

**ATTESTATION REPORT
OF THE
NEBRASKA COMMISSION ON PUBLIC ADVOCACY**

JULY 1, 2018, THROUGH JUNE 30, 2019

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Issued on August 29, 2019

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Audit Staff Working On This Examination

Kris Kucera, CPA, CFE – Audit Manager

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NEBRASKA COMMISSION ON PUBLIC ADVOCACY

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NEBRASKA COMMISSION ON PUBLIC ADVOCACY

BACKGROUND

The Nebraska Commission on Public Advocacy's website, which is found at <http://www.ncpa.ne.gov/>, states the following:

The Nebraska Commission on Public Advocacy ("Commission") was created in 1995 to provide property tax relief to counties that are required to provide legal representation to indigent defendants charged with first degree murder and serious violent or drug related felonies. The Commission also provides legal assistance to public defenders and court-appointed attorneys. The Commission provides property tax relief because counties pay nothing for such legal services and associated costs.

The Commission consists of nine members appointed by the governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. A member is appointed from each of the six state Supreme Court districts, and three members are appointed at large. Members must have substantial experience in criminal defense work and civil legal matters. They may not be prosecutors, law enforcement officials, or judges during their terms in office. Members serve six-year terms. The governor designates the chairperson of the Commission. Members are reimbursed for expenses.

The Commission appoints a chief counsel to supervise the divisions of the Commission. These divisions are: the capital litigation division; the violent crime and drug defense division; the appellate division; the DNA testing division; and the major case resource center, which helps public defenders, contracting attorneys or court-appointed attorneys with the defense of felony offenses. The chief counsel also administers the Legal Aid and Services Fund and the Civil Legal Services Fund.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

KEY OFFICIALS AND COMMISSION CONTACT INFORMATION

Nebraska Commission on Public Advocacy Board Members

<u>Name</u>	<u>Title</u>	<u>Term Ending</u>
Julie E. Bear	Chairperson – Fifth District	November 3, 2019
Robert Lindemeier	Member At Large	November 3, 2021
Jonathan M. Braaten	Member At Large	November 3, 2019
Charles D. Brewster	Member At Large	November 3, 2023
Linsey A. Camplin	First District	November 3, 2023
Michael Ziskey	Second District	November 3, 2019
Douglas J. Stratton	Third District	November 3, 2021
Thomas P. Strigenz	Fourth District	November 3, 2021
Nancy S. Freiburg	Sixth District	November 3, 2023

Nebraska Commission on Public Advocacy Executive Management

<u>Name</u>	<u>Title</u>
Jeffery A. Pickens	Chief Counsel, Director
Rita J. Wesely	Fiscal Officer, Administrative Assistant

Nebraska Commission on Public Advocacy
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NEBRASKA COMMISSION ON PUBLIC ADVOCACY

SUMMARY OF COMMENTS

During our examination of the Nebraska Commission on Public Advocacy (Commission), we noted certain deficiencies and other operational matters that are presented here. The following comment is required to be reported in accordance with *Government Auditing Standards*: Comment #1, “Legal Aid and Services Grant Monitoring,” which is considered to be a material weakness.

These comments and recommendations are intended to improve the internal control over financial reporting or result in operational efficiencies in the following areas:

- 1. *Legal Aid and Services Grant Monitoring:*** The Commission did not monitor service providers to ensure that the amounts they were paid from the Legal Aid and Services Fund were used only to assist eligible low-income individuals. A total of \$2,057,950 was paid to service providers from the Legal Aid and Services Fund during the fiscal year ended June 30, 2019.
- 2. *Lack of Segregation of Duties Over Accounts Receivable:*** Only one person was involved in the process of monitoring accounts receivable for the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Program (LRAP). Additionally, the Commission did not keep complete and accurate accounts receivable balance tracking reports. Total expenditures for the LRAP totaled \$232,754 during the fiscal year ended June 30, 2019.

More detailed information on the above items is provided hereinafter. It should be noted that this report is critical in nature, containing only our comments and recommendations on the areas noted for improvement and does not include our observations on any accounting strengths of the Commission.

