



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

March 18, 2021

Don Cook, Chairperson
Village of Reynolds
PO Box 98
Reynolds, NE 68429

Dear Chairperson Cook:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Reynolds (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. Possible Conflict of Interest

The APA received Village Board (Board) meeting minutes and the accompanying claims listing for January 9, 2020. From this listing, the APA identified a potential conflict of interest involving the actions of Board members Susan Cook and Robert Kendall.

According to the meeting minutes, Susan Cook and Robert Kendall appear to have failed to abstain from voting on the following claims:

Claim Date	Name/Vendor	Amount	Check #	Cleared Date
1/9/2020	Susan Cook	\$ 10.18	3584	1/13/2020
1/9/2020	Susan Cook	\$ 487.18	3584	1/13/2020
1/9/2020	Rob Kendall	\$ 40.80	3585	1/14/2020
1/9/2020	Susan Cook	\$ 295.80	3585	1/14/2020
	Total	\$ 833.96		

An excerpt from the January 9, 2020, Board minutes is provided below:

Bills- Fairbury Light & Water - \$12,993.41, Schmidt's Inc. - \$675.00, Salary-\$1,125.0, DHHS-\$31.00(water test), Nebraska Rural Water Assoc.-\$100.00(dues), One Call Concepts-\$1.92(locate fees), Duwane Speers-\$120.00(utility refund), Olsson's-\$134.26(1&6 Year report), Rob Kendall-\$40.80(paper & lights reimburse), Susan Cook-\$10.18(thumb drive), Sharon Ginn-\$269.49-\$269.49(blind kits), Fairbury Journal News-\$11.04(print minutes), Reynolds Oil-\$262.50(Hall propane)Smith, Schafer, Davis, & Gaertig LLC-\$105.00(legal work)

Robert made a motion to pay the bills. Don seconded. All voted aye, motion carried.
The next meeting is February 13, 2020 at 7:00 P.M.
Meeting adjourned.

The apparent failure of Board members Susan Cook and Robert Kendall to abstain from voting on the motion above 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. 2020) et seq.

To start, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2010) states the following:

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.

The penalty for violating the above-cited conflict of interest statute is set out in subsection (7) thereof, as follows:

[A]ny 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.

Furthermore, Neb. Rev. Stat. § 49-1499.03(2) (Cum. Supp. 2020) provides the following related to claims not associated with a contract:

(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Except as otherwise provided in subsection (3) of this section, abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(Emphasis added.) Additionally, Neb. Rev. Stat. § 49-14,103.01 (Cum. Supp. 2020) provides the following, in relevant part, for claims associated with a contract:

*(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means . . .
(c) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (d) any elected county, school district, educational service unit, city, or village official . . .*

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. . . .

* * * *

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(Emphasis added.) Good internal control requires procedures to ensure compliance with the applicable provisions of the Act. Without such procedures, there is an increased risk for both statutory violations and the loss of Village funds.

We recommend the Board 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. 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 25 of the Village checks written during the examination period contained only one signature. An example of such checks is shown below.

VILLAGE OF REYNOLDS
P.O. BOX 66
REYNOLDS, NE 68429

AMERICAN NATIONAL BANK
22-851610 Branch 1

3549

10/10/2019

PAY TO THE ORDER OF Don Cook \$ **25.00

Twenty-Five and 00/100**

Don Cook
501 Pemberton Street
Reynolds, NE 68429

MEMO Board Meeting

Susan Cook
AUTHORIZED SIGNATURE

3551 \$2,250.00 10/16/2019

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 October 8, 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.

* * * * *

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,



Mark Avery, CPA
Assistant Deputy Auditor