

February 20, 2018

Honorable Sean D. Reyes
Attorney General
State of Utah
350 North State Street
Suite 230
Salt Lake City, UT 84114-2320

VIA EMAIL: UAG@Utah.gov

Dear Attorney General Reyes:

Campaign for Accountability respectfully requests that you investigate Utah State Representative Michael Noel (R-Kanab) for making false or deceptive statements, violating anti-nepotism rules, and failing to disclose conflicts of interest.

Background

Rep. Noel was appointed to the Board of Trustees of the Kane County Water Conservancy District (“KCWCD”) in 1992, stepping down to become its executive director in 1996.¹ Over the course of his legislative career, from 2003-present, Rep. Noel repeatedly has failed to disclose to the chief clerk of the House of Representatives his ownership in Noel Properties, LLC,² which owns land in Kane County worth approximately \$1.3 million.³

Further, on behalf of KCWCD, Rep. Noel has continually advocated for a proposal to develop the Lake Powell Pipeline (“LPP”), despite the fact that Johnson Canyon, where Rep. Noel owns a significant portion of the irrigated farmland, will uniquely benefit. Rep. Noel shepherded bills through the legislature promoting the LPP, including the LPP Development

¹ <http://www.kcwcd.com/about-us/staff/>.

² See Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2017, filed January 16, 2018, available at <https://le.utah.gov/house2/CofI/COFINOELME1.pdf>; Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2016, filed January 23, 2017, available at <https://le.utah.gov/house2/CofI/COFINOELME.pdf>; Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2015, filed December 16, 2015, available at <https://web.archive.org/web/20161222025123/http://le.utah.gov/house2/CofI/mnoel2.pdf>; Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2014, filed January 14, 2015, available at <http://le.utah.gov/house2/CofI/mnoel.pdf>; Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2010, filed December 20, 2011, available at <http://www.le.utah.gov/house2/CofI/noel.pdf>; Noel Properties, LLC, Articles of Incorporation, Utah Secretary of State, filed October 20, 2006; Noel Properties, LLC, Annual Report, Utah Secretary of State, filed September 30, 2017, available at <https://secure.utah.gov/besimage/search.html?entityNumber=6372427-0160>.

³ Property Summaries for Parcels 3-4.5-18-1; 3-4.5-20-1; 3-5-24-5; 4-5-6-2; K-16-22-ANNEX; 4-6-12-1; 3-5-13-7, Kane County, Utah, available at <https://eagleweb.kane.utah.gov/eaglesoftware/web/login.jsp>.

Act.⁴ He is a member of the LPP Management Committee, which oversees development of the LPP,⁵ and has publicly advocated for the LPP.⁶

Rep. Noel also told the LPP Committee that KCWCD's board of directors was "100% committed" to the LPP without knowing KCWCD's total cost.⁷ As it turned out, an assessment prepared for the Utah Board of Water Resources determined that the KCWCD does not need the LPP, finding existing and new groundwater supplies sufficient to meet all of KCWCD's water needs through 2060.⁸ In response, Rep. Noel asked the firm that produced the assessment to amend the report to project greater water needs.⁹ Notably, the assessment determined that one of the few areas in KCWCD's jurisdiction that might benefit from the LPP, was the "lower portions" of Johnson Canyon,¹⁰ exactly where Rep. Noel's land is located.¹¹

Yet, it does not appear that Rep. Noel informed KCWCD of his ownership interest in the property. In addition, in May 2009, KCWCD owed Rep. Noel at least \$4,000 for an easement across his property.¹² KCWCD also installed a water connection and the necessary line and hydrant for Rep. Noel's use.¹³

Rep. Noel engaged in other questionable actions as well. According to KCWCD's website and newsletter, his daughter, Jennifer Stewart¹⁴, serves as the group's executive secretary,¹⁵ and apparently has held this position for more than a decade.¹⁶

⁴ Utah House Natural Resources, Agriculture, and Environment Standing Committee, Meeting Minutes, January 25, 2006, available at <https://le.utah.gov/~2006/minutes/HNAE0125.htm>.

⁵ See <https://water.utah.gov/lakepowellpipeline/managementcommittee/default.asp>; <http://lpputah.org/lpp-management-committee/>.

⁶ Julie Applegate, Noel Tells Republican Women Thoughts on Lake Powell Pipeline, Monument Designations, *St. George News*, January 6, 2017, available at <http://www.stgeorgeutah.com/news/archive/2017/01/06/jla-noel-favors-pipeline-for-massive-growth-opposes-monument-designations/>.

⁷ LPP Management Committee, Meeting Minutes, September 11, 2008, available at <https://water.utah.gov/lakepowellpipeline/managementcommittee/Approved%20Minutes/MINUTES-LPP%209-11-08.pdf>.

⁸ Utah Department of Natural Resources, Utah Division of Water Resources, Lake Powell Pipeline Study Water Needs Assessment, Draft, prepared by MWH, March 2011, available at <http://www.riversimulator.org/Resources/Purveyors/LPPipeline/19DraftWaterNeedsAssessmentReport.pdf> "LPP Water Study", pg. ES-24.

⁹ KCWCD Board of Trustees, Meeting Minutes, October 11, 2007, available at <https://www.documentcloud.org/documents/4378332-CfA-Noel-Complaint-Oct-11-2007-Meeting-Minutes.html>.

¹⁰ LPP Water Study at 4-93.

¹¹ Preliminary Licensing Proposal, Lake Powell Pipeline, Utah Board of Water Resources, Federal Energy Regulatory Commission, Docket P-12966, Accession Number 20151203-4007, EZ_Fig_5_4_Major_Water_Uses_Map_11x17_Landsc_10_13_15.PDF, available at https://elibrary.ferc.gov/idmws/File_list.asp?document_id=14405464; *Supra* fn.3.

¹² KCWCD Board of Trustees, Meeting Minutes, May 14, 2009, available at <https://www.documentcloud.org/documents/4378336-CfA-Noel-Complaint-May-14-2009-Meeting-Minutes.html>.

¹³ *Id.*

¹⁴ See <http://www.legacy.com/obituaries/deseretnews/obituary.aspx?pid=177290360>.

¹⁵ See www.kcwcd.com/about-su/staff/; The newsletter describes Ms. Stewart as "on a contract to work as the executive secretary for KCWCD." *The KCWCD Pipeline*, Winter 2017, available at www.kcwcd.com/wp-content/uploads/2018/01/2018-Winter-Newsletter.pdf.

¹⁶ <https://web.archive.org/web/20060626212833/http://www.kcwcd.com:80/html/contact.html>.

Ms. Stewart's role with KCWCD has been recognized as a problem. Indeed, in 2017, at a meeting of KCWCD's Board of Trustees, Rep. Noel "discussed with the board the complaint letter sent to the state by an individual who felt we were violating the nepotism law."¹⁷ In response, Rep. Noel decided to turn Ms. Stewart into "a contract employee working for him."¹⁸

Notably, when questioned about Ms. Stewart's contract, KCWCD wrote an email stating it "does not have a copy of any contracts with Michael Noel or any Business entity he or his immediate family have interest in. Also we do not have an anti-nepotism policy."¹⁹ Nevertheless, KCWCD does have a record of paying Ms. Stewart \$6,216 in 2017.²⁰

In addition, in November 2015, on behalf of KCWCD, Rep. Noel held a surplus sale on water hauling and 4x4 trucks, selling a Dodge truck to his son-in-law, Trevor Stewart, for use at Rep. Noel's Flood Canyon Ranch.²¹ In July 2017, Rep. Noel persuaded the Board to pay at least \$4,000 to repair alleged problems with the same truck, including replacing its engine.²²

Violations of Utah Law

Filing Inaccurate Financial Disclosure Forms and Failing to Reveal Conflicts of Interest

As you know, Utah law requires state representatives to file financial disclosure forms identifying "each entity in which [the legislator] is an owner or officer."²³ The disclosure must include the entity name, a description of the business and the representative's position in the entity.²⁴ Further, the form specifically provides that the person signing the form attests that the information "is true and accurate to the best of the [representative's] knowledge."²⁵ Nevertheless, on the forms he submitted from 2015-2018, Rep. Noel failed to identify Noel Properties, LLC.²⁶

Further, intentionally failing to include information about Noel Properties on his disclosure forms appears to constitute a false statement. Under Utah law, a person commits a

¹⁷ KCWCD, Board of Trustees, Meeting Minutes, July 20, 2017, available at <https://www.documentcloud.org/documents/4378351-CfA-Noel-Complaint-July-20-2017-Meeting-Minutes.html>.

¹⁸ *Id.*

¹⁹ Email from KCWCD Office Manager Amanda Buhler to Lori Anderson, November 16, 2017, available at <https://www.documentcloud.org/documents/4378324-CfA-Noel-Complaint-Nov-16-2017-Email.html>; Email from KCWCD Office Manager Amanda Buhler to Nova Dubovik, *et. al.*, November 8, 2017, available at <https://www.documentcloud.org/documents/4378317-CfA-Noel-Complaint-Nov-8-2017-Email.html>.

²⁰ KCWCD Table of Salaries, 2017.

²¹ KCWCD Meeting Minutes, November 12, 2015, available at <https://www.documentcloud.org/documents/4378337-CfA-Noel-Complaint-Nov-12-2015-Meeting-Minutes.html>; KCWCD Meeting Minutes, June 8, 2017, available at <https://www.documentcloud.org/documents/4378346-CfA-Noel-Complaint-June-8-2017-Meeting-Minutes.html>; Rep. Mike Noel, Conflict of Interest & Financial Disclosure Form for Calendar Year 2017, filed January 16, 2018.

²² KCWCD Meeting Minutes, July 20, 2017, available at <https://www.documentcloud.org/documents/4378351-CfA-Noel-Complaint-July-20-2017-Meeting-Minutes.html>.

²³ Utah Code Ann. § 20a-11-1604(3)(b) and (d).

²⁴ Utah Code Ann. § 20a-11-1604(4)(d).

²⁵ Utah Code Ann. § 20a-11-1604(4)(n).

²⁶ *See supra* fn. 2.

misdemeanor if he “makes a written false statement which he does not believe to be true on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable.”²⁷

Similarly, it is also a misdemeanor to knowingly make a false entry in anything “belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government,” or to intentionally conceal or otherwise impair the verity of records, knowing that concealment is unlawful.²⁸

Utah law also requires legislators to orally disclose conflicts of interest prior to votes that might impact them.²⁹ It appears there have been at least three votes related to the LPP over the last 12 years,³⁰ and, on information and belief, it does not appear Rep. Noel revealed his ownership interest in the Johnson Canyon properties and the potential conflict of interest that interest posed.³¹ Intentionally failing to disclose such information on his financial disclosure forms and failing to reveal the conflict prior to a vote are both misdemeanors.³²

When recently confronted about his failure to disclose his interest, Rep. Noel claimed the property was disclosed because he files taxes every year on the land.³³ He did not dispute, however, that he had failed to list the property on his financial disclosure forms, nor did he state that he had otherwise publicly disclosed his ownership interest. As you are no doubt aware, individual tax returns – even of elected state representatives – are not public documents. The fact that Rep. Noel filed accurate tax returns does not relieve him of other disclosure obligations.

Therefore, by repeatedly failing to disclose his ownership of Noel Properties, and by failing to disclose that ownership and resulting conflicts of interest before votes impacting his property interest, Rep. Noel appears to have committed numerous violations of Utah law.

²⁷ Utah Code § 76-8-504(1).

²⁸ Utah Code § 76-8-511(1), (3).

²⁹ Utah Code § 20(a)-11-1604(1).

³⁰ Utah House Roll Call votes on S.B. 80 (2016); S.B. 281 (2015); and S.B. 27 (2006)

³¹ Neither the KCWCD website nor any other Utah government website has conflict of interest statements for KCWCD trustees or staff, and KCWCD did not produce any conflict of interest forms in response to a September 11, 2017 GRAMA request.

³² Utah Code § 20(a)-11-1604(11) and (12). While misdemeanors generally carry only a two-year statute of limitations, Utah Code § 76-1-302(1)(b), if Rep. Noel conspired keep this information secret from the House, deliberately omitting it from his financial disclosure forms year-after-year and failing to reveal the conflict before votes, he may have committed conspiracy to violate the disclosure rules. And, if that is correct, his failure to reveal the information on his 2017 forms could constitute an overt act in a continuing offense, thereby tolling the limitations period.

³³ Taylor W. Anderson, Rep. Mike Noel's Company Owned Land Inside Grand Staircase-Escalante While he Fought Against the Monument, *Salt Lake Tribune*, February 14, 2018, available at <https://www.sltrib.com/news/politics/2018/02/14/it-looks-as-if-rep-mike-noels-company-owned-land-inside-grand-staircase-escalante-while-he-fought-against-the-monument/>.

