



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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March 17, 2021

Mark Billesbach, Chairperson
Village of Odell
PO Box 5
Odell, NE 68415

Dear Chairperson Billesbach:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Odell (Village) for the fiscal year ending 2020. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Cum. Supp. 2020), the preliminary examination necessary to determine whether the audit waiver should be allowed or further audit work would be required, the APA noted certain internal control or compliance matters, or other operational issues, within the Village.

The following information is intended to improve internal controls or result in other operational efficiencies.

Comments and Recommendations

1. Possible Conflict of Interest

The APA received Village Board (Board) meeting minutes and the accompanying claims listing for January 8, 2020. From this listing, the APA identified a potential conflict of interest involving the actions of Board member Spencer Sutton.

According to the meeting minutes, Spencer Sutton appears to have failed to abstain from voting on the following claims:

Claim Date	Name/Vendor	Amount	Check #	Cleared Date
10/9/2019	Sutton Repair	\$ 6.02	9136	10/15/2019
11/13/2019	Sutton Repair	\$ 18.00	9162	11/15/2019
12/11/2019	Sutton Repair	\$ 12.89	9177	12/30/2019
1/8/2020	Sutton Repair	\$ 27.29	9193	1/9/2020
2/28/2020	Sutton Repair	\$ 113.44	9215	2/28/2020
3/11/2020	Sutton Repair	\$ 586.28	9234	3/12/2020
4/8/2020	Sutton Repair	\$ 457.71	9251	4/16/2020
5/19/2020	Sutton Repair	\$ 269.62	9277	5/19/2020
6/10/2020	Sutton Repair	\$ 233.68	9299	6/11/2020
7/20/2020	Sutton Repair	\$ 47.26	9321	7/20/2020
8/17/2020	Sutton Repair	\$ 158.19	9343	8/17/2020
8/17/2020	Sutton Repair	\$ 67.76	9347	8/17/2020
9/11/2020	Sutton Repair	\$ 466.50	9365	9/11/2020
Total		\$2,464.64		

An excerpt from the January 8, 2020, Board minutes is provided below:

Minutes of the last meeting were read and approved. The following claims were read:		
Edward Jones	IRA	366.00
NE Public Health	Water tests	31.00
Black Hills Energy	Utilities	307.61
Adam's Plumbing	Repair on water meter	200.00
Schmidt's Sanitation	Garbage service	2524.99
Farmers Cooperative	Fuel	215.56
Sapp Bros.	Propane/tank	815.40
Wymore Arbor State	Proceedings	36.45
Norris Public Power	Utilities	1681.41
Odell Community Market	Supplies	2.00
Diller Telephone	Utilities	344.71
James Duitsman	Postage reimbursement	102.87
VISA	Flags, water certification renewal	699.86
One Call Concepts	Locate requests	42.97
NE Rural Water	Dues	125.00
Utilities Section	James wastewater conference	95.00
Maguire Iron	Inspect water tower	1400.00
Sutton Repair	Supplies repair tire	27.29
Trustee Henrichs made a motion to approve all the claims. Seconded by Trustee Sutton. Trustees voted aye: Henrichs, and Sutton. Motion carried.		

The apparent failure of Board member Spencer Sutton to abstain from voting on the motion above gives rise to concerns regarding possible violations of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. § 49-1401 (Cum. Supp. 2020) et seq.

To start, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2010) states the following:

A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

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

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

Furthermore, Neb. Rev. Stat. § 49-14,103.01 (Cum. Supp. 2020) provides the following, in relevant part:

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means . . . (c) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (d) any elected county, school district, educational service unit, city, or village official . . .

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. . . .

* * * *

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

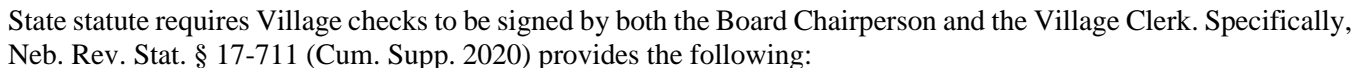
(a) *Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;*

(b) *Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and*

(c) *Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.*

We recommend the Board implement procedures to ensure compliance with the applicable provisions of the Act. Because the issue addressed herein constitutes a possible violation of the Act, we are forwarding this information to the Nebraska Accountability and Disclosure Commission.

The APA obtained the bank statements for the Village's accounts from its fiscal year 2020 audit waiver request. From these statements, the APA noted that one Village check written during the examination period contained only one signature, as shown below.



Good internal control and sound accounting practices require procedures to ensure that Village checks contain the statutorily required endorsements. Without such procedures, there is an increased risk of not only failure to comply with State statute but also the loss and/or misuse of Village funds.

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We recommend the Board implement procedures to require dual signatures, from the Board Chairperson and the Village Clerk, on all Village checks, as required by law.

* * * * *

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the Village's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful to the Village.

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

If you have any questions, please contact **Dakota Christensen** at **402-499-8702** or **dakota.christensen@nebraska.gov**.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Avery", with a long, sweeping horizontal line extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor