



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
auditors.nebraska.gov

October 20, 2020

Ronald Whitebear, Chairman
Village of Winnebago
P.O. BOX 683
Winnebago, NE 68071

Dear Mr. Whitebear:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding charges made by the former Clerk of the Village of Winnebago (Village). 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, including an analysis of the information received, the APA has determined it to be unnecessary for this office to perform a separate financial audit or attestation of the Village at this time.

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

Comments and Recommendations

1. Potentially Fraudulent Expenses

The APA's examination of the records for the Village reveals that Tyren Wolfe, the former Village Clerk, appears to have made personal purchases with municipal funds and overpaid himself with unearned overtime compensation and payroll advances.

The APA has created the following timeline of significant events that took place while Mr. Wolfe was employed by the Village. This timeline is based upon information received from the Village.

- In November 2018, the Village hired Mr. Wolfe as a Treasurer Trainee.
- In December 2018, Mr. Wolfe was appointed as the Village Treasurer.
- During a special emergency meeting on April 4, 2019, the Village Board of Trustees (Board) accepted a resignation letter from Ramona Baker, Village Clerk. In the same meeting, Mr. Wolfe was appointed to acting Village Clerk/Treasurer.
- On June 19, 2019, the Board created the position of Village Deputy Clerk/Treasurer, hiring Mary Greaves to assume that new post.

- On September 27, 2019, the Village’s charge accounts at both the Heritage Food Store and the Pony Express Market in Winnebago, as well as at the Heritage Food Town in neighboring Walthill, Nebraska, were suspended.
- On November 13, 2019, the Board suspended Mr. Wolfe as the Village Clerk/Treasurer, appointing Mary Greaves to serve as acting Village Clerk/Treasurer.
- On November 25, 2019, the Board terminated Mr. Wolfe as the Village Clerk/Treasurer.

The following table offers a brief summary of Mr. Wolfe’s suspected improper expenditures of public funds during his tenure as Village Clerk/Treasurer:

Description	Number of Transactions	Total Amounts of Possible Fraud
Questionable Purchases	11	\$ 181.60
Overtime	9	\$ 1,351.98
Payroll Advance	1	\$ 375.00
Total		\$ 1,908.58

The specifics of these expenses are discussed in further detail below.

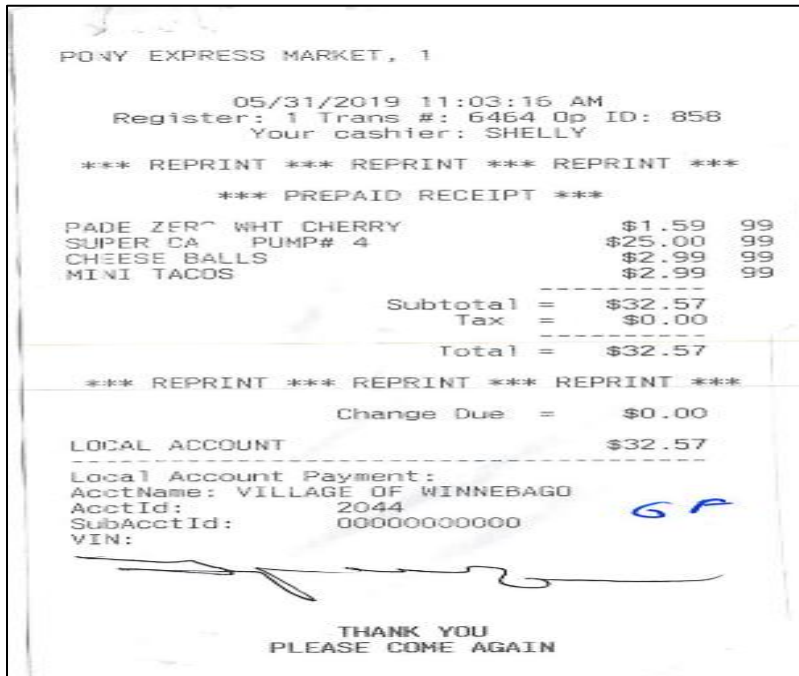
Questionable Purchases

The APA noted the following receipts, totaling \$181.60, that Mr. Wolfe signed at the Pony Express Market for unallowable food and fuel purchases:

