



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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May 24, 2022

Mark Byars, President
Bennington Public School District
11620 N. 156th Street, Box 309
Bennington, NE 68007

Dear Mr. Byars:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received allegations regarding the purportedly questionable or unusual expenditure of funds by the Bennington Public School District (District). Responding thereto, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. In doing so, the APA requested specific financial records and other relevant documentation from the District. Based on the outcome of this preliminary planning work, including an analysis of the information obtained, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

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

Background Information

In a letter dated February 9, 2022, the Nebraska Attorney General addressed alleged violations of the Open Meetings Act (Act) by the Board of Education (Board) of the District. According to that letter, the Board violated the Act by “not providing at least one complete copy of all reproducible materials to be discussed at the meeting.” The letter also advised the Board to do the following: 1) “end the confusing practice” of allowing public comment during a “public forum” prior to calling the meeting order; 2) “cease incorrectly advising the public that the public forum is not a part of the public meeting”; and 3) “specifically identify, within the agenda, the topics to be discussed during each closed session where withholding the nature of the topic is not clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and such individual has not requested a public meeting.”

In addition to Board meeting minutes, the APA obtained documentation, including invoices, purchase orders, billing statements, and receipts, to support the following disbursements of District funds:

Month	Vendor	Fund	Amount
February 2020	AMAZON CAPITAL SERVICES	General	\$ 7,578.74
February 2020	MILESTONES DISABILITY SERVICES INC.	General	\$ 6,909.85
August 2020	HOME DEPOT PRO, THE	General	\$ 18,431.98
September 2020	NEBRASKA ASSOCIATION OF SCHOOL BOARDS	General	\$ 321,929.00
September 2020	US BANK	General	\$ 23,289.10
Total			\$ 378,138.67

According to the 2021-2022 budget filed with our office, the District’s actual disbursements and transfers for fiscal year 2020 totaled \$52,423,448.

The Board consisted of the following members during the period examined:

- Darren Siekman, President
- Valerie Calderon, Vice President
- Mark Byars
- Heather Goertz
- Kara Neuverth
- Brad Renter

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

Comments and Recommendations

1. Publication of Claims Listings and Meeting Minutes

Upon request, the APA was provided with the Board's published agendas for its regular meetings in February, August, and September 2020. Included were "Board Report – Newspaper" documents, which are the listings of claims provided to the Board to be reviewed and approved at each regular meeting.

The following is an excerpt of the claims listing provided to the Board during its August 10, 2020, meeting:

County of Douglas School District 59 08/07/2020 12:43 PM		Board Report - Newspaper	Page: 1 User ID: JIP
Vendor Name	Vendor Description	Amount	
ACTIVITY FUND			
HY-VEE INC.		\$88.97	
US BANK		\$2,180.73	
Fund Number 21		\$2,269.70	
Checking Account ID	ACTIVITY	\$2,269.70	

The Board's aggregate approval of certain claims – as opposed to approving them individually – is typically recorded in the "Consent Agenda" section of the meeting minutes, as illustrated by the following excerpt from the minutes of the August 10, 2020, meeting:

III. Consent Agenda (Note: Items on the consent agenda are considered routine and will be enacted under one motion. There will be no separate discussion of these items at the meeting unless a Board Member requests an item removed from the agenda for separate action.)
(Note: Items on the consent agenda are considered routine and will be enacted under one motion. There will be no separate discussion of these items at the meeting unless a Board member requests an item removed from the consent agenda for separate action.)
MOTION PASSED: Motion to approve the following Consent Agenda items (or as presented):
- Approval of Agenda - Approval of Minutes of the Monday, July 13, 2020, Special Hearing, Monday July 13, 2020, Joint City/District Meeting and the Monday, July 13, 2020, Regular Meeting - Approve August claims for payment - Approve Temporary Non-Resident Request, passed with a motion by Mark Byars and a second by Kara Neuverth. Mark Byars: Yea, Valerie Calderon: Yea, Heather Goertz: Yea, Kara Neuverth: Yea, Brad Renter: Yea, Darren Siekman: Yea

The District publishes a post-meeting list of claims in the Douglas County Post-Gazette, a newspaper located in Elkhorn, Nebraska. In doing so, however, the District has failed to list all claims – including those on the Consent Agenda – approved by the Board, which is required by State statute.

Neb. Rev. Stat. § 79-580 (Cum. Supp. 2020) provides the following:

The secretary of the school board or board of education of each Class III school district shall, within ten days after any regular or special meeting of the board, publish one time in a legal newspaper published in or of general circulation in such district a list of the claims, arising on contract or tort, allowed at the meeting. The list shall set forth the name of the claimant and the amount and nature of the claim allowed, to consist of not more than ten words in stating the nature of each such claim. The secretary shall likewise cause to be published a concise summary of all other proceedings of such meetings. Publication of such claims or proceedings in a legal newspaper shall not be required unless the publication can be done at an expense not exceeding the rates provided by law for the publication of proceedings of county boards.

(Emphasis added.) The following table summarizes the dates of both the Board meetings and the incomplete publications noted by the APA:

Date of Meeting	Date of Publication	# of Days after Meeting
2/10/2020	2/26/2020	16
8/10/2020	8/26/2020	16
9/14/2020	9/30/2020	16

In addition to not including all claims approved by the Board, each of the publications at issue was made 16 days after the meeting. As shown above, however, § 79-580 requires the District’s claims listing to be published “within ten days after any regular or special meeting of the board”

Good internal control and sound accounting practices require procedures to ensure that the published listing of all Board-approved claims is complete and appears within 10 days of each meeting.

Without such procedures, there is an increased risk of not only failure to comply with statutory publication requirements but also a lack of transparency regarding District expenditures.

We recommend the District implement procedures to ensure that the published listing of Board-approved claims is complete and made within 10 days of each meeting, as required by State statute.

District Response: This section of the draft findings letter indicates that “the District has failed to list all claims” in the published notice. The school district asks for more information on which claims were not published so that it can take corrective action in the future.

This section also indicates that the claims were published later than the 10-day requirement. The school district has investigated its process and believes the issue lies with an employee who no longer works for the district. The District will review its practice to ensure that all legal notices are timely filed with the newspaper of record as required by law.

2. Lack of Supporting Documentation

The APA requested documentation to support a \$23,289.10 payment to US Bank, which included expenditures made with District purchasing cards. In reviewing those charges, the APA found five instances in which the District was unable to provide adequate supporting documentation for the expenditures.

Those instances of missing documentation are summarized in the table below:

Date	Vendor	Amount	APA Explanation
7/28/2020	Home Depot	\$ 81.67	No receipt was provided for this purchase.
7/28/2020	Lakeshore Learning	\$ 7.20	No receipt was provided for this purchase.
8/6/2020	Lowe's	\$ 6.60	No receipt was provided for this purchase.
8/10/2020	Target	\$ 17.10	No receipt was provided for this purchase.
8/16/2020	Signup Genius	\$ 9.99	No receipt was provided for this purchase.
Total		\$ 122.56	

The District stated that similar errors had been identified during its own internal auditing process, resulting in a change of its Accounts Payable Department personnel in September 2020.

Neb. Rev. Stat. § 13-610 (Reissue 2012) provides, in relevant part, the following:

(1) A political subdivision, through its governing body, may create its own purchasing card program. The governing body shall determine the type of purchasing card or cards utilized in the purchasing card program and shall approve or disapprove those persons who will be assigned a purchasing card

(2) Any political subdivision may utilize its purchasing card program for the purchase of goods and services for and on behalf of the political subdivision.

* * * *

(4) An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

* * * *

(6) No officer or employee of a political subdivision shall use a political subdivision purchasing card for any unauthorized use as determined by the governing body.

(Emphasis added.) Good internal control and sound business practices require procedures to ensure that proper documentation is maintained for all purchases, especially when made with a District purchasing card.

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

We recommend the implementation of procedures to ensure proper documentation is maintained for all purchases, especially when made with a District Purchasing card.

District Response: The school district believes it has corrected the issue with purchase receipts. The school district will consider whether a formal policy needs to be implemented in the future. Nonetheless, the school district will review its procedures with all staff to ensure that required documentation is received prior to payment of any purchases made, especially with the district's purchasing card program and that all internal control practices are followed by our accounts payable department.

3. Improper Payment of Sales Tax

The APA identified three instances of State sales taxes, totaling \$56, being paid on purchases made by the District.

Per Neb. Rev. Stat. § 77-2704.15(1)(a) (Reissue 2018), purchases made by the State or other specified public entities are exempt from sales tax, as follows:

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any . . . public schools or learning communities established under Chapter 79.

Good internal control requires procedures to ensure that the District does not pay State sales taxes on any of its purchases.

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

We recommend the District implement procedures to prevent the payment of State sales taxes on any of its purchases.

District Response: The school district notes that this is as much an issue with training school district employees as it is training vendor employees. In many instances, school employees will need to make point of sale purchases with local vendors. Even if school district employees understand that such purchases should be sales tax free, local vendor employees may not or may not have training to process purchases sales tax free. Depending on the timing of school needs, the school may not have the luxury of waiting for local vendors to figure out how to process sales without sales tax. Emergencies exist and the school district needs to make good choices to manage and maintain the district.

4. Lack of Policy Regarding Meals

The APA noted 29 expenditures of District funds, totaling \$6,717.24, that appear to have been made to purchase food or meals for staff and registration workers.

These food/meal purchases have been summarized in the table below:

Date	Vendor	Amount	Description
7/28/2020	A Catered Affair	\$ 1,310.00	New Teacher Meeting
7/28/2020	Walmart	\$ 92.50	Drinks & Snacks for registration
7/28/2020	HyVee	\$ 59.84	Drinks for registration workers
7/29/2020	A Catered Affair	\$ 350.00	New Teacher Math Training
7/29/2020	Runza	\$ 85.42	food for registration
7/29/2020	Subway	\$ 63.69	food for registration
7/29/2020	Domino's Pizza	\$ 36.16	Pizza for Registration workers
7/29/2020	Casey's General Store	\$ 25.30	food for registration
7/30/2020	Runza	\$ 90.72	Dinner for Registration workers
7/30/2020	Runza	\$ 85.12	Dinner for registration workers
7/31/2020	Rusty Taco	\$ 145.87	Lunch for registration workers
7/31/2020	Mangia Italiana	\$ 116.90	food for registration
7/31/2020	Chipotle	\$ 86.15	food for registration
7/31/2020	Casey's General Store	\$ 25.30	Breakfast for Registration Workers
7/31/2020	Square Donut	\$ 22.60	food for registration
8/3/2020	A Catered Affair	\$ 325.00	New Teacher Reading Training
8/3/2020	Mangia Italiana	\$ 199.92	Administrator Dinner Meeting
8/3/2020	Costco	\$ 190.59	Snacks for SIT, PAC and staff meetings
8/4/2020	La Mesa	\$ 159.54	food for registration
8/4/2020	HyVee	\$ 39.45	soda - registration
8/4/2020	Cubby's	\$ 31.95	food for registration
8/5/2020	Panera Bread	\$ 425.70	SpEd Dept Meeting
8/5/2020	Panera Bread	\$ 202.72	Breakfast and lunch for registration wor
8/6/2020	Walmart	\$ 124.74	Drinks & Snacks for staff meetings.
8/6/2020	Walmart	\$ 21.60	Soda for back to school meetings
8/7/2020	Rusty Taco	\$ 479.28	Breakfast for staff
8/12/2020	Dickey's Barbecue Pit	\$ 876.25	Dickey's BBQ - staff lunch
8/12/2020	Dickey's Barbecue Pit	\$ 639.20	Lunch for staff on first day of school
8/13/2020	Panera Bread	\$ 405.73	Panera
Total		\$ 6,717.24	

The District acknowledged lacking specific policies or procedures pertaining to the allowability of meal purchases for in-service activities, meetings, or other functions.

The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. §§ 13-2201 to 13-2204 (Reissue 2012, Cum. Supp. 2020), specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to school districts, among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Cum. Supp. 2020).

Neb. Rev. Stat. § 13-2203 (Cum. Supp. 2020) of the Act enumerates the miscellaneous expenditures permitted by governing bodies of local governments. Purchases of meals for employees and volunteers are allowable expenditures, but only under specific circumstances. To start, § 13-2203(1)(b) says the following:

Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies[.]

Section 13-2203(2) authorizes the “expenditure of public funds” for the following:

(a) Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and

(b) Nonalcoholic beverages and meals:

(i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident;

(ii) Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or

(iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed fifty dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body[.]

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

Regarding the issue of meal purchases, the Guideline says the following:

Question #1 – Is a city official permitted to use public funds to purchase meals for officials or staff?

Response – Under certain circumstances, yes. The Local Government Miscellaneous Expenditure Act provides that public funds may be spent for meals under the following circumstances:

a) If the meal is part of the actual and necessary expenses incurred by the official or employee at educational workshops, conferences, training programs, official functions, hearings or meetings (whether within or without the municipal limits). The governing body must give approval prior to the expense being incurred either by formal vote or by the adoption of a uniform policy.

b) Meals and nonalcoholic beverages may be provided to individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations including tornado, severe storm, fire, accident, etcetera.

The governing body may not expend public funds for meals of paid members of a governing body provided while the members are attending a public meeting of the governing body unless the meeting is a joint public meeting with one or more other governing bodies.

Despite addressing expenditures by “a city official,” the above Guideline excerpt is applicable to school officials as well.

Good internal control requires procedures to ensure that the expenditure of District funds for food or meals is authorized by statute.

Without such procedures, there is an increased risk of violating State law.

We recommend the District implement procedures to ensure that the expenditure of District funds for food or meals is authorized by statute.

District Response: The school district is aware of the State Auditor’s report to Laurel-Concord Coleridge Public Schools, dated September 28, 2016, where the Auditor said: “Whether meal expenses meet the requirements of either § 79-526 or § 13-2203(1)(a) is a matter left to the discretion of the Board.” In this case, the school district disagrees with the State Auditor’s suggestion that Section 13-2203(2) is the only basis for providing food or meals. As the State Auditor noted to Laurel-Concord-Coleridge, § 13-2203(1)(a) also is applicable. That section applies to “elected and appointed officials, employees, or volunteers.”

The school district will work to develop a policy to address the expenditure of funds for food or meals.

* * * * *

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the District and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the District.

Draft copies of this letter were furnished to the District to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

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

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

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor

Mason Culver – Auditor-In-Charge

Sincerely,



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