

For Immediate Release
October 27, 2015

Press Release

Last Friday, October 23, 2015, I received a response from Frank Daley, the Executive Director of the Nebraska Accountability and Disclosure Commission (NADC), to my request for an advisory opinion regarding the performance of my duties as Auditor of Public Accounts (APA) for the State of Nebraska. The NADC advisory opinion is attached.

In that request, I asked whether my business activities as President and CEO of RTG Medical, a Nebraska-based medical staffing company that has contracts with certain State agencies and other political subdivisions, conflict in any way with my official auditing duties.

I will abide by the directives in the requested advisory opinion to ensure effective fulfillment of my official role as APA. I am in the process of reviewing the opinion and taking the appropriate action.

At this time, I will reserve any further comment until all questions have been addressed and the action deemed appropriate is taken. An official response by the end of the week is planned.

State Auditor's web site at the following address: www.auditors.state.ne.us

A handwritten signature in cursive script, appearing to read "C. J. Farnsworth".

State of Nebraska

Accountability and Disclosure Commission

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October 23, 2015

Charlie Janssen
Auditor of Public Accounts
Suite 2303 State Capitol
Lincoln, Nebraska
INTEROFFICE

Dear Mr. Janssen:

Reference is made to your letter of September 4, 2015 requesting an opinion from this office. As I understand it, you serve as the Auditor of Public Accounts, a Nebraska statewide elective office established by Article IV, section 1 of the Nebraska Constitution. The duties of the Auditor of Public Accounts (APA) are generally to audit and examine the books, accounts and expenditures of State governmental entities and political subdivisions of the State, including audits to assure that grant funds are properly used. See §84-304 of the Nebraska Revised Statutes. You also serve as the President and CEO of RTG Medical. RTG Medical is the trade name for ReadyTech-Go, Inc. RTG Medical is a Nebraska based staffing agency which places healthcare professionals in facilities around the country. In the course of its business it contracts with health care facilities, businesses and governmental entities.

RTG currently has contracts with the Nebraska Department of Health and Human Services (DHHS). The office of the Auditor of Public Accounts audits DHHS. Any such audit could include an examination of the contractual arrangement of the department's contracts with RTG. You wish to know what actions you need to take in order to be in compliance with the provisions of the Nebraska Political Accountability and Disclosure Act (NPADA). To that end, you ask four specific questions. Prior to addressing your questions, a review of the applicable provisions of the NPADA is appropriate.

Section 49-1499.02 of the Nebraska Political Accountability and Disclosure Act provides that a public official or public employee of the executive branch of state government 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 reasonably foreseeable and must

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be distinguishable from that experienced by the general public or a broad segment of it. You are a public official in the executive branch of State government. See §49-1443 of the NPADA.

Section 49-1499.02 further provides that when a public official has a potential conflict of interest, he or she shall file a written statement with the Nebraska Accountability and Disclosure Commission. If the Commission determines that there is a conflict of interest, the public official "shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter".

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, RTG 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.

According to the information provided, RTG stock is not publically traded. You own closed corporate stock in RTG valued at more than \$1,000 and you serve as RTG's President and CEO. Accordingly, you have a business association with RTG.

Section 49-14,102 of the NPADA provides in part that no public official or public employee or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a governmental body unless the contract is awarded through an open and public process which includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting governmental body of the proposals considered and the contract awarded.

I turn now to your specific questions.

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First Question: Does my business relationship with RTG Medical give rise to any potential conflicts of interest with my official duties as APA or to any other concerns under the NPADA?

Response: In the event that you are faced with taking an official action or making an official decision as Auditor of Public Accounts that could have a financial effect on RTG, you would have a conflict of interest. Actions or decisions by APA employees are generally attributable to you.

Second Question: Does contracting with an outside audit firm to carry out my office's financial examination work at DHHS effectively mitigate any potential conflict of interest or other concerns that might arise under the NPADA due to my business relationship with RTG Medical and my official duties as APA?

Response: Contracting with an outside audit firm does not eliminate a conflict of interest. However, it is the mandate of the statute to insure that conflicts of interest are publically disclosed and that, with limited exceptions, the public official with the conflict of interest steps out of the decision making process in the situation in which he or she has a conflict of interest. Having an outside audit firm perform audits and issue audit reports in situations in which you have a potential conflict of interest is a method by which you may remove yourself from taking an action or making a decision as contemplated by §49-1499.02(1)(b). The requirement to disclose a potential conflict of interest would remain. You may also wish to consult with the appropriate professional as to how, if at all, the current Government Auditing Standards promulgated by the Comptroller General of the United States may apply to your proposal to contract with an outside auditing firm.

Third Question: If potential conflicts of interest or other concerns under the NPADA continue to exist, what remedial action should I take to address them appropriately?

Response: In the event that you are faced with taking an official action or making an official decision which could result in a financial benefit or detriment to RTG, you should file a written disclosure of the situation with the Commission. The Commission will review the matter and determine if you do or do not have a conflict of interest. If the Commission determines that you do have a conflict of interest it will provide advice or direction as to how you may remove yourself from the situation in which you have a conflict of interest.

Fourth Question: Given the likelihood that RTG Medical will enter into future contracts with governmental entities, including possibly DHHS, what specific steps should I take to ensure that such agreements do not give rise to any potential conflicts of interest or other concerns under the NPADA?

Response: A public official who has an interest in a contract with his or her governmental entity has certain obligations under the NPADA. A State official with an interest in a contract with the State is subject to the provisions of §49-14,102 of the NPADA. As described above, you may not have an interest in a contract with State government unless: a) the contract is entered into through an open and public process; b) the process includes prior public notice; and c) there is subsequent availability for public inspection of the proposals considered and the contract awarded. Compliance is important. Section 49-14,103 provides that a contract entered into in violation of §49-14,102 is voidable by a court of proper jurisdiction.

It is therefore recommended that you consult with this office in the event that RTG considers a renewal of a current contract with the State or entry into new contract with the State. The Commission can examine the process so as to insure it is an open and public process as contemplated by the statute.

Further discussion as to these provisions of the Nebraska Political Accountability and Disclosure Act may be useful.

The Nebraska Political Accountability and Disclosure Act does not prohibit a public official or public employee from having a conflict of interest. Instead, it requires that conflicts be publicly disclosed and that they be properly addressed such that the public official or public employee with a conflict of interest is not part of the decision making process. The disclosure also provides the public with the opportunity to evaluate the actions of a public official or public employee.

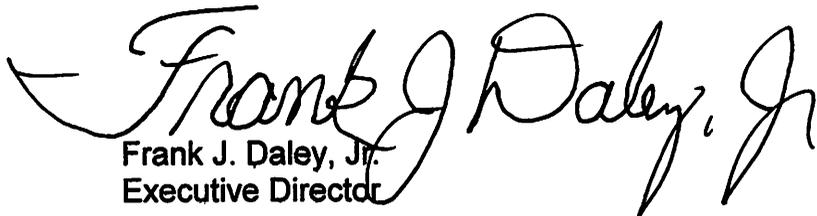
The NPADA does prohibit a State elected official from having an interest in a contract with the State either personally or through a business with which he or she is associated unless the contract is entered into through an open and public process. Again, this process provides the public with the opportunity to evaluate the actions and interests of a public official or public employee.

Finally, §49-14,101.01(1) generally provides that a public official or public employee may not use his or her public office or confidential information received through the holding of a public office for personal financial gain or that of a business with which he or she is associated. To this end, you must be scrupulous in avoiding the use of confidential information which may be at your disposal as Auditor for the benefit of you or RTG. Confidential information includes information which is not generally available to the public. You must also be scrupulous in avoiding words or actions that could lead someone to believe that special treatment of RTG will result in special treatment from the Auditor of Public Accounts.

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Please understand that this is a staff opinion only and not a formal Commission Advisory Opinion. If you have any questions, please feel free to contact me.

Sincerely,



Frank J. Daley, Jr.
Executive Director