

OFFICE OF THE STATE AUDITOR



Village of Tijeras

Special audit of PERA and related payroll records

For the Period of January 1, 2006 through May 7, 2018



Wayne Johnson
State Auditor

C. Jack Emmons, CPA, CFE
Deputy State Auditor

State of New Mexico

OFFICE OF THE STATE AUDITOR

June 11, 2018

Ms. Gloria J. Chavez, Mayor and
Governing Board
Village of Tijeras
#12 Camino Municipal
Tijeras, New Mexico 87059

Dear Mayor and Council Members:

We have performed a special audit of certain accounting and financial records maintained by the Village of Tijeras (the "Village") for the period of January 1, 2006, through May 7, 2018. The purpose of the special audit was to determine if certain PERA reimbursement checks issued by the Village in January were proper and in accordance with state law. In the course of the special audit, additional findings were uncovered which are set forth in the audit report.

The Office entered into a contract with the Village for the conduct of the Special Audit. The special audit was conducted in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants.

Village management is responsible for maintaining the accounting records and for establishing and maintaining effective internal control over compliance with applicable laws, regulations, and procurement policies of the Village. The Special Audit was limited in its scope. Had the OSA performed additional procedures, other matters might have come to our attention that would have been reported to you. The OSA may, in addition to this Special Audit, refer matters found to the Village's independent public accountant to be reviewed as a part of the Village's 2018 annual audit.

This report is intended to identify violations of state and local law, and provide recommendations to the Village to correct the existing violations found, as well as provide recommendations to prevent future violations and lack of adequate controls. Please do not hesitate to contact us at (505) 476-3800 if you have any questions regarding this report.

Sincerely,

A handwritten signature in black ink that reads "C. Jack Emmons".

C. Jack Emmons, CPA, CFE

Deputy State Auditor

2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507

Local (505) 476-3800 * Fax (505) 827-3512

<http://www.osanm.org> * 1-866-OSA-FRAUD

Village of Tijeras

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Village of Tijeras

OFFICIAL ROSTER

VILLAGE COUNCIL

Jake Bruton	Mayor Pro Tem
Maxine Wilson	Councilor
Felix Garcia	Councilor
Don Johnson	Councilor

VILLAGE OFFICIALS

Gloria Chavez	Mayor
Diane Klaus	Acting Village Clerk
Teresa Grannemann	Village Comptroller
Darlene Coleman	Finance Director

Village of Tijeras
Special Audit Report
For the Period of January 1, 2006 through May 7, 2018

I. EXECUTIVE SUMMARY

In the spring of 2018, the Office of the State Auditor (“OSA”) received communications through its special investigations intake process from a concerned Senator, the media and from Village council members expressing concerns about the Village of Tijeras’ issuance of refunds to employees of alleged overpayments of PERA deductions. After receiving these communications and conducting fact-finding, the OSA determined that the matters raised were appropriate for a more in-depth review.

Pursuant to NMSA 1978, Section 12-6-3(C) (“Audit Act”) the State Auditor “may cause the financial affairs and transactions of an agency to be audited in whole or in part.” Additionally, in accordance with 2.2.2.15 NMAC (“Audit Rule”), the State Auditor may initiate a special audit regarding the financial affairs and transactions of an agency or local public body based on information it receives.

On April 30, 2018, the OSA formally designated Village of Tijeras (“Village”) for a special audit. On May 7, 2018, the OSA entered into an agreement with the Village to conduct the special audit in accordance with American Institute of Certified Public Accountants (“AICPA”) Statement on Standards for Consulting Services.

The initial purpose of the special audit was to address concerns regarding the Village of Tijeras’ refunds to employees of PERA deductions that were issued on January 8, 2018. It was the contention of the Mayor that the Village had withheld excess PERA contributions from employees’ paychecks from 2006 to 2017, and that she and other current Village employees were entitled to refunds of the excess withholdings in the total amount of \$64,423.65. Those payments were issued without the approval of the Village Council.

The OSA conducted the special audit by reviewing payroll files, payroll deductions, and related payroll reimbursements for accuracy and compliance with statutes, regulations, and policies and procedures. The Village of Tijeras Mayor and staff provided access to the records in a timely manner, and the OSA is grateful to Village personnel for their cooperation in the conduct of this special audit.

The OSA’s special audit reveals that the \$64,423.65 in payments were improper and not supported by the Village’s historical payroll documentation. The OSA’s audit determined that the total amount that was improperly paid out was \$47,350.94. The Mayor was overpaid by the amount of \$6,745.91, and the Acting Village Clerk was overpaid by the amount of \$10,624.55.

The OSA’s special audit also revealed that overpayments of PERA contributions were made by a number of former employees of the Village. Those former employees did not receive reimbursement checks, but the Village has a liability for overpayments to those employees in the amount of \$71,957.99.

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These findings indicate that the Village appears to have violated the state's Anti-Donation Clause, DFA Rule 95-1, and the Internal Revenue Code among others laws. Additionally, the Mayor and acting Village Clerk may have violated the criminal provisions of the Governmental Conduct Act contained in NMSA 1978 § 10-16-4.

With regard to the primary audit of the PERA refunds, the Village Mayor did not submit the reimbursements to the Village Council for approval, and failed to maintain adequate supporting documentation to support all payroll disbursements and related payroll reimbursements of the Village.

The Village also failed to take appropriate actions regarding related party transactions and the appearance of conflicts of interest; safeguard Village assets; or comply with federal law regarding the taxation of PERA reimbursements, otherwise identified as taxable wages by the Internal Revenue Service. The Village does not appear to have addressed its liability to prior employees of the Village who did overpay their PERA contributions and are entitled to reimbursement.

In the course of its audit of the PERA refund checks issued on January 8, 2018, the OSA also discovered other issues which may have violated provisions of New Mexico law or Village ordinances, and which are noted as additional findings in this special audit.

Overall, the Village's financial practices are significantly lacking in internal controls with policy and general oversight deficiencies which make the Village susceptible to fraud, waste and abuse.

It is vitally important that the Village correct these practices. The OSA's findings reveal a significant need for the Village to improve its internal controls related to the Village's daily operations to safeguard public funds and ensure compliance with applicable laws and regulations.

