



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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May 18, 2021

Tony Kaufman, Mayor
City of Gering
1025 P St.
P.O. Box 687
Gering, NE 69341

Dear Mr. Kaufman:

As you know, the Nebraska Auditor of Public Accounts (APA) has been contacted regarding the City of Gering's (City) financial procedures. The APA received a list of concerns about, among other things, frequent changes to the Finance Director position, late filing of the Fiscal Year 2020 audit, and questionable transfers listed on the Fiscal Year 2021 budget form.

The Finance Director position for the City has experienced significant turnover in recent years, with the most recent resignation occurring on January 11, 2021. Per multiple discussions with her, Liz Loutzenhiser, the Finance Director for the City of Scottsbluff, she has agreed to assume the role of Finance Director for the City. According to Ms. Loutzenhiser, the frequent changing of previous Finance Directors has resulted in the failure not only to reconcile municipal accounts in a timely fashion but also to not have the City's Fiscal Year 2020 audit completed and submitted to the APA by the March 31, 2021, deadline. As of May 3, 2021, the APA still has not received the Gering Fiscal Year 2020 audit. Neb. Rev. Stat § 19-2903 (Reissue 2012) requires the annual audit report to be submitted within six months after the close of the fiscal year.

In response to these specific concerns, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested certain financial records from the City. Based upon the outcome of this preliminary planning work, including an analysis of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, we have noted a certain internal control or compliance matter that is presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

Lack of Resolution

The APA analyzed the City's Fiscal Year 2021 budget filed with our office and noted that the municipality transferred surplus utility fees to its General Fund. Consequently, the APA asked the City to produce a copy of the City Council resolution approving the transfer of those funds, as required by State statute. A chart showing the history of transfers from the last four budget filings with the APA's office has been included as follows:

Transfer From	Transfer To	FY2018	FY2019	FY2020	FY2021	Total by Fund
Electric Fund	General Fund	\$ 1,816,299	\$ 2,082,689	\$ 2,073,772	\$ 1,839,575	\$ 7,812,335
Water/Wastewater Fund	General Fund	\$ 147,300	\$ 147,300	\$ 196,760	\$ 35,000	\$ 526,360
Sanitation Fund	General Fund	\$ 289,299	\$ 289,299	\$ 127,197	\$ 23,000	\$ 728,795
Total by Fiscal Year		\$ 2,252,898	\$ 2,519,288	\$ 2,397,729	\$ 1,897,575	\$ 9,067,490

Neb. Rev. Stat. § 16-691.02 (Cum. Supp. 2020) permits certain excess utility revenues to be transferred to a city's General Fund, as follows:

The mayor and city council of any city of the first class may, by resolution, direct and authorize the city treasurer to dispose of the surplus electric light, water, or natural gas distribution system funds, or the funds arising from the sale of electric light and water properties, by the payment of outstanding electric light, water, or natural gas distribution system warrants or bonds then due and by the payment of all current amounts required in any revenue bond ordinance in which any part of the earnings of the electric light or water utility or natural gas distribution system are pledged. The excess, if any, after such payments, may be transferred to the general fund of such city at the conclusion of the fiscal year.

(Emphasis added.) Instead of providing the APA with a copy of the resolution mandated by § 16-691.02, the City Administrator responded that, according to legal advice received, no such document was required because the City does not have a board of public works.

The APA disagrees with such an interpretation of § 16-691.02. To start, that statute makes no mention of a board of public works. Rather, as highlighted above, the language therein permits the Mayor and City Council to “direct and authorize the city treasurer,” by resolution, to dispose of the surplus funds at issue.

Interestingly, the section heading to § 16-691.02 does say the following: “Board of public works; surplus funds; disposition; transfer.” That ancillary wording has no bearing upon the proper interpretation of the actual statutory language, however. Neb. Rev. Stat. § 49-802 (Reissue 2010) sets out the “general rules of construction” for Nebraska statutes. Subsection (8) of that law provides the following:

Title heads, chapter heads, section and subsection heads or titles, and explanatory notes and cross references, in the statutes of Nebraska, supplied in compilation, do not constitute any part of the law.

The Nebraska Supreme Court (Court) has applied the above rule of statutory interpretation and construction consistently for decades. See Cosentino v. Omaha, 186 Neb. 407, 411, 183 N.W.2d 475, 478 (1971); Twin Loups Reclamation Dist. v. Blessing, 202 Neb. 513, 516, 276 N.W.2d 185, 187 (1979); State v. Holmes, 221 Neb. 629, 634, 379 N.W.2d 765, 769 (1986).

Rather than considering a statute's heading or title, the Court has emphasized the importance of focusing exclusively upon the language of the law itself. “[A] court must determine and give effect to the purpose and intent of the Legislature as ascertained,” the Court has explained, “from the entire language of the statute considered in its plain, ordinary, and popular sense.” Southeast Rural Volunteer Fire Dept. v. Nebraska Dept. of Revenue, Charitable Gaming Div., 251 Neb. 852, 864, 560 N.W.2d 436, 444 (1997). Furthermore, the Court has stated the following:

A statute is not to be read as if open to construction as a matter of course. Where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning. In the absence of anything to indicate the contrary, words must be given their ordinary meaning. It is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of a court to read anything plain, direct, and unambiguous out of a statute.

Bachus v. Swanson, 179 Neb. 1, 4, 136 N.W.2d 189, 192 (1965). In light of the clear and unambiguous language in § 16-691.02, the APA believes that a formal resolution by the Mayor and City Council was required to transfer the surplus utility fees to the General Fund.

Additionally, good internal control requires procedures to ensure that excess utility funds are handled in strict conformity with applicable statutory provisions, and proper documentation thereof is created and maintained.

Without such procedures, there is an increased risk for not only statutory noncompliance but also the loss or misuse of public monies.

We recommend the City implement procedures to ensure excess utility funds are handled in strict conformity with applicable statutory provisions, and proper documentation thereof is created and maintained. Additionally, we recommend the City Council take proper action, per legal counsel's guidance, to remedy concerns with the past handling of such funds. We further recommend the City submit the audit with our office as soon as possible to avoid the possible loss of State revenues due to the late filing.

City Response: In reference to the May 3, 2021 draft letter received from you, the City of Gering will pass a Resolution related to utility funds transferred to the general fund for the 2020-2021 fiscal year. At all future budget hearings, the City will pass a resolution for any utility fund transfers to the general fund.

On behalf of the City of Gering, we appreciate your input, advice and accommodation. The City of Gering certainly intends to follow Nebraska 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 City'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 City.

Draft copies of this letter were furnished to the City to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. The formal response received has been incorporated into this letter. The response has been objectively evaluated and recognized, as appropriate, in the letter. A response 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 City 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: City Attorney
Scotts Bluff County Attorney