Date	Items Purchased on Receipt	Transaction Amount	Amount Deducted From Pay	Total Amount
5/28/2019	12 pk Diet Coke	\$ 5.99	\$ -	\$ 5.99
5/30/2019	12 pk Coke Zero, Cheez Its, BBQ Ribs, Italian Sub Sandwich	\$ 17.05	\$ -	\$ 17.05
5/31/2019	Powerade, Fuel, Cheese Balls, Mini Tacos	\$ 32.57	\$ -	\$ 32.57
6/3/2019	Powerade, Fuel, Cheeseburgers	\$ 30.75	\$ -	\$ 30.75
6/12/2019	Fuel	\$ 53.26	\$ -	\$ 53.26
7/1/2019	Fuel	\$ 30.00	\$ -	\$ 30.00
7/31/2019	12 pk Diet Coke, 12 pk Coke	\$ 11.98	\$ -	\$ 11.98
8/7/2019	Breakfast Pizza, Muffins, 12 pk Diet Dr. Pepper	\$ 15.95	\$ (15.95)	\$ -
8/8/2019	Spicy Chicken Sandwich, 12 pk Diet Dr. Pepper, Muffins	\$ 11.88	\$ (11.88)	\$ -
8/14/2019	Cookies, Slices of Pizza, 12 pk Coke Zero	\$ 15.97	\$ (15.97)	\$ -
8/28/2019	Small Side, 5 Gallon Refill, Cheese Balls	\$ 9.77	\$ (9.77)	\$ -
Total		\$ 235.17	\$ (53.57)	\$ 181.60

Note: On Mr. Wolfe’s final paycheck from the Village, the cost of some of the more recent of these questionable purchases were deducted from his pay.

The following is an image of the receipt for one of the purchases listed in the table above:



The scrawled signature at the bottom of the receipt appears to be that of Mr. Wolfe. Per the receipt, the items purchased were a Powerade drink, fuel, cheese balls, and an order of mini tacos.

After reviewing the dates of the Board’s meetings, the APA noted that only the purchase on August 14, 2019, was made on one of those meeting days. Consequently, the food and fuel purchases made on the other 10 days, as set out in the above table, appear to have served no governmental purpose, constituting an apparently improper expenditure of public funds solely for Mr. Wolfe’s own personal benefit.

Overtime

The APA questions the \$1,351.98 in overtime compensation that the Village paid to Mr. Wolfe during fiscal year 2019. The following table provides a summary of those payments:

Pay Period	Overtime Hours Paid	Overtime Rate	Amount Paid
3/29/2019 - 4/11/2019	4.25	\$ 23.25	\$ 98.81
4/12/2019 - 4/25/2019	5.00	\$ 24.75	\$ 123.75
4/26/2019 - 5/9/2019	1.13	\$ 24.75	\$ 28.05
5/10/2019 - 5/23/2019	8.00	\$ 24.75	\$ 198.00
5/24/2019 - 6/6/2019	5.42	\$ 24.75	\$ 134.06
6/7/2019 - 6/20/2019	10.75	\$ 24.75	\$ 266.06
6/21/2019 - 7/4/2019	9.50	\$ 24.75	\$ 235.13
7/5/2019 - 7/18/2019	5.42	\$ 24.75	\$ 134.06
7/19/2019 - 8/1/2019	5.42	\$ 24.75	\$ 134.06
Totals	54.88		\$ 1,351.98

Section 8.20 (“Overtime”) of the Village’s Personnel Management Policies states the following regarding overtime pay for municipal staff:

Employees may be required to work overtime or shall be on call when necessary. Overtime shall be worked only with approval of the Chairperson or designated representative of the Village Board of Trustees. A request for approval of overtime shall be submitted in advance to the Chairperson or designated representative. If time does not allow for approval before the overtime is worked, the request shall be immediately submitted for retroactive approval by the Village Board of Trustees.

Compensation for overtime shall be paid at one and one-half times the employee's current rate of pay. [Handwritten in ink] Actual hrs worked over 40

Reporting to work early or staying late shall not be compensable unless prior written authorization is received from the employee's supervisor.

Section 14.50 (“Compensation and Overtime”) of the Village’s Personnel Management Policies provides further clarification for overtime pay:

Employees working more than 40 hours a week [may] shall be paid overtime at one and one-half time their regular rate of pay. For overtime pay purposes, time computation shall be rounded to the nearest one half hour.

The Village timecards for the pay periods listed in the above table do not support the almost 55 hours of overtime for which Mr. Wolfe was paid. The following table shows the actual number of Mr. Wolfe’s overtime hours according to those timecards:

Week Started	Week Ended	Timecard Hours		
		Regular Hours	Overtime Hours	Total Hours
3/29/2019	4/4/2019	36.72	-	36.72
4/5/2019	4/11/2019	40.00	1.03	41.03
4/12/2019	4/18/2019	36.23	-	36.23
4/19/2019	4/25/2019	32.25	-	32.25
4/26/2019	5/2/2019	8.03	-	8.03
5/3/2019	5/9/2019	-	-	-
5/10/2019	5/16/2019	8.62	-	8.62
5/17/2019	5/23/2019	19.95	-	19.95
5/24/2019	5/30/2019	18.77	-	18.77
5/31/2019	6/6/2019	31.08	-	31.08
6/7/2019	6/13/2019	23.05	-	23.05
6/14/2019	6/20/2019	38.20	-	38.20
6/21/2019	6/27/2019	40.00	1.07	41.07
6/28/2019	7/4/2019	33.12	-	33.12
7/5/2019	7/11/2019	15.47	-	15.47
7/12/2019	7/18/2019	35.48	-	35.48
7/19/2019	7/25/2019	39.40	-	39.40
7/26/2019	8/1/2019	10.68	-	10.68
Total Timecard Hours				469.15

Both Section 8.20 (“Overtime”) and Section 14.50 (“Compensation and Overtime”) of the Village’s Personnel Management Policies state that only hours worked in excess of 40 hours each week are subject to overtime compensation. As shown in the table above, Mr. Wolfe would have been eligible to receive a total of only 2 hours of overtime – not the nearly 55 hours for which he was actually paid.

Moreover, the APA did not receive any documentation showing either prior or retroactive approval of Mr. Wolfe’s overtime hours – both of which are required by Section 8.20 (“Overtime”) of the Village’s Personnel Management Policies.

In reviewing Mr. Wolfe’s timecards, the APA found that the clock-in or clock-out times were handwritten, as opposed to machine stamped, on certain days. It is worth noting that the clock-out times were handwritten on the timecards containing both of the overtime hours listed in the above table.

The *Lack of Supporting Documentation* section of **Comment and Recommendation Number 2** (“Other Payroll Issues”) herein describes in further detail the issues with Mr. Wolfe’s timecards.

Because of the poor timekeeping practices and the lack of prior or retroactive approval for the overtime claimed, contrary to Section 8.20 (“Overtime”) of the Village’s Personnel Management Policies, the APA questions the reasonableness of the overtime payments to Mr. Wolfe.

Payroll Advancement

On June 12, 2019, Mr. Wolfe was given a gross pay “advance” of \$375, to be deducted from the pay period ending June 20, 2019, for additional funds to cover unexpected travel expenses that might arise during his trip to Lincoln, NE, on June 13 and June 14, 2019. However, the amount was not deducted from the next paycheck, and the payment was approved after the check was written.

The image below is the check of the net pay paid to the Mr. Wolfe:



While the check was written on June 12, 2019, the Board did not actually approve the payment until its meeting on June 19, 2019, as shown in the following excerpt from the meeting minutes:

5) Ratification. **MOTION # 19-082** made by Trustee Snake to ratify the 3-signature request from Tyren Wolfe for payroll advancement of \$375.00, seconded by Trustee Bellanger. Upon roll call vote the following voted Aye: Whitebear, Price, Bellanger, and Snake. Nay: None. Abstain: None. Absent: Warner. Motion carried (4-0-0-1).

