



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Charlie Janssen
State Auditor

Charlie.Janssen@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
auditors.nebraska.gov

December 28, 2022

Wendall Pascarelli, Chairperson
Yutan Rural Fire District 12
P.O. Box 111
Yutan, NE 68073

Dear Chairperson Pascarelli:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Yutan Rural Fire District 12 (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. Possible Conflict of Interest

The APA received the District Board (Board) meeting minutes and the accompanying claims listings for March 16, 2022, and September 21, 2022. From these listings, the APA identified a potential conflict of interest involving the actions of Board member JC Long.

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

Payee Name	Amount
Jaime Long	\$ 200

During the fiscal year 2022, the APA noted that the District made twelve payments, totaling \$2,400, to Jaime Long, the spouse of JC Long. Jaime Long assists the District with bookkeeping tasks and is paid \$200 per month for assisting with these tasks.

While it was noted that Mr. Long appeared to arrive to the March 16, 2022, meeting after the payment of bills had been approved, the minutes dated September 21, 2022, note that all members present, including Mr. Long, voted in favor of the motion to pay bills.

An excerpt from the September 21, 2022, Board minutes is provided below:

YUTAN RURAL FIRE PROTECTION DISTRICT #12 MEETING

September 21, 2022 7:00 P.M.

Wendall Pascarelli called the meeting to order at 7:30 PM. Meeting notices were posted at the Yutan Post Office, First State Bank, and the Yutan Fire Station. The Nebraska Open Meeting Act was displayed and referenced by Pascarelli. Board members present: Wendall Pascarelli, Duane Ptacek, Justin Grint and JC Long. Visitors Don Dooley and Jaime Long.

Grint made a motion to approve the budget as submitted. Ptacek seconded. Motion passed. (Yes:4, No: 0)

Grint made motion to use the budget document as the audit waiver. Ptacek seconded. Motion passed. (Yes:4, No: 0)

Grint made motion to request an additional 1% budget authority on restricted funds. Ptacek seconded. Motion passed. (Yes:4, No: 0)

Grint made a motion to approve the minutes. Ptacek seconded.

Ptacek made a motion to pay the bills presented and to approve the Treasurer's Report minus the Nelson Performance bill. Grint seconded. Motion passed. (Yes: 4, No: 0)

The apparent failure of Board member Long 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 District 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. Negative Bank Balance

While examining the District's bank statements, the APA noted that the District's checking account had a negative balance from January 12, 2022, to January 14, 2022. During that period, the largest negative balance was \$14,497. For the fiscal year ended June 30, 2022, the District incurred no overdraft fees.

Good internal controls and sound business practices require procedures to ensure that funds are available in the District's bank account prior to payment. Without such procedures, additional fees can occur.

We recommend the District Board implement procedures to ensure funds are available in the bank account prior to payment.

3. Expenditures in Excess of Budget

For the fiscal year ended June 30, 2022, actual expenditures exceeded the adopted budget by \$380,619. 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 (Reissue 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 District is noncompliant with State statute, further increasing the risk for loss and/or misuse of funds.

A similar issue was identified by the APA in a prior review and was disclosed to the District in the APA's letter dated January 20, 2022, which can be found on the APA's website.

We recommend the Board implement procedures to monitor closely its budget status on an ongoing basis to avoid incurring expenditures in excess of the amount budgeted, and amend the budget as necessary.

* * * * *

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,



Mark Avery, CPA
Assistant Deputy Auditor