ATTESTATION REPORT
OF THE
NEBRASKA BOARD OF EDUCATIONAL
LANDS AND FUNDS

JULY 1, 2017, THROUGH JUNE 30, 2018

Issued on October 9, 2018

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TABLE OF CONTENTS

BACKGROUND

Nebraska became a State on March 1, 1867, pursuant to the Enabling Act of Congress passed on April 19, 1864. As a condition of statehood, the Federal government set aside land sections 16 and 36 in each township, placing those parcels in trust for the support of Nebraska's common (K-12 public) schools. In 1875, the Nebraska Board of Educational Lands and Funds (Board) was created under Article VII, § 6, of the Nebraska Constitution and was vested with the "general management of all lands set apart for educational purposes."

Carrying out the responsibility of managing nearly 1.26 million acres of trust property, the Board serves as both land owner and land manager. In its capacity as land owner, the Board makes substantial expenditures for the maintenance, conservation, and improvement of the land under its care. In its capacity as land manager, the Board issues and services surface leases, primarily for agricultural uses, and subsurface leases permitting exploration for and extraction of oil and gas, minerals, and other natural resources. The income derived from these leases is used for the costs of managing the land and is also distributed to school districts. Mineral royalties are deposited in the Permanent School Fund.

The Board also houses the office of the State Surveyor. The State Surveyor provides support services to the Board in the area of mapping and analysis of areas and settles surveying disputes between Nebraska landowners and surveyors. The State Surveyor also keeps a repository of land surveys carried out in the State.

KEY OFFICIALS AND AGENCY CONTACT INFORMATION

Nebraska Board of Educational Lands and Funds Board Members

Name	Title	Term Ending
Jim Hain	Chairperson	October 1, 2018
Glenn Wilson Jr.	Vice-Chairperson	October 1, 2019
Jerald Meyer	Member	October 1, 2021
Robert Kobza	Member	October 1, 2022
Charles Ward	Member	October 1, 2020

Nebraska Board of Educational Lands and Funds Executive Management

Name	Title
Kelly Sudbeck	CEO/Executive Secretary
Casey Sherlock	State Surveyor
Cindy Kehling	Executive Assistant
Roxanne Suesz	Executive Assistant
Cort Dewing	Director of Field Operations

Nebraska Board of Educational Lands and Funds
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Lincoln, NE 68505
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SUMMARY OF COMMENTS

During our examination of the Nebraska Board of Educational Lands and Funds (Board), we noted certain deficiencies and other operational matters that are presented here. The following comments are required to be reported in accordance with *Government Auditing Standards*: Comment #2, "Land Not Reported as an Investment," and #3, "University Land Coding," which are considered to be significant deficiencies, and Comment #1, "Outside Bank Account," which is considered to be material noncompliance and a material weakness.

These comments and recommendations are intended to improve the internal control over financial reporting or result in operational efficiencies in the following areas:

1. ***Outside Bank Account:*** The Board had an outside bank account that was not authorized by the State Treasurer, not secured by pledged collateral, and not properly reported for inclusion in the State's financial statements. Additionally, the Board's use of the account to hold proceeds from the sale of educational trust land and to disburse funds for the purchase of new property did not appear to be in accordance with State statute. The balance in the account as of June 30, 2018, was $2,296,257.

2. ***Land Not Reported as an Investment:*** State-owned land managed by the Board was not valued at fair market value on the State's accounting system, as required by the Government Accounting Standards Board (GASB). Nor was it reported to the Department of Administrative Services (DAS) for inclusion in the State's financial statements. The fair market value of land held by the Board as of June 30, 2018, was $1,287,190,886. Additionally, there was an unsupported $54,269,195 adjustment to reduce the fair market value for tenant-owned improvements.

3. ***University Land Coding:*** The Board was recording rent receipts as State revenue, and payments for property taxes and maintenance as a State expenditure, rather than a liability, for the University land that it was managing. Consequently, during the fiscal year ended June 30, 2018, revenues were overstated by $747,875, expenditures were overstated by $240,515, a liability due to the University was understated by $113,644, and transfers out were overstated by $506,082.

4. ***Lack of Controls Over Receipts – State Surveyor:*** The State Surveyor Division of the Board did not have an adequate segregation of duties over receipts. Furthermore, a listing of monies received was not created at the time the mail was opened.

5. ***Payroll Issues:*** Several issues were noted during payroll testing, including a lack of I-9 and W-4 forms, inadequate documentation to support salary amounts being split between two different Board funds for two employees, and one employee being able to make changes to her own payroll withholdings without a secondary review.

6. ***Inadequate Support for Mileage:*** The Board did not have procedures to review mileage noted on the field representatives' activity logs to ensure travel was appropriate. For 7 of 11 trips reviewed, mileage could not be recalculated based upon locations noted.

7. ***Capital Asset Issues:*** We noted a lack of segregation of duties over fixed assets. No documented review of fixed asset reports was completed by a separate individual. Also during testing, it was noted that one asset was marked for surplus in 2015 but has still not been removed from the capital asset listing. Finally, for one asset tested, the acquisition date was incorrectly entered.

SUMMARY OF COMMENTS
(Concluded)

8. ***Allocation of Costs – General Fund:*** The Board did not have on file documentation to support the $65,483 of expenditures that was reimbursed to the State General Fund for salaries and miscellaneous expenditures related to school lands. Additionally, the Board's coding of these allocations resulted in an overstatement of $65,483 in expenditures and revenues.

9. ***Deposit Timeliness:*** For 3 of 10 bonus bid receipts tested, the funds were not deposited within the specific five-day time frame authorized by the State Treasurer. One receipt for $1,500 was deposited within seven business days, and two receipts, totaling $109,500, were deposited within six business days.

10. ***Contracts Not on the State's Accounting System or the State's Contracts Database:*** Four service contract payments were not properly recorded in the State's accounting system, and 27 contracts were not recorded in the State's contract database, as required by State statute.

More detailed information on the above items is provided hereinafter. It should be noted that this report is critical in nature, containing only our comments and recommendations on the areas noted for improvement and does not include our observations on any accounting strengths of the Board.

Draft copies of this report were furnished to the Board to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this report. Responses that indicates corrective action has been taken were not verified at this time, but they will be verified in the next examination.

COMMENTS AND RECOMMENDATIONS

1. Outside Bank Account

As mentioned in the Background section of this report, the Nebraska Board of Educational Lands and Funds (Board) manages all State lands held in trust for educational purposes. As part of this management function, during the fiscal year ended June 30, 2018, the Board sold land and, with the sale proceeds, purchased new property to be added to the educational land trust.

The Board used a local title company to handle the funds being exchanged during these transactions. Such funds were deposited into, as well as disbursed from, an outside bank account held by the Board under the State's Federal Tax Identification Number (FTIN). The balance in this account at June 30, 2018, was $2,296,257.

A. Lack of Authorization to Hold an Outside Bank Account

The Board's outside bank account was not authorized by the State Treasurer, as required by State statute.

Neb. Rev. Stat. § 77-2301(1) (Reissue 2009) provides the following:

> *The State Treasurer shall deposit, and at all times keep on deposit for safekeeping, in the state or national banks, or some of them doing business in this state and of approved standing and responsibility, the amount of money in his or her hands belonging to the several current funds in the state treasury. Any bank may apply for the privilege of keeping on deposit such funds or some part thereof.*

Furthermore Neb. Rev. Stat. § 77-2309 (Reissue 2009) states the following:

> *It is made the duty of the State Treasurer to use all reasonable and proper means to secure to the state the best terms for the depositing of the money belonging to the state, consistent with the safekeeping and prompt payment of the funds of the state when demanded.*

Regarding these two statutes and the authority of the State Treasurer to administer public funds, including opening a bank account to hold those monies, the Attorney General has explained the following:

> *We are unaware, generally, of any other statutes which specifically give other state officials or state agencies the authority to deposit the state's funds in a bank. As a result, to the extent that "establishing a banking relationship" in your question is synonymous with depositing funds in the state treasury in a bank, we believe that your office [the State Treasurer] is the only agency with such authority.*

Op. Att'y Gen. No. 98006 (Jan. 21, 1998). As noted in the Background section of this report, the decision in Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977), which recognizes the constitutional authority of the Board of Regents to manage the "general government" of the University of Nebraska relatively free from legislative interference, has been applied also to the Board, another constitutional entity. See Op. Att'y Gen. No. 250 (April 7, 1982).

In discussing the general autonomy ensured to certain constitutional entities under Board of Regents v. Exon, however, the Attorney General has offered the following caveat:

> *First of all, while Exon provides that the "general government" of the University must remain vested in the Board of Regents, it does not state that all statutes which pertain to state government have no application to the University. . . . As a result, it seems to us that statutes which pertain generally to state agencies and which do not purport to direct the Board of Regents as to matters which are central to the University's educational function or its "government," can have application to the University, even under Exon.*

COMMENTS AND RECOMMENDATIONS
(Continued)

1. Outside Bank Account (Continued)

Op. Att'y Gen. No. 98006 (Jan. 21, 1998). Such being the case, it is only reasonable to assume that the same caveat applies also to the Board's autonomous exercise of its constitutional authority under Board of Regents v. Exon.

Furthermore, the Attorney General has noted that the State Treasurer has certain inherent constitutional powers, including the authority to establish banking relationships for the State, which cannot be superseded by either statute or the actions of other constitutional officers or entities, as follows:

> *[T]he office of the Nebraska State Treasurer has existed as a constitutional and Executive Branch office since the first Nebraska Constitution was approved by the people of the State in 1866. Neb. Const. of 1866, art. III, § 1 (1867). Therefore, the authority of the University Board of Regents under Art. VII, § 10 of the Nebraska Constitution must be considered in light of Art. IV, § 1 and the fact that the Nebraska Constitution also contemplates the existence of and duties for the office of State Treasurer.*
>
> *This office has indicated in previous opinions that constitutional officers such as the State Treasurer have certain core functions and inherent constitutional authority which cannot be removed by legislative enactment. Op. Att'y Gen. No. 93012 (March 4, 1993); 1969-70 Rep. Att'y Gen. 164 (Opinion No. 110, dated May 5, 1970). Our research discloses that, since the inception of statehood in Nebraska, the State Treasurer has had the duty to receive and keep all money of the State not expressly required to be received and kept by some other officer. Neb. Rev. Stat. § 84-602(1) (1994); Neb. Rev. Stat. 1866, c. 4, § 18. Moreover, since 1891, the State Treasurer has had authority to deposit the funds of the State in his keeping in state and national banks. Neb. Rev. Stat. § 77-2301 (1996), 1891 Neb. Laws, c. 50, § 1, p. 347. It is also generally accepted that the Treasurer of a state has, by law, the custody of the monies of the State. 81A C.J.S. States § 135. Based upon those historical duties of the State Treasurer, it seems to us that the core functions of that office would clearly include maintaining custody of state funds. Arguably, those core functions would also include general supervision of State's relationships with state and national banks.*
>
> *Since Art. VII, § 10 of the Nebraska Constitution must be read together with Art. IV, § 1, and since the core functions of the State Treasurer seem to include those matters enumerated above, we believe that the general government of the University vested in the Board of Regents under the Nebraska Constitution may only be exercised in such a way as to preserve the Treasurer's general authority over the custody of state funds and the supervision of the State's relationships with state and national banks.*

Id. Consequently, opening a bank account under the State's FTIN for the purpose of holding public monies falls within the exclusive purview of the State Treasurer.

Taking such action without the proper authorization not only intrudes impermissibly upon the inherent constitutional authority of the State Treasurer but also increases the risk for loss or misuse of State funds.

Moreover, the only authorized signers on the Board's outside bank account were members of the title company's staff; no one from the Board was listed on the account. This increases even further the risk for loss or misuse of State funds.

> We recommend the Board work with the State Treasurer to address concerns raised herein regarding the underlying propriety of the outside bank account.

Board Response: During the course of this audit, the Board received a letter from the Nebraska State Treasurer demanding that the Board close its escrow account as soon as possible, and transfer those funds into the custody of the State Treasurer. The Board, as argued below [see ***Exhibit E*** *for entire Board*

COMMENTS AND RECOMMENDATIONS
(Continued)

1. Outside Bank Account (Continued)

response], disagrees with the determination of the Auditor and Treasurer. Notwithstanding this; however, the Board immediately applied for an escrow exchange account, and received the approval of the Department of Administrative Services, State Accounting, and the Treasurer. The funds are now in the custody of the Treasurer.

See **Exhibit E** for complete Board Response.

APA Response: The Board took corrective action by moving the account to the State Treasurer.

B. Use of the Account and Noncompliance with State Statute

Per discussion with the Board, the outside bank account at issue was used both to hold proceeds from the sale of educational trust land and to disburse funds for the purchase of new property to be added to the educational land trust. Using this outside bank account does not appear to be in accordance with Neb. Rev. Stat. § 72-259 (Reissue 2009), which states, in relevant part, the following:

> *(1) The Board of Educational Lands and Funds shall deposit the proceeds of the sales of educational lands with the State Treasurer for the benefit of the various funds as provided in this section.*
>
> *(2) The proceeds of the sales of common school and saline educational lands shall be deposited with the State Treasurer for the benefit of the permanent school fund of the state.*

Per the above statutory language, funds from the sale of educational lands must be deposited with the State Treasurer for the appropriate distribution. However, the Board deposited these funds into the outside bank account to be used for the purchase of more land. When asked about this activity, the Board responded that the sales and subsequent purchases of land were actually "exchanges" under Neb. Rev. Stat. § 72-253(2) (Reissue 2009), which states, in relevant part, the following:

> *The Board of Educational Lands and Funds is authorized, upon the written approval of the Governor, to enter into agreements with individuals for the exchange of any state educational lands for other lands of equal areas or value.*

According to the Board, State statute does not define the word "exchange" for purposes § 72-253(2). Thus, the Board looked elsewhere for an appropriate definition, finally deciding upon language found in 26 U.S.C. § 1031. That Federal provision permits a taxpayer to use the proceeds from the sale of one property to purchase another tract of land. As long as certain requirements are met, those separate transactions can be classified as a single "like-kind exchange," and the recognition of capital gains and related Federal income tax liability may be deferred.

Conflating a land transaction authorized under § 72-253(2) with a "like-kind exchange" under 26 U.S.C. § 1031 is, to say the least, questionable. To start, the Nebraska Supreme Court has said the following about interpreting statutory language:

> *In the absence of anything indicating to the contrary, statutory language is to be given its <u>plain and ordinary meaning</u>, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.*

1. Outside Bank Account (Continued)

(Emphasis added.) Payless Bldg. Ctr. v. Wilmoth, 254 Neb. 998, 1000, 581 N.W.2d 420, 423 (1998). The Court has also said the following:

> *Generally speaking, a statute should be construed so that an ordinary person reading it would get from it the usual accepted meaning. Rules of interpretation are resorted to for the purpose of resolving an ambiguity, not of creating it.*

(Emphasis added.) State ex rel. Finigan v. Norfolk Live Stock Sales Co., 178 Neb. 87, 90, 132 N.W.2d 302, 304 (1964). Additionally, the Court has said this:

> *The words and terms of a constitutional provision are to be interpreted and understood in their most natural and obvious meaning.*

(Emphasis added.) State v. City Betterment Corp., 197 Neb. 575, 582-583, 250 N.W.2d 601, 605 (1977).

Looking to 26 U.S.C. § 1031 to define an "exchange" permitted by § 72-253(2) is hardly using the "plain and ordinary," "usual accepted," or "most natural and obvious" meaning of the word. This is emphasized by the fact that the Federal provisions serves as a tax deferment mechanism, and the Board is a tax-exempt governmental entity.

Rather, the online Cambridge Dictionary defines the word "exchange" as "to change something for something else of a similar value or type" or "the act of giving something to someone and getting something else that is similar."[1] It also defines "sell" as "to give a thing or perform a service in exchange for money."[2]

Based upon these commonly accepted definitions, which are fairly representative of the average person's understanding of these words, there is nothing in the relevant statutory language that allows the meaning of "proceeds of the sales" in § 72-259 to be anything other than giving those lands for money, and "the exchange of any state educational lands for other lands of equal areas or value" in § 72-253(2) to mean anything other than trading land for land.

During the fiscal year ended June 30, 2018, the Board entered into seven transactions to sell land for money. The total received for these seven transactions was $7,387,339, less associated fees of $138,830, for a net amount of $7,248,509. This amount was not deposited into the permanent school fund, as required by § 72-259. Instead these funds were used to purchase more land. The Board purchased a total amount of $6,439,052 in land, plus fees of $7,414, during the fiscal year ended June 30, 2018.

Also during fiscal year ended June 30, 2018, the Board entered into one transaction to exchange land parcels with another party but also paid the other party funds, as the values of the parcels were not equal. For this transaction, the Board exchanged 240 acres with an appraised value of $532,000 and paid $56,000 for a piece of land that was 164.25 acres with an appraised value of $953,000. Per § 72-253, an exchange of State educational lands is allowed if the other lands being received are "of equal areas or value." This exchange was not of equal acreage or value, as the Board was required to pay the additional $56,000 to complete the exchange.

[1] https://dictionary.cambridge.org/us/dictionary/english/exchange.
[2] https://dictionary.cambridge.org/us/dictionary/english/sell.

COMMENTS AND RECOMMENDATIONS
(Continued)

1. <u>Outside Bank Account</u> (Continued)

A good internal control plan requires procedures to ensure that monies received from the sale of educational trust lands are handled in accordance with State statute. Those same procedures should ensure that land exchanges are similarly carried out in compliance with statute. Without such procedures, there is an increased risk for not only the loss or misuse of public funds but also noncompliance with State law.

> We recommend the Board implement procedures to ensure proceeds from the sale of land are handled in strict accordance with State statute. Those same procedures should ensure that land exchanges are similarly carried out in compliance with statute.

Board Response: The Board uses the commonly accepted 'term of art' definition of "exchange" found in Federal law when construing its statute, and as a result, reasonably achieves and effects the statute's purpose rather than defeating it, has avoided an anomalous, unusual or absurd result, and avoids a Constitutional violation by preserving its fiduciary duty to the School Land Trust.

See **Exhibit E** for complete Board Response.

APA Response: As noted in the report comment, the Nebraska Supreme Court has said that "statutory language is to be given its plain and ordinary meaning." Guidance from the Attorney General or legislative action to clarify the relevant provisions of law could resolve this concern.

<u>C. Balance Not Secured by Pledged Collateral</u>

The Board's outside bank account, with a balance as high as $7,566,839 during the fiscal year ended June 30, 2018, was not adequately collateralized, as required by Neb. Rev. Stat. § 77-2395(1) (Reissue 2009). That statute provides, in relevant part, the following:

> *[T]he custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.*

After taking into account the Federal Deposit Insurance Corporation (FDIC) limit of $250,000, the Board was lacking $7,463,176 in collateral in order to be in compliance with the above statutory requirement.

Any funds held by a financial institution, whether under the control of the State or otherwise, are at greater risk of loss when the amounts in excess of FDIC coverage are not properly secured. When State funds are involved, moreover, failure to ensure proper collateralization contravenes State statute.

> We recommend the Board ensure funds held outside of the State Treasurer are properly collateralized in accordance with State statute.

Board Response: The escrow account was in the custody of one of the largest title companies in Lincoln, Nebraska, which is underwritten by the largest title insurer in the United States. Both the local company, with its errors and omissions insurance policy, and the national underwriter, were fully bonded and insured, and would have been liable to the Board for loss caused by any insufficient collateralization of the account. As stated earlier, this account has already been transferred to the Treasurer's office.

COMMENTS AND RECOMMENDATIONS
(Continued)

1. <u>Outside Bank Account</u> (Concluded)

See **Exhibit E** for complete Board Response.

APA Response: The bank account has been transferred into the custody of the State Treasurer.

<u>D. Account Balance Not Properly Reported for Inclusion in the State's Financial Statements</u>

The Board did not track the balance or activity in the outside bank account in the State's accounting system, nor did it report this information to the Department of Administrative Services (DAS) for inclusion in the State's Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2017. This resulted in cash being understated by $1,554,961 for the June 30, 2017, financial statements.

A good internal control plan requires procedures to ensure that all Board bank activity and balances are reported to DAS for accurate financial statement representation. Without such procedures, there is an increased risk that the State's CAFR will be materially misstated.

> We recommend the Board work with DAS to ensure the outside bank account activity and balance are included in both the State's accounting system and the State's CAFR.

<u>E. Fees Not Supported</u>

During review of the bank activity, it was noted that $690 in fees paid were unsupported. The title company, that the Board used to handle the funds being exchanged in the account, charged the Board $115 per transaction. This fee amount was not documented in an agreement or closing statement.

A good internal control plan requires procedures to ensure that all fees paid are properly supported. Without such procedures, there is an increased risk of improper payments or use of State funds.

> We recommend that proper documentation be on file to support fees paid.

Board Response: The account is no longer in the title company's possession, but the title company may perform closings for the Board in the future, and all fees will be documented on the closing statements in each transaction. The charges were customary to the industry and typical for the title company. No set fee was documented since the role of the title company in each transaction frequently differed, and often required work after the closing statements were finalized.

See **Exhibit E** for complete Board Response.

2. <u>Land Not Reported as an Investment</u>

During testing, the Auditor of Public Accounts (APA) noted that the State-owned land managed by the Board for educational purposes was not valued at fair market value on the State's accounting system, as required by the Government Accounting Standards Board (GASB) Codification section I50, Investments, nor was it reported to DAS for inclusion in the State of Nebraska's CAFR. The requirement to report land held for investment purposes at fair market value was to be implemented starting with the fiscal year ended June 30, 2016.

COMMENTS AND RECOMMENDATIONS
(Continued)

2. Land Not Reported as an Investment (Continued)

The fair market value of the land held by the Board as of June 30, 2018, was $1,287,190,886. There was an adjustment for $54,269,195 to reduce the fair market value for tenant-owned improvements, as these improvements were originally included in the valuation but were for items not owned by the Board. The Board did not have support on file to document how the assumptions for the underlying adjustment to reduce the land value were determined. Additionally, during testing of the fair market valuation calculation, the APA found an error that understated the value by $541,704, which the Board adjusted once brought to its attention.

GASB Codification section I50, Investments, paragraph .108, states the following:

> *[I]nvestments should be measured at fair value . . . . Examples of investments that should be measured at fair value include investments in the following:*
>
> > *f. Land and other real estate held as investments by endowments (including permanent and term endowments) or permanent funds.*

Good internal control requires procedures to ensure the State's accounting system reflects accurately fair market land valuations in accordance with GASB, and the value is properly documented. Without such procedures, there is an increased risk that amounts reported in the CAFR will be materially misstated and not in compliance with GASB.

> We recommend the Board ensure the fair market value of land owned is reported to DAS for inclusion in the CAFR, in accordance with GASB. We also recommend the Board ensure the calculation to reduce tenant-owned improvements from the fair market value is properly supported. Finally, we recommend the Board strengthen procedures to ensure the land fair value calculation is accurate.

Board Response: The Board's land was not reported as an investment to DAS because the regulation requiring the report is new. The Board was not advised of the recent change to this regulation, and has never before been required to report the value of its property on the State's accounting system. The Board has already met with DAS, and has begun the process of reporting the value of the Board's land onto the State's accounting system.

The value of the adjustments the Board makes to reduce the fair market value of its property to account for lessee owned improvements is obtained from experts at the University of Nebraska – Lincoln. The assumptions used to determine the amount of the adjustment were created by Professors at the University with specialized knowledge of the issue, and who have devoted considerable research and time into creating the assumptions, and as a result, the value of the adjustments. It is the Board's opinion that relying upon experts at the University is reasonable and adequate for this purpose.

APA Response: The tenant-owned improvements of $54,269,195 were calculated using the following:

- **The fair market value of pasture land multiplied by 5 percent, plus**

COMMENTS AND RECOMMENDATIONS
(Continued)

2. <u>Land Not Reported as an Investment</u> (Concluded)

- **The number of acres of gravity irrigated cropland multiplied by $425 and 50 percent, plus**
- **The number of acres of pivot irrigated cropland multiplied by $550 and 50 percent.**

No documentation could be provided to support that the numbers above used in the calculation were reasonable assumptions.

3. <u>University Land Coding</u>

The Board managed land for the University of Nebraska (University), which included collecting rent payments from lessees and paying for related land expenses, such as property taxes. Per a contract between the University and the Board, a 10 percent fee was retained by the Board for managing the land, and the University received the remaining 90 percent. The rental receipts collected during the fiscal year ended June 30, 2018, were recorded as a revenue in fund 63320 (Ag & University Land Lease Fund). The Board payments related to the University land were recorded as an expense in the State's accounting system in fund 23220 (Board Cash Fund). On a monthly basis, if funds were available, the Board performed a transfer of funds to the University. A transfer out was recorded to fund 63320, and a transfer in was recorded to a University fund. This transfer was calculated by taking the total lease receipts collected during the month minus the following: the 10 percent fee retained by the Board and any expenses the Board paid on the related land.

Since the rental receipts (along with the 10 percent fee that the Board retained) and transfers were recorded in fund 63320, while the expenses were recorded in fund 23220, the fund balance in 63320 increased continuously. The Board stated that it performs periodic entries to move funds from 63320 into 61360 (Temporary School Fund). The last such transfer performed was in December 2016 for $500,000. As of June 30, 2018, the fund balance in 63320 was $1,748,491, of which $113,664 was owed to the University. The Board lacks written procedures for determining how frequently transfers should be made from 63320 to 61360, other than requiring that the balance in fund 63320 should not be below $100,000. Additionally, the payments for maintenance of the University land should be recorded to the same fund as rental receipts to ensure funds are being tracked and separately maintained. Furthermore, when the Board paid expenses related to the University land, the employee handling the payment made a copy of the invoice and set it aside to ensure it was deducted on the next monthly transfer to the University. Since payments were not recorded to the same fund as the receipts and transfers, there was a risk that not all expenditures were deducted from receipts to calculate the transfers due to the University.

Additionally, since the rental receipts and related land expenditures were not activity related to the Board-owned land, the collection of rent and the payment to maintain the University land should not be recorded as a revenue and expense of the Board. Instead, this activity should be recorded as a liability when fees are collected and as a decrease in the liability when the Board makes payments on the land, including when it pays the University what it is owed.

As a result, revenues were overstated by $747,875, expenses were overstated by $240,515, a liability due to the University was understated by $113,644, and transfers out were overstated by $506,082 during the fiscal year ended June 30, 2018. The APA proposed an adjustment to the financial schedule and these errors were agreed to and corrected on the Board's financial schedule.

COMMENTS AND RECOMMENDATIONS
(Continued)

3. University Land Coding (Concluded)

Additionally, to verify the accuracy of transfers to the University during the fiscal year, the APA selected one monthly transfer to test. The APA determined that this transfer was understated by $14,948.

Sound accounting practices and a good internal control plan require procedures to ensure that financial activity is properly tracked and recorded, and funds are remitted to the appropriate parties. Without such procedures, there is an increased risk for inaccurate financial activity in the State's accounting system and funds not being remitted appropriately to the University.

> We recommend the Board implement procedures to ensure activity related to University lands is reflected properly in the State's accounting system, and fund transfers are accurate.

Board Response: The Board has managed the University's land for over a century, and this issue has never previously been raised. The Board is working with the State Accounting office to create appropriate accounting codes to comply with the Auditor's request.

4. Lack of Controls Over Receipts – State Surveyor

The State Surveyor within the Board did not have an adequate segregation of duties over receipt transactions, as one individual was responsible for applying receipts to balances due, depositing the funds in the State's accounting system, and billing customers. Furthermore, a listing of monies received was not created at the time the mail was opened. The State Surveyor received $92,972 in receipts during the fiscal year ended June 30, 2018.

A good internal control plan requires procedures to ensure an adequate segregation of duties over receipt transactions, so no one individual is in a position both to perpetrate and to conceal errors or irregularities. Such procedures should include: 1) assigning more than one person to the process of handling funds, issuing receipts, applying receipts to balances due, and preparing the deposits; and 2) creating a listing of all cash and checks received in the mail each day to establish an initial control over receipts.

Without such procedures, there is an increased risk for the loss, misuse, or theft of State funds.

> We recommend the Board implement procedures to ensure no one person is responsible for all aspects of the receipt process. This should include not only assigning more than one individual to handle funds, issue receipts, apply receipts to balances due, and prepare the deposits but also creating a listing of all cash and checks received in the mail each day to establish an initial control over receipts.

Board Response: This matter will be reviewed and the appropriate action will be implemented, taking into consideration the limited number of employees in the State Surveyor's office.

5. Payroll Issues

The APA selected four Board employees for payroll testing and noted the following:

- One employee did not have the required I-9 ("Employee Verification Form") form on file.

COMMENTS AND RECOMMENDATIONS
(Continued)

5. <u>Payroll Issues</u> (Continued)

- Three employees did not have an updated Internal Revenue Service W-4 ("Employees Withholding Allowance Certificate") form on file to support income tax exemptions, additional Federal and State withholdings, and marital status:
    - The current W-4 form on file for one employee listed two exemptions; however, the Board was withholding State and Federal income taxes based upon one exemption. As a result, the employee's taxes were over-withheld by $61 based upon the W-4 form on file. Per discussion with the Board, the employee called to change his exemptions, but an updated W-4 form was not completed.
    - One employee was withholding an additional $30 per paycheck for income taxes. The W-4 form on file did not support this additional withholding.
    - The current W-4 form on file for one employee listed the employee as single. When his marital status changed to married, a corresponding change was made in the system; however, an updated W-4 form was not completed. As a result, the employee's taxes were under-withheld by $418 based upon the W-4 form on file.
- One employee's salary was split between the General Fund (10000) and the Survey Record Repository Cash Fund (23230), with 80% going to the General Fund and 20% going to the Survey Record Repository Cash Fund. The basis for these percentages had not been reviewed since 2013. For the fiscal year ended June 30, 2018, $38,585 was charged to the General Fund and $9,647 was charged to the Survey Record Repository Cash Fund. During testing, the APA asked if there were any other employees whose payroll was split. The Board had one other employee during the fiscal year ended June 30, 2018, whose payroll was split approximately 89% to the General Fund and 11% to the Board's Cash Fund (23220) or $50,893 and $6,034, respectively. The Board did not have documentation to support these splits.
- One employee, who was in charge of processing payroll, made changes to her own payroll withholdings in the system, and no secondary review was documented.

The I-9 ("Employee Verification Form") form states the following:

> *Employers must complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, to work in the United States.*

A good internal control plan and sound accounting practice require procedures for ensuring that each worker's legal employment status is adequately documented, employee tax withholdings are properly authorized, and payroll splits between funds, if any, are correct. Additionally, such procedures should preclude an employee from making unapproved changes to his or her own payroll records in the accounting system.

Without such procedures, there is an increased risk of non-compliance with Federal work eligibility requirements, taxes being deducted without the employee's authorization, and payroll splits being charged to the incorrect fund. There is also an increased risk of an employee making unapproved changes to his or her own payroll records in the accounting system.

COMMENTS AND RECOMMENDATIONS
(Continued)

5. Payroll Issues (Concluded)

We recommend the Board implement procedures to ensure the required I-9 forms are completed, and current W-4 forms are maintained for all employees. Furthermore, those procedures should ensure that all payroll splits reflect accurately the work being performed. Finally, the procedures should prevent an employee from making unapproved changes to his or her own payroll records in the accounting system.

Board Response: The Board has implemented the Auditor's suggestions.

6. Inadequate Support for Mileage

The Board had nine field representatives, including a Director of Field Operations, who worked out of their homes throughout the State and traveled to Board-owned land for inspections, maintenance, or visits with lessees. The field representatives were assigned a Board-owned vehicle and completed monthly activity logs detailing the duties performed that day, any mileage driven, and the destinations of each trip.

Our examination of one field representative's activity logs revealed that the mileage recorded was not adequately supported for 7 of 11 trips reviewed. The Board lacked procedures for reviewing mileage recorded on the activity logs to ensure that the travel was appropriate based upon the activities listed. See the table below for details of the seven trips that were not adequately supported.

For reasonableness, the APA determined that variances within 10% were adequately supported. After further inquiry with the field representative, the APA was able to explain some of the variances originally calculated; however, only one was explained sufficiently to drop below a 10% variance. Therefore, six trips remained with mileage that was not adequately supported.

			Based upon Original Activity Logs			Based upon Further Information Provided by the Employee		
	Date	Mileage Traveled Per Logs	APA Calculated Mileage	Mileage Variance	Percentage Variance	APA Calculated Mileage	Mileage Variance	Percentage Variance
1	September 29, 2017	77	0	77	100.00%	62.4	14.6	18.96%
2	October 4, 2017	247	156	91	36.84%	274	-27	-10.93%
3	November 20, 2017	187	150.2	36.8	19.68%	152	35	18.72%
4	December 15, 2017	216	136.4	79.6	36.85%	169	47	21.76%
5	January 11, 2018	226	181.8	44.2	19.56%	195	31	13.72%
6	February 7, 2018	168	0	168	100.00%	153	15	8.93%
7	May 22, 2018	261	174	87	33.33%	174	87	33.33%

A good internal control plan requires procedures to ensure that accurate activity logs are maintained to support not only any mileage driven with a State-owned vehicle but also the appropriate purpose of the travel. Without such procedures, there is an increased risk for the loss of State funds or the improper use of State-owned vehicles.

6. <u>Inadequate Support for Mileage</u> (Concluded)

> We recommend the Board implement procedures to ensure accurate activity logs are maintained to support not only any mileage driven with a State-owned vehicle but also the appropriate purpose of the travel.

Board Response: Our Field Representatives currently maintain a daily log of tasks and mileage. The Board will implement spot checking the mileage logs against the Field Representative's activity log, to determine if the miles traveled are, in the Board's opinion, reasonable. However, using Google maps, MapQuest, or other similar internet applications as the Auditor does, to determine appropriate mileage and the most direct routes for our Field Representatives' trips, does not accurately reflect reality. Furthermore, requiring Field Representatives to always use the "most direct route" encourages inefficiency. Internet map applications do not recognize "trail roads" nor will they recognize any miles accumulated driving on and around the Board's properties.

See **Exhibit E** for complete Board Response.

APA Response: The comment focuses upon the absence of procedures for ensuring the appropriate use of Board vehicles. If Google Maps, MapQuest, or similar internet applications are inadequate for the task, we encourage the Board to consider implementing an alternative method, including sufficient supporting documentation, for achieving that objective.

7. <u>Capital Asset Issues</u>

During our review of the Board's capital assets and procedures, the following was noted:

- The Board did not have an adequate segregation of duties over capital assets. One individual maintained the capital assets in the State's accounting system, added new assets, initiated the disposal of assets, and performed the physical inventory without any secondary review of system-generated reports or surplus property notification forms. Additionally, the State Surveyor did not have procedures in place to review capital asset integrity reports to ensure asset records in the accounting system were accurate.

- One item on the capital asset listing for $2,310 was marked for surplus in 2015; however, no adjustment was made, and the asset remained on the list. Despite requesting guidance from DAS in 2015 regarding proper surplus procedures, the Board has yet to initiate the removal process for that marked item.

- For one of three capital asset additions tested, the acquisition date was entered incorrectly into the State's accounting system, causing the depreciation expense for the fiscal year ended June 30, 2018, to be overstated by $1,585. The Board created the capital asset record in the State's accounting system when the purchase order was entered. When this was done, the acquisition date was entered as the same date the purchase order was created. The Board forgot to change the acquisition date to when the item was actually received.

COMMENTS AND RECOMMENDATIONS
(Continued)

7. Capital Asset Issues (Concluded)

As of June 30, 2018, the Board's capital assets had a total purchase value of $1,214,890; however, due to depreciation, the book value was $332,616.

A good internal control plan and sound business practice require procedures for ensuring an adequate segregation of duties over capital assets, so no one individual is in a position both to perpetrate and to conceal errors and irregularities. Those same procedures should ensure also that items designated for surplus are removed timely from the Board's asset listing, each capital asset's acquisition date is properly recorded so that the depreciation matches the asset's life, and capital asset integrity reports are reviewed.

Without such procedures, there is an increased risk for not only the theft or loss of assets but also incorrect capital asset listings and depreciation expenses.

> We recommend the Board implement procedures for ensuring an adequate segregation of duties over capital assets. Those same procedures should ensure also that items designated for surplus are removed timely from the Board's asset listing, each capital asset's acquisition date is properly recorded so that the depreciation matches the asset's life, and capital asset integrity reports are reviewed.

Board Response: The capital asset listing error, the non-removal of a surplused item, and the incorrectly entered acquisition date, have been corrected.

The Board believes its present system of asset management is appropriate to ensure the adequate segregation of duties over capital assets. The Board will implement the Auditor's suggestion for the review of capital asset integrity reports by a separate individual.

See **Exhibit E** for complete Board Response.

8. Allocation of Costs – General Fund

During the fiscal year ended June 30, 2018, the Board reimbursed the State General Fund $65,483 for State Surveyor staff salaries and miscellaneous expenditures related to school lands. The basis for the reimbursement was a percentage of three State Surveyor employees' monthly salaries. The Board did not have documentation for how the percentage was determined and had not updated that figure for several years.

Additionally, when these expenditures were originally recorded by the State Surveyor, an expenditure was recognized in the General Fund. Then, when the Board reimbursed the General Fund, an expenditure was recorded in the Temporary School Fund, and a revenue was recorded in the General Fund. This caused the Board's expenditures and revenues to be overstated by $65,483 during the fiscal year ended June 30, 2018.

Furthermore, testing of one reimbursement to the General Fund revealed that $2,014 was inappropriately included twice in the reimbursement for health insurance costs. This amount should not have been reimbursed to the General Fund from the Temporary School Fund.

COMMENTS AND RECOMMENDATIONS
(Continued)

8. Allocation of Costs – General Fund (Concluded)

Sound accounting practices and a good internal control plan require procedures for ensuring that the basis for the allocation of costs from the General Fund to the Temporary School Fund is reasonable, documented, and updated periodically. Such procedures should ensure also that the allocation is coded correctly in the State's accounting system.

Without such procedures, there is an increased risk that not all funds owed to the General Fund will be received, and inaccurate financial information will be recorded.

> We recommend the Board implement procedures for ensuring the basis for the reimbursement of costs from the General Fund to the Temporary School Fund is reasonable, documented, and updated periodically. Those procedures should ensure also that the allocation is coded correctly in the State's accounting system.

Board Response: The Board will consider the Auditor's recommendations, and will determine the best course of action.

9. Deposit Timeliness

To lease Board land, auctions were conducted. If only one bidder was interested in a particular lease, the lease was awarded to that person. However, if two or more bidders were interested in a lease, bonus bidding would take place. Whoever bid the largest one-time payment or bonus was awarded the lease. This bonus bid payment was collected on the day of the auction by a Board field representative, who then remitted the funds to the Board's accounting department for deposit.

The total amount of bonus bids collected by the Board during the fiscal year ended June 30, 2018, was $2,930,201.

Neb. Rev. Stat. § 84-710 (Reissue 2014) provides, in part, the following:

> *It shall be unlawful for any executive department, state institution, board, or officer acting under or by virtue of any statute or authority of the state, including the State Racing Commission, to receive any fees, proceeds from the sale of any public property, or any money belonging to the state or due for any service rendered by virtue of state authority without paying the same into the state treasury within three business days of the receipt thereof when the aggregate amount is five hundred dollars or more and within seven days of the receipt thereof when the aggregate amount is less than five hundred dollars. <u>The State Treasurer may, upon a written request from an executive department, state institution, board, or officer stating that the applicable time period cannot be met, grant additional time to remit the funds to the state treasury.</u>*

(Emphasis added.) Pursuant to the highlighted statutory language above, the State Treasurer granted the Board approval to deposit monies into the treasury within five business days – rather than the three days typically required – of receipt.

Nevertheless, a review of ten bonus bid receipts revealed that three of them were not deposited within the extended five days authorized by the State Treasurer. One receipt for $1,500 was deposited within seven business days, and two receipts, totaling $109,500, were deposited within six business days.

COMMENTS AND RECOMMENDATIONS
(Continued)

9. Deposit Timeliness (Concluded)

Good internal control requires procedures for ensuring that funds collected by the Board are deposited timely and within the specific time frame authorized, per statute, by the State Treasurer.

Without such procedures, there is an increased risk for not only the loss or misuse of State funds but also noncompliance with the law.

> We recommend the Board implement procedures for ensuring all deposits are made timely and in accordance with the specific time frame authorized, per statute, by the State Treasurer.

Board Response: We have sent a request to the State Treasurer for an enlargement of the time period we are given to deposit money. The Board endeavors to deposit all funds in a timely fashion. However, when the Board holds auctions in western Nebraska, checks which are tendered to an Agency employee on that day (which is considered the date the Agency receives the check), can take a number of days to arrive at the Agency office. The Auditor found one deposit was deposited two days late, and two deposits were deposited one day late. This delay can usually be attributed to logistical challenges when trying to mail from western Nebraska, to the Agency's office in Lincoln.

10. Contracts Not on the State's Accounting System or the State's Contracts Database

During a review of five payments, totaling $65,607, related to 27 different contracts (as several invoices were paid at once to the same vendor), the APA noted the following:

- Four of the payments, totaling $50,607, pertained to 26 service contracts. None of the four contract payments were entered into the State's accounting system, as required by Neb. Rev. Stat. § 73-503(1) (Cum. Supp. 2016). That statute states, in relevant part, "All state agencies shall process and document all contracts for services through the state accounting system."

- None of the 27 contracts were reported on the State's contract database, as required by Neb. Rev. Stat § 84-602.04 (Cum. Supp. 2016). That statute requires, in relevant part, the following:

  > *(1) The State Treasurer shall develop and maintain a single, searchable web site with information on state receipts, expenditures of state funds, and contracts which is accessible by the public at no cost to access as provided in this section.*
  >
  > * * * *
  >
  > *(4)(a) The web site described in this section shall include a link to the web site of the Department of Administrative Services. The department's web site shall contain:*
  >
  > *(i) A data base that includes a copy of each active contract that is a basis for an expenditure of state funds, including any amendment to such contract and any document incorporated by reference in such contract . . . . All state entities shall provide to the Department of Administrative Services, in electronic form, copies of such contracts for inclusion in the data base beginning with contracts that are active on and after January 1, 2014. . . . .*

COMMENTS AND RECOMMENDATIONS
(Concluded)

10. Contracts Not on the State's Accounting System or the State's Contracts Database
(Concluded)

A good internal control plan requires procedures for ensuring that all applicable contracts are processed and documented through the State's accounting system and included on the State's contract database, as statutorily required. Without such procedures, there is an increased risk for not only lack of transparency but also noncompliance with State statute.

> We recommend the Board implement procedures to ensure all service contracts are processed and documented through the State's accounting system, and all contracts that are the basis for expenditures of State funds are included on the State's contract database, as required by State statute.

Board Response: This matter will be reviewed and the appropriate action will be taken.

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NEBRASKA BOARD OF EDUCATIONAL LANDS AND FUNDS

INDEPENDENT ACCOUNTANT'S REPORT

Nebraska Board of Educational Lands and Funds
Lincoln, Nebraska

We have examined the accompanying Schedule of Revenues, Expenditures, and Changes in Fund Balances of the Nebraska Board of Educational Lands and Funds (Board) for the fiscal year ended June 30, 2018. The Board's management is responsible for the Schedule of Revenues, Expenditures, and Changes in Fund Balances based on the accounting system and procedures set forth in Note 1. Our responsibility is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Schedule of Revenues, Expenditures, and Changes in Fund Balances is based on the accounting system and procedures set forth in Note 1, in all material respects. An examination involves performing procedures to obtain evidence about the Schedule of Revenues, Expenditures, and Changes in Fund Balances. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of the Schedule of Revenues, Expenditures, and Changes in Fund Balances, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

In our opinion, the Schedule of Revenues, Expenditures, and Changes in Fund Balances for the fiscal year ended June 30, 2018, is based on the accounting system and procedures prescribed by the State of Nebraska's Director of Administrative Services, as set forth in Note 1, in all material respects.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Schedule of Revenues, Expenditures, and Changes in Fund Balances; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the subject matter or an assertion about the subject matter of the examination engagement. We are also required to obtain and report the views of management concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Schedule of Revenues, Expenditures, and Changes in Fund Balances is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over the Schedule of Revenues, Expenditures, and Changes in Fund Balances or on compliance and other matters; accordingly, we express no such opinions. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards*, and those findings, along with the views of management, are described in the Comments Section of the report.

The purpose of this report is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances, as described in paragraph one above. Accordingly, this report is not suitable for any other purpose. This report is a matter of public record, and its distribution is not limited.

C. J. Janssen

October 1, 2018

Charlie Janssen
Auditor of Public Accounts
Lincoln, Nebraska

NEBRASKA BOARD OF EDUCATIONAL LANDS AND FUNDS

SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES

For the Fiscal Year Ended June 30, 2018

	State General Fund 10000	Surveyors Cash Fund 23210	BELF Cash Fund 23220	Survey Record Repository Cash Fund 23230	Temporary School Fund 61360	Ag. & Univ. Land Lease Fund 63320	Permanent School Fund 63340	**Totals (Memorandum Only)**
REVENUES:								
Appropriations	$ 377,542	$ -	$ -	$ -	$ -	$ -	$ -	$ 377,542
Sales & Charges	71,222	-	61,208	20,627	10	-	-	153,067
Miscellaneous (Note 10)	-	74	436,552	1,049	45,891,144	122,526	702,376	47,153,721
TOTAL REVENUES	448,764	74	497,760	21,676	45,891,154	122,526	702,376	47,684,330
EXPENDITURES:								
Personal Services	342,621	-	1,936,942	13,424	-	-	-	2,292,987
Operating (Note 10)	33,789	50	14,410,765	2,929	65,483	-	-	14,513,016
Travel	1,132	-	17,076	-	-	-	-	18,208
Capital Outlay	-	-	80,270	-	-	-	-	80,270
TOTAL EXPENDITURES	377,542	50	16,445,053	16,353	65,483	-	-	16,904,481
Excess (Deficiency) of Revenues Over (Under) Expenditures	71,222	24	(15,947,293)	5,323	45,825,671	122,526	702,376	30,779,849
OTHER FINANCING SOURCES (USES):								
Sales of Assets	230	-	28,070	-	10,000	-	59,038	97,338
Deposit to General Fund	(71,452)	-	-	-	-	-	-	(71,452)
Deposit to/from Common Fund (Note 7)	-	-	-	-	(27,105,678)	-	(761,414)	(27,867,092)
Operating Transfers In (Note 6)	-	-	18,729,993	-	-	-	-	18,729,993
Operating Transfers Out (Note 6 & Note 10)	-	-	-	-	(18,729,993)	-	-	(18,729,993)
TOTAL OTHER FINANCING SOURCES (USES)	(71,222)	-	18,758,063	-	(45,825,671)	-	(702,376)	(27,841,206)
Net Change in Fund Balances	-	24	2,810,770	5,323	-	122,526	-	2,938,643
FUND BALANCES, JULY 1, 2017 - as Restated (Note 10)	40	3,497	7,226,275	46,984	-	1,271,806	-	8,548,602
FUND BALANCES, JUNE 30, 2018	$ 40	$ 3,521	$ 10,037,045	$ 52,307	$ -	$ 1,394,332	$ -	$ 11,487,245
FUND BALANCES CONSIST OF:								
General Cash (Note 10)	$ -	$ 3,501	$ 10,239,929	$ 51,906	$ -	$ 1,507,976	$ -	$ 11,803,312
Deposits with Vendors	40	20	1,463	81	-	-	-	1,604
Accounts Receivable Invoiced	-	-	-	320	-	-	-	320
Due to Vendors	-	-	(3,256)	-	-	-	-	(3,256)
Deposits	-	-	(201,091)	-	-	-	-	(201,091)
Due to Government (Note 10)	-	-	-	-	-	(113,644)	-	(113,644)
TOTAL FUND BALANCES	$ 40	$ 3,521	$ 10,037,045	$ 52,307	$ -	$ 1,394,332	$ -	$ 11,487,245

The accompanying notes are an integral part of the schedule.

