



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley
State Auditor

Mike.Foley@nebraska.gov

PO Box 98917

State Capitol, Suite 2303

Lincoln, Nebraska 68509

402-471-2111, FAX 402-471-3301

auditors.nebraska.gov

November 17, 2023

Ronald Brovont, Chairperson
Everett Township Burt County
832 County Road RS
Lyons, NE 68038

Dear Chairperson Brovont:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Everett Township Burt County (Township) for the fiscal year ending 2023. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Supp. 2023), the preliminary examination necessary to determine whether further audit work would be required or the audit waiver should be allowed, the APA noted certain internal control or compliance matters, or other operational issues, within the Township.

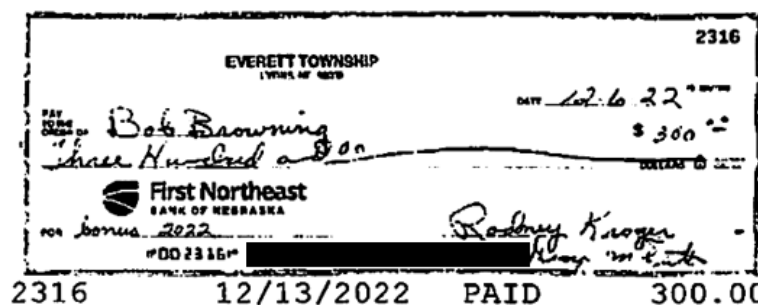
The following information is intended to improve internal controls or result in other operational efficiencies.

Comments and Recommendations

1. Possible Impermissible Gratuity

In December 2022, the Township Board (Board) paid a Township employee \$300 with a check memo of "bonus 2022." According to the Board Chairperson, this payment was for an annual bonus – which was paid in addition to compensation received already for work performed.

The following is an image of the check at issue:



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 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. 95071 (Sept. 13, 1995).

According to the Nebraska Supreme 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 Township is subject to the injunction against gratuities.

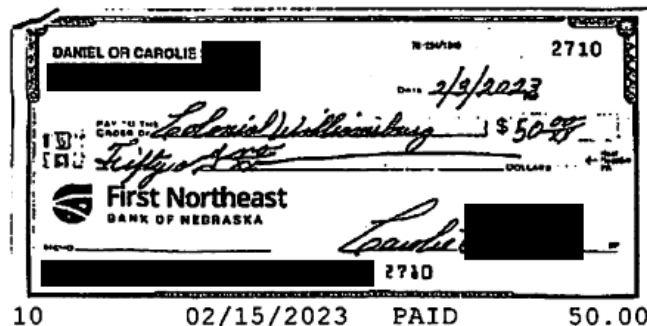
Good internal control requires procedures to ensure that any payments, including bonuses, to Township employees are made in strict accordance with Article III, § 19.

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 Township implement procedures to ensure all payments are constitutionally permissible.

2. Lack of Review of Bank Statements

On February 15, 2023, the following check, in the amount of \$50, was posted to the bank account of the Township:



This check was not issued by the Township but was charged to the Township’s bank account in error. Although this check appeared on the Township’s bank statement for the month of February, the Township failed to notice this error. As of June 30, 2023, this amount had not been returned to the Township’s bank account.

The Board Chairperson acknowledged being unaware that this check had cleared the bank. Consequently, the Board appears to have failed to perform an adequate review of its monthly bank statements to ensure that such error would be caught.

Good internal controls and sound business practices require procedures to ensure that an adequate, periodic review of bank statements is performed to ensure that no unusual or erroneous activity is occurring in the Township’s bank account, and any unusual activity noted is corrected in a timely manner.

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

We recommend the Board implement procedures to ensure that an adequate, periodic review of bank statements is performed to ensure that no unusual or erroneous activity is occurring in the Township’s bank account, and any unusual activity noted is corrected in a timely manner.

3. Expenditures in Excess of Budget

For the fiscal year ended June 30, 2023, actual expenditures exceeded the Township’s adopted budget by \$265,849. No amendment was filed with our office for these additional expenditures.

Neb. Rev. Stat. § 13-510 (Reissue 2022) states, in relevant part, the following:

No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

Neb. Rev. Stat. § 13-511 (Reissue 2022) sets out the procedures for amending the adopted budget accordingly.

When expenditures are made in excess of the amounts budgeted with no appropriation adjustments by the Board to address those excesses, the Township is noncompliant with State statute, further increasing the risk for loss and/or misuse of funds.

We recommend the Board implement procedures for monitoring closely its budget status on an ongoing basis to avoid expenditures that exceed the amount budgeted and amending the budget as required when such excess expenditures are unavoidable.

4. Possible Conflict of Interest

The APA received the Board meeting minutes and the accompanying claims listing for March 1, 2023. From this listing, the APA identified a potential conflict of interest involving the actions of Board member Jake Carpenter.

According to the meeting minutes, Mr. Carpenter appears to have failed to abstain from voting on the following claim, totaling \$980:

Jake Carpenter 980.00
Motion by Fritts seconded by Carpenter to pay the
bills. Motion carried. Treasurer report shows

Additionally, the Township Board discussed this claim in further detail, as shown below:

Motion was made by Fritts that we pay Jake
\$20 for the 49 hours he ran the maintenance in
Bob's absents. Motion carried.

The apparent failure of Board member Jake Carpenter to abstain from voting on the motions above gives rise to concerns regarding possible violations of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. § 49-1401 et seq. (Reissue 2021, Cum. Supp. 2022).

Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2021) states the following:

A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

The penalty for violating the above-cited conflict of interest statute is set out in subsection (7) thereof, as follows:

[A]ny person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

It should be noted that Neb. Rev. Stat. § 49-14,100 (Reissue 2021) provides the following:

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.

Additionally, good internal control requires procedures to ensure compliance with the applicable provisions of the Act.

Without such procedures, there is an increased risk for both statutory violation and the loss of Township funds.

We recommend the Board implement procedures to ensure compliance with the applicable provisions of the Act. Because the issue addressed herein constitutes a possible violation of the Act, we are forwarding this information to the Nebraska Accountability and Disclosure Commission for further review.

* * * * *

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 Township'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 Township.

This communication is intended solely for the information and use of the Township 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**.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Avery", with a long, sweeping horizontal line extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor