



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

February 20, 2024

Mark Nolte, Chairperson
Village of Virginia
116 First St
Virginia, NE 68458

Dear Chairperson Nolte:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Virginia (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 the meeting held on September 11, 2023. From that documentation, the APA identified a potential conflict of interest involving the actions of Board member Linda Searcey, who also serves as the Village Treasurer.

According to the meeting minutes, Ms. Searcey appears to have failed to abstain from voting on the following claims paid to herself:

| Name | Description | Amount |
|---------------|--------------------------------------------------------------|------------------|
| Linda Searcey | Office Supplies | \$ 43.69 |
| Linda Searcey | Treasurer Quarterly Pay for July, August, and September 2023 | 720.00 |
| Linda Searcey | Bank Deposit Mileage | 131.00 |
| Total | | \$ 894.69 |

Relevant excerpts from the September 11, 2023, Board minutes are provided below:

**Village of Virginia
Meeting 9/11/2023**

Meeting was called to order by Mark Nolte at 7:00 p.m. Mark notes that the Open Meeting Resolution is posted on the wall in the Legion for all to read. Members present were: Mark Nolte, Dale Barnes, Justin, Holsing, Linda Searcey, and Denise Spilker. Guest present: None.

Bills:

General Account:

| | |
|--------------------------------------------------------------------------------------------------------|------------|
| 9/11/2023 Ch# 3865 – Diller Telephone / Internet & telephone service | \$ 86.29 |
| 9/11/2023 Ch# 3866 – NPPD Office / Streetlight & Civil Def | \$ 372.53 |
| 9/11/2023 Ch# 3867 – Temps Disposal (30) Garbage P.U. | \$ 570.00 |
| 9/11/2023 Ch# 3868 – Sterup Enterprises, LLC / Inv. #6240 | \$ 43.04 |
| 9/11/2023 Ch# 3869 – Lincoln Journal Star / Notice of Budget Hearing | \$ 308.51 |
| 9/11/2023 Ch# 3870 – Linda Searcey / Office Supplies | \$ 43.69 |
| 9/11/2023 Ch# 3871 – Linda Searcey / Treasurer Quarterly Pay for July, August, and September 2023 | \$ 720.00 |
| 9/11/2023 Ch# 3872 – League of Nebraska Municipalities 2023 Annual Conference (Electronic sessions) | \$ 395.00 |
| 9/11/2023 Ch# 3873 – Linda Searcey / Bank Deposit Mileage | \$ 131.00 |
| 9/11/2023 Ch# 3874 – Caden Searcey / Inv. #352453 – Gas for mower | \$ 35.48 |
| 9/11/2023 Ch# 3875 – Caden Searcey / Inv. #352454 – Mowing & Weeding | \$ 97.50 |
| Total - | \$2,803.04 |

Motion made by Dale Barnes and seconded by Justin Holsing to approve the bills and treasurer report. Motion carried.

Based on the excerpts above, it is unclear if Ms. Searcey abstained from voting on her own claims. If Ms. Searcey failed to abstain, as an acting Board member, from voting on the above motion, there are 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 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. 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 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 does not withhold State income tax from Village employee pay; instead, the employee is supposed to ensure taxes are paid at the time the employee files their personal tax return with the State. However, it is unclear what authority the Village has for this practice.

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. Lack of Adequate Documentation

During our review of the Village’s bank statements for fiscal year 2023, the APA noted that the Village Treasurer, Linda Searcey, was paid \$576.23 for mileage reimbursements over the course of the examination period.

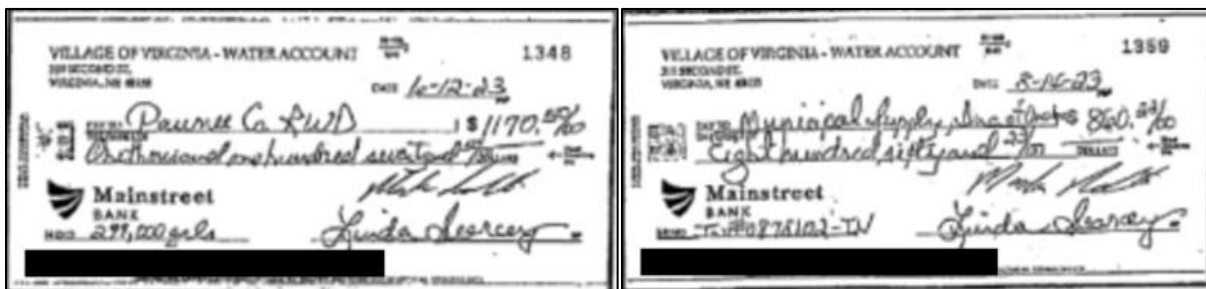
The APA received documentation for the trips made by the Village Treasurer and the mileage for each one. This documentation, however, did not contain adequate detail necessary to support the actual mileage incurred by the Village Treasurer for these trips. We were unable to determine the actual route taken, and as a result, we were unable to determine if the mileage reimbursement was reasonable.

Good internal control requires procedures to ensure proper documentation is maintained for all disbursement transactions, including mileage reimbursements. Without such procedures, there is an increased risk for the loss, misuse, or abuse of public funds.

We recommend the Village implement procedures to ensure proper documentation is maintained for all disbursement transactions, including mileage reimbursements.

4. Lack of Village Clerk’s Signature

The APA obtained the bank statements for the Village’s accounts from its fiscal year 2023 audit waiver request. From these statements, the APA noted that all of the Village checks written during the examination period contained the signatures of the Board Chairperson and the Village Treasurer rather than the Village Clerk. Examples of such checks are shown below.



State statute requires Village checks to be signed by both the Chairperson of the Board and the Village Clerk. Specifically, Neb. Rev. Stat. § 17-711 (Reissue 2022) provides the following:

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

(Emphasis added.) Good internal control and sound accounting practices require procedures to ensure that Village 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 and/or misuse of Village funds.

We recommend the Board implement procedures to require dual signatures, from the Board Chairperson and the Village Clerk, on all Village checks, as required by law.

* * * * *

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, sweeping horizontal line extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor