

State of Nebraska

Accountability and Disclosure Commission

P.O. BOX 95086
Lincoln, Nebraska 68509
nadc.nebraska.gov



Centre Terrace, 1225 L St. #400
Phone (402) 471-2522
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August 7, 2023

Roger Olson
11769 732 Road
Holdrege, NE 68949

Re: C-2 Potential Conflict of Interest Statement

Dear Mr. Olson:

This will acknowledge receipt of a C-2, Potential Conflict of Interest Statement ("Statement"), which you filed with the Nebraska Accountability and Disclosure Commission ("NADC") on Monday, February 6, 2023. Following our receipt of the Statement, we have had communications with Charles Brewster with the law firm of Anderson, Klein, Brewster and Brandt, who represents The Central Nebraska Public Power and Irrigation District (the "District"). Those communications have addressed your Statement, as well as five other Statements from similarly situated members of the Board of Directors of the District who, like you, have present and prospective leases and water service agreements with the District.

You are a Director, serving on the Board of Directors of the District. As your Statement indicates, in addition to being a Director, you are also, "an irrigator and hold a Water Service Agreement with the District." Your Statement further notes that a decision on 2024 irrigation rates will likely be made at the District's meeting on December 4, 2023. Your Statement also advises that you intend to recuse yourself from discussing or voting on irrigation rates due to conflict of interest.

The question of whether you and similarly situated Directors have a conflict of interest with respect to irrigation rates, was addressed in Advisory Opinion #205, which was adopted by the NADC on September 13, 2019. That Opinion concluded:

"...[District] Board Members who have present or prospective leases may not participate in discussions and voting on standard form leases, and Board Members who have present or prospective water service

agreements with the District may not participate in discussions and voting on standard form water service agreements.”

As we noted at the outset, there are six members of the District Board who are in a position of conflict and, because of this conflict of interest, would need to recuse themselves from discussions or voting on the subject leases and water service agreements.

The only exceptions to recusal under these circumstances would occur if the Board—due to the recusal of six (6) of its members—is unable to reach a decision on leases and water service agreements. We have discussed this exception with your attorneys. If the making of those subject decisions is prevented by the recusal of the Directors, then the recused Directors may vote. The exception is found at Section 49-1499.03(1)(c), which states:

(c) This subsection does not prevent such a person [with a conflict of interest] from making or participating in the making of a governmental decisions to the extent that the individual's participation is legally required for the action or decision to be made.”

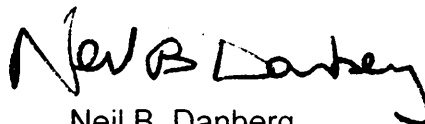
The NADC has interpreted this exception to mean that where recusals based upon conflicts of interest would prevent the political subdivision from taking a necessary action or making a necessary decision, then the recused member(s) may vote so that the necessary action is not prevented from being taken.

As we have stated above, the general rule is that where there is a conflict of interest, recusal would be required. The exception cited above is rarely invoked, and, as noted, cannot be invoked unless recusals prevent necessary governmental actions.

Our opinion in this matter is premised upon the material facts which we have outlined above. If any of these facts are inaccurate or incomplete, please contact us immediately.

Thank you for your timely filing of the subject Statement. Please contact me directly if you have any questions concerning this opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "Neil B. Danberg", written in a cursive style.

Neil B. Danberg
General Counsel

Cc: Charles Brewster