

NEBRASKA MUNICIPAL REVIEW

■ Boston loses third party SCOTUS case

■ Omaha business owner, Kauth, appointed to Legislature

■ \$30 million Granary District Project unveiled in Ralston

Official Publication of the League of Nebraska Municipalities

JUNE 2022

League Insurance Government Health Team – LIGHT



Partners with Blue Cross Blue Shield
and Mutual of Omaha

Providing cost savings with quality health plans for employees



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Photo of health care workers from © iStock.com.

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Municipal Legal Calendar

(All statute citations to Revised Statutes of Nebraska)

AUGUST 2022 CITIES OF THE FIRST CLASS

Within 10 days following meeting or before next meeting (whichever is sooner)..... Clerk to have minutes available for public inspection. (84-1413)

Within 15 days of Passage..... Clerk publishes ordinances passed. (16-405)

Within 30 days of Council meeting..... Clerk publishes official proceedings of meeting, including claims. (19-1102)

On or before August 1..... Political subdivisions subject to city levy submit preliminary request for levy allocation to City Council. (77-3443)

Prior to Notice of Budget Hearing..... Proposed annual or biennial budget statement available to public. (13-504) *

Before August 15..... Job titles and salaries of employees shall be published. (19-1102)

On or before August 20..... Should have received the current taxable value of all property subject to levy from the County Assessor. (13-509)

On or before September 1..... City Council determines the final allocation of levy authority for its subdivisions (77-3443)

On or before September 30..... File adopted budget statement with County and State Auditor's Office (13-508)*

On or before September 30..... File information on trade names and interlocal agreements with State Auditor's Office (13-513)

Within 20 days after end of month..... Treasurer files monthly financial report. (16-318)

* * Clerk must prepare agenda prior to next Council meeting. (84-1411)

On or after September 17 and July to September 29..... Joint public hearing if increasing property tax request by more than allowable growth percentage

By September 5..... Provide information to county if participating in joint public hearing

CITIES OF THE SECOND CLASS

Within 10 days following meeting or before next meeting (whichever is sooner)..... Clerk to have minutes available for public inspection. (84-1413)

Within 15 days of Passage..... Clerk publishes ordinances passed. (17-613)

Within 30 days of Council meeting..... Clerk publishes official proceedings of meeting, including claims. (19-1102)

On or before August 1..... Political subdivisions subject to city levy submit preliminary request for levy allocation to City Council. (77-3443)

Prior to Notice of Budget Hearing..... Proposed annual or biennial budget statement available to public. (13-504) *

Before August 15..... Job titles and salaries of employees shall be published. (19-1102)

On or before August 20..... Should have received the current taxable value of all property subject to levy from the County Assessor. (13-509)

On or before September 1..... City Council determines the final allocation of levy authority for its subdivisions (77-3443)

On or before September 30..... File adopted annual or biennial budget statement with County and State Auditor's Office (13-508) *

On or before September 30..... File information on trade names and interlocal agreements with State Auditor's Office (13-513)

Within 20 days after end of month..... Treasurer files monthly financial report. (17-606)

* * Clerk must prepare agenda prior to next Council meeting. (84-1411)

On or after September 17 and July to September 29..... Joint public hearing if increasing property tax request by more than allowable growth percentage

By September 5..... Provide information to county if participating in joint public hearing

VILLAGES

Within 10 days following meeting or before next meeting (whichever is sooner)..... Clerk to have minutes available for public inspection. (84-1413)

Within 15 days of Passage..... Clerk publishes ordinances passed. (17-613)

Within 30 days of Board of Trustees' meeting..... Clerk publishes official proceedings of meeting, including claims. (19-1102)

On or before August 1..... Political subdivisions subject to village levy submit preliminary request for levy allocation to Village Board. (77-3443)

Prior to Notice of Budget Hearing..... Proposed annual or biennial budget statement available to public. (13-504) *

Before August 15..... Job titles and salaries of employees shall be published. (19-1102)

On or before August 20..... Should have received the current taxable value of all property subject to levy from the County Assessor. (13-509)

On or before September 1..... Village Board determines the final allocation of levy authority for its subdivisions (77-3443)

On or before September 30..... File adopted annual or biennial budget statement with County and State Auditor's Office. (13-508) *

On or before September 30..... File information on trade names and interlocal agreements with State Auditor's Office (13-513)

Within 20 days after end of month..... Treasurer files monthly financial report. (17-606)

* * Clerk must prepare agenda prior to next Village Board meeting (84-1411)

*** Does not apply to cities with a biennial budget that are in the second year of the biennial budget period.**

The **NEBRASKA MUNICIPAL REVIEW** is the official publication of the League of Nebraska Municipalities, an association of the cities and villages of Nebraska, published at 1335 L St., Lincoln, Nebraska 68508 — Telephone 402-476-2829; FAX 402-476-7052; Website: www.lonm.org. Periodicals postage paid at Lincoln, Nebraska. Views of contributors, solicited or unsolicited, are their own and not to be construed as having the endorsement of the League unless specifically and explicitly stated by the publisher.

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LIGHT's partnership with BCBSNE and Mutual of Omaha is providing cost savings and quality health plans for municipal employees

BY L. LYNN REX, EXECUTIVE DIRECTOR, LNM

Municipalities across the state are joining the League Insurance Government Health Team (LIGHT) which partners with Blue Cross Blue Shield Nebraska (BCBSNE), Mutual of Omaha, McInnes Maggart Consulting Group, LLC and First Concord. LIGHT is providing a significant cost savings to many municipalities and their respective employees with a broad range of benefits and the flexibility to customize their health plans. Although some cities and villages have minimal cost savings, they join LIGHT for the quality benefits, flexibility and services available to eligible municipal employees. As an increasing number of League members join LIGHT, one of the major goals is to stabilize rates. In addition, LIGHT will minimize the workload on municipal staff by including online enrollment and standardize compliance services.

Thanks to the leadership of League President Paul Lambert, Mayor of Plattsmouth, City Administrator Emily Bausch and City Clerk Sandy Meyer, their City Council was the first municipality to pass a motion indicating the city would join LIGHT. Plattsmouth officially did so on June 13 by passing the “Resolution” authorizing the city clerk to sign LIGHT’s Interlocal Agreement, Membership Agreement and other related documents.

As noted in background information below, Shirley Riley, League Membership Services Director, had been working with Michelle Sitorius of Cline Williams Wright Johnson & Oldfather, LLC (Cline Williams) and several others strategizing with us on a regular basis as necessary documents and requirements to establish LIGHT as an Association Health Plan (AHP) were finalized. Michelle Sitorius submitted a “Declaration for Single Health Plan Status” to the Nebraska Department of Insurance and successfully obtained approval of LIGHT as a bona fide association eligible to establish an AHP and purchase large group insurance as a single plan.

Thanks to the City Council of Alma which passed the Resolution to join LIGHT on June 6 followed by the City Council of West Point which did so on June 7, thereby officially forming LIGHT pursuant to the Interlocal Cooperation Act and providing for their participation in the LIGHT Member Health Plan making health insurance coverage available for their eligible employees and dependents who participate in the plan.

The first meeting of the LIGHT Board of Directors was held June 29, 2022, at the Cornhusker Marriott Hotel in Lincoln pursuant to the provisions of the Open Meetings Act. As stated in LIGHT’s Interlocal Agreement, the initial Board of Directors is composed of an elected or appointed official from five municipalities which executed the Interlocal Agreement prior to July 1, 2022, each of whom was approved as a “Director” by their respective governing body. The following officials serve on the LIGHT Board of Directors: Joel Bergman, Mayor of St. Paul; Tom Goulette, City Administrator/Utility Superintendent of West Point; Paul Lambert, Mayor of Plattsmouth; Jessica Quady, City Administrator of Ashland; and Brenda Wheeler, City Clerk of Blair. At LIGHT’s first meeting, **Mayor Paul Lambert was elected Chair of the LIGHT Board and Tom Goulette was elected Vice Chair.** The Interlocal Agreement allows LIGHT’s Bylaws to be amended to increase the number of board members up to a maximum of 15 officials; an amendment to the Bylaws increasing the number of board members to at least 10 officials likely will occur at the 2023 Members’ Meeting of LIGHT held in conjunction with the League Annual Conference.

Hopefully, your municipality will consider joining LIGHT as so many other League members have done to take advantage of this great program!

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League Insurance Government Health Team (LIGHT) Board of Directors Held First Meeting June 29, 2022

LIGHT Board of Directors

(From left to right): **Brenda Wheeler**, Blair City Clerk; **Tom Goulette**, West Point City Administrator/Utility Superintendent and Vice Chair of the LIGHT Board of Directors; **Jessica Quady**, Ashland City Administrator; **Paul Lambert**, Plattsmouth Mayor and Chair of the LIGHT Board of Directors; **Joel Bergman**, St. Paul Mayor (not pictured).



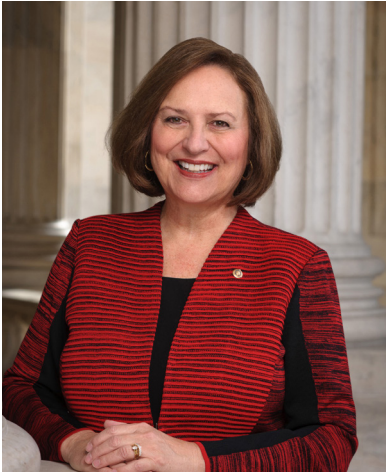
LIGHT Strategic Partnerships

(From left to right): **Jim Daubert**, First Concord; **Laura Rogge**, **Cortney Ray**, **Christa Hofferber**, **Sue Warner**, Blue Cross Blue Shield Nebraska; **Dennis Maggart**, McInnes Maggart Consulting Group, LLC; **Brett Condie**, Mutual of Omaha (not pictured).

LIGHT Board selects Michelle Sitorius as Legal Counsel

(From left to right): **Michelle Sitorius**, Cline Williams Wright Johnson & Oldfather, L.L.P. **Jessica Quady**, Ashland City Administrator; **Paul Lambert**, Plattsmouth Mayor and Chair of the LIGHT Board of Directors; **Brenda Wheeler**, Blair City Clerk; and **John Zimmer**, Cline Williams Wright Johnson & Oldfather, L.L.P., who also attended the first meeting of the LIGHT Board of Directors.





Update on Safe Connections Act

BY U.S. SEN. DEB FISCHER

Your cell phone number is tied to countless aspects of your daily life. If you are like me, you have had the same number for a decade or more. Your family and friends all know how to reach you at that number. If you change it, you could lose contact with dozens of loved ones and many other people who need to contact you for crucial needs – like your bank, healthcare provider, employer or your children’s school. Would you panic if you had to change your number all of a sudden?

This is a dilemma many survivors of domestic violence must face. Through a shared mobile wireless phone plan, private information can be accessed and misused to control victims. If an abusive partner is the plan’s account holder, they could access sensitive information like location, messages or calls to a domestic violence support hotline. Depending on differing company policies that may not consider these circumstances, many survivors cannot separate their phone numbers on their own without authorization from the abusive partner.

To cut these digital ties, many times survivors’ only option is to change their number. This a burden and the last thing they should have to worry about as they escape abusive situations

and regain independence. Survivors should be able to choose whether retaining their number or getting a new number on a new plan is the safest option for them.

U.S. Sen. Brian Schatz of Hawaii and I introduced the Safe Connections Act last year to solve this problem, no matter where survivors live or who their wireless carriers are. I am happy to say our bipartisan bill recently passed the Senate unanimously.

The Safe Connections Act will allow a survivor of domestic violence to separate their mobile phone line from a wireless phone plan shared with an abuser, without penalty. They also will be able to do the same for any dependents in their care.

Additionally, the bill will require the Federal Communications Commission to enroll survivors temporarily in programs that help make cell phone plans more affordable. They will be eligible for this benefit for a transition period of up to six months while they work to become financially stable.

Lastly, and importantly, the Safe Connections Act will protect survivors from their abusers even before they separate their cell phone plans. It asks the FCC to undertake a rule-making proceeding to evaluate how calls and texts to domestic abuse hot lines can

be removed from phone call logs – which abusers often track. This will be crucial for helping survivors reach out to support services without their abusers finding out.

I am thankful for the support of local organizations, such as the Nebraska Coalition to End Sexual and Domestic Violence, for the Safe Connections Act. As the coalition previously noted “Domestic violence survivors so often have significant financial challenges when separating from the person harming them... the Safe Connections Act is an important step toward providing safety for survivors and in giving them autonomy and control back over their own lives.”

The Safe Connections Act is now with the House of Representatives. Recently, the House Energy & Commerce Committee discussed the Safe Connections Act during a hearing on pending communications legislation. I am hopeful that the House will continue to make progress to pass this critical legislation.

The Safe Connections Act is a common-sense solution that will help domestic abuse survivors nationwide. It’s time for Congress to act. ■

Omaha business owner, Kauth, appointed to Legislature

Sen. Kauth to fill remainder of late Sen. Paul's term; intends to run for election to seat

Omaha business owner Kathleen Kauth will fill the Legislative District 31 seat left vacant by the death of Sen. Rich Pahls in April. Gov. Pete Ricketts announced the appointment at a June 7 press conference.

Kauth, who said she was “deeply honored” by the appointment, owns a mediation and consulting business with her husband, Andrew. She holds a bachelor’s degree in criminology and sociology and a master’s degree in public policy.

Kauth was sworn in by Nebraska Secretary of State Bob Evnen and will serve the remainder of Pahls’ term, which ends January 2023. She is eligible to run for election to the seat in the November general election and said she intends to do so. ■

Source – Unicameral Information Office



Omaha business owner Kathleen Kauth is sworn into office by Nebraska Secretary of State Bob Evnen. Photo by Unicameral Information Office.

Legislative information for interim

The 108th Legislature, first session, will convene Jan. 4, 2023. For information about interim hearings, which usually begin in late summer or fall, and other legislative information, use this website: nebraskalegislature.gov.

The Nebraska Legislature also provides an easy way for you to locate your district and Senator at the Legislature’s website. Enter your full address into the “Find Your Senator” search field located on the right side of the home page. This opens a map that shows your legislative district and a picture of your Senator and a link to that Senator’s web page, which includes contact information and links to a biography and photos. ■



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Tara A. Stingley



Lily Amare

Ensuring proper classification of workers as independent contractors

BY TARA A. STINGLEY & LILY AMARE,
CLINE WILLIAMS WRIGHT JOHNSON
& OLDFATHER, L.L.P.

The traditional arrangement of America's workforce was disrupted by the COVID-19 pandemic. Although remote work arrangements have tempered in 2022, there is no doubt there has been a significant shift to and acceptance of remote work when compared to the pre-pandemic era. This shift is expected to bring with it the consideration and implementation of a gig economy, where workers maintain a flexible or temporary arrangement with an organization, unlike the traditional long-term employer-employee relationship. This trend will lead to questions of whether a worker should be classified as an employee or independent contractor.

Proper classification of a worker as an independent contractor involves consideration of several factors and application of multiple standards (depending on the purpose of the analysis). In general, an independent contractor is a worker who: (a) charges fees for a service; (b) is engaged only for the term required to perform an identified service or task; (c) retains control over the method and manner of work; (d) retains economic independence to accept work from multiple entities; (e) pays its own income and payroll taxes; and (f) is not covered by most federal, state or local laws intended to protect

employees. Improper classification of independent contractors may carry significant wage, tax and other implications for employers under federal and state law.

This article will address the potential consequences of misclassification, discuss the various approaches under federal and Nebraska state law to determine independent contractor/employee status and set forth recommendations on best practices to mitigate risk in this area.

Potential Consequences of Misclassification

The consequences of misclassifying a worker as an independent contractor can be significant. An employer that misclassifies an employee as an independent contractor may be liable for:

- Back pay that the worker would have received if they had been classified as an employee, including overtime compensation pursuant to federal and state law and potential reimbursement of work-related expenses. In most cases, back pay awards can cover up to two years. If the violation is considered willful, a court can order an employer to pay up to three years of back pay.
- Employee benefits, including retirement benefits, health insurance

benefits, stock compensation, and other benefits to which the employee would have been entitled if such benefits are offered to similarly-situated employees.

- Unpaid workers' compensation and disability premiums.
- Unpaid federal, state and local income tax withholdings, as well as associated interest and penalties for such missed payments.
- Unemployment insurance premiums, including taxes owed under FUTA and its state equivalents.
- Liquidated damages and statutory penalties.
- Attorneys' fees, both in the event the misclassified worker is the prevailing party in litigation against the company, as well as the company's attorneys' fees for having to defend a misclassification claim.

Moreover, wrongful classification of a worker as an independent contractor opens the door for potential exposure under common employment-related statutes, including: (a) reasonable accommodation and return-to-work benefits under the federal Americans with Disabilities Act of 1990 (ADA) and its state equivalents; (b) rights to job-protected leave arising under the federal Family and Medical Leave Act of 1993

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(FMLA) and its state equivalents; and (c) protection under the federal Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act of 1967 (ADEA), and their state equivalents.

If an employer fails to complete a Form I-9 for a worker who is misclassified as an independent contractor, the employer faces potential fines and penalties under the federal Immigration Reform and Control Act of 1986 (IRCA).

Additionally, if an employer misclassifies a worker as an independent contractor, such misclassification will directly impact the employer's compliance obligations under the federal Affordable Care Act (ACA) and its exposure to related penalties.

Independent Contractor Tests

No single test exists to evaluate independent contractor status for all purposes. Compliance is complicated by the fact that different tests may apply depending on the jurisdiction where a worker is located as well as the purposes for which a classification determination is made. Because there is not a single test for independent contractor status, widely varying results can occur. For example, a worker may be considered an independent contractor for some purposes and an employee for others and courts applying the same test to the same position may arrive at different results.

With that said, most of the tests for independent contractor status share common characteristics, including an analysis of the degree of control the company has over the manner and means by which the worker accomplishes the work.

Federal Law

Under federal law, various tests are used depending on the purpose of the

classification. For example, the Fair Labor Standards Act (FLSA) uses the "economic realities" test to determine if an employment relationship exists. No single factor is determinative, although a court will analyze the totality of the parties' relationship to determine whether the economic realities of the relationship are such that the worker is dependent on the company. More specifically, a court

will evaluate:

- the degree of control the company has over the worker performing the services, including the company's right to control, even if unexercised;
- the permanency of the parties' relationship;
- the worker's opportunity for profit and loss;

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Papillion city staff appointed, promoted to new roles

Stursma appointed to oversee community development

Papillion Mayor David Black appointed Mark Stursma to the role of Deputy Administrator of Community Development during a May 3 Papillion City Council meeting.

The position oversees the Planning and Building Departments and is responsible for ensuring the quality and compatibility of new development and redevelopment in Papillion's jurisdiction. The position also serves as a liaison to outside stakeholders navigating the city's processes associated with development.

"This position is vital to effectively and responsibly managing Papillion's continued growth," Mayor David Black said. "Mark's talent and skill set has been instrumental in guiding our community's development up to this point. His new role will continue to ensure the City of Papillion's future development is on the right track."

Stursma has worked for the City of Papillion for 18 years. Overall, he has had a 28-year career in the field of planning and development, including a variety of experience working in both the public and private sectors.

Gibbons promoted to Planning Director

To backfill Stursma's previous role, Travis Gibbons has been promoted to the role of Planning Director. Gibbons has served as Assistant Planning Director for the City of Papillion since 2017. He has 20 years of experience in the planning career field. Before joining the City of Papillion, he was previously a city planner and flood plain manager for the City of Omaha and the planning administrator for the City of Fort Pierce, Fla. He is also



Papillion Mayor David Black (left) swears in Mark Stursma as Deputy Administrator of Community Development (right). Next to Mayor Black is Travis Gibbons, Planning Director, and Alex Evans, Deputy Public Works Director/City Engineer. Photo courtesy of City of Papillion.

a graduate of the City of Papillion Leadership Program.

"Travis brings solid knowledge and experience to his new role as Planning Director," Mayor David Black said. "I have full confidence that he will continue to maintain the department's high standards, which ultimately leads to a high quality of life for our residents."

Evans promoted to Deputy Public Works Director/City Engineer

Alex Evans has been promoted to Deputy Public Works Director/City Engineer. The position is responsible for the daily operation of the Papillion Public Works Engineering Division and is responsible for the planning and implementation of public in-

frastructure expansion and the engineering oversight of the repair and replacement of public infrastructure, including city streets and water and sewer infrastructure.

Evans has worked in the engineering field since 2008. He has served as the Deputy City Engineer for the City of Papillion for three years and was previously a civil engineer in Burns & McDonnell's Water Group. Evans also is a graduate of the City of Papillion Leadership Program.

"Alex is well equipped for his new role and will continue Papillion's reputation for high-quality, well-maintained city infrastructure," Mayor David Black said. ■

Source – City of Papillion

Ehler becomes Minatare's first female fire chief

Brandi Ehler has a moment that splits her life into a before and after – the summer of 2013, when her house in Melbeta burned down. “Our community is amazing,” she said. “They helped us out so much that I figured the least I could do to give back was join the fire department.”

In the aftermath, she joined the volunteer Minatare-Melbeta Fire Department, climbing the ladder to emergency medical technician, a lieutenant, a safety officer, search and rescue diver and assistant chief to Brian Lore.

Now, after seven years, she is the fire chief and the city's first woman to hold that position, after Lore stepped down last November.

Didn't expect to fight fires

Ehler grew up south of Lyman – a farm kid, who didn't anticipate fighting fires in adulthood.

“I never expected to get where I got. It was a big surprise,” she said. She oversees a combined rural and city fire district spanning just over 300 square miles. It covers all of Minatare, McGrew, Melbeta, a portion of Banner County and a part of Sioux County.



Brandi Ehler, Minatare Fire Chief. Photo courtesy of the City of Minatare.

It also includes the town's namesake, Lake Minatare, the Panhandle's largest body of water. That's a lot of ground to cover.

“The nice thing is we have what's called a mutual aid agreement. So we work a lot with other fire departments. If we ever have a major call, we can depend on them,” she said.

10 volunteers in department

She has 10 volunteers in the Minatare-Melbeta department, with only three EMTs currently on the force. She now works as an EMS instructor and hopes to get two more people certified. She said it's hard to get people interested in working for free.

“It's not just us – a lot of departments are struggling with recruitment,” she said.

It's not an easy job, she added. There are plenty of midnight calls and she wants to keep the small force from burning out and hopes to push for more recruitment and trainings this year.

She isn't the only woman on the force. She inspired her daughters, Ashlee Wells, 19, and Lashae Ehler, 20, to join as well.

The pay is \$150 a month and the hours are long. Ehler also has her own business, Building Blocks day care in Gering, which means she has some flexibility to try to get to every call.

COVID effects

She said, like everyone else, COVID impacted the department's operation. “It changed the whole lifestyle of our class. We mask just like everybody else, we're trying to protect our people from getting sick,” she said. “It has really hampered our trainings.”

Ehler said training is a core part of her mission at the station, saying that wildfire season this year could be grim if drought conditions worsen, which could spawn another incident like the days-long fire that burned 4,000 acres in the Wildcat Hills. ■

Source – City of Minatare



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The U.S. Supreme Court. Photo by Bill Chizek, iStock Photo.

Boston loses third-party SCOTUS case

BY LISA SORONEN
EXECUTIVE DIRECTOR
STATE AND LOCAL LEGAL
CENTER

In *Shurtleff v. City of Boston* the U.S. Supreme Court held unanimously that Boston's refusal to fly a Christian flag on a flagpole outside city hall violated the First Amendment. The State and Local Legal Center (SLLC), in an amicus brief, argued the First Amendment wasn't violated.

On the plaza, near Boston City Hall entrance, stand three 83-foot flagpoles. Boston flies the American flag on one (along with a banner honoring prisoners of war and soldiers missing in action) and the Commonwealth of Massachusetts flag on the other. On the third it usually flies Boston's flag.

Since 2005, Boston has allowed third parties to fly flags during events held in the plaza. Most flags are of other countries, marking the national holidays of Bostonians' many countries of origin.

Third-party flags also have been flown for Pride Week, emergency medical service workers and a community bank.

Camp Constitution request

When Camp Constitution asked to fly a Christian flag, Boston refused – for the first time ever – citing Establishment Clause concerns. The flag has a red cross on a blue field against a white background.

Camp Constitution sued arguing that Boston opens its flagpole for citizens to express their views in which case it can't refuse to fly Camp Constitution's

flag based on its (religious) viewpoint. Boston argued it “reserved the pole to fly flags that communicate governmental messages” and was “free to choose the flags it flies without the constraints of the First Amendment's Free Speech Clause.”

First Amendment applies

The Supreme Court held that Boston's flag-raising program doesn't constitute government speech, meaning the First Amendment applies and it couldn't reject Camp Constitution's flag based on its viewpoint.

Justice Breyer, writing for the majority, noted that “[t]he boundary between government speech and private expression can blur when, as here, a government invites the people to participate in a program.” Conducting

Continued on page 13

Continued from page 12

a “holistic inquiry” which considered “the history of the expression at issue; the public’s likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression,” he didn’t find government speech.

According to the court, the “general history” of flying flags “particularly at the seat of government” favors Boston. But “even if the public would ordinarily associate a flag’s message with Boston, that is not necessarily true for the flags at issue here” where “Boston allowed its flag to be lowered and other flags to be raised with some regularity.”

While neither of these two factors

resolved the case, Boston’s record of not “actively control[ing] these flag raisings and shap[ing] the messages the flags sent” was “the most salient feature of this case.” Boston had “no written policies or clear internal guidance – about what flags groups could fly and what those flags would communicate.”

While the SLLC amicus brief argued that Boston’s third-party flag program was government speech, it acknowledged the Court might not agree and asked for “clear guidance on how they may avoid creating such a forum while still flying third-party flags.” Justice Breyer obliged writing: “Boston could easily have done more to make clear it wished to speak for itself by raising

flags. Other cities’ flag-flying policies support our conclusion. The City of San Jose, Calif., for example, provides in writing that its ‘flag-poles are not intended to serve as a forum for free expression by the public,’ and lists approved flags that may be flown ‘as an expression of the city’s official sentiments.’”

Daniel L. Bromberg and Shelby L. Dyl of Pillsbury Winthrop Shaw Pittman wrote the SLLC amicus brief, which the following organizations joined: National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, and International Municipal Lawyers Association. ■

500+ local leaders from all 50 states sign NLC letter to Congress urging immediate action to prevent gun violence

In June, the National League of Cities (NLC) sent a letter to members of Congress urging them to enact stronger laws that keep guns out of the hands of violent individuals and support stronger mental health systems. The letter was signed by more than 500 mayors, council members and other local elected officials from all 50 U.S. states, Puerto Rico and the District of Columbia. Signers of the letter included Democrats, Republicans and Independents.

“The status quo isn’t working,” said NLC President Mayor Vince Williams of Union City, Ga. “Congress must enact stronger laws that keep semi-automatic, assault-type weapons out of the hands of dangerous people seeking to do harm. There are widely supported practices like expanded criminal background checks that must be enacted without delay. Public safety and Second Amendment rights

needn’t be mutually exclusive.”

Local leaders see the horrific impact of gun violence on their residents firsthand. While action at the local level is important, federal action also is needed and long past due.

Consistent with the NLC’s National Municipal Policy, which consists of consensus-driven federal policy positions crafted and approved by the bipartisan membership, the letter calls on Congress to quickly enact stronger laws that keep guns away from individuals who intend to commit violence, as well as support stronger mental health systems in part by:

- Shutting down the illegal sale and distribution of firearms and gun trafficking;
- Requiring a waiting period of up to 30 days for the purchase or transfer of all guns so that local police agencies may check the criminal and mental health status

of purchasers;

- Banning the manufacture, sale, importation or transfer of all automatic and semi-automatic assault-type weapons;
- Requiring the Department of Justice to work with state and local law enforcement to aggressively target and hold accountable licensed and unlicensed individuals who break the law by knowingly selling or transferring firearms or ammunition to prohibited persons, gun traffickers or straw purchasers;
- Helping state and local governments enact extreme risk protection orders, known as red flag laws;
- Requiring every state to include people who have been adjudicated as mentally ill or have been committed to any mental

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Granary Green. Photo courtesy of City of Ralston.

\$30 million Granary District Project unveiled in Ralston

U.S. Rep. Don Bacon touts Economic Opportunity Zone impact; County Commissioner Jim Cavanaugh announces ARPA funds for project

The Venues at the Granary and the Granary Green, part of the \$30 million project in the heart of Ralston's Granary District, was officially unveiled in May.

"The Granary District was founded on a vision of entrepreneurship that creates jobs and growth in Ralston and the Omaha metro while respecting the small-town values of the Ralston community," I See It Ventures Founder and CEO Gordon Whitten said at a press conference and ribbon-cutting ceremony.

"Ralston is a place that celebrates the occasions that bring people together. The district's Venues event space was designed for wedding receptions, graduations and business gatherings. The Granary Green will host outdoor concerts and community events and function as a public park when it's not hosting events, making it the perfect civic gathering spot that everyone can enjoy.

"Together, the Venues and the Granary Green comprise a unique, versatile three-season outdoor venue and in-

door event space that is already being touted as the Metro's premier wedding and event space.

