



# NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Roger Theye, Chairperson  
Village of Liberty  
601 Webster Avenue  
Liberty, NE 68381

Dear Chairperson Theye

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Liberty (Village) for the fiscal year ending 2021. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Supp. 2021), 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 11, 2021. From this listing, the APA identified potential conflicts of interest involving the actions of Board members Roger Theye (Chairperson) and Michael Tallant.

According to the meeting minutes, Mr. Theye and Mr. Tallant appear to have failed to abstain from voting on the following claims:

Claim Date	Name/Vendor	Claim Description	Amount	Check #	Cleared Date
1/11/2021	Roger Theye	Reimbursement for Postage	\$ 18.15	1981	1/15/2021
1/11/2021	Roger Theye	Net Dec Wages	\$ 323.22	1986	1/15/2021
1/11/2021	Ileen Theye	Net Dec Wages	\$ 277.05	1987	1/15/2021
1/11/2021	Michael Tallant	Snow Removal	\$ 25.00	1988	1/13/2021
<b>Total</b>			<b>\$ 643.42</b>		

An excerpt from the January 11, 2021, Board minutes is provided below:

The Village Board meeting was called to order at 7:00 p.m. on January 11, 2021. Roll call was taken with the following members present: Chairman Roger Theye, Board of Trustees Michael Tallant, Steven McDowell, and Donald Wade. Bill Seeman was absent. Quorum was announced.

Chairman Roger Theye announced that the Open Meeting Act is posted on the east wall of the Village hall.

Minutes of the last meeting were read and treasurers report given with a current balance of \$86,829.46 with one outstanding check in the amount of \$ 150 made payable to Brian Boyarko for trustee fees. With no additions or corrections to the minutes, Don made a motion to accept the minutes as read, seconded by Steve. All members present voted in favor of the motion to accept the minutes as read, motion passed.

Claims were reviewed. Don made a motion to pay all bills that were presented, seconded by Steve. All members present voted in favor of the motion to pay all bills that were present, motion passed.

The apparent failure of Board members Roger Theye and Michael Tallant 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 2021) 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.*

Additionally, Neb. Rev. Stat. § 49-14,103.01 (Supp. 2021) 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. Payment of Claims Prior to Board Approval**

During our comparison of the Village’s bank account details to claims approved by the Board, the APA noted that the following checks, totaling \$1,171.49, were issued before the underlying claims were approved by the Board.

The table below provides a summary of the premature payments:

Name/Vendor	Amount	Approval Date	Check Date	Days Paid Before Approval
Orscheln	\$ 246.22	1/11/21	12/29/20	13
IRS	\$ 298.35	1/11/21	1/6/21	5
NE Dept of Revenue	\$ 626.92	1/11/21	1/8/21	3
<b>Total</b>	<b>\$ 1,171.49</b>			

Neb. Rev. Stat. § 17-614(1) (Supp. 2021) sets out the proper method for the appropriation or payment of money by the Village, as follows:

*All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.*

(Emphasis added.) Good internal control requires procedures to ensure that all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved. Without such procedures, there is an increased risk for the loss or misuse of Village funds.

We recommend the Board implement procedures to ensure all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

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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