



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

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Rich Novacek, Chairperson
Oak Creek Township Butler County
2421 County Road 29
Brainard, NE 68626

Dear Chairperson Novacek:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Oak Creek Township Butler 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.

Comment and Recommendation

Board Member Compensation

During review of the fiscal year 2023 audit waiver request for the Township, the APA noted that the Township received \$5,043.37 from the Federal Emergency Management Agency (FEMA) on August 11, 2022. The purpose of those funds was to reimburse the Township for administrative costs incurred as a result of the 2019 flooding disaster.

According to information provided to FEMA, disaster relief funds were requested as reimbursement for the per diem payments made to Township Board (Board) members, totaling \$8,825, for the period April 17, 2019, to September 15, 2021 – during which, it was reported, a significant amount of time was spent addressing the problems caused by the flood. Those per diem payments had been made pursuant to Neb. Rev. Stat. § 23-260 (Reissue 2022), which states, “The members of the town board shall be entitled to a per diem as fixed by the town board at its annual meeting.”

Questionable Distribution of FEMA Funds to Board Members Already Paid

During the Township’s annual meeting on September 21, 2022, all of the FEMA administrative funds were divided among the three Board members, each of whom received a check in addition to the per diems previously paid. The total of per diems previously paid and the amount paid from FEMA funds are shown by the following table:

Board Member	Total Per Diems Previously Paid	Bonus Amount
Eileen Rock	\$ 3,825.00	\$ 2,271.69
Jerome Kudlacek	3,200.00	2,271.68
Rich Novacek	1,800.00	500.00
Total	\$ 8,825.00	\$ 5,043.37

The following excerpt from the minutes of that meeting describes the decision to give the FEMA reimbursement money to the Board members:

Chairman Novacek made the motion that the FEMA disbursement for administrative value for FEMA/NEMA grants (\$5,043.37) be bonused to board members for the considerable time and energies spent on the application for the grants, and then extensive documentation, communication , and considerable time and energies spent to capture the monies for road repair for the township for FEMA DR 4420 NE. Jerome made the motion that Rick receive \$500, and Eileen and Jerome receive the remainder @ \$ 2,271.68 and \$2,271.69 respectively. Motion carried and all are glad to have this effort behind us.

Allowing the FEMA funds to “be bonused” to the Board members, as characterized above, appears strikingly inconsistent with the stated purpose of the grant – which was to reimburse the Township for the per diem amounts already paid to the Board members.

Depositing the FEMA money into the Township’s bank account would have accomplished an actual reimbursement to the Township. Instead, the Board members were paid for work that they had previously been compensated for. As a result, the Township received nothing in the form of actual reimbursement, and the individual Board members received additional compensation in the form of Federal funds intended for the Township.

Lack of Adequate Documentation and Compensation Approval by Township Electors

Even if it could be argued that the additional payments to the Board members were for work performed, no documentation was provided to support that such extra work, above and beyond what was routinely required of the three Township officials, had been performed to merit the amount of additional compensation awarded to them.

Furthermore, the Board approved this additional compensation at the annual town meeting; however, the meeting minutes fail to show that this additional compensation was approved by a vote of all electors present. Neb. Rev. Stat. § 23-224 (Reissue 2022) provides the following:

The electors present at the annual town meeting shall have power:

* * * *

(8) To direct the raising of money by taxation, subject to approval by the county board . . . (e) for the compensation of town officers at the rate allowed by law and, when no rate is fixed for such amount, as the electors may direct[.]

Possible Conflicts of Interest

The decision to award the Federal grant funds at issue to the three Board members – instead of using that money for the stated purpose of reimbursing the Township for the per diem payments made already to those three officials – gives rise also to concerns regarding possible violation of the Nebraska Political Accountability and Disclosure Act (Act), as set out at Neb. Rev Stat. §§ 49- 1401 to 49-14,142 (Reissue 2021, Cum. Supp. 2022).

According to Neb. Rev. Stat. § 49-1402 (Reissue 2021), the Act serves the purpose of, among other things, ensuring “that public office or employment not be used for private gain other than the compensation provided by law” and preventing situations in which “there exists, or appears to exist, a substantial conflict between the private interests of a public official and his or her duties as such official.”

Neb. Rev. Stat. § 49-14,101.01 (Reissue 2021) of the Act says, in relevant part, the following:

(1) 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.

(2) 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.

* * * *

(7) *Except as provided in section 23-3113, any 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.*

A Board member would fall within the definition of “public official,” which Neb. Rev. Stat. § 49-1443 (Reissue 2021) provides as follows:

Public official shall mean an official in the executive branch, an official in the legislative branch, or an elected or appointed official in the judicial branch of the state government or a political subdivision thereof; any elected or appointed member of a school board; and an elected or appointed member of a governing body of a state institution of higher education.

(Emphasis added.) According to the Nebraska Supreme Court, moreover, “A township is a political subdivision.” *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 725, 515 N.W.2d 128, 130 (1994). Finally, it should be noted that questions regarding the propriety of official actions taken by the Board members, at least with regard to compliance with the provisions of the Act, may be submitted to the Nebraska Accountability and Disclosure Commission (Commission) for guidance. Neb. Rev. Stat. § 49-14,100 (Reissue 2021) states 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.

Good internal control requires procedures to ensure: 1) any grant monies received by the Township are used in strict accordance with the stated purpose of the grant; 2) proper documentation is maintained for all funds received or expended by the Township; and 3) all Township officers adhere to the provisions of the Act. Without such procedures, there is an increased risk for not only loss or misuse of Township funds but also noncompliance with State statute or applicable Federal requirements.

We recommend the Board implement procedures to ensure: 1) any grant monies received by the Township are used in strict accordance with the stated purpose of the grant; 2) proper documentation is maintained for all funds received or expended by the Township; and 3) all Township officers adhere to the provisions of the Act. Additionally, because this comment notes a possible violation of the Act, we are forwarding the information herein to the Commission for review.

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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 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,



Mark Avery, CPA
Assistant Deputy Auditor