



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Julie Deepe, Board Chairperson
City of Deshler
305 E. Bryson Ave.
Deshler, NE 68340

Dear Ms. Deepe:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding bonus payments made to employees of the City of Deshler (City). Responding thereto, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. In doing so, the APA received certain information from the City. Based upon the outcome of this preliminary planning work, including an analysis 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 our preliminary planning work, we noted a certain internal control or compliance matter within the City, which is presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

Comment and Recommendation

Impermissible Gratuities

According to its November 5, 2019, meeting minutes, the City Council approved the following motion regarding employee bonuses:

Employee Bonus: Council Member Fintel made a motion to approve a \$250.00 bonus for full-time employees and a \$25.00 bonus for part-time employees. Council Member Ridolfi seconded the motion. Upon roll call vote on the motion, the following Council Members voted "AYE": Miller, Fintel, Ridolfi, Bartling. The following voted "NAY": None. Motion carried.

Four full-time employees and five part-time employees received the 2019 bonus, which totaled \$1,125. The full-time employees received \$1,000 (\$250 each) while the part-time employees received \$125 (\$25 each). According to City staff, the bonuses are given annually for the Christmas holiday. In reviewing the City's Personnel Policy, though, the APA found no provision for such payments.

Article III, § 19, of the Nebraska Constitution contains the following prohibition against gratuitous payments to public employees:

The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement.

According to the Nebraska Supreme Court, this constitutional prohibition is applicable to both the State and its many political subdivisions. Retired City Civilian Employees Club v. Omaha Employees' Retirement System, 199 Neb. 507, 512, 260 N.W.2d 472, 475 (1977).

The Nebraska Attorney General has commented upon the prohibition in Article III, § 19, as follows:

[T]he purpose of state constitutional provisions such as Art. III, § 19 which prohibit extra compensation to public employees after services are rendered is to prevent payments in the nature of gratuities for past services.

Op. Att’y Gen. No. 95063 (Aug. 9, 1995). It should be noted, however, that the prohibition against gratuities does not necessarily apply to certain types of salary adjustments, such as longevity pay – which, unlike an impermissible gratuitous bonus, is earned compensation.

Good internal control requires procedures to ensure that any payments, including bonuses, to City employees are made in strict accordance with governing statutory and constitutional provisions.

We recommend the City consult with the City Attorney, County Attorney, or the Nebraska Attorney General regarding the permissibility of giving employee bonuses.

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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 City’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 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. The City declined to respond.

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,



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