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To: Steven G. Oltmans, General Manager
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Subject: Conflicts of interest

As you requested, here are the relevant Nebraska statutes regarding contracts between an NRD director and the District, the principle regulation being Section 49-103.01, *infra*.

With regard to the authority of the Board of Directors to preclude directors from having an interest in NRD contracts, please note Sections 49-14,103.05 and 49-14,103.06, *infra*.

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

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 governmental body unless the contract is awarded through an open and public process which includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting governmental body of the proposals considered and the contract awarded. No contract may be divided for the purpose of evading the requirements of this section. 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. This section is intended to prevent public officials from engaging in certain activities under circumstances creating a substantial conflict of interest and is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

Source: Laws 1976, LB 987, § 102.

49-14,103 Contract; conflict of interest; voidable; decree.

(1) A contract involving a prohibited conflict of interest under section 49-14,102 shall be voidable only by decree of a court of proper jurisdiction in an action brought by any citizen of this state as to any person that entered into the contract or took assignment thereof, with actual knowledge of the prohibited conflict. In the case of a person other than an individual, the actual knowledge must be that of an individual or body finally approving the contract for the person. An action to void any contract shall be brought within one year after discovery of circumstances suggesting the existence of a violation. To meet the ends of justice any such decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the state or political subdivision has benefited thereby.

(2) Sections 49-14,102 and 49-14,103 shall not apply to a contract for labor which is negotiated or is being negotiated pursuant to the laws of this state.

Source: Laws 1976, LB 987, § 103.

49-14,103.01 Officer, defined; interest in contract prohibited; when.

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (c) any elected county, school district, educational service unit, city, or village official, and (d) a member of any board of directors or trustees of a district hospital as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-3501 to 23-3519. Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the county attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

The prohibition in this subsection shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(3) Subsection (2) of this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue,

then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(4) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(5) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(6) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(7) Section 49-14,102 shall not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

(8) Nothing in this section shall prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three registered, licensed, certified residential, or certified general real estate appraisers or by a court of competent jurisdiction in an eminent domain proceeding.

District payments to a director of a natural resources district of the fair market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

Source: Laws 1986, LB 548, § 2; Laws 1987, LB 134, § 8; Laws 1987, LB 688, § 10; Laws 1990, LB 1153, § 55; Laws 1991, LB 203, § 2; Laws 1994, LB 1107, § 2; Laws 2001, LB 242, § 21.

Effective date September 1, 2001.

49-14,103.02 Contract with officer; information required; ledger maintained.

The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1) through (5) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

- (1) Names of the contracting parties;
- (2) Nature of the interest of the officer in question;
- (3) Date that the contract was approved by the governing body;
- (4) Amount of the contract; and

(5) Basic terms of the contract.

The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.

Source: Laws 1986, LB 548, § 3; Laws 2001, LB 242, § 22.

Effective date September 1, 2001.

49-14,103.03 Open account with officer; how treated.

An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to sections 49-14,103.01 to 49-14,103.06. The statement required to be filed by section 49-14,103.02 shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for such governing body shall maintain a running account of amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to sections 49-14,103.01 to 49-14,103.06.

Source: Laws 1986, LB 548, § 4.

49-14,103.04 Violations; penalties.

Any officer who knowingly violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class III misdemeanor. Any officer who negligently violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class V misdemeanor.

Source: Laws 1986, LB 548, § 5.

49-14,103.05 Governing body; prohibit certain contracts.

Notwithstanding sections 49-14,103.01 to 49-14,103.03, any governing body may prohibit contracts over a specific dollar amount in which an officer of such body may have an interest.

49-14,103.06 Governing body; exempt certain contracts.

Any governing body may exempt from sections 49-14,103.01 to 49-14,103.03 contracts involving one hundred dollars or less in which an officer of such body may have an interest.

Source: Laws 1986, LB 548, § 7.