



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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February 20, 2024

Gus Moreno, Chairperson
Village of Ithaca
503 Main St.
Ithaca, NE 68033

Dear Chairperson Moreno:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Village of Ithaca (Village) for the fiscal year ending 2023. **That request has been approved.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (Supp. 2023), 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 the Village Board (Board) meeting minutes, along with the accompanying claims listing for July 27, 2023. From that documentation, the APA identified a potential conflict of interest involving the actions of Board member Bonnie Vitale.

According to the meeting minutes, Bonnie Vitale appears to have failed to abstain from voting on the following reimbursement claim:

Name	Description	Amount
Bonnie Vitale	Mowing, weed eating, & pick up debris	\$ 786

An excerpt from the July 20, 2023, Board minutes is provided below:

CLAIMS FOR PAYMENT		
PAYABLE	AMOUNT	DESCRIPTION
JPPD	524.77	village utilities
Windstream	246.60	village utilities
EcoLab	64.80	village utilities
EMC Insurance Companies	755.36	village insurance
Michelle Thompson	660.00	July clerk duties & July Planning Commission Meeting
Bonnie Vitale	786.00	Mowing, weed eating, & pick up debris
Roadrunner Transportation	774.40	Village utilities
Roy Canterbury	25.00	July Planning Commission Meeting
Scott Negley	25.00	July Planning Commission Meeting
Wahoo Newspaper	202.33	Publications
NE Department of Revenue	443.77	Tax Period 4/2023 – 6/2023
Hanson Well Service	400.00	Water Operator
NE Public Health Env Lab	629.00	Water testing
One Call Concepts	4.38	Water main locating services
Wahoo Utilities	205.50	Monthly Water Contracts
Total	5746.91	

1. General Claims
Board Member Pam Milligan moved to approve the claims for payment. Chairman Robert Thompson seconded the motion. Upon roll call vote on the motion, the following Board Members voted "AYE": Robert Thompson,

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Gus Moreno, Pam Milligan, and Bonnie Vitale. The following Board Members voted "NAY": None. Motion carried 4-0.

The apparent failure of Board member Bonnie Vitale to abstain, as an acting Board member, 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 to 49-14,142 (Reissue 2021, Cum. Supp. 2022).

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.

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 payment 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 Village 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 for further review.

2. Payroll Tax Withholding Issues

During the fiscal year ended September 30, 2023, taxes were not withheld from wages paid to Village employees and remitted to either the Internal Revenue Service (IRS) or the Nebraska Department of Revenue (Department). The Village is required to withhold Federal taxes, including income tax, Social Security tax, and Medicare tax, as well as State income tax from compensation paid to municipal employees.

According to the Village Clerk, the Village provides each Village Board member and the Clerk with an IRS Form 1099 instead of withholding and remitting taxes through either a quarterly Form 941 or an annual Form 944, and then issuing a Form W-2 to those employees.

The requirements for withholding payroll taxes from compensation paid to public officials and employees are explained in various Federal and State publications, as described below.

For Federal income taxes, the “Tax Withholding for Government Workers” information (last updated March 9, 2023), which appears on the IRS website, states the following, as is relevant:

Internal Revenue Code section 3401(c) indicates that an “officer, employee, or elected official” of government is an employee for income tax withholding purposes.

* * * *

The courts generally define “public official” and “public officer” to mean anyone who exercises significant authority pursuant to public laws. This includes any official who administers or enforces public laws whether the public elected the individual or an office appointed them.

(Emphasis added.) Additionally, the “Frequently Asked Questions” section of IRS Publication 963 (Rev. 7-2020), “Federal-State Reference Guide,” states the following, in relevant part, about the employment status of government officials, especially with regard to not only Federal income taxes but also Social Security and Medicare tax withholdings:

For income tax purposes, elected (or elective) and most appointed officials are defined by IRC Section 3401(c) as employees of the public entity they serve (mayors, members of the legislature, county commissioners, city council members and board or commission members). In general, elected and appointed officials will meet the common-law tests to be considered employees. Regardless of the common-law tests, some positions may be defined as employment by state statute. Some fee-basis officials are by law treated as self-employed. An elected or appointed official who is an employee is subject to rules for mandatory Social Security and Medicare unless covered under a Section 218 Agreement or a qualified participant in a retirement system. All officials elected or appointed to their positions after March 31, 1986, are subject to Medicare withholding.

(Emphasis added.) Turning specifically to State income taxes, the “2022 Nebraska Circular EN”, published by the Nebraska Department of Revenue, provides the following, as is relevant:

If you have an office or conduct business in Nebraska and are considered an employer for federal purposes, you must withhold income taxes for Nebraska. This includes payments made to all employees, including nonresidents, for services performed in this state.

(Emphasis added.) Good internal controls require procedures to ensure both the correct classification of employees for tax purposes and the collection of all required Federal and State taxes from such personnel, as appropriate, and the proper remittance thereof.

Without such procedures, there is an increased risk for not only failure to comply with State statute and Federal regulations but also the resulting liability of the Village and its employees alike.

We recommend the Village implement procedures to ensure both the correct classification of employees for tax purposes and the collection of all required Federal and State taxes from such personnel, as appropriate, and the proper remittance thereof.

3. Payment of Unapproved Claims

During our comparison of the Village’s bank account details to claims approved by the Board, the APA identified the following payments, totaling \$262.20, which were paid but not included on the claims listing to be approved by the Board.

Details of the unapproved payments are included in the table below:

Name/Vendor	Check Date	Amount	Check #
Ring Unlimited Monthly	7/3/23	\$ 10.55	ACH
O.P.P.D Elec Bill	7/5/23	209.15	ACH
Intuit QuickBooks	7/24/23	42.50	ACH
Total		\$ 262.20	

Neb. Rev. Stat. § 17-614(1)(a) (Supp. 2023) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

(Emphasis added.) Good internal control requires procedures to ensure that all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

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

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

4. Payment of Claims Prior to Board Approval

During our comparison of the Village's bank account details to claims approved by the Board, the APA noted that one Village payment, totaling \$246.60, was issued before the underlying claim was approved by the Board.

The table below provides a summary of the premature payment:

Name/Vendor	Amount	Approval Date	Check Date	Days Paid Before Approval
Windstream	\$ 246.60	7/20/23	7/17/23	3

Neb. Rev. Stat. § 17-614(1)(a) (Supp. 2023) sets out the proper method for the appropriation or payment of money by the Village, as follows:

All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees.

(Emphasis added.) Good internal control requires procedures to ensure that all claims are authorized by the Board prior to payment and are adequately documented in the meeting minutes of the month in which they are approved.

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

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

5. Lack of Purchasing Card Policy

During review of the bank statements obtained from the Village's audit waiver request, it was noted that there were multiple debit card transactions throughout fiscal year 2023, totaling \$254.70. After further inquiry with the Village, the APA was informed that the Village utilizes a debit card for subscription fees.

With the use of a debit card, the Village increases its risk of unrecoverable loss of funds due to fraud because debit cards do not provide as much fraud protection as a credit card or other purchasing cards. The Village also increases its risk of payments being made without Board approval because the debit card does not require dual signatures. It was noted during the review that the Village did not have a formal purchasing card policy outlining procedures for safeguarding Village assets when using the Village card, including such allowable purchases and authorized individuals.

Neb. Rev. Stat. § 13-610 (Reissue 2022) provides, in relevant part, the following requirements regarding a purchasing card program:

(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. Under the direction of its governing body, any political subdivision may contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating the purchasing card program on behalf of the political subdivision. Expenses associated with the political subdivision's purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

* * * *

(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.

Good internal control procedures require adequate controls over the Village's purchasing card, including an approved card policy that outlines procedures for the allowable use of the Village card and authorized users. Without such procedures, there is an increased risk of loss, theft, or misuse of Village funds.

We recommend the Village implement adequate controls over the Village's purchasing card, including an approved card policy that outlines procedures for the allowable use of the Village card and authorized users.

* * * * *

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