

**ATTESTATION REPORT
OF
DIXON COUNTY COURT**

JULY 1, 2014, THROUGH DECEMBER 31, 2016

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Issued on May 31, 2017

DIXON COUNTY COURT

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DIXON COUNTY COURT

SUMMARY OF COMMENTS

During our examination of the Dixon County Court, we noted certain deficiencies and other operational matters that are presented here. The following comment is required to be reported in accordance with Government Auditing Standards: Comment #1, which is considered to be a material weakness.

These comments and recommendations are intended to improve the internal control over financial reporting or result in operational efficiencies in the following areas:

1. ***Segregation of Duties:*** One individual was capable of handling all phases of a transaction from beginning to end.
2. ***Review of Trust Balances:*** The County Court did not review its trust balances on an ongoing, timely basis to ensure such balances were complete and accurate.
3. ***Established Fine Variance:*** For 2 of 10 case files tested, the fine amount did not agree to the amount set by State statute and/or Nebraska Supreme Court Rules.

More detailed information on the above items is provided hereinafter. It should be noted that this report is critical in nature, as it contains only our comments and recommendations on the areas noted for improvement and does not include our observations on any accounting strengths of the County Court.

Draft copies of this report were furnished to the County Court to provide management with an opportunity to review the report and to respond to the comments and recommendations included in this report. All formal responses received have been incorporated into this report. Responses have been objectively evaluated and recognized, as appropriate, in the report. Responses that indicate corrective action has been taken were not verified at this time, but they will be verified in the next examination.

DIXON COUNTY COURT

COMMENTS AND RECOMMENDATIONS

1. Segregation of Duties

Good internal control includes a plan of organization, procedures, and documentation designed to safeguard assets and provide reliable financial records. A system of internal control should include a proper segregation of duties, so no one individual is capable of handling all phases of a transaction from beginning to end.

We noted the office of the County Court lacked a segregation of duties. Specifically, one person was capable of handling all aspects of processing transactions from beginning to end. A lack of segregation of duties increases the risk of possible errors or irregularities; however, due to a limited number of personnel, an adequate segregation of duties is not possible without additional cost. Further, personnel are under the direction of both the Nebraska State Court Administrator and the Presiding Judge. We have included this comment in previous examinations.

Additionally, the following 2 errors were noted during a test of 10 non-monetary receipts. Such errors might have been prevented if the County Court had an adequate segregation of duties over the receipting process.

- One non-monetary receipt waived \$17 in non-waiverable fees due to jail time served. These fees cannot be waived per State statute. Therefore, the fees should have been paid by the County and remitted to the State Treasurer, rather than having been waived after jail time served.
- One non-monetary receipt waived \$28 in court costs with no documentation on file to indicate that the waiver of such costs had been authorized by the judge.

We recommend the County Court and the Nebraska State Court Administrator review this situation, and the specific issues identified above. As always, the cost of hiring additional personnel versus the benefit of a proper segregation of duties must be weighed.

County Court Judge's Response: With regard to the annually repeated Segregation of Duties comment, I agree with you; though apparently and repeatedly, our legislature who continues to increase staff workload, without corresponding increase in staff has not considered such concern a legislature/appropriations concern.

So, I fail to understand why this item continues to be listed as a deficiency against these county court offices. The Clerk- Magistrates, and the Judges, have no control over the size of their staff! Those who do maintain their offices, in the Capital Building, and one even has a residence in the Governor's Mansion. Putting those facts into your analysis, apparently they are the ones who are deficient. I look forward to reading your frank critique in this area of their performance; and to seeing their signatures on letters, like those attached with this letter, that you require the Clerk Magistrates to sign.

DIXON COUNTY COURT

COMMENTS AND RECOMMENDATIONS

(Continued)

1. Segregation of Duties (Concluded)

APA Response: The audit report is intended to identify errors and risks in the accounting processes of the Court, not only for the Court, but also the public. Therefore, even though the Court may not feel that it has control over the availability of resources to correct the lack of segregation of duties, it still remains a risk that needs to be disclosed.

2. Review of Trust Balances

Good internal control requires the County Court to have procedure in place to provide an ongoing, detailed review and resolution of trust balances reflected on the County Court's monthly financial reports, including the Monthly Case Balance Report.

During a review of the County Court's trust balances, we noted 5 criminal cases, out of 15 cases tested, had bond appearance monies, totaling \$3,060, held in trust for extensive periods of time following a court order. Details on these five trust balances are included below.

- For three of the cases, the judge had issued an order to revoke the bond funds held in trust, pending receipt of a motion to revoke the bond from the County Attorney. These orders had been issued between 8 to 28 months prior to the APA's fieldwork (April 2017), yet the Court could not provide any documentation to indicate that an attempt had been made to follow up with the County Attorney on the pending motion. The table below illustrates the delays in following up on these three trust balances.

Case	Amount	Date of Order	Delay* (in Months)
Case 1	\$540	12/16/2014	28
Case 2	\$450	7/28/2015	20
Case 3	\$450	8/16/2016	8

**Delay is calculated from the date of the order through April 2017, when fieldwork was performed.*

- For the other two cases, which were both cases from 2004 for the same defendant, the APA observed court orders from 2004 indicating that the bond amounts would be released upon the payment of all fines, costs, and restitution in both cases. The costs remain outstanding; however, despite no contact with the defendant in over 12 years, the court has not reconsidered forfeiting the bond and applying it to the outstanding costs. The table below illustrates the delays in following up on the trust balances.

Case	Amount	Date of Order	Delay* (in Months)
Case 4	\$630	8/17/2004	152
Case 5	\$990	12/21/2004	148

**Delay is calculated from the date of the order through April 2017, when fieldwork was performed.*

DIXON COUNTY COURT

COMMENTS AND RECOMMENDATIONS

(Continued)

2. Review of Trust Balances (Continued)

Without adequate controls in place to ensure the complete, accurate, and timely review and resolution of trust balances, there is an increased risk of loss, theft, misuse, or improper payment of monies held by the County Court. The timely follow up and resolution of long-outstanding case balances is particularly important given the lack of segregation of duties previously noted.

We recommend the County Court implement procedures to review financial reports, such as the Monthly Case Balance Report, in order to ensure trust balances are reviewed timely for completeness, accuracy, and proper disposition.

County Court Judge's Response: Concerning the portion labeled "Review of Trust Balances"; some background on the law may be helpful.

- A. *An individual who previously has posted bond, then "willfully fails to appear" shall be guilty of certain felony or misdemeanor crimes, "in addition to any other penalties or "forfeitures". See Neb. Rev. Stat §29-908. Willfully is a mental state the court cannot assume; it must be proven by evidence of record.*
- B. *But Neb. Rev. Stat. §29-901.04 also provides that the court "may at any time amend his order to impose additional or different conditions of release" however, should an amendment occur, the individual must be "re-advised" of various rights and procedures as required by Neb. Rev. Stat. §29-901.03. This frequently occurs by revocation, not forfeiture, of bond, and a warrant being issued, to bring back the defendant for compliance with §29-901.03. Now if the county attorney is so inclined, they may add any other appropriate charges, either by, a new complaint, or amended complaint if granted leave of court to amend.*
- C. *Now, because a bond is a contract between the State and the individual, or his surety, Neb. Rev. Stat. §29-1106, provides that only "When there is a breach of a condition of a recognizance, the court shall declare a forfeiture of the bail". And Neb. Rev. Stat. §29-1107 provides that the court may direct a set aside of the forfeiture, "if it appears that justice does not require enforcement of the forfeiture". So again before any forfeiture, or set aside of forfeiture, the court must have evidence to find a breach in order to forfeit. Each party should be given the opportunity to be heard.*
- D. *When a forfeiture has not been set aside, the court "shall on motion, enter a judgment of default and execution may issue . . . (and) where a cash deposit . . . (is) in lieu of surety or sureties . . . the cash deposit shall upon forfeiture of the recognizance be paid into the county treasury upon the entry of the order of forfeiture of the bond . . .". See Neb. Rev. §29-1108.*

DIXON COUNTY COURT

COMMENTS AND RECOMMENDATIONS

(Continued)

2. **Review of Trust Balances** (Concluded)

E. *In the absence of a motion filed by the State, based upon the bail bond contract with either the accused, or the accused surety, that a judge may only revoke/modify a bond “at any time”, but cannot forfeit, where there is no evidence of record to justify a forfeiture.*

F. *This is so because as in all other criminal matters, the court sits, neutral and detached, between the State and the accused. As a result, lacking specific statutory authority to act on its “own motion” any action of the court must be based on a motion and notice of hearing to allow each party to be present to present “their side of the story” before actions such as forfeiture, execution, and judgment can occur. A fair reading of the statutes indicates, any power to affect the bond, other than revocation, cannot be exercised until there is an evidentiary hearing with notice, is sought by the State or Defendant or Defendant’s surety.*

If you have been provided, or discovered, legal authority, granting the court to act upon its own I will gladly consider it. Until then I must obey the law as I understand it. The money belongs to the citizen until by due process, it passes to the government.

APA Response: As previously noted, the audit report is intended to identify risks in the accounting processes of the Court. The lack of timely follow up on case balances increases the risk that money will be lost, stolen or inappropriately handled. We encourage the Court to work with the appropriate attorney to resolve case balances in a timely manner, so money can be disbursed to the correct entity or individual.

