

State of Nebraska

Accountability and Disclosure Commission

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April 18, 2023

Dan Curran
Interim Director
Department of Economic Development
245 Fallbrook Blvd, Suite 002
Lincoln, NE 68521

REVISED OPINION

Dear Mr. Curran:

Reference is made to your letter of April 10, 2023. As I understand it, on April 5, 2023 you were appointed Interim Director of the Department of Economic Development (DED). You state that DED has a current contract with Aksarben Foundation. You will be leaving your position with DED on May 1, 2023 to become Executive Director of the Internship Program for Aksarben Foundation. You wish to disclose this situation and ensure that you comply with the conflict provisions of the Nebraska Political Accountability and Disclosure Act (NPADA).

A recitation of the facts would be useful.

On November 9, 2022 DED issued an RFP for a non-profit to assist the Department with an internship program. On March 17, 2023 DED entered into a contract with Aksarben Foundation to operate the program. You were not involved in the application or proposal process. You state that you did not participate in the scoring of the proposals. You further state that you have worked with Aksarben on behalf of DED to create a relationship as to how the two organizations would function.

You became aware of an opening for the position of Executive Director for internship programs with Aksarben Foundation and you applied. You were offered the position on March 31st and accepted the position on April 2nd. As stated, you will be taking up your new position on May 1st.

You state that you have removed yourself from all matters within DED related to Aksarben Foundation. Matters related to the internship program will be managed by Chief Legal Counsel Joseph Lauber, Business Development Division Director Joe Fox and Talent Manager Rose Baker.

Section 49-1499.02 of the NPADA provides that a public official or public employee of the executive branch of state government 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

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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.

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, Aksarben Foundation 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."

If you were currently an officer of Aksarben Foundation, you would have a business association with that entity. You would be advised by this office not to participate in any matter, as Interim Director of DED, that involves Aksarben Foundation. However, you are not currently an Aksarben Foundation officer and you do not have a current business association. Nevertheless, you have removed yourself from any matter at DED involving Aksarben Foundation. This is certainly keeping in the spirit of the NPADA.

Your disclosure of this situation and your described course of action are appropriate and nothing further is required. In the event other matters arise while you are employed by DED which involve Aksarben Foundation, you are welcome to contact this office for further advice.

This opinion replaces my opinion dated April 12, 2023. The April 12 opinion included a factual misstatement.

Please understand that this is a staff opinion only and not a formal Commission Advisory Opinion. It is based upon the facts that you have provided. If any of these stated facts are incorrect or incomplete, please advise me immediately as this could affect the stated conclusion.

Sincerely,


Frank J. Daley, Jr.
Executive Director