"We have always envisioned the Granary District as a place where long-time and new Ralston residents and emerging entrepreneurs and business owners come together. Our vision is coming to fruition," Whitten said.

"It's a unique project for everyone to enjoy and we couldn't have done it without the support of Congressman Bacon, Commissioner Cavanaugh,

Continued on page 15

LIGHT's partnership with BCBSNE and Mutual of Omaha

Continued from page 5

BACKGROUND:

For several years, **Shirley Riley**, League Membership Services Director, has spent countless hours participating in meetings with experienced service providers and legal counsel at Cline Williams as we researched and strategized on how to develop a successful League health plan for full-time municipal employees. The League initiated meetings with several brokers and agencies while others periodically contacted us about the League sponsoring such a program with them. Notwithstanding, “the stars finally aligned” in November 2021 as we participated in numerous meetings organized by **Dennis Maggart** of McInnes Maggart Consulting Group, LLC with **Ron Rowe**, Chief Revenue Officer of Blue Cross Blue Shield Nebraska (BCBSNE). Dennis has worked with the League for decades presenting sessions and updates at League conferences and meetings on the Affordable Care Act and other healthcare-related issues. Dennis also is a consultant for the Nebraska Association of County Officials’ AHP with BCBSNE.

On Jan. 26, 2022, the League Executive Board approved a staff recommendation authorizing the League staff to email an initial survey to League

members relating to the healthcare of municipal employees. **League President Paul Lambert**, Mayor of Plattsmouth, emailed a survey to all League members on Feb. 3, 2022, announcing the League had been collaborating for several months with representatives of BCBSNE to explore the feasibility of developing a **fully insured League health plan for full-time municipal employees!** League members were asked to complete the survey by no later than Feb. 11. **Thanks to municipal clerks and others, there was an overwhelming response to the League’s survey!**

President Lambert emphasized that the initiative to form an AHP was in response to consistent requests by municipal officials for the League to establish such a program. In addition to discussions with **Ron Rowe**, **Cortney Ray**, **Laura Rogge**, **Christa Hofferber** and **Sue Warner** of BCBSNE, others partnering with the League to establish an AHP for municipal employees include: 1) **Michelle Sitorius**, **Andy Barry** and **John Zimmer** of Cline Williams; 2) **Dennis Maggart** and **Jane Limbach** of McInnes Maggart Consulting Group, LLC; 3) **Brett Condie** of Mutual of Omaha; and 4) **Jim Daubert** of First Concord.

Due to the response from the initial survey and steadfast leadership of

President Lambert, the League Executive Board unanimously passed on a roll call vote the following motion on April 4, 2022: “*Subject to consideration and ultimate approval by the Nebraska Department of Insurance: a) for the League to move forward with gathering more information from League members for the establishment of an Association Health Plan (AHP) underwritten by Blue Cross Blue Shield; and b) to negotiate contracts (subject to approval by the League Officers and/or the League Executive Board) with McInnes Group, Inc., Blue Cross Blue Shield, Mutual of Omaha and other service providers, as necessary.*” ■

NLC urges action on gun violence

Continued from page 13

institution to be registered as a prohibited person in the national instant criminal background check system;

- Establishing a national commission that consists of federal, state, and local officials, gun rights advocates, survivors of gun violence, law enforcement officials and medical and mental health providers to recommend legislative solutions aimed at reducing gun violence;
- Ensuring that all Americans have access to adequate physical and mental health care, including mental health parity and the provision of comprehensive services to address mental health needs for persons with general mental health conditions, serious mental health diagnoses and substance use disorders. ■

\$30 million Granary District Project unveiled in Ralston

Continued from page 14

and Mayor (Don) Groesser,” Whitten concluded.

“This is exactly the type of project I envisioned when I supported the Tax Cuts and Jobs Act of 2017,” Rep. Bacon said. “In that legislation, we passed Economic Opportunity

Zones, which has given communities across our state and country the tools necessary to revitalize neighborhoods and create jobs. I am glad to highlight the success of that legislation to my friends at the U.S. Chamber of Commerce.” ■

Source – City of Ralston

City of O'Neill celebrates its founder

BY LARAYNE TOPP
NORFOLK DAILY NEWS

Reprinted by permission

O'NEILL – “Oh Rowan tree, oh Rowan tree, thou'lt aye be dear to me.”

A bagpiper sounded this old Celtic melody through the streets of O'Neill, leading the Irish, plus a few Irish wannabes, to the Holt County Courthouse. There they unveiled the latest addition to the town – a statue of its founder, John C. O'Neill.

According to Irish tradition, the Rowan tree provided protection against evil spirits. No evil spirits were on hand in O'Neill, however, only those who had come to celebrate a project rooted in 2017.

Led group

Similar to the magical, mythical pied piper of Hamelin, bagpiper Steve Sexton led the group of townspeople who had gathered at the Handlebend Building on Main Street to the Courthouse Square.

Sexton was accompanied by the O'Keefe Honor Guard of the Ancient Order of Hibernians, Father Flanagan Division 1, Omaha. An Irish American Fraternal Organization, the order was founded in New York City in 1836.

Wearing traditional kilts, they lent an air of charm and authenticity to the occasion, heading the procession, which included descendants of John C. O'Neill.

A native of Ireland and veteran of the American Civil War, O'Neill directed settlers, many of them of Irish origin, in 1874 to the Elkhorn Valley site that now bears his name. He died and was buried in Omaha when only 43 years old.

The Omaha Hibernians place a



Sculptor Herb Mignery thanks those who contributed to the John O'Neill Sculpture project. Photo by LaRayne Topp of the Norfolk Daily News. Reprinted by permission.

wreath on his grave every year on St. Patrick's Day, said their president, Tim Lonergan. It was only fitting then, that they drive three-and-a-half hours to take part in the O'Neill celebration.

Few photos exist

Few photographs of O'Neill exist, and those that do, were copied a number of times from varying views and impressions. However, sculptor Herb Mignery was able to use those when creating the new bronze statue.

Mignery said he was honored to be commissioned to create the new statue. The request came initially from Lois Schaffer, 93, past Mayor of O'Neill. She had toured the Mignery Sculpture Garden and its 39 western bronzes, all designed by Herb Mignery, on the grounds of the Wheeler County Courthouse in Bartlett.

“Why don't we get something like

that for O'Neill?” Schaffer said to Natalie Butterfield, president of the Fenian Women's Auxiliary, the name of which derives from a legendary band of Irish warriors.

“If you say something like that to Natalie, it's like a bomb going off,” Schaffer said.

Both knew that Mignery should be the one to create a statue of John O'Neill.

Project underway

Butterfield contacted Mignery and the project was soon underway. Schaffer began by directing memorials given at the death of her late husband to the \$60,000 project. Fundraising efforts, severely curtailed by the COVID pandemic, were boosted with a \$25,000 tourism grant awarded through the Holt County Visitors Committee.

Continued on page 17

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In addition, 508 inscribed bricks were sold, forming a plaza for the sculpture. Orders for bricks came from 28 states, as well as Canada, England and, of course, Ireland.

Plaza formed backdrop

The plaza formed a backdrop for the afternoon's program as Schaffer unveiled the bronze. Three of John O'Neill's descendants were among those present: Siblings Ellen Messinger and Dana Messinger, both of California, and Grete Phillips of Kansas. Only Phillips had visited O'Neill before. All their lives, the three had heard about O'Neill and his exploits, primarily from their grandmother, Grace Margaret O'Neill, a granddaughter of John O'Neill.

"We talked about him all the time," Ellen Messinger said. "It's nice to actually walk the ground where he did.

