

**ATTESTATION REPORT
OF THE
NEBRASKA COMMISSION ON
AFRICAN AMERICAN AFFAIRS**

**FISCAL YEARS 2022 THROUGH 2024 AND
THE SIX-MONTH PERIOD THROUGH DECEMBER 31, 2024**

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Issued on July 11, 2025

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NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

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NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

BACKGROUND

The 2022 - 2023 Nebraska Blue Book states, in part, the following regarding the history, purpose, and operations of the Nebraska Commission on African American Affairs (Commission):

The 2020 Legislature created the Nebraska Commission on African American Affairs with the passage of LB918. The commission was established to enhance the cause of African American rights and to develop solutions to problems common to all Nebraska African Americans.

The commission works to promote state and Federal legislation beneficial to the state's African American community and to coordinate programs relating to housing, education, welfare, medical and dental care, employment, economic development and related problems.

The 14 commission members are appointed by the Governor and must be of African ancestry. Members serve four-year terms and receive a \$50 per diem when engaged in performance of commission duties. The commission meets quarterly.

(<https://nebraskalegislature.gov/about/blue-book.php>). The Commission began receiving legislative appropriations in the fiscal year ending June 30, 2021.

Appropriations for fiscal year 2021, totaling \$127,500, lapsed without being used. Starting in fiscal year 2022, however, the Commission's unspent appropriations have been authorized to be carried forward to the following fiscal year.

See **Exhibit A** herein for a historical timeline of Commission appropriations.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

KEY OFFICIALS AND AGENCY CONTACT INFORMATION

Current Commissioners of the Nebraska Commission on African American Affairs

Name	Term Start	Term End
Gwendolyn Easter	June 2021	June 2025
Connie Edmond	June 2021	June 2025
Glenn Freeman	June 2021	June 2025
Clarice Jackson	June 2021	June 2025
Laban Njuguna	June 2021	June 2025
Trevon Brooks	December 2023	June 2025
Quentin Brown	January 2024	June 2025
Dorothy Johnson	January 2024	June 2025
Tim Clark	July 2024	June 2025
Terri Crawford	January 2025	June 2025
Ted Lampkin	January 2025	June 2025
JoAnna LeFlore-Ejike	January 2025	June 2025
Johnny Nesbit	January 2025	June 2025
VACANT		June 2025

Past Commissioners of the Nebraska Commission on African American Affairs

Name	Term Start	Term End
Rendell (Dell) Gines	June 2021	October 2022
Mark Smith	June 2021	November 2022
William (Femi) Awodele	June 2021	May 2023
Vernon J	June 2021	November 2023
DeMoine Adams	June 2021	February 2024
John Carter	June 2021	February 2024
Antoinette (Toni) Clarke	June 2021	February 2024
Karine Sokpoh	June 2021	February 2024
LaShawn Young	June 2021	February 2024
Malinda Williams	January 2024	November 2024

List of Chairpersons of the Nebraska Commission on African American Affairs

Name	Term Start	Term End
LaShawn Young	June 2021	October 2021
Dell Gines	October 2021	October 2022
LaShawn Young	October 2022	October 2023
John Carter	November 2023	January 2024
Toni Clarke (Interim)	January 2024	February 2024
Malinda Williams	April 2024	November 2024
Dorothy Johnson (Interim)	November 2024	January 2025
Tim Clark	January 2025	Present

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

KEY OFFICIALS AND AGENCY CONTACT INFORMATION

(Concluded)

Past Executive Directors of the Nebraska Commission on African American Affairs

Name	Term Start Date	Term End Date
Christopher Banks	February 14, 2022	September 16, 2022
Mark Patten	July 3, 2023	September 12, 2023
John Carter*	November 20, 2023	February 6, 2024
Simone Smith	August 19, 2024	April 1, 2025

See **Comment and Recommendation Number 2 (“Appointment of Interim Executive Director”) herein. Questions exist as to whether the Commission officially voted for John Carter as the interim executive director. The start and end dates of his tenure in that position were obtained from the State’s accounting system. His service dates as both interim executive director and commissioner overlap.*

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NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

SUMMARY OF COMMENTS

During our examination of the Nebraska Commission on African American Affairs (Commission), we noted certain deficiencies and other operational matters that are presented here. The following comments are required to be reported in accordance with *Government Auditing Standards*: Comments #1, #2, #3, #4, and #5, which are considered to be significant deficiencies.

These comments and recommendations are intended to improve the internal control over financial reporting or result in operational efficiencies in the following areas:

1. ***Apparent Open Meetings Act Violations:*** The Commission's meeting minutes appear to show regular and significant violations of the Open Meetings Act, including the use of email to conduct Commission business.
2. ***Appointment of Interim Executive Director:*** Not only did the "appointment" of former Commissioner John Carter as the interim Executive Director appear to violate the Open Meetings Act, but also he appears to have fraudulently misrepresented his purported appointment to the Department of Administrative Services (DAS) – HR Shared Services, which made the necessary entries in the State's accounting system to improperly set him up as a new employee and to process his pay as such.
3. ***Commission Expenditures:*** The APA questioned the following Commission expenditures: 1) those made to support organizations or events in the absence properly approved policies; 2) those lacking adequate documentation for the underlying expenses; 3) those which are considered excessive when compared to the GSA guidelines; and 4) those for which the meeting minutes lacked sufficient detail to ensure that the expenditures were approved. For a detailed list of Commission expenditures, see **Exhibit B** herein.
4. ***Purchasing Card Transactions:*** The Commission lacked adequate documentation for one hotel stay. Additionally, for some of the transactions tested, the adequacy of information to justify the expenses raised concerns regarding reasonableness.
5. ***Contracts and Bidding:*** The Commission did not conduct a formal bidding process for one of the contracts reviewed and three transactions tested were not entered into the State's contract database, as required by statute. Additionally, the Commission did not obtain a contract or agreement for one of the expenditures tested.
6. ***Use of Temporary Employees:*** During periods without an Executive Director, the Commission paid more than \$45,000 to temporary employees who worked without direct onsite supervision.
7. ***Accounting Performed by DAS – State Accounting:*** The Commission relied on the Department of Administrative Services (DAS) – State Accounting to perform its accounting services. However, DAS – State Accounting failed to provide sufficient controls over certain accounting transactions, made late payments to vendors, recorded inaccurate transactions, and failed to monitor the Commission's one-day meal usage for potential tax consequences.

More detailed information on the above items is provided hereinafter. It should be noted that this report is critical in nature, containing only our comments and recommendations on the areas noted for improvement and does not include our observations on any accounting strengths of the Commission.

Draft copies of this report were furnished to the Commission to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this report. Responses that indicate corrective action has been taken were not verified at this time, but they will be verified in the next examination.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

1. Apparent Open Meetings Act Violations

The Open Meetings Act (Act) is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2024). The intent of the Act is stated by Neb. Rev. Stat. § 84-1408 (Reissue 2024), as follows:

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

The Auditor of Public Accounts (APA) noted what appear to have been significant violations of the Act – as well as its own statutory quorum requirements – during our testing of the 10 most recent Commission meetings through December 2024.

The following table summarizes the issues found for the 10 meetings tested:

Date of Meeting Tested	Time, place, members present and absent, and substance of all matters discussed included in minutes	Closed session - vote in open session; time commenced and concluded included in minutes	Actions are duly moved, seconded, and have a roll call vote included in minutes	Eight members at meeting (for quorum)	Advance public notice documented	Method and date of public notice in minutes
October 19, 2022	No	No	No	Yes	No	No
February 1, 2023	No	No	No	No	No	No
April 20, 2023	No	No	No	Yes	No	No
May 8, 2023	No	No	No	Yes	No	No
October 18, 2023	No	No	No	Yes	No	No
November 18, 2023	No	No	No	Yes	No	No
February 6, 2024	No	Yes	Yes	Yes	No	No
April 24, 2024	No	No	No	Yes	No	No
May 14, 2024	Yes	No	No	Yes	No	No
July 23, 2024	Yes	No	Yes	Yes	No	No

More details regarding the issues shown in the above table above are provided below.

Time, Place, Members Present and Absent, and Substance of all Matter Discussed in Minutes

The minutes for 8 of the 10 Commission meetings tested failed to identify where those meetings were held.

Moreover, for 2 of 10 meetings tested, the Commission's minutes failed to identify the members present.

Both apparent deficiencies violate Neb. Rev. Stat. § 84-1413(1) (Reissue 2024), which states the following:

Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(Emphasis added.) An example of both violations is shown in the image below, which is taken from the minutes for the Commission's November 18, 2023, meeting:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

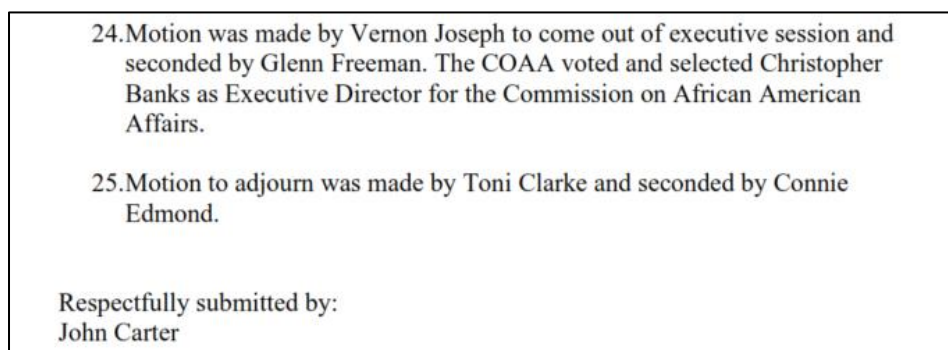
(Continued)

1. Apparent Open Meetings Act Violations (Continued)

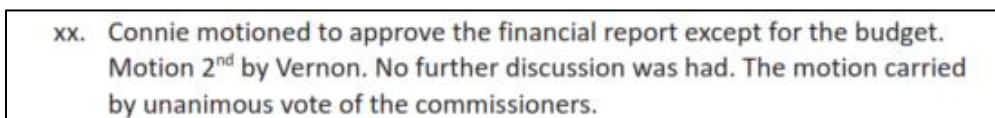
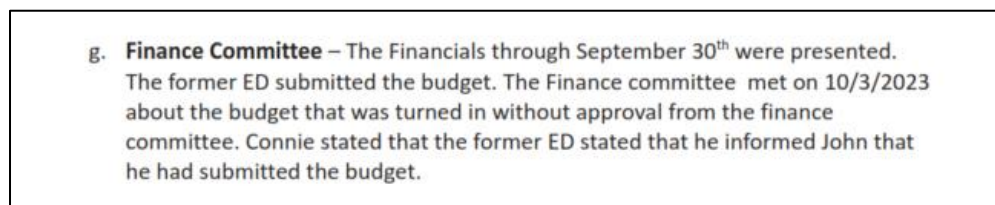


Additionally, the Commission's meeting minutes lacked adequate documentation regarding the approval of its expenses or other substantive matters. For example, none of the minutes for meetings pertaining to the appointment of an Executive Director contain details of the hiring, including an official start date or salary.

The following image, which is illustrative of the lack of details surrounding the appointment of an Executive Director, is from the minutes for the Commission's January 19, 2022, meeting:



Additionally, the meeting minutes were not sufficiently detailed to document which expenses had been approved by the Commission. The following is an example from the October 2023 meeting minutes.



The information included above is not sufficient to determine the time period reviewed, which reports were reviewed, or the total amount of expenses included in the review.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

1. **Apparent Open Meetings Act Violations** (Continued)

Closed Sessions Not Properly Documented in Minutes

Nine of 10 Commission meeting minutes tested failed to record at least one of the following requirements of the Act: 1) the vote to enter a closed session; 2) the commencement time of the closed session; or 3) the time the closed session concluded.

All of the above are mandated by Neb. Rev. Stat. § 84-1410(2) (Reissue 2024), which says the following:

The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(Emphasis added.) The following image, taken from the minutes for the Commission's meeting on February 1, 2023, typifies other minutes that are deficient in this regard:

13. Motion by LaShawn to go into executive session 13:08, Seconded by Vernon.
14. Motion by LaShawn to come out of executive session at 15:09. Seconded by Vernon.

Actions of the Commission not Duly Moved, Seconded, and included a Roll Call Vote

Eight of 10 Commission meeting minutes tested failed to document properly actions to move or second a motion; others lacked records of official roll call votes, including required information regarding those voting, absent, or not voting.

All of the above are mandated by Neb. Rev. Stat. § 84-1413(2) (Reissue 2024), which says the following:

Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(Emphasis added.) The minutes for the Commission's meeting on April 24, 2024, provide an example of the above deficiencies. The attendance of nine Commissioners is documented; however, for the roll call vote to approve the Commission Chair and the first roll call vote for Commission Vice Chair, only eight votes were recorded, leaving out Commissioner Connie Edmond. In the second vote for the Commission Vice Chair, only seven votes were recorded, which would not constitute a quorum.

The following is an image of the April 24, 2024, meeting minutes provided by the Commission:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS (Continued)

1. Apparent Open Meetings Act Violations (Continued)

V.	Roll Call Vote on the Positions of Commission Chair <ul style="list-style-type: none">• Nominations for Chair: Commissioner Malinda Williams; Commissioner Gwen Easter; and Commissioner Glenn Freeman• Roll Call Vote to elect Commissioner Malinda Williams as Chair<ul style="list-style-type: none">a). YEAS: Commissioner Quentin Brown; Commissioner Laban Njugma; Commissioner Trevon Brooks; Commissioner Dorothy Johnson; Commissioner Glenn Freeman; Commissioner Clarice Jackson; Commissioner Malinda Williams.b). NO: Nonec). Abstain: Commissioner Gwen Easter abstained and nominated herself as a candidate for Chair.• The motion carried, appointing Commissioner Malinda Williams as Commission Chair.
VI.	Roll Call Vote on the Position of Commission Vice-Chair <ul style="list-style-type: none">• Nominations for Vice-Chair: Commissioner Dorothy Johnson; Commissioner Glenn Freeman; Commissioner Gwen Easter.• Roll Call Vote to elect Commissioner Gwen Easter as Commission Vice-Chair<ul style="list-style-type: none">a). YEAS: Commissioner Gwen Easterb). NO: Commissioner Dorothy Johnson; Commissioner Malinda Williams; Commissioner Laban Njugma; Commissioner Trevon Brooks; Commissioner Quentin Brown; Commissioner Glenn Freeman; Commissioner Clarice Jackson.• Roll Call Vote to elect Commissioner Dorothy Johnson as Commission Vice-Chair<ul style="list-style-type: none">a). YEAS: Commissioner Quentin Brown; Commissioner Laban Njugma; Commissioner Trevon Brooks; Commissioner Malinda Williams; Commissioner Glenn Freeman; Commissioner Clarice Jackson; Commissioner Dorothy Johnson.b). NO: None• Commissioner Glenn Freeman withdrew his nomination as Vice-Chair.• The motion carried, appointing Commissioner Dorothy Johnson as Vice-Chair.

The minutes for that same meeting reflect only six votes on appointments to the Executive Board (referred to in the Commission's own documents and, therefore, hereinafter as the "Executive Committee"), as shown in the image below:

IV.	Roll Call Vote on Appointments to the Executive Committee <ul style="list-style-type: none">• Commissioner Glenn Freeman made a motion to accept the nominations of Commissioner Melinda Williams and Commissioner Dorothy Johnson to the Executive Committee. Commissioner Quentin Brown seconded the motion.• Roll Call Votes to accept the nominations of Commissioner Melinda Williams and Commissioner Dorothy Johnson to the Executive Committee.
	<ul style="list-style-type: none">a). YEAS: Commissioner Laban Njugma; Commissioner Glenn Freeman; Commissioner Gwen Easter; Commissioner Trevon Brooks; Commissioner Quentin Brown; Commissioner Clarice Jackson.b). NO: None <p>The motion carried, appointing Commissioner Malinda Williams and Commissioner Dorothy Johnson to the Executive Committee.</p>

Even if the two appointees abstained from voting in this instance, one vote – for Commissioner Connie Edmond – appears not to have been recorded.

Interestingly, the minutes for the Commission's next meeting, which occurred on May 14, 2024, reflect another vote for roles on the Executive Committee. As shown by the following excerpt, however, those meeting minutes fail to indicate who made the motion, who seconded it, and the tally of the roll call vote:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

1. Apparent Open Meetings Act Violations (Continued)

V. Vote for Executive Committee Roles: Votes for the Executive committee roles.
Motion to appoint Malinda Williams as Chair and Dorothy Johnson as Vice
Chair. Majority rules motion carries.

The minutes for the Commission's May 8, 2023, meeting appear to show that it was conducted entirely in closed session. Once out of closed session, the motion, second, and roll call vote for the hiring of the Executive Director were not documented, as shown in the image below:

LaShawn motioned that the meeting move to Executive Session @3.57pm, it was seconded by Vernon J and motion was carried.

The Meeting came out of Executive Session @6.58pm

LaShawn called for motion to vote for the Executive Director. Vernon moved the motion to vote for the ED - during the discussion the group decided against open ballot, so motion was rescinded. Connie suggested that we do secret ballot and then moved a motion to accept the vote. There was a secret ballot and Mark Patten was voted 7 - 1 as the Executive director.

Vernon moved the motion that we bring in an additional executive staff personal as discussed (Zelle was instructed during executive session), Laban seconded the motion and the motion carried. The group also agreed that Chad T of Zelle should offer the position of ED of NECAAA to Mark P verbally on Tuesday May 9th wit a start date of Tuesday May 30th.

Furthermore, the Commission appears to have conducted certain business via email – which also contravenes the provisions of the Act.

For example, the minutes for the Commission's February 1, 2023, meeting contain the following, which acknowledges the members' use of emails communications to formulate the approved bylaws:

Glenn Freeman made a motion to adopt the accepted bylaws as written as previously agreed by email. The motion was seconded by Vernon. The motion unanimously carried by members present.

Neb. Rev. Stat. § 84-1411(4) (Reissue 2024) provides the following:

Virtual conferencing, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

Lack of Quorum Present

Although not addressed specifically in the Act, the Commission has transacted business despite lacking a quorum of eight voting members, as required by Neb. Rev. Stat. § 81-2606(1) (Reissue 2024). That statutory provision says the following:

The commission shall meet at least once every calendar quarter. Meetings shall be held in January, April, July, and October. Special meetings may be called at the request of eight voting members. Eight voting members of the commission shall constitute a quorum for the transaction of business.

(Emphasis added.) For instance, the minutes for the Commission's February 1, 2023, meeting – an excerpt of which is shown below – reveal that then-Chair LaShawn Young called the meeting to order without having a quorum of eight members:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

1. Apparent Open Meetings Act Violations (Continued)

1. Call to Order –

LaShawn Called the meeting to order at 9:23 after the 7th member showed up so that there would be a majority of members present to constitute a quorum, which is a majority of the twelve active Commission Members to start meeting.

According to the Nebraska Attorney General, “The presence of a quorum is critical because a quorum is essential to the transaction of any business, other than adjournment or continuing a matter to a later date or time.” Op. Att. Gen. No. 05007 (April 12, 2005). Moreover, as explained by the Nebraska Supreme Court, any action taken by a public body absent a required quorum is “ineffective” and, therefore, must be disregarded. *Bond v. Neb. Liquor Control Com.*, 210 Neb. 663, 667, 316 N.W.2d 600, 602 (1982).

Consequently, without the quorum required by § 81-2606(1), the Commission lacks the authority to transact any lawful business.

Lack of Documentation for Advance Public Notice

The Commission was unable to provide documentation of the advanced publicized notice for the time and place of each of the 10 meetings tested, as well as an accompanying meeting agenda, as required by State statute.

Neb. Rev. Stat. § 84-1411 (Reissue 2024) provides, as is relevant, the following:

(1) *Until January 1, 2025:*

(a) *[E]ach public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.*

(b)(i) *[S]uch notice shall be published in a newspaper of general circulation within the public body’s jurisdiction and, if available, on such newspaper’s website.*

* * * *

(e) *Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or (ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.*

The Commission stated that the public notice was included on the State of Nebraska’s public notice website at www.nebraska.gov/calendar/index.cgi. Additionally, the Commission pointed to payments made to local newspapers as further evidence of the public notice. However, no such documentation of the public notice was maintained.

Method and Date of Public Notice Not Documented in Minutes

For all of the 10 meetings tested, the methods and dates of advanced publicized notice of the time and place of each meeting were not recorded in the minutes, as required by State statute.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

1. Apparent Open Meetings Act Violations (Continued)

Neb. Rev. Stat. § 84-1411(1) (Reissue 2024) provides, as is relevant, the following:

(c) [S]uch notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

In addition to the items listed above, the APA observed other apparent violations of statutes, including the Act, governing Commission meetings, as summarized in the following table:

Meeting Date	Statute	Description
January 17, 2024	84-1413(4)	The Commission failed to provide minutes for this meeting.
January 19, 2022	81-2606(1)	The Commission's minutes state that five Commissioners did not attend the meeting, calling into question whether a quorum was present.
January 2023	81-2606(1)	The required quarterly meetings were not held during these months, due to weather or the lack of a quorum.
July 2023		
October 2024		
May 14, 2024	81-2606(1)	Special meetings can be called at the request of eight voting members. The Commission lacked documentation showing that eight commissioners called the special meeting.
February 6, 2024		
November 18, 2023		
May 8, 2023		
February 1, 2023		

The APA has also addressed other apparent violations of the Act in **Comment and Recommendation Number 2** ("Appointment of Interim Executive Director"), **Comment and Recommendation Number 3** ("Commission Expenditures"), and **Comment and Recommendation Number 4** ("Purchasing Card Transactions") herein.

Although the APA tested meeting minutes of the full Commission, we observed also that similar violations of the Act appear to have taken place for meetings of the Commission's Executive Committee.

Neb. Rev. Stat. § 84-1414(1) (Reissue 2024) contains the following language regarding failure to abide by the precepts of the Act:

Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

Subsection (4) of that same statute adds this:

Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

A proper system of internal control requires the implementation of procedures to ensure the proper documentation of business conducted by the Commission, especially during its public meetings – all of which should be conducted in strict compliance with the Act. At a minimum, the Commission's meeting minutes should reflect the following: the time, place, members present and absent, and substance of all matters discussed; any vote to go into closed session and the time that such session commenced and concluded; motions to move or second any action, including subsequent roll call votes; and the methods and dates of any public notice given, which the Commission should be able to document separately. Additionally, as required by statute, the Commission should conduct business only when a quorum of its members is present.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

1. Apparent Open Meetings Act Violations (Concluded)

Without such procedures, there is an increased risk for not only statutory noncompliance but also misuse or abuse of State funds.

We recommend the Commission implement procedures to ensure compliance with all provisions of the Act as well as its own statutory requirements regarding quorums and special meetings.

***Commission Response:** The Chair of the Commission was governed with posting the public notice of the meetings and conducting the meetings with Robert Rules of Order. Lashawn Young was Chair from October 2022- October 2023 and was the only one designated to post on the State site. John Carter assumed the Chair role in November of 2023. Toni Clarke Chaired the February 2024 meeting. May and July meetings were Chaired by Malinda Williams. Upon Lashawn Young's resignation the staff did not find any documentation in the files that Lashawn provided of the postings. The Commission did not receive files from John Carter, Toni Clarke or Malinda Williams upon their resignations. The Commission was informed by the Chairs that they did comply with the posting requirements for open meetings.*

With the Commission being newly formed there was difference of opinions regarding the recording of the minutes. We will require that the Commission is trained on Roberts Rules of Order. Also, that the Chairs are trained on the proper conduct of meetings and transparency with documenting the public meeting notices. In addition, we will ensure that all Commissioners understand their responsibility in reviewing and approving minutes to ensure that official actions are properly documented. This will ensure compliance with the Open Meeting Act going forward.

2. Appointment of Interim Executive Director

On January 30, 2024, State Auditor Mike Foley sent a letter to Governor Pillen, the Commission, the Attorney General, and the Department of Administrative Services (DAS) – State Accounting questioning the legality of John Carter's appointment as Interim Executive Director of the Commission in 2023.

Please see **Exhibit C** for a copy of the APA's letter regarding the appointment of Mr. Carter.

Auditor Foley's letter pointed out the apparent irregularity of Mr. Carter's supposed appointment, which was recorded in the minutes (prepared by Mr. Carter) for the Commission's meeting on November 18, 2023. An excerpt of those minutes is shown below:

3. Approve using an Interim Executive Director until a permanent director can be hired.
 - a. Motion was made by Vernon to go into Executive Session to discuss the hiring of an Interim Director and exclude John, since he is being considered.
 - b. Motion was seconded by LaShawn.
 4. The Commission went into Executive Session at 9:36 A.M.
 5. Vernon Motioned for the Commission to come out of Executive Session at 10:08 A.M.
 6. Motion was seconded by Toni
 7. Vernon stated John received the majority vote of the Commission that he is approved to serve as the Interim Executive Director until a new Executive Director could be hired, so that the work of the Commission could continue to move forward.
 8. John moved to adjourn the special meeting at 10:11 A.M.
 9. Motion seconded by Gwen
 10. Meeting Adjourned 10:11 A.M.
- Minutes by
John Carter

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Appointment of Interim Executive Director** (Continued)

As explained in Auditor Foley's letter, the Commission appears to have approved Mr. Carter's appointment as Interim Executive Director during closed session, which would be contrary to the requirements of the Open Meetings Act (Act), as set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2024).

Neb. Rev. Stat. § 84-1410(1) (Reissue 2014) permits a public body to meet in closed session for certain purposes. Subsection (2) of that statute provides the following, however:

The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(Emphasis added.) Auditor Foley observed also that the meeting minutes contain no information about the terms of Mr. Carter's appointment, including the date upon which he was to assume his duties, the details and parameters of his official responsibilities, and any specifics regarding compensation. These omissions appear to constitute further violations of the Act.

To start, Neb. Rev. Stat. § 84-1413(1) (Reissue 2024) provides the following:

Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(Emphasis added.) Subsection (2) of that same statute adds this requirement:

Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting.

The APA obtained additional evidence confirming that Mr. Carter's appointment took place during closed session. The minutes from the December 26, 2023, meeting of the Commission's Executive Committee meeting contain the following:

Attorney General inquiry – John stated he received a request from Lynn Melson, Deputy Attorney General, appointed to the Commission, for us to send her a copy of the minutes from when John was approved to serve as interim director and the information concerning the public notice and voting result. John said he contacted Melson and informed her he was not a part of the actual executive session where the approval was discussed, but was informed after the regular meeting resumed that he had been approved to serve as Interim Executive Director. There was some concern from some members of John serving as Chair and Interim Director, that's why Lynn Melson was contacted by Vernon and Connie to render an opinion concerning the temporary appointment. John stated he informed Melson that he thought her request was outside the scope of what the Commission had requested, which was an opinion on the appropriateness or legality of the temporary appointment. John said since the actual voting was done in executive session, which he was not privy to, the result of an actual roll call vote in executive session was not a proper disclosure to anyone outside of that executive session.

(Emphasis added.) In addition to this apparent violation of the Act, Mr. Carter appears to have misrepresented his supposed appointment in the November 18, 2023, meeting minutes that he prepared and subsequently provided to DAS – HR Shared Services.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Appointment of Interim Executive Director** (Continued)

To ascertain the accuracy of those meeting minutes, the APA communicated with two Commissioners in January 2024, both of whom attended the November meeting and were present during the closed session. The Commissioners confirmed that no vote was taken to appoint Mr. Carter as Interim Executive Director.

According to the two Commissioners, moreover, any such future appointment was to hinge on the outcome of a requested opinion from the Attorney General's office regarding the legality of Mr. Carter serving as both a Commissioner and the Interim Executive Director.

Additionally, the APA received copies of internal Commission email exchanges confirming that Mr. Carter was not formally appointed to serve as Interim Executive Director. Copied below is one example of multiple such exchanges observed:

On Feb 23, 2024, at 4:30 AM, [REDACTED] wrote:

There is no valid authorization of hiring John as interim director.

I never received an opinion from the AG.

Hiring John as ID was contingent on know if he could continue to serve in a commissioner status & an employee of the committee.

Nevertheless, as shown previously herein (pg. 12), the November 18, 2023, meeting minutes prepared by Mr. Carter assert the following:

Vernon stated John received the majority vote of the Commission that he is approved to serve as the Interim Executive Director until a new Executive Director could be hired, so that the work of the Commission could continue to move forward.

The APA also reviewed email messages between Mr. Carter and DAS – HR Shared Services, which was responsible for setting up Commission employees in the State's accounting system and processing their pay. On November 28, 2023, a DAS – HR Shared Services team member emailed Mr. Carter, referencing a telephone call that took place earlier that morning. That message asked Mr. Carter to contact the Attorney General's office regarding assistance with questions about the Interim Executive Director role.

In an email message the next day, November 29, 2023, the DAS – HR Shared Services team member directed Mr. Carter to contact someone in that office once direction from the Attorney General's office had been received.

On December 5, 2023, Mr. Carter emailed the DAS – HR Shared Services teammate, stating the following:

I did receive an email from Lynn and she requested some additional information, which I believe I adequately answered for her. Basically, since the full Commission met, approved and voted for me to serve as interim director for now, that doesn't seem to be an issue.

I am not resigning from the Commission while serving as interim director, since that is only temporary and will very likely be short term. However, if the Commission offers me a permanent position as Director, then I would resign from the Commission to perform that job on a permanent full-time basis.

Please advise what day and time I can come to Lincoln to do the onboarding and get all of the paperwork completed to serve as Interim Director. I agreed with the Commission to accept \$85K per year, as it was for Mark Patten. I am available immediately any day and time to come to Lincoln to get started.

Thank you in advance for your assistance in this matter.

John Carter

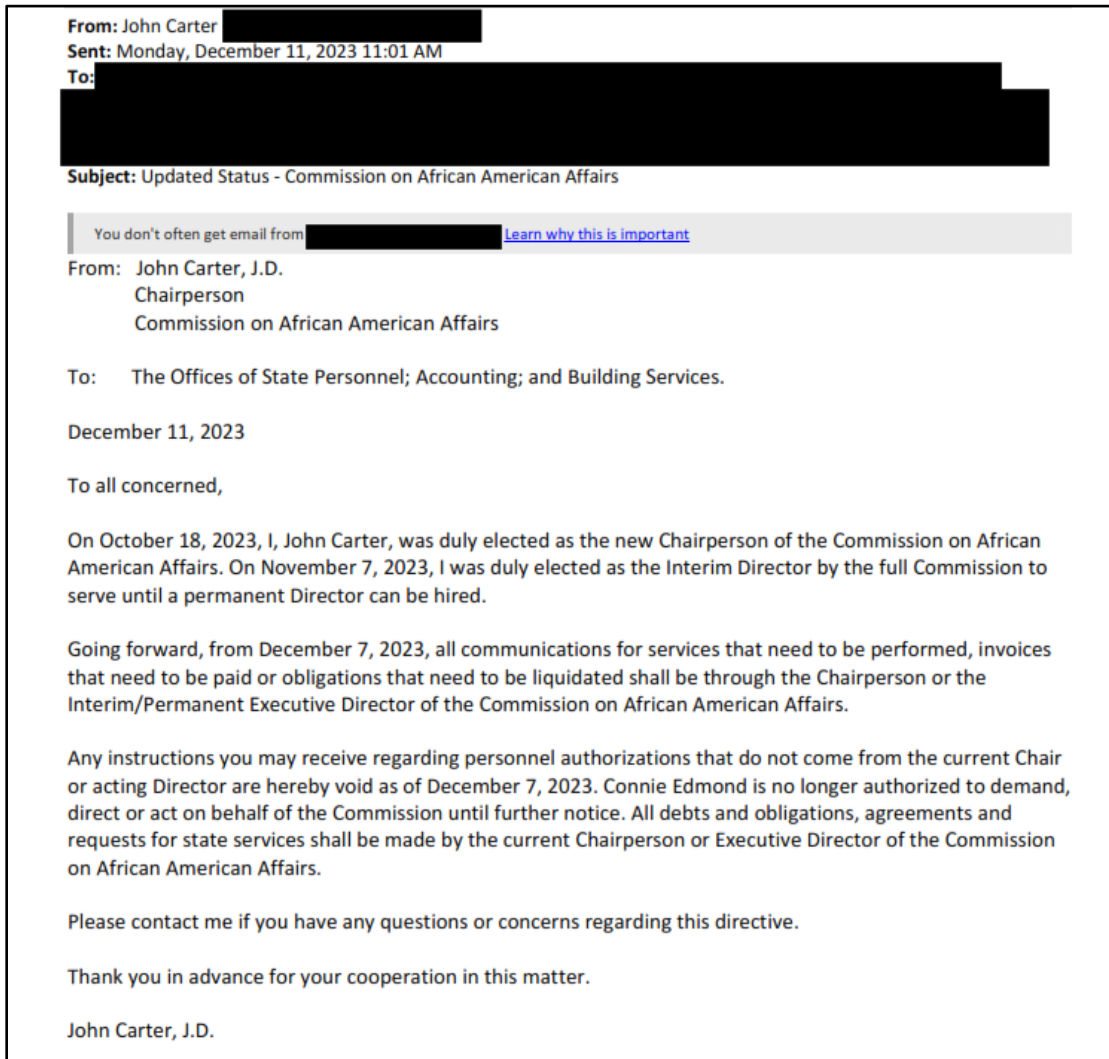
NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Appointment of Interim Executive Director** (Continued)

On December 11, 2023, Mr. Carter sent the following “directive” to both DAS – State Accounting and DAS – HR Shared Services:



Interestingly, this email states, “On November 7, 2023, I was duly elected as the Interim Director by the full Commission to serve until a permanent Director can be hired.” That claim directly contradicts the minutes for the November 18, 2023, meeting of the Commission (pg. 12) – as prepared by Mr. Carter – which indicate that the purported executive session vote occurred some 11 days later.

Curiously, in addition to claiming for himself an earlier appointment date than that reflected in the applicable meeting minutes, Mr. Carter’s December 11, 2023, email message appears to have been an attempt to consolidate for himself significant power over the Commission – demanding, among other things, that all instructions “regarding personnel authorizations” come solely from him.

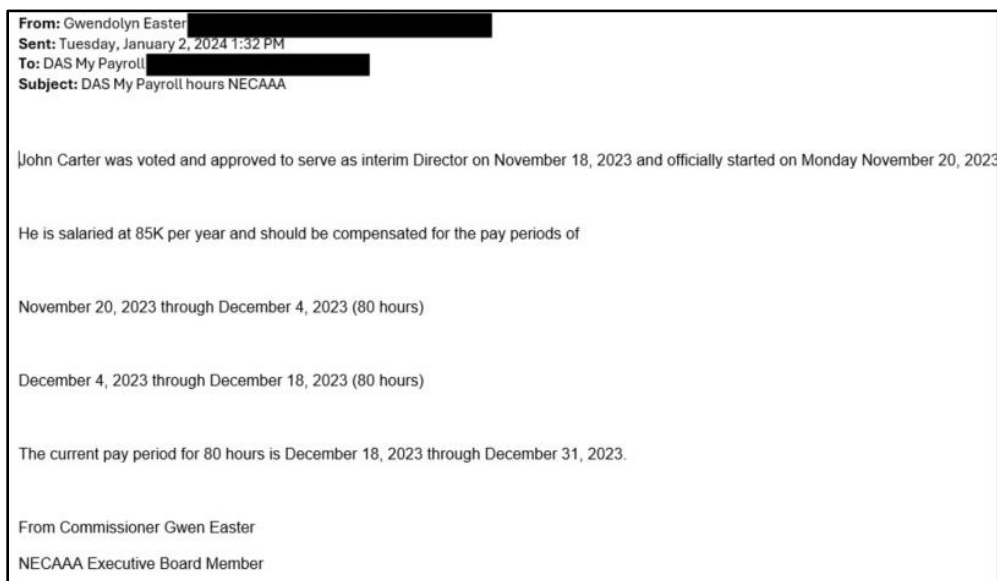
On January 2, 2024, Commissioner Gwen Easter submitted Mr. Carter’s start dates, salary, and hours worked to DAS – HR Shared Services via email, as shown below:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. Appointment of Interim Executive Director (Continued)



However, as noted previously herein (pg. 12), neither the start date nor the salary for Mr. Carter are documented to have been discussed, much less formally approved, by the full Commission. Furthermore, Commissioner Easter was not authorized by the Commission to submit this information to DAS – Shared Services.

Despite these concerns, DAS – HR Shared Services relied upon Commissioner Easter’s email message to process a \$9,807.84 gross payroll disbursement to Mr. Carter on January 17, 2024, for 240 hours of work claimed.

Shown below is an image of that payment:

State of Nebraska -- Pay Stub Information

DEPT ADMIN SERVICES - ACCOUNTING
1526 K ST STE 190
LINCOLN, NE, 68508-2741

Employee Number
Employee Name

CARTER, JOHN M

Check Number
Route

Pay Period End Date
12/31/2023

Check Date
01/17/2024

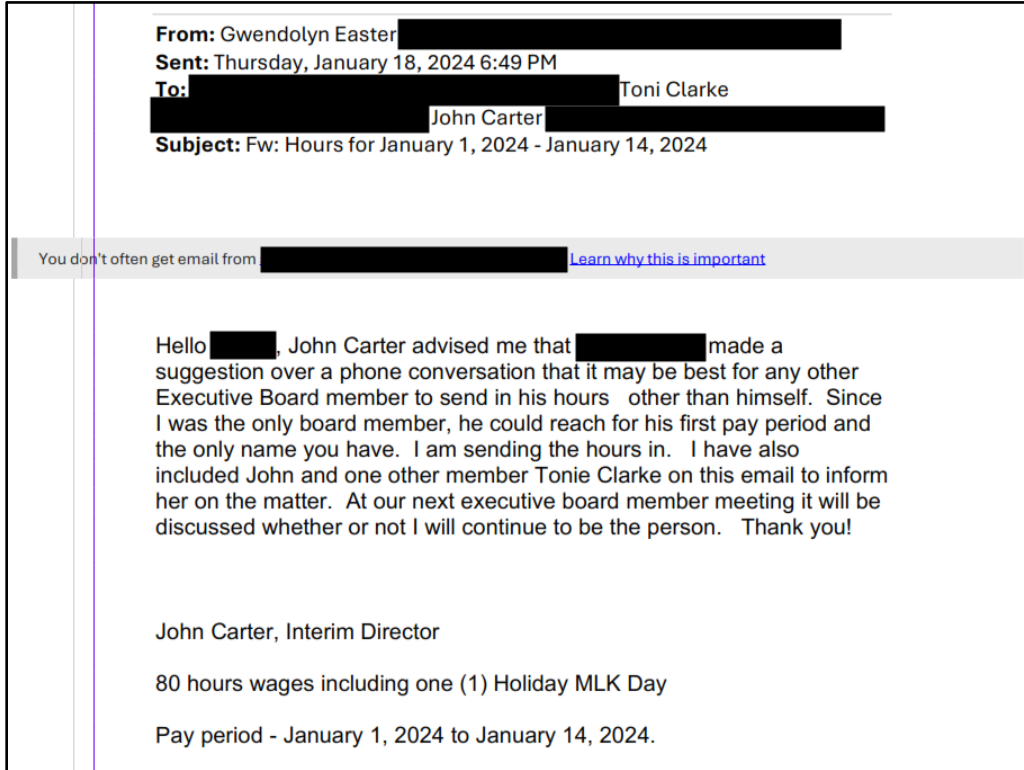
Pay / Accrual Description	Hours	Hourly Rate	Gross Pay	YTD Amount	Deduction Description	Current Amount	YTD Gross Amount
REGULAR PAY	216.00	40.866	8,827.06	8,827.06	Gross Wages	9,807.84	9,807.84
HOLIDAY	24.00	40.866	980.78	980.78	FEDERAL INCOME TAX	1,359.24	1,359.24
RETIREMENT			734.42	734.42	FEDERAL SOC SEC WITHHELD	608.09	608.09
VACATION HOURS EARNED			11.10	11.10	FEDERAL MEDICARE WITHHELD	142.21	142.21
SICK HOURS EARNED			11.10	11.10	NEBRASKA STATE INCOME TAX	498.58	498.58
					RETIREMENT	470.78	470.78
Gross Pay					Deductions		
9,807.84					3,078.90		
					Net Pay		
					6,728.94		

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS (Continued)

2. Appointment of Interim Executive Director (Continued)

One week later, on January 24, 2024, Mr. Carter received an additional \$3,269.28 gross payroll disbursement for claimed work hours that Commissioner Easter reported for him to DAS – State Personnel in the email message shown below:



The following is an image of the pay stub for the second payroll disbursement to Mr. Carter:

State of Nebraska -- Pay Stub Information

DEPT ADMIN SERVICES - ACCOUNTING
1526 K ST STE 190
LINCOLN, NE, 68508-2741

Employee Number
Employee Name

CARTER, JOHN M

Check NumberRoutePay Period End DateCheck Date

01/14/202401/24/2024

Pay / Accrual Description	Hours	Hourly Rate	Gross Pay	YTD Amount	Deduction Description	Current Amount	YTD Gross Amount
REGULAR PAY	72.00	40.866	2,942.35	11,769.41	Gross Wages	3,269.28	13,077.12
HOLIDAY	8.00	40.866	326.93	1,307.71	FEDERAL INCOME TAX	124.71	1,483.95
RETIREMENT			244.81	979.23	FEDERAL SOC SEC WITHHELD	202.69	810.78
VACATION HOURS EARNED			3.70	14.80	FEDERAL MEDICARE WITHHELD	47.41	189.62
SICK HOURS EARNED			3.70	14.80	NEBRASKA STATE INCOME TAX		498.58
* Sick Taken/Available *	0.00		14.80		RETIREMENT	156.93	627.71
* Vacation Taken/Available *	0.00		14.80				
Gross Pay					Deductions		
3,269.28					531.74		
					Net Pay		
					2,737.54		

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Appointment of Interim Executive Director** (Continued)

The gross payroll disbursements to Mr. Carter for his presumed term as Interim Executive Director totaled \$13,077.12.

In addition to the lack of evidence for Mr. Carter's appointment as Interim Executive Director, including no support for his hire date or salary, there is nothing to document that the full Commission was notified of, much less approved, his claimed work hours or payroll information.

The following shows the contents of a January 22, 2024, email message from a Commission member to DAS – HR Shared Services confirming that the initial payroll disbursement to Mr. Carter was processed based on both the documentation provided by him and the email message from Commissioner Easter reporting Mr. Carter's claimed work hours:

I confirmed with my colleague that he met with John on 12/18 to verify his I-9, W4, and Direct Deposit information was all up to date in our files and answer any questions he would have. This was all that was completed by way of orientation. An offer letter was not completed, and I believe that to be just a lapse of communication between myself and my team because I was out for almost the entirety of December overseas. Attached is the email chain between my colleague and John regarding that onboarding meeting. The hire event was completed at that point by my colleague and then when I returned in early January, I saw the email from Gwendolyn with the back-dated pay information, so I executed that on the next paycheck (I believe this was the 1/10 check).

I can't determine the exact day that John stopped by in my office to meet with me, but I do remember it was within the days prior to my departure in December. This would have been between November 29th- December 1st. He came to my office and let me know just how important getting a lot of the moves made for the Commission was. He stated that he was already appointed by the Commission and was doing the work of Interim. He was also talking about how we needed to get an Administrative Assistant hired to help complete the work needed. I stated in that meeting that I knew a Commissioner could not also be a permanent staff member with the State, but that I wasn't sure if there were concerns with the transfer event to and from that position. (For example, if we moved him into the permanent position, would we be able to move him back into the Commissioners role seamlessly or would there be obstacles we should think about before taking any action). This is where I deferred John to the AG's office since they would be able to advise on matters related to this that I may not have been able to. I have always tried to have Commissions work directly with the AG's office for things like this so that HR doesn't become a middleman (and potentially misunderstand what is being asked by both parties). John's email to me on 12/5 implied, and I assumed (unfortunately) that the matter had been closed and "approved" to move forward.

(Emphasis added.) On February 2, 2024, the Attorney General issued a letter to the Commission pointing out that Mr. Carter had not been properly appointed as Interim Director and, due to violations of the Act, was not authorized to act in that capacity for the Commission.

Please see **Exhibit D** for a copy of the Attorney General's letter to the Commission.

On February 6, 2024, the Commission held a special meeting during which Mr. Carter formally resigned as Interim Executive Director – a largely unnecessary action given the Attorney General's conclusion that he had not been appointed properly in the first place.

To date, despite the Attorney General's clear pronouncement regarding Mr. Carter's erroneous claim to the Interim Executive Director position, no action has been taken to recoup the questionable payroll disbursements to him.

Along with the Commission's apparent violations of the Act, Mr. Carter may have fraudulently misrepresented his appointment to DAS – HR Shared Services to obtain in excess of \$13,000 in payroll disbursements from the State.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Appointment of Interim Executive Director** (Continued)

If proven true, such action would give rise to serious statutory concerns. In particular, Neb. Rev. Stat. § 28-512 (Reissue 2016) creates the criminal offense of “theft by deception,” as follows:

A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgment of a transaction; or

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (a) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, or (b) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument.

The word deceive does not include falsity as to matters having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed.

Furthermore, there was a clear failure on the part of DAS – HR Shared Services to obtain either proper supporting documentation or full Commission approval prior to processing the payroll disbursements arising from Mr. Carter’s supposed appointment as Interim Executive Director.

A proper system of internal control requires procedures to ensure that the Commission adheres strictly to all provisions of the Act when taking any formal action, including appointing an Executive Director or other personnel. Likewise, those same procedures should ensure that no Commissioner acts unilaterally to authorize payments, including payroll disbursements from DAS – HR Shared Services, without both the approval of the full Commission and the appropriate supporting documentation.

Without such procedures, there is an increased risk for fraud or abuse and the loss of public funds.

We recommend the implementation of procedures to ensure: 1) the Commission adheres strictly to all provisions of the Act when taking any formal action, including appointing an Executive Director or other personnel; and 2) no Commissioner acts unilaterally to authorize payments, including payroll disbursements from DAS – HR Shared Services, without both the approval of the full Commission and the appropriate supporting documentation. Given the gravity of this matter, moreover, we will forward the information herein to the Attorney General again, encouraging immediate action to recoup the questionable payroll disbursements to Mr. Carter. Finally, we urge the Commission to work closely with DAS – HR Shared Services to implement formal procedures for adding new employees to the State’s accounting system and processing payroll disbursements thereto.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

2. Appointment of Interim Executive Director (Concluded)

Commission Response: *There appeared to be some discrepancy in what occurred in the November 18th special meeting. See email:*

On Mon, Jan 15, 2024 at 6:28 PM Clarice Jackson <voiceadvocacycenter@gmail.com> wrote:

I am requesting the meeting minutes from the November 18th meeting where Toni made a motion to appoint John as interim director, LaShawn and/or Gwen please confirm which one of you seconded the motion to appoint John as the interim director, and after my concerns about being director and chair were voiced, then we all voted in agreement to get clarity in writing that he could in fact remain in both positions (as John inserted that state personnel told him could) be sent to the entire commission. It has been over a month and nothing has been submitted in writing and therefore all other actions are unauthorized!

I also would like to know who from the Executive Committee, (was it you Toni since you made the motion) instituted his hiring onboarding, the hiring date and all preliminary hiring background checks since he states and it is stated in the Nebraska Examiner that he is in fact hired and serving in both capacities and we ALL voted that clarity from the attorney general's office on him serving in both positions needed to happen first, in writing before any roles were solidified?

The acting Chair Toni Clark presiding over this issue and in a special meeting and informed the Commission that no further action was necessary.

3. Commission Expenditures

The APA tested 18 Commission expenditures and found various issues, as detailed in the table below. It is important to note that the Commission's expenses are entered into the State's accounting system, then preaudited and approved by DAS – State Accounting, which retains some responsibility, at least, to ensure that the Commission's expenditures are reasonable, necessary, and in compliance with State policies and regulations.

Documentation for Expenditures

The APA had concerns regarding several of the 18 expenditures tested. A few of the transactions were payments for attendance at events or to organizations requesting support from the Commission; however, no formal policies or procedures were in place for either type of expenditure. Such policies or procedures might include a formalized process for approving requests for Commission funds, including a specific method for evaluating those petitions, and a required vote by the Commission to approve any applications for financial support or payments to attend events. Of particular interest were three instances of the Commission purchasing tickets/seats to events for non-Commission members and purchases of meals/food items that appear to have been excessive.

A summary of the APA's concerns regarding eight of the Commission's expenditures is provided in the following table:

Vendor	GL Date	Amount	Description
Juneteenth Nebraska NJOF	7/2/2024	\$ 2,000.00	Despite lacking any formal policies or procedures for evaluating requests of financial support, the Commission made this sponsorship payment. The documentation to support the expense consisted of an email from the Juneteenth Nebraska organization thanking the Commission for its sponsorship; however, no invoice, agreement, or other documentation was included to support what the sponsorship included. The email stated that the sponsorship included a booth rental at all Juneteenth Nebraska 2024 summer celebrations, as well as calendars, promotion, and literature. The email alone is not considered adequate documentation to support the expense.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

Vendor	GL Date	Amount	Description
100 Black Men of Omaha	9/30/2024	\$ 1,500.00	Despite lacking any formal policies or procedures for approving financial support to organizations or events, the Commission purchased tickets for a 10-person table at this dinner gala event. The former Executive Director provided initial documentation showing that only four Commissioners and the Executive Director attended the event, while the remaining five attendees were not Commissioners or employees of the Commission. According to a subsequent response from the Commission, however, seven Commissioners, along with the former Executive Director, were in attendance. In either case, the APA does not believe the payment for individuals who were neither Commissioners nor employees of the Commission is a reasonable use of Commission funds.
Chief Standing Bear Project	10/31/2024	\$ 1,200.00	Despite lacking any formal policies or procedures for approving financial support to organizations or events, the Commission purchased tickets for an eight-person table at this dinner gala event. According to the documentation provided, only two Commissioners and the former Executive Director appear to have attended the event, while two individuals unaffiliated with the Commission also attended. No documentation was provided to account for the remaining three tickets. The APA does not believe the payment for individuals who were neither Commissioners nor employees of the Commission is a reasonable use of Commission funds. The APA noted a similar \$1,200 expense paid to the same entity in January 2024.
Connie Edmond	3/15/2023	\$ 1,000.00	Despite lacking any formal policies or procedures for approving financial support to organizations or events, the Commission purchased a table at the January 2023 Governor's inaugural ball. In an email message prior to the event, the Commission noted that five Commissioners and their guests would attend. The APA does not believe the payment for individuals who were neither Commissioners nor employees of the Commission is a reasonable use of Commission funds.
Two Men & A Truck	4/17/2024	\$ 771.25	This expense was incurred as the result of moving the Commission to a new office building. However, the address listed on the invoice for the Commission's prior location was for an empty lot, which raises questions regarding the validity of the expense.
Connie Edmond	7/14/2023	\$ 632.33	This was a reimbursement for the purchase of several meals and food items, as follows: <ul style="list-style-type: none"> For its April 20, 2023, meeting, a \$291 purchase at Qdoba for 11 attendees, or \$26.45 per attendee. This is more than the U.S. General Services Administration's (GSA) per diem rate of \$20 for lunch and incidentals. Additionally, there was a \$138 purchase at Sam's Club for this meeting. A noon meal for the four members of the Executive Committee at Lazlo's on September 16, 2022, for \$102.97, which equates to almost \$26 per attendee. This is more than the GSA per diem rate of \$20 for lunch and incidentals. Additionally, the Nebraska State Accounting Manual specifically prohibits the reimbursement to one employee for two or more employees' meal expenses. Because the calculated amount of the meal per person exceeded the GSA per diem rate, the APA considers this expenditure to be excessive.
Candace Reid	7/14/2023	\$ 602.37	This was a reimbursement to one of the Commission's temporary employees for the purchase of office supplies. At the time, the Commission had a State purchasing card, which should have been used. As a result of not using the purchasing card, \$41 in sales taxes was paid on the purchases.
Helen Wakefield	1/31/2022	\$ 22.51	This expense was a reimbursement to an Executive Director candidate for a meal from Burger Theory in downtown Omaha, NE, on 1/18/2022. However, the receipt provided was not itemized; rather, it was only a credit card receipt, containing no specifics regarding the purchase being reimbursed.
Total		\$ 7,728.46	

Neb. Rev. Stat. § 81-1174(2)(b) (Reissue 2024) states the following:

[E]ach request [by "any state officer, state employee, or member of any commission, council, committee, or board of the state"] for any meal expense incurred during travel status shall be paid or reimbursed pursuant to a percentage of the per diem rates of the federal General Services Administration for travel within the contiguous United States, the United States Department of Defense for travel within Alaska, Hawaii, or a United States territory or possession,

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

and the United States Department of State for foreign travel, as determined by and in accordance with policies established by the Director of Administrative Services. Such percentage shall not exceed one hundred percent nor be less than sixty percent of the federal per diem rate. Any meal expense charged directly to and paid for by the state shall be identified on the request for reimbursement and deducted from the per diem based on the percentage established for the meal provided.

(Emphasis added.) Additionally, the Nebraska State Accounting Manual, General Policies, 22. *State Employee Expenses While Not In Travel Status* (01/2021), states the following, in relevant part:

These payments are only allowable under State Statute 81-1174 for attendance at official functions, conferences or hearings, not to include normal day-to-day operations of the department, agency, commission, council, committee, or board. These reimbursements shall be accounted for by using object code 571600, and reviewed for each employee based on IRS guidance

If meals are included in the payments by the agency, a list of State employees attending the conference, official function or hearing must be attached to the payment document. The agency must identify for each employee their headquarter city. The disbursement document description must state whether this is an official function, conference or hearing and the disbursement document shall be signed or approved online by the agency director. If the agency director preauthorized (signed) the meal, the original preauthorization may be submitted in place of their signature, and the payment may be approved by an individual other than the director. The director's approval or preauthorization is only required for meals for employees who are not in travel status. Other employee expense reimbursements may be handled through the normal process.

It is the policy of State Accounting to allow agency directors to determine the definition of conferences, official functions and hearings, unless otherwise defined by Statute.

Furthermore, the Nebraska State Accounting Manual, Travel Policies, 6. *Meals* (11/2023), states the following, in relevant part, regarding one-day travel:

At the agency head's discretion, one-day travel meal expenses (breakfast and dinner only) may be reimbursed using State per diem rates when it is deemed necessary for the working conditions of the employee. Travel start and stop times must be included.

* * * *

- *Lunch - Noon meals for one-day travel are not reimbursable.*

* * * *

- *NOTE: The time limitations set forth do not include the time taken for the meal. Incidental per diem expenses should not be reimbursed unless the employee is approved for one-day travel meal expenses.*

- *One-day travel will be prorated at 75% of the State Per Diem Rate (Must check the box for 1st or Last Day)*
- *Meal expenses incurred in the city or town in which the residence or primary work location of such employee is located, are not reimbursable, except as discussed in General Policy #22. State Employee Expenses While Not in Travel Status and Travel Expense Policy #3. Conference (attendance by State Employees).*
- *Actual expenses for group meals incurred by an agency on a purchasing card are allowable for official functions, conferences, or hearings; not to include normal day-to-day operations of the agency, commission, committee, or board.*

The IRS has taken the position that reimbursement for meal expenses incurred on one-day travel is taxable income to the employee unless such reimbursements are deemed "occasional". . . . When total one-day travel meal reimbursements are \$200 or more for an employee in any one year (December 1 through November 30), the entire amount of such reimbursements will be considered taxable income. . . . This should be processed during the calendar year payroll. The reimbursements will be added to the employee's gross wages and payroll taxes will be withheld accordingly.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

* * * *

Reimbursement to one employee for two or more employee's expenses will not be allowed for meals because of this provision.

Finally, the Nebraska State Accounting Manual, Travel Policies, 9. *Reimbursement to One Employee for Two or More Employee's Expenses* (01/2021), states the following, in relevant part:

An employee may not be reimbursed for another employee's meal per diem.

A proper system of internal control requires the Commission to do the following: 1) adopt and follow formal policies and procedures for approving attendance at, as well as providing sponsorships or organizational grants for, events; 2) implement procedures to ensure proper documentation – including records of those for whom event tickets have been obtained and itemized receipts for purchases – is maintained for all Commission expenditures; and 3) ensure expenditures not only comply with State statutes and accounting policies but also are necessary.

Without such procedures, there is an increased risk for loss, waste, or abuse of State funds.

We recommend the Commission adopt and follow formal policies and procedures for approving attendance at, as well as providing sponsorships or organizational grants for, events. The payment for attendance at events should be limited to Commissioners or Commission staff. We also recommend the Commission implement procedures to ensure proper documentation – including records of those for whom event tickets have been obtained and itemized receipts for purchases – is maintained for all Commission expenditures. Finally, the Commission should ensure expenditures not only comply with State statutes and accounting policies but also are necessary.

Approval of Expenditures

The Commission's policy and procedures for the handling of expenditures was mentioned in the Commission's meeting minutes. However, the Commission did not provide a signed document to verify the official policy.

Furthermore, both the full Commission and its Executive Committee lacked adequate documentation in their respective meeting minutes to support whether any of the expenses tested by the APA had been approved for payment. For several of the transactions examined, moreover, the APA questions whether the Commission's Executive Committee has the authority to approve expenditures other than those considered necessary between regular Commission meetings.

The APA identified issues with 16 of the 18 Commission expenditures tested, as follows:

Vendor	GL Date	Amount	Description
Zelle, Inc	3/15/2023	\$ 7,500.00	This expense was a recruitment fee to find candidates for the vacant Executive Director's position. It was discussed during the Commission's February 1, 2023, meeting, which did not have a quorum of members in attendance. Furthermore, the minutes state that all of the Commissioners voted by email to hire Zelle, Inc. As pointed out in Comment and Recommendation Number 1 ("Apparent Open Meetings Act Violations") herein (pg. 9), however, emails may not be used to circumvent any requirements of the Open Meetings Act.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

Vendor	GL Date	Amount	Description
Stable Gray	11/3/2023	\$ 5,290.00	This expense, which was for the development and maintenance of a multipage website, was discussed at the Commission's February 1, 2023, meeting; however, as noted above, that meeting lacked a quorum of members in attendance. Additionally, the approval of the cost for the services of up to \$5,500 did not have a second to the motion and did not have the votes recorded. In a follow-up email on February 7, 2023, Commissioner Young explained to the Commission that she had mistakenly determined there was a quorum and asked for a vote to approve the \$5,500 cost via email, which is not allowable under the Open Meetings Act. In its October 2023 Commission meeting minutes, more discussion was held regarding the launch of the website. Payment was delayed due to the lack of a contract or invoice. On November 2, 2023, John Carter emailed DAS – State Accounting, providing the invoice and asking that it be paid – which it was the next day – despite a contract never being provided.
Zulkoski Weber, LLC	3/15/2023	\$ 3,750.00	This company provided legislative monitoring services to the Commission. The Executive Committee's meeting minutes for December 6, 2022, reflect a discussion of the contract; however, no evidence could be provided that the full Commission approved the contract or transaction, as required by statute for expenditures exceeding \$2,000.
100 Black Men of Omaha	9/30/2024	\$ 1,500.00	As noted in a previous table herein (pg. 19), the Commission purchased tickets for a 10-person table at a dinner gala event; however, the Commission did not provide adequate evidence that the full Commission approved the transaction. The APA questions whether this expense could be considered "necessary" and, therefore, allowable for Executive Committee approval.
DAS-OCIO	2/12/2024	\$ 1,454.38	This expense consisted of cabling and electrical work to set up the Commission's new office location; however, the Commission did not provide adequate evidence that the full Commission or the Executive Committee approved the cost of the transaction.
Chief Standing Bear Project	10/31/2024	\$ 1,200.00	As noted in a previously herein (pg. 20), the Commission purchased tickets for an eight-person table at a dinner gala event. However, the Commission did not provide adequate evidence that the full Commission approved the transaction. The APA questions whether this expense could be considered "necessary" and, therefore, allowable for Executive Committee approval.
Connie Edmond	3/15/2023	\$ 1,000.00	This was a payment for the purchase of a table at the January 2023 Governor's inaugural ball, which was noted in a previous table herein (pg. 20); however, the Commission did not provide adequate evidence that the full Commission approved the cost for this transaction. The December 6, 2022, Executive Committee meeting minutes contain a statement that the Commissioners should plan to attend the Governor's ball. The APA questions whether this expense could be considered "necessary" and, therefore, allowable for Executive Committee approval.
DAS-OCIO	9/30/2024	\$ 832.45	This expense was for device leasing and site support. The Commission did not provide adequate evidence that the full Commission or the Executive Committee approved the cost of the transaction.
Connie Edmond	7/14/2023	\$ 781.76	This expense was related to meal and food purchases, as noted in a previous table herein (pg. 20), as well as for name tags. The Commission did not provide adequate evidence that the full Commission approved the transaction. The APA questions whether this expense could be considered "necessary" and, therefore, allowable for Executive Committee approval.
Two Men & A Truck	4/17/2024	\$ 771.25	As noted above (pg. 22), this expense was incurred as a result of the Commission's move to a new office building. The Commission did not provide adequate evidence that the full Commission approved the transaction.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

Vendor	GL Date	Amount	Description
Helen Wakefield	1/31/2022	\$ 766.57	This was a reimbursement of travel expenses to a candidate for the vacant Executive Director position. Not only did the Commission lack adequate evidence that the full Commission approved the transaction, but also the Commission's meeting minutes contain no mention of an interview having taken place with this individual.
Candace Reid	7/14/2023	\$ 602.37	This expense was for office supplies and meeting materials printing costs. The Commission did not provide adequate evidence that the full Commission or the Executive Committee approved the transaction.
Game & Parks Commission	5/8/2024	\$ 290.00	This expense was a used furniture purchase. The Commission did not provide adequate evidence that the full Commission or the Executive Committee approved the transaction.
Leisure Limousine & Sedan Services	2/17/2022	\$ 101.45	This expense was to provide transportation from Lincoln, NE, to Omaha, NE, for a candidate for the vacant Executive Director position. The Commission did not provide adequate evidence that the full Commission approved the transaction.
Dunkin' Donuts	3/14/2022	\$ 53.96	This expense was for coffee and donuts for the January 19, 2022, Commission meeting. The Commission did not provide adequate evidence that the full Commission approved the transaction. The APA questions whether this expense could be considered "necessary" and, therefore, allowable for Executive Committee approval.
Dunkin' Donuts	3/15/2023	\$ 30.98	This expense was for coffee and donuts for the February 1, 2023, Executive Committee meeting. The Commission did not provide adequate evidence that the full Commission approved the transaction. The APA questions whether this expense could be considered "necessary" and, therefore, allowable for Executive Committee approval.
Total		\$ 25,925.17	

Neb. Rev. Stat. § 81-2606(1) (Reissue 2024) requires the Commission to meet "at least once every calendar quarter." That same subsection of statute says, "Special meetings may be called at the request of eight voting members."

Any approval of expenditures should be documented in the minutes of the meeting during which such expenses were authorized.

Neb. Rev. Stat. § 84-1413 (Reissue 2024) of the Open Meeting Act requires, in part, the following:

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(Emphasis added.) Neb. Rev. Stat. § 81-2607 (Reissue 2024) establishes an executive board (referred to in the Commission's own documents and, therefore, herein as the "Executive Committee") for administration of the Commission between quarterly meetings, as follows:

(1) For purposes of administration of the commission during the interim between regular quarterly meeting, there is hereby established an executive board of the Commission on African American Affairs consisting of the chairperson of the commission and four members of the commission.

(2) The executive board may enter into contracts for consultation services, supplies, and equipment, if the amount contracted for does not exceed two thousand dollars in any one contract, and may supervise all programs relating to the affairs of African American people instituted and authorized by the commission.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

A proper system of internal control requires procedures to ensure the appropriate documentation of the approval of Commission expenditures by the Commission's Executive Committee in the interim period between regular quarterly meetings.

Furthermore, it is important to note that Executive Committee expenditures are restricted to those either specified in § 81-2607(2) or necessary – not merely convenient, but indispensable – to carry out the administration and oversight of the Commission during interim periods. The Commission bears the burden, moreover, of justifying the necessity of such expenditures.

A proper system of control also requires policies that identify the approval process used by the Commission.

Finally, there has been a clear failure on the part of DAS – State Accounting to ensure that the Commission's expenditures are properly approved prior to payment.

Without the policies and procedures described in this comment, there is an increased risk for loss or misuse of State funds.

We recommend the Commission implement procedures to ensure either the full Commission or the Executive Committee has approved all expenses, including those necessary for administrative and oversight purposes during interim periods, prior to payment, and such approval is included in the appropriate meeting minutes.

Subsequent Expenditures

In our review of subsequent expenditures – or those paid after December 31, 2024 – the APA identified other issues, as detailed in the table below:

Vendor	GL Date	Amount	Description
The Jet Award Foundation	4/28/2025	\$2,000.00	The Commission purchased tickets to this dinner gala event. Similar to our above concerns regarding these types of payments, the Commission lacked formal policies and procedures for approving attendance at, as well as providing sponsorships or organizational grants for, such events.
Marcus D Lawson	2/21/2025	\$761.28	An invoice dated January 15, 2024, indicated that the vendor provided video recording services for a community meeting at the Malcolm X Foundation. The original amount of the invoice was \$271.92. This was not paid until February 2025, over one year from the date of the original invoice. The delay in payment was due to the lack of a written contract or agreement and the failure of the vendor to provide an Internal Revenue Service (IRS) Form W-9 to receive payment from the State. During the delay in payment, the vendor charged the Commission \$489.36 in late fees – which were not indicated on the original invoice and were not supported by a written agreement.
Albers Property Management	2/21/2025	\$700.00	Starting in August 2024, the Commission began paying \$80 each for two parking spaces near its office. The invoice received was \$60 for a prorated month of August 2024 and then \$160 for the months of September to December 2024. Because the Commission's office is located near State-owned parking lots, this appears to have been a questionable expenditure of State funds. Furthermore, most State employees working in downtown Lincoln, NE, are required to pay for their own parking.
Total		\$ 3,461.28	

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Commission Expenditures (Continued)

A proper system of internal control requires the Commission to do the following: 1) adopt and follow formal policies and procedures for approving attendance at, as well as providing sponsorships or organizational grants for, events; 2) obtain adequate documentation, such as written contracts, to support all expenditures; 3) adopt and follow policies and procedures for authorizing and submitting payments to DAS – State Accounting; and 4) use and pay for State parking facilities when needed.

Without such procedures, there is an increased risk for loss of State funds.

For a list of the Commission's Expenditures by Vendor/Expense Type, see **Exhibit B** herein.

We recommend the Commission: 1) adopt and follow formal policies and procedures for approving attendance at, as well as providing sponsorships or organizational grants for, events; 2) obtain adequate documentation, such as written contracts, to support all expenditures; 3) adopt and follow policies and procedures for authorizing and submitting payments to DAS – State Accounting; and 4) use and pay for State parking facilities when needed.

Commission Response: *Under Neb. Rev. Stat. § 81-2602, the Commission “may determine to do all things ... to enhance the cause of African American rights and to develop solutions to problems common to all Nebraska African Americans”. This constitutes a delegation of broad authority—empowering the Commission to undertake ANY activity deemed necessary to fulfill its mission.*

Attendance at the Governor's Ball provided a unique opportunity for the Commission to meet, informally yet directly, key Executive Branch officials and senior staff—supporting more effective communication. The advocacy agencies event brought together mission-aligned commissions and key stakeholders. By attending, the Commission: Networked with sister agencies—Latino Affairs, Native American, etc. and Built relationships critical to future interagency coordination on legislation, grants, or policy initiatives surrounding housing, education, public health, and economic opportunity (§ 81-2604(2)– (3))

Lunch was purchased as “official business” which would not fall under the GSA guidelines and would be reimbursed as actual expense as advised by DAS/State Accounting. As well as meeting expense meals were for the meeting and not as an employee reimbursement for meals. Providing lunch for a full day Commission meeting is deemed reasonable.

All expenditures were:

- *Discussed, documented, and cleared through Executive Committee review and approval (see email examples)*
- *Properly documented via receipts, itemized invoices, and attendance logs.*
- *Approved by the full Commission at the quarterly meeting via approval of financial reports.*

This ensures accountability without compromising the Commission's ability to fulfill its mission. Furthermore, the Commission received approval from DAS/State Accounting in advance to further support and ensure that the expenses were reasonable and could be incurred.

The Commission acknowledges that the former Executive Director Simone Smith did maintain conflicting attendance information for the Standing Bear and 100 Black men event and the Commission will work to better train and educate future Executive directors on record keeping.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS (Continued)

3. Commission Expenditures (Concluded)

The Commission will adopt policies for support of events and representation by the Commission at events. In addition, the Commission will provided greater detail in minutes to more adequately support that all expenditures were necessary and properly approved within the structure of the Commission.

4. Purchasing Card Transactions

The Commission had two purchasing cards between July 2023 and December 2024. The APA identified several issues while reviewing a sample of 19 transactions made with the Commission's purchasing cards, as detailed below.

Lack of Documentation or Questionable Transactions

The APA found that 13 of 19 purchasing card transactions tested either lacked adequate supporting documentation or raised questions as to the reasonableness of the expense.

Four of those transactions are described in the following table:

Vendor	Amount	Invoice Date	Description
Hotel Phoenix	\$ 1,134.34	9/5/2024	The Commission failed to obtain after-the-fact documentation for this hotel stay, such as a hotel invoice. After the APA inquired about the lack of documentation, the Commission provided an invoice that did not match the original email confirmation for the hotel stay. The APA obtained an invoice that showed the Commission was charged for a no-show. It was determined that Commissioner Jackson canceled her hotel stay; however, the hotel had mistakenly booked two reservations for her. Consequently, when Commissioner Jackson canceled her reservation, the hotel charged the Commission for the erroneous second reservation. The hotel reversed the transaction on April 21, 2025. Had the APA not questioned this transaction, the Commission would have been unaware that the hotel charge was invalid.
Southwest Airlines	\$ 875.96	9/6/2024	This was for former Executive Director Simone Smith's round-trip flight from Omaha, NE, to Washington, D.C., to attend the 2024 Congressional Black Caucus Foundation (CBCF) annual legislative conference. The former Executive Director did not attend the event and, instead of requesting a refund on the purchasing card, a flight credit from the airline was received. Despite having terminated her employment with the Commission, the former Executive Director has retained access to the flight credit confirmation number. The APA believes the Commission should seek reimbursement from the former Executive Director for the cancelled flight.
CBCF Registration Fee	\$ 600.00	9/5/2024	This was a conference registration fee for two individuals to attend the 2024 CBCF annual legislative conference in Washington, D.C. The Commission paid for former Executive Director Simone Smith and Commissioner Clarice Jackson to attend this event. Former Executive Director Smith canceled her attendance at the event, but the registration was not refundable. This is not a reasonable use of Commission funds.
American Airlines	\$ 45.00	9/12/2024	This purchase was a second checked baggage fee for a Commissioner to attend the 2024 CBCF annual legislative conference in Washington, D.C. The return airline fee was to a different state for personal reasons. The need to check two bags for a three-day conference appears questionable.
Total	\$ 2,655.30		

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

4. Purchasing Card Transactions (Continued)

The following nine transactions relate to food or meal expenses charged to the Commission's purchasing card:

Vendor	Amount	Invoice Date	Description
Qdoba	\$ 468.56	10/18/2023	The purchase from Qdoba was for a noon meal during the Commission's October 18, 2023, meeting. According to the meeting minutes, eight Commissioners were in attendance, which brings the cost of the meal per attendee to \$58.57, which is unreasonable for a noon meal.
Qdoba	\$ 434.89	1/17/2024	The purchase from Qdoba was for a noon meal during the Commission's January 17, 2024, meeting. The Commission failed to provide meeting minutes for this meeting. However, in email correspondence from a Commissioner to DAS – State Accounting, nine Commissioners were identified as having been in attendance, making the cost per attendee \$48.32, which is unreasonable for a noon meal.
Qdoba	\$ 323.59	7/19/2023	This purchase from Qdoba was for a noon meal during the Commission's July 19, 2023, meeting. The Commission failed to provide minutes for this meeting, likely because a quorum of at least eight members was not present. Assuming only seven Commissioners were present, the cost per attendee was \$46.23 – which, per DAS accounting policies, is unreasonable.
Lazlo's	\$ 101.57	7/3/2023	This purchase was a lunch for the new Executive Director, Mark Patten, on his first day, along with four Commissioners. This was a non-travel meal and should have been handled through expense reimbursements for all in attendance, in accordance with DAS accounting policies.
Sam's Club	\$ 90.56	10/17/2023	This was the purchase of various snack foods for the October 18, 2023, Commission meeting. In addition to the \$468.56 Qdoba expense included above, the overall food costs related to the meeting are unreasonable.
Sam's Club	\$ 43.22	1/16/2024	This was a purchase of various snack foods for the January 17, 2024, Commission meeting. The Commission failed to provide minutes for this meeting. In addition to the \$434.89 Qdoba expense included above, the overall food costs for this meeting are unreasonable.
Sam's Club	\$ 40.80	7/18/2023	This was the purchase of various snack foods for the July 19, 2023, Commission meeting. In addition to the \$323.59 Qdoba expense included above, the overall food costs related to the meeting are unreasonable.
Sam's Club	\$ 34.26	10/17/2023	This was the purchase of various snack foods for the October 18, 2023, Commission meeting. In addition to the \$468.56 Qdoba expense included above, the overall food costs related to the meeting are unreasonable.
Eileen's Cookies	\$ 12.50	7/16/2023	This was a purchase of two dozen cookies for the July 19, 2023, Commission meeting. In addition to the \$323.59 Qdoba expense included above, the overall food costs related to the meeting are unreasonable.
Total	\$ 1,549.95		

The APA uses the Federal General Services Administration (GSA) per diem rates as its guide for reasonable meal expenses based on the destination city. The Nebraska State Accounting Manual, Travel Policies, 6. *Meals* (11/2023), states the following, in part:

The State per diem rates shall be 70% of the relevant federal rates (General Services Administration for travel within the contiguous United States)

The Federal GSA meal and incidental expense breakdown for Lincoln, Nebraska, was \$20 for lunch and incidentals from October 2021 through September 2024 and increased to \$24 effective October 1, 2024.

Furthermore, there has been a clear failure on the part of DAS – State Accounting to ensure that the Commission's expenditures are reasonable and in accordance with State policies.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

4. Purchasing Card Transactions (Continued)

A proper system of internal control requires procedures to ensure: 1) adequate supporting documentation is maintained for all Commission expenditures, which is necessary to verify their reasonableness and necessity; and 2) the Commission's lunch costs are reasonable per the Federal GSA rate, which in Federal fiscal year 2024 was \$15 for Lincoln, Nebraska. The table above shows three separate instances of the Commission's lunch expenses exceeding \$40 per Commissioner present.

Without such procedures, there is an increased risk for loss, misuse, and abuse, including fraud, of State funds.

We recommend the Commission implement procedures to ensure that all purchasing card transactions are supported by adequate documentation and are reasonable and necessary.

Commission Response: *All but one of the purchasing card transactions were supported by actual invoices, receipts, and statements. The one in question was from Simone Smith the Executive Director who signed off on the transaction unbeknownst that the official receipt was not present. Most of the transactions were for official functions of the Commission which allows for actual expenses to be incurred. Food expenses were for morning and afternoon meals and not one meal as was calculated and included delivery and tip charges. We will ensure that the policy and minutes reflect the Commission's intent to cover cost for official functions of the Commission. In addition, we will establish an out of state travel policy and ensure that there is accountability for transactions of the Executive Director.*

Lack of Approval for Out-of-State Travel

The APA found that out-of-state travel expenses paid for with a Commission purchasing card were not formally approved, or such approval was not recorded in the appropriate meeting minutes.

The seven travel expenditures detailed below pertain to attendance at the Congressional Black Caucus Foundation Annual Legislative Conference, hosted in Washington, D.C., from September 10, 2024, to September 15, 2024. They included airfare, lodging costs, and conference registration fees, for a total of \$3,415.75 – all of which appear to have been incurred without prior formal approval from the Commission:

Transaction	Amount	GL Date	Description of Purchase
D.C. PHOENIX PARK HOTEL	\$ 1,134.34	10/2/2024	This was for a two-person room in Washington, D.C.
SOUTHWEST	\$ 875.96	10/2/2024	This was an airline round-trip ticket for former Executive Director Simone Smith between Omaha, NE, and Washington, D.C.
CBCFINC.ORG	\$ 600.00	10/2/2024	This was a conference registration fee for two people, former Executive Director Simone Smith and Commissioner Clarice Jackson.
SOUTHWEST	\$ 480.98	10/2/2024	This was a departure ticket for Commissioner Clarice Jackson, from Omaha, NE, to Washington, D.C.
AMERICAN AIRLINES	\$ 244.47	10/2/2024	This was a return flight ticket for Commissioner Clarice Jackson, from Washington, D.C., to another state.
AMERICAN AIRLINES	\$ 45.00	10/2/2024	This was a checked baggage fee for Commissioner Clarice Jackson.
AMERICAN AIRLINES	\$ 35.00	10/2/2024	This was a checked baggage fee for Commissioner Clarice Jackson.
Total	\$ 3,415.75		

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

4. **Purchasing Card Transactions** (Concluded)

Per discussions with Commissioners, it was clear that the Commission was aware of these travel expenditures; however, no formal policy required the Commission's prior approval for out-of-state travel.

A proper system of internal control requires procedures to ensure that out-of-state travel expenses are formally preapproved by the Commission, and such approval is documented in the appropriate meeting minutes.

Without such procedures, there is an increased risk for loss, theft, or misuse of State funds.

We recommend the Commission implement procedures to ensure that out-of-state travel expenditures are preapproved by the Commission and documented in the appropriate meeting minutes.

Commission Response: *The Commission hired a new Executive Director Simone Smith in August 2024. Simone informed the Chair of her attendance and approval of the conference. Simone coordinated the travel with another Commissioner, approved the expenses including the checked bags and managed the arrangements for payment and cancellation when plans changed. Simone Smith informed the Commission that we would receive credit for the attendance cancellation. Simone Smith was informed that the flight credit was the property of the Commissions and it was to be used for future official business. The Commission will seek to have Simone Smith reimburse the Commission for the flight credit that she has maintained in light of her departure. In addition, the Commission will adopt a formal out of state travel plan.*

5. **Contracts and Bidding**

The Commission lacked adequate procedures for ensuring compliance with State bidding and contract requirements.

Lack of Bidding Process

The Commission entered a \$15,000 annual contract with a guaranteed rate for three years. The Commission also added an additional \$3,000 annual service to the contract. In total, the \$54,000 agreement was awarded without completing the formal competitive bidding process required by State statute.

The following table shows the details of that contract:

Vendor	Contract Start Date	Contract End Date	Tested Expenditure	Contract Amount	Description
FiscalNote	10/31/2023	12/30/2026	\$ 9,000.00	\$ 54,000.00	Expenditure was for legislative review software.

The State Procurement Act is set out at Neb. Rev. Stat. §§ 73-801 to 73-819 (Cum. Supp. 2024).

Neb. Rev. Stat. § 73-802 (Cum. Supp. 2024) declares the purposes of the State Procurement Act, as follows:

The purposes of the State Procurement Act are to establish a standardized, open, and fair process for selection of contracts and to create an accurate reporting of expended funds for such contracts. This process shall promote a standardized method of selection for state contracts, assuring a fair assessment of qualifications and capabilities for project completion or compliance with specifications. There shall also be an accountable, efficient reporting method of expenditures for these contracts.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

5. **Contracts and Bidding** (Continued)

Neb. Rev. Stat. § 73-807 (Cum. Supp. 2024) provides the following, in relevant part:

(1) All state agencies shall comply with the review and competitive bidding processes provided in this section. Unless otherwise exempt, no state agency shall expend funds for contracts without complying with this section.

(2) All proposed state agency contracts in excess of fifty thousand dollars shall be bid by a competitive formal bidding process in the manner prescribed by the division procurement manual or a process approved by the Director of Administrative Services. Bidding for contracts for services may be performed at the state agency level or by the division. The division shall administer the public notice and bidding procedures for any contract for personal property.

(Emphasis added.) For purposes of the State Procurement Act, Neb. Rev. Stat. § 73-803(11) (Cum. Supp. 2024) defines as “state agency” to include “any agency, board, or commission of this state”

Additionally, the State of Nebraska Procurement Manual (effective 7/19/2024), Section II. Competitive Bidding, issued by DAS, says the following:

A. Contracts subject to the State Procurement Act (Neb. Rev. Stat. § 73-801 et seq.) with a total cost greater than fifty-thousand dollars (\$50,000) must be competitively bid unless an exception applies.

As addressed in greater detail in **Comment and Recommendation Number 7** (“Accounting Performed by DAS – State Accounting”) herein, the Commission relies on DAS – State Accounting to perform all of its accounting functions. However, in response to the APA’s inquiry as to whether the Commission had followed mandatory competitive bidding procedures for the contract at issue, a DAS – State Accounting representative responded, “I’m not aware of any bidding, but I didn’t realize it was required for a service of this amount.”

Section 73-807(2), as referenced above, tasks the Director of DAS with both creating the governing procurement manual and designating the competitive bidding processes to be used by State agencies, including the Commission. Consequently, the APA believes that DAS – State Accounting, being the entity that oversees the disbursement of State funds, has a responsibility to advise the Commission regarding compliance with applicable statutory bidding requirements. This seems all the more true when, as was the case for the contract at issue, the invoice provided to DAS – State Accounting for payment of expenses contained the \$54,000 price, which is well above the statutory threshold for mandatory competitive bidding.

A proper system of internal control requires procedures for ensuring compliance with the State’s competitive bidding mandate.

Without such procedures, there is an increased risk for not only failure to comply with statutory bidding requirements but also misuse of State funds.

We recommend the Commission work with DAS – State Accounting to ensure compliance with competitive bidding requirements, as set out in both State statute and DAS procurement policies.

State Contract Database

The following Commission contracts were not entered into the DAS State contract database, as required by law:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

5. Contracts and Bidding (Continued)

Vendor	Contract Beginning Date	Contract Ending Date	GL Date	Tested Expense Amount	Total Contract Amount	Description
Fiscal Note	10/31/2023	12/30/2026	5/30/2024	\$ 9,000	\$ 54,000	Legislative review software
Zelle, Inc	1/5/2023	1/5/2024	3/15/2023	\$ 7,500	\$ 15,000	Executive Director recruiting
Zulkoski Weber, LLC	1/1/2023	12/31/2023	3/15/2023	\$ 3,750	\$ 15,000	Legislative monitoring services

Neb. Rev. Stat. § 84-602.04(4)(a) (Reissue 2024) states the following, in relevant part:

The website described in this section shall include a link to the website of the Department of Administrative Services. The department's website shall contain:

(i) A database that includes a copy of each active contract that is a basis for an expenditure of state funds, including any amendment to such contract and any document incorporated by reference in such contract. . . . The database shall be accessible by the public and searchable by vendor, by state entity, and by dollar amount. All state entities shall provide to the Department of Administrative Services, in electronic form, copies of such contracts for inclusion in the database beginning with contracts that are active on and after January 1, 2014, except that for any state entity that becomes subject to this section due to the changes made by Laws 2016, LB851, such state entity shall provide copies of such contracts for inclusion in the database beginning with contracts that are active on and after January 1, 2017; and

(ii) A database that includes copies of all expired contracts which were previously included in the database described in subdivision (4)(a)(i) of this section and which have not been disposed of pursuant to policies and procedures adopted under subdivision (4)(e) of this section. The database required under this subdivision shall be accessible by the public and searchable by vendor, by state entity, and by dollar amount.

The APA believes that DAS – State Accounting, being the entity that oversees the disbursement of State funds, has a responsibility to ensure the Commission is aware of the statutory requirement to upload its contracts to the State contract database. Lacking access to the database, moreover, the Commission would require assistance from DAS – State Accounting to enter its contracts therein.

Additionally, a proper system of internal control requires procedures to ensure that Commission contracts are entered into the State contract database, as required by statute.

Without such procedures, there is an increased risk for not only the Commission's failure to comply with applicable statutory requirements but also misuse of State funds.

We recommend the Commission work with DAS – State Accounting to ensure procedures are in place for contracts to be entered into the State contract database in a timely manner.

Lack of Written Agreement

Our testing revealed one Commission expenditure that lacked a written contract specifying either the work to be performed, the cost thereof, or any other terms of the agreement.

Vendor	G/L Date	Amount	Description
Stable Gray, Inc.	11/3/2023	\$ 5,290.00	Expense for Commission website creation. According to the Commission, the vendor did not provide a written agreement.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

5. Contracts and Bidding (Concluded)

As addressed in greater detail in **Comment and Recommendation Number 7** (“Accounting Performed by DAS – State Accounting”) herein, the Commission relies on DAS to perform all of its accounting functions. For the above expenditure, the APA asked DAS whether a copy of a contract between the parties had been obtained prior to approval of the invoice. A DAS – State Accounting representative responded, “I didn’t have a contract.”

The APA believes that DAS – State Accounting, being the entity that oversees the disbursement of State funds, has a responsibility to ensure the Commission obtains adequate supporting documentation for its expenditures, preferably in the form of a written contract.

Additionally, a proper system of internal control requires procedures to ensure that the Commission obtains a written contract memorializing the terms of any agreement that is the basis for an expenditure of funds.

Without such procedures, there is an increased risk for not only disputes regarding the obligations of the parties to an agreement, including the goods or services to be provided and the payments owed, but also loss or misuse of State funds.

We recommend the Commission work with DAS – State Accounting to ensure a written contract, memorializing the obligations of the parties thereto, is available for any agreement that is the basis for an expenditure of State funds.

***Commission Response:** The Commission submitted all the contracts to DAS and was informed that none of the contracts need to be uploaded. We now are aware that there are two different reporting requirements and will confirm that DAS will upload these contracts.*

The Commission negotiated a reduced rate for the service at \$15,000 a year. This was a one-year invoice. The vendor agreed to lock in the rate for three years to assist the Commission with budgeting purposes. Subsequently, an additional service was added that was \$3,000. The Commission will ensure that contracts represent the intent of the expense and will work within the competitive bidding process when applicable.

6. Use of Temporary Employees

The State of Nebraska’s temporary employment service under DAS – State Personnel, the Specialized Office Services (SOS) Temporary Program, offers temporary employees to State agencies, boards, and commissions. The Commission began utilizing SOS temporary employees in December 2022 and has employed four different temporary employees – at considerable expense – over the years.

As noted in the Background section of this report, the Commission has struggled to maintain a permanent Executive Director. More than nine months passed between the leaving of the first Executive Director and the hiring of his successor. Another five months passed between John Carter’s departure, despite not being properly appointed to that position, and the hiring of the fourth Executive Director.

Nevertheless, the Commission has consistently paid at least one temporary employee since December 2022. Each such temporary employee has worked a significant number of hours, therefore, absent any direct, on-site supervision.

The table below shows the total hours worked and the gross pay received by temporary employees during times when there was an Executive Director as well as when there was not:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

6. Use of Temporary Employees (Concluded)

SOS Temporary Employees	Hours Worked	Gross Pay
Without an Executive Director	2,017.50	\$ 45,468.04
With an Executive Director	1,217.00	\$ 30,633.07
Totals	3,234.50	\$ 76,101.11

Note: The amounts shown in this table do not include the surcharges assessed to agencies by DAS – State Personnel for the Specialized Office Services (SOS) Temporary Program for providing temporary employees.

As shown above, over 2,000 hours have been worked – totaling more than \$45,000 in gross pay – by temporary employees assigned to the Commission without the on-site supervision of a full-time Executive Director.

Furthermore, as noted on **Exhibit B** herein, the total charges to the Commission for temporary employees exceeded \$86,000. This is approximately 41% of the Commission's total operating expenditures.

A proper system of internal control requires procedures to ensure: 1) the Commission conducts a proper analysis of the cost effectiveness of using temporary employees; and 2) temporary employees of the Commission receive appropriate on-site supervision, preferably from a full-time Executive Director.

Without such procedures, there is an increased risk for fraud, waste, and abuse of funds and resources.

We recommend the implementation of procedures to ensure a proper analysis of the Commission's temporary employee expenditures is conducted, and temporary employees hired by the Commission receive appropriate on-site supervision, preferably from a full-time Executive Director.

Commission Response: *As a startup Commission, we did not have an office to operate out of nor any permanent positions that we could hire. The use of SOS employees was an option that HR provided as an option to have employees and was at a cost savings to the Commission. The Commission was in compliance with the allowable hours. The professional temporary employees worked diligently and efficiently. Daily supervision was provided and would be no different from State employees working remotely. The prior Chairs and Executive Directors were tasked with establishing permanent positions. The Commission is in the process of establishing the permanent positions.*

7. Accounting Performed by DAS – State Accounting

Lacking full-time staff, the Commission relies on DAS – State Accounting to perform its accounting functions, including entering and approving payments in the State's accounting system.

The Commission could not produce a Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), or any other written pact between itself and DAS – State Accounting outlining either the accounting services to be provided or other obligations of both parties.

In addition to other issues addressed previously herein, the APA identified the following concerns with the internal control processes of DAS – State Accounting while performing the Commission's accounting functions:

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

7. Accounting Performed by DAS – State Accounting (Continued)

Description of Lack of Control
According to the Director of DAS – State Accounting, that department performs the preaudit function for the Commission. Neb. Rev. Stat. § 81-1111(3)(a) (Reissue 2024) requires DAS – State Accounting to preaudit all vouchers and payrolls equal to or exceeding \$1,500. Subsection (3)(b) of that same statute requires a preaudit of audit-sensitive areas, including employee expense vouchers and expenses pertaining to conferences, including lodging. Per our discussion with the DAS – State Accounting staff member assigned to the Commission, the preaudit process that he performs is not an official one. Based on errors noted, the APA questions whether DAS – State Accounting provides an effective preaudit function, as required by statute.
DAS – State Accounting failed to provide pertinent reports to the Commission, such as a general ledger detail report that would identify all disbursements made from Commission funds.
DAS – State Accounting failed to provide the Commission with the details of any billings from the Office of the Chief Information Officer (OCIO). Through December 31, 2024, the Commission has paid nearly \$16,000 for services provided by the OCIO.
DAS – State Accounting failed to review the Commission’s outstanding warrant listing or notify the Commission of outstanding warrants. The Commission had two outstanding warrants as of February 2025, totaling \$1,530, that had been outstanding for 158 days each. One \$1,500 check was returned to the Commission and has been in the Commission’s possession since October 2024 – without appropriate follow-up.
DAS – State Accounting failed to monitor the use of the one-day meal account code. According to the State Accounting Manual, Travel Policies, 6. <i>Meals</i> (11/2023): “The IRS has taken the position that reimbursement for meal expenses incurred on one-day travel is taxable income to the employee unless such reimbursements are deemed ‘occasional’.” DAS – State Accounting requires all such meals to be coded to a separate account code. When one-day travel meal reimbursements are \$200 or more in any one year, the entire amount will be taxable income. For the period from December 1, 2022, to November 30, 2023, at least one Commissioner appears to have exceeded that maximum amount.

In addition to these internal control concerns, the APA identified the following errors made by DAS – State Accounting while performing the Commission’s accounting functions:

Untimely Payments

The APA found many instances of DAS – State Accounting failing to process Commission transactions timely.

DAS – State Accounting made 9 of 18 Commission payments tested by the APA later than the 45 days required by statute, as shown in the following table:

Payee	Invoice Date	Payment Date	# of Days Outstanding	Amount
Zelle, LLC	1/27/2023	3/15/2023	47	\$ 7,500.00
Stable Gray, Inc	8/15/2023	11/3/2023	80	\$ 5,290.00
Zulkoski Weber, LLC	1/14/2023	3/15/2023	60	\$ 3,750.00
Connie Edmond*	1/24/2023	3/15/2023	50	\$ 1,000.00
Connie Edmond*	5/18/2023	7/14/2023	57	\$ 781.56
Two Men & A Truck	11/3/2023	4/17/2024	166	\$ 771.25
Candace Reid*	5/18/2023	7/14/2023	57	\$ 602.37
Game & Parks	3/7/2024	5/8/2024	62	\$ 290.00
Dunkin' Donuts	1/19/2022	3/14/2022	54	\$ 53.96

*These were expense reimbursements for purchases made with personal credit cards on behalf of the Commission.

Neb. Rev. Stat. § 81-2403(1) (Reissue 2024) states the following:

Except as provided in subsection (2) of this section, each agency shall make payment in full for all goods delivered or services rendered on or before the forty-fifth calendar day after (a) the date of receipt by the agency of the goods or services or (b) the date of receipt by the agency of the bill for the goods or services whichever is later, unless other provisions for payment are agreed to in writing by the creditor and the agency.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

7. Accounting Performed by DAS – State Accounting (Continued)

A proper system of internal control requires procedures to ensure that invoices are processed within the statutorily required timeframe.

Without such procedures, there is an increased risk for late payments.

Miscoding in State Accounting System

The APA determined that two Commission expenses tested were recorded improperly in the State's accounting system.

The first transaction was to reimburse expenses of a candidate for the vacant Executive Director position. Instead of recording the costs as job applicant expenses, DAS – State Accounting recorded them incorrectly as travel expenses, as detailed in the following table:

Invoice Date	Payee	Object Account Description	Amount	Transaction Description
1/31/2022	Helen Wakefield	Commercial Transportation Expense	\$ 420.48	This was for the purchase of a Southwest Airlines ticket from Roswell, NM, to Omaha, NE.
		Lodging	\$ 277.42	This was for a two-night stay in a Holiday Inn in Omaha, NE.
		Meals – Travel Status	\$ 68.67	This was for various meals in Omaha, NE, as well as the purchase of water and a yogurt cup at the airport.

The State Accounting Manual, General Policies, 3. *Job-applicant Expenses* (01/2021), states the following, in relevant part:

The State Personnel Rules and Regulations permit an agency to pay the expenses for up to three applicants (§81-1311(10)) per position/opening for travel, meals and lodging incurred to travel to and from the prospective job/interview site.

* * * *

All expenses should be coded to Job Applicant Expense, 522600, regardless of whether payment is to the applicant or a vendor that provided the services on behalf of the applicant. . . .

The second transaction was recorded incorrectly due to a misidentification of the proper fiscal year. As shown in the table below, the \$2,000 transaction was recorded as a fiscal year 2024 expense; however, DAS – State Accounting did not ensure that line items were identified correctly in the State's accounting system as current or prior-year obligations. Consequently, the expenditure was misidentified as a fiscal year 2024 obligation when it was clearly a fiscal year 2023 obligation. Upon inquiry, DAS – State Accounting confirmed the error.

Invoice Date	Payee	Amount	Transaction Description
7/2/2024	Juneteenth Nebraska NJOF	\$ 2,000	The email request from the Commission to DAS – State Accounting to process the payment was dated June 5, 2024. Therefore, the expense should have been processed against the fiscal year 2024 budget. Because DAS – State Accounting failed to post the entry until July 2024, however, it was posted incorrectly against the fiscal year 2025 budget.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Continued)

7. **Accounting Performed by DAS – State Accounting** (Continued)

A proper system of internal control requires procedures to ensure the timely and accurate recording of Commission transactions in the State's accounting system.

Noncompliance with State Accounting Policy

The APA found one instance of DAS – State Accounting processing a reimbursement to a commissioner for the meal expenses of more than two employees – which violates the State Accounting Manual's prohibition against such payments.

G/L Date	Amount	Description
7/14/2023	\$ 102.97	Reimbursement for a noon meal at Lazlo's for four Commissioners on the Executive Committee.

The State Accounting Manual, Travel Policies, 6. *Meals* (11/2023), states the following, in relevant part:

Reimbursement to one employee for two or more employee's expenses will not be allowed for meals because of this provision.

A proper system of internal control requires procedures to ensure compliance with the one-employee meal reimbursement requirement prescribed for one-day travel in the State Accounting Manual.

Without such procedures, there is an increased risk of taxable income not being recorded properly.

We recommend the creation of a written agreement with DAS – State Accounting for performance of the Commission's accounting functions. We also recommend DAS – State Accounting implement procedures to ensure: 1) timely payment of Commission invoices; 2) correct coding of Commission expenses; and 3) proper monitoring of expenses to ensure compliance with State Accounting policy.

Commission Response: *DAS provided accounting services for the Commission to ensure that the Commission's expenditures were reasonable, necessary and in compliance State policies and regulations. DAS approved all expenditures submitted or requested by the Commission. DAS, processed all payments as the Commission did not have access to any of the systems to enter, process, or approve payments. Nor did the Commission have an office or staff, thus as a newly formed Commission DAS assumed responsibility for the Commissions Accounting, processing, and payment function. The Commission greatly appreciates DAS in performing accounting services. The Commission relied upon DAS as a check and balance and was never advised that any of the expenditures were not reasonable or necessary. DAS have been wonderful to work with and a great partner. The Commissions challenges with not having permanent Executive Director and turnover in Chair position may have created some challenges with communication with DAS in the execution of their duties on behalf of the Commission.*

DAS – State Accounting Response: *DAS does pre-audit Commission expenditures.*

Starting April 2023 DAS provided monthly reports to the Commission including the Allotment Status Report, PSL Status Report, Budget Status Report, Program Summary Report, and Year-to-Date General Ledger Detail Report.

The Commission can access details of OCIO billings through an online portal.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

COMMENTS AND RECOMMENDATIONS

(Concluded)

7. **Accounting Performed by DAS – State Accounting** (Concluded)

DAS does not review outstanding warrants on behalf of other agencies. A list is generated quarterly for agencies to review and if a warrant expires the funds revert to the State General Fund.

DAS processes Commission expenditures once received, approved by the Commission to pay, and all questions have been responded to. For example, the Stable Gray, Inc invoice was provided to DAS on November 2, 2023, and was paid on November 3, 2023. The Two Men & A Truck invoice was received by DAS on April 8, 2024, and paid April 17, 2024.

We agree the expenditures noted as coded to travel should have been coded to job applicant expenses, and that the Juneteenth Nebraska payment should have been coded to the prior fiscal year.

DAS will discuss the monitoring of taxable meals with the Commission.

* * * * *

Overall Commission Response: *Four new Commissioners were appointed to the Commission in January 2025 and a new Executive Committee was elected. The Commission will ensure policies and procedures are in place so that there is a transition in leadership that understands the operation and will elect to adopt policies and procedures for the conduct of new ventures.*

We recognize that your recommendations were mainly due to the lack of adequate and formal documentation in the minutes. We acknowledge that the topic of minutes and the appropriateness of such has created challenging conversation amongst the Commissioners. We are confident as the Commission continues to grow that more policies and procedures will be implemented. Finally, we appreciate the opportunity of your office to review our practices as a new start up Commission, and we thank you for the recommendations to ensure that we continue to incorporate best practices for the financial operations of the Commission.



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NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

INDEPENDENT ACCOUNTANT'S REPORT

Nebraska Commission on African American Affairs
Lincoln, Nebraska

We have examined the accompanying Schedule of Revenues, Expenditures, and Changes in Fund Balances of the Nebraska Commission on African American Affairs (Commission) for the fiscal years 2022 through 2024 and the six-month period ending December 31, 2024. The Commission's management is responsible for the Schedule of Revenues, Expenditures and Changes in Fund Balances based on the accounting system and procedures set forth in Note 1. Our responsibility is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Schedule of Revenues, Expenditures, and Changes in Fund Balances is based on the accounting system and procedures set forth in Note 1, in all material respects. An examination involves performing procedures to obtain evidence about the Schedule of Revenues, Expenditures, and Changes in Fund Balances. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of the Schedule of Revenues, Expenditures, and Changes in Fund Balances, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We are required to be independent and to meet our other ethical responsibilities in accordance with relevant ethical requirements relating to the engagement.

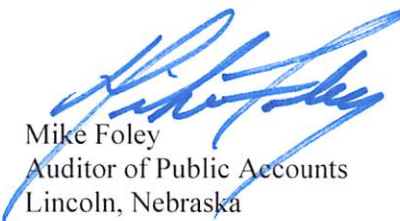
In our opinion, the Schedule of Revenues, Expenditures, and Changes in Fund Balances for fiscal years 2022 through 2024 and the six-month period ending December 31, 2024, is based on the accounting system and procedures prescribed by Nebraska's Director of Administrative Services, as set forth in Note 1, in all material respects.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements that have a material effect on the Schedule of Revenues, Expenditures, and Changes in Fund Balances; fraud that is material, either quantitatively or qualitatively, to the Schedule of Revenues, Expenditures, and Changes in Fund Balances; and any other instances that warrant the attention of those charged with governance. We are also required to obtain and report the views of management concerning the

findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Schedule of Revenues, Expenditures, and Changes in Fund Balances is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over the Schedule of Revenues, Expenditures, and Changes in Fund Balances or on compliance and other matters; accordingly, we express no such opinions. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards*, and those findings, along with the views of management, are described in the Comments Section of the report.

The purpose of this report is to express an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances, as described in paragraph one above. Accordingly, this report is not suitable for any other purpose. This report is a matter of public record, and its distribution is not limited.

June 23, 2025



Mike Foley
Auditor of Public Accounts
Lincoln, Nebraska

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
Fiscal Years 2022 through 2024 and the Six-Month Period through December 31, 2024

	Fiscal Year 2022 General Fund 10000	Fiscal Year 2023 General Fund 10000	Fiscal Year 2024 General Fund 10000	CAAA Cash Fund 29020	July 1, 2024 - December 31, 2024 General Fund 10000	CAAA Cash Fund 29020	Totals (Memorandum Only)
REVENUES:							
Appropriations	\$ 29,749	\$ 94,312	\$ 142,309	\$ -	\$ 80,321	\$ -	\$ 346,691
Miscellaneous	-	-	24	25,000	52	-	25,076
TOTAL REVENUES	<u>29,749</u>	<u>94,312</u>	<u>142,333</u>	<u>25,000</u>	<u>80,373</u>	<u>-</u>	<u>371,767</u>
EXPENDITURES:							
Personal Services	27,899	31,691	38,542	-	32,763	-	130,895
Operating	1,083	62,590	101,827	-	44,340	-	209,840
Travel	<u>767</u>	<u>31</u>	<u>1,964</u>	<u>-</u>	<u>3,270</u>	<u>-</u>	<u>6,032</u>
TOTAL EXPENDITURES	<u>29,749</u>	<u>94,312</u>	<u>142,333</u>	<u>-</u>	<u>80,373</u>	<u>-</u>	<u>346,767</u>
Excess (Deficiency) of Revenues Over (Under) Expenditures	<u>-</u>	<u>-</u>	<u>-</u>	<u>25,000</u>	<u>-</u>	<u>-</u>	<u>25,000</u>
Net Change in Fund Balances	-	-	-	25,000	-	-	<u>\$ 25,000</u>
FUND BALANCES, JULY 1	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>25,000</u>	
FUND BALANCES, JUNE 30 (DECEMBER 31)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 25,000</u>	<u>\$ -</u>	<u>\$ 25,000</u>	
FUND BALANCES CONSIST OF:							
General Cash	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 25,000</u>	<u>\$ -</u>	<u>\$ 25,000</u>	
TOTAL FUND BALANCES	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 25,000</u>	<u>\$ -</u>	<u>\$ 25,000</u>	

The accompanying notes are an integral part of the schedule.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

NOTES TO THE SCHEDULE

For Fiscal Years 2022 through 2024 and the Six-Month Period Ending December 31, 2024

1. **Criteria**

The accounting policies of the Nebraska Commission on African American Affairs (Commission) are on the basis of accounting, as prescribed by Nebraska's Director of Administrative Services (DAS).

Per Neb. Rev. Stat. § 81-1107(2) (Reissue 2024), the duties of the State of Nebraska's Director of DAS include:

The keeping of general accounts and the adoption and promulgation of appropriate rules, regulations, and administrative orders designed to assure a uniform and effective system of accounts and accounting, the approval of all vouchers, and the preparation and issuance of warrants for all purposes[.]

In accordance with Neb. Rev. Stat. § 81-1111(1) (Reissue 2024), the State Accounting Administrator has prescribed the system of accounts and accounting to be maintained by the State and its departments and agencies and has developed necessary accounting policies and procedures. The prescribed accounting system currently utilizes EnterpriseOne, an accounting resource software, to maintain the general ledger and all detailed accounting records. Policies and procedures are detailed in the Nebraska State Accounting Manual published by the DAS State Accounting Division (State Accounting) and are available to the public.

The financial information used to prepare the Schedule of Revenues, Expenditures, and Changes in Fund Balances was obtained directly from the general ledger and fund balance information maintained on EnterpriseOne. EnterpriseOne is not an accrual accounting system; instead, accounts are maintained on a modified cash basis. As revenue transactions occur, the agencies record the accounts receivable and related revenues in the general ledger. As such, certain revenues are recorded when earned, regardless of the timing of related cash flows. State Accounting does not require the Commission to record all accounts receivable and related revenues in EnterpriseOne; as such, the Commission's Schedule does not include all accounts receivable and related revenues. In a like manner, expenditures and related accounts payable are recorded in the general ledger as transactions occur. As such, the Schedule includes those expenditures and related accounts payable posted in the general ledger as of December 31, 2024, and not yet paid as of that date. The amount recorded as expenditures on the Schedule, as of December 31, 2024, **does not** include amounts for goods and services received before December 31, 2024, which had not been posted to the general ledger as of December 31, 2024.

The following fund types are established by the State and used by the Commission:

10000 – General Fund – accounts for activities funded by general tax dollars and related expenditures and transfers.

20000 – Cash Funds – account for revenues generated by specific activities from sources outside of State government and the expenditures directly related to the generation of the revenues. Cash funds are established by State statutes and must be used in accordance with those statutes.

The following major revenue account classifications are established by State Accounting and used by the Commission:

Appropriations – Appropriations are granted by the Legislature to make expenditures and to incur obligations. The amount of appropriations reported as revenue is the amount of expenditures.

Miscellaneous – Revenue from sources not covered by other major categories, such as donations and purchasing card rebates.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

NOTES TO THE SCHEDULE

(Concluded)

1. **Criteria** (Concluded)

The following major expenditure account classifications are established by State Accounting and used by the Commission:

Personal Services – Salaries, wages, and related employee benefits provided for all persons employed by the Commission.

Operating – Expenditures directly related to a program's primary service activities.

Travel – All travel expenses for any State officer, employee, or member of any commission, council, committee, or board of the State.

2. **Reporting Entity**

The Commission is a State agency established under and governed by the laws of the State of Nebraska. As such, the Commission is exempt from State and Federal income taxes. The Schedule includes all funds of the Commission included in the general ledger.

The Commission is part of the primary government for the State of Nebraska.

3. **Totals**

The Totals "Memorandum Only" column represents an aggregation of individual account balances. The column is presented for overview informational purposes and does not present consolidated financial information because interfund balances and transactions have not been eliminated.

4. **General Cash**

General cash accounts are under the control of the State Treasurer or other administrative bodies, as determined by law. All cash deposited with the State Treasurer is initially maintained in a pooled cash account. On a daily basis, the State Treasurer invests cash not needed for current operations with the State's Investment Council, which maintains an operating investment pool for such investments. Interest earned on those investments is allocated to funds based on their percentage of the investment pool.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

SUPPLEMENTARY INFORMATION

Our examination was conducted for the purpose of forming an opinion on the Schedule of Revenues, Expenditures, and Changes in Fund Balances. Supplementary information is presented for purposes of additional analysis. Such information has not been subjected to the procedures applied in the examination of the Schedule of Revenues, Expenditures, and Changes in Fund Balances, and, accordingly, we express no opinion on it.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS
APPROPRIATIONS BY FISCAL YEAR

Exhibit A

Description	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024	July 1, 2024 - December 31, 2024
Beginning (Reappropriated) Balance July 1	\$ -	\$ -	\$ 229,013.10	\$ 397,300.30	\$ 532,020.49
New Appropriations	\$ 127,500.00	\$ 258,762.00	\$ 262,599.00	\$ 277,053.00	\$ 287,760.00
Total Appropriations:	\$ 127,500.00	\$ 258,762.00	\$ 491,612.10	\$ 674,353.30	\$ 819,780.49
Disbursements	\$ -	\$ 29,748.90	\$ 94,311.80	\$ 142,332.81	\$ 80,372.68
Lapsed Appropriations	\$ 127,500.00	\$ -	\$ -	\$ -	\$ -
Ending (Appropriations) Balance June 30 (December 31)	\$ -	\$ 229,013.10	\$ 397,300.30	\$ 532,020.49	\$ 739,407.81

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS

Exhibit B**EXPENDITURES BY VENDOR/EXPENSE TYPE**

July 1, 2021, through December 31, 2024

Vendor or Expense Type	Description	Amount
Executive Director	Pay for Executive Director	\$ 130,895.65
Temporary Employees	Pay for temporary employees	\$ 86,509.40
Rent Expense	Office rent	\$ 38,267.22
FiscalNote Inc	Legislative subscription software	\$ 18,000.00
DAS OCIO	Communications and IT expenses	\$ 15,962.84
Zelle LLC	Recruiting Fee for Executive Director	\$ 15,000.00
DAS Administration	Costs for human resources services (payroll processing)	\$ 8,744.42
Zulkoski Weber LLC	Legislative monitoring services	\$ 7,500.00
Purchase Card Transactions	Travel and food expenses	\$ 5,717.75
Stable Gray INC	Website Development and Maintenance	\$ 5,290.00
Office Depot	Office supplies	\$ 2,573.11
Chief Standing Bear Project	Table for Chief Standing Bear Prize for Courage Dinner & Program	\$ 2,400.00
Juneteenth Nebraska NJOF	Sponsorship of 2024 Juneteenth Celebration	\$ 2,000.00
Connie Edmond	Expense Reimbursements - includes \$1,000 for a table at the Governor's Ball	\$ 1,781.76
100 Black Men of Omaha INC	19th Men of Honor Awards Dinner & Fundraiser	\$ 1,500.00
DAS Copy Services	Copies and Printing	\$ 803.19
Two Men & A Truck	Moving to New Office	\$ 771.25
Helen Elizabeth Wakefield	Expense Reimbursement for Executive Director candidate	\$ 766.57
Candace L Reid	Expense Reimbursements for office supplies to temporary employee	\$ 602.37
DAS Building	Employee parking	\$ 565.00
Omaha World Herald	Advertising/Public Notices	\$ 348.94
Furniture Pre-Auction	Furniture	\$ 290.00
One Source The Background Check	Background checks	\$ 157.00
Leisure Limousine & Sedan Service	Transporation of executive director candidate from Lincoln to Omaha	\$ 101.45
Dunkin Donuts	Donuts	\$ 84.94
Column Software PBC	Software platform for informing public with public notices	\$ 83.54
Dorothy L. Johnson	Expense reimbursement - Commissioner	\$ 29.75
Lincoln Journal Star	Advertising/Public Notices	\$ 10.18
DAS Risk Management	Blanket bond insurance expense	\$ 6.06
Postage	Postage expense	\$ 3.80
Total Commission Expenditures		\$ 346,766.19



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January 30, 2024

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State Capitol
P.O. Box 94848
Lincoln, NE 68509-4848

RE: Nebraska Commission on African American Affairs

Dear Governor Pillen:

The purpose of this letter is to provide you with information about an important financial matter pertaining to the Nebraska Commission on African American Affairs (Commission). Based upon the facts presented herein, moreover, I encourage you to direct the Department of Administrative Services (DAS) – Accounting Division (Accounting) to suspend, at least temporarily, payroll disbursements and other payments to Mr. John Carter, the acting Interim Executive Director for the Commission.

On April 4, 2023, I sent an email message to your office outlining significant concerns surrounding Mr. Carter, who was appointed to the Commission on June 5, 2021. I thought it best to acquaint you with those issues at that time.

As explained in the email, while auditing the City of Crofton, Nebraska, (City) in 2023, my office identified certain peculiarities in Mr. Carter's financial activities as that municipality's Police Chief. Released on March 29, 2023, the resulting audit report – which is available on the APA's website (<https://auditors.nebraska.gov/>) – detailed the following:

1. Conflicting and misleading information provided by Mr. Carter regarding questionable charges made on the City's credit card.
2. Mr. Carter's problematic handling of funds while administering the municipal "Shop With a Cop" program, including noncompliance with the City Council's directives for the deposit of those receipts, as indicated clearly by the resolution creating the program.

On June 27, 2023, the City chose not to renew Mr. Carter's employment contract as Police Chief.

During the course of the City audit, my office's staff became aware of additional information that called further into question Mr. Carter's trustworthiness to handle public funds – whether in his former law enforcement role or, for that matter, any other capacity. Specifically, Mr. Carter, who began practicing law in 2007, had his licenses revoked in three jurisdictions for mishandling client money.

In 2011, noting Mr. Carter's "conflicting and inconsistent explanations for his actions" and the "conflicting and contradictory documentation" produced by him, the Nebraska Supreme Court concluded that he should be disbarred from the practice of law in this state, as follows:

APA'S JANUARY 30, 2024 LETTER TO COMMISSION

Misappropriation alone is presumptive grounds for disbarment, but here it is aggravated by an apparent attempt to conceal what had occurred from the clients and from the Counsel for Discipline. Viewed in its entirety, Carter's conduct indicates a lack of concern for the protection of the public, the profession, and the administration of justice. On this record, we cannot conclude that there are extraordinary mitigating circumstances which would justify departure from the general rule that a lawyer's misappropriation of client funds should result in disbarment. Upon due consideration, we conclude that disbarment is the appropriate sanction.

State ex rel. Counsel for Discipline v. Carter, 282 Neb. 596, 607-608, 808 N.W.2d 342, 351-352 (2011).

In 2012, having received notice of Mr. Carter's disbarment by the State of Nebraska, the United States District Court for the District of Nebraska recommended disbaring him from practicing law before that court as well, making the following pronouncement:

As the summary of the state record indicates, there was ample evidence to support a finding that Carter misappropriated client funds, allowed the attorney trust account to be depleted, made unauthorized disbursements to himself from the Charles trust account assets, and attempted to conceal this conduct by creating a contrived fee and expense ledger. Carter admitted his conduct violated ethical standards in his brief before the Nebraska Supreme Court. Contrary to Carter's argument, the record reveals clear and convincing evidence that Carter violated this court's ethical standards by engaging in "conduct unbecoming a member of the bar."

Dist. Of Neb. V. Carter, No. 8:11AD20, 2012 U.S. Dist. LEXIS 199153 (D. Neb. Jan. 19, 2012).

In 2014, the Supreme Court of Iowa upheld the revocation of Mr. Carter's law license in that state, based upon a multiple-count indictment, declaring, in relevant part, the following:

We conclude the Board proved by a convincing preponderance of the evidence that Carter converted client funds when he withdrew \$6300 from his trust account in March and April 2009 and that he did so without a colorable future claim to the funds. The claim by Carter that he was unable to establish his right to the client funds because of lost records was not supported by credible evidence. He failed to come forward with credible evidence.

