



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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August 2, 2013

Lyle Koester, Board President
Maywood Public Schools
9481 E. Koester Rd.
Wellfleet, NE 69170

Dear Mr. Koester:

As you know, the Auditor of Public Accounts (APA) has a toll-free number and an anonymous email 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 misperceptions the taxpayers may have about government. We try to do this in a timely manner and believe this is a valuable service to the State's taxpayers.

In response to a recent citizen complaint regarding the operations of the Maywood Public Schools Board of Education (Board), the APA performed limited preliminary planning work to determine if a financial audit or an attestation of the Maywood Public Schools (School) would be necessary.

On June 6, 2012, we contacted you, as President of the Board, requesting meeting minutes, petty cash transactions and supporting documentation, and a copy of the Superintendent's contract for the period for the period of September 2012 to present – all of which you provided. After evaluating that information, we have determined that neither an audit nor an attestation of the School, by the APA, is necessary at this time. However, during the course of our preliminary work, we noted certain internal control or compliance matters, related to the activities of the School or other operational matters that are presented below. The comments and recommendations, which have been discussed with the appropriate members of the Board, are intended to improve internal control or result in other operating efficiencies.

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

Draft copies of this letter were furnished to the Board to provide them an opportunity to review the letter and to respond to the comment and recommendation included in this letter. The formal response received has been incorporated into this letter. The 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.

Board President Signature on Checks

The Board President is not signing all checks issued by the School, as required by State statute. Instead, various School officials – including the School’s Superintendent, the Board Treasurer, and the Administrative Assistant – have been allowed to serve as the sole signatory authorities on payments made from the School’s different funds.

The following discussion of payments made from the Petty Cash Fund, which contains money from the School’s General Fund, illustrates this problem. The purpose of the Petty Cash Fund is to pay for expenses that cannot be delayed until the next Board meeting, such as credit card bills that would incur late fees if not paid by a certain date.

From September 2012, through June 10, 2013, the School provided the APA documentation of the following payments from its Petty Cash Fund:

From Meeting Minutes	Amount
October 2012	\$ 6,656.97
November 2012	\$ 2,066.57
December 2012	\$ 6,448.72
January 2013	\$ 1,170.37
February 2013	\$ 8,306.61
March 2013	\$ 4,069.69
April 2013	\$ 2,576.30
May 2013	\$ 1,753.17
June 2013	\$ 1,407.54
Total	\$ 34,455.94

It appears that the Board members are provided a list of these Petty Cash Fund expenditures at each Board meeting. The following is an example of such a list.

Maywood Post Office	Postage	500.00
Wells Fargo	SPED Program	439.00
Adrienne Johnson	Gift Certificates - Staff Apprec.	50.00
Holdrege Schools	Williams - Meal	9.00
ESU #16	Future Problem Solvers	67.50
Southwest Schools	Quiz Bowl	11.57
Tom Frick	Superintendent House	2811.38
Wells Fargo	Superintendent Travel	398.05
Madison National	Life and LTD Ins	7.71
ESU #11	Printing	29.28
Dustin Kinnison	Refund Rent	200.00
Nebraska State Reading Assoc.	Teacher Inservice	280.00
Southwest Schools	Quiz Bowl	50.00
Tom Frick	Superintendent House	2644.38
Wells Fargo	Staff Gifts, Superintendent Travel	808.74
Total Due From General Fund		8306.61

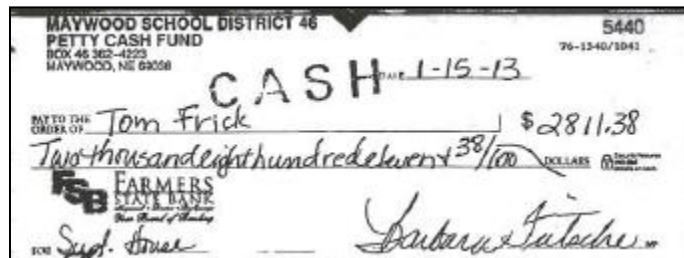
According to the School’s Administrative Assistant, the list of Petty Cash Fund expenditures is included in an informational packet provided to each member at Board meetings. Although not also included in those packets, supporting documentation for the expenditure is available for review at anytime.

Neb. Rev. Stat. § 79-575 (Cm. Supp. 2012) requires the Board President to sign all checks written by the School. Specifically, the statute provides:

The secretary of a school district shall draw and sign all orders upon the treasurer for all money to be disbursed by the district and all warrants upon the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer and shall present the same to the president to be countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be issued until so countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be countersigned by the president until the amount for which it is drawn is written upon its face. Facsimile signatures of board members may be used, and a person or persons delegated by the board may sign and validate all warrants, checks, and other instruments drawn upon bank depository funds of the district. (Emphasis added.)

The above statutory language is clear that no “warrant, check, or other instrument drawn upon bank depository funds of the district” may be issued unless countersigned by the Board President. The final sentence of the statute does allow for both facsimile signatures of Board members and authorized individuals to serve as signatories. However, those additional provisions do not eliminate the underlying duty of the Board President to countersign every designated “warrant, check or other instrument.”

Despite the explicit mandate in § 79-575, individuals have been permitted to make payments – without being countersigned by the Board President – from other School funds. For instance, the Board Secretary has authorized the Board Treasurer to serve as the sole signatory authority on both General Fund and Lunch Fund bank accounts. The Superintendent and Administrative Assistant have been authorized, moreover, to take similar action with regard to School funds, as noted in the example included below.



We recommend the Board take steps – including, if necessary, consultation with its legal counsel – to ensure compliance with State statute regarding the signing of warrants or checks drawn for payment by the School.

School Response: The school district will review its policies, practices, and procedures to ensure that all school district disbursements comply with state law.

Superintendent’s Home Remodeling Project

The School provides the Superintendent with a housing and utilities package worth \$6,000 per year. A stipulation of the Superintendent’s employment requires him to live in Maywood. As such, his contract was amended to include his living, rent-free, in one of four teacherages owned by the School. Additionally, the School pays all of the utility expenses at that residence.

In October 2012, the Board unanimously approved a bid from Thrasher Basement Systems in the amount of \$12,556 for work on the School-owned Superintendent’s residence. In January 2013,

the School began making payments for additional work performed on the house. The School provided the following list of expenses related to the remodeling of the Superintendent's residence.

Vendor Name	Check Number	Check Date	Invoice	Description	Amount	Fund
Menards	18660	1/10/2013	11647	TEACHERAGE	\$1,133.96	General
Menards	18660	1/10/2013	11915	TEACHERAGE	\$469.67	General
Menards	18708	2/7/2013	12295	SUPT HOUSE	\$328.04	General
Menards	18708	2/7/2013	12537	SUPT HOUSE	\$520.73	General
Menards	18708	2/7/2013	12519	SUPT HOUSE	(\$19.96)	General
Menards	18708	2/7/2013	12728	SUPT HOUSE	\$45.82	General
Menards	18708	2/7/2013	13245	SUPT HOUSE	\$1,249.00	General
Menards	18708	2/7/2013	14060	SUPT HOUSE	\$570.99	General
Menards	18708	2/7/2013	14056	SUPT HOUSE	\$323.08	General
Menards	18708	2/7/2013	14123	SUPT HOUSE	\$242.98	General
Menards	18708	2/7/2013	14440	SUPT HOUSE	(\$209.99)	General
Menards	18708	2/7/2013	14442	SUPT HOUSE	\$103.70	General
Menards	18708	2/7/2013	14546	SUPT HOUSE	\$50.88	General
Menards	18760	3/7/2013	14697	TEACHERAGE	\$268.67	General
Menards	18760	3/7/2013	14736	TEACHERAGE	\$7.93	General
Menards	18760	3/7/2013	15254	TEACHERAGE	\$273.76	General
Menards	18760	3/7/2013	15458	TEACHERAGE	(\$29.97)	General
Menards	18760	3/7/2013	15459	TEACHERAGE	(\$34.68)	General
Menards	18760	3/7/2013	15460	TEACHERAGE	(\$11.58)	General
Menards	18760	3/7/2013	15461	TEACHERAGE	(\$27.72)	General
Menards	18760	3/7/2013	15464	TEACHERAGE	\$106.77	General
Menards	PENDING		15778		\$648.00	General
Menards	PENDING		15887		\$360.98	General
Menards	18760	3/7/2013	16121	TEACHERAGE	\$209.54	General
Menards	18760	3/7/2013	16372	TEACHERAGE	\$98.67	General
Menards	18760	3/7/2013	16549	TEACHERAGE	\$31.96	General
Menards	18760	3/7/2013	17028	TEACHERAGE	\$33.92	General
Menards	PENDING		17153		(\$93.45)	General
Menards	PENDING		17152		(\$8.91)	General
Menards	PENDING		17151		(\$23.93)	General
Menards	PENDING		17134		\$35.95	General
Menards	PENDING	Hot water heater less re-stocking fee			(\$1,111.61)	General
Menards Total					\$5,543.20	
Brown's	18689	2/7/2013	90896	TEACHERAGE	\$718.39	General
Brown's	18739	2/7/2013	91802	TEACHERAGE	\$36.99	General
Brown's	18739	2/7/2013	91862	TEACHERAGE	\$5.50	General
Brown's	18789	4/4/2013	93364	TEACHERAGE	\$893.15	General
Brown's	18789	4/4/2013	90626	TEACHERAGE	\$29.95	
Brown's Total					\$1,683.98	
Select Carpet	18768	3/7/2013	23689	TEACHERAGE	\$1,855.75	General
Select Carpet Total					\$1,855.75	
Thrasher	2122	10/9/2012	1235	Custodial Depreciation	\$2,511.20	Depreciation
Thrasher	1238	12/19/2012	1238	Custodial Depreciation	\$10,044.80	Depreciation
Thrasher Total					\$12,556.00	

Vendor Name	Check Number	Check Date	Invoice	Description	Amount	Fund
Tom Frick	535842	1/15/2013	5440	TEACHERAGE	\$2,811.38	Petty Cash - Reimbursed by General Fund
Tom Frick	535843	1/31/2013	5448	TEACHERAGE	\$2,644.38	Petty Cash - Reimbursed by General Fund
Tom Frick	535844	2/15/2013	5451	TEACHERAGE	\$2,905.88	Petty Cash - Reimbursed by General Fund
Tom Frick	535845	3/7/2013	18772	TEACHERAGE	\$2,976.75	General
Tom Frick	535846	4/4/2013	18821	TEACHERAGE	\$3,083.38	General
Tom Frick Total					\$14,421.77	
Grand Total					\$36,060.70	

Note: Some invoices have been marked pending, as the School is in the process of resolving issues with Menards concerning the wrong invoices being credited when payment is made.

Board Policy 3004, Purchasing, Section (1)(b), (February 15, 2012), states:

The board intends to purchase competitively, whenever possible, without prejudice and to seek maximum educational value for every dollar expended.

Despite the policy's stated intent of purchasing competitively, Board Policy 3003, Bid Letting and Contracts, Section (3)(a), (February 15, 2012), specifies:

The board of education may solicit bids for the provisions of large orders of supplies and equipment, new construction, or repair and renovation, if the estimated amount for the supplies and/or equipment exceeds \$5,000.00. (Emphasis added.)

By saying only that the Board "may" solicit bids, this policy does not mandate competitive bidding for supplies or equipment in excess of \$5,000. In fact, the Board is not required to solicit bids unless the contemplated expenditure of the project exceeds \$40,000, in accordance with Neb. Rev. Stat. § 73-106 (Reissue 2009), as follows:

Whenever any public school district in the state expends public funds for the construction, remodeling, or repair of any school-owned building or for site improvements, other than those expenditures authorized by section 79-10,104 for facilities which are not to be owned by the district following their completion, the school board or its representative shall advertise for bids in the regular manner established by the board and accept or reject bids pursuant to section 73-101, except that nothing in this section applies to such construction, remodeling, repair, or site improvements when the contemplated expenditure for the complete project does not exceed forty thousand dollars. This section does not apply to the acquisition of existing buildings, purchase of new sites, or site expansions by the school district. (Emphasis added.)

According to the Board President, the Board intends to have all purchases obtained competitively, when possible. After the basement was repaired by Thrasher Basement Systems, however, the Board President gave the Superintendent verbal permission to negotiate individually – without any Board oversight or approval – with builders and other workers to complete the remodeling of the School-owned residence.

Although not supported by documentation, such as written estimates or Board meeting minutes, the Board president claims that the Superintendent attempted to obtain bids from several contractors regarding the remodeling work; however, none of those individuals returned his calls. Consequently, independent contractor Tom Frick was hired to complete the remodeling.

Aside from the work done by Thrasher Basement Systems, the Board did not pre-approve the costs of any of the other improvements to the Superintendent's residence. According to the

Board President, subsequent to the completion of all the remodeling projects, the School's "Building and Grounds Committee" determined that the Board would have ultimately authorized those expenses.

Because no Board policy or State statute requires competitive bids to be obtained for the type of remodeling work performed at the Superintendent's residence, failure to do so poses no legal concerns. Nevertheless, the lack of documentation for the attempt to obtain bids and the lack of public discussion by the Board regarding that remodeling work may strike concerned citizens as being indicative of inadequate governmental transparency and accountability.

We recommend the Board take action to ensure implementation of its policy's stated intent of purchasing competitively. We recommend also that significant purchases and projects be adequately documented, as well as discussed publicly by the Board, in order to foster an atmosphere of proper governmental transparency and accountability.

School Response: The school district, its board members, and its employees will continue to comply with state law and school district policies when making purchases on behalf of the school district. The school district will review its policies, practices, and procedures to insure that it creates, obtains, and/or maintains adequate documentation for school district bid solicitations. The school board will continue to discuss school district matters at school board meetings as required by law or as otherwise provided by school district policy.

Miscellaneous Expenditures

The School made a purchase of memorial flowers, which is questionable under the Local Government Miscellaneous Expenditure Act (Act).

The Act, which is set out at Neb. Rev. Stat. §§ 13-2201 through 13-2204 (Reissue 2012), 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 entities, under both §§ 13-2202(2) and (3).

The following is an example of the School's questioned purchase of memorial flowers:

Consolidated Check Listing February 2013			
Check	Payable To	Purpose	Amount
18694	Curtis Flowers	Bereavement - Votaw	33.00

On September 17, 1993, the Nebraska Accountability and Disclosure Commission (NADC) issued "A Guideline to the Use of Public Funds by Cities and Villages" (Guideline). That document attempts to answer some commonly asked questions regarding the appropriate use of public funds. Though written principally for the benefit of cities and villages, the advice provided in the Guideline is equally applicable to school districts – which, as pointed out already, are also covered under the Act.

One of the issues addressed in the Guideline is the purchase of flowers, as follows:

Question #6 – May municipal funds be expended for flowers and memorials for deceased elected officials, employees, or their families?

Response – No.

The above conclusion is based upon the fact that § 13-2203 enumerates specifically allowable expenditures of public funds under the Act. Subsection (3) of that statute says:

The expenditure of public funds for plaques, certificates of achievement, or items of value awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions. Before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. Such policy, following its initial adoption, shall not be amended or altered more than once in any twelve-month period.

As apparently determined by NADC, buying flowers for a funeral is not included among such statutorily approved purchases.

Interestingly, School Board Policy 2007, Reimbursement and Miscellaneous Expenditures, Section (2)(f), states:

It is in the best interest of this school district to recognize service by board members, employees, and volunteers. The board authorizes the president, superintendent or the superintendent's designee to determine when and to whom plaques, certificates of achievement, flowers or other items of value should be granted, provided that no such plaque, certificate, flowers or other item of value shall cost more than \$50.00.

A gift of flowers could constitute, depending upon the circumstances, an item “of value awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions,” as expressly permitted by § 13-2203(3). However, when the flowers are purchased for the funeral of a board member, employee, or volunteer, such an expenditure does not appear to meet the statutory criteria of being an award – as § 13-2203(3) specifies that the “expenditure of funds” be for something “awarded to” the designated recipient.

The Policy appears to conflict with the plain language of the Act, as pointed out years ago by the Guideline.

We recommend the Board consult with its legal counsel to determine whether its practice of permitting the purchase of memorial flowers conflicts with State statute, as appears to be indicated by the Guideline.

School Response: You cite "A Guideline to the Use of Public Funds by Cities and Villages" from the Nebraska Accountability and Disclosure Commission dated September 17, 1993 for the proposition that school districts are prohibited from spending public funds for flowers and memorials for deceased elected officials, employees, or volunteers. The school district respectfully disagrees. The school district has statutory authorization for such a purchase in addition to an obligation to its students that is not shared by a city or village.

The Act includes a list of specific expenditures that a school board may approve, but the Act also makes clear that these expenditures are "[i]n addition to other expenditures authorized by law." NEB. REV. STAT. § 79-405 states: "Every duly organized school district shall be a body corporate and possess all the usual powers of a corporation for public purposes." A public purpose corporation "has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power . . . [t]o make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest." See, NEB. REV. STAT. § 21-1928(13). A public purpose corporation also has the power "[t]o do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation." See, NEB. REV. STAT. § 21-1928(17).

*According to the United States Supreme Court, the purpose of public education in America is to teach fundamental values. See, **Bethel School Dist. No. 403 v. Fraser**, 478 U.S. 675, 106 S. Ct. 3159 (1986). The Supreme Court stated:*

The role and purpose of the American Public School System were well described by two historians, who stated: "[P]ublic education must prepare pupils for citizenship in the Republic . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation."

***Bethel School Dist. No. 403 v. Fraser**, 478 U.S. 675, 681, 106 S. Ct. 3159, 3163 (1986), citing **C. Beard & M. Beard, New Basic History of the United States**, 228 (1986). The court continued:*

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers--and indeed the older students--demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models.

Id. at 683-85, 106 S. Ct. at 3164-65.

The school district has chosen to model "shared values of civilized social order," educate its students about honoring the dead, and inculcate them with appropriate values by expending public funds for flowers for the deceased as authorized by state laws applicable to school districts and public purpose corporations.

APA Response: While appreciative of the State statutes and case law cited in support of the practice and policy of expending public funds to purchase flowers for private purposes, the APA finds the school's argument unpersuasive.

To start, both statutory provisions referenced, Neb. Rev. Stat. § 21-1928 (13) & (17) (Reissue 2012), contain the identical qualifying language: "not inconsistent with law." However, as made clear in this letter, conflicting State law does, in fact, exist. Specifically, § 13-2203 designates, without any ambiguity whatsoever, the precise types of expenditures permitted by the governing bodies of local governments – among which school districts and school boards are explicitly included under § 13-2202(2) & (3) (Reissue 2012), respectively. Flower purchases, regardless of the reason or occasion, are not found among that select statutory list of allowable expenditures.

Clearly applicable here is the legal principle of "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of the others), which "recognizes the general principle of statutory construction that an expressed object of a statute's operation excludes the statute's operation on all other objects unmentioned by the statute." *Chapin v. Neuhoff Broadcasting-Grand Island, Inc.*, 268 Neb. 520, 527, 684 N.W.2d 588, 594 (2004). Because § 13-2203 does not expressly include the purchase of flowers among the permissible expenditures listed, such purchase must be considered disallowed – which is unquestionably inconsistent with the broad interpretation of § 21-1928 suggested.

Even if the "not inconsistent with law" language were absent from § 21-1928, the definitive parameters established by § 13-2203 would govern nonetheless. The Nebraska Supreme Court has explained a fundamental rule of statutory construction as follows: "To the extent there is conflict between two statutes on the same subject, the specific statute controls over the general statute." *Jeffrey B. v. Amy L.*, 283 Neb. 940, 951, 814 N.W.2d 737, 746, (2012). While § 21-1928 deals with the "general powers" of all nonprofit corporations, § 13-2203 places specific limitations upon the spending authority of the governing bodies of local governments – including, as pointed out already, school boards. Accordingly, there can be no question that the specific restrictions in § 13-2203 take clear precedent over the far more general provisions of § 21-1928.

Inadequate Documentation of Expenses

The APA found that in some instances adequate documentation was not provided to support certain School expenditures. Rather, the School allowed for expenses to be reimbursed using only the School’s “Expense Disbursement Request,” as seen in the examples below:

EXPENSE DISBURSEMENT REQUEST
MAYWOOD PUBLIC SCHOOLS

Date 4-17-13

Please make check payable to Katy Snyder

in the amount of \$ 178.71 for gas for State FFA

to be charged to School

Requested by Katy Snyder

Approved by [Signature]

*Patty Cash
4-20-13
#5491*

APA removed copy of check.

EXPENSE DISBURSEMENT REQUEST
MAYWOOD PUBLIC SCHOOLS

Date 1/31/13

Please make check payable to NEBRASKA STATE READING ASSOCIATION

in the amount of \$ 280.00 for CONF REGISTRATION

to be charged to _____

Requested by [Signature]

Approved by [Signature]

*Patty Cash
1-31-13
#5491*

APA removed copy of check.	REIMBURSEMENT REQUEST PUBLIC SCHOOLS Date <u>12-13-12</u>
Please make check payable to <u>DeLoe Market</u>	
in the amount of \$ <u>225.00</u> for <u>gift cert.</u>	
to be charged to _____	
Requested by _____	
Approved by <u>M. Fole</u>	

Dated
12-13-12
#5495

Proper documentation for any School expenditure should include, when at all possible, an actual vendor receipt. Unlike a mere form filled out by an individual seeking reimbursement, a vendor receipt provides substantive proof of the nature and purpose of the expense. Permitting reimbursements based upon submittal of an “Expense Disbursement Request” alone increases the potential for fraud and misappropriation of funds.

We recommend the Board ensure adequate documentation is provided to support all payments.

School Response: The school district will review its policies, practices, and procedures to insure that school district expenditures are supported by a vendor receipt or some similar documentation.

* * * * *

The Board should take, in a timely fashion, whatever action it deems appropriate to address and resolve the issues addressed in this letter – thereby, ensuring compliance with applicable Nebraska laws and providing transparency and accountability for its citizens.

Our planning and 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 Schools and its interaction with other entities gained during our work to make comments and suggestions that we hope will be useful to the School.

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

Sincerely,

SIGNED ORIGINAL ON FILE

Mike Foley
State Auditor

cc: School Board members