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The following table summarizes the OSA’s findings:

<i>Finding No.</i>	<i>Finding Description</i>
2018-001	<i>Potential Violation of the Governmental Conduct Act</i>
2018-002	<i>Governing Board not exercising control over finances NMSA 1978, Section 3-12-3 (A)</i>
2018-003	<i>Lack of evidence for Council approved fiscal budget</i>
2018-004	<i>Lack of supporting evidence indicating Council approval for the hiring of the Village Comptroller and for payroll changes</i>
2018-005	<i>Anti-Donation of Public Monies</i>
2018-006	<i>Payroll taxes were not withheld from the PERA reimbursement checks, as required under the Internal Revenue Code</i>
2018-007	<i>Improper reporting of Wages on W-2</i>
2018-008	<i>Potential abuse of mileage and Per Diem and Non-compliance with DFA Rule 95-1</i>
2018-009	<i>Improper Payments through reimbursement checks that may also violate Anti-donation clause</i>
2018-010	<i>State Fire Marshal Fund expended for purchases of food and paper goods</i>
2018-011	<i>Management Could Not Provide All Requested Information</i>
2018-012	<i>Timeliness of PERA Contributions</i>
2018-013	<i>Violation of Village Personnel Ordinance No. 157 with regard to Nepotism Policy</i>
2018-014	<i>Use of Duplicate Check numbers</i>

In response to the findings, the OSA recommends that the Village take the following actions:

- The Village should ensure that personnel receive training regarding compliance with applicable state laws, including, but not limited to, the Anti-Donation Clause, Governmental Conduct Act, Public Money Act, Village policies and procedures, and Federal income tax requirements.
- The Village should develop and implement adequate internal controls and documentation standards to support financial transactions, with regard to the hiring, termination and payroll processes.
- The Village should consider its options to recoup the funds that were incorrectly reimbursed to current employees on January 8, 2018. Additionally, the Village should consider its options to rectify the overpayments of PERA deductions made by former Village employees and should also consider the tax implications of the remedy.
- The Village should require employees to submit receipts which have adequate information to support price, quantity, and timeline of goods delivered and services rendered. Additionally, the Village should monitor invoices received from employees for accuracy and compliance with DFA rule 95-1.
- The Village should review its own policies and procedures regarding nepotism and adhere to those policies as approved by the Governing Council.

The Village provided responses to each audit finding. The responses included in the schedule of findings and responses have not been audited or edited.

II. BACKGROUND

The Village of Tijeras was incorporated in 1973. The Village operates under a Mayor-Council form of government and provides the following services as authorized by its charter: public safety (police and fire), highways and streets, health and social services, culture and recreation, public improvements, planning and zoning, water and general and administrative services.

The approximate lengths of time that key employees have been with the Village are:

- Mayor - 18 years
- Acting Village Clerk - 7 years
- Finance Director - 5 years
- Fee Accountant – 12 years

Since the fall of 2017, the Village Council and the Mayor have been at odds with each other regarding the operations of the Village, and the employment of the Acting Village Clerk. In January 2018, the Village Council terminated the Acting Village Clerk. The Mayor has refused to recognize that termination and has continued to employ the person who is the subject of the dispute. The Mayor and Village Council have both stated that they intend to litigate the issue regarding that person's employment.

On January 8, 2018, during the time that the dispute between the Mayor and Council was ongoing, the Village of Tijeras issued thirteen (13) checks to current employees for reimbursements of excess PERA deductions for the years 2006 through 2017. The mayor, the Acting Village Clerk, a Councilor and ten employees received checks totaling \$64,423.65.

The disbursement was not presented to the Village Council for approval and the Council did not become aware of the disbursements until one of them received a check. The Office of the State Auditor ("OSA") received notification of the issue on April 23, 2018 and then again on April 26, 2018 and began a fact finding inquiry to determine if the PERA contribution reimbursement checks were properly calculated, authorized and issued in compliance with all laws and regulations. Subsequent to the OSA's initial inquiry, the OSA designated the Village of Tijeras for Special Audit with respect to potential unauthorized refunds to employees, fund disbursements, the Governmental Conduct Act and other related areas.

III. SCOPE AND PROCEDURES

The scope of the Special Audit involved the performance of certain procedures to assess the Village's compliance with applicable laws, regulations, policies and procedures in various areas. The following procedures were agreed to:

1. Obtain and review relevant resolutions and policies and procedures for the Village.
2. Gain an understanding of the policies and procedures related to personnel, payroll, related deductions and payments of taxes or remittances of PERA contributions through inquiry and observation.
3. Review personnel and payroll files and supporting documentation, test for compliance with statutes, regulations, and policies and procedures.
4. Review the payroll processes with respect to deductions, test for compliance with statutes, regulations, and policies and procedures.
5. Review disbursement processes with regard to employee reimbursements, test for compliance with statutes, regulations, and policies and procedures.

This report was developed based on information from interviews, observations, and the OSA's review of selected documentation and records.

Based on the limited procedures performed, the OSA has not made a finding of intentional criminal wrongdoing by Village officials. However, the OSA has referred its findings to the Attorney General's office for review and determination of whether criminal prosecutions are warranted.

IV. GENERAL OBSERVATIONS

The results observed from the procedures performed highlight internal control and policy deficiencies, which may make the Village susceptible to fraud, waste and abuse.

Audit Challenges

During the course of the special audit, it came to the OSA's attention that Village staff appeared to be intimidated and feared retaliation for speaking with the auditors. Specifically, staff were concerned that employees who spoke with auditors may face retaliation by the Mayor and/or the Village Council due to past instances where it was perceived that former employees were targeted by one faction or the other and ultimately lost their jobs. The apprehension noted in the employees is troubling and our concern is that the employees may have been too afraid to openly communicate with the OSA regardless of whether they were actually aware of any wrongdoing.

Possible Violations of the Governmental Conduct Act and the State Constitution's Anti-Donation Clause

The OSA identified two possible violations of the Governmental Conduct Act. First, the Village's Mayor made an "executive" decision to issue checks to current employees for an alleged payroll calculation error regarding the PERA deduction that had not been brought before the Council. The Mayor received a reimbursement check totaling \$8,707.99. The Mayor, in an interview with OSA, indicated that she had made the decision to reimburse the monies without taking the issue before the Village Council because the Council had been "postponing" agenda items and she did not believe the Council would take action on the reimbursements. She also stated "that she felt it was their money and they should be refunded."

Second, the Acting Clerk, who was identified as the individual who located the error in the PERA deductions, also received a reimbursement check totaling \$10,752.58.

These reimbursements in addition to the other eleven (11) may also violate the Anti-Donation Clause of the New Mexico Constitution.

Possible violation of Section 3-12-3 (A), NMSA 1978 regarding the managing and controlling of the Village's Finances

Management of finances and prescribing the compensation to be paid to municipal officers and employees are express duties of the Village Council, not the Mayor. Council members have alleged that the Council has not approved any finances since the fall of 2017, and did not receive financial information until months after expenditures had been made.

The hiring of a Village Comptroller without Council approval, along with the issuance of payments/reimbursement to vendors, the employees and officers of the Village, as well as not providing timely financial information to the Council, the Mayor may have overridden the most basic internal control in any municipality - the approval of the legislative body (Village Council) of the expenditures by the Village.

Additionally, the Mayor made a decision to hire a Village Comptroller, a position that was not taken to the Council for approval. During the OSA's review, the Village Comptroller was the individual who provided the information requested. Additionally the Village Comptroller is paid on contract but does not appear to meet the Internal Revenue Service's definition of a contractor.

Concerns regarding who had the proper authority to act on behalf of the Village

In May 2017, the Village Clerk resigned and the Deputy Clerk was designated as the Acting Village Clerk by the Mayor. The Village policy and statutory authority states that this action is allowable only until the next Governing board meeting at which point the board will determine if the appointment stands or if the village will appoint a new Village Clerk. It does not appear that the Village Council took action to confirm the designation or to appoint the existing Deputy Clerk as the Village Clerk. In August 2017, a new Deputy Clerk was hired, confirmed by the Council, and held the position from August 2017 through October 31, 2017, suggesting that the position for the Deputy Clerk had been vacated. Based on the OSA's review of council minutes it was not evident that the council had terminated or approved the previous Deputy Clerk as the Village Clerk making it difficult to determine who has the proper authority to act in the position of the Village Clerk on behalf of the Village. During the review, the OSA found documents dated between 2012 through 2018 where the same individual signed as the Acting Village Clerk.

Section 3-11-6 (A), NMSA 1978 provides that the mayor's ability to appoint or terminate employees is subject to the approval of a majority of the members of the governing body. Subsection (B) provides that the mayor may appoint temporary employees as required for the proper administration of municipal affairs. The employee shall serve only until the next regular meeting of the governing body at which a quorum is present. The temporary employment shall cease and the employee shall not be reappointed unless his appointment is confirmed by the governing body. A temporary employee is entitled to the usual, ordinary and reasonable compensation for services rendered to the municipality.

While both the Mayor and Village Council have indicated they intend to litigate the issue of whether the subject employee may be terminated by the Council, the OSA recommends a speedy resolution to the issue given the substantial duties of the position and the lack of internal controls found in this special audit.

SCHEDULE OF FINDINGS AND RESPONSES

Finding 2018-001 Potential Violation of the Governmental Conduct Act (Material Weakness)

Condition

The Village Mayor made an “executive decision” to issue checks to current employees for an alleged payroll calculation error regarding the PERA deduction that had not been presented to or approved by the Village Council. The Mayor herself received a reimbursement check totaling \$8,707.99. The Mayor, in an interview with the OSA, indicated that she had made the decision to reimburse the monies without taking the issue before the Village Council because the Council had been “postponing” agenda items and she did not believe the Council would take action on the reimbursements. She also stated “that she felt it was their money and they should be refunded.”

The Acting Clerk, who was identified as the individual who located the error in the PERA deductions, also received a reimbursement check totaling \$10,752.58. The Mayor received \$6,745.91 more than she was legally entitled to receive for any overpayment. The Acting Clerk received \$10,624.55 more than she was legally entitled to receive for any overpayment. In addition, the only reimbursement check to a Councilor was delivered in April 2018, despite the fact that all other employees received their checks on January 8, 2018.

Criteria

Under the Governmental Conduct Act, Section 10-16-4, NMSA 1978. *Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.*

- A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officers or employee’s financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

The Governmental Conduct Act also provides:

- B. Section 10-16-3(A-B) NMSA 1978 provides that a public employee shall treat the public employee’s government position as a public trust, the public employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests. Public employees shall conduct themselves in a manner that justifies the confidence placed in them by the people at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

Cause

An apparent lack of oversight at the Village and inadequate internal controls over financial transactions. Insufficient supervision and/or employee’s failure to understand policy, laws, rules, and regulations.

Finding 2018-001 Potential Violation of the Governmental Conduct Act (continued) (Material Weakness)

Effect

Non-compliance with the Village's policies and procedures and state statutes. The Mayor and the Acting Village Clerk have improperly received public funds through their own acts, and without approval of the legislative body.

The Village did not calculate the potential liability correctly and has incorrectly reimbursed employees who were not entitled to a reimbursement, a total of \$47,350.94 in excess of what they were due to get back. The potential liability to the remaining employees is \$71,957.99.

Recommendation

The Village must recoup the funds that the current employees received from the reimbursement checks on January 8, 2018 for excess PERA deductions and address the tax consequences created by the issuance of the checks.

The Village must address the liability found to exist regarding overpayments by former employees who had excess PERA deductions from January 1, 2006 to May 7, 2018.

Response

The village will hold a meeting with all employees who received reimbursement checks to inform them of the need to pay back the monies. The employees will pay back as much as they can now and begin wage garnishment their first paycheck in July and continuing till fully paid back in the amounts equal to what it will take to fully reimburse the village by 12/31/18. The village will not bring any employee below minimum wage using the mechanism of wage garnishment. If any employee that received monies or former employee that owes monies to the village refuses to pay or leaves the employment of the village, the village will pursue collections and or litigation on a case by case basis to be decided by the governing body.

The village will create a financial oversight committee made up of no more than two council persons the mayor and vital staff to approve all payments on weekly basis. The two council persons will cycle every six months to control for complacency and will also cycle meetings every week so that only one council person will be present so there is no quorum.

The village will change over to a biweekly payroll system as soon as the reimbursements from over payments is collected from the employees.

Finding 2018-001 Potential Violation of the Governmental Conduct Act (continued) (Material Weakness) (continued)

The village will hold a special meeting as soon as legally possible after this special audit becomes public record to inform financial director of need to cease paying 75% of employees mandatory Pera contribution and only pay the stipulated amount according to the 2013 resolution.

The village will maintain a special fund for the monies recouped from the employees to take extra care and verify that all possible monies are returned.

The village will evaluate staff education qualifications competency and experience for the positions they hold and either provide education and training or restructure the staff to provide the correct level of knowledge education competency and expertise for each position.

Strict regulations regarding levels of education experience and qualifications will be written into personnel ordinance for all positions and adhered to from 6/11/2018 on.

A member of the council will be present at the interview of all new staff. All council members will also have resumes and all supporting documentation regarding new employees available to them at the first council meeting following new hires. All new hires and position changes/promotions will be approved by council.

The mayor will publicly apologize to staff and the residents for taking unilateral action based on misinformation and bad communication that impacted the lives and finances of so many employees and the financial standings of the Village along with the misuse of public monies.

Finding 2018-002 Governing Board not exercising control over finances Section 3-12-3 (A), NMSA 1978 (Material Weakness)

Condition

The Village Mayor issued refund checks for the excess PERA deductions to the employees and officers of the Village without proper Council approval. The Village staff has not provided timely financial information to the Council for approval.

Criteria

The Village Council's responsibility for control over the Village's finances is set forth in NMSA 1978, Section 3-12-3(A) which provides that managing the finances and prescribing the compensation to be paid to municipal officers and employees are express duties of the Village Council, not the Mayor.

Cause

The Mayor unilaterally made the decision to reimburse the monies without taking the issue before the Village Council because the Council had been "postponing" agenda items and she did not believe the Council would take action on the reimbursements.

Effect

The Village does not appear to be in compliance with State statutes in relation to Section 3-12-3 (A), NMSA 1978. The Village appears to have overridden the most basic internal control in any municipality - the approval of the legislative body (Village Council) of the expenditures by the Village.

Recommendation

The Mayor and Village Council must ensure that each party is fulfilling its statutory duties and fiduciary responsibilities to the Village. The parties may want to consider mediation and additional training to ensure that they are each properly fulfilling their respective roles in the Village administration.

Village of Tijeras
Schedule of Findings and Responses
For the Period of January 1, 2006 through May 7, 2018

Finding 2018-002 Governing Board not exercising control over finances Section 3-12-3 (A), NMSA 1978 (Material Weakness) (continued)

Response

The Village will create a financial oversight committee made up of no more than two council persons the mayor and vital staff to approve all payments on weekly basis. The two council persons will cycle every six months to control for complacency and will also cycle meetings every week so that only one council person will be present so there is no quorum.

The council will have unrestricted access to any files, documentation or records possessed by the Village on demand. The Council will not need to file a public record request and will receive the requested information at the earliest capability of the Village not to exceed 3 days, the Council may request information either electronically or as a hard copy.

Staff will be educated and informed of the Council's fiduciary responsibility and their right to examine any document possessed by the Village on demand and will provide those documents in a timely manner.

Council will receive meeting information on Thursdays by 5:00 pm to allow for longer examination and to pose questions regarding the information on Friday and have the answers at the regularly scheduled Monday meeting.

The Mayor and Council will be provided with their specific statutory duties assigned by the state of New Mexico. The Village will use outside agencies that can teach classes and educate the Mayor and council on their respective duties and responsibilities.

If mediation is agreed to by all parties there is no reason why the Village administration will not enter in to mediation however if all parties fulfill their statutory duties there is no reason for mediation.

Finding 2018-003 Lack of evidence for Council approved fiscal budget (Material Weakness)

Condition

The Village was unable to provide sufficient evidence that the budget was approved by the Council through the Council Minutes or Budget Meeting Minutes for the calendar years 2011 to 2017.

Criteria

Section 3-12-3(A), NMSA 1978 states “Governing body; powers and duties”, the governing body of a municipality having a mayor-council form of government shall (3) manage and control the finances and all property, real and personal, belonging to the municipality. The Village Personnel Ordinance No. 157 also states that the Governing body has responsibility for fiscal management of the Village.

Cause

The Village changed the way they maintained the records of official business with regard to budget meetings in or around 2011. The minutes of the budget meetings were no longer maintained with the Record of Proceedings and could not be located on Village computer equipment or in the archives.

Effect

The Village does not appear to be complying with the Village’s Personnel Ordinance No. 157 Section 2 Governing Body Responsibilities and NMSA 1978 Section 3-12-3 (A).

Recommendation

The Village should document the minutes of the budget meetings and maintain them with the Official Record of Proceedings as evidence of the approved fiscal budget and any budget adjustments or other actions taken by this committee that is then referred to and accepted by the Village Council in the Regular Council Meeting Minutes.

Response

The Village staff will be trained on the taking and preservation of minutes as well as best practices for record storage along with development and creation of a uniformed filing system.

The Village will from 6/11/2018 on take more defined and in-depth minutes at all workshops hearings meetings etc., as well as saving an audio copy of the minutes indefinitely.

The Village will maintain all minutes with the official records of proceedings as evidence of all actions, discussions, and workshops etc.

Finding 2018-004 Lack of supporting evidence indicating Council approval for the hiring of the Village Comptroller and for payroll changes (Material Weakness)

Condition

In January 2018, the Mayor hired the fee accountant as the Village Comptroller. There is no evidence to indicate that the Council approved the position or the hiring of the position. Additionally, the Village was unable to provide sufficient evidence that employee wage adjustments were approved by the Council through the Council Minutes or Budget Meeting Minutes for the period July 1, 2011 to May 7, 2018.

Criteria

According to the Village Personnel Ordinance No. 157, Section 2 Responsibilities for Personnel Functions by the Governing Body state that the Village Governing Body shall: (1) By vote of a majority of all members approve or disapprove Mayoral appointments, dismissals or suspensions with or without pay. (2) Determine salaries, fees and overtime compensation. (3) Approve job classifications, descriptions and pay scales.

Cause

In December 2017, the Mayor made a decision to hire the fee accountant as the Village Comptroller as a result of the Independent Public Accountant (IPA) stating that the Village Clerk and Finance Director lacked the ability to prepare the financial statements and the Village relied on the IPA to correct cash basis to accrual and prepare the financial statements. The Village also changed the way they maintained the records of official business with regard to budget meetings in or around 2011. The minutes of the budget meetings were no longer maintained with the Record of Proceedings and could not be located on Village computer equipment or in the archives.

Effect

The Village appears to be in violation of the Village's Personnel Ordinance No. 157 Section 2 Governing Body Responsibilities with regard to Personnel.

Recommendation

We recommend that the Mayor and Council abide by the Village's Personnel Ordinance No. 157 Section 2, which states, the Village Governing Body shall determine salaries, fees and overtime compensation and approve job classifications, descriptions and pay scales. The Village should document the minutes of the budget meetings and maintain them with the Official Record of Proceedings as evidence of the approved fiscal budget, any budget adjustments, wage adjustments or other actions taken and approved by the Village Council in the Regular Council Meeting Minutes.

Finding 2018-004 Lack of supporting evidence indicating Council approval for the hiring of the Village Comptroller and for payroll changes (Material Weakness) (continued)

Response

The Mayor and Council will abide by all state law and the village personnel ordinance.

Strict regulations regarding levels of education experience and qualifications will be written into personnel ordinance for all positions and adhered to from now on. The Village will also develop a comprehensive list of job descriptions to include pay scales.

A member of the Council will be present at the interview of all new staff. All Council members will also have resumes and all supporting documentation regarding new employees available to them at the first council meeting following new hires. All new hires and position changes/promotions will be approved by Council.

The Village will maintain all minutes with the official records of proceedings as evidence of all approved action items regarding new hires promotions and position changes.

The Council will be notified on the first day of employment of any new hires.

**Finding 2018-005 Anti-Donation of Public Monies related to the PERA reimbursements
(Material Weakness)**

Condition

The Mayor received \$6,745.91 more than she was entitled to receive for any overpayment. The Acting Clerk received \$10,624.55 more than she was legally entitled to receive for any overpayment. The remaining eleven (11) employees and officials received checks that were in excess of any amounts they were entitled to receive, for a total of \$ 29,980.48.

Criteria

Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause) sets forth the requirement that government entities, including municipalities, not make any donation to or in aid of any person, association or public or a private corporation.

Cause

The Village finance administrators, acting under the direction of the Mayor, improperly calculated the PERA reimbursements by referring only to PERA records and failing to review the Village's own payroll records. The Mayor then made the decision to issue the checks to employees and officials without requesting or obtaining the approval of the Village Council.

Effect

The overpayments to the Mayor, Acting Village clerk and remaining eleven (11) employees appear to constitute an unwarranted donation of public funds to private individuals, in violation of the Anti-Donation Clause.

Recommendation

The Village should follow state law and its personnel ordinance 157 with regard to expenditures required to be approved by the Village Council.

Village of Tijeras
Schedule of Findings and Responses
For the Period of January 1, 2006 through May 7, 2018

**Finding 2018-005 Anti-Donation of Public Monies related to the PERA reimbursements
(Material Weakness) (continued)**

Response

The Village will abide by state law and personnel ordinance 157 regarding expenditures required to be approved by Village Council no exceptions.

The Village will evaluate staff education qualifications and experience for the positions they hold and either provide education and training or restructure the staff, to provide the correct level of knowledge education and expertise for each position.

The Village will hold a meeting with all employees who received reimbursement checks to inform them of the need to pay back the monies. The employees will pay back as much as they can now and begin wage garnishment their first paycheck in July and continuing till fully paid back in the amounts equal to what it will take to fully reimburse the Village by 12/31/18. The Village will not bring any employee below minimum wage using the mechanism of wage garnishment. If any employee that received monies or former employee that owes monies to the village refuses to pay or leaves the employment of the village, the Village will pursue collections and or litigation on a case by case base to be decided by the governing body.

The Village will create a financial oversight committee made up of no more than two Council persons the Mayor and vital staff to approve all payments on weekly bases. The two Council persons will cycle every six months to control for complacency and will also cycle meetings every week so that only one Council person will be present so there is no quorum.

Finding 2018-006 Payroll taxes were not withheld from the PERA reimbursement checks, as required under the Internal Revenue Code (Material Weakness)

Condition

On January 8, 2018, the Village of Tijeras issued checks to thirteen (13) of their current employees. These checks were reimbursements for the alleged excess PERA deductions from January 1, 2006 to December 31, 2017. The Checks were issued as vendor checks and the employee and employer payroll taxes were not withheld or remitted to the appropriate agencies.

Cause

The Village staff responsible for the issuance of these checks had not considered the payroll tax implications of the reimbursements.

Effect

The Village does not appear to have complied with IRS requirements, the State of New Mexico's taxation requirements, state unemployment requirements, federal unemployment requirements, Social Security and Medicare taxation requirements. Non-compliance with payment of employment taxes can have serious consequences for employers and the employees. Employers may be subject to criminal and civil sanctions for failing to pay employment taxes. Employees' social security, Medicare, or unemployment benefits are adversely affected when employers do not properly report or pay employment and unemployment taxes. The recipients of the checks may not have adequate withholding and would be responsible for taxes on these payments resulting in unexpected Federal and State tax due for 2018.

Recommendation

All Village staff responsible for the Village's finances should be sent to additional training over payroll and finances to ensure that errors and misclassifications do not occur in the future. The Village will need to evaluate the potential consequences with the IRS and other State Agencies and ways to rectify the noncompliance while minimizing the impact to the Village and adverse effects on the employees who received the payments.

Response

The Village will recoup as much of the overpaid monies as possible by 12/31/2018 as well as contracting with a CPA to examine the potential tax consequences and ways to rectify the noncompliance while minimizing the impact to the village and adverse effects on the employees.

The Village will evaluate staff education qualifications competency and experience for the positions they hold and either provide education and training or restructure the staff to provide the correct level of knowledge education competency and expertise for each position.

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

Finding 2018-007 Improper reporting of taxable wages on W-2 (Material Weakness)

Condition

During the special audit, the OSA inquired about the Village's Section 125 Plan (Cafeteria Plan) to substantiate the deferment of certain items from immediate federal and state taxation. The Village was unable to provide a valid Section 125 Plan document. Without an approved Section 125 Plan all wages, except those identified in Code Section 401 (A), are subject to both federal and state income taxes. The federal and state taxable wages reflected on the W-2's were improperly reported. An analysis of the W-2's for calendar years 2011 to 2017, the years where evidence existed in paper form and also in the computerized bookkeeping system, indicates under-reporting of wages. Although further analysis is required, for calendar years 2011 to 2017, it is estimated that federal taxable wages were understated by more than \$85,000 and state taxable wages were understated by more than \$200,000.

Criteria

Internal Revenue Service Code states that all wages are subject to tax unless they are identified specifically in IRC Section 401 (A) or the entity adopts a Section 125 Plan that allows for certain items to be considered pre-tax items and therefore deferred from taxation until such time as they withdraw those specific funds.

Cause

The Village staff responsible for payroll did not have the necessary knowledge of payroll processes and the requirements of a pre-tax Section 125 Plan or IRC Section 401 (A). The Village improperly reduced taxable wages for deductions from employee's paychecks.

