



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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October 24, 2023

Linda Rasmussen, Board Chairperson
Village of Dix
P.O. Box 23
Dix, NE 69133

Dear Ms. Rasmussen:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the Village of Dix (Village). It was brought to our attention that, among other concerns, the Village has not remitted Federal taxes withheld from employee compensation for over 10 years. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA obtained financial records and other relevant documentation from the Village. Based on the outcome of this preliminary planning work, including an analysis of the information obtained, 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

The Village of Dix (Village) is located in Kimball County, Nebraska. The Village Board of Trustees (Board) is the governing body that exercises financial accountability and control over activities relevant to the operations of the Village. Board members are elected by the public and have broad decision-making authority, including the power to levy taxes and to designate management, the ability to exert significant influence over all Village operations, and the primary responsibility for related fiscal matters.

The following comments and recommendations, which have been discussed with the appropriate members of the Village and its management, are intended to improve internal control or result in other operating efficiencies.

Comments and Recommendations

1. Failure to Remit Federal Taxes

The Internal Revenue Service (IRS) Form 941 is the Employer's Quarterly Federal Tax Return used for reporting and paying employee-related taxes to the United States Government. The Village is required to withhold Federal taxes, including income tax, Social Security tax, and Medicare tax, from compensation paid to municipal employees. Despite withholding the Federal taxes from employees' compensation, the Village Clerk (Clerk) has neither remitted those amounts to the IRS nor filed the quarterly Form 941s.

According to the IRS, the Village, as of June 7, 2023, had not made any payroll tax deposits since October 18, 2013. In addition, the Village had not filed the quarterly Form 941s for the 3rd and 4th quarter of 2013, as well as all four quarters of 2014, 2015, 2019, 2020, 2021, and 2022. Documentation provided to the Village by the IRS showed that, for the period of tax years 2011 through 2018, the estimated balance due totaled \$133,124, which included taxes due of \$67,796.37 plus penalties and interest of \$65,327.63.

Village representatives informed the APA that the Clerk stated she stopped making payments to the IRS when electronic payments were implemented because she could not figure out how to make the payments.

Additional IRS documentation provided to the Village presented the taxes due and potential penalty assessments (as calculated through April 2023) for failure to file the quarterly Form 941s and remit payment of payroll taxes for tax years 2019 through 2022. The following table summarizes the Village’s estimated balance due to the IRS for this period:

Period	Estimated Taxes Due	Estimated Penalty Assessed	Estimated Balance Due
1st Quarter 2019	\$ 4,141.35	\$ 3,597.76	\$ 7,739.11
2nd Quarter 2019	\$ 4,903.39	\$ 4,152.74	\$ 9,056.13
3rd Quarter 2019	\$ 4,060.15	\$ 3,286.46	\$ 7,346.61
4th Quarter 2019	\$ 4,859.62	\$ 3,745.74	\$ 8,605.36
2019 Totals	\$ 17,964.51	\$ 14,782.70	\$ 32,747.21
1st Quarter 2020	\$ 4,091.39	\$ 3,088.21	\$ 7,179.60
2nd Quarter 2020	\$ 4,821.70	\$ 3,544.36	\$ 8,366.06
3rd Quarter 2020	\$ 4,198.85	\$ 2,980.46	\$ 7,179.31
4th Quarter 2020	\$ 4,922.51	\$ 3,331.88	\$ 8,254.39
2020 Totals	\$ 18,034.45	\$ 12,944.91	\$ 30,979.36
1st Quarter 2021	\$ 4,393.22	\$ 2,876.95	\$ 7,270.17
2nd Quarter 2021	\$ 5,071.06	\$ 3,203.87	\$ 8,274.93
3rd Quarter 2021	\$ 4,494.10	\$ 2,745.63	\$ 7,239.73
4th Quarter 2021	\$ 5,164.72	\$ 3,035.84	\$ 8,200.56
2021 Totals	\$ 19,123.10	\$ 11,862.29	\$ 30,985.39
1st Quarter 2022	\$ 4,335.45	\$ 2,534.37	\$ 6,869.82
2nd Quarter 2022	\$ 5,953.91	\$ 3,391.22	\$ 9,345.13
3rd Quarter 2022	\$ 7,546.77	\$ 4,016.75	\$ 11,563.52
4th Quarter 2022	\$ 5,161.61	\$ 2,638.92	\$ 7,800.53
2022 Totals	\$ 22,997.74	\$ 12,581.26	\$ 35,579.00
Overall Totals	\$ 78,119.80	\$ 52,171.16	\$ 130,290.96

IRS Publication 15 (Circular E), “Employer’s Tax Guide,” states the following, in relevant part:

Form 941. *If you paid wages subject to federal income tax withholding (including withholding on sick pay and supplemental unemployment benefits) or social security and Medicare taxes, you must file Form 941 quarterly even if you have no taxes to report, unless you filed a final return, you receive an IRS notification that you’re eligible to file Form 944, or the exceptions discussed later apply.*

* * * *

Penalties. *For each whole or part month a return isn’t filed when required, there is a failure-to-file (FTF) penalty of 5% of the unpaid tax due with that return. The maximum penalty is generally 25% of the tax due. Also, for each whole or part month the tax is paid late, there is a failure-to-pay (FTP) penalty of 0.5% per month of the amount of tax. For individual filers only, the FTP penalty is reduced from 0.5% per month to 0.25% per month if an installment agreement is in effect. You must have filed your return on or before the due date of the return to qualify for the reduced penalty. The maximum amount of the FTP penalty is also 25% of the tax due. If both penalties apply in any month, the FTF penalty is reduced by the amount of the FTP penalty. The penalties won’t be charged if you have reasonable cause for failing to file or pay. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.*

Note. *In addition to any penalties, interest accrues from the due date of the tax on any unpaid balance.*

Good internal control requires procedures to ensure that Federal taxes withheld from compensation paid to municipal employees is submitted timely, along with the corresponding Form 941s, to the IRS, as required by Federal law.

Without such procedures, there is an increased risk for not only loss or misuse of Village funds but also violation of Federal law.

We recommend the Village implement procedures to ensure municipal employee taxes are remitted timely, along with the Form 941s, to the IRS, as required by Federal law.

2. Health Savings Account Plan

When observing the cleared check images of the Village’s bank accounts, the APA noted that payments were being made directly to three Village employees, annually, in the amount of \$2,080 each, for a Health Savings Account (HSA).

According to the Nebraska Department of Insurance, an HSA is “a type of savings account that allows you to set aside money on a pre-tax basis to pay for qualified medical expenses,” and the untaxed dollars put into an HSA allow employees to “pay for deductibles, copayments, coinsurance, and other qualified health-related expenses.” (<https://doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/ConsumerAlertWhatIsAHealthSavingsAccount.pdf>)

The following table lists the payments made to the three Village employees during the period January 1, 2020, through December 31, 2022:

Check Date	Date Cleared	Check Number	Payee	Memo	Amount
5/27/2020	5/28/2020	19019	Maintenance Employee #1	Health Savings	\$ 2,080.00
5/27/2020	5/28/2020	19020	Clerk	Health Savings Account	\$ 2,080.00
4/21/2021	4/28/2021	19361	Maintenance Employee #1	Health Savings	\$ 2,080.00
4/21/2021	4/29/2021	19362	Clerk	Health Savings Plan	\$ 2,080.00
4/25/2022	4/26/2022	19711	Clerk	Health Savings	\$ 2,080.00
4/25/2022	5/2/2022	19715	Maintenance Employee #1	Health Savings Plan	\$ 2,080.00
8/5/2022	8/5/2022	19812	Maintenance Employee #2	Health Savings Plan	\$ 2,080.00

When the APA asked if the Village had a formal, written policy regarding an HSA, the Village was unable to provide such policy. However, municipal representatives have stated that the Village is currently developing a formal, written policy, as well as setting up HSA payments to go directly to the bank rather than Village employees.

Good internal control requires the Board to approve a formal, written HSA policy that outlines when the payments should be made, the amount of such payment, and the purpose of the HSA account.