Draft copies of this report were furnished to the Commission to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this report. Responses that indicate corrective action has been taken were not verified at this time, but they will be verified in the next examination.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

COMMENTS AND RECOMMENDATIONS

1. Legal Aid and Services Grant Monitoring

The Nebraska Commission on Public Advocacy (Commission) awards all money in the Legal Aid and Services Fund annually in the form of grants to service providers of civil legal services. Per Neb. Rev. Stat. § 25-3002 (Reissue 2016), this money “shall be used to provide civil legal services to eligible low-income persons.” Additionally, Neb. Rev. Stat. § 25-3001(1) (Reissue 2016) defines an “eligible low-income person” as follows:

Eligible low-income person means any person (a) whose income is less than one hundred twenty-five percent of the federal poverty level, (b) who is financially eligible under the service provider’s eligibility guidelines, (c) who resides in one of the counties in the service provider’s area, and (d) who has a civil legal problem that falls within the guidelines established by the Commission on Public Advocacy[.]

A stipulation of the grants is that the service providers be required to submit a Quarterly Report to the Commission showing the activities that have taken place during the reporting period, a schedule of funds received from the Commission, expenditures incurred, and the number of clients served. Despite supplying this information, however, the service providers do not submit a detailed list of cases or individuals given free civil legal services, which were paid for with Legal Aid and Services grant funds, to ensure that each such recipient met the statutory definition of “eligible low-income person.”

Additionally, the service provider is required to be financially audited annually and to submit a copy of the audit report to the Commission. However, the audits performed do not appear to have included testing of the service providers’ compliance with § 25-3002, which is necessary to provide assurance that Legal Aid and Services Fund monies were used to provide civil legal services to only eligible low-income persons.

A total of \$2,057,950 was paid to service providers from the Legal Aid and Services Fund during the fiscal year ended June 30, 2019.

When procedures and policies are not in place to ensure service providers are using Legal Aid and Services Fund monies to assist only low-income persons, there is an increased risk that these funds could be used, contrary to statute, to assist ineligible individuals.

We recommend the Commission implement procedures to verify that service providers are using the grant payments for only eligible low-income persons. This could involve the Commission adding a requirement to its administrative rules and regulations directing the service providers’ annual audits to include specific compliance procedures to ensure that Legal Aid and Services Fund monies are spent only on civil legal services for eligible low-income persons.

Commission Response: The Eligibility Criteria, Guidelines and Policies Pertaining to Grants and Grantees of the Legal Aid & Services Fund will be amended by adding that the required annual audit of civil legal service providers include compliance procedures to ensure that Fund monies are spent only on civil legal services for eligible low-income persons.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Lack of Segregation of Duties Over Accounts Receivable**

Accounts receivable for the Commission consist of refunds owed to the Commission for the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Program (LRAP). The LRAP was established to provide educational loan repayment assistance to attorneys. The LRAP strengthens legal assistance for low-income persons by supporting the recruitment and retention of qualified attorneys who are employed by tax-exempt charitable organizations performing such assistance, who may have skills in languages other than English, or who are employed in legal profession shortage areas in Nebraska. This is done through maximum annual awards of \$6,000 or an aggregate of \$42,000 in the case of any one recipient – regardless, the award cannot exceed the total qualifying loan balance.

To be eligible for the LRAP, applicants must meet the following criteria: 1) agree to remain employed in either a tax-exempt charitable organization whose primary duties are “public legal service” or in a “designated legal profession shortage area” for not less than three years; an applicant who has completed a three-year commitment under the program and is eligible to receive another award must agree to remain employed for not less than another year; and 2) apply the full amount of the award towards a qualifying educational loan and provide proof of the payment to the Commission no later than 60 days following the date of the award. Any recipient of LRAP funding who does not meet the above criteria must return the award money immediately.

The Commission monitors the LRAP payments by maintaining spreadsheets that document all applicants to ensure they have provided proof of payment on an educational loan and semi-annual verification of eligible employment. However, the Commission has only one employee who maintains these spreadsheets, giving rise to a risk that individuals who fail to submit the required documentation may avoid detection.

As of June 30, 2019, the Commission could identify only one LRAP funding recipient who was required to repay a \$6,000 award due to failure to provide proof that the money was applied to an eligible educational loan. No spreadsheet was maintained by the Commission employee, however, to track proof of payment by award recipients on an educational loan. Consequently, we were unable to determine if any other funding recipients owed money to the Commission as a result of failing to provide proof of paying off an eligible educational loan.

Additionally, the same Commission employee tracks LRAP award recipients to ensure that they provide semi-annual proof of employment with an eligible tax-exempt charitable organization or in a designated shortage area. Again, the Commission employee did not maintain a complete and accurate spreadsheet for proof of such employment.