Effect

The Village has not complied with IRS requirements, the State of New Mexico's taxation requirements, State Unemployment requirements, Federal Unemployment requirements, and Social Security and Medicare taxation requirements. The Village issued incorrect W-2's which were used in the reconciliation of annual federal and state taxes. The Village could be held responsible for all employee and employer taxes and related penalties by the Internal Revenue Service.

Recommendation

The Village will need to evaluate the potential consequences with the IRS and other State Agencies and find ways to rectify the noncompliance while minimizing the impact to the Village. At a minimum, the Village should analyze W-2 wages from inception of/adoption of the PERA pension plan to current and make every effort to correct the W-2's and related reporting. The Village staff responsible for the issuance of public monies should receive additional training with regard to payroll and finances.

Finding 2018-007 Improper reporting of taxable wages on W-2 (Material Weakness) (continued)

Response

The Village will contract with a CPA to analyze W-2 wages from inception of adoption of Pera pension plan to current and make every effort to correct the W-2's and related reporting.

The Village will evaluate staff education qualifications competency and experience for the positions they hold and either provide education and training or restructure the staff to provide the correct level of knowledge education competency and expertise for each position.

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

The village will pass a section 125 plan (cafeteria plan) at the earliest possible day to legally hold a meeting.

Finding 2018-008 Potential abuse of mileage and per diem and non-compliance with DFA Rule 95-1. (Material Weakness)

Condition

During the course of the special audit, the OSA investigators noted checks that were being paid to employees using the payroll module that were outside of the normal weekly payroll schedule. During the OSA's review of those checks and their related supporting documentation, the OSA found that employees were being reimbursed \$85 per day, plus partial pay of \$12 per day, for travel that should not have required overnight stays. As a result of the Village paying per diem, the employees are not required to provide substantiation of expenditures.

Without some substantiation as to the nature of the travel/event (i.e. event brochure, hotel billing, etc.) incorrect per diem rates may have been applied.

Although there were many questionable reimbursements, one specific instance noted was the three hour audit rule training provided, in Santa Fe, by the Office of the State Auditor in which an overnight stay was requested by the employee. The OSA also noted annual lobbying trips taken to Washington DC by various employees and council members where the Village paid for the hotel rooms and flights but also where each was reimbursed per diem at the overnight rates. Additionally, employees were paid \$30 per meeting they attended despite those meetings occurring during normal business hours.

Criteria

DFA Rule 95-1 States, in pertinent part:

A. Applicability: Per diem rates shall be paid to public officers and employees only in accordance with the provisions of this section. Per diem rates shall be paid without regard to whether expenses are actually incurred. Where lodging and/or meals are provided or paid for by the agency, the governing body, or another entity, the public officer or employee is entitled to reimbursement only for actual expenses under 2.42.2.9 NMAC.

B. Per diem rate computation: Except as provided in Subsections C through I of this Section, per diem rates for travel by public officers and employees shall be computed as follows:

(1) Partial day per diem rate: Public officers or employees who occasionally and irregularly travel shall be reimbursed for travel which does not require overnight lodging, but extends beyond a normal work day as follows:

- (a) for less than 2 hours of travel beyond normal work day, none;
- (b) for 2 hours, but less than 6 hours beyond the normal work day, \$12.00;
- (c) for 6 six hours, but less than 12 hours beyond the normal work day, \$20.00;
- (d) for 12 hours or more beyond the normal work day, \$30.00;

(e) "Occasionally and irregularly" means not on a regular basis and infrequently as determined by the agency. For example, an employee is not entitled to per diem rates under this subparagraph if the employee either travels once a week or travels every fourth Thursday of the month. However, the employee is entitled to per diem rates under this subparagraph if the employee either travels once a month with irregular destinations and at irregular times or travels four times in one month and then does not travel again in the next two months, so long as this is not a regular pattern.

Finding 2018-008 Potential abuse of mileage and Per Diem and Non-compliance with DFA Rule 95-1 (Material weakness) (continued)

(f) “Normal work day” means 8 hours within a nine-hour period for all public officers and employees both salaried and nonsalaried, regardless of the officers’ or employees’ regular work schedule.

(2) Overnight travel: Regardless of the number of hours traveled, travel for public officers and employees where overnight lodging is required shall be reimbursed as follows:

- (a) in state areas \$85.00
- (b) in state special areas \$135.00
- (c) out of state areas \$115.00;
- (d) or actual lodging and meal expenses under 2.42.2.9 NMAC.

(3) Return from overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed. Divide the number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as follows:

- (a) for less than 2 hours, none;
- (b) for 2 hours, but less than 6 hours, \$12.00;
- (c) for 6 hours or more, but less than 12 hours, \$20.00;
- (d) for 12 hours or more, \$30.00.

(4) Special area designations: For all officers and employees, the in state special area shall be Santa Fe.

C. Board, commission and committee members: Nonsalaried public officers may receive per diem as follows:

(1) Official board, commission and committee meetings:

(ii) per diem rates in accordance with Subsection B of this Section, provided that the board or commission meeting is held outside of the municipal boundaries.

(2) Other official meetings: Nonsalaried public officers may receive per diem rates for travel on official business that does not constitute a board, advisory board, committee or commission meeting only in accordance with Subsection B of this Section.

G. Travel for educational purposes: A public officer or employee shall not be reimbursed for more than 30 calendar days of per diem in any fiscal year for attending educational or training programs unless approval has been obtained from the secretary.

2.42.2.10 TRAVEL ADVANCES:

A. Authorizations: Upon written request accompanied by a travel voucher, agency heads and governing boards of local public bodies or their authorized designees may approve a public officer’s or employee’s request to be advanced up to 80 percent of per diem rates and mileage cost or for the actual cost of lodging and meals pursuant to 2.42.2.8 NMAC and 2.42.2.9 NMAC and for other travel expenses that may be reimbursed under 2.42.2.12 NMAC. Requests for travel advances shall not be submitted to the financial control division of the department of finance and administration more than two weeks prior to travel unless, by processing the request earlier, significant savings can be realized for travel by common carrier or for registration fees for seminars and conferences.

Finding 2018-008 Potential abuse of mileage and Per Diem and Non-compliance with DFA Rule 95-1 (Material Weakness) (continued)

2.42.2.11 MILEAGE-PRIVATE CONVEYANCE:

D. Privately owned automobile: For conveyance in the discharge of official duties by privately owned automobile, mileage accrued shall be reimbursed at the rate set forth in this section as follows:

2.42.2.12 REIMBURSEMENT FOR OTHER EXPENSES: Public officers and employees may be reimbursed for certain actual expenses in addition to per diem rates.

