

State of Nebraska

Accountability and Disclosure Commission

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



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Phone (402) 471-2522
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December 30, 2024

David Durbin
Lancaster County Chief Administrative Officer
555 South 10th Street, Suite 110
Lincoln, NE 68508

Re: Your Letter of December 4, 2024 Re: Potential Conflict of Interest

Dear Mr. Durbin,

This will acknowledge receipt of your subject letter in which you raise a question concerning a possible conflict of interest. The letter was addressed to Executive Director Hunter, and it concerned a possible conflict of interest on the part of County Commissioner Sean Flowerday. The letter requests an opinion from the Nebraska Accountability and Disclosure Commission ("NADC") with respect to a possible conflict of interest. The NADC will treat your letter as a Potential Conflict of Interest Statement with respect to Commissioner Flowerday.

The facts in this matter, as we understand them, are that Commissioner Flowerday is an elected County Commissioner for Lancaster County. His spouse is the Chief Executive Officer for the Community Health Endowment Board of Lincoln (hereinafter, "Endowment Board"). This organization was created under the terms of Chapter 4 of the City Code of the City of Lincoln, Nebraska. Chapter 4 addresses Boards and Commissions which have been created by the City of Lincoln.

The question posed by your subject correspondence is whether Commissioner Flowerday may act upon contracts involving the County and the Endowment Board. In your correspondence you anticipate that such contracts may be presented to the County Board for approval in the future.

In addressing this issue, we first turn to the terms of §49-1499.03(1) of the Nebraska Political Accountability and Disclosure Act ("NPADA"). This Section requires Lancaster County Commissioners, among others, to file a Statement of Potential Conflict of Interest under the following circumstances:

“...An official of a political subdivision designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated,... shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner...”

Although we have not been provided with a list of potential or past contracts which may involve the County and the Endowment Board, we will assume that such contracts would address the business of the County or the Endowment Board, and would not in any way provide financial benefit or detriment to either Commissioner Flowerday or his spouse. Therefore, under the terms of the subject Statute, neither Commissioner Flowerday nor his spouse would be confronted with making a decision or taking action which would “cause financial benefit or detriment” to them.

Continuing the analysis of §49-1499.03(1), we next turn to the question of whether Commissioner Flowerday has “a business with which he...is associated..” In other words, would he have such an association that there would be a potential financial gain or detriment for such business because of his decision concerning a contract between the County and the Endowment Board. Based on the information which we have in the subject letter, Commissioner Flowerday does not appear to have any such business association.

Therefore, the language of §49-1499.03 would not require Commissioner Flowerday to file a Potential Conflict of Interest Statement when confronted with a contract between Lancaster County and the Endowment Board.

In your subject letter you also request the NADC to address the question of whether a contract between Lancaster County and the Endowment Board could be considered a prohibited contract between an “officer” and his governing body, under the terms of §49-14,103.01.

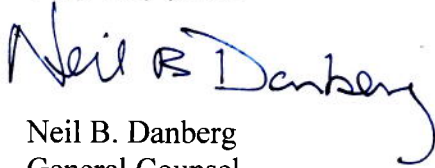
As we understand the nature of the contracts in question which may come before the County Board, none of them involve Commissioner Flowerday personally or on behalf of any other entity. Since he is not proposing a contract between himself and his governing body, he would not fall within the terms of 49-14,103.01.

The NPADA does not address the question of appearance of conflict. (See generally, NADC Advisory Opinion #136) In your subject letter you have advised that Commissioner Flowerday intends to recuse himself in the event that he is required to take action or make a decision with respect to a contract involving the Endowment Board. Given his spouse’s position with that Board, recusal, while not required under the terms of the NPADA, may seem appropriate under those circumstances.

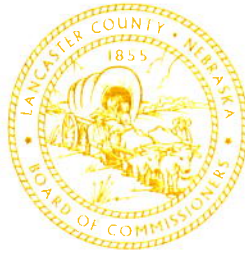
If any of the facts relating to this matter are not accurate, or if you have any further questions concerning this opinion, please contact me.

The Commission thanks you for your filing.

Very truly yours

A handwritten signature in blue ink that reads "Neil B. Danberg". The signature is written in a cursive style with a large, stylized "N" and "D".

Neil B. Danberg
General Counsel



LANCASTER COUNTY BOARD OF COMMISSIONERS

Roma Amundson

Sean Flowerday

Matt Schulte

Rick Vest

Christa Yoakum

David A. Derbin, *Chief Administrative Officer*

Kristy Bauer, *Deputy Chief Administrative Officer*

December 4, 2024

David Hunter

Executive Director

Nebraska Accountability and Disclosure Commission

P.O. Box 95086

Lincoln, NE 68509

Dear David:

I am writing to you on behalf of County Commissioner Sean Flowerday to deliver a written statement to the Accountability and Disclosure Commission ("Commission") that Commissioner Flowerday has become aware of a potential conflict arising out of his being required to take an action or make a decision in the discharge of his official duties as County Commissioner for the County of Lancaster, Nebraska, ("County") that may cause financial benefit or detriment to businesses with which his spouse is associated. *See* Neb. Rev. Stat. § 49-1499.03(1). Commissioner Flowerday also has become aware of the potential application of the prohibition against contracts when an officer's spouse will receive a payment, fee, or commission as a result of the contract. *See* Neb. Rev. Stat. §§ 49-14,103.01 through 49-14,103.07.

Specifically, the spouse of Commissioner Flowerday is employed as President and Chief Executive Officer by Community Health Endowment of Lincoln, a municipal endowment created pursuant to Chapter 4.16 of the City Code of the City of Lincoln, Nebraska.

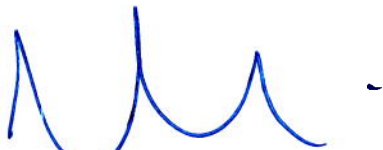
At the same time, as a member of the Board of County Commissioners of the County of Lancaster, Nebraska ("Board"), Commissioner Flowerday is required to take actions and/or make decisions regarding contracts entered into between the aforementioned municipal endowment, as well as claims arising out of such contracts, at regular meetings of the Board. Accordingly, Commissioner Flowerday is writing to disclose this potential conflict.

Commissioner Flowerday intends to abstain from participating in discussions regarding or voting on such contracts and claims and to follow such additional action as the Commission shall advise. In addition, Commissioner Flowerday intends to follow the dictates of Neb. Rev. Stat. § 49-14,103.01(5) with respect to contracts between the County and the aforementioned municipal endowment with which his spouse has a potential business association and/or from whom his spouse has the potential to receive a payment, fee, or commission as a result of the contract.

Please advise on behalf of the Commission what action or actions Commissioner Flowerday shall take in these matters, including prescribing that he remove himself from influence over the action or decision on these matters.

As always, your assistance is greatly appreciated. Please do not hesitate to contact me if you have any questions or need additional information to respond to this letter disclosing Commissioner Flowerday's potential conflict of interest.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David A. Derbin', with a small horizontal line at the end.

David A. Derbin
Chief Administrative Officer
County of Lancaster, Nebraska

CC: Matt Hansen, County Clerk