

State of Nebraska

Accountability and Disclosure Commission

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August 8, 2023

Ty Lucas
North Platte City Council Member
Via email: tlucas@nlnb.com

Dear Mr. Lucas:

Reference is made to your letter of August 2, 2023. As I understand it, you are a member of the North Platte City Council. You are also an employee, stockholder and member of the Board of Directors of NebraskaLand Bank. You wish to know if there would be a conflict of interest if NebraskaLand Bank participates in the financing of Phase 2 of the Victory Village on Lakeview project. The project is an expansion of an existing apartment complex in North Platte.

Background

Your letter includes a timeline of events which are summarized as follows:

In February 2023 DP Management, LLC contacted NebraskaLand Bank seeking financing for Phase 2 of the Victory Village on Lakeview project. It was seeking construction and term financing to add 120 units to an existing apartment complex. In March NebraskaLand Bank issued a letter of intent to finance the project. At the time, the applicant did not request TIF bond financing from NebraskaLand Bank.

In April 2023 NebraskaLand Bank became aware that the Victory Village on Lakeview project was applying to the City of North Platte for an expansion of the project that included tax increment financing assistance (TIF). NebraskaLand Bank issued a letter revoking its intent to finance. The concern was that you, as both a city council member and member of the Board of Directors of the bank, would have a conflict of interest as to the matter if TIF was a factor.

When the matter of the application came before the North Platte City Council, NebraskaLand Bank had already revoked its letter of intent to finance. You voted in favor of the application to expand the project including the tax increment financing.

Victory Village on Lakeview sought other financing and eventually accepted a proposal from United Republic Bank. The proposal was conditioned on the participation of other banks. United Republic Bank contacted twenty-one Nebraska banks about participating in the project. While several of the other banks agreed to participate, at the beginning of August United Republic Bank was about \$5,000,000 short in financing commitments. United Republic Bank has approached NebraskaLand Bank about becoming part of the bank participating group.

Issue

The issue is whether your vote as a member of the City Council in May in favor of the expansion of the project creates a conflict of interest if NebraskaLand Bank now participates in the financing of the project. In my view, your prior vote, by itself, does not create a conflict of interest.

Applicable Statutes

Section 49-1499.03(2) of the Nebraska Political Accountability and Disclosure Act (NPADA) provides that a person holding an elective office of a city 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 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." By this definition, NebraskaLand Bank is a business.

Section 49-1408 of the NPADA defines the term "business association" as a business in which the individual is "...a partner, limited liability company member, director, or officer." An individual may also have a business association if the individual or a member of that individual's immediate family own stock with a certain dollar value or which represents a certain equity interest. For closed corporate stock a business association exists if the value of the stock is one thousand dollars or more or the stock represents a five percent equity interest. For publicly traded stock a business association exists if the value of the stock is ten thousand dollars or more or represents a ten percent equity interest.

As a member of its Board of Directors and a holder of its stock valued at more than \$10,000, you have a business association with NebraskaLand Bank.

Analysis

The fact that you previously voted on a matter at a time during which NebraskaLand Bank had no connection with the matter is irrelevant as to whether you have a conflict of interest going forward. Going forward, the test is whether you are faced, as a city council member, with taking an action or making a decision which could result in a financial benefit or detriment to NebraskaLand Bank.

If a matter comes before the City Council regarding the Victory Village on Lakeview project, and the action or decision by the city council will have a potential financial effect on NebraskaLand, you are required to:

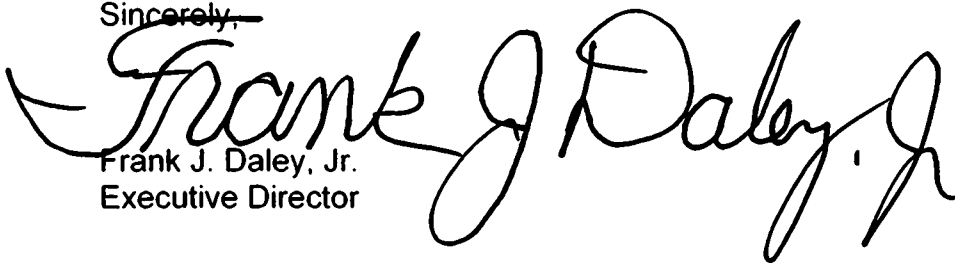
- File a Potential Conflict of Interest Statement (Form C-2A) with the city clerk disclosing the matter before the council and describing how it would financially affect NebraskaLand Bank; and
- Abstain from participating or voting on the matter.

If you want an opinion as to whether or not you have an actual conflict of interest, you may also file a copy of your Potential Conflict of Interest Statement with this office. We will provide you with a written response.

Summary: Your prior vote on the Victory Village on Lakeview project at a time when NebraskaLand Bank had no connection with the project does not create a conflict of interest. Going forward, the test is whether a matter before city council will have a financial effect on NebraskaLand Bank. If so, you are required to disclose the matter in writing and abstain from participating or voting on the matter.

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