

ORDINANCE NO. 02-589

AN ORDINANCE RELATING TO conflicts of interest; to change provisions relating to restrictions on contracts between municipal officers and governing bodies; to harmonize with state law; to repeal conflicting ordinances and sections; to provide for the publication of this ordinance in pamphlet form; and to provide an effective date.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FRIEND, NEBRASKA:

Section 1. Section 1-902 of the Municipal Code of Friend, Nebraska, is amended to read as follows:

CONFLICT OF INTEREST INVOLVING CONTRACTS.

(A) (1) BUSINESS ASSOCIATION means a business:

(a) In which the individual is a partner, limited liability company member, director, or officer; or

(b) In which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth \$1,000 or more at fair market value or which represents more than a 5% equity interest or is a stockholder of publicly traded stock worth \$10,000 or more at fair market value or which represents more than 10% equity interest.

An individual who occupies a confidential professional relationship protected by law shall be exempt from this definition. This definition shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker. (Neb. RS 49-1408)

(2) IMMEDIATE FAMILY means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes. (Neb. RS 49-1425)

(3) OFFICER means:

(a) A member of any board or commission of the municipality which spends and administers its own funds, who is dealing with a contract made by such board or commission; or

(b) Any elected municipal official.

Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(B) (1) Except as provided in Neb. RS 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the county attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

(2) The prohibition in this division (B) shall apply only when the officer or his or her parent, spouse, or child:

- (a) Has a business association with the business involved in the contract; or
- (b) Will receive a direct pecuniary fee or commission as a result of the contract.

(C) Division (B) of this section does not apply if the contract is an agenda item approved at a meeting of the governing body and the interested officer:

(1) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(2) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(3) Does not act for the governing body which is a party to the contract as to inspection or performance under the contract in which he or she has an interest.

(D) An officer who (1) has no business association with the business involved in the contract or (2) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(E) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than 5% of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(F) If an officer's parent, spouse, or child is an employee of the officer's governing body, the officer may vote on all issues of the contract which are generally applicable to (1) all employees or (2) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(G) Neb. RS 49-14,102 shall not apply to contracts covered by this section. (Neb. RS 49-14,103.01)

(H) (1) The person charged with keeping records for the governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (a) through (e) of this division (H)(1) about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to division (C) of this section. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

- (a) Names of the contracting parties;
- (b) Nature of the interest of the officer in question;
- (c) Date that the contract was approved by the governing body;
- (d) Amount of the contract; and

(e) Basic terms of the contract.

(2) The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this division (H) shall be available for public inspection during the normal working hours of the office in which it is kept. (Neb. RS 49-14,103.02)

(I) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to this section. The statement required to be filed by division (H) of this section shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for the governing body shall maintain a running account of amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to this section. (Neb. RS 49-14,103.03)

(J) Notwithstanding divisions (A) through (I) of this section, the governing body may prohibit contracts over a specific dollar amount in which an officer of the governing body may have an interest. (Neb. RS 49-14,103.05)

(K) The governing body may exempt from divisions (A) through (I) of this section, contracts involving \$100 or less in which an officer of such body may have an interest. (Neb. RS 49-14,103.06)

Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication in pamphlet form or posting as required by law.

Passed and approved this 4th day of December, 2002.

Roger C Hainer
Mayor



[Signature]
Clerk