



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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May 23, 2016

Jay Jacobsen, Board Chair
Village of Winslow
P.O. Box 157
Winslow, NE 68072

Dear Mr. Jacobsen:

As you know, the Nebraska Auditor of Public Accounts (APA) received concerns regarding the Village of Winslow (Village). The APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested certain information regarding the Village's financial transactions or compliance matters.

Based upon the outcome of this preliminary planning work, the APA has determined that a separate financial audit or attestation of the Village is unnecessary at this time. However, during the course of the preliminary planning work, we noted certain internal control or compliance matters, or other operational matters within the Village, that are presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

Summary of Compliance Issues

The APA reviewed 17 months of the Village Board of Trustees' (Board) meeting minutes, from October 2014 to February 2016, and identified numerous compliance issues, which are summarized below.

Date	Open Meetings Act Posted	Agenda Accepted	Prior Minutes Approved	Treasurer Report Presented	Payroll/Salary Claims Approved	Employees' Salaries Published
10/14/2014	NO	YES*	NO	NO	NO	N/A
11/18/2014	NO	YES	NO	NO	NO	N/A
12/15/2014	NO	Note 1	Note 1	Note 1	Note 1	N/A
01/05/2015	NO	YES	NO	NO	YES	N/A
02/10/2015	NO	Note 1	Note 1	Note 1	Note 1	N/A
03/02/2015	NO	YES*	NO	YES	YES	N/A
04/06/2015	NO	YES	NO	TABLED	YES	N/A
05/04/2015	NO	YES*	NO	YES	YES	N/A
06/02/2015	NO	YES*	NO	YES	NO	N/A
07/06/2015	NO	YES*	NO	YES	NO	NO
08/03/2015	NO	YES	NO	YES	YES	NO
09/08/2015	NO	YES*	NO	YES	YES	N/A

Date	Open Meetings Act Posted	Agenda Accepted	Prior Minutes Approved	Treasurer Report Presented	Payroll/Salary Claims Approved	Employees' Salaries Published
10/05/2015	NO	YES	NO	YES	NO	N/A
11/03/2015	NO	YES*	NO	YES	YES	N/A
12/07/2015	NO	YES*	NO	YES	YES	N/A
01/04/2016	NO	YES*	NO	TABLED	YES	N/A
02/01/2016	NO	YES	NO	YES	NO	N/A

* Agenda was altered at the start of the meeting. See Acceptance of Agenda finding below.

Note 1: The December 2014 meeting was considered a special emergency meeting, according to the meeting minutes. The February 2015 meeting was considered a special meeting according to the meeting minutes.

These following comments and recommendations address these compliance issues in greater detail.

1. Compliance with Open Meetings Act

Based upon our review of its meeting minutes, the Board failed to comply with certain provisions of the Open Meetings Act (Act), which can be found at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Supp. 2015). The details of this lack of compliance follows.

Posting of Open Meetings Act

None of the meeting minutes provided by the Village documented the location of the posting of the Act. Neb. Rev. Stat. § 84-1412(8) (Reissue 2014) states, in relevant part, the following:

Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

(Emphasis added.) For example, the initial entries of the Board's March 2, 2015, meeting minutes, which are shown below, give no indication that the public was "informed about the location of the posted information" at the beginning of the meeting:

<p>CALL TO ORDER</p> <p>The Village Board of Winslow held their regular monthly meeting on Monday March 2nd 2015 at the Village Community Center.</p> <p>ROLL CALL</p> <p>Chairman J. Jacobsen opened the meeting at 7pm with trustees: R. Bechtel, Z. Klein, S. Kotik, and J. Woodcock present. Absent - None</p> <p>APPROVAL OF AGENDA</p> <p>A motion was made by S. Kotik and 2nd by R. Bechtel to approve the agenda with the addition of culverts & ditches to the agenda. All in favor. The motion was passed.</p> <p>COMMITTEE REPORTS</p>
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Meeting Agendas

At times, the Board altered the meeting agenda at the start of its meeting and then approved the amended agenda. Such action appears to have violated Neb. Rev. Stat. § 84-1411(1) (Reissue 2014) of the Act, which provides, in relevant part, the following:

Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality.

None of the questioned alterations seem to have been made as the result of an emergency. The pertinent excerpt from the October 14, 2014, meeting minutes is set out below as an example, showing the relatively mundane purpose of the agenda alteration at that meeting.

APPROVAL OF AGENDA

A motion was made by S. Kotik and 2nd by J. Woodcock to accept the agenda for tonight's meeting with the addition to : 1) Unpaid water bills, and 2) Shut-off of water at 301 Main Street. All board members in favor. The motion was passed.

