

**State Auditor Fiscal Rulings and Issues**  
**NASBO 2014**

**Jim Gessford, Perry Law Firm**  
**Greg Perry, Perry Law Firm**

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**Mike Foley** State of Nebraska  
**Auditor of Public Accounts**

**APA Reports @**  
<http://www.auditors.nebraska.gov/FileSearch/entity.cgi>

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**Mike Foley** State of Nebraska  
**Auditor of Public Accounts**

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Select An Agency

- Abstracts, Board of Examiners
- Accountability and Disclosure Commission
- Adams County
- Adams County Court
- Administrative Services, Department of (GAS)
- GAS Chief Information Officer
- GAS Communications Division - Program 173
- GAS Material Division
- GAS State Personnel - Employee Reassignment Program
- Distribution of Aid to Community Colleges
- Agriculture, Department of
- Care Industry and Development Board
- Alcohol and Drug Addiction Aid - Detox Program 34
- Antelope County Court
- Antelope County Court
- Arts Council
- Asian Community and Cultural Center
- Assistance to the Handicapped and Disabled (AHDC) Program and the State Disability Program (SDP)
- Attorney General
- Austin Center of Excellence
- Banning and Finance, Department of
- Barber County
- Barber County Court
- Barber Examiners, Board of

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## I. APA AUTHORITY

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## I. APA AUTHORITY

§84-304(9)

- The APA is to conduct all **audits and examinations** (pre-audit inquiry) in accordance with Government Auditing Standards
- GAS §2.07(a) required the APA to review for “compliance with laws, regulations, contracts and grants...”
- **Refer to other agencies**

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## 2. APPROVAL OF BOARD EXPENDITURES

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## 2. APPROVAL OF BOARD EXPENDITURES

**APA Ruling** The School Board Secretary and President are **not signing all checks**, and all expenditures do not have School **Board approval** as required by State statute.

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## 2. APPROVAL OF BOARD EXPENDITURES

**§79-575** The **secretary** shall draw and **sign all orders** for all **money** ... and shall present the same to the **president** to be countersigned. No check, or other instrument drawn shall be issued until so countersigned [with] the **amount** for which it is drawn is **written upon its face**.

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## 2. APPROVAL OF BOARD EXPENDITURES

**§79-575**

- Applies all funds & accounts (e.g.)
  - Reimbursement Account
  - Activity Fund
  - Lunch Fund
- Regardless of how paid
  - Credit card
  - ACH
  - Check
  - Purchase Order

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## 2. APPROVAL OF BOARD EXPENDITURES

**§79-575** Facsimile signatures of board members **may be used, and a person or persons delegated\*** by the board **may sign** and validate all ☐ checks, and other instruments drawn upon ☐ funds of the district.

\*Auditor believes that Op. Att'y Gen. 02004 (Jan. 31, 2002) and §79-526 still require board approval "of some sort."

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## 2. APPROVAL OF BOARD EXPENDITURES

### APA Ruling

"We recommend the Bd ensure compliance with ☐ statute and implement procedures for reviewing and formally approving all expenditures of funds – no matter when, by whom, or the particular accounts out of which those expenditures were made."

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## 3. IMPROPER EXPENDITURES

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### 3. IMPROPER EXPENDITURES

**APA Ruling** [Our] analysis reveal[s] certain types of purchases that **do not appear to be allowable uses of public funds** according to State statute.

See The Local Government Miscellaneous Expenditure Act ("Act"), §§ [13-2201](#) through [13-2204](#).

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### 3. IMPROPER EXPENDITURES

**APA Ruling**  
Reviewed

- Flower Purchases
- Memorials
- Food Purchases (e.g., retirement party, kid candies, staff "in-service day" donuts and lunches, vendor lunches, board dinners, during student activities, etc.)

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### 3. IMPROPER EXPENDITURES

**APA Ruling**  
We recommend the Board [] re-evaluate the Policy, which allows for the purchase of **flowers** up to \$50 per occurrence. This provision appears to conflict with the Act.

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### 3. IMPROPER EXPENDITURES

#### APA Ruling

We recommend the Bd clarify its Policy [] by restricting the expenditure of funds for food and nonalcoholic beverages to qualifying events or functions only. Additionally, we recommend requiring supporting documentation to verify that all food-related purchases are for qualifying events or functions, as specified under the Act.

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- May pay **“actual and necessary expenses”** for workshops, conferences, training programs, official functions, hearings, or meetings, with board prior approval by **uniform policy** or **formal board vote**.

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- The Act's List:
  1. Registration, tuition & fees
  2. Mileage\81-1176 or actual travel expense if commercial
  3. Meals/lodging @ IRS rates or actual-itemized\Bd approved
  4. Nonalcoholic beverages for meeting attendees

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- The Act's List (continued):

5. Nonalcoholic beverage & meal:
  - (i) In emergencies (e.g. tornado)
  - (ii) Volunteers (before/after activity)
  - (iii) One recognition dinner a yr @ \$ set by Bd under \$25
  - (iv) Plaques, etc., with uniform policy after public hearing and \$ limit set by Bd

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- The Act's List per Auditor is:
- "expressio unius est exclusio alterius"

Unless it's one of the 5 listed things or otherwise authorized by law it's not permitted.

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- A Misnomer:

"Authorized expenditures shall not include expenditures for **meals of paid members** of a governing body provided **while** such members are **attending a public meeting** of the governing body unless such meeting is a joint public meeting with one or more other governing bodies...."

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- Mileage per **§81-1176**:

Effective January 1, 2014

**\$.56 per mile\***

\*<http://www.education.ne.gov/sped/serviceagency/ApprovedMileage.pdf>

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- But see also **§79-546** (Schools) and **§79-1217** (ESUs) may reimburse Bd members for "actual and necessary expenses incurred while carrying out their duties."

- **What is necessary?**

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- See also **§49-14,101.01** (PADC)  
A public official or public employee **shall not** use or authorize the use of ... resources, property, or funds ... for personal financial gain.  
**Meals, frequent flyer miles, bonus points, etc., etc.?**

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### 3. IMPROPER EXPENDITURES

**LB 967 § 5 (2014)\*** Amends §79-526:

(2) The school board **may make expenditures** for supplies, equipment, travel, meals, and lodging for school programs and activities, including extracurricular and interscholastic activities, appropriate for the benefit, government, and health of pupils enrolled in the school district.

\*Emergency clause effective April 2, 2014.

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### 3. IMPROPER EXPENDITURES

The Miscellaneous Expenditure Act ("Act"), [§13-2201 et seq.](#)

- Action Steps:
  - Accounting controls
  - Need for legislation (e.g. LB 967)
  - Review policies & procedures

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## 4. SALES TAX PAID

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## 4. SALES TAX PAID

**APA Ruling** We found that sales tax had been paid on **point-of-sale purchases** contrary to Title 316 NAC 1-092.01 which exempt [NE SD's] from payment of the NE sales and use tax after the institution has applied for and received a certificate of exemption.

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## 4. SALES TAX PAID

**APA Ruling**

Examples:

- HyVee
- Walmart
- Lowe's
- Subway
- Etc., etc.

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## 4. SALES TAX PAID

**APA Ruling** We recommend both the Board and the administrative staff work to ensure that Nebraska sales tax is not paid on any purchase made, regardless of the account or fund used for the purchase.

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## 5. EXPENDITURE DOCUMENTATION

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## 5. EXPENDITURE DOCUMENTATION

**APA Ruling** We found numerous expenditures with no supporting documentation for payments made.

**“No itemized receipt!”**

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## 5. EXPENDITURE DOCUMENTATION

**APA Ruling** We recommend the Bd ensure detailed documentation is required and maintained **to support all expenditures of all funds.**

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## 6. CONFLICT OF INTEREST

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## 6. CONFLICT OF INTEREST

**APA Ruling** Recently, this office received an inquiry regarding the School and its ±\$17,000 in purchases with a local grocery store. The School's Superintendent, and his wife are the owners of the business.

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## 6. CONFLICT OF INTEREST

**APA Ruling** School paid ±\$8,000 for a Trophy Case constructed by company owned by principal's husband.

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## 6. CONFLICT OF INTEREST

**APA Ruling** The Supt. paid ±\$3,000 to refurbish the high school gymnasium floor.

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## 6. CONFLICT OF INTEREST

**§49-14,102(1)** [N]o 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 \$2,000 or more, in anyone year, with Bd unless the contract is awarded through an open & public process.

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## 6. CONFLICT OF INTEREST

**§49-14,102(2)** An **open and public process** includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting District of the proposals considered and the contract awarded.

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## 6. CONFLICT OF INTEREST

**APA Ruling** Because the APA does not have jurisdiction we are referring this matter to the PADC for further review and possible action.

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# State Auditor Fiscal Rulings and Issues

NASBO 2014



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