The following is an image of Mr. Wolfe’s pay stub for this \$375 payment:

VILLAGE OF WINNEBAGO / GENERAL FUND					17058	
Employee	Tyren L. Wolfe, [REDACTED]			SSN	[REDACTED]	
				Status (Fed/State)	Single/Don't Withhold	
				Pay Period: 06/07/2019 - 06/20/2019	Allowances/Extra Fed-2/0/NE-0/0 Pay Date: 06/12/2019	
Earnings and Hours	Hours	Rate	Current	YTD Amount		
Hourly	22:45	16.50	375.38	9,136.89	Payroll Advance for PPE 06/20/2019	
Overtime Hourly Rate			0.00	582.67		
Vacation Hourly Rate			0.00	732.50		
Sick Hourly Rate			0.00	893.50		
	22:45		375.38	11,345.56		
Taxes			Current	YTD Amount		
Medicare Employee Addl Tax			0.00			
Federal Withholding			0.00	-547.00		
Social Security Employee			-23.27	-703.42		
Medicare Employee			-5.44	-164.51		
NE - Withholding			0.00	-7.85		
			-28.71	-1,422.78		
Net Pay			346.67	9,922.78		
Paid Time Off		Earned	YTD Used	Available		
Sick		4:00	63:00	-3:00		
Vacation		4:00	52:00	-24:00		
Memo						
Village of Winnebago, Village of Winnebago, PO Box 683, Winnebago, NE 68071					Powered by Intuit Payroll	

The \$375 from the previous paystub was not deducted from the gross pay of the pay stub on June 20, 2019, as shown below:

VILLAGE OF WINNEBAGO / GENERAL FUND					17068
Employee	Tyren L. Wolfe		SSN	[REDACTED]	
			Status (F)	Single/Do	
			hhold	Pay Period: 06/07/2019 - 06/20/2019	
			Allowances/Extra	Fed-2/0/NE-0/0	
			Pay Date:	06/20/2019	
Earnings and Hours					
	Hours	Rate	Current	YTD Amount	
Hourly	56:00	16.50	924.00	10,060.89	
Overtime Hourly Rate	10:45	24.75	266.06	848.73	
Vacation Hourly Rate	4:00	16.50	66.00	798.50	
Sick Hourly Rate			0.00	893.50	
	70:45		1,256.06	12,601.62	
Taxes					
			Current	YTD Amount	
Medicare Employee Addl Tax			0.00		
Federal Withholding			-87.00	-834.00	
Social Security Employee			-77.88	-781.30	
Medicare Employee			-18.21	-182.72	
NE - Withholding			0.00	-7.85	
			-183.09	-1,605.87	
Net Pay			1,072.97	10,995.75	
Paid Time Off					
		Earned	YTD Used	Available	
Sick	4:00		63:00	1:00	
Vacation	4:00		56:00	-24:00	
Village of Winnebago, Village of Winnebago, PO Box 683, Winnebago, NE 68071					
Powered by Intuit Payroll					

As the Clerk/Treasurer at that time, Mr. Wolfe was then in control of the Village’s payroll processing, so he should have been the one to deduct the amount from his gross pay for the June 20, 2019, payroll.

Missing Village Computer

After the termination of Mr. Wolfe’s employment with the Village, the Board Chairman sent a letter to him on December 16, 2019, requesting that he return a laptop issued to him by the Village. See **Attachment A** for a copy of the letter. When Mr. Wolfe did not return the laptop, the Village had one of its employees try to contact him.

On January 8, 2020, an incident report was filed stating that Josh Bassette, a Village maintenance employee, met with Mr. Wolfe regarding the Village laptop that was still in his possession. According to the report, Mr. Wolfe stated that the computer and a flash drive were stolen from his vehicle, although he did not give a date or time when the theft occurred. It is the APA’s understanding that a police report was not filed. The computer was an HP brand laptop and was in a carrying case. See **Attachment B** for a copy of the incident report.

To the APA’s knowledge, no further action has been taken regarding the missing laptop. The APA is unaware of the laptop’s value, so it was not included in the summary table (page 2 herein) provided at the beginning of this comment. However, we believe that the Village and appropriate authorities should continue to attempt to recover the laptop or seek other means of redressing this loss of Village property.

The issues addressed herein give rise to numerous possible statutory concerns. To start, Neb. Rev. Stat. § 28-511 (Reissue 2016) provides, in relevant part, the following:

(1) A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.

(2) A person is guilty of theft if he or she transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto.

Likewise, Neb. Rev. Stat. § 28-512 (Reissue 2016) states the following, as is relevant:

A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgment of a transaction; or

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (a) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, or (b) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument.

(Emphasis added.) Additionally, Neb. Rev. Stat. § 28-911 (Reissue 2016) prohibits “abuse of public records,” as follows:

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

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

(b) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or

(c) Knowing he lacks the authority to retain the record, he refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such 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.

(Emphasis added.) Neb. Rev. Stat. § 28-924 (Reissue 2016) creates the offense of “official misconduct” by a public servant, as follows:

(1) A public servant commits official misconduct if he knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties.

(2) Official misconduct is a Class II misdemeanor.

Furthermore, Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) of the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. § 49-1401 et seq. (Reissue 2010, Cum. Supp. 2018, Supp. 2019), restricts the use of resources 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”

These potential statutory concerns aside, it should be noted that good internal controls require procedures to ensure one person is not in a position both to perpetrate and to conceal financial errors or irregularities.

Without such procedures, there is an increased risk for fraud or the misappropriation of public funds.

We recommend the Village implement procedures to prevent one person from being in a position both to perpetrate and to conceal financial errors or irregularities. This would include having a Board member, or a separately designated individual, review the monthly bank statements, purchase card statements, payroll registers, and timecards for any discrepancies with approved claims, or unusual charges or hours worked. We recommend also the Village consult and work with the proper authorities regarding Mr. Wolfe’s suspected mishandling of public funds and property. The Village should implement procedures to recover or otherwise account for any such monies or assets proven to have been misappropriated.

We are referring the information herein to the Nebraska Attorney General, the Nebraska State Patrol, the Nebraska Accountability and Disclosure Commission, and the Thurston County Attorney. The APA will also forward the details of this matter to the Nebraska Department of Revenue and the U.S. Internal Revenue Service.

2. Other Payroll Issues

The APA identified other issues with the Village’s payroll process, including the improper tracking and usage of leave hours, lack of supporting documentation, and improper use of “administration” leave.

Improper Leave Use and Tracking

The APA noted that, during his tenure as Village Clerk/Treasurer, Mr. Wolfe was not properly tracking vacation and sick leave balances. This caused Mr. Wolfe to have negative leave balances for several pay periods during fiscal year 2019.

Other issues noted related to leave use and tracking included the following:

- Leave paid was not accurately recorded on Mr. Wolfe’s timecards.
- The Board denied certain leave requests, but the leave was still taken and paid.
- For some leave taken, there was not adequate documentation showing it was approved by the Board.

When employee leave usage is not in accordance with Village policy, and employee timecards do not reflect the correct type of leave used, there is an increased risk of loss or misuse of Village funds.

Lack of Supporting Documentation

In reviewing Mr. Wolfe’s Village timecards, the APA was unable to determine the actual number of hours that he worked due to several timecards lacking a clock-in time, a clock-out time, or both.

To illustrate, the images below are of Mr. Wolfe’s timecard for the period April 5, 2019, through April 11, 2019:

On April 10, 2019, a clock-in time of 8:16 AM was recorded normally. However, the clock-out time of 4:45 PM, listed directly under the clock-in time, is handwritten. The next entry recorded on the timecard is a clock-in on April 11, 2019, at 8:17 AM. Therefore, Mr. Wolfe does not appear to have clocked-out in the system on April 10.

The APA noted similar issues for several other days during the periods in which Mr. Wolfe received overtime pay. Those issues are summarized in the table below:

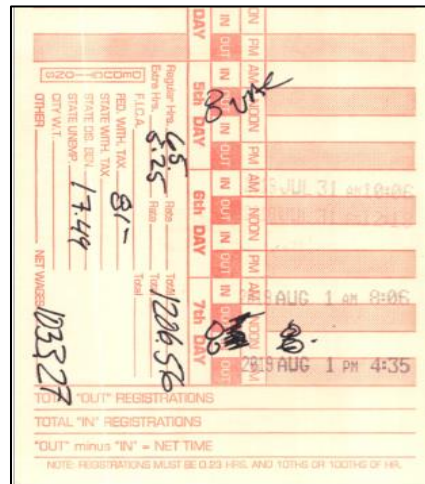
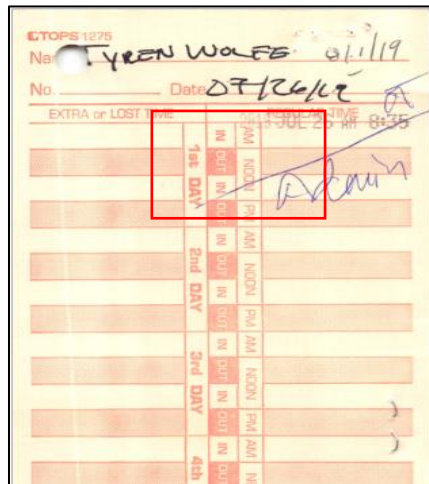
Date	APA Notes
4/10/2019	No actual clock-out time. Instead, there is a handwritten clock-out time of 4:45 PM.
4/19/2019	No actual clock-out time. Instead, there is a handwritten clock-out time of 4:30 PM.
4/24/2019	No actual clock-out time. Instead, there is a handwritten clock-out time of 5:00 PM.
4/27/2019	No clock-in time.
4/29/2019	No clock-out time.
5/2/2019	No clock-in or clock-out time.
5/13/2019	No clock-in or clock-out time.
5/15/2019	No clock-in or clock-out time.
5/16/2019	No clock-in or clock-out time.
5/20/2019	No clock-in or clock-out time.
5/22/2019	No clock-out time.
5/27/2019	No clock-in or clock-out time.
6/3/2019	No clock-out time.
6/9/2019	No clock-in time.
6/12/2019	No clock-out time.
6/13/2019	No clock-in or clock-out time.
6/14/2019	No clock-in or clock-out time.
6/15/2019	No clock-out time.
6/19/2019	No actual clock-out time. Instead, there is a handwritten clock-out time of 5:00 PM.
6/24/2019	No actual clock-out time. Instead, there is a handwritten clock-out time of 4:30 PM.
6/30/2019	No clock-in time.
7/4/2019	No clock-in or clock-out time.
7/10/2019	No clock-out time.
7/11/2019	No clock-out time.
7/26/2019	No clock-out time.

Without adequate documentation of hours, calculation of time is not sufficiently supported and can result in the loss or misuse of Village funds.

Administration Hours

Another issue noted with Mr. Wolfe’s Village timecards was several instances of “Admin” or “Administration” time being recorded instead of actually clocking in or out.

The following are images of a timecard that had such “Admin” time recorded:



The Village’s Personnel Management Policies contain no mention of “Admin” or “Administration” leave as a category of authorized leave. However, these administration leave hours recorded on Mr. Wolfe’s timecards were used as regular hours worked in the calculation of overtime hours paid to him.

Good internal control requires procedures to ensure that Village employee leave usage is in accordance with the Board’s formal policies. Those same procedures should ensure also that employee timecards are completed properly and reflect accurately the hours worked and the appropriate type of leave used.

We recommend the Village implement procedures to ensure Village employee leave usage not only complies with the terms of the Board’s formal policies but also is properly reflected on employee timecards.

3. Board Approval of Purchase Policy

During its meeting on August 14, 2019, the Board approved a policy requiring the prior signed approval by three trustees for any Village purchase over \$1,000.

The following is an excerpt taken from the minutes for that meeting:

1) **MOTION # 19-094** made by Trustee Snake to require three signatures for purchases and/or services over \$1,000.00 and to be ratified at the next regular meeting, seconded by Trustee Warner. Upon roll call vote the following voted Aye: Price, Warner, Snake and Bellanger. Nay: None. Abstain: None. Absent: Whitebear. Motion carried (4-0-0-1).

While applicable to purchases over \$1,000, such a policy might be interpreted as implying that any purchases under that amount could be made without prior Board approval, which is not allowable.

Neb. Rev. Stat. § 17-614(1) (Cum. Supp. 2018) contains the following directive for the appropriation or payment of money by the Village:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

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

4. Impermissible Gratuities

According to its December 11, 2019, meeting minutes, the Board approved the following motion regarding “Christmas/Incentive” payments for Village employees:

<p><u>Christmas/Incentive Payment Discussion:</u></p> <p>⁰³⁴ <u>Motion 20-0025:</u> Long term employees received \$750.00 last year, and new employees received \$350.00. Denise made motion to follow that and give long term employees \$750.00 and short term employees \$350.00 for the Incentive Pay. James Price Sr. seconded motion. None opposed. Motion carried.</p>
--

The APA observed a payroll report from October 2018 through October 2019 reflecting the payment of \$4,100 in such bonuses. In reviewing the Village’s Personnel Management Policies, the APA found no provision for such payments.

More importantly, 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.

The Nebraska Attorney General (Attorney General) has summarized this constitutional provision by explaining, “Nebraska law generally requires work be performed in order for payment to be received.” Op. Att’y Gen. 95071 (Sept. 13, 1995).

According to the Nebraska Supreme Court (Court), this constitutional prohibition is applicable to both the State and its many political subdivisions. *Retired City Civilian Employees Club of City of Omaha v. City of Omaha Employees’ Retirement System et al.*, 199 Neb. 507, 512, 260 N.W.2d 472, 475 (1977). Consequently, the Village is subject to the injunction against gratuities.

Discussing the terminology found in Article III, § 19, the Court has explained, “A payment of compensation to a public servant constitutes extra compensation whenever there is no legal obligation to pay such compensation.” *Myers v. Nebraska Equal Opportunity Com’n*, 255 Neb. 156, 163, 582 N.W.2d 362, 367 (1998) (quoting *Matter of Mullane v. McKenzie*, 269 N.Y. 369, 377, 199 N.E. 624, 627 (1936)).

The Attorney General has shed additional light on the prohibition in Article III, § 19, as follows:

As we stated in Op. Att’y Gen. No. 94064 (August 22, 1994), the 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.

City of Omaha v. City of Elkhorn, 276 Neb. 70, 83, 752 N.W.2d 137, 147 (2008). In another opinion, Op. Att’y Gen. 95063 (August 9, 1995), the Attorney General addressed the potential problem with making a congratulatory payment to a public employee upon his or her retirement:

With this rule in mind, it becomes apparent that a payment to a state employee upon his or her termination for which the state receives nothing would constitute a gratuity forbidden by Art. III, § 19. For example, if a state employee voluntarily retires after 50 years of service and receives a payment of \$ 25,000 solely for his long and faithful service, such a payment could be characterized as a gratuity and would clearly be improper.

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

The payments at issue here do not appear to constitute such contractual salary adjustments; rather, they are “Christmas/Incentive” bonuses for which the Village receives no promised or actual future benefit, making them constitutionally suspect.

Good internal control requires procedures to ensure that any payments, including bonuses, to Village employees are made in strict accordance with Article III, § 19.

Without such procedures, there is an increased risk of not only loss or misuse of public funds but also violation of the Nebraska Constitution.

We recommend the Village consult with the Village Attorney, County Attorney, or the Nebraska Attorney General regarding the permissibility of the “Christmas/Incentive” payments addressed in this comment.

Overall Village Response: The Village Board of Trustees was unaware of the findings of the past staff but paid two auditors to audit the Village. One was an Internal Auditor and the other one was an External Auditor. They failed to find and report these findings.

The most important lesson that the Village of Winnebago learned from this is that no one person should be able to write the check, sign the check and reconcile the bank statements. It is a violation of good internal control and separation of duties.

Staff limitations allowed this to happen. Board of Trustees time limit and long term employees who were able to explain away all questions regarding items and a past Chairman who was allowing this to happen. There were ethics violations and money violations. Even one employee was able to get a \$8,000.00 plus loan. Had the paperwork at one time but this was either shredded or taken by a temporary file clerk who had befriended the person who had received this loan.

The audit prepared by Henjes, Conner & Williams P.C. under Significant Deficiencies II-B-19 The Village of Winnebago does not have adequate segregation of duties for revenues, expenditures and payroll. This was a finding in the last five years of audit.

The Village’s response was the Village has implemented controls whereby the board president receives all bank statements and reviews all expenditures for FY2018.

One lady on the board did receive the bank statements and check them off but did not monitor payroll, expenditures and revenues.

Only that the amounts were recorded on the bank statement to the check register.

The Village still has limited staff however, a hire was made of an accountant with a degree in accounting, and was hired with the direction from the Board of Trustees to review the audits and fix the findings and implement internal controls. That person is now Deputy Village Clerk/Treasurer, Mary Greaves. After reviewing several years of the audits and gleaned what the problem identified started working on correcting findings. The utility billings had a computer crash and could only go back to May 2017.

The Deputy Clerk/Treasurer was instructed to take over all payroll, payment of bills and since most findings were in regard to utility billing to review and learn that system and recommend and implement corrections cited in the audit. Could only go back to 2017.

First the bills were given over to work on and learn how to make the approval forms for the meeting each month. The experience of almost 40 years in accounting enabled the Deputy Clerk/Treasurer to see what was happening and then the next step was payroll. Much resistance was given but insisted, with the Board of Trustees support, was able to get the payroll transferred to begin processing payroll. Found irregularities in that overtime, was given when the employee had not even worked the regular 40 hours required to give overtime. It was during the whole year.

Overtime was used as a way to get money from the Village that the employees were not eligible to receive. This was stopped but very stressful as employees did not want this stopped.

When things did not return to what they wanted the revenue clerk resigned and the former Clerk had already resigned in April. The Board of Trustees wanted and insisted that we proceed with correcting the finding and it took a while as one board member supported Tyren and now is running with him on the school board.

An excel spreadsheet was prepared of random charging and given to the Board of Trustees. The Board of Trustees took action at the end of September 2019 to implement purchase orders on all expenditures. That would mean every purchase would need a purchase order and two signatures required on all purchases. So, that helped to implement internal control and stop random charging.

TW tried to charge gas and found out the account had been closed. Gas could only be charged against the account with a purchase order. It was a moment to recall when Tyren had tried to fill his gas tank but could not and inquired of me whose big idea it was to start using purchase orders.

So, the Village is on a path of correcting years of past errors. Many changes implemented to correct audit findings and move ahead with staff in compliance and good audits as the goal. With the External Auditors and the Internal auditors help the Village will eventually meet Generally Accepted Accounting Principles with training and the right people in the positions.

* * * * *

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. All formal responses received have been incorporated into this letter. Responses have been objectively evaluated and recognized, as appropriate, in the letter. Responses that indicated corrective action has been taken were 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

Crystaphena Balquier – Auditor

Sincerely,

A handwritten signature in cursive script that reads "Mary Avery".

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

cc: Mary Greaves, Village Clerk/Treasurer
Nebraska Attorney General
Nebraska State Patrol
Nebraska Accountability and Disclosure Commission
Thurston County Attorney
Nebraska Department of Revenue
U.S. Internal Revenue Service

VILLAGE OF WINNEBAGO
LETTER TO TYREN WOLFE

Attachment A

05/20/2020 17:10 Village of Winnebago

(FAX)402 878 4280

P.006/011

VILLAGE OF WINNEBAGO

P.O. BOX 683
WINNEBAGO, NEBRASKA 68071
Phone: (402) 878-2938 Fax: (402) 878-4280

December 16, 2019

Mr. Tyren Wolfe

171 Valley Drive

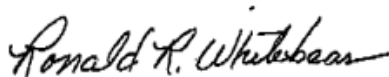
Winnebago, Nebraska 68071

Mr. Wolfe:

A laptop was issued to you by Village Board Member Sarah Snake for Village use.

She said HCI donated the laptop to the Village. As you have been terminated, please return the laptop, memory stick etc. and any other Village property asap.

Thank you,



Ronald R. Whitebear

Chairman



VILLAGE OF WINNEBAGO
INCIDENT REPORT

Attachment B

05/20/2020 17:06 Village of Winnebago

(FAX)402 878 4280

P.005/011

January 2020

INCIDENT

Josh Bassette was requested to go and contact Tyren Wolfe, former Village Clerk, regarding laptop that HCI donated to the Village of Winnebago.

On this day 1-08-2020 it was reported by Josh Bassette, Jr., that Tyren Wolfe former Village Clerk, said Computer was stolen from his vehicle. The date this happened was not known or given by Tyren Wolfe.

It was an HP laptop computer in a carrying case. It had Village information on the HP computer, plus a flash drive that also had information on it.

I would like to ask the Board of Trustees what to do about this situation?

Signed:

A handwritten signature in black ink, appearing to read "Josh Bassette", written over a horizontal line.