



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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August 22, 2022

Rick Valentine, President  
Bayard Cemetery District  
1303 Ave. B  
Bayard, NE 69334

Dear Mr. Valentine:

As you know, the Nebraska Auditor of Public Accounts (APA) was contacted regarding alleged financial improprieties by the former Secretary/Treasurer of the Bayard Cemetery District (District), Joyce Mick. As a result of those allegations, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA reviewed financial records and other relevant documentation of the District. Based on the outcome of this preliminary planning work, including an analysis of the information examined, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the preliminary planning work, the APA noted certain issues that merit corrective action.

### **Background Information**

The Bayard Cemetery District (District) is located in Morrill County, Nebraska. Cemetery districts are political subdivisions that are empowered under State statute to equip and maintain a cemetery. The District's Board of Trustees (Board) is the governmental body that exercises financial accountability and control over activities relevant to the operations of the District. The District receives funding from State and local government sources and must comply with the requirements of these funding sources. Board members are elected by the public and have broad decision-making authority, including the power to levy taxes and to designate management, the ability to exert significant influence over all District operations, and the primary responsibility for related fiscal matters.

As of September 15, 2021, the District Board consisted of the following members:

- Roger Heigel, President
- Doug Kizzire
- Tom Bauer
- Deb Dudden
- Dennis Henkel
- Larry Neiger
- Micki McKibben

The following comments and recommendations, which have been discussed with the appropriate members of the District and its management, are intended to improve internal control or result in other operating efficiencies.

### **Comments and Recommendations**

#### **1. Payments in Excess of Approved Wage**

Joyce Mick served as the Secretary/Treasurer of the District. Her duties included, among other responsibilities, writing payroll checks for herself and other District employees. The APA received allegations that Ms. Mick had been writing herself monthly payroll checks in excess of her Board-approved wages. The following excerpt from the minutes for the Board's meeting on March 29, 2006, shows that Ms. Mick was authorized to receive an initial salary of \$475 per month:

Discussion on wages and they are as follows now: Gary \$1730.00 a month; Juan \$8.00; Tery \$6.00; Kristy \$6.25; Joyce \$475.00 and go to Gary \$150.00 more a month, Juan \$8.50, Tery \$7.50, Kristy \$7.50, Joyce \$10.00 an hour. Gary wants to go to \$2000.00 which would be an increase of \$270.00 a month.

The Board took no action to increase Ms. Mick's salary during this meeting. The Board did approve, however, a \$50 monthly increase to Ms. Mick's salary – up to \$525 per month, or \$6,300 annually – during the September 11, 2007, meeting, as shown below:

Larry moved to approve a \$.70 an hour increase for Gary, which will be \$1800.00 a month, Tery and Amber to \$8.00, a \$.50 an hour increase, Joyce a \$50.00 increase a month starting April 1, 2008. Doug seconded the motion. Motion carried.

In response to the allegations received, the APA analyzed the District's bank account records from Western States Bank in Bayard, NE, for the period January 2019 through December 2021. Because Ms. Mick resigned from her position at the District in October 2021, she should have received 34 monthly salary payments of \$525 apiece, totaling \$17,850, during the three-year period examined. Instead, Ms. Mick paid herself a gross salary of \$33,600, for that same time frame. One of the checks alone, written on December 30, 2020, amounted to nine months' worth of her approved salary.

The following is a comparative summary of Ms. Mick's approved wages and the actual pay that she received as a result of the excess payroll amounts:

Year	Approved Salary Total	Actual Salary Total	Variance
2019	\$ 6,300.00	\$ 11,025.00	\$ 4,725.00
2020	\$ 6,300.00	\$ 14,175.00	\$ 7,875.00
2021 (January to October)	\$ 5,250.00	\$ 8,400.00	\$ 3,150.00
<b>Totals</b>	<b>\$ 17,850.00</b>	<b>\$ 33,600.00</b>	<b>\$ 15,750.00</b>

*Note: The approved salary is the gross pay, not the net check amount.*

Below is a listing of all 56 checks paid to Ms. Mick from January 2019 through October 2021, which include both the check amount as well as her gross pay amount:

Check #	Check Date	Payee Per Check	Check Amount	Gross Pay Amount
7799	1/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7814	1/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7820	1/31/2019	Joyce Mick	\$ 387.84	\$ 525.00
7824	3/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7835	3/18/2019	Joyce Mick	\$ 387.84	\$ 525.00
7837	3/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7839	4/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7848	4/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7857	5/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7878	6/3/2019	Joyce Mick	\$ 387.84	\$ 525.00
7896	7/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7900	7/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7915	8/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7924	8/15/2019	Joyce Mick	\$ 387.84	\$ 525.00

Check #	Check Date	Payee Per Check	Check Amount	Gross Pay Amount
7925	9/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7938	9/18/2019	Joyce Mick	\$ 387.84	\$ 525.00
7951	10/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7957	10/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7964	11/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7977	11/15/2019	Joyce Mick	\$ 387.84	\$ 525.00
7980	12/1/2019	Joyce Mick	\$ 387.84	\$ 525.00
7987	1/8/2020	Joyce Mick	\$ 387.84	\$ 525.00
7993	1/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8004	2/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8011	3/1/2020	Joyce Mick	\$ 387.84	\$ 525.00
8018	3/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8026	4/14/2020	Joyce Mick	\$ 387.84	\$ 525.00
8027	4/14/2020	Joyce Mick	\$ 387.84	\$ 525.00
8036	5/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8055	6/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8048	6/1/2020	Joyce Mick	\$ 387.84	\$ 525.00
8072	7/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8087	8/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8088	8/3/2020	Joyce Mick	\$ 387.84	\$ 525.00
8099	9/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8120	10/1/2020	Joyce Mick	\$ 387.84	\$ 525.00
8128	10/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8129	11/1/2020	Joyce Mick	\$ 387.84	\$ 525.00
8137	11/15/2020	Joyce Mick	\$ 387.84	\$ 525.00
8157	12/30/2020	Joyce Mick	\$ 3,490.56	\$ 4,725.00
8171	1/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8176	2/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
8179	3/1/2031*	Joyce Mick	\$ 387.84	\$ 525.00
8188	3/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8199	4/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
8202	4/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8207	5/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
8213	5/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8218	6/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
8228	6/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8237	7/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
8243	7/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8264	8/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
8265	7/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8284	9/15/2021	Joyce Mick	\$ 387.84	\$ 525.00
8296	10/1/2021	Joyce Mick	\$ 387.84	\$ 525.00
<b>Totals</b>			<b>\$ 24,821.76</b>	<b>\$ 33,600.00</b>

\*The APA noted that the check image for check # 8179 is dated March 1, 2031. However, it appears that this check was most likely actually issued on March 1, 2021.

The District questioned Ms. Mick at a September 2021 meeting as to how much she was making, and she responded that her pay was \$500 per month. Prior to that time, Ms. Mick was regularly paying herself two paychecks a month for a gross amount of \$525 each. After being questioned, she only had one check paid in September and October 2021.

On **Attachment A** herein, the APA presents images of eight of the cleared checks to Ms. Mick. Images of the other 48 checks made to her can be provided to the District or other authorized personnel upon request.

It is important to note that the APA's tally of the apparently fraudulent payroll checks to Ms. Mick dates back only to January 1, 2019. Per discussions with District staff, similar activity appears to have been occurring earlier as well. According to the District, the prior Board President, Roger Heigel, would pre-sign multiple checks, which Ms. Mick could then be able to use as she pleased.

The information presented above points to the apparent unauthorized expenditure of public funds by Ms. Mick for her own personal benefit, giving rise to serious statutory concerns. To start, Neb. Rev. Stat. § 28-511 (Reissue 2016) provides, in relevant part, the following:

*(1) A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.*

*(2) A person is guilty of theft if he or she transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto.*

Neb. Rev. Stat. § 28-512 (Reissue 2016) states the following, as is relevant:

*A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:*

*(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or*

*(2) Prevents another from acquiring information which would affect his judgment of a transaction; or*

*(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or*

*(4) Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (a) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, or (b) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument.*

Furthermore, Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2021) of the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. § 49-1401 et seq. (Reissue 2021), restricts the use of resources under the "official care and control" of a public official or public employee, as follows:

*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.*

Per subsection (7) of that same statute, "[A]ny person violating this section shall be guilty of a Class III misdemeanor . . . ."

These potential statutory concerns aside, it should be noted that good internal controls and sound accounting practices require procedures to ensure that one person is not in a position both to perpetrate and to conceal financial errors or irregularities, including fraud.

Without such procedures, there is an increased risk for fraud or the misappropriation of District funds.

We recommend the District implement procedures to prevent one person from being in a position both to perpetrate and to conceal financial errors or irregularities, including fraud. Among other things, the District could require a documented review of all payroll disbursements by a Board member or other employee not involved with the payment process. We also recommend the District implement procedures to ensure that all claims are submitted and approved with all relevant supporting documentation. Finally, because this comment gives rise to concerns regarding possible violations of State statute, we are forwarding the

information herein to the Nebraska State Patrol, Nebraska Attorney General, Nebraska Accountability and Disclosure Commission, and the Morrill County Attorney for further review. The APA will also forward the details of this matter to the Nebraska Department of Revenue and the U.S. Internal Revenue Service.

## 2. **Additional Questioned Payments**

As previously mentioned, the APA learned that the prior Board President, Roger Heigel, would pre-sign multiple checks, allowing Ms. Mick to use them as she pleased without any formal oversight or review. This laxity in the handling of the District's financial instruments may have contributed to not only the payroll irregularities addressed in the previous comment herein but also other seemingly problematic expenditures discussed below.

Worse yet, the Board typically met only once per year, and the purpose of that meeting was primarily to approve the District's annual budget – not to review District expenditures or otherwise to ensure the proper handling of funds. According to District personnel, moreover, bills or claims were rarely ever presented to the Board for review and approval.

The use of pre-signed checks and the lack of Board review and approval of expenditures constitute – both separately and, far more grievously, together – crucial shortcomings in the District's financial oversight process, increasing significantly the risk of questionable, or even improper, expenditures of funds.

While working with the District, there were certain payments that appear unusual for a cemetery district. The following table lists those expenditures, summarized by vendor:

<b>Payee Totals</b>	<b>Amount</b>	<b>APA Notes</b>
Westco	\$ 7,167.24	
Coop	\$ 4,868.73	
Sandberg	\$ 3,083.61	
Lighthouse Place	\$ 1,500.00	
Steel Grill	\$ 1,200.00	
Dennis Henkel	\$ 1,100.00	
Bayard FFA	\$ 1,059.00	
Larry Neiger	\$ 855.00	
Postmaster	\$ 825.00	
Eric Howton Inc	\$ 700.00	
Panhandle Area Development District	\$ 512.98	
Charter Communications	\$ 293.45	
Roger Heigel	\$ 216.93	
Menards	\$ 149.79	
Joyce Bonus	\$ 50.00	
Illegible	\$ 19,592.15	Several check images had illegible payees on the bank statements received.
Unknown	\$ 963.19	The detail for one check stated, "The image for this item could not be located." Two other debit line items noted that check numbers 8220 and 8229 had cleared the bank. However, no images for those checks were included on the bank statement.
<b>Total</b>	<b>\$ 44,137.07</b>	

In 2020, the District paid the Panhandle Area Development District two checks, totaling \$512.98. The following was noted on the Staff & Leadership page of the Panhandle Area Development District website as of April 12, 2022:

*Joyce serves as the administrative assistant and book keeper for PADD and Panhandle Resource Conservation and Development. Joyce has years of accounting and administrative experience through her time as the Bayard City Clerk and her service to numerous agencies and irrigation districts throughout the Panhandle.*

It is questionable why a District would be paying a Development District, especially when Ms. Mick was working for both entities.

The District was unable to provide documentation to support any of these expenditures. Due to both their seemingly odd nature and the corresponding lack of supporting documentation – not to mention the absence of review or approval by the Board – the APA questions the propriety of these fund disbursements.

Good internal controls and sound accounting practices require proper documentation to be maintained for all disbursements of District funds, especially when such expenditures may appear unusual for a cemetery district. Those same procedures should require formal Board review and approval of all District expenditures.

We recommend the District implement procedures to ensure: 1) proper documentation is maintained for all disbursement transactions, especially when such expenditures may appear unusual for a cemetery district; and 2) formal Board review and approval takes place for all District expenditures.

### **3. Other Issues**

During our examination of the District's bank statements and other relevant documentation, the APA noted that Ms. Mick may have acted as Secretary/Treasurer for the District in violation of State statute.

Neb. Rev. Stat. § 12-913 (Reissue 2012) provides, in relevant part, the following:

*The board of trustees shall organize by electing a president, vice president, and secretary-treasurer from the members of the board for a term of one year. All officers shall serve without pay.*

(Emphasis added.) None of the Board's meeting minutes – or, for that matter, any other District documents – reviewed by the APA designate Ms. Mick as a member of that body; this raises serious doubt as to her legal capacity to act as Secretary/Treasurer for the District. In question also are any payments that she received for holding that official position.

