



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Charlie Janssen
State Auditor

Charlie.Janssen@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
auditors.nebraska.gov

October 10, 2019

Jeremiah Sullivan, Mayor
City of Ainsworth
P.O. Box 165
Ainsworth, NE 69210

Dear Mr. Sullivan:

As you know, the Nebraska Auditor of Public Accounts (APA) has received some financial concerns regarding the distribution of money from the City of Ainsworth (City) to the North Central Development Center (NCDC). Those concerns pertain to the NCDC's use of City grant funds, including money from the LB 840 Economic Development Program (Program).

As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested certain financial information pertaining to the City and the NCDC. Based upon the outcome of this preliminary planning work, including a review of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time, as the City has already received a fiscal year 2018 audit.

Nevertheless, we have noted certain internal control or compliance matters, or other operational issues, that are presented below. The following information is intended to improve internal control or result in other operational efficiencies.

Background Information

The NCDC is a non-profit corporation established in March 1993. According to its IRS filing, the mission of the NCDC is as follows:

TO PROMOTE AND COORDINATE ECONOMIC DEVELOPMENT, EDUCATION AND QUALITY OF LIFE THROUGH STRENGTHENED COMMUNICATION IN NORTH CENTRAL NEBRASKA.

The current Board of Directors for the NDC is comprised of the following members:

Kim Buckley, President	Mark Johnson
Graig Kinzie, Secretary/Treasurer	Dolly Kienke
Denny Bauer	Mike Tuerk
Sheryl Graff	Doug Weiss

Kristin Olson served as the Executive Director of the NCDC.

According to its fiscal year 2018 audit, the City had engaged the NCDC as program administrator responsible for the day-to-day management of municipal grants, including those from the LB 840 Program, through November 2018. The LB 840 Program was established pursuant to the Local Option Municipal Economic Development Act (Act), which is set out at Neb. Rev. Stat. §§ 18-2701 to 18-2739 (Reissue 2012, Cum. Supp. 2018). The Act was adopted through passage of LB 840 (1991), for which the Program is named.

The City Council approved the amount of LB 840 Program operating grants made to the NCDC. In addition, other grants for various projects were made directly to the NCDC based on a grant application with 100% of funds advanced upon approval of the grant.

The Dana F. Cole & Co. audits for fiscal year 2017 and 2018 identified several weaknesses with the NCDC’s use of municipal grant funds. In particular, the fiscal year 2018 audit questioned a wire transfer of \$35,015 out of the Workforce Development account to pay for repairs to the roof of a movie theater owned by the NCDC in Ainsworth, NE.

In response to the audit findings, the City undertook corrective action, engaging an independent legal counsel to review the LB 840 Program and other municipal grant operations. In November 2018, the legal counsel presented his recommendations for program corrections to the City Council. Among them was a proposal to remove the NCDC as the Program Administrator, replacing it with the City Administrator. The legal counsel suggested also returning to the City all municipal grant funds held by the NCDC. The City Council adopted many of the legal counsel’s recommendations.

Additionally, in February 2019, the City Council requested the Brown County Sheriff's Office to investigate the NCDC’s use of \$35,015 in municipal grant funds from the Workforce Development account to pay for replacing the roof of a movie theater owned by the NCDC. On February 22, 2019, the APA received a telephone call from Bruce Papstein, the Brown County Sheriff, requesting assistance with his investigation of the expenditure at issue.

During a subsequent review of the NCDC’s financial bank records, the APA noted that the following deposits of City grant funds had been made into the NCDC’s various bank accounts:

Account	Date	Amount
NCDC Housing	7/16/2010	\$ 150,000.00
NCDC Professional Recruitment	7/19/2010	\$ 20,000.00
NCDC Housing	2/20/2013	\$ 50,000.00
NCDC Professional Recruitment	10/18/2013	\$ 20,000.00
NCDC Professional Recruitment	10/7/2014	\$ 20,000.00
NCDC Housing	10/24/2014	\$ 50,000.00
NCDC Professional Recruitment	11/24/2014	\$ 60,000.00
NCDC Housing	11/24/2014	\$ 200,000.00
NCDC Operating	5/14/2015	\$ 5,115.79
NCDC Professional Recruitment	9/1/2016	\$ 120,000.00
NCDC Housing Demolition	11/15/2016	\$ 50,000.00
NCDC Housing Demolition	2/9/2017	\$ 50,000.00
NCDC Business Revitalization	2/27/2017	\$ 100,000.00
NCDC Workforce Development	5/31/2017	\$ 60,000.00
NCDC Housing Demolition	8/14/2017	\$ 50,000.00
Total		\$ 1,005,115.79

Comment and Recommendation

Unauthorized Use of Funds

On May 31, 2017, the NCDC opened a Workforce Development checking account at West Plains Bank in Ainsworth, NE, depositing therein a \$60,000 grant payment from the City. Those funds were supposed to be used to recruit professionals to Brown County. After this initial deposit in 2017, there was no activity, including no interest received, in the account until May 2018.

The Workforce Development account was only one of many bank accounts maintained by the NCDC, of which held grant money or other City funds.

On May 17, 2018, without notification to or authorization from the City, the NCDC wire transferred \$35,000 from the Workforce Development bank account to Arends Roofing LLC, a company in Grand Island, NE. The funds were used to defray the cost of repairing the roof of a movie theater in Ainsworth, NE. That transaction included a \$15 wire transfer fee, bringing its total amount to \$35,015.

The actual bank transaction is shown below:

REGULAR CHECKING ACCOUNT [REDACTED]				
DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			04/30/18	60,000.00
OUTGOING WIRE TRANSFER FEE	15.00		05/17/18	59,985.00
OUTGOING WIRE TRANSFER TO ARENDS ROOFING LLC DBA COMPASS ROOF	35,000.00		05/17/18	24,985.00
BALANCE THIS STATEMENT			05/31/18	24,985.00

At the time of this payment to Arends Roofing, LLC, the NCDC did not have enough of its own money to pay for the roof repair. Consequently, without permission to do so, the NCDC used the City grant funds from the Workforce Development account to cover the costs of that expense.

On February 13, 2019, the City Council met to discuss several concerns with the NCDC's handling of municipal grant funds, including the unauthorized use of \$35,000 from the Workforce Development account to pay for the movie theater roof repair. At that meeting, Kim Buckley, a NCDC representative, explained the questioned use of City grant funds for the roof repair. The meeting minutes record his explanation as follows:

To give you an explanation why the \$35,000.00 was used, you may remember that the roof blew off the theatre and it was raining about every day. A bunch of work had been done inside the building for the theatre. The roof blew off and in order to get the roof back on in a reasonable time we needed those funds to get the roof back on. We borrowed the \$35,000.00 from that fund with the intent to pay it back when the theatre fund received grants or donations. "Now was it a fraudulent deal? Not really," said Buckley. Should we have let the water run down and ruin the amount of money the community had already invested in the theatre or do we do what you have to do to get the roof fixed? . . . "I don't know the legal reasons, but I can tell you it was done for the benefit of the theatre and city. If it was done incorrectly, there was never a chance it wasn't going to be paid back," said Buckley. "It was a loan out of that fund to the theatre. The decision was made by volunteers who do not get paid to help with these community projects."

On January 11, 2019, the NCDC transferred \$35,015 from the NCDC Theatre bank account to the Workforce Development checking account in an attempt to replenish the funds used for the roof repair. On January 16, 2019, the NCDC returned \$60,000, including \$6.16 of interest, to the City from the Workforce Development checking account, leaving that account with a zero balance.

However, based upon the APA’s examination of other NCDC bank accounts, the NCDC used City money held in those additional NCDC bank accounts to repay the \$35,015 to the Workforce Development checking account. On January 11, 2019, the NCDC performed a series of transfers between its various bank accounts in an effort to repay the \$35,015.

The APA has created the following table to illustrate how the NCDC used City funds to repay the \$35,015 taken out of the Workforce Development checking account.

Date	From	To	Description	Amount
Multiple Deposits Between 2010-2014	City of Ainsworth	NCDC Housing Account	Several deposits of City funds were made to the NCDC Housing Account. See the table on page 3 herein.	\$ 450,000.00
1/20/2015	NCDC Housing Account	NCDC Housing Demolition Account	This deposit was made to set up the NCDC Housing Demolition Account.	\$ 72,987.84
Multiple Deposits Between 2016-2017	City of Ainsworth	NCDC Housing Demolition Account	Several deposits of City funds were made to the NCDC Housing Demolition Account. See the table on page 3 herein.	\$ 150,000.00
1/11/2019	NCDC Housing Demolition Account	NCDC Operating Account	Two deposits were made to close out the NCDC Housing Demolition Account.	\$ 72,997.68
1/11/2019	NCDC Operating Account	NCDC Theater Account	This deposit was made to increase the balance of the NCDC Theater Account.	\$ 35,010.00
1/11/2019	NCDC Theater Account	NCDC Workforce Development Account	This deposit was made to pay back the NCDC Workforce Development Account for the funds used on the movie theater roof repair.	\$ 35,015.00

