



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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February 11, 2025

Dorothy Benton, Chairperson
Village of Phillips
PO Box 203
Phillips, NE 68865

Dear Chairperson Benton:

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

However, the Village's amount of disbursements for the fiscal year ending September 30, 2024, exceeded our normal threshold (\$500,000) for granting a waiver of the audit requirement. Disbursements for the fiscal year ended 2024, totaled \$564,775, which exceeds the normal audit waiver threshold. Due to the Village's submission of supporting documentation for one-time, low risk expenditures, that accounted for a percentage of the current year's expenditures, we were able to consider for this year, the Village's activity to be low enough to grant the audit waiver request.

However, if the September 30, 2025, fiscal year end disbursements are similar to or greater than the fiscal year 2024's expenditures or near the budgeted amount of \$1,271,539 in expenditures, an audit of fiscal year end September 30, 2025, may be required. This information is only for your consideration of planning for fiscal year 2025 and forward.

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. Impermissible Gratuities

While examining the Village's bank account statements, the APA observed two checks, totaling \$200, that were for holiday bonuses, which are shown in the table below. The Village appears to have given two employees an annual holiday bonus in addition to their regular pay.

Date Cleared	Check #	Payee	Memo	Amount
12/13/2023	12189	Clerk	Holiday Bonus	\$ 100
12/7/2023	12188	Maintenance Supervisor	Holiday Bonus	100
			Total	\$ 200

The holiday bonus payments at issue constitute gratuities, which appear problematic in light of the following statutory and constitutional considerations.

To start, the APA is unaware of any legal authority for the Village to give an employee bonus apart from a valid employment contract or formal policy authorizing extra compensation for additional work performed. The Village has no policy regarding bonuses for its employees.

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. No. 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 Village 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.

The holiday bonuses at issue are clearly gratuitous in nature – neither constituting a legal obligation of the Village nor being given in exchange for any promised or actual future benefit – making them constitutionally suspect.

Good internal control requires procedures to ensure that any payments, including bonuses, to Village 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 Village consult with the Village Attorney, County Attorney, or the Nebraska Attorney General regarding the permissibility of the holiday bonus payments addressed in this comment.

2. Untimely Remittance of Payroll Taxes

The APA obtained the Village’s Form 941, the “Employer’s Quarterly Federal Tax Return,” for the period April 1, 2024, through June 30, 2024. The payment owed for this period, totaled \$4,381.76. During the examination of the Village’s bank account statements, the APA noted one payment made to the Internal Revenue Service (IRS) on July 23, 2024, in the amount of \$3,787.64. However, the Village did not pay the remaining amount of \$594.12 until January 14, 2025 – after the APA inquired with the Village.

Similarly, the APA obtained the Village’s Form 941N, the “Nebraska Income Tax Withholding Return,” for the same period mentioned above. The payment owed for this period totaled \$673.86. During the examination of the Village’s bank accounts, however, the APA did not note any payment made to the Nebraska Department of Revenue (Department) in that amount. The Village, in fact, did not make this payment until January 13, 2025, after the APA’s inquiry with the Village.

The due date for remittance of Federal payroll taxes is discussed in IRS “Topic no. 757, Forms 941 and 944 – deposit requirements” (December 30, 2024). That publication states the following, in relevant part:

You must make deposits according to one of two deposit schedules—monthly or semiweekly. The schedule you use for the current calendar year depends on the amount of employment taxes you reported during your lookback period. If you’ve filed only Form 941, the lookback period is the 12 months (covering four quarters) starting July 1st of the second preceding year and ending on June 30th of the prior year. If you filed Form 944 in either of the two previous years or you’re filing Form 944 in the current year, the lookback period is the calendar year two years prior to the year for which you’re depositing (see Publication 15 (Circular E), Employer’s Tax Guide, Section 11, Depositing Taxes).

* * * *

If you reported taxes of \$50,000 or less during the lookback period, you’re a monthly schedule depositor, and you generally must deposit your employment taxes on payments made during a given month on or before the 15th day of the following month.

(Emphasis added.) Similarly, the due date for State payroll taxes is outlined in the “2024 Nebraska Circular EN,” published by the Department, as is relevant:

The amount of income taxes withheld determines the frequency of deposits.

***Deposit for the first month of the quarter.** An employer must make a deposit if more than \$500 was withheld in this period.*

***Deposit for the second month of the quarter.** An employer must make a deposit if more than \$500 was withheld in either this period or in the first month of the quarter.*

Deposits are required to be made on or before the 15th day of the month following the calendar month the income taxes were withheld.

The due date for filing quarterly Federal payroll tax returns is outlined in IRS “Topic no. 758, Form 941, Employers Quarterly Federal Tax Return and Form 944, Employers Annual Federal Tax Return” (December 30, 2024). That publication states the following, in relevant part:

You’re required to file a separate Form 941 for each quarter (first quarter - January through March, second quarter - April through June, third quarter - July through September, fourth quarter - October through December). Form 941 is generally due by the last day of the month following the end of the quarter.

* * * *

If the due date for filing a return falls on a Saturday, Sunday, or legal holiday, you may file the return on the next business day.

(Emphasis added.) The State payroll tax return filing deadlines are explained in the “2024 Nebraska Circular EN,” published by the Department, as is relevant:

Every employer maintaining an office or transacting business in Nebraska, and making payments to employees, is required to file the Nebraska Income Tax Withholding Return, Form 941N, unless licensed as an annual filer.

Form 941N is filed whether or not there were payments made during the quarter that were subject to Nebraska income tax withholding. The Form 941N is due on or before the last day of the month following the end of the quarter. The Form 941N may be e-filed using DOR's free Form 941N filing program.

* * * *

Employers who have been licensed to file on an annual basis will file a single Form 941N for the entire calendar year. This return is due on or before January 31 of the following year. The Form 941N may be e-filed using DOR's Form 941N free filing program. Quarterly returns will not be sent for the first three quarters of the year.

Good internal controls require procedures to ensure that Federal and State taxes withheld from compensation paid to municipal employees are remitted timely, within Department and IRS regulations and guidelines, to avoid incurring unnecessary late penalties and interest.

Without such procedures, there is an increased risk for not only the loss or misuse of funds but also the potential for incurring additional late penalties and interest.

We recommend the Board implement procedures to ensure State and Federal taxes withheld from municipal employee compensation are timely remitted to the Department and IRS.

3. Negative Bank Balance

During a review of the bank statements obtained from the Village's audit waiver request, the APA noted that the Village's TIF bank account had a negative balance on the following days listed in the table below:

Date Range	Largest Negative Balance
4/5/2024 - 4/9/2024	\$ (1,114.54)

It does not appear that the Village had to pay any overdraft fees.

Good internal controls and sound business practices require procedures to ensure that the Village's bank account contains sufficient funds to pay claims. Without such procedures, there is an increased risk for not only loss, misuse, or theft of Village funds but also accumulation of overdraft fees.

We recommend the Village implement procedures to ensure the Village's bank account contains sufficient funds to pay claims.

4. 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. Instead, the publication was done on December 19, 2024.

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 job and wage publication is published annually between July 15 and August 15, 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 job and wage publication is published annually between July 15 and August 15, as required by law.

5. Payment of Sales Tax

During our examination of supporting documentation for the credit card purchases tested, the APA noted that the Village paid a total of \$40.48 in Nebraska sales tax.

Per Neb. Rev. Stat. § 77-2704.15(1)(a) (Cum. Supp. 2024), purchases made by the State or its political subdivisions are exempt from sales tax, as follows:

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village

Good internal control requires procedures to ensure that State and local sales taxes are not paid on municipal purchases. Without such procedures, there is an increased risk for not only loss or misuse of Village funds but also noncompliance with State statute.

We recommend the Board implement procedures to ensure that the Village does not pay Nebraska and local sales tax.

6. Lack of Credit Card Policy

The Village lacked a written purchasing card policy that not only specified allowable purchases and authorized users but also outlined procedures for safeguarding Village assets when using a municipal credit card.

Neb. Rev. Stat. § 13-610 (Reissue 2022) provides, in relevant part, the following requirements for a political subdivision's purchasing card program:

(1) A political subdivision, through its governing body, may create its own purchasing card program. The governing body shall determine the type of purchasing card or cards utilized in the purchasing card program and shall approve or disapprove those persons who will be assigned a purchasing card. Under the direction of its governing body, any political subdivision may contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating the purchasing card program on behalf of the political subdivision. Expenses associated with the political subdivision's purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

* * * *

(4) An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

* * * *

(6) No officer or employee of a political subdivision shall use a political subdivision purchasing card for any unauthorized use as determined by the governing body.

(Emphasis added.) Ensuring that Village purchasing cards are used only for authorized purposes, or the privilege of their use is properly suspended, as required by law, is difficult, if not impossible, without formal municipal guidelines or, as referenced in statute, "rules and regulations adopted and promulgated by the political subdivision" to establish the parameters for such legitimate use.

Good internal control requires written guidelines for the proper use of the Village’s purchasing cards, including formal designation of both the authorized users and the allowable uses thereof.

We recommend the Village Board implement a formal, written credit card policy to outline procedures for the proper use of the Village’s purchasing card, including designation of allowable purchases and authorized users.

7. Lack of Adequate Documentation

The APA noted three payments, totaling \$196.13, lacked adequate documentation, including an itemized receipt. The following table lists these three payments.

Date Cleared	Payee	Type	Amount
10/6/2023	Whiskey Creek Wood Fire Grill Restaurant	Credit Card Purchase	\$ 60.00
2/8/2024	China Buffet	Meal Reimbursement	16.87
9/19/2024	Scott Hooley	Check #4263	119.26
Total			\$ 196.13

Neb. Rev. Stat. § 13-610(4) (Reissue 2022) requires all purchases with a political subdivision’s purchasing card to be supported by an itemized receipt, as follows:

An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

Good internal control requires procedures to ensure that proper documentation is maintained for all disbursement transactions, including itemized receipts for purchases made with the Village’s purchasing cards.

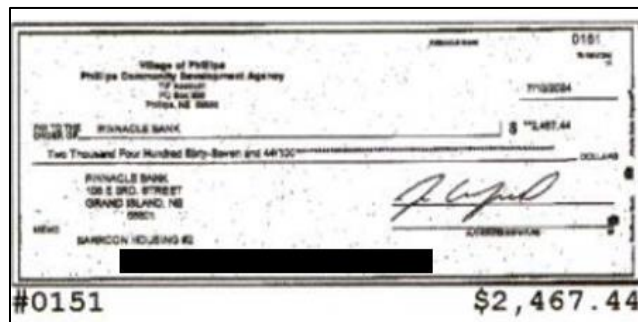
We recommend the Board implement procedures to ensure proper documentation is maintained for all disbursement transactions, including itemized receipts for purchases made with the Village’s purchasing cards.

8. Claims Issues

The APA noted the following issues relating to the Village’s claims made during fiscal year 2024.

Lack of Dual Signatures

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 five of the Village checks written during the examination period, totaling \$4,057.93, contained only one signature. An example of such checks is 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.

Lack of Claim Purpose

During our comparison of the Village’s bank account details to claims approved by the Board, the APA reviewed meeting minutes dated April 17, 2024, and noted that the claims listed therein lacked detailed descriptions of their respective purposes. The following is an excerpt of the approved claims listing provided by the Village for the April 17, 2024, Board meeting:

VILLAGE OF PHILLIPS		Street	
Bills 2024		Aurora Co-Op/F	\$219.61
General	\$11,623.00	Black Hills Energy/G S	\$179.37
Street	\$17,783.88 \$17,829.50	Dobesh Land Leveling, LLC/TS	\$873.88
Water	\$12,447.12	Hamilton Telephone Co.	\$88.30
Sewer	\$5,085.19	MacQueen Light/SH/WH	\$417.82
Bills Total	\$46,939.20 \$46,984.8	Menards/S	\$87.73
		One Call Concepts, Inc./PS	\$7.20
		Redman's Turf Service/PS	\$1,592.90
		Southern Power District/E	\$586.00
		Tjaden Concrete and Construction LLC/PS	\$2,248.20
		Van Kirk Sand and Gravel, Inc/PS	\$11,851.00
		Verizon/CP	\$127.48
		Water	
		Black Hills Energy/GS	\$44.25
		Central District Health Dpt./WT	\$78.00
		Eberl Plumbing & Drain/PS	\$1,295.00
		Municipal Supply, Inc. of NE/WMU	\$132.99
		NE. Public Health Environmental Lab/WS	\$185.00
		Servl-Tech/WS	\$93.00
		Southern Power District/E	\$289.00
		Utility Services Co./YWTM	\$10,349.88
		Sewer	
		Miller Farrell Ins. Ag/PI	\$5,046.25
		Menards/S	\$38.94
		March	
General		Aurora News Register/P	\$52.97
Aurora News Register/P	\$52.97	Black Hills Energy/GS	\$213.21
Black Hills Energy/GS	\$213.21	Hamilton Telephone Co.	\$112.72
Hamilton Telephone Co.	\$112.72	Heartland Disposal/S	\$3,224.00
Heartland Disposal/S	\$3,224.00	Home Federal/M D	\$300.14
Home Federal/M D	\$300.14	Intuit Quickb Books/Mo. Fee	\$12.66
Intuit Quickb Books/Mo. Fee	\$12.66	Intuit Quickbooks/AS	\$684.70
Intuit Quickbooks/AS	\$684.70	Medica/HI	\$384.86
Medica/HI	\$384.86	Menards/S	\$11.65
Menards/S	\$11.65	National Life Co./L I	\$43.90
National Life Co./L I	\$43.90	Nationwide/SB	\$100.00
Nationwide/SB	\$100.00	Nebraska Dpt. Of Revenue/WT	\$438.90
Nebraska Dpt. Of Revenue/WT	\$438.90	Pinnacle Bank/SDB	\$20.00
Pinnacle Bank/SDB	\$20.00	Sams Club/S	\$9.31
Sams Club/S	\$9.31	Southern Public Power District/E	\$208.00
Southern Public Power District/E	\$208.00	Southern Public Power District/E	\$23.45
Southern Public Power District/E	\$23.45	Visa/S	\$41.95
Visa/S	\$41.95	Hoolley, S/P	\$4,381.68
Hoolley, S/P	\$4,381.68	Walker, C/P	\$1,368.90
Walker, C/P	\$1,368.90		

As shown above, short abbreviations are noted next to each claim; however, it is unclear what each abbreviation means as no legend is provided.

Neb. Rev. Stat. § 84-1413(1) (Reissue 2024) of the Open Meetings Act (Act), which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2024), requires political subdivisions and other public entities to “keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.” (Emphasis added.)

Additionally, Neb. Rev. Stat. § 19-1102 (Reissue 2022) requires publication of the Board’s official proceedings, which must include, among other things, the purpose of each claim allowed, as follows:

It shall be the duty of each city clerk or village clerk in every city or village having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the city council or village board of trustees within thirty days after any meeting of the city council or village board of trustees.

The publication shall be in a legal newspaper in or of general circulation in the city or village, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. 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. The charge for the publication shall not exceed the rates provided for in section 23-122.

(Emphasis added.) Good internal control and sound accounting practices require procedures to ensure that the Board’s meeting minutes describe the purpose of each claim allowed.

Payment of Unapproved Claims

During our comparison of the Village’s bank account details to claims approved by the Board, the APA identified five payments, totaling \$3,111.27, which were paid but not included on the claims listing to be approved by the Board. Details of the unapproved payments are included in the table below:

Cleared Date	Name/Vendor	Ck #	Amount
4/30/2024	American Funds	12272	\$ 62.40
4/22/2024	Blue Cross Blue Shield	ACH	54.76
4/23/2024	IRS	ACH	2,315.00
4/30/2024	Pinnacle Bank	ACH	11.00
4/24/2024	Department of Revenue	ACH	668.11
Total			\$ 3,111.27

Neb. Rev. Stat. § 17-614(1)(a) (Cum. Supp. 2024) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

(Emphasis added.) Good internal control requires procedures to ensure that all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

Payment of Claims Prior to Board Approval

During our comparison of the Village’s bank account details to claims approved by the Board, the APA noted that four payments, totaling \$1,413.60, were issued before the underlying claims were approved by the Board. The table below provides a summary of the premature payments:

Name/Vendor	Amount	Approval Date	Date Cleared	Days Paid Before Approval
Home Federal	\$ 300.14	4/17/2024	4/3/2024	14
Intuit QuickBooks	684.70	4/17/2024	3/12/2024	36
Medica	384.86	4/17/2024	4/3/2024	14
National Life Co	43.90	4/17/2024	4/12/2024	5
Total		\$ 1,413.60		

Neb. Rev. Stat. § 17-614(1)(a) (Cum. Supp. 2024) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

(Emphasis added.) Good internal control requires procedures to ensure that all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

Payment in Excess of Approved Amount

During our comparison of the Village’s bank account details to claims approved by the Board, the APA identified one payment, totaling \$913.88, that was paid in excess of the amount approved by the Board. The following table summarizes this overpayment.

Payee	Claim Date	Approved Amount	Amount Paid	Overpayment
Nebraska Department of Revenue	4/17/2024	\$ 438.90	\$ 913.88	\$ 474.98

Good internal controls require procedures to ensure that all claims are made in the amount approved by the Board.

Without such procedures, there is an increased risk for not only failure to comply with statutory requirements and lack of transparency regarding the nature of public expenditures but also the theft, loss, or misuse of Village funds.

We recommend the Board implement procedures to ensure the following: (1) all Village checks include dual signatures, from the Board Chairperson and the Village Clerk, as required by law; (2) the purpose of each claim allowed is included in both the Board’s meeting minutes and the “official proceedings” required to be published afterwards; (3) all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved; and (4) payments are made in the amount approved by the Board.

* * * * *

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,



Mark Avery, CPA
Assistant Deputy Auditor