We recommend the Board implement a formal policy clarifying the purpose of an HSA account, where the payments are to be paid, and how often the payments are to be made.

3. Impermissible Gratuities

When examining the Village’s bank accounts, the APA observed multiple checks to three municipal employees that were for “Christmas” bonuses. The Village appears to have given the employees an annual Christmas bonus in addition to their regular pay. These bonus payments, totaling \$1,750, are shown in the table below:

Check Date	Date Cleared	Check Number	Payee	Memo	Amount
12/15/2020	12/24/2020	19228	Maintenance Employee #1	Merry Christmas	\$ 250.00
12/15/2020	12/21/2020	19229	Clerk	Merry Christmas	\$ 250.00
9/1/2021	12/24/2021	19589	Maintenance Employee #1	Merry Christmas	\$ 250.00
9/1/2021	12/27/2021	19590	Clerk	Merry Christmas	\$ 250.00
12/19/2022	12/20/2022	19911	Maintenance Employee #2	Merry Christmas	\$ 250.00
12/19/2022	12/22/2022	19912	Maintenance Employee #1	Merry Christmas	\$ 250.00
12/19/2022	12/20/2022	19913	Clerk	Merry Christmas	\$ 250.00
Total					\$ 1,750.00

The holiday bonus payments at issue constitute gratuities, which appear problematic in light of the following statutory and constitutional considerations.

To start, the APA is unaware of any legal authority for the Village to give an employee bonus apart from a valid employment contract or formal policy authorizing extra compensation for additional work performed. The Village has no policy regarding bonuses for its employees.

More importantly, 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. No. 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 Village is subject to the injunction against gratuities.

Discussing the terminology found in Article III, § 19, the Court has explained, “A payment of compensation to a public servant constitutes extra compensation whenever there is no legal obligation to pay such compensation.” *Myers v. Nebraska Equal Opportunity Com’n*, 255 Neb. 156, 163, 582 N.W.2d 362, 367 (1998) (quoting *Matter of Mullane v. McKenzie*, 269 N.Y. 369, 377, 199 N.E. 624, 627 (1936)).

The Attorney General has shed additional light on the prohibition in Article III, § 19, as follows:

As we stated in Op. Att’y Gen. No. 94064 (August 22, 1994), the purpose of state constitutional provisions such as Art. III, § 19 which prohibit extra compensation to public employees after services are rendered is to prevent payments in the nature of gratuities for past services.

The “Christmas” bonuses at issue are clearly gratuitous in nature – neither constituting a legal obligation of the Village nor being given in exchange for any promised or actual future benefit – making them constitutionally suspect.

Good internal control requires procedures to ensure that any payments, including bonuses, to Village 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 Village consult with the Village Attorney, County Attorney, or the Nebraska Attorney General regarding the permissibility of the “Christmas” bonus payments addressed in this comment.

4. Lack of Purchasing Card Policy

During our analysis of the Village’s bank statements, the APA noted multiple debit card transactions, totaling \$11,093.88, during the period January 1, 2020, to May 31, 2023.

With the use of a debit card, the Village increases its risk of unrecoverable loss of funds because such cards do not provide as much fraud protection as credit cards or other purchasing cards. Use of a debit card also increases the risk of public funds being spent without Board approval because no monthly billing statements are created. With credit cards, however, the Village's payments for the monthly billing statements must, per Neb. Rev. Stat. § 17-711 (Reissue 2022), be signed by both the chairperson of the Board and the Village Clerk. While a debit card purchase results in an immediate transfer of funds requiring no supervisory approval, therefore, payment on a municipal credit card billing necessitates not only Board authorization but also the increased oversight of two official signatories.

Of no less concern is the Village's lack of a formal, written purchasing card policy outlining procedures for the proper use of the municipal debit card, including the designation of allowable purchases and authorized users.

