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Dustin Breiner, Chairperson
Boyd-Holt County 911 Dispatch Center
P.O. Box 463
O'Neill, NE 68763

Dear Mr. Breiner:

We have received and reviewed the audit waiver request for the Boyd-Holt County 911 Dispatch Center (Dispatch Center) for the fiscal year ended September 30, 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 Dispatch Center.

Background Information

The Dispatch Center is a nonprofit corporation located in Holt County, Nebraska, and was created through an agreement between Boyd County and Holt County, executed pursuant to the Interlocal Cooperation Act, which is set out at Neb. Rev. Stat. §§ 13-801 to 13-827 (Reissue 2022). The Dispatch Center provides emergency dispatching services for several surrounding municipalities and is governed by an Administrative Board of Directors (Board), which consists of seven members with representation as follows: two members appointed by the Boyd County Board of Supervisors; two members appointed by the Holt County Board of Supervisors; two members appointed by the O'Neill City Council; and one member elected by the technical committee established by the Interlocal Agreement executed by the Dispatch Center with other political subdivisions.

A significant portion of the Dispatch Center's funding is derived from assessments charged to each municipality that it serves. The funds that the Dispatch Center receives from municipalities are deposited into a checking account that the Dispatch Center maintains through Pinnacle Bank, which the Dispatch Center also uses to deposit and hold other funds, including those received from the Niobrara Valley Electric Membership Corporation, a rural electric cooperative nonprofit organization, for providing telephone answering services.

The table below provides a summary of the Dispatch Center's receipts and disbursements during fiscal year 2023:

| FY2023 | Amount |
|-------------------------------|---------------------|
| Beginning Bank Balance | \$155,327.42 |
| Receipts | |
| State PSC Allocation | \$63,244.92 |
| Municipality Assessments | \$527,160.00 |
| 911 Surcharges | \$40,800.56 |
| Other Receipts | \$27,984.84 |
| Disbursements | |
| Personnel Services | \$527,957.11 |
| Capital Outlay/Improvements | \$45,709.51 |
| Professional Fees | \$37,058.40 |

| FY2023 | Amount |
|-----------------------------|---------------------|
| Disbursements | |
| Telecommunications Services | \$30,947.08 |
| Other Disbursements | \$62,188.27 |
| Ending Bank Balance | \$110,657.37 |

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

Comments and Recommendations

1. Apparent Impermissible Gratuity

In December 2022, the Dispatch Center made a debit card purchase of \$650 to Taco and Tequila, a restaurant in O’Neill, Nebraska. An excerpt of the Dispatch Center’s operating bank account showing this transaction is provided below:

| |
|---|
| XX8430 VISA PURCHASE TACO AND TEQUILA ONEILL NE 00006586 12/22 650.00 000037 |
|---|

According to the minutes for the Dispatch Center Board (Board) meeting held on December 6, 2022, the Board approved the purchase of gift cards to Taco and Tequila in the amounts of \$75 for full-time Dispatch Center staff and \$25 for part-time employees. The following image is an excerpt of the minutes showing the Board’s approval of this purchase:

Holiday-
Talk was had about getting employees gift cards for the holiday. Motion was made to give \$75 to full time employees to Taco and Tequilla, no second motion dies. Wrede made the motion for everyone to get \$50, 2nd by Menish. Menish, yes; Wrede, yes; Treptow, no; Briener, no; Nicolaus, no; Otte, no; Larabee, no. Motion not passed. Motion made by Nicolaus to give \$75 to full time and \$25 to part time, 2nd by Otte. Larabee, no; Wrede, no; Nicolaus, yes; Treptow, yes; Menish, no; Otte, yes; Briener, yes. Motion passed.

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. No. 95071 (Sept. 13, 1995).

Discussing the terminology found in Article III, § 19, the Nebraska Supreme 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 (August 9, 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).

Brought into existence under the Interlocal Cooperation Act (Act), the Dispatch Center is subject to the same constitutional injunction against gratuities that the two counties responsible for its creation must observe. Section 13-804(1) (Reissue 2022) of the Act says, in relevant part, the following:

Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state

Similarly, Neb. Rev. Stat. § 13-807 (Reissue 2022) of the Act provides, as is relevant, the following:

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which at least one of the public agencies entering into the contract is authorized by law to perform.

(Emphasis added.) Commenting upon the powers of a joint entity created under the Act, the Attorney General has stated the following:

We also point out that a joint entity created by agreement under the [Interlocal Cooperation] Act is imbued with characteristics of governmental subdivisions. By statute, the joint entity constitutes a “separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement. . . .” Neb. Rev. Stat. § 13-804(6) (Cum. Supp. 1996). . . . Of course, the [Interlocal Cooperation] Act is not intended to increase nor enhance the substantive powers and authority of governmental subdivisions. Rather, the [Interlocal Cooperation] Act authorizes governmental subdivisions to act jointly for exercise of any powers, privileges, or authority to the extent permitted by law. Neb. Rev. Stat. § 13-804(1) (Cum. Supp. 1996). Local governmental subdivisions have such powers and authority as conferred by law. Counties and county boards can only exercise such powers as are expressly granted by statute which are strictly construed.

(Emphasis added.) Op. Att’y Gen. No. 96087 (December 20, 1996). In a subsequent opinion, the Attorney General offered this further observation regarding the operations of joint entities under the Act:

As you note, Neb. Rev. Stat. § 13-807 (1991) authorizes public agencies to enter into contracts for performing functions which each agency entering into the contract is authorized by law to perform. Thus, the Board [a joint entity created under the Act] cannot exercise powers beyond those conferred by law upon each of the governmental subdivisions that are parties to the interlocal agreement.

(Emphasis added.) Op. Att’y Gen. No. 97011 (February 14, 1997). Additionally, when the APA inquired about the Taco and Tequila gift card purchase, Dispatch Center representatives claimed to be unable to obtain a receipt because the vendor did not have a receipt printer. Dispatch Center representatives did provide the meeting minutes approving this purchase; however, no other supporting documentation was offered for this purchase.

Good internal control requires procedures to ensure that any payments, including gift cards, to Dispatch Center employees are made in strict accordance with Article III, § 19. Those same procedures should ensure also that adequate documentation is maintained for all Dispatch Center transactions.

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

We recommend the Dispatch Center implement procedures to ensure all expenditures are made in accordance with Article III, § 19, and adequate documentation is maintained for all of its transactions.

2. Services Provided to Private Business

During our examination, the APA was informed that the Niobrara Valley Electric Membership Corporation (NVEMC) pays the Dispatch Center, pursuant to agreement between those two entities, to answer after-hours power outage calls. The NVEMC is an energy cooperative based out of O’Neill, Nebraska, that provides electricity to the surrounding area, having filed with the Nebraska Secretary of State as a nonprofit corporation on August 13, 1945.

The arrangement for the services that the Dispatch Center provides to the NVEMC is as follows: After the NVEMC closes for the day, service and outage calls are redirected to the Dispatch Center. The Dispatch Center then takes those calls and reports them back to NVEMC the following business day. For providing the call answering services, the Dispatch Center received a total of \$5,296 from NVEMC during fiscal year 2023. Those payments are summarized in the table below:

| Deposit Date | Amount Rec’d from NVEMC | Total Deposit Amount |
|---------------------|--------------------------------|-----------------------------|
| 1/6/2023 | \$1,599.00 | \$1,635.00 |
| 6/16/2023 | \$1,523.00 | \$4,471.35 |
| 8/8/2023 | \$2,174.00 | \$5,137.00 |
| Totals | \$5,296.00 | \$11,243.35 |

However, as explained below, the APA questions the Dispatch Center’s authority to provide such after-hours answering services to the NVEMC.

Section 1 (“Purpose”) of the interlocal agreement under which the Dispatch Center was formed states the following:

The purpose of this agreement is to establish and maintain a 911 Emergency Communications Dispatch System.

Section 2 (“Definitions”) of the interlocal agreement details the nature of the services to be provided:

The 24 hour E-911 Service Call public safety answering point which directly dispatches, refers, or relays the dispatch of all or some of the following categories of health and safety services; fire fighting, law enforcement, emergency medical services, and similar emergency services.

Providing an after-hours answering service for a local energy cooperative does not appear to fall within the scope of the emergency dispatch duties specified in the interlocal agreement.

Additionally, the Emergency Telephone Communication Systems Act (ETCS Act), which is set out at Neb. Rev. Stat. §§ 86-420 to 86-441.01 (Reissue 2014), authorizes counties, cities, villages, and rural or suburban fire protection districts to charge users for 911 emergency services.

Neb. Rev. Stat. § 86-425 (Reissue 2014) of the ETCS Act defines “E-911 service or enhanced-911 service” as follows:

E-911 service or enhanced-911 service means a telephone exchange communications service by which one or more public safety answering points designated by the governing body may receive telephone calls dialed to the telephone number 911. E-911 service generally may provide, but is not limited to, selective routing, automatic number identification, and automatic location identification features.

Similarly, Neb. Rev. Stat § 86-428 (Reissue 2014) of the ETCS Act provides the following definition for “911 service”:

911 service means a telephone service which provides a service user with the ability to reach a public safety answering point by dialing the digits 911 for the purpose of reporting emergencies. The level of technology to be used for the provision of 911 service in a particular 911 service area shall be determined by the governing bodies having jurisdiction over such 911 service area.

Neb. Rev. Stat. § 86-431 (Reissue 2014) of the ETCS Act defines a “public safety answering point” as follows:

Public safety answering point means a twenty-four-hour, local-jurisdiction communications facility which receives 911 service calls and either directly dispatches emergency services or relays calls to the appropriate public safety agency.

Likewise, Neb. Rev. Stat. § 86-433 (Reissue 2014) of the ETCS Act defines a “service surcharge” as follows:

Service surcharge means a charge set by a governing body and assessed on each telephone number or functional equivalent of service users whose primary place of use is within the governing body’s designated 911 service area . . .

The above definitional language indicates that the Dispatch Center’s authority under the interlocal agreement should pertain to providing 911 services to connect users with public safety agencies, which Neb. Rev. Stat. § 86-430 (Reissue 2014) of the ETCS Act defines as follows:

Public safety agency means an agency which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services.

Furthermore, Neb. Rev. Stat. § 86-440 (Reissue 2014) of the ETCS Act authorizes the governing bodies of political subdivisions to enter into specific agreements:

Any governing body authorized to impose a service surcharge may enter into an agreement directly with a service supplier of 911 service or may contract and cooperate with any public safety agency, with other states or their political subdivisions, or with any association or corporation for the administration of 911 service as provided by law.

None of the above statutory provisions appear to support the Dispatch Center’s provision of after-hours answering services for the NVEMC.

As pointed out already in **Comment and Recommendation Number 1** (“Apparent Impermissible Gratuity”) herein, Neb. Rev. Stat. § 13-807 (Reissue 2022) of the Act authorizes public agencies to contract with one another to “perform any governmental service, activity, or undertaking which at least one of the public agencies entering into the contract is authorized by law to perform.”

Noted previously also, Neb. Rev. Stat. § 13-804(1) (Reissue 2022) of the Act permits any “power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state” to be “exercised and enjoyed jointly with any other public agency of this state”

Nebraska case law is clear that political subdivisions enjoy only limited powers. To start, the Nebraska Supreme Court (Court) has made this observation regarding the underlying authority of counties:

It is well settled in this state that counties have no inherent power, and that their commissioners, or agents, acting for them, have only such powers, generally, as are especially granted to them by statute, or such as are incidentally necessary to carry into effect those which are granted. And the grant of power must be strictly construed. . . . There being no question then upon the necessity of the grant of power before authority exists, it is only necessary to examine the statute and ascertain whether the grant has been made.

(Emphasis added.) *State ex rel. Grady v. Comm’rs Lincoln Co.*, 18 Neb. 283, 283-284, 25 N.W. 91, 91 (1885) (internal citations omitted). The same is true, the Court has explained, for Nebraska municipalities:

Historically, states were viewed as possessing all powers necessary for the protection of the general public, and thus a municipality or local city government could exercise only those powers specifically granted to it by the sovereign state. . . . A legislature’s grant of powers to a municipality is often referred to as a “legislative charter.” . . . Legislative grants of power are strictly construed pursuant to what has become known as Dillon’s rule, which provides:

“[A] municipal corporation possesses and can exercise these powers only: (1) Those granted in express terms; (2) those necessarily or fairly implied in, or incident to, the powers expressly granted; and (3) those essential to the declared objects and purposes of the municipality, not merely convenient, but indispensable.”

Consumers Coal Co. v. City of Lincoln, 109 Neb. 51, 69-70, 189 N.W. 643, 650 (1922).

(Emphasis added.) *Lincoln Elec. Sys. v. Neb. Pub. Serv. Comm’n (In re Lincoln Elec. Sys.)*, 265 Neb. 70, 80-81, 655 N.W.2d 363, 372 (2003). The Court has made this further observation:

Political subdivisions “are purely entities of legislative creation. They do not exist independent of some action of the legislative department of government bringing them into being. All the powers which they can possess are derived from the creator. Unlike natural persons they can exercise no power except such as has been expressly delegated to them, or such as may be inferred from some express delegated power essential to give effect to that power.”
Traditionally, Nebraska has required strict construction regarding the authority granted to a political subdivision.

(Emphasis added.) *Neb. League of Sav. & Loan Assos. v. Johnson*, 215 Neb. 19, 24, 337 N.W.2d 114, 117 (1983) (internal citations omitted). Given the strict construction required of statutory grants of power to political subdivisions, the Court has concluded, “[W]here doubt exists, such doubt must be resolved against the grant.” *L.J. Vontz Const. Co., Inc. v. City of Alliance*, 243 Neb. 334, 341, 500 N.W.2d 173, 177 (1993).

The APA is unaware of any express, or even implied, authority in statute – or, for that matter, anywhere else – for a county, a city, or a joint entity created pursuant to an interlocal agreement between such political subdivisions to offer answering services similar to those the Dispatch Center provides to the NVEMC. Consequently, that activity appears legally suspect.

Good internal controls require procedures to ensure that all operations and services provided by the Dispatch Center are authorized by statute.

Without such procedures, there is an increased risk for the performance of statutorily impermissible activity.

We recommend the Dispatch Center obtain formal legal guidance – preferably from the Nebraska Attorney General, if possible – regarding this matter to ensure that all of its operations are allowable under State law.

Overall Dispatch Center Response:

We will comply with your recommendations within 30 days of our receipt of the final letter from you.

* * * * *

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 Dispatch Center.

Draft copies of this letter were furnished to the Dispatch Center to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the Dispatch Center 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.

Audit Staff Working on this Examination:

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Sincerely,



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