



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Charlie Janssen  
State Auditor

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October 4, 2018

Lori Biesecker, Board President  
Potter-Dix School District No. 9  
303 Walnut St.  
Potter, NE 69156

Dear Ms. Biesecker:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding personal food purchases being made with funds belonging to the Potter-Dix School District No. 9 (District). Responding thereto, the APA began limited preliminary planning work to determine if a full financial audit or attestation of the District would be warranted. In doing so, the APA requested certain information from the District. Based upon the outcome of this preliminary planning work, including an examination of the information received, the APA has determined that it is unnecessary for this office to perform a separate financial audit or attestation of the District at this time.

Nevertheless, during the course of the preliminary planning work, we noted certain internal control or compliance matters, or other operational matters within the District, that are presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

### Comment and Recommendation

On at least two occasions, Donna Juelfs, who was the District Board President at the time, purchased food and other disposables for her personal benefit through the District's charge account with US Foods (DBA The Thompson Co.), a nationwide foodservice distributor.

The following purchases by Ms. Juelfs were identified through invoices received by the District.

Vendor	Invoice Number	Date Ordered	Invoice Date	Amount Ordered
US Foods	2035215	4/25/2018	4/26/2018	\$608.88
US Foods	2037881	5/2/2018	5/3/2018	\$166.31
<b>Total</b>				<b>\$775.19</b>

See **Attachment A** for a copy of the invoices.

The APA has created the following timeline of significant events that took place after the two purchases reflected above. This timeline is based upon information received from the District.

- On May 7, 2018, the District's Bookkeeper (Bookkeeper) notified the District Superintendent (Superintendent) of the two orders at issue. The following was noted by the Superintendent:

*This was the first I had heard of the orders. It has been the practice of Potter-Dix Public Schools to let individuals or groups purchase food through the school in the past, so at that time I did not proceed with any action. The fact that Mrs. Juelfs had not asked for approval to do this was troublesome.*

- On May 15, 2018, the Bookkeeper sent Ms. Juelfs a text message to inform her that she still owed for the food orders. At the request of Ms. Juelfs, the Bookkeeper also emailed her the amount due, along with copies of the bills.
- On June 5, 2018, the Bookkeeper sent another text to Ms. Juelfs asking her to pay the amount due by the June 11, 2018, meeting of the Potter-Dix Board of Education (Board). Ms. Juelfs responded by indicating her intention to do so. The Superintendent also contacted Ms. Juelfs about her need to pay the bills.
- On June 18, 2018, Ms. Juelfs emailed District representatives the following:

*I will be putting the payment in the mail for the Thompson food invoices this week, if you could let everyone know when you have receipt of them that would be great so that all are made aware of that it has been paid for. Also, apparently Lance was to have paid for something and he has never seen an invoice or receipt for and if you have a chance, please contact him with a copy of it so he can take care of his portion as well. thanks, dj*

- On June 24, 2018, the Superintendent had a meeting with three of the six Board members to discuss the situation. The Superintendent was directed to contact the District's attorney for guidance. The Superintendent told the Board members that, if payment was not received by June 25, he would go to Ms. Juelfs' place of employment to obtain from her the amount due. After the meeting, the Superintendent called the District's attorney to discuss the situation with him. He then called Ms. Juelfs to tell her what had transpired at the meeting, along with the following: "I told her that her resignation might be what's best, but that the decision to do anything was hers." Ms. Juelfs told him that the payment had been mailed. The Superintendent then contacted the other two remaining Board members to inform them of what had transpired earlier that day.
- On June 25, 2018, Ms. Juelfs sent an email message to the District, stating that she was resigning from the Board effective immediately. According to the Superintendent, no payment had been received in the mail.
- On June 26, 2018, the Superintendent went to Ms. Juelfs' place of employment, and she wrote a \$775.19 check from a different bank account; however, funds were not available to cover the check amount, as summarized below.
- On July 2, 2018, the Board met to discuss the situation and accept Ms. Juelfs' resignation. The meeting was attended by the District's attorney. The Board went into executive session and, upon returning to open session, noted that the payment had been received, and they considered the matter closed.
- On July 19, 2018, Ms. Juelfs provided the District with a money order in the amount of \$43, which was deposited into the District's Lunch Fund Bank Account on July 20. The money order was to cover the appropriate amount of sales tax for the food that had been purchased.

Ms. Juelfs' use of the District account to purchase food for her personal use gives rise to both constitutional and statutory concerns. To start, Article XIII, § 3, of the Nebraska State Constitution prohibits extending the credit of the State to a private individual or enterprise. Emanating from that prohibition is "a longstanding principle of constitutional law in Nebraska that public funds cannot be expended for private purposes." Op. Att'y Gen. No. 97048 (Sept. 16, 1997).

By using the District's charge account to make personal purchases with public funds, Ms. Juelfs appears to have run afoul of that common law corollary to Article XIII, § 3.

Additionally, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2010) provides 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.*

Subsection (2) of that same statute provides:

*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.*

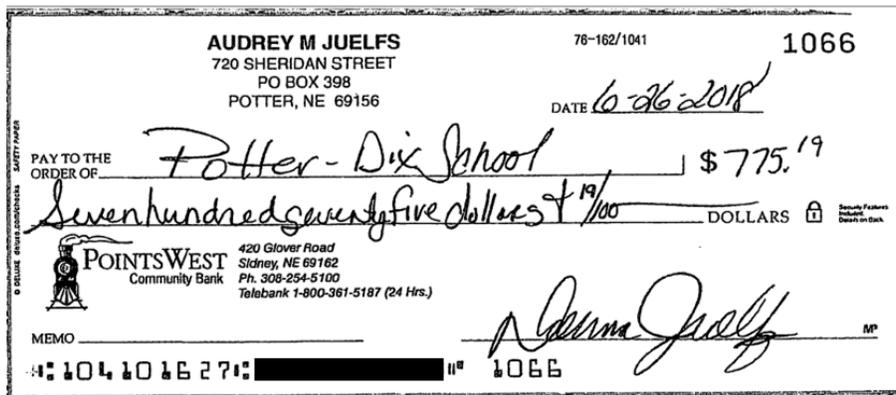
(Emphasis added.) Section 49-14,101.01(7) says, in relevant part, "[A]ny person violating this section shall be guilty of a Class III misdemeanor . . . ."

It is important to note that it is a violation of § 49-14,101.01 not only to use public information or resources for personal benefit but also to authorize such use.

The food purchases at issue appear to have been violative of § 49-14,101.01. For, by using the District's charge account to buy food for herself, the former Board President benefited not only from what was essentially an interest-free loan of public funds but also by avoiding sales tax due to the District's tax-exempt status. Likewise, the authorization to make such purchases appears to conflict with that statutory prohibition.

### ***Insufficient Funds Check***

As noted above, on June 26, 2018, Ms. Juelfs presented the Superintendent with a check in the amount of \$775.19; however, the bank account upon which it was to be drawn lacked sufficient funds for payment in full upon the check's presentation. The following is a copy of the check:



On July 26, 2018, at approximately 4:10 p.m., the Superintendent called Points West Community Bank in Sidney, Nebraska, to inquire about the check. A bank representative said that the check would not clear that day. The following morning, at approximately 8:55 a.m., the Superintendent called the bank again and was told that the check would still not clear. Later that day, at approximately 12:15 p.m., the Superintendent was informed that the funds were available, and the check was finally deposited nearly 10 minutes later.

Neb. Rev. Stat. § 28-611(1) (Reissue 2016) provides, in relevant part, the following:

*Whoever obtains property, services, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:*

\* \* \* \*

*(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars[.]*

According to available court records, this was not the first time that Ms. Juelfs had written a bad check. In 2011, Ms. Juelfs had an “Issuing Bad Check” case dismissed in the Cheyenne County Court after paying restitution, protest fees, and court costs in full. Moreover, in addition to being charged in one other criminal case, Ms. Juelfs has been the defendant in numerous civil cases.

### ***Sales Tax***

As noted previously, Ms. Juelfs provided the District with a \$43 money order to cover the 5.5 percent sales tax on her purchases, which was calculated at \$42.63. There are several concerns with the sales tax collected and deposited by the District, as summarized below:

1. The 5.5 percent would have been based on the sales tax rate in Potter, Nebraska, and not Grand Island, Nebraska, where the items were purchased from, which has a 7 percent sales tax rate.
2. Sales tax would be required only on the disposable goods, as there is currently no sales tax on food purchased in Nebraska. Of the total items purchased, the APA noted \$71 was spent on disposables, including forks and plates.
3. According to the Superintendent, as of September 19, 2018, the District has not done anything with the \$43 received for sales tax.

### ***Open Meetings Laws***

We would caution the District that, depending upon the circumstances, informal communications among Board members regarding business matters, especially when potential action by the Board is contemplated, could constitute an impermissible – even if unintentional – attempt to circumvent the requirements of the Open Meetings Act (Act), which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Cum. Supp. 2016, Supp. 2017).

The Attorney General has issued the following guidance regarding adherence to the requirements of the Act:

*Section 84-1410(4) prohibits a person or a public body from circumventing the purpose of the open meetings statutes by failing to invite a portion of its members to a meeting or by designating itself as a subcommittee of the whole body. That section also prohibits the use of any closed session, informal meeting, chance meeting, social gathering, email, fax or other electronic communication for the purpose of circumventing the requirements of the open meetings statutes.*

([https://ago.nebraska.gov/open-meetings#circumvention.](https://ago.nebraska.gov/open-meetings#circumvention)) As noted in the time line above, several different meetings or discussions were held between the Board members on June 24, 2018. While no formal action was taken on that date, the former Board President was told that her resignation might be in the best interest of the District, and it was received by the Board the next day.

Care should be taken to ensure that informal communications and interactions between Board members do not rise to the level, whether inadvertently or otherwise, of violating any provisions of the Act.

Good internal control requires procedures to ensure that any District funds or charge accounts are used in strict accordance with governing statutory and constitutional provisions. Without such procedures, there is an increased risk for the improper use thereof.

We recommend the District implement procedures to prohibit any future expenditure of public funds to purchase items for personal use, regardless of whether such expenditures are subsequently reimbursed. Furthermore, the District should ensure sales taxes are properly paid or reported on the purchases at issue with the Nebraska Department of Revenue. The APA will refer this matter to the Nebraska Accountability and Disclosure Commission, the Nebraska Department of Revenue, and the Nebraska Attorney General.

*District Response: See **Attachment B** for the District's response.*

\* \* \* \* \*

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 District'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 District.

Draft copies of this letter were furnished to the District to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such 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.

This communication is intended solely for the information and use of the District 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

cc: Nebraska Accountability and Disclosure Commission  
Nebraska Department of Revenue  
Nebraska Attorney General

