



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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March 17, 2021

Jennifer Backhaus, Chairperson
Village of McLean
108 W 4th Street
McLean, NE 68747

Dear Chairperson Backhaus:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of McLean (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.

Comment and Recommendation

Possible Conflict of Interest

The APA received Village Board (Board) meeting minutes and the accompanying claims listing for January 8, 2020. From this listing, the APA identified a potential conflict of interest involving the actions of Board member Jesse Backhaus.

According to the meeting minutes, Jesse Backhaus appears to have failed to abstain from voting on the following claims:

| Claim Date | Name/Vendor | Amount | Check # | Cleared Date |
|------------|----------------|------------|---------|--------------|
| 1/8/2020 | Jesse Backhaus | \$1,176.00 | 2310 | 1/23/2020 |

An excerpt from the January 8, 2020, Board minutes is provided below:

January 8, 2020

Opening

The regular meeting of the Village of Mclean was called to order at 7 pm on January 8, 2020 at the town hall.

Notice of the meeting was published in the Osmond Republican.

The open meeting laws were pointed out and are on display for public viewing.

Members in Attendance:

Jennifer Backhaus Doug Levos Mitchell Nordhues
 Cindy Gerdes Doug Whalen Jesse Backhaus

Approval of Agenda

The agenda and minutes were unanimously approved by all members present.

Old Business

The town is still facing a 23% water loss. A few ideas were brought up about where this water loss may be collecting around town.

New Business

The need to possibly update our sewer lagoon/ perform some serious maintenance on it was discussed. Once the trees are removed, we will assess how to keep the grass short and repair the ground around both lagoons.

Approval of Bills

The following bills were presented for payment approval:

Key Sanitation- \$262.00- trash services
One Call Concepts- \$6.15- locate fees
Joe Hunhoff, CPA- \$1150.00- professional services
Northeast News- \$13.72- newspaper ad for audit waiver
Jesse Backhaus- \$1176.00- mowing village properties for 2018/2019

Motion was made by Doug Whalen to pay these bills. Doug Levos made a motion to second the approval. The motion was passed to approve these bills.

The apparent failure of Board member Jesse Backhaus 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. § 49-14,103.01 (Cum. Supp. 2020) provides the following, in relevant part:

(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.

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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 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