



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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June 27, 2022

Wayne Henkel, President
Bayard Rural Fire District 3
RR 2
Bayard, NE 69334

Dear Mr. Henkel:

As you know, the Nebraska Auditor of Public Accounts (APA) was contacted regarding personal purchases being made with funds belonging to the Bayard Rural Fire District 3 (District). As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested specific financial records and other relevant documentation from 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 Rural Fire District 3 (District) is located in Morrill County, Nebraska. Rural and suburban fire protection districts are political subdivisions that are empowered under State statute to organize, equip, and maintain local firefighting bodies for the purpose of providing fire protection services to citizens residing in rural and suburban areas in the State. The District's Board of Trustees (Board) is the governing 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 April 7, 2022, the District Board consisted of the following members:

- Wayne Henkel, President
- Harry Henkel
- Chris Dudden
- Aaron Kreman
- Randy Eirich

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. Personal Use of District Funds

The APA obtained the monthly statements and transaction activity reports for the District's bank accounts for the period July 1, 2021, through April 15, 2022. From this documentation, the APA noted 10 checks that cleared in February and March 2022, all of which appear to have been for personal purchases made by the wife of Wayne Henkel, the District Board President. These checks are listed in the table below:

Check #	Issue Date	Clear Date	Vendor	Amount
5451	Note 1	2/22/2022	TARGETT0831 PURCHASE	\$ 210.35
5452	2/17/2022	2/22/2022	Safeway	\$ 46.09
5453	Note 1	2/28/2022	DISCOVER ARC PAYMENTS	\$ 101.29
5454	2/24/2022	2/28/2022	Co-op	\$ 37.35
5455	Note 2	3/10/2022	Note 2	\$ 76.83
5456	Note 1	3/18/2022	BEST BUY PMT CHECK PMT	\$ 130.04
5457	3/17/2022	3/21/2022	Safeway	\$ 126.99
5458	Note 1	3/23/2022	TARGETT0831 PURCHASE	\$ 30.79
5459	3/22/2022	3/24/2022	Platte Valley Dental	\$ 288.15
5460	Note 1	3/29/2022	KOHL'S CHECK PYMT	\$ 58.31
Total				\$ 1,106.19

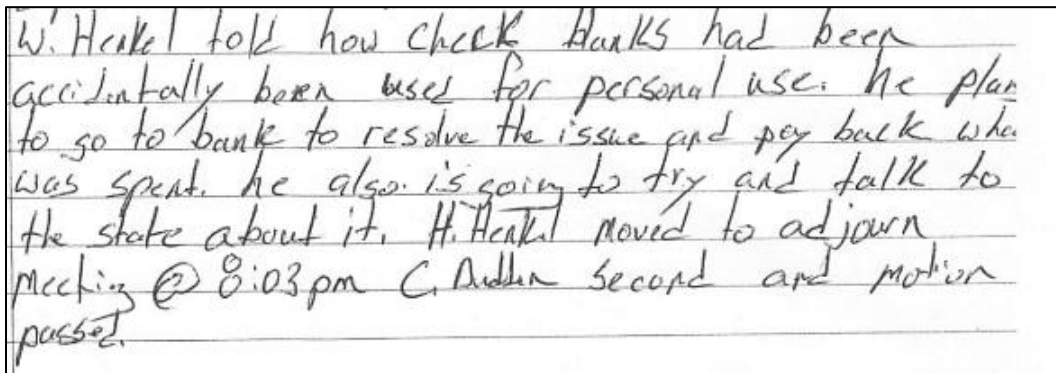
Note 1: The check image was not included on the bank statement; instead, it was shown under the account activity section of the statement. Therefore, the APA was unable to ascertain when the check was issued.

Note 2: The APA was unable to discern the check's issue date or vendor, as those details of the check image on the bank statement were illegible.

See **Attachment A** hereto for a copy of the check images obtained by the APA.

The APA has created the following timeline of significant events that took place after the purchases reflected above. This timeline is based upon information received from the District.

- On April 7, 2022, Mr. Henkel informed the Board during a meeting that the District's funds had "accidentally been used for personal use," and he was going to resolve the issue with the bank and pay back the funds, as well as notify the State of the purported mistake. The following image is an excerpt from the minutes of this Board meeting:



- On April 8, 2022, Mr. Henkel alerted the APA to the 10 District checks that were "accidentally" written by his wife. The District had recently hired a new Secretary-Treasurer, Mr. Henkel explained, so he had taken the District's financial records, including its bank account check books, home to ensure that they would be ready to hand over to the incoming Secretary-Treasurer. According to Mr. Henkel, both the District's account and his own personal account are held at the same bank, causing the confusion responsible for his wife's having written the checks mistakenly from the District's account instead of from his personal account.
- On April 8, 2022, the District's bank account was credited for the \$1,106.19 of personal purchases made by Mr. Henkel's wife with the 10 checks at issue. The image below shows this credit:

● Apr 08, 2022	Unauthorized Checks #5451-5460 2/2-3/29/2022	1,106.19	16,790.55
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Use of the District’s account by Mrs. Henkel to make personal purchases gives rise to serious concerns. To start, as explained by the Nebraska Attorney General, “It is a longstanding principle of constitutional law in Nebraska that public funds cannot be expended for private purposes.” Op. Att’y Gen. No. 97048 (Sept. 16, 1997). More specific, though, are certain statutory prohibitions that would require either an intent to perform the illegal acts or, at the very least, knowledge thereof in order for violations of the law to occur.

In revealing the 10 improperly written District checks to both the Board and the APA, Mr. Henkel indicated ignorance of his wife’s wrongful expenditure of public funds. If somehow proven, however, that Mr. Henkel had been aware of, or even allowed, his wife’s misuse of the District checks then in his lawful possession, possible violation of the Nebraska Political Accountability and Disclosure Act (Act) could well become an issue. Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2021) of the Act provides the following:

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.

(Emphasis added.) Section 49-14,101.01(7) adds, in relevant part, “[A]ny person violating this section shall be guilty of a Class III misdemeanor”

Similarly, if Mrs. Henkel were shown to have intentionally – as opposed to “accidentally,” as Mr. Henkel explained to both the Board and the APA – written any of the 10 District checks at issue, the result could be a possible violation of Neb. Rev. Stat. § 28-602 (Reissue 2016), which says the following:

(1) A person commits forgery in the first degree if, with intent to deceive or harm, he falsely makes, completes, endorses, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(a) Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency; or

(b) Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property.

(2) Forgery in the first degree is a Class III felony.

Regardless of whether either of the above statutes was violated, Mrs. Henkel’s misuse – even if unintentional – of the District’s checks remains problematic. Mr. Henkel did reimburse the District for the total cost of his wife’s illegitimate purchases; nevertheless, the unauthorized issuance of the checks not only constituted an improper expenditure of public funds but also resulted, for all practical purposes, in an interest-free loan of those moneys to the Henkels.

Further, 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.”

As shown by the images contained in **Attachment A** hereto, neither of these District checks were signed by the President or the Secretary-Treasurer.

A similar issue regarding the lack of statutorily-required endorsements was previously noted by the APA on two separate occasions in letters dated November 2, 2020, and January 12, 2022.

Good internal control requires procedures to ensure that District funds are expended only for proper purposes, and checks and other negotiable instruments of the District are properly safeguarded from mishandling. Those same procedures should also ensure that District checks contain the statutorily-required endorsements.

Without such procedures, there is not only an increased risk for failure to comply with State statute but also the improper, if not illegal, expenditure of District funds.

We recommend the District implement procedures, including the proper securing of checks and other negotiable instruments, to prevent any future misuse of public funds, regardless of whether such improper expenditures are subsequently reimbursed. We also recommend the District implement procedures to require dual signatures, from both the Secretary-Treasurer and the President, on all District checks, as required by law. Additionally, the APA will refer this matter to both the Nebraska Accountability and Disclosure Commission and the Morrill County Attorney for further review.

District Response: In regards to the funds of the Bayard Rural Fire District #3.

When I was alerted that the checks had been accidentally used, I alerted the State Auditor and followed his advice and guidance to resolve the issue. I also went to the bank and with their assistance they rerouted the 10 checks that were written by mistake and all funds came out of my personal checking account. I informed the Rural Fire Board in our monthly meeting. They understood that an honest mistake had been made and measures to correct were in place.

We, the board members, accept the explanation that Wayne Henkel has given us.

*Chris Dudden Aaron Kreman
Harry Henkel Randy Eirich*

2. Secretary-Treasurer Position

While examining the District’s bank statements and other relevant documentation, the APA noted that the current Secretary-Treasurer appears to be serving in that position contrary to the provisions of State statute.

Neb. Rev. Stat. § 35-506(1) (Cum. Supp. 2020) provides, in relevant part, the following:

Permanent organization [of the District] shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years. . . .

(Emphasis added.) None of the Board’s meeting minutes – or, for that matter, any other District documents reviewed by the APA – designate the current Secretary-Treasurer as a member of that body; this raises serious doubt as to her legal capacity to hold such a position for the District.

Good internal control requires procedures to ensure that Board officers are selected in accordance with the provisions of State statute.

Without such procedures, there is an increased risk of not only ineligible appointees serving as Board officers but also violation of State statute.

We recommend the District implement procedures to ensure that only those statutorily eligible to serve are selected as Board officers. Additionally, because the present comment addresses an apparent violation of law, the APA will forward this matter to the to the Morrill County Attorney for further review.

District Response: During the auditor’s review of the information sent per request. An issue with the above position was noted. Procedures to ensure that only those statutorily eligible to serve are selected as Board officers will be in place.

3. Incomplete Meeting Minutes

While reviewing the minutes for the Board’s meeting on April 7, 2022, the APA noted apparent noncompliance with the Open Meetings Act (Act), which is set out at Neb. Rev. Stat. § 84-1407 et seq. (Reissue 2014, Cum. Supp. 2020, Supp. 2021).

Specifically, Neb. Rev. Stat. § 84-1413(2) (Supp. 2021) of the Act requires the following:

Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(Emphasis added.) The Board’s meeting minutes – as shown in **Comment and Recommendation Number 1** (“Personal Use of District Funds”), page 2 herein – contain the following statement:

H. Henkel moved to adjourn meeting @ 8:03pm C. Dudden second and motion passed.

In the above excerpt, as well as in portions of the other meeting minutes that the APA examined, the Board failed to comply with § 84-1413(2) by neglecting to record a roll call vote for action taken.

Good internal control requires procedures to ensure compliance with all provisions of the Act, including the requirement that the Board’s meeting minutes record a roll call vote for action taken.

Without such procedures, there is an increased risk of noncompliance with the Act.

We recommend the District implement procedures to ensure compliance with all provisions of the Act, including the requirement that the Board’s meeting minutes record a roll call vote for action taken. Additionally, because the present comment addresses apparent violation of the Act, the APA will forward this matter to both the Morrill County Attorney and the Nebraska Attorney General for further review.

District Response: The issue regarding the perceived incomplete minutes will be discussed with the board and measures taken to correct.

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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 our 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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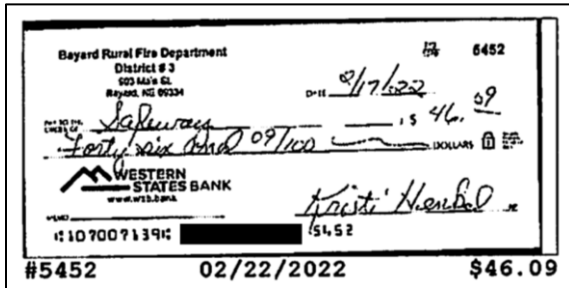
craig.kubicek@nebraska.gov

cc: Nebraska Accountability and Disclosure Commission
Morrill County Attorney

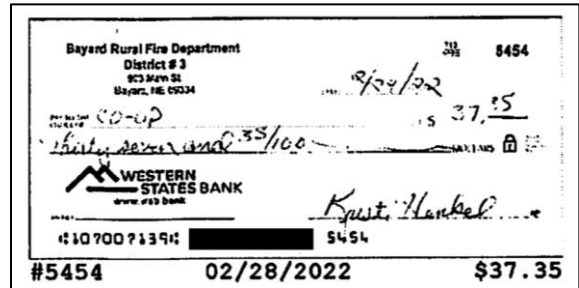
BAYARD RURAL FIRE DISTRICT 3
 Check Image Examples of Personal Checks

Attachment A

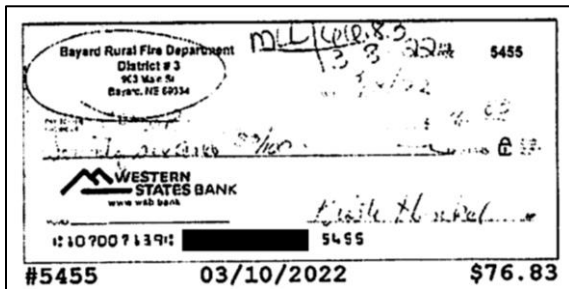
EXAMPLE 1



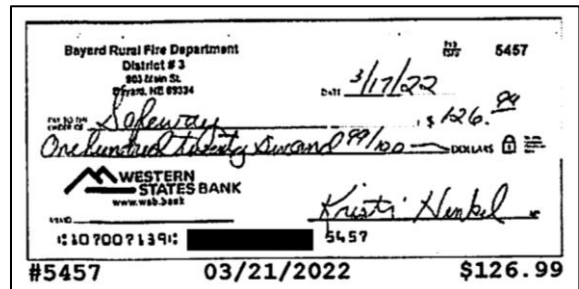
EXAMPLE 2



EXAMPLE 3



EXAMPLE 4



EXAMPLE 5

