



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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October 17, 2019

Dwight Coleman, Mayor
City of Imperial
P.O. Box 637
Imperial, NE 69033-0637

Charlesa Kline, Council President
City of Imperial
P.O. Box 637
Imperial, NE 69033-0637

Dear Mayor Coleman and Council President Kline:

As you may know, the Nebraska Auditor of Public Accounts (APA) received a financial concern related to the City of Imperial (City). Specifically, it has been alleged that public resources were used to install electrical outlets on the Mayor's residential property. Responding to that concern, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested from the City certain financial information pertinent to this issue.

Based upon a review of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time. Nevertheless, during the course of the preliminary planning work, we noted an issue that merits corrective action, as presented below.

Comment and Recommendation

In early August 2019, the APA was informed that the Mayor had City staff install three electrical plug outlets (two 30-amp and one 50-amp) on his personal property for private use. The APA found this to be problematic for a couple of reasons as identified below.

Lack of Documentation

On August 22, 2019, the APA requested and reviewed the City Council meeting minutes from April 2019 through August 2019, none of which included any mention of the electrical work performed by City staff on the Mayor's personal property.

According to the City's Public Works Director, the electrical outlets were installed on the Mayor's residential property for private use, and the decision to do that work was not discussed in any City Council meeting. Rather, the work was performed pursuant to a verbal agreement with the Mayor.

The APA requested documentation showing that the Mayor was properly billed for these services. The City provided an invoice, dated August 22, 2019, the same date as the APA's initial inquiry to the City, for the services provided. The City Administrator explained that normally the City issued invoices to customers at the end of the month. Because of the APA's inquiry, however, the City Administrator decided to complete this particular invoice early.

The work order and invoice provided by the City are shown in **Attachment A** and **Attachment B**, respectively, of this letter. The City also provided a fee schedule resolution dated October 15, 2018. The following is an excerpt from that resolution, showing “Equipment Rental and Labor Fees”:

<u>Equipment Rental and Labor Fees</u>	
Front-End Loader	\$150.00 per hour operator included
Motor Grader	\$200.00 per hour operator included
50 Ft Bucket Truck	\$125.00 per hour operator included
Digger Derrick Truck	\$175.00 per hour operator included
Backhoe	\$125.00 per hour operator included
42 Ft Bucket Truck	\$100.00 per hour operator included
Dump Trucks	\$ 85.00 per hour operator included
Sewer Jet Machine	\$ 85.00 per hour operator included
Vacuum Machine	\$ 85.00 per hour operator included
Mower	\$ 70.00 per hour operator included
Compactor	\$ 35.00 per hour operator included
Pickup	\$ 50.00 per hour operator included
Trash Truck	\$200.00 per hour operator included
Tree Chipper	\$150.00 per hour operator included
Street Sweeper	\$150.00 per hour operator included
All Equipment shown above must be operated by City personnel	
Mileage charge of \$1.00 for all miles traveled	
Compressor	\$45.00 per hour
Jack Hammer	\$20.00 per hour
Sod Cutter	\$35.00 per hour
Cement Saw	\$50.00 per hour
Man Hours	\$50.00 per hour

The invoice amounts agree to the rates shown above.

Additionally, the City provided documentation to support the Mayor’s payment of \$740.54 on August 23, 2019.

Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) prohibits public officials from using public resources for personal financial gain, as follows:

A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

In order to avoid possible noncompliance with State statute, much less the mere appearance of impropriety, the City should ensure that any services performed for the benefit of public officials are formally discussed and authorized at City Council meetings, as well as adequately documented in the meeting minutes of the month in which they are approved.

Questionable Authority

The authority of a political subdivision, such as the City, to perform a given task is conferred by either the Constitution or statute. The Nebraska Supreme Court has said the following regarding the limited authority of municipalities:

The well-settled rule in this jurisdiction is that a municipal corporation possesses, and can exercise, the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; and third, those essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Professional Firefighters of Omaha, Local 385 v. City of Omaha, 243 Neb. 166, 174, 498 N.W.2d 325, 331 (1993). Furthermore, the Court has stated that any powers granted to political subdivisions must be “strictly construed,” as follows:

Statutes granting powers to municipalities are to be strictly construed, and where doubt exists, such doubt must be resolved against the grant.

L.J. Vontz Constr. Co., Inc. v. City of Alliance, 243 Neb. 334, 341, 500 N.W.2d 173, 177 (1993). With these judicial pronouncements in mind, the APA has searched unsuccessfully for any constitutional or statutory authority, express or otherwise, allowing the City to provide private electrical installation services for pay – operating, for all practical purposes, as a private contractor, not to mention competing for business with local independent electricians, in that respect.

In order to avoid exceeding its legitimate authority, as derived from the Constitution or statute, the City should seek legal guidance regarding the proper parameters of its official powers and duties, especially with respect to performing services typically associated with the private sector.

Good internal control requires procedures to ensure that City services are properly authorized and documented and do not exceed legitimate municipal authority.

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

We recommend the Council implement procedures to ensure all City services are properly authorized and documented and do not exceed legitimate municipal authority. As a result of this finding, the APA will forward a copy of this letter to the Nebraska Accountability and Disclosure Commission and the City Attorney.

City Response: In your draft letter, it is stated “...the APA was informed the Mayor had City staff install three electrical plug outlets (two 30-amp and one 50-amp) on his personal property for private use.” While this statement is true, it does not accurately summarize the entirety of the work that was completed on the Mayor’s real estate.

The work completed at the Mayor’s real estate consisted of a new service tap, new meter, and work associated therewith. The work described in your draft letter is not connected to the service that was previously installed on the Mayor’s real estate. The installation consisted of new electrical service on a separate meter that was not connected to any other electrical source.

The billing invoices referenced do not show any billing information for any meters or providing new service as is the policy for the City of Imperial. New service connections which do not require any transformer installation or upgrades or cause undue strain on the existing infrastructure are provided by the City without fee. A new meter associated with a new service is provided by the City without charge to electrical customers who are residents of the City.

The full scope of the work on the Mayor’s property consisted of:

- 1. Tapping the existing power distribution system for a new electrical service connection.*
- 2. Installing a new pole on the property for the new service connection.*

3. *Extending service from the power distribution system to the new pole.*
4. *Placing a new meter into service on the new pole.*
5. *Wiring in the breakers and outlets discussed in your draft letter on the pole.*

Per the City's policy there were no charges for the following work completed on the Mayor's property:

1. *Tapping into existing electrical network for a resident of the City when the demand size will not require electrical system upgrades.*
2. *Wire to extend from the existing electrical network to the new meter.*
3. *New electrical meter for a new service connection.*

Per the City's policy the Mayor was charged for the following:

1. *Time and materials for new pole installation when the pole is used only by one private service.*
2. *Time and materials for installation for any electrical equipment on the new service other than the new meter.*

The City's policies on which services were billed to the Mayor and which services were provided without charge was consistent with all requests for new service which are made to the City.

APA Response: The APA received a phone call on August 1, 2019, regarding the work completed on the Mayor's property. On August 22, 2019, the APA contacted the City to request information regarding the situation. Among other things, the APA was provided with a work order dated August 6, 2019, and an invoice dated August 22, 2019, for the work to be completed. There appears to be a lot of confusion regarding this situation, and it is unclear whether the Mayor would have been billed for the work had the APA not contacted the City.

* * * * *

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 City's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make a comment and recommendation that we hope will prove useful to the City.

Draft copies of this letter were furnished to the City to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A 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 City and its management. 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,

A handwritten signature in cursive script that reads "Mary Avery".

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

cc: Nebraska Accountability and Disclosure Commission
Josh Wendell, City Attorney

JOB NAME Dwight Coleman
 ORDER DELIVERED TO _____ DATE 8-6-19

WORK SHEET
 Light, Water and Sewer Departments
 CITY OF IMPERIAL

No 12010

Job Specifications
 NAME _____ DEPT. Elea
 ADDRESS _____
 ORDERED BY _____
 REMARKS _____
 REPORT _____

Report on Materials and Labor Used

Out	In	Used	Description	Unit Price	Total
		1	30' wood pole (Used)	150	
		2	30# Center outlet (Used)	5	
		1	50# Center outlet (Used)	15	
		1	100# Breaker box (Used)	45	
		2	30# Breakers (Used)	4	
		1	50# Breaker (Used)	6	
		3	4# boxes (used)	2	
		3	offset nipples (USED)	.50	
		12	#8 THH	.25	
		6	#8 THH white	.25	
		1	Derrick (30min)	175-hr	
		1	Bucket (30min)	100-hr	
		1.5	Man Hours — 3 men	50-hr	

CUSTOMER CHG. \$ _____ TOTAL
 DATE COMPLETED _____
 SIGNED _____ DEPARTMENT CHARGE \$ _____

