



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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May 23, 2016

James Cunningham, President
Jefferson County Historical Society
55880 709 Road
Fairbury, NE 68352

Dear Mr. Cunningham:

As you may know, the Nebraska Auditor of Public Accounts (APA) has both an anonymous hotline number and an email address for Nebraskans to raise issues about possible waste, mismanagement, or fraud within government. In connection with this, we help to provide accurate information to taxpayers and attempt to correct their misperceptions about government. We try to do this in a timely manner and believe this to be a valuable service to the State's citizens.

Recently, we have received several concerns regarding the Jefferson County Historical Society's (Society) bookkeeping processes. Additional concerns regarding the accuracy of financial records arose during the APA's review of the Society's fiscal year 2016 budget. In response, the APA began limited preliminary planning work to determine if a full financial audit or attestation of the Society would be warranted. Pursuant thereto, the APA requested certain information regarding the Society's financial transactions and compliance with applicable laws.

During the course of the preliminary planning work, the APA noted certain internal control or compliance matters, or other operational concerns, that are presented below. Those matters, along with the related recommendations, will provide the Society with an opportunity to improve overall operations.

Our consideration of internal control was for the limited purpose described above and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Therefore, material weaknesses or significant deficiencies may exist that were not identified.

Background

Designated a political subdivision under Neb. Rev. Stat. § 84-304(4)(a) (Supp. 2015), the Society was formed as a non-profit 501(c)(3) corporation in 1955. The Society's purpose is to preserve the area's history and to maintain and run several historical sites near Fairbury, Nebraska, including the following: the 1869 District 10 School; the 1872 W.C. Smith House and Lime Kiln; the 1883 Diller Bank Building Museum; the Rock Island Depot Railroad Museum; and the Steele City Historical District, which features a blacksmith shop, livery barn, exchange bank, Baptist church, and school.

The Society is governed by a Board of Directors. The members of the Board exercise financial accountability and control over activities relevant to the operations of the Society. When receiving funding from local and State government sources, the Board must comply with the requirements of those funding source entities.

The current Board of Directors and Curator are:

James Cunningham – President
Zach Schacht – Treasurer
Lawrence Junker – Board Member
Phyllis McCown – Board Member

John Howell – Vice President
RoseAnne Zach – Secretary
Adam D’Angelo – Board Member
Denise Andersen – Curator

The bulk of the Society’s revenue is comprised of local public funding, including tax money levied specifically for its use, from Jefferson County residents under Neb. Rev. Stat. § 23-351 (Reissue 2012) and Neb. Rev. Stat. § 23-355.01 (Reissue 2012). The Society also accepts donations and generates funds from museum entrance fees, gift shop revenue, and special events that it organizes.

Public funds entrusted to the Society under § 23-351 are to be expended for the following purposes:

(1) Establishment, construction, and reconstruction of historical buildings; (2) purchase of exhibits, equipment, and real and personal property of historical significance and the maintenance thereof; and (3) lease, rental, purchase or construction, and maintenance of buildings other than those of historical nature for the display and storage of exhibits.

Similarly, § 23-355.01 requires tax monies levied for the Society to be used as follows:

[F]or the purpose of establishing a fund to be used for the establishment, management, and purchase of exhibits, equipment, and other personal property and real property and maintenance of such nonprofit county historical association or society, including the construction and improvement of necessary buildings therefor.

The APA has examined the summary of the Society’s revenues and expenses, on a cash basis, for the fiscal year ended June 30, 2015. The following information was obtained from the Society’s fiscal year ending June 30, 2016, budget document.

Description	Amount
Property Tax Receipts	\$44,333.76
State Receipts	\$2,955.80
Other Tax Receipts	\$138.75
Local Receipts	\$5,838.29
Total Receipts	\$53,266.60
Less: Total Expenditures	\$63,829.55
Net Change	(\$10,562.95)

Comments and Recommendations

1. Open Meeting Laws

The Society's Curator indicated to the APA that she thought the Society was not subject to the Open Meetings Act (Act), which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Supp. 2015). Consequently, the Society has not followed the Act's many provisions, including those requiring public notice of meetings, publication of meeting agendas, and adherence to the aforementioned agenda.