We now have a real sense of belonging, knowing where our people came from."

In addition to Mignery's and Butterfield's remarks during the program, other speakers included Bill Tielke, chairman of the Holt County Board of Supervisors; and Pam Miller, vice president of the Fenian Women's Auxiliary.

O'Neill Mayor Scott Mennish gave an invitation to the family of John O'Neill to "come back often."

Ended with Irish music

As the day began with the sound of bagpipes, it ended with Irish music by Danny Leger and the Omaha band Easter Rising. In between, vocalist Kay Carraher Stepp gave those in attendance an old and melodic Irish blessing.

"May the road rise to meet you," she sang. "May the wind be always at your

back and may the sun shine warm upon your face."

John C O'Neill is buried at the Holy Sepulchre Cemetery in Omaha. ■

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Atkinson redesigns city website, creates mobile apps

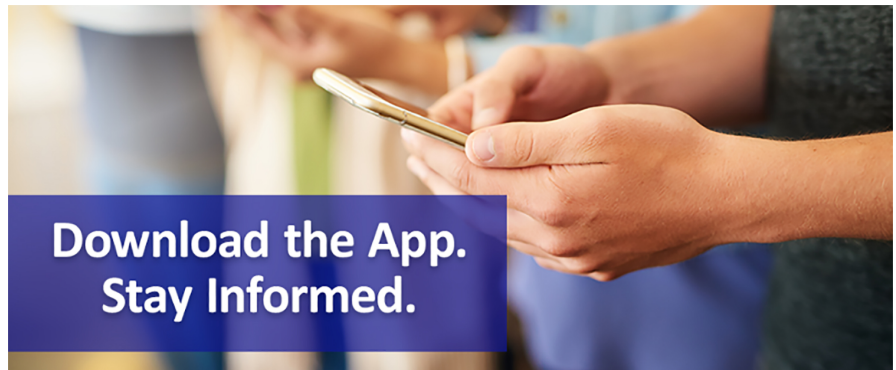
The City of Atkinson in May launched its new website as well as mobile apps for both iPhone and Android smartphones. The website address has stayed the same – www.atkinsonne.com.

The City of Atkinson mobile app can be downloaded from the Apple App Store or Google Play Store. Once downloaded, users can access the website, view current news, check out the calendar of events, pay their utilities bill, sign up for push notifications for important or urgent details and connect to the city’s Facebook page. Users also will be able to easily contact the city as well as report a concern.

‘Working hard’

“We have been working hard for the past few months to redesign the website and we will be making additions over the course of the next several weeks and months,” said Amanda Sindelar, City of Atkinson Economic Development Director. “The site will continue to evolve and keep you up to date on important activities and information. We are excited to tell you that the new website is adaptable for viewing on mobile devices. The site also is ADA compliant so that all our viewers can easily access the website.”

SOCS web platform and city staff



designed the new website. According to SOCS, their themes have been tested to comply with all accessibility standards.

Community survey

The City of Atkinson Economic Development office brought the Entrepreneurial Community Activation Process (ECAP) led by the Nebraska Extension to the community last summer to help identify priorities and actions for the future. This included a community survey, which was completed by more than 130 people.

“While reviewing the survey results, it came to our attention that many of our residents wanted more options to be able to stay connected with the

City of Atkinson’s activities and to learn about community information,” Mayor Paul Corkle said.

Variety of tools

Of those who responded, 73 percent preferred to learn about community news and announcements through the newspaper, 69 percent on Facebook and 55 percent on the community’s website.

“Four in 10 of the respondents believe Atkinson uses a variety of tools for communication to keep citizens in the loop,” Mayor Corkle said. “The city council and I thought we could do better and voted to redevelop our website.” ■

Source – City of Atkinson

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Municipal Legal Calendars also available in Clerks Newsletter

Municipal Legal Calendars are available in the *Nebraska Municipal Clerks Newsletter* in addition to the *Nebraska Municipal Review*. ■

See professional directory on pages 26-27

‘Wastewater epidemiology’ helping to track spread and prevalence of COVID-19

Omaha, Lincoln, 11 other communities report data to the state

BY PAUL HAMMEL
NEBRASKA EXAMINER

Reprinted by permission

LINCOLN – Call it “CSI of the sewers,” but public works employees in Lincoln, Omaha and at least 11 other Nebraska communities are conducting surveillance of city wastewater to track the incidence of COVID-19.

The testing is a relatively new thing in the world of public health and is giving epidemiologists and other health officials a new tool to track the spread of the coronavirus and decide best strategies to deal with it.

Scott Holmes of the Lincoln-Lancaster County Health Department said a rise in COVID-19 in wastewater has been an early warning that an increase in positive tests is coming in the community.

“It’s an additional test that gives us a little better heads up” on what’s ahead, Holmes said.



This machine pulls a sample of Lincoln’s wastewater every 30 minutes, which is then shipped to a lab in Massachusetts to determine the extent of COVID-19 virus in the city.

Pictured is Todd Boling, supervisor of the Theresa Street Wastewater Treatment Plant. (Paul Hammel/Nebraska Examiner) Reprinted by permission.



Lincoln’s Theresa Street Wastewater Treatment Plant is one of 13 across the state participating in a surveillance program for COVID-19. (Paul Hammel/Nebraska Examiner) Reprinted by permission.

He was among Lincoln officials who conducted a tour to explain how samples are drawn at Lincoln’s Theresa Street Wastewater Treatment Plant, which is located along the Salt Creek near 27th and Cornhusker.

For the past year in Lincoln, a machine at the treatment plant has drawn a sample from incoming wastewater every half hour.

Every day, a 5-liter jar of wastewater is removed from a refrigerated storage area on the machine.

Lab in Massachusetts

Then, three 50-milliliter vials of liquid are drawn off and shipped overnight every Tuesday to a testing lab, Biobot Analytics, in Cambridge, Mass. That firm was co-founded by a Massachusetts Institute of Technology (MIT) student interested in the po-

tential of “wastewater epidemiology.”

By Thursday or Friday, Lincoln health officials said they have a report back on how prevalent the COVID virus is in the capital city’s wastewater.

Holmes said that since the testing began, the highest peak was in January, when COVID registered more than 3 million “viral copies” per liter of water.

More recently, there was a rise in COVID cases in April, which raised readings in Lincoln to about 713,000 viral copies. The most recent tests, though, have been in the 600,000 range, Holmes said.

Testing costs \$350 a week

The testing costs \$350 a week, or about \$18,200 a year, in Lincoln, an expense that is being picked up by federal coronavirus relief funds.

Continued on page 20

‘Wastewater epidemiology’ helping to track spread and prevalence of COVID-19

Continued from page 19

Holmes said the data is especially valuable since so many COVID cases go unreported now because of the prevalence of home tests – tests that don’t generate a report to the local health department. Also, a person who becomes infected and does not show symptoms may not report.

He said the Lincoln-Lancaster County Health Department looks at five other factors besides the wastewater test findings to determine the local response. Those include positive tests, the positivity rate, hospital usage and COVID deaths.

Holmes said it was difficult to esti-

mate the percentage of unreported cases, but one study found that for every COVID case reported, three to five may not have been.

State has surveillance program

The Nebraska Department of Health and Human Services, in collaboration with the University of Nebraska-Lincoln and University of Nebraska Medical Center College of Public Health, began issuing statewide “surveillance reports” every week around the first of the year from 15 testing sites in 13 communities.

