



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Caes Linner, Chairperson
Village of Upland
P.O. Box 67
Upland, NE 68981

Dear Mr. Linner:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding bank accounts that were opened under the Village of Upland's (Village) Employer Identification Number (EIN) but lacked any oversight by the Village Board of Trustees (Board). Furthermore, that lack of oversight appears to have resulted in the misappropriation of municipal funds.

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.

Comment and Recommendation

Potentially Fraudulent Expenses

The APA's examination of the records for the Village revealed that Ms. Amber Grams, the Village's former Board Chairperson, appears to have made personal purchases with municipal funds.

The APA has created the following timeline of significant events that took place during and after Ms. Grams' tenure as Board Chairperson. This timeline is based upon information received from the Village.

- Before January 1, 2017, a bank account labeled the "Community Improvement Fund" was opened with the Village's EIN. To the Village's knowledge, this account has never been governed by the Village's claims process, and the bank activity has never been presented to the Board.
- On October 5, 2017, a \$2,500 "Grant" received from Monsanto, along with \$1,000 in donations from private individuals, was deposited into the Community Improvement Fund. No documentation could be provided to show how these grant and donation funds were to be spent.

- Beginning in February 2017, and continuing through April 2019, numerous questionable transactions were made through Ms. Grams’ personal PayPal account and paid via the Community Improvement Fund bank account.
- On August 17, 2018, \$1,176.33 was deposited into the Community Improvement Fund from the Village’s main checking account.
- On October 24, 2018, \$211.99 was deposited into the Community Improvement Fund from the Village’s “Water Construction Account.”
- On May 17, 2019, Ms. Grams’ personal PayPal account was unlinked from the Community Improvement Fund bank account.
- On May 22, 2019, a \$1,400.00 cash deposit was made into the Community Improvement Fund.
- On October 7, 2019, \$3,040.43 was transferred from the Community Improvement Fund to the Village’s main checking account, and the Community Improvement Fund bank account was closed.
- On March 4, 2020, the Village’s fiscal year 2019 audit noted that the Board lacked control over all bank accounts using the Village’s EIN.

Because the Community Improvement Fund bank account was opened and operated under the Village’s EIN, and municipal funds were deposited into the account, such monies constituted public funds and should have been handled accordingly.

The following table details the bank activity for the Community Improvement Fund:

Calendar Year	Deposits	Withdrawals	Balance
Beginning Balance			\$ 2,815.74
2017	\$ 4,010.00	\$ 2,333.88	\$ 4,491.86
2018	\$ 1,444.29	\$ 3,126.58	\$ 2,809.57
2019	\$ 1,400.00	\$ 4,209.57	\$ -
Totals	\$ 6,854.29	\$ 9,670.03	

The following table offers a brief summary of Ms. Grams’ suspected improper expenditures during and after her tenure as Board Chairperson:

Description	Number of Transactions	Total Amount of Possible Fraud
Questionable Purchases via PayPal	26	\$ 2,833.40
Questionable Purchases from Amazon	8	\$ 1,100.57
Questionable Purchase from Wal-Mart	1	\$ 318.86
Questionable Purchase from Netflix	1	\$ 13.77
Total		\$ 4,266.60

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

Questionable Purchases via PayPal

The APA noted 26 purchases from Ms. Grams’ personal PayPal account that were paid via the Community Improvement Fund. These purchases were from various online businesses, including Antiquefarm, WebStaurant, Fantasticdi (Fantastic Displays), Zulily, JibJab.com, Hobby Lobby, Inkgrabber, etc. However, an itemized invoice was provided for only 1 of these 26 transactions.

The following table lists all 26 of Ms. Gram's PayPal purchases paid via the Community Improvement Fund:

Date	Check #	Amount	Payee
2/1/2017	Pay Pal Debit	\$ 57.45	PAYPAL INST XFER ANTIQUEFARM
4/26/2017	Pay Pal Debit	\$ 253.61	PAYPAL INST XFER WEBSTAIRANT
5/10/2017	Pay Pal Debit	\$ 384.00	PAYPAL INST XFER FANTASTICDI
5/17/2017	Pay Pal Debit	\$ 172.89	PAYPAL INST XFER ZULILY
6/5/2017	Pay Pal Debit	\$ 71.91	PAYPAL INST XFER ZULILY
6/6/2017	Pay Pal Debit	\$ 202.95	PAYPAL INST XFER ANTIQUEFARM
12/6/2017	Pay Pal Debit	\$ 20.00	PAYPAL INST XFER JIBJAB.COM
5/25/2018	Pay Pal Debit	\$ 60.88	PAYPAL INST XFER HOBBY LOBBY
6/1/2018	Pay Pal Debit	\$ 49.89	TRILIMEDIAI IAT PAYPAL 1003199837677
6/11/2018	Pay Pal Debit	\$ 203.90	PAYPAL INST XFER ZULILY
*7/19/2018	Pay Pal Debit	\$ 188.51	PAYPAL INST XFER INKGRABBER
7/23/2018	Pay Pal Debit	\$ 25.96	STRORMMEDIAL IAT PAYPAL 1003515658516
7/24/2018	Pay Pal Debit	\$ 89.97	VAELIOLLE IAT PAYPAL 1003523149040
8/7/2018	Pay Pal Debit	\$ 229.95	PAYPAL INST XFER ANTIQUEFARM
9/13/2018	Pay Pal Debit	\$ 30.00	PAYPAL INST XFER ALUMNI WEB
9/17/2018	Pay Pal Debit	\$ 211.99	PAYPAL INST XFER OFFICEDEPOT
10/11/2018	Pay Pal Debit	\$ 12.39	PAYPAL INST XFER OFFICEDEPOT
11/2/2018	Pay Pal Debit	\$ 55.97	PAYPAL INST XFER ZULILY
**11/2/2018	Pay Pal Debit	\$ 55.97	PAYPAL INST XFER ZULILY
12/6/2018	Pay Pal Debit	\$ 2.99	PAYPAL INST XFER CABOKI.COM
12/6/2018	Pay Pal Debit	\$ 20.00	PAYPAL INST XFER JIBJAB.COM
12/17/2018	Pay Pal Debit	\$ 129.92	PAYPAL INST XFER ZULILY
12/20/2018	Pay Pal Debit	\$ 119.99	PAYPAL INST XFER ZULILY
12/21/2018	Pay Pal Debit	\$ 30.86	PAYPAL INST XFER ZULILY
1/22/2019	Pay Pal Debit	\$ 111.88	PAYPAL INST XFER ZULILY
3/5/2019	Pay Pal Debit	\$ 39.57	PAYPAL INST XFER ZULILY
Total		\$ 2,833.40	

*This was the only transaction for which an itemized receipt could be provided.

**On November 7, 2018, a Zulily refund of \$55.97 was posted to the Community Improvement Fund.

As mentioned already, the APA obtained an itemized receipt for only 1 of the 26 transactions listed in the above table. This \$188.51 transaction was for the purchase of 11 ink cartridges from InkGrabber on July 19, 2018. When the APA asked her about the purchase, Ms. Grams stated that the ink cartridges were for her personal printer. According to Ms. Grams, the Village did not have a computer until 2018, so she had to print Village documents with her own printer. No documentation was provided, however, to show that the Board had ever requested printing services from Ms. Grams.

Additionally, for the remaining 25 transactions, Ms. Grams claimed that she bought items needed by the Village and was reimbursed for those expenditures because the Village did not have a purchasing card. The APA questions this, as documentation showing Board approval for such a process has not been provided. Ms. Grams stated, moreover, that she reimbursed the Community Improvement Fund for any "personal items purchased" – which, based upon the limited information obtained, appear to have comprised almost all of the transactions at issue. Thus, Ms. Grams admitted that she had expended public funds for her personal benefit.

Questionable Purchases via Amazon

The APA noted eight questionable purchases from Amazon.com, which Ms. Grams also made with Community Improvement Fund money. No supporting documentation was provided for four of those purchases. Supporting documentation was obtained, however, for the other four purchases. These documented transactions were for the purchase of four six-foot Lifetime brand 22119 folding picnic tables, as shown below:



(Source: Google Images)

The four tables were delivered directly to Ms. Grams' home address. When asked about the purchases, Ms. Grams claimed that the tables were delivered to her home because they could not be received at the Village address. The four tables, Ms. Grams explained further, are used at the Village's park and auditorium, as well as for various municipal events. The APA was unable to verify such usage, however.

All eight of Ms. Grams' Amazon.com purchases are detailed below:

Date	Check #	Amount	Payee
6/1/2017	Amazon Debit	\$ 6.62	AMAZON MARKETPLA INTERNET 091000014343770
6/1/2017	Amazon Debit	\$ 31.98	AMAZON MARKETPLA INTERNET 091000014348196
6/1/2017	Amazon Debit	\$ 45.26	AMAZON MARKETPLA INTERNET 091000014348200
6/2/2017	Amazon Debit	\$ 235.03	AMAZON MARKETPLA INTERNET 091000014647170
*6/5/2017	Amazon Debit	\$ 195.42	AMAZON INTERNET 091000015036936
*6/5/2017	Amazon Debit	\$ 195.42	AMAZON INTERNET 091000015036938
*6/5/2017	Amazon Debit	\$ 195.42	AMAZON INTERNET 091000015036940
*6/5/2017	Amazon Debit	\$ 195.42	AMAZON INTERNET 091000015668648
Total		\$ 1,100.57	

*Purchase was for folding picnic tables.

Again, if the four documented purchases of folding picnic tables were made on behalf of the Village, documentation showing Board approval of those expenditures was not provided. Because the first four transactions shown above lacked any supporting documentation, the APA is unable to determine whether the purchases were made for the Village or were personal in nature.

Other Questionable Purchases

The APA noted two other questionable purchases by Ms. Grams involving the expenditure of Community Improvement Fund money. As shown below, those transactions include the purchase of a television from Wal-Mart and a one-month subscription to Netflix.

Date	Check #	Amount	Payee
5/14/2018	2101	\$ 318.86	WAL-MART STORES PURCHASE 2101 KEARNE
April 2019	Unknown	\$ 13.77	Netflix
Total		\$ 332.63	

The television from Wal-Mart appears to have been used in the Village's community center; however, as noted with many of the other expenditures addressed herein, there is no documentation supporting the Board's approval of this purchase. Additionally, a one-month subscription to Netflix appears to be an improper expenditure of funds for a political subdivision.

Community Improvement Fund Deposits

As shown in the APA's timeline of significant events, the Village deposited two checks into the Community Improvement Fund. The first check was written on August 17, 2018, for \$1,176.33, and the second check was written on October 24, 2018, for \$211.99. Regarding these two deposits, Ms. Grams told the APA, "The Village of Upland has no ties or money involved with this account other than repayment for items I purchased for the Village [ink cartridges, picnic tables, television, etc.], as the Village did not have a credit card." However, no documentation has been provided to the APA to support this assertion.

Furthermore, as also reflected in the APA's timeline, a cash deposit of \$1,400 was made into the Community Improvement Fund bank account on May 22, 2019. Ms. Grams acknowledged that she made that deposit as reimbursement for the personal items that she had purchased with Community Improvement Fund money. Again, due to the significant lack of documentation for the activity in this account, the APA is unable to verify the source of this cash deposited.

The issues addressed herein give rise to serious concerns. As explained by the Nebraska Attorney General, for instance, there exists a "principle of law that public funds cannot be expended for private purposes." Op. Att'y Gen. No. 95034 (April 26, 1995). This fundamental legal precept is closely related to, though not part of, Article XIII, § 3, of the Nebraska Constitution, which prohibits giving or lending the State's credit.

The numerous statutory concerns occasioned by Ms. Grams' admitted personal use of Community Improvement Fund moneys are no less consequential. To start, State law requires the expenditure of Village funds to be made through a formal claims and warrant process, as directed by the Board. Neb. Rev. Stat. § 17-708 (Cum. Supp. 2020) says the following:

The mayor and city council of a city of the second class or village board of trustees shall have no power to appropriate or to issue or draw any order or warrant on the city treasurer or village treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of sections 17-714 and 17-715, and funds for the class or object out of which such claim is payable have been included in the adopted budget statement or transferred according to law.

Neb. Rev. Stat. § 17-714(1) (Cum. Supp. 2020) reads as follows:

All liquidated and unliquidated claims and accounts payable against a city of the second class or village shall (a) be presented in writing, (b) state the name and address of the claimant and the amount of the claim, and (c) fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

Neb. Rev. Stat. § 17-715(1) (Cum. Supp. 2020) provides, in relevant part, the following:

Upon the allowance of claims by the city council of a city of the second class or village board of trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the adopted budget statement

A Village official or employee who expends public funds except as expressly authorized by the Board, especially for his or her own personal benefit, does so at the risk of violating certain criminal statutes. For example, Neb. Rev. Stat. § 28-511 (Reissue 2016) says the following, as is relevant:

- (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, in relevant part, the following:

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.) 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. 2020), 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 that: 1) one person is not in a position both to perpetrate and to conceal financial errors or irregularities; 2) the Board exercises exclusive control over the expenditure of all Village funds; and 3) no bank account is opened under the Village’s EIN without the Board’s documented prior authorization.

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. Those same procedures should ensure also that the Board exercises exclusive control over the expenditure of all Village funds, and no bank account is opened under the Village’s EIN without the Board’s documented prior authorization. Further, we recommend the Village consult and work with the proper authorities regarding Ms. Grams’ 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 Franklin 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.

Village Response:

As for the changes recommended by the Auditors: 1. The Village Board has implemented procedures to keep this from happening again by two signatures must be on all checks. 2. bank accounts are checked at least twice a year under the EIN number. 3. Only two people are authorized at the bank to sign checks. All recommendations are greatly appreciated. 4. No payments to any one unless documentation is turned in on expense. All purchases over 250 must be approved before purchase and also have documentation on purchase. 5. No one can carry the credit card. Needs to be obtained from the clerk/treas. with the Boards approval.

* * * * *

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 responses 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:

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Sincerely,



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cc: Nebraska Attorney General
Nebraska State Patrol
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