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Ms. Kelly Lammers, Director
Nebraska Department of Banking and Finance
PO Box 95006
1526 K St., #300
Lincoln, NE 68508

RE: Tri-County Bank Manipulation of Depositor Financial Records

Dear Director Lammers:

The purpose of this letter is to bring to your attention a banking issue that my office encountered during a recent audit of the financial statements of Rock County, Nebraska, (County) for the fiscal year ended June 30, 2022. Specifically, my audit staff found that Tri-County Bank (TCB) appears to have altered the monthly statements for two Insured Cash Sweep (ICS) accounts maintained by the County at that financial institution.

As is customary following an audit, my office has released a report, dated July 28, 2023, addressing the findings resulting from the financial examination of the County. That report has been posted, along with others released by my office, on the website for the Auditor of Public Accounts (APA). For your convenience, however, I am enclosing a copy of the report with this letter. The first comment (“Bank Statement Alterations”) of the report, beginning on page 1 therein, contains a detailed discussion of the present issue.

As explained in the report comment, while reviewing the financial records of the County Treasurer, the APA examiners noticed a discrepancy between the ending balance for January 2022 and the beginning balance for February 2022 on the bank statements for two ICS accounts maintained by the County at TCB. Scrutinizing those documents further, the auditors noticed also that they appeared to have been altered, displaying irregular fonts and alignments typical of “copy and paste” modifications.

Suspecting possible fraudulent activity, my office exercised its authority, under Neb. Reb. Stat. § 84-305(4) (Cum. Supp. 2022), to subpoena the problematic bank statements directly from TCB. The APA’s subpoena to TCB was issued on June 1, 2023. On June 8, 2023, the APA received a letter from Baird Holm LLP, a prominent Omaha law firm, alleging certain “procedural concerns” with the issuance of the subpoena. My office responded on June 12, 2023, refuting that assertion. Subsequently, on June 23, 2023 – some 10 days after the June 12, 2023, deadline specified in the subpoena – TCB turned over the requested bank statements to the APA. The report states candidly that, since exercising the statutory subpoena authority granted in 2015, the APA has never experienced similar resistance.

As explained in the report comment, as well as displayed by the images in Attachment A and Attachment B thereto, the documents received directly from TCB validated the APA's suspicions that the bank statements reviewed in the County Treasurer's office had been altered. When asked about the alterations to those documents, the Bank responded with an email message containing the following:

The discrepancy between the Rock County statements for January of 2022 was due to a depositing mistake on the banks [sic] end. We were able to correct the account before the internal statements cut but we were unable to before the ICS Statement cut so the bank edited Rock County's ICS statement so it would show correctly on their end.

In short, TCB acknowledged having altered the bank statements for two County ICS accounts. Instead of making the necessary correction and reflecting that correcting transaction on the next month's statements, which would have been the anticipated rectification, the Bank altered the original statements to conceal the error and provided those "corrected" documents to the County Treasurer.

Because its focus is the condition of the County's financial statements, the report comment does not address the potential ramifications, legal or otherwise, of TCB's actions. The comment's recommendation concludes, however, by promising to forward "the information herein to the Nebraska Department of Banking and Finance for further review." This letter is in fulfillment of that assurance.

The bank statement alterations by TCB are of particular concern because they involve accounts holding public funds. If not discovered by my staff, such activity would have risked denying citizen taxpayers information pertinent to the true status of bank accounts created and maintained by their hard-earned money. No less important, such activity gives rise to concerns regarding possible violations of state statutes, including Neb. Rev. Stat. § 8-175 (Reissue 2022) or Neb. Rev. Stat. § 28-612 (Cum. Supp. 2022), both of which prohibit the falsification of bank records, and Neb. Rev. Stat. § 28-911 (Reissue 2016), prohibiting "abuse of public records," which covers any records "received, or used by or in any governmental office or agency."

Thank you very much for taking the time to consider the information that I have presented to you in this letter. I would be more than happy to discuss this matter further with you, or designated staff, at your convenience.

Sincerely,



Mike Foley
Nebraska State Auditor