



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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February 20, 2024

Heath Vrbka, Chairperson
Village of Rising City
PO Box 127
Rising City, NE 68658

Dear Chairperson Vrbka:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Rising City (Village) 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 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. Possible Conflict of Interest

The APA received the Village Board (Board) meeting minutes, along with the accompanying claims listing, for meetings held on June 5, 2023, and July 3, 2023. From that documentation, the APA identified a potential conflict of interest involving the actions of Board member Shane Hinkle.

On February 6, 2024, the APA confirmed with Mr. Hinkle that he owns Hinkle Mowing. According to both sets of meeting minutes, however, Mr. Hinkle appears to have failed to abstain from voting on the following claims to his personal business:

Name/Vendor	Amount	Approval Date	Check #	Cleared Date
Hinkle Mowing	\$ 412.50	6/5/2023	9093	6/14/2023
Hinkle Mowing	330.00	7/3/2023	9121	7/5/2023
Total	\$ 742.50			

The relevant excerpts from those minutes are copied below:

June 5, 2023, Meeting Minutes

Bills: Payroll 5676.41; Edward Jones 290; Cardmember 699.89; One Call Concepts 27.77; DC Ace Hardware 51.07; Menards 335.14; Nebraska Public Health 34; NDEE 11657; Egr/Birkel/Wollmer 143; Lincoln Journal Star 46.71; CVA 727.70; Windstream 57.82; Awards & Engraving 26.22; Triple S Service 65; Barcel Landscaping 280; Hinkle Mowing 412.50; Rylie Carter 80; Black Hills Energy 526.29; BPPD 2025.33; Butler County Treasurer 1000; JEO Consulting 12350; Grass Roots Lawncare 1350; Steager Irrigation 5400; Jackson Services 102.56; Municipal Supply 882.13; Mid west Lab 62; Butler County Welding 26.70; Rehmer Auto Parts 185.27; MARC 135; Hilltop Rolloffs 3675; Butler County Landfill 1189.76; Dale R. Johnson 627; Jones Group 1512.
Additional bills to include: sales tax & 941 tax.

It was moved by Trustee Wingard and seconded by Trustee Roberts that the bills submitted in advance by the Village Clerk be approved and checks drawn for the same. Additional bills to include: 941 tax, CVA, and sales tax. The following voted AYE: Vrbka, Roberts, Hinkle, Amsler, Wingard. The following voted NAY: none. The motion carried.

July 3, 2023, Meeting Minutes

Bills: Payroll 5676.41; Randy Wingard 757.10; Heath Vrbka 854.24; Shane Hinkle 689.87, Rich Amsler 621.97; Corey Roberts 825; Edward Jones 290; Hinkle Mowing 330; BPPD 2232.18; Butler County Treasurer 1000; Black Hills Energy 289.51; Lincoln Journal Star 25.25; Hein Construction 1018.50; Diamond Vogel 390.10; Applied Connective 224.18; Cornerstone Bank 6678.59; Demon Decals 300; Johnston Controls 155.13; JEO 7770; Cornhusker Irrigation 354.62; Triple S 209; MARC 1544; Nebraska Public Health 30; BJ's Hardware 127.65; Steager Lawn Service 6555; Menards 303.38; Jackson Services 105.49; Thomas McCracken 1674.38; Jett Vrbka, 468.75; Elan Financial Services 217.59; Barco 531.25; Windstream 57.88; DC Ace Hardware 61.96; Sargent Drilling 800; One Call Concepts 9.83; Rehmer Auto Parts 20.35.
Additional bills to include: 941 taxes, sales tax, CVA.

It was moved by Trustee Wingard and seconded by Trustee Roberts that the bills submitted in advance by the Village Clerk be approved and checks drawn for the same. Additional bills to include: 941 tax, CVA, and sales tax. The following voted AYE: Vrbka, Roberts, Hinkle, Amsler, Wingard. The following voted NAY: none. The motion carried.

The apparent failure of Mr. Hinkle to abstain from voting, in his official capacity as a Board member, 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 to 49-14,142 (Reissue 2021, Cum. Supp. 2022).

To start, 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.

Additionally, Neb. Rev. Stat. § 49-14,103.01 (Reissue 2021) provides the following, in relevant part:

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means . . . (c) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (d) any elected county, school district, educational service unit, city, or village official . . .

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party

* * * *

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a payment fee or commission as a result of the contract.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(Emphasis added.) As referenced above, Neb. Rev. Stat. § 49-1408 (Reissue 2021) defines a “business association” as follows:

Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer

As the owner of the lawn mowing company at issue, Mr. Hinkle clearly falls within the above definitional language.

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 violations and the loss of Village funds.

We recommend the Board implement procedures to ensure compliance with the applicable provisions of the Act. Because the concern 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. Lack of Claim Purpose

During our comparison of the Village’s bank account details to claims approved by the Board, the APA observed meeting minutes dated April 3, 2023, and noted that the claims listed therein lacked descriptions of their respective purposes.

The following is an example of the approved claims listing provided by the Village for April 3, 2023:

Bills: Payroll 5676.41; Rylie Carter 80; BPPD 2335.35; DC Ace Hardware 59.99; Triple S 65; Dale R. Johnson 748; Windstream 58.44; Black Hills Energy 2016.10; Nebraska Public Health 366; Johnson Control 149.21; Marc 1428.75; Cardmember 3327.54; Lincoln Journal Star 14.64; Butler County Sheriff 1000; Edward Jones 290; One Call Concepts 6.01; O’Dell Concrete 18288; CVA 284.89. Additional bills to include: sales tax, 941 tax.

Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022) of the Open Meetings Act, which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Cum. Supp. 2022), requires political subdivisions and other public entities to “keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.” (Emphasis added.)

Additionally, Neb. Rev. Stat. § 19-1102 (Reissue 2022) requires publication of the Board’s official proceedings, which must include, among other things, the purpose of each claim allowed, as follows:

It shall be the duty of each city clerk or village clerk in every city or village having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the city council or village board of trustees within thirty days after any meeting of the city council or village board of trustees. The publication shall be in a legal newspaper in or of general circulation in the city or village, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

(Emphasis added.) Good internal control and sound accounting practices require procedures to ensure that the Board’s meeting minutes describe the purpose of each claim allowed.

Without such procedures, there is an increased risk of not only failure to comply with statutory requirements pertaining to the keeping of proper meeting minutes and the publication of the municipality’s “official proceedings” but also a lack of transparency regarding the nature of public expenditures.

We recommend the Board implement procedures to ensure the purpose of each claim allowed is included in both the Board’s meeting minutes and the “official proceedings” required to be published afterwards.

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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.**

Sincerely,



Mark Avery, CPA
Assistant Deputy Auditor