



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

August 15, 2022

David Levy, Board of Trustees President
History Nebraska
1500 R Street
Lincoln, NE 68508

Dear Mr. Levy:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns questioning the role played by History Nebraska, an agency of the State, in securing specific funding from the Nebraska State Historical Society Foundation for the COVID-19 pandemic. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation of History Nebraska would be warranted. Pursuant thereto, the APA obtained from the agency specific financial records and other relevant documentation. Based on the outcome of this preliminary planning work, including a review of the information received, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action.

Background Information – History Nebraska

Neb. Rev. Stat. § 82-101 (Reissue 2014) provides, in relevant part, the following regarding both the establishment and governance of History Nebraska:

The Nebraska State Historical Society, operated in the public interest since 1878, is hereby declared to be and does hereby consent to be a state agency on and after July 16, 1994. The society shall hold, in trust for the people of the State of Nebraska, all of the society's present and future collections of property. The agency shall be under the direction of a board of trustees who shall be elected in part by the members of the society and in part appointed by the Governor as provided in section 82-101.01. Membership in the society shall be open to all persons interested in the accomplishment of the purposes of the society.

The Nebraska Blue Book (2020-21) offers additional information about History Nebraska:

The Nebraska State Historical Society was founded in 1878, made a state institution in 1883 and became a state agency in 1994. It was renamed History Nebraska in 2018. History Nebraska collects and preserves historical information and objects for the state's benefit and administers museums and seven historic sites, the State Archives, the State Historic Preservation Office, the Office of the State Archaeologist and the Gerald R. Ford Conservation Center. History Nebraska receives Legislative appropriations plus federal and private funds.

* * * *

History Nebraska is governed by a board of trustees, 12 of whom are elected by the members from each of the state's congressional districts. The governor appoints three members to the board, one from each congressional district, who serve three-year terms. The director/CEO of History Nebraska is the board's secretary.

(pgs. 628 - 629) Trevor Jones terminated employment on July 1, 2022; he had served as the Director and CEO of History Nebraska since 2016.

Regarding finances, § 82-101, as partially quoted above, says also, “The society shall have the power to accept gifts and to own, control, and dispose of property, real and personal.”

Additionally, with respect to acquiring revenue, Neb. Rev. Stat. § 82-101.02 (Reissue 2014) assigns to History Nebraska these general powers and duties:

(5) To create such other classes of membership in the society as the board deems desirable, to determine the qualifications for such classes of membership, and to set the fees to be paid for such memberships;

* * * *

(9) To accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Notwithstanding any provisions to the contrary, the Nebraska State Historical Society may accept a gift of any property other than real estate without prior permission of any other governmental entity, including the Governor;

(10) To contract and enter into agreements necessary to effectuate the objects and purposes of the society;

(11) To sell, exchange, or otherwise dispose of books, museum objects, or other property in the society's collections that are surplus, duplicate, outside the scope of the society's mission, or which lack research, educational, or exhibit value on account of damage or insufficient documentation. Such sums as are derived from the sale or disposition of property that is surplus, duplicate, outside the scope of the society's mission, or which lacks research, educational, or exhibit value on account of damage or insufficient documentation shall be remitted to the State Treasurer for credit to the Nebraska State Historical Society Collections Trust Fund, which fund is hereby established. The fund shall be administered by the society. The fund shall be used, in accordance with appropriate museum and archival standards, exclusively for the acquisition, preservation, or restoration of the society collections;

Other statutes governing the operations of History Nebraska authorize the receipt of donations and contributions for specific purposes. Two examples of these various laws include Neb. Rev. Stat. § 82-117 (Reissue 2014) and Neb. Rev. Stat. § 82-132 (Reissue 2014), both of which permit the acceptance of “gifts, grants, and bequests” for the “administration and continued maintenance” of, respectively, the Nebraska Statehood Memorial and the George Norris House.

As also authorized by statute, History Nebraska maintains specific State accounts into which any money received is to be deposited: the Nebraska Historical Society Collections Trust Fund – Neb. Rev. Stat. § 82-101.02 (Reissue 2014); the Historical Society Fund – Neb. Rev. Stat. § 82-108.02 (Cum. Supp. 2020); the Willa Cather Historical Building Cash Fund – Neb. Rev. Stat. § 82-138 (Cum. Supp. 2020); and the Support Nebraska History Cash Fund – Neb. Rev. Stat. § 82-139 (Supp. 2021).

The Nebraska State Historical Society Foundation (Foundation), an independent, non-profit corporation, was created in 1942. According to its corporate filings with the Nebraska Secretary of State, the Foundation exists for the “SUPPORT OF NEBRASKA HISTORY AND NE STATE HISTORICAL SOCIETY.” The Foundation's website (<https://www.nshsf.org/about-us/history/>) provides the following information about the background and mission of the organization:

Under the leadership of James E. Lawrence, A.E. Sheldon, and Nathan J. Gold, the Foundation was incorporated on September 25, 1942 to solicit, receive, and manage gifts of real estate, personal property or cash for the benefit of the Nebraska State Historical Society. Management of properties and investments was placed under the jurisdiction of the Foundation's Executive Committee.

The Articles of Incorporation were amended on October 31, 1988. The amendments further defined the Foundation's purpose:

"To solicit and receive contributions and gifts, grants, devises, and bequests of real or personal property, or both, from individuals or other legal entities; to use the income therefrom and the principal thereof exclusively for charitable, scientific, literary, or educational activities in order to advance the study and preservation of history; and to aid and benefit the Nebraska State Historical Society or other entities interested or engaged in the collection or preservation of historical property or in the study of history."

The corporation limited itself to 25% of unrestricted monetary funds for distributions to entities other than the Society. Consent by the Society would be sought for distributions, grants, or transfers of tangible real or personal property in excess of this figure.