Neb. Rev. Stat. § 84-1409 (Reissue 2014) offers, as is relevant, the following definition of the type of "public body" to which the requirements of the Act apply:

Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions[.]

The Society falls well within the above definitional language. Additionally, as noted already by the chart provided in the Background section herein, the Society relied upon \$44,333.76 in property taxes levied by the County, as well as \$138.75 in other local tax receipts, to carry out its statutory duties during the 2015 fiscal year.

Neb. Rev. Stat. § 84-1408 (Reissue 2014) provides, in relevant part, the following intent for the Act:

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.

Additionally, the Nebraska Supreme Court (Court) has made this observation regarding the proper interpretation and implementation of Act:

[T]he open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public.

Schauer v. Grooms, 280 Neb. 426, 441, 786 N.W.2d 909, 922 (2010). The fact that the Society is empowered to receive and expend public funds, including tax monies levied specifically for its use, makes adherence to the requirements of the Act all the more crucial. Such adherence is the only way of ensuring that the citizens of Jefferson County may truly exercise their rights not only to observe but also to speak out regarding how their hard-earned tax dollars are being spent. This is essential to fulfilling what the Court has deemed the Act's "statutory commitment to openness in government." *Wasikowski v. Neb. Quality Jobs Bd.*, 264 Neb. 403, 418, 648 N.W.2d 756, 768 (2002).

We recommend the Society take the steps necessary to ensure compliance with all requirements of the Act.

Society Response: Since its inception, the Jefferson County Historical Society, Inc. has been a 501(C)3 non-profit organization operating under the laws of such an organization, which is not governed by open meeting laws. The organization is also operating under Neb. Rev. Stat. 23-355.01 (Non profit county historical association or society; tax levy, requirements; funding request) which “allows a tax of not more than three-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property in such county may be levied for the purpose of establishing a fund to be used for the establishment, management, and purchase of exhibits, equipment, and other personal property and real property and maintenance of such nonprofit county historical association or society, including the construction and improvement of necessary buildings therefor. The levy shall be part of the levy of the county subject to section 77-3442. Such fund shall be paid by the county treasurer to the treasurer of such nonprofit county historical association or society and shall be disburse under the direction and supervision of the board of directors and officers of such nonprofit county historical or society...A nonprofit county historical association or society for which a tax is levied under this subsection is subject to the Nebraska Budget Act.” We file a budget request with the County Commissioners and the State Auditor Office under that act, hold a hearing and approve our budget. Nowhere does Neb. Rev. Stat. 23-355.01 say that the historical society, as a nonprofit organization, is required to follow the Open Meeting Act, it only specifically references the Nebraska Budget Act; therefore, we have been following the meeting format for a nonprofit organization. In addition, the Jefferson County Historical Society is not a political subdivision, it is a paid membership and only members can be on the board of directors.

APA Response: The Society points to its status as a 501(c)(3) corporation to demonstrate the supposed inapplicability of the Open Meetings Act (Act). In doing so, however, the Society ignores Neb. Rev. Stat. § 84-1409(1)(a)(vi) (Reissue 2014), which makes “instrumentalities exercising essentially public functions” subject to the requirements of the Act. According to the Nebraska Attorney General, “[T]he legislative history of this language . . . indicates that it was specifically intended to reach . . . entities which have been granted the power and authority to issue bonds and to borrow and expend public money.” Op. Att’y Gen. 92020 (Feb. 12, 1992) As made clear in the comment, both Neb. Rev. Stat. § 23-351 (Reissue 2012) and Neb. Rev. Stat. § 23-355.01 (Reissue 2012) authorize the Society to receive and expend public funds. The Society’s response acknowledges, moreover, that the latter of those two statutes brings into play the Nebraska Budget Act, the provisions of which are applicable to the State’s various governing bodies. Additionally, the former of the two statutes permits the Society to receive public funds set aside for the County to use for specific historical preservation purposes. Regardless of its corporate status, therefore, the Society is exercising an “essentially public” function by receiving and expending tax revenues to perform historical preservation duties that would otherwise be carried out by the County. Consequently, the Society must comply with the requirements of the Act.

2. Unauthorized Use of Credit Card

The APA requested support for a \$781 credit card purchase made by a Society member from Verizon Wireless on February 11, 2015. According to the Curator, this transaction was not related to Society business; rather, it was charged to the Society’s credit card by mistake. On February 10, 2016, the Curator informed the APA that the amount of the credit card charge in question had been returned to the Society by the individual responsible for the mistaken transaction. Upon request for documentation of the reimbursement, however, the APA

discovered that the funds were returned to the Society's bank account on February 22, 2016, almost two weeks following our inquiry and more than a year after the initial transaction. Due to these circumstances, it appears that Society funds may have been misappropriated for personal use.

Should an investigation reveal credible evidence of Society funds having been misappropriated for personal use, the alleged perpetrator could face criminal prosecution for theft.

Neb. Rev. Stat. § 28-511(1) (Reissue 2008) provides the following:

A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.

Likewise, Neb. Rev. Stat. § 28-512 (Reissue 2008) states the following, in relevant part:

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

(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

An unauthorized use of the Society's credit card appears to have occurred. The status of the Board member's supposed reimbursement is largely immaterial to this determination.

We recommend the Society investigate the possibility that its funds may have been used for personal use and, as determined necessary, implement procedures to ensure the proper corrective action is taken.

Society Response: There was a bit of a delay in getting the check written and in the bank, but the society believes the mistake in using the card was inadvertent and has been reconciled satisfactorily.

APA Response: The "bit of a delay" described in the Society's response was over a year from the purchase to the reimbursement. Additionally, the reimbursement was made only after the APA inquired about the expense, which raises the question as to whether a reimbursement would have been made had the APA not asked about the transaction.

3. Expenditure Support

a. Expenditure Procedures

According to the Society's Curator, all expenditures are approved by the Board prior to payment, with the exception of account or credit card purchases; however, because the meeting minutes provided did not contain a detailed listing of claims approved, the APA was unable to verify that such prior Board approval actually took place. Additionally, the Curator is authorized to make purchases up to \$100 without Board approval and can purchase gift shop stock in any amount without approval.

According to the Curator, invoices and receipts for expenditures were available; however, they were not provided to the Board for review at the time of the meeting.

Good internal controls and sound business practices require procedures to ensure that all expenditures of the Society are approved by the Board prior to payment and that such approval is detailed in the Board's meeting minutes. In addition to enhancing financial accountability, such detailed documentation would be in keeping with Neb. Rev. Stat. § 84-1413 (Supp. 2015), 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.

For expenditures not requiring Board approval, whether account or credit card charges, or certain Curator purchases, the Society should consider implementing procedures for reviewing those transactions to ensure they are appropriate and necessary for the operation of the Society. Such review should also be detailed in the Board's meeting minutes.

Additionally, the Board should strictly oversee the use of the Society's credit card, specifically authorizing each user and establishing definite parameters for the card's allowable usage and dollar limit. As part of the review process discussed herein, moreover, all credit card purchases should be approved by the Board prior to payment of the monthly statement amount.

When the Society does not approve all expenditures prior to payment, as well as ensure a subsequent review of account or credit card charges and certain Curator purchases, there is an increased risk of loss, theft, or misuse of funds. Furthermore, unless properly documented in the Board's meeting minutes, there is no way to verify that any such detailed approval or review actually occurred.

We recommend the Society implement procedures for the prior approval or subsequent review of all Society expenditures, as appropriate. Such prior approval or subsequent review should be thoroughly documented in the Board's meeting minutes. Additionally, the Board should place strict limitations upon the use of the Society's credit card.

b. Supporting Documentation

The APA requested support for 16 expenditures incurred by the Society from June 2014 to June 2015. Receipts or invoices were not provided for seven of these transactions, as follows:

Date	Vendor	Amount
6/21/2014	Wal-Mart	\$26.11
2/16/2015	Jalisco	\$17.23
9/16/2014	Orscheln	\$93.31
10/24/2014	Orscheln	\$164.72
12/11/2014	Ace Hardware	\$542.88
1/14/2015	Menards	\$368.35
1/14/2015	Home Depot	\$29.93

Additionally, support for 2 of the 16 expenditures was inadequate to substantiate those payments, as follows:

