



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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State Auditor

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December 13, 2023

Corey Steel, State Court Administrator  
Nebraska Supreme Court  
1211 State Capitol  
1445 K Street/P.O. Box 98910  
Lincoln, Nebraska 68509

Dear Mr. Steel:

We have audited the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the State of Nebraska (State), as of and for the year ended June 30, 2023, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and we have issued our report thereon dated December 13, 2023. In connection with our engagement to audit the financial statements, we considered the State's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the State's internal control. Accordingly, we do not express an opinion on the effectiveness of the State's internal control.

In connection with our engagement to audit the financial statements as described above, we noted a certain internal control or compliance matter related to the activities of the Supreme Court or other operational matter that is presented below for your consideration. The comment and recommendation, which has been discussed with the appropriate members of the Supreme Court's management, is intended to improve internal control or result in other operating efficiencies.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

In addition, we noted other matters involving internal control and its operation that we have reported to management of the Supreme Court, pursuant to American Institute of Certified Public Accounts (AICPA) Auditing Standards AU-C Section 265.17, in a separate early communication letter dated September 8, 2023.

Draft copies of this letter were furnished to the Supreme Court to provide management with an opportunity to review and to respond to the comment and recommendation contained herein. The formal response received has been incorporated into this letter. The response was not subjected to the other auditing procedures applied in the engagement to audit the financial statements and, accordingly, we express no opinion on it. A response that indicates corrective action has been taken was not verified at this time, but it will be verified in the next audit.

The following is our comment and recommendation for the year ended June 30, 2023.

### **Outstanding Liquidated Damages**

The Supreme Court failed to provide adequate guidance regarding overdue case balances consisting of liquidated damages assessed by county courts for violations of the Game Law, which is set out at Neb. Rev. Stat. §§ 37-201 to 37-811 (Reissue 2016, Cum. Supp. 2022, Supp. 2023)) and §§ 37-1501 to 37-1510 (Reissue 2016).

According to Neb. Rev. Stat. § 37-613(1) (Cum. Supp. 2022), “Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby.”

Neb. Rev. Stat. § 37-601 (Reissue 2016) requires the prosecution of all persons charged with violating the Game Law, as follows:

*All prosecutions for violations of the Game Law shall be brought in the name of the State of Nebraska before any court having jurisdiction thereof. It shall be the duty of all prosecuting attorneys in their respective jurisdictions to prosecute all persons charged with violations of the Game Law.*

Additionally, § 37-613(3) provides the following regarding the collection of liquidated damages incurred for violating the Game Law:

*Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.*

(Emphasis added.) On a rotational basis, the Auditor of Public Accounts (APA) completed attestation engagements for each of the State’s county courts, which are under the jurisdiction of the Supreme Court. During these attestation engagements, the APA found several cases listed on the Overdue Case Balance Reports with balances consisting of liquidated damages due for violating the Game Law. Some of these cases date back more than 20 years. The APA has also noted an inconsistency between courts in the recording and handling of such liquidated damages cases.

The APA identified the following concerns:

- The Supreme Court has not provided guidance to the county courts for collecting outstanding liquidated balances “by execution or otherwise,” as prescribed by § 37-613(3).
- Neither the Supreme Court nor the Nebraska Game and Parks Commission (Commission) has an accurate listing of outstanding liquidated damages. The Supreme Court provided a report showing \$71,820 in such damages. However, the Commission’s report, as of June 20, 2023, showed the total amount owed as \$185,223.
- Some county courts have waived liquidated damages incurred for violating the Game Law, using nonmonetary receipts to remove the cases from their outstanding balances reports. Therefore, those waived cases are not reflected on the Supreme Court’s listing. The APA did not find statutory authority to waive those liquidated damages.

- Some county courts are not recording cases in the court system as liquidated damages; instead, the citation might be entered as restitution, which would not show up on the Supreme Court’s listing.
- Cases that have a balance due in the future (current cases) also would not be reflected on the Supreme Court’s listing.

Without proper procedures to ensure that liquidated damages incurred for violating the Game Law are recorded consistently and not waived, as well as collected, there is an increased risk for not only loss of such revenues to the State Game Fund but also noncompliance with State statute.

We recommend the Supreme Court take the following actions regarding liquidated damages incurred for violating the Game Law: 1) provide guidance to the courts under its jurisdiction for following up on outstanding liquidated damages to ensure that all such amounts are collected and not waived; 2) direct all cases involving liquidated damages to be recorded consistently; and 3) work with the Commission to ensure that an accurate listing of outstanding liquidated damages is maintained.

*Supreme Court’s Response: It remains the position of the Administrative Office of the Courts and Probation (AOC) that Neb. Rev. Stat. §37-613 does not create a duty for a court to enforce collection of liquidated damages. However, the AOC will work to improve court practices regarding the Game Law.*

**APA Response: Neb. Rev. Stat. § 37-613(3) (Cum. Supp. 2022) says the following, in relevant part:**

*In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise.*

**(Emphasis added.) Consequently, pursuant to the plain language of § 37-613(3), the County Courts are required not only to enter judgment against the defendant for liquidated damages arising from a conviction for the illegal selling, purchasing, taking, or possessing of any wildlife but also to “collect such damages by execution or otherwise.” Both the entering of the judgment for liquidated damages and the collection thereof are statutorily mandated upon the County Court and therefore, the responsibility of the Supreme Court.**

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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 our knowledge of the Supreme Court and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the Supreme Court.

The purpose of this letter is solely to describe the scope of our testing of internal control over financial reporting and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the State of Nebraska’s internal control over financial reporting or on compliance. This letter is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the State of Nebraska’s internal control over financial reporting and compliance. Accordingly, this communication is not suitable for any other purposes.



Kris Kucera, CPA, CFE  
Assistant Deputy Auditor