Potter-Dix School District No. 9  
US Foods DBA The Thompson Co. Invoices

ATTACHMENT A

<b>US FOODS</b> (308) 382-6581		ACCOUNT NO. 3082-6581	INVOICE NO. 2035215	INVOICE DATE 4/26/18	CUSTOMER NO. 990949	DELIVERY ROUTE 510-4-120	REP. ORDERED 575 4/25/18					
BILL TO:	POTTER/DIX SCHOOL(ONGORE) 303 WALNUT ST PO BOX 189 POTTER NE 69156	SHIP TO:	POTTER/DIX SCHOOL(ONGORE) 303 WALNUT ST PO BOX 189 POTTER NE 69156		REMIT TO:	US FOODS DBA THE THOMPSON CO 3636 W STOLLEY PARK RD PO BOX 1466 GRAND ISLAND NE 68802						
ATTN:	3636 W STOLLEY PARK RD GRAND ISLAND NE 68802					SHIP DATE:	4/26/18					
INVT TERMS:	MONTHLY	15	6	7	SPECIAL INSTRUCTIONS:	Page 1						
QTY DERED	QTY SHIPPED	SALES UNIT	PRODUCT NUMBER	DESCRIPTION	4/ 11	3/ 3	7/ 0	WEIGHT	PRICING UNIT	UNIT PRICE	EXTENDED PRICE	
1	1	CS	125024	TORTILLA CHIPS	7004	6/2#		MISSION	13.50	CS	18.06	18.06
1	1	EA	128465	OLIVES RIPE SLI	25001	#10		MONARCH	44.00	EA	11.23	11.23
2	2	EA	187429	SAUCE WHITE QUESO QUE BUEN	106	0Z		QUE BUENO	45.00	EA	15.32	30.64
1	1	CS	127631	BEANS BLACK FANCY	67	#10		DELPASADO	47.00	CS	27.57	27.57
1	1	CS	224510	BEANS PINTO	103034	6/10		DELPASADO	46.00	CS	22.50	22.50
1	1	CS	227935	BEANS REFRIED V	44004	6/10		ALLEN	48.00	CS	32.38	32.38
4	4	EA	167037	CUTLERY FORK HEAVY WHITE	100	CT		PRIME SOU	14.63	EA	8.54	34.16
2	2	EA	166359	PLATES 6"FOAM 1	57012	125 CT		GENPAK	6.00	EA	2.43	4.86
2	2	EA	166818	PLATES 10.25" FOAM 1	COMP	125 CT		GENPAK	11.80	EA	15.99	31.98
1	1	CS	272906	PORK BULLED/SHR	112017	3/5#		CLOVERDLE	15.00	CS	61.42	61.42
1	1	CS	247537	RICE SPANISH CO	34034	4/5#		TASTE TRD	20.90	CS	31.59	31.59
1	1	CS	301299	TORTILLAS FLOUR 10"		12/12 CT		CATALLIA	22.65	CS	20.99	20.99
1	1	CS	305375	TORTILLAS YELLOW CORN 6"	800	CT		CATALLIA	28.00	CS	21.99	21.99
2	2	CS	153613	BEEF SHREDDED PC		2/5#		CLOVERDLE	10.55	CS	48.61	97.22
1	1	CS	107452	GREEN CHILI W/PORK - FROZ	5/4#			READY FOD	21.00	CS	53.86	53.86
2	2	EA	260584	CHEESE CHEDDAR	17029	5#		GLENVIEW	21.00	EA	12.31	24.62
1	1	CS	305707	BEEF GROUND FINE 80/20 LB	4/5#			IDC	20.00	CS	51.90	51.90
1	1	EA	227498	GARLIC CHOPPED IN WATER	32	OZ		TULKOFF	12.00	EA	8.95	8.95
2	2	CS	260576	SOUR CREAM PLAI	35112	100/1 OZ		L0L	7.00	CS	11.48	22.96
SUMMARY				QTY	TOTAL							
BEEF				3	149.12							
FROZEN				4	135.99							
DAIRY				2	24.62							
GROCERY				10	210.09							
<small>Properties listed on this invoice are sold subject to the liability limit authorized by section 533 of the Nebraska Revised Statutes, Chapter 48, Article 11. The value of this invoice exceeds a total dollar limit. Other properties listed on this invoice are sold subject to the liability limit authorized by section 533 of the Nebraska Revised Statutes, Chapter 48, Article 11. The value of this invoice exceeds a total dollar limit.</small>								Visit <a href="http://www.usfoods.com">www.usfoods.com</a> for a fast and easy way to order.		CUSTOMERS SIGNATURE: <i>We Appreciate Your Business</i>		
<small>US Foods reserves the right to change prices at any time without notice. Prices are subject to change without notice. © 2018 US Foods. All rights reserved.</small>								DISTRICT COPY		X		



Potter-Dix School District No. 9  
US Foods DBA The Thompson Co. Invoices

ATTACHMENT A

<b>US FOODS</b> (308) 382-6581		ACCOUNT NO. 2037881	INVOICE NO. 5/03/18	INVOICE DATE 5/03/18	CUSTOMER NO. 990949	PURCHASE ORDER NUMBER	SALES LOC. 6A	SALES REP. 575	DATE ORDERED 5/02/18		
BILL TO:	POTTER/DIX SCHOOL (ONCORE) 303 WALNUT ST PO BOX 189 POTTER NE 69156		SHIP TO:	POTTER/DIX SCHOOL (ONCORE) 303 WALNUT ST PO BOX 189 POTTER NE 69156		REMIT TO:	US FOODS DBA THE THOMPSON CO 3636 W. STOLLEY PARK RD PO BOX 1466 GRAND ISLAND NE 68802				
ATTN:	3636 W STOLLEY PARK RD GRAND ISLAND NE 68802		SHIP DATE:	5/03/18		INV DUE:	6/10/18				
SHIP FROM:	MONTHLY		SHIP DATE:	SPECIAL INSTRUCTIONS:		Page 1					
QTY. ORDERED	QTY. SHIPPED	SALES UNIT	PRODUCT NUMBER	DESCRIPTION	PACK SIZE	LABEL	CODE	WEIGHT	PRICING UNIT	UNIT PRICE	EXTENDED PRICE
1	1	CS	125024	TORTILLA CHIPS	7004 6/2#	MISSION		13.50	CS	18.06	18.06
2	2	EA	247383	GUACAMOLE ORIGINAL AVOCAD	1#	CALAYO		15.00	EA	7.29	14.58
1	1	CS	139246	PIZZA MEAT LOVERS	6/12"	ABBI'S		11.84	CS	35.22	35.22
1	1	CS	139289	PIZZA COUNTRY BREAKFAST	6/12"	ABBI'S		11.56	CS	44.16	44.16
1	1	CS	305707	BEEF GROUND FINE 80/20 IB	4/5#	IBP		20.00	CS	49.61	49.61
1	1	CS	127594	FRUIT MIXED MEDLEY	2/5#	CAROL'S C		10.50	CS	37.64	37.64
1	1	EA	330833	LETTUCE SHREDDE	179048 5#	TAYLOR FA		21.50	EA	4.68	4.68
1	1	CS	268135	POTATO SALAD STEAKHOUSE	2/5#	MRS GERRY		10.84	CS	23.73	23.73
1	1	CS	303038	COLESLAW DIXIE	2/4#	MRS GERRY		9.00	CS	15.95	15.95
SUMMARY				QTY	TOTAL						
BEEF				1	49.61						
FROZEN				4	93.96						
PRODUCE/SALADS				4	82.00						
PEANUTS/POPCORN/SNACKS				1	18.06						
									TAXABLE SALES	.00	243.63
									EX STATE TAX		.00
									CITY TAX		.00
									LOCAL TAX		.00
THANKS FOR CHOOSING THE THOMPSON COMPANY-NOW PART OF US FOODS. CHECK ALL PRODUCE AT TIME OF DELIVERY									DELIVERY CHARGE		5.00
											248.63
<small>perishable agricultural commodities listed on this invoice are not subject to the statutory trust authorized by section 54-2 of the Nebraska Agricultural Commodities Act, 1939 (77 S.L.R. 488-52). The sale of these commodities creates a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of or encumbrances on all inventory involved.</small>											
Visit <a href="http://www.usfoods.com">www.usfoods.com</a> for a fast and easy way to order.											
CUSTOMER SIGNATURE: 											

Note: According to the Superintendent, the other charges of \$82.32 were for the District.

# POTTER-DIX PUBLIC SCHOOLS

*Developing Productive and Responsible Citizens*

Elementary  
304 Horrum St.  
P. O. Box 149  
Dix, NE 69133  
308-682-5226  
FAX 308-682-5227



Jr./Sr. High School  
303 Walnut St.  
P. O. Box 189  
Potter, NE 69156  
308-879-4434  
FAX 308-879-4566

Web Page: [www.pdcoyotes.org](http://www.pdcoyotes.org)

Mike Williams  
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Jane Brown  
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October 2, 2018

Mr. Craig Kubicek  
Assistant Deputy Auditor  
Rm 2303, State Capitol  
Lincoln, NE 68509

Dear Mr. Kubicek:

I am writing in response to your draft letter that I received on September 25, 2018.

At our September regular Board of Education meeting, the Board conducted a first reading of a new Board policy – Policy #3004 – that prohibits Board members, staff, patrons, and organizations from using school accounts to purchase items for personal use. Final approval of the policy is on the agenda for the October regular meeting. Board policy #3004 is attached to this correspondence. The exact wording of that section of the policy is:

No board member, employee, volunteer, parent-teacher organization, or other individual or entity may use a school district account, its tax identification number, or its tax exemption to make personal purchases of any kind or for any reason.

In addition, I have been in contact with the Nebraska Department of Revenue to activate our account with them so that we can pay the appropriate sales tax for the amount that was purchased by Mrs. Juelfs. Before I submit the form to activate the account and then submit the payment, I will again check with Department of Revenue personnel to confirm the process has been correctly done.

Thank you for your interest and input in improving our school district and our students' education. I appreciate the opportunity you have provided me to review your draft letter. If you have any additional questions, concerns, or need additional information or documents, please do not hesitate to contact me.

Sincerely,

Mike Williams  
Superintendent

xc: Potter-Dix Board of Education Members  
Steve Williams, KSB School Law