Despite enjoying the support and assistance of the Foundation for approximately eight decades, History Nebraska encouraged and facilitated the creation of a rival fund-raising organization, the History Nebraska Foundation, in 2020. The minutes for the July 10, 2020, meeting of the Board of Trustees for History Nebraska contain the following information:

[Bryan] Zimmer reported on the status and next steps regarding the History Nebraska Foundation. Zimmer stated that the formation of the new Foundation was publically [sic] announced on June 30, 2020. Articles of Incorporation have been filed with the State of Nebraska, and that a request for 501c3 status has been filed with the IRS, and is currently in process. Zimmer thanked the board for their assistance with the formation of the Foundation, and gave special thanks to David Levy and the Baird, Holm Law firm for assistance with drawing up the bylaws and articles of incorporation. The History Nebraska Foundation Board members are David Levy, Bryan Zimmer, and former History Nebraska Board of Trustees President, Katherine Endacott. Zimmer indicated that they plan to expand the roster soon. The Foundation plans to complete a Memorandum of Agreement with History Nebraska to formalize operations. Zimmer added that the board could contact him with questions.

[Charles] Schroeder asked if there was a timeline to receive 501c3 status from the IRS, and whether or not the Foundation would be able to accept donations before 501c3 status is approved. Levy responded that the Foundation will be able to accept donations and retroactively credit donations once 501c3 approval is received, adding that donations will be tax deductible after the 501c3 status is approved. Levy stated that the Foundation needs to be clear with donors that from a legal standpoint, there may be a small chance that they might not be able to take a deduction. Zimmer added that we should receive approval of 501c3 status by the end of the calendar year.

[Richard] Herink asked what amount of funds the Foundation had available so far. Zimmer responded that the Foundation has approximately \$300,000 in funds.

According to its own website (<https://historynebraskafoundation.org/about-us/>), the new History Nebraska Foundation grew out of the need of History Nebraska to partner with an organization that "shared a name and mission" with the State agency, as follows:

History Nebraska, the state's historical society, collects, preserves, and shares our history. In 2020, the History Nebraska Board of Trustees recognized that a Foundation that shared a name and a mission with History Nebraska was needed to meet current and future organizational goals. The goal for the new foundation is to secure the financial resources that will enable History Nebraska to fulfill its mission in new and inventive ways to reach a twenty-first century audience.

Filed with the Nebraska Secretary of State on December 20, 2019, the Articles of Incorporation for the History Nebraska Foundation were signed by David C. Levy, as "Sole Incorporator." In addition to being designated as the Registered Agent for the History Nebraska Foundation, Mr. Levy has been a member of the Board of Trustees for History Nebraska since 2019, and currently serves as the President of that body. Mr. Levy was also listed as the Secretary for the History Nebraska Foundation, as shown by the following "team" information found on the agency's website (<https://historynebraskafoundation.org/our-team/>) on February 1, 2022:

- Executive Director – Tyler Vacha
- President – Bryan Zimmer, Plattsmouth
- Treasurer – Katherine Endacott, Pleasant Dale
- Secretary – David Levy, Omaha
- Member – Ann Bruntz, Friend
- Member – Galen Hadley, Kearney
- Member – Trevor Jones, Lincoln
- Member – Pamela Snow, Ashland
- Member – Ron Jensen, Lincoln

Aside from his association with both History Nebraska and the History Nebraska Foundation, Mr. Levy is a partner with the Baird Holm law firm. From January 1, 2020, through January 31, 2022, the History Nebraska Foundation paid that law firm a total of \$12,629 for legal services, which may include the drafting of the Articles of Incorporation.

On December 30, 2019, a bank account was opened for the History Nebraska Foundation at First National Bank of Omaha. The original signature card was signed by Trevor Jones, the former Director and CEO of History Nebraska since 2016, with the title of “President.”

Comments and Recommendations

1. Misleading Request and Other Funding Concerns

During its meeting on April 17, 2020, the Board of Trustees for History Nebraska approved sending a letter to the Executive Committee of the original Foundation to request a meeting about fiscal concerns occasioned by the COVID-19 pandemic. The meeting minutes state the following:

President [Lance] Bristol added that the basis for the letter is that many foundations across the country are taking a serious look at how they can increase their financial support, and the meeting is to discuss what financial support we can expect from our foundation during this crisis.

A copy of History Nebraska’s letter to the Foundation can be found in **Attachment A** herein. While the requested meeting failed to take place, the Foundation’s Board President, James W. Hewitt, and Lance Bristol, then-President of the Board of Trustees for History Nebraska, exchanged email messages about a possible “economic solution to the financial concerns” (May 7, 2020, message from Mr. Hewitt to Mr. Bristol) related to the COVID-19 pandemic. See **Attachment B** herein for a copy of that email correspondence.

A June 5, 2020, email message from Mr. Hewitt to Mr. Bristol points out that History Nebraska could obtain the COVID-19 relief sought by using funds from a discretionary account at the Foundation:

Thank you for your email of May 28. You are quite correct that it would be difficult for the Foundation to contribute significant amounts to HN [History Nebraska] at present, because of the Covid-19 virus. But I wish to reiterate, as I have previously advised you, that HN has a discretionary account with the Foundation, in the approximate amount of \$250,000, upon which HN can draw for any valid purpose.

The communications between these two Board Presidents of their respective organizations indicate that the funding discussed was for the express purpose of providing “financial support to History Nebraska in the near future” (May 28, 2020, message from Mr. Bristol to Mr. Hewitt) to help offset financial concerns caused, or at least exacerbated, by the COVID-19 pandemic.

Consequently, on June 17, 2020, the Foundation received a “Request for Funds” from History Nebraska, delivered via courier, seeking the specific amount of \$269,926.25. The request form was signed by two State of Nebraska employees, Michelle Furby, the Accounting and Finance Manager of History Nebraska, and Trevor Jones, the former Director and CEO of the agency.

In keeping with the theme of the prior correspondence between Mr. Hewitt and Mr. Bristol, the stated purpose of the requested money is “to offset anticipated loss of quarter four revenue due to COVID.” Additionally, the following State funds are specified: “NSHS [Nebraska State Historical Society] General Admin, Archeology,

Conservation, Historic Preservation, Library/Archives, Museum, Publications, [and] Society Technology Fund.” The request form also directs the payment to be sent to History Nebraska. Furthermore, an additional request for \$325.09, along with the note “2nd check represents final dividends earned – \$325.09,” was handwritten on the form.

Copied below is an image of the “Request for Funds” form submitted by History Nebraska:

Nebraska State Historical Society Foundation

REQUEST FOR FUNDS

Type of Request: *(see reverse for more information on Request Types)*

GRANT
 TRANSFER

Requested by: Michelle Furby Date: June 15, 2020
 NSHS General Admin, Archeology, Conservation, Historic Preservation,
 Name of Fund: Library/Archives, Museum, Publications, Society Technology Fund


Amount Requested: ~~237,410.00~~ 237,410.00 (269,926.25) Date funds are needed: June 26, 2020

This request is for: *(Include a detailed description of the nature of the expenditure, copy of invoice, and/or supporting documentation. See reverse for information on documentation standards)*

Funds to offset anticipated loss of quarter four revenue due to COVID


2nd check represents final dividends earned - \$325.09

Send Payment to: History Nebraska
1500 R Street
Lincoln, Nebraska 68508-1651


 Completed by (signature)

Michelle Furby
 Name (please print)

June 15, 2020
 Date


 NSHS Director (signature)

Trevor Jones
 Name (please print)

June 15, 2020
 Date

For Foundation use only:

Date Received: 6-17-20 Grant Committee Approved: 6-17-20

Executive Committee reviewed:

Request for Funds
Approved by the Foundation BOD August 9, 2012

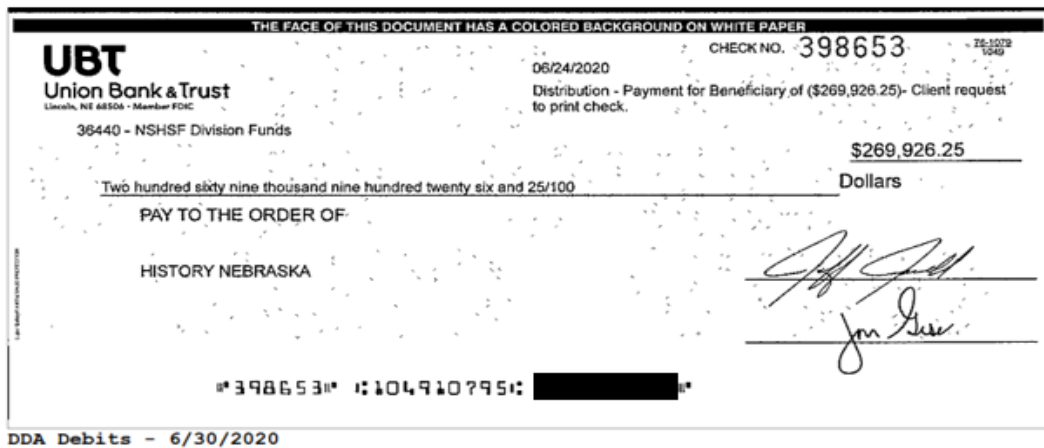
The above request form contains the following directive: “Include a detailed description of the nature of the expenditure, copy of invoice, and/or supporting documentation.” Nevertheless, no supplementary information or support was provided with the request. Given the prior email correspondence between Mr. Hewitt and Mr. Bristol, as well as the statement of purpose on the request form itself, nobody at the Foundation questioned this funding request.

Although the stated purpose of the funding request was to address financial losses related to the COVID-19 pandemic, the resulting checks from the Foundation were not remitted to the State Treasurer for credit to History Nebraska to be used as so specified. Instead, upon receipt by History Nebraska, those funds were deposited directly into the History Nebraska Foundation’s private account at First National Bank of Omaha.

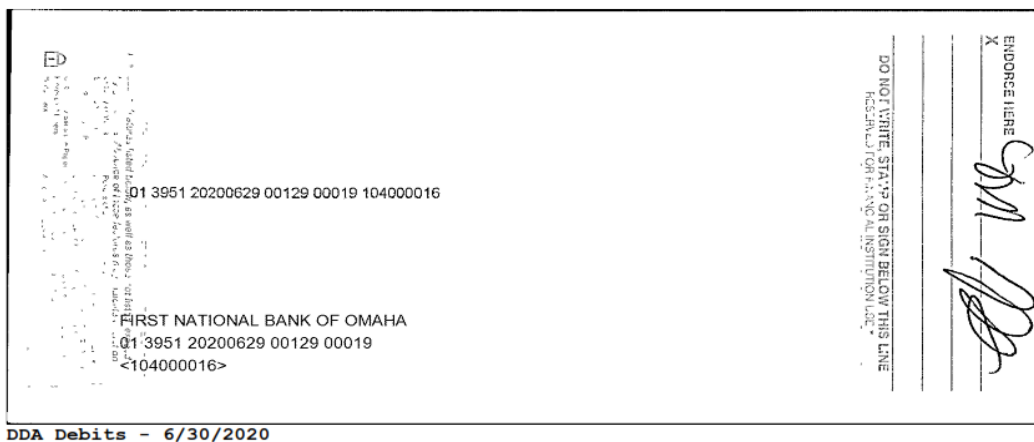
Trevor Jones, presumably acting in his capacity as Director and CEO of History Nebraska, endorsed both checks received from the Foundation. The \$325.09 check was initially stamped “Pay to the Order of State Treasurer Nebraska State Historical Society History Nebraska,” but that standard authorization was crossed out and replaced with Mr. Jones’ personal endorsement.

