



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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December 23, 2022

John Van Velson, Chairperson  
Brule Rural Fire District  
77055 Road 320  
Brule, NE 69127

Dear Chairperson Van Velson:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Brule Rural Fire District (District) 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 District.

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

### Comments and Recommendations

#### 1. Brule Community Center Association Donation

During our review of the bank statements accompanying the District's fiscal year 2022 audit waiver request, the APA noted that the District paid one check, in the amount of \$50,000, to the Brule Community Center Association (Association), a nonprofit corporation. An image of that check is shown below:



The APA was provided multiple sets of meeting minutes related to this payment. Below is an excerpt from the minutes of the District Board of Directors (District Board) meeting on September 8, 2020:

**Daryl Brown & Val Olson** - reported that the Brule Housing Authority Board was appointed by the Village to build Heritage Village, which has since been sold. The Authority wants to give the proceeds of the sale to organizations within the community. \$50,000 of these proceeds are intended for BCCA projects, but due to the organization's legal status the Authority is unable to give the money directly to the BCCA, so would like to give the money to the Brule Fire District to distribute to the BCCA since the District owns the Activity Center. Chris McNeff made a motion to accept this contribution for the BCCA pending approval of the District's accountant and legal advisors. Second by Tom Struckman. Motion carried.

According to these meeting minutes, the Brule Housing Authority (Authority) appears to have wished to make a \$50,000 donation to the Association; however, it could not legally make such a donation. Instead, the Authority donated the funds to the District with the express intent that the District then transfer those same funds to the Association. The District worked with its accountant and legal counsel to determine the next steps. The District Board's decision was documented in the meeting minutes dated February 9, 2021, as shown below:

**Brule Housing Authority gift for the BCCA** - We can accept the funds at any time but can't spend any of it until the next fiscal year when it is included in the budget.

The APA observed a \$50,000 deposit into the District's bank account on August 24, 2021. The District then made a \$50,000 payment to the Association on September 14, 2021, as shown by the check image above. The APA also obtained the bank statements of the Association and observed a deposit of \$50,000 on September 15, 2021. This \$50,000 was then transferred to the Association's savings account on September 27, 2021, and was still held in the savings account as of October 31, 2022. According to the District, the Association plans to use this money to replace the air conditioning in the Brule Community Center.

The APA questions the propriety of the District's donation to the Association.

To start, attention should be given to the suspect intent behind the Authority's \$50,000 gift to the District. As the Nebraska Supreme Court has stated, "The law will not permit that to be done indirectly which cannot be done directly . . ." *Fall v. Fall*, 75 Neb. 120, 132-133, 113 N.W. 175, 180 (1907). Echoing this fundamental legal maxim, the Nebraska Attorney General has opined, "It is a well known [sic] rule that one cannot do indirectly what it is prohibited from doing directly . . ." Op. Att'y Gen. No. 125 (October 2, 1970). Thus, the Attorney General explained further in that opinion, making an otherwise prohibited gift to a third party "for the purpose of a subsequent gift is as bad as making that gift directly."

More importantly – for purposes of this letter, at least – the District appears equally devoid of authority to make the gift at issue to the Association. According to the Nebraska Supreme Court, "a creature of statute," including any political subdivision, such as the District, "has no inherent authority" and "can exercise only those powers expressly granted to it by statute or necessarily implied to carry out its expressed powers." *Wetovick v. Cty. of Nance*, 279 Neb. 773, 787, 782 N.W.2d 298, 311 (2010). Such grant of power, the Court continued, must be "strictly construed, and reasonable doubts regarding the existence of its power are resolved against it." *Id.*

The various powers of the District are set out at Neb. Rev. Stat. § 35-508 (Reissue 2016). They range from, per subsection (6), purchasing or leasing "such firefighting and rescue equipment, supplies, and other real or personal property as necessary and proper to carry out the general fire protection and rescue program of the district" to, per subsection (15), generally performing "all acts necessary to fully carry out the purposes of" the statutes governing such fire protection districts.

The APA's examination of § 35-508, as well as other pertinent statutes, has failed to reveal any express, or even implied, authority for the District to make donations, whether of its own accord or at the behest of another public entity, to a nonprofit entity for purposes unrelated to firefighting or public safety.

Secondly, the Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. § 13-2201 (Reissue 2022) et seq., specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to Districts, among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Reissue 2022).

Neb. Rev. Stat. § 13-2203 (Reissue 2022) of the Act enumerates the miscellaneous expenditures permitted by governing bodies of local governments. Donations are not found among that select statutory list of permissible expenditures. As a result, given that they appear to lack authorization under any other statute as well, such disbursements must be considered disallowed by law.

Additionally, the funds were deposited into the District’s bank account, making them “public funds” under Neb. Rev. Stat. § 13-503(7) (Reissue 2022) of the Nebraska Budget Act. That subsection of statute states, in part, “Public funds means all money, including nontax money, used in the operation and functions of governing bodies.” Consequently, it would be the responsibility of the Board to ensure that the money received from the Authority was disbursed and utilized properly, not entrusted blindly to a nonprofit third party with which the District has no direct relationship.

Moreover, good internal controls and sound business practices require procedures to ensure that any expenditure of District funds is not only made for an appropriate – i.e., statutorily allowable – purpose but also used in accordance with the underlying objective of that disbursement.

Without such procedures, there is an increased risk for noncompliance with State statute and the improper, if not prohibited, use of District funds.

We recommend the District seek legal guidance regarding the propriety of its donation to the Association on behalf of the Authority. We also recommend the District implement procedures to ensure that all of its financial transactions are allowable by law.

## 2. Potentially Disallowed Purchase – Memorial Donation

Our review of the bank statements obtained from the District’s audit waiver request revealed that the District made one payment in the amount of \$25 with a payee of Darren Krull Memorial Donation on April 12, 2022. This disbursement was made from the District’s checking account, which contained property tax revenues. An image of that check is shown below:



The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. § 13-2201 (Reissue 2022) et seq., specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to Districts, among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Reissue 2022).

Neb. Rev. Stat. § 13-2203 (Reissue 2022) of the Act enumerates the miscellaneous expenditures permitted by governing bodies of local governments. Donations to memorials are not found among that select statutory list of permissible expenditures. As a result, such disbursements must be considered disallowed by law.

On September 17, 1993, the Nebraska Accountability and Disclosure Commission adopted a document entitled “A Guideline to the Use of Public Funds by Cities and Villages – Revised” (Guideline). The Guideline addresses a number of different scenarios involving the expenditure of public funds. Though issued almost three decades ago, the Guideline remains relevant to various Nebraska public entities, including Districts.

Regarding the issue of flower and memorial purchases, the Guideline provides the following:

*Question #6 – May municipal funds be expended for flowers and memorials for deceased elected officials, employees or their families?*

*Response – No.*

Good internal control requires procedures to ensure compliance with the provisions of the Act.

Without such procedures, there is an increased risk for not only noncompliance with applicable statutory requirements but also loss or misuse of District funds.

We recommend the Board implement procedures to ensure all District expenditures are allowable under State statute, including the provisions of the Act.

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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 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