



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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September 6, 2019

Ruth Hasenauer, Chairperson
Village of Wellfleet
P.O. Box 71
Wellfleet, NE 69170

Dear Chairperson Hasenauer:

As you know, the Nebraska Auditor of Public Accounts (APA) has approved the fiscal year 2018 audit waiver for the Village of Wellfleet (Village). However, while performing our review to determine whether to approve the audit waiver, the APA noted certain internal control or compliance matters, or other operational issues, within the Village. The following information is intended to improve internal controls or result in other operational efficiencies.

Comments and Recommendations

1. Possible Conflict of Interest

The APA received Village Board (Board) meeting minutes and the accompanying claims listing for September 4, 2018. From this listing, the APA identified a potential conflict of interest involving the actions of Board members John Lewis and Jeff Clark.

According to the meeting minutes, Mr. Lewis and Mr. Clark appear to have failed to abstain from voting on the following claims:

Claim Date	Name/Vendor	Claim Amount
9/4/2018	John Lewis	\$ 114.00
9/4/2018	Jaden Clark	\$ 165.64
9/4/2018	Lewis Handyman	\$ 579.90
Total		\$ 859.54

An excerpt from the September 4, 2018, Board minutes is provided below:

Lewis presented bills to be paid Oldham made motion to pay the bills, Prochaska seconded, motion carried.

The apparent failure of Board members John Lewis and Jeff Clark to abstain from voting on the motion above gives rise to concerns regarding possible violations of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. § 49-1401 (Cum. Supp. 2018) et seq.

To start, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2010) states the following:

A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

The penalty for violating the above-cited conflict of interest statute is set out in subsection (7) thereof, as follows:

[A]ny person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Furthermore, Neb. Rev. Stat. § 49-1499.03(2) (Reissue 2010) provides the following:

(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(Emphasis added.) Neb. Rev. Stat. § 49-1425 (Reissue 2010) defines “immediate family” as follows:

Immediate family shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

Good internal control requires procedures to ensure compliance with the applicable provisions of the Act.

Without such procedures, there is an increased risk for both statutory violations and the loss of Village funds.

We recommend the Board implement procedures to ensure compliance with the applicable provisions of the Act. Because the issue addressed herein constitutes a possible violation of the Act, we are forwarding this information to the Nebraska Accountability and Disclosure Commission.

Village Response: After our conversation with the Board, the Board has agreed to make sure that an abstention is shown in their minutes and done by the person filing the claim if there is a potential conflict of interest.

2. Lack of Claim Purpose

During our comparison of the Village’s bank account details to claims approved by the Board, the APA noted that a majority of the claims listed in the Board’s official proceedings lacked descriptions of their respective purposes.

The following is an example of the approved claims listing provided by the Village for September 4, 2018:

Name	Description	Amount
Ruth Hasenauer	Wages	\$ 45.00
Mary Oldham	Wages	\$ 45.00
John Lewis	Wages	\$ 45.00
Jeff Clark	Wages	\$ 30.00
Paul Prochaska	Wages	\$ 30.00
Jaden Clark		\$ 165.64
Ag Valley		\$ 6.00
McCook Public Power		\$ 176.34
John Lewis		\$ 114.00
Lewis Handyman		\$ 579.90
Camas publishing		\$ 37.64
Johnny on the Spot		\$ 120.00
Western Materials		\$ 8,000.00
Neihardt CPAC		\$ 1,650.00
	Total	\$ 11,044.52

Neb. Rev. Stat. § 19-1102 (Cum. Supp. 2018) requires publication of the Board’s official proceedings, which must include, among other things, the purpose of each claim allowed, as follows:

It shall be the duty of each village or city clerk in every village or city having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the village or city board, council, or commission within thirty days after any meeting of the board, council, or commission. The publication shall be in a newspaper in or of general circulation in the village or city, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

(Emphasis added.) Good internal control and sound accounting practices require procedures to ensure that the Board’s official proceedings describe the purpose of each claim allowed.

Without such procedures, there is an increased risk of not only failure to comply with statutory publication requirements but also a lack of transparency regarding the nature of public expenditures.

We recommend the Board implement procedures to ensure the purpose of each claim allowed is included in the Board’s official proceedings and published in accordance with State statute.

Village Response: The Board has implemented a new Treasurer’s report that specifically states the purpose of all payments as required by law. We do not expect this to be an issue again with the Village of Wellfleet.

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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 Village's policies or procedures. 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 to the Village.

Draft copies of this letter were furnished to the Village to provide its management with an opportunity to review and to respond to the comments and recommendations 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 Village 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: John Lewis, Village Treasurer
Nebraska Accountability and Disclosure Commission