



# NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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December 23, 2022

Justin Hallman, Chairperson  
Ansley Township Custer County  
79279 Road 455  
Ansley, NE 68814

Dear Chairperson Hallman:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Ansley Township Custer County (Township) for the fiscal year ending 2022. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Cum. Supp. 2022), 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 Township.

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 the Township Board (Board) meeting minutes and the accompanying claims listing for June 9, 2022. From this listing, the APA identified a potential conflict of interest involving the actions of Board member James Focken.

According to the meeting minutes, Mr. Focken appears to have failed to abstain from voting on the following claims:

Name	Amount	Description
James Focken	\$ 6,100	FEMA Administrative Fees

Excerpts from the June 9, 2022, Board minutes are provided below:

**The Ansley Township Board met on June 9, 2022, at the Ansley Township Library. Board members present were Justin Hallman, Lynn Ryan, and James Focken. No**

the additional \$20 premium to Heartland Insurance. All aye. Motion carried. A motion was made by Lynn Ryan and seconded by Justin Hallman to pay the outstanding bills totaling \$3463.66. All aye. Motion carried.

Kent Evans - \$1300, Trotters - \$299.75, Custer County Road Dept. -\$327.48, Ansley Lumber-\$25.73, Board Fees-\$1500, and Wenquist-\$10.70. An additional \$6100 was paid to James Focken out of FEMA account for administrative fees.

The apparent failure of Board member Focken 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. 2022) 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) (Reissue 2021) 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.*

Furthermore, Neb. Rev. Stat. § 49-14,103.01 (Reissue 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 Township 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. Payments Not Approved**

The APA obtained a copy of the June 9, 2022, meeting minutes for the Township Board. Those minutes fail to reflect the Board's approval of any expenditures made from the Township's Cemetery and Library bank accounts.

Nebraska law requires the Township Board to approve all claims against the Township. In particular, Neb. Rev. Stat. § 23-255 (Reissue 2022) states the following, in relevant part:

*All claims and charges against the town, duly audited and allowed by the town board, shall be paid by order so drawn.*

(Emphasis added.) Properly discharging the above statutory duties necessarily entails the Board's approval of all expenditures of Township funds prior to the actual disbursement.

As a public body, moreover, the Board is subject to the provisions of the Open Meetings Act, which is set out at Neb. Rev. Stat. § 84-1407 (Reissue 2014) et seq. Per Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022) public bodies, including Township Boards, are required to "keep minutes of all meetings," showing, among other things, "the substance of all matters discussed."

Furthermore, a good internal control plan and sound business practices require procedures to ensure that the Board approves all expenditures and business transactions of the Township prior to payment. Those same procedures should ensure also that the Board documents such approval in its meeting minutes, specifying the name of each payee, the exact amount of any disbursement, and the specific purpose of the payment.

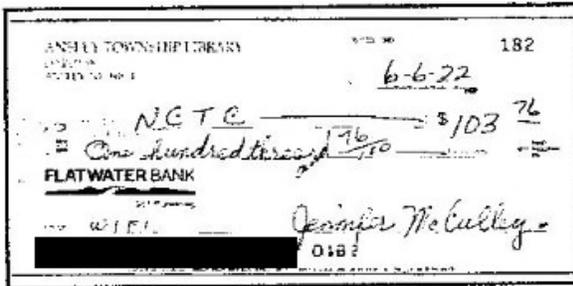
Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

A similar issue was identified by the APA in a prior review and was disclosed to the Township in the APA's letter dated November 23, 2021, which can be found on the APA's website. However, it does not appear this issue was corrected after the APA's notification.

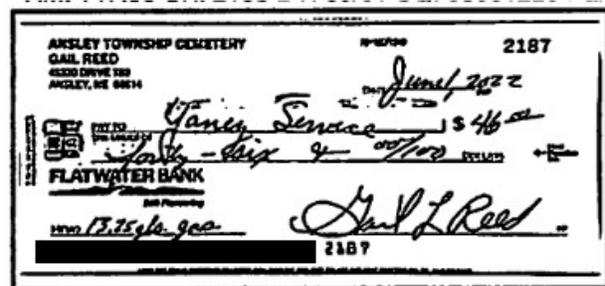
We recommend the implementation of procedures to ensure the Board approves all expenditures of Township funds prior to payment, and such approval is documented adequately in the Board's meeting minutes.

### 3. Lack of Dual Authorized Signatures

The APA obtained the monthly statements for the Township's bank accounts from its fiscal year 2022 audit waiver request. From those statements, the APA noted that all Township checks written from the Cemetery and Library bank accounts during the examination period contained only one signature. Additionally, the individual signing these checks was not a member of the Township Board. Examples of such checks are shown below.



AM: 103.76 CK: 182 DT: 06/10 SQ: 80201880 Paid



AM: 46.00 CK: 2187 DT: 06/03 SQ: 80102280 Paid

Nebraska law requires both the Clerk and the Chairperson of the Township Board to sign all checks approved by the Board. In particular, Neb. Rev. Stat. § 23-255 (Reissue 2022) states, in relevant part, the following:

*The town clerk shall draw and sign all orders upon the town treasurer for all money to be disbursed by the township, and all warrants upon the county treasurer for money raised for town purposes, or apportioned to the town by the county or state, and present the same to the chairman of the board, to be countersigned by him, and no warrant shall be paid until so countersigned.*

(Emphasis added.) In addition, good internal controls and sound accounting practices require procedures to ensure that Township 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.

A similar issue was identified by the APA in a prior review and was disclosed to the Township in the APA's letter dated November 23, 2021, which can be found on the APA's website. However, it does not appear this issue was corrected after the APA's notification.

We recommend the Board implement procedures to require dual signatures, from both the Clerk and the Chairperson, on all Township checks, as required by law.

### 4. Expenditures in Excess of Budget

For the fiscal year ended June 30, 2022, actual expenditures exceeded the Township's adopted budget by \$27,607. No amendment was filed with our office for these additional expenditures.

Neb. Rev. Stat. § 13-510 (Reissue 2022) states, in relevant part, the following:

*No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.*

Neb. Rev. Stat. § 13-511 (Cum. Supp. 2022) sets out the procedures for amending the adopted budget accordingly.

When expenditures are made in excess of the amounts budgeted with no appropriation adjustments by the Board to address those excesses, the Township is noncompliant with State statute, further increasing the risk for loss and/or misuse of funds.

We recommend the Board implement procedures for monitoring closely its budget status on an ongoing basis to avoid expenditures that exceed the amount budgeted and amending the budget as required when such excess expenditures are unavoidable.

\* \* \* \* \*

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 Township'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 Township.

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