The following are the front and back images of the two Foundation checks received by History Nebraska:

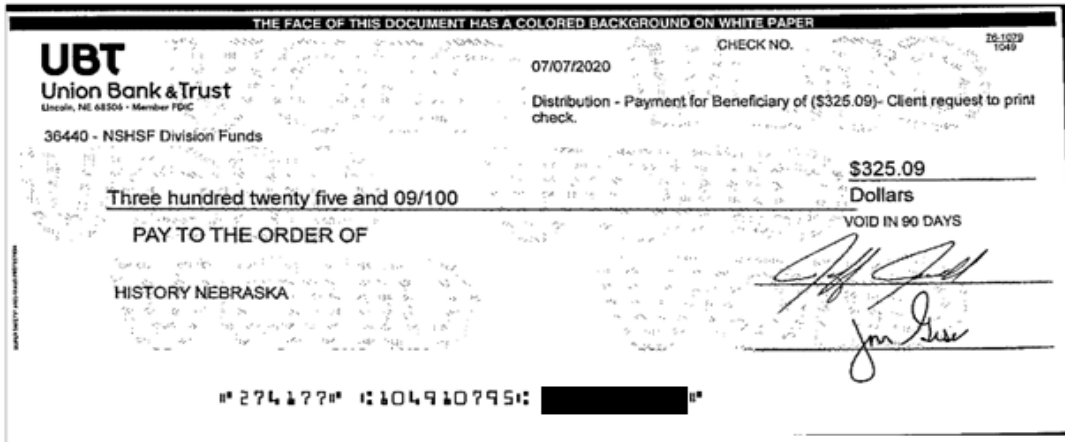
Front Image of Check #398653



Back Image of Check #398653

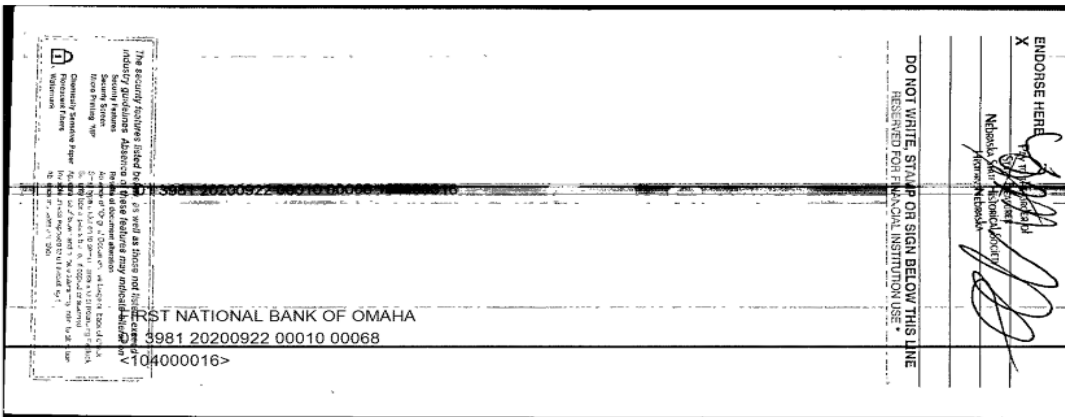


Front Image of Check #274177



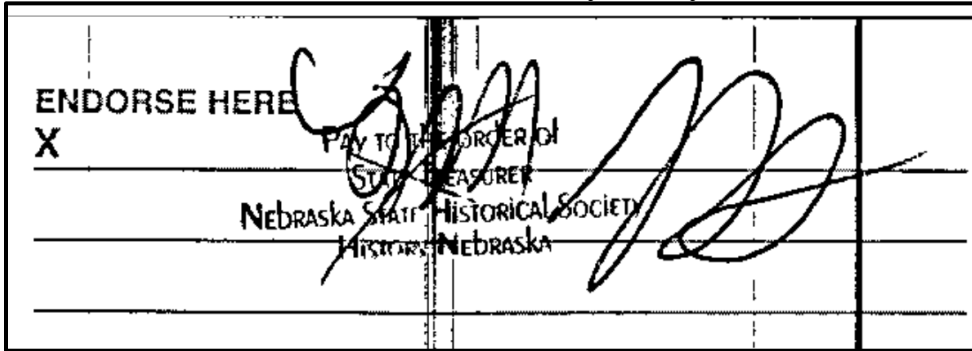
DDA Debits - 9/23/2020

Back Image of Check #274177



DDA Debits - 9/23/2020

Enlarged Back Image of Check #274177 Endorsement with "Pay to the Order of State Treasurer Nebraska State Historical Society History Nebraska" Crossed Out



On January 31, 2022, in order to confirm the actual destination of the Foundation funds disbursed to History Nebraska, the APA subpoenaed the records of the History Nebraska Foundation's account at First National Bank of Omaha. The APA received the bank statements sought on February 15, 2022, which revealed conclusively that the funds at issue were not, in fact, remitted to the State of Nebraska but were deposited instead to the History Nebraska Foundation's bank account.

The corresponding bank activity for the History Nebraska Foundation, from January 1, 2020, through January 31, 2022, is detailed in the table below:

Statement Date	Deposits (+)	Checks (-)	Account Balance
Beginning Balance			\$ 1,000.00
January 2020			\$ 1,000.00
February 2020	\$ 2,250.00	\$ 34.99	\$ 3,215.01
March 2020			\$ 3,215.01
April 2020			\$ 3,215.01
May 2020	\$ 2,500.00		\$ 5,715.01
June 2020	\$ 269,926.25	\$ 1,800.00	\$ 273,841.26
July 2020	\$ 178.87		\$ 274,020.13
August 2020	\$ 313.52		\$ 274,333.65
September 2020	\$ 4,372.03*	\$ 2,000.00	\$ 276,705.68
October 2020	\$ 2,023.47		\$ 278,729.15
November 2020	\$ 498.42	\$ 3,853.00	\$ 275,374.57
December 2020	\$ 9,152.54	\$ 26,200.00	\$ 258,327.11
January 2021	\$ 4,594.01	\$ 11,709.11	\$ 251,212.01
February 2021	\$ 2,184.21	\$ 784.88	\$ 252,611.34
March 2021	\$ 632.25	\$ 189.60	\$ 253,053.99
April 2021	\$ 3,518.27	\$ 1,163.06	\$ 255,409.20
May 2021	\$ 2,600.00		\$ 258,009.20
June 2021	\$ 1,485.49	\$ 12,094.52	\$ 247,400.17
July 2021	\$ 465.00	\$ 11,151.89	\$ 236,713.28
August 2021	\$ 1,250.00	\$ 10,952.17	\$ 227,011.11
September 2021	\$ 10,794.80	\$ 14,480.16	\$ 223,325.75
October 2021	\$ 1,508.11	\$ 11,410.81	\$ 213,423.05
November 2021	\$ 7,552.05	\$ 13,545.90	\$ 207,429.20
December 2021	\$ 14,416.19	\$ 17,448.08	\$ 204,397.31
January 2022	\$ 10,328.52	\$ 36,799.43	\$ 177,926.40
Totals	\$ 352,544.00	\$ 175,617.60	

