



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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November 17, 2023

Randy Royle, Chairperson
Algernon Township Custer County
78493 Road 456
Mason City, NE 68822

Dear Chairperson Royle:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Algernon Township Custer 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 Conflict of Interest

The APA received the Township Board (Board) meeting minutes and the accompanying claims listing for December 12, 2022. From this listing, the APA identified a potential conflict of interest involving the actions of Board member Curtis Cole.

In addition to being a Board member, Mr. Cole is the president of Cole Electric Company, LLC, an electrical contractor services business located in Mason City, Nebraska. According to the above-referenced meeting minutes, Mr. Cole appears to have failed to abstain from voting on the following claim, totaling \$3,839.75:

Cole Electric Company - \$3,839.75 Inv# 2022-296

An excerpt from the December 12, 2022, Board minutes is provided below:

Motion made by Brian to pay all bills in full. Randy seconds motion. Motion carries to vote.
Curtis - AYE
Brian - AYE
Randy - AYE

The apparent failure of Mr. Cole to abstain from voting on the motion above gives rise to concerns regarding possible violation 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 applicable provisions of the Act.

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

We recommend the Board implement procedures to ensure compliance with 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.

2. Payments Not Approved

The APA obtained a copy of the February 6, 2023, meeting minutes for the Township Board. Those minutes reflect the Board's approval of Township expenditures; however, one \$118 payment to Bakko Transfer, Inc., a Litchfield, Nebraska, business that specializes in providing forage services to the livestock industry, was not included in the listing of claims approved by the Board.

Additionally, the February 6, 2023, meeting minutes for the Township Board fail to reflect the Board's approval of any expenditures for the Township Library or the Township Cemetery.

Nebraska law requires the Township Board to approve all claims against the Township. In particular, Neb. Rev. Stat. § 23-255 (Reissue 2022) states the following, in relevant part:

All claims and charges against the town, duly audited and allowed by the town board, shall be paid by order so drawn.

(Emphasis added.) Properly discharging the above statutory duties necessarily entails the Board's approval of all expenditures of Township funds prior to the actual disbursement.

As a public body, moreover, the Board is subject to the provisions of the Open Meetings Act, which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Cum. Supp. 2022). Per Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022) public bodies, including Township Boards, are required to "keep minutes of all meetings," showing, among other things, "the substance of all matters discussed."

Furthermore, a good internal control plan and sound business practices require procedures to ensure that the Board approves all expenditures and business transactions of the Township prior to payment. Those same procedures should ensure also that the Board documents such approval in its meeting minutes, specifying the name of each payee, the exact amount of any disbursement, and the specific purpose of the payment.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

We recommend the implementation of procedures to ensure the Board approves all expenditures of Township funds prior to payment, and such approval is documented adequately in the Board's meeting minutes.

3. Lack of Dual Signatures

The APA obtained the monthly statements for the Township's bank accounts from its fiscal year 2023 audit waiver request. From those statements, the APA noted that all Township checks written from the Cemetery and Library bank accounts during the examination period contained only one signature. Further, the individual signing these checks is not a member of the Township Board.

Examples of the Cemetery and Library bank account checks at issue are shown below:



Nebraska law requires both the Clerk and the Board Chairperson to sign all checks approved by the Board. Specifically, Neb. Rev. Stat. § 23-255 (Reissue 2022) states, in relevant part, the following:

The town clerk shall draw and sign all orders upon the town treasurer for all money to be disbursed by the township, and all warrants upon the county treasurer for money raised for town purposes, or apportioned to the town by the county or state, and present the same to the chairman of the board, to be countersigned by him, and no warrant shall be paid until so countersigned.

(Emphasis added.) In addition, good internal controls and sound accounting practices require procedures to ensure that Township checks contain the statutorily required endorsements.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

A similar issue was identified by the APA in a prior review and was disclosed to the Township in the APA's letter dated December 29, 2022, which can be found on the APA's website. However, this issue does not appear to have been corrected after the APA's notification.

We recommend the implementation of procedures to require dual signatures, from both the Clerk and the Board Chairperson, on all Township checks, as required by law.

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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,

A handwritten signature in black ink that reads "Mark Avery". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor