



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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February 20, 2024

Jason Reuter, Chairperson
Village of Martinsburg
P.O. Box 65
Newcastle, NE 68757

Dear Chairperson Reuter:

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

However, the Village's amount of disbursements for the fiscal year ending September 30, 2023, exceeded our normal threshold (\$500,000) for granting a waiver of the audit requirement. Disbursements for the fiscal year ended 2023, totaled \$988,165, which exceeds the normal audit waiver threshold. Additionally, we noted the budgeted expenditures for fiscal year 2024 are \$1,313,270. Due to the Village's submission of supporting documentation for one-time, low risk expenditures, that accounted for a percentage of the current year's expenditures, we were able to consider for this year, the Village's activity to be low enough to grant the audit waiver request.

Nevertheless, if the September 30, 2024, fiscal year end disbursements are similar to or greater than the fiscal year 2023's expenditures or near the budgeted amount of expenditures, an audit of fiscal year end September 30, 2024, may be required. This information is only for your consideration of planning for fiscal year 2023 and forward.

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 April 5, 2023. From that documentation, the APA identified a potential conflict of interest involving the actions of Board member Jason Reuter.

According to the meeting minutes, Jason Reuter appears to have failed to abstain from voting on a reimbursement claim totaling \$93.05. Furthermore, the check for this reimbursement was for \$100 more than approved. Further details are noted in **Comment and Recommendation Number 2** ("Payments in Excess of Approved Amounts").

An excerpt from the April 5, 2023, Board minutes is provided below:

Village of Martinsburg - Public Meeting Minutes
April 5, 2023 at 6:00pm
Martinsburg Fire Hall, Martinsburg, Nebraska

I. Chairman Jason Reuter called meeting to order at 6:00pm. Open Meeting Laws that are posted were acknowledged. Meeting notice was posted at Bob's Bar, Fire Hall, and Community Hall. The Pledge of Allegiance recited by all in attendance

II. Roll Call: __HERE__Jason __ HERE __Randy __ HERE __Matt __ HERE __Jaime__ HERE __Travis

III. Approve Agenda and Previous Meeting Minutes Motion made by Matt to approve. Travis Bartling seconded. Upon roll call, all voted aye. MC

IV. Acknowledge Guests / Brief Comments - NONE

V. Discussion/Action Items:

- Bills were read and reviewed. Matt Michl made the motion to approve bills. Travis Bartling seconded. Upon roll call, all voted aye. MC

VI. Old Business:NONE

New Business: NONE

Jaime made the motion to set Next Meeting: **May 3, 2023** and Motion to Adjourn at 7:35pm. Matt seconded. Upon roll call, all voted aye. MC

5-Apr-23

<u>Check #</u>	<u>Payee</u>	<u>Amount</u>	<u>Memo</u>
5160	Jason Reuter	\$ 93.05	postage reimburse
EFT	Transfer to Sewer Reserve	\$ 160.00	monthly general to sewer reserve

The apparent failure of Board member Jason Reuter to abstain from voting on the motion 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.

Furthermore, Neb. Rev. Stat. § 49-1499.03(2) (Reissue 2021) provides the following related to claims not associated with a contract:

(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Except as otherwise provided in subsection (3) of this section, abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(Emphasis added.) 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 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. Payroll Tax Withholding Issues

During the fiscal year ended September 30, 2023, taxes were not withheld from wages paid to Village employees and remitted to either the Internal Revenue Service (IRS) or the Nebraska Department of Revenue (Department). The Village is required to withhold Federal taxes, including income tax, Social Security tax, and Medicare tax, as well as State income tax from compensation paid to municipal employees.

According to the Village Clerk, the Village provides each Village Board member, the Clerk, and other Village employees with an IRS Form 1099 instead of withholding and remitting taxes through either a quarterly Form 941 or an annual Form 944, and then issuing a Form W-2 to those employees.

The requirements for withholding payroll taxes from compensation paid to public officials and employees are explained in various Federal and State publications, as described below.