- A \$2,057 rental payment to Oregon Trail Equipment on June 1, 2015. The Society provided a rental agreement for the use of a tractor at \$10 per hour; however, the Society lacked any other documentation to support the number of hours the equipment was used, or by whom, in order to verify that the rental amount paid was correct.
- A \$45.33 utility payment to Sandra Gapp on March 12, 2015. The Society provided a property lease agreement with Ms. Gapp that requires the Society to pay a “minimum” utility bill for the Society-owned rental property each month. The amount paid under this lease agreement fluctuates monthly based on the utilities charged to the property. The Society lacked further support, such as monthly utility billings, to verify that the amount paid was correct. Because the term “minimum” is ambiguous, moreover, the Society should consider redefining more precisely the utility amount to be paid under the lease agreement.

Good internal control and sound business practice require procedures to ensure that adequate documentation is maintained to support all Society expenditures. Without such procedures, there is an increased risk for loss, theft, or misuse of funds.

We recommend the Society implement procedures to ensure all financial activity is supported by adequate documentation.

c. Employee Payroll

The Society pays the wages of two employees – Audrey Schoenbeck and Denise Anderson.

The APA requested documentation to support the July 9, 2014, payment of \$544 to Audrey Schoenbeck. The payment to this individual appears to be based on an hourly rate; however, during the time of the APA’s procedures, the Society was unable to provide timesheets or other documentation to support the number of hours worked. Only after the draft letter was provided to the Board did the Curator provide a timesheet. Additionally, the timesheet provided did not include a signature of Ms. Schoenbeck’s supervisor. The Society failed also to provide the Board’s approval of this hourly rate.

Additionally, the Society appears to have paid Denise Anderson a set salary amount; however, support was not provided for the amount paid. The Curator provided Board meeting minutes from August 2006 as support for the salary amount. Those minutes approved a salary of \$15,600 plus an annual three percent raise. The current salary paid to Ms. Anderson is \$12,000. No other support for the actual salary paid was provided. Additionally, the Society failed to require timesheets or other documentation to ensure compliance with the Board-approved terms of employment. Finally, Ms. Anderson appears to be the individual in charge of writing all payroll and claim checks, without further controls to ensure amounts paid are accurate.

Neb. Rev. Stat. § 23-355.01 (Reissue 2012) requires levied tax monies received by the Society to “be disbursed under the direction and supervision of the board of directors and officers”

Good internal control and sound business practice require procedures to ensure wages paid to employees are properly approved by the Board, and the number of hours worked are adequately documented. This support should be reviewed by the Board prior to payment.

Without sufficient procedures to ensure wages are approved, and time worked is adequately documented, there is an increased risk of loss, theft, or misuse of funds.

We recommend the Society implement procedures to ensure all hourly rates have been approved by the Board, and all wages paid are fully supported by an accounting of hours worked and approved by the Board prior to payment.

Society Response: Documentation is available for all expenditures and subject to review at all meetings. The review process will be included in all subsequent minutes. The board reviewed and approved an amended lease agreement for Sandra Gapp that includes the exact amount of the minimum monthly payment for utilities, as well as obtaining documentation for hours and use of the Gator, as well as policy for when Denise Andersen can authorize expenditures. These must still be approved by the board before payment is made. A timesheet for Audrey Schoenbeck is attached as well as reaffirmation of her wages. Likewise, the board affirmed Denise Andersen’s pay contract and terms. She does write checks when the treasurer is unavailable to do so, so bills can be paid in a timely manner, all checks require two signatures by two of three officers authorized to sign the checks, the president, vice president and treasurer.

APA Response: Had adequate documentation been available for all expenditures, it should have been readily available upon request from the APA. As noted in this comment, documentation was not provided for several transactions.

