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David A. Vaudt, CPA
Auditor of State

NEWS RELEASE

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FOR RELEASE October 3, 2005

Auditor of State David A. Vaudt today released a reaudit report on Dubuque County for the period July 1, 2002 through June 30, 2003. The reaudit also covered certain items to determine practices applicable to the year ended June 30, 2002 and the year ended June 30, 2004. The reaudit was performed at the request of citizens of the County.

Vaudt recommended the County ensure compliance with the public hearing requirements of the Code of Iowa. Also, the County was advised to review and revise its policies and procedures pertaining to conflict of interest, overtime, sick leave and timesheet approval. The County responded favorably to the recommendations contained in the reaudit report.

A copy of the reaudit report is available for review in the Office of Auditor of State and in the County Auditor's office. The report is also available on the Auditor of State's web site at:
<http://auditor.iowa.gov/reports/reports.htm>.

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DUBUQUE COUNTY
AUDITOR OF STATE'S REPORT ON REAUDIT
FOR THE PERIOD
JULY 1, 2002 THROUGH JUNE 30, 2003

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Dubuque County

Officials

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
Jim Waller	Board of Supervisors	January 2005
Donna Smith	Board of Supervisors	January 2007
Eric Manternach	Board of Supervisors	January 2007
Denise Dolan	County Auditor	January 2005
Eric Stierman	County Treasurer	January 2007
Kathy Flynn Thurlow	County Recorder	January 2007
Leo Kennedy	County Sheriff	January 2005
Fred McCaw	County Attorney	January 2007
Paul Thomsen	County Assessor	January 2010
Richard Engelken	City Assessor	January 2008

Dubuque County



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Auditor of State's Report on Reaudit

To the Board of Supervisors of
Dubuque County:

We received a request to perform a reaudit of Dubuque County under Chapter 11.6(4) of the Code of Iowa. As a result, we reviewed the audit report of the County's independent auditing firm for the fiscal year ended June 30, 2003. We determined a partial reaudit was necessary to further investigate specific issues identified in the request for reaudit or through our preliminary review. Accordingly, we have applied certain tests and procedures to selected accounting records and related information of Dubuque County for the period July 1, 2002 through June 30, 2003. We also inquired and performed procedures for certain items to determine practices applicable to the year ended June 30, 2002 and the year ended June 30, 2004. The procedures we performed are summarized as follows:

1. We interviewed selected officials and employees of Dubuque County and obtained and reviewed information pertaining to certain capital projects and policies and procedures of the County.
2. We obtained and reviewed County policies, if available, pertaining to conflict of interest, competitive bidding requirements, outside employment and use of County-owned vehicles and/or equipment.
3. We obtained and reviewed selected documentation from the Iowa Department of Transportation for Dubuque County projects.
4. We inquired about internal control procedures and reviewed and tested selected capital projects and supporting documentation at the County Engineer's office.
5. We inquired about employee use of County-owned cellular telephones and whether the County had a policy regarding cellular telephones.
6. We obtained and reviewed the Union Contract for Highway Department employees.
7. We reviewed and tested the County's compliance with its Union Contract pertaining to wages and other payments made to selected individuals in the County Engineer's office.

Based on the performance of the procedures described above, we have various recommendations for the County. Our recommendations and the instances of non-compliance noted are described in the Detailed Findings of this report. Unless reported in the Detailed Findings, no other items of non-compliance were noted during the performance of the specific procedures listed above.

The procedures described above are substantially less in scope than an audit of financial statements made in accordance with U.S. generally accepted auditing standards, the objective of which is the expression of an opinion on financial statements. Accordingly, we do not express an opinion. Had we performed additional procedures or had we performed an audit of Dubuque County, additional matters might have come to our attention that would have been reported to you. A copy of this report has been filed with the Iowa Department of Transportation.

We would like to acknowledge the assistance extended to us by personnel of Dubuque County. Should you have any questions concerning any of the above matters, we shall be pleased to discuss them with you at your convenience.



