



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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William Newton, Chairman
Village of Pender
P.O. Box S
Pender, NE 68047

Dear Mr. Newton:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding Village of Pender (Village) employees using municipal equipment for personal use. 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 requested certain information from the Village. Based upon the outcome of this preliminary planning work, the APA has determined that it is unnecessary for this office to perform a separate financial audit or attestation of the Village at this time.

During the course of the preliminary planning work, we noted certain internal control or compliance matters, or other operational matters within the Village, that are presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

Comment and Recommendation

According to the complaint, Village employees have been seen utilizing municipal equipment, including tractors, skid loaders, backhoes, vehicles, and trailers, for personal use in and around Pender, Nebraska. In addition, personal vehicles have been observed being serviced in the Village's repair shop. The complaint information sent to the APA contained several photographs of what appears to be municipal property, including a John Deere tractor, at the personal residence of a Village maintenance employee.

The APA confirmed with the Village that it owns a John Deere tractor with a front end loader. According to the Village Clerk, however, the Village authorizes personal use of the tractor by allowing the Utilities Superintendent to give employees permission to borrow municipal equipment based on individual need.

According to Subsection 7.725, "Use of City Equipment," under Section 7, "Employee Responsibilities and Conduct," of the Village's Personnel Policy (Policy), personal use of Village property is generally prohibited. Exceptions are permitted, though. That subsection of the Policy states the following:

Other Village equipment, including vehicles, should be used by employees for Village business only. An employee's misuse if [sic] Village services, telephones, vehicles, equipment or supplies can result in disciplinary action including termination. The Village Council will allow Village employees to use the Villages equipment on there [sic] own time with the Utilities Superintendent permission.

The Utilities Superintendent's approval for such personal use does not appear to have been documented by the Village. Moreover, the Village Board appears not to have considered the possible legal ramifications of permitting Village employees to use municipal property for personal benefit.

Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. § 49-1401 (Cum. Supp. 2018) et seq., restricts the use of property under the “official care and control” of a public official or public employee, as follows:

A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

Per subsection (7) of that same statute, “[A]ny person violating this section shall be guilty of a Class III misdemeanor”

Neb. Rev. Stat. § 49-1443 (Reissue 2010) defines a “public official” as, among other things, “an elected or appointed official” in a political subdivision of the State. Neb. Rev. Stat. § 49-1442 (Reissue 2010) defines a “public employee” as “an employee of the state or a political subdivision thereof.”

The prohibition in § 49- 14,101.01(2) applies to all public property. Thus, the personal use of municipal equipment, including a tractor, mowers, and other hand tools and power tools, is prohibited.

Good internal control requires procedures to ensure that Village vehicles and equipment are not used for personal purposes.

Without such procedures, there is an increased risk for not only loss of or damage to Village property but also noncompliance with prohibitions against such use in both the Policy and State statute.

We recommend the Village implement procedures to ensure municipal vehicles and equipment are not used for personal purposes. Because the present comment points to a possible violation of the Act, we are forwarding this information to both the Thurston County Attorney and the Nebraska Accountability and Disclosure Commission for further review.

Village Response: The Village of Pender is updating its personnel manual to eliminate the provision that previously permitted the personal use of city equipment.

In the meantime, the Utility Superintendent will not be authorizing any such use.

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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 comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates 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.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Assistant Deputy Auditor
Mason Culver – Auditor II

Sincerely,

A handwritten signature in black ink that reads "Mary Avery". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

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

cc: Thurston County Attorney
Nebraska Accountability and Disclosure Commission