



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
www.auditors.nebraska.gov

September 20, 2019

Miranda Martin, Chairperson
Village of Benedict
P.O. Box 116
Benedict, NE 68316

Dear Chairperson Martin:

As you know, the Nebraska Auditor of Public Accounts (APA) has approved the fiscal year 2018 audit waiver for the Village of Benedict (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 October 10, 2017. From this listing, the APA identified a potential conflict of interest involving the actions of Board member Brad Brooke.

According to the meeting minutes, Mr. Brooke appears to have failed to abstain from voting on the following claim:

Claim Date	Name/Vendor	Amount	Check #	Cleared Date
10/10/2017	Kelly K. Brooke	\$ 1,799.18	10581 & 10579	10/17 & 10/31

An excerpt from the October 10, 2017, Board minutes is provided below:

A motion was made by Heiden, seconded by Brooke, to approve and pay the claims as presented. Roll call vote, all ayes. Motion carried.

(Emphasis added.) The apparent failure of Board member Brad Brooke 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.) 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: The board member in question abstains from any claim involving his spouse other than payroll checks. We will be implementing procedures to make sure that board members abstain from voting on all matters that involve themselves, immediate family members or personally owned businesses.

2. Payment of Unapproved Claims

During our comparison of the Village's bank account details to claims approved by the Board, the APA identified one check, totaling \$500, which was paid but not included on the claims listing to be approved by the Board.

Details of that unapproved payment are presented in the table below:

Check Date	Name/Vendor	Amount	Check #	Cleared Date
10/10/2017	Nebraska Rural Water Assoc.	\$ 500.00	10578	10/23/2017

Good internal control requires procedures to ensure that all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

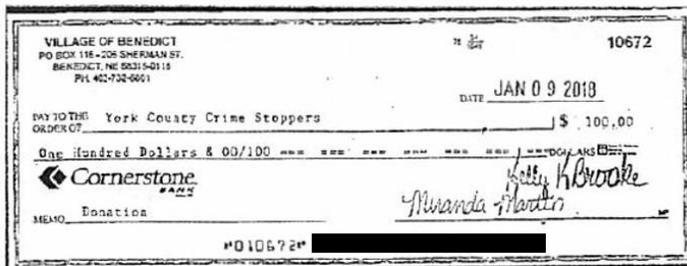
Without such procedures, there is an increased risk for the loss or misuse of Village funds.

We recommend the Board implement procedures to ensure all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

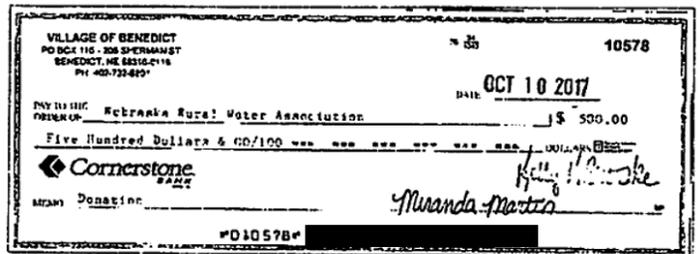
Village Response: The check in question was approved in a separate motion and not part of the motion to approve claims. The amount of the check was not predetermined so a separate motion was made for the agreed upon amount.

3. Donations

While reviewing the bank statements, the APA noted two checks, totaling \$600, whose memos noted "Donation." Images of these two checks are shown below:



10672 \$100.00 01/10/2018



10578 \$500.00 10/23/2017

Neb. Rev. Stat. § 13-604(1) (Reissue 2012) authorizes a municipality "to spend its own revenue and other available resources" for any lawful purpose, including the following:

Ordinary and necessary maintenance and operating expenses for (a) public safety, including law enforcement, fire protection, and building code enforcement; (b) environmental protection, including sewage disposal, sanitation and pollution abatement; (c) public transportation, including transit systems for streets and roads; (d) health; (e) recreation; (f) libraries; (g) social services as defined in section 68-1202; and (h) financial administration . . .

Though not taking exception to the legality of the payment itself to these entities, the APA questions the apparent lack of subsequent oversight to ensure that the public funds were utilized appropriately by them.

Good internal control requires procedures to ensure that Village disbursements are not only lawful but also reasonable, necessary, and utilized appropriately for their intended purpose.

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

We recommend the implementation of procedures to ensure that all Village disbursements are reasonable, necessary, and utilized appropriately for their intended purpose. To accomplish this, we recommend that Village aid be made – when expressly authorized by statute – on a reimbursement basis or contingent upon support from the recipient that the public funds awarded are being utilized appropriately.

Village Response: The checks in question were in fact membership/dues/equipment use paid to the different agencies and not donations of public funds. We will make sure to label these appropriately going forward.

4. Payments Made in Excess of Approved Amounts

During our comparison of the Village’s bank account details to claims approved by the Board, the APA identified two checks paid in excess of the amounts approved by the Board.

The following table summarizes those overpayments:

Name	Claim Date	Approved Amount	Amount Paid	Over Payment
Kelly K. Brooke	10/10/2017	\$ 1,799.18	\$ 1,805.06	\$ 5.88
James E Stearns	10/10/2017	\$ 1,095.41	\$ 1,159.86	\$ 64.45
Totals		\$ 2,894.59	\$ 2,964.92	\$ 70.33

Good internal control requires procedures to ensure that all claims are made in the amounts approved by the Board.

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

We recommend the Village implement procedures to ensure payments are made in the amounts approved by the Board.

Village Response: It is the Village’s policy to pay their employees every other Monday, so the amounts approved at the meeting are the paychecks that occurred in between the two monthly meetings. The amounts listed as approved were correct for the last paycheck in September and the first paycheck in October. The amounts listed as paid in the above table include the second paycheck in October and the last paycheck in October (due to October 2017 having three pay periods).

* * * * *

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". The signature is written in black ink and is positioned to the left of the typed name.

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

cc: Kelly Brooke, Village Clerk
Nebraska Accountability and Disclosure Commission