



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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August 9, 2024

Randy Olson, Chairperson
Burt Washington Drainage District
1212 M Street
Tekamah, NE 68061

Dear Chairperson Mr. Olson:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver requests for the Burt Washington Drainage District (District) for the fiscal years ended February 28, 2021, February 28, 2022, February 28, 2023, and February 29, 2024. **The requests for fiscal years 2021, 2022, 2023, and 2024 have been approved.**

However, the District's amount of disbursements for each of the fiscal years ending 2021 through 2024 exceeded our normal threshold (\$500,000) for granting a waiver of the audit requirement. Disbursements (excluding interfund transfers) for these four fiscal years were \$528,371, \$583,113, \$521,223, and \$523,810, respectively, which exceed the normal audit waiver threshold. Due to the District's submission of supporting documentation for one-time, low risk expenditures, that accounted for a large percentage of the expenditures for each fiscal year, we were able to consider for these years, the District's activity to be low enough to grant the audit waiver requests.

However, if the February 28, 2025, fiscal year end disbursements are similar to or greater than the fiscal year 2021 through 2024's expenditures, an audit of fiscal year end February 28, 2025, may be required. This information is only for the District's consideration of planning for fiscal year 2025 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 District.

The following information is intended to improve internal controls or result in other operational efficiencies.

Comments and Recommendations

1. Incorrect Tax Withholdings

The APA obtained the District's bank account statements for the period March 1, 2020, to February 29, 2024. From these statements, the APA noted that the Director was receiving a monthly insurance stipend payment of \$230 in lieu of electing medical coverage through the District. The following table summarizes these stipend payments:

Fiscal Year	# of Payments	Amount
2021	12	\$ 2,760
2022	12	2,760
2023	12	2,760
2024	12	2,760
Totals	48	\$ 11,040

Such payments are generally allowable if offered under a “Cafeteria Plan” per Section 125 of the Internal Revenue Code, which gives employees a choice between at least one taxable benefit (i.e., cash-in-lieu payments) and at least one qualified benefit. The APA inquired with District representatives regarding these payments, and it appears that not only does the District lack a formal, written Cafeteria Plan, but also payroll taxes have not been withheld from these insurance stipend payments, contrary to the Internal Revenue Service (IRS) regulations.

The “FAQs for government entities regarding Cafeteria Plans” information (last updated January 3, 2023) on the IRS website states the following, as is relevant:

A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of section 125 of the Internal Revenue Code. It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit.

* * * *

If an employee elects to receive cash instead of any qualified benefit, it is treated as wages subject to all employment taxes.

(Emphasis added.) Good internal controls require procedures to ensure that any taxable benefit (e.g., cash-in-lieu payments) provided by the District is subject to all employment taxes in the payroll system in accordance with applicable IRS regulations.

We recommend the District implement procedures to ensure any taxable benefit (e.g., cash-in-lieu payments) provided by the District is subject to all employment taxes in the payroll system in accordance with applicable IRS regulations.

2. Potentially Disallowed Purchases

During the examination of the District’s general bank account statements, the APA noted the following seven potentially disallowed payments, totaling \$4,282.12, that were for “Christmas,” “Memorials,” “Chamber Bucks,” or “Funeral.”

Date	Name	Check #	Memo	Amount
12/19/2019	Chamber of Commerce	18306	Christmas	\$ 750.00
2/12/2020	Save Misc Market	18394	Austin’s funeral	119.17
12/13/2021	Chamber of Commerce	18882		750.00
2/28/2022	Gerhart Thompson		Note	912.95
10/20/2022	Dennis C-- Family	19111	Memorial	250.00
12/21/2022	Cash	19157	Christmas - employees	750.00
12/12/2023	Chamber of Commerce	19406	Chamber bucks	750.00
Total				\$ 4,282.12

Note: Per the fiscal year 2022 Treasurer’s report, this payment was for employee gifts and a memorial.

The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. § 13-2201 (Reissue 2022) et seq., 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 sanitary drainage districts among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Reissue 2022).

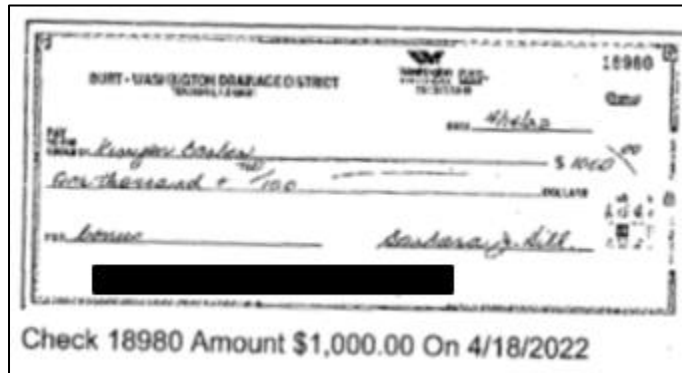
Neb. Rev. Stat. § 13-2203 (Reissue 2022) of the Act enumerates the miscellaneous expenditures permitted by governing bodies of local governments. Christmas gifts, memorials, and purchases of flowers – whether for funerals, memorials, or other personal occasions – are not found among that select statutory 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 District funds.

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

3. Impermissible Gratuity

On April 14, 2022, the District Board paid an employee of the District a \$1,000 “bonus.” According to District representatives, this payment was for the employee’s “long loyal service to the District” – which was paid in addition to the employee’s regular pay. An image of the bonus payment check is shown below.



The bonus payment at issue constitutes gratuities, which appear problematic in the light of the following statutory and constitutional considerations.

To start, the APA is unaware of any legal authority for the District to give employees bonuses apart from a valid employment contract or formal policy authorizing extra compensation for additional work to be performed. According to District representatives, the District does not have any valid employment contract or a formal, written policy that authorizes extra compensation.

More importantly, 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 (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. 95071 (Sept. 13, 1995).

According to the Nebraska Supreme Court (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 District is subject to the injunction against gratuities.

Discussing the terminology found in Article III, § 19, the Court has explained, “A payment of compensation to a public servant constitutes extra compensation whenever there is no legal obligation to pay such compensation.” *Myers v. Nebraska Equal Opportunity Com’n*, 255 Neb. 156, 163, 582 N.W.2d 362, 367 (1998) (quoting *Matter of Mullane v. McKenzie*, 269 N.Y. 369, 377, 199 N.E. 624, 627 (1936)).

The Attorney General has shed additional light on the prohibition in Article III, § 19, as follows:

As we stated in Op. Att’y Gen. No. 94064 (August 22, 1994), the purpose of state constitutional provisions such as Art. III, § 19 which prohibit extra compensation to public employees after services are rendered is to prevent payments in the nature of gratuities for past services.

Op. Att’y Gen. No. 95063 (Aug. 9, 1995). In that same opinion, the Attorney General offered the following:

With this rule in mind, it becomes apparent that a payment to a state employee upon his or her termination for which the state receives nothing would constitute a gratuity forbidden by Art. III, § 19. For example, if a state employee voluntarily retires after 50 years of service and receives a payment of \$ 25,000 solely for his long and faithful service, such a payment could be characterized as a gratuity and would clearly be improper.

It should be noted that the constitutional prohibition against gratuities does not necessarily apply to certain types of salary adjustments, such as longevity pay granted pursuant to the explicit terms of a valid contractual agreement – which, unlike an impermissible gratuitous bonus, is earned compensation.

The payment at issue here does not appear to constitute such contractual salary adjustments; rather, they are bonuses for which the District receives no promised or actual future benefit, making them constitutionally suspect.

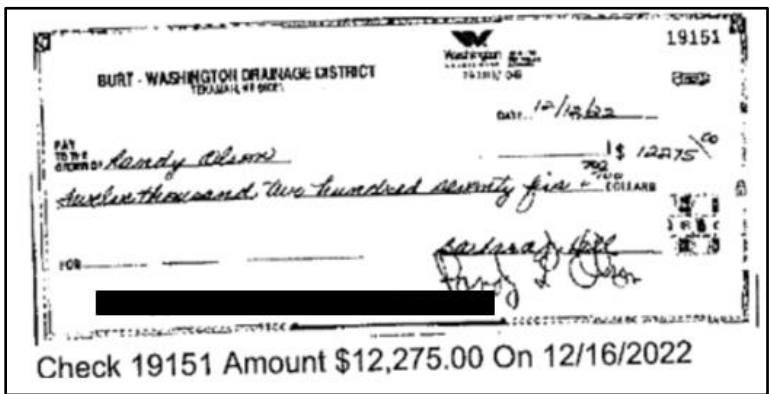
Good internal control requires procedures to ensure that any payments, including bonuses, to District employees are made in strict accordance with Article III, § 19.

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

We recommend the District consult with the District Attorney, County Attorney, or the Nebraska Attorney General regarding the permissibility of the “bonus” payment addressed in this comment.

4. Lack of Adequate Documentation

The APA noted one payment, totaling \$12,275, written to Randy Olson, the Board Chairperson, on December 12, 2022. According to District representatives, the payment was for Mr. Olson’s “management of the employees.” An image of this check is shown below.



The District informed the APA that Mr. Olson will track his hours, and then at the end of the year, he is issued a Form 1099 that shows the total amount that is paid to him. An excerpt of the tracked hours (and mileage) for the above payment is shown below.

1-10-2023 Burt Washington Change
 JAN 1st 2022 to Dec 31 2022

Total Hours
 223 @ \$50 = \$11,150

Total Miles
 1875 Miles @ 6¢ = \$1125

Total Management Fee \$12,275

Burt J. Olson

In addition to the documentation provided above, the APA requested the District provide any additional underlying documentation, such as mileage logs and timesheets, to support the 223 hours worked and the 1,875 miles driven during the period January 1, 2022, to December 31, 2022.

JANUARY 1 st - 2022 to DECEMBER 31, 2022	HOURS	Miles
JANUARY	12	98
FEBRUARY	13	112
MARCH	18	151
APRIL	19	159
MAY	24	202
JUNE	22	185
JULY	23	191
AUGUST	24	187
SEPTEMBER	17	128
OCTOBER	16	172
NOVEMBER	18	148
DECEMBER	17	142
	<u>223 Hours</u>	<u>1875 Miles</u>

Although the District was able to provide the APA with the documentation shown above, the District was still unable to provide documentation that contained adequate detail to support the actual mileage incurred and hours worked. Therefore, the APA was unable to determine the actual routes taken, and the days and times worked, and as a result, the APA was unable to determine if such payment was reasonable.

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

We recommend the District implement procedures to ensure proper documentation is maintained for all disbursement transactions.

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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 District'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 District.

This communication is intended solely for the information and use of the District 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