



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Mike Szekely, Board Chair
Loomis Public Schools
105 Bryan Street
Loomis, Nebraska 68958

Dear Chairman Szekely:

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.

The APA completed some preliminary planning work recently to determine if an audit or attestation of the Loomis Public School (School) is necessary. We contacted you, as Chair of the Board of Education (Board), regarding an expenditure made by the Loomis Public Schools (School) and were provided with the requested information. At this time, we have determined that neither an audit nor attestation of the School is necessary. However, during the course of our preliminary work, we encountered the following issue, which we wish to bring to your attention.

Trophy Case Construction

The School paid Hardwick Construction \$8,488 in March 2013 for the construction of a trophy case. This business is owned by the husband of Nicole Hardwick, Principal. See copy of invoice attached.

The Nebraska Political Accountability and Disclosure Act (Act) is set out at Neb. Rev. Stat. §§ 49-1401 to 49-14,141 (Reissue 2010, Cum. Supp. 2012). Section 49-14,102(1) of the Act addresses contracts entered into with public employees or their immediate family members. The payment for the construction of the trophy case raises concerns regarding this section of the Act, which states:

"Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process." (Emphasis added.)

Section 49-1442 of the Act provides, "Public employee shall mean an employee of the state or a political subdivision thereof." The Principal falls easily within this definition. Similarly, the definition of "immediate family," which is found at § 49-1425, expressly includes "a spouse of an individual." A "government body" is defined under § 49-1424, moreover, to include school districts. Finally, the agreement to pay Hardwick Construction for the services rendered clearly constituted a contract, and the subsequent \$8,488 payment was well in excess of the \$2,000 statutory threshold.

It should be noted also that Subsection § 49-14,102(2) states:

For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

Based upon the information obtained – including the fact that no written agreement exists for the work at issue – it does not appear that the contract was awarded to Hardwick Construction through the required “open and public process.”

There is no documentation of the Board having played any role in selecting Hardwick Construction for the work. It is reasonable to conclude, therefore, that the Principal represented the school in making that decision. This is an important detail that, if true, nullifies the exception at § 49-14,102(4), which states:

This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

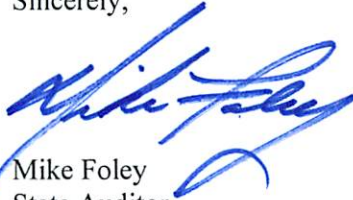
In light of the above analysis, it appears that the payment from the School to Hardwick Construction may well have been made in violation of § 49-14,102(1).

We recommend that the Board take action to ensure full compliance with § 49-14,102, as well as any other applicable provisions of the Act, when the School enters into contracts with public employees or their immediate family members. Because the School’s payment to Hardwick Construction may have resulted in a violation of the Act, we are referring this matter to the Nebraska Accountability and Disclosure Commission.

The Board should take, in a timely fashion, whatever action it deems appropriate to address and resolve the issue addressed in this letter – thereby, both protecting the finances of the School and ensuring compliance with applicable Nebraska laws.

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

Sincerely,



Mike Foley
State Auditor

cc: School Board Members and Superintendent
Accountability and Disclosure Commission

Enclosure: Copy of Invoice



207 Clifton
Loomis, NE 68958

Invoice

DATE	INVOICE #
3/7/2012	329
DUE DATE	
4/8/2012	

BILL TO
Loomis School 101 Bryan Street Loomis, NE 68958

Job Name
Trophy Cases

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Cabinets	Labor and materials to build and install (4) 8' oak trophy cases. Including 1/4" tempered glass doors and shelves.	1	8,487.50	8,487.50
			Total	8,487.50