



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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September 29, 2023

Gary Kuhl, Chairperson  
Village of Herman  
P.O. Box 196  
Herman, NE 68029-0196

Dear Chairperson Kuhl:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Herman (Village) for the fiscal year ending 2022. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Cum. Supp. 2022), the preliminary examination necessary to determine whether the audit waiver should be allowed or further audit work would be required, the APA noted certain internal control or compliance matters, or other operational issues, within the Village.

The following information is intended to improve internal controls or result in other operational efficiencies.

### **Comments and Recommendations**

#### **1. Payment on Behalf of Unincorporated Nonprofit Association**

During the APA's review of the fiscal year 2022 audit waiver request for the Village, the APA received a complaint regarding certain purchases made by the Village on behalf of the Herman Community Club (Club), an unincorporated nonprofit association.

As a result, the APA inquired with the Village to obtain additional information and documentation. The Village provided credit card statements and related supporting documentation for the period September 1, 2021, through August 25, 2022. From this documentation, the APA noted the Village appears to have made the following purchases using Village funds on the Club's behalf:

- On September 10, 2021, the Village purchased from Walmart several items, including paper towels, nitrile gloves, dish soap, ketchup, cups, coffee, chips, tablecloths, napkins, disinfecting wipes, storage bags, hand sanitizer, and soda pop for \$158.96.
- On December 4, 2021, the Village purchased from Office Depot a 24" x 48" Custom Full-Color 2-Sided Vinyl Banner for \$48.99.

The items procured from these two transactions were then donated by the Village to the Club to use for its purposes.

Neb. Rev. Stat. § 13-610 (Reissue 2022) sets out the requirements to which a political subdivision must adhere in order to establish a purchasing card program. Subsection (2) of that statute says the following:

Any political subdivision may utilize its purchasing card program for the purchase of goods and services for and on behalf of the political subdivision.

(Emphasis added.) A political subdivision's purchasing card may be used only to make purchases for that specific governmental entity. Nowhere in § 13-610 – or, for that matter, in any other State statute with which the APA is familiar – is one political subdivision authorized to utilize its own purchasing card program on behalf of, or for the purpose of benefitting, an unincorporated nonprofit association.

Of even greater concern, however, is the apparent lack of authority for the Village to make such contributions in the first place.

The Nebraska Supreme Court's (Court) has made observations regarding the "the nature of a political subdivision of Nebraska," as shown below:

*Political subdivisions "are purely entities of legislative creation. They do not exist independent of some action of the legislative department of government bringing them into being. All the powers which they can possess are derived from the creator. Unlike natural persons they can exercise no power except such as has been expressly delegated to them, or such as may be inferred from some express delegated power essential to give effect to that power." Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 614, 107 N.W.2d 397, 401 (1961) . . . . Traditionally, Nebraska has required strict construction regarding the authority granted to a political subdivision. See Metropolitan Utilities Dist. v. City of Omaha, supra.*

*Nebraska League of Sav. and Loan Associations v. Johnson*, 215 Neb. 19, 24, 337 N.W.2d 114, 117 (1983). The APA is unaware of any express statutory authority for the Village to make the type of donation at issue.

More specifically yet, the Nebraska Attorney General (Attorney General) has opined that a county lacks the requisite authority to make donations to a nonprofit charity. In Op. Att'y Gen. No. 92 (Sept. 7, 1973), the Attorney General concluded that a county could not donate funds to the Nebraska Epilepsy League, which was described as a "nonprofit, charitable organization." The Attorney General explained that determination as follows:

*A county has only such powers as are expressly granted by the Legislature, together with such implied powers as are required to execute such express powers. Section 23-104, R. R. S. 1943. There is no express statutory authority for a county to make a donation to a nonprofit, charitable organization such as the Nebraska Epilepsy League; nor do we believe that the making of such a donation is necessary, in order to carry out any power expressly granted to the counties by the Legislature.*

In support of that conclusion, the Attorney General referenced the following statement by the Court in *United Community Services v. Omaha Nat'l Bank*, 162 Neb. 786, 795, 77 N.W.2d 576, 584 (1956) – a case in which the Court determined that contributions made by a power district to a charitable organization were improper:

*While we are not unmindful of the fact there is some reasonable basis for the argument made, particularly in view of the evidence adduced to the effect that these contributions bring some benefits to the district and therefore should be considered as operating expenses, nevertheless, we think the matter of subjecting all such public corporations to solicitations by all classes of nonprofit agencies serving a public purpose is a matter of such grave public concern that it should be left with the Legislature which has plenary power over them. There the pros and cons of the matter can be fully presented and that body determine the public policy in regard thereto. We think the purposes served by these agencies are very worthy of everyone's charity but whether or not the revenue of public corporations should be permitted to be contributed for those purposes through these agencies, and to what extent, is, we think, a matter for the Legislature and not the courts. In the absence of express statutory authorization we find the district was without authority to make these contributions.*

Though the Attorney General's opinion described above specifically mentions counties, such restrictions on the use of public funds would necessarily also apply to other political subdivisions, including villages.

Good internal controls and sound business practices require procedures to ensure that the Village has the essential authority for every disbursement of its funds, including those made using a Village credit card – and, whenever doubt exists regarding such authority, as appears to be the case regarding purchases made on behalf of an unincorporated nonprofit association, legal guidance from the Village Attorney should be sought.

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

We recommend the implementation of procedures to ensure that the Village has the essential authority for every disbursement of its funds, including those made using a Village credit card – and, whenever doubt exists regarding such authority, as appears to be the case regarding purchases made on behalf of an unincorporated nonprofit association, legal guidance from the Village Attorney should be sought.

## **2. Duplicate Credit Card Payments**

The APA noted from the Village's bank statements that duplicate credit card balance payments were made to the First National Bank of Omaha in November 2021, January 2022, and February 2022, resulting in a total overpayment of \$4,428.20. The credit card company applied these duplicate payments as credits to the Village's account balance.

Good internal controls and sound business practices require procedures to ensure expenses are paid only once, and if a duplicate payment is discovered, those same controls and practices require procedures to ensure a credit or refund is obtained in a timely manner.

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

We recommend the Village implement procedures for not only preventing duplicate payments but also recouping them promptly when they occur.

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The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the Village's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful to the Village.

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 those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions, please contact **Dakota Christensen at 402-499-8702 or [dakota.christensen@nebraska.gov](mailto:dakota.christensen@nebraska.gov)**.

Sincerely,



Mark Avery, CPA  
Assistant Deputy Auditor