For Federal income taxes, the “Tax Withholding for Government Workers” information (last updated March 9, 2023), which appears on the IRS website, states the following, as is relevant:

Internal Revenue Code section 3401(c) indicates that an “officer, employee, or elected official” of government is an employee for income tax withholding purposes.

* * * *

The courts generally define “public official” and “public officer” to mean anyone who exercises significant authority pursuant to public laws. This includes any official who administers or enforces public laws whether the public elected the individual or an office appointed them.

(Emphasis added.) Additionally, the “Frequently Asked Questions” section of IRS Publication 963 (Rev. 7-2020), “Federal-State Reference Guide,” states the following, in relevant part, about the employment status of government officials, especially with regard to not only Federal income taxes but also Social Security and Medicare tax withholdings:

For income tax purposes, elected (or elective) and most appointed officials are defined by IRC Section 3401(c) as employees of the public entity they serve (mayors, members of the legislature, county commissioners, city council members and board or commission members). In general, elected and appointed officials will meet the common-law tests to be considered employees. Regardless of the common-law tests, some positions may be defined as employment by state statute. Some fee-basis officials are by law treated as self-employed. An elected or appointed official who is an employee is subject to rules for mandatory Social Security and Medicare unless covered under a Section 218 Agreement or a qualified participant in a retirement system. All officials elected or appointed to their positions after March 31, 1986, are subject to Medicare withholding.

(Emphasis added.) Turning specifically to State income taxes, the “2022 Nebraska Circular EN”, published by the Nebraska Department of Revenue, provides the following, as is relevant:

If you have an office or conduct business in Nebraska and are considered an employer for federal purposes, you must withhold income taxes for Nebraska. This includes payments made to all employees, including nonresidents, for services performed in this state.

(Emphasis added.) Good internal controls require procedures to ensure both the correct classification of employees for tax purposes and the collection of all required Federal and State taxes from such personnel, as appropriate, and the proper remittance thereof.

Without such procedures, there is an increased risk for not only failure to comply with State statute and Federal regulations but also the resulting liability of the Village and its employees alike.

We recommend the Village implement procedures to ensure both the correct classification of employees for tax purposes and the collection of all required Federal and State taxes from such personnel, as appropriate, and the proper remittance thereof.

3. Payments in Excess of Approved Amounts

During our comparison of the Village’s bank account details to claims approved by the Board, the APA identified two checks, totaling \$214.05, were paid in excess of the amount approved by the Board. The following table summarizes these overpayments:

Name	Claim Date	Approved Amount	Amount Paid	Overpayment
Jason Reuter	4/5/2023	\$ 93.05	\$ 143.05	\$ 50.00
Steve Sullivan	4/5/2023	51.00	71.00	20.00
Total		\$ 144.05	\$ 214.05	\$ 70.00

Good internal control requires procedures to ensure that all claims are made in the amount approved by the Board. Without such procedures, there is an increased risk for the loss or misuse of Village funds.

We recommend the Village implement procedures to ensure payments are made in the amount approved by the Board.

4. Negative Fund Balance

On Exhibit A of the Village’s audit waiver request form, the APA noted that the Water fund had a deficit balance of \$68,577 as of September 30, 2023. This negative balance was mainly due to the Village having a large water project and not receiving Federal funds in a timely manner to bring the fund balance positive.

Good internal control and sound accounting practices require procedures to ensure that Village fund balances are sufficient to cover fully all disbursements and transfers approved by the Board. Those same procedures should ensure also that the Board is apprised regularly of each Village fund balance and, therefore, placed in a position to take necessary action to resolve any deficits therein.

Without such procedures, there is an increased risk of not only insufficient Village fund balances but also the resultant inability to cover fully all disbursements and transfers approved by the Board.

We recommend the Village board implement procedures to ensure the Board is apprised regularly of each Village fund balance and, therefore, placed in a position to take necessary action to resolve any deficits therein.

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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,

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

Mark Avery, CPA
Assistant Deputy Auditor