



OHIO AUDITOR OF STATE  
**KEITH FABER**





# OHIO AUDITOR OF STATE KEITH FABER



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## BASIC AUDIT REPORT

Village of Nellie  
Coshocton County  
P.O. Box 356  
Warsaw, Ohio 43844

We have completed certain procedures in accordance with Ohio Rev. Code § 117.01(G) to the accounting records and related documents of the Village of Nellie, Coshocton County, Ohio (the Village), for the years ended December 31, 2021 and 2020.

Our procedures were designed solely to satisfy the audit requirements of Ohio Rev. Code § 117.11(A). Because our procedures were not designed to opine on the Village's financial statements, we did not follow *generally accepted auditing standards*. We do not provide any assurance on the Village's financial statements, transactions or balances for the years ended December 31, 2021 and 2020.

The Village's management is responsible for preparing and maintaining its accounting records and related documents. Our responsibility under Ohio Rev. Code § 117.11(A) is to examine, analyze and inspect these records and documents.

Based on the results of our procedures, we found the following significant compliance or accounting issues to report.

### Current Year Observations

1. **Ohio Rev. Code § 149.43(B)(2)** states to facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

The Village did not create and approve a retention schedule as required.

The Village should establish a formal records retention policy and ensure it is readily available to the public. Our prior basic audit also reported this issue.

### Current Year Observations (Continued)

- 2. Ohio Rev. Code § 149.43(E)(1)** states to ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in § 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

**Ohio Rev. Code § 149.43(E)(2)** further requires all public offices take certain actions with regard to their public record policy. Public offices must distribute their Public Records Policy to the employee who is the records custodian/manager or otherwise has custody of the records of that office and have that employee acknowledge receipt of the Public Records Policy; create and display in a conspicuous place in all locations where the public office has branch offices a poster describing the public records policy; and, if the public office has a manual or handbook of its general policies and procedures for all employees, include the public records policy in that manual or handbook.

The Village's elected officials (Fiscal Officer, Mayor and Council) are required to attend public records training, however we noted none of the elected officials attended public records training during their term, and there was no documentation that a designee was appointed to attend the required training on their behalf.

The Village has a public records policy; however, it has not posted the policy in a conspicuous place within the public office. Additionally, the Village has appointed the Village Fiscal Officer as the records custodian, however, there is no written acknowledgement she has received a copy of the policy.

We recommend all elected officials attend the required public records training for each term of office, or formally document an appointed designee to attend on their behalf. We also recommend the Village ensure the public records policy is publicly posted and written evidence is maintained that the records custodian has received the policy. Our prior basic audit also reported this issue.

- 3. Ohio Rev. Code 733.81** requires the Fiscal Officer to complete twelve hours of continuing education in terms subsequent to her first term.

The Fiscal Officer did not complete any continuing education during her term in office.

The Fiscal Officer should review eligible courses and obtain continuing education credits as required. This will help to enhance their understanding of various policies, procedures, ethics, et cetera.

- 4. 26 USC § 3402 and Ohio Rev. Code § 5747.06** requires every employer, including the state and its political subdivisions making payments of any compensation to an employee who is a taxpayer, to deduct and withhold from such compensation for each payroll period a tax substantially equivalent to the tax reasonably estimated to be due under this chapter with respect to the amount of such compensation included in his adjusted gross income during the calendar year. **26 USC § 3102(a)** requires employers to withhold social security Medicare tax from an employee's wages if the employee was hired after April 1, 1986. **Ohio Rev. Code § 145.03** states that employees eligible for exemption from the Ohio Public Employees Retirement System (OPERS) may choose to be exempt from compulsory membership by signing a written application for exemption within the first month after being employed.

#### Current Year Observations (Continued)

##### 4. 26 USC § 3402 and Ohio Rev. Code § 5747.06 (Continued)

We noted that no individuals had Federal, State, Medicare or pension withheld from their pay. Additionally, the Village did not pay the employer portion of Medicare or any required pension payment. The Village has identified Council, the Mayor and Fiscal Officer as independent contractors; however, they are elected officials and should not be identified as independent contractors.

The Village should not identify elected and/or appointed officials to be independent contractors. The Village should review OPERS guidelines to determine employees eligible for OPERS retirement and make the appropriate withholdings and payments. Employees not eligible for OPERS should have Social Security withheld and paid. All other applicable payroll withholdings should be identified and appropriately withheld and paid on behalf of the employees. Our prior basic audit also reported this non-compliance.

This matter will be referred to the IRS, State of Ohio, and OPERS for whatever action deemed necessary.

5. 26 U.S.C. § 3402(a)(1) states in general, except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. 26 U.S.C. §3102 states that Medicare taxes should be deducted from employees' compensation for all employees hired after March 31, 1986. The Village failed to withhold Federal income, social security and Medicare taxes from governing members and employees in 2019, 2020 and 2021. This resulted in Village officials being overpaid in their net wages. Justin Culver was overpaid by \$234, Samantha Culver was overpaid by \$247, Denise Emig was overpaid by \$152, Ashley McMillin was overpaid by \$121, Nicholas McMillin was overpaid by \$265, Juliana Ott was overpaid by \$234, Mark Ott was overpaid by \$318 and Patricia Wherley was overpaid by \$1,413.

In addition, the failure to make timely payments resulted in \$1,079 in penalties being assessed and paid to the United States Treasury. Penalties are unnecessary expenditures which do not serve a proper public purpose.

***State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951)***, provides that expenditures made by a governmental unit should serve a public purpose. Typically the determination of what constitutes a "proper public purpose" rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Even if a purchase is reasonable, Ohio Attorney General Opinion 82-006 indicates that it must be memorialized by a duly enacted ordinance or resolution and may have a prospective effect only.

Under Ohio law, public officials are strictly liable for all public money received or collected by them or their subordinates under color of law. Ohio Rev. Code § 9.39; *Cordray v. Internatl. Preparatory School*, 128 Ohio St.3d 50 (2010). Fiscal Officer Patricia Wherley was responsible for the withholding and payment of taxes; therefore, she was determined to be liable for the penalties paid.

**Current Year Observations (Continued)**

**5. 26 U.S.C. § 3402 and *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320 (1951) (Continued)**

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against former Fiscal Officer Patricia Wherley and her bonding company, Auto-Owners Insurance Company, in the amount of \$2,492, jointly and severally, in favor of the General Fund of the Village of Nellie. In addition, in accordance with the forgoing facts, and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Council Members Justin Culver in the amount of \$234, Samantha Culver in the amount of \$247, Denise Emig in the amount of \$152, Ashley McMillin in the amount of \$121, Nicholas McMillin in the amount of \$265, Juliana Ott in the amount of \$234, and Mayor Mark Ott and his bonding company, Auto-Owners Insurance Company, in the amount of \$318, in favor of the General Fund of the Village of Nellie.

Justin Culver, Samantha Culver, Denise Emig, Ashley McMillin, Nicholas McMillin and Mark Ott all remitted payment to the Village on December 30, 2022 through a deduction from their final paycheck in 2022. Juliana Ott remitted \$250 on December 27, 2022 to the Village. All employees paid a portion of the penalty owed by Patricia Wherley. The total penalties remitted totaled \$105. The remaining amount due from Patricia Wherley is \$2,387.

**6. Sound accounting practices require accurately posting estimated receipts and appropriations to the ledgers to provide information for budget versus actual comparison and to allow the Village Council to make informed decisions regarding budgetary matters.**

The original certificate and amendments establish the amounts available for expenditures for the Village and the receipts journal provides the process by which the Village controls what is available, it is therefore necessary the amounts estimated by the County Budget Commission are posted accurately to the receipts journal.

The Village did not have procedures in place to accurately post authorized budgetary measures to the accounting system. The approved Certificate of Estimated Resources (and amendments thereof) were not posted to the Village's manual accounting ledgers. It was also noted the Village did not review budget versus actual receipts and appropriations throughout 2021 and 2020.

Failure to accurately post the estimated resources to the ledgers and failure to review budget versus actual receipts and appropriations could result in overspending and negative cash balances. To effectively control the budgetary cycle and to maintain accountability over receipts and expenditures, the Village should post to the ledgers, on a timely basis, estimated resources as certified by the budget commission. The Village should then monitor budget versus actual reports to help ensure amended certificates of resources and appropriations have been properly posted to the ledgers. Our prior basic audit also reported this control issue.

### **Current Status of Matters Reported in our Prior Engagement**

7. The Village's small size requires governing board involvement with critical accounting processes (such as the review and approval of all revenue and disbursements) to compensate for the inability to segregate the duties of the accounting function. Currently, Council reviews and approve revenue information each month in aggregate but not in detail. The absence of a review of detailed receipt information may be a significant deficiency in internal accounting control which could possibly result in inaccurate cash balances or even undetected theft.

The Village's Fiscal Officer should submit the monthly Cash Journal and bank to book reconciliation to Council for review and approval. This will allow Council timely review of financial information and compensate for the lack of segregation of duties within the accounting function. Our prior basic audit also reported this control issue.



Keith Faber  
Auditor of State  
Columbus, Ohio

April 26, 2023

# OHIO AUDITOR OF STATE KEITH FABER



**VILLAGE OF NELLIE**

**COSHOCTON COUNTY**

## **AUDITOR OF STATE OF OHIO CERTIFICATION**

This is a true and correct copy of the report, which is required to be filed pursuant to Section 117.26, Revised Code, and which is filed in the Office of the Ohio Auditor of State in Columbus, Ohio.



**Certified for Release 5/9/2023**

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This report is a matter of public record and is available online at  
[www.ohioauditor.gov](http://www.ohioauditor.gov)