



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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April 28, 2022

Michael Walden-Newman, State Investment Officer
Nebraska Investment Council
1526 K Street, Suite 420
Lincoln, Nebraska 68508

Dear Mr. Walden-Newman:

We were engaged to audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the State of Nebraska (State), as of and for the year ended June 30, 2021, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and we have issued our report thereon dated April 28, 2022. In connection with our engagement to audit the financial statements, we considered the State's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the State's internal control. Accordingly, we do not express an opinion on the effectiveness of the State's internal control.

In connection with our engagement to audit the financial statements as described above, we noted a certain internal control or compliance matter related to the activities of the Nebraska Investment Council (Council) or other operational matters that are presented below for your consideration. The comment and recommendation, which has been discussed with the appropriate members of Council management, is intended to improve internal control or result in other operating efficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Draft copies of this letter were furnished to the Council to provide management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response was not subjected to the auditing procedures applied in the engagement to audit the financial statements; accordingly, we express no opinion on it. A response that indicates corrective action has been taken was not verified at this time, but it will be verified in the next audit.

The following is our comment and recommendation for the year ended June 30, 2021.

Investment Council Policy Violations

The Council acknowledged that, despite being referenced by State statute, there was no policy relating to political subdivision investments.

Neb. Rev. Stat. § 77-2341(1) (Reissue 2018) reads as follows:

Whenever any county, city, village, or other governmental subdivision, other than a school district, of the State of Nebraska has accumulated a surplus of any fund in excess of its current needs or has accumulated a sinking fund for the payment of its bonds and the money in such sinking fund exceeds the amount necessary to pay the principal and interest of any such bonds which become due during the current year, the governing body of such county, city, village, or other governmental subdivision may invest any such surplus in excess of current needs or such excess in its sinking fund in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made. The state investment officer shall upon request furnish a copy of current authorized investment guidelines of the Nebraska Investment Council.

(Emphasis added.) The Nebraska Attorney General has stated the following regarding investments held by political subdivisions:

The Nebraska Capital Expansion Act neither authorizes nor prohibits investment in mutual funds. It deals with bank investments and related matters such as assuring all Nebraska banks and savings and loans are provided an equal opportunity to obtain state deposits. The Nebraska State Funds Investment Act's stated purpose is to formulate and establish policies to govern the practices to be followed by the state investment officer for investment of state funds. It likewise fails to specifically address mutual funds, but Neb. Rev. Stat. § 72-1246 (1990) directs that "The state investment officer shall invest in investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another"

Section 77-2341 allows state political subdivisions to invest securities which the Nebraska Investment Council's investment guidelines authorize. The Investment Council's guidelines authorize direct investment in U.S. Government obligations

Op. Att'y Gen. 95041 (May 17, 1995). Good internal controls require procedures to ensure that the Council not only adheres to its own investment policies but also maintains investment guidelines applicable to political subdivisions, as referenced in State statute.

A lack of such procedures increases the risk of both noncompliance with State statute and loss of possible investment income by political subdivisions.

A similar finding was noted during the previous audit.

We recommend the Council maintain investment guidelines applicable to political subdivisions, per State statute.

Council Response: In response to the State Auditor's finding that "the Council maintain investment guidelines applicable to political subdivisions, per [Neb. Rev. Stat. sec. 77-2341(1)]", the State Investment Officer sought and received an opinion from the Nebraska Attorney General, who opined on May 11, 2022 as follows: "The Investment Council is not statutorily required to promulgate an investment policy specifically applicable to Nebraska political subdivisions...." (Neb. Atty. Gen. Op., p. 8.)

If the Council receives a request from a political subdivision pursuant to NRS sec. 77-2341(1), then the Attorney General suggests that the Council "may wish to consider some additional means of notifying political subdivisions" of "applicable constitutional limits on investments of political subdivisions" but such notification is "not required

by statute.” (Neb. Atty. Gen. Op., p. 7-8.) While this item was not identified by the auditor as a finding, the deputy auditor raised it in a separate email after the Attorney General opinion was issued. The State Investment Officer and the Council intend to take the Attorney General’s advice described in this paragraph under advisement but will not consider it to be a statutory requirement.

For the reasons set forth above, we disagree with the finding. The Council and the State Investment Officer intend to continue complying with NRS sec. 77-2341(1) and with the Attorney General’s opinion.

APA Response: In the informal opinion cited, the Nebraska Attorney General advises that “the Council’s current authorized investment guidelines be accompanied by a similar recital of applicable constitutional limitations on investments of political subdivisions so as to eliminate any potential for confusion amongst governing bodies of political subdivisions.” It is clear, therefore, that the current guidelines are inadequate for political subdivisions and might well prove problematic if relied upon by those entities. It would seem reasonable instead either to supplement the current guidelines with the information recommended by the Attorney General or to amend § 77-2341(1) in order to dissuade political subdivisions from reliance upon the guidelines in their current form.

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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 of the Council and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the Council.

This communication is intended solely for the information and use of management, the Governor and State Legislature, others within the Council, Federal awarding agencies, pass-through entities, and management of the State of Nebraska and is not suitable for any other purposes. However, this communication is a matter of public record, and its distribution is not limited.



Kris Kucera, CPA, CFE
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