



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Duane Hinman, Chairperson
Village of Craig
P.O. Box 85
Craig, NE 68019

Dear Chairperson Hinman:

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

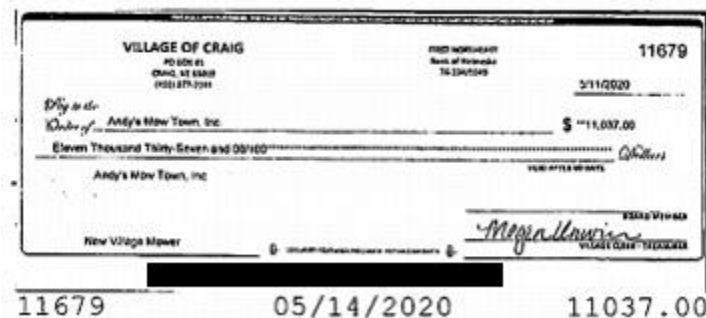
While performing, pursuant to Neb. Rev. Stat. § 84-304 (Cum. Supp. 2020), the preliminary examination necessary to determine whether the audit waiver should be allowed or further audit work would be required, the APA noted certain internal control or compliance matters, or other operational issues, within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

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

Comments and Recommendations

1. Lack of Dual Signatures

The APA obtained the bank statements for the Village's accounts from its fiscal year 2020 audit waiver request. From these statements, the APA noted that two of the Village checks written during the examination period contained only one signature. An example of such checks is shown below.



State statute requires Village checks to be signed by both the Board Chairperson and the Village Clerk. Specifically, Neb. Rev. Stat. § 17-711 (Cum. Supp. 2020) provides the following:

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

Good internal control and sound accounting practices require procedures to ensure that Village checks contain the statutorily required endorsements. Without such procedures, there is an increased risk of not only failure to comply with State statute but also the loss and/or misuse of Village funds.

A similar issue was identified by the APA in a prior review and was disclosed to the Village in the APA's letter dated September 16, 2019, which can be found on the APA's website.

We recommend the Board implement procedures to require dual signatures, from the Board Chairperson and the Village Clerk, on all Village checks, as required by law.

2. Lack of Claim Purpose

During our comparison of the Village's bank account details to claims approved by the Board, the APA noted that most claims listed in the Board's official proceedings lacked descriptions of their respective purposes.

The following is an example of the approved claims listing provided by the Village for December 5, 2019:

Approved Bills and Claims:
GENERAL FUND: N.P.P.D-\$122.11; NNTC-\$104.83; Oakland Independent-\$102.60; One Call Concept-\$11.62; Black Hills Energy-\$102.58; USPS-\$35.00; ACH-United States Treasury-941 corrections-\$946.70; ACH-NE sales and Use tax-\$379.20; Megan Unwin- office supplies-\$29.48; Wages-\$1,869.28
Christmas Bonuses-\$400.00; PARK FUND: N.P.P.D-\$32.50; Christensen Electric-\$1,285.59; Anderson Structures-\$21,683.00; Leo's Pump Shop-rough in-bathroom-\$2,951.63; Wages-\$64.29; Total-\$26,017.01; STREET FUND: N.P.P.D-\$468.92; Verizon-\$33.60; Platte Valley Equipment-tractor parts-\$42.53; Bomgaars-\$19.98; Duane-tractor parts-\$62.08; Temple Display-\$424.00; Ty's Outdoor Power and Service-snow plow-\$124.86; JEO-road program-\$600.00; Wages-\$470.42; WATER FUND: N.P.P.D.-\$484.31; NNTC-\$49.82; Verizon-\$33.60; ACCO-\$270.03; ACCO-chlorinating solution-\$231.40; NE Public Health Environment Lab-\$262.00; USPS-Nebr. Public health postage-\$7.35; Duane-tractor parts-\$62.08
Platte Valley Equipment-tractor parts-\$42.53; DHHS, Licensure Unit-\$115.00; Wages-\$582.92; SEWER FUND: N.P.P.D-\$383.27; Verizon-\$33.61; HTM-lift station repairs-\$1,867.60; S&S pumping-\$240.00; Duane-\$62.08; Platte Valley Equipment-\$42.54; Wages-\$309.70; GARBAGE FUND: Brummond Disposal-\$970.00; COMMUNITY CENTER FUND: Black Hills Energy-\$55.88; Lindy Glass-\$3,971.16; USDA WATER FUND: JEO-PER services through Oct. 11, 2019-\$4,405.00; Total Claims: \$46,848.68

Neb. Rev. Stat. § 19-1102 (Cum. Supp. 2020) requires publication of the Board's official proceedings, which must include, among other things, the purpose of each claim allowed, as follows:

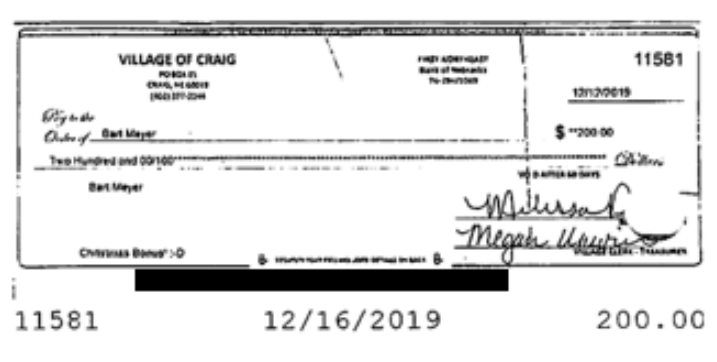
It shall be the duty of each city clerk or village clerk in every city or village having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the city council or village board of trustees within thirty days after any meeting of the city council or village board of trustees. The publication shall be in a legal newspaper in or of general circulation in the city or village, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

(Emphasis added.) Good internal control and sound accounting practices require procedures to ensure that the Board's official proceedings describe the purpose of each claim allowed. Without such procedures, there is an increased risk of not only failure to comply with statutory publication requirements but also a lack of transparency regarding the nature of public expenditures.

We recommend the Board implement procedures to ensure the purpose of each claim allowed is included in the Board's official proceedings and published in accordance with State statute.

3. Impermissible Gratuities

During a review of the Village's bank statements, the APA observed two checks of \$200 each in December 2019 for "Christmas Bonus." After further discussion with the Village, it appears that the Village gives their employees an annual bonus in addition to their regular pay. An example of such checks is shown below.



The holiday bonus payments at issue constitute gratuities, which appear problematic in light of the following statutory and constitutional considerations.

To start, the APA is unaware of any legal authority for the Village to give employee cash bonuses apart from a valid employment contract or formal policy authorizing extra compensation for additional work to be performed. The Village does not have a policy in regards to annual bonuses for the employees.

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” 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” payments addressed in this comment.

4. Expenditure in Excess of Budget

For the fiscal year ended September 30, 2020, actual expenditures exceeded the adopted budget by \$19,870, which was due to the General Fund exceeding its budget by \$7,235 and the Proprietary Funds exceeding their budget by \$12,635. No amended budget was filed with our office for these additional expenditures.

Neb. Rev. Stat. § 13-510 (Reissue 2012) states, in relevant part, the following:

No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

Neb. Rev. Stat. § 13-511 (Cum. Supp. 2020) sets out the procedures for amending the adopted budget accordingly.

When expenditures are made in excess of the amounts budgeted with no appropriate budget amendment by the Board to address those excesses, the Village is noncompliant with State statute, further increasing the risk for loss and/or misuse of funds.

We recommend the Board implement procedures for monitoring closely its budget status on an ongoing basis to avoid incurring expenditures in excess of the amount budgeted, amending the budget as necessary to accommodate any unforeseen expenses.

* * * * *

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.

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, 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