



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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September 18, 2019

Billie Flick, Chairperson
Village of Thayer
235 Pine St.
Waco, NE 68460

Dear Chairperson Flick:

As you know, the Nebraska Auditor of Public Accounts (APA) has approved the fiscal year 2018 audit waiver for the Village of Thayer (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.

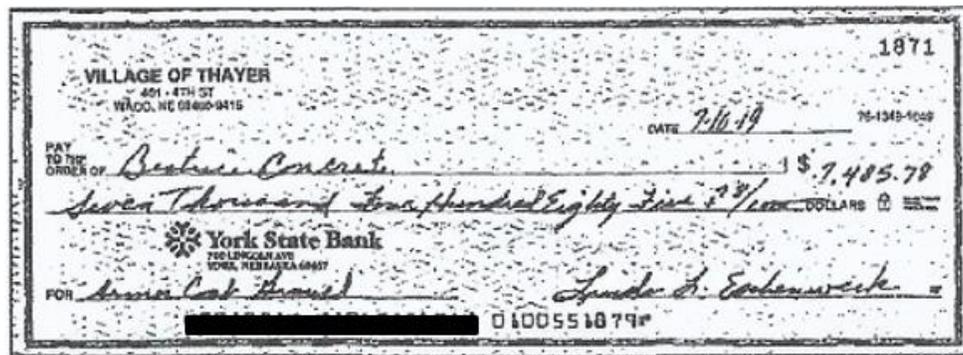
Comments and Recommendations

1. Payment of Unapproved Claim

The APA received information regarding a gravel purchase made by the Village Clerk (Clerk) that was not approved by the Village Board of Trustees (Board). The Village check written as payment for the acquisition was made to Beatrice Concrete for \$7,485.78.

Upon receiving this information, the APA contacted the Clerk to request documentation for the gravel purchase, including a copy of the cleared check.

An image of that check is shown below:



Check 1871, Amount \$7,485.78 On 7/11/2019

The Clerk also provided the APA with copies of the minutes from the July 9, 2019, Board meeting; however, the content of those meeting minutes were “edited” by the Clerk – so much so, the APA later learned, that the information therein pertaining to the concrete purchase at issue bears little resemblance to what actually occurred during that meeting.

Because she was not in attendance, the Clerk did not keep the minutes of that particular meeting. Instead, Sue Foutz, one of the Board members, recorded the minutes. After receiving the meeting minutes completed by Ms. Foutz, the Clerk took the liberty of unilaterally altering them, resulting in an inaccurate account of what had transpired. Specifically, the Clerk added language indicating that the Board had been presented with and approved the Beatrice Concrete claim. According to a subsequent determination by the Board, however, no such presentation or approval took place.

Thus, the Clerk’s self-described “editing” of the Board’s meeting minutes would appear to be more correctly characterized as a blatant falsification of that public record.

The Clerk noted the following in an email to the APA as a reasoning for editing the meeting minutes:

After a phone conversation I had with another Board Member, I edited the minutes to read what I understood to have taken place. (We do not tape record the meetings.)

The “edited” minutes given to the APA were the same as those published by the Clerk for the month of July, as follows:

Village of Thayer
July 9, 2019

The regular meeting of the Thayer Village Board was held on July 9, 2019 at the Village Office. Chairperson B Flick called the meeting to order at 7:12 pm.

Roll Call: B Flick, D Flick, D Foutz and S Foutz, present; Conard, absent. Also absent, Linda Eschenweck, Clerk.

The June 11, 2019 minutes were read. B Flick motioned to approve the minutes; D Foutz seconded. All ayes, motion carried.

The June 30, 2019 Financial Report was reviewed. B Flick motioned to approve the report; S Foutz seconded. All ayes, motion carried.

The following claims were presented: Perennial Public Power District (streets lights) - \$388.62; Perennial PPD (park lights) - \$30.27; City of Stromsburg (mosquito spraying: June 10, 17, and 24) - \$868.98; Beatrice Sand & Gravel (gravel for armor coat) - \$7,485.78; L Eschenweck (computer upgrade) - \$192.00; York News-Times (publication) - \$14.90. Following discussion of the claims, particularly the claim from Beatrice Sand and Gravel, S Foutz motioned to approve the claims, seconded by D Flick. All ayes, motion carried.

Under old business: Picnic is set for September 8 at 4 – 6 pm, with rain date September 15. Food, games, and entertainment are planned for the event. More discussion regarding addition of a swing set for the park ensued. D Flick volunteered to do more research on the type of swing set for the park. Effectiveness of the mosquito spraying was voiced by all Board members. S Foutz volunteered to look into other options to reduce the mosquito population. Street sign installation continues to be an ongoing process. D Foutz volunteered to address this project within the next two weeks.

After discussion of a possible special meeting, B Flick motioned to adjourn at 8:17 pm and to meet in regular session on August 13, 2019; S Foutz seconded. All ayes, motion carried.

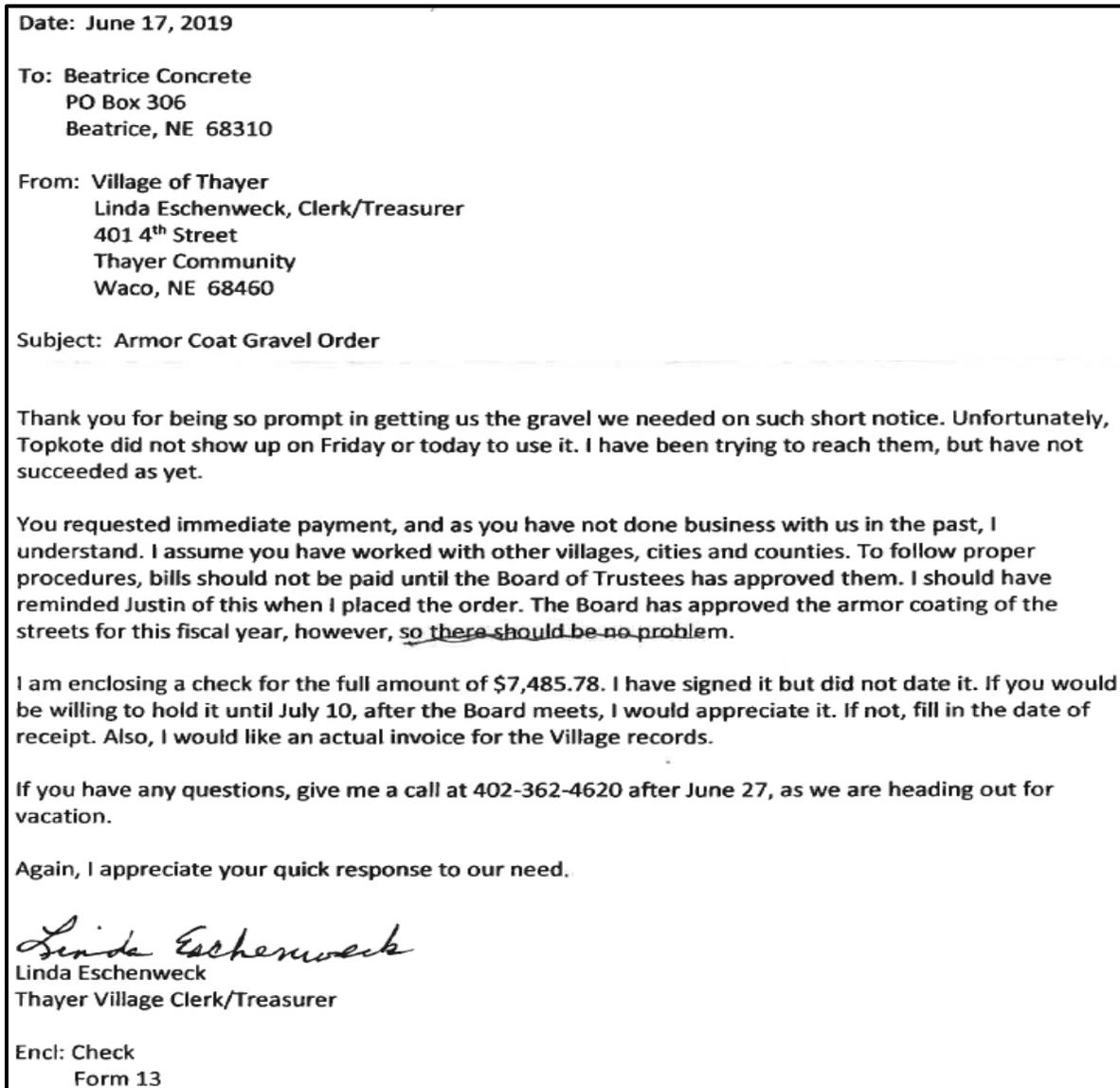
Sue Foutz
Board Member

Edited by Linda Eschenweck Clerk

The Village held a Special Board meeting on July 30, 2019. At that time, the Board members questioned the veracity of the minutes “edited” and published by the Clerk. Of particular concern was whether those minutes describe correctly what had transpired at the Board meeting earlier that month with regard to the \$7,485.78 gravel purchase from Beatrice Concrete. Noting that the claim was never received or approved, the Board concurred that the narrative created by the Clerk’s “editing” of the minutes was specious.