* * * *

We revoke an attorney's license to practice law for stealing client funds. . . . Carter converted client funds in this case without any colorable future claim to the funds. This conduct alone is enough to support revocation, and it is unnecessary for us to further consider the impact of his other unethical conduct.

Iowa Supreme Court Atty. Disciplinary Bd. v. Carter, 847 N.W.2d 228, 234 (Iowa 2014).

Given the disturbing background touched upon above – especially as it pertains to personal integrity, at least when money is involved – I was quite surprised, not to mention more than slightly disconcerted, to learn that Mr. Carter is now serving as the Commission's Interim Executive Director.

That unease has been enhanced considerably by the apparent irregularity of Mr. Carter's supposed appointment. Copied below is an excerpt from the minutes for a Special Meeting of the Commission on November 18, 2023:

4. The Commission went into Executive Session at 9:36 A.M.
5. Vernon Motioned for the Commission to come out of Executive Session at 10:08 A.M.
6. Motion was seconded by Toni.
7. Vernon stated John received the majority vote of the Commission that he is approved to serve as the Interim Executive Director until a new Executive Director could be hired, so that the work of the Commission could continue to move forward.

As recorded in the above excerpt, "Vernon stated John received the Majority vote of the Commission that he is approved to serve as the Interim Executive Director . . ." That approval appears to have taken place during closed session, with no subsequent action taken when the Commission reconvened in open session.

Consequently, I question the underlying legality of Mr. Carter's appointment.

Set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Cum. Supp. 2022), the Open Meetings Act ("Act") governs the actions of "public bodies" in Nebraska, which would include the Commission. In particular, Neb. Rev. Stat. § 84-1410 (Reissue 2014) of the Act permits a public body to meet in closed session for certain purposes. Subsection (2) of that statute provides the following, however:

The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

As noted already, the Commission's purported approval of Mr. Carter as its Interim Executive Director appears to have been taken in violation of the above statutory mandate – as, according to the excerpt from the meeting minutes, that vote occurred while the Commission was still in closed session.

It is worth noting also that the meeting minutes are absolutely silent about the terms of Mr. Carter's appointment, including the date upon which he is to assume his new duties, the details and parameters of his official responsibilities, and, more importantly, any specifics whatsoever regarding his compensation. Such a glaring omission is made all the more conspicuous by the following language in Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022):

Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

Subsection (2) of that same statute adds this requirement:

Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting.

It is difficult to imagine that such essential matters as the starting date, official duties, or pay of the Interim Executive Director, among numerous other considerations, were not topics of discussion when the Commission considered Mr. Carter's appointment – meaning that, per State statute, those specifics should have been reflected in the meeting minutes.

Neb. Rev. Stat. 84-1414(1) (2014) says the following about failure to abide by the of the precepts of the Act:

Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

Subsection (4) of that same statute adds this:

Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

In addition to these apparent violations of the Act, my office has been informed recently that the Commission has a Finance Committee that is responsible for overseeing the fiscal affairs of that body as a whole. I have been told that the committee was neither notified of the amount to be paid to Mr. Carter nor given the opportunity to exercise its responsibility of authorizing the disbursement of those funds and arranging with DAS – Accounting the appropriate payroll schedule.

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On January 26, 2024, my office contacted DAS – Accounting by email, requesting support for both Mr. Carter's work hours and pay as the Commission's new Interim Executive Director. Along with the response provided, the State's Accounting System shows that Mr. Carter received a paycheck on January 10, 2024, for gross wages of \$9,807.84, excluding other benefits, compensating him for 216 hours of work and 24 hours of holiday pay. He then received another paycheck on January 24, 2024, for gross wages of \$3,269.28, excluding other benefits, as compensation for 72 hours of work and 8 hours of holiday pay.

These payments were initiated by a December 11, 2023, email message that Mr. Carter sent to DAS – Accounting, announcing his own appointment as Interim Executive Director. He claims in that message, "On November 7, 2023, I was duly elected as the Interim Director by the full Commission to serve until a permanent Director can be hired." A copy of the email is shown below:

From: John Carter <jmcarter@jmcarterlaw.com>
 To: "Nath, Nicole" <Nicole.Nath@nebraska.gov>, DAS Human Resources <DAS.HumanResources@nebraska.gov>, "Jablonski, Ann" <Ann.Jablonski@nebraska.gov>, "Carlson, Ron" <Ron.Carlson@nebraska.gov>, "Knoche, Johnny" <Johnny.Knoche@nebraska.gov>, "Hood, Greg" <Greg.Hood@nebraska.gov>, "Selk, Pat" <Pat.Selk@nebraska.gov>, "Betz, Kaitlyn" <Kaitlyn.Betz@nebraska.gov>
 Cc:
 Bcc:
 Date: Mon, 11 Dec 2023 17:00:39 +0000
 Subject: Updated Status - Commission on African American Affairs

You don't often get email from jmcarter@jmcarterlaw.com. [Learn why this is important](#)

From: John Carter, J.D.
 Chairperson
 Commission on African American Affairs

To: The Offices of State Personnel; Accounting; and Building Services.

December 11, 2023

To all concerned,

On October 18, 2023, I, John Carter, was duly elected as the new Chairperson of the Commission on African American Affairs. On November 7, 2023, I was duly elected as the Interim Director by the full Commission to serve until a permanent Director can be hired.

Going forward, from December 7, 2023, all communications for services that need to be performed, invoices that need to be paid or obligations that need to be liquidated shall be through the Chairperson or the Interim/Permanent Executive Director of the Commission on African American Affairs.

Any instructions you may receive regarding personnel authorizations that do not come from the current Chair or acting Director are hereby void as of December 7, 2023. Connie Edmond is no longer authorized to demand, direct or act on behalf of the Commission until further notice. All debts and obligations, agreements and requests for state services shall be made by the current Chairperson or Executive Director of the Commission on African American Affairs.

Please contact me if you have any questions or concerns regarding this directive.

Thank you in advance for your cooperation in this matter.

John Carter, J.D.

Based upon the documentation obtained by my office, as explained previously herein, Mr. Carter's assertion to DAS – Accounting regarding his appointment is, at best, unsupported and, at worst, fictitious.

I question, therefore, the propriety of both payroll disbursements to Mr. Carter.

Particularly disquieting, Mr. Carter's email message to DAS – Accounting appears to serve as a means by which to seize unilateral financial control of the Commission. He appoints himself as the sole handler of all the Commission's invoices, obligations, debts, and services, demanding that any communications regarding them be directed to him alone. No less troubling, Mr. Carter takes it upon himself to try to prevent Ms. Connie Edmond, the Commission's Finance Committee Chair, from having any direct knowledge, much less oversight, of that financially relevant correspondence.

Given the charges of both financial impropriety and dishonesty that resulted in the revocation of Mr. Carter's law licenses in Nebraska, Iowa, and the Federal court system, not to mention the more recent issues addressed in my office's audit report for Crofton, Nebraska, failure to provide for a robust segregation of duties within the Commission would be, to say the least, highly ill advised.

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS
APA'S JANUARY 30, 2024 LETTER TO COMMISSION

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All of the above, including both the apparent failure of the Commission to follow State law in selecting an Interim Executive Director and the incongruity of the dubious email message to DAS – Accounting announcing that professed appointment and dictating the handling of the Commission's financial communications, give rise to serious concerns about the legitimacy of Mr. Carter's status as the rightful Interim Executive Director for the Commission.


Consequently, in order to forestall the potential loss of State funds, a prudent course of action would be to suspend any further payroll disbursements or other payments to Mr. Carter, as the purported Interim Executive Director of the Commission, until that position has been filled in accordance with State law, and such action has been documented accordingly. Additionally, the two payroll disbursements made already to Mr. Carter should be subject to review for possible recapture. I encourage you, therefore, to direct DAS – Accounting to take this necessary action, and I offer you the support and assistance of my office in doing so.

Finally, as you know, LB 1412 (2024), now pending, would create a cash fund for the Commission. This makes all the more necessary immediate action not only to resolve the dilemma posed by Mr. Carter's problematic appointment but also to provide for the proper control environment needed to safeguard those proposed State funds.

I am forwarding a copy of this letter to the Commission members in the hope that they will reconvene at the earliest possible date to take appropriate corrective action. Aside from my present responsibility as State Auditor to safeguard public funds, I served as Lieutenant Governor when the Commission was created and continue to wish for its ultimate success – which depends, in no small part, upon both adherence to State law and sound financial management.

Thank you for your attention to this matter. Please do not hesitate to contact me at your convenience with any questions or concerns regarding it.

Sincerely,



Mike Foley
Nebraska Auditor of Public Accounts

CC: Nebraska Attorney General
Jason Jackson, DAS Administrator
Nebraska Commission on African American Affairs Members

NEBRASKA COMMISSION ON AFRICAN AMERICAN AFFAIRS
ATTORNEY GENERAL'S FEBRUARY 2, 2024, LETTER TO COMMISSION

Exhibit D



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

MIKE HILGERS
ATTORNEY GENERAL

RYAN D. BAKER
ASSISTANT ATTORNEY GENERAL

February 2, 2024

Nebraska Commission on African American Affairs
1327 H Street, Suite 306
Lincoln, NE 68508

RE: *Compliance with Open Meetings Act and Attorney General's Position
Regarding Conflicts in Holding Dual Positions Within the Commission*

Dear Members of the Commission:

Thank you for the opportunity to appear and introduce myself at your meeting on January 17, 2023. As the point of contact for the Commission on African American Affairs ["Commission"] in the Attorney General's Office, I look forward to assisting the Commission with its legal needs.

First, as the Commission is aware, the Attorney General's Office has received a copy of the letter dated January 30, 2024, from Mike Foley, Auditor of Public Accounts ["Auditor's Letter"], regarding the hiring and actions of Commissioner John Carter as the Commission's Interim Director. Having reviewed the Auditor's Letter and related materials, we generally agree with its findings to the extent that the Auditor's Letter corresponds to the issues discussed in this letter. Our conclusions are set forth below.

Compliance with Nebraska's Open Meetings Act

As a preliminary matter, the Commission must fulfill its obligations under the Open Meetings Act.¹ This includes, but is not limited to: (1) providing reasonable advance publicized notice of its meetings; (2) maintaining a continually updated and current agenda in advance of the Commission's meetings; and (3) keeping and maintaining written minutes for each meeting and make such minutes available for public inspection. This office has previously requested the Commission to provide certain materials relating to the Commission's special meeting held on November 18, 2023, to assist us in

¹ See generally Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022).

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evaluating concerns expressed regarding the process by which Mr. Carter was selected to serve as the Commission's Interim Director. While we have now received these materials from Mr. Foley, we will take this opportunity to remind the Commission that it must comply with its statutory obligations when holding public meetings.

Upon our review of the minutes for the November 18, 2023, meeting, we found evidence of substantial defects in the manner the Commission conducted and recorded its decision to hire Mr. Carter as the Commission's Interim Director. In pertinent part, the following entries evidence the Commission's noncompliance with the Open Meetings Act:

3. Approve using an Interim Executive Director until a permanent director can be hired.
 - a. Motion was made by Vernon to go into Executive Session to discuss the hiring of an Interim Director and exclude John, since he is being considered.
 - b. Motion was seconded by LaShawn.
4. The Commission went into Executive Session at 9:36 A.M.
5. Vernon Motioned for the Commission to come out of Executive Session at 10:08 A.M.
6. Motion was seconded by Toni.
7. Vernon stated John received the majority vote of the Commission that he is approved to serve as Interim Executive Director until a new Executive Director could be hired, so that the work of the Commission could continue to move forward.

These minutes show the Commission did not discuss and vote on Mr. Carter's hiring, as well as related matters such as compensation, in open session. In fact, our review of related materials shows that a vote was taken during the closed session. While § 84-1410(1) permits the holding of a closed session by an affirmative majority of the Commission's voting members, subsection (2) imposes the following requirements:

The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. *The*

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meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(Emphasis supplied).

The evidence shows that the meeting was not “reconvened in open session” prior to any vote to name Mr. Carter as Interim Director. Nor was a roll call vote taken as required by § 84-1413(2) (“Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting.”). Rather, the vote occurred in the closed session. These failures to comply with the Open Meetings Act mean Mr. Carter was not properly appointed as Interim Director and is, therefore, not authorized to act in this capacity for the Commission.²

However, defects arising from the Commission’s noncompliance with the Open Meetings Act are not incurable. “It is a general principle of law that where a defect occurs in proceedings of a governmental body, ordinarily the defect may be cured by new proceedings commencing at the point where the defect occurred.” See *Pokorny v. City of Schuyler*, 202 Neb. 334, 341, 275 N.W.2d 281, 285 (1979). Thus, an action or decision by the Commission may be cured by holding a new vote at a subsequent meeting that comports with Nebraska law as discussed. As explained below, however, if the Commission conducts another meeting for the purpose of appointing an Interim Director, it cannot cure the defect by again naming Mr. Carter to this position unless he also resigns as a member of the Commission. Nothing, of course, prevents the Commission from appointing another Interim Director and Mr. Carter remaining a Commission member.

Conflicts of Interest Concerning Mr. Carter as Commissioner and Interim Director

Notwithstanding the foregoing, and as described in the Auditor’s Letter, there are conflicts of interest presented by the current situation with Mr. Carter acting as both commissioner and Interim Director. These matters cannot be cured as discussed above. As was brought up at the January 17, 2024, meeting and discussed in prior correspondence, the Attorney General’s Office has examined the question of whether an active commissioner also serving as the Commission’s Interim Director creates conflicts of interest that would preclude the same individual from concurrently holding both positions. Our position on the matter is set forth below.

² In addition, the minutes do not state the statutory basis to convene a closed session as required in § 84-1410(1) (“The subject matter and the reason necessitating the closed session shall be identified in the motion to close.”).

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First, there is a recognized common law prohibition against dual office holding.³ This principle is known as the “incompatibility of office doctrine,” which stands for the proposition that the same person may not hold two offices incompatible with each other. This incompatibility generally exists where (1) one office is subordinate to another office held by the same person, (2) one office is subject to the supervision and control of another office, or (3) one office has the power to appoint, remove, or set the salary of the other. See, e.g., *Bennett v. Hartford County*, 301 A.3d 117 (Md. 2023); *Myers v. City of McComb*, 943 So.2d 1 (Miss. 2006); *Webb v. Carter County Fiscal Court*, 165 S.W.3d 490 (Ky. App. 2005). The Nebraska Supreme Court has likewise recognized this doctrine. See *State v. Wait*, 92 Neb. 313, 138 N.W. 159 (1912). While the Commission’s specific circumstances have not been addressed in Nebraska, it is our position that the incompatibility of offices doctrine applies to prohibit a commissioner from simultaneously holding the position of Interim Director.

Moreover, it is clear from our review of statutory law that conflicts of interest exist with Mr. Carter acting as both commissioner and Interim Director. Namely, Neb. Rev. Stat. § 81-2603 (Cum. Supp. 2022) provides the Commission with the authority to “employ and fix the compensation of an executive director of its own choosing” Inherent in this statutory grant is the potential for a member of the Commission to influence his or her employment as director and the compensation he or she may receive if that commissioner is selected as director. These conflicts are further made clear by the Nebraska Political Accountability and Disclosure Act⁴, which identifies that conflicts of interest exist where the acts or decisions of an “official or employee of the executive branch of state government” may result in financial gain to that official or employee. See § 49-1499.02(1) (2021). The definition of an “official or employee of the executive branch” in this context includes “a member of any state board or commission.” See § 49-1436 (2021).

The Attorney General's Office is cognizant of the issues that the Commission faces in its day-to-day operations due to the vacancies in its Executive Director position. However, construing the common law and Nebraska statutes together, Mr. Carter’s dual role as both commissioner and Interim Director for the Commission is inconsistent with Nebraska law and public policy. Consequently, the current arrangement presents a substantial conflict of interest, and the Commission should take action to address the issues outlined in this letter.

Thank you for your consideration of these matters. Please do not hesitate to contact the undersigned if the Commission has any questions or comments regarding the

³ Nebraska adheres to the common law to the extent it has not been abrogated, as provided in Neb. Rev. Stat. § 49-101 (2021): “So much of the common law of England as is applicable and not inconsistent with the Constitution of the United States, with the organic law of this state, or with any law passed or to be passed by the Legislature . . . is adopted and declared to be law within the State of Nebraska.”

⁴ See generally Neb. Rev. Stat. §§ 49-1401 to 49-14,142 (2021, Cum. Supp. 2022).

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foregoing. Again, I look forward to providing assistance to the Commission as we go forward.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink, appearing to read "Ryan Baker".

Ryan Baker
Assistant Attorney General

55-006-30