

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
Fax (402) 471-6599

September 22, 2023

Pamela Lancaster
Hall County Commissioner
121 South Pine Street
Grand Island, NE 68801

Re: Request for a Staff Opinion

Dear Ms. Lancaster,

On September 19, 2023, on behalf of Hall County, you made a request that the Nebraska Accountability and Disclosure Commission ("NADC" or "Commission") prepare and issue a Staff Opinion. The Opinion would address the hiring of, "a professional firm to assist with the education of the public, about the need to build a new Hall County Courthouse." You noted that the question of whether a new courthouse should be built would probably be submitted in a special election next year. The election would decide whether to pass a bond issue to finance the new courthouse.

Issues and question to be addressed. In your letter, you further identified the issues and question which the Staff Opinion should address as follows:

"Hall County Commissioners' concern is the level of assistance a professional firm hired by the Board can give in developing materials and presentations to inform the public about improved security and space for Hall County Courts. We would like a better understanding of the legal limits between education of the public and promotion of the project."

This letter will constitute a Staff Opinion from the NADC with respect to your subject request.

Under the terms of the Nebraska Political Accountability and Disclosure Act ("NPADA"), a special election for the purpose of funding a new Hall County Courthouse with a bond issue would constitute a "ballot question" within the meaning of the NPADA:

“§ 49-1405. Ballot Question, defined. (1) Ballot question shall mean any question which is submitted or which is intended to be submitted to a popular vote at an election, including, but not limited to, a question submitted or intended to be submitted by way of initiative, referendum, recall, or judicial retention, whether or not it qualifies for the ballot.

(2) Ballot question shall also mean any question which has been submitted to a popular vote at an election as a result of legislative action or adoption of a resolution by a political subdivision to place an issue of issues on the ballot.”

We conclude that a ballot question will be submitted to the voters on the subject of whether a bond issue should be approved to finance a new Hall County Courthouse.

With this understanding, we turn to § 49-14,101.02 of the NPADA. This provision prohibits use of public resources for the purpose of campaigning for or against a ballot question. The language of the Statute is as follows:

“§ 49-14,101.02. Public official or public employee; use of public resources or funds; prohibited acts; exceptions. (1) For purposes of this section, public resources means personnel, property, resources, or funds under the official care and control of a public official or public employee.

(2) Except as otherwise provided in this section, a public official or public employee shall not use or authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.”

This Statute was an amendment to the original NPADA. The Statute specifically prohibits use of public resources for campaigning for or against a ballot question. Prior to the enactment of § 49-14,101.02, the NDAC had concluded that use of public resources for ballot question campaigning was prohibited by the NPADA based upon the more general statute of § 49-14,101(4). That Statute provided that public resources could not be used other than in accordance with “prescribed constitutional, statutory, and regulatory procedures..” The NADC concluded, in a series of consistent Advisory Opinions, that campaigning for or against ballot questions was not an authorized use of public resources.

For example, in Advisory Opinion #156, the NADC discussed whether the City of Norfolk could expend funds for an open house of municipal facilities. In concluding that this was a permissible use of public resources, the Commission went on to state, based upon §49-14,101(4), that it was permissible so long as, “the funds are not being used to support or oppose a candidate or ballot question.” (Advisory Opinion #156)

In Advisory Opinion #143, the NADC considered a question which is virtually identical to that presented by the present request. The Commission considered the limits of what the

City of Norfolk could do in providing information with respect to a ballot question without advocating or opposing it. The NADC stated its position as follows:

"The Commission has regularly interpreted this statute [§ 49-14,101(4)—now superseded by the more explicit terms of § 49-14,101.02]...as prohibiting the use of public personnel, resources, property or funds...to support or oppose the qualification or passage of a ballot question. A full discussion of this interpretation may be found in Commission Advisory Opinions #68, #82, #89, #95, #112, #113, and #128."

That Advisory Opinion (together with all others cited herein) may be found on the NADC website, in the Advisory Opinions Digest found under the menu topic "About Us".

We commend Advisory Opinion #143 to your attention since it provides an extensive discussion of the limits between permissible education and impermissible advocacy. While addressing the guidelines which should be observed in its information campaign, the Commission wrote:

"The City of Norfolk may engage in an information program regarding a question to appear on the ballot as long as fairness and neutrality are maintained. The information must be presented in a factual manner and not advocate or oppose the ballot question or attempt to persuade the voters."

In Advisory Opinion #128, the NADC addressed a series of ballot questions which were being presented in the November 1990 general election. With respect to these questions the Commission wrote:

"While public funds may not be used to advocate a position on a ballot question, such funds may be used for [informing] the electorate about an issue so long as fairness and neutrality are maintained. See also Advisory Opinion #68. That is, public funds can be used to prepare and distribute information provided the information is presented in a balanced, factual manner and it does not advocate or oppose a ballot question or attempt to persuade the voters. See Advisory Opinion #112..."

Advisory Opinion #128 also discussed certain of the exceptions which permit public officials or employees to support or oppose ballot questions where no public resources are used and they are not engaged in their public duties.

Conclusion: Based upon the authorities cited above, we conclude that Hall County may expend funds to retain an organization to assist in educating the public with respect to the proposed ballot question. Information disseminated to the public on this question should be neutral, factual, balanced, and informative. The advantages and disadvantages of enacting a bond issue should be presented without advocacy for or against the ballot question.

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You should understand that this is a Staff Opinion, and it is not a formal Commission Advisory Opinion. This opinion is based upon the facts which you have presented to us in your subject correspondence. If there are additional facts which may be material to this Opinion, you should report that to us immediately as it may affect this staff opinion.

Please contact me if you have further questions relating to the subject of your letter,

Very truly yours

A handwritten signature in black ink, appearing to read "Neil B. Danberg". The signature is fluid and cursive, with a large, sweeping "D" and a long, horizontal stroke extending to the right.

Neil B. Danberg
General Counsel



Hall County Board of Commissioners

121 South Pine Street, Grand Island, NE 68801
Phone (308) 385-5093

September 19, 2023

David Hunter, Executive Director
Nebraska Accountability and Disclosure Commission
PO Box 95086
Lincoln, NE 68509

Dear Director:

Hall County is seeking a Staff Opinion in regard to the hiring of a professional firm to assist with the education of the public, about the need to build a new Hall County Courthouse.

Hall County Commissioners concern is the level of assistance a professional firm hired by the Board can give in developing materials and presentations to inform the public about improved security and space for Hall County Courts. We would like a better understanding of the legal limits between education of the public and promotion of the project.

The Board is seeking a Staff Opinion because of timing. Hall County tentatively plans a special election for the Bond next spring. With a shortage of staff, we understand that a Legan Opinion from Accountability and Disclosure would take more time than a Staff Opinion.

If you have any questions about the Opinion we are seeking, please contact us. Thank you for your assistance.

Sincerely,

Pamela Lancaster, Hall County Commissioner
121 South Pine
Grand Island, NE 68801
pelcommish@charter.net
Cell: 308-380-2418

Commissioners

Ron Peterson, Board Chair 382-3280 ✧ Butch Hurst 391-2940 ✧ Scott Sorensen 390-2122
Pamela E. Lancaster 381-2754 ✧ Karen Bredthauer 382-2070 ✧ Gary Quandt 382-8255 ✧ Jane Richardson 382-5878