Expenditures for the LRAP totaled \$232,754 during the fiscal year ended June 30, 2019.

A good internal plan and sound business practices require an adequate segregation of duties to ensure that no one individual is in a position both to perpetrate and to conceal errors or irregularities. This would require, at the very least, not only the maintenance of receivable balance spreadsheets for tracking proof of compliance with LRAP funding eligibility requirements but also a secondary review of those documents to ensure that they are being monitored properly.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

COMMENTS AND RECOMMENDATIONS

(Concluded)

2. **Lack of Segregation of Duties Over Accounts Receivable** (Concluded)

We recommend the Commission implement procedures to ensure a proper segregation of duties – or, alternatively, compensating measures – exists for handling accounts receivable amounts due to the Commission. At a minimum, such procedures should include both the maintenance of receivable balance spreadsheets for tracking recipient compliance with LRAP funding eligibility requirements and a secondary review of those documents to ensure that they are being monitored properly.

Commission Response: All documentation required by the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Program will be reviewed and initialed by Chief Counsel and filed by Administrative Assistant. Administrative Assistant will maintain spreadsheets in the computer and on paper tracking receipt of all documentation that will be initialed and dated by Chief Counsel upon his review.



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NEBRASKA COMMISSION ON PUBLIC ADVOCACY

INDEPENDENT ACCOUNTANT'S REPORT

Nebraska Commission on Public Advocacy
Lincoln, Nebraska

We have examined the accompanying Schedule of Revenues, Expenditures, and Changes in Fund Balances of the Nebraska Commission on Public Advocacy (Commission) for the fiscal year ended June 30, 2019. The Commission's management is responsible for the Schedule of Revenues, Expenditures, and Changes in Fund Balances based on the accounting system and procedures set forth in Note 1. Our responsibility is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Schedule of Revenues, Expenditures, and Changes in Fund Balances is based on the accounting system and procedures set forth in Note 1, in all material respects. An examination involves performing procedures to obtain evidence about the Schedule of Revenues, Expenditures, and Changes in Fund Balances. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of the Schedule of Revenues, Expenditures, and Changes in Fund Balances, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

In our opinion, the Schedule of Revenues, Expenditures, and Changes in Fund Balances for the fiscal year ended June 30, 2019, is based on the accounting system and procedures prescribed by the State of Nebraska's Director of the Department of Administrative Services, as set forth in Note 1, in all material respects.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Schedule of Revenues, Expenditures, and Changes in Fund Balances; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the subject matter or an assertion about the subject matter of the examination engagement. We are also required to obtain and report the views of management concerning the findings, conclusions, and recommendations, as well as any planned corrective actions.

We performed our examination to express an opinion on whether the Schedule of Revenues, Expenditures, and Changes in Fund Balances is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over the Schedule of Revenues, Expenditures, and Changes in Fund Balances or on compliance and other matters; accordingly, we express no such opinions. Our examination disclosed a certain finding that is required to be reported under *Government Auditing Standards*, and that finding, along with the views of management, is described in the Comments Section of the report.

The purpose of this report is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances, as described in paragraph one above. Accordingly, this report is not suitable for any other purpose. This report is a matter of public record, and its distribution is not limited.

A handwritten signature in cursive script, appearing to read "C. J. Janssen", with a long horizontal flourish extending to the right.

August 21, 2019

Charlie Janssen
Auditor of Public Accounts
Lincoln, Nebraska

NEBRASKA COMMISSION ON PUBLIC ADVOCACY
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
For the Fiscal Year Ended June 30, 2019

	Civil Legal Services Fund 20590	Commission on Public Advocacy Operations Cash Fund 29410	Legal Aid and Services Fund 29420	Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund 29430	Totals (Memorandum Only)
REVENUES:					
Sales & Charges	\$ 183,772	\$ 938,073	\$ 2,055,901	\$ 13,075	\$ 3,190,821
Miscellaneous	187	21,992	2,080	3,502	27,761
TOTAL REVENUES	183,959	960,065	2,057,981	16,577	3,218,582
EXPENDITURES:					
Personal Services	-	947,704	-	-	947,704
Operating	-	168,048	-	-	168,048
Travel	-	40,581	-	-	40,581
Capital Outlay	-	1,568	-	-	1,568
Government Aid	183,903	-	2,057,950	232,754	2,474,607
TOTAL EXPENDITURES	183,903	1,157,901	2,057,950	232,754	3,632,508
Excess (Deficiency) of Revenues Over (Under) Expenditures	56	(197,836)	31	(216,177)	(413,926)
OTHER FINANCING SOURCES:					
Operating Transfers In	-	-	-	150,000	150,000
TOTAL OTHER FINANCING SOURCES	-	-	-	150,000	150,000
Net Change in Fund Balances	56	(197,836)	31	(66,177)	(263,926)
FUND BALANCES, July 1, 2018	23	935,611	(3,918)	125,424	1,057,140
FUND BALANCES, June 30, 2019	\$ 79	\$ 737,775	\$ (3,887)	\$ 59,247	\$ 793,214
FUND BALANCES CONSIST OF:					
General Cash	\$ 79	\$ 744,156	\$ 1,247	\$ 59,247	\$ 804,729
Deposits with Vendors	-	79	-	-	79
Accounts Receivable Invoiced	-	3	5	-	8
Due From Other Government	(4)	(2,836)	(5,139)	-	(7,979)
Due to Vendors	-	(3,627)	-	-	(3,627)
Due to Fund	4	-	-	-	4
TOTAL FUND BALANCES	\$ 79	\$ 737,775	\$ (3,887)	\$ 59,247	\$ 793,214

The accompanying notes are an integral part of the schedule.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

NOTES TO THE SCHEDULE

For the Fiscal Year Ended June 30, 2019

1. Criteria

The accounting policies of the Nebraska Commission on Public Advocacy (Commission) are on the basis of accounting prescribed by the State of Nebraska's Director of the Department of Administrative Services (DAS).

Per Neb. Rev. Stat. § 81-1107(2) (Reissue 2014), the duties of the State of Nebraska's Director of DAS include:

The keeping of general accounts and the adoption and promulgation of appropriate rules, regulations, and administrative orders designed to assure a uniform and effective system of accounts and accounting, the approval of all vouchers, and the preparation and issuance of warrants for all purposes[.]

In accordance with Neb. Rev. Stat. § 81-1111(1) (Reissue 2014), the State Accounting Administrator has prescribed the system of accounts and accounting to be maintained by the State and its departments and agencies and has developed necessary accounting policies and procedures. The prescribed accounting system currently utilizes EnterpriseOne, an accounting resource software, to maintain the general ledger and all detailed accounting records. Policies and procedures are detailed in the Nebraska State Accounting Manual published by the DAS State Accounting Division (State Accounting) and are available to the public.

The financial information used to prepare the Schedule of Revenues, Expenditures, and Changes in Fund Balances was obtained directly from the general ledger and fund balance information maintained on EnterpriseOne. EnterpriseOne is not an accrual accounting system; instead, accounts are maintained on a modified cash basis. As revenue transactions occur, the agencies record the accounts receivable and related revenues in the general ledger. As such, certain revenues are recorded when earned, regardless of the timing of related cash flows. State Accounting does not require the Commission to record all accounts receivable and related revenues in EnterpriseOne; as such, the Commission's schedule does not include all accounts receivable and related revenues. In a like manner, expenditures and related accounts payable are recorded in the general ledger as transactions occur. As such, the schedule includes those expenditures and related accounts payable posted in the general ledger as of June 30, 2019, and not yet paid as of that date. The amount recorded as expenditures on the schedule, as of June 30, 2019, **does not** include amounts for goods and services received before June 30, 2019, which had not been posted to the general ledger as of June 30, 2019.

The Commission had accounts receivable of \$6,000 from refunds owed to the Commission for the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Program, which were not included in the Schedule. State Accounting did not require the Commission to record its receivables on the general ledger, and these amounts are not reflected in revenues or fund balances on the Schedule. Liabilities for accrued payroll and compensated absences are not recorded in the general ledger.

The following fund types are established by the State and used by the Commission:

20000 – Cash Funds – account for revenues generated by specific activities from sources outside of State government and the expenditures directly related to the generation of the revenues. Cash funds are established by State statutes and must be used in accordance with those statutes.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

NOTES TO THE SCHEDULE

(Continued)

1. Criteria (Concluded)

The following major revenue account classifications are established by State Accounting and used by the Commission:

Sales & Charges – Income derived from sales of merchandise and commodities, compensation for services rendered, and charges for various licenses, permits, and fees.

Miscellaneous – Revenue from sources not covered by other major categories, such as investment income.

The following major expenditure account classifications are established by State Accounting and used by the Commission:

Personal Services – Salaries, wages, and related employee benefits provided for all persons employed by the Commission.

Operating – Expenditures directly related to a program's primary service activities.

Travel – All travel expenses for any State officer, employee, or member of any commission, council, committee, or board of the State.

Capital Outlay – Expenditures that result in the acquisition of or an addition to capital assets. Capital assets are resources of a long-term character, owned or held by the government.

Government Aid – Payment of Federal and/or State money to governmental subdivisions, State agencies, local health and welfare offices, individuals, etc., in furtherance of local activities and accomplishment of State programs.

Other significant accounting classifications and procedures established by State Accounting and used by the Commission include the following:

Assets – Resources owned or held by a government that have monetary value. Assets include cash accounts, deposits with vendors, due from other government, and receivable accounts. Accounts receivable are recorded as an increase to revenues, resulting in an increase to the fund balance on the schedule. Cash accounts and deposits with vendors are also included in the fund balance and are reported as recorded in the general ledger.

Liabilities – Legal obligations arising out of transactions in the past that must be liquidated, renewed, or refunded at some future date. Accounts payable transactions are recorded as expenditures, resulting in a decrease to the fund balance. Other liabilities recorded in the general ledger for the Commission's funds at June 30, 2019, included amounts recorded in Due to Vendors and Due to Fund. The activity of these accounts are not recorded through revenue and expenditure accounts on the Schedule of Revenues, Expenditures, and Changes in Fund Balances.

Other Financing Sources – Includes operating transfers.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

NOTES TO THE SCHEDULE

(Continued)

2. Reporting Entity

The Commission is a State agency established under and governed by the laws of the State of Nebraska. As such, the Commission is exempt from State and Federal income taxes. The schedule includes all funds of the Commission included in the general ledger.

The Commission is part of the primary government for the State of Nebraska.

3. Totals

The Totals “Memorandum Only” column represents an aggregation of individual account balances. The column is presented for overview informational purposes and does not present consolidated financial information because interfund balances and transactions have not been eliminated.

4. General Cash

General cash accounts are under the control of the State Treasurer or other administrative bodies, as determined by law. All cash deposited with the State Treasurer is initially maintained in a pooled cash account. On a daily basis, the State Treasurer invests cash not needed for current operations with the State’s Investment Council, which maintains an operating investment pool for such investments. Interest earned on those investments is allocated to funds based on their percentage of the investment pool.

5. Capital Assets

Capital assets include land, buildings, equipment, improvements to buildings, construction in progress, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items). Under State Accounting policies, expenditures for such capital assets are not capitalized as an asset in the funds used to acquire or construct them. Rather, costs of obtaining the capital assets are reflected as expenditures in the general ledger and are reported as such on the Schedule.

However, State Accounting does adjust such expenditures and reports the capital assets as assets for the State of Nebraska in the Comprehensive Annual Financial Report (CAFR). In addition, the Commission takes an annual inventory, recording in the State Accounting System all equipment that has a cost of \$1,500 or more at the date of acquisition, and all computers.

For the CAFR, the State requires the Commission to value all capital assets at cost where historical records are available and at estimated historical cost where no historical records exist. Donated capital assets are valued at their estimated fair market value on the date received. Generally, equipment that has a cost of \$5,000 or more at the date of acquisition and has an expected useful life of more than one year is capitalized. Depreciation expenses are reported in the CAFR in the funds used to acquire or construct them for the State of Nebraska. The cost of normal maintenance and repairs that does not add to the value of the asset or extend the asset’s life is not capitalized.

Equipment is depreciated in the CAFR using the straight-line method with estimated useful lives of 3 to 10 years.

NEBRASKA COMMISSION ON PUBLIC ADVOCACY

NOTES TO THE SCHEDULE

(Concluded)

5. Capital Assets (Concluded)

Capital asset activity of the Commission recorded in the State Accounting System for the fiscal year ended June 30, 2019, was as follows:

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
Capital Assets				
Equipment	\$ 54,652	\$ 446	\$ -	\$ 55,098
Less accumulated depreciation for:				
Equipment				<u>\$ 54,739</u>
Total capital assets, net of depreciation				<u><u>\$ 359</u></u>

6. Transfers

2018 Neb. Laws, LB 945, § 14, required the State Treasurer to transfer \$150,000 from the State Settlement Cash Fund to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund on or before July 9, 2018.