3. **Established Fine Variance**

Neb. Rev. Stat. § 60-682.01(1) (Reissue 2010) states the following:

Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(a) Ten dollars for traveling one to five miles per hour over the authorized speed limit;

** * * **

(f) Three hundred dollars for traveling over thirty-five miles per hour over the authorized speed limit.

Appendix 6 of Article 14, Uniform County Court Rules of Practice and Procedure, within Chapter 6 of the Nebraska Supreme Court Rules, sets the following fines for the noted offenses:

<u>Offense</u>	<u>Fine</u>
Speeding over 35 mph over authorized limit	\$300
Speeding 1-5 mph over authorized limit	\$10
No operator’s license	\$75
Duty to carry and exhibit driver’s license	\$25

DIXON COUNTY COURT

COMMENTS AND RECOMMENDATIONS

(Continued)

3. Established Fine Variance (Continued)

For 2 of 10 case files tested, the fine amounts did not agree to those set by State statute and/or the Nebraska Supreme Court Rules. In both cases, the original offense was reduced to a lesser charge; however, the fine assessed for that lesser charge was higher than designated by either law or rule.

Additionally, no judge's written authorization or other documentation was on file to support fines assessed for amounts different than those set by State statute and/or court rule.

Case	Original Offense	Original Fine	Amended Offense	Amended Fine	Fine Per Supreme Court Rules	Fine Per State Statute
Case A	Speeding over 35 mph over authorized limit	\$300	Speeding 1-5 mph over authorized limit	\$100	\$10	\$10
Case B	No operator's license	\$75	Duty to carry and exhibit driver's license	\$75	\$25	n/a

When assessed fines differ from those provided by either State statute and/or applicable court rule, there is an increased risk that the County Court will not collect the proper amounts. Without either a judge's written authorization or other supporting documentation, moreover, the reason for such variance in fine amounts cannot be determined.

We recommend the County Court assess fines in accordance with State statute and/or applicable court rule. We recommend also that fines assessed in amounts different than those set by either State statute or court rule be supported by a judge's written authorization or other documentation.

County Court Judge's Response:

- A. *Second, concerning the part labeled "Established Fine Variances" citing Appendix 6 of Article 14, of the Uniform County Court Rules of Practice Procedure. In your analysis, please consider that §6-1454 limits only the Clerk Magistrates authority; it does not limit a judges authority. See also the discretion given to the court (a judge) to provide for modification of these rules "as maybe necessary in special instance to meet emergencies or to avoid injustice or great hardship" §6-1461.*
- B. *You should also consider §6-1444 of those same rules which states in part "nor shall failure to comply with any such rule in any proceeding impair or otherwise affect the legality of such proceedings". In sum, these rules place upon the court the case by case authority, and discretion, to deal with the matters discussed in that part of your report, provided there is no abuse of discretion.*

DIXON COUNTY COURT

COMMENTS AND RECOMMENDATIONS

(Concluded)

3. Established Fine Variance (Concluded)

C. *However, when considering the statutorily set fines for speeding, a prosecutor may rely on the basic speed rule stated in Neb. Rev. Stat. §60-6,185. That rule, if applied, allows deviation from Neb. Rev. Stat. §60-682.01 provision of specific fines for specific speeds. If that occurs, it is certainly the Court's obligation to document accordingly, as you have suggested.*



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DIXON COUNTY COURT

INDEPENDENT ACCOUNTANT'S REPORT

We have examined the accompanying Schedules of Changes in Assets and Liabilities Arising from Cash Transactions of the Dixon County Court as of and for the period July 1, 2015, to December 31, 2016, and the fiscal year ending June 30, 2015. The County Court's management is responsible for the Schedules based on the accounting system and procedures set forth in Note 1. Our responsibility is to express an opinion on the Schedules based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Schedules are based on the accounting system and procedures set forth in Note 1, in all material respects. An examination involves performing procedures to obtain evidence about the Schedules of Changes in Assets and Liabilities Arising from Cash Transactions. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of the Schedules, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

In our opinion, the Schedules of Changes in Assets and Liabilities Arising from Cash Transactions for the period July 1, 2015, to December 31, 2016, and the fiscal year ending June 30, 2015, are based on the accounting system and procedures prescribed by the Nebraska Supreme Court, as set forth in Note 1, in all material respects.

In accordance with *Government Auditing Standards*, we are required to report findings of deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Schedules and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Schedules are presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over the Schedules or on compliance and other matters; accordingly, we express no such opinions. Our examination disclosed a certain finding that is required to be reported under *Government Auditing Standards*, and the finding, along with the views of management, is described in the Comments Section of the report.

This report is intended solely for the information and use of management, the Supreme Court, others within the County Court, and the appropriate Federal and regulatory agencies, and it is not intended to be, and should not be, used by anyone other than these specified parties. However, this report is a matter of public record, and its distribution is not limited.



May 19, 2017

Zachary Wells, CPA, CISA
Audit Manager
Lincoln, Nebraska

DIXON COUNTY COURT
PONCA, NEBRASKA
SCHEDULE OF CHANGES IN ASSETS AND LIABILITIES
ARISING FROM CASH TRANSACTIONS
AGENCY FUNDS

For the Period Ending December 31, 2016

	Balance July 1, 2015	Additions	Deductions	Balance December 31, 2016
ASSETS				
Cash and Deposits	\$ 21,816	\$ 255,899	\$ 248,653	\$ 29,062
LIABILITIES				
Due to State Treasurer:				
Regular Fees	\$ 2,990	\$ 40,199	\$ 41,121	\$ 2,068
Law Enforcement Fees	205	2,490	2,536	159
State Judges Retirement Fund	741	9,943	10,019	665
Court Administrative Fees	858	20,042	19,074	1,826
Legal Services Fees	782	8,736	8,934	584
Due to County Treasurer:				
Regular Fines	3,230	61,051	60,310	3,971
Overload Fines	-	1,675	1,675	-
Regular Fees	8	5,411	5,312	107
Petty Cash Fund	100	-	-	100
Due to Municipalities:				
Regular Fines	-	650	638	12
Regular Fees	-	-	-	-
Trust Fund Payable	12,902	105,702	99,034	19,570
Total Liabilities	\$ 21,816	\$ 255,899	\$ 248,653	\$ 29,062

The accompanying notes are an integral part of the schedule.

DIXON COUNTY COURT
PONCA, NEBRASKA
SCHEDULE OF CHANGES IN ASSETS AND LIABILITIES
ARISING FROM CASH TRANSACTIONS
AGENCY FUNDS

For the Fiscal Year Ended June 30, 2015

	Balance July 1, 2014	Additions	Deductions	Balance June 30, 2015
ASSETS				
Cash and Deposits	\$ 15,282	\$ 127,556	\$ 121,022	\$ 21,816
LIABILITIES				
Due to State Treasurer:				
Regular Fees	\$ 1,829	\$ 22,521	\$ 21,360	\$ 2,990
Law Enforcement Fees	102	1,832	1,729	205
State Judges Retirement Fund	416	5,984	5,659	741
Court Administrative Fees	1,243	10,752	11,137	858
Legal Services Fees	375	6,396	5,989	782
Due to County Treasurer:				
Regular Fines	1,443	39,522	37,735	3,230
Overload Fines	-	725	725	-
Regular Fees	725	2,574	3,291	8
Petty Cash Fund	100	-	-	100
Due to Municipalities:				
Regular Fines	225	975	1,200	-
Regular Fees	-	-	-	-
Trust Fund Payable	8,824	36,275	32,197	12,902
Total Liabilities	\$ 15,282	\$ 127,556	\$ 121,022	\$ 21,816

The accompanying notes are an integral part of the schedule.

DIXON COUNTY COURT
NOTES TO FINANCIAL SCHEDULES

For the Period Ended December 31, 2016, and Fiscal Year Ended June 30, 2015

1. Criteria

A. Reporting Entity

The Dixon County Court is established by State statute and is administratively operated through the Court Administrator's Office of the Nebraska Supreme Court, which is part of the State of Nebraska reporting entity. The Schedules of Changes in Assets and Liabilities Arising from Cash Transactions of the County Court reflect only the Agency Funds activity of the County Court, including the receipts and their subsequent disbursement to the appropriate entities for which they were collected. The Schedules do not reflect the personal services expenses of the County Court, which are paid by the Nebraska Supreme Court, or the operating expenses, which are paid by Dixon County.

B. Basis of Accounting

The accounting records of the County Court Agency Funds are maintained, and the Schedules of Changes in Assets and Liabilities Arising from Cash Transactions have been prepared, based on the accounting system and procedures prescribed by the Nebraska Supreme Court. Under this system of accounting, fines, fees, and receipts relating to trust funds are shown as additions to assets and as an increase in the related liability when received. Likewise, disbursements are shown as deductions to assets and as a decrease in the related liability when a check is written.

2. Deposits and Investments

Funds held by the County Court are deposited and invested in accordance with rules issued by the Supreme Court, as directed by Neb. Rev. Stat. § 25-2713 (Reissue 2016). Funds are generally consolidated in an interest-bearing checking account; however, the County Court may order certain trust funds to be invested separately. Any deposits in excess of the amount insured by the Federal Deposit Insurance Corporation are required by Neb. Rev. Stat. § 77-2326.04 (Reissue 2009) to be secured either by a surety bond or as provided in the Public Funds Deposit Security Act.