



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

January 15, 2021

Arlin Beethe, Chairperson
Elk Creek Fire Protection District
PO Box 128
Elk Creek, NE 68348

Dear Chairperson Beethe:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Elk Creek Fire Protection District (District) for the fiscal year ending 2020. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (2020 Neb. Laws, LB 781, § 8), the preliminary examination necessary to determine whether further audit work would be required or the audit waiver should be allowed, the APA noted certain internal control or compliance matters, or other operational issues, within the District.

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

Comments and Recommendations

1. Possible Conflict of Interest

When reviewing the District's bank statements, which were received as part of its audit waiver request, the APA identified potential conflict of interest concerns regarding District Board members, Donald Gottula and Derek Eggers. During fiscal year 2020, the APA noted that the District made the following payments.

| Payee | Owner | Purpose | Check # | Check Date | Cleared Date | Amount |
|---------------------|----------------|---------------|---------|------------|--------------|--------------------|
| G & G Oil | Donald Gottula | Fuel | 2260 | 1/10/20 | 1/14/20 | \$ 352.24 |
| Gottula Propane Inc | Donald Gottula | Propane | 2261 | 1/10/20 | 1/14/20 | \$ 684.26 |
| Eggers Bros | Derek Eggers | Truck Repairs | 2262 | 2/26/20 | 3/10/20 | \$ 104.06 |
| | | | | | Total | \$ 1,140.56 |

The APA obtained a copy of the January 8, 2020, Board meeting minutes. The following is an excerpt of those minutes, which documents the Board's approval of claims, including two of the payments above.

The treasurer report was given by Donald Gottula with the last of bills that were paid. Ball Insurance \$6820.00. Speers Truck Repair \$1660.44. Danko Fire Equipment \$126.75. Tecumseh Chieftain \$58.00. Field Ford \$280.11. G and G Oil \$352.24. Eggers Brothers \$104.06. For a total of \$9401.60. Motion by Arlin Beethe to except the total of \$9401.60. Seconded by Lavon Heidemann. Motion passed by Eggers, Gottula, and Boone.

Based on the excerpt above, payments to G and G Oil and Eggers Brothers were approved; however, the minutes do not document any Board members abstained from approving claims.

On January 8, 2021, the APA contacted both Mr. Gottula and Mr. Eggers and was informed Mr. Gottula is the owner of G and G Oil and Gottula Propane, Inc., and Mr. Eggers is the owner of Eggers Brothers. Mr. Gottula stated he does abstain from voting on claims to his businesses; however, the minutes do not reflect that he abstained. Mr. Eggers stated that he does not abstain from voting on claims to his business as he was not aware he should be abstaining.

To corroborate Mr. Gottula's claim that he abstains from voting on claims to his personal businesses, the APA contacted the Board Chairperson, and was informed that the Chairperson was unable to recall if any members ever abstained from voting on claims, and he does not recall Mr. Gottula and Mr. Eggers abstaining on the claims to their respective personal businesses.

As a result, it appears Mr. Gottula and Mr. Eggers failed to abstain from voting on payments to their respective personal businesses.

The apparent failure of the Board members, Donald Gottula and Derek Eggers, to abstain from voting on authorizing the payment to their respective personal businesses 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. 2018) et seq.

To start, Neb. Rev. Stat. § 49-14,102 (Cum. Supp. 2018) states, in relevant part, the following:

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

Neb. Rev. Stat. § 49-1443 (Reissue 2010) defines a "public official as follows:

Public official shall mean an official in the executive branch, an official in the legislative branch, or an elected or appointed official in the judicial branch of the state government or a political subdivision thereof; any elected or appointed member of a school board; and an elected or appointed member of a governing body of a state institution of higher education.

Neb. Rev. Stat. § 49-1424 (Reissue 2010) defines "government body" as follows:

Government body shall mean an authority, department, commission, committee, council, board, bureau, division, office, legislative body, or other agency in the executive, legislative, or judicial branch of state government or of one or more political subdivisions thereof or a school district, state college, state university, or other state-supported institution of higher education.

Neb. Rev. Stat. § 49-1408 (Reissue 2010) provides the following definition for the term "business with which the individual is associated":

Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer; or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five percent equity interest or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest. An individual who occupies a confidential professional relationship protected by law shall be exempt from this section. This section shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker.

In light of the above definitions, it is clear that the prohibition in § 49-14,102 applies to Board members Gottula and Eggers.

Furthermore, Neb. Rev. Stat. § 49-14,101.01 (Reissue 2010) provides the following, as is relevant:

(1) 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.

(2) 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.

* * * *

(7) Except as provided in section 23-3113, any 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.

Good internal controls require procedures to ensure compliance with the requirements of the Act.

Without such procedures, there is an increased risk for both statutory violations and loss of District funds.

We recommend the District implement procedures to ensure compliance with the applicable provisions of the Act, and such compliance is documented in the District's Board meeting minutes as necessary. 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 monthly statements for the District's bank accounts from its fiscal year 2020 audit waiver request. From those statements, the APA noted that all District checks written during the examination period contained only one signature.

Nebraska law requires both the Secretary-Treasurer and the President of the District to sign all checks approved by the Board. In particular, Neb. Rev. Stat. § 35-511 (Reissue 2016) states that those checks "shall bear the signature of the secretary-treasurer and the countersignature of the president of such district."

In addition, good internal controls and sound accounting practices require procedures to ensure that District checks contain the statutorily required endorsements.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

We recommend the Board implement procedures to require dual signatures, from both the Secretary-Treasurer and the President, on all District 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 District'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 District.

This communication is intended solely for the information and use of the District 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