



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Dan Thompson, Chairperson
Blair Rural Fire District
1712 Washington St.
Blair, NE 68008

Dear Chairperson Thompson:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Blair Rural Fire District (District) for the fiscal year ending 2020. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (2020 Neb. Laws, LB 781, § 8), the preliminary examination necessary to determine whether further audit work would be required or the audit waiver should be allowed, the APA noted certain internal control or compliance matters, or other operational issues, within the District.

The following information is intended to improve internal controls or result in other operational efficiencies.

Comments and Recommendations

1. Possible Conflict of Interest

When reviewing the District's bank statements, which were received as part of its audit waiver request, the APA identified a potential conflict of interest concern regarding the District's Chairperson, Dan Thompson. During the fiscal year 2020, the APA noted that the District made a payment, totaling \$33,591, to Thompson Agency for the District's insurance. Per the Thompson Agency website, Dan Thompson is the owner of this business.

As mentioned in **Comment and Recommendation 2** ("Open Meetings Act Violation") below, the Chairperson stated that the Board of Directors (Board) is approving bills, but the approval is not reflected in the District's meeting minutes. As a result, the APA is unable to determine if the Chairperson voted on or abstained from voting on this payment to his personal business.

The apparent failure of the Chairperson, Dan Thompson, to abstain from voting on authorizing the payment to his personal business gives rise to concerns regarding possible violations of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. §§ 49-1401 (Cum. Supp. 2018) et seq.

To start, Neb. Rev. Stat. § 49-14,102 (Cum. Supp. 2018) 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.

Neb. Rev. Stat. § 49-1443 (Reissue 2010) defines a “public official 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.

Neb. Rev. Stat. § 49-1424 (Reissue 2010) defines “government body” as follows:

Government body shall mean an authority, department, commission, committee, council, board, bureau, division, office, legislative body, or other agency in the executive, legislative, or judicial branch of state government or of one or more political subdivisions thereof or a school district, state college, state university, or other state-supported institution of higher education.

Neb. Rev. Stat. § 49-1408 (Reissue 2010) provides the following definition for the term “business with which the individual is associated”:

Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer; or (2) in which the individual or a member of the individual’s immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five percent equity interest or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest. An individual who occupies a confidential professional relationship protected by law shall be exempt from this section. This section shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker.

In light of the above definitions, it is clear that the prohibition in § 49-14,102 applies to Chairperson Thompson. Without any meeting minutes to document the Board’s approval of the contract with the Howard D. Thompson Agency, however, it is difficult to determine whether the “open and public process” required by § 49-14,101.01(1) occurred.

Furthermore, Neb. Rev. Stat. § 49-14,101.01 (Reissue 2010) provides the following, as is relevant:

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) 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.

* * * *

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Good internal controls require procedures to ensure compliance with the requirements of the Act.

Without such procedures, there is an increased risk for both statutory violations and loss of District funds.

We recommend the District implement procedures to ensure compliance with the applicable provisions of the Act. Because the issue addressed herein constitutes a possible violation of the Act, we are forwarding this information to the Nebraska Accountability and Disclosure Commission.

2. Open Meetings Act Violation

The APA obtained a copy of the September 11, 2019, meeting minutes for the Board of Directors (Board) of the District. Those minutes fail to reflect the Board's approval of any District expenditures. According to the Chairperson for the District, the Board is approving expenses; however, this approval is not reflected in its minutes.

Per Neb. Rev. Stat. § 35-508(4) (Reissue 2016), Boards have the exclusive power to "manage and conduct the business affairs of the district." Accordingly, any expenditure of District funds requires express Board authorization.

Additionally, Neb. Rev. Stat. § 35-511 (Reissue 2016) provides, in relevant part, the following:

All donations, contributions, bequests, annuities, or borrowed money received by or on behalf of the district shall be deposited with the secretary-treasurer of the district and shall be drawn out only upon proper check. Such check shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president of such district.

(Emphasis added.) Properly discharging the above statutory duties necessarily entails proper financial management, which calls for the Board's approval of all expenditures prior to, or as soon thereafter as possible, the actual disbursement of District funds. Without detailed Board meeting minutes, however, it is difficult to determine whether such approval actually took place.

As a public body, moreover, the Board is subject to the provisions of the Open Meetings Act, which is set out at Neb. Rev. Stat. § 84-1407 (Reissue 2014) et seq. In particular, Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2018) requires public bodies, including the Board, to "keep minutes of all meetings," showing, among other things, "the substance of all matters discussed." Thus, the Board's minutes should record any formal approval of District expenditures.

Furthermore, a good internal control plan and sound business practices require procedures to ensure that the Board approves, in a timely fashion, all expenditures and business transactions of the District. Those same procedures should ensure also that the Board documents such approval in its meeting minutes, specifying the name of each payee, the exact amount of any disbursement, and the specific purpose of the payment.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

We recommend the implementation of procedures to ensure the Board approves, in a timely fashion, all expenditures of District funds, and such approval is documented adequately in the Board's meeting minutes.

3. Lack of Dual Signatures

The APA obtained the monthly statements for the District's bank accounts from its fiscal year 2020 audit waiver request. From those statements, the APA noted that all District checks written during the examination period contained only one signature.

Nebraska law requires both the Secretary-Treasurer and the President of the District to sign all checks approved by the Board. In particular, Neb. Rev. Stat. § 35-511 (Reissue 2016) states that those checks "shall bear the signature of the secretary-treasurer and the countersignature of the president of such district."

In addition, good internal controls and sound accounting practices require procedures to ensure that District checks contain the statutorily required endorsements.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

We recommend the Board implement procedures to require dual signatures, from both the Secretary-Treasurer and the President, on all District checks, as required by law.

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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 District'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 District.

This communication is intended solely for the information and use of the District 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, please contact **Dakota Christensen** at **402-499-8702** or **dakota.christensen@nebraska.gov**.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Avery", with a long horizontal flourish extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor