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

April 28, 2022

Scott Frakes, Director
Nebraska Department of Correctional Services
PO Box 94661
Lincoln, Nebraska 68509

Dear Mr. Frakes:

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 certain internal control or compliance matters related to the activities of the Nebraska Department of Correctional Services (Department) or other operational matters that are presented below for your consideration. These comments and recommendations, which have been discussed with the appropriate members of Department management, are intended to improve internal control or result in other operating efficiencies.

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 and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified a certain deficiency in internal control that we consider to be a significant deficiency.

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. We did not identify any deficiencies in internal control that we consider to be material weaknesses.

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. We consider Comment Number 1 ("Accounting Issues") to be a significant deficiency.

This comment will also be reported in the State of Nebraska's Statewide Single Audit Report Schedule of Findings and Questioned Costs.

Draft copies of this letter were furnished to the Department to provide management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal responses received have been incorporated into this letter. Such responses were not subjected to the auditing procedures applied in the engagement to audit the financial statements; accordingly, we express no opinion on them. Responses that indicate corrective action has been taken were not verified at this time, but they will be verified in the next audit.

The following are our comments and recommendations for the year ended June 30, 2021.

1. <u>Accounting Errors</u>

The Department of Administrative Services, State Accounting Division (State Accounting), prepares the State of Nebraska Annual Comprehensive Financial Report (ACFR) and requires all State agencies to determine and report payable and receivable amounts and other financial information not contained within the State's accounting system at the end of the fiscal year.

During testing of information prepared by the Department, we noted the following issues:

- The Department paid $4,561,759 for construction projects performed during fiscal year 2021; however, the Department did not properly accrue the expenditures for these projects paid in July 2021 as a payable at fiscal year-end.
- The Department did not report its construction commitments for two major construction projects properly to DAS for inclusion in the Capital Assets footnote. The Department overstated the amount by $3,144,327.
- The Department also recorded $1,107,134 as current year expenditures; however, the expenses related to fiscal year 2020 COVID-19 materials and medical staffing services. The Department should have reported these as prior year expenditures.
- Lastly, the Department did not record construction-in-progress expenditures correctly in the State's accounting system; instead, the Department recorded the $6,041,139 of costs as operating expenditures. Construction-in-progress was reported properly to State Accounting on the accrual response form for the financial statements.

A good internal control plan requires agencies to have procedures for the reporting of accurate and complete information, ensuring expenditures are recorded in the proper fiscal year, and accounting for project expenditures appropriately as a capital asset cost when required.

Without adequate procedures for the proper reporting of financial information, there is an increased risk of material misstatements occurring and remaining undetected.

> We recommend the Department implement procedures to ensure expenditures are recorded to the proper account code and in the proper fiscal year.

Department Response: NDCS Accounting team members reviewed the issue involving construction related expenditures and covid expenses and agree that the transactions should have been recorded as identified by the Auditors.

2. Employee Timesheets

The Department used the Kronos system to track work time and duties for personnel. The Department's overtime-exempt employees were not required to maintain timesheets or other supporting documentation for time worked; rather, they were required only to record leave used. Consequently, there was no support that all full-time employees rendered at least 40 hours of labor each week, as required by Neb. Rev. Stat. § 84-1001(1) (Reissue 2014). That statute says the following:

> *All state officers and heads of departments and their deputies, assistants, and employees, except permanent part-time employees, temporary employees, and members of any board or commission not required to render full-time service, shall render not less than forty hours of labor each week except any week in which a paid holiday may occur.*

Similarly, the lack of timesheets or other records for tracking the hours worked by exempt personnel means that there is no documentation to support the proper accrual of employee sick and vacation leave.

The Department's payroll expenditures for the fiscal year ended June 30, 2021, totaled approximately $129 million. This was for 2,506 employees, of whom approximately 348 were exempt.

A good internal control plan requires procedures to ensure that hours worked are adequately documented by timesheets or other supporting documentation, which should be kept on file to provide evidence of compliance with § 84-1001(1). Those same procedures should ensure also that adequate documentation is maintained to support that accrued employee sick and vacation leave was actually earned.

Without such procedures, there is an increased risk for not only payment of fraudulent or inaccurate employee work and leave hours but also the inability to support compliance with § 84-1001(1).

A similar finding has been noted since the fiscal year ended June 30, 2015, audit.

> We recommend the Department implement procedures to ensure that hours worked are supported by timesheets or other documentation, which should be kept on file to provide evidence of compliance with State statute. Those same procedures should ensure also that adequate documentation is maintained to support that accrued employee sick and vacation leave was actually earned.

Department Response: Based on the Fair Labor Standards Act, exempt employees must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked, unless exceptions are met. The exception reporting of leave is an appropriate process for exempt employees. They are expected to work 40 hours per week, except when taking leave, and they often work more than 40 hours per week.

APA Response: Reference to the FLSA is irrelevant to ensuring either compliance with § 84-1001(1) or proper leave accrual. Though not appropriate for determining the basis of pay for exempt employees, timesheets may be utilized for other purposes. According to an opinion letter issued by the U.S. Department of Labor, Wage and Hour Division, "[I]t is not a violation of the FLSA or its implementing regulations for your employer to track your working time, even if you are an exempt employee." 2004 DOLWH LEXIS 8 (Dep't of Labor Wage & Hour Div. May 13, 2004) While the Department might expect exempt employees to work 40 hours per week, there is currently no documented confirmation of such expectations being met. Requiring all employees, both exempt and non-exempt alike, to complete time sheets is the most reliable way to corroborate both compliance with § 84-1001(1) and the proper accumulation and recording of leave earned.

* * * * *

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 Department 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 Department.

This communication is intended solely for the information and use of management, the Governor and State Legislature, others within the Department, 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

Kris Kucera, CPA, CFE
Assistant Deputy Auditor