

State of Nebraska

Accountability and Disclosure Commission

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Lincoln, Nebraska 68509
www.nadc.nebraska.gov



Centre Terrace, 1225 L St. #400
Phone (402) 471-2522
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May 10, 2023

Jim Ruggles
71797 Rd 388
McCook, NE 69001

Dear Mr. Ruggles:

Reference is made to your Potential Conflict of Interest Statement which was filed with this office on May 5, 2023. As I understand it, you serve as a director of the McCook Public Power District (MPPD). You also indicate on your statement that Ruggles Truck and Trailer Sales is a business with which you are associated.

You state that Ruggles Truck and Trailer Sales provides periodic services to MPPD. These include tire repairs, tire purchases, trailer repairs, truck repairs and other services.

Each time that Ruggles Truck and Trailer Sales provides these goods or services, it is entering into a separate contract with MPPD.

Section 49-14,103.01 of the Nebraska Political Accountability and Disclosure Act (NPADA) generally prohibits certain categories of public officials (including a director of a public power district) from having an interest in a contract with their governing bodies. By this provision, a director of a public power district board may not have an interest in a contract with the district, unless the requirements set forth below are met.

A director of a public power district is considered to have an interest in a contract with the district if the director, the director'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.

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." The records of the Nebraska Secretary of State shows Ruggles Truck and Trailer Sales to be a limited liability company. Accordingly, Ruggles Truck and Trailer Sales is a business as defined.

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." In your filing, you do not state your exact connection to Ruggles Truck and Trailer Sales. However, you describe it as a business with which you are associated. This opinion assumes that a business association exists.

Contract Requirements: Pursuant to §49-14,103.01(5) the prohibition in the NPADA against having an interest in a contract with McCook Public Power District would not apply if:

- 1) You ensure that the matter of entering into any contract with Ruggles Truck and Trailer Sales is an agenda item at an MPPD meeting;
- 2) You make a public disclosure of your interest in the contract prior to its consideration by MPPD. This disclosure may be made on Form C-3, Contractual Interest Statement, and filed with the person who normally keeps records for MPPD. The disclosure may also be made orally prior to the consideration of the contract. Under such circumstances the disclosure should be recorded in the minutes;
- 3) You abstain from participating or voting on granting the contract or similar matters relating to the contract;
- 4) You do not vote to make any payment under the contract; and
- 5) You do not act on behalf of MPPD as to inspection or performance under the contract.

Open Contracts: As stated, each time Ruggles Truck and Trailer Sales sells goods or services to McCook Public Power District, there is a separate contract and the above procedures must be followed. Understandably, this can be awkward since matters such as the need for vehicle repair may not occur in close proximity to an MPPD meeting. An alternative is for MPPD to enter an open contract with Ruggles Truck and Trailer Sales. An open contract is one which allows MPPD to purchase goods or services from Ruggles Truck and Trailer Sales as needed without having to follow the above noted procedure for each transaction. To enter into an open contract place the matter of entering into an open contract on the agenda of the PPD. Then follow steps 2 through 5 above.

It should be noted that failure to adhere to the provisions of §49-14,103.01 renders the contract voidable by a court of competent jurisdiction. See §49-14,103.01(5) of the NPADA.

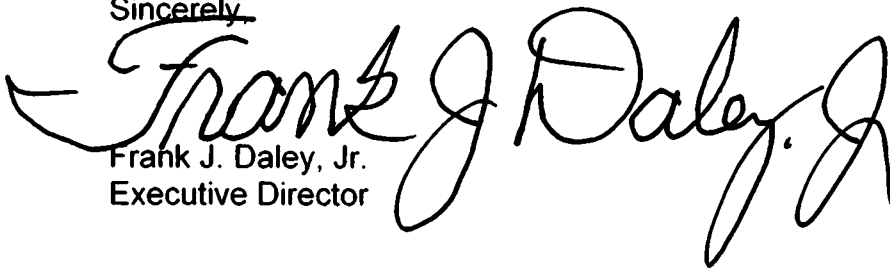
Summary: You may not have an interest in contract with McCook Public Power District unless you follow the steps outlined in the Contract Requirements or outlined in Open Contracts.

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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.

If you or MPPD have questions about contract or open contract requirement, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, reading "Frank J. Daley, Jr.", with a stylized flourish at the end.

Frank J. Daley, Jr.
Executive Director