

Ethics/Accountability & Disclosure

Board members, the Commissioner and Department staff are all subject to the provisions of the Nebraska Political Accountability and Disclosure Act (Sections 49-1401 et. seq. of the Revised Statutes of Nebraska). The Commissioner is authorized to develop administrative and personnel policies dealing with ethics and conflicts of interest for Department staff, which may include requirements for the reporting of outside consulting income received by staff.

In addition to sections of the Act regarding campaign activities of Board members, the following sections should be of primary interest to the Board and staff of the Department:

49-1499.02. Executive branch; discharge of official duties; potential conflict; actions required.

(1) An official or employee of the executive branch of state government who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another. If the immediate superior does not assign the matter to another or if there is no immediate superior, the official or employee shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(2) This section does not prevent such a person from (a) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (a) of this subsection shall report the occurrence to the commission.

49-14,100. Advisory opinions; application; effect. Any person who is in doubt as to the propriety of action proposed to be taken by him may apply to the commission for an advisory opinion relating thereto, and the commission shall have authority to render such opinions. When an advisory opinion is issued pursuant to a complete and accurate request, such opinion shall be a complete defense to any charge of violation of sections 49-1493 to 49-14,104 as to any action taken strictly subject to the terms of such opinion.

49-14,101.01 Financial gain; gift of travel or lodging; prohibited acts; violation; penalty.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a 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.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

(3) Unless otherwise restricted by an employment contract, a collective-bargaining agreement, or a written agreement or policy approved by a government body, a public official or public employee may use a telecommunication system, a cellular telephone, an electronic handheld device, or a computer under the control of the government body for email, text messaging, a local call, or a long-distance call to a child at home, a teacher, a doctor, a day care center, a baby-sitter, a family member, or any other person to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of public business. A public official or public employee shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. An agency or government body may establish procedures for reimbursement of charges pursuant to this subsection.

(4) A public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(5) A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties. . . .

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, . . .

49-14,102. Contracts with governmental bodies; procedure; purpose.

(1) Except as otherwise provided by law, 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 two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

[Subsection 5 does not apply to NDE contracts]

(6) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

(7) This section does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06. *[These statutes cover contracts involving school districts and other local political subdivisions, for which different procedures are required.]*

Additional Board Policies

Board members, the Commissioner, and staff shall seek an opinion from the Accountability and Disclosure Commission in any situation in which they may have a potential conflict of interest or are uncertain as to whether their planned actions may be a violation of the accountability and disclosure laws. Such opinion requests by staff shall be routed through the Commissioner's Office and General Counsel's Office.

In particular, situations may arise in which staff wish to serve as officers or directors of corporations, foundations, associations, or other organizations which

may do business with the Department. Except where there is a clear statutory authority for the Commissioner and Department staff to serve in such a capacity, they should refrain from accepting such office without an opinion from the Accountability and Disclosure Commission if their Department duties and the private officer/director duties may create a potential conflict.

When Board members, the Commissioner, and staff serve as officers or directors in businesses or organizations in which there is no potential conflict under the accountability and disclosure laws, they nonetheless should do so on their own time and with their own resources, unless there is specific statutory authority for such activity. Resources of the State, including staff time shall not be used in support of private entities.

Occasionally the Board is requested to appoint staff or Board members as Board of Directors members for non-profit corporate board that may, or may not, eventually have financial dealings with the Department or may take positions on the regulatory operations of the Department. Absent specific statutory directive, the Board has no authority to appoint Board of Directors members for any corporation. If regular contact with the entity would be in the best interests of the Department, and is within the Constitutional and statutory authority granted to the Department, the Board may choose to assign Board members, the Commissioner, or staff to serve as regular liaisons with such organizations or corporations. Such liaisons may convey information and monitor and coordinate joint activities, but shall take no role in managing the affairs of the private entity.

The State Board of Education encourages opportunities to cooperate with other agencies and associations involved in education. The Commissioner, or designee, is directed to represent the State Board when such representation is appropriate. The State Board may also designate members of the Board to act as official or additional liaisons or representatives to agencies and associations.

It is the responsibility of the Commissioner to secure Board approval for joining associations or other formal groups when acting on behalf of the Board, whenever such membership involves the policy function of the Board, and whenever a commitment of resources not previously approved by the Board is involved.

Board Action History

- 12/8/95 – Prior D12
(NEW)
- 11/3/06 – D12
(Revised statute changes)
- 10/08/09 – D12
(Amended to add language to specifically permit the use of certain state communication resources for essential personal business and to require reimbursement, consistent with LB 626 [Laws, 2009].)
- 09/05/2014 – D12
(Revised statute changes)

Cross-References

- 49-1401 et seq.
- 49-1499.02
- 49-14,100
- 49-14,101.01
- 49-14,102
- State Board Bylaw B20