There is an increased risk of loss, abuse, or fraud involving public funds when the Village does not comply with the provisions of the Act. Additionally, such noncompliance could give rise to the perception that the Village lacks transparency and accountability.

We recommend the Board implement procedures to ensure compliance with provisions of the Act. We also recommend the Village consider reviewing the Attorney General's website at http://www.ago.ne.gov/public_records/open_meetings_act in order to obtain reliable guidance for achieving such compliance.

2. Other Board Meeting Compliance Issues

Our review of the Board meeting minutes revealed these additional compliance issues.

Approval of Prior Board Minutes

The Board failed to approve the meeting minutes from the prior month's Board meeting; therefore, it is unclear whether the Board maintained a true record of the corporate actions and proceedings.

The legal encyclopedia Corpus Juris Secundum (CJS) states the following:

It is the right and duty of the governing body of a municipal corporation to approve and verify its minutes of proceedings so that there can be a true record of the corporate actions and proceedings. Such bodies are authorized and required to see that their minutes and recorded proceedings show and continue to speak the truth.

62 CJS (Municipal Corporations) § 319 (Sept. 19, 2011). Additionally, sound business practices and proper internal control procedures require all official proceedings of the Board to be formally approved.

Treasurer's Report

As indicated in the summary table above, the APA determined that 3 of 17 Board meeting minutes lacked any mention of a Treasurer's report, while 2 of 17 Board meeting minutes indicated that the Treasurer's report had been tabled until the next meeting. Additionally, the Treasurer's report was regularly presented by a Board member and not the Treasurer.

Neb. Rev. Stat. § 17-606(1) (Cum. Supp. 2014) states, in relevant part, the following:

[The Treasurer] shall, at the end of every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class or the chairperson of the village board with the advice and consent of the trustees may use this failure as cause to remove the treasurer from office.

For example, the Treasurer's report was not presented at the Board's January 5, 2015, meeting, based upon our review of the meeting minutes:

JANURARY 5TH, 2015

The Village Board of Winslow held their regular monthly meeting on Monday January 5th, 2015 at the Village Community Center.

ROLL CALL

A motion was made by S. Kotik and 2nd by J. Woodcock to appoint Z. Klein as temporary chairman as J. Jacobson absent. All in favor. Motion was passed. Attending: Z. Klein, S. Kotik, R. Bechtel and J. Woodcock. Absent: J. Jacobsen.

APPROVAL OF AGENDA

A motion was made by S. Kotik and 2nd by J. Woodcock to approve the agenda. All in favor. The motion was passed.

COMMITTEE REPORTS

Streets - Received the 1 & 6 year plan to review. Will approve at the Feb. meeting.

Street Lights - R. Bechtel to assess and notify OPPD

Water/Sewer - Sewer pump - Need to get the primary sewer pump out and fixed. The lift station needs some parts to have for the repairs. Discussion was held regarding setting aside \$100.00/month for emergencies (A hoist for the lift station and a rail system). This is a huge safety issue. May cost approx. \$12,000.00 - \$15,000.00 for parts and labor. May take 2-3 years to save up for this. A motion was made by S. Kotik and 2nd by J. Woodcock to set \$100.00/month out the water/sewer fund. All in favor. The motion was passed. The valve at the base of the water tower still needs to be fixed. The Christmas lights need to be taken down.

OTHER BUSINESS

S. Kotik questions about the property to the south of him - K.Mock property. He needs to make more progress on his property. Will table this until next month.

UNFINISHED BUSINESS

Lagoon - Will table this until spring

NEW BUSINESS

Discussion was held regarding the help from M. Goodwin. He has been doing some of the village work around town. A motion was made by S. Kotik and 2nd by J. Woodcock to have him be a part-time employee. This is not to exceed more than \$100.00 per month. All in favor. The motion was passed.

DISBURSEMENTS

ADAMS OIL - 348.53, GETZCHMANN'S - 52.50, LERW-576.13, ONE CALL - 1.10, OPPD - 143.73, SHELL - 11.82, ST, NEBR. - 15.00, WHITES - 222.85, SALARIES - 1250.00

A motion was made by S. Kotik and 2nd by J. Woodcock to pay the bills. All in favor. The motion was passed.

ADJOURNMENT

A motion was made by J. Woodcock and 2nd by S. Kotik to adjourn meeting. All in favor. The motion was passed. Meeting adjourned at 745pm.

VILLAGE CLERK - LONNIE KOTIK;

In another example, the April 6, 2015, meeting minutes indicate that the Treasurer's report was tabled:

TREASURE'S REPORT

A motion was made by S. Kotik and 2nd by J. Woodcock to table the treasure's report as Z. Klein does these. All in favor. Motion was passed.