The state also is tracking the mutation and evolution of COVID-19 through “genomic” testing to determine which variants are present in Nebraska.

All the reporting stations showed spikes in coronavirus cases in early to late January, with some showing slight increases in April.

The cities participating in the test-

ing, besides Lincoln and Omaha, are Atkinson, Chadron, Columbus, Fremont, Norfolk, Grand Island, Kearney, Hastings, North Platte, Scottsbluff and Wayne. ■

See the Nebraska Examiner at <https://nebraskaexaminer.com/>

Gering voters approve sales tax increase

During the May 10 primary election, Gering voters approved a proposal to increase the sales and use tax from 1.5 percent to 2 percent beginning Oct. 1. The increase will last for a decade and will be used to fund infrastructure projects, particularly sewer lines, roads and water mains. The proposal passed by a margin of 827-658 votes. ■

Source – Area news reports

Online Nebraska statutes updated

The Nebraska statutes on the Legislature’s website have been updated to reflect legislation passed during the 2022 legislative session.

The statutes are available at <https://nebraskalegislature.gov/>. ■

Share news from your city or village

Share your city or village’s news with fellow municipal officials across the state by sending information for the *Nebraska Municipal Review* to the League of Nebraska Municipalities, Attn: Lynn Marienau at 1335 L Street, Lincoln, NE 68508, 402-476-2829 by phone, 402-476-7052 by fax, or lynnm@lonm.org by e-mail. ■

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LARM – Security camera guidelines

BY DIANE BECKER
COMMUNICATIONS/MARKETING
DIRECTOR, LARM

Many organizations are using security cameras in their public spaces, but they may not have a good policy in place concerning their use. Security cameras are reasonably inexpensive, easy to install and can be placed anywhere there is a somewhat strong WIFI signal. Before installing security cameras, there are some essential questions to consider. Answers to these questions can be a good start for establishing the purpose and use of security cameras.

What are the reasons for putting up the cameras? It's appropriate if the purpose for putting up security cameras is for the safety of citizens and the protection of public property. Vandalism and theft are real concerns in any community and cameras are an important key to identifying and preventing perpetrators.

Do people need to know they're being recorded? It can be helpful, but it's not required to have signage informing people that security cameras are in use.

Who will have access to the camera footage? Before installation, the decision should be made as to who will be allowed to view the camera footage. Only authorized persons should be able to view what has been recorded. No footage should be released by anyone other than the authorized persons.

How long should the footage be stored? Keeping footage for six months or longer may be useful, but at least 30 days is a good policy for storing the recorded data. Stored footage can amount to a lot of data if there is continuous recording 24/7. Many cameras are activated by motion, so the footage may be edited to delete clips when the camera has recorded a passing cat or blowing leaves.

Where can cameras be located? Cameras should not be placed in areas



PhonlamaiPhoto

that would threaten a person's right to privacy. Cameras can be placed in public reception areas, entrance doors and other areas open to the public.

Should cameras be used to monitor employees? Security cameras should not be used to monitor employees' activities. Ensure employees that the cameras will not be used to measure productivity.

Security cameras are a valuable tool for even small organizations and, when used properly, can prevent losses and deter criminal activity. ■

Directory of Municipal Officials

Position/Information Changes

Municipality	Title	Delete	Add
Dakota City	Administrator/Clerk/Treasurer	Jason Allen	Robert Kratky
Kearney	Assistant City Manager	Eric Hellriegel	Brenda Jensen
Loup City	Clerk/Treasurer	Jami Spotanski	Corrie Badura
	Deputy Clerk/Treasurer	Nichelle Harrington	Tricia Kuszak
Pender	City Administrator		Pete Rizzo
Revision			
Winside	Email	vowoffice@compoint.com	vowoffice@conpoint.com
	Utility Superintendent	Kevin Cleveland	Zach Morris
	Sewage Plant Operator	Kevin Cleveland	Zach Morris
	Sewer/Water/Refuse Comm.	vacant	Scott Stenwall
	Light Commissioner	vacant	Chris Hansen

Ensuring proper classification of workers as independent contractors

Continued from page 9

- the skill required for the work;
- the relative investment in facilities; and
- the extent to which the services rendered are an integral part of the principal's business.

For purposes of claims brought pursuant to Title VII, the ADA, the ADEA and the Employment Retirement Income Security Act of 1974 (ERISA), federal courts generally use the common law test for determining whether a worker is an employee or independent contractor. The common law test has been developed through case law and focuses on principles of agency to determine the worker's status by considering:

- Skill required for the work;
- Source of supplies and tools;
- Location of the work;
- Duration of the parties' relationship;
- Hiring party's right to assign additional projects to the hired party;
- Extent of the hired party's discretion over when and how long to work;
- Method of payment;
- Hired party's role in hiring and paying assistants;
- Regular business of the hiring party and if the work performed is part of that business;
- Hiring party's status as being in business;
- Provision of employee benefits; and
- Tax treatment of the hired party.

See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992). The National Labor Relations Board (NLRB) also uses the common law test set forth above in determining

whether an individual is an employee or independent contractor pursuant to the National Labor Relations Act (NLRA) (note that the NLRB is currently considering changing the standard for determining if a worker is properly classified as an independent contractor or an employee under the NLRA).

The factors that gave rise to the U.S. Supreme Court's standard in *Darden* also are found in the Restatement (Second) of Agency § 220, which is frequently considered by courts in determining whether a worker is properly classified as an independent contractor under the common law. The Restatement identifies the following factors:

- The extent of control which, by the agreement, the company may exercise over the details of the work;
- Whether or not the employee is engaged in a distinct occupation or business;
- The type of occupation, and whether the kind of job is usually done under the direction of a company or by a specialist without supervision;
- Skill required in the particular occupation;
- Whether the company or the worker supplies the instrumentalities, tools and place of work;
- Length of time for which the worker is engaged;
- Whether payment is made by the job or based on the worker's time spent on the job;
- Whether the work is part of the company's regular business;
- Whether the parties believe they are creating an employment relationship; and

- Whether the company is in the same business as the worker.

Nebraska Law Regarding Independent Contractors

As a general matter, for purposes of vicarious liability, workers' compensation and discrimination claims, Nebraska employs a common law test that considers the factors set forth above. In *Haag v. Bongers*, 256 Neb. 170 (1999) (evaluating status of worker for purposes of vicarious liability), the Nebraska Supreme Court stated that 10 factors are to be considered in determining whether a worker is an independent contractor or an employee:

- The extent of control which, by the agreement, the employer may exercise over the details of the work;
- Whether the worker is engaged in a distinct occupation or business;
- The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- The skill required in the particular occupation;
- Whether the employer or the one employed supplies the instrumentalities, tools and the place of work for the person doing the work;
- The length of time for which the one employed is engaged;
- The method of payment, whether by the hour or by the job;
- Whether the work is part of the regular business of the employer;
- Whether the parties believe they are creating an agency relation-

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ship; and

- Whether the employer is or is not in business.

Haag, 256 Neb. at 190 (citation omitted). The Nebraska Supreme Court has reiterated that “[t]he right of control is the chief factor distinguishing an employment relationship from that of an independent contractor.” *Mays v. Midnight Dreams, Inc.* 300 Neb. 485 (2018).

For purposes of Nebraska’s unemployment and wage laws, Nebraska statutorily defines an independent contractor as any person who:

- is free from control and direction in how the person performs the services;
- performs services that are outside either the usual course of business for the company; or the place of business of the company;
- is customarily engaged in an independently established business related to the service performed.

NEB. REV. STAT. §§ 48-604(5), 48-1229(1).

Best Practices to Minimize Risk

Given the significant potential risks associated with misclassification of independent contractors, below is a list of proactive steps to reduce potential liability with respect to workers.

First, audit current worker classifications to determine if they comply with applicable federal and state laws. Consider whether to seek a determination and ruling from the IRS on worker classification issues. The IRS allows companies to request a determination regarding a worker’s status, upon which a company can rely as evidence of proper classification for federal tax purposes. However, the company should take into consideration that an

IRS ruling that a worker is actually an employee is also conclusive.

Second, draft independent contractor agreements that comply with applicable law, documenting the rela-

tionship between the company and the applicable independent contractor and ensuring that the company’s practices comply with the contractual language

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Ensuring proper classification of workers as independent contractors

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regarding the relationship between the parties.

Third, structure contemplated worker relationships to maintain a proper independent contractor classification, including:

- To the extent practicable, have the worker work from a location separate and apart from the company.
- Require workers to provide their own equipment to perform the services.
- Even if the worker cannot practicably contract with other companies, it should be made clear in the independent contractor agreement and the company's practices that such workers are *permitted* to contract with other companies. The company should not restrict a worker from working for or interacting with the company's competitors or otherwise sanction such workers for pursuing economic opportunities with other companies.
- The longer the relationship between the company and each individual worker, the more likely such a relationship will be considered an employer/employee relationship. The company should avoid indicia of perma-

nence regarding its relationships with workers.

- The company cannot control the means or methods by which the workers perform the work. Additionally, the company should not: (i) require training on a specific method of performing the work; (ii) discipline the workers for performance issues; or (iii) subject the workers to performance reviews. While the company can require the workers to abide by its conduct policies while performing the work or when they are on its premises, the company's remedy for inadequate work performance by a worker should be to simply terminate or not renew the parties' contract.
- It is more likely that workers will be deemed independent contractors if they are compensated on a per project or flat-fee basis. Payment of a worker on an hourly basis tends to indicate an employer/employee relationship because it denies the worker an opportunity for profit or loss as it relates to the work. Although independent contractor status can be found where the worker is not solely in control of their profits or losses, it is more likely to be found where the worker: (i) has the opportunity for additional compensation based on the exercise of initiative, judgment, or foresight; (ii) has flexibility to renegotiate compensation throughout the working relationship; or (iii) has capital expenditure at risk in the job.
- Require the independent contractor to provide confirmation

of their coverage under their own worker's compensation insurance.

Fourth, train management and human resources employees on classification issues, including those who interact directly with independent contractors to reduce the possibility that the company's internal practices will undermine potential defenses against allegations of misclassification.

Finally, if misclassifications of workers are found, promptly correct such misclassifications to reduce the risk of liability or litigation.

Conclusion

Above all, it is important to remember that actual facts trump labels. Merely because a worker is dubbed an "independent contractor" does not make them so. In light of increased government monitoring of the workforce to ensure proper classification of workers, companies should apply increased scrutiny to arrangements engaging workers on an independent contractor basis. In these circumstances, companies must be particularly cognizant of the rules governing proper classification of workers, the legal risks associated with misclassification and the steps necessary to minimize risks associated with misclassification. ■

Editor's Note: This article is not intended to provide legal advice to its readers. Rather, this article is intended to alert readers to new and developing issues. Readers are urged to consult their own legal counsel or the author of this article if they wish to obtain a specific legal opinion regarding their particular circumstances. The authors of this article, Tara A. Stingley and Lily Amare, can be contacted at Cline Williams Wright Johnson & Oldfather, L.L.P., 12910 Pierce Street, Suite 200, Omaha, NE 68144, (402) 397-1700, tstingley@clinewilliams.com, lamare@clinewilliams.com, or www.clinewilliams.com.

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Positions

City Administrator. City of Gibbon is seeking qualified candidates for position of city administrator.

Gibbon is a progressive community experiencing steady and sustainable growth. Basic economic activities include manufacturing, retail, agriculture, and transportation. Gibbon is a City of the Second Class with a Mayor-Council form of government. With a population just under 2,000, Gibbon offers an excellent workforce, high quality of life and low cost of living. Friendly citizens, local businesses, parks, ball fields, swimming pool, public library, heritage center, volunteer fire and rescue squad, K-12 public school, churches, and nearby municipal golf course, Windmill State Recreation Area and Rowe Sanctuary all combine to make Gibbon an excellent place to live, work and play.

City administrator directly oversees the following departments: city hall, wastewater, streets, parks & recreation, cemetery, code enforcement, zoning, and finance, with an annual operating budget of \$9 million. Staff consists of 10 full-time employees, supplemented by part-time and seasonal employees, and professional service consultants and providers in the areas of law enforcement, legal, engineering, and economic development.

Qualified candidates should possess a bachelor's degree in Public Administration, or Business Administration, or a closely related field. Candidates should have at least 3 years of progressive municipal management experience and be familiar with all aspects of municipal operations. Ideal candidate will demonstrate excellent organization, project management, and time management skills, with an emphasis on professional team leadership, progressive attitude, effective communication, public relations, financial management and planning/development.

Applications to include resume, work and salary history, experience in municipal administration, and references should be mailed to the Mayor of Gibbon at P.O. Box 130, Gibbon, Nebraska 68840 or emailed to gibboncityhall-mayor@nctc.net. Salary dependent on experience and will be negotiated with successful candidate at the time an offer is made. Applications for Interim City Administrator also will be accepted. Position will remain open until filled. City of Gibbon is an EOE.

Positions

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Village Office, 423 St. James Ave.

Wynot, NE. Office Hours are 9 a.m. to 4:00 p.m., Tuesday, Wednesday, and Thursday.

Water Utility Supervisor. City of Kimball, NE- Water Utility Supervisor. Salary negotiable based on experience. Primarily responsible for the general operations of Water Department. Requires a high school diploma or GED and three years' experience in water related field. Applicant must have required certification of Grade 3 Water License. Must have valid Nebraska driver's license and be insurable under the City of Kimball's automobile policy. Pre-employment drug test is required. Applications and job description may be obtained at City Hall at 223 South Chestnut, Kimball, NE 69145 or at www.kimballne.org. Please submit resume and applications to Mayor Prunty, 223 South Chestnut, Kimball, NE 69145. Applications will be accepted until position is filled. EOE.

Village Maintenance Supervisor. Village of Niobrara is accepting applications for full-time Village Maintenance Supervisor. Applicant must possess or be able to attain a Grade IV water license, a wastewater management license for lagoons and a Class B CDL. Responsibilities include: water and sewer operations, street cleaning and repair, mowing, maintenance of village properties and equipment, snow removal, tree dump maintenance and other duties as assigned. Salary negotiable DOQ. A complete job description and application available at Village Office or by contacting Village of Niobrara, PO Box 447, Niobrara NE 68760 or nioccc@gpcom.net. Position opened until filled. EOE

Public Works Facilities and Maintenance Assistant Director (with intentions of succession into the Facilities and Maintenance Director position).

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Positions

city's public work functions while training under the direct supervision of the current Director prior to their retirement. This is an advanced professional position that requires knowledge and comprehension of municipal infrastructure operations; supervisory experience; ability to apply engineering practices/principles; reporting requirements of various federal, state, and local regulations. State of Nebraska certifications in water and wastewater management will be required but can be acquired during employment.

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Please deliver completed applications and resumes to Hickman City Hall. Screening process begins immediately; position open until filled.

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