NOTES TO THE SCHEDULE

For the Fiscal Year Ended June 30, 2018

1. Criteria

The accounting policies of the Nebraska Board of Educational Lands and Funds (Board) are on the basis of accounting, as prescribed by the State of Nebraska's Director of Administrative Services (DAS).

Per Neb. Rev. Stat. § 81-1107(2) (Reissue 2014), the duties of the State of Nebraska's Director of DAS include:

> *The keeping of general accounts and the adoption and promulgation of appropriate rules, regulations, and administrative orders designed to assure a uniform and effective system of accounts and accounting, the approval of all vouchers, and the preparation and issuance of warrants for all purposes[.]*

In accordance with Neb. Rev. Stat. § 81-1111(1) (Reissue 2014), the State Accounting Administrator has prescribed the system of accounts and accounting to be maintained by the State and its departments and agencies and has developed necessary accounting policies and procedures. The prescribed accounting system currently utilizes EnterpriseOne, an accounting resource software, to maintain the general ledger and all detailed accounting records. Policies and procedures are detailed in the Nebraska State Accounting Manual published by DAS State Accounting Division (State Accounting) and are available to the public.

The financial information used to prepare the Schedule of Revenues, Expenditures, and Changes in Fund Balances was obtained directly from the general ledger and fund balance information maintained on EnterpriseOne. EnterpriseOne is not an accrual accounting system; instead, accounts are maintained on a modified cash basis. As revenue transactions occur, the agencies record the accounts receivable and related revenues in the general ledger. As such, certain revenues are recorded when earned, regardless of the timing of related cash flows. State Accounting does not require the Board to record all accounts receivable and related revenues in EnterpriseOne; as such, the Board's schedule does not include all accounts receivable and related revenues. In a like manner, expenditures and related accounts payable are recorded in the general ledger as transactions occur. As such, the schedule includes those expenditures and related accounts payable posted in the general ledger as of June 30, 2018, and not yet paid as of that date. The amount recorded as expenditures on the schedule, as of June 30, 2018, **does not** include amounts for goods and services received before June 30, 2018, which had not been posted to the general ledger as of June 30, 2018.

Other liabilities are recorded in accounts entitled Due to Vendors, Deposits, and Due to Government for the Board. The assets in these funds are being held by the State as an agent and will be used to pay those liabilities to individuals, private organizations, other governments, and/or other funds. The recording of those liabilities reduces the fund balance/equity.

The Board had accounts receivable not included in the Schedule of $321,890 from past due lease amounts. State Accounting did not require the Department to record its receivables on the general ledger, and these amounts are not reflected in revenues or fund balances on the Schedule. Liabilities for accrued payroll and compensated absences are not recorded in the general ledger.

The following fund types are established by the State and used by the Board:

10000 – General Fund – accounts for activities funded by general tax dollars and related expenditures and transfers.

NOTES TO THE SCHEDULE
(Continued)

1. **Criteria** (Continued)

20000 – Cash Funds – account for revenues generated by specific activities from sources outside of State government and the expenditures directly related to the generation of the revenues. Cash funds are established by State statutes and must be used in accordance with those statutes.

60000 – Trust Funds – account for assets held by the State in a trustee capacity. Expenditures are made in accordance with the terms of the trust.

The following major revenue account classifications are established by State Accounting and used by the Board:

Appropriations – Appropriations are granted by the Legislature to make expenditures and to incur obligations. The amount of appropriations reported as revenue is the amount of expenditures.

Sales & Charges – Income derived from sales of merchandise and commodities, compensation for services rendered, and charges for various licenses, permits, and fees.

Miscellaneous – Revenue from sources not covered by other major categories, such as investment income and income from educational land leases.

The following major expenditure account classifications are established by State Accounting and used by the Board:

Personal Services – Salaries, wages, and related employee benefits provided for all persons employed by the Board.

Operating – Expenditures directly related to a program's primary service activities.

Travel – All travel expenses for any State officer, employee, or member of any commission, council, committee, or board of the State.

Capital Outlay – Expenditures that result in the acquisition of or an addition to capital assets. Capital assets are resources of a long-term character, owned or held by the government.

Other significant accounting classifications and procedures established by State Accounting and used by the Board include the following:

Assets – Resources owned or held by a government that have monetary value. Assets include cash accounts, deposits with vendors, and receivable accounts. Accounts receivable are recorded as an increase to revenues resulting in an increase to fund balance on the schedule. Cash accounts and deposits with vendors are also included in fund balance and are reported as recorded in the general ledger.

NOTES TO THE SCHEDULE
(Continued)

1. Criteria (Concluded)

Liabilities – Legal obligations arising out of transactions in the past that must be liquidated, renewed, or refunded at some future date. Accounts payable transactions are recorded as expenditures, resulting in a decrease to fund balance. Other liabilities recorded in the general ledger for the Board's funds at June 30, 2018, included amounts recorded in Due to Vendors, Deposits, and Due to Government. The activity of these accounts are not recorded through revenue and expenditure accounts on the Schedule of Revenues, Expenditures, and Changes in Fund Balances.

Other Financing Sources – Operating transfers, deposits to common funds, deposits to General Fund, and proceeds of fixed asset dispositions.

2. Reporting Entity

The Board is a State agency established under and governed by the laws of the State of Nebraska. As such, the Board is exempt from State and Federal income taxes. The schedule includes all funds of the Board included in the general ledger.

The Board is part of the primary government for the State of Nebraska.

3. Totals

The Totals "Memorandum Only" column represents an aggregation of individual account balances. The column is presented for overview informational purposes and does not present consolidated financial information because interfund balances and transactions have not been eliminated.

4. General Cash

General cash accounts are under the control of the State Treasurer or other administrative bodies, as determined by law. All cash deposited with the State Treasurer is initially maintained in a pooled cash account. On a daily basis, the State Treasurer invests cash not needed for current operations with the State's Investment Council, which maintains an operating investment pool for such investments. Interest earned on those investments is allocated to funds based on their percentage of the investment pool.

5. Capital Assets

Capital assets include buildings, equipment, improvements to buildings, construction in progress, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items). Under State Accounting policies, expenditures for such capital assets are not capitalized as an asset in the funds used to acquire or construct them. Rather, costs of obtaining the capital assets are reflected as expenditures in the general ledger and are reported as such on the Schedule.

However, State Accounting does adjust such expenditures and reports the capital assets as assets for the State of Nebraska in the Comprehensive Annual Financial Report (CAFR). In addition, the Board takes an annual inventory, recording in the State Accounting System all equipment that has a cost of $1,500 or more at the date of acquisition, and all computers.

NOTES TO THE SCHEDULE
(Continued)

5. Capital Assets (Concluded)

For the CAFR, the State requires the Board to value all capital assets at cost where historical records are available and at estimated historical cost where no historical records exist. Donated capital assets are valued at their estimated fair market value on the date received. Generally, equipment that has a cost of $5,000 or more at the date of acquisition and has an expected useful life of more than one year is capitalized. Substantially, all initial building costs are capitalized. Building improvements and renovations are capitalized if a substantial portion of the life of the asset has expired and if the useful life of the asset has been extended as a result of the renovation or improvement. Depreciation expenses are reported in the CAFR in the funds used to acquire or construct them for the State of Nebraska. The cost of normal maintenance and repairs that does not add to the value of the asset or extend the asset's life is not capitalized.

Buildings and Equipment are depreciated in the CAFR using the straight-line method. The following estimated useful lives are used to compute depreciation:

Buildings	40 Years
Equipment	3 to 10 Years

Capital asset activity of the Board recorded in the State Accounting System for the fiscal year ended June 30, 2018, was as follows:

	Beginning Balance	Increases	Decreases	Ending Balance
Capital Assets				
Buildings	$ 624,256	$ -	$ -	$ 624,256
Equipment	595,631	80,270	(85,267)	590,634
Total	$ 1,219,887	$ 80,270	$ (85,267)	1,214,890
Less accumulated depreciation for:				
Buildings				483,798
Equipment				398,476
Total				882,274
Total capital assets, net of depreciation				$ 332,616

State-owned land managed by the Board is held for investment purposes and, therefore, should be reported as an investment at fair market value rather than as a capital asset, per Government Accounting Standards Board Codification Section I50, Investments. See also Note #8 "Permanent School Fund – Fund 63340."

6. Transfers

Operating transfers included $18,729,993 transferred from the Temporary School Fund 61360 to the Board Cash Fund 23220, as required by Neb. Rev. Stat. § 72-232.02 (Reissue 2009), for the costs of administering the unsold lands.

NOTES TO THE SCHEDULE
(Continued)

7. Deposits to/from Common Funds

Deposits to Common Funds represent the collections made by the Board that were due to the Temporary School Fund 61360 and the Permanent School Fund 63340. Since the Board has no control over these funds once the deposits were made to the funds, the fund balances were not reflected in the Board's financial schedule.

8. Permanent School Fund – Fund 63340

The following accounts are recorded on EnterpriseOne as part of the Board's general ledger activity; however, they were not reflected in the Board's financial schedule because the Board was not responsible for recording this activity.

- Account 453500 – Severance taxes (oil and gas severed from lands) are not collected by the Board. They are collected by the Nebraska Department of Revenue and deposited with the State Treasurer. The State Treasurer allocates proceeds to various funds as required by Neb. Rev. Stat. § 57-705 (Reissue 2010). The Permanent School Fund receives all severance taxes collected from school lands.

- Accounts 481100, 481200, and 559100 – Investment earnings and expenses are processed and posted by DAS and not the Board.

- Account 493112 – Unclaimed property money is collected by the State Treasurer and not the Board. The State Treasurer deposits the money into a trust fund and transfers balances in excess of an established amount into the Permanent School Fund at least annually in accordance with Neb. Rev. Stat. § 69-1317 (Cum. Supp. 2016).

Furthermore, since the Permanent School Fund is a common fund used by multiple agencies of the State, the fund balances were not reflected in the Board's financial schedule. The Permanent School Fund balances were reflected in the Nebraska State Treasurer's attestation report for the time period July 1, 2016, through December 31, 2017, and the State of Nebraska's CAFR. However, the following fund balances were not noted in the Nebraska State Treasurer's attestation report or the CAFR due to the reasons noted below:

- As noted in Comment #2, "Land Not Reported as an Investment," in the Comments and Recommendations section of the report, the Board did not record the fair market value of land in the State's accounting system nor did it report these values to DAS for inclusion in the State's CAFR in accordance with the Government Accounting Standards Board requirements. The fair market value of land as of June 30, 2018, was $1,287,190,886.

