



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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June 16, 2025

Diane LaPointe, Chairperson
Village of Santee
425 Frazier Avenue North, Ste 2
Niobrara, NE 68760

Dear Chairperson LaPointe:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Santee (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. Payroll Issues

During our examination of the Village's bank account statements submitted with its fiscal year 2024 audit waiver request, the APA noted that 283 municipal payments, totaling \$70,032.23, were made to members of the Village Board of Trustees (Board) and other Village employees. The APA identified the following issues with the Village's payroll procedures:

Board Payments

According to the Acting Village Clerk (Village Clerk), Board members are paid \$100, and the Board Chairperson is paid \$125, per regular Board meeting. In addition to the amount earned for regular meetings, the Village pays both Board members and the Board Chairperson \$200 for special/emergency meetings.

Despite \$200 being the most that can be earned per Board meeting, the APA noted that each Board member and the Board Chairperson received a \$250 payment for two special meetings during fiscal year 2024. The table below summarizes these meetings for which amounts were paid in excess of the Village's approved amount:

Meeting Date	Board Members Paid	Total Amount Paid	Approved Amount	Overpayment
11/14/2023	5	\$ 1,250	\$ 1,000	\$ 250
12/26/2023	5	1,250	1,000	250
Totals	10	\$ 2,500	\$ 2,000	\$ 500

The APA inquired with the Village regarding these payments, and the Village Clerk could not explain why they were in excess of the approved amount.

In addition to the above special meetings, the APA noted one regular meeting that was designated incorrectly as a special meeting, resulting in the Board members receiving payments greater than allowed for regular meetings. When the APA inquired with the Village Clerk, she confirmed that the meeting on August 20, 2024, was a regular meeting; therefore, Board members should have received \$100, with the Board Chairperson receiving \$125. Rather than the \$100 and \$125 payments for Board members and the Board Chairperson, respectively, each received \$250 for this meeting, as shown in the following table:

Meeting Date	Board Members Paid	Total Amount Paid	Approved Amount	Overpayment
8/20/2024	5	\$ 1,250	\$ 525	\$ 725

Furthermore, the APA noted one instance of Board members being paid before a meeting took place. For the special meeting dated July 20, 2024, checks were written to Board members on July 16 and July 18, with two of the five checks being cashed before the meeting occurred. The table below summarizes those premature payments:

Meeting Date	Board Members Paid	Total Amount Paid Early
7/20/2024	5	\$ 1,000

Lack of Adequate Documentation

In addition to the above concerns regarding compensation for attending Board meetings, the APA noted issues with Village payments to individuals for performing various types of general labor, such as maintenance work, cleaning, and other general office tasks. For such labor, the Village has an approved pay rate of \$100 per day. The APA requested documentation to support Village payments made to individuals performing this work; however, the Village did not provide any documentation to support the work performed or how many hours it entailed. From October 1, 2023, through September 30, 2024, the Village made 117 payments, totaling \$37,882.23, for what appears to be this general labor.

Further, the APA noted that a majority of those payments appear to have been made to Board members – whom State statute authorizes to receive additional municipal compensation for performing only seasonal or emergency work.

Neb. Rev. Stat. § 17-209.02(2)(a) (Reissue 2022) provides the following:

The office of village trustee shall not be combined or merged with any other village office or village employment, except that a member of the village board of trustees may receive compensation to perform seasonal or emergency work upon approval by the village board of trustees.

(Emphasis added.) Chapter 17, Article 2, of the Nebraska Revised Statutes provides no definition of “emergency” for purposes of § 17-209.02. Without such guidance, it is necessary to rely upon a long-standing rule of statutory interpretation that requires statutory language to be given its “plain and ordinary” meaning. The Nebraska Supreme Court has utilized this rule numerous times, as follows:

In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.

Nelson v. City of Omaha, 256 Neb. 303, 311, 589 N.W.2d 522, 527 (1999). Typical of the many virtually synonymous meanings accorded to the word is that provided by Webster’s New World Dictionary and Thesaurus (1996), which defines an “emergency” as “a sudden, generally unexpected occurrence demanding immediate action.” When applied to § 17-209.02, that standard definition appears to entail a necessary and immediate short-term response to a particular exigency.

The additional payments to the Board members do not appear to have been made exclusively for either seasonal or emergency work, which would contravene the clear directive in § 17-209.02(2)(a). Additional issues noted by the APA regarding these payments are discussed further in **Comment and Recommendation Number 2** (“Claim Approval Issues”) herein.

Good internal controls require procedures to ensure the following: 1) all payments to Board members are for approved amounts; 2) employee payroll expenditures are adequately documented and supported by timesheets or other evidence of actual hours worked; and 3) extra compensation paid to Board members is for seasonal or emergency work only, as required by State statute.

We recommend the Board implement procedures to ensure the following: 1) all payments to Board members are for approved amounts; 2) employee payroll expenditures are adequately documented and supported by timesheets or other evidence of the actual hours worked; and 3) extra compensation paid to Board members is for seasonal or emergency work only, as required by State statute.

2. Claim Approval Issues

During our examination of the Village’s bank account statements submitted with the Village’s fiscal year 2024 audit waiver request, the APA noted that, generally, the Village appears neither to list individual claims in the Board’s official proceedings nor to record whether Board members abstained from voting when faced with potential conflicts of interest.

The following images are excerpts from the minutes for the Board meeting held on July 20, 2024:

<p>2. <u>ROLL CALL</u> Roll taken by <u>Susie</u> Present: <u>Diane, Natalie, Sherri, Susie, Don</u> Absent: _____ Others; _____ (Quorum Established to Transact Business)</p>
<p>4. <u>FINANCIALS</u> Village Clerk verbally reported <u>July 2024</u> financials: North Central Public Power District - <u>981.03</u> MOTION by: <u>Diane</u> to approve financials as presented. SECONDED by: <u>Sherri</u> All in favor – MOTION CARRIED.</p>

During July 2024, the Village made eight payments, totaling \$2,992.25, to Board members for the general labor addressed previously herein. The following table summarizes not only these payments but also the total amounts paid to the Board members for fiscal year 2024:

Name	APA Description – Pay Type	July 2024 Amount	Fiscal Year 2024 Totals
Natalie Torrez	General Labor	\$ 353.75	\$ 1,178.75
Sherri Henry	General Labor	928.75	7,117.02
Susie Kitto [Deceased]	General Labor	1,709.75	12,808.44
Don LaPointe, Sr.	General Labor	0.00	150.00
Totals		\$ 2,992.25	\$ 21,254.21

However, as shown by the above excerpts from minutes for the July 20, 2024, meeting, all Board members present voted to approve the financials. No Board members appear to have abstained from voting on any claims to themselves. Further, the only individual claim listed was a payment to the North Central Public Power District for \$981.03.

The images below are excerpts from the minutes of a more recent Board meeting held on February 14, 2025:

2. <u>ROLL CALL:</u>	
a. Roll call was taken by: <u>Sherri Henry</u>	
i. Members Present:	
	Sherri Henry
	Diane LaPointe
	Natalie Torrez
ii. Members Absent:	None
iii. Others Present:	None
b. <u>Quorum was established to conduct regular Business</u>	
4. <u>FINANCIALS:</u>	
a. Acting- Village Clerk verbally reported the <u>GENERAL FUND Financials</u> for the month of January 2025 of <u>\$21269.83</u> through voice call to Farmers and Merchants State Bank, Niobrara, NE.	
b. Minus the North Central Public Power District Electric Bill of 1093.89	
c. Remaining Balance of <u>\$20,175.94</u>	
d. <u>Motion by:</u> Diane LaPointe to Approve FINANCIALS:	
i. <u>Seconded by:</u> Natalie Torrez	
1. <u>All in Favor – MOTION CARRIED</u>	

The Village appears to have continued its practice of not listing individual claims approved except for the payments made to the North Central Public Power District.

Neb. Rev. Stat. § 84-1413(1) (Reissue 2024) of the Open Meetings 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.) In addition, the apparent failure of Board members to abstain from voting on claims paid to themselves gives rise to concerns regarding possible violation of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. §§ 49-1401 to 49-14,142 (Reissue 2021, Cum. Supp. 2024).

To start, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2021) states 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.

The penalty for violating the above-cited conflict of interest statute is set out in subsection (7) thereof, as follows:

[A]ny person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Furthermore, Neb. Rev. Stat. § 49-1499.03(2) (Cum. Supp. 2024) provides the following:

(a) Any public official of any political subdivision not designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the political subdivision who shall enter the statement onto the public records of the political subdivision; and

(iii) Except as otherwise provided in subsection (3) of this section, abstain from participating or voting on the matter in which the public official has a conflict of interest.

(b) The public official may apply to the commission for an opinion as to whether the person has a conflict of interest.

(Emphasis added.) Good internal controls require procedures to ensure the following: 1) the Board's meeting minutes list and describe the purpose of each claim allowed; and 2) Board members abstain from voting on matters posing a conflict of interest, as required by the Act.

Without such procedures, there is an increased risk for both statutory violations and the loss or misuse of Village funds.

We recommend the Board implement procedures to ensure the following: 1) the Board's meeting minutes list and describe the purpose of each claim allowed; and 2) Board members abstain from voting on matters posing a conflict of interest, as required by the Act. Furthermore, because the failure of Board members to abstain from voting on matters posing a conflict of interest constitutes a possible violation of the Act, we are forwarding this information to the Nebraska Accountability and Disclosure Commission for further review.

3. Payroll Tax Withholding Issues

During the fiscal year ended September 30, 2024, taxes were not withheld from wages paid to Village employees, including Board members, 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.

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 April 17, 2025), 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. 5-2025), “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.

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.

4. Expenditure in Excess of Budget

For the fiscal year ended September 30, 2024, actual Village expenditures exceeded the adopted budget by \$23,892. No amended budget was filed with our office for these additional expenditures.

Neb. Rev. Stat. § 13-510 (Reissue 2022) states, in relevant part, the following:

No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

Neb. Rev. Stat. § 13-511 (Reissue 2022) sets out the procedures for amending the adopted budget accordingly.

When expenditures are made in excess of the amounts budgeted, with no appropriate budget amendment by the Board to address those excesses, the Village is noncompliant with State statute, further increasing the risk for loss and/or misuse of funds.

We recommend the Board implement procedures for monitoring closely its budget status on an ongoing basis to avoid incurring expenditures in excess of the amount budgeted, amending the budget as necessary to accommodate any unforeseen expenses.

5. Audit Waiver Filing

The Village's audit waiver request was filed with the APA on March 17, 2025, almost six months after the fiscal year end and nearly three months after the APA's deadline of December 31, 2024. To ensure adequate time to review audit waiver requests by villages, the APA required that all villages file their audit waiver request by December 31, 2024.

Good internal control requires procedures to ensure that all forms required to be filed with the APA, including audit waiver requests, are submitted within the time constraints set out by State statute and the APA.

Without such procedures, there is an increased risk of not only noncompliance with State statute but also an increased chance of the Village's audit waiver request being denied or forfeited funds due to its delinquent filing with the APA.

We recommend the Village implement procedures to ensure all forms required to be filed with the APA, including audit waiver requests, are submitted within the time constraints set out by State statute and the APA.

6. Job and Wage Publication

The APA noted that the Village failed to provide documentation to support that the Village published its annual job and wage publication between July 15, 2024, and August 15, 2024, as required by State statute. As part of the Village's audit waiver request, the APA requested documentation to support such publication; however, no such documentation was provided by the Village as part of its audit waiver request.

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 for 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.

Overall Village Response: We are in receipt of your draft letter for the Village of Santee outlining issues in approving our audit waiver. We had an unexpected passing of our Village Clerk this fiscal year and were put in a dilemma. We are immediately striving to get these issues in compliance.

We started our documentation of timecards, general ledger sheets, and classifying expenditures properly. We will immediately start the processing of withholding payroll taxes on the board and any hired laborers.

* * * * *

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", with a long, sweeping horizontal line extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor

cc. Nebraska Accountability and Disclosure Commission