln, Nebraska

Call to Order – Chairman Sullivan called the meeting to order at 9:03 a.m. and announced the location in the meeting room of a copy of the Open Meetings Law. She stated that notice of the meeting was posted on the Commission’s website and on the State’s Public Meeting Calendar.

Roll Call –

Roderic Anderson – Present
Ann Ashford - Excused
Marty Callahan – Excused
Tom Carlson – Present
Jeffery Davis - Present
Robert Evnen – Excused for Late Arrival
Andrew Reuss – Present
Kate Sullivan – Present

Introduction and welcome to new Commissioner Andrew Reuss – Chairman Sullivan introduced and welcomed new Commissioner Andrew Reuss from Elkhorn. He was appointed by Governor Pete Ricketts to the Commission. His term expires on June 30, 2028. Commissioner Reuss expressed his gratitude and willingness to serve Nebraska.

Approval of the Open Session Minutes of the October 21, 2022 Meeting – Chairman Sullivan referred the Commissioners to their copies of the Open Session minutes of the previous meeting.

Motion by Davis, second by Carlson, that the Open Session Minutes of the October 21, 2022 meeting be approved - Roll Call Vote: Commissioners Anderson, Carlson, Davis, Reuss, and Sullivan voted yes. Motion carried (5-0-0).

Report on late filing fees and requests for relief: The Executive Director indicated that there were no requests for relief.

Consideration and action on proposed Advisory Opinion #206 requested by David Derbin, Lancaster County Chief Administrative Officer, on behalf of

Lancaster County Commissioner Christa Yoakum, regarding conflicts of interests – The Executive Director indicated the proposed advisory opinion was requested by David Durbin, the Lancaster County Chief Administration Officer, on behalf of Lancaster County Commissioner Christa Yoakum. The proposed opinion takes the position that mere employment does not rise to the level of a business association under the NPADA. A county commissioner does not have a business association with a non-profit corporation based solely on her employment. She would not have an interest in a contract between the corporation and the county simply because she is an employee of the corporation. Daley reminded the Commission that it had considered a draft of the opinion at its October meeting. As directed by the Commission, the latest version of Advisory Opinion #206 clarifies that the county commissioner would have an interest in the contract if her level of compensation or continued employment were affected by the contract.

Discussion followed.

Motion by Anderson, second by Reuss, to adopt proposed Advisory Opinion #206 – Roll Call Vote: Commissioners Anderson, Carlson, Davis, Reuss, and Sullivan. Motion carried (5-0-0).

Executive Director's Report (includes personnel activity, budget status, budget process and litigation status) – The Executive Director referred the Commissioner's to their packets.

Executive Director Daley indicated that Governor Pete Ricketts appointed Mr. Andrew Reuss of Elkhorn Nebraska to the Commission.

The Director stated that six months into the current budget year the Commission had expended approximately 36% of the agency budget.

At the request of Commissioner Anderson, the Executive Director gave a brief history of the Cash Fund. He noted that in the 2000's the Commission administered the Campaign Finance Limitation Act. The CFLA provided public funding to candidates who agreed to limit their campaign spending. He explained that all of the late filing fees and civil penalties went into the CFLA Fund for this purpose. In 2011 a case involving a similar public funding program in Arizona was found to be unconstitutional by the U.S. Supreme Court. Concerns about the Nebraska law prompted a test case before the Nebraska Supreme Court which found the Campaign Finance Limitation Act to be unconstitutional. Ultimately, the Legislature transferred the funds from the CFLA Cash Fund to the NADC Cash fund to be used for the development of an electronic filing system and for the general operations of the Commission. Mr. Daley deferred to the Deputy Director for more discussion about the fund.

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Mr. David Hunter addressed the Commission and provided information on certain aspects of the cash fund.

The Executive Director indicated that the Lincoln City Elections are held in odd numbered years. The Primary and General Elections will be held on April 4th and May 2nd. The 1st Primary Campaign Statements are due on March 6th.

Legislative Update - Executive Director Daley noted that the Commission adopted Resolution 19-01. The resolution authorizes the staff to provide assistance to Legislators with drafting legislation related to the NPADA. He also noted that if the Commission staff needs direction with regard to legislative matters, it consults with the Executive Committee. Daley reported on pending legislative bills which specifically affect the Commission or affect the Commission as a state agency.

LB 9 – This bill by Senator Blood requires the reporting of electioneering communications or issue ads to the NADC. Currently, these types of ads are outside the jurisdiction of the Commission yet are intended to influence the election. Recommended Commission position: Support.

LB 43 – This bill by Senator Sanders amends the Administrative Procedures Act. It provides that hearing officers and judges in contested cases under the APA shall not defer to the agency's interpretation of a statute and interpret the statute de novo on the record. It also requires the resolution of any doubt in a way to limit the agency's power and maximizes individual liberty. Recommended Commission position: Oppose.

General Counsel Danberg noted for the record that Secretary Evnen arrived at 9:25 a.m.

Discussion followed.

Legislative Update Supplement – January 19, 2023

LB 282 – This is bill by Senator Riepe is the Miscellaneous Claims Bill in which claims made against the State are approved or denied. It also includes write-offs recommended by the Commission of certain unpaid late filing fees and civil penalties. Recommended Commission position: Support

LB 297 – This bill by Senator Sanders enacts the Personal Privacy Protection Act. It restricts different types of governmental entities from requesting or publishing certain private information from charities including their donors. The bill also provides for an exception for information required by the Nebraska Accountability and Disclosure Act. Recommended Commission position: Neutral

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LB 302 – This bill is by Senator Linehan would extend the conflict of interest provisions to elected officials of all political subdivisions and to all public employees on the state and local level. Recommended Commission position: Support

LB 304 – This bill is by Senator Linehan requires political subdivisions to disclose on their websites the name of any association to which the subdivision pays dues and the amount of those dues. The disclosure would also include the amount of the dues which are used for lobbying. Recommended Commission position: Neutral

LB 408 – This bill by Senator M. Cavanaugh extends the application of the conflict of interest provisions to members non-elected government bodies. Recommended position: Support

LB 409 – This bill by Senator M. Cavanaugh requires members of library boards of cities of the metropolitan class to file annual Statements of Financial Interests. Recommended Commission position: Neutral

LB 410 – This bill by Senator M. Cavanaugh extends the conflicts of interest provisions to members of the library boards of cities of the metropolitan class. Recommended Commission position: Support

LB 559 - This bill by Senator Blood requires elected officials of cities of the first class to file annual Statements of Financial Interests. The bill also provides that Statements of Financial Interest shall be filed electronically. It further provides that the Commission may establish exemptions to the electronic filing requirement by rule and regulation. Recommended Commission position: Support

LB 569 – This is by Senator Bostelman prohibits county board members and county planning commission members from having an interest, direct or indirect, in any party to a contract for the development, construction, management or operation of an electric generation facility. The bill extends the prohibition and defines the term. The bill defines the term immediate family member differently than the NPADA. It was noted that it is not clear if the provisions of the bill will be part of the NPADA or not. Recommended Commission position: Neutral

LB 737 – This is bill by Senator Raybould would limit contributions from a person to a candidate committee to \$1,000 per year in the year of the election. Recommended Commission position Neutral

Legislative Bills Applicable to State Agencies

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LB 366 – This bill by Senator Conrad provides that recordings made by law enforcement body cameras become public records under certain circumstances. Recommended Commission position Monitor

LB 486 – This bill by Senator Hunt provides that state funds may not be used for radio, television, print or promotional materials which refer by name to the Governor, Lt. Governor, Secretary of State, State Treasurer, Attorney General or Auditor of Public Accounts. Current law imposes this restriction only during a gubernatorial election year. The bill is not within the NPADA and has no apparent enforcement mechanism. Recommended Commission position Neutral

LB 513 – This bill by Senator Brewer would change notice requirements for certain government bodies under the Open Meetings Law. The changes do not affect State agencies. Recommended Commission position Monitor

LB 530 – This bill by Senator McKinney provides for election of Housing Authority board members. It also provides that a board member may not have interest in contract with the Housing Authority. Recommended Commission position Neutral

LB 637 – This bill by Senator Albrecht amends the Open Meetings Law to permit the public to speak at all meetings of a public body. Recommended Commission position Neutral

LB 650 – This bill by Senator McDonnell would allow certain cybersecurity records to be withheld from the public. Recommended Commission Monitor

LB 684 – This bill by Senator Briese would require the Department of Administrative Services to contract for a study of State agencies to assist in the development of performance measures and efficiency standards for government services. Recommended Commission position Monitor

Discussion followed.

Motion by Evnen, second by Reuss, that the Commission accept the recommended positions set forth in the memorandum dated January 19th 2023 with the exception that the Commission take the position of neutral with respect to LB 408 and LB 410 – Roll Call Vote: Commissioners Anderson, Carlson, Davis, Evnen, Reuss, and Sullivan voted yes. Motion carried (6-0-0).

Discussion followed.

Motion by Davis, second by Carlson, that the Commission support LB 9 and oppose LB 43 as outlined in the January 11th 2023 memorandum - Roll Call Vote: Commissioners Anderson, Carlson, Davis, Evnen, Reuss, and Sullivan voted yes. Motion carried (6-0-0).

Discussion retirement of Executive Director and process for choosing a successor – Executive Director Daley indicated that his target retirement date of August was chosen for two reasons. First, it is a Lincoln city election year. The city elections take place in April and May, with final campaign statements due in June. The would allow the new Executive Director would have time to get acquainted with the position in between the Lincoln elections and the 2024 elections.

The Executive Director indicated that the Commission has adopted a Transition Plan. The plan calls for the Commission to form a search committee. It would consist of the Chair and two appointees. The Search Committee would review the job description and duties of the outgoing Executive Director and recommend any changes it deemed appropriate. The Search Committee may recommend and identify the qualifications of prospective candidates for Executive Director. The Search Committee may also recommend to the Commission that it limit its search to the candidates currently employed by the Commission. He continued that the Search Committee is to establish a timeline for the process of hiring an Executive Director. It is to consult with the current Executive Director for the purpose of developing a budget for search process. This would include travel costs, advertising and extra meetings with the Commission. The Search Committee will solicit applications for the position and forward all applications to all members of the Commission. During this process the Search Committee would regularly report its findings to the Commission.

Discussion followed.

Report of Conflicts Committee – Commissioner Davis indicated that there was no report from the committee.

Report of Executive Committee – Commissioner Sullivan indicated that there are no issues to report.

Closed Session - Motion by Sullivan, second by Davis, that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA – Roll Call Vote: Commissioners Anderson, Carlson, Davis, Evnen, Reuss, and Sullivan voted yes. Motion carried (6-0-0).

The NADC went into Closed Session at 10:20 a.m.

The NADC returned to Open Session at 10:40 a.m.

Announcements from Closed Session – Executive Director Daley announced that in the matter of Cynthia Hartley v. Paul Vrbka (#22-02) the Commission approved a settlement agreement by which it found a violation of §49-14,101.02 and assessed a civil penalty of \$1,000.00. The Commission approved the

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Settlement Agreement with six Commissioners concurring, none dissenting, and none abstaining.

Adjournment – Motion by Anderson, second by Davis, that the NADC adjourn. Roll Call Vote: Commissioners Anderson, Carlson, Davis, Evnen, Reuss, and Sullivan voted yes. Motion carried (6-0-0).

Chairman Sullivan declared the meeting adjourned at 10:41 a.m.