DAVID A. VAUDT, CPA
Auditor of State



WARREN G. JENKINS, CPA
Chief Deputy Auditor of State

February 24, 2005

Detailed Findings

Dubuque County

Detailed Findings

July 1, 2002 through June 30, 2003

- (A) Potential Conflict of Interest – The County employed an individual in the Secondary Roads Department (Highway Department) under the supervision of the County Engineer. The employee is also a co-owner of a seeding business.

According to the employee's job description, typical tasks include, among other duties: "supervises the staking and grading of construction projects for roadways, drainage and other public improvements" and "assists with project inspections, as assigned."

Chapter 314.2 of the Code of Iowa states:

"No state or county official or employee, elective or appointive shall be directly or indirectly interested in any contract for the construction, reconstruction, improvement or maintenance of any highway, bridge or culvert, or the furnishing of materials therefore. The letting of a contract in violation of the foregoing provisions shall invalidate the contract and such violation shall be a complete defense in any action to recover any consideration due or earned under the contract at the time of its termination."

Conflict of interest has been addressed and defined in various court cases and opinions of the Iowa Attorney General. An opinion of the Attorney General dated September 8, 1992, addressed the doctrine of conflict of interest. The Opinion states in part:

"A conflict of interest is generally defined as existing whenever a person serving in public office may gain any private advantage, financial or otherwise, from such service. It is not required that this advantage be a financial one. Neither is it required that there be a showing the official sought or gained such a result. It is the potential for conflict of interest which the law desires to avoid."

The County has an Ethics Policy adopted on August 15, 1994, amended on March 9, 1998 and February 26, 2001. The following excerpt was taken from the policy as amended on February 26, 2001:

"The ethical county employee should not engage in outside interests that are not compatible with the impartial and objective performance of his or her duties."

According to the Dubuque County Conflict of Interest policy: "Employees of Dubuque County are expected to follow Iowa Code Chapter 331.342 to avoid conflicts of interest in public contracts, Iowa Code Chapter 721.1-.2, 721.4 and 721.10-.11 to avoid public employee misconduct and Iowa Code Chapter 68B.2A to avoid conflicts in employment."

In 2001, the County Attorney determined the business owned by the employee should not be allowed to bid on county road projects pursuant to Chapter 314.2 of the Code of Iowa and because of the potential and/or actual conflict(s) that could occur as a result of the employee's position in the Highway Department. The County Attorney reiterated his opinion in a letter to the Board of Supervisors dated February 16, 2005.

Dubuque County

Detailed Findings

July 1, 2002 through June 30, 2003

County Road Projects

Inspector: The County identified the employee was a lead inspector on two projects in the fall of 2001 and fall of 2002. We reviewed the project files and determined the employee's seeding business was not a subcontractor on the two projects for which the employee served as lead inspector.

In addition, the County identified the employee performed material testing on several projects for the County in 1997, 2000, 2001 and 2002. We did not review these project files since the material testing results performed by the employee were submitted to the lead inspector and, based upon our review, we did not deem additional testing to be necessary.

Subcontractor: Based upon documentation provided by the County, the employee was not a lead inspector on projects for which the employee's business was a subcontractor. The employee's seeding business was a subcontractor on two Dubuque County projects occurring between 1998 and 2001. We reviewed and determined the employee did not conduct inspections on the Pleasant Grove Road East project that occurred between 1999 and 2001.

The Seippel Road project occurred between September 1998 and June 2000. The employee conducted inspections on the Seippel Road project for a ten-day period during October 1998. According to the inspection reports, these inspections were performed several months before the employee's seeding business was hired as a subcontractor on the project in August 1999. The seeding work was completed in August and September 1999, based on the progress billings.

Iowa Department of Transportation Projects

According to the Iowa Department of Transportation (IDOT), the Dubuque County employee's seeding business has been a subcontractor on several projects let by the IDOT and the employee's seeding business unsuccessfully bid as prime contractor on three projects let by the IDOT. Also, according to the IDOT, the contractor's signature submitting its bid certifies it is in compliance with Chapter 314.2. Two of the three projects bid by the employee's business as prime contractor were for projects let by the IDOT for Dubuque County. Also, according to the IDOT, inspections are normally performed by County inspectors in lieu of IDOT inspectors on certain projects let by the IDOT for the County. Although the employee's business was not awarded the bid, a potential conflict of interest existed since the employee could have potentially been assigned to perform the inspections.

Recommendation – Based upon our review of the employee's involvement, no apparent direct or actual conflict of interest occurred due to the timing of the hiring of the employee's business on the Seippel Road project and since the employee's business was not awarded bids as prime contractor for contracts let by the IDOT. That is, the employee did not inspect work performed by the employee's seeding business. However, a potential conflict of interest exists due to the structure that allows an employee to perform duties or services that directly or indirectly conflict with the employee's outside business. Conflicts of interest may only be determined definitively in a court of law.

Dubuque County

Detailed Findings

July 1, 2002 through June 30, 2003

Based upon the County's policy and the nature of the employee's outside business, there remains an appearance of or potential conflict of interest due to the employee's position with the County and the outside business. This potential conflict of interest exists, if not directly, at least indirectly in any Dubuque County project, including those County projects let by the IDOT, whether the project is competitively bid or not. The Board of Supervisors should review and consult with the County Attorney to determine the proper course of action.

County policies address the employee's responsibilities as to conflicts of interest. However, the County should consider modification of County policy to include the County's responsibilities as to conflicts of interest. Specifically, the County should adopt a policy to prohibit employees from performing duties which may result in a direct, indirect or potential conflict of interest and prohibit employees with private businesses or interests from bidding on jobs which may result in an actual or appearance of conflict of interest. Again, competitive bidding, in and of itself, does not eliminate the potential for conflict of interest.

Procedures should be in place to monitor the County's compliance with the requirements of the Code of Iowa and the County's policies. In addition, the County may wish to implement a requirement for all County officials and employees to disclose, in writing, any and all outside business relationships and/or activities that could potentially conflict with County operations.

Response – The County will amend its ethics policy to make clear that County employees may not perform work that conflicts with or creates the appearance of a conflict with any private interest of the employee or the employee's family. The County will further inform all employees of this policy and will request disclosure of all interest that may cause such a conflict.

Conclusion – Response accepted.

- (B) Public Hearings – Chapter 309.40 of the Code of Iowa states “All contracts for road or bridge construction work and materials for which the engineer's estimate exceeds fifty thousand dollars, except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting.” Chapter 384.102 requires the “governing body shall not enter into a contract for the improvement until it has held a public hearing on the proposed plans, specifications, and form of contract, and estimated cost for the improvement” including notice of the hearing.

The County did not publish notice of or hold public hearings for the Pleasant Grove Road East and Seippel Road projects.

Recommendation – The County should hold public hearings as required. In addition, the County should implement procedures to ensure compliance with the statutory requirements of the Code of Iowa in the future.

Response – The County is aware of this requirement and will hold the public hearings as provided by Iowa Code Section 384.102, which is applied to County road contracts by Iowa Code Section 331.341.

Conclusion – Response accepted.

Dubuque County

Detailed Findings

July 1, 2002 through June 30, 2003

- (C) Change Orders - The Board of Supervisors does not approve change orders for the Highway Department. The County Engineer represented some change orders are issued for quantity variances and some are issued for changes in the scope of the project. These are coded differently to distinguish the type of change order issued.

Recommendation – For better control and accountability over projects, and since change orders effectively modify the original contract approved by the Board, all change orders should be approved by the Board.

The Board may wish to consider approving a policy to establish a threshold and/or specific circumstances for which change orders may be approved by the County Engineer prior to Board authorization. The policy, if enacted, should require these change orders to be submitted to the Board for subsequent review and approval. All change orders to original contracts should be reviewed and approved by the Board of Supervisors.

Response – The County Engineer will provide the Board of Supervisors with monthly project status reports that will show change orders. The Board of Supervisors will establish a policy for determining which change orders require prior Board approval and which change orders may be approved by the County Engineer.

Conclusion – Response accepted.

- (D) Inspection Reports – Weekly inspection reports are completed by the County Highway Department on IDOT forms. The forms are designed to provide sign-off and to evidence completion and/or review and approval by the inspector and project engineer. Two reports for the Seippel Road Project were completed but not signed by the inspector. The project engineer signature space appeared to be completed in advance and photocopied on the forms. Although the dates listed in the project engineer's space varied on the forms, we were unable to determine whether the dates were completed by the inspector or the County Engineer as project engineer.

Recommendation - All inspection reports should be signed by the inspector performing the inspection to authenticate the report. To improve accountability and control over the inspection process, the County Engineer, as project engineer, should review, approve, sign and date the inspection reports when completed and submitted by the inspector to the project engineer. Completing forms in advance negates the purpose of the review and approval process.

Response – Inspection reports will be signed and approved as recommended. Iowa DOT projects have an audit procedure. County projects will be reviewed upon completion to assure that all records are in order.

Conclusion – Response accepted.

Dubuque County

Detailed Findings

July 1, 2002 through June 30, 2003

- (E) Cellular Phone Policy – The County has three cellular phones for use in the Highway Department and these phones are assigned to specific individuals. The County Engineer represented he reviews the bills for propriety prior to submitting the bills for payment. However, the County does not have a specific policy addressing the use of County-owned cellular phones.

Recommendation – The County should consider establishing a policy to address the use of County-owned cellular phones, including use by employees of the County should be restricted solely and only for County-related business.

Response – The Board of Supervisors will consider the adoption of a policy governing the use of county-owned cell phones. Presently, cell phone bills are reviewed for appropriate use by department heads.

Conclusion – Response accepted.

- (F) Highway Department Overtime – According to the County’s Union Contract for the period July 1, 2000 through June 30, 2003 (2003 Union Contract), all eligible employees “shall be paid one and one half times their regular hourly rate of pay for all hours worked over 40 hours in any one week” and holiday pay shall be used for computing weekly overtime. According to the 2003 Union Contract “employees cannot earn overtime on days they have taken vacation or sick leave.”

Similar provisions exist in the Union Contract for the period July 1, 2003 through June 30, 2006 except “when any employee is called in to work outside his normal hours while on paid time off (vacation, personal day, pre-approved sick leave), the employee shall receive one and one half times their regular rate of pay for all hours worked in addition to the paid time off.”

Since overtime is based upon hours “worked”, sick leave, compensatory time and vacation should not be used in the calculation to determine overtime pay. The County included vacation, sick leave and/or compensatory time used during a pay period in the calculation of overtime for two pay periods in fiscal 2003. This resulted in overstating actual overtime.

Recommendation - The County should review this for compliance and consult with the County Attorney and Fair Labor Standards Board, if necessary, to clarify overtime requirements. This should be addressed and clarified in the next Union Contract.

Response – The Board of Supervisors will address this issue in collective bargaining.

Conclusion – Response accepted.

Dubuque County

Detailed Findings

July 1, 2002 through June 30, 2003

- (G) Highway Department Sick Leave – According to the County’s Union Contract for the period July 1, 2000 through June 30, 2003, “use of sick leave may be granted for periods of less than one day, but not less than one full hour.” We noted two pay periods with .5 hours of sick leave charged and used.

Recommendation – The County should implement procedures to ensure compliance with the Union Contract.

Response – The County will ensure compliance with the contract provision.

Conclusion – Response accepted.

- (H) Highway Department Timesheets – The County Engineer represented that he reviews the timesheets and signs a printout that summarizes the payroll. Also, based upon representations, timesheets are reviewed by the Highway Department Office Manager and/or Administrative Aide. However, individual timesheets did not include evidence of review and approval by a supervisor.

Recommendation – For better control and accountability over payroll and compliance with the Union Contract, timesheets should be reviewed and approved by the employee’s supervisor and evidenced by initials or signature of the supervisor and the date approved.

Response – Timesheets will be reviewed and approved as recommended.

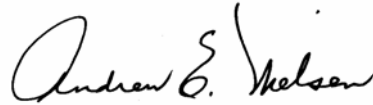
Conclusion – Response accepted.

Dubuque County

Staff

This reaudit was performed by:

Susan D. Battani, CPA, Director
Donna F. Kruger, CPA, Senior Auditor II
Cheryl McNaught, Assistant Auditor

A handwritten signature in black ink, reading "Andrew E. Nielsen". The signature is fluid and cursive, with the first name "Andrew" and last name "Nielsen" clearly legible.

Andrew E. Nielsen, CPA
Deputy Auditor of State