Failure to Disclose Conflicts of Interest and Misuse of Public Money

Utah law requires public employees who own a substantial interest in any business entity subject to the regulation of the agency in which the employee works to disclose any position held and the nature and value of the employee's interest.³⁴ The law requires disclosures by sworn statement made in writing,³⁵ and prohibits employees from receiving any "compensation in respect to any transaction between the state or any of its agencies and any business entity" as to which the employee "is also an officer, director," or "owns a substantial interest, unless disclosure has been made."³⁶ It is a felony to receive compensation of more than \$1,000,³⁷ and a knowing and willful violation requires a public official be removed from office.³⁸

In his role as KCWCD executive director and as a legislator, Rep. Noel has advocated for the development of the LPP, which would provide him unique financial benefits, despite the fact that the LPP actually may be a bad deal for KCWCD. Further, again through his role as executive director, Rep. Noel has been able to have KCWCD pay him \$4,000 for an easement across his land, and provide a hydrant and water line for his use. If Rep. Noel did not reveal his interests in writing, he may have received compensation in violation of the law.

In addition, Rep. Noel auctioned KCWCD's vehicles, allowing his son-in-law to purchase a truck for use on Rep. Noel's property. Then, almost two years later, when the truck required repair, Rep. Noel went back to KCWCD to recoup about \$4,000 to defray the cost of those repairs.³⁹

It is a felony for any public officer charged with the receipt, safekeeping, transfer, disbursement or use of public money to appropriate any portion of that money to his own use or benefit or the use or benefit of another.⁴⁰ Further, any public officer – regardless of whether or not that officer has a fiduciary relationship with public money – who makes a profit from or out of public money is guilty of a felony.⁴¹ Moreover, any officer who violates these provision is disqualified from holding public office.⁴²

Whether or not Rep. Noel's sale of the truck to his son-in-law – a transaction that seems to have accrued to the benefit of Rep. Noel personally as well as to that of his son – violates the law, the \$4,000 cash payment appears to fall squarely within the law's prohibitions. In addition, the sale of the truck may, in itself have violated another law that requires state agencies (which

³⁴ Utah Code § 67-16-1.

³⁵ Utah Code § 67-16-7(2)(b).

³⁶ Utah Code § 67-16-(8)(1).

³⁷ Utah Code § 67-16-12(2).

³⁸ Utah Code § 67-16-14.

³⁹ KCWCD Meeting Minutes, July 20, 2017, available at <https://www.documentcloud.org/documents/4378351-CfA-Noel-Complaint-July-20-2017-Meeting-Minutes.html>.

⁴⁰ Utah Code § 76-9-402(1)(a), (2).

⁴¹ Utah Code § 76-8-404.

⁴² *Id.*

would include the KCWCD) to auction and/or sell vehicles through the state's Division of Purchasing and General Services.⁴³

Violations of Anti-Nepotism Statute

Utah law essentially bars a public officer from supervising a relative and an employee may not accept employment from a relative.⁴⁴ Each day a relative works for and is paid from public funds constitutes a separate violation.⁴⁵ Violations are criminal misdemeanors.⁴⁶

By hiring and supervising his daughter at KCWCD for more than a year Rep. Noel appears to have committed **a minimum of 365 counts** of anti-nepotism violations.

Conclusion

Rep. Noel appears to have committed numerous violations of Utah conflict of interest and anti-nepotism laws. Further, relying on his credibility and authority as a Utah state legislator and KCWCD board member, Rep. Noel appears to have persuaded other local officials to make decisions that accrued to his personal financial interest, but that may not be in the interest of Utah taxpayers. The Attorney General's office has named white collar fraud and government ethics as top priorities. Therefore, your office should immediately investigate whether Rep. Noel has abused his government position, and if so, hold him accountable.

Thank you for your prompt attention to this matter.

Sincerely,



Daniel E. Stevens
Executive Director

Encls.

cc: Hon. John Dougall, State Auditor

⁴³ Utah Code § 63A-2-401(3)(a).

⁴⁴ Utah Code § 52-3-1(b), (c).

⁴⁵ Utah Code § 52-3-2.

⁴⁶ Utah Code § 52-3-3.