



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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December 23, 2022

Don Brockmann, Chairperson
Elkhorn Township Cuming County
921 11th Road
West Point, NE 68788

Dear Chairperson Brockmann:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Elkhorn Township Cuming County (Township) for the fiscal year ending 2022. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Cum. Supp. 2022), the preliminary examination necessary to determine whether further audit work would be required or the audit waiver should be allowed, the APA noted certain internal control or compliance matters, or other operational issues, within the Township.

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 the Township Board (Board) meeting minutes and the accompanying claims listing for May 25, 2022. From this listing, the APA identified a potential conflict of interest involving the actions of Board member Don Brockmann.

According to the meeting minutes, Mr. Brockmann appears to have failed to abstain from voting on the following claims:

Name	Amount	Explanation
Colleen Brockmann	\$ 500	Wages

According to the Township Treasurer, Colleen Brockmann is the wife of Don Brockmann. She was paid \$2,000 during fiscal year 2022 for helping the Township with paperwork. Excerpts from the May 25, 2022, Board minutes are provided below:

Meeting was held May 25
at Don B Residence at 7PM
Present was Don B, Ken W.
and Roy R.

The apparent failure of Board member Don Brockmann 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. 2022) et seq.

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

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

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

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

Furthermore, Neb. Rev. Stat. § 49-1499.03(2) (Reissue 2021) provides the following related to claims not associated with a contract:

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

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

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

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

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

Furthermore, Neb. Rev. Stat. § 49-14,103.01 (Reissue 2021) provides the following, in relevant part, for claims associated with a contract:

(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.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(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.

(Emphasis added.) Good internal control requires procedures to ensure compliance with the applicable provisions of the Act. Without such procedures, there is an increased risk for both statutory violations and the loss of Township funds.

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.

2. Payment of Claims Prior to Board Approval

During our comparison of the Township's bank account details to claims approved by the Board, the APA noted that the following checks, totaling \$13,765, were issued before the underlying claims were approved by the Board.

Approval Date	Name/Vendor	Amount	Check #	Check Date	Days Paid Before Approval
5/25/2022	EMC Insurance	\$ 6,255	4613	3/23/2022	62
5/25/2022	Quality Printing	\$ 305	4614	4/13/2022	41
5/25/2022	Colleen Brockmann	\$ 500	4615	4/18/2022	36
5/25/2022	Don Brockmann	\$ 595	4616	4/18/2022	36
5/25/2022	Roy Ritter	\$ 595	4617	4/18/2022	36
5/25/2022	Ken Wordekemper	\$ 595	4618	4/18/2022	36
5/25/2022	Payroll	\$ 1,785	EFT	4/1/2022	54
5/25/2022	Payroll	\$ 1,785	EFT	5/2/2022	23
5/25/2022	Internal Revenue Service	\$ 560	EFT	4/5/2022	50
5/25/2022	Internal Revenue Service	\$ 560	EFT	5/4/2022	21
5/25/2022	NE Department of Revenue	\$ 230	EFT	4/6/2022	49
	Total	\$ 13,765			

The Township Board is required to approve claims against the Township as set out in Neb. Rev. Stat. § 23-255 (Reissue 2022), which states the following, in relevant part:

All claims and charges against the town, duly audited and allowed by the town board, shall be paid by order so drawn.

(Emphasis added.) Properly discharging the above statutory duties necessarily entails the Board's approval of all expenditures of Township funds prior to the actual disbursement.

Furthermore, good internal control requires procedures to ensure that all claims are approved by the Board prior to payment and are adequately documented in the minutes of the meeting during which they are approved.

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

We recommend the Board implement procedures to ensure all claims against the Township are approved by the Board prior to payment and are adequately documented in the minutes of the meeting during which they are approved.

3. **Board Member Per Diem**

The APA obtained the monthly statements for the Township's bank accounts from its fiscal year 2022 audit waiver request. From those statements, the APA noted that each Township Board member received a per diem of \$2,380 during fiscal year 2022. However, the Township failed to provide documentation supporting the approval of this per diem amount.

Neb. Rev. Stat. § 23-260 (Reissue 2022) states the following:

The members of the town board shall be entitled to a per diem as fixed by the town board at its annual meeting.

Good internal control requires procedures to ensure that the Board's per diem is set annually, as required by State statute, and is adequately documented in the minutes of the meeting in which the per diem was approved.

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

We recommend the Board implement procedures to ensure that the Board's per diem is set annually, as required by State statute, and is adequately documented in the minutes of the meeting in which the per diem was approved.

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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 Township'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 Township.

This communication is intended solely for the information and use of the Township 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