

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

IN THE MATTER OF THE REMOVAL FROM OFFICE OF  
MARK SPLONSKOWSKI, BURLEIGH COUNTY AUDITOR / TREASURER

State of North Dakota,	)	
	)	
Petitioner,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
vs.	)	
	)	
Mark Splonskowski,	)	
Burleigh County Auditor / Treasurer,	)	
	)	
Respondent.	)	
.....	)	

[¶1] I hereby certify that on May 27, 2025, the following documents:

- A. **Petition for Removal;**
- B. **Attachments;** and
- C. **Certificate of Service**

were personally served by hand-delivery to:

Office of Attorney General  
600 E Boulevard Ave, Dept. 125  
Bismarck, ND 58505

/s/ Julie Lawyer  
Julie Lawyer  
Burleigh County State's Attorney  
BAR ID # 05693  
514 E Thayer Avenue  
Bismarck, ND 58501  
Phone: (701) 222-6672  
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STATE OF NORTH DAKOTA

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IN THE MATTER OF THE REMOVAL FROM OFFICE OF  
MARK SPLONSKOWSKI, BURLEIGH COUNTY AUDITOR / TREASURER

State of North Dakota,	)	
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Petitioner,	)	<b>PETITION FOR REMOVAL</b>
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vs.	)	
	)	
Mark Splonskowski,	)	
Burleigh County Auditor / Treasurer,	)	
	)	
Respondent.	)	
.....	)	

¶ 1. COMES NOW the Petitioner, State of North Dakota, by and through Julie Lawyer, Burleigh County State's Attorney, on behalf of the Board of Burleigh County Commissioners, and for this petition pursuant to Chapter 44-11, North Dakota Century Code (N.D.C.C.), alleges and states as follows:

¶ 2. That the Respondent, Mark Splonskowski, is a resident of Burleigh County, North Dakota.

¶ 3. That the Respondent is the current Auditor / Treasurer of Burleigh County, having been elected to this position in 2022.

¶ 4. That the Respondent is guilty of misconduct, malfeasance, neglect of duty in office, and gross incompetency which are grounds to remove him from the office of Auditor / Treasurer of Burleigh County by:

¶ 5. In July 2023, Burleigh County Auditor / Treasurer Mark Splonskowski filed a lawsuit against Erika White in her capacity as State Election Director of North Dakota. Splonskowski did not have consent or approval of the Board of Burleigh County Commissioners pursuant to N.D.C.C. § 11-11-14(1) to file said lawsuit. Splonskowski claimed he filed the lawsuit on a personal basis and not in his official capacity despite the only standing he had to file the lawsuit was due to his elected position and performance of statutory duties as the

Burleigh County Auditor and the allegations of harm made in the lawsuit were in his capacity as the Burleigh County Auditor. *Splonskowski v. White*, 1:23-cv-00123, in United States District Court for the District of North Dakota.

¶ 6. From April 2023 through April 2025, the Board of Burleigh County Commissioners have approved abatements and settlement of taxes for specific properties, thereby requiring the Burleigh County Auditor / Treasurer to issue refunds of overpaid taxes to the property owner. Refunds have been withheld for up to six weeks after they have been approved.

¶ 7. In 2024, Splonskowski, as the Burleigh County Auditor was responsible for proper administration of election procedures for the first time. In October 2024, it was discovered by the State Election Director that election equipment provided by the North Dakota Secretary of State to Burleigh County had been compromised. A media device (flash drive or thumb drive) had been introduced to a stand-alone computer that, pursuant to security processes set forth in N.D.C.C. Title 16.1, was not allowed. A replacement stand-alone computer was provided to Burleigh County but the security breach caused concern for the Secretary of State to the extent that he requested inspection of all the election equipment to ensure compliance with all security processes required by law and requested specific reporting to ensure training of election workers and post-election security processes were followed. The North Dakota Secretary of State conducted over thirty election training sessions in 2024. Splonskowski attended or partially attended nine of the thirty training sessions.

¶ 8. Splonskowski has not ensured proper handling of incoming monies into the Auditor / Treasurer's office in that a payment by the City of Bismarck for approximately \$91,000 was lost or misplaced within the Auditor / Treasurer's office after it was hand-delivered to the office.

¶ 9. Splonskowski, who is responsible for investment of Burleigh County funds has delayed investing incoming funds and/or has not properly invested Burleigh County funds resulting in a loss of investment revenue to Burleigh County and to other governmental entities.

¶ 10. Splonskowski has engaged in improper accounting practices which result in negative balances on Burleigh County accounts and improper allocation of interest earnings in accounts. Some of the accounts at issue are governed by a Joint Powers Agreement and Burleigh County is at risk of violating the Joint Powers Agreement due to improper accounting practices.

¶ 11. In October 2024, Splonskowski engaged in harassment and/or retaliation against the Burleigh County Human Resources Director (HR Director). The Burleigh County Elections Coordinator abruptly resigned on October 15, 2024. The HR Director contacted the former Elections Coordinator for an exit interview. The HR Director prepared a confidential memorandum regarding that conversation which was shared with the media. Splonskowski accused the HR Director of releasing the confidential memorandum to the media and requested an investigation despite the fact he has received confirmation from the member of the media who received the confidential memorandum that the HR Director did not release the memorandum.

¶ 12. In November 2024, Splonskowski continued to engage in harassment and/or retaliation against the Burleigh County HR Director. Splonskowski notified the Burleigh County Human Resources Team that he wished to hire a new employee following the abrupt resignation of the Elections Coordinator on October 15, 2024. Pursuant to Burleigh County policy, the HR Director, in conjunction with Splonskowski, determined the composition of the interview panel. Splonskowski disagreed with composition of the interview panel. Splonskowski, as the elected auditor and department head, made the final determination as to the hiring of the new Burleigh County Elections Coordinator. Splonskowski filed a grievance against the HR Director with the Director's subordinate employee based on the composition of the interview panel.



Splonskowski was notified the subject matter of his grievance was not an event for which he could file a grievance. Splonskowski then filed his grievance with a Burleigh County Commissioner and the matter was placed on the agenda for the December 2, 2024 meeting of Burleigh County Commissioners. Splonskowski did not provide a copy of the grievance to the Commissioners prior to the meeting and Splonskowski offered to read his grievance into the record at the meeting. The Commissioners voted to table the matter until they all received a copy of the grievance for review. Thereafter Splonskowski sent an email rescinding his grievance.

¶ 13. From January 31, 2025 through March 2025, Splonskowski failed to provide election workers with proper tax forms to enable them to file their 2024 income tax returns. Temporary workers were employed by the Burleigh County Auditor to assist in fulfilling his duties as the county's election coordinator. Those temporary workers who were required to receive 2024 W-2 Wage and Tax Statements from Burleigh County were mailed a 2025 W-2 Wage and Tax Statement on or about March 6, 2025. On or about March 31, 2025, a 2024 W-2 Wage and Tax Statement was mailed to each of the qualifying temporary election workers. W-2 forms were required to be filed with the U.S. Internal Revenue Service and sent to the worker no later than January 31, 2025. Due to these errors, Burleigh County could face penalties from the federal government of up to approximately \$42,000.

¶ 14. On at least two occasions, the County Finance Director has had to remind Splonskowski of his deadlines and obligations to ensure Burleigh County receives matching funds through state programs. On or before February 1, 2025, county auditors are required to submit an annual report on Senior Citizens Mill Levy/Match. In order to complete the report, county Senior Centers/Senior Service Centers submit their annual reports to the auditor's office by January 15, 2025 for the county auditor to compile the information into a single report to the State in order to qualify for matching grants funds from the state. The annual reports of the

individual centers were submitted and compiled into one final annual report for the auditor's signature and sent to Splonskowski on January 13, 2025. No response or filing was completed by Splonskowski by January 28, 2025 and the Burleigh County Finance Director, upon finding the completed report had been sent to Splonskowski for review and filing on January 13, 2025 but had not yet been filed, had to remind Splonskowski about his duties to ensure the report was filed in a timely manner so Burleigh County could qualify for matching state funds. The same occurred with the North Dakota Department of Agriculture's Landowner Assistance Program for the removal of noxious weeds.

¶ 15. On or about March 28, 2025, the Burleigh County Auditor's Office received approximately \$10,700,000 from the North Dakota Treasurer for primary residence credits. Pursuant to N.D.C.C. § 57-02-08.10, the county auditor "shall apportion and distribute the payment to the county and the taxing districts of the county" within fourteen day of receiving the funds. As of April 25, 2025, Splonskowski had not distributed the funds as required by law.

¶ 16. WHEREFORE, due to Splonskowski's misconduct, malfeasance, neglect of duty in office, and gross incompetency, pursuant to Chapter 44-11, N.D.C.C., the undersigned respectfully requests the following relief:

¶ 17. That the Attorney General conduct an investigation and make a recommendation to the Governor to conduct removal proceedings and suspend Splonskowski during the pendency of proceedings;

¶ 18. That upon finding it to be in the best interests of the State, that the Governor by written order, suspend Splonskowski from the performance of his duties during the pendency of the proceedings;

¶ 19. That upon suspension, the Governor immediately notify the Burleigh County Board of Commissioners that within five days after receipt of the notice of suspension, the

Commission shall appoint a competent person to fill the office of Auditor / Treasurer and perform those duties during the pendency of proceedings;

¶ 20. That the Governor appoint a special commissioner to preside over a hearing on removal proceedings, prepare a report of the proceedings, including a summary of testimony, findings as to whether any allegations were proven by a preponderance of the evidence, exhibits and evidence received, and a recommendation whether Splonskowski should be removed from office;

¶ 21. That upon completion of said hearing, that the Governor remove the Respondent, Mark Splonskowski, from the office of Burleigh County Auditor / Treasurer and direct the person appointed to the office during the suspension shall continue until the expiration of the term for which Splonskowski was elected.

¶ 22. I have read section 44-11-03, N.D.C.C., and the statements made in this petition are true and correct to the best of my knowledge.

Dated this 27<sup>th</sup> day of May, 2025.

/s/ Julie Lawyer  
Julie Lawyer, BAR ID 05693  
Burleigh County State's Attorney  
514 E Thayer Ave  
Bismarck, ND 58501  
Phone: (701) 222-6672  
E-service: bc08@nd.gov

\* A broadcast of the meeting is available for viewing at <https://reflect-dakotamediaaccess.cablecast.tv/internetchannel/show/9552?site=2>

**BURLEIGH COUNTY COMMISSION  
MEETING MINUTES  
JULY 19, 2023**

**8:38 A.M**

Chair Matthews called the regular meeting of the Burleigh County Commission to order.

Roll call of the members; Commissioners, Woodcox, Munson, Bitner, Schwab, and Chair Matthews present.

Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Bitner to approve the agenda. All members present voted, "AYE." Motion carried. Chair Matthews opened the meeting for public comment, no one appeared for public comment. Motion by Comm. Schwab, 2<sup>nd</sup> by Comm. Bitner to approve July 5<sup>th</sup>, 2023, minutes, and bills. All members present voted, "AYE." Motion carried.

The following abatements were presented for the Board's consideration; a complete copy of which are on file and available for inspection in the office of the Burleigh County Auditor/Treasurer:

Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Woodcox to approve the Mikkelsen, Wald, Rabenberg, and Jahner abatements along with the remainder of the Consent Agenda. All members present voted, "AYE." Motion carried.

City of Bismarck Planning Manager Daniel Nairn presented an update on the City of Bismarck Renaissance Zone. Bismarck's Renaissance Zone Program discontinued in July 2022; however, House Bill 1266 was signed into law, allowing Bismarck to renew the Renaissance program. The estimated results from the program was \$95,000,000 in total documented private investment, estimated \$726,000 in annual tax revenue, 250 new housing units, and 604 new full time jobs. Comm. Schwab asked if the estimated numbers included money from the former TIF district. Mr. Nairn was not completely sure to what extent they were included. The commission requested more detailed information in the formal request and asked that the letters of support included in the packet be updated.

County Planning Director Mitch Flanagan presented a request from Glenview Township to reacquire their zoning and permit authority. Flanagan suggested either denying the request or entering into a joint powers agreement with Glenview Township. Glenview Township Supervisor Steve Krants came before the Commission and stated that he would be in favor of a joint powers agreement. Comm. Bitner stated that he had concerns with the request and failed to see the benefit of a joint powers agreement. Motion by Comm. Bitner, 2<sup>nd</sup> by Comm. Schwab to deny the request. Comm. Munson, Bitner, Schwab and Chair Matthews, "AYE" Comm. Woodcox, "NAY." Motion carried. Flanagan presented a zoning change and approval of Aberle Park subdivision request. Motion by Comm. Munson 2<sup>nd</sup> by Comm. Bitner to approve the requests. All members present voted, "AYE." Motion carried. Flanagan presented the new Off Highway Vehicle ordinance. Comm. Bitner and Chair Matthews shared concerns with OHV use in the ditches, safety concerns and damage to the right of way. Motion by Comm. Woodcox, 2<sup>nd</sup> by Comm. Munson to approve the ordinance to go forward to a public hearing to hear the 1<sup>st</sup> draft. Comm. Woodcox, Munson, Bitner and Chair Matthews, "AYE." Comm. Schwab, "NAY." Motion carried.

Comm. Munson presented a request to fill an open position in the Home Rule Charter Committee, Motion by Comm. Munson 2<sup>nd</sup> by Comm. Woodcox to appoint Kay Lacoe to the position. All members present voted, "AYE." Motion carried.

HR Director Pam Binder presented a request for clarification on the action taken by the Commission on June 19<sup>th</sup>. The Commission voted to place the Deputy Finance Director onto a career path but then had unanimous consensus to readvertise the position for Finance Director. The Commission can only do one or the other because the career path includes a 36 month window to allow for certification. Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Woodcox to continue with the career path passed by the Commission and not readvertise the Finance Director position. Comm. Woodcox, Munson, and Chair Matthews, "AYE." Comm. Bitner and Schwab, "NAY." Motion carried.

County Engineer Marcus Hall presented a request from the City of Wing for ARPA funds to be used for a wastewater treatment plant. They requested \$1,100,000. The engineer for the City of Wing, Tom Klabundy and Wing Mayor Julie Hein presented before the Commission, telling the Commission more details on the project. Comm. Munson requested that the committee to determine the uses of the ARPA funds meet and present a report back to the County Commission.

County Deputy Finance Director Jusin Schulz presented the updated bidding policy with the requested definition of emergency and a referral to the approved procurement policy currently being used by the County. Motion by Comm. Bitner 2<sup>nd</sup> by Comm. Munson to approve the updated bidding policy. Comm. Bitner, Woodcox, Munson and Chair Matthews, "AYE." Comm. Schwab, "NAY." Motion carried.

Chair Matthews called for a fifteen-minute recess.

The County Commission reconvened at 10:30.

County Auditor Treasurer Mark Splonskowski presented before the Commission a statement about the lawsuit he filed against the ND State Election Director. He clarified that it was a private lawsuit done by him as an individual, and the County was not included nor involved in it. He also gave a brief explanation of the lawsuit. Julie Lawyer verified that it was a personal lawsuit and not filed in his capacity as Burleigh County Auditor. Splonskowski presented the bids received for the sale of the Bismarck Tire parking lot. JJ Hagerness renovations LLC bid \$78,100.00 with an escalation clause and RJ Holdings LLP bid \$90,100.00. Motion by Comm. Munson 2<sup>nd</sup> by Comm. Woodcox to approve the sale of the Bismarck Tire parking lot to RJ Holdings LLP for \$90,100.00. Comm. Woodcox, Munson, Chair Matthews, "AYE." Comm. Bitner and Schwab, "NO." Motion carried. Splonskowski presented the updated leases for the County Courthouse and the City County building with the City of Bismarck. The updates included changes of the rates to \$13.00 a square foot and the inclusion on janitorial services for both properties. Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Woodcox to approve the updated leases. Comm. Woodcox, Munson and Chair Matthews, "AYE." Comm. Bitner and Schwab, "NAY." Motion carried.

Deputy Finance Director Schulz presented the 2024 preliminary budget to the Commission. Auditor Splonskowski read through the recommendations that came from the budget committee. The total general fund preliminary budget for 2024 is \$35,594,973. The total expenditure budget for 2024 is \$79,460,469 compared to 2023 at \$71,250,381, for an increase of \$8,210,088. Of that amount \$2,801,812 from the special road fund is a transfer to the highway department to pay for the 66<sup>th</sup> Street overpass project and \$2,400,000 is transferred from the same account to the Highway Department. That leaves an actual

expense increase of \$3, 008,276 or 4.2%. He also gave an update on the current status of the fund balance. The Commission discussed the spending of ARPA funds for the Courthouse boiler replacement, a capitol improvement plan in order to avoid large, one-time expenditures that were uncalculated in past budgets and options to cover the portion of the budget no longer covered by the fund balance. Motion by Comm. Bitner, 2<sup>nd</sup> by Comm. Woodcox to apply the \$189,000 from ARPA funds and the proceeds from the sale of the Bismarck Tire parking lot to a Capitol planning fund. All members present voted, "AYE." Motion carried. Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Woodcox to add ½ a mil to the budget to be used for the capitol improvement fund. Comm. Bitner, Woodcox, Munson and chair Matthews, "AYE." Comm. Schwab, "NAY." Motion carried. The Commission clarified that the boiler for the Courthouse would not be added to the 2024 budget. Chair Matthews brought the following items for discussion: the proposed infrastructure, salary increase, County Administrator and Public Health increase. Comm Bitner said that he disagreed that the citizens outside the City of Bismarck made up 25% of the costs of Public Health and would not support an increase in the County's portion. Comm Bitner also stated that he would not support a 1 mil. increase for the highway department. The Commission discussed options of paying for portions of the budget through different funds. Motion by Comm. Munson 2<sup>nd</sup> by Comm. Woodcox to approve the 2024 preliminary budget and call for a final budget hearing September 20<sup>th</sup>, 2023. Comm. Woodcox, Munson and Chair Mathews, "AYE." Comm. Bitner and Schwab, "NAY." Motion carried. Chair Matthews directed staff to explore options of using the Missouri Valley Complex funds to help buy down the budget and present them to the Commission.

County States Attorney Julie Lawyer presented a draft of a letter to the Public Service Commission requesting the release of results from Carbon Summit Solutions' PLUME model. She said that she would include a request for an environmental impact study in the final letter. The Commissioners approved the letter and requested that all their signatures be included on the letter.

Meeting adjourned.

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Mark Splonskowski, County Auditor/Treasurer

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Becky Matthews, Chairman

**U.S. District Court  
District of North Dakota (Western)  
CIVIL DOCKET FOR CASE #: 1:23-cv-00123-DMT-CRH**

Splonskowski v. White  
Assigned to: Judge Daniel M. Traynor  
Referred to: Magistrate Judge Clare R. Hochhalter  
Cause: 28:2201 Constitutionality of State Statute(s)

Date Filed: 07/05/2023  
Date Terminated: 02/02/2024  
Jury Demand: None  
Nature of Suit: 890 Other Statutory Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Mark Splonskowski**

represented by **David J. Chapman**  
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V.

**Defendant**

**Erika White**  
*in her capacity as State Election Director of North  
Dakota*

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**Movant**

**League of Women Voters of North Dakota**

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**Amicus**

**United States of America**

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Date Filed	#	Docket Text
07/05/2023	<a href="#"><u>1</u></a>	COMPLAINT against Erika White (Filing fee \$402, receipt number 100001253) filed by Mark Splonskowski. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet)(mf) (Entered: 07/06/2023)
07/06/2023	<a href="#"><u>2</u></a>	Summons Issued as to Erika White. (mf) (Entered: 07/06/2023)
07/24/2023	<a href="#"><u>3</u></a>	NOTICE of Appearance by Courtney Rebecca Titus on behalf of Erika White (Titus, Courtney) (Entered: 07/24/2023)
07/24/2023	<a href="#"><u>4</u></a>	NOTICE of Appearance by Jane Sportiello on behalf of Erika White (Sportiello, Jane) (Entered: 07/24/2023)
07/24/2023	<a href="#"><u>5</u></a>	MOTION for Extension of Time to File <i>Response to Complaint</i> by Erika White. (Sportiello, Jane) Modified to correct motion relief on 7/25/2023 (sc). (Entered: 07/24/2023)
07/25/2023	6	(Text Only) ORDER by Magistrate Judge Clare R. Hochhalter granting <a href="#"><u>5</u></a> Motion for Extension of Time to Respond to Complaint. Defendant's response to Plaintiff's Complaint due by 8/7/2023. (BG) Modified on



		7/25/2023 to correct response date. Regenerated NEF. (jb) (Entered: 07/25/2023)
07/25/2023		Set/Reset Deadlines: Answer due 8/7/2023. (jb) (Entered: 07/25/2023)
07/25/2023		DOCKET CORRECTION re: <a href="#">5</a> MOTION for Extension of Time to File Answer. Clerk's Office corrected motion relief from MOTION for Extension of Time to File Document to MOTION for Extension of Time to File Answer. (sc) (Entered: 07/25/2023)
07/25/2023	<a href="#">7</a>	MOTION to Appear Pro Hac Vice Attorney Noel H. Johnson (Filing fee \$150, receipt number ANDDC-2713462) by Mark Splonskowski. (Johnson, Noel) Modified on 7/25/2023 to add receipt number. (jb) (Entered: 07/25/2023)
07/25/2023	8	(Text Only) ORDER by Magistrate Judge Clare R. Hochhalter granting <a href="#">7</a> Motion to Appear Pro Hac Vice for Attorney Noel H. Johnson. (jb) (Entered: 07/25/2023)
08/07/2023	<a href="#">9</a>	MOTION to Dismiss for Lack of Jurisdiction , MOTION to Dismiss for Failure to State a Claim by Erika White. (Sportiello, Jane) (Entered: 08/07/2023)
08/07/2023	<a href="#">10</a>	MEMORANDUM in Support re <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Erika White. (Attachments: # <a href="#">1</a> Declaration of Erika White, # <a href="#">2</a> Exhibit 1-Meeting Minutes)(Sportiello, Jane) Modified on 8/8/2023 to add number and description for exhibit (cjs). (Entered: 08/07/2023)
08/08/2023		DOCKET CORRECTION re: <a href="#">10</a> Memorandum in Support. Clerk's Office added number and description for exhibit. (cjs) (Entered: 08/08/2023)
08/14/2023	<a href="#">11</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim ( <i>Unopposed</i> ) by Mark Splonskowski. (Johnson, Noel) (Entered: 08/14/2023)
08/15/2023	12	(Text Only) ORDER by Judge Daniel M. Traynor granting <a href="#">11</a> Motion for Extension of Time to File Response/Reply re <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim. Responses due by 9/5/2023. (CK) (Entered: 08/15/2023)
08/15/2023		Set/Reset Deadlines as to <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim . Responses due by 9/5/2023 (mf) (Entered: 08/15/2023)
08/18/2023	<a href="#">13</a>	MOTION to Intervene <i>as Defendant</i> by League of Women Voters of North Dakota. (Attachments: # <a href="#">1</a> Proposed Motion to Dismiss, # <a href="#">2</a> Exhibit 2 - B. Headrick Declaration)(Danahy, Molly) (Entered: 08/18/2023)
08/29/2023	<a href="#">14</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">13</a> MOTION to Intervene <i>as Defendant</i> ( <i>Unopposed</i> ) by Mark Splonskowski. (Johnson, Noel) (Entered: 08/29/2023)
08/30/2023	15	(Text Only) ORDER by Magistrate Judge Clare R. Hochhalter granting <a href="#">14</a> Motion for Extension of Time to File Response to <a href="#">13</a> MOTION to Intervene. Plaintiff's response due by 9/15/2023. (BG) (Entered: 08/30/2023)
09/01/2023	<a href="#">16</a>	RESPONSE to Motion re <a href="#">13</a> MOTION to Intervene <i>as Defendant</i> filed by Erika White. (Sportiello, Jane) (Entered: 09/01/2023)
09/05/2023	<a href="#">17</a>	RESPONSE to Motion re <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Mark Splonskowski. (Johnson, Noel) (Entered: 09/05/2023)
09/08/2023	<a href="#">18</a>	REPLY to Response to Motion re <a href="#">13</a> MOTION to Intervene <i>as Defendant</i> filed by League of Women Voters of North Dakota. (Danahy, Molly) (Entered: 09/08/2023)
09/11/2023	<a href="#">19</a>	BRIEF ( <i>Statement of Interest of the United States</i> ) by United States of America. (Anderson, Jacki) (Entered: 09/11/2023)
09/13/2023	<a href="#">20</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">9</a> <i>Motion to Dismiss for Lack of Jurisdiction, Motion to Dismiss for Failure to State a Claim</i> and MOTION for Leave to File Excess Pages ( <i>Unopposed</i> ) by Erika White. (Sportiello, Jane) Modified to correct link on 9/14/2023 (sc). (Entered: 09/13/2023)
09/14/2023		DOCKET CORRECTION re: <a href="#">20</a> MOTION for Extension of Time to File Response/Reply. Clerk's Office corrected link. (sc) (Entered: 09/14/2023)
09/14/2023	21	(Text Only) ORDER by Judge Daniel M. Traynor granting <a href="#">20</a> Motion for Extension of Time to File Response/Reply re <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction , MOTION to Dismiss for Failure to State a Claim; granting <a href="#">20</a> Motion for Leave to File Excess Pages. Defendant's reply due on or before 9/22/2023. Defendant's reply shall not exceed 18 pages. (TL) Modified on 9/14/2023 to correct link. Regenerated NEF. (jb) (Entered: 09/14/2023)

09/14/2023		Set/Reset Deadlines as to <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim . Reply due by 9/22/2023. (jb) (Entered: 09/14/2023)
09/15/2023	<a href="#">22</a>	ORDER by Judge Daniel M. Traynor for Additional Briefing re <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Erika White. Additional briefing shall be submitted as follows:  Splonskowski's additional brief due by 9/29/2023.  White's Response is due 10/6/2023.  Splonskowsky's Reply is due 10/13/2023. (CK) (Entered: 09/15/2023)
09/15/2023	<a href="#">23</a>	RESPONSE to Motion re <a href="#">13</a> MOTION to Intervene <i>as Defendant</i> filed by Mark Splonskowski. (Johnson, Noel) (Entered: 09/15/2023)
09/22/2023	<a href="#">24</a>	REPLY to Response to Motion re <a href="#">13</a> MOTION to Intervene <i>as Defendant</i> filed by League of Women Voters of North Dakota. (Attachments: # <a href="#">1</a> Exhibit 1 - N. Johnson Email, Aug. 29, 2023)(Danahy, Molly) (Entered: 09/22/2023)
09/22/2023	<a href="#">25</a>	REPLY to Response to Motion re <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Erika White. (Sportiello, Jane) (Entered: 09/22/2023)
09/29/2023	<a href="#">26</a>	SUPPLEMENT <i>Brief</i> to document: <a href="#">17</a> RESPONSE to Motion by Mark Splonskowski. (Johnson, Noel) Modified to correct link on 10/2/2023 (sc). (Entered: 09/29/2023)
10/02/2023		DOCKET CORRECTION re: <a href="#">26</a> SUPPLEMENT. Clerk's Office linked to correct document. (sc) (Entered: 10/02/2023)
10/06/2023	<a href="#">27</a>	SUPPLEMENT to document: <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim by Erika White. (Sportiello, Jane) (Entered: 10/06/2023)
10/12/2023	<a href="#">28</a>	SUPPLEMENT ( <i>Reply</i> ) to document: <a href="#">9</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim by Mark Splonskowski. (Johnson, Noel) Modified on 10/13/2023 to correct link. (jb) (Entered: 10/12/2023)
10/13/2023		DOCKET CORRECTION re: <a href="#">28</a> Supplement (Reply). Clerk's office linked to correct document. (jb) (Entered: 10/13/2023)
12/12/2023	<a href="#">29</a>	MOTION to Appear Pro Hac Vice (Filing fee \$150, receipt number BNDDC-2802546) by Mark Splonskowski. (Adams, Christian) Modified on 12/12/2023 to add receipt number. (jb) (Entered: 12/12/2023)
12/12/2023	30	(Text Only) ORDER by Magistrate Judge Clare R. Hochhalter granting <a href="#">29</a> Motion to Appear Pro Hac Vice for Attorney J. Christian Adams. (jb) (Entered: 12/12/2023)
02/02/2024	<a href="#">31</a>	ORDER by Judge Daniel M. Traynor granting <a href="#">9</a> Motion to Dismiss for Lack of Jurisdiction; finding as moot <a href="#">9</a> Motion to Dismiss for Failure to State a Claim; finding as moot <a href="#">13</a> Motion to Intervene. The <a href="#">1</a> Complaint is dismissed. (CK) (Main Document 31 replaced on 2/2/2024 to correct a typographical error.) Regenerated NEF. (jb) (Entered: 02/02/2024)
02/02/2024	<a href="#">32</a>	CLERK'S JUDGMENT in favor of Erika White and against Mark Splonskowski.(jb) (Entered: 02/02/2024)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWEST DIVISION**

MARK SPLONSKOWSKI,

Plaintiff,

V.

ERIKA WHITE, in her capacity as State  
Election Director of North Dakota,

Defendant.

Case No. \_\_\_\_\_

## COMPLAINT

Plaintiff Mark Splonskowski brings this action for declaratory and permanent injunctive relief against Defendant Erika White in her official capacity as the State Election Director of North Dakota, alleging as follows:

1. Federal law fixes Election Day on one specific day. 2 U.S.C. § 1; 2 U.S.C. § 7; and 3 U.S.C. § 1.
2. Congress originally enacted a single statutory election day in order to address chaos and prolonged uncertainty surrounding elections in the 19<sup>th</sup> Century.
3. In describing the purpose of the law, the Member of Congress who sponsored the legislation stated:

The object of this amendment is to provide a uniform time of electing Representatives in Congress... But on account of the facility for colonization and repeating among the large central States, New York holding its election in November, and Ohio, Pennsylvania, and Indiana holding their elections in October, the privilege is allowed the border States, if any man is so disposed, of throwing voters across from one into the other.

I think it will be fair for everybody that on the day when one votes all should vote, and that the whole question should be decided then.

CONG. GLOBE, 42d Cong., 2d Sess. 112 (1871).

4. Despite federal law assigning one day as Election Day, North Dakota law allows ballots to arrive and be counted up to 13 days after Election Day. N.D. CENT. CODE, §§ 16.1-11.1-07 and 16.1-15-17.
5. The “whole question” of who the new officeholder will be cannot be decided on Election Day because North Dakota continues accepting ballots after Election Day.
6. In fact, North Dakota law allows votes to be delivered by mail and cast for a longer period after Election Day than nearly every single other state.
7. North Dakota law and Defendant’s enforcement of it harm Mr. Splonskowski because they put him in the position of having to choose between dictates of state law to accept and allow votes to be cast after Election Day and federal law that requires a single election day.
8. Mr. Splonskowski is subject to criminal penalties if he chooses incorrectly.
9. Mr. Splonskowski seeks a judgment declaring North Dakota’s extension of Election Day to be unlawful and an injunction enjoining the laws allowing for the extension.

#### **Jurisdiction and Venue**

10. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 2201, as the action arises under the laws of the United States, and because this matter is a proper subject for a declaratory judgment.
11. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1), because the Defendant resides in this district, and under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurs in this district.

**Parties**

12. Defendant Erika White is the State Elections Director for North Dakota (“Director” or “the Director”) and is sued in the Director’s official capacity only. North Dakota employs the Director to administer elections and has delegated significant authority to her to manage and direct North Dakota’s elections. N.D. CENT. CODE § 16.1-01-01. The Director is responsible for implementing election best practices and training for the State of North Dakota, working closely with North Dakota’s 53 counties to ensure uniform election procedures and processes. In this capacity, the Director also conducts training for all county auditors every election year to train them on uniform implementation of state election policies, including how to properly accept ballots, and which ballots to accept. *Id.* § 16.1-01-01(2)(d).
13. Plaintiff Mark Splonskowski is the County Auditor of Burleigh County, North Dakota. In this capacity, he is the county administrator of elections and is responsible for the proper administration of state laws, rules, and regulations concerning election procedures within Burleigh County. N.D. CENT. CODE § 16.1-01-01(4). Before each primary and general election, he must conduct “training sessions on election laws and election procedures for election officials in the county,” including all election board members and poll clerks. *Id.* § 16.1-05-03(2). He also must designate a location for the closing, counting, and canvassing process, to be open to any person for the purpose of observing, and he sits on the county canvassing board, which reviews ballots that arrive after Election Day and certifies the county election results. *See id.* §§ 16.1-11.1-06 and 16.1-15-15.

### **Factual Allegations**

#### ***Federal Law on Election Day***

14. The United States Congress is authorized under Art. I, § 4 cl. 1 and Art. II, § 1 cl. 4 to establish the time for conducting federal elections.
15. The next Tuesday after the first Monday in November of every even-numbered year is Election Day for federal elections. *See* 2 U.S.C. § 1 (2022), 2 U.S.C. § 7 (2022), and 3 U.S.C. § 1 (2021).
16. Indeed, a recent revision to Title 3 dealing with the election process to elect the President reiterated that “‘election day’ means the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State...” Electoral Count Reform Act, 136 Stat. 5233, 5235 (enacted as Div. P, Title I, § 102(b) of the Consolidated Appropriations Act, 2023, 117 Pub. L. No. 328, Dec. 29, 2022).
17. Federal law prescribes votes to be tabulated on Election Day, as every mention of the day is singular, and not plural.

#### ***North Dakota’s Election Process***

18. North Dakota allows any qualified voter to vote via absentee ballot, with no particularized justification. *See* N.D. CENT. CODE § 16.1-07-01.
19. Absentee ballots must be delivered in-person before Election Day or mailed. If mailed, they must be postmarked the day before Election Day in order to be tallied and must be received prior to the meeting of the county’s canvassing board. *See* N.D. CENT. CODE § 16.1-07-09.

20. These county canvassing boards meet “[o]n the thirteenth day following each election.”

*See* N.D. CENT. CODE § 16.1-15-17.

21. Read together, these two provisions mean that absentee ballots received up to 13 calendar days after the day of the election shall be counted as if cast and received on or before Election Day, provided they are accepted by the county canvassing board.

22. In addition to absentee voting by mail, North Dakota law permits a Board of County Commissioners to conduct elections by mail ballot. *See* N.D. CENT. CODE § 16.1-11.1-01.

23. Mail ballots must be returned to a designated place of receipt before Election Day, or mailed with a postmark of, at the latest, the day before the election. *See* N.D. CENT. CODE § 16.1-11.1-04.

24. Mail ballots must be received prior to the meeting of the county canvassing board. *See* N.D. CENT. CODE § 16.1-07-09.

25. The county canvassing board members must take an oath before opening and canvassing the returns. N.D. CENT. CODE § 16.1-15-17.

26. That oath requires the members to “solemnly swear” to “support the Constitution of the United States and the Constitution of the State of North Dakota.”

27. The County Canvassing Board canvasses the returns of all ballots that have arrived since Election Day at this meeting. N.D. CENT. CODE § 16.1-15-17.

28. There the board determines which mail and absentee ballots constitute legitimate votes. N.D. CENT. CODE §§ 16.1-15-01, -17, and -19.

29. After the ballots have been counted and the votes canvassed, each member of the canvassing board must sign an affidavit attesting to the veracity of the returns in the canvass report. N.D. CENT. CODE § 16.1-15-05.

30. North Dakota state election officials have already posted “Voter Important Dates” as November 4, 2024, being the submission deadline for absentee and mail ballots, and November 18, 2024, being the County Canvassing Board meeting. *See* Secretary of State, Voter Important Dates, *found online at* <https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=104&ptlPKID=7>.

***Penalties Associated with Election Offenses***

31. It is unlawful for an individual to “[k]nowingly exclude a qualified elector from voting or knowingly allow an unqualified individual to vote.” N.D. CENT. CODE § 16.1-01-12(1)(f). This offense is a class A misdemeanor. *Id.* at § 16.1-01-12(2)(a).

32. It is unlawful to “[w]illfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.” N.D. CENT. CODE § 16.1-01-12(1)(k). This offense is a class A misdemeanor. *Id.* at § 16.1-01-12(2)(a).

33. It is unlawful to “[w]illfully violate any rule adopted by the secretary of state pursuant to this title.” N.D. CENT. CODE § 16.1-01-12(1). This offense is a class A misdemeanor. *Id.* at § 16.1-01-12(2)(a).

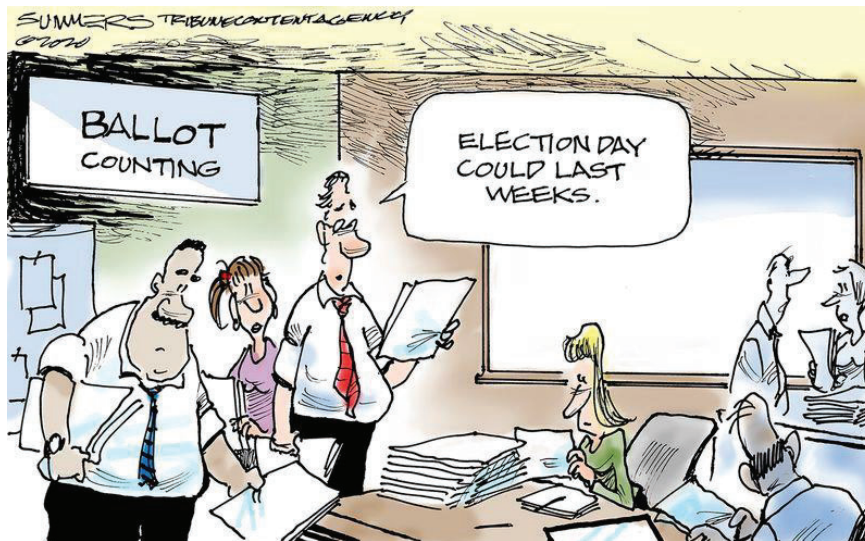
34. It is unlawful to “[w]illfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the canvass or return to be false....” N.D. CENT. CODE § 16.1-01-12(m). This offense is a class C felony. *Id.* at § 16.1-01-12(2)(b).

***Late Ballots Arriving After Election Day in the 2022 Election***

35. The 53 county canvassing boards of North Dakota received at least 294 ballots after Election Day and counted at least 212 of them in the November 2022 election.



36. Burleigh County received at least 53 ballots after Election Day and counted 30 of them in the November 2022 election.
37. One ballot was received through the United States Postal Service but had no postmark on it and was counted in the election.
38. Because North Dakota's system allows ballots to be received and cast 13 days after Election Day, North Dakota's federal officeholders on the ballot in November 2022 had their elections certified by County Canvassing Boards of North Dakota on November 21, 2022.
39. Other states determined the races for federal officeholders after Election Day too. In Utah, 3 federal congressional races were not determined until November 22, 2022, after the election held on November 9, 2022. In Illinois, 6 federal congressional races were not determined until November 22, 2022.
40. Political cartoons have even taken to poking fun at the extended electoral process.



Dana Summers, Tribune Content Agency, found online at <https://www.syracuse.com/opinion/2020/11/editorial-cartoons-for-nov-8-2020-waiting-for-a-winner-counting-votes-shaming-pollsters.html>

***The Effect of the Conflicting Laws***

41. Mr. Splonskowski is harmed by instructions to accept and cast ballots received after Election Day.
42. Mr. Splonskowski, as county auditor, must enforce state law in the administration of election procedures in Burleigh County. He must train election officials in the county on how to conduct elections in Burleigh County. Because federal and state law conflict on the day the ballots must be turned in, he faces an impossibility in enforcing the law.
43. Mr. Splonskowski sits on the county canvassing board, which reviews and counts ballots that arrive after Election Day and certifies the election results. In this role, he must “solemnly swear” to “support the Constitution of the United States and the Constitution of the State of North Dakota.” However, since the federal and state law conflict, Mr. Splonskowski must choose which law to enforce when determining whether to certify ballots that arrive after Election Day, and if he chooses incorrectly, he can be subject to a Class C felony for certifying a false canvass of votes, or a Class A misdemeanor for failing to perform a duty as an election official, violating a rule set by the Secretary of State, or knowingly allowing an unqualified individual to vote.
44. Mr. Splonskowski has no adequate remedy at law.

**COUNT I**

**Violation of 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 21**

45. Plaintiff Mr. Splonskowski hereby incorporates the above listed allegations.
46. 2 U.S.C. § 7 and 3 U.S.C. § 21 provide that federal elections occur on one day – “on the Tuesday next after the first Monday in November.”
47. In 2024, this means that the federal election will occur on November 5, 2024.

48. Yet, Mr. Splonskowski will be trained by Defendant to accept and tabulate ballots that come in after Election Day.

49. At the County Canvassing Board meeting November 18, 2024, Mr. Splonskowski will have to make the decision of choosing between conflicting state and federal law, risking violating his oath and incurring criminal penalties.

50. Mr. Splonskowski has no other remedy in law and will suffer serious and irreparable harm to his constitutional rights unless Defendant is enjoined from implementing North Dakota's laws related to accepting late ballots.

**Prayer for Relief**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as follows:

A. Declaring North Dakota's statutes allowing ballots to be received and counted after Election Day to violate federal law under 28 U.S.C. § 2201;

B. Enjoining Defendant from implementing and enforcing North Dakota's laws allowing for the receipt and tabulation of ballots after Election Day;

C. Enjoining Defendant from instructing and training North Dakota's election officials to count ballots received after Election Day;

D. Awarding Plaintiff reasonable attorneys' fees, expenses, and costs; and

E. Awarding any other relief the Court deems just and proper.

Dated: July 5, 2023

Respectfully submitted,

*s/David J. Chapman*

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Mark Splonskowski,

Plaintiff,

vs.

Erika White, in her capacity as State Election  
Director of North Dakota,

Defendant.

**MOTION TO DISMISS**

**Case No. 1:23-cv-00123**

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[¶1] The Defendant, Erika White, in her capacity as State Election Director of North Dakota, moves this Court under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for an order dismissing Plaintiff’s Complaint. This motion is made to assist the Court in securing “the just, speedy, and inexpensive determination” of this action. Fed. R. Civ. P. 1. This motion is supported by the attached memorandum and all documents on file with this Court, and is made on the grounds that the Court lacks subject matter jurisdiction over the entirety of Plaintiff’s Complaint. Further, this motion is made on the grounds that Plaintiff’s Complaint fails to state a claim upon which relief can be granted as more fully set forth in the attached memorandum.

[¶2] The Defendant requests this Court grant her Motion to Dismiss and dismiss the Complaint against her.

Dated this 7th day of August, 2023.

State of North Dakota  
Drew H. Wrigley  
Attorney General

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Mark Splonskowski,

Plaintiff,

vs.

Erika White, in her capacity as State  
Election Director of North Dakota,

Defendant.

**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS**

**Case No. 1:23-cv-00123**

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**INTRODUCTION**

[¶1] Plaintiff comes before this Court in a bid to overthrow longstanding North Dakota law and rewrite it according to his own preference. He attempts to manufacture standing by threatening to violate the law unless the Court changes it. But the laws at issue here represent the will of the people expressed through their elected representatives and enacted through the democratic process. This Court must protect the will of the people from one individual's misplaced whims.

[¶2] Several Constitutional principles bar adjudication of Plaintiff's claims, which also fail on the underlying merits. First, he pleads no case or controversy as required to justify federal court intervention. Second, because he fails to name a proper defendant, his suit violates the sovereign immunity of North Dakota under the Eleventh Amendment. But even if this Court would reach the merits of this case, it should follow the guidance of other courts around the country who have rejected similar attacks against validly-enacted state laws. Even though Plaintiff may disagree with how the citizens of North Dakota have chosen to count lawfully cast absentee ballots, the Court should not countenance Plaintiff's attempts to disenfranchise the people of this state.

**BACKGROUND**

[¶3] North Dakota's election laws, as set forth in Title 16.1 of the North Dakota Century Code, allow state citizens to exercise their right to vote by casting ballots on or before Election Day. Citizens have several options for exercising this right, but all share the same deadline. First, citizens may vote in person at a polling place until the polls close on Election Day, or before that

day through early voting. *See generally* N.D. Cent. Code Ch. 16.1-13, General Elections. Second, citizens may vote by absentee ballot pursuant to a series of laws passed in 1981. N.D. Cent. Code § 16.1-07-01. Citizens who elect this option have two ways of submitting their ballot. First, they may personally deliver it to the proper officer by 5:00 P.M. on the day *before* the election. N.D. Cent. Code § 16.1-07-09. Second, they may return their ballot by mail. If such ballots are postmarked by the day *before* the election, and are received prior to the scheduled meeting of the County Canvassing Board (“Canvassing Board”), they will be accepted. N.D. Cent. Code § 16.1-07-09. Ballots with an illegible or missing postmark must be received prior to the meeting of the Canvassing Board to be accepted. *Id.* Ballots postmarked on the day of the election or thereafter “may not be tallied.” *Id.* Lastly, in certain circumstances, a board of county commissioners may choose to conduct an election by mail ballot. N.D. Cent. Code § 16.1-11.1-01. The same deadlines apply as for absentee ballots. N.D. Cent. Code §§ 16.1-11.1-04, -07, -08.

[¶4] Thirteen days after the election, the Canvassing Board meets, takes an oath of office<sup>1</sup>, and then “shall proceed to open and publicly canvass the returns.” N.D. Cent. Code § 16.1-15-17. This process includes reviewing those ballots which have arrived by mail, verifying not only timeliness but voter qualification and signature. N.D. Cent. Code § 16.1-07-09.

[¶5] Even from this brief overview, the mistake in Plaintiff’s Complaint is clear. He writes that North Dakota law “allows ballots to be received **and cast** 13 days after Election Day. . .” Compl., para. 38 (emphasis added). But this is plainly false from the law that he cites. Ballots cannot be cast after Election Day. They can be cast *on* Election Day for in-person voters, or, cast and submitted by mail by the day *before* Election Day for absentee votes. Unless Plaintiff is suggesting that North Dakotans have the power to change their vote once it is already in the mail, his statement makes no sense.

[¶6] Plaintiff also criticizes North Dakota’s election system as violating federal law. This, too, is mistaken. Under federal law, the day for elections is Election Day (i.e., the Tuesday after the

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<sup>1</sup> Plaintiff’s Complaint purports to give the contents of this oath, para. 26, but he is incorrect. The oath for election officials is set forth at N.D. Cent. Code § 16.1-05-02.



first Monday in November in an even-numbered year). *See* 2 U.S.C. § 7, 3 U.S.C. § 1. In North Dakota, in order to have their votes counted, voters must cast them either in person on Election Day or by mail before Election Day. Nothing in North Dakota law provides a way for a vote cast after Election Day to be counted. Only ballots cast on or before Election Day can be counted. Under well-established law, states maintain “discretion and flexibility in establishing the time, place, and manner of electing its federal representatives” so long as its system does not conflict with any federal laws. *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 775 (5th Cir. 2000). North Dakota’s system does not conflict with any federal laws.

[¶7] The other details of Plaintiff’s allegations are addressed fully in the arguments below, but a brief summary is helpful here. As Defendant, he names Erika White, State Elections Director. Compl., para. 12. Plaintiff bases his status as a complaining party on his own duties as the Burleigh County Auditor and as a member of the Canvassing Board; these duties, he alleges, expose him to risk of criminal prosecution due to the purported conflict in laws described above., *Id.*, para. 43. While his Complaint turns on his status as a member of the Canvassing Board, Plaintiff brings it in his individual capacity. He names Ms. White as the source of this harm because she will “train” county auditors such as himself regarding North Dakota law. *Id.*, para. 48. He asks the Court for a declaratory judgment that North Dakota law violates federal law, and he also seeks two injunctions: one preventing Ms. White from “implementing and enforcing” North Dakota law, and another preventing her from “instructing and training” election officials on how to count ballots pursuant to it. Compl. at 9.

[¶8] For the reasons set forth below, Plaintiff’s allegations are barred by subject-matter jurisdiction, and are thus subject to immediate dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Even if the Court would find jurisdiction, Plaintiff’s Complaint fails to state a claim in any event, and is subject to dismissal pursuant to Rule 12(b)(6).

## LAW AND ARGUMENT

### I. The Complaint Must Be Dismissed for Lack of Subject Matter Jurisdiction.

[¶9] The Court lacks subject-matter jurisdiction over this case for two reasons. First, Plaintiff fails to allege facts showing Article III standing. Second, Plaintiff’s suit is barred by the Eleventh Amendment and the doctrine of sovereign immunity. Either of these obstacles are fatally defective to his claim, and the Court may rely upon either ground to dismiss the Complaint in its entirety in whichever order the Court prefers. *See Minn. RFL Republican Farmer Lab. Caucus v. Freeman*, 33 F.4th 985, 989 (8th Cir. 2022), *cert. denied* 143 S. Ct. 304 (2022).

#### A. Plaintiff Lacks Standing.

[¶10] “No principle is more fundamental to the judiciary’s proper role in our system of government” than the constitutional limitation of federal-court jurisdiction to actual cases or controversies. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). One component of Article III’s case-or-controversy requirement is standing, which demands that a plaintiff show the “now-familiar” elements of injury-in-fact, causation, and redressability. *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

[¶11] The party invoking federal jurisdiction bears the burden to establish standing. *Lujan*, 504 U.S. at 561. At the motion to dismiss stage, “the plaintiffs must allege sufficient facts to support a reasonable inference that they can satisfy the elements of standing.” *Animal Legal Def. Fund v. Vaught*, 8 F.4th 714, 718 (8th Cir. 2021).

[¶12] Here, even taking Plaintiff’s allegations as true, he cannot show standing. Injury, causation, and redressability are absent here, rendering Plaintiff’s Complaint nothing more than a request for an advisory opinion in support of his personal disagreement with the North Dakota Century Code. Ms. White respectfully submits that this case must be dismissed for lack of standing.

#### 1. Plaintiff Can Show No Injury-in-Fact.

[¶13] Even viewing his allegations from every possible angle, Plaintiff can show no injury in fact. An injury in fact is “the actual or imminent invasion of a concrete and particularized legal interest.” *Kuehl v. Sellner*, 887 F.3d 845, 850 (8th Cir. 2018) (citations omitted). A “conjectural or

hypothetical” injury will not suffice for standing purposes. *City of Kennett, Mo. v. Env't Prot. Agency*, 887 F.3d 424, 430–31 (8th Cir. 2018).

[¶14] The Supreme Court has recognized that future injury can be sufficient to establish Article III standing. *In re SuperValu, Inc.*, 870 F.3d 763, 769 (8th Cir. 2017) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). In future injury cases, the plaintiff must demonstrate that “the threatened injury is ‘certainly impending,’ or there is a “substantial risk” that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quoting *Clapper*, 568 U.S. at 414 n.5). “Possible future injury” is insufficient. *City of Kennett*, 887 F.3d at 431 (citing *Clapper*, 568 U.S. at 409 (2013)). “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly impending*.” *City of Kennett*, 887 F.3d at 430–31 (citing *Clapper*, 568 U.S. at 409 (2013)).

[¶15] As set forth below, all possible theories of injury here are unavailing.

**a. Plaintiff’s Risk of Criminal Prosecution is Speculative and Therefore Fails to Constitute an Injury in Fact.**

[¶16] The primary injury Plaintiff cites in his Complaint is that of his risk of criminal prosecution. But his allegations, even taken as true, do not establish that Plaintiff “[has] ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible.” *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298–99. Such “imaginary” fears of prosecution do not “allege a dispute susceptible to resolution by a federal court.” *Id.*

[¶17] An examination of Plaintiff’s Complaint provides some idea of the criminal prosecution he believes he faces. His chief complaint is that, because federal and state laws purportedly conflict, he must “choose which law to enforce when determining whether to certify ballots that arrive after Election Day;” further, “if he chooses incorrectly, he can be subject to a Class C felony for certifying a false canvass of votes, or a Class A misdemeanor for failing to perform a duty as an election official, violating a rule set by the Secretary of State, or knowingly allowing an unqualified individual to vote.” Compl., para. 43. As for the timing of this criminal liability, Plaintiff states

that it will come into effect at the Canvassing Board meeting set for November 18, 2024, when he will have to “make the decision of choosing between state and federal law,” thereby risking criminal penalties. *Id.*, para. 49.

[¶18] These allegations leave a great deal unsaid. Most relevantly, Plaintiff does not disclose what his choice will be – i.e., whether he will “choose” to follow North Dakota law, or reject North Dakota law in favor of federal law (as he interprets it). He also remains coy as to the exact actions he will take once he makes his choice. Nevertheless, some observations are possible by logical deduction from what Plaintiff does allege, and these observations allow for an analysis of Plaintiff’s true risk of injury.

[¶19] First of all, Plaintiff alleges that his choice will subject him to “a Class C felony for certifying a false canvass of votes, or a Class A misdemeanor for failing to perform a duty as an election official, violating a rule set by the Secretary of State, or knowingly allowing an unqualified individual to vote.” *Id.*, para. 43. Importantly, these statutes limit his injury at the outset. This is because these are all North Dakota criminal statutes, set forth in North Dakota law, and only enforceable by the State’s Attorney’s Office for the relevant county. As such, if Plaintiff “chooses” North Dakota law, he could not possibly face prosecution under any of the North Dakota statutes, given the impossibility that an Assistant Burleigh County State’s Attorney would attempt to prosecute someone for complying with the Century Code.

[¶20] So, in essence, the risk of harm of criminal prosecution is based on Plaintiff’s decision to “choose” federal law. But what does this choice look like, in practice? Again, the Complaint is silent on the relevant details. It is possible that Plaintiff would, in light of his view that federal law requires “tabulation” of votes on Election Day, determine that the Canvassing Board meeting is itself illegitimate (because it occurs after Election Day) and refuse to attend. It is not clear how such a refusal to attend would subject him to any criminal penalties, particularly because the other members of the Canvassing Board could simply proceed without him so long as they maintained a quorum.

[¶21] Or perhaps Plaintiff intends to attend the meeting, take the oath, and then explicitly announce his opposition to accepting mail-in ballots in accordance with state law, *i.e.*, ballots that are cast and postmarked before Election Day and received after. *See* N.D. Cent. Code § 16.1-0-09. The problem is that such an announcement – however dramatic – would not have much of an effect. The Canvassing Board proceeds by standard parliamentary procedure. *See* Ex. 1, Meeting Minutes of November 2022 Canvassing Board.<sup>2</sup> At any Canvassing Board meeting, groups of ballots are viewed by the Board as a whole, and then are accepted or rejected. But in order for any ballots to be accepted or rejected, a board member first needs to make a motion. If a motion is not seconded, it fails; if a motion is seconded and not supported by a vote, it also fails.

[¶22] In this hypothetical situation, Plaintiff could certainly make a motion to reject the ballots he sees as objectionable. However, unless the other board members have *also* resolved to disregard state law, his motion would not be seconded and would fail. Ultimately, Plaintiff has no unilateral power to reject any votes. His motion to do so would fail, and the ballots would be accepted anyway.

[¶23] In light of such a non-event, it is not possible that any of the criminal statutes cited by Plaintiff could apply to him. There is theoretically some argument that refusing to enforce state law is “failing to perform a duty as an elected official,” but the mere act of making a motion at a board meeting and having that motion rejected does not really “fail” in any meaningful way. In other words, he could not successfully fail to perform his duty because his motion to reject the ballots would fail at the outset. No caselaw suggests that a board member of a governing body would be prosecuted in such a scenario. As for the Class C felony for certifying a false canvass of votes, again, the Board as a whole would ensure that the canvass was conducted in compliance

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<sup>2</sup> Ms. White respectfully submits that in addressing a Motion to Dismiss, a court may consider matters of public record such as Exhibit 1 without treating the Motion as one for summary judgment. *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1107 (8th Cir. 1999). Should the Court determine, however, that the document discussed here should not be considered, Ms. White requests that the Court simply disregard it and address this dismissal motion without converting it into one for summary judgment.

with North Dakota law, *i.e.*, by including absentee ballots that are cast in accordance with North Dakota law. Plaintiff has no real power to bring about a false canvass by himself. The only remaining foreseeable path to prosecution is if Plaintiff somehow, by artifice or force, manages to successfully reject the legally-cast absentee ballots and proceeds to certify the canvass anyway. This is unlikely, to say the least.

[¶24] None of these scenarios approach the showing of imminence required by federal courts when evaluating claims of future injury. Even if Plaintiff contemplates some course of action not outlined above, it is unreasonable to presume that his risk of prosecution is anything more than sheer speculation. Again, allegations of future injury only suffice for standing purposes when a plaintiff alleges that injury is “certainly impending” or when there is a “substantial risk” that the harm will occur. *Clapper*, 568 U.S. at 414. Standing is not established when there is an “attenuated chain of inferences” necessary to find the harm. *Id.* Here, Plaintiff provides an attenuated chain of inferences that leads nowhere. In other words, even indulging the above scenarios, he cannot fairly allege a real risk of criminal prosecution at the end of the chain, given the realities of the canvassing process. For these reasons, his alleged injury also fails to be “concrete.” A concrete injury “must actually exist.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339–40. Also fatal to his claim is the longstanding principle that an alleged injury in fact may not “rely on speculation about ‘the unfettered choices made by independent actors not before the court.’” *Clapper*, 568 U.S. at 414 n.5 (quoting *Defs. of Wildlife*, 504 U.S. at 562). Here, Plaintiff’s claims of criminal prosecution depend entirely on members of the Burleigh County State’s Attorney’s Office, as well as potentially other members of the Canvassing Board.

[¶25] Additionally, Plaintiff’s alleged harm is barred because any injury is self-inflicted. Plaintiffs “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *Id.* Here, manufacturing standing is precisely what Plaintiff is attempting to do. Again, he cannot show an actual risk of prosecution. But even if he could, his attempts to literally invite it – by willfully rejecting state law in violation of his duties as a public official – are entirely self-inflicted. As set forth below, the

conflict between state and federal law does not exist. But even if he believes it does, he could seek legal advice from the legal adviser to his office, *i.e.*, the Burleigh County State’s Attorney.<sup>3</sup> In essence, he is threatening to break the law unless the Court enjoins it, but the choice to do so is entirely his own.

[¶26] Again, an injury must be “actual or imminent” to support standing to sue in federal court. While “imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly impending*.” *City of Kennett*, 887 F.3d at 430–31 (8th Cir. 2018). Plaintiff’s allegations do not show that criminal prosecution is “certainly impending”; they show that it is unlikely to the vanishing point. He has failed to show an injury in fact.

**b. Plaintiff Cannot Prevail Under a Theory of Pre-enforcement Review.**

[¶27] Before turning away from the risk of criminal prosecution, however, it is worth briefly addressing an argument that may arise. From an initial glance at Plaintiff’s Complaint, he seems poised to argue standing under the familiar “pre-enforcement” framework used by the Supreme Court. Under this test, a plaintiff can show standing to challenge a statute by alleging “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Missouri v. Yellen*, 39 F.4th 1063, 1068 (8th Cir. 2022), *cert. denied*, 143 S. Ct. 734 (2023) (citing *Susan B. Anthony List*, 573 U.S. at 159. For the reasons set forth above, Plaintiff would necessarily fail any application of this test; the Supreme Court has explicitly decreed that “persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs.” *Babbitt*, 442 U.S. at 298.

[¶28] But, on a more basic level, Plaintiff cannot show that the test should apply to him in the first place. Again, pre-enforcement standing requires that the intended conduct be “proscribed by

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<sup>3</sup> Again, this lawsuit is brought in Plaintiff’s individual capacity. Burleigh County is not a party to this lawsuit.

a statute,” and that “there exists a credible threat of prosecution thereunder.” *Id.* In other words, the test contemplates that the statute proscribing the conduct is the *same statute* under which prosecution is threatened. This is the case in every application of the test that the undersigned was unable to identify, and for good reason: no federal court “has jurisdiction to pronounce any statute . . . void, because irreconcilable with the constitution, except as it is called to adjudge the legal rights of litigants in *actual controversies*.” *Golden v. Zwickler*, 394 U.S. 103, 110 (1969) (emphasis added). To allow plaintiffs to argue an error of law in one statute, and claim injury under another statute, would stretch the meaning of “controversy” past its Constitutional limit.

[¶29] Here, Plaintiff challenges those provisions of the Century Code which affirmatively permit ballots which are cast before Election Day to be counted after Election Day. See Compl., paras. 18-27. But the laws under which he fears prosecution are *different* laws, concerning criminal penalties for election misconduct, which he apparently does not object to in their own right. The connection between the absentee voting provisions and Plaintiff’s (nonexistent) risk of prosecution for election misconduct are attenuated in the extreme. The test for pre-enforcement review is not apposite here.

**c. Plaintiff Cannot Show Injury By Alleging a Conflict Between State and Federal Law.**

[¶30] The only other plausible allegation of injury detectable from the face of the Complaint is Plaintiff is that somehow harmed by the conflict of laws, in itself. Such a claim would not suffice. In the Supreme Court case of *Lance*, plaintiffs were four Colorado voters who brought suit alleging that the Colorado state Constitution, as interpreted by that State’s Supreme Court, violated the Elections Clause of the federal Constitution. 549 U.S. at 442. The United States Supreme Court dismissed for lack of standing, characterizing the injury as merely alleging that the law has not been followed, and describing such allegations precisely the kind of “undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.” *Lance*, 549 U.S. at 442 (2007). Here, while Plaintiff’s claims of injury are, theoretically, more particularized to him personally, his injury remains nothing more than his objection to what he



(wrongly) characterizes as a conflict between state and federal law; this is not a concrete, imminent injury for purposes of Article III. *See also Minn. Voters All. v. City of Minneapolis*, Civil File No. CV 20-2049 (MJD/TNL), 2020 WL 6119937, at \*5 (D. Minn. Oct. 16, 2020) (“Therefore, to the extent Plaintiffs assert a claim based solely on the assertion that the City’s action is barred or preempted by the Supremacy Clause, they lack standing.”)

[¶31] In sum, Plaintiff fails to allege a valid injury in fact. This defect destroys standing, and mandates dismissal of the Complaint.

## **2. Plaintiff Cannot Show Causation.**

[¶32] For reasons largely distinct from those above, yet just as fatal to his case, Plaintiff fails to allege the element of causation. Article III requires “a causal connection” between the injury and the defendant’s conduct; the injury may not be a result of “the independent action of some third party not before the court.” *Digit. Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 957–58 (8th Cir. 2015). *See also Lujan*, 504 U.S. at 560 (internal quotation omitted). “When a plaintiff brings a pre-enforcement challenge to the constitutionality of a particular statutory provision, the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.” *Dig. Recognition Network*, 803 F.3d at 957-58. Here, Plaintiff’s Complaint shows no real connection between Ms. White and his alleged injury.

### **a. Allegations Regarding Ms. White.**

[¶33] While Plaintiff is correct to identify Ms. White as the State Elections Director, Plaintiff appears to be under some misapprehension as to her exact role. He alleges that the State “has delegated significant authority to her to manage and direct North Dakota’s elections” and cites N.D. Cent. Code § 16.1-01-01. Compl., para. 12. But the cited provision of the Century Code outlines the duties and responsibilities of the *Secretary of State*, not the State Elections Director. *See* N.D. Cent. Code § 16.1-01-01. The Secretary of State is set forth in the statute as “ex officio, supervisor of elections.” *Id.* The State Elections Director’s job, by contrast, is not outlined in statute at all. *Id.* She simply serves in a position created by the Secretary of State, one of the many “additional personnel” whom he is authorized to employ.

[¶34] Ms. White’s alleged connection to Plaintiff’s harm is also tenuous. In terms of the harm that Ms. White will allegedly inflict on Plaintiff, it comes in the form of the “training” that she provides to county auditors. Compl., para. 12. Plaintiff alleges that he is “harmed” by Ms. White’s instructions. Compl., para. 41. He writes, “Mr. Splonskowski will be trained by Ms. White to accept and tabulate ballots that come in after Election Day.” *Id.*, para. 48. He asks the Court to enjoin Ms. White from training him. *Id.* at 9.

[¶35] Additionally, Plaintiff asks the Court to enjoin Ms. White from “implementing and enforcing North Dakota’s laws allowing for the receipt and tabulation of ballots after Election Day.” *Id.* at 9.

[¶36] Even taking all of Plaintiff’s claims as true, neither the training provided by Ms. White nor her “implementation and enforcement” of North Dakota law are causally connected to his alleged injury.

**b. These Allegations Fail to Suggest a Causal Connection Between Ms. White and His Injuries.**

[¶37] Again, Article III requires “a causal connection” between the injury and the defendant’s conduct; the injury may not be a result of “the independent action of some third party not before the court.” *Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 957–58 (8th Cir. 2015). For the sake of argument, Ms. White will assume that the “injury” here is Plaintiff’s risk of criminal prosecution.

[¶38] First of all, Plaintiff’s decision to violate state law and invite prosecution is not casually connected to Ms. White’s “training” regarding North Dakota election law. This is clear from the face of the Complaint. Obviously, Plaintiff already *knows* state election law, including his obligation to accept legally-cast absentee ballots, because he has filed an entire lawsuit contesting it. His obligation to comply with the law is not dependent on Ms. White’s reiteration of the same during a future training session. Indeed, it’s possible that her training will reduce his likelihood of injury: if Ms. White trains him adequately on North Dakota law, perhaps he will elect to comply with it in November of 2024.

[¶39] Second, any amorphous “harm” Plaintiff experiences as a result of the supposed conflict between state and federal law is not attributable to Ms. White. As stated previously, this law has been on the books since 1981. Again, if a plaintiff seeks to bring “a pre-enforcement challenge to the constitutionality of a particular statutory provision, the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.” *Dig. Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 957-58 (8th Cir. 2015). Here, while Ms. White is obviously involved in the administration of elections in a broad sense, she is not connected to the enforcement of North Dakota voting laws any more than the other employees who work for the Secretary of State; the duty to supervise elections is ultimately his. N.D. Cent. Code § 16.-1-01-01. There is simply no connection between Ms. White’s role and Plaintiff’s alleged harm, especially in light of her lack of statutory authority. *Cf. Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 428 F.3d 1139, 1145 (8th Cir. 2005) (due to statutory provisions allowing Attorney General to aid prosecutors and sign indictments, finding that “statutory authority creates a sufficient connection with the enforcement of [Mo. Ann. Stat.] § 188.039 to make the Attorney General a potentially proper party for injunctive relief, in which case he would be within the scope of the *Ex parte Young* exception to Eleventh Amendment immunity.”)

[¶40] Further, there is no possible causal connection between Ms. White and Plaintiff’s fear of prosecution. Again, any prosecution would have to be initiated by the Burleigh County State’s Attorney’s Office – not Ms. White.

[¶41] Frankly, the inclusion of Ms. White seems to be an afterthought in this Complaint. The majority of Plaintiff’s allegations are devoted to his legal and historical arguments condemning vote-counting after Election Day. He fails to show causation, and his failure is even more proof that his true aim in this lawsuit is not adjudication of a true conflict, but the improper overthrow of North Dakota law.

### 3. Plaintiff Cannot Show Redressability.

[¶42] Redressability is “a likelihood that the injury will be redressed by a favorable decision.” *Kuehl*, 887 F.3d at 850 (citations omitted).” Here, the sought-after injunctive relief would simply have no effect on Plaintiff’s alleged harm. First of all, as outlined above, Plaintiff’s alleged harm is due to his own opinion of North Dakota law and the actions of third parties such as state prosecutors, not the actions of Ms. White or anyone else. Second, even if Plaintiff did show a connection between North Dakota law and his hypothetical prosecution, an injunction against Ms. White would have no effect in redressing Plaintiff’s injury. This is because it is her supervisor, the Secretary of State as a state office holder, who administers election laws in the state, and it is the Burleigh County State’s Attorney’s Office who prosecutes any election-related crimes.

### 4. Conclusion as to Standing.

[¶43] Courts have long refused to find standing in situations like those present here. In a case issued 100 years ago, the United States Supreme Court emphasized the importance of the separation of powers and the need to avoid exactly the disguised attacks on statutes that are present here:

Here the [plaintiffs] have no such case. Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be, not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess.

*Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 488–89 (1923).

[¶44] Here, too, when the Court “looks through the form of words to the substance of [his] complaint,” *id.*, the substance is only Plaintiff’s own disagreement with North Dakota’s election law. But here, he does not even assert that the law is unconstitutional – only that it violates federal law in an extremely attenuated way. As set forth in the next section, federal courts across the country have rejected this exact claim. Regardless of the merits of his disagreement with state law, however, it cannot gain him entry to the federal courts.

**B. Plaintiff’s Suit is Barred by the Eleventh Amendment.**

[¶45] Setting aside Plaintiff’s lack of standing, his Complaint is also barred by the Eleventh Amendment. As recently pointed out by a district court, “suits for declaratory and injunctive relief against state officials raise the specter of Eleventh Amendment state sovereign immunity.” *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1048–49 (D.N.D. 2020), citing *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017). An exception to Eleventh Amendment immunity exists pursuant to the Supreme Court case of *Ex parte Young*, which held that a suit seeking to enjoin “a state official’s enforcement of state legislation on the ground that the official’s action would violate the Constitution” does not constitute a suit against the State for Eleventh Amendment immunity purposes. *Dig. Recognition Network, Inc.*, 803 F.3d at 956-57. “A suit for injunctive or declaratory relief avoids this immunity if the official has some connection to the enforcement of the challenged laws.” *Calzone*, 866 F.3d at 869–70. The *Ex parte Young* inquiry is analogous to the causation requirement for Article III standing. See *id.* at 869.

[¶46] Here, the lack of a causal connection between Ms. White and Plaintiff’s alleged injuries, as well as her inability to remedy this injury even if enjoined, are set forth *supra* at pages 14-15, and Ms. White incorporates those arguments by reference here. Further, “the *Ex parte Young* doctrine does not apply when the defendant official has neither enforced nor threatened to enforce the statute challenged as unconstitutional.” *Minn. RFL Republican Farmer Lab. Caucus*, 33 F.4th at 992. Again, here, Ms. White has no power to “enforce” the statute complained of. Even going beyond this, though, the underlying defects in Plaintiff’s Complaint bar application of the *Ex parte Young* exception. “In determining whether this exception applies, a court conducts “a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *281 Care Comm. v. Arneson*, 638 F.3d 621, 632 (8th Cir. 2011) (alteration in original) (citing *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002)). Here, again, Plaintiff alleges no ongoing violation of federal law, because North Dakota law does not violate it. For all of these reasons, he fails to invoke the *Ex*

*parte Young* exception to sovereign immunity, and this suit is subject to dismissal on Eleventh Amendment grounds.

## II. Even if this Court would find jurisdiction, Plaintiff fails to state a claim upon which relief can be granted.

[¶47] Even if the Court does find a proper basis to exercise jurisdiction here, Plaintiff's Complaint still warrants dismissal because he fails to state a claim upon which relief can be granted. In summary, Plaintiff fails to actually show a conflict between state and federal law. For purposes of analyzing a motion to dismiss pursuant to 12(b)(6), this Court must accept Plaintiff's factual allegations as true, but the Court is not required to accept his legal conclusions. *Brown v. Medtronic, Inc.*, 628 F.3d 451, 459 (8th Cir. 2010) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). Here, his legal conclusions are fatally flawed. His claims not only fly in the face of federal court jurisprudence but offend the plain language of the statutes he cites, as set forth below.

### A. Plaintiff's Interpretation Violates the Plain Meaning of the Text.

[¶48] Even before one considers the relevant caselaw, Plaintiff's error is clear from the face of the Complaint. His entire justification for alleging that state and federal law conflict is set forth in the following sentence: "**Federal law prescribes votes to be tabulated on Election Day, as every mention of the day is singular, and not plural.**" Compl., para. 17.

[¶49] Plaintiff is simply wrong. While *voting* as it is understood occurs on a set day, Election Day, nothing in the plain meaning of the phrase "Election Day" indicates that votes must be *tabulated* that day as well. Voting is different than tabulating votes. This distinction is nicely parsed by the United States District Court for the Northern District of Illinois in an Order issued on July 26, 2023, in which the court dismissed a claim very similar to that present here :

More broadly, Plaintiffs consistently-and wrongly-conflate "voting" with "counting votes." The word "voting" as used in this case is a gerund; that is, a word derived from a verb that functions as a noun. As a derivative of the verb "to vote," "voting" refers to a specific act: casting a vote. Under the Ballot Receipt Deadline Statute, the voting deadline is unambiguous: the act of voting must take place on or before Election Day. 10 ILCS § 5/19-8(c). Counting those votes, however, may take place up to 14 days after Election Day. *Id.* Voting (as an act) and counting votes (as a separate act) are not the same thing, and the Statute allows counting alone-not voting-to continue after Election Day.

*Bost v. Ill. State Bd. of Elections*, No. 22-CV-02754, 2023 WL 4817073, at \*1 (N.D. Ill. July 26, 2023)

[¶50] The North Dakota statute is similar to the one at issue in *Bost*, in that Illinois’ law provides the act of voting must take place on or before Election Day, but the ballots may subsequently be counted for up to 14 dates after. For similar reasons as those cited by the court in *Bost*, this Court should reject Plaintiff’s tortured interpretation of the word “vote.”

[¶51] The failure in Plaintiff’s reasoning further is illustrated more vividly when one indulges his hypothetical. He bases his interpretation that votes should be tabulated on “Election Day” on the idea that the noun is singular, not plural. Compl., para. 14. So, for the sake of argument, let us imagine that it *is* plural – that every mention in federal statute was of “Election Days.” Would use of the term Election Days indicate to Plaintiff that votes *could* be tabulated after the multi-day period lapsed? There doesn’t seem to be any justification for such a reading. In short, whether or not there is an “s” at the end of the phrase “Election Day” cannot inject a pronouncement about the timing of vote tabulation into the plain meaning of the phrase. The Plaintiff’s interpretation can be rejected on the basis of the plain language of the statute alone.

[¶52] Further, Plaintiff’s proposed reading defies common sense. There are roughly 332 million people in the United States; facilitating elections is an enormously complex process, especially with the safeguards necessary to maintain integrity and preserve the rights of every eligible person to vote. It is patently irrational to presume Congress would have required election officials to provide for voting on Election Day *and* require that votes be tabulated simultaneously.

#### **B. Plaintiff’s Interpretation Is Unsupported by Federal Law.**

[¶53] This commonsense reading of the word, set forth above, is supported by the Constitution itself. The Elections Clause of the United States Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators.” U.S. Const. art. I, § 4, cl. 1. As

interpreted by the Supreme Court, the Elections Clause grants the states “comprehensive . . . authority to provide a complete code for the congressional elections, not only as to times and places, but in relation to . . . supervision of voting, protection of voters, prevention of fraud and corrupt practices, **counting of votes**, duties of inspectors and canvassers, and making and publication of elections returns”, unless Congress should “supplement these state regulations or . . . substitute its own.” *Smiley v. Holm*, 285 U.S. 355, 366–67 (1932) (emphasis added). In other words, the Elections Clause essentially grants state governments “the “default” authority to regulate the mechanics of federal elections,” with Congress retaining “exclusive control” to “make or alter” any state’s regulations. *Bognet v. Sec’y Pa.*, 980 F.3d 336, 343 (3d Cir. 2020), *cert. granted* and *vacated, sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021) (citing *Foster v. Love*, 522 U.S. 67, 69 (1997)). As such, “a state’s discretion and flexibility in establishing the time, place, and manner of electing its federal representatives has only one limitation: the state system cannot directly conflict with federal election laws on the subject.” *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 775 (5th Cir. 2000).

[¶54] Here, there is no indication that North Dakota’s statute conflicts with federal election laws on the subject. Under federal law, the day for elections is Election Day (i.e., the Tuesday after the first Monday in November in an even-numbered year). 2 U.S.C. § 7, 3 U.S.C. § 1. In North Dakota, in order to have their votes counted, voters must cast them in person on Election Day or by mail before Election Day. Nothing in North Dakota law provides a way for a vote cast after Election Day to be counted. In any event, only ballots cast on or before Election Day can be counted.

[¶55] Faced with similar challenges, federal courts around the country have declined to find the sort of conflict urged here. *See Bognet*, 980 F.3d at 354 (“The Deadline Extension and federal laws setting the date for federal elections can, and indeed do, operate harmoniously. At least 19 other States and the District of Columbia have post-Election Day absentee ballot receipt deadlines.”). *See also Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354, 359 (D.N.J. 2020) (“Although federal law prohibits New Jersey from canvassing ballots cast after Election Day, it is within New Jersey’s discretion to choose its methods of determining the timeliness of ballots, so



long as there is no appreciable risk of canvassing untimely ballots”); *Bost v. Ill. State Bd. of Elections*, No. 22-CV-02754, 2023 WL 4817073, at \*1 (“In this Court’s view, and with due respect to Plaintiffs’ contrary view, the Ballot Receipt Deadline Statute operates harmoniously with the federal statutes that set the timing for federal elections.”)

[¶56] North Dakota is one of approximately 20 states with a post-Election Day ballot receipt deadline. *See Bognet*, 980 F.3d at 354. The reasoning of the Court in *Bomer* is instructive here. There, the Court was faced with a challenge to Texas state statutes which allowed early voting; specifically, plaintiffs claimed that such voting violated the meaning of “Election Day.” *Bomer*, 199 F.3d. at 774. The court rejected this contention:

Further, we cannot logically hold that Texas’ system of unrestricted advanced voting violates federal law without also finding that absentee balloting — which occurs in every state — violates federal law.

We do not believe that Congress would have allowed absentee balloting to occur under state laws if it attached the meaning to the federal election day statutes urged by VIP. More than a century ago, some states began to allow absentee voting, and all states currently provide for it in some form, Edward B. Moreton, Jr., *Voting by Mail*, 58 S.Cal. L.Rev. 1261, 1261–62 (1985); yet Congress has taken no action to curb this established practice. We are unable to read the federal election day statutes in a manner that would prohibit such a universal, longstanding practice of which Congress was obviously well aware.

*Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000).

[¶57] Here, likewise, the Court should not read the federal election day statutes in a manner that would prohibit the “universal” and “longstanding” practice of post-election receipt deadlines. *See also Millsaps v. Thompson*, 259 F.3d 535, 546, n.5 (6th Cir. 2001) (rejecting similar challenge to early voting based on definition of “Election Day” and noting that “official action to confirm or verify the results of the election extends well beyond federal election day: county election officials must meet to verify and certify the results announced on election day . . .”)

[¶58] In addition to Congress, the Supreme Court itself is demonstrably “well aware” of ballots arriving after Election Day and their subsequent tabulation. One example is the 2020 case of *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020). There, the Court was faced with a Wisconsin district court order permitting absentee ballots to be “mailed and

postmarked *after* Election Day.” *Id.* at 1206 (emphasis added). The Court emphasized the unusual nature of the district court’s order: “Extending the date by which ballots may be cast by voters—not just received by the municipal clerks *but cast by voters*—for an additional six days after the scheduled election day fundamentally alters the nature of the election.” *Id.* at 1207 (emphasis added). Importantly, the Court did not overturn the District Court’s order on this “fundamental alteration” itself, but on the longstanding principle that “lower federal courts should ordinarily not alter the election rules on the eve of an election” pursuant to *Purcell v. Gonzalez* and its progeny. *Id.* at 1207, citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

[¶59] On the facts alone, *Republican Nat’l Comm.* provides a favorable comparison to the present case—in North Dakota, the casting and postmarking of ballots by voters is limited to the traditional pre-Election Day timeline. But even more illustrative is what comes next. The Supreme Court, having set forth the above analysis, issued its own order to remedy the order of the Wisconsin district court. *Id.* at 1208. It wrote:

Therefore, subject to any further alterations that the State may make to state law, in order to be counted in this election a voter's absentee ballot must be either (i) postmarked by election day, April 7, 2020, and received by April 13, 2020, at 4:00 p.m., or (ii) hand-delivered as provided under state law by April 7, 2020, at 8:00 p.m.

*Id.* at 1208. In other words, the Supreme Court itself issued an order directing the State of Wisconsin to accept ballots postmarked by Election Day and received afterwards. Surely, were Plaintiff’s position tenable, the Supreme Court would not have issued its own order in potential violation of federal law.

[¶60] Further, other federal statutes permit ballots to arrive after Election Day in specific contexts. Such statutes were addressed recently by the court in *Bost*:

For example, the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (“UOCAVA”), 52 U.S.C. §§ 20301–20311, sets out various requirements for states to ensure that military voters overseas can cast ballots in federal elections. . . . These longstanding efforts by Congress and the executive branch to ensure that ballots cast by Americans living overseas are counted, so long as they are cast by Election Day, strongly suggest that statutes like the one at issue here are compatible with the Elections Clause.

*Bost*, 2023 WL 4817073, at \*11.

[¶61] Again, it is not reasonable to infer that Congress would pass statutes like the Uniformed and Overseas Citizens Absentee Voting Act of 1986 if federal law banned post-Election Day tabulation of votes. The weight of authority on this question supports the commonsense and longstanding interpretation that federal law does not preclude the counting of votes after Election Day, as long as those votes are validly cast on or before Election Day.

**C. Conclusion as to 12(b)(6).**

[¶62] As explained in the preceding sections, the Court need not reach the merits of this case. But if it does, Ms. White submits that Plaintiff has failed to state a claim that North Dakota's statutes violate federal law.

**CONCLUSION**

[¶63] For all the reasons set forth above, the Court lacks subject-matter jurisdiction over this case. But even if the Court does find the existence of subject matter jurisdiction, it should dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted. Ms. White respectfully requests that Plaintiff's Complaint be dismissed in its entirety.

Dated this 7<sup>th</sup> day of August, 2023.

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Drew H. Wrigley  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Mark Splonskowski,

Plaintiff,

vs.

Erika White, in her capacity as State  
Election Director of North Dakota,

Defendant.

**DECLARATION OF ERIKA WHITE**

**Case No. 1:23-cv-00123**

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

Erika White states as follows:

[¶1] I declare under penalty of perjury that the statements made in this declaration are true and correct to the best of my knowledge and belief.

[¶2] Attached to this declaration as Exhibit 1 is a true and correct copy of the Meeting Minutes for the Burleigh County Canvassing Board Meeting which occurred on November 8, 2022.


Dated this 4<sup>th</sup> day of August, 2023.

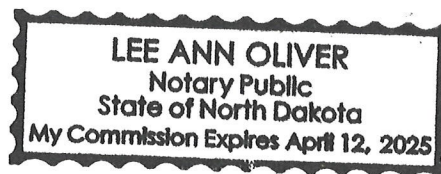


Erika White  
State Elections Director  
North Dakota Office of the Secretary of State

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

Subscribed and sworn to before me  
this 4<sup>th</sup> day of August, 2023.

  
Notary Public



**EXHIBIT**

**1**

**BURLEIGH COUNTY CANVASSING BOARD  
MEETING MINUTES  
November 8, 2022**

**TOM BAKER MEETING ROOM  
CITY/COUNTY OFFICE BUILDING  
221 N 5<sup>TH</sup> STREET, BISMARCK**

**10:00 am**

Erika White, Burleigh County Election Manager called the Canvass Board to order.

Members Present were Kathleen Jones, Claus Lembke, Leo Vetter, Melissa Hanson, Carson Fleck, and Erika White

The first order of business was to appoint the Chair of the Canvass Board. Claus Lembke nominated Erika White, Kathleen Jones 2<sup>nd</sup>, all members voted "AYE". Motion passed.

Chair White reviewed the numbers for the 2022 General Election and compared to previous elections. Voter turnout was 49%, lower voter turnout than typical General Elections but higher than the statewide average.

The Canvass Board reviewed 30 ballots that had matching signatures and were received by the absentee deadline set forth in North Dakota Century Code. Motion by Lembke to accept the ballots, 2<sup>nd</sup> by Jones, all members voted "AYE". Motion passed.

The Canvass Board then reviewed 21 ballots with questionable signatures that were unverified. A motion was made by Hanson to reject the ballots, 2<sup>nd</sup> by Lembke, all members voted "AYE". Motion passed.

The Canvass Board then reviewed 22 ballots with questionable signatures that were verified. Motion by Lembke to accept the ballots, 2<sup>nd</sup> by Jones, all members voted "AYE". Motion passed.

The Canvass Board then reviewed 23 ballots with postmarks past the deadline set forth in North Dakota Century Code. Motion by Jones to reject the ballots, 2<sup>nd</sup> by Fleck, all members voted "AYE". Motion passed.

The Canvass Board then reviewed 1 ballot with no postmark received through the United States Postal Services. Motion by Lembke to accept the ballot, 2<sup>nd</sup> by Jones, all members voted "AYE". Motion passed.

The Canvass Board then reviewed 6 verified set-aside ballots. Motion by Jones to accept the ballots, 2<sup>nd</sup> by Hanson, all members voted "AYE". Motion passed.

The Canvass Board then reviewed 28 unverified set-aside ballots. Motion by Hanson to reject the ballots, 2<sup>nd</sup> by Jones, all members voted "AYE". Motion passed.

Jones motioned to authorize the Election Manager to add the accepted ballots to the abstract, 2<sup>nd</sup> by Lembke, all members voted "AYE". Motion passed.

Vetter motioned to authorize the Election Manager to deliver absentees received in the next days (if any) to the County Recorder, Jones 2<sup>nd</sup>, all members voted "AYE". Motion passed.

The DS450 tabulator was turned on and a zero totals report was printed showing the machine was clear of votes. The ballots to be counted were tabulated with the DS450. The results report was printed to show the results of the Canvass Board. Motion by Jones to approve the vote totals, 2<sup>nd</sup> by Lembke, all members voted "AYE". Motion passed.

Motion by Lembke to adjourn the meeting of the County Canvass Board, 2<sup>nd</sup> by Jones, all members voted "AYE". Motion passed.

The board adjourned.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWEST DIVISION**

MARK SPLONSKOWSKI,

Plaintiff,

V.

ERIKA WHITE, in her capacity as State  
Election Director of North Dakota,

Defendant.

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Case No. 1:23-cv-00123-DMT-VPH

**PLAINTIFF MARK SPLONSKOWSKI’S RESPONSE IN OPPOSITION TO  
DEFENDANT’S MOTION TO DISMISS**



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## INTRODUCTION

More than 175 years ago, before North Dakota was admitted to the Union, Congress established a uniform Election Day: the Tuesday after the first Monday in November of every even-numbered year. Not all ballots are cast by this day in North Dakota. Instead, ballots arriving up to 13 days after Election Day may be counted. *See* N.D. Cent. Code §§ 16.1-11.1-07 and 16.1-15-17 (together, “Ballot Receipt Deadline”). The complaint alleges North Dakota’s Ballot Receipt Deadline and the federal Election Day statutes are plausibly in conflict.

Legislative history and historical practice support the allegations. As originally understood, Election Day means the day by which ballots must be received and the day on which the “whole question should be decided.” Cong. Globe, 42d Cong., 2d Sess. 112 (1871). Accordingly, the Supreme Court of the United States has explained that “[w]hen the federal statutes speak of ‘the election’ of a Senator or Representative, they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder[.]” *Foster v. Love*, 522 U.S. 67, 71 (1997). In North Dakota, the “combined actions of voters and officials meant to make a final selection of an officeholder” cannot occur by Election Day. North Dakota’s Ballot Receipt Deadline therefore conflicts with the federal Election Day statutes, and where such a conflict exists, North Dakota law “ceases to be operative.” *Ex parte Siebold*, 100 U.S. 371, 384 (1879).

The conflict between federal and state law here presents a real and personal dilemma for Burleigh County Auditor Mark Splonskowski. Mr. Splonskowski alleges that North Dakota’s expansion of Election Day is contrary to federal law. (Doc. 1, ¶ 9.) Yet he is bound to administer elections in Burleigh County according to state law, N.D. Cent. Code § 16.1-01-01(4), including the Ballot Receipt Deadline, and he must train others to do the same, N.D. Cent. Code § 16.1-05-

03(2). As a member of the County Canvassing Board, Mr. Splonskowski must swear an oath to “support the Constitution of the United States and the Constitution of the State of North Dakota” and to “faithfully discharge the duties of the office of Burleigh County Canvass Board.” (Doc. 1, ¶ 26.)

Mr. Splonskowski alleges that he cannot simultaneously honor federal law, North Dakota’s statutes, and his oath. If he adheres to his state-imposed duties, Mr. Splonskowski must allow elections to occur under circumstances he believes are unlawful, and which violate his oath to uphold the U.S. Constitution. If Mr. Splonskowski chooses federal law over his state-imposed duties, he faces fines and prison time. *See* N.D. Cent. Code § 16.1-01-12. His injuries are real.

This case is not about Mr. Splonskowski’s preferences or his disagreement with North Dakota’s policies, as Director White contends. This case is about Congress’s choices when it comes to the timing of federal elections, “a matter on which the Constitution explicitly gives Congress the final say.” *Foster*, 522 U.S. at 71-72. Mr. Splonskowski’s Complaint alleges facts demonstrating a plausible risk of injury and a conflict between federal and state law. Director White’s motion to dismiss should therefore be denied.

## **BACKGROUND**

### **Federal Election Day Statutes**

A trio of statutes establishes the Tuesday after the first Monday in November of every even-numbered year as the uniform Election Day. In 1845, Congress passed the “Presidential Election Day Act,” which is now codified as 3 U.S.C. § 1. 28 Cong. Ch. 1, 5 Stat. 721. Twenty-seven years later, Congress passed what is now 2 U.S.C § 7, establishing the same day for congressional elections. In 1914, following the adoption of the Seventeenth Amendment, Congress aligned Senate elections with those in the House. 2 U.S.C. § 1.

### **North Dakota's Ballot Receipt Deadline**

In North Dakota, ballots sent by mail may be counted if postmarked “at least the day before the election and received prior to the meeting of the canvassing board.” N.D. Cent. Code § 16.1-11.1-07(1). The Canvassing Board meets “[o]n the thirteenth day following each election.” N.D. Cent. Code § 16.1-15-17. Together, these statutes permit mailed ballots to arrive up to thirteen (13) days after Election Day and be cast and counted.

Statewide, in the November 2022 election, at least 294 ballots were received after Election Day and at least 212 of those ballots were cast and counted. (Doc. 1, ¶ 35.) In Burleigh County, North Dakota, at least 53 ballots were received after Election Day, and 30 of those ballots were cast and counted. (Doc. 1 ¶ 36.)

### **County Auditor Mark Splonskowski**

Plaintiff Mark Splonskowski is the County Auditor of Burleigh County, North Dakota. (Doc. 1, ¶ 13.) In that capacity, Mr. Splonskowski is the county administrator of elections, *id.*, and is “responsible to the secretary of state for the proper administration within the auditor’s county of state laws, rules, and regulations concerning election procedures,” N.D. Cent. Code § 16.1-01-01(4). Mr. Splonskowski has election administration duties, some of which are described at N.D. Cent. Code § 16.1-01-01(5). Among them, Mr. Splonskowski must attend training administered by Director White. N.D. Cent. Code § 16.1-01-01(5)(f). Upon completion of duties, Mr. Splonskowski must “certify to the secretary of state ... that the duties have been completed.” N.D. Cent. Code § 16.1-01-01(5). Failure to do so is a crime, *id.*; N.D. Cent. Code § 12.1-11-06, punishable by imprisonment and fines, N.D. Cent. Code § 12.1-32-01(5).

Mr. Splonskowski is also a member of the County Canvassing Board. N.D. Cent. Code § 16.1-15-15. “On the thirteenth day following each election, the county canvassing board shall

meet and, after taking the oath of office, shall proceed to open and publicly canvass the returns.” N.D. Cent. Code § 16.1-15-17. The oath taken by Mr. Splonskowski requires him to “solemnly swear” to “support the Constitution of the United States and the Constitution of the State of North Dakota,” and to “faithfully discharge the duties of the office of Burleigh County Canvass Board[.]” (Doc. 1, ¶ 26.) At this meeting, the County Canvassing Board tallies and canvasses ballots that arrive after Election Day. (Doc. 1, ¶ 27); N.D. Cent. Code § 16.1-07-09 (providing that ballots received after Election Day “must be tallied by the canvassing board of the county”); *see also Self Advocacy Sol. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1045 (D.N.D. 2020) (“Absentee ballots received after the polls close on election day are forwarded directly to the county canvassing board.”).

#### **State Elections Director Erika White**

Though “[t]he secretary of state is, ex officio, supervisor of elections,” the Secretary of State “may employ additional personnel to administer [Title 16.1].” N.D. Cent. Code § 16.1-01-01(1). The Secretary of State has exercised this authority by making Defendant Erika White his State Elections Director. (Doc. 1, ¶ 12.) Director White has significant authority to administer elections in North Dakota. She oversees North Dakota’s 53 county auditors to ensure that the election processes and procedures are uniform (*id.*), and that the standards of the Secretary of State and the law are met. Director White oversees the development of conferences, trainings, and educational materials for election officials. Each election year, Director White conducts training for all county auditors, where she trains them on uniform implementation of state election policies, including how to accept ballots, and which ballots to accept. (Doc. 1, ¶ 12.)

### **Fines and Penalties for Election Offenses**

North Dakota law provides penalties for election-related offenses, including prison time and fines. N.D. Cent. Code § 16.1-01-12; N.D. Cent. Code § 12.1-11-06; (Doc. 1, ¶¶ 31-34). For example, it is a Class A misdemeanor to “[w]illfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title,” or “[w]illfully violate any rule adopted by the secretary of state pursuant to [Title 16.1].” N.D. Cent. Code § 16.1-01-12(1)(k)-(l); N.D. Cent. Code § 16.1-01-12(2)(a). A county auditor commits a separate offense if he “knowingly refuses to perform any duty imposed upon him by law, N.D. Cent. Code § 12.1-11-06, or fails to “certify to the secretary of state ... that [his] duties have been completed,” N.D. Cent. Code § 16.1-01-01(5).

### **STANDARD OF REVIEW**

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

## ARGUMENT

### I. Mr. Splonskowski Has Standing.

Simply put, if Mr. Splonskowski honors federal law—as he believes he must—he will necessarily fail or refuse to perform his official, statutory duties, acts that will expose him to adverse consequences, including criminal prosecution. An actual controversy therefore exists.

#### A. Mr. Splonskowski’s Risk of Injury Is Sufficient for Pre-Enforcement Review.

Director White does not quibble that the threat of criminal prosecution constitutes an injury in fact sufficient to confer standing. *See St. Paul Area Chamber of Commerce v. Gaertner*, 439 F.3d 481, 485 (8th Cir. 2006). She argues instead that such a threat to Mr. Splonskowski is too “speculative.” (Doc. 10 at 5.) Not so.

“[A] plaintiff [can] bring a preenforcement suit when he has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014); *see also Missouri v. Yellen*, 39 F.4th 1063, 1068 (8th Cir. 2022). “A party, however, need not expose itself to arrest or prosecution in order to challenge a criminal statute.” *Gaertner*, 439 F.3d at 485. Rather, “[a] plaintiff’s fear of enforcement must be objectively reasonable, meaning that the threat of enforcement may not be ‘imaginary or wholly speculative.’” *Animal Legal Def. Fund v. Vaught*, 8 F.4th 714, 719 (8th Cir. 2021) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014)).

This pre-enforcement standard does not help Director White. Rather, “as long as there is no ‘evidence—via official policy or a long history of disuse—that authorities’ have ‘actually’ refused to enforce a statute, a plaintiff’s fear of prosecution for illegal activity is objectively reasonable.” *Jones v. Jegley*, 947 F.3d 1100, 1104 (8th Cir. 2020) (quoting *281 Care Comm. v.*



*Arneson*, 638 F.3d 621, 628 (8th Cir. 2011)); *See also Gaertner*, 439 F.3d at 485 (quoting *Minn. Citizens Concerned for Life v. Fed. Election Comm’n*, 113 F.3d 129, 131 (8th Cir. 1997))

(“When a statute is challenged by a party who is a target or object of the statute’s prohibitions, ‘there is ordinarily little question that the [statute] has caused him injury.’”).

Contrary to Defendant’s argument, the Complaint is not ambiguous about Mr. Splonskowski’s intended “course of conduct.” *Susan B. Anthony List*, 573 U.S. at 160. The Complaint evinces an unambiguous belief in the supremacy of the federal Election Day statutes. (*See* Doc. 1, ¶ 9 (seeking “a judgment declaring North Dakota’s extension of Election Day to be unlawful...”). This action would not exist if Mr. Splonskowski intended to follow Director White’s training or its source, North Dakota’s statutes. Director White appears to concede this point. (Doc. 10, ¶ 18 (“[S]ome observations are possible by logical deduction from what Plaintiff does allege, and these observations allow for an analysis of Plaintiff’s true risk of injury.”)).

Mr. Splonskowski’s view that federal law is supreme and in conflict means, by necessity, that he cannot follow his training, including Director White’s instruction to accept, count, and certify ballots that arrive after Election Day. The Complaint plausibly alleges that these actions will violate multiple state criminal statutes. (Doc. 1, ¶¶ 31-34, 43.) Furthermore, “[a]t the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (citations and quotations omitted). This means that Mr. Splonskowski’s intent to choose federal law and disregard state law includes the specific facts (or acts) necessary to establish the injury he justifiably fears—namely, a plausible violation of a criminal statute, or at minimum, repercussions stemming from failure to follow Director White’s training.

Nevertheless, the Complaint alleges what Mr. Splonskowski’s course of conduct would plausibly mean for him in practice (Doc. 1, ¶ 43), and these allegations allow the Court to draw the “reasonable inference” that his choices will place him in jeopardy, *Iqbal*, 556 U.S. at 678. For example, Mr. Splonskowski, as a member of the County Canvassing Board, “must” count ballots that arrive after Election Day. N.D. Cent. Code § 16.1-07-09; (Doc. 1, ¶ 27). If he fails or refuses to perform this duty—because he believes those ballots are unlawful—he will have “[w]illfully fail[ed] to perform any duty of an election officer,” N.D. Cent. Code § 16.1-01-12(1)(k). (Doc. 1, ¶ 32), or “knowingly refuse[d] to perform any duty imposed upon him by law,” N.D. Cent. Code § 12.1-11-06. The same is true if Mr. Splonskowski fails or refuses to meet with other members of the Canvassing Board “to open and publicly canvass the returns,” N.D. Cent. Code § 16.1-15-17, because he believes those returns include unlawful ballots.

Mr. Splonskowski must also distribute training manuals prepared by the Secretary of State, N.D. Cent. Code § 16.1-05-03(1) and must “conduct training sessions on election laws and election procedures for election officials” before each election, N.D. Cent. Code § 16.1-05-03(2). If he fails or refuses to perform these duties—because they require him to give instruction contrary to federal Election Day statutes—he will have “[w]illfully fail[ed] to perform any duty of an election officer,” N.D. Cent. Code § 16.1-01-12(1)(k), (Doc. 1, ¶ 33), and risks “[w]illfully violat[ing] any rule adopted by the secretary of state pursuant to [Title 16.1],” N.D. Cent. Code § 16.1-01-12(1)(l), (Doc. 1, ¶ 33).

Mr. Splonskowski risks violating these same laws if he refuses to sign the abstract of votes after each primary election, N.D. Cent. Code § 16.1-15-21, or refuses to deliver abstracts to the Secretary of State, N.D. Cent. Code §§ 16.1-15-22, 16.1-15-25, because he believes abstracts to include votes cast in contravention of the federal Election Day statutes.

Director White herself highlights another risk for Mr. Splonskowski. She notes that Mr. Splonskowski, while serving at the Canvassing Board meeting, “could certainly make a motion to reject the ballots he sees as objectionable.” (Doc. 10 at 7.) Moving to reject ballots cast in accordance with state law may reasonably be seen as “[k]nowingly exclud[ing] a qualified elector from voting[.]” N.D. Cent. Code § 16.1-01-12(1)(f), (Doc. 1, ¶ 31). Director White warns that “[t]here is theoretically some argument that refusing to enforce state law is ‘failing to perform a duty as an elected official.’” (Doc. 10, ¶ 23.) She nonetheless claims there could be no actual or “meaningful” failure because Mr. Splonskowski’s motion would fail. (*Id.*) The success or failure of his actions does not determine whether Mr. Splonskowski has failed to perform a duty or refused to enforce state law. Imagine, *arguendo*, that Mr. Splonskowski denied a voter access to the polling place on Election Day, but a different official allowed that same voter to vote later that day. The character of Mr. Splonskowski’s actions—*i.e.*, whether he acted unlawfully—would not change simply because he was unsuccessful in preventing that person from voting. For the same reason, it does not matter whether Mr. Splonskowski has “unilateral power to reject any votes,” as Director White suggests it does. (Doc. 10, ¶ 22.)

Mr. Splonskowski’s other duties are described in N.D. Cent. Code, § 16.1-01-01, including the duty to (1) “Prepare and disseminate voter information as prescribed by the secretary of state”; (2) “Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state”; (3) “Provide completed reports on election matters as required by the secretary of state”; and, (4) “Attend, or send a designee to attend, state election conferences convened by the secretary of state.” Section 16.1-01-01(5) provides further, “Upon completion of the duties required by this subsection, the county auditor shall certify to the secretary of state, in the manner prescribed by the secretary of state, that the duties have been

completed. A knowing violation of this subsection **is an offense** under section 12.1-11-06.”

(Emphasis added); *see also* N.D. Cent. Code § 12.1-11-06 (“Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.”). As failure to perform any of his duties “is an offense” under North Dakota law, Mr. Splonskowski’s fear of injury is “objectively reasonable.” *Vaught*, 8 F.4th at 719.

Mr. Splonskowski’s risk of injury does not depend on the actions of any third parties, including the Burleigh County State’s Attorney’s Office. For starters, the doctrine of pre-enforcement review precludes this defense. If prosecutors, by virtue of their being independent actors, destroyed standing, pre-enforcement review could never happen. But it is beyond debate that it does. *See Susan B. Anthony List*, 573 U.S. at 160.

Furthermore, controlling precedent forecloses Director White’s argument that standing is lacking solely because prosecutors have not threatened to prosecute. “The Supreme Court has repeatedly found that plaintiffs have standing to bring pre-enforcement First Amendment challenges to criminal statutes, even when those statutes have never been enforced.” 281 *Care Comm.*, 638 F.3d at 628 (citing *Babbitt v. UFW Nat’l Union*, 442 U.S. 289, 302 (1979); *Doe v. Bolton*, 410 U.S. 179, 188 (1973)). The Eighth Circuit accords. In *Saint Paul Area Chamber of Commerce v. Gaertner*, 439 F.3d 481 (8th Cir. 2006), the Eighth Circuit found standing even where “Appellees asserted they have never prosecuted anyone under the Minnesota Statutes or made any public statements threatening to do so[.]” *Id.* at 485 (citation and quotations omitted; *see also See United Food & Commercial Workers Int’l Union v. IBP, Inc.*, 857 F.2d 422, 429 (8th Cir. 1988) (holding that representation by state officials that they have no “present plan” to enforce a statute does not divest plaintiffs of standing to challenge the statute because “the state’s position could well change”). What mattered was that “Appellees ha[d] not disavowed an intent

to enforce the statutes in the future” and “Appellees ha[d] taken an oath to enforce Minnesota law.” *Id.* 485-86; *see also 281 Care Comm.*, 638 F.3d at 628 (finding plaintiffs’ fear of prosecution objectively reasonable where “Defendants have neither established a long history of disuse nor produced a clear statement by proper authorities that they do not intend to enforce the statute.”). The Burleigh County District Attorney has taken an oath to enforce North Dakota law, and to Mr. Splonskowski’s knowledge, the District Attorney has not disavowed an intent to enforce any of the state’s statutes.

Last, there is no requirement that challenged statute exclusively prescribe the plaintiff’s course of conduct. (Doc. 10, ¶ 28.) Mr. Splonskowski’s risk of injury is no less real because his injuries may be caused by the operation of the Ballot Receipt Deadline and the statutes providing penalties for election misconduct, together. Director White offers no authority to the contrary.

#### **B. Causation.**

Director White does not dispute that absent relief she will train and instruct Mr. Splonskowski to implement and enforce the Ballot Receipt Deadline. Director White’s instructions have legal significance, N.D. Cent. Code, § 16.1-01-01(2)(d), and she is enforcing the law. Mr. Splonskowski’s dilemma is thus “fairly traceable” to Director White’s actions. *Bennett v. Spear*, 520 U.S. 154, 167 (1997). Furthermore, any repercussions Mr. Splonskowski may face for acting contrary to his training, including the Ballot Receipt Deadline, will likely originate with Director White, due to her direct oversight over Mr. Splonskowski, and her responsibility to ensure uniform application of election procedures (Doc. 1, ¶ 12).

A 2019 job posting for the North Dakota State Elections Director supports the allegations.<sup>1</sup> The position’s “Summary of Work” provides, “A primary purpose of this position is to ensure the elections administered across the state are executed in compliance with laws and rules, and in a manner that is responsive to the public’s needs.” (Emphasis added). The posting further provides that the Election Director “[p]rovide[s] support and oversight to the state’s local election officials cooperatively and individually in their administration of elections to ensure that the standards of the Secretary of State and law are met,” and “[o]versee[s] the development of conferences, trainings, and educational materials for election officials as required by both statute and the direction of the Secretary of State.” (Emphasis added).

Even if other state officials may also enforce North Dakota’s election laws, that alone does not make the injury any less traceable to Director White under these circumstances. As the Third Circuit has put it, “there is room for concurrent causation in the analysis of standing ... and, indeed, an indirect causal relationship will suffice, so long as there is a fairly traceable connection.” *Constitution Party v. Aichele*, 757 F.3d 347, 366 (3d Cir. 2014) (citations and quotations omitted); *see also Libertarian Party of Va. v. Judd*, 718 F.3d 308, 316 (4th Cir. 2013).

The Eighth Circuit analyzes Article III’s “causation” requirement similar to the *Ex parte Young* inquiry, which asks whether “the official has some connection to the enforcement of the challenged laws.” *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017). “[T]hat connection does not need to be primary authority to enforce the challenged law.” *281 Care Comm.*, 638 F.3d at 632. “Nor does the [official] need to have the full power to redress a plaintiff’s injury in order to have ‘some connection’ with the challenged law.” *Id.* at 633.

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<sup>1</sup> Available at <https://www.electioncenter.org/job-openings/election-officials-and-election-administration-and-voter-registration-employment-positions/2019/State-Election-Director-Office-of-the-Secretary-of-State-Bismark-North-Dakota-2019-10-02.pdf> (last accessed Sept. 5, 2023).

For example, in *Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Nixon*, 428 F.3d 1139 (8th Cir. 2005) (“*Reprod. Health*”), the Eighth Circuit found the Missouri Attorney General had the requisite connection even though he “had no authority to initiate criminal prosecution,” and “could only participate in a criminal proceeding if his assistance was requested by the assigned county attorney or the trial court asked him to sign indictments.” 281 *Care Comm.*, 638 F.3d at 633 (citing *Reprod. Health*, 428 F.3d at 1145-46).

In *Worth v. Harrington*, No. 21-cv-1348 (KMM/LIB), 2023 U.S. Dist. LEXIS 56638 (D. Minn. Mar. 31, 2023), the plaintiffs challenged a Minnesota law that prohibited anyone under the age of twenty-one from obtaining a permit to carry a handgun in public. *Id.* at \*1. The plaintiffs sued the Commissioner of the Minnesota Department of Public Safety and various county sheriffs, all of which claimed they were entitled to Eleventh Amendment Immunity due to an insufficient connection to the challenged statute. *Id.* at \*49-50.

The Commissioner argued that “the Sheriffs, and not the Commissioner, are responsible for reviewing, investigating, denying and issuing licenses under the statute” and “he is not charged with enforcing the statute as a matter of law.” *Id.* at \*51-52 (quotations omitted). The court disagreed, finding that the “statutory scheme plainly gives the Commissioner ‘some connection’ with enforcement of the act.” *Id.* at \*52. What was that connection? The Commissioner’s duty to “develop statewide standards for *application forms* that are consistent with the criteria set forth in [the law],” including the field where applicants must provide their date of birth. *Id.* (emphasis added). The Commissioner also “ma[d]e the standardized forms available on the Internet,” and “inform[ed] members of the public who are 18-20-year-olds that they are ineligible to receive a permit to carry.” *Id.* at \*52-53. In other words, the Commissioner told members of the public what the law says. That was enough for the court to conclude that the

Commissioner “has some connection to enforcement of the statute such that he can be ordered to provide meaningful prospective injunctive relief.” *Id.* at \*53.

Director White’s involvement with the Ballot Receipt Deadline is far greater than the Commissioner’s connection to the handgun permit statute in *Worth v. Harrington*. Director White not only tells the auditors what the law says, she instructs and trains the auditors on how to carry out the law, including the Ballot Receipt Deadline. Director White also oversees all county auditors and their compliance with election administration statutes. (Doc. 1, ¶ 12.) Despite her attempt to downplay her role (Doc. 10, ¶ 41), Director White has a significant and critical role in administration and instruction regarding the challenged statute. If Director White is arguing that she does not have or execute these duties as alleged, she is arguing factual matters, which are not properly resolved through a Rule 12 motion. *Fla. State Bd. of Admin. v. Green Tree Fin. Corp.*, 270 F.3d 645, 663 (8th Cir. 2001).

Director White raises the Secretary’s authority and asserts that “the duty to supervise elections is ultimately his.” (Doc. 10, ¶ 39.) If that is true, the proper recourse is a motion under Fed. R. Civ. P. 12(b)(7) for “failure to join a party under Rule 19,” not the motion now before the Court. *See also* Fed. R. Civ. P. 19(a)(1)(A).

### **C. Redressability.**

Mr. Splonskowski’s seeks both declaratory and injunctive relief. (Doc. 1, Prayer for Relief (A)-(C).) A declaration that North Dakota law is invalid would alleviate Mr. Splonskowski’s fear of prosecution—and any actual prosecution—because with such a declaration in place, no official can enforce the Ballot Receipt Deadline or punish non-compliance therewith. Director White ignores the request for declaratory relief. This alone satisfies Article III’s redressability prong.



With respect to the request for injunctive relief, Director White claims that “an injunction against Mrs. White would have no effect in redressing Plaintiff’s injury ... because it is her supervisor, the Secretary of State as a state office holder, who administers elections laws in the state....” (Doc. 10, ¶ 42.) Again, the appropriate motion is under Fed. R. Civ. P. 12(b)(7) and that motion was not made. In any event, “a party ‘satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury.’” *Minn. Citizens Concerned for Life v. FEC*, 113 F.3d 129, 131 (8th Cir. 1997) (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982)) (emphasis in original). An injunction against Director White would prevent her from forcing Mr. Splonskowski to act contrary to federal law.

#### **D. Mr. Splonskowski Has Oath-of-Office Standing.**

Mr. Splonskowski also has standing under *Bd. of Educ. v. Allen*, 392 U.S. 236 (1968). In *Allen*, school board members challenged the constitutionality of a law requiring public schools to lend textbooks to all students in grades seven through twelve, alleging that their doing so would violate the Establishment Clause. 392 U.S. at 238-40. The Supreme Court explained,

Appellees do not challenge the standing of appellants to press their claim in this Court. Appellants have taken an oath to support the United States Constitution. Believing § 701 to be unconstitutional, they are in the position of having to choose between violating their oath and taking a step—refusal to comply with § 701—that would be likely to bring their expulsion from office and also a reduction in state funds for their school districts. There can be no doubt that appellants thus have a “personal stake in the outcome” of this litigation.

*Allen*, 392 U.S. at 241 n.5 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Although some courts have questioned the current validity of this decision, *see S. Lake Tahoe v. Cal. Tahoe Reg’l Planning Agency*, 625 F.2d 231 (9th Cir. 1980), to Mr. Splonskowski’s knowledge, the Supreme Court has not expressly overruled *Allen*. *Rodriguez de Quijas v.*

*Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

The Reasoning of *Allen* supports Mr. Splonskowski. Like the school board members, he has taken an oath to uphold the United States Constitution. (Doc. 1, ¶ 26.) If he enforces the Ballot Receipt Deadline, he must reject the supremacy of federal law and thereby violate his oath. Choosing to honor his oath means rejecting his training and the Ballot Receipt Deadline, which “would be likely to bring” repercussions, such as criminal prosecution. (See Doc. 1, ¶¶ 31-34, 41-43.) As in *Allen*, so here: Mr. Splonskowski has a “personal stake in the outcome of this litigation.” *Allen*, 392 at 241 n.5 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

#### **E. The Eleventh Amendment Does Not Bar This Action.**

“In *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), the Supreme Court recognized sovereign immunity does not bar ‘certain suits seeking declaratory and injunctive relief against state officers in their individual capacities’ based on ongoing violations of federal law.” *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1131 (8th Cir. 2019) (quoting *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 269 (1997)). This requirement is satisfied because Mr. Splonskowski seeks declaratory and injunctive relief against Director White based on her ongoing violation of the federal Election Day statutes. And, as explained, also satisfied is the requirement that “the official has some connection to the enforcement of the challenged laws.” *Supra* Section I.B. The Eleventh Amendment is not applicable here.

The Eight Circuit recognizes that pre-enforcement challenges “promote[] good public policy by breeding respect for the law.” *Gaertner*, 439 F.3d at 488; see also *Ariz. Right to Life*

*PAC v. Bayless*, 320 F.3d 1002, 1007 (9th Cir. 2003) (“[I]t would turn respect for the law on its head for us to conclude that [a plaintiff] lacks standing to challenge the provision merely because [the plaintiff] chose to comply with the statute and challenge its constitutionality, rather than to violate the law and await an enforcement action.”); *see also Mobil Oil Corp. v. Attorney Gen. of Va.*, 940 F.2d 73, 75 (4th Cir. 1991). The dilemma is true here. Mr. Splonskowski’s conviction and his oath require him to honor the U.S. Constitution. Director White says he must instead honor North Dakota law. Rather than risk injury to himself and confusion in the electoral process, Mr. Splonskowski has asked this Court to resolve any conflict now. For these reasons, the Court is authorized to do so. *See also Mobil Oil Corp.*, 940 F.2d at 75 (“We think that [this] case is precisely the one for which the Declaratory Judgments Act was designed.”).

## **II. Mr. Splonskowski States a Plausible Claim for Relief.**

Director White’s arguments under Rule 12(b)(6) fair no better. Federal law fixes Election Day on one specific day. 2 U.S.C. § 1; 2 U.S.C. § 7; and 3 U.S.C. § 1. North Dakota law allows ballots to be cast for 13 days after Election Day. There is a conflict between federal and state law, which must be resolved in favor of federal law.

### **A. Congress May Override State Law Establishing the Time for Federal Elections.**

Congress is authorized under the Elections Clause (U.S. Const. art. I, § 4 cl.1) and Election Day Clause (U.S. Const. art. II, § 1 cl.4) to establish the Time for conducting federal elections. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932). These two clauses give “Congress ‘the power to override state regulations’ by establishing uniform rules for federal elections, binding on the States.” *Foster*, 522 U.S. at 69 (citing *Thornton*, 514 U.S. at 832-833). “When Congress legislates with respect to the ‘Times, Places and Manner’ of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States.” *Arizona*

*v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14, (2013). When Congress acts under the Elections Clause, the so-called presumption against preemption “does not hold.” *Id.* at 14. Instead, “the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive intent.” *Id.* Congress’s decisions governing federal elections “are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative.” *Ex parte Siebold*, 100 U.S. 371, 384 (1880).

Congress exercised its authority almost 200 years ago when it enacted the first of a trio of statutes that established the Tuesday after the first Monday in November of every even-numbered year as the uniform Election Day. In 1845, Congress passed the “Presidential Election Day Act,” which is now codified as 3 U.S.C. § 1. 28 Cong. Ch. 1, 5 Stat. 721. Twenty-seven years later, Congress passed what is now 2 U.S.C § 7, establishing the same day for congressional elections. In 1914, following the adoption of the Seventeenth Amendment, Congress aligned Senate elections with those in the House. 2 U.S.C. § 1.

In contrast, North Dakota’s Ballot Receipt Deadline is a new development. When absentee balloting was first authorized in 1981, S.L. 1981, ch. 241, § 5, the law did not expressly contemplate that ballots would arrive after Election Day. Instead, the law provided procedures for absentee ballots that arrived “too late to be forwarded to the proper voting precinct in time to be tabulated.” N.D. Cent. Code § 16.1-07-09 (1981). Those ballots were tabulated “at such time as the returns are canvassed.” *Id.* In 1981, the law instructed the County Canvassing Board to canvass the returns “[a]s soon as the returns are received by the county auditor, but not later than ten days after each election[.]” N.D. Cent. Code § 16.1-07-09 (1981) (emphasis added). In other words, the canvass could occur on Election Day.

It was not until 2011 that the North Dakota legislature expressly mentioned counting mail ballots postmarked “at least the day before the election and received prior to the meeting of the canvassing board.” *See* S.L. 2011, ch. 152, § 27. And it was not until 2021, that the North Dakota legislature expressly gave the County Canvassing Board the duty to count absentee ballots received “after election day.” *See* S.L. 2021, ch. 164, § 40 (amending N.D. Cent. Code § 16.1-07-09 “too late to be forwarded to a polling place of the proper voting precinct in time to be tabulated” to “after election day.”).

**B. The Complaint Plausibly Alleges the Ballot Receipt Deadline Conflicts with the Text and Meaning of the Federal Election Day Statutes.**

Mr. Splonskowski’s claims sound in preemption. “State law is preempted when Congress expressly prohibits state regulation, when Congress implicitly leaves no room for state involvement by pervasively occupying a field of regulation, and when state law directly conflicts with federal law[.]” *Chapman v. LabOne*, 390 F.3d 620, 624 (8th Cir. 2004). The complaint alleges that the Ballot Receipt Deadline is preempted because it expressly and impliedly conflicts with the text and meaning of the federal Election Day statutes. (Doc. 1, ¶¶ 1-5, 14-17, 21 35-36, 46, Prayer for Relief (A).) Simply put, federal laws fix Election Day on one specific day (Doc. 1, ¶¶ 1, 15, 46), while North Dakota law allows the election to occur for thirteen days after Election Day (Doc. 1, ¶ 21). The conflict is apparent and “plausible on its face.” *Iqbal*, 556 U.S. at 678.

Director White makes no effort to interpret the actual text of the federal Election Day statutes. Instead, she parses an allegation in Mr. Splonskowski’s complaint. (Doc. 10, ¶ 4.) The statutory text—which is what matters—is exceptionally clear. Congress did not just say that elections should generally occur on one “day.” No. Congress told us exactly on what day Election Day must occur: “[t]he Tuesday next after the 1st Monday in November, in every even numbered year.” 2 U.S.C. § 7. “It is well established that when the statute’s language is plain, the

sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) (citations and quotations omitted).

### **C. Supreme Court Precedent Supports Mr. Splonskowski’s Allegations.**

The Supreme Court’s decision in *Foster v. Love* supports Mr. Splonskowski’s allegations. There, the Supreme Court recognized that Congress “mandates holding all elections for Congress and the Presidency on a single day throughout the Union.” *Foster*, 522 U.S. at 70. The Court defined “election” as used in the Election Day statutes: “When the federal statutes speak of ‘the election’ [...], they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder[.]” *Id.* at 71. Put differently, this “final act of selection,” *id.* at 72, “means a ‘consummation’ of the process of selecting an official.” *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001).

Voters’ role in the “final act of selection” includes not just marking a ballot but also “having it delivered to the election officials and deposited in the ballot box.” *Maddox v. Bd. of State Canvassers*, 149 P.2d 112, 115 (Mont. 1944) (citation omitted). Thus, the “consummation” or the “final act of selection” does not occur until *ballots are received* by election officials. The Montana Supreme Court described the effects of voting innovations on this process:

Nothing short of the delivery of the ballot to the election officials for deposit in the ballot box constitutes casting the ballot, which fact was unmistakable so long as the ballot continued to be, as originally, a ball or marble or other marker which was “cast” or deposited in an official receptacle or custody. The fact that the ballot has now become a sheet of paper upon which the voter’s choices for the various offices are marked before it is deposited has not changed either the word used to characterize the act of casting the ballot, or the meaning of the word.

*Id.* For “[i]t is not the marking but the depositing of the ballot in the custody of election officials which constitutes casting the ballot or vot[ing].”<sup>2</sup> *Id.* After all, a ballot has “no effect until it is deposited with the election officials, by whom the will of the voters must be ascertained and made effective.” *Id.* Stated differently, it is the receipt of a qualified ballot by state election officials that transforms a ballot into a cast vote. Under North Dakota’s Ballot Receipt Deadline, that “final act of selection” now continues for as much as thirteen days after Election Day.

This concept is illustrated by reviewing the status of a ballot once it is received by a voter. The ballot sitting in a voter’s kitchen waiting to be completed is not a vote. Even once it is marked, its status does not change. Nor does it change once it is handed to a third party (*e.g.*, U.S. Postal Service or family member) for delivery. Likewise, a ballot in transit or sitting in the Postal Service’s distribution center is not a vote. A ballot that is lost, stolen, or destroyed is not a vote. A ballot is not a vote until it is properly marked *and* received by the election official. At receipt, a qualified ballot becomes a vote that can be counted during canvassing.

When Congress passed the Civil Rights Act of 1957 it defined a “vote [as including] all action necessary to make a vote effective including [...] casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast[.]” 52 U.S.C. § 10101(e). It is axiomatic that “all actions necessary” includes casting *and* receiving the ballot for canvassing.

Given the “binding” federal requirements, *Foster*, 522 U.S. at 69, of these “combined actions” and the consummation of the process of selecting an official, the Supreme Court had no problem finding that Louisiana’s election regime violated federal law if “the combined actions of voters and officials meant to make a final selection of an officeholder” occur “*prior* to federal election day.” *Id.* at 71, 72 n.4 (emphasis added). There, the Court unanimously invalidated

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<sup>2</sup> *Cf. Bloome v. Hograeff*, 61 N.E. 1071, 1071-72 (Ill. 1901) (allowing ballots received by state election officials on Election Day, but not physically deposited into a ballot box, to be counted).

Louisiana’s election regime that held congressional elections in October. Louisiana’s regime was thus constitutionally flawed because it established “a contested selection of candidates for a congressional office that is concluded as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress.” *Id.* at 72. Similarly, the “final act of selection” of federal candidates in North Dakota continues as a matter of state law as much as thirteen days after Election Day and can *never* be concluded on Election Day.

The Fifth, Sixth, and Ninth Circuits have all considered the meaning of “Election Day,” but only in evaluating whether state *early* voting practices comport with federal law. In those cases, the courts ruled such practices did not violate federal law because they did not consummate the election before Election Day or alter the “final act of selection.” *See Keisling*, 259 F.3d at 1175-76; *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 775-77 (5th Cir. 2000); *Millsaps v. Thompson*, 259 F.3d 535, 543-46 (6th Cir. 2001). Early absentee voting merely complements other “voting,” which “still takes place on” Election Day, which was the day of the “final selection of an officeholder.” *Keisling*, 259 F.3d at 1175, 1176 (quoting *Foster*, 522 U.S. at 71); *see also Bomer*, 199 F.3d at 776 (“Allowing some voters to cast votes before election day does not contravene the federal election statutes because the final selection is not made before the federal election day.”). Stated differently, the collective voters’ “final selection” still occurs no earlier or later than Election Day, even if canvassing remains to be done.

North Dakota’s Ballot Receipt Deadline violates 2 U.S.C. § 7 and 3 U.S.C. § 1 for the same reason that Louisiana’s system did in *Foster*. Here, because the “final selection” of candidates can never be consummated on Election Day, it does not, in fact, take place on the date chosen by Congress. *Foster*, 522 U.S. at 71-72. State election regimes can no more require “the combined actions of voters and officials meant to make a final selection of an officeholder”



occur *prior* to Election Day than they can allow these combined actions to continue thirteen days *after* Election Day. *See id.* Louisiana’s former, and North Dakota’s current, election regimes both “affect the timing of federal elections”— an October election in Louisiana “requires no further act by anyone to seal the election” on Election Day, *id.* at 73, while accepting votes thirteen days after Election Day in North Dakota requires “further act[s]” intended to influence the final result of a federal election. *Id.* Both contravene Congress’ “final say” about the time for federal elections and “clearly violate” 2 U.S.C. § 7 and 3 U.S.C. § 1. *Id.* at 72.

**D. The Ordinary, Plain Meaning of “Election Day” Is the Date by Which Ballots Must Be Received by Election Officials.**

History confirms the plausibility of Mr. Splonskowski’s allegations. From 1845 until about 2005, the unmistakable historical practice was that Election Day was the day of final action and that final action was the act of election officials receiving cast ballots. In short, Election Day was the singular ballot receipt day.

Unless otherwise defined, words will be interpreted as taking their ordinary, common public meaning at the time of enactment. *See Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (citations omitted). “[I]f judges could freely invest old statutory terms with new meanings, we would risk amending legislation outside the ‘single, finely wrought and exhaustively considered, procedure’ the Constitution commands.” *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (citation omitted). This inquiry often looks to the development of the common-law definition, *id.*, or refers to dictionaries contemporaneous with the enactment. *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 228 (2014).

Dictionaries published before and after 1845 define “election” as “[t]he *day* of a public choice of officers,” emphasizing the temporal nature of this regulation. Noah Webster, *An American Dictionary of the English Language*, 288, (Joseph E. Worcester, *et al.* eds. 1st ed.

1830), available at <https://bit.ly/3INC9nG>; and Noah Webster, An American Dictionary of the English Language, 383, (Joseph E. Worcester, *et al.* eds. 2nd ed. 1860), available at <https://bit.ly/3LK7ZMF> (emphasis added). This emphasis on time and electoral practices before and after 1845 speaks to the ordinary public meaning of election. The original public meaning of election meant the final act of selection and that act was receipt of ballots.

### **1. There Was No Pre-Republic Right to Vote Absentee.**

Colonial electoral practices can be grouped together depending on whether the colony followed Puritan, British royal, or some other proprietary rules. *See* Cortland F. Bishop, History of Elections in the American Colonies, 98-99 (1893), available at <https://bit.ly/3yso7xC>; and Kirk H. Porter, Ph.D., History of Suffrage in the United States, 1-3 (1918), available at <https://bit.ly/3RsJ9ES> (explaining that colonies were essentially corporations and the right to vote was “much the same” as a stockholder’s right to vote). Many of these electoral practices lasted through the American Revolution and early republic. *See* Porter at 1-3; and *see generally* Bishop at 1-45. While some colonial corporations later enacted rules allowing limited proxy voting, it was unknown under the common law and all votes needed to be “personally given” at poll sites.<sup>3</sup> George W. McCrary, A Treatise on the American Law of Elections, 132 (Henry L. McCune eds. 4th ed. 1897) available at <https://bit.ly/3PIGMCa>.

“During the colonial period, many government officials were elected by the *viva voce* method or by the showing of hands, as was the custom in most parts of Europe.” *Burson*, 504 U.S. at 200; *see also Doe v. Reed*, 561 U.S. 186, 224-27 (2010) (Scalia, J., concurring in judgment) (describing historic voting practices). It was not possible during this time for votes, whether conducted *viva voce* or by dropping beans in a bowl, to be received after Election Day.

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<sup>3</sup> In its basic form, proxy voting allowed eligible voters to assign their vote to a qualified proxy who was required to appear in person on Election Day to cast the assigned vote. *See* Bishop at 127-40.

## 2. It Remained Physically Impossible for Votes to Be Received After Election Day for Most of the 19th Century.

After the Constitution’s ratification, Congress was unsure whether states would conduct timely federal elections or whether the states would appoint electors at all. *See* Jeffrey M. Stonecash, Jessica E. Boscarino, Rogan T. Kersh, Congressional Intrusion to Specify State Voting Dates for National Offices, *Publius: The Journal of Federalism*, Vol. 38, Issue 1, Winter 2008, Pages 137–151, *available at* <https://bit.ly/3uEBRh5>; *Inter Tribal Council of Ariz.*, 570 U.S. at 8 (discussing the Framers’ concern that “a State would refuse to provide for the election of representatives to the Federal Congress.” (citing *The Federalist* No. 59, pp. 362-363 (C. Rossiter ed. 1961) (A. Hamilton))). Concerns led to 1792 legislation in Congress, which provided a deadline, rather than a designated day, by which states must appoint electors. Act of March 1, 1792, Sess. I, Ch. 8; and Stonecash, *et al.*, at 140-41. Yet further legislation tried to resolve issues arising from the nation’s varied state electoral calendars. *Id.* This prompted Congress to establish a National Day of Election for the appointment of presidential electors in 1845, *id.* at 142; 3 U.S.C. § 1, which all states conformed to within three years, *id.* at 141.

New state electoral practices would emerge, but none allowed ballots to be received after Election Day. In the 18th and early part of the 19th century, some states began adopting paper ballots. E. Evans, *A History of the Australian Ballot System in the United States*, 11 (1917) (Evans); *Burson*, 504 U.S. at 200. This practice generally involved voters’ handwriting their votes on personal paper, which they delivered to polling places on Election Day. *Id.* at 200. *Viva voce* and handwritten ballots remained the majority practices until one voter crafted his own preprinted “ticket” ballot in 1829. Evans at 11-12. Many states abandoned *viva voce* voting as tickets grew in popularity. Evans, at 11-12, 17; *Burson*, 504 U.S. at 201-03; *see also* Donald A. Debats, *How America Voted: By Voice*, 5, Univ. of Virg. Inst. For Advanced Tech. in

Humanities, (2016), *available at* <https://bit.ly/3sVOMRu>. Like handwritten ballots, tickets were papers of no effectiveness until deposited into a ballot box on Election Day. *See Maddox*, 149 P.2d at 115; *but see Bloome*, *supra*, n.2.

### **3. Even During the Civil War, Absentee Ballots Were Not Cast Until Received by Officials on Election Day.**

There have been two waves of absentee voting adoption. The advent of absentee voting arose during the Civil War. Josiah Henry Benton, *Voting in the Field*, 4-5 (1915), *available at* <https://bit.ly/3p4OQaq>. Prior to 1861, all states required that voting was exercised by casting ballots in person in their election districts.<sup>4</sup> *See id.* During the Civil War, efforts were made to ensure soldiers could exercise their franchise. *Id.* at 4-14. Between 1861-64 several states adopted one of two absentee voting methods to allow “voting in the field,” both of which involved receipt of ballots by election officials on Election Day. *Id.* at 4, 15. Some states enacted proxy voting whereby a soldier mailed his marked ballot to someone back home to deliver at his home precinct on Election Day. *Id.* at 15, 265. “Under this method it was claimed that the voter’s connection with his ballot did not end until it was cast into the box at the home precinct, and therefore that the soldier really did vote, not in the field, but in his precinct.” *Id.* at 15.

Under the second method, states created poll sites within military units by providing them ballot boxes and appointing servicemen as state election officials to receive ballots on Election Day. *Id.* at 15-17; *see also id.* at 43. After field ballots were received by the appointed officials, the ballots would be counted in the field or sent back to the servicemen’s home states. *Id.* at 317.

Absentee voting disappeared after the Civil War, *id.* at 314, but reemerged in the early 20th century due to changing economics and war. Charles Kettleborough, *The American Political Science Review*, Vol. 11, No. 2, 320-322 (May 1917), *available at*

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<sup>4</sup> Pennsylvania’s 1813 absentee voting law was invalidated by the Pennsylvania Supreme Court. Benton at 189-203.

<https://bit.ly/3z14deH>; *see also* John C. Fortier, Absentee and Early Voting: Trends, Promises, and Perils, AEI Press, at 8-11 (2006), *available at* <https://bit.ly/3P3HaFD>. These new practices adhered with the original public meaning that Election Day meant receipt day. *See generally* P. Orman Ray, The American Political Science Review, Vol. 12, No. 2, 251-261 (May 1918) (describing different state absentee voting procedures), *available at* <https://bit.ly/3PjmtVS>. For example, several states required absentee voters to swear they would return ballots on or before Election Day. *Id.* at 255. Washington state required absentee voters to appear at any state poll site on Election Day to absentee vote. *Id.* at 253. “[T]he act of voting is not completed until the ballot is deposited in the ballot-box.” *Goodell v. Judith Basin Cty.*, 224 P. 1110, 1111-14 (1924).

Similarly, early 20th century military absentee laws adopted many of the voting practices from the Civil War that reflected the original public meaning that Election Day meant receipt day. *See generally* P. Orman Ray, The American Political Science Review, Vol. 12, No. 3, at 461-69 (Aug. 1918), *available at* <https://bit.ly/3auLHlv>.

**E. Congress Intended that Election Day Was the Day Of “Final Selection,”  
When the “Whole Question” Should Be Decided.**

The pre-enactment legislative history surrounding Election Day statutes shows that Congress considered and rejected requests for a multiday Election Day in both 1845 and, especially, in 1872. *Keisling*, 259 F.3d. at 1169-74 (discussing the legislative history surrounding Election Day); *see also Millsaps*, 259 F.3d at 540-43. Other federal statutes in Title 2 and 3 emphasize Congress’ intent that Election Day, and not thirteen days later, is the deadline for “final selection.” *See* 3 U.S.C § 2 (“Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law[.]”); and 2 U.S.C. § 8 (“whether such vacancy is caused by a failure to elect at the time prescribed by law[.]”). If all voters’ “final selections” are not complete by Election Day, then the final selection

cannot be ascertained within “the time prescribed by law.” In consequence, federal elections in North Dakota suffer from the same fatal flaw as federal primaries in Louisiana: the final selection of candidates for office is not concluded as a matter of law on Election Day.

The Member of Congress who sponsored Election Day legislation stated:

The object of this amendment is to provide a uniform time of electing Representatives in Congress... But on account of the facility for colonization and repeating among the large central States, New York holding its election in November, and Ohio, Pennsylvania, and Indiana holding their elections in October, the privilege is allowed the border States, if any man is so disposed, of throwing voters across from one into the other. I think it will be fair for everybody that on the day when one votes all should vote, and that the whole question should be decided then.

Cong. Globe, 42d Cong., 2d Sess. 112 (1871). In North Dakota, the “whole question” cannot be decided until thirteen days after Election Day.

**F. Director White Does Not Address the Ordinary, Common, Public Meaning of the Text of the Federal Election Day Statutes.**

Director White’s motion offers no textual or historical analysis. Instead, Director White primarily relies on rulings from truncated proceedings involving emergency relief related to the highly contentious 2020 elections. The unique circumstances in which those rulings were made minimize their value here, and in any event, they do not change the controlling nature of *Foster* with respect to the textual interpretation of “election.”

The decision in *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020) is entirely inapposite because it dealt with a *primary* election. This case does not challenge the authority of the states to set the day for their primary elections. *Republican Nat’l Comm.* was also a *per curiam* order, issued on an application for a stay, one day before Wisconsin was scheduled to hold its primary election. The Supreme Court made clear that it was not reviewing the issue before this Court—that is, whether to extend ballot receipt day.

The question before the Court is a narrow, technical question about the absentee ballot process. In this Court, all agree that the deadline for the municipal clerks to receive absentee ballots has been extended from Tuesday, April 7, to Monday, April 13. That extension, **which is not challenged in this Court**, has afforded Wisconsin voters several extra days in which to mail their absentee ballots. **The sole question before the Court** is whether absentee ballots now must be mailed and postmarked by election day, Tuesday, April 7, as state law would necessarily require, or instead may be mailed and postmarked after election day, so long as they are received by Monday, April 13.

*Id.* at 1206 (emphasis added). The decision also does not mention *Foster*.

Director White’s reliance on *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354 (D.N.J. 2020) is similarly misplaced. *Way* operated on an expedited procedural track without the benefit of either time or discovery during the often-chaotic 2020 election. The plaintiffs moved for preliminary relief, less than two months before the November 8, 2020, general election. In the limited time between the lawsuit and Election Day, and without discovery, the plaintiffs failed to show with evidence that mail ballots were cast after Election Day. 492 F. Supp. 3d at 371. Such proceedings “based on expedited briefing and little opportunity for the adversarial testing of evidence” force courts to make “rushed, high-stakes, low information decisions.” *Dep’t of Homeland Security v. New York*, 140 S. Ct. 599, 600 (Gorsuch, J., concurring). On the instant issue, *Way* also contains little to no analysis of *Foster*.

*Bost v. Ill. State Bd. of Elections*, No. 22-cv-02754, 2023 U.S. Dist. LEXIS 129509 (N.D. Ill. July 26, 2023) may appear comparable to this case, but it is not. The case was dismissed for lack of standing, *id.* at \*10-25, and Eleventh Amendment immunity, *id.* at \*25-28. Mr. Splonskowski’s complaint makes very different allegations regarding standing.<sup>5</sup> While the court separately found the complaint did not state a plausible claim for relief, *id.* at \*28-32, the court did not address *Foster* or evaluate the original, common meaning of the phrase “the election.”

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<sup>5</sup> If the *Bost* plaintiffs filed their action in the Eighth Circuit, they likely would have standing. See *Carson v. Simon*, 978 F.3d 1051, 1057-59 (8th Cir. 2020).

Instead, the court inferred that post-Election Day receipt deadlines must be lawful because “Congress has never stepped in and altered the rules.” *Id.* at \*31.

The Supreme Court cautions that “subsequent legislative history is a ‘hazardous basis for inferring the intent of an earlier’ Congress,” *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)), and the Court is “reluctant to draw inferences from Congress’ failure to act,” *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 306 (1988) (citations omitted). On matters of election administration and voting, disagreements in Congress are frequent, and often occur for political reasons. Congress’s inaction certainly cannot provide a sound interpretation of the federal Election Day statutes.

#### **G. This Case Will Not Affect UOCAVA Voters.**

UOCAVA helps Mr. Splonskowski here. UOCAVA provides military and overseas voters the right to vote by absentee ballot in federal elections. Extensions for ballot receipts have been used by federal courts as a *remedy* for UOCAVA violations. *See generally United States v. West Virginia*, Civ. No. 2:14-27456, 2014 WL 7338867 (S.D. W. Va. Dec. 22, 2014). These extensions do not change any of the claims or arguments raised by Mr. Splonskowski in this action. Even if UOCAVA expressly authorized post-election receipt of UOCAVA ballots it would make no difference because Congress can amend the federal Election Day statutes at will and otherwise make specific carveouts as needed. States cannot.

#### **CONCLUSION**

For the foregoing reasons, Mr. Splonskowski has alleged a plausible risk of injury and a plausible conflict between federal Election Day statutes and North Dakota’s Ballot Receipt Deadline. The motion to dismiss should therefore be denied.



Dated: September 5, 2023.

Respectfully submitted,

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*\*Admitted Pro Hac Vice*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Mark Splonskowski,

Plaintiff,

vs.

Case No. 1:23-cv-00123

Erika White, in her capacity as State Election  
Director of North Dakota,

Defendant.

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**ORDER FOR ADDITIONAL BRIEFING**

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[¶1] THIS MATTER comes before the Court on a Motion to Dismiss filed by the Defendant Erika White (“White”). Doc. No. 9. Plaintiff, Mark Splonskowski (“Splonskowski”) filed a Response on September 5, 2023. Doc. No. 17. The United States Department of Justice filed a Statement of Interest on White’s Motion to Dismiss on September 11, 2023. Doc. No. 19. The Court has reviewed the briefing on file and the issue of whether Splonskowski has legal authority to initiate this suit has not been addressed by the Parties. The Court believes Splonskowski’s legal authority may be a threshold issue before considering the question presented in the pending Motion to Dismiss. The Court believes additional briefing is necessary.

[¶2] In North Dakota, “[e]ach organized county is a body corporate for civil and political purposes only. As such, the county may sue and be sued.” N.D.C.C. § 11-10-01. To effectuate this authority to sue, the North Dakota Legislature gave the power to institute civil actions “for and on behalf of the county and in its name” to the board of county commissioners for each county. N.D.C.C. § 11-11-14. Notably, North Dakota county auditors are not given that same authority. See N.D.C.C. § 11-13-02 (describing the duties of county auditors).

[¶3] The authority to sue appears to be vitally important here. Splonskowski seeks declarative and injunctive relief to prohibit the enforcement of North Dakota’s ballot counting statutes as violative of federal election law. The Complaint’s caption is silent as to what capacity Splonskowski sues the Defendant. See Doc. No. 1. But the description of Splonskowski clearly contemplates the suit in his official capacity as Burleigh County Auditor:

Plaintiff Mark Splonskowski is the County Auditor of Burleigh County, North Dakota. **In this capacity**, he is the county administrator of elections and is responsible for the proper administration of state laws, rules, and regulations concerning election procedures within Burleigh County. N.D. CENT. CODE. § 16.1-01-01(4). Before each primary and general election, he must conduct “training sessions on election laws and election procedures for election officials in the county,” including all election board members and poll clerks. *Id.* § 16.1-05-03(2). He also must designate a location for the closing, counting, and canvassing process, to be open to any person for the purpose of observing, and he sits on the county canvassing board, which reviews ballots that arrive after Election Day and certifies the county election results. *See id.* §§ 16.1-11.1-06 and 16.1-15-15.

Doc. No. 1, ¶ 12 (emphasis added). Despite this clear indication in the Complaint, at a County Commission meeting on July 19, 2023, Splonskowski claimed he brought this lawsuit in his “individual” capacity.<sup>1 2</sup> The Burleigh County State’s Attorney, Julie Lawyer, called the matter “a bit complicated” and concluded Burleigh County is not involved in this lawsuit “at all” because Splonskowski brought it individually and the County is not paying for the litigation.<sup>3 4</sup>

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<sup>1</sup> See Noble Sys. Corp. v. Alorica Central, LLC, 543 F.3d 978, 982 (8th Cir. 2008) (noting courts may judicially notice public records).

<sup>2</sup> Burleigh County Commission meeting on July 19, 2023, found at <https://archive.org/details/BurleighCountyCommission2023-07-19>, at 1:59:26-2:04:15; see also Blake Nicholson, *Splonskowski to County Commission: Election Lawsuit is Private; Woodcox Expresses Unease*, Bismarck Tribune, July 19, 2023, found at [https://bismarcktribune.com/news/state-regional/government-politics/splonskowski-to-county-commission-election-lawsuit-is-private-woodcox-expresses-unease/article\\_69787048-264a-11ee-ae5a-8b84a382c3de.html](https://bismarcktribune.com/news/state-regional/government-politics/splonskowski-to-county-commission-election-lawsuit-is-private-woodcox-expresses-unease/article_69787048-264a-11ee-ae5a-8b84a382c3de.html).

<sup>3</sup> Id.

<sup>4</sup> Who pays for the litigation has no bearing on the capacity in which Splonskowski brings this suit. While private funding may be paying for Splonskowski’s claim, that does not matter when considering whether Splonskowski’s claims are brought in his official or individual capacity.

[¶4] The only issue with State’s Attorney Lawyer’s assessment, as this Court sees it, is not single claim in the Complaint involves Splonskowski as an individual citizen. Not only is this supported by the plain language of the Complaint, but Splonskowski’s briefing essentially advances the same. See Doc. No. 17, pp. 6-7 (noting all of the actions Splonskowski has to take in his official capacity). Despite Splonskowski’s affirmation at the County Commission meeting that he brought this case in his official capacity, each allegation in the Complaint relates directly to his official actions taken as Burleigh County Auditor. Every injury he claims will occur are a direct result of his official actions as County Auditor and are not specific to Splonskowski as a citizen. If he were not the County Auditor, he would suffer no injury. Not a single fact Splonskowski alleges leads this Court to conclude he has brought this case in his “individual” capacity. While Splonskowski’s position may be a clever lawyer’s trick to try to get around the Commission’s sole authority to bring this claim, it appears Splonskowski may not have legal authority to bring this action.<sup>5</sup>

[¶5] Accordingly, the Court **ORDERS** additional briefing by the Parties on whether the Complaint should be dismissed because Splonskowski lacks approval from the Burleigh County Commission to initiate this lawsuit in his official capacity as Burleigh County Auditor. Briefing shall be submitted as follows:

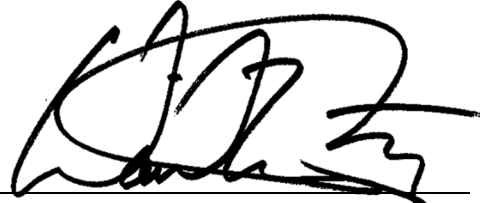
- Splonskowski’s additional brief is due by September 29, 2023.
- White’s Response is due by October 6, 2023.
- Splonskowski’s Reply is due October 13, 2023.

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<sup>5</sup> If Splonskowski is seeking guidance on what he should do in light of the alleged inconsistencies between federal and state election law, he may request an opinion from State’s Attorney Lawyer. See N.D.C.C. § 11-16-01(1)(i) (“The state’s attorney is the public prosecutor, and shall: . . . (i) Give, when required and without fee, the state’s attorney’s opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.”).

[¶6] **IT IS SO ORDERED.**

DATED September 15, 2023.

A handwritten signature in black ink, appearing to read 'D. Traynor', written over a horizontal line.

Daniel M. Traynor, District Judge  
United States District Court

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Mark Splonskowski,

Plaintiff,

vs.

Erika White, in her capacity as State  
Election Director of North Dakota,

Defendant.

**REPLY IN SUPPORT OF  
MOTION TO DISMISS**

**Case No. 1:23-cv-00123**

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[¶1] Defendant Erika White, in her capacity as State Election Director of North Dakota, submits this Reply in further support of her Motion to Dismiss previously filed with this Court. *See* Doc. No. 9. For the reasons set forth below, Plaintiff fails to carry his burden to show standing. But even if he did have standing, he fails to state a claim upon which relief can be granted.

**I. Plaintiff’s Case Must Be Dismissed for Lack of Subject Matter Jurisdiction.**

[¶2] Plaintiff’s attempts to establish Article III standing do not succeed. *See* Doc. No. 17, *Response*, at 9-20 (hereinafter “*Response*”). Specifically, his attempt to show an injury cites the wrong body of law, and his arguments on causation and redressability miss the mark. For parallel reasons, Ms. White’s right to Eleventh Amendment immunity from this suit remains clear. If the Court were to adopt Plaintiff’s proposed expansion of the standing doctrine, the Constitutional limits on federal subject matter jurisdiction would be rendered meaningless. He has failed to establish standing under controlling precedent and his Complaint should be dismissed.

**A. Plaintiff Fails to Establish an Injury**

[¶3] Plaintiff’s *Response* clarifies many of the ambiguities which were present in his Complaint. No longer does he allow for the possibility that he *may* follow state law when the time comes to canvass ballots. Plaintiff now declares that “after having accepted the responsibility of being an election officer,” *Response*, at 8, he will reject those responsibilities. *Compare* Doc. No. 1, *Complaint* at ¶ 49 (describing Plaintiff’s upcoming “choice between conflicting state and federal

law”) *with Response*, at 10 (asserting Plaintiff’s “intent to choose federal law and disregard state law.”)

[¶4] Through explaining his intent to violate his duties, Plaintiff asserts that his alleged injury is sufficient to support standing. *See generally Response*, at 9-14. Primarily, his claimed injury is the alleged risk of criminal prosecution, for which he claims entitlement to preenforcement review by this Court. His claim should be rejected.

[¶5] As Ms. White explained in her opening Memorandum, Doc. No. 10, at ¶¶ 27-29, the test for preenforcement review is inapposite here. In his Response, Plaintiff not only doubles down on the applicability of preenforcement review, but relies almost exclusively on preenforcement cases stemming from the specialized First Amendment context, despite the facial inapplicability of their holdings to his situation. When his claims of injury are examined in the full light of the actual governing law, they necessarily fail.

# **1. The Preenforcement Review Standard for Establishing Injury-in-Fact.**

[¶6] In a long line of cases, the Supreme Court has held that in certain situations, an Article III injury-in-fact may be created by “threatened enforcement” of a law, allowing preenforcement review of the law so long as the enforcement is “sufficiently imminent.” *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 603 (8th Cir. 2022), *citing Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014). Situations allowing preenforcement review are identified by application of a three-part test, as set forth in the oft-cited 2014 case of *Susan B. Anthony List v. Driehaus*. *See Religious Sisters of Mercy*, 55 F.4th at 603. In *Susan B. Anthony List*, the Court explained that an Article III injury is established, and preenforcement review is justified, when a plaintiff alleges: “[1] an intention to engage in a course of conduct arguably affected with a constitutional interest, but [2] proscribed by a statute, and [3] there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List* at 159, *quoting Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)).

[¶7] Even from this brief summary, problems arise for Plaintiff at all three factors of the test. First, he doesn’t actually challenge the law under which he claims to fear prosecution (*i.e.*, N.D. Cent. Code § 16.1-01-12, which sets forth criminal violations for election law penalties). Rather,

he challenges a *different* set of statutes (*i.e.*, portions N.D. Cent. Code Chapter 16.1-07, 16.1-11.1, and 16.1-15, which, when read together, set forth the ballot receipt deadlines which Plaintiff opposes). Second, he does not even attempt to argue that his course of conduct is affected by a Constitutional interest.<sup>1</sup> Instead, he draws almost entirely from cases arising in the First Amendment context.<sup>2</sup> These facial problems with Plaintiff's analysis only grow more serious when the governing law is examined.

## **2. Preenforcement Review Does Not Apply When the Statute Being Enforced Is Different Than the Statute Being Challenged.**

[¶8] The most obvious flaw in Plaintiff's argument is the fact that the set of laws he challenges are different than those under which he allegedly fears enforcement. However, Plaintiff does not address this threshold problem until the very end of his argument on injury.

[¶9] There, Plaintiff simply asserts "there is no requirement that [the] challenged statute exclusively prescribe the plaintiff's course of conduct." *Response*, at 14. He asserts that his "risk of injury is no less real" because his injuries may be caused by two groups of statutes operating "together." *Id.* He concludes, "Director White offers no authority to the contrary." *Id.*

[¶10] This entire paragraph misapprehends the law, but the last sentence is simply wrong. Not only Ms. White but Plaintiff himself offers "authority to the contrary." He does so six pages earlier, when he sets forth the governing standard for preenforcement review. Indeed, he cites the very test from *Susan B. Anthony List*, explaining that a plaintiff shows a preenforcement injury in fact "when he has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder."

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<sup>1</sup> Additionally, as set forth at length in Ms. White's opening brief, his threats of prosecution are not credible. While Ms. White obviously cannot predict with certainty the actions of the Burleigh County State's Attorney's Office with regards to every criminal statute Plaintiff now threatens to violate, *see Response* at 10-13, her inability to do so only emphasizes the lack of a causal connection between Ms. White and his alleged injury.

<sup>2</sup> The case Plaintiff cites which does not implicate the First Amendment is *Missouri v. Yellen*, where the Eighth Circuit held that the State of Missouri failed to show an injury-in-fact under the preenforcement review standard. *See Missouri v. Yellen*, 39 F.4th 1063, 1070 (8th Cir. 2022), cert. denied, 143 S. Ct. 734, 214 L. Ed. 2d 384 (2023).



*Response*, at 9. The language of the test is authority enough. Thereunder means “under that.” See Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/thereunder>. Applying this definition to the law, the word “thereunder” means that the prosecution is threatened under the statute described in the previous clause – *i.e.*, the statute proscribing the conduct. But even if there were any ambiguity on this point, it was dispelled by the Supreme Court in the very same case, when it considered whether the plaintiffs’ conduct was “proscribed by [the] statute[] they wish to challenge.” *Susan B. Anthony List*, 573 U.S. at 162, citing *Babbitt*, 442 U.S. at 298. In other words, preenforcement review contemplates that the statute proscribing the conduct is the *same statute* under which prosecution is threatened. Here, where Plaintiff attacks the North Dakota statutes outlining ballot receipt deadlines which supposedly prevent him from following federal law, he cannot allege any preenforcement injury because those statutes contain no criminal penalties. There is nothing to enforce.

[¶11] Cases which expand on this point are relatively few, perhaps due to the self-explanatory operation of the test. But those cases that do exist overwhelmingly support Ms. White’s position. See, e.g., *Penkoski v. Bowser*, 548 F. Supp. 3d 12, 30 (D.D.C. 2021) (holding that “preenforcement challenges are limited to where the threat of enforcement *stems from the challenged law itself*.”)(emphasis added); see also *Kearns v. Cuomo*, 415 F. Supp. 3d 319, 329 (W.D.N.Y. 2019), *aff’d*, 981 F.3d 200 (2d Cir. 2020) (“Plaintiff has not cited any case in which preenforcement standing to challenge a particular statute has been recognized based on the potential for prosecution under a different law . . . A plaintiff asserting standing on such grounds necessarily cannot satisfy the essential requirement identified by the Supreme Court in *Babbitt* – that the plaintiff allege an intention to engage in a course of conduct proscribed by the challenged statute.”)

[¶12] In sum, the Court should reject Plaintiff’s request to expand the doctrine of preenforcement review to cover challenges to one statute and injuries from another. His claim of injury based on preenforcement review must fail.

### **3. Even if Plaintiff Could Allege Preenforcement Review, He Lacks a “Constitutional Interest.”**

[¶13] But even if this Court would expand the test to cover Plaintiff’s claims, Plaintiff still fails to show an injury because he does not allege any conduct “affected with a constitutional interest.” *Susan B. Anthony List*, 573 U.S. at 159. Nevertheless, in his argument, Plaintiff cites almost exclusively from cases addressing First Amendment claims – a “constitutional interest” which is entirely missing from his own case.

[¶14] Again, the test for preenforcement review set forth in *Susan B. Anthony List* requires the proposed conduct to be “affected with a Constitutional interest.” 573 U.S. at 159. *See, e.g., Religious Sisters of Mercy v. Azar*, 513 F. Supp. 3d 1113, 1138 (D.N.D. 2021) (considering whether parties’ conduct implicates constitutional concerns). The problem for Plaintiff is that he fails to allege that his conduct is affected by any Constitutional interest. In his Complaint, he avers vaguely that he will suffer “serious and irreparable harm to his constitutional rights.” Doc. No. 1 at ¶ 50. But nothing in the 34 pages of his Motion gives the slightest indication as to what these rights are, what amendment they fall under, or the nature of the injury that would result to them. Such a deficiency is fatal to his attempt to show an injury-in-fact based on preenforcement review. *See Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1350 (11th Cir. 2011) (holding operator of pool hall could not show preenforcement injury-in-fact and noting “[t]he preenforcement review paradigm hardly fits our record; even though Bankshot is ‘chilled’ from engaging in an activity in which it once engaged, that activity is not constitutionally protected. Rather, it is normal business activity.”)

[¶15] Furthermore, Plaintiff only relies upon cases which *do* implicate a constitutional interest – specifically, that of the First Amendment. When it comes to preenforcement review, “[t]he First Amendment standing inquiry is ‘lenient’ and ‘forgiving.’” *Dakotans for Health v. Noem*, 52 F.4th 381, 386 (8th Cir. 2022). Indeed, the overwhelming majority of cases which apply the three-part test for preenforcement review arise in the First Amendment context, as did *Susan B. Anthony List* itself. *See, e.g., Sch. of the Ozarks, Inc. v. Biden*, 41 F.4th 992, 1000 (8th Cir. 2022) (A plaintiff claiming an abridgment of free speech is permitted to seek preenforcement review “under circumstances that render the threatened enforcement sufficiently imminent.”) *Peck v. McCann*,

43 F.4th 1116, 1129 (10th Cir. 2022) (“the First Amendment context creates unique interests that lead us to apply the standing requirements somewhat more leniently, facilitating preenforcement suits.”) (internal quotations omitted); *see also Tingley v. Ferguson*, 47 F.4th 1055, 1067 (9th Cir. 2022) (“‘[T]he Supreme Court has dispensed with rigid standing requirements’ for First Amendment protected speech claims and has instead endorsed a ‘hold your tongue and challenge now’ approach.”)

[¶16] But Plaintiff does nothing to justify application of the “lenient” First Amendment standard to his case, despite his reliance on it. Indeed, he does not allege conduct implicating *any* constitutional rights. As such, the cases he cites in support of his injury are inapplicable to his situation, and Plaintiff to establish a right to preenforcement review.

#### 4. The Remainder of Plaintiff’s Arguments Are Unavailing.

[¶17] Once the standard is clarified, there is little left of Plaintiff’s arguments. For instance, he cites *St. Paul Area Chamber of Commerce v. Gaertner* for the proposition that “[w]hen a statute is challenged by a party who is a target or object of the statute’s prohibitions, ‘there is ordinarily little question that the [statute] has caused him injury.’” 439 F.3d 481, 485 (8th Cir. 2006). But again, this statement comes in the context of preenforcement review of a First Amendment challenge, in a case where the Court considers challenges to a criminal statute and the risk of enforcement under the same statute. It does not help Plaintiff establish threat of any injury here, where the statute “targeting” Plaintiff – the criminal penalties for election misconduct – are not the statutes he challenges. Later, Plaintiff explains that “the Supreme Court has repeatedly found that plaintiffs have standing to bring preenforcement **First Amendment** challenges to criminal statutes, even when those statutes have never been enforced.” *Response*, at 13, *citing 281 Care Comm v. Arneson*, 638 F.3d 621, 628 (8<sup>th</sup> Cir. 2011) (emphasis added). That may be, but it has no relevance to Plaintiff’s case.

[¶18] In an attempt to shore up his risk of prosecution, Plaintiff cites to an even wider array of criminal statutes than those mentioned in his Complaint – but this tactic backfires. For instance, Plaintiff now invokes not only the criminal penalties associated with election-related offenses, but

also N.D. Cent. Code § 12.1-11.06, which addresses public servants in general. It states: “[a]ny public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.” N.D. Cent. Code § 12.1-11-06. But this statute is extremely broad. If Plaintiff’s theory is true, then *any* public servant in the state of North Dakota would be able to attack *any* law of the state in federal court, simply by alleging that they plan to ignore it, which would expose them to liability under N.D. Cent. Code § 12.1-11-06.

[¶19] Lastly, Plaintiff also suggests that he has oath-of-office standing under *Bd. Of Educ. v. Allen*, 392 U.S. 236 (1960). Without getting into the case’s questionable validity, it is enough to simply note that Plaintiff’s oath-of-office standing still relies upon the injuries he cites above. In his words, “Choosing to honor his oath means rejecting his training and the Ballot Receipt Deadline, which “would be likely to bring” repercussions, such as a criminal prosecution.” *Response* at 19. For the reasons set forth above, these repercussions are insufficient to support standing.<sup>3</sup>

## **5. Conclusion as to Injury-in-Fact.**

[¶20] Plaintiff fails to show an injury-in-fact based on the test for preenforcement review. Accordingly, he is forced to rely on the more general, less lenient tests for injury-in-fact. *See, e.g., Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). Plaintiff did not address these cases in his *Response*, but as set forth at length in Ms. White’s opening brief, they require that injury is “certainly impending.” *Id.* *See* Doc. No. 10, ¶¶ 13-26 (addressing general test for injury-in-fact). For all the reasons set forth in Ms. White’s opening brief, Plaintiff fails to show an Article III injury, and his case must be dismissed for lack of standing.

## **B. Plaintiff Cannot Show Causation.**

[¶21] Plaintiff’s attempt to establish the second element of standing, causation, fares no better. His *Response* fails to meaningfully address any of the logical flaws in his theory of causal connection between his injury and Ms. White. Further, the case he cites is distinguishable.

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<sup>3</sup> Further, Plaintiff’s discussion of this form of standing ignores the error which Ms. White previously noted in the contents of the oath. *See* Doc. No. 10 at ¶ 4.

[¶22] First, Plaintiff does not squarely address the fact that the training provided by Ms. White cannot possibly be a cause of his harm when he has *already* decided to disregard the law. On this point, Plaintiff simply avers that her training has “legal significance.” *Response*, at 14. It is not clear what this proposition means. In support, Plaintiff cites N.D. Cent. Code § 16.1-01-01(2)(d), which dictates that the Secretary of State will “[c]onvene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.” But the significance of this statute to Plaintiff’s argument is left unexplained. Even if Ms. White, rather than the Secretary of State, would convene this conference herself, there is no way that her facilitation of a “discussion” regarding “uniform implementation of state election policies” has any causal connection to Plaintiff’s proposed course of action. The “state election conference” referenced in the statute is not a meeting of the legislature to decide the *contents* of the state election laws. It is a conference to discuss how they should be implemented. And Mr. Splonskowski has already decided to disregard them. He fails to show a causal connection between Ms. White’s training and his injury.

[¶23] Plaintiff’s next contention is that Ms. White will be the origin of “repercussions” which Plaintiff may face. *Response*, at 14. First of all, this is far too vague to support a claim of injury. Second of all, Ms. White works for the state, and is not in any sort of supervisory role over Plaintiff. In any event, Plaintiff fails to causally link these undefined “repercussions” to Ms. White.

[¶24] But most fatally to his causation argument, Plaintiff fails to address the fact that it is the Burleigh County State’s Attorney, not Ms. White, who initiates criminal action in the state. While Plaintiff correctly recognizes that causation only requires that officials have “some connection” to the challenged law, a finding of “some connection” *here* would render the requirement of causation meaningless. Dozens of individuals across the state share in the responsibility of executing elections in compliance with laws and rules. However, none of them, except the State’s Attorney’s offices with the requisite jurisdiction, have authority to *bring criminal charges* which is the injury that Mr. Splonskowski supposedly faces.

[¶25] The case chiefly relied upon by Plaintiff is distinguishable. In *Worth v. Harrington*, the court found that the Minnesota Commissioner of Public Safety was one of several proper defendants in terms of plaintiff's claims for declaratory and injunctive relief against a statute placing age restrictions on permits to carry firearms in public. No. 21-CV-1348 (KMM/LIB), 2023 WL 2745673, at \*20 (D. Minn. Mar. 31, 2023). The Commissioner was statutorily responsible for facilitating the age-restricted permit application process by creating and promulgating application forms, among other duties. *Id.*

[¶26] The present facts are distinguishable. While Ms. White certainly informs people of the law, she does not “facilitate” the ballot receipt deadline in the same way the Commissioner facilitated the application process. Further, while it is true that the Commissioner told the members of the public what the law said, he did so in his capacity as the head of the Department of Public Safety. Under Minnesota law, the Commissioner of Public Safety is the individual charged by statute with “supervision and control” of the Department of Public Safety. Minn. Stat. § 299A.01. *Id.* Here, Ms. White is not a department head. She is a state employee.

[¶27] And most importantly, the operation of North Dakota’s election laws, even if they were under Ms. White’s control, causes Plaintiff no actual injury. Unlike the plaintiffs in *Worth* who were directly harmed by the statute in question by being prevented from carrying firearms, the statutory framework at issue here causes Splonskowski no injury whatsoever. He clearly disagrees with it, but his remedy is with the state legislature.

[¶28] Lastly, Plaintiff is wrong about the application of Federal Rule 12(b)(7). Ms. White has correctly pointed out that she lacks the causal connection to the harm alleged by Plaintiff, which is a fatal jurisdictional defect requiring dismissal under Rule 12(b)(1). She is under no obligation to ask the court to join other parties in an effort to salvage Plaintiff’s case.

[¶29] In sum, Plaintiff cannot show causation, and his case must be dismissed for lack of standing. For similar reasons, Plaintiff fails to prevail on the analogous inquiry as to whether Ms. White’s Eleventh Amendment immunity may be overcome: here, it cannot. *See* Doc. No. 10, at 15-16.

### C. Plaintiff Cannot Show Redressability.

[¶30] Plaintiff maintains that he shows redressability for both his claims for declaratory relief and his claims for injunctive relief. This claim is complicated by the fact that, since Plaintiff alleges no real injury, there is effectively nothing to redress. But even if the Court would find that Plaintiff has alleged an injury, it would not be redressed by the relief he sets forth here.

[¶31] Regarding injunctive relief, Plaintiff’s response misses the mark. Again, he asserts that Ms. White ought to bring a motion under Rule 12(b)(7). But again, whether or not another better defendant exists has no bearing on whether or not Plaintiff has standing to litigate *this* case against Ms. White.

[¶32] Plaintiff correctly cites caselaw for the proposition that, to satisfy the redressability requirement, a plaintiff “need not show that a favorable decision will relieve his *every* injury.” Response at 18. But here, Plaintiff has not shown that a favorable decision will relieve *any* injury. Again, an injunction against Ms. White would have no effect on the circumstances of this case; it would simply replace the individual who would ultimately be tasked with training the county auditors. And it would have no effect on the Plaintiff. He would still disagree with the law, he would still try to reject ballots, and he would still run the (speculative) risk of prosecution for failing to perform his duties. Further, his final statement – “[a]n injunction against Director White would prevent her from *forcing* Mr. Splonskowski to act contrary to federal law” – is simply unsupported. *Response*, at 18. Ms. White cannot “force” Plaintiff to do anything. Just because Ms. White, as Director of Elections, has “compliance” in her job description does not mean that Ms. White, whether by holding a conference or distributing a brochure, can *force* Plaintiff to comply with state law. Indeed, the only individuals who can force him to comply with the law are those charged with prosecuting violations of it – i.e., the Burleigh County State’s Attorney. The same is true for declaratory relief. While a wholesale invalidation of North Dakota election law would presumably remove Plaintiff’s temptation to violate the same, redressability in this case must concern Ms. White herself. *See Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 958 (8th Cir. 2015) (“[I]t must be the effect of the court’s judgment **on the defendant** that redresses

the plaintiff's injury, whether directly or indirectly.”) (emphasis added). Plaintiff’s alleged injury here is his risk of prosecution, and whether or not the Burleigh County State’s Attorney decides to prosecute Plaintiff does not depend on whether or not he was trained by Ms. White. He cannot establish redressability for either the declaratory or injunctive relief he seeks.

#### **D. Conclusion as to Standing**

[¶33] As the Supreme Court admonishes, “[s]tanding is not ‘an ingenious academic exercise in the conceivable.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 566 (1992). Here, Plaintiff goes to great lengths to link his disapproval of North Dakota law with Ms. White, relying on a chain of disparate statutes, independent actors, and his own avowed desire to break the law unless the Court invalidates it. But for all his efforts, he fails to allege “sufficient facts to support a reasonable inference that [he] can satisfy the elements of standing.” *Animal Legal Def. Fund v. Vaught*, 8 F.4th 714, 718 (8th Cir. 2021). Ms. White respectfully submits that Plaintiff has failed to carry his burden to establish the elements of this threshold requirement, and so this case must be dismissed.

#### **II. Even if this Court would find jurisdiction, Plaintiff fails to state a claim upon which relief can be granted.**

[¶34] Even if the Court does find a proper basis to exercise jurisdiction here, Plaintiff’s Complaint still warrants dismissal because he fails to state a claim upon which relief can be granted.

[¶35] Plaintiff summarizes the conflict on which his case is based as follows: “[f]ederal law fixes Election Day on one specific day,” while “North Dakota law allows ballots to be cast for 13 days after Election Day.” *Response*, at 20.

[¶36] The claim that North Dakotans are casting ballots for 13 days after Election Day is a surprising one. Determining whether a complaint states a plausible claim is “context specific, requiring the reviewing court to draw on its experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 663, 663-64. Ms. White respectfully submits that Plaintiff’s averments, however grounded in legal analysis, are unreasonable on their face. Further, an examination of the law cited by Plaintiff



leads to the same conclusion: that he fails to state a claim upon which relief can be granted. Ms. White will address Plaintiff's arguments sequentially below.

**A. Plaintiff's Complaint Fails to Plausibly Allege Any Conflict Between State and Federal Law.**

[¶37] Plaintiff starts this section of his Response by explaining the relationship between state and federal law, *Response* at 17, but he merely repeats the broad principles that Ms. White has already explained: namely, states have discretion in establishing time, place, and manner for elections of federal representatives, but such state systems may not directly conflict with federal election laws on the same subject. *See* Doc. No. 10, at ¶ 53. As the supremacy of federal law is not under attack here, Plaintiff's defense of it merits little response.

[¶38] Plaintiff next recounts the chronological histories of both the federal election statutes and the North Dakota election statutes, but the relevance of such information is not clear. He tries to cast the ballot receipt deadlines as a "new development," supposedly stemming from 2021. *Response* at 18. But even if such laws did date back to the 1800s, what would it matter? Federal law would still be supreme. Further, it appears from Plaintiff's own analysis that in 1981, just as today, ballots that arrive after election day were not counted until the County Canvassing Board meeting. Perhaps he wishes to emphasize that, in 1981, it was possible that the County Canvassing Board might meet *on* Election Day and thus any ballots arriving after Election Day would be discarded. But again, the relevance of such a hypothetical to Plaintiff's ultimate claim remains unclear.

[¶39] Plaintiff next asserts that he states a claim for preemption, because he alleges that state and federal law conflict. *Response*, at 22. Again, he refers to his own Complaint for the proposition that "North Dakota law allows the election to occur for thirteen days after Election Day." *Id.* But this does not suffice to state a claim. In analyzing a motion to dismiss pursuant to 12(b)(6), this Court must accept Plaintiff's factual allegations as true, but the Court is not required to accept his legal conclusions. *Brown v. Medtronic, Inc.*, 628 F.3d 451, 459 (8th Cir. 2010) (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Plaintiff is not allowed to allege an erroneous "fact"

about North Dakota law and thereby shield it from legal scrutiny at the 12(b)(6) stage. Plaintiff's allegations about North Dakota's allegedly extended election period are legal conclusions, and faulty ones, at that.

**B. Neither *Foster* Nor Other Federal Cases Support Plaintiff's Allegations.**

[¶40] The Supreme Court case of *Foster v. Love*, 522 U.S. 67 (1997), undermines Plaintiff's position. Not only is the Louisiana statutory scheme in *Foster* illustratively distinguishable than the laws of North Dakota, but further, the Court in *Foster* cautions against exactly the sort of argument that Plaintiff makes here.

[¶41] In *Foster*, the Court was confronted with the claim that Louisiana's election framework violated federal election law. 522 U.S. at 69. In Louisiana, an "open primary" statute allowed elections for federal offices to be held in October; only if no candidate received a majority would any election at all be held the following month, on Election Day itself. *Id.* at 70. Counsel for Louisiana explained at oral argument "Louisiana's system certainly allows for the election of a candidate in October, as opposed to actually electing on Federal Election Day." *Id.* at 73. The Court observed that under Louisiana law, the election for federal office straightforwardly took place in October. *Id.* at 72-73. The Court ultimately held that the Louisiana law conflicted with 2 U.S.C. § 7 and was void, but cautioned against hyper-technical interpretation of its ruling:

While true that there is room for argument about just what may constitute the final act of selection within the meaning of the law, our decision **does not turn on any nicety in isolating precisely what acts a State must cause to be done on federal election day** (and not before it) in order to satisfy the statute. **Without paring the term "election" in § 7 down to the definitional bone**, it is enough to resolve this case to say that a contested selection of candidates for a congressional office that is concluded as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress, clearly violates § 7.

*Id.* at 72 (emphasis added).

[¶42] In other words, *Foster* explicitly *declines* to "isolat[e] precisely what acts a State must cause to be done on federal election day." *Id.* Plaintiff reads this language to the contrary, but even his attempt to pare "the term election . . . down to the definitional bone" fail to cast aspersions on North Dakota's statutory scheme.

[¶43] Indeed, the commentary offered by *Foster* on the federal definition of “election” only helps Ms. White. “When the federal statutes speak of ‘the election’ of a Senator or Representative, they plainly refer to the **combined actions of voters and officials meant to make a final selection of an officeholder.**” *Id.* at 71. In North Dakota, the “combined actions of voters and officials” does not continue beyond Election Day for even a single hour, let alone for 13 days as Plaintiff contends.<sup>4</sup> Simply put, voters cannot take any action after Election Day in furtherance of the “final selection of an officeholder.” While the ballots themselves can move through the postal system after Election Day, the voters cannot revise, change, or undo their choice in the “final selection” because their ballots are required to be postmarked *before* Election Day. N.D. Cent. Code § 16.1-07-09. They have exercised their right to vote by marking their ballot, sealing the envelope, and sending it through the mail to be canvassed. Nothing about North Dakota’s procedure for returning ballots offends *Foster* or any definition of the word “election.”

[¶44] Plaintiff’s reading of *Foster* – indeed, his entire case – depends upon his deliberate misunderstanding of the finality of a voter’s actions in the context of a ballot returned by mail. Specifically, he insists that a vote is not “cast” until it is received by an election official. But his only support for this idea *Maddox v. Board of State Canvassers*, in which the Montana Supreme Court interpreted its’ own state laws as they existed in 1944. 149 P.2d 112, 115 (1944). *Maddox* is not binding on this court, nor has its rationale been adopted by any of the federal courts since to consider this subject.<sup>5</sup>

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<sup>4</sup> For unclear reasons, Plaintiff does not appear to object to the canvassing of votes by the County Canvassing Board, asserting that canvassing is excluded from the phrase “final selection” as he construes it. This puzzling omission only detracts from the plausibility of his narrow definition of “final selection.”

<sup>5</sup> Plaintiff’s unsupported statements on “the status of a ballot,” do not help his case. *See* Response at 17 (“The ballot sitting in a voter’s kitchen waiting to be completed is not a vote.” ... “A ballot that is lost, stolen, or destroyed is not a vote.”) This focus on the metaphysical characteristics of a ballot raises more questions than answers. What if a ballot is received by an election official, who then promptly loses it? (Indeed, what if a ballot is received by an election official who disregards it because he disagrees with state law?) While an extended discussion on this subject would be of little value, Ms. White simply notes that no case besides *Maddox* subscribes to Plaintiff’s theory on the ballot-vote distinction, which was not addressed in *Foster*; it is of no relevance in deciding the instant case.

[¶45] Rather, cases following *Foster* have not interpreted it as Plaintiff has. One of *Foster*'s progeny, *Millsaps v. Thompson*, discusses the case at length and explicitly acknowledges the need for post-Election Day official actions to confirm and verify results. *Millsaps v. Thompson*, 259 F.3d 535, 546 n.5 (6th Cir. 2001).

[¶46] Looking at Plaintiff's legal discussion more broadly, his inability to cite a single case which squarely supports him is telling. Indeed, all the cases directly considering this matter oppose his position, and his attempts to minimize them are unavailing. For instance, Plaintiff criticizes the recent case of *Bost v. Ill. State Bd. of Elections*, No. 22-CV-02754, 2023 WL 4817073 (N.D. Ill. July 26, 2023) for not discussing *Foster*. *Response*, at 32. But he omits the fact the *Bost* court carefully considered *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000), a case reliant on *Foster* and cited by Plaintiff himself earlier in his brief.

[¶47] Further, Plaintiff misapprehends the significance of *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020). True, this case concerns a primary election, and the question facing the Court is not so close to the instant facts as are the other cases Ms. White relies upon. But the Court's rationale in *Republican Nat'l* casts doubt in Plaintiff's theory of what it means to cast a vote. In *Republican Nat'l*, the Court was faced with a district court who extended the deadline for mailing and postmarking ballots to an unspecified number of days *after* Election Day, so long as the ballots were received within six days of Election Day itself. *Id.* at 1206-07. In describing this decision, the Court stated that the district court's plan to allow *mailing* of votes after Election Day would be "*allowing voting* for six additional days after the election." *Id.* at 1208. In other words: mailing a ballot is the functional equivalent of casting it. In North Dakota, by contrast, no voting *or* mailing is allowed after Election Day. Ballots must be postmarked by the day before Election Day. N.D. Cent. Code § 16.1-07-09.

[¶48] Further, Plaintiff's claim that the court in *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354 (D.N.J. 2020) conducted "little to no analysis" of *Foster* is wrong. *Response*, at 32. The court in *Way* analyzed *Foster* both on the question of early voting and the question present

here – i.e., whether counting votes postmarked by Election Day but arriving after it violates federal law. The Court in *Way* simply reads *Foster* in a way that does not help Plaintiff’s case:

New Jersey law prohibits canvassing ballots cast after Election Day, in accordance with the Federal Election Day Statutes. Plaintiffs direct the Court to no federal law regulating methods of determining the timeliness of mail-in ballots or requiring that mail-in ballots be postmarked. Where Congress “declines to preempt state legislative choices,” the Elections Clause vests the states with responsibility for the “mechanics of congressional elections.” *Foster*, 522 U.S. at 69, 118 S.Ct. 464.

*Way*, 492 F. Supp. 3d at 372.

[¶49] Faced with this federal court decision which directly contradicts his reading of *Foster*, Plaintiff attempts to minimize it as a “rushed” decision. *Response*, at 32. This Court should disregard this criticism and read *Way* on its merits.

[¶50] Lastly, Plaintiff’s extensive historical discussion does not help his argument. *Response*, at 26-31.<sup>6</sup> While a comprehensive review of all historical literature is outside the scope of the instant Reply, some small examples serve to show Plaintiff’s error. For instance, he cites a 1918 article for the proposition that practices at that time “adhered with the original public meaning that Election Day meant receipt day.” *See Response* at 30 (discussing P. Orman Ray article). Yet the article itself reveals that these practices could not have been unanimous. For instance, according to this same source, absentee ballots in Washington State were sent through the mail and counted so long as they were “received by the county auditor within six days from the date of the election.” *Id.* at 253-254. At least as of 1918, then, a post-Election Day ballot receipt deadline was not unheard of. Presumably, Plaintiff’s historical recitation is meant to support his flawed analysis of the finality of an absentee vote postmarked and sent through the mail. He writes, “[i]n North Dakota, the “whole question” cannot be decided until thirteen days after Election Day,” but again, this is false. *Id.* at 31. The whole question *is* decided by Election Day on North Dakota. The vote of a North Dakotan is immutable once his or her ballot is in the mail, where it is required to be placed by the day before Election Day. *See N.D. Cent. Code* § 16.1-07-09. Even if, on Election

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<sup>6</sup> The undersigned was unable to access some of the academic articles cited by Plaintiff despite using the “available at” links supplied in the *Response*, but for purposes of this response Ms. White simply relies upon the excerpts provided by Plaintiff in his briefing.

Day, a ballot is still *en route* to the election officer through the mail, that ballot is already cast – signed, sealed, if not delivered – in full compliance with federal law. In other words, the “whole question” is answered by Election Day, even though the “answer” – the results of the election – will not be published until the votes are carefully tallied and the other post-election day certifications and canvasses take place.

[¶51] Plaintiff cannot escape the fact that federal courts have unanimously rejected his arguments. Ms. White respectfully requests that this Court should do the same and find that he has failed to plausibly allege any conflict between state and federal law.

### CONCLUSION

[¶52] For all the reasons set forth above, the Court lacks subject-matter jurisdiction over this case. But even if the Court does find the existence of subject matter jurisdiction, it should dismiss Plaintiff’s Complaint for failure to state a claim upon which relief can be granted. Ms. White respectfully requests that Plaintiff’s Complaint be dismissed in its entirety.

Dated this 22<sup>nd</sup> day of September, 2023.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWEST DIVISION**

MARK SPLONSKOWSKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:23-cv-00123-DMT-CRH
	)	
ERIKA WHITE, in her capacity as State	)	
Election Director of North Dakota,	)	
	)	
Defendant.	)	

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**PLAINTIFF MARK SPLONSKOWSKI’S ADDITIONAL BRIEFING**

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The Court has asked the Parties to address “whether the Complaint should be dismissed because [Mr.] Splonskowski lacks approval from the Burleigh County Commission to initiate this lawsuit in his official capacity as Burleigh County Auditor.” (Doc. 22.) The answer to that question is “no.” Mr. Splonskowski is pursuing this action in his personal capacity notwithstanding that his injuries stem from his official obligations. Under its plain meaning, the statute giving the Burleigh County Board of Commissioners (the “Board”) authority to pursue civil actions, N.D.C.C. § 11-11-14(1), is not exclusive and reaches only actions brought “for and on behalf of the county and in its name.” In other words, the Board has no power to institute or prosecute this action on Mr. Splonskowski’s behalf, even if he asked it to. Simply put, this action may escape review if the complaint is dismissed under Section 11-11-14(1).

Mr. Splonskowski, not the Board, will face penalties for acting contrary to state law. He is the only party in interest and under ordinary standing principles, he may pursue this action in his individual capacity to protect his individual liberties.

**I. The Legislature Gave the Board Limited Authority to Pursue Civil Actions Only “For And On Behalf of the County and In Its Name.”**

“The interpretation of a statute is a question of law[.]” *N. X-Ray Co. v. State by & Through Hanson*, 542 N.W.2d 733, 735 (N.D. 1996). When interpreting a statute, “the “primary goal in construing a statute is to discover the intent of the legislature.” *Id.* “Words in a statute are given their plain, ordinary and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears.” *Indus. Contractors, Inc. v. Taylor*, 2017 ND 183, ¶ 11, 899 N.W.2d 680, 684 (N.D. 2017). “If a statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. *N. X-Ray Co.*, 542 N.W.2d at 735. The North Dakota Supreme Court has “consistently recognized that it must be presumed the legislature intended all that it said, said all that it intended to say, and meant what it has plainly expressed.” *Estate of Christeson v. Gilstad*, 2013 ND 50, ¶ 12, 829 N.W.2d 453, 456 (N.D. 2013).

Section 11-11-14(1) provides, “The board of county commissioners shall have the following powers: ... 1. To institute and prosecute civil actions for and on behalf of the county and in its name[.]” The text and plain meaning of the statute confines the Board’s authority to bringing actions filed for *and* on behalf of the county *and* in the county’s name. This action meets none of those requirements.

Nearly 100 years ago, in *Murphy v. Swanson*, 50 N.D. 788, 198 N.W. 116 (1924), the North Dakota Supreme Court explained that the powers of County Commissioners are strictly limited by the statute’s text. In *Murphy*, the Board of County Commissioners of Burleigh County adopted a resolution employing a private attorney to assist the state’s attorney with investigations of tax delinquents. *Id.* at 792. Residents and taxpayers of Burleigh County challenged the resolution on the grounds that it was “wholly beyond and outside of the authority of the board.” *Id.* at 794.



The relevant statute made the “attorney general, his assistants and the state’s attorney the only public prosecutors in *all cases* civil and criminal wherein the state or county is a party to the action[],” but contained an exception allowing the county commissioners to employ additional counsel “*in cases of public importance*[.]” *Id.* at 795 (emphasis in original). Burleigh County argued that its employment of the private attorney was within the scope of this statutory exception. *Id.* The court disagreed, finding that the legislature’s use of the word “cases” meant “causes at law,” and could not be read to include “matters of public importance” or “affairs of public importance.” *Id.* at 796.

Had it been the purpose of the legislature to empower the county commissioners to employ special counsel to advise them in matters where no suits were pending or in contemplation, or where such suits were only more or less remote possibilities, we think that other language would surely have been used to express such purpose.

*Id.* Because the private attorney was employed to assist with more than “cases of public importance,” the Supreme Court found that “it is plain that the provision relied upon confers no express authority upon the board to make the contract here complained of by the respondent.” *Id.* The Supreme Court also found that the private attorney’s employment was “beyond the implied power of the county board,” *id.* at 798, even though the “the board as a board is charged with the superintendence of the fiscal affairs of the county and is, therefore, interested in the collection of taxes,” *id.* at 797.

Similarly, the statute giving the Board authority to pursue civil actions must be read to mean what is “plainly expressed.” *Gilstad*, 2013 ND 50, ¶ 12. It says that the Board may “institute and prosecute civil actions for and on behalf of the county and in its name[.]” N.D.C.C. § 11-11-14(1). Thus, the Board does not, for example, have the authority to institute civil actions for, on behalf of, or in the name of private citizens or elected officials like Mr. Splonskowski. As in *Murphy*, so here: if the legislature had intended to give the Board the power to control all civil

actions for the county *and* for all elected officials who are personally affected by the operation of the law, “other language would surely have been used to express such purpose.” *Murphy*, 50 N.D. at 796.

To be sure, Mr. Splonskowski’s injuries depend on his obligations as Burleigh County Auditor. Those injuries do not impact his office or the Board, they impact him personally. The relief he seeks is exclusive to him. Under the plain language of Section 11-11-14(1), the North Dakota Legislature did not deprive him of the ability to do that.

## **II. Several Other Factors and Considerations Counsel Against Reading a Broader, Implied Power Into Section 11-11-14(1).**

For several additional reasons, the Court should decline to read a broader, implied power into Section 11-11-14(1). First, the legislature did not say that the power to institute civil actions is *exclusive* to the Board, only that the Board shall have such a power. The statute therefore cannot be read to *preclude* this action. Indeed, neither Section 11-11-14(1) nor any other statute that undersigned counsel could locate *prohibits* a county official from instituting an action in his own name to remedy personal injuries.

Second, finding an implied power to preempt this action would contravene *Murphy*, where the North Dakota Supreme Court explained that “[t]he board of county commissioners is charged with the supervision of the conduct of the county officials, but it has no right to perform their duties or to exercise their prerogatives, and it has no right to delegate to others authority which it cannot itself exercise.” *Murphy*, 50 N.D. at 797. The duties and prerogatives that form the basis of this action are exclusive to Mr. Splonskowski as Burleigh County Auditor. The Board has no right or standing to pursue relief for Mr. Splonskowski under these circumstances. Furthermore, Mr. Splonskowski alleges that he will face criminal penalties if he chooses to follow federal Election Day statutes over North Dakota’s Ballot Receipt Deadline. (Doc. 1, ¶¶ 8, 31-34, 41-43.) His alleged

injuries are exclusive to him because only he has the responsibilities of the Burleigh County Auditor (Doc. 1, ¶ 13), and only he will face repercussions because of his choice. Mr. Splonskowski's standing here is thus stronger than the Board's standing could ever be because the Board, as a body, cannot be prosecuted or put in jail for failure to follow the law, especially laws it has no duty or authority to execute.

Third, a requirement that Mr. Splonskowski seek permission from the Board to initiate legal action to safeguard his liberties would likely be unconstitutional because it would give the Board veto power over an individual's right to petition the federal government for redress of grievances, U.S. Amend. I., which includes a right to petition a court to remedy a perceived wrong, *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 612 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition."); *see also Phelps-Roper v. City of Manchester*, 697 F.3d 678, 686 (8th Cir. 2012) (recognizing that the First Amendment "has long been made applicable to the states").

### **CONCLUSION**

The intent of Section 11-11-14(1) is "clear on the face of the statute." *N. X-Ray Co.*, 542 N.W.2d at 735. The Board may pursue civil actions for itself and in its name. The Board may not pursue Mr. Splonskowski's cause of action for him. Nor may the Board prohibit his action or require Mr. Splonskowski to seek its permission. This action should therefore proceed for disposition under Federal Rule of Civil Procedure 12.

Dated: September 29, 2023.

Respectfully submitted,

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Mark Splonskowski,

Plaintiff,

vs.

Erika White, in her capacity as State Election  
Director of North Dakota,

Defendant.

**RESPONSE TO PLAINTIFF’S ADDITIONAL  
BRIEFING**

**Case No. 1:23-cv-00123**

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**INTRODUCTION**

[¶1] Defendant Erika White, in her capacity as State Election Director of North Dakota, hereby responds to Plaintiff’s Additional Briefing, Doc. No. 26, submitted pursuant to the Court’s Order for Additional Briefing on the matter of Plaintiff’s legal authority to bring this action. Doc. No. 22. For the reasons set forth below, Defendant respectfully submits that Plaintiff lacks standing to bring this suit in any capacity, and renews her request that this case be dismissed.

**ARGUMENT**

[¶2] In Defendant’s view, the question of capacity is at the heart of the Court’s Order. The issue is particularly fraught here because of Plaintiff’s alleged injuries, which are, as the Court notes, “a direct result of his official actions as County Auditor.” Doc. No. 22 at ¶ 4. The Court acknowledges Plaintiff’s public statement that he brings the case in his personal capacity only, but looks to the briefing and observes “[n]ot a single fact Splonskowski alleges leads this Court to conclude he has brought this case in his “individual” capacity.” *Id.* at ¶¶ 3-4. Defendant understands the question posed by the Court as follows: considering the apparent official-nature capacity of Plaintiff’s suit, is it barred by N.D. Cent. Code § 11-11-14?

[¶3] In his Additional Briefing (“Brief”), Plaintiff simply asserts that he is bringing this case in his individual capacity “under ordinary standing principles.” Doc. No. 26 at 1. He then proceeds to consider the following question: given that Plaintiff brings the suit as an individual, is it barred by N.D. Cent. Code § 11-11-14?

[¶4] Defendant respectfully submits that the question raised by the Court is slightly different than the question answered by the Plaintiff, and will start her argument by focusing on the “ordinary standing principles” which Plaintiff asserts control this matter.

**I. Plaintiff Improperly Combines Two Capacities to Establish Standing.**

[¶5] Plaintiff does not appear to dispute one of the Court’s primary observations: that his allegations of harm are logically dependent upon his status as Burleigh County Auditor. But his own explanation of his capacity illustrates the flaws in his standing argument. He writes, “To be sure, Mr. Splonskowski’s injuries depend on his obligations as Burleigh County Auditor. Those injuries do not impact his office or the Board, they impact him personally.” Brief at 1. In other words, Plaintiff’s injuries start from his official capacity as Burleigh County Auditor, and then accrue to Plaintiff as an individual. Effectively, Plaintiff tries to combine his official and individual capacities into one capacity in order to show standing. This attempt fails as a matter of logic and legal precedent.

[¶6] When addressing the question of standing, courts explicitly separate official capacity standing and individual capacity standing. *See, e.g., Kearns v. Cuomo*, 415 F. Supp. 3d 319, 326–337 (W.D.N.Y. 2019), *aff’d*, 981 F.3d 200 (2d Cir. 2020) (in action brought by county clerk, separating out official capacity standing and individual capacity standing analyses); *Arpaio v. Obama*, 27 F. Supp. 3d 185, 200 (D.D.C. 2014), *aff’d*, 797 F.3d 11 (D.C. Cir. 2015) (noting Plaintiff’s failure to identify capacity in Complaint and requiring clarification at oral argument; proceeding to separately address standing for either capacity).

[¶7] Plaintiff does not appear to dispute that these two capacities – individual and official – are legally distinct. Yet Plaintiff provides no support for the proposition that he may borrow from the duties of his office for purposes of establishing injury as an individual.

[¶8] Once Plaintiff’s capacities are properly separated, each argument for standing collapses without the support of the other. In his individual capacity, he has no personal connection to enforcement of *any* voting laws, which he only enforces under the auspices of his elected office. And in his official capacity, he has no injury, because the Office of the Burleigh County Auditor

is not a person subject to prosecution, as Plaintiff seems to agree. *See* Brief at 4 (“Those injuries do not impact his office. . . .”)

[¶9] Indeed, it could be argued that Plaintiff’s capacities are directly in conflict with each other. For instance, in an official capacity suit, a plaintiff must show that the challenged actions “have interfered with his official duties. . . .” *Arpaio v. Obama*, 27 F. Supp. 3d 185, 203. Here, the only one interfering with Plaintiff’s official duties is Plaintiff himself, through his avowed intent to violate state law. If anything, Plaintiff as Auditor could seek to enjoin Plaintiff as citizen for trying to disrupt the electoral process. Obviously, the idea of a person suing himself in federal court is absurd – but it is a nice illustration of the logical challenges present here. At the very least, the capacity problem reiterates the jurisdictional one already briefed extensively by White in her Motion to Dismiss and associated briefing: the distance between Plaintiff’s official duties and his personal fear of prosecution is too great to establish an injury. *See generally* Doc. Nos. 9, 10, 25. His claims are too “attenuated” to establish standing. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013).

## **II. State Law Does Not Help Plaintiff**

[¶10] Once Plaintiff has asserted individual standing, he bases his argument on the idea that Section 11-11-14 does not preclude a person with individual standing from bringing a lawsuit. That may be – but as explained above, Plaintiff is not such a person. Plaintiff writes that Section 11-11-14(1) would not prohibit “a county official from instituting an action in his own name to remedy personal injuries.” Brief at 4. But this omits the point that these injuries are not truly “personal” when they rely upon *both* Plaintiff’s personal consequences and the duties of his office.

[¶11] Plaintiff’s insistence that his suit is brought in his personal capacity, together with the details of his specific allegations, render the application of Section 11-11-14(1) very difficult to parse. For one, his analysis leaves out the role of the State’s Attorney, who has a host of statutory duties regarding litigation on behalf of the county. *See* N.D. Cent. Code § 11-16-01 (1). While not binding on this Court, the role of the State’s Attorney was helpfully explained in Letter Opinion No. 2014-L-08, issued by the Office of Attorney General in 2014. 2014 N.D. Op. Att’y Gen. No.

L-08 (2014), 2014 WL 2417714. Therein, the Attorney General cited the 1904 North Dakota Supreme Case of *Fox v. Jones*, 13 N.D. 610, 102 N.W. 161 (1905) as well as Section 11-16-01 to opine whether a State's Attorney was required to represent a county's social service board. The Attorney General read *Fox* for the proposition that "where a county agency needed to conduct legal work, the state's attorney was the only attorney who could perform such work." *Id.* The opinion concluded, "the state's attorney is responsible for all legal representation of county government, including all legal duties that may be undertaken by the county's agencies such as a social service board." 2014 N.D. Op. Att'y Gen. No. L-08 (2014).

[¶12] As the Court noted, the State's Attorney's Office is not involved in this litigation,<sup>1</sup> raising further doubts as to Plaintiff's ability to rely upon his official-capacity injuries. Essentially, from Defendant's perspective, the problem is not so much that Section 11-11-14 or Section 11-16-01 specifically precludes Plaintiff from bringing *this* action: it is that *this action itself* is fatally flawed because it combines two separate capacities to establish the requisite injury. Chapters 11-11 and 11-16 merely occupy the space from which Plaintiff must borrow to bolster his purportedly personal claim of injury, which in reality depends on the duties of his office. But as set forth above, such combinations of capacity are legally and logically impossible. Whether this matter is viewed through the lens of capacity or standing, Plaintiff's inability to proceed is clear. Defendant respectfully requests that this matter be dismissed.

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<sup>1</sup> Notably, even if somehow the Burleigh County State's Attorney were somehow involved in bringing this lawsuit, Plaintiff cites the Burleigh County State's Attorney's Office as the entity whose threat of prosecution creates his injury.



Dated this 6<sup>th</sup> day of October, 2023.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWEST DIVISION**

MARK SPLONSKOWSKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:23-cv-00123-DMT-CRH
	)	
ERIKA WHITE, in her capacity as State	)	
Election Director of North Dakota,	)	
	)	
Defendant.	)	

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**PLAINTIFF MARK SPLONSKOWSKI’S ADDITIONAL BRIEFING REPLY**

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Defendant concedes that state law does not preclude this action. This case should therefore proceed to disposition under ordinary standing principles.

The Court asked the parties to address a specific question: “whether the Complaint should be dismissed because Splonskowski **lacks approval from the Burleigh County Commission** to initiate this lawsuit in his official capacity as Burleigh County Auditor.” (Doc. 27 at 22 (emphasis added).) The basis for this question is N.D.C.C. § 11-11-14(1), which gives the “board of county commissioners” the power to “[t]o institute and prosecute civil actions for and on behalf of the county and in its name.”

Defendant explains that “from Defendant’s perspective, the problem is not so much that Section 11-11-14 or Section 11-16-01 specifically precludes Plaintiff from bringing *this action*[.]” (Doc. 27, ¶ 12 (emphasis in original).) However, whether those statutes require Plaintiff to obtain approval for this action is the precise question the Court ordered the parties to address. (Doc. 22, ¶ 5.) Defendant skirts that issue. Instead, Defendant quibbles with Plaintiff’s reliance on his official

duties. But Defendant never says whether that reliance requires him to obtain approval under Section 11-11-14(1). In fact, Defendant says Plaintiff's lack of approval is "not so much" the problem. (Doc. 27, ¶ 12.) Defendant thus concedes the point. Defendant also effectively concedes that if this case is brought in Plaintiff's individual capacity—which it is—Section 11-11-14(1) is no bar to suit. (Doc. 27, ¶ 2.)

Defendant chooses to answer a question the Court did not pose—namely, whether a government official may "combine two separate capacities to establish the requisite injury." (Doc. 27, ¶ 12.) Because the parties were not asked to brief this question, Plaintiff did not brief it, and the Court should disregard Defendant's arguments. It matters not, in any event, because Plaintiff's reliance on his official duties does not transform this case into one brought in his official capacity. But even if this case combines some elements of Plaintiff's individual and official capacities, Defendant identifies no barrier to standing.

Section 11-11-14(1) is the only basis identified by the Court for Plaintiff's needing approval for this action. Defendant does not argue that Section 11-11-14(1) requires Plaintiff to seek such approval. (Doc. 27, ¶ 12.) Defendant otherwise cites no authority from this Court or the Eighth Circuit, and the authorities she does cite do not support her argument. (Doc. 27, ¶ 6.) In fact, *Arpaio v. Obama*, 27 F. Supp. 3d 185, 200 (D.D.C. 2014), *aff'd*, 797 F.3d 11 (D.C. Cir. 2015), supports Plaintiff. There, the plaintiff alleged, in his **individual capacity**, a fear of criminal prosecution and removal from office if he complied with state law as part of his **official duties** as the "elected County Clerk for Erie County." *Id.* at 322, 328-336.

In an attempt to defeat Plaintiff's standing, Defendant takes a position that would effectively prevent all elected official facing criminal prosecution from challenging their

prosecution, because such actions would “combine” their official duties with their personal injuries. Such a result is absurd and should be avoided.

For these reasons, this action should proceed for disposition under Federal Rule of Civil Procedure 12.

Dated: October 12, 2023.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Mark Splonskowski,

Plaintiff,

vs.

Case No. 1:23-cv-00123

Erika White, in her capacity as State Election  
Director of North Dakota,

Defendant.

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**ORDER GRANTING MOTION TO DISMISS FOR LACK OF JURISDICTION,  
FINDING AS MOOT MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM,  
AND FINDING AS MOOT MOTION TO INTERVENE**

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**INTRODUCTION**

[¶1] THIS MATTER comes before the Court on a Motion to Dismiss for Lack of Jurisdiction and Motion to Dismiss for Failure to State a Claim filed by the Defendant Erika White (“White”) on August 7, 2023. Doc. No. 9. Plaintiff Mark Splonskowski (“Splonskowski”) filed a Response on September 5, 2023. Doc. No. 17. The United States filed a Statement of Interest in this case on September 11, 2023. Doc. No. 19. White filed a Reply on September 22, 2023. Doc. No. 25. For the reasons set forth below, White’s Motion to Dismiss for Lack of Jurisdiction is **GRANTED** and, in light of this, White’s Motion to Dismiss for Failure to State a Claim is **MOOT**.

[¶2] Also before the Court is a Motion to Intervene as Defendant filed by the League of Women Voters of North Dakota (“the League”). Doc. No. 13. White filed a Response on September 1, 2023. Doc. No. 16. The League filed a Reply on September 8, 2023. Doc. No. 18. Splonskowski filed a Response on September 15, 2023. Doc. No. 23. The League filed a Reply on September 22,

2023. Doc. No. 24. Because the Court concludes Splonskowski lacks standing to bring this lawsuit, the League’s Motion to Intervene is **MOOT**.

### **BACKGROUND**

[¶3] The facts as alleged in the Complaint are relatively unremarkable. Federal election law fixes the Tuesday after the first Monday in November in every even-numbered year as the date for federal elections. Doc. No. 1, ¶ 15. North Dakota permits mail-in absentee ballots as long as they are post-marked the day before election day and received prior to the county’s canvassing board’s meeting. Id. at ¶ 19. County canvassing boards in North Dakota meet on the thirteenth day after each election. Id. at ¶ 20. If the absentee ballots in North Dakota are post-marked the day prior to the election day and received by the canvassing board before it meets, that ballot must be counted. Id. at ¶ 21.

[¶4] Burleigh County Auditor Mark Splonskowski (“Splonskowski”) believes North Dakota’s process violates federal election law. He claims that by following North Dakota’s law he will violate federal law. Conversely, he alleges that by following federal law and only counting ballots cast on election day, he will run afoul of North Dakota’s law. According to Splonskowski, following his understanding of federal law will inevitably result in criminal prosecution under North Dakota law because he will have to forego his duty to follow North Dakota election law. See id. at ¶¶ 31-34. Here, Splonskowski avers he will not comply with North Dakota law. See Doc. No. 17, pp. 10 (“Mr. Splonskowski’s intent to choose federal law and disregard state law includes the specific facts (or acts) necessary to establish the injury he justifiably fears—namely, a plausible violation of a criminal statute, or at minimum, repercussions stemming from failure to follow Director White’s training.”).

[¶5] Because of this understanding, Splonskowski has filed a Complaint against North Dakota Election Director Erika White (“White”). Doc. No. 1 at ¶ 12. White is sued in her official capacity and is responsible for administering elections in North Dakota. Id. The Court previously found Splonskowski brought this action in his official capacity as Burleigh County Auditor.<sup>1</sup> Doc. No. 22.

### **DISCUSSION**

[¶6] White argues Splonskowski lacks standing to bring this lawsuit. In making this claim, White contends (1) Splonskowski’s risk of criminal prosecution is speculative and does not constitute an injury in fact; (2) Splonskowski cannot show standing based on a theory of pre-enforcement review; (3) an alleged conflict between state and federal law does not create an injury; (4) Splonskowski cannot show White, as State Elections Director, would cause any injury to Splonskowski; and (5) Splonskowski cannot show redressability.

[¶7] Splonskowski disagrees with White, arguing he has standing for several reasons. First, Splonskowski claims his risk of injury—potential criminal prosecution if he fails to abide by North Dakota election law—is sufficient to establish pre-enforcement review. Second, he argues White is the direct cause of his potential future injury. Third, Splonskowski contends he adequately pleads redressability because he seeks both a declaration the North Dakota law is contrary to federal law and injunctive relief to prevent White from informing Splonskowski of his duties to

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<sup>1</sup> The Court reiterates its concern with Splonskowski bringing this action without the approval of the Burleigh County Commission. See Doc. No. 22. As previously stated, it appears to this Court North Dakota law requires permission or authorization by the County Commission for a county official to commence a lawsuit of this sort. See id. This analysis, however, is moot because Splonskowski fails to establish the traditional elements of standing as required for this Court to assert subject matter jurisdiction over the Complaint, as discussed in more detail below.

count ballots under North Dakota law. Fourth, Splonskowski claims he has oath-of-office standing because he swore an oath to uphold and defend the United States Constitution.

[¶8] In reply, White points out Splonskowski misconstrues the law governing pre-enforcement review because such review does not apply when the statute being enforced is different from the statute being challenged. White also argues Splonskowski fails to establish a constitutional interest at play in this case. Finally, White reiterates her arguments regarding Splonskowski failing to show causation and redressability. The Court agrees with White that Splonskowski lacks standing.

[¶9] It has long been established that the Court’s constitutional authority permits it only to hear actual cases or controversies. Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 37 (1976) (“No principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.”). The doctrine of standing to sue is “rooted in the traditional understanding of a case or controversy.” Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016). Because Splonskowski seeks federal jurisdiction, he must establish he “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” Id. (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). This standard “limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.” Id. In making this determination, “courts should assess whether the alleged injury to the plaintiff has a ‘close relationship’ to a harm ‘traditionally’ recognized as providing a basis for a lawsuit in American courts.” TransUnion LLC v. Ramirez, 594 U.S. 413, 425 (2021). At the pleading stage, the Complaint must contain clear allegations of facts that demonstrate each element. Warth v. Seldin, 422 U.S. 490, 518 (1975); Spokeo, 578 U.S.



at 338. Splonskowski has failed to establish the injury in fact and causation elements of standing and has failed to show he has “oath-of-office” standing.

### **I. Injury in Fact**

[¶10] To establish an injury in fact, the Complaint must allege facts that show the injury is (1) concrete and particularized and (2) actual and imminent as opposed to hypothetical or conjectural. Lujan, 504 U.S. at 560. The injury must be “the actual or imminent invasion of a concrete and particularized legal interest.” Kuehl v. Sellner, 887 F.3d 845, 850 (8th Cir. 2018) (quoting Sierra Club v. Kimbell, 623 F.3d 549, 556 (8th Cir. 2010)). It is possible future injury may constitute injury in fact. In re SuperValu, Inc., 870 F.3d 763, 768-69 (8th Cir. 2017). In such a case, “the plaintiff must demonstrate that ‘the threatened injury is “certainly impending,” or there is a “substantial risk’ that the harm will occur.” Id. (quoting Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (quoting in turn Clapper v. Amnesty Int’l USA, 568 U.S. 398, 409 (2013))).

[¶11] Splonskowski contends he has alleged sufficient facts to establish injury in fact because he has satisfied the requirements of pre-enforcement review. The Court disagrees. Pre-enforcement suits are permissible in limited circumstances when there are allegations of “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” Susan B. Anthony List, 573 U.S. at 160 (quoting Babbitt v. Farm Workers, 442 U.S. 289, 298 (1979)). When challenging a criminal statute, a party does not need to be exposed to arrest or prosecution before bringing a claim against it. St. Paul Area Chamber of Commerce v. Gaertner, 439 F.3d 481, 485 (8th Cir. 2006).

[¶12] Splonskowski is not entitled to pre-enforcement review standing for several reasons. First, he does not challenge the criminal statute under which he would be subject to criminal penalties. The Complaint expressly challenges the validity of N.D.C.C. chapters 16.1-07, 16.1-11.1, and

16.1-15, which establish North Dakota’s ballot receipt and counting requirements. See Doc. No. 1, p. 9, ¶¶ A, B, C. The prohibitions on action, however, are found at N.D.C.C. section 16.1-01-12 and the criminal penalties are found at N.D.C.C. section 12.1-11-06 (“Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.”). Neither of these statutes are actually challenged by Splonskowski.

[¶13] In the pre-enforcement context, this failure is fatal. Under Susan B. Anthony List, the threatened prosecution must be contained within the same statute proscribing the alleged conduct. Susan B. Anthony List, 573 U.S. at 160. Splonskowski is allegedly subject to criminal prosecution under a separate statute than the ones he claims conflict with federal election law. He is not subject to criminal prosecution under any of the statutes mandating his duties as a member of the canvassing board. See, e.g., Penkoski v. Bowser, 548 F.Supp.3d 12, 30 (D.D.C. 2021) (“[P]re-enforcement challenges are limited to where the threat of enforcement stems from the challenged law itself.”); Kearns v. Cuomo, 415 F.Supp.3d 319, 329 (W.D.N.Y. 2019), aff’d, 981 F.3d 200 (2d Cir. 2020) (“A plaintiff asserting standing on [pre-enforcement] grounds necessarily cannot satisfy the essential requirement identified by the Supreme Court in Babbitt—that the plaintiff allege an intention to engage in a course of conduct proscribed by the challenged statute.”). Accordingly, on this ground alone, Splonskowski lacks standing.<sup>2</sup>

[¶14] The Complaint also fails to allege a constitutional interest. Under Susan B. Anthony List, the statute at issue must ostensibly prohibit the exercise of a specific constitutional right. 573 U.S. at 159. Apart from vague assertions of Splonskowski’s “constitutional rights” being violated, he has failed to identify any specific constitutional provision or Amendment that will be violated if

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<sup>2</sup> Splonskowski essentially concedes this omission, claiming “there is no requirement that challenged statute exclusively prescribe the plaintiff’s course of conduct.” Doc. No. 17, p. 11. Splonskowski provides no caselaw to support this contention and the Court could find none.

he does not get the relief he seeks. Indeed, the cases on which Splonskowski relies depend on a potential violation of a particular constitutional right, typically the First Amendment. For example, in Gaertner, 439 F.3d at 484, the appellants refrained from making political contributions out of fear they may be penalized under Minnesota law. They brought a claim for violation of their First Amendment rights to engage in political and campaign activities. Id. The Eighth Circuit held, “[t]he chilling of Appellants’ First Amendment rights is also an injury that supports their standing to bring suit.” Id. at 487.

[¶15] In Animal Legal Defense Fund v. Vaught, 8 F.4<sup>th</sup> 714, (8th Cir. 2021), “[t]he complaint sought an order that would prevent [the defendants] from bringing a civil suit against plaintiffs under an Arkansas statute.” Id. at 717. The statute, the plaintiffs argued, violated their rights to free speech under the First Amendment. Id. The Eighth Circuit found the complaint adequately alleged the standing elements, holding “[the] conduct is arguably affected with a constitutional interest, because ‘the creation and dissemination of information are speech within the meaning of the First Amendment.’” Id. at 718 (quoting Sorrell v. IMS Health Inc., 564 U.S. 552, 570 (2011)).

[¶16] The Complaint contains only vague allegations of Splonskowski’s constitutional rights being violated and fails to allege with specificity the precise constitutional provisions Splonskowski would be required to violate if he enforced North Dakota law. Accordingly, the claims are not “arguably affected with a constitutional interest.” See Susan B. Anthony List, 573 U.S. at 160 (pre-enforcement standing permitted only when the claims are “arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution

thereunder.”). Splonskowski has not made an argument his constitutional rights have or will be violated.<sup>3</sup> This defeats his claim for standing.

## II. Causation

[¶17] Splonskowski argues the Complaint establishes the purported injury (potential criminal prosecution) and it is fairly traceable to White’s conduct. According to Splonskowski, White is responsible for administering North Dakota election law and provide training to Splonskowski regarding North Dakota’s requirements because her training has “legal significance.” White argues Splonskowski fails to address the fact that White’s training cannot cause Splonskowski harm because (1) Splonskowski has determined North Dakota’s election law contradicts federal election law<sup>4</sup> and (2) Splonskowski has already declared he will not abide by North Dakota’s laws.

[¶18] To establish causation, Splonskowski must show his alleged injury is “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” Agred Foundation v. United States Army Corps of Engineers, 3 F.4th 1069, 1073 (8th Cir. 2021) (quoting Lujan, 504 U.S. at 560) (quotation marks omitted)). The connection between the action of the defendant to the purported injury of the plaintiff must be

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<sup>3</sup> But Splonskowski’s proposed conduct may impinge upon the voting rights of members of the United States military and United States citizens living abroad. Technically, the Complaint does not challenge the North Dakota Century Code provision authorizing ballot receipts from military and overseas citizens (N.D.C.C. §§ 16.1-07-24 and 16.1-07-26). See Doc. No. 19, p. 10. If given the relief he asks for here—that is, invalidation of North Dakota’s general absentee ballot statutes—the same reasoning could be utilized against overseas citizens and members of the United States military’s rights to vote. This, indeed, is a concerning position for an elected official to take.

<sup>4</sup> The Court notes the unusual steps taken by Splonskowski in initiating this matter. He should have asked his local State’s Attorney for an opinion regarding the alleged conflict between North Dakota and Federal election law. See N.D.C.C. § 11-16-01(1)(i) (providing the local State’s Attorney must “[g]ive, when requested and without fee, the state’s attorney’s opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.”). If he really believed there was a conflict, he should have sought counsel from the State’s Attorney rather than filing the instant lawsuit with the help of independent legal counsel.

sufficiently direct and not “overly attenuated.” Agreed Foundation, 3 F.4th at 1069 (quoting Dantzler, Inc. v. Empresas Berrios Inventory & Operations, Inc., 958 F.3d 38, 47 (1st Cir. 2020)).

[¶19] Splonskowski relies on Worth v. Harrington to support his claim for causation. In Worth, the court found the Minnesota Commissioner of Public Safety was a proper defendant for plaintiff’s claim for declaratory and injunctive relief against a Minnesota statute that placed age limits on permits to publicly carry a firearm. \_\_\_ F. Supp. 3d \_\_\_, 2023 WL 2745673, \*20 (D. Minn. March 31, 2023). The Minnesota Statute, however, mandated the Commissioner to facilitate the age-restricted permit application process by creating and promulgating application forms, among other duties. Id.

[¶20] Here, White is not required to do anything by statute. White concedes she informs people of North Dakota’s election law requirements. But she is not statutorily mandated to ensure the ballot receipt deadlines in the manner the Commissioner was in Worth. Indeed, White is not a department head. She is not the Secretary of State. She is an employee tasked with informing Splonskowski of his legal requirements on the election board. Even if White were statutorily required to provide such training, as discussed above, her trainings do not cause the alleged injury because, among other reasons, Splonskowski has already decided to violate North Dakota law.

[¶21] Assuming White’s training has “legal significance,” as Splonskowski contends, Splonskowski has essentially conceded it is meaningless. If the Court were to enjoin White from providing election law training as Splonskowski asks, it would not make a difference. Whether she acts according to her duties or not, Splonskowski states he will violate North Dakota law. The only cause for his potential injury is himself because he states he will violate North Dakota election law. This is deeply concerning to the Court that an elected official openly advocates for violating the law he was elected to enforce because he has independently concluded it contradicts federal

law. Another North Dakota official may have to take action against Splonskowski under the circumstances, but that official is not White. Indeed any potential injury Splonskowski will face would most likely be caused by the Burleigh County State’s Attorney who is charged with prosecuting violations of North Dakota’s criminal laws.<sup>5</sup> N.D.C.C. § 11-16-01(1)(a) (The state’s attorney is the public prosecutor, and shall: a. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.”). White has no authority to bring such an enforcement action and the Burleigh County State’s Attorney is not before the Court. See Agred Foundation, 3 F.4th at 1073 (injury cannot be “the result of the independent action of some third party not before the court”).

[¶22] In sum, White is not a potential cause for Splonskowski’s alleged injuries because she has no enforcement authority. She cannot bring a criminal action against Splonskowski. Her role is simply educational, not prosecutorial. Even assuming he has alleged an adequate injury, Splonskowski fails to allege adequate causation.

### **III. Oath of Office Standing**

[¶23] Splonskowski also argues he has “oath-of-office” standing. Splonskowski relies on Bd. of Educ. v. Allen, 392 U.S. 236, 241, n.5 (1968), which noted:

Appellees do not challenge the standing of appellants to press their claim in this Court. Appellants have taken an oath to support the United States Constitution. Believing s 701 to be unconstitutional, they are in the position of having to choose between violating their oath and taking a step—refusal to comply with s 701—that would likely bring their expulsion from office and also a reduction in state funds

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<sup>5</sup> As noted above, Splonskowski should have posed the question presented in this lawsuit to his local State’s Attorney. He may wish to do so before the next election as it may avoid his potential prosecution under N.D.C.C. § 12.1-11-06 (“Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.”) or removal from office under N.D.C.C. § 44-11-01 (providing the governor of North Dakota authority to remove county officials, including county auditors, “whenever it appears to the governor by a preponderance of the evidence after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, [or] neglect of duty in office.”).

for their school districts. There can be no doubt that appellants thus have a “personal stake in the outcome” of this litigation. Baker v. Carr, 369 U.S. 186, 204 (1962).

There was no more discussion of standing in Allen. See id.

[¶24] Allen is inapplicable here. The Complaint claims Splonskowski’s oath required him to “solemnly swear” to “support the Constitution of the United States and the Constitution of the State of North Dakota.” Doc. No. 1, ¶ 43. As a matter of law, this oath is incorrect. As an election board official, he would take the following oath:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

N.D.C.C. § 16.1-05-02(3). The oath of office Splonskowski would take as an election board official is different than the one envisioned by the Court in Allen. Splonskowski’s oath does not require him to uphold the United States Constitution. Id. It simply requires him to perform his duties as a North Dakota election official to the best of his ability. Id. Based upon this oath, he is not subject to the same conundrum the plaintiffs in Allen faced. Splonskowski is also not conflicted by the controversy he posits in this lawsuit.

[¶25] In addition, Splonskowski has failed to show his injuries have a constitutional interest as required under Susan B. Anthony List. In Allen, the plaintiffs were required to either violate their oath or violate the constitution. Splonskowski does not allege following North Dakota law will violate his constitutional rights. Rather, Splonskowski specifically claims North Dakota’s election laws should be found to violate 28 U.S.C. § 2201, which is not a constitutional provision. Accordingly, Allen is inapplicable in this case. See Rodearmel v. Clinton, 666 F.Supp.2d 123, 130 (D.D.C. 2009) (finding Allen is applicable when a pleading fails to allege the conduct violates a specific constitutional provision).

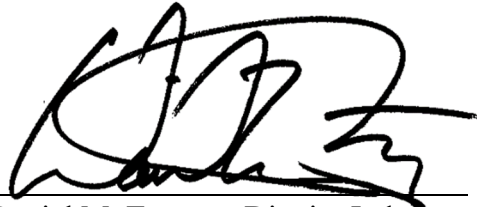
[¶26] Accordingly, Allen is inapplicable to this case and Splonskowski has failed to establish “oath-of-office” standing.

**CONCLUSION**

[¶27] The Court has considered the remaining arguments relating to standing and finds they are unnecessary to determine Splonskowski lacks standing. Accordingly, for the reasons set forth above, White’s Motion to Dismiss for Lack of Jurisdiction is **GRANTED**. The Complaint is **DISMISSED**. Based upon this, White’s Motion to Dismiss for Failure to State a Claim and the Motion to Intervene are **MOOT**.

[¶28] **IT IS SO ORDERED.**

DATED February 2, 2024.

A handwritten signature in black ink, appearing to read 'D. Traynor', is written over a horizontal line.

Daniel M. Traynor, District Judge  
United States District Court





NORTH DAKOTA  
**SECRETARY OF STATE**  
MICHAEL HOWE

600 E. BOULEVARD AVENUE, DEPT. 108  
BISMARCK, ND 58505-0500  
701-328-2900 • 800-352-0867  
SOS.ND.GOV • SOS@ND.GOV

October 23, 2024

Mark Splonskowski  
Burleigh County Auditor  
PO Box 5518  
Bismarck, ND 58506-5518

Dear Auditor Splonskowski,

I appreciated your willingness to meet last week to discuss how we could help support Burleigh County with the resignation of your county elections coordinator so close to Election Day. We discussed a couple areas where our team could support your county, as well as identified some follow-up items such as a plan with identified key contacts for oversight of specific election functions within the county.

Earlier this week, State Election Director Erika White was able to provide training to your team related to processes with the stand-alone computer and Electionware practices. This training identified some areas where I believe key processes need to be strengthened and double-checked to ensure we have Burleigh County in the best place for election success.

Ms. White observed that media was inserted into the stand-alone computer that had been connected to other devices, which is not something allowed in the security processes I set forth under NDCC Chapter 16.1. We were able to provide an uncompromised replacement stand-alone computer for Burleigh County, but this and other observations by my team related to processes has resulted in the below request.

Under NDCC 16.1-01-01, the Secretary of State has the authority to request examination to ensure sufficient compliance with the law and established criteria as set forth under NDCC Chapter 16.1. Based on this, I am requesting the following be completed and reported to me by Tuesday, October 29, 2024 (unless otherwise noted):

- Inspection of Election Equipment to Ensure Appropriate Programming & Function – All of the following equipment and any backups must be checked to ensure media is appropriately installed and cleared of testing results.
  - DS200s/Media/Programming – provide an accounting of each piece of equipment inspected by serial number, including date of inspection and protected count number from each DS200
  - DS450s/Media/Programming – provide an accounting of each piece of equipment inspected by serial number and date of inspection

- ExpressVote/Programming – ensure equipment boots properly and pulls up correct ballots from check-in receipts
- Inspection of PollPads – upon importing of election information - verify voters are assigned to correct polling locations and are assigned the correct ballot style
- Key Points of Contact for Election Functions – identification of individuals who are responsible for key election functions such as:
  - Pollworker Point of Contact
  - Secretary of State Office Point of Contact
  - Identification of Burleigh County personnel responsible for:
    - Pollpads
    - Tabulation
    - Training of Pollworkers
    - Scheduling/Conducting the Public Test
    - Absentee Board
    - Election Night Reporting
    - Post-Election Process – The following contacts can be provided within 3 days following election.
      - Absentee & Set-Aside Curing
      - Write in Assignments
      - Post-Election Test
      - Voter History
      - Canvass Board

The Office of the Secretary of State will provide any additional instruction needed for the completion of the above items. Please respond with any questions or support you may need.

Sincerely,

A handwritten signature in black ink, reading "Michael Howe". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Howe  
Secretary of State

cc: Brian Bitner, Burleigh County Commission Chair  
Erika White, ND Office of the Secretary of State Election Director

**From:** [White, Erika M.](#)  
**To:** [Splonskowski, Mark D.](#); [Lawyer, Julie A.](#); [Caya, Brandi M.](#)  
**Subject:** RE: equipment testing.  
**Date:** Wednesday, October 23, 2024 8:18:00 PM

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Mark,

Thank you for sending over the Bismarck Event Center reports for early vote and Election Day.

We look forward to receiving the reports for the remainder of the polling locations.

Please reach out if we can assist or answer any further questions.

Thank you,

Erika White  
Elections Director  
**NORTH DAKOTA OFFICE OF THE SECRETARY OF STATE**  
P: 701-328-3721 | [emwhite@nd.gov](mailto:emwhite@nd.gov) | [sos.nd.gov](https://sos.nd.gov)

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**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Wednesday, October 23, 2024 6:49 PM  
**To:** White, Erika M. <emwhite@nd.gov>; Lawyer, Julie A. <JLAWYER@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Subject:** equipment testing.

Good evening, we tested the Poll pads, ds 200's and the Express votes as indicated in our conversation. Everything looked good and I included the sheets in this email for your review, let me know if there is anything you need further for the Early vote and Event Center Election Day equipment.

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

**From:** [White, Erika M.](#)  
**To:** [Splonskowski, Mark D.](#); [Caya, Brandi M.](#)  
**Cc:** [Bitner, Brian](#); [Bakken, Steven](#); [Lawyer, Julie A.](#); [Howe, Michael C.](#); [McMerty, Sandra L.](#)  
**Subject:** Bismarck Event Center Resources  
**Date:** Friday, October 25, 2024 11:01:07 AM  
**Attachments:** [image001.png](#)

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Good Morning!

I want to congratulate you on a successful first day of early voting! I also have recommendations for the Bismarck Event Center on Election Day.

I chatted with Brandi on the phone yesterday about proper staffing and resources at the Bismarck Event Center on Election Day. I had discussed scaling up resources with Lisa for the 2024 General Election as the Event Center was overwhelmed during the 2022 General with voters opting to vote at that location instead of their precinct specific location. This caused for longer wait times, bottlenecks at certain points, and election workers being overwhelmed. When election workers are overwhelmed, it can lead to mistakes when checking-in voters or handing out incorrect ballots.

As you know, 2022 had historically low voter turnout and we're expecting much higher voter turnout for the 2024 General. I want to ensure your polling location has proper resources available to serve the voters in Burleigh County so, I have my recommendations below for your consideration and planning:

- DS200s
  - Reports provided by Auditor Splonskowski indicate the use of 3 DS200s at the Bismarck Event Center on Election Day which is the same amount as 2022.
  - Recommendation: Scale the number of DS200s to a minimum of 6 to prevent bottleneck when tabulating ballots.
- Voting Booths
  - Brandi indicated there are 40 voting booths at the Bismarck Event Center which is the same amount as 2022.
  - Recommendation: Scale the number of voting booths to a minimum of 60 to prevent bottleneck of voters marking ballots.
- Election Workers
  - Brandi indicated you have the following for election workers at the Bismarck Event Center: 3 Inspectors, 16 clerks, 1 greeter, 4 ExpressVote Aides, 6 judges.
  - Recommendation: Scale the number of clerks to a minimum of 18 and judges to a minimum of 8 to prevent bottlenecks at check-in and receiving ballots.
- Layout
  - I'm unsure of your spacing between the clerks and judges tables but we experienced a bottleneck between the clerk and judges station in 2022.
  - Recommendation: Increase the spacing between the clerks and judges to accommodate voters moving from the clerks to the judges station.

I appreciate your consideration on this matter. Please reach out if you have any questions.

Thanks,

Erika White  
Elections Director

**NORTH DAKOTA OFFICE OF THE SECRETARY OF STATE**

600 E. Boulevard Ave, Dept. 108

Bismarck, ND 58505-0500

P: 701-328-3721 | [emwhite@nd.gov](mailto:emwhite@nd.gov) | [sos.nd.gov](https://sos.nd.gov)



NORTH DAKOTA  
**SECRETARY  STATE**

**From:** White, Erika M. <emwhite@nd.gov>  
**Sent:** Tuesday, December 31, 2024 11:03 AM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** FW: Best Practice Recommendations - Burleigh

Brian,  
Here is the letter discussed earlier.

Thank you,

Erika White  
Elections Director  
**NORTH DAKOTA OFFICE OF THE SECRETARY OF STATE**  
P: 701-328-3721 | [emwhite@nd.gov](mailto:emwhite@nd.gov) | [sos.nd.gov](https://sos.nd.gov)

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**From:** White, Erika M.  
**Sent:** Monday, December 23, 2024 8:59 AM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Larson, Thomas <larsonthomas@nd.gov>  
**Cc:** Aaron Birst <aaron.birst@ndaco.org>; Preskey, Donnell <donnell.preskey@ndaco.org>; McMerty, Sandra L. <slmcmerty@nd.gov>; Howe, Michael C. <michaelhowe@nd.gov>  
**Subject:** FW: Best Practice Recommendations - Burleigh

Mark and Thomas,  
Please find attached a best practice letter specific to Burleigh County.

We are happy to discuss any process and resource improvements to assist Burleigh County in future elections.

Thank you!

Erika White  
Elections Director  
**NORTH DAKOTA OFFICE OF THE SECRETARY OF STATE**  
P: 701-328-3721 | [emwhite@nd.gov](mailto:emwhite@nd.gov) | [sos.nd.gov](https://sos.nd.gov)

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**From:** White, Erika M.

**Sent:** Monday, December 23, 2024 8:54 AM

**To:** Anderson, Michele T. <[mitanderson@nd.gov](mailto:mitanderson@nd.gov)>; Angie Scherer <[schererangie@nd.gov](mailto:schererangie@nd.gov)>; [asouth@co.richland.nd.us](mailto:asouth@co.richland.nd.us); Bachmeier, Hailey <[hbachmeier@nd.gov](mailto:hbachmeier@nd.gov)>; Becky Andrews <[randrew@nd.gov](mailto:randrew@nd.gov)>; Blumhagen, Diane L. <[dblumhagen@nd.gov](mailto:dblumhagen@nd.gov)>; Bopp, Tia <[tbopp@nd.gov](mailto:tbopp@nd.gov)>; Bosch, Gwyn L. <[gbosch@nd.gov](mailto:gbosch@nd.gov)>; Brad Fettig <[brfettig@WardND.gov](mailto:brfettig@WardND.gov)>; Brenda Johnson <[brendaj@co.williams.nd.us](mailto:brendaj@co.williams.nd.us)>; Carol Grenz <[cgrenz@barnescounty.us](mailto:cgrenz@barnescounty.us)>; Cia Gronneberg <[cgronneberg@nd.gov](mailto:cgronneberg@nd.gov)>; Ellingson, Nancy <[nellingson@nd.gov](mailto:nellingson@nd.gov)>; Emily McLean <[emclean@stutsmancounty.gov](mailto:emclean@stutsmancounty.gov)>; Erickson, Bonnie S. <[bserickson@nd.gov](mailto:bserickson@nd.gov)>; Foss, Lori A. <[lfoss@nd.gov](mailto:lfoss@nd.gov)>; Gapp, Melissa <[gappmelissa@nd.gov](mailto:gappmelissa@nd.gov)>; Hallaway, Cari J. <[cjhalloway@nd.gov](mailto:cjhalloway@nd.gov)>; Halmrast, Sharon <[shalmrast@nd.gov](mailto:shalmrast@nd.gov)>; Haylee Senger <[Haylee.senger@co.bottineau.nd.us](mailto:Haylee.senger@co.bottineau.nd.us)>; Henke, Christine <[chenke@nd.gov](mailto:chenke@nd.gov)>; Hovey, Heather J. <[heather.hovey@co.traill.nd.us](mailto:heather.hovey@co.traill.nd.us)>; Jana Flaten <[flatenjana@nd.gov](mailto:flatenjana@nd.gov)>; Josh Smaage <[jsmaage@stutsmancounty.gov](mailto:jsmaage@stutsmancounty.gov)>; Julie Mindt <[jmindt@barnescounty.us](mailto:jmindt@barnescounty.us)>; Klein, Mikaela <[kleinmikaela@nd.gov](mailto:kleinmikaela@nd.gov)>; Knudson, Tessa M. <[tmknudson@nd.gov](mailto:tmknudson@nd.gov)>; Kristi Quibell <[kquibell@nd.gov](mailto:kquibell@nd.gov)>; Kruger, Tracy <[tkruger@nd.gov](mailto:tkruger@nd.gov)>; Langland, Maria <[mprouthy@nd.gov](mailto:mprouthy@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>; Lisa Weigel <[weigellisa@nd.gov](mailto:weigellisa@nd.gov)>; Lori Morgan <[lori.morgan@gfcounty.org](mailto:lori.morgan@gfcounty.org)>; Marie Dorich <[mdorich@nd.gov](mailto:mdorich@nd.gov)>; Marie Langland <[mlangland@nd.gov](mailto:mlangland@nd.gov)>; Maurice Dullea <[dulleam@casscountynnd.gov](mailto:dulleam@casscountynnd.gov)>; Mya Troska <[mya.troska@co.bottineau.nd.us](mailto:mya.troska@co.bottineau.nd.us)>; NDACO Auditors <[auditors@ndaco.org](mailto:auditors@ndaco.org)>; Nelson, Linda <[linelson@nd.gov](mailto:linelson@nd.gov)>; Nickela Runck <[nhrunck@nd.gov](mailto:nhrunck@nd.gov)>; Oberlander, Kayla L. <[kloberlander@nd.gov](mailto:kloberlander@nd.gov)>; O'Connor, Kristy R. <[koconnor@nd.gov](mailto:koconnor@nd.gov)>; Rachael Wyum <[Rachael.wyum@wardnd.com](mailto:Rachael.wyum@wardnd.com)>; Reimer, Mindy <[mreimer@nd.gov](mailto:mreimer@nd.gov)>; Ripplinger, Kaylee <[kriplinger@nd.gov](mailto:kriplinger@nd.gov)>; Runck, Nickela H. <[nhrunck@nd.gov](mailto:nhrunck@nd.gov)>; Sandy Newcomb <[Sandy.newcomb@mortonnd.org](mailto:Sandy.newcomb@mortonnd.org)>; Scherr, Jodi L. <[jscherr@nd.gov](mailto:jscherr@nd.gov)>; Schmidt, Jaden <[jadschmidt@nd.gov](mailto:jadschmidt@nd.gov)>; Schumacher, Becki <[schumacher.becki@nd.gov](mailto:schumacher.becki@nd.gov)>; Secrest, Nancy <[nsecrest@nd.gov](mailto:nsecrest@nd.gov)>; Shanel Bohnenstingl <[sbohenstingl@nd.gov](mailto:sbohenstingl@nd.gov)>; Sheila Haaland <[sheilah@co.williams.nd.us](mailto:sheilah@co.williams.nd.us)>; Street, Kelsee <[kstreet@nd.gov](mailto:kstreet@nd.gov)>; Szudera, Cassie <[caszudera@nd.gov](mailto:caszudera@nd.gov)>; Tackett, Lisa <[tackettlisa@nd.gov](mailto:tackettlisa@nd.gov)>; Tiffany Bunn <[tbunn@nd.gov](mailto:tbunn@nd.gov)>; Tracy Laib <[tlaib@nd.gov](mailto:tlaib@nd.gov)>; Volk, Leann <[lvolk@nd.gov](mailto:lvolk@nd.gov)>; Wuori, Kimberly <[wuorikimberly@nd.gov](mailto:wuorikimberly@nd.gov)>  
**Cc:** Aaron Birst <[aaron.birst@ndaco.org](mailto:aaron.birst@ndaco.org)>; Preskey, Donnell <[donnell.preskey@ndaco.org](mailto:donnell.preskey@ndaco.org)>; McMerty, Sandra L. <[slmcmerty@nd.gov](mailto:slmcmerty@nd.gov)>; Howe, Michael C. <[michaelhowe@nd.gov](mailto:michaelhowe@nd.gov)>  
**Subject:** Best Practice Recommendations - All Counties

Good Morning,

Attached you will find the 2024 Election Cycle – Best Practice Recommendations letter.

As discussed at our meeting on Thursday, December 19<sup>th</sup>, this letter is to serve as guidance as we plan processes forward and develop resources for future election cycles.

Please reach out with any recommendations you may have that can be developed for all counties.

Thank you and Merry Everything!

Erika White



NORTH DAKOTA  
**SECRETARY OF STATE**  
MICHAEL HOWE

600 E. BOULEVARD AVENUE, DEPT. 108  
BISMARCK, ND 58505-0500  
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December 19, 2024

Mark Splonskowski  
Burleigh County Auditor  
PO Box 5518  
Bismarck, ND 58506-5518

Dear Auditor Splonskowski,

The 2024 Election cycle is past, and we have begun to turn our focus to improving processes for 2026.

The few challenges faced during the election were related to process steps which were missed, or training protocols that need greater reinforcement. With that in mind, we are reaching out directly to counties who had such occurrences during the election to offer insights into some areas of process improvement. Please note the following as areas for improvement and training focus in Burleigh County for future elections:

- **Standalone Reporting Computer** – No device that has been connected should ever be inserted into the standalone reporting computer, including things like mice, keyboards, and USB drives that have been attached to computers or devices that have an internet connection. If an internet exposed device is attached to the standalone results computer, an uncompromised replacement must be obtained through the Office of the Secretary of State.
  - Election Director witnessed mouse dongle that was previously connected to a computer with internet access plugged into standalone reporting computer. Affected standalone reporting computer was replaced by the Office of the Secretary of State with a standalone reporting computer that had not been compromised for use in the 2024 General. The compromised computer was returned to Election Systems and Software for proper security maintenance and handling.
- **Election Media** – Election media (ES&S provided media) is never to be inserted into a computer that has been exposed to the internet.
  - Election Director witnessed election media being inserted into a computer that had internet access. The compromised media was confiscated from Burleigh County to ensure the drives were not used in future elections.
- **Equipment Testing**
  - Following the two incidents above, the Office of the Secretary of State requested additional equipment testing to ensure equipment was cleared of test totals and



election was loaded successfully to not hinder election day activities. Letter dated 10/23/2024.

- **Overall Best Practice**

- Key election personnel in the Auditor's office should attend regular trainings provided by the Office of the Secretary of State. Attending the training would have mitigated the issues outlined.
- All staff in Auditor's office should receive training from key election personnel to ensure all are aware of the security provisions and processes outlined by the Office of the Secretary of State.

Thank you for considering the above recommendations in your preparations for the next election. Our team is working on process improvements and tools to assist in ensuring protocols are easier to communicate and follow.

Sincerely,



Michael Howe  
Secretary of State



Erika White  
State Election Director

cc: Aaron Birst, North Dakota Association of Counties  
Donnell Preskey, North Dakota Auditors Association  
Sandy McMerty, Deputy Secretary of State



December 19, 2024

County Auditors/Election Directors  
State of North Dakota

SUBJECT: 2024 Election Cycle – Best Practice Recommendations

Dear North Dakota County Auditors,

Congratulations on a successful election cycle this year! Conducting an election is no easy feat. We appreciate your time, attention, and dedication to ensuring North Dakota's elections are run with integrity.

We identified a few best practice areas during the election cycle that may need greater focus or training in some counties. Overall, the 2024 election cycle had minimal issues, but awareness and training are a key part of continuous improvement. Please note the below areas as we begin preparations for the 2026 election cycle.

#### **Standalone Computers**

- **No Internet Exposed Devices** – No device that has been connected to the internet should ever be inserted into the standalone reporting computer, including things like mice, keyboards, and USB drives that have been attached to computers or devices that have an internet connection.
  - If an internet exposed device is attached to the standalone reporting computer, an uncompromised replacement must be obtained through the NDSOS office.
- **Clearing Results** – Always follow processes to ensure test results are cleared from all media, equipment, and standalone reporting computer prior to election day.

#### **USB Drives**

- **Election Media - No Exposure to Internet** – Election media (ES&S provided drives) are never to be inserted into a computer that has been exposed to the internet.
- **Election Media – Clearing of Test Results** - Ensure you follow proper instructions when clearing test results for each piece of election equipment. Improper processes may result in you not having enough drives for election day.
- **Public Tests & Results** – All media used for public testing should be cleared once results have been verified. Make sure all materials used for public tests are cleared and put away prior to election night.

Most of the issues that were identified in this election cycle were simply steps missed in processes for election day administration. We will be working to adapt processes as needed and help develop documentation tools to aid in step-by-step protocols. We will again be including processes such as these in our weekly training calls in the future to ensure we can keep them top of mind.

Thank you again for being a key partner in delivering a successful election for North Dakota.

Sincerely,

A handwritten signature in black ink, reading "Michael Howe". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Michael Howe  
Secretary of State

A handwritten signature in black ink, reading "Erika White". The signature is cursive and compact, with the first letters of each word being capitalized and prominent.

Erika White  
State Election Director

cc: Aaron Birst, North Dakota Association of Counties  
Donnell Preskey, North Dakota Auditors Association  
Sandy McMerty, Deputy Secretary of State

Mark Splonskowski  
Election Training Attendance

TRAINING TITLE	TRAINING DATE	NAME	DURATION
County Responsibilities - Election Basics Training	11/17/2023	DID NOT ATTEND	--
ND Voices Overview - Election Basics Training	12/15/2023	DID NOT ATTEND	--
SOS Election Meeting	1/4/2024	DID NOT ATTEND	--
SOS Election Meeting	1/18/2024	Splonskowski, Mark	50m 3s
SOS Election Meeting	1/18/2024	Splonskowski, Mark	50m 3s
SOS Election Meeting	2/1/2024	Splonskowski, Mark	1h 16s
SOS Election Meeting	2/15/2024	Splonskowski, Mark	1h 27m 24s
SOS Election Meeting	2/29/2024	DID NOT ATTEND	--
ES & S Training	3/6/2024	Splonskowski, Mark	Unknown
ES & S Training	3/8/2024	Splonskowski, Mark	Unknown
SOS Election Meeting	4/4/2024	Splonskowski, Mark	39m 28s
NEW SOS Election Meeting	4/11/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	4/18/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	4/25/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	5/2/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	5/9/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	5/16/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	5/23/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	5/30/2024	Splonskowski, Mark	58m 13s
NEW SOS Election Meeting	6/6/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	6/13/2024	Splonskowski, Mark	1h 1m 10s
NEW SOS Election Meeting	6/20/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	8/8/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	8/22/2024	Splonskowski, Mark	32m 2s
NEW SOS Election Meeting	8/29/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	9/5/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	9/12/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	9/19/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	9/26/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	10/3/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	10/10/2024	DID NOT ATTEND	--
NEW SOS Election Meeting	10/17/2024	DID NOT ATTEND	--

TRAINING TITLE	TRAINING DATE	NAME	Meeting Start Time	First Log In	Last Log Out	Meeting End Time	Participant Duration
SOS Election Meeting	1/18/2024	Splonskowski, Mark D.	1/18/24, 9:26:40 AM	1/18/24, 10:01:40 AM	1/18/24, 10:51:43 AM	1/18/24, 10:52:54 AM	50m 3s
SOS Election Meeting	2/1/2024	Splonskowski, Mark D.	2/01/24, 9:41:14 AM	2/01/24, 9:57:29 AM	2/01/24, 10:57:46 AM	2/01/24, 10:58:53 AM	1h 16s
SOS Election Meeting	2/15/2024	Splonskowski, Mark D.	2/15/24, 9:45:44 AM	2/15/24, 10:00:13 AM	2/15/24, 11:27:37 AM	2/15/24, 11:27:58 AM	1h 27m 24s
ES & S Training	3/6/2024	In Person Training					
ES & S Training	3/8/2024	In Person Training					
SOS Election Meeting	4/4/2024	Splonskowski, Mark D.	4/04/24, 9:37:26 AM	4/04/24, 10:14:27 AM	4/04/24, 10:53:55 AM	4/04/24, 10:54:56 AM	39m 28s
NEW SOS Election Meeting	5/30/2024	Splonskowski, Mark D.	5/30/24, 9:41:24 AM	5/30/24, 10:02:40 AM	5/30/24, 11:00:54 AM	5/30/24, 11:02:11 AM	58m 13s
NEW SOS Election Meeting	6/13/2024	Splonskowski, Mark D.	6/13/24, 9:38:01 AM	6/13/24, 9:59:50 AM	6/13/24, 11:01:00 AM	6/13/24, 11:01:47 AM	1h 1m 10s
NEW SOS Election Meeting	8/22/2024	Splonskowski, Mark D.	8/22/24, 9:45:11 AM	8/22/24, 10:13:14 AM	8/22/24, 10:45:16 AM	8/22/24, 10:52:05 AM	32m 2s

**BURLEIGH COUNTY COMMISSION  
MEETING MINUTES  
APRIL 21<sup>st</sup>, 2025**

**5:00 PM** *Invocation by Chaplain and Pledge of Allegiance*

Chairman Bitner called the regular meeting of the Burleigh County Commission to order.

Roll call of the members: Commissioners Bakken, Munson, Schwab, Woodcox, and Chairman Bitner present.

Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Bakken to approve the agenda. All members present voted 'AYE'.  
***Motion carried.***

Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Bakken to approve the April 7<sup>th</sup>, 2025 meeting minutes as well as the approval of the bills. Comm. Schwab, Bakken, Munson, Woodcox, and Chair Bitner voted 'AYE'. ***Motion carried.***

The following abatements were presented for the Board's consideration; a complete copy of which are on file and available for inspection in the office of the Burleigh County Auditor/Treasurer.

Owner	Tax Year	Legal Description	Credit Type	Current MV	Reduced MV
Talon Bitz	2024	Lot 18, Block 7, Casey's 2nd	Error in property description	\$282,800	\$264,300
Delano & Lorene Balkowitsch	2023	Lot 8, Block 1, Elk Ridge Addn	Error in property description	\$665,300	\$585,300
Delano & Lorene Balkowitsch	2024	Lot 8, Block 1, Elk Ridge Addn	Error in property description	\$698,100	\$618,100
William & Laurie Mulnix	2024	Unit 623 Ave C Townhouses, N1/3 of Lot 7 & all Lot 8, Block 10, Northern Pacific	90% Disabled Veteran	\$19,240	\$9,620
Wanda Lamontagne	2024	S2' of Lot 3 & all Lot 4, Block 9, Southwood Terrace	100% Disabled Veteran	\$295,700	\$115,700
Patricia Trottier	2023	Tract 3281 of Lot 5, Block 3, Haycreek Meadows	100% Disabled Veteran	\$251,600	\$71,600
Patricia Trottier	2024	Tract 3281 of Lot 5, Block 3, Haycreek Meadows	100% Disabled Veteran	\$258,700	\$78,700
Gary Quinlen	2024	Lot 2, Block 2, Promised Land	90% Disabled Veteran	\$254,800	\$173,800
John Jacobson	2024	W1/2 of S1/2 of E 1 acre of Aud lot 7 less S33', Block 7, Park Hill (Aud Lots)	100% Homestead Credit	\$193,800	\$64,600

Derald Horn Sr	2025	1982 Champion 48 x 24, serial # 0520028664	50% Homestead Credit	\$14,462	\$7,231
Thomas & Doris Weiss	2025	2002 Schult 60 x 27, serial # R308263AB	50% Homestead Credit	\$67,018	\$33,509
Deborah Frank	2023	Unit 13, South Aires Condo, S76' of Lot 2, all Lot 3 & N34' of Lot 4, Block 17, Wachter's 2nd	50% Homestead Credit	\$97,200	\$48,600
Darwin & Laura Lee	2023	Lot 1, Block 9, Riverview	50% Homestead Credit	\$190,800	\$95,400
Darwin & Laura Lee	2024	Lot 1, Block 9, Riverview	50% Homestead Credit	\$195,500	\$97,750
Michael & Mary Sahli	2023	Lot 35, Block 5, Eastside Heights	50% Homestead Credit	\$295,200	\$195,200
Michael & Mary Sahli	2024	Lot 35, Block 5, Eastside Heights	100% Homestead Credit	\$303,400	\$103,400
Randy & Lori Smith	2025	1992 Guerdon Americana 26 x 60, serial #41926814A	50% Disabled Veteran	\$39,780	\$19,890
Timothy & Regina Davidson	2025	2017 Friendship Showcase 28 x 56, serial #FMT410MN17-50733A1B	50% Homestead Credit	\$99,882	\$49,941
Sharon Litton	2024	Lotb 48, Block 5, Falconer Estates	100% Homestead Credit	\$723,700	\$523,700
Darlene Osborn	2023	SE1/4 35-142-78	100% Homestead Credit	\$93,600	\$0
Darlene Osborn	2024	SE1/4 35-142-78	100% Homestead Credit	\$93,600	\$0
Cynthia Landenberger	2024	Part Lot 1 S200' of N300' of Wly 200', Block 1, Johnson's 2nd	50% Homestead Credit	\$271,200	\$171,200
Jeffery & Victoria Haas	2023	Unit 4 & garage 4 (bldg 872) San Angelo Dr Condo Assoc, Lots 3-5, Block 2, Cottonwood Lake 5th	50% Homestead Credit	\$196,000	\$98,000
Betty Eggers	2023	Lot 3, Block 9, Gateway Addition	50% Homestead Credit	\$280,100	\$180,100
Betty Eggers	2024	Lot 3, Block 9, Gateway Addition	50% Homestead Credit	\$296,100	\$196,100
Rodney Poppinga	2023	Lot 3, Block 1, Lemieux	100% Homestead Credit	\$261,100	\$61,100
Rodney Poppinga	2024	Lot 3, Block 1, Lemieux	100% Homestead Credit	\$276,400	\$76,400
Dale & Judith Naben	2023	Lot 18, Block 1, Southland Addn	50% Homestead Credit	\$510,000	\$410,000

Dale & Judith Naben	2024	Lot 18, Block 1, Southland Addn	50% Homestead Credit	\$536,200	\$436,200
James Schneider; Robert & Michelle Schneider	2024	Lot 9 & N18' of Lot 10, Block 83, William's Survey	100% Homestead Credit	\$120,600	\$80,400
Hermenegilda Berg	2024	Unit 5 & garage G-5 Fox Hill Condos, Lot 1, Block 1, Replat L10 B1 North Hills 1st	100% Homestead Credit	\$89,800	\$0
Michael John Nagel	2024	Lot 2, Block 4, Marian Park 2nd	100% Homestead Credit	\$225,700	\$25,700
Pat Tidball	2024	1973 Western 14 x 68, serial # 73470118W	100% Homestead Credit	\$7,311	\$0
Margaret Wald	2024	Lot 16, Block 5, East View	100% Homestead Credit	\$210,500	\$10,500
Harlin & Marilyn Miller	2024	Beg on W line 295'S & 125'E of NW cor, E75' N95' W75' to beg, Block 6, Lincoln	100% Homestead Credit	\$229,800	\$29,800

Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Bakken to approve the Talon Bitz, Delano & Lorene Balkowitsch, William & Laurie Mulnix, Wanda Lamontagne, Patricia Trottier, Gary Quinlen, John Jacobson, Derald Horn Sr, Thomas & Doris Weiss, Deborah Frank, Darwin & Laura Lee, Michael & Mary Sahli, Randy & Lori Smith, Timothy & Regina Davidson, Sharon Litton, Darlene Osborn, Cynthia Landenberger, Jeffery & Victoria Haas, Betty Eggers, Rodney Poppinga, Dale & Judith Naben, James Schneider; Robert & Michelle Schneider, Hermenegilda Berg, Michael John Nagel, Pat Tidball, Margaret Wald, Harlin & Marilyn Miller abatements and the consent agenda in its entirety. All members present voted 'AYE'. ***Motion carried.***

County Sheriff Kelly Leben presented the quarterly report on the Burleigh Morton Detention Center (BMDC). Leben discussed the population numbers for the detention center and said that the current daily population is 290. He stated in the first quarter of 2025, the BMDC has had billings of \$876,236 and comparatively the first quarter of 2024 was \$591,337 and the first quarter of 2023 was \$558,860. In 2024, the BMDC billings ended at \$2,591,063 and in 2023 approximately \$1,900,00. Leben said that the BMDC should have approximately \$3,500,000 in billings by the end of 2025. He discussed involvement with the legislature on the bill affecting the 24/7 Program and how the fees are paid being either by the participant or waived by the courts putting the costs on the County taxpayers. Leben then stated that the BMDC is on a continuous hiring cycle and that five to eight positions constantly turn over. He mentioned that there is the potential for additional bed space contracts that would require extra staff, but then that would not be hired until the contracts guaranteeing the income were signed.

County Human Resources Director Pam Binder presented information on the need and selection of a new human resources information system (HRIS), payroll, and timekeeping software. Binder discussed Infinite Visions, the current HRIS and payroll software, and how it is not meeting the needs of the County even though an update was done this year to enhance its abilities. A request for proposal was done last year for

new software and Infinite Visions, Paylocity, and ADP were the bidders. Negotiations took place with Paylocity and ADP who came in close together in price and Paylocity presented the better ending quote. Binder stated that Paylocity has all the components that are needed to benefit the County. Discussion was had. Motion by Comm. Schwab, 2<sup>nd</sup> by Comm. Munson to accept Paylocity as the new payroll, HRIS, timekeeping, and benefits administration software vendor for Burleigh County and the accept the Paylocity proposal and implementation guideline for an October 2025 start date. All members voted 'AYE'. ***Motion carried.***

County Planning Director Mitch Flanagan presented a consideration to approve a special use permit for a manufactured home to be used as office space. He stated that the manufactured home is not big enough to be legally allowed for a residence and must be used as office space only. Motion by Comm. Woodcox, 2<sup>nd</sup> by Comm. Bakken to approve the special use permit for Jason & Jenny Schatz for the placement of a manufactured home to be used as office space and the installation of a septic system as discussed. All members voted 'AYE'. ***Motion carried.***

Planning Director Flanagan presented a consideration to approve Article 8 Section 30 to allow data centers within I-Districts. This ordinance is regarding data centers using more than 50 megawatts. Discussion was had. States Attorney Julie Lawyer made some recommendations to amend the ordinance. Motion by Comm. Munson, 2<sup>nd</sup> by Comm. Bakken to table this item until the next meeting to give Lawyer time to review. All members present voted 'AYE'. ***Motion carried.***

Planning Director Flanagan presented a need to develop a zoning ordinance amendment to establish a framework for the evaluation and siting of battery energy storage system (BESS) facilities and the recommendation of a resolution of a BESS moratorium. This moratorium would allow the time to develop the zoning ordinance amendment. Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Woodcox to approve a moratorium on BESS facilities for up to a year. All members voted 'AYE'. ***Motion carried.***

Commissioner Munson noted that a discussion on a fireworks ban for the County might be needed if the current burn restrictions continues or escalates into a burn ban. States Attorney Lawyer stated the penalties for violating a burn ban is a Class B misdemeanor with a fine up to \$1,500 and/or up to thirty days in jail. She also stated that if there is a fire resulting from a burn ban violation there could be different charges and higher penalties.

Commissioner Munson presented information on the Bismarck-Burleigh Public Health Department and recommendations he has regarding it. He stated that public health is the responsibility of the County and not the City of Bismarck even though the County only pays twenty-five percent of the public health budget. Munson would like the contribution of the County increased to over fifty percent by increasing it slowly each year as to not put a huge draw on the County budget; to gain a controlling interest and more influence on the operations of the public health unit. He provided documentation on the required functions of public health per the North Dakota Century Code and other functions that are offered and how they are paid for.

Commissioner Munson presented an update to the commission on the proposed sizes of the buildings to be included in the Ag & Equestrian Center.



Chairman Bitner continued the discussion on County investments and stated that there was an investment transaction that had some complications due to a unexpected fee in the account. County Finance Director Leigh Jacobs came forward and provided an explanation of what happened and how it was corrected. Chair Bitner then asked States Attorney Julie Lawyer about the ability of transferring job duties from the Auditor's Office to the Finance Department. Lawyer stated that the process to transfer job duties would be the same as the resolution to change the Auditor/Treasurer to an appointed position. He stated that this be a part of further discussion.

Chairman Bitner continued the discussion regarding the Auditor/Treasurer and noted that the Commission can alter the position through modifying the preliminary resolution. He said that the board should make a motion to direct the States Attorney to start the process in removing the Auditor/Treasurer from office and then make modifications to the preliminary resolution to remove the investment decisions from the Auditor. Chair Bitner stated those investment decisions should be temporarily placed on the Finance Department until a qualified Treasurer is appointed. He said once these changes are made then the salary of the elected Auditor should be adjusted to reflect the changes in duties. Chair Bitner said that the documentation he had on the Auditor/Treasurer along with a rollup of the public hearing, rollup of the online forum, the NDCC Auditor and Treasurer duties, and more were analyzed by the committee and they agreed with the options presented at the April 7<sup>th</sup>, 2025 commission meeting being to redesignate the Auditor/Treasurer to appointed by resolution or separating the positions of Auditor and Treasurer into two or more elected or appointed positions by resolution. States Attorney Julie Lawyer discussed the findings and opinions of the committee. She also stated that the committee had discussed putting all the documents on the County website for the public to view. Chair Bitner recommended the Commission move forward with petitioning the Governor's Office for removal of the current Auditor/Treasurer and Comm. Woodcox agreed. Motion by Comm. Woodcox, 2<sup>nd</sup> by Comm. Munson to proceed with the process of removal of the current Auditor/Treasurer. Lawyer presented the process of petitioning the Governor for the removal of the Auditor/Treasurer from office. Revised motion by Comm. Woodcox, 2<sup>nd</sup> by Comm. Munson to table the discussion on petitioning the Governor for the removal of the Auditor/Treasurer. Commissioners Woodcox, Schwab, Bakken, and Munson voted 'AYE'. Chairman Bitner voted 'NAY'. **Motion carried.** Motion by Comm. Woodcox, 2<sup>nd</sup> by Comm. Munson to proceed with having States Attorney Lawyer draft up the resolution to split the positions of Auditor and Treasurer. All members present voted 'AYE'. **Motion carried.**

In other business, Comm. Schwab stated that there has been excessive garbage in the ditches. States Attorney Julie Lawyer listed the penalties of littering as \$200 for up to a square foot of refuse and if the dumped items are over a square foot then it's a Class B misdemeanor. She also stated that the penalties can't be heightened because they can't exceed what the state has set. Comm. Schwab said that he had drafted a letter to find out why Ducks Unlimited can tell the County if they can build a road. Chair Bitner mentioned other points that should be included in the letter regarding wetland mitigation. County Engineer Marcus Hall came up and spoke on the topic and said once the draft letter is complete it will be brought to the Chairman to sign. Discussion was had. The consensus amongst the commission was to update the letter Comm. Schwab drafted with the amendments that Chair Bitner recommended and sending the letter to the State Senators and Representative. Comm. Schwab stated that the Highway Department was instructed by Apple Creek Township to put up road restriction signs in Lincoln whom he says is targeting a specific

company. States Attorney Lawyer stated that there is no effective law for Apple Creek Township to require that signs be put up. Engineer Hall spoke on the topic. Discussion was had. Chair Bitner stated that more discussion would be had once the States Attorney is able to do more research on the topic.

Meeting Adjourned

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Mark Splonskowski,  
County Auditor/Treasurer

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Brian Bitner,  
Chairman

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, December 5, 2024 10:28 AM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** FW: Investment Policy & additional files

Brian,

Here are some documents that show the historical duties within the Auditor's office. We found them all on the Auditor's drive.

It seems pretty clear that the investments all fell under Auditor Glatt and his staff in the past.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

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**From:** Jacobs, Leigh  
**Sent:** Tuesday, December 3, 2024 9:19 AM  
**To:** Munson, Wayne <bccmunson@nd.gov>; Lawyer, Julie A. <JLAWYER@nd.gov>  
**Subject:** Investment Policy & additional files

Good morning,

This email is in response to requests from last night's meeting for the investment policy.

I've added a couple of additional files, mostly for Commissioner Munson. Julie, you had requested the investment policy – please see that as attached.

The files are as follows:

**Burleigh County Investment Policy.pdf:** This is the latest version of our investment policy, as far as I am aware.

**September 2024 Investment Meeting with Minutes.docx:** These are the minutes from the last investment Committee meeting. Wayne, I will forward you an email we sent after the meeting. It relates to one of the action items. We never received a response from the Auditor/Treasurer.

**Investment PolicyNOTES.doc:** We think this document is from Auditor Glatt. It describes the way investments were done during his tenure **after** the offices of Auditor and Treasurer were combined. Best we can tell, the “Treasurer” became the “Deputy Auditor/Treasurer” and continued doing the Treasurer functions in that role.

**Office Duties.docx:** This is another older file from the Auditor’s drive. It shows that investments were done by Brandi Caya, who was a staff accountant or clerk at the time, and Robin Grenz, who was the Deputy Auditor/Treasurer at that time. You will see Clyde Thompson’s name in this file, but he does not have investments as one of his job duties. In fact, he is listed as the “Chief Accountant” among other things. I have since been told by the Deputy Auditor/Treasurer that the Auditor is in charge of accounting, not the Finance Director. This was used as justification to refuse to make adjusting journal entries I proposed that would have prevented audit findings.

**Pages from Accounting Job Descriptions.pdf:** This is the most recent version of the Deputy Auditor/Treasurer’s job duties. This shows investments as a job responsibility of that position.

If I may add this – last night Auditor Splonskowski made the claim that the Finance Director was historically responsible for investing county funds. That’s categorically false as you can in the attachments. Furthermore, he hasn’t made any effort to *now* give us the authority to invest funds.

For example, last week the Finance Department arranged with BND to open a new account for our 1-cent sales tax. This was necessary because the half-cent is pledged to the bond until defeasance is finished (we are working on this), and we can’t “split” the 1-cent deposit from the ND Treasurer. Meaning BND is expecting a half-cent deposit this month but will receive a 1-cent, so they need a new account to store the additional half-cent, plus the 1-cent once it is released from the bond. We also arranged to invest the sales tax with BND each month we receive it with basically no fees, although we need to direct BND exactly how to invest it, unlike a managed fund where they will do all the work for us. Part of this whole process involves signing a document granting authority to invest county funds with BND. ***The County Auditor and Deputy/Auditor Treasurer signed the document but did not add the Finance Department, giving us no authority to invest with BND.***

Commissioner Munson, I will forward you a couple of emails that I referenced last night.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501

# **BURLEIGH COUNTY INVESTMENT POLICY**

## **I. Governing Authority**

### *Legality*

The Burleigh County investment program shall be operated in conformance with federal, state, and other legal requirements, including NDCC 21-06-07.

## **II. Scope**

This policy applies to the investment of all funds. Proceeds from certain bond issues may be covered by a separate policy.

### *1. Pooling of Funds*

Except for cash in certain restricted and special funds, the County of Burleigh will consolidate cash and reserve balances from all funds to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping and administration. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

## **III. General Objectives**

The primary objectives, in priority order, of investment activities shall be safety, liquidity, and yield:

### *1. Safety*

Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

#### *a. Credit Risk*

The County of Burleigh will minimize credit risk, which is the risk of loss due to the failure of the security issuer or backer, by:

- Limiting investments to the types of securities listed in Section VII of this Investment Policy
- Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisers with which the County of Burleigh will do business in accordance with Section V
- Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer will be minimized.

#### *b. Interest Rate Risk*

The County of Burleigh will minimize interest rate risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity
- Investing operating funds primarily in shorter-term securities or similar investment pools and limiting the average maturity of the portfolio in accordance with this policy (see section VIII).

### *2. Liquidity*

The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity). Alternatively, a portion of the portfolio may be placed in local government investment pools which offer same-day liquidity for short-term funds.

### *3. Yield*

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. **Return on investment is of secondary importance compared to the safety and liquidity objectives described above.** The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall generally be held until maturity with the following exceptions:

- A security swap would improve the quality, yield, or target duration in the portfolio.
- Liquidity needs of the portfolio require that the security be sold.

### *4. Local Considerations*

The County of Burleigh seeks to promote local economic development through various programs and activities. Where possible, funds may be invested for the betterment of the local economy. The County of Burleigh may accept a proposal from an eligible institution which provides for a reduced rate of interest for community development projects. The Board of County Commissioner's recognizes that such investments might diminish investment yields in exchange for potential expansion of the tax base.

## **IV. Standards of Care**

### *1. Prudence*

The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.

The "prudent person" standard states that, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

### *2. Ethics and Conflicts of Interest*

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the County of Burleigh.

### *3. Delegation of Authority*

Authority to manage the investment program is granted to the County Auditor\Treasurer, hereinafter referred to as investment officer and derived from the following: NDCC 11-14-06 & 21-04-04. Responsibility for the operation of the investment program is hereby delegated to the investment officer, who shall act in accordance with established written procedures and internal controls for the operation of the County of Burleigh investment program consistent with this investment policy. Procedures should include references to: safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, and collateral/depository agreements. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the investment officer. The investment officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

## **V. Designated Depositories, Authorized Financial Institutions and Broker/Dealers**

### *1. Designated Depositories, Authorized Financial Institutions, and Broker/Dealers*

Pursuant to ND Century Code 21-04 public funds belonging to the County of Burleigh must be deposited in the Bank of North Dakota or in financial institutions which have been duly designated as depositories. The Board of Burleigh County Commissioners shall at its regular meeting in January of each even-numbered year, shall designate depositories of public funds and semiannually shall approve the acceptance of any securities as pledge for repayment of deposits.

In addition, a list will be maintained of approved security broker/dealers selected by creditworthiness (e.g., a minimum capital requirement of \$10,000,000 and at least five years of operation). These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule).

All financial institutions and broker/dealers who desire to become qualified for investment transactions must supply the following as appropriate:

- Audited financial statements demonstrating compliance with state and federal capital adequacy guidelines.
- Proof of National Association of Securities Dealers (NASD) certification (not applicable to Certificate of Deposit counterparties).
- Proof of state registration.
- Completed broker/dealer questionnaire (not applicable to Certificate of Deposit counterparties).
- Certification of having read and understood and agreeing to comply with the County of Burleigh investment policy.
- Evidence of adequate insurance coverage.

An annual review of the financial condition and registration of all qualified financial institutions and broker/dealers will be conducted by the investment officer (or designee).

### *2. Minority and Community Financial Institutions*

From time to time, the investment officer may choose to invest in instruments offered by minority and community financial institutions. In such situations, a waiver to certain parts of the criteria under Paragraph 1 may be granted. All terms and relationships will be fully disclosed prior to purchase and will be reported to and approved by the Board of Burleigh County Commissioners on a consistent basis in advance and shall be consistent with state law.

## **VI. Safekeeping and Custody**

### *1. Delivery vs. Payment*

All trades of marketable securities will be executed by delivery vs. payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds.

## *2. Safekeeping*

Securities may be held by an independent third-party custodian selected by the Burleigh County as evidenced by safekeeping receipts in the County of Burleigh's name. The safekeeping institution shall annually provide a copy of their most recent report on internal controls (Statement of Auditing Standards No. 70, or SAS 70).

## *3. Internal Controls*

The investment officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the County of Burleigh are protected from loss, theft or misuse. Details of the internal control system shall be documented and shall be reviewed and updated annually. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall be designed to prevent the loss of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the County of Burleigh.

Internal control compliance should be assured through the Burleigh County annual independent audit.

# **VII. Suitable and Authorized Investments**

## *1. Investment Types*

Pursuant to North Dakota Century Code Chapter 21-06-07, the County of Burleigh may invest moneys in its general fund, or balances in any special or temporary fund, in:

- Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organization created by an act of Congress.
- Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above. Repurchase agreements shall be consistent with GFOA Recommended Practices on Repurchase Agreements. (See GFOA Recommended Practices in Appendix.)
- Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
- Obligations of the state.
- Local government investment pools either state-administered or developed through joint powers statutes and other intergovernmental agreement legislation.
- State and local securities:
  - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.
  - (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
  - (3) Any security that is a general obligation of a school district and is rated in the highest



two categories by a nationally recognized rating agency.

(4) Obligations of this state and general obligations of its political subdivisions.

- Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.

Investment in derivatives of the above instruments shall require authorization by the Board of Burleigh County Commissioners.

## *2. Collateralization*

Except as is otherwise provided in NDCC sections 21-04-16 and 21-04-17, and before any deposit is made in any depository other than the Bank of North Dakota, such depository shall furnish a bond payable to the County of Burleigh in an amount that at least equals the largest deposit that at any time may be in such depository.

The Board of Burleigh County Commissioners may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the County of Burleigh, the Board of Burleigh County Commissioners shall require security in the amount of one hundred ten dollars for every one hundred dollars of deposits. Securities that are eligible for the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investor Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies or instrumentalities, or by any county, city township, school district, park district or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board.

The Board of Burleigh County Commissioners semiannually shall approve the acceptance of any securities as pledge for repayment of deposits.

Where allowed by state law and in accordance with the GFOA Recommended Practices on the Collateralization of Public Deposits, full collateralization will be required on all demand deposit accounts, including checking accounts and non-negotiable certificates of deposit. (See GFOA Recommended Practices in Appendix.)

## **VIII. Investment Parameters**

### *1. Diversification*

It is the policy of the County of Burleigh to diversify its investment portfolios. To eliminate risk of loss resulting from the over-concentration of assets in a specific maturity, issuer, or class of securities, all cash and cash equivalent assets in all Burleigh County funds shall be diversified by maturity, issuer, and class of security. Diversification strategies shall be determined and revised periodically by the investment committee/investment officer for all funds except for the employee retirement fund.

In establishing specific diversification strategies, the following general policies and constraints

shall apply: Portfolio maturities shall be staggered to avoid undue concentration of assets in a specific maturity sector. Maturities selected shall provide for stability of income and reasonable liquidity.

For cash management funds:

- Liquidity shall be assured through practices ensuring that the next disbursement date and payroll date are covered through maturing investments or marketable U.S. Treasury bills.
- Risks of market price volatility shall be controlled through maturity diversification such that aggregate price losses on instruments with maturities exceeding one year shall not be greater than coupon interest and investment income received from the balance of the portfolio.
- The investment committee/investment officer shall establish strategies and guidelines for the percentage of the total portfolio that may be invested in securities other than repurchase agreements, Treasury bills or collateralized certificates of deposit. The committee shall conduct a quarterly review of these guidelines and evaluate the probability of market and default risk in various investment sectors as part of its considerations.

## *2. Maximum Maturities*

To the extent possible, the County of Burleigh shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the County of Burleigh will not directly invest in securities maturing more than five (5) years from the date of purchase or in accordance with state statutes. The County of Burleigh shall adopt weighted average maturity limitations (which often range from 90 days to 3 years), consistent with the investment objectives.

Reserve funds and other funds with longer-term investment horizons may be invested in securities exceeding five (5) years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds. The intent to invest in securities with longer maturities shall be disclosed in writing to the Board of County Commissioners. (See the GFOA Recommended Practice on "Maturities of Investments in a Portfolio" in Appendix.)

Because of inherent difficulties in accurately forecasting cash flow requirements, a portion of the portfolio should be continuously invested in readily available funds such as local government investment pools, money market funds, or overnight repurchase agreements to ensure that appropriate liquidity is maintained to meet ongoing obligations.

## *3. Competitive Bids*

The investment officer shall obtain competitive bids from at least two brokers or financial institutions on all purchases of investment instruments purchased on the secondary market.

# **IX. Reporting**

## *1. Methods*

The investment officer shall submit quarterly an investment report that summarizes the quarter's total investment return. The report shall disclose all transactions during the past quarter. The report shall be in compliance with state law (if any) and shall be distributed to the Board of Burleigh County Commissioners and others as may be required by law.

Each quarterly report may indicate any areas of policy concern and suggested or planned revision of investment strategies.

Within 60 days of the end of the fiscal year, the investment officer shall present a comprehensive annual report on the investment program and investment activity. The annual report shall include 12-month and separate quarterly comparisons of return and suggest policies and improvements that might be made in the investment program. Alternatively, this report may be included within the County of Burleigh annual Comprehensive Annual Financial Report.

*2. Performance Standards*

The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. A series of appropriate benchmarks should be established against which portfolio performance shall be compared on a regular basis. The benchmarks should be reflective of the actual investments being purchased.

*3. Marking to Market*

The market value of the portfolio shall be calculated at least quarterly and a statement of the market value of the portfolio shall be issued at least quarterly. This will ensure that review of the investment portfolio, in terms of value and price volatility, has been performed. In defining market value, considerations should be given to the GASB Statement 31 pronouncement.

## **X. Policy Considerations**

*1. Exemption*

Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

*2. Amendments*

This policy will be reviewed on an annual basis. Any changes must be approved by the Board of County Commissioners in consultation with the investment officer and the individuals charged with maintaining internal controls.

## **VII. Approval of Investment Policy**

The investment policy shall be formally approved and adopted by the Board of Burleigh County Commissioners and reviewed annually.

## **VIII. List of Attachments**

The following documents, as applicable, are attached to this policy:

- North Dakota century code
- Listing of authorized personnel
- Listing of authorized broker/dealers and financial institutions
- Internal Controls

## **XIII. Other Documentation**

- Master Repurchase Agreement, other repurchase agreements and tri-party agreements,

- Broker/Dealer Questionnaire,
- Credit studies for securities purchased and financial institutions used,
- Safekeeping agreements,
- Wire transfer agreements,
- GFOA Recommended Policies.

## **AUTHORIZED PERSONNEL**

Burleigh County Auditor/Treasurer  
Leo Vetter

Deputy Auditor/Treasurer  
Brandi Caya

Deputy Finance Director  
Justin Schulz

-CERTIFICATION-

I hereby certify that I have personally read the investment policies of the County of Burleigh and have implemented reasonable procedures and controls designed to prohibit investment transactions inconsistent with your policies. Whenever we are notified in writing, we will inform our sales personnel of your investment objectives, outlook, strategy and risk constraints. We will notify you immediately by telephone and in writing in the event of a material adverse change in our financial condition. We pledge to exercise due diligence in informing you of fundamental risks associated with financial transactions conducted with our firm. Price markup will be consistent with prevailing institutional pricing at the time of each transaction. I attest to the accuracy of our responses to your questionnaire.

Signed: \_\_\_\_\_

(Countersigned by corporate officer responsible for compliance.)

\_\_\_\_\_

## COUNTY OF BURLEIGH INVESTMENT PROCEDURES and INTERNAL CONTROLS

### **A. Introduction:**

The Burleigh County Auditor\Treasurer has the responsibility of conducting cash and investment transactions for all funds held by or for the benefit of the County of Burleigh. The responsibility for the management of the investments here and after in this document will be referred to as the investment officer. The investment program has been delegated to the investment officer who shall implement the investment policy by following the investment procedures and internal controls herein delineated.

### **B. Objective:**

The Investment Procedures and Internal Controls Manual provides an outline for investment management. This manual shall be reviewed annually.

### **C. Internal Control:**

The system of internal controls is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

### **D. Investment Decisions:**

The investment officer shall adhere to the guidelines of the government's investment policy regarding all investment purchases or any other cash and investment transactions.

### **F. Delegation of Authority:**

As established by the investment policy, certain specified individuals (i.e., the Deputy Auditor\Treasurer, Accountant) have authority to transact investments. In case of an absence of officer, procedures and specific alternate personnel should be delineated.

### **G. Segregation of Duties and Compensating Controls:**

The government shall establish written internal controls, which should include:

#### **1. Control of Collusion:**

Collusion is a situation where two or more employees are working in conjunction to defraud their employer. Employee duties will be shifted periodically to reduce the opportunity for collusion.

#### **2. Segregation of duties:**

By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a good separation of duties is achieved.

3. Custodial safekeeping:  
Securities purchased from any bank or dealer, including appropriate collateral, should be placed into an independent third-party institution for custodial safekeeping.
4. Avoidance of physical delivery securities:  
Book entry securities are much easier to transfer and account for since actual delivery is never taken. Physical delivery securities must be properly safeguarded as are any valuable documents. The potential of fraud and loss increases with physical delivery securities.  
Bearer form securities are much easier to convert to personal use than securities that are registered in the name of the government.
5. Clear delegation of authority to subordinate staff members:  
Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid any improper actions. Clear delegation of authority also preserves the internal control structure that is built around the various staff positions and their respective responsibilities.
6. Written confirmation of all transactions (transfer, fax, Internet) for investments and wire transfers:  
Due to the potential for errors and improprieties arising from telephone/electronic transactions, all such transactions will be documented in writing and approved by the auditor\treasurer.
7. Development of an electronic funds transfer agreement with banks:  
This agreement should outline the various controls and security provisions for making and receiving electronic funds transfers.
  - a) Dual authorization and signatures of the County Auditor\Treasurer and Deputy Auditor\Treasurer shall be required for all transfers.
  - b) Financial institutions will have written instructions regarding government authorizations for wire transfers, restrictions on accounts where funds can be wired, and other procedures that will mitigate unauthorized movement of funds (e.g., call-back to independent person, written confirmations, etc.)
8. All personnel will be required to take minimum planned vacations thereby requiring other personnel to temporarily assume their duties.
9. Insurance shall be secured at appropriate levels to bond employees charged with investment and cash handling responsibilities shall be acquired from the ND State Bond Fund.

#### **H. Operations:**

Procedures and duties recommended include:

##### **1. Investment Procedures:**

The following is a basic outline of routine daily procedures necessary to maintain proper documentation on cash and investment transactions;

Each morning, the daily bank balance report shall be obtained from the depository bank(s).

Overnight (sweep) repurchase agreements and/or money market accounts interest shall be verified and recorded. All incoming and maturing investments shall be verified with the custodial bank. All earned interest, maturing investments, and incoming funds should be verified and recorded.

Daily information regarding the cash requirements and required maturity dates shall be provided by the Deputy Auditor\Treasurer. All security purchases or sells must be recorded on a confirmation form.

On a daily basis, it is necessary to conduct cash and investment activity within specific

bank accounts, and all transactions within each account shall be recorded on a daily investment worksheet. All worksheets shall be maintained by the Deputy Auditor\Treasurer, and the worksheets shall be available for review upon request.

Proper documentation and authorization shall be required before any cash or investment transaction is executed. All investment documentation shall require the signature of the Auditor\Treasurer or the Deputy Auditor\Treasurer.

**2. Authorized Wires:**

Only the Auditor\Treasurer or Deputy Auditor\Treasurer shall be authorized to wire funds according to the approved wire transfer agreement for investment. Wire instructions and personal identification numbers (PIN's) shall be safeguarded. All bank transfer requests shall be in writing and require a second confirmation by another Burleigh County employee. The purpose of the bank transfer must be stated as part of the transfer information. ACH procedures shall also be delineated.

**3. Securities Confirmations:**

The processing of securities' confirmations, including filing and reconciling, shall be conducted by an individual not permitted to purchase and sell investments.

**4. Safekeeping Procedures:**

All securities purchased shall be received by "delivery vs. payment" (per the investment policy) to the custodian for safekeeping.

Certificates of deposit are permitted to be held at the issuing bank.

Collateral for certificates of deposit and purchased securities in connection with repurchase agreements may be delivered to the governments' designated custodian. Additional requirements and procedures should be outlined in a third-party custodial safekeeping agreement regarding safekeeping procedures.



## September 10, 2024 - Investment Meeting Agenda

- I. WF Zero Balance Account
  - a. PEG set at \$10m for a time
  - b. lowered to \$3m
  - c. Should lower to \$0
    - i. Did we contact WF about lowering PEG to \$0?

Brandi emailed Wells Fargo to lower the PEG to \$1.5m.

Taylor asked for terms of the account but did not get terms from WF. Taylor said no PEG is required, per WF 50% of clients use \$0 balance. No additional fee – fees based on transactions. Fee is approximately \$1273 per month.

At \$3m PEG we are losing \$12,000 per month in interest on the sweep at current rates.

At zero balance we would earn \$12,000 per month in interest at current rates.

At \$1.5m PEG we lose \$6000 a month in potential interest @ current rates

ND State Treasurer operates with a zero balance account.

**Action item: Brandi will inquire with Wells Fargo about lowering PEG to \$0 and if that will increase fees.**

- II. Concentration of credit at Financial Institution
  - a. We have \$30m in First International
  - b. We have \$68m as of 9/5/2024
  - c. 43.5% of cash is at FIL
    - i. This seems to be over-concentrated
    - ii. ACTION ITEM: Determine what is the max % of total cash we are willing to keep at a given financial institution (15%? 25%?, etc)
    - iii. If First international is over the max, then the recommendation is to move the all/most/some of account # 661 out and into other financial institutions/investments
  - d. We have \$20m in Wells Fargo cash + \$6/7/8m in WF investments
    - i. This seems to be over-concentrated as well
    - ii. General Fund is \$5m over last year at this time due to increased RE taxes

Mark trying to consolidate banks down to 5, perhaps 6.

Finance Dept suggests expanding on the policy to define what % is a concentration at a financial institution, and what % is a concentration in a maturity and/or what % should we have in a given maturity or type

Action item: Mark wants to consolidate banks and stay in ND banks. Finance will look at banks to see if any can be removed. See what kind of investments we have and how long it will take to get out of there. Can we mature investments out of BNC

- III. Concentration of investments by maturity
  - a. We have approximately \$50m in money markets/sweep
    - i. \$20m WF
    - ii. \$15.8m FIL 662
    - iii. \$13.5M FIL ARPA
  - b. Per policy we should be diversified in our maturity of investments
  - c. Money markets will decline due to rate cuts
  - d. ACTION ITEM: Determine the maturity distribution for reserves and ARPA (i.e. 3month/6month/9month)
- IV. Concentration of investments by type
  - a. We are heavily in money markets
  - b. Our other investments are mostly CDs
  - c. Treasuries have a higher yield
    - i. For example our money markets are probably invested in short term (1month) Treasuries on a rolling basis
    - ii. Money markets must be in allowable investments per NDCC
    - iii. FIL makes money by discounting their investments (if Treasuries are 5.5%, FIL gives us 5.25% and pockets the difference)
  - d. ACTION ITEM: Determine the mix of investments by type (this may need to be revisited as rates change)

Mark would like to move cash into more of an even mix between the various investment types (CD, Fixed Income, Money Market, CD, Treasuries)

Mark would like to trial an investment mix and evaluate how it is going. At that point if it is going well, we can draft a policy or guidelines

Taylor mentioned first international money market is mostly reserves and can probably be invested for a longer period.

Action Item: Finance will create a hypothetical investment mix for Mark to review. We will focus on Reserves at this point in time

- V. Cash forecast
  - a. Historically the county has invested reserves
  - b. The county should consider investing operating cash
    - i. We collected 95%+ of our taxes by Feb 15
    - ii. These could be invested to mature as we need to pay bills throughout the year

- c. To do so requires a cash forecast
- d. Finance can assist but the Auditor/Treasurer should review
- e. **ACTION ITEM: Draft a cash forecast auditor to review**

VI. ~~Negative Cash~~

- a. ~~Having negative cash makes cash forecasting difficult~~
- b. ~~For example, if the general fund has \$5m but CenComm has -\$1m then the general fund really has \$4m~~
- c. ~~Negative cash is causing us to over-allocate interest to certain funds such as CenComm~~
- d. ~~For example, Provident Building has negative cash but has an investment~~
- e. ~~Fort Rice has negative cash but has an investment~~
- f. ~~Etc~~
- g. ~~ACTION ITEM: Correct the negative cash balances [this is a recommendation the Commission voted to adopt]. We may need to change the accounting practices to use payable/receivable or due to/from OR use cash forecasting to avoid going negative~~

VII. Investment checklist

- a. Do we need to develop a checklist where everyone involved signs off or initials off on a checklist for each investment?
- b. Checklist could be saved and stored the with record of investment

**ACTION ITEM: Finance will prepare an investment checklist for Auditor to review**

## Investment Policy

One of my goals for 2005 was the development and adoption of a county investment policy. I believe it is prudent for Burleigh County to have a formal policy covering the investment of county funds for several reasons. To help meet this goal I attended a Government Finance Officers Association Training Conference in April of this year. Shortly after I returned I visited with Park Commissioner Gregoire (after a Park Board Meeting) about my plans to draft an Investment Policy, hoping to draw upon his knowledge and experience as an investment advisor. Mr. Gregoire agreed to review the policy upon completion of the draft. Deputy Auditor\Treasurer Bettenhausen and I also discussed the proposed policy with Comm. Johnson and requested that he provide us with his insights regarding the policy as he also is a licensed investment professional.

A DRAFT INVESTMENT POLICY was provided to all Commissioners, State's Attorney Riha, HR Director Czosnek, and Mr. Gregoire on August 25, 2005. This draft was the culmination of many, many hours of effort by several members of staff. Minor changes were made based upon State's Attorney Riha's advice. Gregoire offered several thought provoking questions AND favorable comments regarding the draft.

### THE INVESTMENT POLICY

- I. Sets standards and parameters for county investments,
- II. Identifies county investment objectives,
- III. Organizes and formalizes investment activities,
- IV. Helps protect the assets of county from inappropriate and/or poor investment decisions,
- V. Identifies internal controls,
- VI. GASB requirements,
- VII. Enhances Audit performance.
- VIII. Educates Investment staff and elected officials.

THE INVESTMENT POLICY FORMALIZES WHAT THE COUNTY TREASURER HAS BEEN DOING FOR SEVERAL YEARS.

In response to Commissioner Woodcox's comments at the last Commission meeting, I believe his comments were unfounded, unwarranted, not well thought, and disrespectful to my office and Mr. Gregoire.

*Woodcox's statement that this policy puts the power of all investments into one person's hands is not very well thought or studied as ND Century Code provides this authority to the County Treasurer.*

Commissioner Woodcox had ample opportunity to visit with me and/or staff prior to the meeting regarding Gregoire's role and possible conflict of interest along with current investment practices.

PERHAPS WE SHOULD DISCUSS ALL SUCH CONFLICTS.

Would Comm. Johnson not have the same conflict? What about Woodcox's own conflicts? As a matter of fact, shortly after the July County Commission meeting, Woodcox visited with Deputy Auditor/Treasurer Bettenhausen regarding investment of county funds. Woodcox was briefed on current investment practices and *attempted to use the influence of his office to persuade Deputy Auditor/Treasurer Bettenhausen to direct investments to BNC Bank where he sits on the Board of Directors and has a financial interest.* (Attachment)

Gregoire's review of the Draft Investment Policy did not and will not create any conflict of interest. Gregoire will be required to meet same requirements as any other potential depository of Burleigh County funds. Furthermore, Gregoire did not attempt to use his position on the County Park Board to influence the investment decisions of myself or any other staff member. Unfortunately I cannot say the same about Comm. Woodcox.

In regards to any perceived conflict of interest that I may have, be advised my role in the investment process has been as a resource to Deputy Auditor/Treasurer Bettenhausen. Mrs. Bettenhausen was responsible for the investments prior to the office combination and has continued that role. I have no interest in Kirkwood Bank (attachments) and offer the following affidavit willingly signed by Bettenhausen confirming that I have never tried to influence the investment of funds in Kirkwood Bank. Unfortunately I cannot say the same about Comm. Woodcox.


Does this policy need to be approved by the Commission?

**ETHICS**

Joan Zimmerman	Accounts Receivable / Daily Checkout / Supply Orders / Liquor Licenses Gaming, Raffle, Bingo Permits / Fast Forward (Mail) / Special Assessment Creation / Website Maintenance / Duties as Assigned
Erika White	Office and Election Manager / Duties as Assigned
Brandi Caya	Month End Processing / Monthly Apportioning / Banking and Investments / Escrow Accounts (Property Taxes) / Mill Levy Calculations / Duties as Assigned
New AP Employee	Accounts Payable / Apportioning / Credit Card Coordinator / Phone Bills / Duties as Assigned
Erin Buchwitz	Deed Transfers / Legal Publications / Township Information / Website Maintenance / Commission Meeting Minutes and Agendas / Abatement Maintenance / Entry of Homestead and Vet Credits / 3 Year Delinquent Taxes / Special Assessment Maintenance / Multiple Parcel Maintenance / Duties as Assigned
Tessa Knudson	Property File Maintenance / New Subdivisions – Annexations / Property Splits / Legal Descriptions / Deed Transfers / Property Tax Assessments / Mill Levies / CAMA System / Reporting of Homestead and Vet Credits / Real Property Assessments (Inspections Outside of Bismarck) / Equalization / Mobile Home Taxation and Maintenance / Duties as Assigned
Mark Splonskowski	Real Property Assessments (Inspections Outside of Bismarck) / Equalization / Property Tax Estimates / CAMA System / Exemptions / Mobile Home Taxation and Maintenance / Duties as Assigned
Trudy Jackson	Mobile Home Taxation and Maintenance / Abatement / Building Permit Maintenance (CAMA) / Deed Maintenance (CAMA) / Duties as Assigned
Al Vietmeier	Deputy Auditor/Tax Director – Oversees Tax Equalization Department Real Property Assessments (Outside of Bismarck) / Equalization / Abatements / Property Tax Exemptions and Credits / GIS / Notice of Increase / Duties as Assigned
Robin Grenz	Deputy Auditor/Treasurer – Oversees Property Tax Investments / Investments / ACH Transfers / Month End / Online Payments / Duties as Assigned
Kevin Glatt	Auditor/Treasurer – Oversees Entire Office

## ALL STAFF ASSISTS with TAX STATEMENT MAILING, TAX COLLECTIONS and ELECTIONS!

Clyde Thompson	Chief Accountant/Finance Director – Annual Audit, Budget, Mill Levies, Building and Grounds , Property and Casualty Insurance
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	<p align="center"><b>Burleigh County, North Dakota</b></p> <p align="center"><b>Job Description</b></p>	<p align="center"><b>Last Date Revised:</b> 04/17/2023</p> <p align="center"><b>Job Description #</b> 02-41410-533</p>
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**Employee:** \_\_\_\_\_  
**Job Title:** Deputy Auditor/Treasurer  
**Job Status:** Exempt  
**Salary Grade:** 12

**Location:** Bismarck  
**Department:** Auditor/Treasurer/Tax  
**Reports to:** Auditor/Treasurer  
**DBM Rating:** C44/C51

**Job Summary:** Under the supervision of the Auditor/Treasurer/Tax, is responsible for supervision of clerical staff, tax collection function, accounting functions, preparing, balancing, and making daily bank deposits, and reconciling periodic statements of the County's bank accounts.


**Responsibilities:**

- 60 % time      Supervise, schedule, train, and evaluate staff in the Auditor/Treasurer area of the department, and prepare and mail tax statements, entry of tax collections, and issuance of receipts.
- 25 % time      Manage and perform fund investment activities and monitors cash flow requirements of county including preparation of required reports and apportioning various funds to proper districts and custodial accounts.
- 15 % time      Maintain periodic financial reports related to general ledger, accounting for special funds, tax collections, and investment of funds, assist with the budget and mill levy processes.

**Essential Job Duties:**

1. Oversee the collection and recording of all county revenues; prepare and balance daily receipts and deposits of funds, prepare listing of all checks and cash, and reconciliation checking account(s) and periodic statements of bank accounts.
2. Prepare needed data for annual audit, internal report requests, maintain pledged securities.
3. Serve as an active member of the Burleigh County Investment Committee.
4. Assist in the annual budget preparation including calculation of tax levies, preparing assessment list/abstract, special assessment districts.
5. Assist in review of warrants and orders for payments issued by the county to determine whether they are legal obligations of the County, have been properly budgeted, and do not represent over payment to any payee or from any fund.
6. Assist County Auditor/Treasurer in the official record keeping process including taking minutes of County Commission and other meetings.
7. Serve as contact (liaison) for Banks, all Auditor/Treasurer software systems, online (web-based) programs.
8. Responsible for research, troubleshooting, and problem-solving processes for the technical programs and the overall Auditor/Treasurer's department.
9. Create property tax statements, courtesy notices (two time a year), estimate statements, taxation notices, in lieu of taxes, public utilities (electrical and transmission) distribution lines – verifying, reporting, and billing.
10. Process year-end entries, perform rollover and annual closing processes for connection groups.
11. Supervise, train, process timekeeping, monitor workload, evaluate performance, and provide assistance to staff in the department.
12. Assist with elections as directly by the Auditor/Treasurer.
13. Provide backup for telephone calls and assist the public.



	<p align="center"><b>Burleigh County, North Dakota</b></p> <p align="center"><b>Job Description</b></p>	<p align="center"><b>Last Date Revised:</b> 04/17/2023</p> <p align="center"><b>Job Description #</b> 02-41410-533</p>
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14. Perform other duties as required or assigned.

**Job Qualifications, Experience and Education**

1. Bachelor's degree in finance, accounting, or business administration, five(5) years' experience in accounting including banking and investing funds, and two (2) or more years supervisory experience, and/or an equivalent combination of education and experience.
2. Knowledge of state and local laws governing the assessment and collection of real estate taxes.
3. Knowledge of legal property descriptions and common property instruments such as warranty and quit claim deeds, death certificates, and plats.
4. Must possess excellent written and communication skills with eh ability to prepare clear, concise, and accurate reports, and maintain effective working relationships with the public and other employees.
5. Ability to perform day-to-day accounting operations, technical computer skills, sufficient in the implementation of an integrated financial management system, and problem solving and analytical skills, sufficient to identify problem areas.
6. Must have valid North Dakota drivers license with clean driving record.

**Working Conditions/ Physical and Mental Demands**

1. Physical environment consists of a desk job in the standard environment, repetitive motion, sitting, standing, lifting, and completing a variety of recurring activities independently.
2. Requires operation of specialized equipment such as a computer, adding machine, business machines, copiers, etc.
3. Mental demands require the ability to interpret and choose the appropriate work procedure from available choices and judgment to select the appropriate guidelines.

**Clarification Clause:**

This job description is not intended and should not be construed to be a complete list of all duties, skills, responsibilities, or working conditions associated with the job. It is intended to be a reasonable outline of those principal job elements essential in maintaining the Deputy Auditor/Treasurer position. The job description is not a contract. The County reserves the right to modify job descriptions at any time.

\_\_\_\_\_  
**Employee Signature**

\_\_\_\_\_  
**Date**

**From:** Jacobs, Leigh <ljacobs@nd.gov>

**Sent:** Thursday, December 5, 2024 4:47 PM

**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>

**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>

**Subject:** RE: Follow up from Aug 5 Commission meeting - Approval of Finance Dept Recommendations

Mark,

If you're looking to get started, please see the attached Investment checklist. I sent this out several weeks ago but received no comments for or against. This doesn't relate to the accounting recommendations per se but does relate to investments.

If you concur, this is something that could be implemented immediately.

The other items can be discussed in a special meeting if the Commission is available.

***However, we would need to revisit the timeline.*** Take Tab #1, "Cash Management" in the attached "Recommendations...." Spreadsheet for example which we've been working on with you since August 29<sup>th</sup>. It has taken your office almost 100 days, dozens of emails, multiple meetings like the one we are discussing here, to correct a simple accounting error – negative cash in the CenComm fund– and it's still not done, despite it costing the County around \$3,000 a month due to incorrectly allocated interest revenue. Consequently, I don't think the timeline in the attached spreadsheet is realistic under the circumstances. We'll just have to take the recommendations one at a time.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

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**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Thursday, December 5, 2024 4:16 PM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Subject:** RE: Follow up from Aug 5 Commission meeting - Approval of Finance Dept Recommendations

After reviewing the recommendations you attached earlier and the previous emails, it appears that most of the processes are to be discussed in person, plans drafted by the Finance Department and then approved by the Auditor/ Treasurer. Since we have not yet met, and I have received no plans for the Finance Department I have not been able to approve any plans thus far. I would love to get together soon so that we can have plans drafted as soon as possible and improve our processes.

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**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, December 5, 2024 2:13 PM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Subject:** RE: Follow up from Aug 5 Commission meeting - Approval of Finance Dept Recommendations

Mark,

We have a handful of projects to get through in the coming weeks including the TLR and SPC reports for the Tax Department. The window for reporting the TLR and SPC opened on November 25<sup>th</sup> and closes at year end which doesn't give us a lot of time. Also, maybe we should invite more members of the Burleigh County Commission to the discussion considering it is their recommendations we are talking about. This might require a public notice or some kind of special meeting.

Which of the Commission's recommendations have you started implementing, and do you have any specific questions/concerns/comments about the items you have started implementing?

Leigh Jacobs, CPA  
Finance Director  
Burleigh County

316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Wednesday, December 4, 2024 12:40 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Subject:** RE: Follow up from Aug 5 Commission meeting - Approval of Finance Dept Recommendations

Can we meet up some time next week to go over these this? I would definitely like to get these all addressed before the end of the year if possible.

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**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Friday, November 8, 2024 11:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Subject:** FW: Follow up from Aug 5 Commission meeting - Approval of Finance Dept Recommendations

Good morning,

I'm following up on this email I sent back in September. I had intended to follow up sooner, but I thought it would be better to wait until after the election considering all the work with absentee ballots, etc.

We've already met to discuss some of these items such as negative cash, and we had a separate meeting which Pam attended about the financial statement audit results. But there are several other recommendations the Commission adopted back in August that we should start discussing. The hope is to develop a timeline for implementation that is realistic but has clear deliverables.

Mark and Brandi, do you have any availability in the coming weeks to sit down and discuss the Commission recommendations and a realistic plan for implementing those recommendations?

Leigh Jacobs, CPA  
Finance Director

Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

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**From:** Jacobs, Leigh  
**Sent:** Friday, September 13, 2024 11:14 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Ripplinger, Ronda <[roripplinger@nd.gov](mailto:roripplinger@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>; Schilling, Colette K. <[ckschilling@nd.gov](mailto:ckschilling@nd.gov)>; Potoniec, Matthew <[mapotoniec@nd.gov](mailto:mapotoniec@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** Follow up from Aug 5 Commission meeting - Approval of Finance Dept Recommendations

Good morning all,

I'm following up from the August 5<sup>th</sup> meeting of the Burleigh County Commission. At the meeting, the Commission approved a raft of recommendations from the Finance Department aimed at improving our audit report for next year and beyond. The audit report is a requirement under NDCC and is a critical item when it comes to external financing.

I've attached a spreadsheet with a summary of the recommendations and my thoughts on what an implementation schedule looks like. I'd like to meet as a group to discuss some of these items, especially the ones that we should implement as soon as possible. One example is adding the transaction date to the ledger, which the Commission approved. This will have a domino effect, and we will need input from staff to understand which of our existing procedures this will impact.

Please take some time to review the attached, and we can hopefully get together in the very near future to discuss.

Thanks

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

## APPENDIX A - SUMMARY OF RECOMMENDATIONS

Finding No.	Summary of Recommendations	Related Audit Adjustment
1.	Cash Management	#1, #7, #13
2.	Year End Policies and Procedures	#1, #7, #8, #9, #13, #15, #17, #18, #19, #20
3.	GAAP Continuing Education	#1, #7, #11, #12, #14, ARPA entry
4.	General Ledger Update	#3, #5, #10, #11, #13
5.	Supervisory Review	#4, #8, #14
6.	Improve Fixed Asset Policies & Procedures	#17, #18
7.	Improve Documentation	#6, #16
8.	Add transaction date to general ledger	#15, #19, #20

### **Recommendation #1: Adopt County-wide and Fund-level Cash Management Policies**

The County has several funds with a negative cash balance. Some of these accounts have carried a negative cash balance for several years. The reason for the negative cash balances is the County lacks County-wide and Fund-level cash management policies. The County simply “writes a check” from these funds without regard to how much cash the funds have. Some county funds, such as unorganized townships, cannot be made positive on the long-term due to economic factors (too few residents); other funds, such as CenComm, are negative because of a lack of cash management, planning, or awareness from staff and Treasurer.

The County should adopt County-wide and Fund-level cash management policies in coordination with department heads and the County Commission. The plan should include a cash forecast at both the County-wide and the Fund level, including plans to invest excess cash so investments mature in line with cash needs. The plan should include policies or procedures for situations where funds have negative cash, including identifying which funds are loaning money to the negative funds and reclassifying negative balances as a liability at period end.

By carrying negative cash balances in accounts, the county is unable to correctly allocate interest revenue from certain pooled investments such as the Wells Fargo “sweep” account, especially with no inter-fund loan documents. This has led to the County possibly over-allocating interest to the CenComm fund which is shared with the City of Bismarck. Per the joint powers agreement, we must leave all interest earned on the CenComm investments in the fund. **See Appendix C.**

### **Recommendation #2#: Improve year-end policies and procedures**

Most of the County’s adjusting entries relate to the year-end process. In the past, the County Finance Director prepared Financial Statements, and it seems likely that this process acted as a review of the books, especially the year-end, because that is when many financial statement adjustments take place, such as accruing expenditures. The County is now outsourcing the financial statement preparation and the year-end process is suffering.

It is common in accountancy to revert to the “SALY” principal, an acronym which means “same as last year.” That seems to be the case with the County’s year-end process. We rely heavily on the prior year’s records to close the current year. The challenge becomes when we have new or different scenarios

## **APPENDIX A - SUMMARY OF RECOMMENDATIONS**

develop throughout the year, which is often the case. In those cases, there is no record from prior years to rely on.

Rather than rely on a list of duties or on the prior year's activities, the County should take a holistic approach to closing the books by reflecting on broad categories such as payables, receivables, fixed assets, cash, etc. Another approach might be to create a checklist that reviews broad categories. For example, the checklist might ask, "Have all expenses been accrued?" and ask the accountant to check off fund-by-fund.

Whatever approach the County chooses, it must go further than simply a list of procedures we did last year. The County should involve more staff in the closing process. For example, the receivables accountant should oversee accruing receivables; likewise, the payables accountant with payables. This would improve the speed of the process rather than having one staff member do most of the work. It would also create opportunities for a level of review since one person wouldn't be doing all the work.

### **Recommendation #3 – Continuing Education in GAAP**

Some of the adjusting entries relate to a misunderstanding or lack of awareness of generally accepted accounting principles as they relate to governmental entities. For example, GASB statement 34 requires that revenue from sale of capital assets be reported as "Other Financing Sources." The County reported capital asset sales as "Miscellaneous Revenue," essentially burying the transaction in the ledger and making compliance with accounting standards much more difficult. Additionally, recording Prairie Dog Funds as a Transfer In is not correct under GAAP because transfers are not considered revenues; in this case, the Prairie Dog funds are intergovernmental revenues which must be reported as revenues.

Accounting standards are evolving, and sometimes we will encounter a new situation where we must apply an old accounting standard that we haven't applied up to this point. The county should adopt a continuing education policy for accounting staff which requires a certain number of hours per year.

### **Recommendation #4 – General Ledger Update**

Some of the adjustments relate to the inadequacy of our general ledger to capture the breadth of economic activity in Burleigh County. Economic activity has exploded in the last 10-15 years, but our ledger has not been updated. We haven't added significantly more accounts – in fact, we have 17 fewer accounts in 2023 than in 2015. We haven't added any additional accounting elements – such as sub-departments or project codes.

The County should consider re-writing the general ledger to provide an adequate number of accounts and account elements (Funds, departments, sub-departments, accounts, project codes, etc.) to properly account for the vast increase in economic activity in Burleigh County since the current ledger was adopted.

One example is the Gas Tax Refund revenue account. Since at least 2015, this account recorded our quarterly Township distributions from the ND Treasurer; however, we have begun using this account as a catch-all for various State financial aid packages such as SB2016 in 2019; HB 1015 in 2021; and more recently in 2023, Prairie Dog and Legacy Fund distributions.

## **APPENDIX A - SUMMARY OF RECOMMENDATIONS**

By adding various new State financial distributions to this existing account, we create inconsistencies within the ledger and make year-to-year comparisons impossible. These funds, especially permanent funding mechanisms such as Prairie Dog and Legacy Fund, should be in their own, new account, not in an account that historically captures the Township Road Distribution.

This is a systemic issue within our ledger goes back for years. Economic activity has dramatically increased in the State and in the region in the past decade, but we are using the same ledger from decades ago.

Other counties are handling their ledgers in completely different ways. Grand Forks County has five account elements (columns) and they have a wide range of accounts which capture the depth of their economic activity. For example, we have eleven (11) distinct sources of tax revenue represented in our “MH AND RE TAX” account, number 31110, including real estate tax; mobile home tax; railroad assessments; utility assessments; and more. Grand Forks County breaks each of these distinct sources of revenue out into their own account number. In total Grand Forks has over 4,000 accounts in their ledger while Burleigh has only 1,600.

Grand Forks County also provides for additional columns to capture important information. For example, they have a column with a unique identifier for grant-funded expenditures. They also use this column to capture the tax year. For example, every year they add a new account for the tax year. For 2025, they will add an account “xxxx.xxxx.xxxx.xxxx.2025.” Another use for this column is to track Highway Department projects by a unique project number.

### **Recommendation #5 – Supervisory Review**

A handful of adjusting entries were simple errors. The complexity of the underlying transaction can increase the chances of error. One such adjustment is the adjustment to correct Morton County’s reimbursement for the Burleigh Morton Detention Center ARPA funded staff. This is a complex entry because it involves reimbursement from two sources: ARPA and Morton County. We failed to correctly account for this transaction, and as a result understated both revenues and expenditures by approximately \$150,000.

The County should implement policies so that adjusting entries are reviewed and signed off on by a supervisor, if possible. The Finance Director job description includes a duty to review journal entries; however, accounting staff do not report to the Finance Director and have refused to make the journal entries recommended by the Finance Director in the past. Consequently, this is not an effective internal control, unless it goes to the level of the County Commission, because the County Commission can direct the County Auditor to keep all books and records required by the Commission per NDCC 11-03-02 paragraph 7.

### **Recommendation #6 – Improve Fixed Assets Policies & Procedures**

Several adjustments relate to fixed assets. Fixed Assets are generally kept in a part of the software called a “subsidiary ledger.” The subsidiary ledger is a detailed list of all assets with their purchase date, cost, accumulated depreciation, current depreciation, book value, salvage value, and disposal date if disposed. The fixed asset subsidiary ledger is a critical part of the accounting record because it accounts for a large portion of the balance sheet by dollar value.



## **APPENDIX A - SUMMARY OF RECOMMENDATIONS**

The County had errors relating to failure to add assets; delete assets; correctly classify assets as construction in progress; or remove construction in progress projects that were cancelled. The County should evaluate and improve fixed asset policies. Policy books and manuals are available online; the County should research and adopt fixed asset policies appropriate for its operations.

### **Recommendation #7 – Improve Documentation**

The County general ledger has 149 funds and 82 departments but lacks any centralized documentation describing why the funds exist or what laws, agreements, regulations, or resolutions govern them. This is a major weakness in our accounting system and all but guarantees errors will occur. We've already had issues with the lack of documentation this year with a failure to pay the Bismarck Parks District based on an agreement from 1998. We needed a reminder from the Bismarck Parks District to make the agreed-upon payment.

This issue of a lack of documentation is systemic, and it's often hard to track issues such as Commission actions that impact accounting or finance. The County should organize documentation related to the general ledger by fund and department in a centralized, digital location.

### **Recommendation #8 – Add Transaction Date to General Ledger**

The date field is a critical piece of accounting information recorded in every general ledger. In almost every case, the date shown in the ledger is the transaction date. This is often the date on an invoice, for example. Rather than record the transaction date, Burleigh County records the journal date – the date staff made the entry into the general ledger. The journal date is a trivial piece of information, whereas the transaction date is critical.

Without the transaction date, it's nearly impossible to forecast the current year's results or to compare the current year with the prior year, especially in years of staff turnover. As staff get busy or are in training, there's a greater delay between when a transaction occurs and when staff find time to enter the transaction into the ledger. Consequently, if staff fall behind compared to the previous year, then the transaction will show up at a later date in the ledger.

No transaction date makes the year-end process much more difficult, because we are required by GAAP to keep our books based on the transaction date, but we can't easily assess that information based on the general ledger.

Adding the transaction date to the ledger is a critical step in improving our financial report both to external users through our financial statements and internally with reports to management.

<b>Burleigh County Auditor's Office</b> <b>Investment Checklist</b>
--

Investment Type:

Investment Duration:

Financial Institution:

Amount:

Investment/Deposit Number:  
(if applicable)

Were three bids received?

Are all bids attached?

Is this investment appropriately diversified  
by type and maturity?

Is a copy of the current investment mix  
by type and maturity attached?

Is a copy of the adjusting journal entry attached?

<b>Approved by:</b> (County Auditor or designee to initial or sign)	<hr/> <i>Burleigh County Auditor</i>	<hr/> <i>Date</i>
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<b>Bank transfer ordered by:</b> (Deputy Auditor/Treasurer or designee to Sign)	<hr/> <i>Burleigh Deputy Auditor/Treasurer</i>	<hr/> <i>Date</i>
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Secondary Authorization of Bank Transfer: (per policy, staff or Auditor)	<hr/>	<hr/> <i>Date</i>
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<b>Investment checklist, reconciliation prepared by:</b> (Staff to initial or sign)	<hr/>	<hr/> <i>Date</i>
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<b>Adjusting journal entries reconciled, approved, posted:</b> (Staff to initial or sign)	<hr/>	<hr/> <i>Date</i>
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### **Summary of Recommendations**

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Tab 1	Cash Management
Tab 2	Year End Policies and Procedures
Tab 3	GAAP Continuing Education
Tab 4	General Ledger Update
Tab 5	Supervisory Review
Tab 6	Improve Fixed Asset Policies & Procedures
Tab 7	Improve Documentation
Tab 8	Add transaction date to general ledger

<b>Recommendation</b>	<b>Adoption Timeline</b>
Cash Management	Q4 2024
Year End Policies and Procedures	Begin Q4 2024/Q1 2025
GAAP Continuing Education	Q1 2025
General Ledger Update	Q1 2026
Supervisory Review	Q1 2025
Improve Fixed Asset Policies & Procedures	Begin immediately
Improve Documentation	Begin Q1 2025
Add transaction date to general ledger	Begin Q1 2025

<b>Cash Management</b>
------------------------

**Recommendation:** Adopt County-wide and Fund-level Cash Management Policies

**Discussion:** The County should adopt County-wide and Fund-level cash management policies in coordination with department heads and the County Commission. The plan should include a cash forecast at both the County-wide and the Fund level, including plans to invest excess cash so investments mature in line with cash needs. The plan should include policies or procedures for situations where funds have negative cash, including identifying which funds are loaning money to the negative funds and reclassifying negative balances as a liability at period end. The plan should include separate plans for reserve funds versus operating funds.

**Implementation Date:** Begin Q4 2024 (the rationale behind adopting the plan this fall is so we can begin to invest pre-paid property taxes)

**Responsible Party:** Treasurer to approve plan; Finance to draft plan in coordination with staff and department heads

## Year End Policies and Procedures

**Recommendation:** Adopt/Expand upon year-end policies and procedures

**Discussion:** Most of the County's adjusting entries relate to the year-end process. In the past, the County Finance Director prepared Financial Statements, and it seems likely that this process acted as a review of the books, especially the year-end, because that is when many financial statement adjustments take place, such as accruing expenditures. The County is now outsourcing the financial statement preparation and the year-end process is suffering. The County should involve more staff in the closing process. For example, the receivables accountant should oversee accruing receivables; likewise, the payables accountant with payables. This would improve the speed of the process rather than having one staff member do most of the work. It would also create opportunities for a level of review since one person wouldn't be doing all the work.

**Implementation Date:** Begin Q4 2024/Q1 2025

**Responsible Party:** Auditor to approve plan; Finance will assist Auditor's Office in documenting closing process & developing policies and procedures

## GAAP Continuing Education

**Recommendation:** Adopt continuing education policies and procedures

**Discussion:** Most accounting jobs require 40 hours per year of continuing education. The requirement is primarily driven by external standard-setters, such as the Yellow Book in the case of government auditors or the AICPA in the case of public accounting. Even if we don't necessarily have an external entity requiring continuing education, the County should require a certain amount of continuing education hours per year for all professional staff. The County must also be willing to fund this effort by increasing the continuing education and travel budgets.

**Implementation Date:** Begin Q1 2025 (this may require an amendment to the budgets)

**Responsible Party:** Auditor to approve plan; Finance to draft plan in coordination with staff and department heads

## General Ledger Update

<b>Recommendation:</b>	Expand upon the number of fields and accounts (columns and rows) to better capture the economic activity within the County and to better interface with modern software
<b>Discussion:</b>	<p>The County should expand on the general ledger to provide an adequate number of accounts and account elements (Funds, departments, sub-departments, accounts, project codes, etc) to properly account for the vast increase in economic activity in Burleigh County since the current ledger was adopted. Other counties are handling their ledgers in completely different ways. Grand Forks County has five account elements (columns) and they have a wide range of accounts which capture the depth of their economic activity. For example, we have eleven (11) distinct sources of tax revenue represented in our "MH AND RE TAX" account, number 31110, including real estate tax; mobile home tax; railroad assessments; utility assessments; and more. Grand Forks County breaks each of these distinct sources of revenue out into their own account number. In total Grand Forks has over 4,000 accounts in their ledger while Burleigh has only 1,600</p>
<b>Implementation Date:</b>	Begin Q1 2026 (this may require an amendment to the budgets)
<b>Responsible Party:</b>	Finance, Auditor's Office will draft a general ledger plan in coordination with staff and department heads



## Supervisory Review

**Recommendation:** The County should implement policies so that adjusting entries are reviewed and signed off on by a supervisor. The County should implement policies to review the books, broadly conceived.

**Discussion:** We should review adjusting journal entries on an ongoing basis because they are at a higher risk for error. We should also review the books, broadly conceived, throughout the year. An effective way to do this is ratio analysis or trend analysis (comparing the current year's account balance with the prior year). Major differences in account balances one year to the next can indicate errors in the ledger.

**Implementation Date:** Begin Q1 2025 (this may require an amendment to the budgets)

**Responsible Party:** Auditor to approve plan; Finance to draft plan in coordination with staff and department heads

## Improve Fixed Asset Policies & Procedures

**Recommendation:** The County should research and adopt fixed asset policies appropriate for its operations.

**Discussion:** The County had several errors relating to fixed assets in the audit report. The County has an unclear policy regarding to fixed assets (and may not have a policy at all). The process for adding fixed assets is unclear and inconsistent. The result is fixed assets are not getting added to the fixed asset subsidiary ledger. We are required under Government Accounting Standards to capitalize assets on our government-wide financial statements.

**Implementation Date:** Begin immediately

**Responsible Party:** Commission to approve fixed asset policy; Finance to draft policy in coordination with staff, department heads and Auditor; Finance will work with Auditor to adopt procedures to implement the policy

## Improve Documentation

**Recommendation:** The County should organize documentation relating to the general ledger by fund and department in a centralized, digital location

**Discussion:** The County general ledger has 149 funds and 82 departments but lacks any centralized documentation describing why the funds exist or what laws, agreements, regulations, or resolutions govern them. This is a major weakness in our accounting system and all but guarantees errors will occur. We've already had issues with the lack of documentation this year with a failure to pay the Bismarck Parks District based on an agreement from 1998. We needed a reminder from the Bismarck Parks District to make the agreed-upon payment.

**Implementation Date:** Begin Q1 2025

**Responsible Party:** Finance will work with Auditor's Office to implement

## Add transaction date to general ledger

- Recommendation:** The County should use the transaction date for all entries in the general ledger rather than the posting date.
- Discussion:** The date field is a critical piece of accounting information recorded in every general ledger. In almost every case, the date shown in the ledger is the transaction date. This is often the date on an invoice, for example. Rather than record the transaction date, Burleigh County records the journal date – the date staff made the entry into the general ledger. The journal date is a trivial piece of information, whereas the transaction date is critical.
- Without the transaction date, it's nearly impossible to forecast the current year's results or to compare the current year with the prior year, especially in years of staff turnover. As staff get busy or are in training, there's a greater delay between when a transaction occurs and when staff find time to enter the transaction into the ledger. Consequently, if staff fall behind compared to the previous year, then the transaction will show up at a later date in the ledger.
- No transaction date makes the year-end process much more difficult, because we are required by GAAP to keep our books based on the transaction date, but we can't easily assess that information based on the general ledger.
- Adding the transaction date to the ledger is a critical step in improving our financial report both to external users through our financial statements and internally with reports to management.
- Implementation Date:** Begin Q1 2025
- Responsible Party:** Finance will work with Auditor's Office and staff to implement  
This will require a lot of input from staff.

**From:** Jacobs, Leigh <ljacobs@nd.gov>

**Sent:** Tuesday, March 18, 2025 1:01 PM

**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>; Ripplinger, Ronda <roripplinger@nd.gov>

**Cc:** Bakken, Steven <BCCBAKKEN@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>

**Subject:** RE: Choice Bank

Mark,

I've attached a handful of emails, meeting minutes, and pages from the diversification section of our investment policy. The timeline of the investment mix and the investment checklist is as follows:

- On 9/10/2024, the Investment Committee met and discussed an investment mix (see attached minutes).
- On 9/19/2024 Taylor emailed a hypothetical investment mix (see attached 9.19.2024 email).
- On 12/4/2024, we received a response from you (see attached 12.4.2024 email) stating that you mostly agree with the mix.
- On 12/6/2024, I emailed you asking you to state in writing any disagreement you have with the mix ("mostly agree" implies there is something with which one does not agree). We received no response to this email.
- On 12/26/2024, the Investment Committee met (see attached 12.26.2024 email and see minutes, attached).

**Regarding the investment mix:**

Per the 12/26/2024 meeting minutes, the Finance Department agreed to investigate the possibility of an investment mix which is only 50% Treasuries. We learned that our money markets are invested in Treasuries to varying degrees and that the degree to which they are invested in Treasuries is subject to change on an ongoing basis. We concluded that we would require a subscription service to view the composition of the funds in which Wells Fargo and other banks have invested their money markets, and that this would require ongoing surveillance. Most importantly, we concluded that this effort is not a good use of time ***because the Investment Policy forbids setting a limit on***

***Treasuries, i.e., the Investment Policy allows us to be 100% invested in Treasuries.***

Quoting from the Diversification section of the Investment Policy, attached, “The investment committee... shall establish...guidelines for the percentage of the total portfolio that may be invested in securities **other than... Treasury bills...**” [emphasis added]

Therefore, until the policy goes before the Commission for revision, we remain fully compliant with the policy by setting our Treasury limit at 100%, for both investment and benchmarking purposes.

**Regarding the Investment Checklist:**

Per the 12/26/2024 meeting minutes, you as Chief Investment Officer declined to adopt an investment checklist. The stated reason according to the minutes was to wait until we determine whether we engage a third party to manage our funds. The Finance Department stressed (quoting from the attached minutes), “It is unlikely that we will outsource all our investing activity. We will likely retain some – maybe a significant amount – in -house. An investment checklist is a critical piece of documentation and internal control, especially in an era of global fraud.”

**To summarize:**

- 1. We are waiting on a response from you about the Investment mix sent 9/19/2024**
- 2. You stated you do not want to adopt an investment checklist, and that was the last discussion we had until today.**

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>

**Sent:** Tuesday, March 18, 2025 12:03 PM

**To:** Jacobs, Leigh <ljacobs@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>; Ripplinger, Ronda <roripplinger@nd.gov>

**Subject:** Choice Bank

Good afternoon,

I am looking to fill out the investment checklist for the recent reinvestment in Choice Bank. It

calls for the current investment mix and adjusting journal entry. Do you have those available?

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

## September 10, 2024 - Investment Meeting Agenda

- I. WF Zero Balance Account
  - a. PEG set at \$10m for a time
  - b. lowered to \$3m
  - c. Should lower to \$0
    - i. Did we contact WF about lowering PEG to \$0?

Brandi emailed Wells Fargo to lower the PEG to \$1.5m.

Taylor asked for terms of the account but did not get terms from WF. Taylor said no PEG is required, per WF 50% of clients use \$0 balance. No additional fee – fees based on transactions. Fee is approximately \$1273 per month.

At \$3m PEG we are losing \$12,000 per month in interest on the sweep at current rates.

At zero balance we would earn \$12,000 per month in interest at current rates.

At \$1.5m PEG we lose \$6000 a month in potential interest @ current rates

ND State Treasurer operates with a zero balance account.

**Action item: Brandi will inquire with Wells Fargo about lowering PEG to \$0 and if that will increase fees.**

- II. Concentration of credit at Financial Institution
  - a. We have \$30m in First International
  - b. We have \$68m as of 9/5/2024
  - c. 43.5% of cash is at FIL
    - i. This seems to be over-concentrated
    - ii. ACTION ITEM: Determine what is the max % of total cash we are willing to keep at a given financial institution (15%? 25%?, etc)
    - iii. If First international is over the max, then the recommendation is to move the all/most/some of account # 661 out and into other financial institutions/investments
  - d. We have \$20m in Wells Fargo cash + \$6/7/8m in WF investments
    - i. This seems to be over-concentrated as well
    - ii. General Fund is \$5m over last year at this time due to increased RE taxes

Mark trying to consolidate banks down to 5, perhaps 6.

Finance Dept suggests expanding on the policy to define what % is a concentration at a financial institution, and what % is a concentration in a maturity and/or what % should we have in a given maturity or type



Action item: Mark wants to consolidate banks and stay in ND banks. Finance will look at banks to see if any can be removed. See what kind of investments we have and how long it will take to get out of there. Can we mature investments out of BNC

- III. Concentration of investments by maturity
  - a. We have approximately \$50m in money markets/sweep
    - i. \$20m WF
    - ii. \$15.8m FIL 662
    - iii. \$13.5M FIL ARPA
  - b. Per policy we should be diversified in our maturity of investments
  - c. Money markets will decline due to rate cuts
  - d. ACTION ITEM: Determine the maturity distribution for reserves and ARPA (i.e. 3month/6month/9month)
- IV. Concentration of investments by type
  - a. We are heavily in money markets
  - b. Our other investments are mostly CDs
  - c. Treasuries have a higher yield
    - i. For example our money markets are probably invested in short term (1month) Treasuries on a rolling basis
    - ii. Money markets must be in allowable investments per NDCC
    - iii. FIL makes money by discounting their investments (if Treasuries are 5.5%, FIL gives us 5.25% and pockets the difference)
  - d. ACTION ITEM: Determine the mix of investments by type (this may need to be revisited as rates change)

Mark would like to move cash into more of an even mix between the various investment types (CD, Fixed Income, Money Market, CD, Treasuries)

Mark would like to trial an investment mix and evaluate how it is going. At that point if it is going well, we can draft a policy or guidelines

Taylor mentioned first international money market is mostly reserves and can probably be invested for a longer period.

Action Item: Finance will create a hypothetical investment mix for Mark to review. We will focus on Reserves at this point in time

- V. Cash forecast
  - a. Historically the county has invested reserves
  - b. The county should consider investing operating cash
    - i. We collected 95%+ of our taxes by Feb 15
    - ii. These could be invested to mature as we need to pay bills throughout the year

- c. To do so requires a cash forecast
- d. Finance can assist but the Auditor/Treasurer should review
- e. **ACTION ITEM: Draft a cash forecast auditor to review**

VI. ~~Negative Cash~~

- a. ~~Having negative cash makes cash forecasting difficult~~
- b. ~~For example, if the general fund has \$5m but CenComm has \$1m then the general fund really has \$4m~~
- c. ~~Negative cash is causing us to over-allocate interest to certain funds such as CenComm~~
- d. ~~For example, Provident Building has negative cash but has an investment~~
- e. ~~Fort Rice has negative cash but has an investment~~
- f. ~~Etc~~
- g. ~~ACTION ITEM: Correct the negative cash balances [this is a recommendation the Commission voted to adopt]. We may need to change the accounting practices to use payable/receivable or due to/from OR use cash forecasting to avoid going negative~~

VII. Investment checklist

- a. Do we need to develop a checklist where everyone involved signs off or initials off on a checklist for each investment?
- b. Checklist could be saved and stored the with record of investment

**ACTION ITEM: Finance will prepare an investment checklist for Auditor to review**

**From:** [Schmidt, Taylor](#)  
**To:** [Splonskowski, Mark D.](#); [Caya, Brandi M.](#)  
**Cc:** [Jacobs, Leigh](#); [Binder, Pamela J.](#)  
**Subject:** Investment Mix  
**Date:** Thursday, September 19, 2024 11:54:28 AM  
**Attachments:** [image001.png](#)

---

Good morning,

These tables show our current cash and investment mix as of 08/31/2024 (July fixed income balances). As we discussed in our investment meeting, per investment policy diversification of financial institution and investment type are the County's top investment priorities. The Finance Department recommends keeping no more than 25% of County funds at any bank (except BND) and no more than 50% of County investments in one investment type (except treasuries). As you can see below, based on Finance's recommended maximum allocation, we are over-concentrated in First International and Wells Fargo and are over-concentrated in money market accounts.

These are only guidelines that can and should be reviewed on a regular basis and revised as needed. The goal is to have a broad set of guidelines to provide a reasonable rationale for investment decisions that align with the investment priorities in our investment policy. Once we're in agreement on strategy, our office can create some cash flow forecasts and suggest specific investments for specific funds. This will be a significant undertaking that will take some time. We would start with recommendations of investments for general fund reserves currently held at First International.

**Mark, do you have any thoughts on this allocation before we move forward?**

Bank	Combined Balance	Current %	Max %	Difference	Amount Under/(Over)
BNC	1,196,248.92	1.73%	25.00%	23.27%	16,102,766.03
BND	1,027.40	0.00%	100.00%	100.00%	69,195,032.41
Bravera Bank	7,184,787.67	10.38%	25.00%	14.62%	10,114,227.28
Bremer	2,733,461.05	3.95%	25.00%	21.05%	14,565,553.90
Choice Bank	1,029,280.15	1.49%	25.00%	23.51%	16,269,734.80
First International Bank	30,974,435.22	44.76%	25.00%	-19.76%	(13,675,420.27)
Wells Fargo	26,076,819.40	37.69%	25.00%	-12.69%	(8,777,804.45)
<b>Total</b>	<b>69,196,059.81</b>	<b>100.00%</b>			

Investment Type	Combined Balance	Current %	Max %	Difference	Amount Under/(Over)
Fixed Income	8,996,528.99	13.00%	50.00%	37.00%	25,601,500.92
Money Market	54,378,474.78	78.59%	50.00%	-28.59%	(19,780,444.88)
CD	5,821,056.04	8.41%	50.00%	41.59%	28,776,973.87
Treasuries	-	0.00%	100.00%	100.00%	69,196,059.81
<b>Total</b>	<b>69,196,059.81</b>	<b>100.00%</b>			

Thanks,

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

(701) 712-8354

[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

316 N 5<sup>th</sup> St Ste 104

Bismarck, ND 58501

[www.burleigh.gov](http://www.burleigh.gov)

**From:** [Splonskowski, Mark D.](#)  
**To:** [Schmidt, Taylor](#); [Caya, Brandi M.](#)  
**Cc:** [Jacobs, Leigh](#); [Binder, Pamela J.](#); [Splonskowski, Mark D.](#)  
**Subject:** RE: Investment Mix  
**Date:** Wednesday, December 4, 2024 2:52:06 PM  
**Attachments:** [image001.png](#)

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Hey, I'm going through my old emails and found this one. I Mostly agree with this breakdown however Id like to discuss it and steps moving forward in person. Would we be able to set up a time next week along with the meeting on the Audit findings? Thanks

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Thursday, September 19, 2024 11:54 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Subject:** Investment Mix

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Thanks,

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

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[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

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**From:** [Jacobs, Leigh](#)  
**To:** [Splonskowski, Mark D.](#); [Schmidt, Taylor](#); [Cava, Brandi M.](#)  
**Cc:** [Binder, Pamela J.](#)  
**Subject:** RE: Investment Mix  
**Date:** Friday, December 6, 2024 2:17:00 PM  
**Attachments:** [image001.png](#)

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Mark,

As indicated in another email, some things have come up since you requested the below investment mix at our September 11<sup>th</sup>, 2024 investment meeting and which Taylor emailed to you on September 19<sup>th</sup>, 2024. The ND Tax Department's TLR and SPC reporting opened November 25<sup>th</sup> with a Dec 31 deadline, and Finance is working on those reports. It's a first for me and a bit stressful.

Since you mostly agree with the investment mix, may I suggest that an immediate starting point for the Auditor Treasurer's Office might be to get bids from some broker-dealers or securities agents for a **transaction-fee based investment service?**

Personally, I don't think the County needs a full-blown managed fund, although reasonable people could disagree. Bremer's rate for a managed investment fund seemed fairly competitive at 15 basis points over \$10m. They might be able to earn us an extra 15 basis points due their skill and expertise in the markets. But with that amount of cash on the line, I'd personally want bids.

The next move could be to get bids and to transfer around \$13,675,000 out of First International Bank's money markets and lock it into some longer-term investments (perhaps Treasuries or a competitively-bid managed fund. There's probably a lot of different levels of services and fees out there). That transfer would get us below the 25% hypothetical max for banks and would reduce our money market exposure. (I'm basing these figures on the email from Sept 19 below, so your mileage may vary)

So to summarize my thoughts, they are:

1. Get bids for broker-dealers or securities agents, especially looking for transaction-fee based investment services
2. Once you've selected a broker-dealer at step #1 above, check rates on a ladder of 3/6/9/12 month investments for the \$13,675,000 from First International

As for getting bids on broker-dealers or securities agents, I'd personally just start with google and with the banks we already bank with (Bremer and Wells Fargo are already done). The ND Securities Department may have a list of registered agents, too.

I think everything above can be done in a week or two and the results emailed to the group for comment; however the final decision is up to the Treasurer.

We can revisit once I have a better handle on this TLR/SPC report, although by then we'll probably be in the midst of tax season. Never a dull moment.

Also, please put into writing any specific **disagreements** you have with the proposal Taylor presented on September 19<sup>th</sup>, 2024 so I can ask him to update it with those changes and with the current balances. thanks

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Wednesday, December 4, 2024 2:52 PM  
**To:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Jacobs, Leigh <ljacobs@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>; Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Subject:** RE: Investment Mix

Hey, I'm going through my old emails and found this one. I Mostly agree with this breakdown however Id like to discuss it and steps moving forward in person. Would we be able to set up a time next week along with the meeting on the Audit findings? Thanks

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**Sent:** Thursday, September 19, 2024 11:54 AM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Jacobs, Leigh <ljacobs@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Subject:** Investment Mix

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**Mark, do you have any thoughts on this allocation before we move forward?**

---

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---

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
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**From:** [Jacobs, Leigh](#)  
**To:** [Splonskowski, Mark D.](#); [Schmidt, Taylor](#); [Binder, Pamela J.](#)  
**Subject:** 12.26.2024 Investment Committee Meeting Minutes  
**Date:** Monday, December 30, 2024 1:43:00 PM  
**Attachments:** [12.26.2024 Investment Committee Meeting Minutes.docx](#)

---

Good afternoon,

I've attached minutes from the 12/26/2024 meeting of the investment committee. I will follow up with the action items as we tick them off the list.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

**1. Investment Mix – ACTION FINANCE: Use latest investment numbers to determine what the proposed mix would look like.**

- a. Auditor Splonskowski proposed 50% limit on treasuries, 50% limit on WF and FIBT, and 25% on all other investment types and banks (*not sure if we addressed Money Market %*)
- b. Finance Department did not concur with a 50% limit on Treasuries.
  - i. It will be challenging to limit our treasuries to 50% considering that most of our Money Market accounts are backed by treasuries.
    - 1. Treasuries are one of the fundamental monetary units of our country – to limit Treasuries would be like limiting US dollars.
  - ii. The investment policy states that a percentage needs to be established for investments OTHER THAN repurchase agreements, **treasuries**, and collateralized CDs. We may need to ask the Commission to amend the policy re: a 50% limit on Treasuries
- c. Diversification is required to ensure we minimize our risk. Treasuries are the least risky investment we can purchase.
- d. Finance Department will prepare an investment mix showing what our theoretical balance would be with a 50% limit on Treasuries from a risk-mitigation perspective.

**2. Investment Process Checklist – No action at this time**

- a. Auditor Splonskowski proposed delaying implementation of a checklist until we decide if we are going to have a bank manage our funds
- b. The county lacks sufficient documentation that our investment procedures are being followed. Not following procedures exposes our funds to a huge amount of risk due to theft or error.
- c. It is unlikely that we will outsource all our investing activity. We will likely retain some – maybe a significant amount – in -house. An investment checklist is a critical piece of documentation and internal control, especially in an era of global fraud.

**3. Cash Forecast – ACTION FINANCE: Finance is working on those cash forecasts.**

- a. Finance Director Jacobs indicated that Finance is working on a cash flow forecast that can be used to guide investments for sales tax revenues.
- b. Finance Department has a cash forecast for the general fund for 2025. Finance Department will create a cash forecast for sales tax.

**4. Health Insurance – ACTION FINANCE: Contact NDIRF to see how they manage their funds.**

- a. HR Director Binder expressed concern that all health insurance funds need to be held in a trust and invested as legally allowed.
- b. *The County needs to make sure health insurance funds are contained in a legal account, separated from other funds, and that we balance cash flow needs with a return on investment.*
- c. *Finance Department* will contact NDIRF to ask if they will meet with us to discuss.

5. **Finance Investing Duties – ACTION FINANCE: Contact banks to see what services they offer and what their fees are. DUE:**
- a. Auditor Splonskowski mentioned that he may be interested in working with a local bank to manage our investments.
  - b. Finance Department will send a request for information to all our authorized banks.

**BURLEIGH COUNTY COMMISSION  
MEETING  
DECEMBER 16TH, 2024**

**5:00 PM** *Invocation by Chaplain and Pledge of Allegiance*

Chairman Bitner called the regular meeting of the Burleigh County Commission to order.

Roll call of the members: Commissioners Woodcox, Munson, Schwab, Bakken, and Chairman Bitner were present.

The following changes were made to the agenda:

- Item 10A was moved to after the consent agenda
- Item 6 became item 9
- Item 7 became item 6
- Item 9 became item 7
- The words CISA Report was added to item 10B

Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Munson to approve the meeting agenda. All members present voted "AYE". Motion carried.

Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Munson to table the December 2nd, 2024 meeting minutes in order to properly review a revised draft due to unnecessary language in original version. All members present voted, "AYE". Motion carried.

Motion by Comm. Schwab, 2<sup>nd</sup> by Comm. Munson to approve the December 16th, 2024 bills. All members present voted, "AYE". Motion carried.

The following abatements were presented for the Board's consideration; a complete copy of which are on file and available for inspection in the office of the Burleigh County Auditor/Treasurer.

Owner	Tax Year	Legal Description	Credit Type	Current MV	Reduced MV
Clayton & Mary Felchle	2023	Lot 18, Block 22, Wachter's 3rd	50% Homestead Credit	\$248,500	\$148,500
Clayton & Mary Felchle	2024	Lot 18, Block 22, Wachter's 3rd	50% Homestead Credit	\$266,400	\$166,400
Robert & Gayle Moyle	2024	S80' of Lots 15-18, Block 4, McKenzie's	50% Homestead Credit	\$294,300	\$194,300
Steven Blakely	2022	1976 Marshfield 66 x 14, VIN# 29553	Mobile home removed	\$7,484	\$0
Steven Blakely	2023	1976 Marshfield 66 x 14, VIN# 29553	Mobile home removed	\$7,983	\$0
Steven Blakely	2024	1976 Marshfield 66 x 14, VIN# 29553	Mobile home removed	\$7,983	\$0
Etta Schue	2024	Lot 11, Block 13, Register's 2nd	100% Homestead Credit	\$277,300	\$77,300
Robert & Jayme Holmberg	2024	Lot 10, Block 1, Horizon Heights 1st	50% Homestead Credit	\$357,000	\$257,000
Kevin & Christine Soule	2024	Block 21, Lounsberry Outlots, Beg pt 500' S & 180' E of NW corner, E 117' S 50' W 117' N 50' to beg	100% Homestead Credit	\$168,600	\$0

Motion by Comm. Munson, 2nd by Comm. Bakken to approve the Clayton & Mary Felchle (2), Robert & Gayle Moyle, Steven Blakely (3), Etta Schue, Robert & Jayme Holmberg, and Kevin & Christine Soule abatements and the remainder of the consent agenda. All members present voted "AYE". Motion carried.

Chairman Bitner gave an update on the CO2 pipeline situation, saying that attorneys representing Burleigh County have filed to the courts an appeal of the Public Service Commission decision to approve a pipeline permit to Summit Carbon Solutions within the designated timeframe required by the law. Discussion on Summit Carbon Solutions' CO2 pipeline was then continued from previous meeting(s). Chairman Bitner then once again opened the floor for public comment. Opinions about Summit and its pipeline were had and shared by Charles Tuttle, Tommy Collins, and Curtis Jundt.

John Fraase inquired of the Commission about the possibility of renaming the municipal courtroom in the county courthouse after former Judge William C. Severin of Bismarck, subsequently giving a presentation about Judge Severin's career and stated his favorability of such a memorial. Comm. Woodcox volunteered to work with Mr. Fraase to help the project along. Motion by Comm. Munson, 2nd by Comm. Bakken to rename the municipal courtroom in the county courthouse in honor of former Judge William C. Severin. Comm. Woodcox, Munson, and Bakken voted "AYE"; Comm. Schwab and Bitner voted "NAY". Motion carried.

Auditor/Treasurer Splonskowski presented to the Commission clarifications regarding the 2024 First Quarter investment report provided by County Finance Director Jacobs back on November 18<sup>th</sup>, 2024. The points of clarifications are as follows:

- Auditor/Treasurer Splonskowski stated that he believes the benchmarks used in Finance Director Jacobs' report did not follow the current investment policy in the Burleigh County Finance Manual. Jacobs' report had compared treasuries against CDs for example rather than comparing treasuries against treasuries, CDs against CDs, etc., as the manual states that, 'The benchmarks should be reflective of the actual investments being purchased'. The report's figures were also based solely on treasuries and had not included CDs or money markets.
- Auditor/Treasurer Splonskowski informed the Commission that the 2023 yield exceeded the budgeted yield by over \$100,000, and that as of August 2024, Burleigh County investments yielded \$1.1 million beyond what was budgeted. Based on Finance Director Jacobs' report & benchmark, the calculated loss in 2023 amounted to 0.0088 (9/10<sup>ths</sup> of 1%) and the loss of 2024's 1<sup>st</sup> quarter likewise amounted to 0.0018 (1/5<sup>th</sup> of 1%).
- Auditor/Treasurer Splonskowski stated to the Commission that on one or two of the investments made in 2024, both Finance Director Jacobs and Deputy Finance Director Schmidt agreed.
- The unmodified opinion of the 2023 annual Audit from the State's Auditor's Office was highlighted to show the Commission that no funds in Burleigh County were mishandled or misplaced.
- Auditor/Treasurer Splonskowski further stated that Finance Director Jacobs's report did not take into consideration the workforce issues and challenges effecting the Auditor/Treasurer's office. Multiple hirings and re-hirings took place within the Auditor/Treasurer's office across 2023. Furthermore, Splonskowski also explained that in 2024 the county Commission had transferred several duties historically held by the Finance Director over to his office but did not allow for the addition of new staff help disperse the workload (even removing a proposed accountant position in the Auditor/Treasurer's office during the 2025 preliminary budget). Paired with the office's standard election duties, the Auditor/Treasurer's office – and the Deputy Auditor/Treasurer in particular – suffered from overwork and was thus prevented from researching & pursuing better investment options.

Auditor/Treasurer Splonskowski ended by stating that his office exceeded the budgeted yields, and that a combination of improving internal processes, a continued adherence to North Dakota century code, and the addition of new staff to the Auditor/Treasurer's office would greatly help the investment process for Burleigh County.

Tommy Collins approached the podium to express her opinions on Auditor/Treasurer Splonskowski's clarifications.

Splonskowski presented to the Commission a recap on the November 5<sup>th</sup>, 2024, general election. Elections Coordinator Hart resigned during the general election process, her duties were reallocated within the office and members of the Auditor/Treasurer's office took on more responsibilities to keep the process going. The Secretary of State's office assisted the Auditor/Treasurer's office in finding, correcting, and noting mistakes to prevent them from happening again, and other departments within Burleigh County lent available staff to the Auditor/Treasurer's office to assist in daily election operations. Splonskowski informed the Commission that there were 52,866 ballots cast in total throughout the course of the general election,

which included 9,637 absentee votes, 19,065 early votes, and 24,164 votes cast on Election Day. Overall, Burleigh County saw a 69.9 percent voter turnout, which beat the statewide turnout of 62.61 percent.

Finance Director Jacobs addressed a couple of points before his items. Firstly, he stated that he took exception to any implications/accusations of unethical behavior on his part, and secondly, Finance Director Jacobs rebutted an earlier point made by Auditor/Treasurer Splonskowski during his clarification presentation. Jacobs stated that in his report, he never claimed there was no turnover in the Auditor/Treasurer's office during the 2023 year; rather, he had stated that there was no turnover in the Deputy Auditor/Treasurer position specifically.

County Finance Director Jacobs gave an overview of both the 2023 Investment Report and the Q2 2024 & Q3 2024 Investment Returns. Jacobs stated that in 2023, Burleigh County underperformed the benchmark of a similar term investment in US treasuries by \$751,055. The Burleigh County Auditor/Treasurer is also responsible for investing Morton County's sales taxes – in 2023, Morton County underperformed the benchmark by \$77,800. Burleigh County underperformed in 2023 mainly due to failure to invest, failure to capitalize on rising rates, and poor investment choices. Jacobs gave the following figures for each quarter in 2024:

- In Q1 of 2024, Burleigh County underperformed by \$136,000, with Morton County underperforming by \$26,000.
- In Q2 of 2024, Burleigh County underperformed by \$168,000, with Morton County underperforming by \$19,000.
- In Q3 of 2024, Burleigh County underperformed by \$226,900, with Morton County underperforming by \$38,000.

Jacobs gave some clarification as to why the numbers in Q3 of 2024 were so high, the explanation being that Burleigh County at that time was engaged in some bond defeasance activity at the advice of the county's bidding agent. If one were to remove the bond defeasance activity from Q3 of 2024, Burleigh County would underperform by \$150,000, and Morton County would underperform by \$25,000. Burleigh County underperformed in 2024 mainly due to a failure to invest and poor investment choices. Jacobs then touched on a couple of examples of a failure to invest along with other issues in 2023 under both Auditor/Treasurer Splonskowski and the previous Auditor/Treasurer Leo Vetter. Jacobs stood for questions.

County States Attorney Lawyer notified the Commission that in September 2024, the Burleigh County victim/witness program was awarded \$110,285 in federal VOCA grants through the state of North Dakota for the period of October 1<sup>st</sup>, 2024 through September 30<sup>th</sup>, 2025. Lawyer also stated that in a memo on December 9<sup>th</sup>, 2024, the state of North Dakota allocated an additional \$50,715 in federal VOCA grants to the Burleigh County victim/witness program for the period of October 1<sup>st</sup>, 2024, through June 30<sup>th</sup>, 2025. No further action was taken.

States Attorney Lawyer then continued the discussion regarding the county's internal investigation within the Auditor/Treasurer's office, mainly regarding the topics of removing a position from office and converting an elected office into an appointed office. Lawyer presented a summary of laws related to removing a position from office, and then went into detail about how petition process works when a petition is submitted to the state governor's office by either the public or the States Attorney. Additionally, Lawyer gave more insight into the process of what the Commission needed to do according to state law when converting an elected office into an appointed one. Motion by Comm. Munson, 2nd by Comm. Bakken to table the item until the next meeting. All members present voted "AYE". Motion carried.

Chris Legenfelder, Charles Tuttle, Curtis Jundt, and Steve Nagel were allowed to express their opinions concerning States Attorney Lawyer's item on the investigation discussion.

Chairman Bitner gave a report regarding the county's standalone election computer. Before the election, the Secretary of State's office had discovered that Burleigh County's standalone election computer had been connected to the Internet. Since the Internet connection instantly compromised the computer's internal security and could call into question the integrity of future elections, it had to be removed from the county and returned to its vendor for recalibration. Bitner also highlighted a 'security assessment at first entry' report from August 1<sup>st</sup>, 2024, written by officials at CISA (Cybersecurity Infrastructure Security Administration) of the Department of Homeland Security. In it, the report mentioned potential issues with the county's standalone election computer.

The Commission then began reviewing for consideration applications of Auxiliary Board members. Positions were open in the following boards & committees: Bismarck Planning Commission for an ETA member (1), Burleigh County Housing Authority (1), Burleigh County Human Service Zone Board (1), Burleigh County Park Board (2), Burleigh County School District Reorganizational Board (3), Burleigh County Water Resource Board (2), and Missouri Valley Complex Committee for a

Junior/High School Rodeo Appointee (1). Motion by Comm. Munson, 2nd by Comm. Bakken to reappoint Trent Wangen to the Bismarck Planning Commission as an ETA member. All members present voted "AYE". Motion carried. Motion by Comm. Munson, 2nd by Comm. Bakken to reappoint Cynthia Chavez to the Burleigh County Housing Authority. All members present voted "AYE". Motion carried. Motion by Comm. Bakken, 2nd by Comm. Munson to appoint Keli Berglund to the Burleigh County Human Service Zone Board. All members present voted "AYE". Motion carried. Motion by Comm. Bakken, 2nd by Comm. Munson to reappoint Errol Behm and Jeffery Herman to the Burleigh County Park Board. All members present voted "AYE". Motion carried. Motion by Comm. Bakken, 2nd by Comm. Munson to table the positions for Burleigh County School District Reorganizational Board. All members present voted "AYE". Motion carried. Motion by Comm. Woodcox, 2nd by Comm. Munson to reappoint Roger Smith and appoint Chuck Mischel to the Burleigh County Water Resource Board. All members present voted "AYE". Motion carried. Motion by Comm. Bakken to table the Junior/High School Rodeo Appointee position on the Missouri Valley Complex Committee. A consensus was reached among the commissioners to table the Junior/High School Rodeo Appointee position on the Missouri Valley Complex Committee. No further action was taken.

County Engineer Hall presented to the Commission a pavement waiver request by a couple on Sandy River Drive. This request was essentially a reconsideration of a waiver which had been denied in 2016; the waiver had included a lot split and would've required both the reconstruction and paving of Fernwood Drive. Hall stated that he recommends approval of the current waiver (which will only do a lot split), with an added caveat which states that this approval doesn't preclude the county or township from coming back in the future and requiring the individuals to share in the cost associated with rebuilding Fernwood Drive. Motion by Comm. Bakken, 2nd by Comm. Woodcox to grant the waiver as recommended by Hall. All members present voted "AYE". Motion carried. Hall then began a discussion about the bridge located on 236th St SE, as the deteriorating condition of the bridge's timber deck, beams, and piling are an area of concern. The bridge has a current posted load of 10 tons. Hall stated that the county applied for federal bridge funds from the DOT in 2021 and were approved to receive funds by 2024; however, due to inflation the project and funds were pushed back to 2026. Hall proposed two options on how to tackle the issue. The first option would be to stay on schedule and replace the bridge in 2025, using local funds and tapping into reserve funds to pay for the bridge. The total estimated cost for replacing the bridge would lie between \$900,000 and \$1 million, and the bridge would be completed by the fall of 2025. The second option would be to wait an additional year for those federal funds from the DOT to arrive in 2026 (assuming there are no further delays). With this latter option, the county would be on the hook for only \$250,000 in local funds and the bridge would be completed by the fall of 2026. Hall also highlighted a major concern that the county at some point might need to close the bridge, which would greatly affect the people living in that area due to the bridge being on an important route. A detour route has already been planned and prepared, but all three legs of the detour would need some extra work to be more efficient and safer. Motion by Comm. Munson, 2nd by Comm. Schwab to go with option one and stay on schedule to replace the bridge. All members present voted "AYE". Motion carried.

Meeting Adjourned.

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Mark Splonskowski, County Auditor/Treasurer

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Brian Bitner, Chairman



**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Saturday, December 7, 2024 12:45 PM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** investment update

Brian, we are still working on the 2023 investment report. Here's where we're at so far. I have reviewed all of these numbers and I don't expect them to change much if at all. The split below is based on **when** the decision was made. If it was made during Vetter's term, it goes under his column:

	VETTER 1/1/2023 - 3/31/2023	SPLONSKOWSKI 4/1/2023 - 12/31/2023	TOTAL FY 2023
Bank of North Dakota - Burleigh County	\$ (89,779.03)	\$ (146,385.72)	\$ (236,164.75)
Bank of North Dakota - Morton County	(27,743.64)	(50,056.97)	(77,800.61)
Bank of the West	(10,540.62)	-	(10,540.62)
BNC National Bank	(21,095.86)	(13,456.60)	(34,552.46)
Bravera Bank	(6,902.47)	(6,277.80)	(13,180.26)
Choice Bank	(29,894.38)	(6,281.85)	(36,176.22)
First Interational Bank	(204,615.86)	(79,031.25)	(283,647.10)
Wells Fargo (Sweep) - General Fund	(1,886.49)	(2,353.79)	(4,240.28)
Wells Fargo (Sweep) - "PEG"	(27,163.97)	(105,254.64)	(132,418.61)
	\$ (419,622.31)	\$ (409,098.61)	\$ (828,720.92)

The County made some poor decisions under Vetter, but I do not believe that when Splonskowski took over, he tried to mitigate those choices. Example: we bought \$22.5m in CDs from First International on Feb 16<sup>th</sup>. The rates were a hair over 4%. On the same exact day, Wells Fargo was paying us 4.31% in our Sweep, and Treasuries were yielding more (I've attached one of our **daily** reports that we run and save. We know every single day what rates we are getting in Wells Fargo, so there's no way we didn't know they were paying more than First International). This decision to buy these \$22.5m cost the County around \$66,000 over investing in Treasuries. However, Splonskowski didn't try to mitigate it (for example, sell the CDs, take the penalty, reinvest. Or ask FIL to waive the penalty and let us re-invest with them in higher rate CDs). In fact, in May, half those CDs matured for \$11.5m, and Splonskowski dumped the cash it into money markets at First International earning one percent **less** than Treasuries. That cost us \$9k a month as long as it lasted.

Also, on May 23<sup>rd</sup> when Splonskowski dumped \$11.5m into First Interational, their money market was doing 4.67% but Wells Fargo was doing 4.91%

The point I'm making is that even though some stuff was decided during Vetter's tenure, if Splonskowski isn't mitigating the bad choices then he's at least somewhat responsible.

Even if we just credit each Auditor with the decisions made during their term of office, Splonskowski is responsible for \$409,000 in 2023, including Morton County's sales tax.

We'll keep working on this next week. The goal is to get it on the next Commission meeting

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Tuesday, December 10, 2024 5:30 PM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** Draft 2023 Investment Report

Brian, I have attached the draft of the 2023 investment report. The numbers won't change between now and the meeting.

Taylor came up with \$155,519 for Q2 without Morton and \$174,828 with. I haven't had a chance to review this yet but will tomorrow.

Q3 is about the same but a little more complicated because we have to peel apart some of those bond defeasance decisions. We liquidated our investments at the advice of our bidding agent so that contributed to some of the loss. I should know more tomorrow.

I also need to ask Taylor to calculate how much Morton County lost in Q1 2024 at BND

In total it's going to be at least \$1.25m from Jan 1 2023 through Sept 30 2024.

I'll email the Auditor tonight to get this discussion added to the agenda

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

# **BURLEIGH COUNTY FINANCE DEPARTMENT**

316 N. 5<sup>th</sup> St.  
Bismarck, ND 58501  
701-712-8353

**DATE:** DECEMBER 11, 2024

**TO:** MARK SPLONSKOWSKI  
County Auditor

**FROM:** LEIGH J JACOBS, CPA  
Finance Director

**RE:** 2023 Investment Report to Burleigh County Commission

Please place the attached 2023 Investment Report and Q1, Q2, Q3 2024 Summary of Return on Investment to the Burleigh County Commission on the next Burleigh County Board agenda.

**ACTION REQUESTED:**

Receive the 2023 Investment Report as required by the County Investment Policy.

**BACKGROUND:**

The County Investment Policy requires a quarterly and annual investment report to be delivered to the Burleigh County Commission. This requirement has been neglected in recent years. Consequently, the Finance Department prepared an annual report for 2023 to get the County up to date on its reporting requirements to the Commission.

**RECOMMENDATION:**

It is recommended that the Board review the attached 2023 Investment Report and Q1, Q2, Q3 2024 Summary of Return on Investment. Staff will be available at the meeting to answer questions.

# **BURLEIGH COUNTY, NORTH DAKOTA REPORT ON INVESTMENT RETURN FY 2023**

**Prepared by**

**BURLEIGH COUNTY FINANCE DEPARTMENT**

**December 6th, 2024**

# BURLEIGH COUNTY, NORTH DAKOTA

## REPORT ON INVESTMENT RETURN

### FY 2023

## EXECUTIVE SUMMARY

### EXECUTIVE SUMMARY

The County's investment policy requires an annual report to management on the following topics: disclosure of all transactions during the year; summary of the year's total investment return; indication of any areas of policy concern (if identified); and suggested changes to investment strategy.

### TRANSACTIONS DURING THE YEAR

The County made only twenty-two (22) **active investment decisions** during the year. This equates to less than two active decisions per month. All the decisions but one underperformed Treasuries. Some of the decisions carried a heavy price in terms of opportunity costs, i.e. the opportunity to invest in higher-yielding US Treasuries. For instance, the decision on February 16<sup>th</sup> to invest \$22,500,000 in Certificates of Deposit (CDs) with First International Bank and Trust ("First International") cost the County \$66,000 in potential interest revenues from US Treasuries in 2023 alone, with the costs continuing into 2024 on 12-month CDs. It's unclear if the County received bids for this CD despite its huge cost at \$22.5m. On February 28<sup>th</sup>, the County purchased a 12-month CD with Choice Bank ("Choice") for \$6,000,000 yielding 4.50%. It's unclear if the County received bids for this purchase; however, rates on a 12-month Treasury which the County purchased at Bank of North Dakota ("BND") on February 2<sup>nd</sup> were 4.67%, and rates had risen to 5.03% by the end of February. The opportunity cost of this decision exceeded \$26,000 in 2023.

The County made **passive investment decisions** during the year. For example, the County failed to capitalize on rising interest rates. The County left \$30,000,000 in its First International money market earning **less than 1%** during January when our **Wells Fargo Sweep account was paying 4.04% at the beginning of the month (see Appendix A.1.)**. The County prints daily reports from Wells Fargo which report on the previous day's yield in the account; therefore, the County knew rates were far higher at Wells Fargo, yet the County failed to transfer money from First International to take advantage of the higher rates at Wells Fargo. **This inaction cost the county \$75,000 in opportunity cost in the month of January alone.**

In another example, when the CDs purchased from First International on February 16<sup>th</sup> began to mature, the County on May 23<sup>rd</sup> deposited the proceeds into First International's money markets which yielded almost one percent (1%) **less** than similar Treasuries. The cost to the County over \$9,000 **per month** in lost potential interest revenue while rates held.

In another example, the County allowed sales taxes to sit uninvested at the Bank of North Dakota throughout the year. At the beginning of 2023, the County held over \$18,500,000 in uninvested cash at the Bank of North Dakota earning only .38%. Although the County invested much of this idle cash in February, the County went four months – from April 4<sup>th</sup> to August 2<sup>nd</sup> – without making a single investment at BND, despite collecting

# BURLEIGH COUNTY, NORTH DAKOTA

## REPORT ON INVESTMENT RETURN

### FY 2023

## EXECUTIVE SUMMARY

sales taxes monthly. On average, the County held \$6,181,606 in uninvested cash at the Bank of North Dakota throughout the year. Excluding Q1 2023, the County averaged \$4,700,000 in uninvested cash during the remaining months of the year. The failure to invest sales taxes cost the County \$236,000.

The County's decision to leave cash uninvested at BND impacted Morton County, as well. Burleigh County has a fiduciary obligation to manage Morton County's sales taxes held in trust at BND and pledged to our joint detention center bond. Under the bond documents, only the Burleigh County Auditor/Treasurer may invest sales taxes for Burleigh and Morton Counties. Morton's uninvested cash balance averaged \$2,157,618 throughout the year, with an average of \$1,750,000 during the last three quarters of the year. The failure to invest Morton County's sales taxes cost Morton County nearly \$78,000.

## RETURN ON INVESTMENT

Bank	Average Balance	Interest \$ Earned	Earned Interest Rate	Benchmarked Interest	Benchmark Interest Rate	Difference Over/(Under) Benchmark
Bank of North Dakota - Burleigh County	\$ 28,120,083.56	\$ 1,028,334.81	3.66%	\$ 1,264,499.56	4.50% <sup>a</sup>	\$ (236,164.75) (0.84)%
Bank of the West	962,824.35	18.80	0.0020%	10,559.42	4.48%	(10,540.62) (4.48)%
BNC National Bank	3,178,344.78	122,128.47	3.8425%	156,680.93	4.93%	(34,552.46) (1.09)%
Bravera Bank	2,124,727.49	96,548.12	4.54%	109,728.38	5.16%	(13,180.26) (0.62)%
Choice Bank	6,611,017.22	267,684.66	4.05%	303,860.89	4.60%	(36,176.22) (0.55)%
First International Bank	30,655,097.92	1,247,903.47	4.07%	1,531,684.80	5.00%	(283,781.33) (0.93)%
Wells Fargo (Sweep) - General Fund	14,046,068.21	683,718.63	4.87%	687,958.91	4.90%	(4,240.28) (0.03)%
Wells Fargo (Sweep) - "PEG"	3,000,000.00	16,819.47	0.56%	149,238.08	4.97%	(132,418.61) (4.41)%
Subtotal, Burleigh County	88,698,163.53	3,463,156.43	3.90%	4,214,210.96	4.75%	(751,054.53) (0.85)%
Bank of North Dakota - Morton County	4,571,057.97	151,344.94	3.31%	229,145.55	5.01% <sup>a</sup>	(77,800.61) (1.70)%
Grand Total, Burleigh & Morton	\$ 93,269,221.49	\$ 3,614,501.37	3.88%	\$ 4,443,356.51	4.76%	\$ (828,855.14) (0.89)%
<sup>a</sup> Note: Morton County's benchmark exceeds Burleigh's because Morton on average 47% of their cash uninvested in BND's money market. We benchmarked money markets against 1-mo. Treasuries. Given the inverted yield curve, this credited Morton's benchmark with the higher-yielding 1-month Treasury rates.						

Using Treasuries as a benchmark, the County **underperformed** the market by \$751,055 during the year. Adding Morton County brings the total to \$828,855. Much of this comes from the failure to invest sales tax proceeds; failure to invest the \$3,000,000 "PEG" balance at Wells Fargo; failure to capitalize on rising rates; and a handful of poorly conceived and executed investment decisions involving CDs at First International and Choice.

Every decision the County made during the period except one performed below the benchmark. The only other exception is the BND sales tax accounts which are invested in Treasuries; however, the County made the questionable decision of purchasing \$5,000,000 in Treasuries maturing in January 2025. The County should have refrained from purchasing securities in that account with such a long maturity because this

# BURLEIGH COUNTY, NORTH DAKOTA

## REPORT ON INVESTMENT RETURN

### FY 2023

#### EXECUTIVE SUMMARY

purchase conflicted with our bond repayment plan. Ultimately, these investments had to be sold at a discount to purchase investments that properly coincided with our bond repayment schedule.

	TIMELINE OF RETURN ON INVESTMENT BY ELECTED OFFICIAL TERM IN OFFICE			
	AUDITOR/TREASURER	AUDITOR/TREASURER	DEPUTY	TOTAL
	VETTER	SPLONSKOWSKI	AUDITOR/TREASURER	
	1/1/2023 - 3/31/2023	4/1/2023 - 12/31/2023	1/1/2023 - 12/31/2023	FY 2023
Bank of North Dakota - Burleigh County	\$ (89,779.03)	\$ (146,385.72)	\$ (236,164.75)	\$ (236,164.75)
Bank of North Dakota - Morton County	(27,743.64)	(50,056.97)	(77,800.61)	(77,800.61)
Bank of the West	(10,540.62)	-	(10,540.62)	(10,540.62)
BNC National Bank	(21,095.86)	(13,456.60)	(34,552.46)	(34,552.46)
Bravera Bank	(6,902.47)	(6,277.80)	(13,180.26)	(13,180.26)
Choice Bank	(29,894.38)	(6,281.85)	(36,176.22)	(36,176.22)
First Interational Bank	(204,615.86)	(79,165.47)	(283,781.33)	(283,781.33)
Wells Fargo (Sweep) - General Fund	(1,886.49)	(2,353.79)	(4,240.28)	(4,240.28)
Wells Fargo (Sweep) - "PEG"	(27,163.97)	(105,254.64)	(132,418.61)	(132,418.61)
	<u>\$ (419,622.31)</u>	<u>\$ (409,232.84)</u>	<u>\$ (828,855.14)</u>	<u>\$ (828,855.14)</u>

#### POLICY CONCERNS

The County's investment policy is adequate; however, the County is not following the policy objectives. For example, the County went four months – April 4<sup>th</sup> to August 2<sup>nd</sup> – without making a single investment at BND, despite receiving sales taxes monthly. Sales taxes accumulated in the BND money market earning around .60% (6/10ths of one percent). These decisions run contrary to the "Yield" objective of our investment strategy.

#### CHANGES TO INVESTMENT STRATEGY

The County's investment practices prioritize convenience above the policy objectives. For example, the County accepts a lower rate of return than the benchmark for the convenience of using money markets. The County should re-structure its investment strategy to comply with the investment policy. Convenience should be considered only after other investment objectives are achieved.



# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

Burleigh County has a formal investment policy which guides investment decisions. The policy requires annual reporting to the Burleigh County Commission (hereafter “the Commission.”) The purpose of the required annual report is to disclose all transactions during the year; to summarize the year’s total investment return; to indicate any areas of policy concern (if identified); and to suggest changes to investment strategy.

#### TRANSACTIONS DURING THE YEAR

At year end 2022, the County held \$81,290,773 in cash and investments per our 2022 financial statement audit report. This amount does not include fiduciary funds held in trust for other entities such as property taxes received on behalf of the City of Bismarck, the School District, etc.

The table below summarizes the investment decisions the County made during Q1 2024:

Date	Bank	Decision	Effect of Decision	Auditor
1/24/2023	Choice Bank	Deposit \$1,004,244 in CD proceeds in Money Market @ 3.30%	Underperformed Treasuries by over 1.27%	VETTER
2/3/2023	Bank of North Dakota	Invest \$15,628,128 of Burleigh sales taxes	Failed to invest \$3,802,003 of Burleigh sales taxes; part is invested too long - 01/2025	VETTER
2/6/2023	Bank of North Dakota	Invest \$1,172,764 of Burleigh sales taxes	Failed to invest \$2,629,238 of Burleigh sales taxes	VETTER
2/16/2023	First International	Purchase \$22,500,000 in CDs at 4.03% - 4.18%	Underperformed Treasuries by .80% by weighted avg.	VETTER
2/28/2023	Choice Bank	Purchase \$6,000,000 in 12 Month CD @ 4.50%	Underperformed Treasuries by .53%	VETTER
3/6/2023	Bank of North Dakota	Invest \$1,825,793 of Burleigh sales taxes	Failed to invest \$3,752,976 of Burleigh sales taxes	VETTER
3/17/2023	First International	Deposit \$3,532,054 in CD proceeds in Money Market @ 4.37%	Overperformed 1-mo. Treasury by .11%; underperformed 2-mo. by .12%	VETTER
3/30/2023	BNC National Bank	Purchase 3/6/12 Months CD @ 4.15% - 4.50%	Underperformed Treasuries by .39% by weighted avg.	VETTER
4/3/2023	Bank of North Dakota	Invest \$3,248,483 of Burleigh sales taxes	Failed to invest \$3,626,379 of Burleigh sales taxes	SPLONSKOWSKI
4/18/2023	Choice Bank	Purchase \$500,000 in 12 Month CD @ 4.50%	Underperformed Treasuries by .31%	SPLONSKOWSKI
5/23/2023	First International	Deposit \$11,362,747 in CD proceeds in Money Market @ 4.67%	Underperformed Treasuries by .96%; underperformed Wells Fargo by .25%	SPLONSKOWSKI
June 2023	BNC National Bank	Left \$47,459 in cash or CD interest in money market @ .5%	Underperformed Treasuries by 4.81%	SPLONSKOWSKI
6/29/2023	BNC National Bank	Renew 3 Month CD of \$1,147,019 for 12 Months @ 4.70%	Underperformed Treasuries by .73%	SPLONSKOWSKI
7/15/2023	Bravera	Renew 10 month CD of \$680,000 for 12 Months @ 5.06%	Underperformed Treasuries by .29%	SPLONSKOWSKI
8/3/2023	Bank of North Dakota	Invest \$7,000,000 of Burleigh sales taxes	Failed to invest \$3,922,328 of Burleigh sales taxes	SPLONSKOWSKI
8/14/2023	Bravera	Transferred matured investments from Wells Fargo to Bravera money market @ 5.12% - WF Sweep was 5.19%	Underperformed Treasuries by .27%; underperformed WF sweep by .07%	SPLONSKOWSKI
8/17/2023	First International	Renew 6 Month CDs of \$3,750,000 for 6 months @ 5.00%	Underperformed Treasuries by .5%	SPLONSKOWSKI
8/31/2023	Bank of North Dakota	Invest \$1,795,479 of Burleigh sales taxes	Failed to invest \$5,095,620 of Burleigh sales taxes	SPLONSKOWSKI
9/12/2023	Choice Bank	Transfer via check \$1,000,000 to Bravera money market at 5.12%	Underperformed Treasuries by .27%; loss of 2 days interest while check in transit	SPLONSKOWSKI
9/28/2023	BNC National Bank	Renew 6 Month CD of \$1,147,019 for 12 Months @ 5.06%	Underperformed Treasuries by .42%	SPLONSKOWSKI
9/29/2023	Bank of North Dakota	Invest \$3,800,000 of Burleigh sales taxes	Failed to invest \$5,640,751 of Burleigh sales taxes	SPLONSKOWSKI
10/3/2023	Bank of North Dakota	Invest \$2,324,000 of Burleigh sales taxes	Failed to invest \$3,319,334 of Burleigh sales taxes	SPLONSKOWSKI

Auditor Splonskowski began his term of office on April 1, 2023. Prior to this, Leo Vetter served as the County Auditor/Treasurer. The Deputy Auditor/Treasurer position, responsible for investments under the Auditor, was fully staffed and with no turnover during the year under both Auditor/Treasurers. The table below summarizes the opportunity cost of lost interest revenue under the respective Auditors during the year, based on when the decision was made:

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

	TIMELINE OF RETURN ON INVESTMENT BY ELECTED OFFICIAL TERM IN OFFICE			
	AUDITOR/TREASURER VETTER 1/1/2023 - 3/31/2023	AUDITOR/TREASURER SPLONSKOWSKI 4/1/2023 - 12/31/2023	DEPUTY AUDITOR/TREASURER 1/1/2023 - 12/31/2023	TOTAL FY 2023
Bank of North Dakota - Burleigh County	\$ (89,779.03)	\$ (146,385.72)	\$ (236,164.75)	\$ (236,164.75)
Bank of North Dakota - Morton County	(27,743.64)	(50,056.97)	(77,800.61)	(77,800.61)
Bank of the West	(10,540.62)	-	(10,540.62)	(10,540.62)
BNC National Bank	(21,095.86)	(13,456.60)	(34,552.46)	(34,552.46)
Bravera Bank	(6,902.47)	(6,277.80)	(13,180.26)	(13,180.26)
Choice Bank	(29,894.38)	(6,281.85)	(36,176.22)	(36,176.22)
First Interational Bank	(204,615.86)	(79,165.47)	(283,781.33)	(283,781.33)
Wells Fargo (Sweep) - General Fund	(1,886.49)	(2,353.79)	(4,240.28)	(4,240.28)
Wells Fargo (Sweep) - "PEG"	(27,163.97)	(105,254.64)	(132,418.61)	(132,418.61)
	<u>\$ (419,622.31)</u>	<u>\$ (409,232.84)</u>	<u>\$ (828,855.14)</u>	<u>\$ (828,855.14)</u>

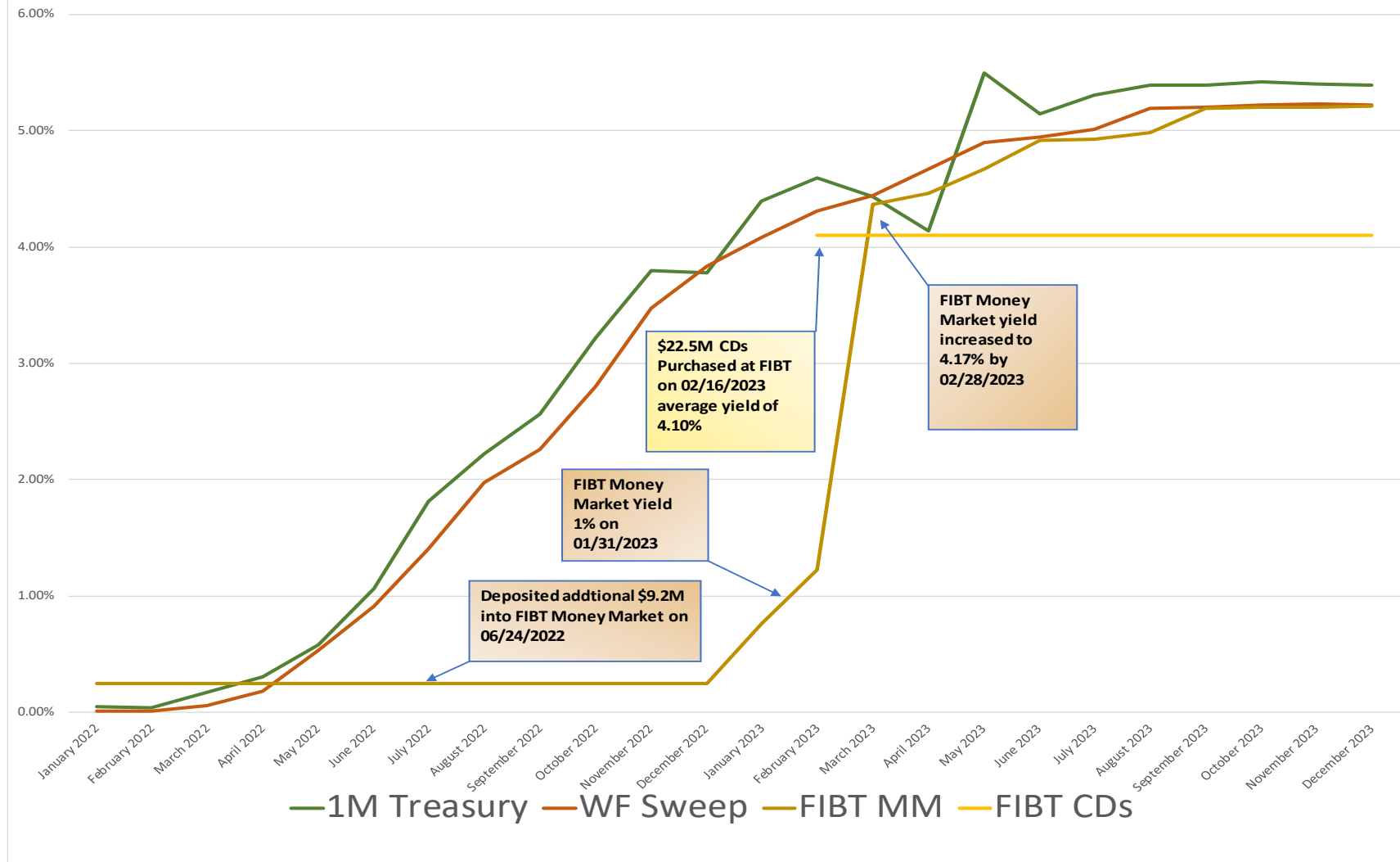
In total the County made twenty-two investment decisions during the year. This amounts to less than two investment decisions per month. The County made non-decisions or passive decisions during the Year such as allowing funds to mature into money markets (e.g., Treasuries maturing into BND's money market). The County failed in all decisions but one to match or exceed the return on Treasuries (excluding active investments at BND in Treasuries). Most of the loss during the year stems from one passive and two active decisions at First International and from a handful of passive decisions at BND.

The problematic decisions at First International began with the passive decision to leave cash in the First International money market for the first forty-six (46) days of the year. The First International money market averaged 1.22% during this period.

The County knew this rate was far below the rate at Wells Fargo. The County prints daily reports from its Wells Fargo Sweep account. These reports showed the Wells Fargo Sweep exceeded the rate at First International for much of 2022. **See the chart below.** See also an example of the daily report from December 15, 2022 at **Appendix A.2**. Despite knowing this, the County allowed over \$30,000,000 to sit in the First International money market for the first six weeks of the year. Furthermore, US Treasuries paid more than the Wells Fargo Sweep account. The decision to leave cash in the First International money market cost the County \$125,000 compared with investing in Treasuries. Even the simple act of transferring cash to our Wells Fargo account during this forty-six-day period would have earned the County an additional \$100,000.

**REPORT ON INVESTMENT PERFORMANCE  
BURLEIGH COUNTY  
JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

## Interest Rate Comparison 2022-2023



# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

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In an active investment decision, the County on February 16<sup>th</sup>, 2023, made the decision to purchase \$22,500,000 in First International CDs. These CDs averaged 4.10%. On the same day, the County earned 4.31% in the Wells Fargo Sweep account (**see Appendix A.3.**), and Treasuries averaged 4.86%. ***Twelve days later, the First International money market yield at 4.17% exceeded the rate on our CDs.*** The decision to purchase CDs instead of higher-yielding Treasuries cost the County \$66,000 during the year.

There's no indication the County tried to mitigate the effects of this decision under a new Auditor/Treasurer. To the contrary, the County deposited proceeds from these CDs at First International in May, when half these CDs matured. The County deposited the proceeds plus interest of \$11,362,747 into money markets earning .96% **less** than Treasuries. This decision cost the County more than \$9,000 a month over Treasuries while the rates held.

The passive decision (or non-decision) to leave cash uninvested at BND cost the County \$236,000 during the year. At one point, the County went four months – from April 4<sup>th</sup> to August 2<sup>nd</sup> – without making a single investment at BND, despite collecting sales taxes monthly. Under our sales tax bond documents, the responsibility to invest sales taxes, including Morton County, lies with the Burleigh County Auditor/Treasurer. The failure to invest Morton County sales taxes held at BND cost Morton County \$77,800.

Of the loss at BND, \$146,000 happened during the last three quarters of the year. During the last three quarters of 2023, Burleigh County averaged \$4,700,000 in uninvested cash. During the same period, Morton lost \$50,000 in potential interest income on an average of \$1,750,000 in uninvested cash.

Another decision was the passive decision to leave over \$2,000,000 in the BNC National Bank account during Q1 earning only .75% interest. By simply transferring this cash to Wells Fargo Sweep the County would have earned over \$18,000 in additional interest revenues. Treasuries earned even more during the period.

In still another example, the County purchased a \$6,000,000 CD with Choice Bank on February 28<sup>th</sup> paying 4.50%. At the same time, the County could have purchased a Treasury with the same maturity earning 5.03%. This decision cost the County \$26,000 during the year.

Another costly passive decision was the decision to maintain a \$3,000,000 balance in the Wells Fargo Zero Balance account rather than reduce this balance to \$0, as the name implies, and invest the \$3,000,000 overage. Although the County adopted a zero-balance position in this account in 2024 at the request of the Finance Department, the County lost approximately \$130,000 in earning potential on the \$3,000,000 balance during 2023.

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The table below outlines provides a detailed listing of the investment decisions made during the year.

Date	Bank	Description	Amount	Investment Decision	Alternative Decisions	Affect of Investment Decision	Decision Type	Auditor
1/24/2023	Choice Bank	Liquid	1,004,243.60	Deposit CD proceeds in Money Market @ 3.30%	Purchase 1-month Treasury @ 4.57%	Loss of opportunity to invest in higher paying Treasuries	Passive	VETTER
2/3/2023	Bank of North Dakota	T Note 9128283VD	3,908,569.33	Purchase Treasury Maturing 8/3/2023	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	VETTER
2/3/2023	Bank of North Dakota	T Bill 912796177	3,917,765.23	Purchase Treasury maturing 1/31/2024	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	VETTER
2/3/2023	Bank of North Dakota	T Note 912828529	3,921,213.23	Purchase Treasury maturing 7/31/2024	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	VETTER
2/3/2023	Bank of North Dakota	T Note 91282CFA4	3,880,578.73	Purchase Treasury maturing 1/31/2025	Purchase shorter-term investment	Invested for too long. County had to sell at a loss to fund bond escrow account.	Active	VETTER
2/6/2023	Bank of North Dakota	T Note 91282CGG0	1,172,764.29	Purchase Treasury maturing 1/31/2025	Purchase shorter-term investment	Invested for too long. County had to sell at a loss to fund bond escrow account	Active	VETTER
2/16/2023	First International	1 Month	1,875,000.00	Purchase 1 Month CD @ 4.03%	Purchase Treasury @ 4.61%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	3 Months	7,500,000.00	Purchase 3 Months CD @ 4.08%	Purchase Treasury @ 4.82%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	3 Months	1,875,000.00	Purchase 3 Months CD @ 4.08%	Purchase Treasury @ 4.82%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	6 Months	1,875,000.00	Purchase 6 Months CD @ 4.13%	Purchase Treasury @ 5.02%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	12 Months	1,875,000.00	Purchase 12 Months CD @ 4.18%	Purchase Treasury @ 5.01%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	1 Month	1,875,000.00	Purchase 1 Month CD @ 4.03%	Purchase Treasury @ 4.61%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	3 Months	1,875,000.00	Purchase 3 Months CD @ 4.08%	Purchase Treasury @ 4.82%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	6 Months	1,875,000.00	Purchase 6 Months CD @ 4.13%	Purchase Treasury @ 5.02%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/16/2023	First International	12 Months	1,875,000.00	Purchase 12 Months CD @ 4.18%	Purchase Treasury @ 5.01%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
2/28/2023	Choice Bank	12 Months	6,000,000.00	Purchase 12 Month CD @ 4.50%	Purchase 12 Month Treasury @ 5.03%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
3/6/2023	Bank of North Dakota	T Bill 912796Z51	1,825,792.50	Purchased Treasury with Reserve fund maturing 8/31/2023	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	VETTER
3/17/2023	First International	Liquid	3,532,053.53	Deposit CD proceeds in Money Market @ 4.37%	Purchase 1-month Treasury @ 4.26%	Gain over 1M; loss over 2M Treasury at 4.49%	Passive	VETTER
3/30/2023	Bank of the West	Money Market	1,162,893.60	Invest in BNC CD @ 4.15%	Purchase 3 Month Treasury @ 4.69%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
3/30/2023	BNC National Bank	3 Months	1,147,018.68	Purchase 3 Months CD @ 4.15%	Purchase 3 Month Treasury @ 4.94%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
3/30/2023	BNC National Bank	6 Months	1,147,018.68	Purchase 6 Months CD @ 4.30%	Purchase 6 Month Treasury @ 4.89%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
3/30/2023	BNC National Bank	12 Months	1,147,018.68	Purchase 12 Months CD @ 4.50%	Purchase 12 Month Treasury @ 4.64%	Loss of opportunity to invest in higher paying Treasuries	Active	VETTER
4/3/2023	Bank of North Dakota	T Bill 912796CS6	977,281.15	Purchased Treasury maturing 9/28/2023	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	SPLONSKOWSKI
4/3/2023	Bank of North Dakota	T Bill 912796CS6	2,271,201.39	Purchased Treasury with Reserve fund maturing 9/28/2023	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	SPLONSKOWSKI
4/18/2023	Choice Bank	12 Months	500,000.00	Purchase 12 Month CD @ 4.50%	Purchase 12 Month Treasury @ 4.81%	Loss of opportunity to invest in higher paying Treasuries	Active	SPLONSKOWSKI
5/23/2023	First International	Liquid	11,362,746.91	Deposit CD proceeds in Money Market @ 4.67%	Purchase 1-month Treasury @ 5.63%	Loss of opportunity to invest in higher paying Treasuries	Passive	SPLONSKOWSKI
June 2023	BNC National Bank	Liquid	47,458.67	Leave cash or CD interest in Money Market @ .5%	Purchase 1 Month Treasury @ 5.31%	Loss of opportunity to invest in higher paying Treasuries	Passive	SPLONSKOWSKI
6/29/2023	BNC National Bank	12 Months	1,147,018.68	Renew 3 Month CD for 12 Months @ 4.70%	Purchase 12 Month Treasury @ 5.43%	Loss of opportunity to invest in higher paying Treasuries	Active	SPLONSKOWSKI
7/15/2023	Bravera	12 Months	680,000.00	Renew 10 month CD for 12 Months @ 5.06%	Purchase 12 Month Treasury @ 5.35%	Loss of opportunity to invest in higher paying Treasuries	Active	SPLONSKOWSKI
8/3/2023	Bank of North Dakota	T Bill 912797G87	7,000,000.00	Purchased Treasury maturing 7/11/2024	Invest all available funds	Invested a portion of available cash	Active	SPLONSKOWSKI
8/14/2023	Bravera	Liquid	3,000,000.00	Transferred matured investments from Wells Fargo to Money Market @ 5.12% - W	Purchase 1 Month Treasury @ 5.39%	Loss of opportunity to invest in higher paying Treasuries	Active	SPLONSKOWSKI
8/17/2023	First International	6 Months	1,875,000.00	Purchase 6 Months CD @ 5.00%	Purchase Treasury @ 5.50%	Loss of opportunity to invest in higher paying Treasuries	Passive	SPLONSKOWSKI
8/17/2023	First International	6 Months	1,875,000.00	Purchase 6 Months CD @ 5.00%	Purchase Treasury @ 5.50%	Loss of opportunity to invest in higher paying Treasuries	Passive	SPLONSKOWSKI
8/31/2023	Bank of North Dakota	T Bill 912797GP6	1,795,478.88	Purchased Treasury maturing 2/29/2024 with Reserve fund	Invest all available funds	Invested a portion of available cash	Active	SPLONSKOWSKI
9/12/2023	Choice Bank	Liquid	1,000,000.00	Checking withdrawal from MM to Bravera @ 5.12% on 9/14	Purchase 1-month Treasury @ 5.39%	Loss of interest while check in transit; loss of interest on higher paying Treasury	Active	SPLONSKOWSKI
9/28/2023	BNC National Bank	12 Months	1,147,018.68	Renew 6 Month CD for 12 Months @ 5.06%	Purchase 12 Month Treasury @ 5.48%	Loss of opportunity to invest in higher paying Treasuries	Active	SPLONSKOWSKI
9/29/2023	Bank of North Dakota	T Bill 912797GY7	3,800,000.00	Purchased Treasury maturing 3/28/2024	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	SPLONSKOWSKI
10/3/2023	Bank of North Dakota	T Bill 912797GY7	2,324,000.00	Purchased Treasury with Reserve fund maturing 3/28/2024	Purchase investment in a timely manner when cash became available	Invested a portion of available cash	Active	SPLONSKOWSKI

## RETURN ON INVESTMENT

To give context to our return on investment, we benchmarked our annual returns against US Treasuries of comparable term purchased on the same day. For example, a six-month CD is benchmarked against a six-month Treasury; a twelve-month CD against a twelve-month Treasury, etc. Money markets or demand deposits are benchmarked against a one-month treasury. The rationale behind using the one-month benchmark for money markets or demand deposits is that an investor can achieve comparable liquidity to a demand deposit by investing, on a rolling basis, in one-month Treasuries, such that the Treasuries mature on a daily, weekly, biweekly, etc. basis. (In fact, this is probably exactly what the public-fund money markets are doing.)

We summarize the return on investment below. For investments maturing during the year, we benchmark the investment performance against a US Treasury, of similar maturity, purchased on the same day the investment was purchased; however, we only benchmark interest earned during the year (1/1/2023 through 12/31/2023). We retrieved historical Treasury data from the US Treasury website for use in this report.

# REPORT ON INVESTMENT PERFORMANCE

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Bank	Average Balance	Interest \$ Earned	Earned Interest Rate	Benchmarked Interest	Benchmark Interest Rate	Difference Over/(Under) Benchmark	
Bank of North Dakota - Burleigh County	\$ 28,120,083.56	\$ 1,028,334.81	3.66%	\$ 1,264,499.56	4.50% <sup>a</sup>	\$ (236,164.75)	(0.84)%
Bank of the West	962,824.35	18.80	0.0020%	10,559.42	4.48%	(10,540.62)	(4.48)%
BNC National Bank	3,178,344.78	122,128.47	3.8425%	156,680.93	4.93%	(34,552.46)	(1.09)%
Bravera Bank	2,124,727.49	96,548.12	4.54%	109,728.38	5.16%	(13,180.26)	(0.62)%
Choice Bank	6,611,017.22	267,684.66	4.05%	303,860.89	4.60%	(36,176.22)	(0.55)%
First Interational Bank	30,655,097.92	1,247,903.47	4.07%	1,531,684.80	5.00%	(283,781.33)	(0.93)%
Wells Fargo (Sweep) - General Fund	14,046,068.21	683,718.63	4.87%	687,958.91	4.90%	(4,240.28)	(0.03)%
Wells Fargo (Sweep) - "PEG"	3,000,000.00	16,819.47	0.56%	149,238.08	4.97%	(132,418.61)	(4.41)%
Subtotal, Burleigh County	88,698,163.53	3,463,156.43 <sup>✓</sup>	3.90%	4,214,210.96	4.75%	(751,054.53)	(0.85)%
Bank of North Dakota - Morton County	4,571,057.97	151,344.94	3.31%	229,145.55	5.01% <sup>a</sup>	(77,800.61)	(1.70)%
Grand Total, Burleigh & Morton	\$ 93,269,221.49	\$ 3,614,501.37 <sup>✓</sup>	3.88%	\$ 4,443,356.51	4.76%	\$ (828,855.14)	(0.89)%
<sup>a</sup> Note: Morton County's benchmark exceeds Burleigh's because Morton on average 47% of their cash uninvested in BND's money market. We benchmarked money markets against 1-mo. Treasuries.							
Given the inverted yield curve, this credited Morton's benchmark with the higher-yielding 1-month Treasury rates.							

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**BANK OF NORTH DAKOTA – BURLEIGH**

Deposits at BND consist of sales tax revenues and interest earned on invested sales tax revenues. Investments consist of US Treasuries. Since we are benchmarking against Treasuries any investments at BND will immediately be at benchmark. The only way in which BND could fail to meet benchmarks is for funds to remain uninvested. Uninvested funds earned an interest rate of .56% (56/100ths of one percent) during the period. In benchmarking BND, we focused on days funds were not invested. We benchmarked uninvested funds at the one-month Treasury rate. At the beginning of the period, the County had \$18,547,917 in uninvested funds at BND. At the end of the period, the County had \$3,379,637 in uninvested funds. For the period, the County earned \$236,165 under the benchmark of a one-month Treasury with **no** days uninvested.

Morton County started the period with \$2,767,835 in uninvested funds and ended the period with \$1,673,084 in uninvested funds. For the period, Morton County earned \$77,801 under the benchmark of a one-month Treasury with **no** days uninvested.

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Date	Transaction	Amount	Invested	Uninvested Cash	Interest @ BND	Days Not Invested	Interest Earned (Actual)	Interest @ Benchmark- 1M Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
12/31/2022	Beginning Balance	\$ -	\$ 4,150,000.00	\$ 18,547,916.83	0.38%	24	\$ 4,634.44	4.03%	\$ 49,149.44	\$ (44,515.00)
1/24/2023	Sales Tax	877,964.60	-	19,425,881.43	0.38%	7	1,415.69	4.57%	17,025.59	(15,609.90)
1/31/2023	Month End Balance	-	4,150,000.00	19,430,130.27	0.41%	3	654.77	4.53%	7,234.40	(6,579.63)
2/3/2023	Purchase T-Bills	15,628,127.52	15,628,127.52	3,802,002.75	0.41%	3	128.12	4.56%	1,424.97	(1,296.85)
2/6/2023	Purchase T-Bills	1,172,764.29	1,172,764.29	2,629,238.46	0.41%	16	472.54	4.57%	5,267.12	(4,794.58)
2/22/2023	Sales Tax	1,106,193.47	-	3,735,431.93	0.41%	6	251.76	4.57%	2,806.18	(2,554.42)
2/28/2023	Maturity of Note	1,826,000.00	(1,826,000.00)	5,561,431.93						
2/28/2023	Month End Balance	-	19,124,891.81	5,578,768.49	0.53%	6	486.04	4.60%	4,218.47	(3,732.43)
3/6/2023	Purchase T-Bills	1,825,792.50	20,950,684.31	3,752,975.99	0.53%	15	817.43	4.68%	7,218.05	(6,400.62)
3/21/2023	Sales Tax	778,510.89	-	4,531,486.88	0.53%	10	658.00	3.99%	4,953.60	(4,295.60)
3/31/2023	Maturity of Note	2,324,000.00	18,626,684.31	6,874,861.67	0.54%	3	305.13	4.69%	2,650.12	(2,344.99)
4/3/2023	Purchase T-Bills	3,248,482.54	21,875,166.85	3,626,379.13	0.54%	21	1,126.66	4.65%	9,701.81	(8,575.15)
4/24/2023	Sales Tax	739,956.36	-	4,366,335.49	0.54%	6	387.59	3.47%	2,490.61	(2,103.02)
4/30/2023	Month End Balance	-	21,875,166.85	4,368,150.77	0.61%	1	73.00	4.31%	515.80	(442.80)
5/1/2023	Bond Payment	(379,671.05)	-	3,988,479.72	0.61%	18	1,199.82	4.41%	8,674.12	(7,474.30)
5/19/2023	Sales Tax	688,155.85	-	4,676,635.57	0.61%	12	937.89	5.52%	8,487.13	(7,549.24)
5/31/2023	Month End Balance	-	21,875,166.85	4,678,815.11	0.59%	22	1,663.86	5.18%	14,608.16	(12,944.30)
6/22/2023	Sales Tax	1,066,011.06	-	5,744,826.17	0.59%	8	742.89	5.12%	6,446.80	(5,703.91)
6/30/2023	Month End Balance	-	21,875,166.85	5,747,291.24	0.61%	24	2,305.21	5.18%	19,575.43	(17,270.22)
7/24/2023	Sales Tax	987,741.14	-	6,735,032.38	0.61%	7	787.91	5.37%	6,936.16	(6,148.25)
7/31/2023	Interest Payment	187,296.06	-	6,922,328.44						
7/31/2023	Month End Balance	-	21,875,166.85	6,922,328.44	0.61%	3	347.06	5.38%	3,061.00	(2,713.94)
8/3/2023	Maturity of Note	4,000,000.00	17,966,597.52	10,922,328.44						
8/3/2023	Purchase T-Bills	7,000,000.00	24,966,597.52	3,922,328.44	0.61%	18	1,179.92	5.39%	10,425.87	(9,245.95)
8/21/2023	Sales Tax	1,095,716.25	-	5,018,044.69	0.61%	10	838.63	5.39%	7,410.21	(6,571.58)
8/31/2023	Purchase T-Bills	1,795,478.88	26,762,076.41	3,222,565.81						
8/31/2023	Maturity of Note	1,870,820.00	24,936,283.91	5,093,385.81						
8/31/2023	Month End Balance	-	24,936,283.91	5,095,620.45	0.59%	22	1,812.09	5.39%	16,554.48	(14,742.39)
9/22/2023	Sales Tax	1,021,130.79	-	6,116,751.24	0.59%	6	593.24	5.40%	5,429.66	(4,836.42)
9/28/2023	Maturity of Notes	3,324,000.00	21,687,801.36	9,440,751.24	0.59%	1	152.60	5.40%	1,396.71	(1,244.11)
9/29/2023	Purchase T-Bills	3,800,000.00	25,487,801.36	5,640,751.24	0.59%	1	91.18	5.40%	834.52	(743.34)
9/30/2023	Month End Balance	-	25,487,801.36	5,643,333.52	0.61%	3	282.94	5.40%	2,504.71	(2,221.77)
10/3/2023	Purchase T-Bills	2,324,000.00	27,811,801.36	3,319,333.52	0.61%	17	943.05	5.40%	8,348.35	(7,405.30)
10/20/2023	Sales Tax	716,756.35	-	4,036,089.87	0.61%	11	741.98	5.42%	6,592.65	(5,850.67)
10/31/2023	Month End Balance	-	27,811,801.36	4,037,997.55	0.59%	1	65.27	5.40%	597.40	(532.13)
11/1/2023	Bond Payment	(2,961,138.50)	-	1,076,859.05	0.59%	21	365.54	5.40%	3,345.64	(2,980.10)
11/22/2023	Sales Tax	1,366,765.51	-	5,404,763.06	0.59%	8	698.92	5.39%	6,385.02	(5,686.10)
11/30/2023	Month End Balance	-	27,811,801.36	2,422,335.76	0.61%	21	850.14	5.40%	7,525.83	(6,675.69)
12/21/2023	Sales Tax	950,487.81	-	3,372,823.57	0.61%	10	563.68	5.35%	4,943.73	(4,380.05)
12/31/2023	Month End Balance	-	27,811,801.36	3,379,636.55						\$ (236,164.75)



# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

#### BANK OF NORTH DAKOTA – MORTON

Date	Transaction	Amount	Invested	Uninvested Cash	Interest @ BND	Days Not Invested	Interest Earned (Actual)	Interest @ Benchmark- 1M Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
12/31/2022	Beginning Balance	\$ -	\$ 850,000.00	\$ 2,767,834.67	0.38%	24	\$ 691.58	4.03%	\$ 7,334.38	\$ (6,642.80)
1/24/2023	Sales Tax	159,764.28	-	2,927,598.95	0.38%	7	213.35	4.07%	2,285.13	(2,071.78)
1/31/2023	Month End Balance	-	850,000.00	2,930,186.20	0.41%	22	724.12	4.19%	7,400.13	(6,676.01)
2/22/2023	Sales Tax	194,341.24	-	3,124,527.44	0.41%	6	210.58	4.21%	2,162.34	(1,951.76)
2/28/2023	Maturity of Note	374,000.00	476,000.00	3,498,527.44						
2/28/2023	Month End Balance	-	476,000.00	3,485,014.93	0.53%	6	303.63	4.27%	2,446.19	(2,142.56)
3/6/2023	Purchase T-Bills	373,957.50	849,957.50	3,111,057.43	0.53%	15	677.61	4.27%	5,459.27	(4,781.66)
3/21/2023	Sales Tax	126,518.06	-	3,237,575.49	0.53%	10	470.11	4.45%	3,947.18	(3,477.07)
3/31/2023	Maturity of Note	476,000.00	373,957.50	3,713,575.49	0.53%					
3/31/2023	Month End Balance	-	373,957.50	3,718,571.58	0.53%	3	161.99	4.48%	1,369.25	(1,207.26)
4/3/2023	Purchase T-Bills	2,419,748.13	2,793,705.63	1,298,823.45	0.54%	21	403.52	4.47%	3,340.29	(2,936.77)
4/24/2023	Sales Tax	139,878.38	-	1,438,701.83	0.54%	6	127.71	4.57%	1,080.80	(953.09)
4/30/2023	Month End Balance	-	2,793,705.63	1,439,376.64	0.61%	1	24.06	4.56%	179.82	(155.76)
5/1/2023	Bond Payment	(77,763.95)	-	1,361,612.69	0.61%	18	409.60	4.57%	3,068.66	(2,659.06)
5/19/2023	Sales Tax	132,196.41	-	1,493,809.10	0.61%	12	299.58	4.57%	2,244.40	(1,944.82)
5/31/2023	Month End Balance	-	2,793,705.63	1,494,531.21	0.59%	22	531.48	4.55%	4,098.70	(3,567.22)
6/22/2023	Sales Tax	185,829.63	-	1,680,360.84	0.59%	8	217.30	4.57%	1,683.12	(1,465.82)
6/30/2023	Month End Balance	-	2,793,705.63	1,681,125.36	0.61%	24	674.29	4.56%	5,040.61	(4,366.32)
7/24/2023	Sales Tax	175,329.29	-	1,856,454.65	0.61%	7	217.18	4.55%	1,619.95	(1,402.77)
7/31/2023	Month End Balance	-	2,793,705.63	1,857,334.39	0.61%	21	651.85	4.53%	4,840.77	(4,188.92)
8/21/2023	Sales Tax	218,445.94	-	2,075,780.33	0.61%	10	346.91	4.54%	2,581.93	(2,235.02)
8/31/2023	Maturity of Note	383,180.00	2,419,748.13	2,458,960.33						
8/31/2023	Purchase T-Bills	367,748.69	2,787,496.81	2,091,211.64						
8/31/2023	Month End Balance	-	2,787,496.81	2,092,197.87	0.59%	22	744.02	4.57%	5,763.00	(5,018.98)
9/22/2023	Sales Tax	200,682.44	-	2,292,880.31	0.59%	6	222.38	4.57%	1,722.49	(1,500.11)
9/28/2023	Maturity of Notes	2,430,562.30	367,748.69	4,723,442.61	0.59%	1	76.35	4.59%	593.99	(517.64)
9/29/2023	Purchase T-Bills	2,600,000.00	2,967,748.69	2,123,442.61	0.59%	1	34.32	4.61%	268.19	(233.87)
9/30/2023	Month End Balance	-	2,967,748.69	2,169,948.70	0.61%	3	108.79	4.61%	822.20	(713.41)
10/3/2023	Purchase T-Bills	476,000.00	3,443,748.69	1,693,948.70	0.61%	17	481.27	4.61%	3,637.12	(3,155.85)
10/20/2023	Sales Tax	159,377.07	-	1,853,325.77	0.61%	11	340.71	4.58%	2,558.10	(2,217.39)
10/31/2023	Month End Balance	-	3,443,748.69	1,854,232.77	0.59%	1	29.97	4.59%	233.18	(203.21)
11/1/2023	Bond Payment	(609,296.96)	-	1,244,935.81	0.59%	21	422.60	4.61%	3,301.98	(2,879.38)
11/22/2023	Sales Tax	235,014.56	-	1,479,950.37	0.59%	8	191.38	4.59%	1,488.87	(1,297.49)
11/30/2023	Month End Balance	-	3,443,748.69	1,495,820.00	0.61%	21	524.97	4.58%	3,941.59	(3,416.62)
12/21/2023	Sales Tax	181,875.96	-	1,677,695.96	0.61%	10	280.38	4.57%	2,100.57	(1,820.19)
12/31/2023	Month End Balance	-	3,443,748.69	1,673,084.38						
										\$ (77,800.61)

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

#### WELLS FARGO SWEEP ACCOUNT

The Wells Fargo Sweep account, also known as the Zero Balance Account ("ZBA"), is designed to allow for the maximum investment of funds by keeping the account balance at zero overnight. The account goes negative through the day as checks are drawn, and at the close of business, Wells Fargo "sweeps" cash from the money market into the ZBA to cover the checks drawn throughout the day and bring the balance of the account up to zero. This type of account is common and is employed by many other entities including the North Dakota Treasurer's Office.

Burleigh County failed to take full advantage of the account. Burleigh County set the account balance at \$3,000,000 (this is known as the "PEG" amount) instead of zero as the account name would imply. Consequently, \$3,000,000 remained effectively uninvested for the entire year. This uninvested amount is allowed to earn enough interest to pay the account fees but no more. For the period, the County earned \$132,419 under the benchmark of one-month Treasuries.

Date	Uninvested "PEG" Amount	Days Not Invested	Interest Earned (Actual)	Interest @ Benchmark - 1M Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
1/1/2023	3,000,000.00	31	\$ 1,864.39	4.03%	\$ 10,268.22	\$ (8,403.83)
2/1/2023	3,000,000.00	28	1,987.87	4.54%	10,448.22	(8,460.35)
3/1/2023	3,000,000.00	31	1,420.76	4.60%	11,720.55	(10,299.79)
4/1/2023	3,000,000.00	30	1,230.14	4.69%	11,564.38	(10,334.24)
5/1/2023	3,000,000.00	31	1,214.79	4.41%	11,236.44	(10,021.65)
6/1/2023	3,000,000.00	30	1,312.38	5.25%	12,945.21	(11,632.83)
7/1/2023	3,000,000.00	31	1,170.12	5.18%	13,198.36	(12,028.24)
8/1/2023	3,000,000.00	31	1,206.70	5.39%	13,733.42	(12,526.72)
9/1/2023	3,000,000.00	30	1,203.37	5.39%	13,290.41	(12,087.04)
10/1/2023	3,000,000.00	31	1,220.95	5.40%	13,758.90	(12,537.95)
11/1/2023	3,000,000.00	30	1,248.01	5.40%	13,315.07	(12,067.06)
12/1/2023	3,000,000.00	31	1,739.99	5.40%	13,758.90	(12,018.91)
						\$ (132,418.61)

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

The County uses the Sweep account as one of its primary investment vehicles. Substantially all property taxes are receipted into Wells Fargo by February 15<sup>th</sup>. The funds are deposited into the Sweep account until utilized. The Sweep account underperformed the benchmark of a one-month Treasury throughout the year. In total, the Sweep account underperformed the benchmark by \$4,240.

Date	Account #	Description	Average Balance	Invested	Days Interest Earned	Interest % (APY)	Interest Earned	Interest @ Benchmark - 1M Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
1/31/2023	Sweep	Burleigh Funds	\$ 20,696,472.81	\$ 17,696,472.81	31	4.10%	61,602.82	4.0300%	\$ 60,570.42	\$ 1,032.40
2/28/2023	Sweep	Burleigh Funds	26,819,673.88	23,819,673.88	28	4.34%	79,219.69	4.5400%	82,957.72	(3,738.03)
3/31/2023	Sweep	Burleigh Funds	24,178,719.97	21,178,719.97	31	4.65%	83,561.21	4.6000%	82,742.07	819.14
4/30/2023	Sweep	Burleigh Funds	21,668,013.01	18,668,013.01	30	4.66%	71,577.15	4.6900%	71,961.35	(384.20)
5/31/2023	Sweep	Burleigh Funds	20,932,636.03	17,932,636.03	31	4.95%	75,362.74	4.4100%	67,166.32	8,196.42
6/30/2023	Sweep	Burleigh Funds	21,581,133.41	18,581,133.41	30	4.96%	75,732.98	5.2500%	80,178.86	(4,445.88)
7/31/2023	Sweep	Burleigh Funds	20,953,133.40	17,953,133.40	31	5.16%	78,701.86	5.1800%	78,983.95	(282.09)
8/31/2023	Sweep	Burleigh Funds	16,924,419.14	13,924,419.14	31	5.20%	61,520.58	5.3900%	63,743.32	(2,222.74)
9/30/2023	Sweep	Burleigh Funds	12,268,856.09	9,268,856.09	30	5.21%	39,693.08	5.3900%	41,062.30	(1,369.22)
10/31/2023	Sweep	Burleigh Funds	8,555,265.68	5,555,265.68	31	5.23%	24,690.19	5.4000%	25,478.12	(787.93)
11/30/2023	Sweep	Burleigh Funds	5,918,791.35	2,918,791.35	30	5.23%	12,546.80	5.4000%	12,954.64	(407.84)
12/31/2023	Sweep	Burleigh Funds	7,395,663.62	4,395,663.62	31	5.23%	19,509.53	5.4000%	20,159.84	(650.31)
										\$ (4,240.28)

### FIRST INTERNATIONAL BANK – CERTIFICATES OF DEPOSIT

The County purchased \$22,500,000 of CDs with First International Bank on February 16<sup>th</sup> using cash invested in the First International money market, which earned 1.22% at the time the CDs were purchased. On that day, our Wells Fargo Sweep account yielded more than the CDs purchased (**see Appendix A.3.**). Treasuries yielded a substantially higher interest rate than these CDs, and by February 28<sup>th</sup>, only twelve days later, our First International money market yielded more than the CDs purchased on February 16<sup>th</sup>. It's unclear if the County followed its investment policy in receiving bids for this transaction, despite the enormous size of the transaction at \$22.5m.

When these CDs matured, the County either deposited the proceeds into money markets or purchased additional CDs at First International.

The purchase of \$22.5m in CDs on February 16<sup>th</sup> underperformed the benchmark of similar Treasuries by \$66,000 during 2023. The additional CDs purchased August 17<sup>th</sup> underperformed the benchmark of similar Treasuries by \$7,000. In total, the First International CDs underperformed the benchmark by \$73,000.

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

Purchase Date	Maturity Date	Term	Term (Days)	Bank	Account Type	Opening Balance	Interest Rate	Interest Earned 2023	Interest @ Benchmark - Similar Term Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
2/16/2023	3/16/2023	1 Month	28	First International	CD	\$ 1,875,000.00	4.03%	\$ 5,796.58	4.61%	\$ 6,630.82	\$ (834.24)
2/16/2023	5/18/2023	3 Months	91	First International	CD	7,500,000.00	4.08%	76,290.41	4.82%	90,127.40	(13,836.99)
2/16/2023	5/18/2023	3 Months	91	First International	CD	1,875,000.00	4.08%	19,072.60	4.82%	22,531.85	(3,459.25)
2/16/2023	8/17/2023	6 Months	182	First International	CD	1,875,000.00	4.13%	38,612.67	5.02%	46,933.56	(8,320.89)
2/16/2023	2/16/2024	12 Months	318	First International	CD	1,875,000.00	4.18%	68,282.88	5.01%	81,841.44	(13,558.56)
2/16/2023	3/16/2023	1 Month	28	First International	CD	1,875,000.00	4.03%	5,796.58	4.61%	6,630.82	(834.24)
2/16/2023	5/18/2023	3 Months	91	First International	CD	1,875,000.00	4.08%	19,072.60	4.82%	22,531.85	(3,459.25)
2/16/2023	8/17/2023	6 Months	182	First International	CD	1,875,000.00	4.13%	38,612.67	5.02%	46,933.56	(8,320.89)
2/16/2023	2/16/2024	12 Months	318	First International	CD	1,875,000.00	4.18%	68,282.88	5.01%	81,841.44	(13,558.56)
8/17/2023	2/15/2024	6 Months	136	First International	CD	1,875,000.00	5.00%	34,931.51	5.50%	38,424.66	(3,493.15)
8/17/2023	2/15/2024	6 Months	136	First International	CD	1,875,000.00	5.00%	34,931.51	5.50%	38,424.66	(3,493.15)
											\$ (73,169.17)

#### **FIRST INTERNATIONAL BANK – MONEY MARKETS**

At the beginning of the year, the County held \$30,000,000 at First International in money markets earning only .76%. Meanwhile, the Wells Fargo Sweep account – also a money market – was earning 4.04% (**see Appendix A.1.**). The rates at Wells Fargo rose gradually during 2022, topping 4% on December 15, 2022 (**see Appendix A.2.**). The County prints daily activity reports from Wells Fargo, so the higher rate was known to the County, yet the County maintained its accounts at the much lower yielding First International money market.

On February 16<sup>th</sup>, forty-six days into the year, with its money market earning only 1.69% on average, the County purchased \$22,500,000 in CDs with First International averaging 4.10%. For the first forty-six days of the year, the First International money market underperformed the benchmark of a one-month Treasury by \$125,000.

In May, when half these CDs matured, the County chose to deposit the proceeds plus interest of \$11,362,747 into money markets earning 4.67%, **which was .96% less than Treasuries**. On the same day, according to the County's daily report, the Wells Fargo Sweep account was paying significantly more than First International's money market at 4.94% (**see Appendix A.4.**), but the County chose to keep its cash in First International, choosing convenience over yield. This decision to deposit CD proceeds into money markets underperformed the benchmark of a one-month Treasury by over \$9,000 a month while the rates held. In total, the First International money markets underperformed the benchmark of a one-month Treasury by \$210,000 during 2023.

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

Date	Account	Description	Amount	Account Balance	Invested	Days Interest Earned	Interest % (APY)	Interest Earned	Interest @ Benchmark - 1M Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
1/1/2023	County Reserves	Opening Balance	\$ 14,753,327.08	\$ 14,753,327.08	\$ 14,753,327.08	2.00	0.76%	614.39	4.03%	\$ 3,257.86	\$ (2,643.47)
1/3/2023	County Reserves	Deposit	148.97	14,753,476.05	14,753,476.05	28.00	0.76%	8,601.48	4.03%	45,610.47	(37,008.99)
1/31/2023	County Reserves	Interest Deposit	9,501.26	14,762,977.31	14,762,977.31	1.00	0.76%	307.39	4.53%	1,832.23	(1,524.84)
2/1/2023	County Reserves	Deposit	219.18	14,763,196.49	14,763,196.49	15.00	1.22%	7,401.82	4.54%	27,544.48	(20,142.66)
2/16/2023	County Reserves	Purchase CD	(14,763,196.49)	-	-	12.00	1.22%	-	4.61%	-	-
2/28/2023	County Reserves	Interest Deposit	7,360.49	7,360.49	7,360.49	1.00	1.22%	0.25	4.60%	0.93	(0.68)
3/1/2023	County Reserves	Opening Balance	-	7,360.49	7,360.49	1.00	4.37%	0.88	4.60%	0.93	(0.05)
3/2/2023	County Reserves	Withdrawal	(7,360.49)	-	-	15.00	4.37%	-	4.68%	-	-
3/17/2023	County Reserves	Deposit	1,651,363.75	1,651,363.75	1,651,363.75	14.00	4.37%	2,767.96	4.26%	2,698.28	69.68
3/31/2023	County Reserves	Interest Capitalization	2,910.44	1,654,274.19	1,654,274.19	1.00	4.37%	198.06	4.69%	212.56	(14.50)
4/1/2023	County Reserves	Opening Balance	-	1,654,274.19	1,654,274.19	2.00	4.46%	404.28	4.65%	421.50	(17.22)
4/3/2023	County Reserves	Deposit	505.87	1,654,780.06	1,654,780.06	25.00	4.46%	5,055.01	4.65%	5,270.36	(215.35)
4/28/2023	County Reserves	Interest Capitalization	5,947.02	1,660,727.08	1,660,727.08	2.00	4.46%	405.85	4.31%	392.20	13.65
4/30/2023	County Reserves	Ending Balance	-	1,660,727.08	1,660,727.08	1.00	4.46%	202.93	4.31%	196.10	6.83
5/1/2023	County Reserves	Deposit	846.16	1,661,573.24	1,661,573.24	22.00	4.67%	4,676.99	4.41%	4,416.60	260.39
5/23/2023	County Reserves	Deposit	9,468,955.76	11,130,529.00	11,130,529.00	8.00	4.67%	11,392.78	5.63%	13,734.77	(2,341.99)
5/31/2023	County Reserves	Interest Capitalization	17,134.00	11,147,663.00	11,147,663.00	1.00	4.67%	1,426.29	5.18%	1,582.05	(155.76)
6/1/2023	County Reserves	Deposit	1,030.63	11,148,693.63	11,148,693.63	29.00	4.92%	43,580.70	5.25%	46,503.80	(2,923.10)
6/30/2023	County Reserves	Interest Capitalization	44,062.78	11,192,756.41	11,192,756.41	1.00	4.92%	1,508.72	5.18%	1,588.45	(79.73)
7/1/2023	County Reserves	Opening Balance	-	11,192,756.41	11,192,756.41	2.00	4.93%	3,023.58	5.18%	3,176.90	(153.32)
7/3/2023	County Reserves	Deposit	986.20	11,193,742.61	11,193,742.61	28.00	4.93%	42,333.81	5.20%	44,652.30	(2,318.49)
7/31/2023	County Reserves	Interest Capitalization	45,871.22	11,239,613.83	11,239,613.83	1.00	4.93%	1,518.12	5.38%	1,656.69	(138.57)
8/1/2023	County Reserves	Deposit	1,022.70	11,240,636.53	11,240,636.53	30.00	4.98%	46,009.62	5.39%	49,797.56	(3,787.94)
8/31/2023	County Reserves	Interest Capitalization	46,478.73	11,287,115.26	11,287,115.26	1.00	4.98%	1,540.00	5.39%	1,666.78	(126.78)
9/1/2023	County Reserves	Deposit	1,031.66	11,288,146.92	11,288,146.92	28.00	5.19%	44,942.29	5.39%	46,674.17	(1,731.88)
9/29/2023	County Reserves	Interest Capitalization	47,052.48	11,335,199.40	11,335,199.40	1.00	5.19%	1,611.77	5.40%	1,676.99	(65.22)
9/30/2023	County Reserves	Ending Balance	-	11,335,199.40	11,335,199.40	1.00	5.19%	1,611.77	5.40%	1,676.99	(65.22)
10/1/2023	County Reserves	Opening Balance	-	11,335,199.40	11,335,199.40	1.00	5.20%	1,614.88	5.40%	1,676.99	(62.11)
10/2/2023	County Reserves	Deposit	1,005.33	11,336,204.73	11,336,204.73	29.00	5.20%	46,835.61	5.40%	48,636.98	(1,801.37)
10/31/2023	County Reserves	Interest Capitalization	48,883.78	11,385,088.51	11,385,088.51	1.00	5.20%	1,621.99	5.40%	1,684.37	(62.38)
11/1/2023	County Reserves	Deposit	1,110.52	11,386,199.03	11,386,199.03	29.00	5.20%	47,042.16	5.40%	48,851.47	(1,809.31)
11/30/2023	County Reserves	Interest Capitalization	47,555.16	11,433,754.19	11,433,754.19	1.00	5.20%	1,628.92	5.40%	1,691.57	(62.65)
12/1/2023	County Reserves	Deposit	1,042.05	11,434,796.24	11,434,796.24	28.00	5.21%	45,701.59	5.40%	47,368.25	(1,666.66)
12/29/2023	County Reserves	Interest Capitalization	49,438.70	11,484,234.94	11,484,234.94	2.00	5.21%	3,278.51	5.44%	3,423.25	(144.74)
12/31/2023	County Reserves	Ending Balance	-	11,484,234.94	11,484,234.94	1.00	5.21%	1,639.26	5.44%	1,711.62	(72.36)
											\$ (80,786.79)

**REPORT ON INVESTMENT PERFORMANCE**  
**BURLEIGH COUNTY**  
**JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

Month	Days	Account	Average Balance	Interest % (APY)	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Perform
January	31	County Reserves	\$ 250,000.00	1.00%	\$ 219.18	4.41%	\$ 936.05	\$ (716.87)
February	28	County Reserves	131,598.24	1.16%	116.99	4.59%	463.37	(346.38)
March	31	County Reserves	139,035.79	4.37%	505.87	4.42%	521.53	(15.66)
April	30	County Reserves	250,000.00	4.50%	846.16	4.10%	842.05	4.11
May	31	County Reserves	250,000.00	4.66%	1,030.63	5.42%	1,150.15	(119.52)
June	30	County Reserves	250,000.00	4.91%	986.20	5.14%	1,056.46	(70.26)
July	31	County Reserves	250,000.00	4.92%	1,022.70	5.31%	1,128.10	(105.40)
August	31	County Reserves	250,000.00	4.97%	1,031.66	5.39%	1,143.62	(111.96)
September	30	County Reserves	250,000.00	5.18%	1,005.33	5.40%	1,108.77	(103.44)
October	31	County Reserves	250,000.00	5.19%	1,110.52	5.41%	1,149.61	(39.09)
November	30	County Reserves	250,000.00	5.19%	1,042.05	5.40%	1,109.78	(67.73)
December	31	County Reserves	250,000.00	5.08%	1,009.06	5.38%	1,143.28	(134.22)
								\$ (1,826.42)

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

Date	Account	Description	Amount	Account Balance	Invested	Days Interest Earned	Interest % (APY)	Interest Earned	Interest @ Benchmark - 1M Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
1/1/2023	ARPA Funds	Opening Balance	\$ 15,506,176.25	\$ 15,506,176.25	\$ 15,506,176.25	30.00	0.76%	\$ 9,686.05	4.03%	\$ 51,361.55	\$ (41,675.50)
1/31/2023	ARPA Funds	Deposit	9,985.93	15,516,162.18	15,516,162.18	1.00	0.76%	323.08	4.53%	1,925.70	(1,602.62)
2/1/2023	ARPA Funds	Opening Balance	-	15,516,162.18	15,516,162.18	15.00	2.15%	13,709.49	4.54%	28,949.33	(15,239.84)
2/16/2023	ARPA Funds	Withdrawal	(7,500,000.00)	8,016,162.18	8,016,162.18	12.00	2.15%	5,666.22	4.61%	12,149.43	(6,483.21)
2/28/2023	ARPA Funds	Interest Capitalization	19,643.61	8,035,805.79	8,035,805.79	1.00	2.15%	473.34	4.60%	1,012.73	(539.39)
3/1/2023	ARPA Funds	Opening Balance	-	8,035,805.79	8,035,805.79	5.00	4.38%	4,821.48	4.60%	5,063.66	(242.18)
3/6/2023	ARPA Funds	Withdrawal	(651,074.74)	7,384,731.05	7,384,731.05	11.00	4.38%	9,747.84	4.68%	10,415.51	(667.67)
3/17/2023	ARPA Funds	Deposit	1,880,689.78	9,265,420.83	9,265,420.83	3.00	4.38%	3,335.55	4.26%	3,244.17	91.38
3/20/2023	ARPA Funds	Interest Capitalization	159.49	9,265,580.32	9,265,580.32	11.00	4.38%	12,230.57	4.27%	11,923.41	307.16
3/31/2023	ARPA Funds	Deposit	858.89	9,266,439.21	9,266,439.21	-	4.38%	-	4.69%	-	-
3/31/2023	ARPA Funds	Interest Capitalization	30,453.05	9,296,892.26	9,296,892.26	1.00	4.38%	1,115.63	4.69%	1,194.59	(78.96)
4/1/2023	ARPA Funds	Opening Balance	-	9,296,892.26	9,296,892.26	27.00	4.46%	30,672.10	4.65%	31,978.76	(1,306.66)
4/28/2023	ARPA Funds	Interest Capitalization	33,412.28	9,330,304.54	9,330,304.54	2.00	4.46%	2,280.17	4.31%	2,203.49	76.68
4/30/2023	ARPA Funds	Ending Balance	-	9,330,304.54	9,330,304.54	1.00	4.46%	1,140.09	4.31%	1,101.74	38.35
5/1/2023	ARPA Funds	Opening Balance	-	9,330,304.54	9,330,304.54	10.00	4.67%	11,937.68	4.41%	11,273.05	664.63
5/11/2023	ARPA Funds	Withdrawal	(534,895.08)	8,795,409.46	8,795,409.46	12.00	4.67%	13,503.97	5.71%	16,511.27	(3,007.30)
5/23/2023	ARPA Funds	Deposit	1,893,791.15	10,689,200.61	10,689,200.61	8.00	4.67%	10,941.06	5.63%	13,190.18	(2,249.12)
5/31/2023	ARPA Funds	Interest Capitalization	37,003.35	10,726,203.96	10,726,203.96	1.00	4.67%	1,372.37	5.18%	1,522.24	(149.87)
6/1/2023	ARPA Funds	Opening Balance	-	10,726,203.96	10,726,203.96	29.00	4.92%	41,929.17	5.25%	44,741.49	(2,812.32)
6/30/2023	ARPA Funds	Interest Capitalization	42,392.94	10,768,596.90	10,768,596.90	1.00	4.92%	1,451.55	5.18%	1,528.26	(76.71)
7/1/2023	ARPA Funds	Opening Balance	-	10,768,596.90	10,768,596.90	30.00	4.93%	43,634.94	5.18%	45,847.67	(2,212.73)
7/31/2023	ARPA Funds	Interest Capitalization	44,129.03	10,812,725.93	10,812,725.93	1.00	4.93%	1,460.46	5.38%	1,593.77	(133.31)
8/1/2023	ARPA Funds	Opening Balance	-	10,812,725.93	10,812,725.93	6.00	4.98%	8,851.62	5.39%	9,580.37	(728.75)
8/7/2023	ARPA Funds	Withdrawal	(641,485.65)	10,171,240.28	10,171,240.28	24.00	4.98%	33,305.94	5.38%	35,981.11	(2,675.17)
8/31/2023	ARPA Funds	Interest Capitalization	42,571.08	10,213,811.36	10,213,811.36	1.00	4.98%	1,393.56	5.39%	1,508.29	(114.73)
9/1/2023	ARPA Funds	Opening Balance	-	10,213,811.36	10,213,811.36	28.00	5.19%	40,664.96	5.39%	42,232.01	(1,567.05)
9/29/2023	ARPA Funds	Interest Capitalization	42,574.16	10,256,385.52	10,256,385.52	1.00	5.19%	1,458.37	5.40%	1,517.38	(59.01)
9/30/2023	ARPA Funds	Ending Balance	-	10,256,385.52	10,256,385.52	1.00	5.19%	1,458.37	5.40%	1,517.38	(59.01)
10/1/2023	ARPA Funds	Opening Balance	-	10,256,385.52	10,256,385.52	26.00	5.20%	37,990.78	5.40%	39,451.96	(1,461.18)
10/27/2023	ARPA Funds	Deposit	38,247.52	10,294,633.04	10,294,633.04	3.00	5.20%	4,399.90	5.41%	4,577.59	(177.69)
10/30/2023	ARPA Funds	Withdrawal	(318,523.46)	9,976,109.58	9,976,109.58	1.00	5.20%	1,421.25	5.40%	1,475.92	(54.67)
10/31/2023	ARPA Funds	Interest Capitalization	44,165.45	10,020,275.03	10,020,275.03	1.00	5.20%	1,427.55	5.40%	1,482.45	(54.90)
11/1/2023	ARPA Funds	Opening Balance	-	10,020,275.03	10,020,275.03	29.00	5.20%	41,398.83	5.40%	42,991.10	(1,592.27)
11/30/2023	ARPA Funds	Interest Capitalization	41,850.26	10,062,125.29	10,062,125.29	1.00	5.20%	1,433.51	5.40%	1,488.64	(55.13)
12/1/2023	ARPA Funds	Opening Balance	-	10,062,125.29	10,062,125.29	28.00	5.21%	40,215.42	5.40%	41,682.01	(1,466.59)
12/29/2023	ARPA Funds	Interest Capitalization	43,503.72	10,105,629.01	10,105,629.01	2.00	5.21%	2,884.95	5.44%	3,012.31	(127.36)
12/31/2023	ARPA Funds	Ending Balance	-	10,105,629.01	10,105,629.01	1.00	5.21%	1,442.47	5.44%	1,506.15	(63.68)
											\$ (87,556.38)

**REPORT ON INVESTMENT PERFORMANCE**  
**BURLEIGH COUNTY**  
**JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

Month	Days	Account	Average Balance	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Benchmark
January	31	Health Insurance	\$ 1,081,630.50	\$ 526.74	4.41%	\$ 4,049.85	\$ (3,523.11)
February	28	Health Insurance	1,105,301.05	726.74	4.59%	3,891.87	(3,165.13)
March	31	Health Insurance	1,086,617.76	806.42	4.42%	4,075.92	(3,269.50)
April	30	Health Insurance	1,129,829.12	915.38	4.10%	3,805.51	(2,890.13)
May	31	Health Insurance	1,096,940.06	869.18	5.42%	5,046.57	(4,177.39)
June	30	Health Insurance	979,296.95	603.78	5.14%	4,138.34	(3,534.56)
July	31	Health Insurance	787,375.83	361.86	5.31%	3,552.96	(3,191.10)
August	31	Health Insurance	795,691.94	337.90	5.39%	3,639.88	(3,301.98)
September	30	Health Insurance	830,914.17	409.99	5.40%	3,685.16	(3,275.17)
October	31	Health Insurance	879,613.87	387.27	5.41%	4,044.85	(3,657.58)
November	30	Health Insurance	799,720.75	336.96	5.40%	3,550.07	(3,213.11)
December	31	Health Insurance	781,926.61	332.06	5.38%	3,575.86	(3,243.80)
							\$ (40,442.56)



# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

#### **BNC NATIONAL BANK – CERTIFICATES OF DEPOSIT**

The County purchased a handful of CDs with BNC National Bank (“BNC”) during 2023. Treasuries yielded a substantially higher interest rate when purchased on the same dates as these CDs. During the year, these CDs underperformed the benchmark of similar Treasuries by \$12,332.