As shown in the image below, the beginning balance of the NCDC Theater account was only \$5,007.25. The transfer from the NCDC Operating account, along with another \$10,000 deposit made the day before, increased the NCDC Theater account balance to \$49,932.76, which allowed for the payment from the Theater account to the Workforce Development checking account.

BASIC BUSINESS INT ACCOUNT [REDACTED]				
DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
LANCE LAST STATEMENT			12/26/18	5,007.25
JACK HILLS ENRG UTIL BILL XXXXXX9851	84.49		12/28/18	4,922.76
POSIT		10,000.00	01/10/19	14,922.76
POSIT		35,010.00	01/11/19	49,932.76
ECK # 1140	35,015.00		01/14/19	14,917.76
ECK # 1141	99.38		01/18/19	14,818.38
INTEREST		1.22	01/25/19	14,819.60
LANCE THIS STATEMENT			01/25/19	14,819.60
TOTAL CREDITS (3)	45,011.22	MINIMUM BALANCE		4,922.76
TOTAL DEBITS (3)	35,198.87	AVG AVAILABLE BALANCE		9,897.07
		AVERAGE BALANCE		13,731.40
YOUR CHECKS SEQUENCED				
DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
/14 1140 35,015.00	01/18 1141 99.38			

Likewise, the NCDC Operating account would not have been able to transfer the \$35,010 to the NCDC Theater account without the \$72,997.68 from the NCDC Housing Demolition account, as the bank balance of the NCDC Operating account at December 31, 2018, was only \$9,899.83. As shown in the table above, the Housing Demolition account was made up of mostly City money. Thus, these two deposits into the NCDC Operating account and subsequent transfers to the NCDC Theater account and NCDC Workforce Development checking account should be considered transfers of City funds.

As a result, the NCDC does not appear to have used its own money to repay the \$35,015 in municipal grant funds taken from Workforce Development account; rather, through multiple transfers of City funds among the NCDC’s various bank accounts, the NCDC was able to repay the amount owed with public funds. This reveals the apparent deceptiveness of Mr. Buckley’s assertions made during the February 13, 2019, City Council meeting: “We borrowed the \$35,000.00 from that fund with the intent to pay it back” Whether intentionally or otherwise, Mr. Buckley failed to mention that the City was repaid with its own money.

The issues addressed herein, especially that pertaining to the NCDC’s unauthorized use of City grant monies to pay for roof repairs to a local movie theater owned by the NCDC, give rise to serious concerns regarding the apparent misuse, including the possible fraudulent expenditure, of public funds.

Additionally, good internal control and sound accounting practice require procedures to ensure that public funds, including grant monies entrusted to an outside administrator, are being managed appropriately and expended only as expressly authorized by the City. Grant funds should not be used to repay other grant funds.

Without such procedures, there is an increased risk for the inappropriate, and even unlawful, use of City funds.

We recommend the City take action to recover the full amount of public funds entrusted to the NCDC.

Because the comment herein addresses an alleged misuse of public funds, the APA will be forwarding a copy of this letter to the Brown County Attorney for further review.

City Response: The APA's draft report is well done, with objective standards and reasoning. It provides clarity to issues previously obscured from the City. For that, the City is thankful for the evidence provided to it by the APA so that the cloud of uncertainty and misdirection can be lifted.

* * * * *

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the policies or procedures of the NCDC or the City. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful.

Draft copies of this letter were furnished to the City to provide both entities with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal responses received have been incorporated into this letter. Such responses have been objectively evaluated and recognized, as appropriate, in the letter. Any response indicating that corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the NCDC and the City. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Sincerely,



Mary Avery
Special Audits and Finance Manager
Phone (402) 471-3686
mary.avery@nebraska.gov

cc: City of Ainsworth Attorney
Brown County Sheriff
Brown County Attorney
Nebraska State Patrol
North Central Development Center