- Additionally, as noted in Comment #1, "Outside Bank Account," in the Comments and Recommendations section of the report, the Board did not record the outside bank account activity or balances in the State's accounting system for inclusion in the CAFR. The bank balance at June 30, 2018, was $2,296,257.

NOTES TO THE SCHEDULE
(Continued)

9. Common Funds Identified with the Board but Not Recorded on the Board's Financial Schedule (Funds 63280, 63330, 63350, 65130)

The activity for Fund 63280 – Normal School Endowment, 63330 – Veteran's Aid, 63350 – Permanent University Endowment, and 65130 – Agriculture College Endowment during the fiscal year ended June 30, 2018, was investment income (accounts 481100 and 481200) and investment expenses (account 559100) in the investment pools. These funds are under the control of the State Treasurer and Investment Council. The Board was not responsible for recording activity in these funds, so these funds were not reflected on the Board's financial schedule.

10. Adjustments to the Financial Schedule

During testing, it was noted that the Board was improperly recording rental receipts and related expenses for University of Nebraska-owned land as a revenue and expenditure of the Board. See Comment #3, "University Land Coding," in the Comments and Recommendations section of the report for more details. As a result, the APA proposed an adjustment to the financial schedule and the Board agreed to correct the overstatements of expenditures and revenues. The following table shows the financial schedule accounts that were adjusted:

Fund	Financial Schedule Line Item	Adjustment Amount Increase/ (Decrease)
63320	Miscellaneous Revenues	$ (747,875)
63320	Fund Balance, July 1, 2017	(112,366)
63320	Due to Government	113,644
63320	General Cash	(240,515)
63320	Operating Transfers Out	(560,082)
23220	Operating Expenditures	(240,515)
23220	General Cash	240,515

There was an adjustment to decrease the fund balance at July 1, 2017, in fund 63320 – Ag. & Univ. Land Lease Fund, due to $112,366 that was owed to the University of Nebraska, but not yet paid as of June 30, 2017. This was not reported as a liability in the State's accounting system as of June 30, 2017, therefore, it was necessary to reduce the fund balance in order to account for this amount.

11. Investment in Land Compared to Investments by the State Investment Officer

The following table shows the asset value of the Permanent School Fund (63340) as of June 30, 2018.

K-12 School Trust Land	$ 1,287,190,886
Investments managed by the Investment Council	756,497,712
Total Assets	$ 2,043,688,598
Percentage School Land is of the Total Assets	63%

NOTES TO THE SCHEDULE
(Concluded)

11. <u>Investment in Land Compared to Investments by the State Investment Officer</u> (Concluded)

The percentage of School Land included in the Permanent School Fund assets has declined from June 30, 2017, due to the decline in land values and an increase in the value of investments managed by the Investment Council during fiscal year ended June 30, 2018.

In July 2007, $40 million of investments in the Permanent School Fund was transferred to the Early Childhood Education Endowment Fund (61365) in accordance with State statute. As of June 30, 2018, the total value of investments in 61365 was $54,563,148. If this value was included in the table above, the percentage of school land of total assets would be 61%.

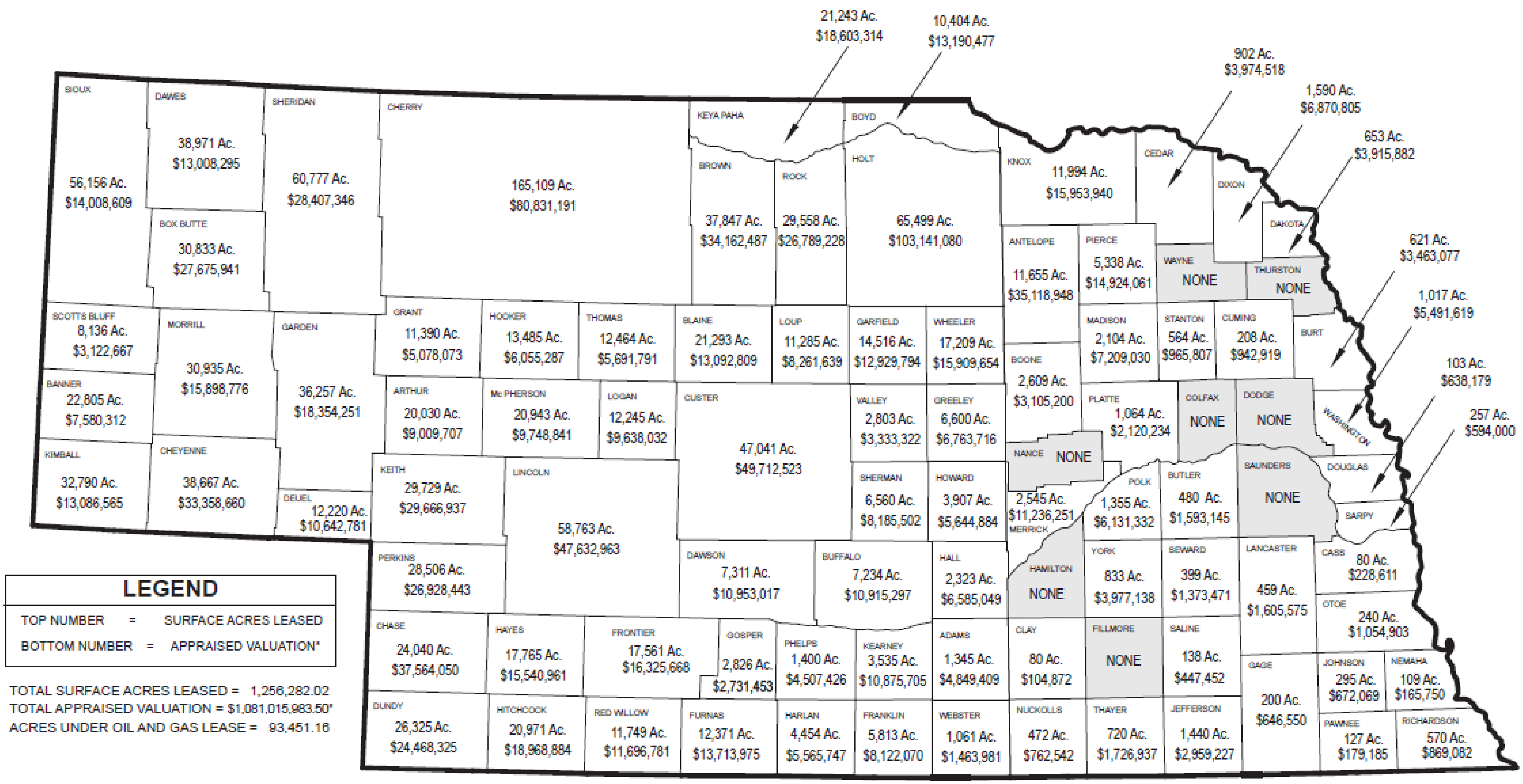
SUPPLEMENTARY INFORMATION

Our examination was conducted for the purpose of forming an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances. Supplementary information is presented for purposes of additional analysis. Such information has not been subjected to the procedures applied in the examination of the Schedule of Revenues, Expenditures, and Changes in Fund Balances, and, accordingly, we express no opinion on it.

NEBRASKA BOARD OF EDUCATIONAL LANDS AND FUNDS **Exhibit A**

MAP OF K-12 SCHOOL TRUST LANDS

As of June 30, 2018



*Appraised valuation is surface rental capitalized at the rate of 4%. This is not the fair market value of the land.

NEBRASKA BOARD OF EDUCATIONAL LANDS AND FUNDS

Exhibit B

LAND REVENUES AND EXPENSES

	Fiscal Years Ended June 30				
	2014	2015	2016	2017	2018
Land Use Revenues (1)	$ 45,753,258	$ 48,577,097	$ 51,850,410	$ 46,311,232	$ 46,647,695
Administrative Costs (2)	(3,522,922)	(4,305,767)	(4,420,144)	(3,953,556)	(4,296,899)
Revenue Less Administrative Expenses (3)	$ 42,230,336	$ 44,271,330	$ 47,430,265	$ 42,357,677	$ 42,350,796
Property Taxes (4)	(8,999,729)	(10,109,855)	(11,265,806)	(12,098,924)	(12,213,636)
Revenue Less Total Expenses (5)	$ 33,230,607	$ 34,161,475	$ 36,164,459	$ 30,258,752	$ 30,137,160
Market Valuation (6)	$ 1,461,000,000	$ 1,552,000,000	$ 1,498,000,000	$ 1,371,000,000	$ 1,287,000,000
Calculated Return Without Property Taxes (7)	2.89%	2.85%	3.17%	3.09%	3.29%
Calculated Return With Property Taxes (8)	2.27%	2.20%	2.41%	2.21%	2.34%

(1) Land Use Revenues include the State's accounting system for accounts 470000's, 482000's, 483112, 484800, 484820, 484823 - 484829, and 491312 transactions included in Board of Educational Lands and Funds Cash Fund - 23220, Temporary School Fund - 61360, and Permanent School Fund - 63340. Revenues include rent from leased land, royalties, bonus bids, and easements, but does not include land sales.

(2) Expenditures for Board of Educational Lands and Funds Cash Fund - 23220 and Temporary School Fund 61360, excluding property taxes.

(3) This is calculated by taking Land Use Revenues less Administrative Costs.

(4) Property tax expenditures for Board of Educational Lands and Funds Cash Fund - 23220 coded to account 559150.

(5) This is calculated by taking Revenue Less Administrative Expenses, less Property Taxes.

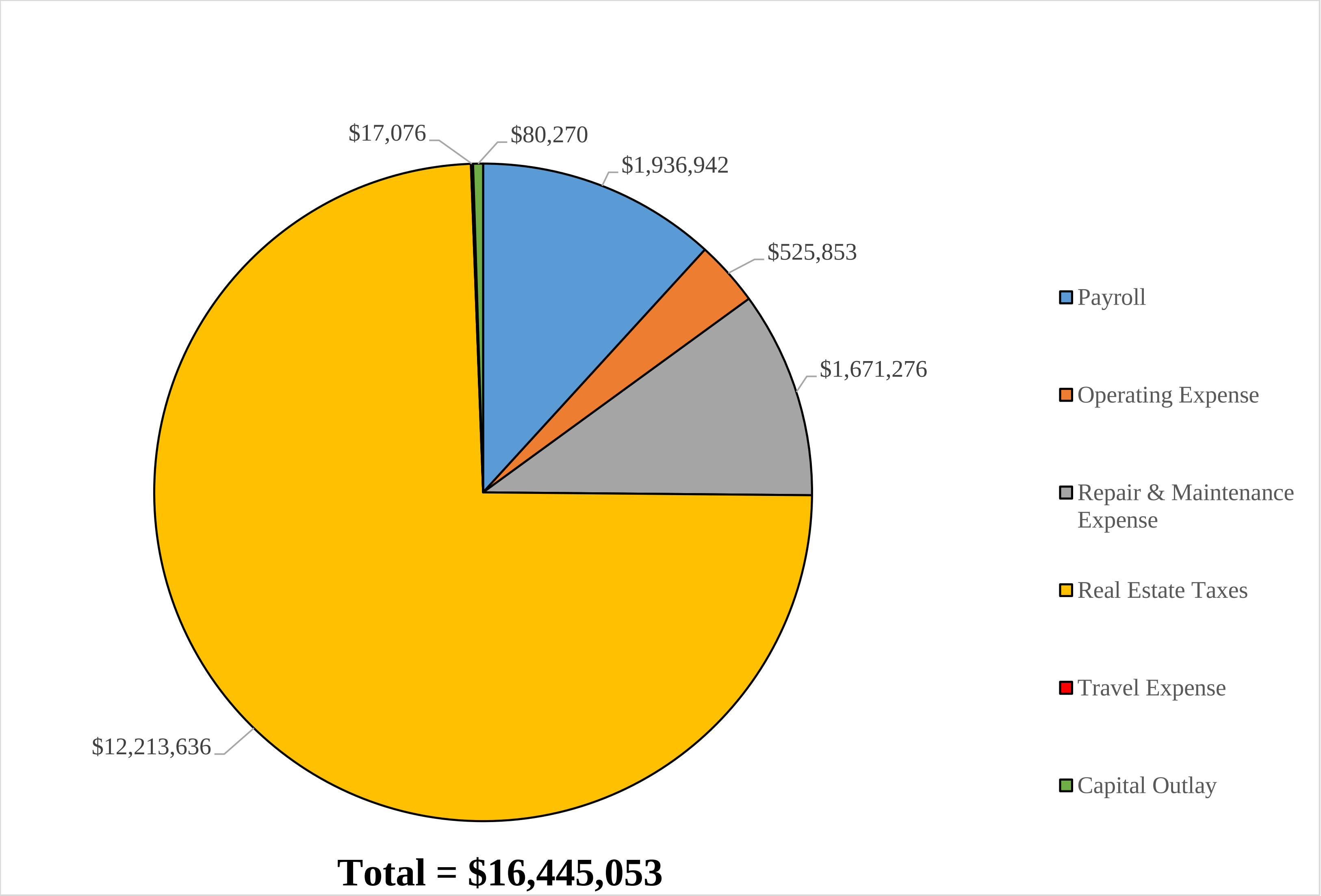
(6) Per Board annual reports, approximate market value of land using University valuation data.

(7) Revenue Less Administrative Costs divided by Market Valuation.

(8) Revenue Less Total Expenses divided by Market Valuation.

NEBRASKA BOARD OF EDUCATIONAL LANDS AND FUNDS
LAND ADMINISTRATION COSTS – CASH FUND 23220 EXPENDITURES
Fiscal Year Ended June 30, 2018

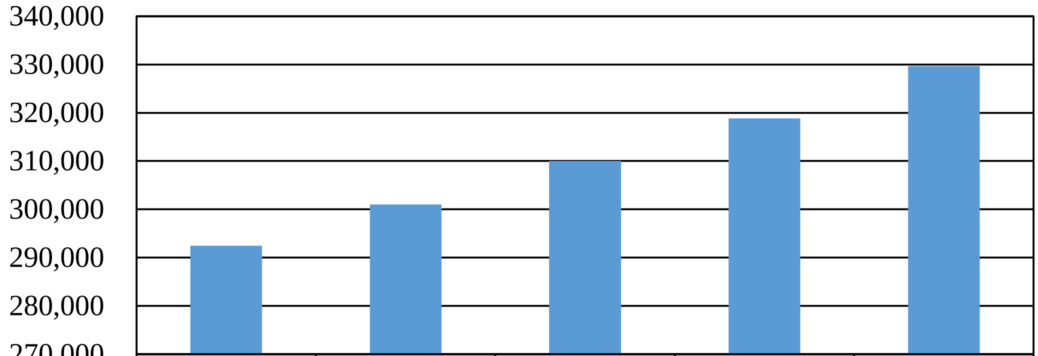
Exhibit C



STATE SURVEYOR INFORMATION

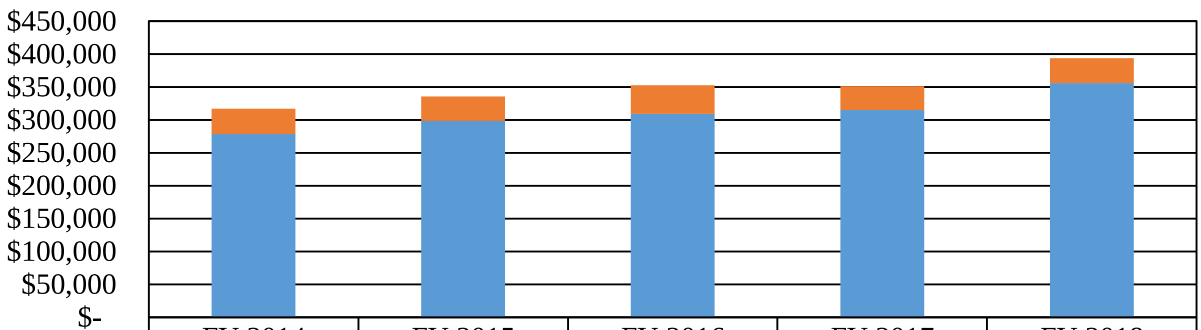
Fiscal Years Ended June 30, 2014, through 2018

Number of Surveys Maintained



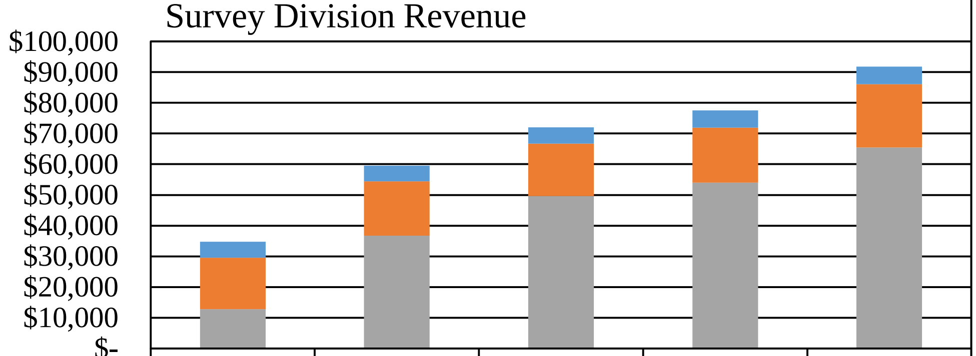
	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Surveys Maintained	292,435	301,004	310,013	318,865	329,627

Survey Division Disbursements



	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Other	$39,092	$36,556	$43,107	$36,245	$37,900
Payroll	$278,003	$298,822	$309,340	$314,879	$356,045

Survey Division Revenue



	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Services to the Board of Examiners for Land Surveyors	$5,175	$5,177	$5,384	$5,607	$5,739
Repository Fees	16,717	17,711	17,086	17,965	20,627
Services to the Board	12,806	36,687	49,598	54,004	65,483

Outside Bank Account:

a. Lack of authorization to Hold an Outside Bank Account:

The Board of Educational Lands and Funds has the Constitutional and Statutory authority to maintain its own account.

During the course of this audit, the Board received a letter from the Nebraska State Treasurer demanding that the Board close its escrow account as soon as possible, and transfer those funds into the custody of the State Treasurer. The Board, as argued below, disagrees with the determination of the Auditor and Treasurer. Notwithstanding this; however, the Board immediately applied for an escrow exchange account, and received the approval of the Department of Administrative Services, State Accounting, and the Treasurer. The funds are now in the custody of the Treasurer.

Funds held by the Board of Educational Lands and Funds (hereinafter referred to as "Board") are not subject to Neb. Rev. Stat. §77-2301(1) and §77-2309. Attorney General Opinion No. 98006 (Jan. 21, 1998), acknowledged that the University has the constitutional authority to manage its own affairs relatively free from legislative interference, which also applies to this Board, a similar constitutional agency. The Attorney General recognized; however, that in some circumstances, this autonomy can have limitations, but the limitations discussed in that opinion do not apply to this Board's authority to maintain its own account. In fact, Opinion No. 98006 actually supports the Board's opinion.

Statutes which generally apply to state agencies cannot direct the Board as to matters that are a central function of Board government, and those functions cannot be delegated to another agency.

In his opinion, the Attorney General states: "…it seems to us that statutes which pertain generally to state agencies and **which do not purport to direct the Board of Regents as to matters which are central to the University's educational function or its 'government', can have application to the University, even under Exon."** (Emphasis Added.) Since the statute has application to the University, the Auditor then ***assumes*** that the same statement likewise applies to this Board's outside account, and the autonomous exercise of its constitutional authority. It does not, since the Attorney General found that subjecting the University to the requirements of that general statute when collecting fees from students, didn't ***intrude[s], in any significant sense, in the University's educational function or its "government***." (Emphasis added.)

Subjecting this Board to these statutes would intrude on the Board's government. The Supreme Court determined that the production of income for the support of the common schools of the state, is one of the primary fiduciary responsibilities of the Board. See: *State ex rel. Ebke v. Board of Educational Lands and Funds, et al.*, 154 Neb. 244, 250, (1951). The Attorney General agreed in Opinion No. 178, (January 17, 1984), when he determined that another similar statute of general application, requiring all agencies to obtain written approval of the central data processing administrator pursuant to Section 81-1117(2)(e), could not apply to the Board since the result would be a delegation of the Board's constitutional authority to another agency. He stated: "*[t]he power and authority of the Board is set forth in the Constitution, which power and authority remains vested in the Board and cannot be delegated to other offices or agencies. The expenditure of funds by the School Land Trust is solely within the administration of the trust. Consequently, the Legislature may not delegate such constitutional authority to another agency." (quoting: State ex rel. Belker v. Board of Educational Lands and Funds, 184 Neb.621 (1969).* Again, in Attorney General Opinion No. 250 (April 7, 1982), when determining that the Board was not subject to another statute of general application to state agencies, he stated: *"The decision* *to lease or purchase vehicles to be used in the administration of the trust is an 'act or function' within the meaning of Regents v. Exon, which is properly regarded as belonging to the Nebraska State Board of Educational Lands and Funds under the Nebraska Constitution, and can only be exercised by that Board in the best interests of the state school trust. Any attempt by the Legislature to delegate such constitutionally vested authority to another agency would, under the case of Regents v. Exon, be unlawful."* If such seemingly mundane acts are considered an "act or function" that belong solely to the Board, then the collection and custody of proceeds of the Board's land would also be, and since §77-2301(1) and §77-2309 seek to delegate those acts to another agency, they are inapplicable to this Board.

The Board's funds are "trust funds" and are therefore not subject to §§77-2301 & 77-2309.

The Constitution gives the Board "general management of all lands set apart for educational purposes." The Nebraska Supreme Court agreed in *Propst v. Board of Educational Lands & Funds,* 156 Neb. 226, 55 N.W.2d 653, 657, when it declared: "*The school lands were received and are held in trust by the State of Nebraska for educational purposes. The state as trustee of the lands* ***and of the income*** *therefrom is required to administer the trust estate under the rules of law applicable to trustees acting in a fiduciary capacity.*" (Emphasis added.) The court also held: "*The title to the state school lands was vested in the state upon an express trust…*" It is clear that all of the Board's property and funds are held in "trust", with the Board as Trustee.

In Opinion No. 98006, the Attorney General finds that certain University Trust Funds were not subject to the Treasurer's custody because ***"…[w]e do not believe that funds accruing to the University Trust Fund need be receipted through the State Treasurer's office in the event that the Board of Regents elects to have those funds held and managed elsewhere***." The Board's funds are similarly "trust funds", as determined by Attorney General Opinion, No. 178, (January 17, 1984), wherein the Attorney General recognized that: *"funds appropriated to the University by Neb.Rev.Stat. §85-131 (Reissue 1976) are trust funds, and can be expended only by the Board of Regents for the benefit of the University. We would draw a parallel between the Nebraska Supreme Court's rationale in Board of Regents and its holding in Ebke v. Board of Educational Lands and Funds, supra, where it held that 'the state as trustee of the lands and of the income therefrom is required to administer the trust of the state…"* Since the Treasurer has no authority over the University's trust funds, then it likewise has no authority over this Board's trust funds.

Transferring trust funds to the Treasurer may be a violation of the Board's fiduciary duty.

The Board as Trustee, is charged with a fiduciary duty to its beneficiaries which duties cannot be delegated. Therefore, transferring those funds to the Treasurer, who has no similar fiduciary duty, may actually be a breach of trust. The Supreme Court ruled that a breach of trust can be, "*in effect a violation of the constitutional provision and has the effect of invalidating the legislation authorizing the breach." Id. at* 254-255. Therefore, by requiring the Board to delegate, and thereby breach, its fiduciary duty, these statutes are invalid as they apply to the Board.

b. Use of Account and Noncompliance with State Statute:

The Board is in full compliance with State Statutes

The Board uses the commonly accepted 'term of art' definition of "exchange" found in Federal law when construing its statute, and as a result, reasonably achieves and effects the statute's purpose rather than defeating it, has avoided an anomalous, unusual or absurd result, and avoids a Constitutional violation by preserving its fiduciary duty to the School Land Trust.

When words are left undefined in statute, Courts often look to other laws, or to case law from other jurisdictions, for definitions. When defining the word "exchange", the Board looked to Federal law, which provided a specific definition. In the world of real estate transactions, the term "exchange" has taken on the meaning given it in the Federal Code, and has therefore become a "term of art". The Nebraska Supreme Court has recognized that: "*[a] 'term of art' is a word or phrase having a specific, precise meaning in a given specialty apart from its general meaning in ordinary contexts. We have ascribed the term of art meaning to statutory terms when necessitated by the statute's context." Wisner v. Vandelay Investments, LLC, 300 Neb. 825, 850 (2018).* When giving a word its "term of art" meaning, the Court stated: *"[a] statute can … be considered ambiguous when a particular interpretation from the face of a statute could lead to an anomalous, unusual or absurd result." For '[i]t is impermissible to follow a literal reading that engenders absurd consequences where there is an alternative interpretation that reasonably effects the statute's purpose." Id.* The Auditor's strict construction of this statute would force the Board to refuse an exchange of thousands of acres of property worth millions of dollars, for a few acres of Board property worth one thousand dollars, because the exchanged properties would not be "of equal areas or value". This would be an absurd result, would violate the Board's fiduciary duty, which in turn would violate the Constitution, which violation then invalidates the legislation. The Nebraska Supreme Court made this clear when stating: "*the designation of these lands as a trust in the Constitution has the effect of incorporating into the constitutional provision the rules of law regulating the administration of trust and the conduct and duties of trustees. A breach of trust in such a situation is in effect a violation of the constitutional provision and has the effect of invalidating the legislation authorizing the breach." State ex rel Ebke v Board of Educational Lands and Funds, 154 Neb. 244, 254-255, (1951).* The Court further noted: "*in providing a method of administering a trust, of which the state is a trustee, is to act for the best interests of the trust estate and obtain for it the most advantageous returns possible." Id.at 255.* Both the Nebraska and Federal statutes use the specific term "exchange" rather than "trade", and the Board's definition of the term "exchange" is an alternative interpretation that reasonably effects the statute's purpose, avoids absurd consequences, and preserves the constitutionality of the statute. The Nebraska Supreme Court has given much deference to how agencies define their own statutes by stating: "*Although construction of a statute by a department charged with enforcing it is not controlling, considerable weight will be given to such a construction…". Metropolitan Utilities District of Omaha v. Balka, 252 Neb. 172,176 (1997).*

As an example, the Auditor points to a recent exchange as improper, since the tracts exchanged were not of equal area nor value. The Board exchanged land worth $532,000.00, plus $56,000.00 in cash, for a total value of $588,000.00; for land worth $953,000.00 ***- a 62% advantage to the School Trust!*** Moreover, when the lease on this new property subsequently went to auction, ***the Board received a $100,000.00 bonus bid,*** over and above the annual rental! Interpreting the statute as the Auditor does, would have required the Board to reject this highly beneficial exchange and violate the Board's fiduciary duty, which in turn would be a violation of the Constitution. Such a breach of trust could not have been intended by the Legislature, and if it was, that intention would, according to the Court in *State ex rel Ebke,* be inconsistent with a trustee's duties in that: "*[a] trustee is required to dispose of trust property upon the most advantageous terms which it is possible for him to secure for the benefit of the cestui que trust whom he represents." Id at 523.* The Court continued: "*The state in acting as a trustee is subject to the same standards, and when its status as a trustee is fixed by the Constitution a violation of its duty as a trustee is a violation of the Constitution itself." Id at 523.* In that case, the Court found that *"[t]he plan* *set up by the Legislature is inconsistent with the duties imposed by law upon a trustee and, consequently, inconsistent with the grant and the acceptance thereof.*" *Id. at 525*.

Land exchanges will rarely be of "equal areas or value", and strictly construing the statute in that way would effectively defeat the statute. *"When construing a statute, a court must look to the statute's purpose and give to the statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it." In re Estate of Peterson v. Moore, 254 Neb. 334, 338, (1998).* In fact, Section 72-253 itself states that "[b]efore such exchange shall be made, it shall be shown that the Board of Educational Lands and Funds will likely be benefited by the exchange." It would be difficult to show a benefit from an exchange of properties that are of exactly equal areas or value. The Supreme Court has stated: "*components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible." Wisner, Supra, at 848*. Since the statute requires the Board be benefited by any exchange, simply exchanging property of equal value or area would not comply with that provision. It appears the intent of the legislature was to allow the Board to accept advantageous trades into higher value, or larger, tracts, and that the limitation on the size or value of the exchanged tracts was intended as a ***minimum*** standard, rather than a limitation on the maximum area or value.

c. Balance not secured by Pledged Collateral:

The balance of the account was fully protected.

The escrow account was in the custody of one of the largest title companies in Lincoln, Nebraska, which is underwritten by the largest title insurer in the United States. Both the local company, with its errors and omissions insurance policy, and the national underwriter, were fully bonded and insured, and would have been liable to the Board for loss caused by any insufficient collateralization of the account. As stated earlier, this account has already been transferred to the Treasurer's office.

d. Fees Not Supported:

Closing company's fees were reasonable.

The account is no longer in the title company's possession, but the title company may perform closings for the Board in the future, and all fees will be documented on the closing statements in each transaction. The charges were customary to the industry and typical for the title company. No set fee was documented since the role of the title company in each transaction frequently differed, and often required work after the closing statements were finalized.

2. Land not Reported as Investment:

The Board's land was not reported as an investment to DAS because the regulation requiring the report is new.

The Board was not advised of the recent change to this regulation, and has never before been required to report the value of its property on the State's accounting system. The Board has already met with DAS, and has begun the process of reporting the value of the Board's land onto the State's accounting system.

The value of the adjustments the Board makes to reduce the fair market value of its property to account for lessee owned improvements is obtained from experts at the University of Nebraska – Lincoln. The assumptions used to determine the amount of the adjustment were created by Professors at the University with specialized knowledge of the issue, and who have devoted considerable research and time into creating the assumptions, and as a result, the value of the adjustments. It is the Board's opinion that relying upon experts at the University is reasonable and adequate for this purpose.

3. University Land Coding:

The Board has managed the University's land for over a century, and this issue has never previously been raised. The Board is working with the State Accounting office to create appropriate accounting codes to comply with the Auditor's request.

4. Lack of Controls over Receipts - State Surveyor:

This matter will be reviewed and the appropriate action will be implemented, taking into consideration the limited number of employees in the State Surveyor's office.

5. Payroll issues:

The Board has implemented the Auditor's suggestions.

6. Inadequate Support for Mileage:

Our Field Representatives currently maintain a daily log of tasks and mileage. The Board will implement spot checking the mileage logs against the Field Representative's activity log, to determine if the miles traveled are, in the Board's opinion, reasonable. However, using Google maps, MapQuest, or other similar internet applications as the Auditor does, to determine appropriate mileage and the most direct routes for our Field Representatives' trips, does not accurately reflect reality. Furthermore, requiring Field Representatives to always use the "most direct route" encourages inefficiency. Internet map applications do not recognize "trail roads" nor will they recognize any miles accumulated driving on and around the Board's properties. Because of these mapping limitations, and the Field Representative's varying duties, on any given day a Field Representative's travel could easily vary more than 10% from the most "direct route" as determined by Google. Our Field Representatives effectively manage large areas of Nebraska spanning hundreds of miles and thousands of acres. Doing so often requires them to spend entire days traveling. The Board and all employees have a fiduciary duty to maximize the income from our properties, which requires that all duties be performed as efficiently, and cost effectively, as possible. Field Representatives schedule multiple meetings, property viewings, and other responsibilities, in one trip, rather than multiple separate trips. These trips typically aren't the shortest or most "direct route" to or from a property, but will include other meetings or a drive by of another property. They also use "trail roads", minimum maintenance roads, or alternate routes if roads are impassable, and drive on and across our properties. The Field Representative may then drive a significant distance to speak with a lessee, if needed. These practices are the most efficient use of the Field Representative's time, and the most cost effective and efficient use of the Board's vehicles. As recognized in Attorney General Opinion No. 250, unlike typical State fleet vehicles, the Board's vehicles are paid for with School trust funds, and are owned specifically by the Board of Educational Lands and Funds. These vehicles are used in the administration of the trust; therefore, the Board has the authority to determine the appropriate use of its vehicles as an "act or function" of the Board.

7. Capital Asset Issues:

The capital asset listing error, the non-removal of a surplused item, and the incorrectly entered acquisition date, have been corrected.

The Board believes its present system of asset management is appropriate to ensure the adequate segregation of duties over capital assets. The Board will implement the Auditor's suggestion for the review of capital asset integrity reports by a separate individual.

Board Employee's duties are divided and assigned to promote efficiency, to further this Agency's fiduciary duty to earn as much money for the school children as possible. Efficiency requires that the duties of purchasing, surplusing, and maintaining the lists of Board assets, be assigned to one person. However, this employee's functions are in fact reviewed by other Board employees. A different employee reviews and submits an asset list to Risk Management every March. All assets are listed and reviewed by this employee, and she is the only employee that can submit to Risk Management. One employee updates the asset list to delete surplused assets and to add new assets. Another employee reviews this update before submission. Annually, three employees within this Agency, (not including the purchasing employee) institute a review of assets. One of those employees maintains a two-year mileage average spreadsheet for vehicles, which is used as part of this Agency's 5-year rotation plan. They decide which assets need to be replaced, and one of those individuals, and the Executive Secretary, contacts the asset purchasing employee regarding the assets to be replaced and purchased. The Executive Secretary then reviews the purchase invoices, and upon delivery to the Agency's office, the new assets are inspected by the Executive Secretary and another employee. To receive the new replacement asset, the replaced asset must first be delivered to the Agency's office. The replaced asset is then inspected by the Executive Secretary and the purchasing employee, and only at that point is an employee given the new replacement asset. Surplus of the old assets is then initiated. The employee is required to provide the date of the surplus auction to the Executive Secretary. After the auction, the Executive Secretary reviews the results of the surplus auction to verify the amount of the proceeds, to check that the asset was surplused correctly. The proceeds from the surplus auction are directly deposited into this Agency's account by surplus, not by an employee. A separate employee reviews that account every month, and makes note of the deposits. Finally, the Executive Secretary performs periodic asset inspections throughout the year.

8. Allocation of Costs – General Fund:

The Board will consider the Auditor's recommendations, and will determine the best course of action.

9. Deposit Timeliness:

We have sent a request to the State Treasurer for an enlargement of the time period we are given to deposit money. The Board endeavors to deposit all funds in a timely fashion. However, when the Board holds auctions in western Nebraska, checks which are tendered to an Agency employee on that day (which is considered the date the Agency receives the check), can take a number of days to arrive at the Agency office. The Auditor found one deposit was deposited two days late, and two deposits were deposited one day late. This delay can usually be attributed to logistical challenges when trying to mail from western Nebraska, to the Agency's office in Lincoln.

10. Contracts Not on the State's Accounting System.:

This matter will be reviewed and the appropriate action will be taken.