

TO: Glenn Pauley
Wyoming State Director, Rural Development
United States Department of Agriculture

THROUGH: Christine Knecht
Chief of Staff
Rural Development
United States Department of Agriculture

FROM: Andrew Tobin
Alternate Designated Agency Ethics Official and Deputy Director
Office of Ethics
United States Department of Agriculture

ANDREW TOBIN Digitally signed by ANDREW TOBIN
Date: 2022.04.07 10:54:16 -04'00'

SUBJECT: Authorization for Participation in Particular Matters involving the State of Wyoming

Introduction:

This memo provides formal authorization for you to participate, as the Rural Development State Director for the State of Wyoming, in specific matters involving your most recent previous employer, the State of Wyoming (WY)¹ pursuant to the Standards of Ethical Conduct at 5 C.F.R. Section 2635.502(d). The impartiality rules impose a one-year cooling off period on all incoming new employees regarding particular matters involving their former employer. 5 C.F.R Section 2635.502(b)(1)(iv). However, the rules also provide a common-sense method for allowing employees to participate in such matters where the potential risk of an appearance of losing impartiality on balance is determined to be minimal and outweighed by the benefit to the public. In such situation, a neutral Ethics Official must issue a written authorization, in accordance with the Standards of Ethical Conduct (at 5 C.F.R. Section 2635.502(d)), which permits an employee to work with his or her former employer. Pursuant to the authority provided to me in Section 2635.502(d), and for the reasons detailed below, this memorandum constitutes formal authorization permitting you to work collaboratively, in your USDA position, with your former employer the State of Wyoming / WGFD.

Factual Background:

You were employed as an Outreach Specialist with WY from July 2008 through February 7, 2022. In that role, you:

- Developed partnerships with over 55 local and national businesses; maintained business relations and sponsorships for WY programs including Super Tag, Aquatic Invasive Species, and Brucellosis raffles; the Hunter Education Instructor recruitment program; and the Governor's 2020 Wildlife Conservation License Plate Challenge.
- Marketed the Wyoming Super Tag hunting license raffles generating \$6.2 million for wildlife conservation.
- Administered the WY Volunteer Program including policy development, public outreach, interdivisional coordination, software development, and database management.

¹ Mr. Pauley was specifically employed by the State of Wyoming Game and Fish Department (WGFD).

You were appointed the State Director for USDA Rural Development (RD) in Wyoming on February 14, 2022. In this position you are expected to meet with state officials, advocating RD's positions on issues of intergovernmental cooperation and mutual interest or involvement; as well as, create and maintain meaningful partnerships with the state. Given that these positional expectations involve your former employer and that you are currently under a one-year cooling off period (effective until February 7, 2023 based upon your separation date from the State of Wyoming) your current situation may cause a reasonable person with access to the relevant facts to question your impartiality in the conduct of your official duties in which WY is or represents a party.

The imposition of a cooling off period on interactions between you, as RD State Director, and your former employer, WY, would effectively render you unavailable for the position to which you were appointed and would present an unreasonable burden on Wyoming RD staffing. This outcome is not in the best interests of the RD, the State of Wyoming, or its citizenry.

Ethics Analysis: The Standards of Ethical Conduct impose a six-factor test for determining whether an authorization to participate is justified. Your situation meets all six factors.

An authorization to participate despite having a covered relationship² is appropriate only when the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. The Office of Ethics makes this determination in writing by weighing six factors, as established in the Standards of Ethical Conduct:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Below is my analysis, based upon the information you have provided to the Office of Ethics:

- (1) Nature of your Relationship with the WY Game and Fish Department (WGFD): You have confirmed, via your OGE-278 Public Financial Disclosure report, that you do not have any ongoing financial ties with WY other than defined benefit and deferred compensation (457) plan(s). Pursuant to 5 CFR 2640.201(c), these interests are exempted from consideration as potential conflicts of interest under 18 U.S.C. § 208(a)(1). While you, as a former state employee for almost 14 years, had a substantive relationship with WGFD, as their Outreach Specialist, this state unit's interest in matters involving rural

² An employee is deemed to have a "covered relationship" with, among others, "any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. 5 C.F.R. § 2635.502(b)(1)(iv) (underlining supplied).

development matters would be limited to providing comment/input on any large-scale Rural Development projects, particularly on public land, and their impact, if any, on Wyoming wildlife and conserving the associated habitat. The fact that WGFD is not a program participant or direct funding recipient reduces the potential appearance risks to the USDA of working with WY as a whole. Also, where another Wyoming state agency is a program participant any appearance risks are further reduced by RD's co-reporting structure, including review and decision-making of significant party by RD leadership in Washington, D.C., and by the fact that your primary role is to be the liaison for coordination between various levels of Wyoming state government and RD.

