



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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James Kaiser, Chairperson
Village of Davey
P.O. Box 1
Davey, NE 68336

Dear Chairperson Kaiser:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Davey (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 minutes, along with the accompanying claims listing, for the Village Board (Board) meeting held on April 9, 2023. From that documentation, the APA identified a potential conflict of interest involving the actions of Board members Jim Kaiser and Duane Edstrom. According to the meeting minutes, Mr. Kaiser and Mr. Edstrom appear to have failed to abstain from voting on the following reimbursement claims:

Name	Description	Amount Paid
Jim Kaiser	Service	\$ 112.50
Duane Edstrom	Service	212.50
Total		\$ 325.00

The following is an excerpt from the meeting minutes:

Industrial Services, Inc.	exp	1,975.91
Windstream	exp	139.37
Norris Public Power	exp	923.00
Wahoo Waverly Newspaper	exp	253.18
Hawkins	sup	25.19
Greg Bouc	se	368.75
Kathy Leggett	se	184.70
DHHS NE Public Health Env. Lab	se	15.00
Sam's Club	exp	50.00
Sheri Verkamp	sup	177.44
Katie Pickel	se	116.59
Duane Edstrom	se	212.50
Jim Kaiser	se	112.50
Salaries	se	800.00
Exp-5, Sup-2, Se-7		
Motion to approve the above claims was made by Kubicek, seconded by Edstrom; roll call vote was: Kubicek - yea, Kaiser - yea, Edstrom - yea, Kubicek - yea, Schnieder - yea.		

The apparent failure of Mr. Kaiser and Mr. Edstrom to abstain, as acting Board members, from voting on the above motion 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. Village Funds Held by County Treasurer

Our review of the Village's bank accounts revealed that municipal funds, totaling \$40,265.18, are being held by the Lancaster County (County) Treasurer's office in a "multi-fund certificate of deposit" program, which includes funds from other political subdivisions within the County.

After further inquiry, we learned that the County Treasurer may have been holding the Village's funds for anywhere between 20 to 30 years – despite being presently uncertain, it appears, as to either the purpose or the legal authority for retaining possession of those monies.

Neb. Rev. Stat. § 23-1601(3) (Reissue 2022) does authorize a county treasurer, “at the direction of the city or village,” to invest “bond fund money collected for each city or village located within each county.” Per its fiscal year 2023 audit waiver request, however, the Village’s only debt was comprised of USDA loans as of September 30, 2023. Consequently, the funds being held by the County Treasurer do not appear to be “bond fund money” of the Village.

Further, if the County Treasurer lacks the authority to hold the funds at issue, Neb. Rev. Stat. § 23-1601(4)(a) (Reissue 2022) requires that money to be remitted to the Village, as follows:

On or before the fifteenth day of each month, the county treasurer (i) shall pay to each city, village, school district, educational service unit, county agricultural society, rural or suburban fire protection district, and township located within the county the amount of all funds collected or received for the city, village, school district, educational service unit, county agricultural society, rural or suburban fire protection district, and township the previous calendar month, including bond fund money when requested by any city of the first class under section 16-731, and (ii) on forms provided by the Auditor of Public Accounts, shall include with the payment a statement indicating the source of all such funds received or collected and an accounting of any expense incurred in the collection of ad valorem taxes, except that the Auditor of Public Accounts shall, upon request of a county, approve the use and reproduction of a county's general ledger or other existing forms if such ledger or other forms clearly indicate the sources of all funds received or collected and an accounting of any expenses incurred in the collection of ad valorem taxes.

(Emphasis added.) Moreover, Neb. Rev. Stat. § 17-606(1) (Reissue 2022) requires all Village monies to be in the custody of the Village Treasurer, as follows:

The treasurer of each city of the second class or village shall be the custodian of all money belonging to the city or village.

Good internal control and sound accounting practices require procedures to ensure that the Village Treasurer maintains custody of all municipal funds not legally authorized to be held elsewhere. Without such procedures, there is an increased risk for not only loss, misuse, or theft of Village monies but also noncompliance with State statute.

We recommend the implementation of procedures to ensure the Village Treasurer maintains custody of all municipal funds not legally authorized to be held elsewhere. We also recommend the Village work with the County Treasurer to resolve this concern by either establishing the legal basis for holding the municipal monies at issue outside of the custody of the Village Treasurer or remitting those funds to their lawful custodian. Finally, because this comment gives rise to concerns regarding possible noncompliance with State statute, and the “multi-fund certificate of deposit” program operated by the Lancaster County Treasurer includes monies from other political subdivision as well, we are forwarding this information to both the Lancaster County Attorney and the Lancaster County Treasurer for further review.

3. 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 9, 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 9, 2023:

The following claims were presented:		
Industrial Services, Inc.	exp	1,975.91
Windstream	exp	139.37
Norris Public Power	exp	923.00
Wahoo Waverly Newspaper	exp	253.18
Hawkins	sup	25.19
Greg Bouc	se	368.75
Kathy Leggett	se	184.70
DHHS NE Public Health Env. Lab	se	15.00
Sam's Club	exp	50.00
Sheri Verkamp	sup	177.44
Katie Pickel	se	116.59
Duane Edstrom	se	212.50
Jim Kaiser	se	112.50
Salaries	se	800.00
Exp-5, Sup-2, Se-7		

Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022) of the Open Meetings Act (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.

4. Payment of Unapproved Claims

During our comparison of the Village’s bank account details to claims approved by the Board, the APA identified the following checks, totaling \$3,938.10, which were paid but not included on the claims listing to be approved by the Board.

Details of the unapproved payments are included in the table below:

Name/Vendor	Check Date	Amount	Check #
NE Dept of Revenue	4/20/23	\$ 466.76	2457
NE Dept of Revenue	4/20/23	8.65	2582
AED Authority Division of Nova Enterprises	4/22/23	2,585.49	1939
NE Dept of Revenue	4/28/23	6.51	2556
US Treasury	4/28/23	122.27	2557
US Treasury	4/28/23	55.90	1940
NE Dept of Revenue	4/28/23	10.68	1971
US Treasury	4/28/23	311.36	1972
NE Dept of Revenue	4/28/23	3.28	1907
US Treasury	4/28/23	122.40	1908
US Treasury	4/28/23	244.80	2583
Total		\$ 3,938.10	

Neb. Rev. Stat. § 17-614(1)(a) (Supp. 2023) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

(Emphasis added.) Good internal control requires procedures to ensure that all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

Without such procedures, there is an increased risk for the loss or misuse of Village funds.

We recommend the Board implement procedures to ensure all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

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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