*The \$325.09 check was included with other deposits, totaling \$4,372.03, made in September 2020.

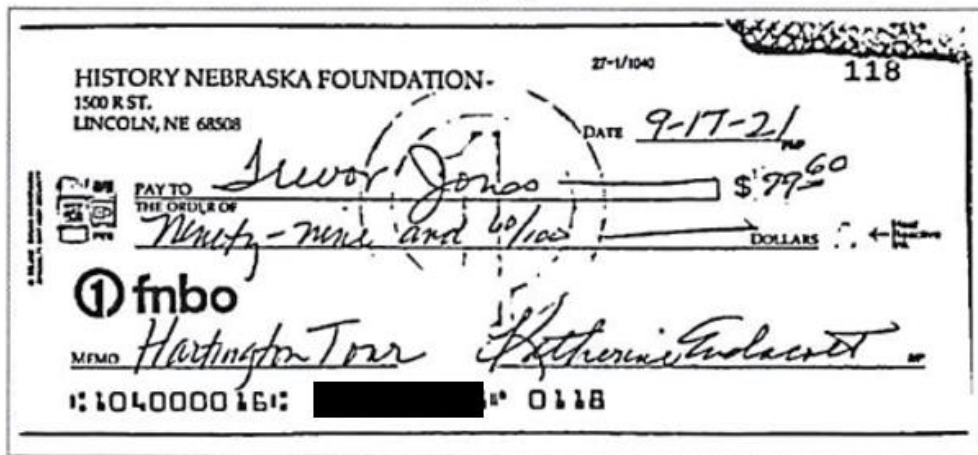
As shown above, the two Foundation checks (\$269,926.25 and \$325.09), totaling \$270,251.34, received by History Nebraska in response to the “Request for Funds” made on June 15, 2020, constituted over 75% of the total deposits to the History Nebraska Foundation bank account during the first 25 months of that organization’s existence. Without these two diverted checks, which were intended for the use of History Nebraska to offset financial losses related to the COVID-19 pandemic, this account would have had a negative balance of \$92,324.94, as of January 31, 2022.

As noted in the “Background Information – History Nebraska” section (pg. 3) herein, the minutes for the July 10, 2020, meeting of the Board of Trustees for History Nebraska contain the following information:

[Richard] Herink asked what amount of funds the [History Nebraska] Foundation had available so far. [Bryan] Zimmer responded that the Foundation has approximately \$300,000 in funds.

Of interest is the timing of both the June 2020 deposit of the \$269,926.25 check to the History Nebraska Foundation’s bank account and Mr. Zimmer’s subsequent pronouncement, made the following month, about the balance of that account – as the one check alone, though not explained to the Board members, comprised almost 99% of the entire balance reported.

At least once, Trevor Jones, the former Director and CEO of History Nebraska, received a direct payment from the History Nebraska Foundation, the check for \$99.60 shown below:



Moreover, on several other occasions, Mr. Jones may have benefited personally from the following purchases made with a History Nebraska Foundation debit card:

Date	Vendor Description	Amount
6/17/2021	6473 The Coffee House Lincoln	\$ 6.47
6/23/2021	6473 Paradise Bakery Omaha	\$ 5.13
7/8/2021	6473 Paradise Bakery Omaha	\$ 7.35
9/9/2021	6322 Paradise Bakery Omaha	\$ 13.04
9/23/2021	6322 Marriott Cornhusker Lincoln	\$ 36.04
10/13/2021	6322 Bagels and Joe Lincoln	\$ 5.11
12/15/2021	6322 Hilcrest Country Club Lincoln	\$ 31.06
12/16/2021	6322 The Mill Lincoln	\$ 8.00

In addition, there were several charges to Bill.Com, an accounts payable cloud-based platform used to pay certain expenses of the History Nebraska Foundation. These charges may have included additional payments to Mr. Jones, or other benefits; however, they do not include an itemized list of amounts paid.

Date	Description	Amount
10/7/2021	6322 Bill.Com, Inc. 650-3533301 CA	\$ 43.75
10/8/2021	Bill.Com Verify 025xgfvhbi3auru	\$ 0.74
10/13/2021	Bill.Com Payables 025gvswgan3C411	\$ 512.09
10/14/2021	Bill.Com Payables 025sascsuf3D4sz	\$ 445.00
11/2/2021	6322 Bill.Com, Inc. 650-3533301 CA	\$ 72.12
11/15/2021	Bill.Com Payables 025entqjhj3vt9T	\$ 2,486.53
12/2/2021	6322 Bill.Com, Inc. 650-3533301 CA	\$ 68.11
12/30/2021	Bill.Com Payables 025uhphogg4uk9W	\$ 6,930.31
1/2/2022	6322 Bill.Com, Inc. 650-3533301 CA	\$ 69.31
1/5/2022	Bill.Com Payables 025qgppwit4xky3	\$ 604.63
1/19/2022	Bill.Com Payables 025ctvsmwy569ju	\$ 337.50
1/25/2022	Bill.Com Payables 025jldzhue5ak8D	\$ 25,200.00
Total		\$ 36,770.09

The APA also observed monthly payments to the Alliance Group, which totaled \$77,982.92, from June 2021 through January 2022. The Alliance Group provides services including human resources, risk management, employee benefits, and payroll services. Again, the monthly amounts may have included additional payments to Mr. Jones or other benefits; however, the bank statements did not include an itemized list of amounts paid.

Based upon the subpoenaed bank records reviewed by the APA, Mr. Jones appears to have played an important, if not actually managerial, role in administering the financial affairs of the History Nebraska Foundation for much of 2020 and 2021. In addition to endorsing over 100 checks deposited into the History Nebraska Foundation's bank account through October 2021, Mr. Jones was one of only two signatories for the organization's check payments during that period.

According to a former mail room clerk, there was an established process when opening the mail to log all incoming monies onto a ledger sheet including the amount, date, and type of monies received. However, there were cases where staff was directed to not log or endorse certain checks, which were given to the Chief Financial Officer. Staff was also directed to not open mail from certain banks that may include bank statements. In past audits of History Nebraska, the APA had recommended two individuals open the mail and to prepare an initial list of monies received. The response to the finding at that time was, "The Society has instituted the recommendations for opening the mail and recording monies received with an appropriate level of segregation of duties." When staff are directed to disregard certain controls that have been put in place, there is an increased risk of loss or misuse of State funds. The purpose of these controls is to ensure no one individual is in a position to both perpetrate and conceal errors or irregularities.

The APA analyzed several checks from the Foundation payable to History Nebraska from January 1, 2020, through December 31, 2021. The APA noted 49 checks payable to History Nebraska during this period including the two checks in question. Forty-seven of the checks were properly endorsed and deposited with the Nebraska State Treasurer.

As Director and CEO of History Nebraska, a State agency, Mr. Jones was a State employee. Any State employee who intercepts and diverts funds to which a State agency is legally entitled – especially if he or she can be shown to have benefitted personally from such wrongful action – does so at the risk of violating certain criminal statutes, some of which are summarized below.

To start, per a review of the meeting minutes for the Board of Trustees of History Nebraska, there appears to have been neither formal documented prior authorization, nor subsequent approval for Mr. Jones' personal endorsement of the two checks received from the original Foundation or for that money to have been forwarded directly to the History Nebraska Foundation.

Even if the Board of Trustees had approved – in blatant disregard of the stated purpose for the funds, which was to offset financial losses related to the COVID-19 pandemic – such approval would have been problematic. As a State agency, History Nebraska is required to remit all of its receipts to the State Treasurer for proper recording and disbursement. Neb. Rev. Stat. § 84-710 (Reissue 2014) provides the following:

It shall be unlawful for any executive department, state institution, board, or officer acting under or by virtue of any statute or authority of the state . . . to receive any fees, proceeds from the sale of any public property, or any money belonging to the state or due for any service rendered by virtue of state authority without paying the same into the state treasury within three business days of the receipt thereof when the aggregate amount is five hundred dollars or more and within seven days of the receipt thereof when the aggregate amount is less than five hundred dollars

The provisions of this section and section 84-711 shall not apply to money received as proceeds of any fair, exposition, or exhibition held by any state board or society or of membership contributions to or receipts from miscellaneous sales by the Nebraska State Historical Society.

(Emphasis added.) Because they did not fall within either of the "membership contributions" or "receipts from miscellaneous sales" exceptions provided in § 84-710, the two checks received from the Foundation were required to be paid to the State Treasurer.

Neb. Rev. Stat. § 84-711 (Reissue 2014) criminalizes noncompliance with the above statutory mandate, as follows:

The failure or refusal of an employee or officer of an executive department, state institution, or board to pay over the public money, or any part thereof, belonging to the state or to account to or to make settlement with the State Treasurer upon demand shall be prima facie evidence of embezzlement, and such person shall be punished, as provided by law, for the embezzlement of public funds.

Additionally, Neb. Rev. Stat. § 28-511 (Reissue 2016) says the following, as is relevant:

(1) A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.

(2) A person is guilty of theft if he or she transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto.

More specific yet, Neb. Rev. Stat. § 28-512 (Reissue 2016) states, in relevant part, the following:

A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgment of a transaction; or

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

Neb. Rev. Stat. § 28-924 (Reissue 2016) creates the offense of “official misconduct” by a public servant, as follows:

(1) A public servant commits official misconduct if he knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties.

(2) Official misconduct is a Class II misdemeanor.

Furthermore, Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2021) of the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. § 49-1401 et seq. (Reissue 2021), restricts the use of resources under the “official care and control” of a public official or public employee, as follows:

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.

Per subsection (7) of that same statute, “[A]ny person violating this section shall be guilty of a Class III misdemeanor”

A control environment conducive to fair and complete financial reporting requires procedures to ensure that all monies due to the State of Nebraska are deposited appropriately.

Without such procedures, there is an increased risk for not only waste, misuse, or misappropriation of State funds but also violation of State law.

We recommend History Nebraska implement procedures to ensure all funds received are deposited appropriately, and a proper segregation of duties exists to ensure that no one individual is capable of handling all phases of a financial transaction from beginning to end. Furthermore, we recommend History Nebraska take immediate action to recover any funds received from the Foundation that have been diverted improperly to the History Nebraska Foundation, ensuring the proper handling of those State monies. Finally, because this comment gives rise to concerns regarding possible violations of State statute, we are forwarding the information herein to the Nebraska Attorney General, the Lancaster County Attorney, the Nebraska State Patrol, and the Nebraska Accountability and Disclosure Commission for further review.

2. Shared Resources to Support the History Nebraska Foundation

In addition to the questionable diversion of funds addressed by the previous comment and recommendation, the APA noted that History Nebraska appears to have shared State resources with the History Nebraska Foundation, an independent, non-profit organization. Trevor Jones, the former Director and CEO of History Nebraska, assisted in the establishment of the History Nebraska Foundation's bank account, and the Articles of Incorporation for that organization were signed, as "Sole Incorporator," by David C. Levy, the current President of the Board of Trustees for History Nebraska.

As also noted in the previous comment and recommendation, Mr. Jones has been endorsing and depositing checks into the History Nebraska Foundation's bank account. Additionally, the bank statements for the History Nebraska Foundation have been mailed to History Nebraska's address at 1500 R Street, Lincoln, NE, 68508.

The websites for both History Nebraska and the History Nebraska Foundation share the same marketing campaign and logo, as shown below:



Furthermore, donations to the History Nebraska Foundation can be made through a link on the History Nebraska website (<https://history.nebraska.gov/>), and correspondence from the History Nebraska Foundation lists History Nebraska's address (1500 R Street, Lincoln, NE 68508) as its own:

Today is the final day of 2021. Make a contribution to the History Nebraska Foundation

Dear [REDACTED]

This has been an incredible year for History Nebraska and the History Nebraska Foundation, which is dedicated, solely, to supporting History Nebraska's efforts and mission. But they can't do it without your help. If you haven't yet done so, please consider joining them by making your first year-end contribution to the History Nebraska Foundation.

Your gift today is an investment in the future of history in Nebraska. Please join us in preserving "Our History." while building "Your Legacy."

Thank you, and Happy New Year from History Nebraska and the History Nebraska Foundation.

[Donate Today](#)



Copyright © 2021 History Nebraska, All rights reserved.

You are receiving this email because you are a member of History Nebraska or you requested to receive updates and content from History Nebraska and their various sites and services.

Our mailing address is:
History Nebraska
1500 R Street
Lincoln, NE 68508

[Add us to your address book](#)

As explained by the Nebraska Attorney General in Op. Att’y Gen. No. 92014 (January 31, 1992), “In general, a state agency has only that power which has been given to it by the Legislature.” The APA is unaware of any express statutory authority that allows History Nebraska, an agency of the State, to share public resources with a private, non-governmental entity.

To the contrary, Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2021) of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. § 49-1401 et seq. (Reissue 2021), restricts the use of resources under the “official care and control” of a public official or public employee, as follows:

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.

Per subsection (7) of that same statute, “[A]ny person violating this section shall be guilty of a Class III misdemeanor”

In Opinion Number 148 (“Conflicts of Interests/Use of Government Resources”), adopted August 19, 1994, the Nebraska Accountability and Disclosure Commission (Commission) opined as follows:

To the extent that it assists the Nutrition Division of the Nebraska Department of Health [a State agency] in carrying out its duties, the Director of the Division may make occasional use of state computers on behalf of the Lincoln Dietetic Association [a private organization]. However, the approval of the immediate supervisor or the governing body is required.

While doing so, however, the Commission offered the following cautionary exhortation:

Section 49-14,101(4) generally provides that no public official or public employee shall use personnel, resources, property, or funds under that individual’s official care and control other than in accordance with law. That is, government personnel, resources, property, and funds are for government purposes only. . . .

* * * *

The simple fact that a state employee belongs to a private organization does not justify the use of state resources by the state employee on behalf of the organization. If the association of the state employee to the organization is primarily for the benefit of the employee and only incidentally benefits the state agency, state resources may not be used on behalf of the private organization in any manner. Even when the association of the state employee with the private organization primarily benefits the state agency, the use of state resources on behalf of the private association must be occasional. The business of private associations should not be run out of government offices using government personnel and government resources.

Neb. Rev. Stat. § 49-14,100 (Reissue 2021) authorizes the Commission to provide formal guidance regarding compliance with the Act, as follows:

Any person who is in doubt as to the propriety of action proposed to be taken by him may apply to the commission for an advisory opinion relating thereto, and the commission shall have authority to render such opinions. When an advisory opinion is issued pursuant to a complete and accurate request, such opinion shall be a complete defense to any charge of violation of sections 49-1493 to 49-14,104 as to any action taken strictly subject to the terms of such opinion.

Good business practice requires the segregation of State business from that of non-governmental entities, especially with regard to anything but the occasional and limited use of State property and/or resources.

Without such segregation, there is an increased risk for conflicts of interest that could result in the violation of State law.

We recommend History Nebraska seek formal guidance from the Commission regarding the sharing of State property and/or resources with the History Nebraska Foundation.

History Nebraska Overall Response: History Nebraska (HN) is in receipt of the draft letter from the Nebraska Auditor of Public Accounts. HN takes seriously its statutory responsibilities as a state agency and welcomes and appreciates the Nebraska Auditor of Public Accounts' (APA) investigation and recommendations made in the letter. HN desires to work in collaboration with the APA to address all issues included in this letter. To that end, HN has begun an investigation into the factual and legal issues raised. That investigation was not complete as of the date of the issuance of this letter, however, certain issues raised in the letter have already been addressed. HN has communicated to the APA that, after its investigation is complete, it will reach back out to the APA to continue to fully discuss and, hopefully, resolve, all issues.

* * * * *

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 History Nebraska, as well as its relationship with the Foundation, gained during our work to make comments and suggestions that we hope will be useful to History Nebraska.

Draft copies of this letter were furnished to History Nebraska to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this letter. Such responses have been objectively evaluated and recognized, as appropriate, in the letter. Responses that indicate corrective action has been taken were not verified at this time.

This communication is intended solely for the information and use of History Nebraska, the Governor and State Legislature, others within the agency, Federal awarding agencies, pass-through entities, and management of the State of Nebraska, and it is not intended to be, and should not be, used by anyone other than these 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.

Sincerely,



Craig Kubicek, CPA, CFE
Deputy Auditor
Auditor of Public Accounts
Room 2303, State Capitol
Lincoln, NE 68509
Phone 402-471-3686
craig.kubicek@nebraska.gov

cc: Nebraska Attorney General
Lancaster County Attorney
Nebraska State Patrol
Nebraska Accountability and Disclosure Commission



April 17, 2020

Lance C. Bristol
320 Keene St.
Ansley, NE 68814

Dear Nebraska State Historical Society Foundation Executive Officers and CEO:

The Executive Officers and CEO of History Nebraska respectfully request a meeting with the Executive Officers and CEO of the Nebraska State Historical Society Foundation to discuss economic challenges faced by both organizations relating to the Covid-19 pandemic. To comply with Covid-19 regulations, I suggest the meeting be a tele-conference which can be scheduled at the convenience of the Foundation Executive Officers and CEO.

If you are amenable to such a meeting, please respond to either Trevor or me with dates that would be workable for your officers and CEO.

Best regards

A handwritten signature in blue ink that reads 'Lance C. Bristol'.

Lance C. Bristol
History Nebraska Board of Trustees
lance.bristol2@gmail.com

1500 R Street
Lincoln, NE 68508 -165'
P: 402.4713270
F: 402.4713100
history.nebraska.gov

HISTORY NEBRASKA **ATTACHMENT B**
**COVID EMAIL CORRESPONDENCE BETWEEN BOARD MEMBERS OF HISTORY NEBRASKA
AND THE NEBRASKA STATE HISTORICAL SOCIETY FOUNDATION**

**May 7, 2020, Email from Nebraska State Historical Society Foundation Board President James
Hewitt to History Nebraska Board of Trustees President Lance Bristol**

Dear Mr. Bristol:

Thank you for your email of May 5 to the Board, officers and Executive Director of your "Supporting Foundation". We, like you, are wrestling-often without success-with the financial strictures imposed upon us by the Covid 19 pandemic.

Your letter appears to be directed to an economic solution to the financial concerns of History Nebraska. We have members of the Foundation Executive Committee who are well versed in dealing with such problems, but before we decide who should participate in an electronic discussion, we need to know how to distill the essence of your concerns.

Before we answer, please discuss in detail the following issues: How much money do you seek? What funds available to the Foundation could be utilized? Have you applied for any relief from Congressional grants? Have you submitted a state budget request? If so, please attach a copy. Are you proposing that the Foundation open the flood gates and do away with its requirements of substantiating documentation?

As I know you are aware, the Foundation receives no state money. Our sources of income are donations and investment earnings. Much of the donated money comes from those who are monitoring what HN is doing. Although we have sometimes been surprised and disturbed by what HN has done, or is doing, responsibility for such acts rest with your board, and we have no voice in the determinations. However, we have been concerned that donations have dropped off and HN membership has decreased. Nor have we received contributions from the great bulk of HN's board.

We were not pleased at your peremptory dismissal of Tony Dworak's request for a voice in the donor wall at Chimney Rock, a project funded entirely by the Foundation. As a lawyer with 64 years of experience in construction contracts I believe some accommodation could have been made.

The Foundation has budget problems of its own. We seriously doubt we will be able to fund the service of a legislative lobbyist, or host a legislative reception. We do know that there is some \$250,000 in a discretionary fund that is available to you for the asking. Other than that, much of the money in our care is money we hold as a fiduciary and which we cannot invade for other than the donor's purpose.

Very candidly, our fiscal picture is not rosy. We want to be of assistance to HN, but money knows no allegiance. We understand your concerns in reaching out to us, but we may not be able to be of the assistance you require.

When we have received the information requested herein, I will be back in touch with you concerning an electronic meeting.

*Your truly,
James W. Hewitt*

**COVID EMAIL CORRESPONDENCE BETWEEN BOARD MEMBERS OF HISTORY NEBRASKA
AND THE NEBRASKA STATE HISTORICAL SOCIETY FOUNDATION**

**May 28, 2020, Response Email from History Nebraska Board of Trustees President Lance Bristol
to Nebraska State Historical Society Foundation Board President James Hewitt**

Dear Mr. Hewitt:

Thank you for your email communication on May 7, 2020. From your statements, I conclude that it will be difficult for the Nebraska State Historical Society Foundation to provide financial support to History Nebraska in the near future, as the Foundation is experiencing financial hardships from the Covid-19 pandemic. Thank you for this straightforward assessment.

Please do not hesitate to email, write, or call if in the future you feel that a joint meeting between our two executive boards would be beneficial to both the Foundation and History Nebraska.

*Lance C. Bristol
President
History Nebraska Board of Trustees*

**June 5, 2020, Email from Nebraska State Historical Society Foundation Board President James
Hewitt to History Nebraska Board of Trustees President Lance Bristol**

Dear Mr. Bristol,

Thank you for your email of May 28. You are quite correct that it would be difficult for the Foundation to contribute significant amounts to HN at present, because of the Covid-19 virus. But I wish to reiterate, as I have previously advised you, that HN has a discretionary account with the Foundation, in the approximate amount of \$250,000, upon which HN can draw for any valid purpose.

In addition, the Foundation has several funds it holds as fiduciary, contributed by donors for specific purposes, i.e. the Paxson Funds, that are available if HN is working on issues that fit within the parameters of the fund.

Our office has only had a skeleton staff since the pandemic struck. Fundraising has been difficult for non-essential uses. The Weese fund is incrementally available when, and if, HN embarks upon the creation of an agricultural exhibit at the museum in compliance with the donors wishes.

So, the cupboard is not entirely bare. But in consonance with the expressed wishes of our donors, and our fiduciary responsibilities, there are definite requirements before any of the fund money would be available to HN.

You have suggested a joint meeting of our boards. We would be willing to discuss issues of interest to us both. But bringing together some 30 people of diverse experience and knowledge does not appear the most satisfactory way to reach an accord. We would be willing to designate three board members to attend such a meeting to discuss a specific itemized agenda with three members of the HN board. We have secured from our board their suggestions for matters to discuss and will winnow them to a manageable [sic] number, which we could submit as topics to be discussed.

Many of our board and trustees are members of HN. Some of us have served on your board in the past. We feel Nebraska's history should be discovered, retained, and interpreted. However, we will resist to the utmost any attempt by HN or any other person or group to diminish or render nugatory either the money or responsibilities which are ours as fiduciary.

I trust this makes our position clear. Thank you for your email. I hope to hear from you when convenient.

Yours truly,

JWH