- (2) Effect of RD matters upon the Financial Interests of WGFD: While it is possible there may be future large RD development projects on public land (*for example, development of renewable energy infrastructure*) which WGFD would have an interest in providing comment (on the impact to wildlife and associated habitat) it would not likely involve this group's financial interests as a funding recipient. In addition, assuming there are any large-scale RD development projects on public land in which WGFD were a direct program participant, the national RD offices headquartered in Washington, DC, would also be involved in the approval process for those projects, as each RD program—RUS, RHS, RBS—has specific protocols and procedural safeguards.
- (3) & (4) The Role of the State Director and the sensitivity of the matters (factors three and four): Your role as State Director is largely to facilitate communications between all relevant parties and to lead RD's efforts in Wyoming to engage external stakeholders, both in the private sector as well as on all levels of state and local government. While these efforts are integral to your position, they are not, however, particularly "sensitive" as characterized by these regulations. You will not be leading any confidential investigations or audits of WY or WFGD as a RD program participant. In addition, while you're the RD State Director, you report directly to RD senior leadership in Washington, D.C. and would be required to discuss any such "sensitive" matters with RD's senior leadership seeking their concurrence and direction before being able to act. This should assuage concerns regarding unilateral action that appears biased in favor of your former employer.
- (5) Difficulty of reassignment of all matters involving the State of Wyoming: It would be unnecessarily burdensome to USDA RD to reassign all communications regarding potential, current, and future projects involving RD and WY. Your role as the State Director is one with a high level of public visibility. It is not reasonably possible to simply assign a neighboring state's RD State Director to the many matters in Wyoming that involve the state. It is similarly not possible (and not a prudent use of taxpayer money) to send a senior official on official travel from RD headquarters in Washington, DC to replace you in the many various meetings and projects where the state is also involved.
- (6) Adjustments to your duties to ensure public trust: The existing co-reporting structure of RD programs provides a sufficient safeguard such that no adjustments to your duties are required. As a long-standing structural safeguard, any significant "specific party matters" for RUS, RBS, or RHS programs will be conducted by RD (Wyoming) employees who also must report these matters to RD leadership in Washington, DC. This means that RFUS, RBS, or RHS officials will be reviewing these matters. As a result of RD's co-reporting structure, you as State Director, do not need to have final approval authority for RD projects where WY receives substantial financial benefit as a direct recipient. Your participation as the main point of contact for coordination between the various levels of government in Wyoming is key to the success of many economic development projects in WY, while the risk of public perception issues due to your prior employment relationship with WY are minimal and outweighed by the fact that the other party here is a state government acting as USDA's partner for the betterment of its citizens.

Conclusion

As USDA's Alternate Designated Agency Ethics Official, I have determined that your participation in those government matters where WY is involved as a stakeholder will not impose a significant appearance risk, because the State government is obligated to act for the benefit of its citizenry. As a result, a member of the public with knowledge of all the relevant factors would not question RD's ability to be impartial in the administration of RD programs. Although you have not participated in any matters involving WY as a State Director for Wyoming's Rural Development Office thus far, your years of Wyoming-specific expertise means that your future participation will be of substantial benefit for the State of Wyoming and for successfully implementing Rural Development's agenda throughout the state.

For the reasons detailed above, this memorandum constitutes the required written determination by me, as USDA's Alternate Designated Agency Ethics Official, authorizing your participation in those RD matters involving WY. This authorization is effective immediately and means that you may properly communicate with WY including former colleagues in your official role as RD State Director to Wyoming.

If you have any questions, please do not hesitate to contact me at andrew.tobin@oe.usda.gov or via telephone at (202) 720-2251.