Signing of Village Checks

In an April 11, 2016, email message to the APA, Zachary Klein, a Village Board member, indicated that the entire Board was authorized to sign Village checks, as shown below.

The entire board is authorized to sign checks for the village. This was done so that we can conduct business with any of the board members present or absent. We do not have a fixed schedule relating to attendance. All board members have lives outside of the village and as such are not able to attend all meetings. This allows the Village of Winslow to conduct business in a timely manner.

According to Neb. Rev. Stat. § 17-711 (Reissue 2012), checks must be signed by the Mayor or Chairman and the Clerk, not by other Board members, as follows:

All warrants drawn upon the treasurer must be signed by the mayor or chairman and countersigned by the clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn, and the amount already expended of such fund.

(Emphasis added.)

Approval of Claims

The Board failed to approve the salary and payroll of its employees for 6 of the 17 months reviewed. During these months, the salary or payroll claims were not included in the Board minutes.

Additionally, the Board appears to have approved the payment of bills prior to claims being submitted. Neb. Rev. Stat. § 17-715 (Reissue 2012) specifies, however, that such payments are to be made “[u]pon the allowance of claims by the council or trustees”

The APA found that the prior approval of bills occurred in 4 of the 17 months reviewed, as follows:

November 2014:

Approval of Agenda

A motion was made by Z. Klein and 2nd by R. Bechtel to approve the agenda to pay the bills and as they come in and forgo all other business until the December meeting. All in favor. The motion was passed.

June 2015:

DISBURSEMENTS

LOAN - 1350.00, ADAMS-233.00, LERW-576.89, HOOPER TIRE=97.95, STATE NEB-15.00, CHEM TECH-37.50, CORNHUSKER PRESS-58.09. All other monthly bills to be paid as they coming.

A motion was made by R. Bechtel, and 2nd by J. Woodcock to pay the bills. All in favor. The motion was passed.

July 2015:

DISBURSEMENTS

A motion was passed by Z. Klein and 2nd by S. Kotik to pay the bills as they come in for the month. All in favor. The motion was passed.

February 2016:

DISBURSEMENTS

ADAMS OIL – 599.40, CHEM TECH – 37.82, LERW – 549.94, OPPD – 261.94, RUSTLER – 30.72, STATE OF NEBR – 15.00.

A motion by S.Kotik and 2nd by J. Woodcock to pay the bills with the approval of all future regular monthly bills that is received. All in favor. The motion was passed.

Neb. Rev. Stat. § 17-714 (Reissue 2012) contains the following filing requirements for claims against the Village:

All liquidated and unliquidated claims and accounts payable against a city of the second class or village shall: (1) Be presented in writing; (2) state the name and address of the claimant and the amount of the claim; and (3) fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

Publishing of Employee Salaries

The Village failed to publish employee salaries, as required by Neb. Rev. Stat. § 19-1102 (Reissue 2012). That statute provides, in relevant part, the following:

Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position.

There is an increased risk of loss, misuse, or abuse of public funds when the Board fails to do the following: 1) approve the minutes from the prior month's Board meeting; 2) receive a monthly Treasurer's report; 3) properly approve salary or payroll claims; 4) approve claims prior to making payments; and 5) publishing annual salaries. All but the first of these concerns involve compliance with applicable statutes.

We recommend the Board ensure governmental accountability and transparency – as well as statutory compliance, when applicable – by implementing the following procedures:

- Approving the minutes from the prior month’s Board meeting;
- Requiring the Treasurer’s report to be presented by the Treasurer and approved at each Board meeting;
- Allowing only those officials specified in statute to sign checks;
- Approving all claims, including salary and payroll of employees;
- Approving each claim only after it has been presented to the Board, and documentation of the expense has been received and reviewed;
- Publishing employee salaries annually.

3. Board Member Compensation for Services

One Board member, Zachary Klein, is employed by the Village to provide general labor and to assist with the Treasurer’s duties. Board members may receive compensation only for seasonal or temporary work, as approved by the Board.

Neb. Rev. Stat. § 17-209.02 (Reissue 2012) states the following:

The local governing body of a village may by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except trustee, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time, except that trustees may perform and upon board approval receive compensation for seasonal or emergency work subject to sections 49-14,103.01 to 49-14,103.06. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

(Emphasis added.) It is unclear from the Village’s documentation whether the labor for which Mr. Klein received additional compensation constituted “seasonal or emergency work” as required by the above statute.

For his services in excess of his Board member compensation, Mr. Klein was paid \$1,404.35 from October 2015 to March 2016, as summarized below.

Bank Statement	Account	Check #	Check Date	Amount	Pay Period Noted on Check
October 2015	General	6217	10/01/15	\$230.87	08/02/2015 - 09/01/2015
November 2015	General	6240	11/02/15	\$230.87	10/02/2014 - 11/01/2014
November 2015	General	6244	11/25/15	\$250.00	10/02/2014 - 11/01/2014
December 2015	General	6253	12/06/15	\$230.87	10/02/2014 - 11/01/2014

Bank Statement	Account	Check #	Check Date	Amount	Pay Period Noted on Check
February 2016	Utility	1023	01/04/16	\$230.87	N/A
March 2016	Street	119	03/07/16	\$230.87	02/02/2015 - 03/01/2015
Totals				\$1,404.35	

According to the notations on the checks, as shown above, the pay periods for most of these disbursements appear to be inaccurate. Two checks for November 2015 and one for December 2015 were all issued for work noted to have been performed between October 2, 2014, and November 1, 2014. For the check issues in February 2016, moreover, no pay period was noted. Finally, the check for March 2016 is noted as payment for work said to have been performed more than a year earlier.

Without adequate procedures to ensure compliance with the statutory restrictions placed upon payment of extra compensation to Board members for “seasonal or emergency work,” there is an increased risk for loss or misuse of Village funds. Failure to designate properly the pay period for any such disbursement heightens that risk.

We recommend the Village ensure extra compensation paid to Board members is for seasonal or temporary work only, as required by statute. We also recommend the proper pay period by designated for any such compensation.

4. Written Policies

The Village lacks written policies governing the use of its equipment, gasoline storage tank, and credit cards.

Village-Owned Equipment

In an April 4, 2016, email message to the APA, Board member Zachary Klein explained the Village’s lack of written policies for the use of Village-owned equipment, as follows:

We do not have policies or procedures on use of village equipment. We have made the equipment available to residents for work that they want to complete, but for insurance purposes we require a village board member or employee on the insurance to operate the equipment.

Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) of the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. §§ 49-1401 to 49-14141 (Reissue 2010, Cum. Supp. 2014), restricts the use of property under the “official care and control” of a public official or public employee, as follows:

A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

Neb. Rev. Stat. § 49-1443 (Reissue 2010) defines a “public official” as, among other things, “an elected or appointed official” in a political subdivision of the State. Neb. Rev. Stat. § 49-1442 (Reissue 2010) defines a “public employee” as “an employee of the state or a political subdivision thereof.” The restriction in § 49-14,101.01(2) applies to all Village property.

Gasoline Storage Tank

The Village has a gasoline storage tank, but lacks written policies for its use. Apparently, there is a general understanding that the tank is to be used only for Village business. A log book is maintained nearby and is to be completed by whoever uses the tank.

As noted above, § 49-14,101.01(2) prohibits the use of public property, such as the Village’s gasoline, by a public official or public employee for personal financial gain. Nevertheless, the Village fails to monitor the fuel tank adequately to ensure that it is being used appropriately and that personal vehicles are not being filled with the Village’s gasoline.

Use of Village Credit Card

The Village lacks written policies regarding the use of its credit cards. In an April 4, 2016, email message to the APA, Board member Zachary Klein stated the following:

We do not have a written policy as to the use of the card. It is to be used for village business relating to fuel purchases.

Neb. Rev. Stat. § 13-610 (Reissue 2012) authorizes political subdivisions to create their own purchasing card programs. Subsection (1) of that statute provides, in relevant part, the following:

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.

(Emphasis added.) Section 13-610(2) states that a political subdivision “may utilize its purchasing card program for the purchase of goods and services for and on behalf of the political subdivision.” Thus, there is no other allowable use for the Village’s card.

Additionally, as noted previously herein, § 49-14,101.01(2) prohibits the use of public property, such as the Village’s credit cards, by a public official or public employee for personal financial gain.

Without written policies and adequate monitoring procedures for the use of the Village’s equipment, gasoline storage tank, and credit cards, there is an increased risk for the loss or misuse of public funds.

We recommend the Board implement written procedures to govern the use of its equipment, gasoline storage tank, and credit cards. Such procedures should establish proper monitoring by the Board to ensure the Village’s property is used only for appropriate public purposes.

Overall Village Response: We appreciate the guidance that has been brought forward from your office. We are working to correct the actions that were in question through this process.

* * * * *

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.

Draft copies of this letter were furnished to the Village to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this letter. Responses have been objectively evaluated and recognized, as appropriate, in the letter. Responses that indicated corrective action has been taken were not verified at this time.

Additionally, a copy of this letter is being forwarded to the Village Attorney for review and any action deemed appropriate by that office.

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 regarding the above information, please contact our office.

Sincerely,



Mary Avery
Special Audits and Finance Manager
Phone 402-471-3686
mary.avery@nebraska.gov

Copy to: County Attorney