



# NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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John Golden, Chairperson  
Nebraska City Rural Fire Protection District  
204 S. 11th Street  
Nebraska City, NE 68410

Dear Chairperson Golden:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Nebraska City Rural Fire Protection District (District) 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 District.

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

## Comments and Recommendations

### 1. Possible Violation of the Open Meetings Act

The APA obtained a copy of the August 25, 2022, and August 25, 2023, meeting minutes for the Board of Directors (Board) of the District. Those minutes fail to reflect the Board's approval of any District expenditures. The APA was informed that no other public meetings were held during fiscal year 2023.

However, the APA was informed that any items requiring Board approval were discussed by Board members via telephone call or text messages. The APA questions this practice as District business is being conducted outside of a public meeting.

Per Neb. Rev. Stat. § 35-508(4) (Reissue 2016), Boards have the exclusive power to "manage and conduct the business affairs of the district." Accordingly, any expenditure of District funds requires express Board authorization.

Additionally, Neb. Rev. Stat. § 35-511 (Reissue 2016) provides, in relevant part, the following:

*All donations, contributions, bequests, annuities, or borrowed money received by or on behalf of the district shall be deposited with the secretary-treasurer of the district and shall be drawn out only upon proper check. Such check shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president of such district.*

(Emphasis added.) Properly discharging the above statutory duties necessarily entails proper financial management, which calls for the Board’s approval of all expenditures of District funds. Such Board approval should be prior to the actual disbursement, if possible, or at the next District Board meeting.

As a public body, moreover, the Board is subject to the provisions of the Open Meetings Act (Act), which is set out at Neb. Rev. Stat. §§ 84-1407 (Reissue 2014, Cum. Supp. 2022) et seq. The intent of the Act is set out at Neb. Rev. Stat. § 84-1408 (Reissue 2014), as follows:

*It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.*

*Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.*

Neb. Rev. Stat. § 84-1409(2) (Cum. Supp. 2022) defines a meeting, in relevant part, as follows:

*Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body].*

(Emphasis added.) Neb. Rev. Stat. § 84-1411(1)(a) (Cum. Supp. 2022) states the following:

*Each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.*

Additionally, Neb. Rev. Stat. § 84-1413 (Cum. Supp. 2022) states, in relevant part, the following:

*(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.*

*(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.*

Further, § 84-1411(2)(a) specifies the entities that “may hold a meeting by means of virtual conferencing.” Section 84-1409(3) defines “virtual conferencing” as “conducting or participating in a meeting electronically or telephonically with interaction among the participants . . . .” Fire districts are not included among the list of public bodies permitted to engage in virtual conferencing. Moreover, § 84-1411(3) states the following:

*Virtual conferencing, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.*

Finally, in Op. Att’y Gen. No. 92019 (Feb. 11, 1992), the Nebraska Attorney General opined that the Act does not generally authorize public meetings to be held by telephone:

*As a result, we do not believe that the Public Meetings Statutes authorize the use of telephone conference calls for non-emergency meetings of a public body. It necessarily follows that absent members of the public body may not be counted to achieve a quorum through the use of a conference call.*

A good internal control plan and sound business practices require procedures to ensure that the Board approves, in a timely fashion, all expenditures and business transactions of the District at public meetings, as required by State law. 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, in a timely fashion, all expenditures of District funds at public meetings. Such approval should be documented adequately in the Board’s meeting minutes. Additionally, because the comments herein address possible violations of the Open Meetings Act, we are forwarding this information to the Nebraska Attorney General and the Otoe County Attorney.

**2. Potentially Disallowed Purchase**

Our review of the bank statements obtained from the District’s audit waiver request revealed that the District made one payment in the amount of \$40 to First Class Flowers for flowers on November 4, 2022. This purchase was made from the District’s checking account, which contained property tax revenues.

The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. § 13-2201 (Reissue 2022) et seq., specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to Districts, among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Reissue 2022).

Neb. Rev. Stat. § 13-2203 (Reissue 2022) of the Act enumerates the miscellaneous expenditures permitted by governing bodies of local governments. Purchases of flowers – whether for funerals, memorials, or other personal occasions – are not found among that select statutory list of permissible expenditures. As a result, such disbursements must be considered disallowed by law.

On September 17, 1993, the Nebraska Accountability and Disclosure Commission adopted a document entitled “A Guideline to the Use of Public Funds by Cities and Villages – Revised” (Guideline). The Guideline addresses a number of different scenarios involving the expenditure of public funds. Though issued almost three decades ago, the Guideline remains relevant to various Nebraska public entities, including fire districts.

Regarding the issue of flower and memorial purchases, the Guideline provides the following:

*Question #6 – May municipal funds be expended for flowers and memorials for deceased elected officials, employees or their families?*

*Response – No.*

Good internal control requires procedures to ensure compliance with the provisions of the Act.

Without such procedures, there is an increased risk for not only noncompliance with applicable statutory requirements but also loss or misuse of District funds.

We recommend the Board implement procedures to ensure all District purchases are allowable under State statute, including the provisions of the Act.

**3. Payment of Sales Tax**

During review of the District’s bank statements for fiscal year 2023, the APA noted a debit card purchase from Home Depot for \$2,452.88. This purchase included payment of sales tax, totaling \$127.88, on the purchase of an air compressor. The receipt for this purchase is shown below.

Subtotal	\$2,325.00
Shipping	FREE
Sales Tax	\$127.88

**Order Total                      \$2,452.88**

Neb. Rev. Stat. § 77-2704.15(1)(a) (Supp. 2023) states that purchases made by the State or its political subdivisions are exempt from sales tax, as follows:

*Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district . . . .*

(Emphasis added.) Good internal controls require procedures to ensure that District funds are not expended for the payment of Nebraska sales tax.

Without such procedures, there is not only an increased risk of noncompliance with State statute, but also an increased risk of the loss, misuse, or theft of District funds.

We recommend the District implement procedures to ensure that District funds are not expended for the payment of Nebraska sales tax.

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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 District’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 District.

This communication is intended solely for the information and use of the District 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