



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Daniel Homes, Chairperson
Village of Valparaiso
PO Box 147
Valparaiso, NE 68065

Dear Mr. Homes:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received allegations that the Village of Valparaiso (Village) has been making improper expenditures of municipal funds. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA obtained financial records and other relevant documentation from the Village. Based on the outcome of this preliminary planning work, including an analysis of the information obtained, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action.

Background Information

The Village is located in Saunders County, Nebraska. The Board of Trustees (Board) is the governing body that exercises financial accountability and control over activities relevant to the operations of the Village. Board members are elected by the public and have broad decision-making authority, including the power to levy taxes and to designate management, the ability to exert significant influence over all Village operations, and the primary responsibility for related fiscal matters.

The following comments and recommendations, which have been discussed with the appropriate members of the Village and its management, are intended to improve internal control or result in other operating efficiencies.

Comments and Recommendations

1. Impermissible Gratuity

The Board approved eight bonus payments to Village employees between August 1, 2021, and March 31, 2024. The following table summarizes those bonus payments:

Claim Date	Payee	Description	Amount
12/14/2021	Cheryl Rieck	Christmas Bonus	\$200.00
12/14/2021	Greg Bouc	Christmas Bonus	\$500.00
12/12/2023	Bobby Draper	Bonus	\$100.00
12/12/2023	James Isaacson	Bonus	\$100.00
12/12/2023	Kathy Leggett	Bonus	\$100.00
12/12/2023	Nick Sanders	Bonus	\$250.00
12/12/2023	Stephanie Nelson	Bonus	\$400.00
12/12/2023	Greg Bouc	Bonus	\$700.00
Total			\$2,350.00

In addition to the bonus payments shown above, the Village provided a \$50 Visa gift card to the Village Utilities Superintendent for such incidentals as gas, food, or an expense of his choice. According to Village representatives, the Utilities Superintendent had experienced a health scare, and the Board wanted to offer its well wishes and show its support with this gift.

Article III, § 19, of the Nebraska Constitution contains the following prohibition against gratuitous payments to public employees:

The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement.

The Nebraska Attorney General has summarized this constitutional provision by explaining, “Nebraska law generally requires work be performed in order for payment to be received.” Op. Att’y Gen. No. 95071 (Sept. 13, 1995).

According to the Nebraska Supreme Court, this constitutional prohibition is applicable to both the State and its many political subdivisions. *Retired City Civilian Employees Club of City of Omaha v. City of Omaha Employees’ Retirement System et al.*, 199 Neb. 507, 512, 260 N.W.2d 472, 475 (1977). Consequently, the Village is subject to the injunction against gratuities.

Good internal control requires procedures to ensure that any payments, including bonuses, to Village employees are made in strict accordance with Article III, § 19.

Without such procedures, there is an increased risk for not only loss or misuse of public funds but also violation of the Nebraska Constitution.

We recommend the Village implement procedures to ensure all payments are constitutionally permissible.

2. Debit Card Issues

The Village utilizes two debit cards to make municipal purchases. Upon inquiry with municipal representatives, the APA was informed that the Village Clerk, Stephanie Nelson, and the Village Utilities Superintendent, Greg Bouc, have access to the purchasing cards. The APA examined the Village debit card purchases for the period January 1, 2023, through March 31, 2024, and noted the following issues:

Questionable Debit Card Purchase

For the period examined, the APA identified one questionable debit card purchase, totaling \$85.37, made on February 20, 2024, at Harry’s Tavern, a local restaurant. Per discussion with Village representatives, this was a personal purchase resulting from the Utilities Superintendent’s inadvertent use of the municipal purchasing card. After this charge was discovered during reconciliation, the Utilities Superintendent reimbursed the Village.

Neb. Rev. Stat. § 13-610(2) (Reissue 2022) requires a political subdivision’s purchasing card to be used for the exclusive benefit of that governmental entity, as follows:

Any political subdivision may utilize its purchasing card program for the purchase of goods and services for and on behalf of the political subdivision.

Thus, the misuse of municipal resources for personal gain is strictly prohibited under State law.

Good internal control and sound accounting practices require procedures to ensure that municipal purchasing cards are used solely for the benefit of the Village.

Lack of Purchasing Card Policy

The Village lacked a written purchasing card policy that not only specified allowable purchases and authorized users but also outlined procedures for safeguarding Village assets when using a municipal debit card.

Furthermore, with the use of a debit card, the Village increases its risk of unrecoverable loss of funds due to fraud because such cards do not provide as much fraud protection as a credit card or other types of purchasing cards. The Village also increases its risk of payments being made without proper Board authorization because expenditures with the debit card do not require dual signatures for approval.

Neb. Rev. Stat. § 13-610 (Reissue 2022) provides, in relevant part, the following requirements for a political subdivision's purchasing card program:

(1) A political subdivision, through its governing body, may create its own purchasing card program. The governing body shall determine the type of purchasing card or cards utilized in the purchasing card program and shall approve or disapprove those persons who will be assigned a purchasing card. Under the direction of its governing body, any political subdivision may contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating the purchasing card program on behalf of the political subdivision. Expenses associated with the political subdivision's purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

* * * *

(4) An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

* * * *

(6) No officer or employee of a political subdivision shall use a political subdivision purchasing card for any unauthorized use as determined by the governing body.

Ensuring that Village purchasing cards are used only for authorized purposes, or the privilege of their use is properly suspended, as required by law, is difficult, if not impossible, without formal municipal guidelines or, as referenced in statute, "rules and regulations adopted and promulgated by the political subdivision" to establish the parameters for such legitimate use.

Good internal control requires written guidelines for the proper use of the Village's purchasing cards, including formal designation of both the authorized users and the allowable uses thereof.

Payment of Sales Tax

During our examination of supporting documentation for the debit card purchases tested, the APA noted that the Village paid a total of \$64.40 in Nebraska sales tax.

Per Neb. Rev. Stat. § 77-2704.15(1)(a) (Supp. 2023), 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

Good internal control requires procedures to ensure that sales taxes are not paid on municipal purchases.

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

We recommend the Board implement procedures to ensure the following: 1) the Village’s purchasing cards are used only for appropriate municipal expenditures; 2) a formal purchasing card policy is implemented to outline procedures for the proper use of the Village’s cards, including designation of allowable purchases and authorized users; and 3) the Village does not pay Nebraska sales tax.

3. Lack of Uniform Allowance Policy

Between August 1, 2021, and March 31, 2024, the Village Utilities Superintendent appears to have used one of the Village’s purchasing cards to make multiple purchases of clothing items for uniforms. The APA inquired with municipal representatives about the existence of any formal, written policies regarding employee uniform allowances or reimbursements, including permissible items, maximum amount to be spent, etc. However, the Village was unable to provide any such policies or guidelines.

It is the APA’s understanding that work clothes and uniform allowances and reimbursements should be considered “fringe benefits” per Internal Revenue Service (IRS) guidelines. IRS Publication 5137 (Rev. 10-2022) offers guidance to employers regarding certain fringe benefits, including uniform allowances or reimbursements.

Publication 5137 describes “Work Clothes and Uniform Allowances and Reimbursements” as follows:

*Periodic allowance payments made to employees for the purchase and maintenance of specific articles of **employer-required** uniforms are not taxable to the employees to the extent that the allowances are used to pay for uniforms that are not adaptable to general use and are not worn for general use, and the employees substantiate the expenses. If the employer does not require substantiation, the allowance is taxable as wages and subject to withholding when paid.*

Based on this guidance, proper documentation must be submitted in order to ensure that the allowance was both for “employer-required” articles and spent on qualifying purchases (e.g., items “that are not adaptable to general use and are not worn for general use”). If such support is not provided, this allowance should be included in the Utilities Superintendent’s taxable wages.

Good internal control requires procedures to ensure that all provisions for employee fringe benefits, including uniform allowances or reimbursements, are specified in written policies or agreements formally approved by the Board. Those same procedures should provide for determining whether fringe benefits given to Village employees must be included in their taxable wages.

We recommend the implementation of procedures to ensure the following: 1) all provisions for employee fringe benefits, including uniform allowances or reimbursements, are specified in written policies or agreements formally approved by the Board; and 2) a determination is made regarding whether fringe benefits provided to Village employees must be included in their taxable wages.

4. Potentially Disallowed Purchase

For the period August 1, 2021, through March 31, 2024, the APA observed one municipal payment made for memorial flowers. The following table summarizes this Village expenditure:

Date	Payee	Description	Amount
1/10/2023	Found & Flora	Memorial flowers	\$71.97

The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. § 13-2201 et seq. (Reissue 2022), 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 Villages, 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. Memorial flowers are not found among that select statutory list of permissible expenditures. As a result, such disbursements must be considered disallowed by law.

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 Village funds.

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

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Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during our work to make comments and recommendations that we hope will be useful to the Village.

Draft copies of this letter were furnished to the Village to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. The Village declined to respond.

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 these specified parties. However, this communication is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

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Sincerely,



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