



# 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

February 5, 2025

Kim Wolken, President  
Plainview Manor and Whispering Pines Assisted Living  
101 W. Harper Ave.  
P.O. Box 219  
Plainview, NE 68769

Robert Smith, Mayor  
City of Plainview  
209 W. Locust  
P.O. Box 757  
Plainview, NE 68769-0757

Dear Ms. Wolken and Mr. Smith:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding possibly unapproved bonuses paid to the Plainview Manor and Whispering Pines Assisted Living’s (Manor) Administrator, Juleen Johnson. 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 Manor. 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, as the Manor is audited on an annual basis.

Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action.

### Background Information

The Manor is a municipal nursing facility located in the City of Plainview, Nebraska, (City). Created by the City Council in 1994 through Ordinance Nos. 596 through 601, pursuant to Neb. Rev. Stat. § 17-961 (Reissue 2022) et seq., the Manor offers both nursing care and assisted living services for elderly individuals who reside in the City. The Manor is governed by a Board of Directors (Board), which consists of five members who are appointed by the City Mayor and City Council. According to Section 2-217 of the City’s municipal code, the Manor Board has “general control of the expenditure of all money collected or donated to the credit of the Manor Fund.” All monies received, including any taxes levied by the City, for the erection, maintenance, or support of the Manor are required to be kept in a fund “separate and apart from the other funds of the City” per Section 2-218 of the City’s municipal code.

During the period January 1, 2023, through, May 31, 2024, the Manor maintained four bank accounts at Midwest Bank, located in Plainview, Nebraska. The activity of those accounts during this period is summarized in the table below:

Account	Beginning Balance	Deposits/Other Credits	Transfer In	Checks/Other Debits	Transfer Out	Ending Balance
General Checking Account	\$508,055.90	\$5,018,289.06	\$11,118.60	\$3,801,619.79	\$1,087,751.01	\$648,092.76
Foundation Checking Account	\$23,686.10	\$7,869.33	\$0.00	\$0.00	\$11,118.60	\$20,436.83
Savings Account	\$1,049,536.65	\$50,248.92	\$300,000.00	\$0.00	\$0.00	\$1,399,785.57
Tax Transfer Account	\$392.32	\$27.10	\$787,751.01	\$787,751.01	\$0.00	\$419.42
<b>Total Bank Activity</b>	<b>\$1,581,670.97</b>	<b>\$5,076,434.41</b>	<b>\$1,098,869.61</b>	<b>\$4,589,370.80</b>	<b>\$1,098,869.61</b>	<b>\$2,068,734.58</b>

The following table lists the different revenue sources for the Manor, which comprise the total deposits of \$5,076,434.41:

<b>Funding Source</b>	<b>Amount</b>
Private Resident & Other Third-party Payor Payments	\$2,963,864.43
State Payments (Medicaid Long Term Care, ARPA funds)	\$1,895,519.35
City of Plainview Payments	\$114,725.00
Interest on Bank Account Balances	\$50,677.74
Donations	\$7,851.00
Other Deposits	\$43,796.89
<b>Total</b>	<b>\$5,076,434.41</b>

As shown in the table above, the Manor received nearly all of its funding from private resident and other third-party payor payments (58%) and from payments received from the State (37%) during the period examined. The Manor also received one payment from the City in both February 2023 and February 2024.

The following comments and recommendations, which have been discussed with the appropriate members of the Manor, the City, and their management, are intended to improve internal control or result in other operating efficiencies.

### Comments and Recommendations

#### **1. Impermissible Gratuity**

In addition to her normal salary of \$122,482 for 2023 and \$127,381.28 for 2024 – which does not include any additional paid time off payouts, bonuses, or other wage adjustments approved by the Manor Board – the APA noted when examining the Manor’s bank statements for the period January 1, 2023, through May 31, 2024, that the Administrator received two bonuses, totaling \$21,500, which appear to have been gratuitous in nature.

Upon inquiry by the APA, Manor representatives provided the following response regarding the first \$13,000 bonus:

*Julen Johnson received a \$13,000 bonus approved by the board of directors on 11/30/2022, see note signed by Kim Wolen- president of Board of Directors. This bonus was paid out overtime once the contract was approved at the City Council meeting. This was paid out on 1/27/23, 2/10/23, 2/24/23, and 3/24/23.*

Manor representatives also informed the APA that the second \$8,500 bonus for the Administrator was approved on January 31, 2024, and provided the proceedings of the Manor Board’s meetings held on November 30, 2022, and January 31, 2024.

However, neither of these meeting minutes contain any specific mention or approval by the Manor Board for any bonus payments. The following image is an excerpt of the November 30, 2022, meeting minutes discussing the Administrator’s contract:

VI. Administrator Contract- A motion was made at 4:32 p.m. to go into closed session for discussion of personnel by Alexander and seconded by Anderson. RCV – Wolken, Alexander, Norris, Anderson– Aye; Nay – None. Absent – Robinson. Information was presented by Wolken to the board members and Johnson and discussion was held. Johnson was then asked to leave the meeting. At 5:14 p.m. Wolken asked to come out of executive session and Johnson entered back into the meeting. A motion was made by Alexander to offer Johnson a 4% increase of her Administrator contract and extend the contract time with approval of the city council to have the contract meet a better time frame for discussion of performance evaluation and financial status. Johnson stated that she understood why the board wanted to change the contract time frame, but the board would need to table the Administrator Contract and place on next agenda based on contract guidance. There was no second motion given and Wolken asked for the Administrative Contract to be tabled at this time until discussion could be reviewed from council.

The image below is an excerpt of the minutes for the Manor Board meeting held on January 31, 2024:

V. Old Business- Administrator Contract- After discussion from last month a motion was made by Norris to offer Johnson a 4% increase due to Manor employees receiving a 4% raise in the middle of 2023, along with their annual evaluation raise, as administrator did not receive due to contract already being signed, and a 4% increase for 2024, seconded by Alexander. RCV – Norris, Alexander, Wolken– Aye; Nay – Tarr. Absent – Ober

As the two previous images clearly show, there is no discussion of, nor specific motion to approve, any bonus payments to the Administrator.

Both bonuses were paid out in multiple separate gross pay installments, as shown in the table below:

Date	Payee	Amount
1/27/2023	Juleen Johnson	\$4,000.00
2/10/2023	Juleen Johnson	\$4,000.00
2/24/2023	Juleen Johnson	\$2,500.00
3/24/2023	Juleen Johnson	\$2,500.00
<b>2023 Bonus Total</b>		<b>\$13,000.00</b>
3/22/2024	Juleen Johnson	\$4,500.00
4/5/2024	Juleen Johnson	\$4,000.00
<b>2024 Bonus Total</b>		<b>\$8,500.00</b>
<b>Overall Bonus Total</b>		<b>\$21,500.00</b>

Mention of possible bonus payments is found in the Administrator’s employment agreements with the Manor. The 2023 agreement, executed on February 13, 2023, contains the following provision:

C. Each year upon the annual review of employment, the board of directors will look and decide if a bonus shall be given based on the year-end financials.

Similarly, the 2024 agreement, executed on March 1, 2024, contains additional language related to the bonus payment, as shown in the excerpt below:

C. Each year, upon the annual review of employment, the Manor Board will look and decide if a bonus shall be given based on the year-end financials, State/federal survey results, and satisfaction survey, with said bonus proposal being submitted to the City for its consideration and approval.

However, the APA questions whether the Administrator should have received these bonus payments at issue, as they appear not only to lack formal approval by the Manor Board, as mentioned previously, but also to constitute gratuities, which is problematic for the following statutory and constitutional reasons.

To start, the APA is unaware of any authority for a municipal entity, such as the Manor, to give bonuses to employees apart from the express terms of a valid employment contract or a formal policy authorizing extra compensation for the performance of additional work. While the possibility of bonus payments is mentioned in the Administrator’s employment agreements, the indefinite language used in those vague contractual provisions (“will look and decide if a bonus shall be given”) is insufficient to create either a legal obligation to make or a right to receive those nonspecific payments.

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).

Discussing the terminology found in Article III, § 19, the Nebraska Supreme 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.*

Op. Att’y Gen. No. 95063 (August 9, 1995). According to the Nebraska Supreme 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). As a municipal nursing facility created and owned by the City, the Manor is subject to the injunction against gratuities.

Good internal control requires procedures to ensure that any payments, including bonuses, to Manor employees are made in strict accordance with Article III, § 19.

Without such procedures, there is an increased risk for not only loss or misuse of funds but also violation of the Nebraska Constitution.

We recommend the Manor consult with the City Attorney, County Attorney, or the Nebraska Attorney General regarding the permissibility of the bonus payments addressed in this comment. We further recommend the Manor work with the City to ensure the Administrator’s complete compensation package – not just the base salary amount – is properly disclosed and approved in the employment agreement.

## 2. Potentially Disallowed Expenditures

During the period examined, the APA noted several potentially disallowed disbursements of Manor funds – including expenditures for gift cards, a scholarship award, an employee Christmas party, memorial plaques, and alcohol. Summarized in the following table, these questioned expenses are discussed in further detail below.

Description	Number of Payments	Amount
Manor Employee Gift Cards & Christmas Party	3	\$2,605.72
Scholarship	1	\$250.00
Memorial Plaques	1	\$172.40
Alcohol	2	\$81.96
<b>Totals</b>	<b>7</b>	<b>\$3,110.08</b>

### *Manor Employee Gift Cards & Christmas Party*

The APA observed that gift cards were purchased for Manor staff on three occasions, as detailed in the following table:

Check Date	Clear Date	Check #	Payee	Amount
1/20/2023	1/24/2023	53932	Mary’s Restaurant	\$250.00
5/17/2023	5/19/2023	54130	Cool Beanz Coffee Truck	\$1,250.00
12/12/2023	12/26/2023	54488	Mary’s Restaurant	\$1,105.72
<b>Total</b>				<b>\$2,605.72</b>

The first transaction was a payment to Mary’s Restaurant in Plainview, Nebraska, on January 20, 2023, wherein 10 \$25 gift cards were purchased for “Staff Appreciation.” In the second transaction, 50 gift certificates, valued at \$25 apiece, were purchased from Cool Beanz Coffee Truck – a food truck business in Plainview, Nebraska – on May 17, 2023, for Manor staff who worked the Manor’s fundraiser held during the week of May 14 to 20, 2023. The third transaction was another payment to Mary’s Restaurant for a Manor staff Christmas party, which included forty-two buffet tickets at \$18 each, eight \$20 gift cards, \$52.92 in sales tax, and a \$136.80 tip.

The Manor lacks a formal policy that specifies the circumstances under which employees are eligible to receive gift cards and other items of value purchased with municipal funds.

### ***Scholarship***

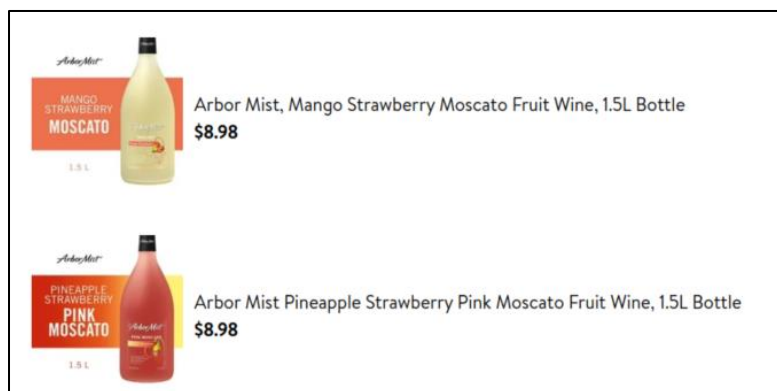
The APA noted that the Manor issued a \$250 check payment to Northeast Community College on February 12, 2024, for a scholarship. The Manor provided documentation that stated the scholarship was given to a student enrolled full-time in the college’s Pre-Professional Nursing program.

### ***Memorial Plaques***

The APA observed an invoice dated June 9, 2023, from Ganz for memorial garden stones, totaling \$172.40, which was paid by the Manor on July 12, 2023. According to Manor representatives, the garden stones were used as memorial plaques for residents as a part of their funeral services.

### ***Alcohol***

The APA noted 17 transactions, totaling \$1,067.44, made by the Manor at Walmart. The APA used Walmart’s “Receipt Lookup” website (<https://www.walmart.com/receipt-lookup>) to ascertain the individual items purchased. In doing so, the APA observed that two of the Walmart transactions, totaling \$81.96, included alcohol. An example of one such purchase on December 15, 2023, is shown below:



The purchase of scholarships, memorials, and alcohol with public funds is not authorized under the Local Government Miscellaneous Expenditure Act (Act). Set out at Neb. Rev. Stat. §§ 13-2201 to 13-2204 (Reissue 2022, Cum. Supp. 2024), the Act specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to cities, among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Reissue 2022). As a municipal nursing facility created and owned by the City, the Manor is also subject to these provisions.

The expenditure of public funds for food or drinks is covered by Neb. Rev. Stat. § 13-2203 (Reissue 2022) of the Act, which permits the governing body of a local government to purchase only nonalcoholic beverages. This section also enumerates the other miscellaneous expenditures permitted by governing bodies of local governments. Scholarships and memorials – whether for funerals or other personal occasions – are not found among that select statutory list of permissible expenditures. As a result, such disbursements must be considered disallowed by law.



On September 17, 1993, the Nebraska Accountability and Disclosure Commission adopted a document entitled “A Guideline to the Use of Public Funds by Cities and Villages – Revised” (Guideline). The Guideline addresses a number of different scenarios involving the expenditure of public funds. Though promulgated over three decades ago, the Guideline remains relevant to various Nebraska public entities, including the Manor.

Regarding the issue of memorial purchases, the Guideline provides the following:

*Question # 6 – May municipal funds be expended for flowers and memorials for deceased elected officials, employees or their families?*

*Response – No.*

The Guideline also provides the following with respect to social functions for employees:

*Question # 9 – May municipal funds be used to pay for Christmas parties and other social functions for employees?*

*Response – No.*

Regarding the purchase of gift cards, the Guideline provides the following:

*Question # 3 – May municipal funds be used to purchase plaques, certificates, and similar tokens of acknowledgement or appreciation for public officials, public employees, and citizens service on municipal boards, etcetera?*

*Response – Yes. However, before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. The policy may not be amended or altered more than once in any twelve month period.*

As noted already, the Manor lacks a formal policy specifying the circumstances under which employees are eligible to receive gift cards and other items of value purchased with municipal funds. Consequently, the purchase of gift cards for Manor employees, as well as the Christmas party payment, do not appear allowable under the Act.

Depending upon the circumstances surrounding these gift card purchases, moreover, they may also give rise to the same concerns regarding impermissible gratuitous payments described in the previous comment herein.

Good internal controls require procedures to ensure that all Manor expenditures are allowable and appropriate.

Without such procedures, there is an increased risk for not only noncompliance with applicable laws but also loss, misuse, or theft of Manor funds.

We recommend that the Manor implement procedures to ensure that all Manor expenditures are allowable and appropriate.

### **3. Other Issues**

The APA identified the following other issues regarding the Manor’s procedures:

#### ***Lack of Adequate Supporting Documentation***

The Manor was unable to provide adequate documentation to support the two purchasing card expenditures shown in the following table:

<b>Date</b>	<b>Payee</b>	<b>Amount</b>
11/1/2023	Mary’s Restaurant	\$11.33
11/1/2023	Mary’s Restaurant	\$90.67

The Manor provided receipts for each purchase. According to the bank statements, however, the amounts listed on those receipts do not match the total amounts actually paid.

Shown below are the two receipts with the inaccurate total amounts:



Neb. Rev. Stat. § 13-610(4) (Reissue 2022) requires any expenditure 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.*

To satisfy this statutory requirement, of course, the itemized receipt provided must offer an accurate representation of the true expenditure.

### **Payment of Sales Tax**

During the period examined, the Manor paid Nebraska sales tax, totaling \$263.42, on 28 purchases.

According to Neb. Rev. Stat. § 77-2704.15(1)(a) (Cum. Supp. 2024), purchases made by the State and various political subdivisions, including cities, 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 . . . .*

(Emphasis added.) As a municipal nursing facility created and owned by the City, the Manor is also subject to this statutory exemption.

Additionally, good internal controls require procedures to ensure the following: (1) an accurate itemized receipt is maintained for all expenditures of Manor funds, especially those made with a purchasing card; and (2) neither the Manor nor any other municipal body pays Nebraska sales tax.

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

We recommend the Manor implement procedures to ensure: (1) an accurate itemized receipt is maintained for all expenditures of Manor funds, especially those made with a purchasing card; and (2) neither the Manor nor any other municipal body pays Nebraska sales tax.

*Overall Manor and City Response:*

*The City of Plainview and Plainview Manor and Whispering Pines Assisted Living appreciate the review conducted by the APA and plan to immediately implement recommendations made therein.*

*Regarding compensation for the Manor's Administrator, the intent of the Manor was to include performance-based compensation for the Administrator, which is important given industry trends under which a large number of similarly situated facilities have faced financial difficulties, while the Manor has remained profitable. To alleviate the concerns identified in the APA review, the Manor will restrict performance-based compensation for the Administrator to base pay, and adjust base pay in annual employment negotiations to reflect the facility's financial health and resident care. Regarding minutes of the Manor Board, the Board will begin audio recording board meetings and digitally archiving the same so that they are available for consultation if an alleged deficiency in the minutes is brought to light.*

*Regarding potentially disallowed expenditures, the Manor will not permit manor funds to be used for gift cards or other employee recognition activities. On the issue of scholarships, there were two circumstances under which a scholarship could be awarded by the Manor – although only one scholarship was ever awarded. The first circumstance would be for an employee. The Manor Board will adopt a uniform policy in accordance with Neb. Rev. Stat. 13-2203(1)(a)(i) regarding this scholarship. The other circumstance would be for a child of employee that had an interest in a field for which the Manor could potentially employ the child. This component of the scholarships will be discontinued.*

*The memorial plaques identified in the APA review were memorials for residents of the Manor who pass away. Such memorials will no longer be purchased. The alcoholic beverages identified in the APA review were neither purchased for nor consumed by Manor employees. Instead, the beverages were for residents to comport with resident's rights to consume the same if they so wish. Furthermore, the purchases were for limited events, not everyday consumption. Due to the APA review, the Manor will no longer acquire alcoholic beverages.*

*Regarding the concerns identified as "Other Issues", the Mary's Restaurant charges on November 1, 2023, were for a leadership course presented by Northeast Community College on even date that all Manor staff were required to attend. The discrepancy between the receipts provided and the purchasing card expenditure is believed to be a tip. Finally, as it relates to sales tax, the Manor has applied for sale tax exemptions with the retailers that were believed to be most responsible for sales tax payments. Between these applications and restricting transactions with entities that have approved the Manor's tax-exempt status, the Manor shall avoid paying sales tax.*

\* \* \* \* \*

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 Manor and the City.

Draft copies of this letter were furnished to the Manor and the City to provide their 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 Manor, the City, and their 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 II

Kelsey Lutz – Examiner

Caden Janak – 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)