Later, the APA obtained a letter sent by the Clerk to Beatrice Concrete with an enclosed Village check that was signed but not dated. The letter requested Beatrice Concrete to hold the check until after the regular July Board meeting – during which, she anticipated, the concrete purchase would be approved.

The following is an image of the Clerk’s letter to Beatrice Concrete:



The Open Meetings Act (Act), which is set out at Neb. Rev. Stat. § 84-1407 (Reissue 2014) et seq., requires minutes to be kept for all public meetings. Specifically, Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2018) of the Act says the following:

Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

When it comes to altering minutes from a prior public meeting, the Nebraska Supreme Court (Court) has stated the following:

As a general rule a public body may, at a subsequent meeting, if no intervening rights of third persons have arisen, order the minutes or record of its own proceedings at a previous meeting to be corrected according to the facts, so as to make them speak the truth, although the record has once been approved.

(Emphasis added.) State ex rel. Schuler v. Dunbar, 214 Neb. 85, 89, 333 N.W.2d 652, 655 (1983). The Court also added the following observation:

The purpose of a nunc pro tunc correction is to make the record speak the truth. Its purpose is not to correct oversights or failures in the performance of mandatory acts.

(Emphasis added.) Id. As made clear by the Court’s comments above, the minutes of a public meeting should “speak the truth” regarding what transpired during that event. Altering meeting minutes to give a false impression of what took place not only runs contrary to the above guidance by the Court but also risks running afoul of the statutory prohibition against “abuse of public records.” Neb. Rev. Stat. § 28-911 (Reissue 2016) says, in relevant part, the following:

(1) *A person commits abuse of public records, if:*

(a) *He knowingly makes a false entry in or falsely alters any public record; or*

* * * *

(d) *He makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.*

(2) *As used in this section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.*

(3) *Abuse of public records is a Class II misdemeanor.*

At this juncture, the Board should consider taking formal action not only to restore the improperly amended July meeting minutes to their original, correct form and publish them accordingly but also to address the underlying payment to Beatrice Concrete.

According to the July 30, 2019, meeting minutes, the Clerk resigned. Per conversations with Village personnel, the APA has been informed that, during its upcoming regular meeting on August 13, 2019, the Board intends to vote on correcting the July meeting minutes so that they reflect what actually occurred.

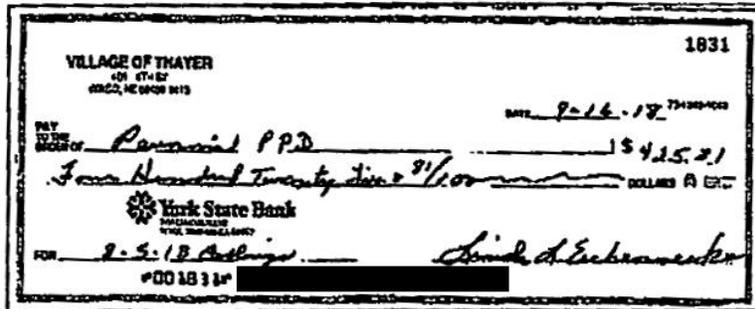
Good internal control requires procedures to ensure that all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved. Those same procedures should safeguard the authenticity of the meeting minutes, ensuring that they are never altered so as to give a false impression of what actually occurred.

Without such procedures, there is an increased risk for violations of State statute, the loss of Village funds, and a lack of transparency with regard to public affairs.

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. Those same procedures should safeguard the authenticity of the meeting minutes, ensuring that they are never altered so as to give a false impression of what actually occurred. We also recommend the Board act not only to correct the improperly altered meeting minutes and publish them accordingly but also to address the underlying payment to Beatrice Concrete. Finally, because this comment addresses an apparent violation of State statute, we are forwarding the information herein to the York County Attorney for further review.

2. Dual Signatures Required on Checks

The APA obtained the bank statements for the Village’s accounts from its fiscal year 2018 audit waiver request. From these statements, the APA noted that all Village checks written during the examination period contained only one signature – that of the Clerk. An example of such checks is shown below:



Check 1831, Amount \$425.81 On 9/20/2018

State statute requires Village checks to be signed by both the Board Chairperson and the Village Clerk. Specifically, Neb. Rev. Stat. § 17-711 (Cum. Supp. 2018) provides the following:

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

Good internal control and sound accounting practices require procedures to ensure that Village checks contain the statutorily required endorsements.

Without such procedures, there is an increased risk of not only failure to comply with State statute but also the loss and/or misuse of Village funds.

We recommend the Board implement procedures to require dual signatures, from the Board Chairperson and the Village Clerk, on all Village checks, as required by law.

* * * * *

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. The Village declined to respond.

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 and title.

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

cc: Christopher M. Johnson, York County Attorney