B. Receipts required: Public officers and employees may be reimbursed for the following expenses provided that receipts for all such expenses are attached to the reimbursement voucher:

(3) registration fees for educational programs or conferences, provided, if the fee includes lodging or meals, then no per diem rates shall be paid and only actual expenses paid by the officer or employee and not included in the fee shall be reimbursed within the limits of 2.42.2.9 NMAC;

The Village Ordinance No. 157 states that all hourly employees will receive meeting pay for meetings attended after their scheduled work day.

Cause

The Village did not adequately review the requests for reimbursement submitted by employees in accordance with DFA Rule 95-1 before approving the reimbursements for payment. Additionally, the Village Council approved these reimbursements after the fact with no support.

Effect

Non-compliance with DFA Rule 95-1. The Village may have reimbursed employees in excess of the approved rates.

Recommendation

The Acting Village Clerk should verify that reimbursements are in accordance with requirements set forth in DFA 95-1 and obtain supporting documentation to justify any expenses requiring receipt.

Finding 2018-008 Potential abuse of mileage and Per Diem and Non-compliance with DFA Rule 95-1 (Material Weakness) (continued)

Response

The Village will adopt a resolution to take per diem over providing receipts and adhere to all current state and federal law regarding per diem amounts. The Village will also develop a pre-authorization form for travel, reimbursements and per diem.

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

The Village will create a financial oversight committee made up of no more than two Council persons the Mayor and vital staff to approve all payments on weekly bases as well as per diem. The two Council persons will cycle every six months to control for complacency and will also cycle meetings every week so that only one council person will be present so there is no quorum.

The Village will empower the financial oversight committee to disapprove reimbursements, travel and per diem.

The Village Clerk will verify that reimbursements are in accordance with requirements set forth in DFA 95-1 and obtain supporting documentation to justify any expenses requiring receipt.

Finding 2018-009 Improper Payments through reimbursement checks that may also violate Anti-donation clause and may result in a referral for possible criminal activity (Material Weakness)

Condition

During the course of the special audit, the OSA noted checks that were being paid to employees using the payroll module that were outside of the normal weekly payroll schedule. The OSA noted that reimbursements were made to the Acting Village Clerk that raised concerns about the appropriate use of public monies. The reimbursements were for purchases such as home décor items from a local crafting store, as well as candles, giftwrap, food, soft drinks and cough drops at a local grocery/convenient store. Additionally, the OSA identified a reimbursement to the Acting Village Clerk, totaling \$798.19 for repairs to a damaged 2012 Mazda 6 Sport by Danlar Collision Inc.-East. When the OSA investigators inquired about the circumstances surrounding the damages to the vehicle, the OSA was informed that the vehicle had been damaged while driving on Village business but no specific information or back-up documentation was provided.

Criteria

An improper payment is defined as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements.

With regard to the vehicle repairs, the Village reimburses employees for the use of their personal vehicles through mileage reimbursements. The rates reimbursed are to cover insurance, wear and tear on the vehicle and routine maintenance. Any damage to a personal vehicle should be covered by the employee's automobile insurance.

Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause) sets forth the requirement that government entities, including municipalities, not make any donation to or in aid of any person, association or public or a private corporation.

Cause

A lack of proper segregation of duties and monitoring. The Mayor, Acting Village Clerk and the Finance Director are the individuals within the Village with signatory authorization and the Acting Village Clerk and the Mayor are responsible for purchasing and the review and approval of payments.

Effect

The Village processed what appears to be improper payments to Village Officials that lack adequate documentation and may give rise to a criminal referral under NMSA 1978 12-6-6.

Recommendation

The Village should ensure that all employees responsible for purchasing, approving, processing and signing checks be re-trained. Additionally, proper segregation of duties should be employed to ensure that those responsible for purchasing and approving payments are not the same individuals responsible for processing and signing checks.

Finding 2018-009 Improper Payments through reimbursement checks that may also violate Anti-donation clause and may result in a referral for possible criminal activity (Material Weakness) (continued)

Response

The Village will pursue reimbursement for the monies disbursed to the acting Village Clerk totaling 798.19 for auto repairs to a personal vehicle when she was also collecting mileage to circumvent the violation of anti-donation clause.

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

The Village will create a financial oversight committee made up of no more than two Council persons the Mayor and vital staff to approve all payments on weekly bases as well as per diem. The two Council persons will cycle every six months to control for complacency and will also cycle meetings every week so that only one Council person will be present so there is no quorum.

The Village will ensure that all employees responsible for purchasing, approving, processing and signing checks be re-trained. Additionally the Village will properly segregate duties to ensure that those responsible for purchasing and approving payments are not the same individuals responsible for processing and signing checks.

**Finding 2018-010 State Fire Marshal fund expended for purchases of food and paper goods.
(Material Weakness)**

Condition

During the course of the special audit, the OSA investigators noted checks that were being paid to employees using the payroll module that were outside of the normal weekly payroll schedule. During the OSA's review of those checks and any related supporting documentation, the OSA found documentation indicating that the Acting Village Clerk would purchase items at local retailers and those charges would be allocated to each department. The OSA noted that food and paper goods were being purchased and allocated to the State Fire Marshal Fund.

Criteria

Section 53A-53-8 NMSA 1978 requires expenditures of State Fire Marshal Funds to be expended for the maintenance of its fire department; the purchase, construction, maintenance, repair and operation of its fire stations; fire apparatus and equipment and the financing or refinancing thereof; the payment of insurance premiums on fire stations, substations, fire apparatus and equipment and insurance premiums for injuries or deaths of firefighters as otherwise provided by law.

Cause

The Village staff responsible for purchasing, approving, processing and signing checks were not aware of the requirements of State Fire Marshal Funds.

Effect

The Village does not appear to be in compliance with Section 53A-53-8 NMSA 1978 which may have resulted in improper use of taxpayer funds and appears to have violated the permitted uses of the special purpose Fire Marshal Funds.

Recommendation

The Village should ensure that all employees responsible for purchasing, approving, processing and signing checks be re-trained on all of the Villages funding sources and their related requirements and exclusions. The Village should ensure that all State Fire Marshal Funds are properly utilized in accordance with their statutory purposes.

