



# NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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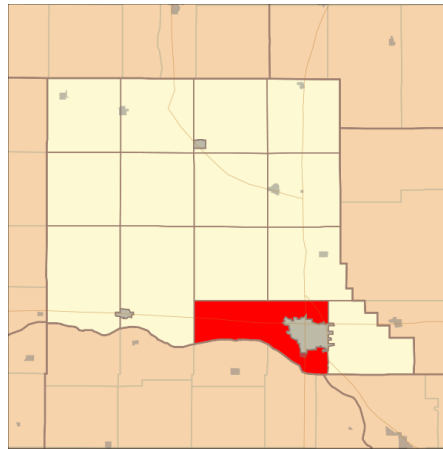
August 3, 2020

Zach Taylor, Chairman  
Platte Township of Dodge County  
3621 N Co Rd 19  
Fremont, NE 68025

Dear Mr. Taylor:

As you may know, the Nebraska Auditor of Public Accounts (APA) received certain financial concerns related to the Platte Township (Township) of Dodge County. 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 specific financial information from the Township's Board of Supervisors (Board).

In the map below, the area highlighted in red represents the Township:



Based upon a review of the information received from the Board, the APA has determined that a financial audit or attestation by our office is not required at this time. Nevertheless, during the course of the preliminary planning work leading to that determination, the APA noted certain issues that merit corrective action, as presented below.

## 1. **Board Contracts**

The members of the Board are Ronald G. Vlach, Zachary C. Taylor, and Adam P. Taylor. The APA found that the Township had paid two companies that are associated with all three Board members a total of \$14,259 for the period July 2019 through June 12, 2020.

Those payments are detailed in the following table:

Type	Date	Num	Name	Split	Amount
Check	7/19/2019	6419	Taylor Farms	Flood Repair	\$ 4,000.00
Check	3/30/2020	6505	Taylor Farms	EQUIPMENT REPAIR	\$ 4,836.73
			<b>Taylor Farms, L.L.C. Total</b>		\$ 8,836.73
Check	8/8/2019	6429	Victory Transportation, Inc.	Flood Repair	\$ 3,515.00
Check	10/25/2019	6453	Victory Transportation, Inc.	Flood Repair	\$ 1,527.00
Check	12/24/2019	6477	Victory Transportation, Inc.	Flood Repair	\$ 380.00
			<b>Victory Transportation, Inc. Total</b>		\$ 5,422.00
<b>Grand Total</b>					<b>\$ 14,258.73</b>

According to information available on the Nebraska Secretary of State’s corporations website, Ronald G. Vlach is the President, Secretary, Treasurer, and Director of Victory Transportation, Inc., a trucking company based in Fremont, Nebraska.

Similarly, Zachary C. Taylor and Adam P. Taylor are both part owners of Taylor Farms, an agricultural business located in Ames, Nebraska.

The Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. §§ 49-1401 to 49-14,142 (Reissue 2010, Cum. Supp. 2018, Supp. 2019), prohibits public officials and their businesses from entering into contracts with government bodies for contracts valued at two thousand dollars or more, unless the contract is awarded through an open and public process.

Specifically, § 49-14,102 of the Act states, in relevant part, the following:

*(1) Except as otherwise provided by law, no public official or public employee, a member of that individual’s immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.*

*(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.*

(Emphasis added.) A Board member would fall within the Act’s definition of “public official,” which § 49-1443 provides as follows:

*Public official shall mean an official in the executive branch, an official in the legislative branch, or an elected or appointed official in the judicial branch of the state government or a political subdivision thereof; any elected or appointed member of a school board; and an elected or appointed member of a governing body of a state institution of higher education.*

(Emphasis added.) According to the Nebraska Supreme Court (Court), “A township is a political subdivision.” Steenblock v. Elkhorn Township Bd., 245 Neb. 722, 725, 515 N.W.2d 128, 130 (1994).

Likewise, § 49-1407 of the Act defines “business” as follows:

*Business shall mean any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, activity, or entity.*

(Emphasis added.) Per § 49-1408(1) of the Act, moreover, a “business with which the individual is associated” includes a business in “which the individual is a partner, limited liability company member, director, or officer[.]”

In light of all the above, it is reasonable to conclude that the Act's prohibition in § 49-14,102 is applicable to Township officials. Nevertheless, the APA's review of the Board's meeting minutes for July 2019, November 2019, January 2020, March 2020, and April 2020 failed to reveal any indication that the contracts at issue were "awarded through an open and public process," as required by § 49-14,102(1).

Advisory Opinion #169, which the Nebraska Accountability and Disclosure Commission (Commission) adopted on December 13, 1996, states the following:

*In past advisory opinions, the Commission has taken the position . . . that an open and public process includes one in which the matter of awarding a contract is an agenda item for a meeting of a governing body if the meeting is publicized in the normal manner of the governing body.*

(Emphasis added.) The Open Meetings Act (OM Act) is found at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Cum. Supp. 2018, Supp. 2019). Section 84-1413(1) of the OM Act requires 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.*

Per § 84-1409(1)(a) of the OM Act, the definition of "public body" includes "governing bodies of all political subdivisions of the State of Nebraska[.]" Thus, the Board is clearly subject to the provisions of the OM Act, including that referenced immediately above. Had either of the contracts with Taylor Farms, Inc., or Victory Transportation, L.L.C., been "awarded through an open and public process," as mandated by § 49-14,102(1), such activity should be reflected in the relevant meeting minutes. As pointed out already, however, it is not.

Without procedures to ensure compliance with the requirements of both the Act and the OM Act, there is an increased risk for not only violation of State law but also loss or misuse of Township funds.

We recommend the Township implement procedures to ensure compliance with requirements of the Act – particularly, in this instance, the prohibition therein against conflicts of interest by public officials – and the OM Act. Because this comment addresses possible noncompliance with not only the Act but also the OM Act, the APA will forward the information herein to both the Commission and the Dodge County Attorney for further review.

*Township Response: Of the \$14,258.73 that was paid to members of the board, \$7,515.00 was for emergency work related to the flood. We had to get roads passable in case first responders were called to an emergency. Time was of the essence and we had to act fast so nobody would get hurt. \$4,836.73 was paid to a member of the board because of damage to an irrigation pivot span being struck during road reconstruction on a township project. The remaining \$1,907.00 was paid to a board member for continuous upkeep on a flooded-out road that is highly traveled as it was needed to keep commuters safe traveling to their flooded houses to make repairs and start the process of rebuilding their lives.*

**APA Response: The APA understands these situations were emergency in nature. However, the Act requires these contracts with related parties to be awarded through an open and public process, and there is no exception for emergency work performed.**

## **2. Other Internal Control or Compliance Issues**

The APA noted other internal control or compliance issues, which are discussed below:

### Meeting Minutes

Comment and Recommendation Number 1 ("Board Contracts") (pgs. 1-3) herein explains in detail that the Board is subject to the provisions of the Open Meetings Act (OM Act), including § 84-1413(1) thereof, which requires meeting minutes to show "the time, place, members present and absent, and the substance of all matters discussed."

Additionally, § 84-1412(8) of the OM Act requires notice to be given of certain posted information during public meetings, as follows:

*Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.*

(Emphasis added.) Furthermore, § 84-1413(2) of the OM Act requires a roll call vote to be taken and recorded on any formal action taken by the Board. That subsection of statute says the following:

*Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.*

(Emphasis added.) The following is a copy of the Board’s March 2020 meeting minutes, which is representative of the other meeting minutes examined by the APA. This document indicates a lack of compliance with all of the above requirements of the OM Act:

March 17, 2020 12:00 pm ¶  
Platte Township Hall ¶  
¶  
Attendees: Zach Taylor, Adam Taylor, Bruce Schmidt, Scott Hubbert ¶  
¶  
A vote was held to enter into a local agreement for Scott Hubbert with the Dodge County Highway Department to help with the completion of the flood damaged roads. He will become the main contact moving forward. All paper work will still go through the township. Motion to approve passed 2 to 0. Invitation to bid was put in the paper. We will meet again on April 2 and 11:00 am at the township hall to publicly open the bids. ¶  
¶  
Discussed current condition of the roads and when gravel is expected to be spread. Dolezal is providing the gravel and Evelands will spread it as soon as it becomes available. We are on the list waiting to be done. ¶  
¶  
Discussed bill that Grant Hansen dropped off for plastic culvert and Scott said FEMA won't pay for a plastic culvert and neither will the county. It's going to be ripped out anyway when the road gets redone. Scott will get back to me with the correct title to make the check out to for reimbursement from FEMA. Discussed a complaint about a bad spot on road 14 ave. Township will have to pay fix that spot, the county will not do it. Gave Bruce an insurance card to put in grader. The hall will not be rented out because of liability and upkeep issues and with the covid-19 pandemic going around. Discussed a bill from Taylor Farms General Partnership about damage to a pivot span from a contractor dumping dirt on one of the road projects. Included was an estimate of the damage, pictures, and a detailed letter explaining the incident. The board decided it will pay for the damages. ¶  
¶  
¶  
¶  
¶  
Adam Taylor ¶  
Clerk ¶  
¶  
¶

In both the above example and the other meeting minutes examined by the APA, either the Board failed to comply with § 84-1412(8) by neglecting to provide the posted information notice required in that statute, or those minutes failed to include the “substance of all matters discussed,” as required by § 84-1413(1).

In the above example, another way in which the minutes failed to include “the substance of all matters discussed,” as required by § 84-1413(1), was by lacking the amount of payments approved. The meeting minutes reference the approval of payment for damages, but no dollar amount is provided. Likewise, no monthly claims are listed or shown as having been approved.

Finally, the minutes do not record a roll call vote for any of the actions taken by the Board. Again, the lack of that information indicates failure to comply with both § 84-1413(2), which mandates such votes to be taken and recorded, and § 84-1413(1), which directs the “substance of all matters discussed” to be included in the minutes.

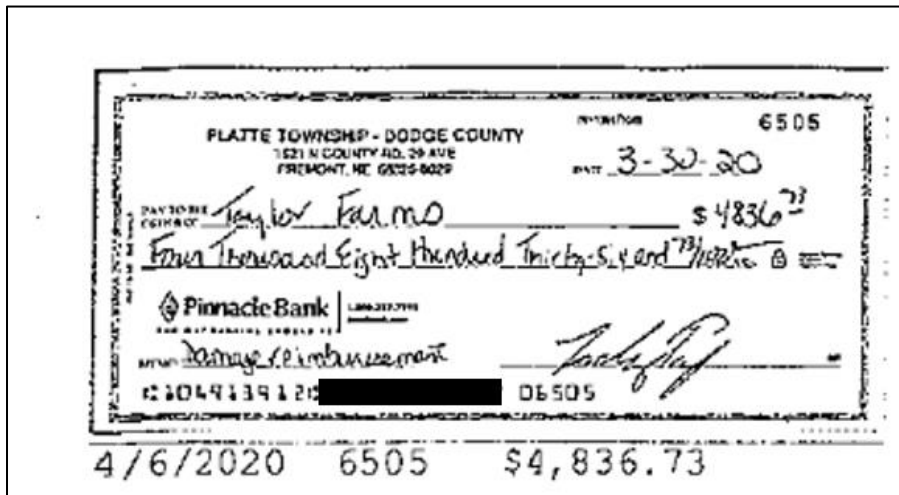
Without procedures to ensure compliance with all applicable provisions of the OM Act, there is an increased risk for not only violation of State statute but also loss or misuse of Township funds.

