



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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State Auditor

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December 23, 2022

Richard Kubik, Chairperson  
Elk Township Saunders County  
1750 County Road 29  
Prague, NE 68050

Dear Chairperson Kubik:

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

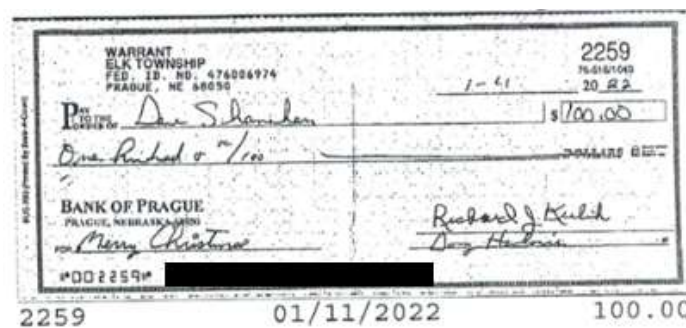
While performing, pursuant to Neb. Rev. Stat. § 84-304 (Cum. Supp. 2022), the preliminary examination necessary to determine whether further audit work would be required or the audit waiver should be allowed, the APA noted certain internal control or compliance matters, or other operational issues, within the Township.

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

### Comment and Recommendation

#### Possible Impermissible Gratuity

In January 2022, the Township Board paid a Township employee \$100 with a check memo of "Merry Christmas." According to the Township Clerk, this payment was for an annual bonus in addition to payment for work performed. An example of this check is shown below:



Article III, § 19, of the Nebraska Constitution contains the following prohibition against gratuitous payments to public employees:

*The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement.*

The Nebraska Attorney General (Attorney General) has summarized this constitutional provision by explaining, "Nebraska law generally requires work be performed in order for payment to be received." Op. Att'y Gen. 95071 (Sept. 13, 1995).

According to the Nebraska Supreme Court (Court), this constitutional prohibition is applicable to both the State and its many political subdivisions. *Retired City Civilian Employees Club of City of Omaha v. City of Omaha Employees' Retirement System et al.*, 199 Neb. 507, 512, 260 N.W.2d 472, 475 (1977). Consequently, the Township is subject to the injunction against gratuities.

Good internal control requires procedures to ensure that any payments, including bonuses, to Township employees are made in strict accordance with Article III, § 19.

Without such procedures, there is an increased risk of not only loss or misuse of public funds but also violation of the Nebraska Constitution.

We recommend the Township implement procedures to ensure all payments are permissible.

\* \* \* \* \*

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