Neb. Rev. Stat. § 13-610 (Reissue 2022) provides, in relevant part, the following requirements for a political subdivision's purchasing card program:

(1) A political subdivision, through its governing body, may create its own purchasing card program. The governing body shall determine the type of purchasing card or cards utilized in the purchasing card program and shall approve or disapprove those persons who will be assigned a purchasing card. Under the direction of its governing body, any political subdivision may contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating the purchasing card program on behalf of the political subdivision. Expenses associated with the political subdivision's purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

* * * *

(4) An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

* * * *

(6) No officer or employee of a political subdivision shall use a political subdivision purchasing card for any unauthorized use as determined by the governing body.

(Emphasis added.) Compliance with the above statutory requirements – including, aside from the underlying creation of an actual “purchasing card program” itself, acting “in accordance with rules and regulations adopted and promulgated by the political subdivision” and determining what constitutes “any unauthorized use” of a municipal card – is virtually impossible without adoption of a formal purchasing card policy.

Good internal control requires the Village: (1) to consider whether use of a debit card or a credit card would prove most conducive to the security of municipal transactions and the protection of public funds; and (2) to implement a formal purchasing card policy that outlines the proper use of the card, including the designation of allowable purchases and authorized users.

Without such procedures, there is an increased risk for not only the loss, theft, or misuse of Village funds but also the inability to comply fully with State statute.

We recommend the Board consider whether use of a debit card or a credit card would prove most conducive to the security of municipal transactions and the protection of public funds. We recommend also the implementation of a formal purchasing card policy that outlines the proper use of the card, including the designation of allowable purchases and authorized users.

5. Other Issues

The APA identified several issues regarding the Village’s payment of claims and lack of supporting documentation for expenses incurred. These issues are explained in further detail below.

Payment of Unapproved Claims

During our examination of the Village’s bank statements and claims approved by the Board, the APA identified 215 checks and debit card transactions, totaling \$165,848.76, that were paid but not included on the claims listing prepared for Board approval.

The total annual numbers and the corresponding amounts of the unapproved claims noted for the period January 1, 2020, to April 30, 2023, are shown in the table below:

Year	Number of Unapproved Claims	Amount Unapproved
2020	56	\$ 56,180.50
2021	38	\$ 15,112.65
2022	96	\$ 87,014.99
2023	25	\$ 7,540.62
Totals	215	\$ 165,848.76

Neb. Rev. Stat. § 17-614(1)(a) (Reissue 2022) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

A similar issue was identified and disclosed to the Village previously in the APA’s letter dated March 2, 2021, which can be found on the APA’s website (<https://auditors.nebraska.gov/>). However, this issue does not appear to have been corrected after the APA’s notification.

Payment of Claims Prior to Board Approval

When analyzing the Village Board’s meeting minutes and approved claims, the APA noted that 206 checks and debit card transactions, totaling \$166,021.74, were issued before the underlying claims were approved by the Board.

A summary of those premature payments is shown in the following table:

Year	Amount	Payments Cleared Before Approval
2020	\$ 36,819.34	45
2021	\$ 38,609.25	56
2022	\$ 64,502.69	66
2023	\$ 26,090.46	39
Totals	\$ 166,021.74	206

Neb. Rev. Stat. § 17-614(1)(a) (Reissue 2022) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

A similar issue was identified and disclosed to the Village previously in the APA’s letter dated March 22, 2022, which can be found on the APA’s website (<https://auditors.nebraska.gov/>). However, this issue does not appear to have been corrected after the APA’s notification.

Payments in Excess of Amount Approved

In reconciling the Village’s bank statements to the claims approved by the Board, the APA noted several payments made in excess of the Board-approved amount.

The following table details the individual claims that exceeded the Board-approved amount during the period January 1, 2020, to April 30, 2023:

Claim Date	Payee	Transaction Type	Total Amount Approved	Total Amount Paid	Variance
5/19/2020	High West Energy	Check #19011	\$ 41.00	\$ 44.00	\$ 3.00
7/21/2020	High West Energy	Check #19096	\$ 47.00	\$ 48.41	\$ 1.41
8/18/2020	High West Energy	Check #19119	\$ 65.00	\$ 66.95	\$ 1.95
9/15/2020	One Call Concepts	Check #19156	\$ 3.30	\$ 15.00	\$ 11.70
10/19/2020	High West Energy	Check #19181	\$ 36.00	\$ 37.08	\$ 1.08
3/19/2021	Public Health Env Lab	Check #19320	\$ 1,264.00	\$ 1,313.00	\$ 49.00
6/15/2021	Kimball Auto Parts	Check #19414	\$ 21.47	\$ 105.61	\$ 84.14
7/20/2022	City of Kimball	Check #19835	\$ 1,881.00	\$ 3,363.00	\$ 1,482.00
1/25/2023	High West Energy	Electronic Debit	\$ 1,783.45	\$ 2,012.00	\$ 228.55
2/15/2023	High West Energy	Electronic Debit	\$ 1,912.95	\$ 1,976.00	\$ 63.05
4/19/2023	City of Kimball	Check #20054	\$ 1,881.00	\$ 3,762.00	\$ 1,881.00
Totals			\$ 8,936.17	\$ 12,743.05	\$ 3,806.88

In addition, the APA noted multiple instances of the approved “payroll” claim items not appearing to agree to the actual payroll payments made during that month. For example, in September 2022, the Board approved the payroll claim of \$4,946.38; however, the actual payroll payments made during that month totaled \$11,119.59.

Lack of Supporting Documentation

The APA requested the Village to provide supporting documentation for certain checks and debit card transactions noted from the Village’s bank statements. However, the Village was able to provide adequate support for only 4 of the 14 transactions for which such documentation was requested. The table below lists the 10 transactions, totaling \$3,871.04, for which the Village was unable to provide adequate supporting documentation:

Date Issued	Transaction Type	Payee	Amount
8/17/2020	Debit Card	Walmart	\$ 73.63
5/19/2021	Check #19385	Spic and Span Cleaners	\$ 695.00
9/23/2021	Check #19517	Nebraska Department of Agriculture	\$ 175.00
5/20/2022	Debit Card	US Connect Service Website	\$ 257.74
5/24/2022	Debit Card	Dolores Weeks	\$ 87.10
6/15/2022	Check #19775	Signarama	\$ 959.95
6/18/2022	Debit Card	Amazon	\$ 76.98
6/24/2022	Debit Card	Staples	\$ 890.94
7/13/2022	Debit Card	Monument Inn and Suites	\$ 229.70
7/29/2022	Check #19830	Spic and Span Cleaners	\$ 425.00
Total			\$ 3,871.04

Good internal control requires procedures to ensure the following: (1) all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved; (2) payments are made in the amount approved by the Board; and (3) adequate supporting documentation is available for all disbursements of municipal funds.

Without such procedures, there is an increased risk for the loss or misuse of Village funds.

We recommend the Board implement procedures to ensure the following: (1) all claims are approved by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved; (2) payments are made in the amount approved by the Board; and (3) adequate supporting documentation is available for all disbursements of municipal funds.

Village of Dix Response: The Village of Dix Board of Directors is currently working with the Internal Revenue Service, Rauner & Associates, and an independent consultant we have hired to assist us with process to pay back all taxes and penalties on the Federal Payroll employee taxes that were not remitted for 10 years. This issue was never brought to the Board's attention until after our previous clerk/treasurer submitted her resignation and we received a phone call and found multiple unopened letters in our office. We have hired a new clerk/treasurer, and she is being trained by this same independent consultant to ensure all claims submitted are approved by the Board before paid and that these claims will always require supporting documentation. We have implemented an Employee Personnel Handbook that gives us a guide for our Health Savings Account and the Impermissible Gratuities going forward to handle these items correctly. We are getting rid of the debit card for purchases and completing an application for a credit card to have better control of purchases and so we have more of an audit trail of monies spent. Our Board of Directors also found over \$58,000 in uncollected water bills that were not addressed in your letter. With the assistance of our independent consultant and new clerk/treasurer billing, payment collection and recording of payments is now happening timely and accurately. Our Board of Directors will be conducting a random internal audit annually going forward.

* * * * *

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 the knowledge gained during our work to make comments and recommendations that we hope will be useful to the Village.

Draft copies of this letter were furnished to the Village to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the Village and its management. 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.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor
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Sincerely,



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