We recommend the Township implement procedures to ensure compliance with all requirements of the OM Act, particularly as they apply to the keeping of Board meeting minutes. Because this comment addresses possible violations of State statute, the APA will forward the information herein to the Dodge County Attorney for further review.

Checks Signed by One Individual

The APA’s review of the Township bank statements and other financial records from July 2019 to mid-June 2020 revealed that only one person, the Board Chair, signed Township checks during that period.

The following is an example of such Township checks:



Neb. Rev. Stat. § 23-255 (Reissue 2012) requires all Township checks and warrants to be signed by the Clerk and countersigned by the Board Chairperson, as follows:

*The town clerk shall draw and sign all orders upon the town treasurer for all money to be disbursed by the township, and all warrants upon the county treasurer for money raised for town purposes, or apportioned to the town by the county or state, and present the same to the chairman of the board, to be countersigned by him, and no warrant shall be paid until so countersigned. No warrant shall be countersigned by the chairman of the board until the amount for which the warrant is drawn is written upon its face. The clerk and chairman of the board shall keep a record in separate books furnished by the county, of the amount, date, purpose for which drawn, and name of person to whom issued, of each warrant signed or countersigned by them . . . .*

(Emphasis added.) Without procedures to ensure that all Township checks and warrants are signed by the Clerk and countersigned by the Board Chairperson, there is an increased risk for not only noncompliance with State statute but also loss or misuse of public funds.

We recommend the Township implement procedures to ensure all Township checks and warrants are signed by the Clerk and countersigned by the Board Chairperson. Because this comment addresses the possible violation of State statute, the APA will forward the information herein to the Dodge County Attorney for further review.

Township Board Vacancy

The November 2019 Board meeting minutes indicate that the Township received notice from the County Clerk that Ronald G. Vlach would no longer be able to serve as a Board member.

Those meeting minutes are copied below:

November-11, 2019¶  
¶  
Attendees: Zach Taylor, Adam Taylor¶  
¶  
Received notice from the County Clerk that Ron Vlach is no longer able to be a board member. Zach will fill in his role for the time being until we can find another member. It was decided that Ron will still get paid for the month of November as the transition process starts and his time will be needed.¶  
¶  
Road construction is at a standstill and will most likely not start till next year.¶  
¶  
¶  
¶  
¶  
Zach Taylor¶  
Board Member¶

The Board meeting minutes provided through April 2020 fail to show the selection of a new Board member. This appears to conflict with the requirement found at Neb. Rev. Stat. § 32-574 (Reissue 2016), which states the following:

*Unless otherwise provided by law, all vacancies shall be filled within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden.*

State statutes authorize two different ways to fill a township board vacancy. The first is under Neb. Rev. Stat. § 23-231 (Reissue 2012), which states the following, in relevant part:

*The electors at special town meetings, when properly convened, shall have full power to fill any vacancies in any of the town offices when the same shall not already have been filled by appointment[.]*

Neb. Rev. Stat. § 32-567(5) (Supp. 2019) provides the alternative method of filling such a vacancy

*Vacancies in office shall be filled as follows:*

\* \* \* \*

*(5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board[.]*

The apparent failure to fill the Board vacancy timely conflicts with State statute.

We recommend the Township consult with the Nebraska Secretary of State for guidance in the selection and appointment of a new Board member. Because this comment addresses the possible violation of State statute, the APA will forward the information herein to the Dodge County Attorney for further review.

*Township Response: Compliance issues related to the OM Act and meeting minutes will be corrected immediately. Lack of knowledge of state statutes and the location to that information to reference from was the main reasoning for non compliance.*

*The board had no prior knowledge that checks had to be signed by two individuals. Moving forward, steps will be taken to assure two signatures will be on the checks.*

*We are actively searching for a new member of the board and have been turned down by many. We will seek help in finding a third member.*

### **3. Payment for Damage by Contractor**

As noted in Comment and Recommendation Number 1 (“Board Contracts”) (pgs. 1-3) herein, on March 30, 2020, the Township made a \$4,836.73 payment to Taylor Farms, L.L.C., for “equipment repair.” The APA questions the necessity of that expenditure.

According to information provided to the APA, the Township entered into an August 2019 agreement with Shepard Enterprises, a general contractor located in Blair, Nebraska, to evaluate, document, and repair damage caused to “roads, bridges, and culverts within the township” by catastrophic flooding earlier that year. Per the terms of the agreement, Shepard Enterprises was to determine the nature of the repairs required, utilize its own equipment in performing that restoration work, and assume responsibility for purchasing any materials needed for the project’s completion. Along with the basic terminology of the agreement (e.g., referring to Shepard Enterprises as “contractor” therein), these provisions attest to the hiring of an independent contractor rather than the formation of an employer-employee relationship.

The Township paid Shepard Enterprises more than \$300,000 for the flood repair work performed under the agreement. During the course of that work, however, Shepard enterprises engaged the services of a subcontractor to assist with certain tasks. While moving dirt at a work site on July 26, 2019, the subcontractor’s truck slid off a muddy road, colliding with a Valley pivot span owned by Taylor Farms. A January 21, 2020, claim submitted to the Township for the resulting damage described the incident as follows:

*At the time of the accident, pivot span was stationary on ground. Your semi collided with our pivot span, causing significant damage to the last span pipe. After accident, I was notified from Scott Huppert, Dodge County Highway Superintendent by phone. When I arrived at the site I observed our pivot was ran over and lodged up in between the axel’s of the side dump trailer. Bruce Schmidt, employee of Platte Township asked me to help dislodge pivot span from under the side dump trailer.*

The claim requested compensation in the amount of \$4,836.73 for the damaged pivot span. As stated at the outset of this comment, the Township paid that amount to Taylor Farms, L.L.C., on March 30, 2020.

The APA questions the Township’s payment of the claim submitted by Taylor Farms, L.L.C., due to the political subdivision’s doubtful liability for damage cause by the independent contractor/subcontractor. The Nebraska Supreme Court (Court) has recognized the following common law rule:

*Generally, the employer of an independent contractor is not liable for physical harm caused to another by the acts or omissions of the contractor or his servants.*

Kime v. Hobbs, 252 Neb. 407, 415, 562 N.W.2d 705, 712 (1997). In stating this rule, the Court explained the following:

*There are two recognized exceptions to the general rule. The employer of an independent contractor may be vicariously liable to a third party (1) if the employer retains control over the contractor's work or (2) if, by rule of law or statute, the employer has a nondelegable duty to protect another from harm caused by the contractor.*

Id. at 415-416, 562 N.W.2d at 712. Based upon the information obtained, neither exception seems to apply to the scenario described. Likewise, nothing in the agreement with Shepard Enterprises requires the Township to assume liability for the contractor/subcontractor's actions. Consequently, the independent contractor/subcontractor appears to be exclusively liable for the damage at issue – meaning that, in light of such a presumption, there was no need for the Township to have paid the claim presented by Taylor Farms, L.L.C.

We recommend the Township seek legal guidance regarding not only liability for the damage caused by the contractor/subcontractor but also any option available for recovering the claim payment made.

*Township Response: Ultimately we feel it is the responsibility of the township in regards to the damage of the irrigation pivot span because this occurred while working on a township project. We will utilize your recommendations and revisit the incident.*

*Overall Township Response: In closing, I want to assure you that changes will be implemented and compliance will be achieved. Thank you for your help and direction to improve the township.*

\* \* \* \* \*

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 Township'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 Township.

Draft copies of this letter were furnished to the Township to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such a 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 Township 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. This letter can be found electronically at: [auditors.nebraska.gov](http://auditors.nebraska.gov).

Audit Staff Working on this Examination:

Cindy Janssen, Audit Manager

Sincerely,



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cc: Nebraska Accountability and Disclosure Commission  
Dodge County Attorney