Further, Neb. Rev. Stat. § 12-914 (Reissue 2012) says, in relevant part, the following regarding tax monies collected for the District's use:

*Such tax shall be collected as other taxes are collected in the county by the county treasurer, shall be placed to the credit of the cemetery district so authorizing the same, and shall be paid to the treasurer of the cemetery district upon warrants drawn upon the fund by the board of trustees of the district. Such warrants shall bear the signature of the president and the counter-signature of the secretary of the cemetery district.*

(Emphasis added.) The above statutory language does not mention checks explicitly; however, the District does not issue warrants, but rather only checks, to expend its funds. Nearly all the check images observed by the APA were signed by both Ms. Mick and Roger Heigel, the former Board President. Seven checks were signed by only the Board President.

As mentioned already, the APA did not observe any District documentation indicating that Ms. Mick was a member of the Board. If she was not a Board member, she could not serve legally as Secretary/Treasurer of the District – meaning also that she had no authority to countersign the District's checks.

After Ms. Mick's resignation, the District hired Shelly Bowlin to act as Secretary/Treasurer. Like her predecessor, however, Ms. Bowlin does not appear to be a Board member. As a result, Ms. Bowlin would be similarly disqualified from not only serving in such an official capacity but also countersigning any of the District's checks. Good internal controls and sound accounting practices require procedures to ensure that whoever serves as the Secretary/Treasurer for the District is statutorily eligible to hold that official position, and District checks are countersigned only by such a legally qualified person.

Without such procedures, there is an increased risk for both failure to comply with State statute and loss or misuse of District funds.

We recommend the District implement procedures to ensure: 1) its Secretary/Treasurer is a Board member and is elected in accordance with State statute; and 2) District checks contain the statutorily required endorsements. Because this comment addresses apparent violations of State statute, we are forwarding the information herein to the Nebraska Attorney General and the Morrill County Attorney for further review.

*District's Overall Response: The board approves moving forward with this final letter and thanks the auditors for their work. We have made changes to the board, and elected a Treasurer from one of the board members. The Clerk now presents the board with bills & claims, bank reconciliations, and typed minutes for prior meetings. The Board is meeting monthly, and the two board members are signing checks. We have made all the other necessary changes as well, so in the future the next people coming in to run the cemetery will have it right.*

\* \* \* \* \*

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during our work to make comments and suggestions that we hope will be useful to the District.

Draft copies of this letter were furnished to the District to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such 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 District and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this communication 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:

Craig Kubicek, CPA, CFE – Deputy Auditor  
Mason Culver – Auditor-In-Charge

Sincerely,



Craig Kubicek, CPA, CFE  
Deputy Auditor  
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cc: Nebraska Attorney General  
Nebraska State Patrol  
Nebraska Accountability and Disclosure Commission  
Morrill County Attorney  
Nebraska Department of Revenue  
Internal Revenue Service



BAYARD CEMETERY DISTRICT  
Check Image Examples of Extra Paychecks

Attachment A

EXAMPLE 1

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8086
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>6-15-20</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#0055	06/18	\$387.84

EXAMPLE 2

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8128
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>11-25-20</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#8128	11/25	\$387.84

EXAMPLE 3

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8157
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>12-30-20</i>	\$ <i>3,490.56</i>
<i>Three thousand four hundred ninety dollars &amp; 56/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#000008157	01/15	\$3,490.56

EXAMPLE 4

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8188
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>3-15-21</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#000008188	03/29	\$387.84

EXAMPLE 5

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8202
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>4-15-21</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#000008202	05/03	\$387.84

EXAMPLE 6

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8213
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>5-15-21</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#000008213	07/09	\$387.84

EXAMPLE 7

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8228
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>6-15-21</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#000008228	07/09	\$387.84

EXAMPLE 8

Bayard Cemetery District 903 Main Street Bayard NE 68334 308-631-4390		8243
PAY TO THE ORDER OF <i>Joyce M. Smith</i>	DATE <i>7-15-21</i>	\$ <i>387.84</i>
<i>Three hundred eighty seven dollars &amp; 84/100</i>		
WESTERN STATES BANK www.wsb.com		
MEMO: <i>Bayard Cemetery District</i>		
#000008243	08/27	\$387.84