Response

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

The Village will make sure that the fire department staff and personnel are educated and trained on what items funds from the State Fire Marshals fund can be spent on.

The Village will ensure that all employees responsible for purchasing, approving, processing and signing checks be re-trained additionally the Village will properly segregate duties to ensure that those responsible for purchasing and approving payments are not the same individuals responsible for processing and signing checks.

Finding 2018-011 Management Could Not Provide All Requested Information (Material Weakness)

Condition

The Village was unable to provide the OSA investigators with all personnel files of each individual employed during the period January 1, 2006 through May 7, 2018. Additionally, personnel files that were provided were missing wage authorization forms, and signed PERA contribution forms, and had incomplete I-9 forms and outdated W-4 forms. The Village also could not provide the OSA with payroll reports or W-2's from the Quick Books software for the year 2006. The OSA did receive copies of the payroll checks but lacked adequate information to ensure that it has compiled a complete and accurate list of employees.

Criteria

Section 14-3-13 NMSA 1978 requires the Village to carefully preserve and protect public records.

Cause

It is unknown why the Village did not retain financial documentation. Additionally, the Village did not maintain the Quick Books file for the periods 2006 through 2010.

Effect

Management and the Village Council of the Village were unable to affirm that they have provided the State Auditor with all requested documents as required for the audit. Missing records can be indicators of more serious issues including fraud. Incomplete I-9 forms could result in fines from the Department of Homeland Security while incomplete or outdated W-4 forms could result in fines and incorrect input into the payroll system.

Recommendation

The Village should have a filing system that enables them to locate supporting documentation for all Village transactions. Additionally, the Village should have an individual responsible for the personnel function who maintains and ensures completeness of personnel records.

Response

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

The Village will adopt a uniform filing system regarding personnel files and repair all past files not complete making sure that all missing i9s and w4s are accounted for and filed.

The Village will adopt a filing system that enables them to locate supporting documentation for all village transactions. Additionally the Village will appoint an individual responsible for the personnel function who maintains and ensures completeness of personnel records along with current I9s and W4s and an overview check list of what is required in every file.

Finding 2018-012 Timeliness of PERA Contributions (Significant Deficiency)

Condition

While conducting test-work related to PERA contributions, it was observed that the Village was not timely in its remittance of PERA contributions. (4) Four of (25) twenty-five payments in fiscal year 2017 were made one day late, while (12) twelve of (25) twenty-five payments were made two or more days late.

Criteria

Per 2.80.500.8.B, NMAC employers shall transmit to PERA the member and employer contributions for every member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period.

Cause

Due to various transitions within the Village's finance department, PERA contributions were not consistently being remitted in a timely manner.

Effect

The Village does not appear to be compliant with 2.80.500.8.B NMAC and could be subject to penalties of \$50 per day and associated interest for each late remittance.

Recommendation

The Village should ensure that all employees responsible for processing payroll and payroll related reporting be re-trained. The Village should establish procedures to ensure that PERA contributions are remitted timely in accordance with applicable statutes.

Response

The Village will send employees to training that pertain to their specific positions and maintain their trainings in their personnel files to insure staff is up to date and trainings are beneficial to their position. Along with requiring a who, what, where, when, why and how explanation for all trainings attended for staff, appointees, fire department and the governing body.

The Village will change over to a biweekly payroll system as soon as the reimbursements from over payments is collected from the employees. This will insure that PERA contributions are remitted timely.

The Village will ensure that all employees responsible for processing payroll and payroll related reporting be re-trained. The Village will establish procedures to ensure that PERA contributions are remitted timely in accordance with applicable statutes.

Finding 2018-013 Violation of Village Personnel Ordinance No. 157 with regard to Nepotism Policy. (Significant Deficiency)

Condition

Throughout the course of the special audit, the OSA investigators noted, through interviews or review of personnel files, that the Village hires employees who are related to other current employees or Council members. This is in violation of the Village's policy regarding Nepotism.

Criteria

The Village Ordinance No. 157 section 15 states that "No relative of any employee, Mayor, or Council Member, by blood or marriage, may be employed in any position as a regular employee with the Village in which the employee may be able directly to supervise, control or influence the work or employment status of the relative or the affairs of the organization unit in which the relative is employed."

Additionally, the Village employment applications have a statement preprinted on them regarding a policy against nepotism.

Cause

It appears that a difficulty in finding qualified individuals resulted in an override of the Village's Policy.

Effect

Non-compliance with Village policy regarding Nepotism. The Village has employees who could be influenced by the employment status of a close relative.

Recommendation

The Village staff and the Village Council responsible for any portion of the hiring process should review the Village's Personnel Ordinance No. 157 and follow the policies set forth by the Village Council.

Response

The Village will hold a meeting to create and adopt a waiver for current employees that are related to each other or the governing body and the village will ensure that the employees are never directly supervised by a relative.

The Village will adhere to ordinance 157 section 15 from 6/11/2018 on.

The Village staff and governing body responsible for any portion of the hiring process will review the Village's personnel ordinance no. 157 and follow polices set forth by the village.

Finding 2018-014 Use of Duplicate Check numbers (Control Deficiency)

Condition

During the course of the special audit, the OSA investigators noted that the Village was issuing duplicate check numbers in QuickBooks to vendors/employees.

Criteria

Good accounting practices and fraud prevention techniques indicate that each check disbursement should have a unique identifying number so that previously written checks cannot be tampered with.

Cause

It is unclear why the Village issued duplicate check numbers.

Effect

Duplicate check numbers expose the Village to the risk of check fraud through tampering of previously issued checks utilizing the same check number.

Recommendation

The Village should ensure that the new check stock number begins where the previous check stock number ended. For continuity the check stock should be in sequential order.

Response

The Village will insure that new check stock begin where the previous check stock number ended. For continuity the check stock will be in sequential order.

Village of Tijeras
Special Audit Report
For the Period of January 1, 2006 through May 7, 2018

EXIT CONFERENCE

On May 31, 2018 the OSA held an exit conference with the following individuals to discuss the results of the consulting service engagement and the findings.

Village of Tijeras

Ms. Gloria Chavez, Mayor
Mr. Jake Bruton, Mayor Pro Tem
Ms. Maxine Wilson, Councilor
Mr. Don Johnson, Councilor

Office of the State Auditor

C. Jack Emmons, CPA, CFE, Deputy State Auditor
Melissa Santistevan, CPA, CFE, CGMA, CICA Special Investigations Division Director