



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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February 18, 2025

Justin Holsing, Chairperson
Village of Virginia
319 2nd St.
Virginia, NE 68458

Dear Chairperson Holsing:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Virginia (Village) for the fiscal year ending 2024. **That request has been approved.**

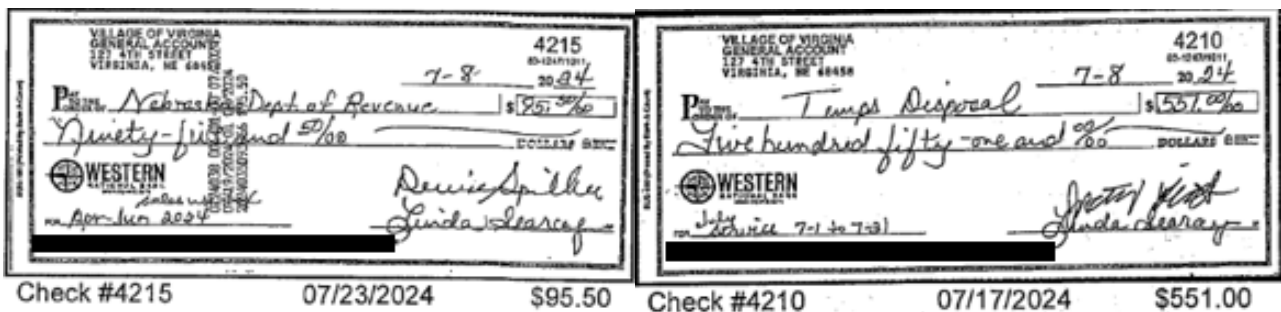
While performing, pursuant to Neb. Rev. Stat. § 84-304 (Reissue 2024), the preliminary examination necessary to determine whether the audit waiver should be allowed or further audit work would be required, the APA noted certain internal control or compliance matters, or other operational issues, within the Village.

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

Comments and Recommendations

1. Lack of Board Chairperson and Village Clerk’s Signature on Checks

The APA obtained the bank statements for the Village’s accounts from its fiscal year 2024 audit waiver request. From these statements, the APA noted that some of the Village checks written during the examination period were missing either the Board Chairperson’s signature or the Village Clerk’s Signature. Examples of such checks are shown below.



State statute requires Village checks to be signed by both the Chairperson of the Board of Trustees (Board) and the Village Clerk. Specifically, Neb. Rev. Stat. § 17-711 (Reissue 2022) provides the following:

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

(Emphasis added.) Good internal control and sound accounting practices require procedures to ensure that Village checks contain the statutorily required endorsements.

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

A similar issue was identified by the APA in a prior review and was disclosed to the Village in the APA's letter dated February 20, 2024, which can be found on the APA's website. However, this issue does not appear to have been corrected after the APA's notification.

We recommend the Board implement procedures to require dual signatures, from the Board Chairperson and the Village Clerk, on all Village checks, as required by law.

2. Job and Wage Publication

The APA noted that the Village failed to publish its annual job and wage publication between July 15, 2024, and August 15, 2024, as required by State statute. No publication was made by the Village.

Neb. Rev. Stat. § 19-1102 (Reissue 2022) states, in relevant part, the following:

Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position.

Good internal control requires procedures to ensure that the Village's annual job and wage publication is published between July 15 and August 15 annually, as required by law.

Without such procedures, there is an increased risk of not only statutory noncompliance but also lack of transparency and loss or misuse of funds.

We recommend the Board implement procedures to ensure the Village's annual job and wage publication is published between July 15 and August 15 annually, as required by law.

3. Payroll Tax Withholding Issues

During the fiscal year ended September 30, 2024, taxes were not withheld from wages paid to Village employees and remitted to either the Internal Revenue Service (IRS) or the Nebraska Department of Revenue (Department). The Village is required to withhold Federal taxes, including income tax, Social Security tax, and Medicare tax, as well as State income tax from compensation paid to municipal employees.

According to the Village Clerk, the Village does not withhold Federal or State income tax, as well as the employee's share of Social Security and Medicare taxes, from Village employee pay. The Village provides each Village Board member, the Clerk, and the Village Maintenance worker with an IRS Form 1099 instead of withholding and remitting taxes through either a quarterly Form 941 or an annual Form 944, and then issuing a Form W-2 to those employees. Instead, the employee is supposed to ensure taxes are paid at the time the employee files their personal tax return with the IRS or Department. However, it is unclear what authority the Village has for this practice.

While the Social Security and Medicare taxes were not properly withheld from the employee's paycheck, the Village did file a Form 944 with the IRS for the employer and employee's share of Social Security and Medicare taxes. The amount owed for these taxes of \$486.54 was paid on January 28, 2024. No Federal income tax was reported on the Form 944 nor remitted to the IRS.

The requirements for withholding payroll taxes from compensation paid to public officials and employees are explained in various Federal and State publications, as described below.

For Federal income taxes, the “Tax Withholding for Government Workers” information (last updated December 13, 2024), which appears on the IRS website, states the following, as is relevant:

Internal Revenue Code section 3401(c) indicates that an “officer, employee, or elected official” of government is an employee for income tax withholding purposes.

* * * *

The courts generally define “public official” and “public officer” to mean anyone who exercises significant authority pursuant to public laws. This includes any official who administers or enforces public laws whether the public elected the individual or an office appointed them.

(Emphasis added.) Additionally, the “Frequently Asked Questions” section of IRS Publication 963 (Rev. 7-2020), “Federal-State Reference Guide,” states the following, in relevant part, about the employment status of government officials, especially with regard to not only Federal income taxes but also Social Security and Medicare tax withholdings:

For income tax purposes, elected (or elective) and most appointed officials are defined by IRC Section 3401(c) as employees of the public entity they serve (mayors, members of the legislature, county commissioners, city council members and board or commission members). In general, elected and appointed officials will meet the common-law tests to be considered employees. Regardless of the common-law tests, some positions may be defined as employment by state statute. Some fee-basis officials are by law treated as self-employed. An elected or appointed official who is an employee is subject to rules for mandatory Social Security and Medicare unless covered under a Section 218 Agreement or a qualified participant in a retirement system. All officials elected or appointed to their positions after March 31, 1986, are subject to Medicare withholding.

(Emphasis added.) Turning specifically to State income taxes, the “2024 Nebraska Circular EN,” published by the Nebraska Department of Revenue, provides the following, as is relevant:

If you have an office or conduct business in Nebraska and are considered an employer for federal purposes, you must withhold income taxes for Nebraska. This includes payments made to all employees, including nonresidents, for services performed in this state.

(Emphasis added.) Good internal controls require procedures to ensure both the correct classification of employees for tax purposes and the collection of all required Federal and State taxes from such personnel, as appropriate, and the proper remittance thereof.

Without such procedures, there is an increased risk for not only failure to comply with State statute and Federal regulations but also the resulting liability of the Village and its employees alike.

A similar issue was identified by the APA in a prior review and was disclosed to the Village in the APA’s letter dated February 20, 2024, which can be found on the APA’s website. However, this issue does not appear to have been corrected after the APA’s notification.

We recommend the Village implement procedures to ensure both the correct classification of employees for tax purposes and the collection of all required Federal and State taxes from such personnel, as appropriate, and the proper remittance thereof.

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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 Village’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 Village.

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 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". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor