

**General Counsel Guidance on Financial Disclosure, Gifts, Expense  
Reimbursement and Conflicts of Interest  
for Board of Regents Members**

This guidance document concerns the activities of members of the Board of Regents of the University of Nebraska regarding financial disclosure, gifts, expense reimbursement, and review and management of conflicts of interest pursuant to Regents Standing Rules, Regents Bylaws 1.10 and 3.8, Regents Policies 1.1.2 and 6.2.1, and applicable law.

**I. GUIDING PRINCIPLES.**

**A. Public Trust.** The Board is responsible for the governance of the University. In carrying out this public trust, Regents must be accountable in the areas of financial disclosure, gifts, expenses, and conflicts of interest, and shall not use the authority or title of their office to solicit or otherwise obtain private financial, social, or political benefit that in any manner is inconsistent with the public interest. In serving the people of Nebraska, Regents are expected to adhere to the highest ethical standards.

**B. Paramount Interest.** Regents bring to their task varied backgrounds and expertise, but they are expected to put aside parochial interests, keeping the welfare of the entire University, not just a particular constituency, at all times paramount.

**C. Time Commitment.** In undertaking the duties of the office, Regents are expected to make the necessary commitment of time and diligence to fulfill their governance responsibilities.

**D. Citizen elected representatives.** The position as a Regent is unpaid and Regents are not expected to provide full time service or surrender/suspend their business and work life to serve as Regents. In fact, the University substantially benefits from the life and work experience of each Regent. The Regents themselves are the first line of defense and disclosure allows a public discussion and vetting process to moderate concerns about conflicts. Nebraska law requires disclosure of sources of income and gifts. While some purists argue for a strict prohibition of any/all potential conflicts, general disclosure requirements emphasize the benefits of raising questions and disclosing potential concerns over and above individuals interpreting what is acceptable or unacceptable with the idea that any and all conflict must be avoided. This avoids the hyper-technical rules oriented approach designed to avoid all arguable conflicts and prefers disclosing and properly managing real conflicts. NADC filings are public, however they have historically been quaintly accessible in person at the NADC.

## II. FINANCIAL DISCLOSURE REQUIREMENTS.

Regents are required as individuals to file all necessary election and annual financial disclosure forms as required by Nebraska law with the Nebraska Accountability and Disclosure Commission (NADC). The General Counsel's Office is not in a position to advise as to how Regents prepare individual NADC reports or choose to report items. The General Counsel's Office will advise related to NADC reporting primarily from the University's perspective of implementing best practices and for Internal Revenue Service (IRS) related income/payroll reporting and withholding requirements.

The NADC has processes to obtain both formal and informal opinions.

## III. GIFTS.

Section 49-1423 of the NPADA defines the term gift as follows:

*"Gift shall mean a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, a gift received from a relative, a breakfast, luncheon, dinner, or other refreshments consisting of food and beverage provided for immediate consumption, or the occasional provision of transportation within the State of Nebraska."*

Complimentary tickets to University events furnished to Regents in accordance with University guidelines are not considered gifts.

Regents need to be aware that tickets sourced through contracted media and marketing firms in connection with paid advertising are treated differently. This different treatment is in accordance with the 2010 determinations made by the NADC and the Nebraska Auditor of Public Accounts (APA) related to tickets provided under the IMG contract at UNL to the Nebraska Corn Board (and presumably those provided through the Learfield contract at UNO Athletics as well). The NADC and APA concluded that these tickets are provided in connection with marketing purchased from these contracted firms (IMG or Learfield). As such they have been connected to official action to acquire the marketing and are essentially treated as gifts that may not be accepted by University officials. See: 1/21/2010 NADC Letter to Don Hutchens, Executive Director, Nebraska Corn Board, on file in the General Counsel's office.

Regents should also be aware of specific provisions of Nebraska law that were specifically enacted in 2002 in part due to concerns about travel expenses related to the spouse of the Governor (at the time Stephanie Johanns). An NADC formal advisory opinion issued in August of 2011 describes the Nebraska provisions as follows: "*§49-14, 101.01(4) R.R.S. 2010 of the NPADA provides that: "A public official shall not accept a gift of travel or lodging if the gift is made so that a member*

of the public official's immediate family can accompany the public official in the performance of his or her official duties." Similarly, the next subsection §49-14,101.01(5) R.R.S. 2010 provides a corollary prohibition to the giving of gifts to the immediate family member to accomplish reimbursement for travel and lodging: "A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursements for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany, the public official in the performance of his or her official duties." . . . The status of the spouse of the Governor is somewhat unique in Nebraska State Government. Neither the Nebraska Constitution nor the Nebraska Statutes establish any official duties for the first lady or first gentleman. Yet there are expectations that the first spouse will make public appearances and engage in other public activity that support the Governor. These expectations notwithstanding, there is no provision in state law or any provision in the state budget to fund these activities. This lack of funding was discussed at a Legislative committee hearing in 2002 in connection with LB 1086. At the hearing there was some discussion of providing state funding for certain activities of the first spouse. The final version of the bill which was passed into law provided for no public funding of the first spouse's activities, but did permit a Governor to use his or her campaign funds for conference fees, meals, lodging, and travel by the immediate family (including spouse) of the Governor when involved in activities related to the duties of the Governor. See §49-1446.03(9). The same legislative bill also provided that "A member of the immediate family of the public official shall not accept a gift of travel or lodging or a gift of reimbursement of travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties." See §49-14,101.01(5). Given these two provisions, the funding options for the first spouse are limited."

NADC Advisory Opinion No. 200, August 2011.

### ***De Minimis (Minimal) Benefits***

Regents may also exclude the value of a "de minimis benefit" provided by the University. According to the Internal Revenue Service:

*"A de minimis benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, use of gift card, charge card, or credit card), no matter how little, are never excludable as a de minimis benefit, except for overtime meal money or transportation fare.*

*Examples of de minimis benefits include the following.*

- *Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See Employer-Provided Cell Phones, later in this section, for details.*
- *Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.*
- *Holiday gifts, other than cash, with a low fair market value.*
- *Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount isn't more than \$2,000.*
- *Meals. See Meals, later in this section, for details.*
- *Occasional parties or picnics for employees and their guests.*

- *Occasional tickets for theater or sporting events.*”  
<https://www.irs.gov/publications/p15b/ar02.html>

#### **IV. EXPENSES.**

Pursuant to Board Bylaw 1.8 and state law, Regents serve without compensation, but shall be allowed actual travel and other expenses in conjunction with official duties, and shall file such statements of expense not later than sixty (60) days after the final day on which expenses were incurred, as provided by operating rules of the University.

#### **V. CONFLICTS OF INTEREST**

Regents serve the University of Nebraska and act in trust with a clear obligation to fulfill their responsibilities in accord with these duties and applicable Nebraska Law including the filing and reporting requirements in the Nebraska Accountability and Disclosure Act. All decisions of the Board are to be made to advance and promote the best interests of the University of Nebraska. The integrity of the Board of Regents must be protected and advanced at all times.

Regents Standing rule 4.4.3 provides: *“If a member of the Board has a conflict of interest with regard to any matter that is before the Board for discussion, deliberation or action, he or she shall report such conflict of interest to the Chairperson prior to any discussion or deliberation by the Board on the matter. The Chairperson shall determine whether there is a conflict of interest. If the Chairperson rules that there is a conflict of interest, the member shall abstain from all discussion, deliberation, voting or other action on the matter.”*

Nebraska State Constitution Article III Section 16 provides that Members of the Legislature have the authority to prescribe the standards and definitions for any state officer.

#### **III-16. Members of the Legislature and state officers; conflicts of interest; standards for.**

*No member of the Legislature or any state officer shall have a conflict of interest, as defined by the Legislature, directly in any contract, with the state or any county or municipality thereof, authorized by any law enacted during the term for which he shall have been elected or appointed, or within one year after the expiration of such term. The Legislature shall prescribe standards and definitions for determining the existence of such conflicts of interest in contracts, and it shall prescribe sanctions for enforcing this section.*

Accordingly, under the Nebraska Political Accountability and Disclosure Act, a conflict of interest exists when, in the discharge of duties, a member of the Board of Regents would be required to “take any action or make any decision 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, which

is distinguishable from the effects of such action on the public generally or a broad segment of the public.” See Neb. Rev. Stat. §49-1499.

Specific Guidance for Disclosure of Actual or Apparent Conflicts. Matters are to be disclosed to the attention of the Chair of the Board at the earliest opportunity and may be reported by an individual Regent or by any other person. Disclosure or acknowledgment of such a conflict of interest and/or recusal shall be noted appropriately in Board minutes. These provisions should be interpreted and applied to best serve the interests of the University. In some cases, full disclosure and consideration of the particular facts may indicate that the University's interests are best served by the Regent's continued participation in the matter following disclosure. However, if reasonable doubt remains regarding the continued participation or the need for recusal, the Regent involved should elect recusal.

Specific Guidance for Disputed Conflicts of Interest. Disputed issues relating to the existence of a conflict of interest which may require recusal shall be decided by the Chair, who may choose to refer the question to the Executive Committee of the Board for review. If the Chair or Vice Chair is the subject of the conflict of interest dispute, another disinterested Regent shall be appointed to oversee the matter. The Chair (or the Executive Committee as the case may be) shall determine whether there is a conflict of interest and report the decision to the Board; however, in all cases the Board is the final authority on unresolved questions involving conflicts of interest.

## **VI. CONFLICT OF COMMITMENT.**

Board members have a wide range of professional, business and personal associations with interests and involvement in other entities, institutions, and organizations. To assure the integrity and primary commitment to the Board of Regents of the University of Nebraska, Regents should disclose and properly manage situations in which such associations, interests or involvement could compromise or reasonably appear to compromise important academic values or the business decisions of the University of Nebraska. Accordingly, Board members should act in a manner consistent with their fiduciary duty to the Board of Regents of the University of Nebraska and disclose and properly manage in consultation with the Board Chair and General Counsel circumstances in which the same present an actual or apparent conflict of interest. In accord with Regents Policy 4.1.2, Board members should avoid establishing clients or business customers within the ranks of administrative officers of the University of Nebraska.

## **VII. UNIVERSITY EMPLOYMENT.**

A Regent shall not serve as a compensated University employee, except that a Student Regent may engage in student employment at the University. Source: Neb. Rev. Stat. § 49-14,102.

Last updated: January 26, 2017