



# NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley  
State Auditor

Mike.Foley@nebraska.gov  
PO Box 98917  
State Capitol, Suite 2303  
Lincoln, Nebraska 68509  
402-471-2111, FAX 402-471-3301  
auditors.nebraska.gov

March 19, 2024

Jason Hefner, Board President  
Bloomfield Community Schools  
311 East Benton Street  
Bloomfield, NE 68718

Dear Mr. Hefner:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding possible misuse of public funds and property at the Bloomfield Community School District (District). Specifically, it is alleged that the District's Kitchen Manager has expended school funds to purchase food for personal use. The Kitchen Manager has also been accused of selling cafeteria food at a discounted price to not only family and friends but also local businesses. 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 District. 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. The following comments and recommendations, which have been discussed with the appropriate members of the District and its management, are intended to improve internal control or result in other operating efficiencies.

## Comments and Recommendations

### 1. District Food Purchases for Personal Benefit

According to District representatives, the District has two bank accounts related to its Lunch Fund. One is held at Farmers & Merchants State Bank, located in Bloomfield, Nebraska, and is the main account used for purchasing food items for the District. The other account is held at the Bank of Hartington, located in Hartington, Nebraska, and is used for depositing payments received from individuals who purchase food items originally ordered by the District and paid from the main Lunch Fund bank account at Farmers & Merchants State Bank.

In examining the bank statements of the District's Lunch Fund account held at the Bank of Hartington for the period January 1, 2022, to December 31, 2023, the APA noted several payments, totaling \$1,231.16, made by the District's Kitchen Manager, Debbie Nipp. Further review by the APA revealed that Ms. Nipp made those payments as apparent reimbursements for personal purchases that she had made with District funds.

The following purchases made by Ms. Nipp correspond to the various subsequent deposits into the District's Lunch Fund account:


Vendor	Invoice Number	Invoice Date	Date Paid	Deposit Date	Amount Ordered
	Note		N/A	1/12/2022	\$ 77.90
	Note		4/13/2022	4/13/2022	\$ 60.20
	Note		6/24/2022	6/27/2022	\$ 265.65
	Note		9/7/2022	9/9/2022	\$ 154.45
	Note		5/23/2023	5/25/2023	\$ 201.76
	Note		5/23/2023	5/25/2023	\$ 141.22

Vendor	Invoice Number	Invoice Date	Date Paid	Deposit Date	Amount Ordered
	Note		9/1/2023	9/5/2023	\$ 78.05
	Note		10/6/2023	10/12/2023	\$ 95.80
	Note		10/6/2023	10/12/2023	\$ 57.53
Cash-Wa Distributing	13998666	11/6/2023	12/22/2023	12/22/2023	\$ 98.60
<b>Total</b>					<b>\$ 1,231.16</b>

*Note: The APA did not receive supporting documentation for these payments.*


For the payment on December 22, 2023, as shown in the above table, Ms. Nipp purchased 15 pounds of beef using the District's Cash-Wa Distributing (Cash-Wa) account.

The following are images of both the invoice for that purchase and the check for the payment made by Ms. Nipp, as apparent reimbursement for that expenditure of District funds, to the Lunch Fund account:



**Cash-Wa Distributing**  
www.cashwa.com  
PO Box 309  
Kearney NE 68848-0309  
(800) 652-0010 (308) 237-3151

Page 1 of 1



Route: 202  
**45**

Customer Copy  
Invoice: 13998666  
Date: 11-05-2023  
Rep: 33 ROD P  
Whse: K

Ship To: [Redacted]

BLOOMFIELD HIGH SCHOOL  
311 E BENTON ST  
BLOOMFIELD, NE 68718  
402.373.4800

Bill To: [Redacted]

BLOOMFIELD HIGH SCHOOL  
311 E BENTON ST  
BLOOMFIELD, NE 68718

Terms: 20TH OF THE MONTH Due: 12-21-2023

Ord	Qty	U/M	Pack	Description	Item #	Price	Code	Total
✓	1	SKU	15 lb	ALL SHORTAGES MUST BE REPORTED IMMEDIATE BEEF FZ PATTY 4-1 CLOUD THE CLOUD FRZ	952874	98.60		98.60

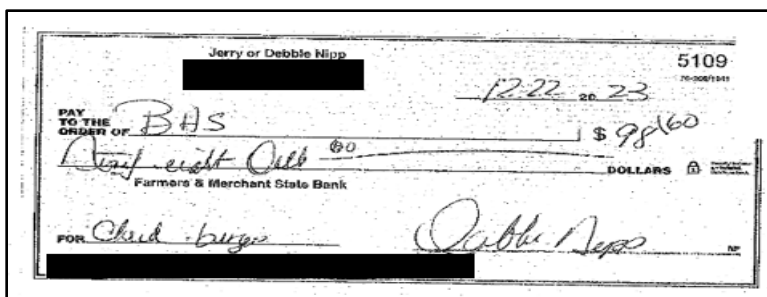
*Dab*

*I will put a check for this so it comes down today ck received 12-22-23*

	DUE
	0.00 98.60

CASH  CHECK (R) AMOUNT

Customer Received By: *TB*



As shown above, Ms. Nipp appears to have billed her personal purchase to the District on November 6, 2023, when the items were ordered; however, she did not make the apparent reimbursement payment to the Lunch Fund account until December 22, 2023, or 46 days later.

Without using the District’s Cash-Wa account to make the November 6, 2023, purchase, it is unlikely that Ms. Nipp would have been allowed to make such a deferred payment.

Ms. Nipp’s use of District funds to purchase food for personal benefit gives rise to serious legal concerns. To start, as explained by the Nebraska Attorney General, there is a “longstanding principle of constitutional law in Nebraska that public funds cannot be expended for private purposes.” Op. Att’y Gen. No. 97048 (Sept. 16, 1997). According to the Nebraska Supreme Court, this common law prohibition is core to the “the fundamental concepts of our constitutional system.” *State ex rel. Douglas v. Thone*, 204 Neb. 836, 842, 286 N.W.2d 249, 252 (1979).

Additionally, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2021), which is found in the Nebraska Political Accountability and Disclosure Act, as set out at Neb. Rev. Stat. §§ 49-1401 to 49-14,142 (Reissue 2021, Cum. Supp. 2022), provides 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.*

Subsection (2) of that same statute provides:

*A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.*

(Emphasis added.) Section 49-14,101.01(7) says, in relevant part, “[A]ny person violating this section shall be guilty of a Class III misdemeanor . . . .”

By using the District’s Lunch Fund account to buy food for herself, the Kitchen Manager benefited not only from what was essentially an interest-free loan of public funds but also by avoiding sales tax due to the District’s tax-exempt status.

Good internal controls require procedures to ensure that District funds are used only as provided by law. Without such procedures, there is an increased risk for not only loss or misappropriation of public monies but also violation of State statute.

We recommend the implementation of procedures to preclude any future disbursement of District funds for personal, as opposed to public, purposes, regardless of whether such expenditures are subsequently reimbursed. Furthermore, the District should ensure sales taxes are properly paid or reported to the Nebraska Department of Revenue on the purchases at issue. Finally, because the issue addressed herein gives rise to concerns regarding possible violation of State law, we are referring this information to the Nebraska Department of Education, the Nebraska Attorney General, the Nebraska Accountability and Disclosure Commission, and the Knox County Attorney for further review.

## 2. Unallowable Resale of Food Items

In addition to the personal food purchases described in the previous comment herein, the APA observed multiple instances of the District’s Kitchen Manager, Ms. Debbie Nipp, appearing to have made food purchases with school funds for the purpose of reselling those items later to local businesses or individuals.

On at least 21 occasions, Ms. Nipp purchased food items through the District’s food vendors that were subsequently resold to individuals or local businesses. The table below shows the reimbursement payments, totaling \$2,683.81, made to the District from the recipients of those resold items during the period January 1, 2022, to December 31, 2023:

Check Date	Deposit Date	Payor	Amount	Notes
2/7/2022	2/11/2022	Bloomfield Booster Club	\$ 378.69	<b>Note 1</b>
5/23/2022	6/8/2022	Individual 4	\$ 85.02	Observed a handwritten note that stated taco meat, salsa, and sour cream were purchased for a total of \$85.02.
5/4/2022	6/8/2022	Individual 5	\$ 101.33	<b>Note 1</b>
5/16/2022	6/27/2022	Individual 2 <b>Note 2</b>	\$ 145.76	<b>Note 1</b>
9/7/2022	9/9/2022	Bloomfield Booster Club	\$ 235.67	<b>Note 1</b>
10/12/2022	11/3/2022	Former Board Member	\$ 152.56	<b>Note 1</b>
11/1/2022	11/3/2022	Individual 2 <b>Note 2</b>	\$ 50.97	<b>Note 1</b>
12/22/2022	1/10/2023	Individual 1	\$ 33.60	<b>Note 1</b>
2/28/2023	2/28/2023	Elementary Principal	\$ 57.53	<b>Note 1</b>
3/22/2023	4/12/2023	Elementary Principal	\$ 18.00	Observed a handwritten note that stated 78 dinner buns and 80 butter packets were purchased for a total of \$18.00.
4/5/2023	4/12/2023	Former Board Member	\$ 32.77	<b>Note 1</b>
4/6/2023	4/12/2023	Elementary Principal	\$ 10.08	Observed a handwritten note that stated 48 cookies were purchased for a total of \$10.08.
4/12/2023	4/18/2023	Grossenburg Implement, Inc.	\$ 45.50	Observed a handwritten note that stated 70 cinnamon rolls were purchased for \$0.60 each for “ladies’ night.” The note also stated the payment was authorized by Debbie Nipp.
4/13/2023	4/18/2023	Community Youth Group	\$ 84.21	Observed a handwritten note that stated one box of biscuits was purchased for \$36.96, and a box of cinnamon rolls was purchased for \$47.25.
6/22/2023	6/28/2023	United Methodist Church	\$ 388.11	Observed a handwritten note that stated seven cases of peanut butter and jelly sandwiches were provided to the church for \$189.27, and another eight cases were purchased for \$198.84.
6/27/2023	6/30/2023	Bloomfield Music Boosters	\$ 217.99	Observed a handwritten note that stated various food items, such as potatoes, butter, salsa, sour cream, diced ham, taco meat, and broccoli, were purchased for a total of \$217.99.
12/6/2023	12/6/2023	Bloomfield Band Boosters	\$ 117.01	<b>Note 1</b>
4/11/2023	4/12/2023	Bloomfield Music Boosters	\$ 146.25	Observed a handwritten note that stated 225 cinnamon rolls were purchased for a total of \$146.25.
4/11/2023	4/12/2023	Bloomfield Music Boosters	\$ 235.34	Observed a handwritten note that stated various food items, such as sour cream, potatoes, butter, diced ham, salsa, and broccoli, were purchased for a total of \$235.34.
5/15/2023	5/25/2023	Individual 2 <b>Note 2</b>	\$ 93.87	<b>Note 1</b>
12/21/2023	12/22/2023	Individual 3	\$ 53.55	Observed a handwritten note that stated 105 cinnamon rolls plus frosting were purchased for a total of \$53.55.
<b>Total</b>			<b>\$ 2,683.81</b>	

**Note 1:** The APA did not receive adequate supporting documentation for these payments.

**Note 2:** This individual is a former employee of the District.

It is important to note that both the District’s Elementary Principal and a former District Board of Education (Board) member were among the individuals who reimbursed the District for food items received from Ms. Nipp.

Each of the above payments was deposited into the Lunch Fund account held at the Bank of Hartington, as referenced in the previous comment.

In addition, the APA obtained the original invoices from the food vendors. This documentation showed the dates that the items listed in the above table were ordered. As a result, the APA found that the following reimbursements, as shown in the above table, were not paid to the District in a timely manner:

- The United Methodist Church made a reimbursement of \$388.11 to the District on June 22, 2023, which was 672 days after the District received the first invoice from U.S. Foods on August 19, 2021.
- Individual 4 reimbursed the District \$85.02 on May 23, 2022, which was 49 days after the first invoice from U.S. Foods was provided to the District on April 4, 2022, and 32 days after the second invoice was received on April 21, 2022. It should be noted also that the District was unable to provide supporting documentation for the salsa that was purchased.
- The Community Youth Group made a reimbursement of \$84.21 to the District on April 13, 2023, which was 350 days after the District received the an invoice from U.S. Foods on April 28, 2022, and 346 days after an Cash-Wa invoice was received on May 2, 2022.

***Discounted Prices***

Not only were these food items purchased with District funds and later resold to individuals or local businesses, but also the prices at which they were resold did not include the costs associated with the additional time and preparation necessary for their procurement – creating, in effect, a considerable discount when compared to the usual inflationary impact of such costs upon standard commercial transactions.

For example, Ms. Nipp charged the Community Youth Group \$84.21 for the Mother’s Day Brunch that occurred in May 2022. As shown in the above table, the Community Youth Group made this payment on April 13, 2023, and it was deposited into the Lunch Fund account on April 18, 2023. However, the time, labor, and other costs associated with procuring the food items – such as expenses associated with ordering, preparing, and delivering the food, not to mention the subsequent collection of payment – were not factored into the price of the items sold to the Community Youth Group.

The following is an image of a Facebook post made by a member of the Community Youth Group to advertise the Mother’s Day Brunch:



In addressing the issues presented herein, the APA has relied upon Nebraska case law stating clearly that political subdivisions enjoy only limited powers:

*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.*

*Nebraska League of Sav. and Loan Associations v. Johnson*, 215 Neb. 19, 24, 337 N.W.2d 114, 117 (1983) (internal citations omitted.) According to the Nebraska Attorney General (Attorney General), moreover, “A public school district is a political subdivision of the state . . .” Op. Att’y Gen. No. 3 (Jan. 14, 1981). Consequently, such entities must operate strictly within the legislative parameters established for them in State law. The Nebraska Supreme Court has emphasized this fact by declaring, “A school district is a creature of statute possessing no powers whatever beyond those given by the legislature . . .” *American Surety Co. v. School Dist.*, 117 Neb. 6, 219 N.W. 583 (1928).

The APA is aware of no express or even implied authority in statute – or, for that matter, anywhere else – for a District official or employee to resell to private individuals or entities food purchased with school funds, especially when such transactions have no relationship whatsoever to the underlying educational purpose of the District. Even if such authority were to exist, Ms. Nipp’s actions appear to have been entirely unilateral in nature, having been undertaken without the requisite approval, much less oversight, of District officials.

Pertinent to the present issue is Op. Att’y Gen. No. 107 (May 6, 1983), an opinion in which the Attorney General concluded that it was inappropriate for a county board “to convey personal property such as drainage tubes and bridge planks to private citizens of the county . . .” The facts addressed in that opinion are somewhat analogous to those discussed herein, making the Attorney General’s analysis applicable to the question of Ms. Nipp’s resale of food items purchased with District funds.

To start, in addition to a basic lack of statutory, the Attorney General addressed the problem of expending public funds for a private purpose, as follows:

*To order items of personal property each year with the knowledge that part of them would be sold to private individuals is, however, tantamount to entering into business for the selling of such products. As long ago as Oxnard Beet Sugar Co. v. State, 73 Neb. 57, 102 N.W. 80 (1905), reh’g overruled, 73 Neb. 66, 105 N.W. 716 (1905), it was held that appropriation for the purpose of private business is not a public purpose and, therefore, is unconstitutional.*

(Emphasis added.) Elaborating further, the Attorney General offered the following quote from the Nebraska Supreme Court in *State ex rel. Beck v. York*, 164 Neb. 223, 231, 82 N.W.2d 269, 274 (1957):

*To permit legislation of this character to stand in the face of constitutional prohibitions would constitute a death blow to the private enterprise system and reduce the Constitution to a shambles in so far as its protection of private enterprise is concerned.*

The Attorney General finished by observing, “[W]e are unable to find a . . . public purpose in a county, in effect, going into competition with private businesses engaged in the retail lumber and culvert business.”

There appears to be a similar lack of public purpose in the resale of District food items to local residents and other businesses – casting further doubt, if any were needed, upon the propriety of such unauthorized activity by a District employee.

It should be noted also that Ms. Nipp’s food-selling activities gives rise to concerns regarding the opportunity, at least, for improper personal gain. Neb. Rev. Stat. § 49-14,101.01 (Reissue 2021) of the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. § 49-1401 et seq. (Reissue 2021, Cum. Supp. 2022), contains the following prohibitions:

*(1) 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.*

*(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.*

The motivation behind the decision by Ms. Nipp to resell food items purchased with District funds remains unclear at present. If it should be shown, however, that she benefited financially from that peculiar undertaking, the above statutory language would apply.

Finally, another potential complication arising from Ms. Nipp's resale of food items purchased with District funds is the question of whether those transactions were subject to State taxes. Depending upon its type, as well as state of preparation at the time, those foodstuffs may have been taxable under administrative rules and regulations promulgated by the Nebraska Department of Revenue (Department). Specifically, Title 316 Nebraska Administrative Code (NAC) 1.083.01 provides the following:

*Retail sales of prepared food, including sales by caterers and concessionaires, and all sales of prepared food, food, and food ingredients through vending machines are taxable. Retail sales of alcoholic beverages are taxable, whether sold packaged or sold by the drink. (Reg-1-031, Coin-Operated Machines; Reg-1-040, Alcoholic Liquors Consumed on the Premises; and Reg-1-087, Food or Food Ingredients.)*

Title 316 NAC 1.083.02 provides, in relevant part, the following definition of prepared food:

*Prepared food is food generally intended for immediate consumption, and is prepared to a point generally accepted as ready to be eaten without further preparation. Prepared food means:*

*083.02A Food sold in a heated state or heated by the retailer, including, but not limited to hamburgers, hot dogs, pizza, egg rolls, baked beans, and nachos with heated cheese sauce;*

*083.02B Two or more foods or food ingredients mixed or combined by the retailer for sale as a single item and not sold by weight or volume, including, but not limited to, fountain drinks, ice cream cones, sandwiches, and salad bars; or*

*083.02C Food sold with eating utensils provided by the retailer. Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, cups, napkins, or straws. Plates do not include a container or packaging used to transport the food.*

Per Title 316 NAC 1.083.08, the following prepared food sales, among others, are exempt from taxation:

*083.08 The following sales of prepared food are not taxable:*

*\* \* \* \**

*083.08F Prepared food sold or served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, or in an elementary or secondary school or any institution of higher education, public or private, during the regular school day or at an approved function of the school or institution. (Reg-1-092, Educational Institutions).*


*083.08F(1) This exemption does not apply to sales of prepared food by an institution of higher education at a facility or event that is open to the public.*

Ms. Nipp's resale of food purchased with District funds gives rise to a plethora of possible legal concerns, including not only those presented above but also likely others. It goes without saying, then, that good internal controls require procedures to ensure that District funds are expended only for proper educational purposes, and District property, including food purchased with school funds, ostensibly for student cafeteria use, is acquired and utilized only as permitted by law.

Without such procedures, there is an increased risk for not only loss or misuse of public funds but also significant legal complications.

We recommend the implementation of procedures to ensure that: 1) District funds are expended only for proper educational purposes; and 2) District property, including food purchased with school funds, ostensibly for student cafeteria use, is acquired and utilized only as permitted by law. Because of the possible legal concerns raised by this issue, we are referring the information herein to the Nebraska Department of Education, the Nebraska Attorney General, the Nebraska Accountability and Disclosure Commission, the Nebraska Department of Revenue, and the Knox County Attorney for further review.


*Bloomfield Community Schools Response:*



## BLOOMFIELD COMMUNITY SCHOOLS

311 East Benton Street P.O. Box 308, Bloomfield, Nebraska 68718  
Phone: 402-373-4985 FAX: 855-372-4017

<b>Jeff Messersmith</b> Superintendent/Principal/AD	<b>Tabitha Gilsdorf</b> Elementary Principal	<b>Konnie Thiele</b> Business Manager
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**Dear Mr. Kubicek,**

**Thank you for the comprehensive guidance regarding the necessary actions for our school lunch program at Bloomfield Community Schools. At present, we will move forward with implementing the following measures across all areas.**

**Step One:**  
At the start of every school year, all staff will participate in a school in-service session aimed at addressing issues related to waste, mismanagement, and fraud within Bloomfield Community Schools.


**Step Two:**  
Building administrators will conduct thorough reviews of purchased items, while teachers will continue to inventory all items, including consumables, in each classroom. Additionally, the Kitchen Manager, Transportation Director, and Head Custodian will provide comprehensive inventories of both consumable and non-consumable items.

**Step Three:**  
In the spring of each school year, staff will undergo a review focused on reducing waste, mismanagement of school district property, and opportunities for fraud. Administration will assist in establishing and implementing an effective inventory system, along with a budget document detailing estimated and actual sales, specifying the purpose of fundraisers and their actual costs.

**These steps are implemented to minimize or eradicate waste, mismanagement, and fraud. They also promote accountability among administration and staff regarding the utilization of school property, as well as fostering fiscal responsibility during fundraising efforts. Furthermore, they establish best practices for the management of finances and property.**

**Bloomfield Community Schools will make these corrective actions through our staff handbook and review of our board policies.**

**Thank you for your guidance and support,**



**Jeffrey L. Messersmith**  
Superintendent BCS



\* \* \* \* \*

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 District.

Draft copies of this letter were furnished to the District 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 District 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:

Craig Kubicek, CPA, CFE – Deputy Auditor  
Mason Culver – Auditor-In-Charge  
Destini Morales – Auditor  
Kelsey Lutz – Examiner

Sincerely,



Craig Kubicek, CPA, CFE  
Deputy Auditor  
Auditor of Public Accounts  
Room 2303, State Capitol  
Lincoln, NE 68509  
Phone (402) 471-3686  
[craig.kubicek@nebraska.gov](mailto:craig.kubicek@nebraska.gov)

cc. Nebraska Department of Education  
Nebraska Attorney General  
Nebraska Accountability and Disclosure Commission  
Nebraska Department of Revenue  
Knox County Attorney