4. Credit Card Fees & Interest

Currently, the Society has two active credit cards. The Society’s monthly credit card balance is fairly significant, ranging from \$6,899.10 to \$9,312.27 during the last fiscal year. The credit card account also consistently incurs approximately \$200 in late fees and interest each period, resulting in over \$3,500 in late fees and interest being paid during the last fiscal year. See the table below for the monthly details of fees and balances of the credit cards:

Month	Fees	Interest	Total Fees & Interest	Total Account Balance
June 2014	\$0.00	\$224.81	\$224.81	\$9,312.27
July 2014	\$0.00	\$226.78	\$226.78	\$8,586.68
August 2014	\$0.00	\$210.13	\$210.13	\$8,296.81
September 2014	\$0.00	\$189.54	\$189.54	\$7,579.66
October 2014	\$39.00	\$193.55	\$232.55	\$8,107.94
November 2014	\$0.00	\$170.26	\$170.26	\$6,919.63
December 2014	\$0.00	\$177.33	\$177.33	\$7,139.84
January 2015	\$0.00	\$182.05	\$182.05	\$7,420.17
February 2015	\$0.00	\$180.01	\$180.01	\$8,142.50
March 2015	\$39.00	\$206.02	\$245.02	\$8,387.52

Month	Fees	Interest	Total Fees & Interest	Total Account Balance
April 2015	\$39.00	\$205.26	\$244.26	\$8,631.78
May 2015	\$0.00	\$201.11	\$201.11	\$7,832.89
June 2015*	\$39.00	\$191.70	\$230.70	\$8,063.59
July 2015	\$39.00	\$204.02	\$243.02	\$8,306.61
August 2015	\$0.00	\$188.79	\$188.79	\$7,495.40
September 2015	\$39.00	\$183.42	\$222.42	\$7,717.82
October 2015*	\$0.00	\$181.28	\$181.28	\$6,899.10
November 2015	\$39.00	\$168.87	\$207.87	\$7,106.97
December 2015	\$39.00	\$181.35	\$220.35	\$7,327.32
Totals	\$312.00	\$3,666.28	\$3,978.28	

*These credit card statements were not provided until after the Society received a draft copy of this letter.

According to the Curator, the balance was created when gift shop stock and garage doors were purchased several years ago; however, no receipts or documentation were provided to the APA to support this.

Sound business practice requires procedures to ensure taxpayer funds are spent only on credit card charges that are necessary and reasonable for Society operations. Furthermore, sound business practices require all credit card charges to be approved by the Board and paid within a timely manner. By incurring significant late fees and interest, the Society takes on the burden of unnecessary costs and expends taxpayer money on unreasonable charges.

We recommend the Society implement procedures to ensure all outstanding credit card balances are paid in a timely manner, preventing the unreasonable expenditure of taxpayer funds for unnecessary late fees and interest. Furthermore, we recommend the Society implement procedures to ensure that its credit cards are used only for authorized purposes.

Society Response: The society has gotten rid of the credit card and it is being paid off in a timely manner and on time so as to eliminate any fees. Payoff date is expected to be September 2016. Payment has to be made as to cause no financial hardship to the society.

APA Response: The APA understands that full payment of the balance at this time could be a financial burden to the Society. However, the nearly \$4,000 in fees and interest incurred on the credit card from June 2014 through December 2015 could also be considered a financial hardship to the Society, not to mention a waste of taxpayer funds, and could have been avoided with proper oversight of the card.

Based upon the outcome of this preliminary planning work, the APA has determined that this preliminary work will suffice to grant a waiver for a financial audit of the Society for fiscal year-end June 30, 2015. However, in accordance with Neb. Rev. Stat. § 84-304(4)(a) (Supp. 2015), the APA has determined it to be necessary for our office to conduct an audit of the Society for the fiscal year ended June 30, 2016, at the Society's cost.

This letter will serve as official notice that the APA will complete the Society's financial examination for the fiscal year ended June 30, 2016, including follow-up of the items disclosed above. As provided under 84-304(4)(a), the Society will be billed for the actual expenses incurred in connection with that audit work.

Draft copies of this letter were furnished to the Society 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 letter. Responses have been objectively evaluated and recognized, as appropriate, in the letter. Responses that indicated corrective action has been taken were not verified at this time.

Additionally, this letter is being copied to the Jefferson County Attorney for any action deemed appropriate by that office.

This communication is intended solely for the information and use of the Society and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Mary Avery". The signature is fluid and cursive, with the first name "Mary" and last name "Avery" clearly distinguishable.

Mary Avery
Special Audits and Finance Manager
Phone 402-471-3686
mary.avery@nebraska.gov

Copy to: Jefferson County Board of Commissioners
Jefferson County Attorney