Purchase Date	Maturity Date	Term	Term (Days)	Bank	Account Type	Opening Balance	Interest Rate	Interest Earned 2023	Interest @ Benchmark - Similar Term Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
3/30/2023	6/29/2023	3 Months	91	BNC	CD	\$ 1,147,018.68	4.15%	\$ 11,867.72	4.94%	\$ 14,126.87	\$ (2,259.16)
3/30/2023	9/28/2023	6 Months	182	BNC	CD	1,147,018.68	4.30%	24,593.34	4.89%	27,967.77	(3,374.43)
3/30/2023	3/28/2024	1 Year	276	BNC	CD	1,147,018.68	4.50%	39,030.06	4.64%	40,244.33	(1,214.27)
6/29/2023	6/27/2024	1 Year	185	BNC	CD	1,147,018.68	4.70%	27,324.18	5.43%	31,568.15	(4,243.97)
9/28/2023	9/26/2024	1 Year	94	BNC	CD	1,147,018.68	5.06%	14,947.07	5.48%	16,187.73	(1,240.67)
											\$ (12,332.49)

#### **BNC NATIONAL BANK – MONEY MARKETS**

The County maintains a small amount of its investments in the BNC money market. The money market consistently underperformed one-month Treasuries purchased at any point during the year. During the year, this investment underperformed the benchmark of a one-month Treasury by \$1,170.

**REPORT ON INVESTMENT PERFORMANCE  
BURLEIGH COUNTY  
JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

Month	Days	Interest % (APY)	Average Balance	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Perform
January	31	-	\$ -	\$ -	4.41%	\$ -	\$ -
February	28	-	-	-	4.59%	-	-
March	31	-	-	-	4.42%	-	-
April	30	-	-	-	4.10%	-	-
May	31	-	-	-	5.42%	-	-
June	30	-	-	-	5.14%	-	-
July	31	0.50%	47,468.75	20.16	5.31%	214.20	(194.04)
August	31	0.50%	47,488.91	20.16	5.39%	217.24	(197.08)
September	30	0.50%	47,508.75	19.52	5.40%	210.70	(191.18)
October	31	0.50%	47,528.60	20.18	5.41%	218.56	(198.38)
November	30	0.50%	47,558.22	19.53	5.40%	211.12	(191.59)
December	31	0.50%	47,583.32	20.20	5.38%	217.61	(197.41)
							\$ (1,169.67)

**BNC – CASH SERVICE ACCOUNT**

The County maintained a significant amount of cash in a BNC Cash Service account during the first quarter of the year earning a fraction of the benchmark rate of a one-month Treasury. In total, this account underperformed the benchmark of a one-month Treasury by \$21,050.

**REPORT ON INVESTMENT PERFORMANCE**  
**BURLEIGH COUNTY**  
**JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

Month	Days	Average Balance	Interest % (APY)	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Perform
January	31	\$ 2,276,341.66	0.75%	\$ 1,450.38	4.41%	\$ 8,523.09	\$ (7,072.71)
February	28	2,277,792.06	0.75%	1,310.79	4.59%	8,020.32	(6,709.53)
March	31	2,318,037.36	0.75%	1,476.92	4.42%	8,695.00	(7,218.08)
April	30	1,476.95	0.75%	0.85	4.10%	4.97	(4.12)
May	31	1,477.80	0.75%	0.94	5.42%	6.80	(5.86)
June	30	1,478.74	0.75%	0.91	5.14%	6.25	(5.34)
July	31	1,479.65	0.75%	0.94	5.31%	6.68	(5.74)
August	31	1,480.59	0.75%	0.93	5.39%	6.77	(5.84)
September	30	1,481.52	0.75%	0.91	5.40%	6.57	(5.66)
October	31	1,482.43	0.75%	0.94	5.41%	6.82	(5.88)
November	30	1,483.37	0.75%	0.90	5.40%	6.58	(5.68)
December	31	1,484.27	0.75%	0.94	5.38%	6.79	(5.85)
							\$ (21,050.30)

**CHOICE BANK – CERTIFICATES OF DEPOSIT**

The County had one CD at Choice at the beginning of the year. During the year, the County purchased two additional CDs at Choice, a 12-month CD for \$6,000,000 and another 12-month for \$500,000. The former CD underperformed a similar-term Treasury by .53% and the latter by .31%. During the year, these CDs underperformed the benchmark by \$29,000.

Purchase Date	Maturity Date	Term	Interest Earned 2023	Bank	Account Type	Opening Balance	Interest Rate	Interest Earned 2023	Interest @ Benchmark - Similar Term Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
7/24/2022	1/24/2023	6 Months	23	Choice Bank	CD	\$ 1,000,000.00	0.70%	\$ 441.10	2.94%	\$ 1,852.60	\$ (1,411.50)
2/28/2023	2/28/2024	12 Months	306	Choice Bank	CD	6,000,000.00	4.50%	226,356.16	5.03%	253,015.89	(26,659.73)
4/18/2023	4/18/2024	12 Months	257	Choice Bank	CD	500,000.00	4.50%	15,842.47	4.81%	16,933.84	(1,091.37)
											\$ (29,162.60)

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

#### **CHOICE BANK – MONEY MARKETS**

The County maintained a sizeable balance in the Choice money market for much of 2023. The money market consistently underperformed one-month Treasuries purchased at any point during the year. In total, the Choice money market underperformed the benchmark of a one-month Treasury by \$7,000.

Month	Days	Average Balance	Interest % (APY)	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Perform
January	31	\$ 258,975.16	3.30%	\$ 714.84	4.41%	\$ 969.66	\$ (254.82)
February	28	1,004,243.60	3.55%	2,689.45	4.59%	3,536.04	(846.59)
March	31	1,006,933.05	3.63%	3,055.28	4.42%	3,777.02	(721.74)
April	30	1,009,988.33	3.82%	3,112.98	4.10%	3,401.86	(288.88)
May	31	1,013,101.31	4.05%	3,420.95	5.42%	4,660.86	(1,239.91)
June	30	1,016,522.26	4.07%	3,341.99	5.14%	4,295.65	(953.66)
July	31	1,019,864.25	4.12%	3,499.67	5.31%	4,602.05	(1,102.38)
August	31	1,023,363.92	4.33%	3,693.92	5.39%	4,681.36	(987.44)
September	30	393,724.50	4.29%	1,361.25	5.40%	1,746.20	(384.95)
October	31	28,419.09	3.30%	78.44	5.41%	130.68	(52.24)
November	30	28,497.53	3.30%	76.12	5.40%	126.50	(50.38)
December	31	28,573.65	3.30%	0.04	5.38%	130.67	(130.63)
							\$ (7,013.62)

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

#### **BRAVERA BANK – CERTIFICATES OF DEPOSIT**

The County began the year with one CD at Bravera Bank (“Bravera”). This was a CD purchased on 9/15/2022 at 2.10% interest – approximately half the yield of a similar Treasury at 4.00%. When the CD matured, the County re-invested with Bravera for the same amount. It’s not clear if the County received bids when making this re-investment; however, the CD underperformed Treasuries by .29%. During the year, the CDs at Bravera underperformed the benchmark of similar Treasuries by \$7,800.

Purchase Date	Maturity Date	Term	Term (Days)	Bank	Account Type	Opening Balance	Interest Rate	Interest Earned 2023	Interest @ Benchmark - Similar Term Treasury	Interest Earned @ Benchmark (Estimate)	Over/(Under) Benchmark
9/15/2022	7/15/2023	10 months	195	Bravera	CD	680,000.00	2.10%	7,629.04	4.00%	14,531.51	\$ (6,902.47)
7/15/2023	7/15/2024	1 Year	169	Bravera	CD	680,000.00	5.06%	15,931.38	5.35%	16,844.44	(913.06)
											\$ (7,815.53)

#### **BRAVERA BANK – MONEY MARKET**

Beginning the last half of 2023, the County deposited a substantial amount of its investments in the Bravera money market. The money market consistently underperformed the benchmark of a one-month Treasuries throughout the year. During the year, the Bravera money market underperformed the benchmark of a one-month Treasury by \$5,300.

**REPORT ON INVESTMENT PERFORMANCE  
BURLEIGH COUNTY  
JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

Month	Days	Average Balance	Interest % (APY)	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Perform
January	31	\$ -	-	\$ -	4.41%	\$ -	\$ -
February	28	-	-	-	4.59%	-	-
March	31	-	-	-	4.42%	-	-
April	30	-	-	-	4.10%	-	-
May	31	-	-	-	5.42%	-	-
June	30	-	-	-	5.14%	-	-
July	31	-	-	-	5.31%	-	-
August	31	1,645,161.29	5.12%	7,397.26	5.39%	7,525.77	(128.51)
September	30	3,574,553.52	5.12%	14,687.93	5.40%	15,853.39	(1,165.46)
October	31	4,022,085.19	5.12%	17,080.09	5.41%	18,495.30	(1,415.21)
November	30	4,039,165.28	5.12%	16,599.31	5.40%	17,930.42	(1,331.11)
December	31	4,055,764.59	5.12%	17,223.11	5.38%	18,547.57	(1,324.46)
							\$ (5,364.73)

**BANK OF THE WEST – MONEY MARKET**

The County maintained a significant amount of cash in a Bank of the West account during the first quarter of the year earning a fraction of the benchmark rate of a one-month Treasury. In total, this account underperformed the benchmark of a one-month Treasury by \$10,541.

Month	Days	Average Balance	Interest % (APY)	Interest Earned	Benchmark Rate	Benchmark Interest	Over/(Under) Perform
January	31	\$ 1,162,884.68	0.05000%	\$ 9.88	4.41%	\$ 4,354.08	\$ (4,344.20)
February	28	1,162,893.60	0.05000%	8.92	4.59%	4,094.66	(4,085.74)
March	31	562,694.77		-	4.42%	2,110.68	(2,110.68)
							\$ (10,540.62)

**REPORT ON INVESTMENT PERFORMANCE**  
**BURLEIGH COUNTY**  
**JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

**FIXED INCOME INVESTMENTS**

The County maintains a fixed income investment portfolio with Wells Fargo and with Bremer Bank. The portfolios were purchased several years ago when interest rates were much lower. With rising rates, the value of the portfolios have declined; however, since the investments are in bonds, our interest payments are not affected by a change in the market value of the bond. The County began divesting of the Wells Fargo portfolio within the last year or two, but we still maintain a significant balance in this account.

The market value of the accounts at year end are summarized in the below table.

		<b>Wells Fargo</b>	<b>Bremer</b>	<b>Total</b>	
	<i>Less than 1 Year</i>	\$ 3,103,648.00	\$ 367,525.45	\$ 3,471,173.45	
	<i>1-2 Years</i>	1,352,297.25	550,254.76	1,902,552.01	
	<i>2-5 Years</i>	315,390.95	1,153,040.61	1,468,431.56	
	<i>5-10 Years</i>	523,614.25	532,469.33	1,056,083.58	
	<i>10+ Years</i>	643,365.20	59,626.18	702,991.38	
		<u>\$ 5,938,315.65</u>	<u>\$ 2,662,916.33</u>	<u>\$ 8,601,231.98</u>	

# REPORT ON INVESTMENT PERFORMANCE

## BURLEIGH COUNTY

### JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

#### POLICY CONCERNS

The County's investment policy is sufficiently detailed and robust for the County's needs. The policy lists objectives in priority order, which makes the objectives easy to follow. The policy needs some addendums, such as investment parameters and internal control documents. But the main challenge the County faces with its investment policy is a failure to follow the policy. For example, the County went four months – from April 4<sup>th</sup> to August 2<sup>nd</sup> – without making a single investment at BND, despite collecting sales taxes monthly. This runs contrary to investment objective #3 – Yield – that “the investment portfolio shall be designed with the objective of attaining a market rate of return.” Other examples include failing to develop cash flow estimates and failing to diversify the portfolio by investment type and maturity. Failing to provide an annual report to the Commission in a timely manner is still another example.

#### CHANGES TO INVESTMENT STRATEGY

The County's current investment strategy prioritizes convenience over the investment objectives laid out in the policy. For instance, the County accepted a lower rate of return in money markets to avoid making active investment decisions such as taking bids, transferring cash to the high bidder, and making the required journal entries into the accounting system. In fact, the County's use of money markets is so pervasive that it accounts for 80% of our non-sales tax investments (sales taxes are held in trust the Bank of North Dakota) and 60% of total investments. As indicated earlier in the report, money markets under-performed Treasuries in every month of the year.

Security Type	Amount	% of portfolio
FIXED INCOME SECURITIES	\$ 8,880,820.05	10.44%
CD	18,121,056.04	21.31%
MONEY MARKET	29,327,783.91	34.49%
US TREASURIES	28,706,621.00	33.76%
	<u>\$ 85,036,281.00</u>	

The convenience provided by the money markets comes at a price. First, we earned less money than we would have earned by investing in Treasuries. Second, we failed to “lock in” any investments during the year, which would protect us against falling interest rates.

The recommended change to strategy investment strategy is to follow the investment policy as written. As mentioned, certain addendums should be considered, such as specific investment parameters and internal control documents. The investment parameters should include



**REPORT ON INVESTMENT PERFORMANCE  
BURLEIGH COUNTY  
JANUARY 1, 2023 THROUGH DECEMBER 31, 2023**

guidelines for term and type of investment. Internal control documents should include, at a minimum, an investment checklist documenting who made the investment; who approved the investment; why the investment was chosen; and what bids were received; among other things. At a minimum, the County should begin following the investment policy as written immediately, whether or not the County adopts any addendums.



# Previous Day Composite Report

## APPENDIX A.1.

### Standard Previous Day Composite Report

As of 12/30/2022

Company: COUNTY OF BURLEIGH

User: Brandi Caya

01/03/2023 09:06 AM ET

Commercial Electronic Office®

Treasury Information Reporting

Currency: USD

Bank: Account: (ND)

WELLS FARGO BANK, N.A.  
COUNTY OF BURLEIGH

#### Balances

Closing Ledger Balance	5,618,476.00
Closing Collected Balance	3,000,000.00
Opening Available Balance	36,909,083.65
One Day Float	2,618,476.00
Two+ Day Float	.00
MTD Average Closing Ledger Balance	10,075,156.36
MTD Average Closing Collected Balance	8,888,810.71
Total Credits	3,747,357.63
Total Debits	4,892,292.63
Total Number Credits	8
Total Number Debits	16

#### Sweep Activity

Sweep Ending Balance	27,371,524.47
Funds Pending Inv/Red	3,919,083.18
Pending Investment Position	31,290,607.65
Shares Purchased(Credit)	17,982,359.42
Shares Redeemed(Debit)	.00
Dividends Paid	.00
Fund Yield	4.04%
SEC Yield(7-Day Average)	4.04%
Accrued Dividends Month-To-Date	9,631.40
Last Month's Dividends	2,863.02
Dividends Year-To-Date	.00

#### Summaries

Type of Credit	Number of Items	Amount
Total ACH Credits	5	97,369.83
Total Deposits	2	2,847,177.49
Total Wire Transfer Credits	1	802,810.31

**Credit Totals** 8 3,747,357.63

Type of Debit	Number of Items	Amount
Total ACH Debits	1	208,620.89
Total Checks Paid	12	88,793.20
Total Return Item Debits	1	3,904.14
Total Sweep Debits	1	3,919,083.18
Total ZBA Debits	1	671,891.22

**Debit Totals** 16 4,892,292.63

#### Credit Transactions

12/30/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 000000000000 Unique ID: 00000091006376168690 BURLEIGH TAX ND Settlement 123022 000016657938054 Burleigh County, ND	Credit Amount: Bank Ref: IA924686471058	74,636.00
12/30/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00018611665 Unique ID: 00000091003653218659 5/3 BANKCARD SYS COMB. DEP. 123022 4445018611665 5/3 BANKCARD COMB. DEP. 4445018611665	Credit Amount: Bank Ref: IA272183912787	17,349.75
12/30/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 000000000000 Unique ID: 00000091006378334720 MERCHANT BANKCD DEPOSIT 221229 496004060885 BURLEIGH COUNTY	Credit Amount: Bank Ref: IA000013900873	4,285.81



# Previous Day Composite Report

## APPENDIX A.2.

Custom

As of 12/15/2022

Company: COUNTY OF BURLEIGH

User: Brandi Caya

12/19/2022 09:28 AM ET

Commercial Electronic Office®

Treasury Information Reporting

Currency: USD

Bank: Account: (ND)

WELLS FARGO BANK, N.A.  
COUNTY OF BURLEIGH

### Balances

Closing Ledger Balance	9,205,190.98
Closing Collected Balance	9,200,259.98
Opening Available Balance	9,205,190.98
One Day Float	4,931.00
Two+ Day Float	.00
MTD Average Closing Ledger Balance	9,650,113.31
MTD Average Closing Collected Balance	9,610,403.91
Total Credits	43,473.47
Total Debits	1,714.09
Total Number Credits	6
Total Number Debits	6

### Sweep Activity

Sweep Ending Balance	.00
Funds Pending Inv/Red	.00
Pending Investment Position	.00
Shares Purchased(Credit)	.00
Shares Redeemed(Debit)	.00
Dividends Paid	.00
Fund Yield	4.01%
SEC Yield(7-Day Average)	3.66%
Accrued Dividends Month-To-Date	153.63
Last Month's Dividends	2,863.02
Dividends Year-To-Date	74,460.69

### Summaries

Type of Credit	Number of Items	Amount
Total ACH Credits	5	31,432.95
Total Deposits	1	12,040.52
<b>Credit Totals</b>	<b>6</b>	<b>43,473.47</b>
Type of Debit	Number of Items	Amount
Total Checks Paid	6	1,714.09
<b>Debit Totals</b>	<b>6</b>	<b>1,714.09</b>

### Credit Transactions

12/15/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00000000000 Unique ID: 00000091006071591422 BURLEIGH TAX ND Settlement 121522 000016552718990 Burleigh County, ND	Credit Amount: Bank Ref: IA924684521214	22,549.55
12/15/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00000000000 Unique ID: 00000091005773436699 ND ASSOCIATION O NDACo COUN Dec 15 NDACo - Nov VZOP Coordinator Reimb	Credit Amount: Bank Ref: IA310590553475	8,119.08
12/15/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00000000000 Unique ID: 00000091005862452753 SIMPLIFILE LC REC FEE 1213 121322 NDC9AP- BURLEIGH COUNTY	Credit Amount: Bank Ref: IA001034095485	500.00
12/15/2022	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00018611665 Unique ID: 00000091006079020763 5/3 BANKCARD SYS COMB. DEP. 121522 4445018611665 5/3 BANKCARD COMB. DEP. 4445018611665	Credit Amount: Bank Ref: IA272180052725	244.32

WELLS  
FARGO

## Previous Day Composite Report

APPENDIX A.3.

## Standard Previous Day Composite Report

As of 02/16/2023

Company: COUNTY OF BURLEIGH

User: Brandi Caya

02/17/2023 09:16 AM ET

Commercial Electronic Office®

Treasury Information Reporting

Currency: USD

Bank: Account: (ND)

WELLS FARGO BANK, N.A.  
COUNTY OF BURLEIGH

## Balances

Closing Ledger Balance	3,011,474.00
Closing Collected Balance	3,000,000.00
Opening Available Balance	56,883,652.77
One Day Float	.00
Two+ Day Float	11,474.00
MTD Average Closing Ledger Balance	5,385,524.25
MTD Average Closing Collected Balance	3,000,000.00
Total Credits	157,231.26
Total Debits	4,496,574.26
Total Number Credits	5
Total Number Debits	14

## Sweep Activity

Sweep Ending Balance	49,410,089.35
Funds Pending Inv/Red	4,473,563.42
Pending Investment Position	53,883,652.77
Shares Purchased(Credit)	.00
Shares Redeemed(Debit)	25,890,109.59
Dividends Paid	.00
Fund Yield	4.31%
SEC Yield(7-Day Average)	4.31%
Accrued Dividends Month-To-Date	149,338.70
Last Month's Dividends	154,511.22
Dividends Year-To-Date	154,511.22

## Summaries

Type of Credit	Number of Items	Amount
Total ACH Credits	5	157,231.26
<b>Credit Totals</b>	<b>5</b>	<b>157,231.26</b>
Type of Debit	Number of Items	Amount
Total Checks Paid	12	19,736.05
Total Return Item Debits	1	3,274.79
Total Sweep Debits	1	4,473,563.42
<b>Debit Totals</b>	<b>14</b>	<b>4,496,574.26</b>

## Credit Transactions

2/16/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 000000000000 Unique ID: 00000091006061864651 BURLEIGH TAX ND Settlement 021623 000017118073322 Burleigh County, ND	Credit Amount: Bank Ref: IA924684114771	90,181.43
2/16/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00018611665 Unique ID: 00000091006068768150 5/3 BANKCARD SYS COMB. DEP. 021623 4445018611665 5/3 BANKCARD COMB. DEP. 4445018611665	Credit Amount: Bank Ref: IA272185653926	46,612.31
2/16/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 01330047242 Unique ID: 00000091005971808700 AMERICAN EXPRESS SETTLEMENT 230215 1330047242 BURLEIGH CO 1330047242	Credit Amount: Bank Ref: IA000015693910	13,254.07
2/16/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 000000000000 Unique ID: 00000091005775110009 SIMPLIFILE LC REC FEE 0214 021423 NDC9AP- BURLEIGH COUNTY	Credit Amount: Bank Ref: IA001035093212	4,498.75



# Previous Day Composite Report

APPENDIX A.3.

## Standard Previous Day Composite Report

As of 05/23/2023

Company: COUNTY OF BURLEIGH

User: BERNADETTE IVEY

05/24/2023 09:23 AM ET

Commercial Electronic Office®

Treasury Information Reporting

Currency: USD

Bank: Account: (ND)

WELLS FARGO BANK, N.A.  
COUNTY OF BURLEIGH

### Balances

Closing Ledger Balance	3,034,638.00
Closing Collected Balance	3,000,000.00
Opening Available Balance	20,818,475.34
One Day Float	34,638.00
Two+ Day Float	.00
MTD Average Closing Ledger Balance	3,071,561.43
MTD Average Closing Collected Balance	3,000,000.00
Total Credits	51,113.95
Total Debits	33,229.95
Total Number Credits	4
Total Number Debits	16

### Sweep Activity

Sweep Ending Balance	17,781,313.50
Funds Pending Inv/Red	2,523.84
Pending Investment Position	17,783,837.34
Shares Purchased(Credit)	.00
Shares Redeemed(Debit)	227,112.92
Dividends Paid	.00
Fund Yield	4.94%
SEC Yield(7-Day Average)	4.92%
Accrued Dividends Month-To-Date	50,121.86
Last Month's Dividends	68,392.04
Dividends Year-To-Date	600,176.49

### Summaries

Type of Credit	Number of Items	Amount
Total ACH Credits	3	5,521.00
Total Deposits	1	45,592.95

**Credit Totals** 4 51,113.95

Type of Debit	Number of Items	Amount
Total ACH Debits	1	871.00
Total Checks Paid	13	29,664.32
Total Return Item Debits	1	170.79
Total Sweep Debits	1	2,523.84

**Debit Totals** 16 33,229.95

### Credit Transactions

5/23/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00000000000 Unique ID: 00000091004430999613 SIMPLIFILE LC REC FEE 0519 051923 NDC9AP- BURLEIGH COUNTY	Credit Amount: Bank Ref: IA001037688516	2,894.15
5/23/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00000000000 Unique ID: 00000091005664206563 BURLEIGH TAX ND Settlement 052323 000017952579858 Burleigh County, ND	Credit Amount: Bank Ref: IA924688813896	2,501.85
5/23/2023	169 / MISCELLANEOUS ACH CREDIT Cust Ref: 00000000000 Unique ID: 00000091005771237389 CSC 5232023C BURLEIGH, ND BURLEIGH COUNTY, ND	Credit Amount: Bank Ref: IA000016289467	125.00
	MISCELLANEOUS ACH CREDIT Total	Credit Amount	5,521.00
5/23/2023	301 / COMMERCIAL DEPOSIT	Credit Amount:	45,592.95

CSC - Recorder

## APPENDIX B.1.

		a	b	c a * b	d a - c
Month	Days	Investment Interest Recorded	Correct Amount	Actual Interest Earned	Over/(Under) Paid
January	31	\$ 965.38	38.84%	\$ 375.00	\$ 590.38
February	28	769.95	48.03%	369.77	400.18
March	31	860.34	29.28%	251.91	608.43
April	30	645.53	18.74%	120.98	524.55
May	31	11,197.79	23.84%	2,669.29	8,528.50
June	30	4,511.03	34.53%	1,557.80	2,953.23
July	31	4,687.50	45.54%	2,134.89	2,552.61
August	31	4,751.92	28.23%	1,341.32	3,410.60
September	30	4,810.22	39.03%	1,877.62	2,932.60
October	31	4,990.78	49.40%	2,465.25	2,525.53
November	30	4,868.39	34.93%	1,700.48	3,167.91
December	31	5,049.97	43.02%	2,172.55	2,877.42
<b>Total amount overpaid to fund 2908 for 2023:</b>					<b>31,071.94</b>


		a	b	c	d a - c
Month	Days	Average Daily Balance	Cash Interest Recorded	Cash Interest Earned	Over/(Under) Paid
January	31	900,745.90	-	3,123.37	(3,123.37)
February	28	900,745.90	-	2,974.53	(2,974.53)
March	31	553,421.68	-	2,087.22	(2,087.22)
April	30	417,768.79	-	1,601.81	(1,601.81)
May	31	117,768.79	-	489.91	(489.91)
June	30	117,768.79	-	478.97	(478.97)
July	31	122,458.56	-	522.16	(522.16)
August	31	263,151.62	-	1,161.01	(1,161.01)
September	30	263,151.62	-	1,124.62	(1,124.62)
October	31	267,889.15	-	1,187.97	(1,187.97)
November	30	410,014.91	-	1,761.29	(1,761.29)
December	31	417,565.18	-	1,851.89	(1,851.89)
<b>Total amount overpaid to fund 2908 for 2023:</b>					<b>(18,364.74)</b>

Net overpaid to CenComm fund    \$ 12,707.19

The County has a negative cash balance of \$1m in the CenComm fund. The County also has a large investment with CenComm. The County should have cashed the investment to pay the negative cash balance. Rather than do so, the County allocated the entire investment balance to the CenComm fund, per our JPA with the City.

The County has failed to allocate interest earned in the Wells Fargo Sweep account to any fund including CenComm.

The combination of these two errors resulted in an overpayment to the CenComm fund, shared with the City of Bismarck, of over \$12,000.

	<p align="center"><b>Burleigh County, North Dakota</b></p> <p align="center"><b>Job Description</b></p>	<p><b>Last Date Revised:</b> 04/17/2023</p> <p><b>Job Description #</b> 02-41410-533</p>
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**Employee:** \_\_\_\_\_  
**Job Title:** Deputy Auditor/Treasurer  
**Job Status:** Exempt  
**Salary Grade:** 12

**Location:** Bismarck  
**Department:** Auditor/Treasurer/Tax  
**Reports to:** Auditor/Treasurer  
**DBM Rating:** C44/C51

**Job Summary:** Under the supervision of the Auditor/Treasurer/Tax, is responsible for supervision of clerical staff, tax collection function, accounting functions, preparing, balancing, and making daily bank deposits, and reconciling periodic statements of the County's bank accounts.


## Responsibilities:

- 60 % time      Supervise, schedule, train, and evaluate staff in the Auditor/Treasurer area of the department, and prepare and mail tax statements, entry of tax collections, and issuance of receipts.
- 25 % time      Manage and perform fund investment activities and monitors cash flow requirements of county including preparation of required reports and apportioning various funds to proper districts and custodial accounts.
- 15 % time      Maintain periodic financial reports related to general ledger, accounting for special funds, tax collections, and investment of funds, assist with the budget and mill levy processes.

## Essential Job Duties:

- Oversee the collection and recording of all county revenues; prepare and balance daily receipts and deposits of funds, prepare listing of all checks and cash, and reconciliation checking account(s) and periodic statements of bank accounts.
- Prepare needed data for annual audit, internal report requests, maintain pledged securities.
- Serve as an active member of the Burleigh County Investment Committee.
- Assist in the annual budget preparation including calculation of tax levies, preparing assessment list/abstract, special assessment districts.
- Assist in review of warrants and orders for payments issued by the county to determine whether they are legal obligations of the County, have been properly budgeted, and do not represent over payment to any payee or from any fund.
- Assist County Auditor/Treasurer in the official record keeping process including taking minutes of County Commission and other meetings.
- Serve as contact (liaison) for Banks, all Auditor/Treasurer software systems, online (web-based) programs.
- Responsible for research, troubleshooting, and problem-solving processes for the technical programs and the overall Auditor/Treasurer's department.
- Create property tax statements, courtesy notices (two time a year), estimate statements, taxation notices, in lieu of taxes, public utilities (electrical and transmission) distribution lines – verifying, reporting, and billing.
- Process year-end entries, perform rollover and annual closing processes for connection groups.
- Supervise, train, process timekeeping, monitor workload, evaluate performance, and provide assistance to staff in the department.
- Assist with elections as directly by the Auditor/Treasurer.
- Provide backup for telephone calls and assist the public.



	<p><b>Burleigh County, North Dakota</b></p> <p><b>Job Description</b></p>	<p><b>Last Date Revised:</b> 04/17/2023</p> <p><b>Job Description #</b> 02-41410-533</p>
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14. Perform other duties as required or assigned.

**Job Qualifications, Experience and Education**

1. Bachelor's degree in finance, accounting, or business administration, five(5) years' experience in accounting including banking and investing funds, and two (2) or more years supervisory experience, and/or an equivalent combination of education and experience.
2. Knowledge of state and local laws governing the assessment and collection of real estate taxes.
3. Knowledge of legal property descriptions and common property instruments such as warranty and quit claim deeds, death certificates, and plats.
4. Must possess excellent written and communication skills with eh ability to prepare clear, concise, and accurate reports, and maintain effective working relationships with the public and other employees.
5. Ability to perform day-to-day accounting operations, technical computer skills, sufficient in the implementation of an integrated financial management system, and problem solving and analytical skills, sufficient to identify problem areas.
6. Must have valid North Dakota drivers license with clean driving record.

**Working Conditions/ Physical and Mental Demands**

1. Physical environment consists of a desk job in the standard environment, repetitive motion, sitting, standing, lifting, and completing a variety of recurring activities independently.
2. Requires operation of specialized equipment such as a computer, adding machine, business machines, copiers, etc.
3. Mental demands require the ability to interpret and choose the appropriate work procedure from available choices and judgment to select the appropriate guidelines.

**Clarification Clause:**

This job description is not intended and should not be construed to be a complete list of all duties, skills, responsibilities, or working conditions associated with the job. It is intended to be a reasonable outline of those principal job elements essential in maintaining the Deputy Auditor/Treasurer position. The job description is not a contract. The County reserves the right to modify job descriptions at any time.

\_\_\_\_\_  
**Employee Signature**

\_\_\_\_\_  
**Date**



## APPENDIX C.2.

Joan Zimmerman	Accounts Receivable / Daily Checkout / Supply Orders / Liquor Licenses Gaming, Raffle, Bingo Permits / Fast Forward (Mail) / Special Assessment Creation / Website Maintenance / Duties as Assigned
Erika White	Office and Election Manager / Duties as Assigned
Brandi Caya	Month End Processing / Monthly Apportioning / Banking and Investments / Escrow Accounts (Property Taxes) / Mill Levy Calculations / Duties as Assigned
New AP Employee	Accounts Payable / Apportioning / Credit Card Coordinator / Phone Bills / Duties as Assigned
Erin Buchwitz	Deed Transfers / Legal Publications / Township Information / Website Maintenance / Commission Meeting Minutes and Agendas / Abatement Maintenance / Entry of Homestead and Vet Credits / 3 Year Delinquent Taxes / Special Assessment Maintenance / Multiple Parcel Maintenance / Duties as Assigned
Tessa Knudson	Property File Maintenance / New Subdivisions – Annexations / Property Splits / Legal Descriptions / Deed Transfers / Property Tax Assessments / Mill Levies / CAMA System / Reporting of Homestead and Vet Credits / Real Property Assessments (Inspections Outside of Bismarck) / Equalization / Mobile Home Taxation and Maintenance / Duties as Assigned
Mark Splonskowski	Real Property Assessments (Inspections Outside of Bismarck) / Equalization / Property Tax Estimates / CAMA System / Exemptions / Mobile Home Taxation and Maintenance / Duties as Assigned
Trudy Jackson	Mobile Home Taxation and Maintenance / Abatement / Building Permit Maintenance (CAMA) / Deed Maintenance (CAMA) / Duties as Assigned
Al Vietmeier	Deputy Auditor/Tax Director – Oversees Tax Equalization Department Real Property Assessments (Outside of Bismarck) / Equalization / Abatements / Property Tax Exemptions and Credits / GIS / Notice of Increase / Duties as Assigned
Robin Grenz	Deputy Auditor/Treasurer – Oversees Property Tax Investments / Investments / ACH Transfers / Month End / Online Payments / Duties as Assigned
Kevin Glatt	Auditor/Treasurer – Oversees Entire Office

### ALL STAFF ASSISTS with TAX STATEMENT MAILING, TAX COLLECTIONS and ELECTIONS!

Clyde Thompson	Chief Accountant/Finance Director – Annual Audit, Budget, Mill Levies, Building and Grounds , Property and Casualty Insurance
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**This is an old "Office Duties" file found on the Auditor's drive by the Finance Department. This describes who is was historically responsible for Investments, which was always the Deputy Auditor/Treasurer and Auditor/Treasurer, not the Finance Director.**

### Investment Policy

One of my goals for 2005 was the development and adoption of a county investment policy. I believe it is prudent for Burleigh County to have a formal policy covering the investment of county funds for several reasons. To help meet this goal I attended a Government Finance Officers Association Training Conference in April of this year. Shortly after I returned I visited with Park Commissioner Gregoire (after a Park Board Meeting) about my plans to draft an Investment Policy, hoping to draw upon his knowledge and experience as an investment advisor. Mr. Gregoire agreed to review the policy upon completion of the draft. Deputy Auditor\Treasurer Bettenhausen and I also discussed the proposed policy with Comm. Johnson and requested that he provide us with his insights regarding the policy as he also is a licensed investment professional.

A DRAFT INVESTMENT POLICY was provided to all Commissioners, State's Attorney Riha, HR Director Czosnek, and Mr. Gregoire on August 25, 2005. This draft was the culmination of many, many hours of effort by several members of staff. Minor changes were made based upon State's Attorney Riha's advice. Gregoire offered several thought provoking questions AND favorable comments regarding the draft.

#### THE INVESTMENT POLICY

- I. Sets standards and parameters for county investments,
- II. Identifies county investment objectives,
- III. Organizes and formalizes investment activities,
- IV. Helps protect the assets of county from inappropriate and/or poor investment decisions,
- V. Identifies internal controls,
- VI. GASB requirements,
- VII. Enhances Audit performance.
- VIII. Educates Investment staff and elected officials.

THE INVESTMENT POLICY FORMALIZES WHAT THE COUNTY TREASURER HAS BEEN DOING FOR SEVERAL YEARS.

**This is an old document the Finance Department found on the Auditor's drive. It describes the historical practice surrounding investments and some of the history regarding the investment policy. This document describes how the Deputy Auditor/Treasurer continued with Treasurer duties after the offices were combined. This includes investments as specifically mentioned below in the highlighted portion.**

In response to Commissioner Woodcox's comments at the last Commission meeting, I believe his comments were unfounded, unwarranted, not well thought, and disrespectful to my office and Mr. Gregoire.

*Woodcox's statement that this policy puts the power of all investments into one person's hands is not very well thought or studied as ND Century Code provides this authority to the County Treasurer.*

Commissioner Woodcox had ample opportunity to visit with me and/or staff prior to the meeting regarding Gregoire's role and possible conflict of interest along with current investment practices.

PERHAPS WE SHOULD DISCUSS ALL SUCH CONFLICTS.

Would Comm. Johnson not have the same conflict? What about Woodcox's own conflicts? As a matter of fact, shortly after the July County Commission meeting, Woodcox visited with Deputy Auditor/Treasurer Bettenhausen regarding investment of county funds. Woodcox was briefed on current investment practices and *attempted to use the influence of his office to persuade Deputy Auditor/Treasurer Bettenhausen to direct investments to BNC Bank where he sits on the Board of Directors and has a financial interest.* (Attachment)

Gregoire's review of the Draft Investment Policy did not and will not create any conflict of interest. Gregoire will be required to meet same requirements as any other potential depository of Burleigh County funds. Furthermore, Gregoire did not attempt to use his position on the County Park Board to influence the investment decisions of myself or any other staff member. Unfortunately I cannot say the same about Comm. Woodcox.

In regards to any perceived conflict of interest that I may have, be advised my role in the investment process has been as a resource to Deputy Auditor/Treasurer Bettenhausen. Mrs. Bettenhausen was responsible for the investments prior to the office combination and has continued that role. I have no interest in Kirkwood Bank (attachments) and offer the following affidavit willingly signed by Bettenhausen confirming that I have never tried to influence the investment of funds in Kirkwood Bank. Unfortunately I cannot say the same about Comm. Woodcox.

Does this policy need to be approved by the Commission?

ETHICS

### Finance Director Recurring Duties

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#### Daily Items

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Misc Receipt Review  
Review invoices from the Accounting Technician

This is a "duty list" for the Finance director provided by Auditor Splonskowski to the Finance Director in January.

#### Monthly Items

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Financial Review  
Budget Performance Reports to the Department Heads and Commissioners  
Journal Entry Review  
Attend Commission Meetings  
Review and Sign off on bi-weekly check run  
Vision Zero Reimbursement Voucher submitted to NDACo by the 10th of each month  
Update: K-Drive-Finance Director-Sales Tax - Detention Bond: This is done by going to:  
<https://www.treasurer.nd.gov/>  
then revenue distribution - historical revenue distributions-county-select Burleigh  
enter the appropriate values

Although the current Finance Director does not agree this is an appropriate list of duties for any finance director to perform, notably, nowhere does the word "investment" appear in the list of duties.

#### Quarterly Items

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Quarterly Billing - Files in drawer 2 of the left filing cabinet  
    911  
    BMDC - Bill Morton County's share  
    Municipal Court  
    Extention - Horticulture Agent  
    Send CenComm quarterly report to Angie  
ARPA Report File in drawer 1 of the right filing cabinet  
    Login to ID.me - click on Compliance reports on the left side of the screen -  
    click on the appropriate report for the quarter  
Financial Summary to the Commissioners  
Professional Building Parking collection - K Drive - Contracts-Leases - Parking - Tracking Sheets  
    Verify all parties have paid for the quarter, if not contact to collect

#### Semi-Annual

---

May and October - Haul Road transfer from 2140 to 4140 and payment of Invoice

#### Annual

---

Spec Ops - \$400 bill to Bismarck Police Department  
Finance Manual Review and update as needed  
Year End Processing  
Prepare Audit documents for annual audit - K Drive-Finance Director-Audits  
Prepare Annual Budget - K Drive-Finance Director-Budget  
    Prepare Preliminary Budget

## APPENDIX C.4.

Lead Budget Committee Hearings

Present Preliminary Budget to the Commission

Present Final Budget to the Commission

Prepare Preliminary Tax Levies - K Drive-Robin F Drive-Mill Levy Robin

1. Obtain the new Max Mill Levy Worksheets from the State Tax Department as well as the annual Levy Limitations guide.
2. Run the Valuation Listing and Property Class Valuation Reports from Taxwise
3. Obtain the Preliminary Budgets from all taxing districts.
4. Upon completion of the worksheets enter the information on the Mill Levy Sheet Front and Back. Work with a member of the office to proof that sheet.
5. Upon completion have the Deputy Auditor/Treasurer proof the Max Levy Sheets.
6. Following proofing provide Tessa the Mill Levy Sheet to enter into Taxwise.

Prepare Final Tax Levies - K Drive-Robin F Drive-Mill Levy Robin

1. Update using the above processes using current Valuations and Final Budgets.

Annual Insurance Review and Renewal - Donna with Bain will send all renewal docs

Annual Capital Improvement Plan applications due from department heads by June 1st

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

## BURLEIGH COUNTY INVESTMENT POLICY

### I. Governing Authority

#### *Legality*

The Burleigh County investment program shall be operated in conformance with federal, state, and other legal requirements, including NDCC 21-06-07.

### II. Scope

This policy applies to the investment of all funds. Proceeds from certain bond issues may be covered by a separate policy.

#### 1. *Pooling of Funds*

Except for cash in certain restricted and special funds, the County of Burleigh will consolidate cash and reserve balances from all funds to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping and administration. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

### III. General Objectives

The primary objectives, in priority order, of investment activities shall be safety, liquidity, and yield:

#### 1. *Safety*

Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

##### a. Credit Risk

The County of Burleigh will minimize credit risk, which is the risk of loss due to the failure of the security issuer or backer, by:

- Limiting investments to the types of securities listed in Section VII of this Investment Policy
- Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisers with which the County of Burleigh will do business in accordance with Section V
- Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer will be minimized.

##### b. Interest Rate Risk

The County of Burleigh will minimize interest rate risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity
- Investing operating funds primarily in shorter-term securities or similar investment pools and limiting the average maturity of the portfolio in accordance with this policy (see section VIII).

#### 2. *Liquidity*

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity). Alternatively, a portion of the portfolio may be placed in local government investment pools which offer same-day liquidity for short-term funds.

### 3. *Yield*

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. **Return on investment is of secondary importance compared to the safety and liquidity objectives described above.** The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall generally be held until maturity with the following exceptions:

- A security swap would improve the quality, yield, or target duration in the portfolio.
- Liquidity needs of the portfolio require that the security be sold.

### 4. *Local Considerations*

The County of Burleigh seeks to promote local economic development through various programs and activities. Where possible, funds may be invested for the betterment of the local economy. The County of Burleigh may accept a proposal from an eligible institution which provides for a reduced rate of interest for community development projects. The Board of County Commissioner's recognizes that such investments might diminish investment yields in exchange for potential expansion of the tax base.

## IV. Standards of Care

### 1. *Prudence*

The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.

The "prudent person" standard states that, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

### 2. *Ethics and Conflicts of Interest*

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the County of Burleigh.

### 3. *Delegation of Authority*



# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

Authority to manage the investment program is granted to the County Auditor\Treasurer, hereinafter referred to as investment officer and derived from the following: NDCC 11-14-06 & 21-04-04. Responsibility for the operation of the investment program is hereby delegated to the investment officer, who shall act in accordance with established written procedures and internal controls for the operation of the County of Burleigh investment program consistent with this investment policy. Procedures should include references to: safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, and collateral/depository agreements. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the investment officer. The investment officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

## **V. Designated Depositories, Authorized Financial Institutions and Broker/Dealers**

### *1. Designated Depositories, Authorized Financial Institutions, and Broker/Dealers*

Pursuant to ND Century Code 21-04 public funds belonging to the County of Burleigh must be deposited in the Bank of North Dakota or in financial institutions which have been duly designated as depositories. The Board of Burleigh County Commissioners shall at its regular meeting in January of each even-numbered year, shall designate depositories of public funds and semiannually shall approve the acceptance of any securities as pledge for repayment of deposits.

In addition, a list will be maintained of approved security broker/dealers selected by creditworthiness (e.g., a minimum capital requirement of \$10,000,000 and at least five years of operation). These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule).

All financial institutions and broker/dealers who desire to become qualified for investment transactions must supply the following as appropriate:

- Audited financial statements demonstrating compliance with state and federal capital adequacy guidelines.
- Proof of National Association of Securities Dealers (NASD) certification (not applicable to Certificate of Deposit counterparties).
- Proof of state registration.
- Completed broker/dealer questionnaire (not applicable to Certificate of Deposit counterparties).
- Certification of having read and understood and agreeing to comply with the County of Burleigh investment policy.
- Evidence of adequate insurance coverage.

An annual review of the financial condition and registration of all qualified financial institutions and broker/dealers will be conducted by the investment officer (or designee).

### *2. Minority and Community Financial Institutions*

From time to time, the investment officer may choose to invest in instruments offered by minority and community financial institutions. In such situations, a waiver to certain parts of the criteria under Paragraph 1 may be granted. All terms and relationships will be fully disclosed prior to purchase and will be reported to and approved by the Board of Burleigh County Commissioners on a consistent basis in advance and shall be consistent with state law.

## **VI. Safekeeping and Custody**

### *1. Delivery vs. Payment*

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

All trades of marketable securities will be executed by delivery vs. payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds.

## *2. Safekeeping*

Securities may be held by an independent third-party custodian selected by the Burleigh County as evidenced by safekeeping receipts in the County of Burleigh's name. The safekeeping institution shall annually provide a copy of their most recent report on internal controls (Statement of Auditing Standards No. 70, or SAS 70).

## *3. Internal Controls*

The investment officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the County of Burleigh are protected from loss, theft or misuse. Details of the internal control system shall be documented and shall be reviewed and updated annually. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall be designed to prevent the loss of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the County of Burleigh.

Internal control compliance should be assured through the Burleigh County annual independent audit.

## **VII. Suitable and Authorized Investments**

### *1. Investment Types*

Pursuant to North Dakota Century Code Chapter 21-06-07, the County of Burleigh may invest moneys in its general fund, or balances in any special or temporary fund, in:

- Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organization created by an act of Congress.
- Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above. Repurchase agreements shall be consistent with GFOA Recommended Practices on Repurchase Agreements. (See GFOA Recommended Practices in Appendix.)
- Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
- Obligations of the state.
- Local government investment pools either state-administered or developed through joint powers statutes and other intergovernmental agreement legislation.
- State and local securities:
  - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.
  - (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
  - (3) Any security that is a general obligation of a school district and is rated in the highest

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

two categories by a nationally recognized rating agency.

(4) Obligations of this state and general obligations of its political subdivisions.

- Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.

Investment in derivatives of the above instruments shall require authorization by the Board of Burleigh County Commissioners.

## *2. Collateralization*

Except as is otherwise provided in NDCC sections 21-04-16 and 21-04-17, and before any deposit is made in any depository other than the Bank of North Dakota, such depository shall furnish a bond payable to the County of Burleigh in an amount that at least equals the largest deposit that at any time may be in such depository.

The Board of Burleigh County Commissioners may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the County of Burleigh, the Board of Burleigh County Commissioners shall require security in the amount of one hundred ten dollars for every one hundred dollars of deposits. Securities that are eligible for the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investor Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies or instrumentalities, or by any county, city township, school district, park district or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board.

The Board of Burleigh County Commissioners semiannually shall approve the acceptance of any securities as pledge for repayment of deposits.

Where allowed by state law and in accordance with the GFOA Recommended Practices on the Collateralization of Public Deposits, full collateralization will be required on all demand deposit accounts, including checking accounts and non-negotiable certificates of deposit. (See GFOA Recommended Practices in Appendix.)

## **VIII. Investment Parameters**

### *1. Diversification*

It is the policy of the County of Burleigh to diversify its investment portfolios. To eliminate risk of loss resulting from the over-concentration of assets in a specific maturity, issuer, or class of securities, all cash and cash equivalent assets in all Burleigh County funds shall be diversified by maturity, issuer, and class of security. Diversification strategies shall be determined and revised periodically by the investment committee/investment officer for all funds except for the employee retirement fund.

In establishing specific diversification strategies, the following general policies and constraints

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

shall apply: Portfolio maturities shall be staggered to avoid undue concentration of assets in a specific maturity sector. Maturities selected shall provide for stability of income and reasonable liquidity.

For cash management funds:

- Liquidity shall be assured through practices ensuring that the next disbursement date and payroll date are covered through maturing investments or marketable U.S. Treasury bills.
- Risks of market price volatility shall be controlled through maturity diversification such that aggregate price losses on instruments with maturities exceeding one year shall not be greater than coupon interest and investment income received from the balance of the portfolio.
- The investment committee/investment officer shall establish strategies and guidelines for the percentage of the total portfolio that may be invested in securities other than repurchase agreements, Treasury bills or collateralized certificates of deposit. The committee shall conduct a quarterly review of these guidelines and evaluate the probability of market and default risk in various investment sectors as part of its considerations.

## 2. *Maximum Maturities*

To the extent possible, the County of Burleigh shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the County of Burleigh will not directly invest in securities maturing more than five (5) years from the date of purchase or in accordance with state statutes. The County of Burleigh shall adopt weighted average maturity limitations (which often range from 90 days to 3 years), consistent with the investment objectives.

Reserve funds and other funds with longer-term investment horizons may be invested in securities exceeding five (5) years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds. The intent to invest in securities with longer maturities shall be disclosed in writing to the Board of County Commissioners. (See the GFOA Recommended Practice on "Maturities of Investments in a Portfolio" in Appendix.)

Because of inherent difficulties in accurately forecasting cash flow requirements, a portion of the portfolio should be continuously invested in readily available funds such as local government investment pools, money market funds, or overnight repurchase agreements to ensure that appropriate liquidity is maintained to meet ongoing obligations.

## 3. *Competitive Bids*

The investment officer shall obtain competitive bids from at least two brokers or financial institutions on all purchases of investment instruments purchased on the secondary market.

## IX. Reporting

### 1. *Methods*

The investment officer shall submit quarterly an investment report that summarizes the quarter's total investment return. The report shall disclose all transactions during the past quarter. The report shall be in compliance with state law (if any) and shall be distributed to the Board of Burleigh County Commissioners and others as may be required by law.

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

Each quarterly report may indicate any areas of policy concern and suggested or planned revision of investment strategies.

Within 60 days of the end of the fiscal year, the investment officer shall present a comprehensive annual report on the investment program and investment activity. The annual report shall include 12-month and separate quarterly comparisons of return and suggest policies and improvements that might be made in the investment program. Alternatively, this report may be included within the County of Burleigh annual Comprehensive Annual Financial Report.

## *2. Performance Standards*

The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. A series of appropriate benchmarks should be established against which portfolio performance shall be compared on a regular basis. The benchmarks should be reflective of the actual investments being purchased.

## *3. Marking to Market*

The market value of the portfolio shall be calculated at least quarterly and a statement of the market value of the portfolio shall be issued at least quarterly. This will ensure that review of the investment portfolio, in terms of value and price volatility, has been performed. In defining market value, considerations should be given to the GASB Statement 31 pronouncement.

## **X. Policy Considerations**

### *1. Exemption*

Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

### *2. Amendments*

This policy will be reviewed on an annual basis. Any changes must be approved by the Board of County Commissioners in consultation with the investment officer and the individuals charged with maintaining internal controls.

## **VII. Approval of Investment Policy**

The investment policy shall be formally approved and adopted by the Board of Burleigh County Commissioners and reviewed annually.

## **VIII. List of Attachments**

The following documents, as applicable, are attached to this policy:

- North Dakota century code
- Listing of authorized personnel
- Listing of authorized broker/dealers and financial institutions
- Internal Controls

## **XIII. Other Documentation**

- Master Repurchase Agreement, other repurchase agreements and tri-party agreements,

**EXHIBIT A** **APPENDIX D.1.**  
**BURLEIGH COUNTY INVESTMENT POLICY**

- Broker/Dealer Questionnaire,
- Credit studies for securities purchased and financial institutions used,
- Safekeeping agreements,
- Wire transfer agreements,
- GFOA Recommended Policies.

**AUTHORIZED PERSONNEL**

Burleigh County Auditor/Treasurer  
Leo Vetter

Deputy Auditor/Treasurer  
Brandi Caya

Deputy Finance Director  
Justin Schulz



**EXHIBIT A** **APPENDIX D.1.**  
**BURLEIGH COUNTY INVESTMENT POLICY**

-CERTIFICATION-

I hereby certify that I have personally read the investment policies of the County of Burleigh and have implemented reasonable procedures and controls designed to prohibit investment transactions inconsistent with your policies. Whenever we are notified in writing, we will inform our sales personnel of your investment objectives, outlook, strategy and risk constraints. We will notify you immediately by telephone and in writing in the event of a material adverse change in our financial condition. We pledge to exercise due diligence in informing you of fundamental risks associated with financial transactions conducted with our firm. Price markup will be consistent with prevailing institutional pricing at the time of each transaction. I attest to the accuracy of our responses to your questionnaire.

Signed: \_\_\_\_\_

(Countersigned by corporate officer responsible for compliance.)

\_\_\_\_\_

**EXHIBIT A** **APPENDIX D.1.**  
**BURLEIGH COUNTY INVESTMENT POLICY**

**COUNTY OF BURLEIGH**  
**INVESTMENT PROCEDURES and INTERNAL CONTROLS**

**A. Introduction:**

The Burleigh County Auditor\Treasurer has the responsibility of conducting cash and investment transactions for all funds held by or for the benefit of the County of Burleigh. The responsibility for the management of the investments here and after in this document will be referred to as the investment officer. The investment program has been delegated to the investment officer who shall implement the investment policy by following the investment procedures and internal controls herein delineated.

**B. Objective:**

The Investment Procedures and Internal Controls Manual provides an outline for investment management. This manual shall be reviewed annually.

**C. Internal Control:**

The system of internal controls is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

**D. Investment Decisions:**

The investment officer shall adhere to the guidelines of the government's investment policy regarding all investment purchases or any other cash and investment transactions.

**F. Delegation of Authority:**

As established by the investment policy, certain specified individuals (i.e., the Deputy Auditor\Treasurer, Accountant) have authority to transact investments. In case of an absence of officer, procedures and specific alternate personnel should be delineated.

**G. Segregation of Duties and Compensating Controls:**

The government shall establish written internal controls, which should include:

1. Control of Collusion:

Collusion is a situation where two or more employees are working in conjunction to defraud their employer. Employee duties will be shifted periodically to reduce the opportunity for collusion.

2. Segregation of duties:

By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a good separation of duties is achieved.



# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

3. Custodial safekeeping:  
Securities purchased from any bank or dealer, including appropriate collateral, should be placed into an independent third-party institution for custodial safekeeping.
4. Avoidance of physical delivery securities:  
Book entry securities are much easier to transfer and account for since actual delivery is never taken. Physical delivery securities must be properly safeguarded as are any valuable documents. The potential of fraud and loss increases with physical delivery securities.  
Bearer form securities are much easier to convert to personal use than securities that are registered in the name of the government.
5. Clear delegation of authority to subordinate staff members:  
Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid any improper actions. Clear delegation of authority also preserves the internal control structure that is built around the various staff positions and their respective responsibilities.
6. Written confirmation of all transactions (transfer, fax, Internet) for investments and wire transfers:  
Due to the potential for errors and improprieties arising from telephone/electronic transactions, all such transactions will be documented in writing and approved by the auditor\treasurer.
7. Development of an electronic funds transfer agreement with banks:  
This agreement should outline the various controls and security provisions for making and receiving electronic funds transfers.
  - a) Dual authorization and signatures of the County Auditor\Treasurer and Deputy Auditor\Treasurer shall be required for all transfers.
  - b) Financial institutions will have written instructions regarding government authorizations for wire transfers, restrictions on accounts where funds can be wired, and other procedures that will mitigate unauthorized movement of funds (e.g., call-back to independent person, written confirmations, etc.)
8. All personnel will be required to take minimum planned vacations thereby requiring other personnel to temporarily assume their duties.
9. Insurance shall be secured at appropriate levels to bond employees charged with investment and cash handling responsibilities shall be acquired from the ND State Bond Fund.

## **H. Operations:**

Procedures and duties recommended include:

### **1. Investment Procedures:**

The following is a basic outline of routine daily procedures necessary to maintain proper documentation on cash and investment transactions;

Each morning, the daily bank balance report shall be obtained from the depository bank(s).

Overnight (sweep) repurchase agreements and/or money market accounts interest shall be verified and recorded. All incoming and maturing investments shall be verified with the custodial bank. All earned interest, maturing investments, and incoming funds should be verified and recorded.

Daily information regarding the cash requirements and required maturity dates shall be provided by the Deputy Auditor\Treasurer. All security purchases or sells must be recorded on a confirmation form.

On a daily basis, it is necessary to conduct cash and investment activity within specific

# EXHIBIT A APPENDIX D.1. BURLEIGH COUNTY INVESTMENT POLICY

bank accounts, and all transactions within each account shall be recorded on a daily investment worksheet. All worksheets shall be maintained by the Deputy Auditor\Treasurer, and the worksheets shall be available for review upon request.

Proper documentation and authorization shall be required before any cash or investment transaction is executed. All investment documentation shall require the signature of the Auditor\Treasurer or the Deputy Auditor\Treasurer.

## **2. Authorized Wires:**

Only the Auditor\Treasurer or Deputy Auditor\Treasurer shall be authorized to wire funds according to the approved wire transfer agreement for investment. Wire instructions and personal identification numbers (PIN's) shall be safeguarded. All bank transfer requests shall be in writing and require a second confirmation by another Burleigh County employee. The purpose of the bank transfer must be stated as part of the transfer information. ACH procedures shall also be delineated.

## **3. Securities Confirmations:**

The processing of securities' confirmations, including filing and reconciling, shall be conducted by an individual not permitted to purchase and sell investments.

## **4. Safekeeping Procedures:**

All securities purchased shall be received by "delivery vs. payment" (per the investment policy) to the custodian for safekeeping.

Certificates of deposit are permitted to be held at the issuing bank.

Collateral for certificates of deposit and purchased securities in connection with repurchase agreements may be delivered to the governments' designated custodian. Additional requirements and procedures should be outlined in a third-party custodial safekeeping agreement regarding safekeeping procedures.

## APPENDIX E.1.

**From:** [Caya, Brandi M.](#)  
**To:** [Splonskowski, Mark D.](#); [Jacobs, Leigh](#)  
**Cc:** [Schmidt, Taylor](#)  
**Subject:** RE: Investment Committee  
**Date:** Sunday, January 28, 2024 3:40:49 PM

---

Same.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Friday, January 26, 2024 4:01 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Subject:** RE: Investment Committee

Im open on the 2<sup>nd</sup>.

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Friday, January 26, 2024 3:26 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Subject:** Investment Committee

Good afternoon,

May I suggest we reconvene the investment committee ASAP (AFTER the 1099 deadline).

We have a considerable amount of interest income budgeted for FY 2024, and we need to ensure we reinvest things as they mature so we hit our budgeted revenues.

I'm a little concerned about the timing considering Justin left around October. It's been four months, and if he made some shorter-term investments prior to his departure, those could be coming due or could already be matured.

Does anyone have availability on Friday, Feb 2?

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501

## APPENDIX E.2.

**From:** [Schmidt, Taylor](#)  
**To:** [Jacobs, Leigh](#)  
**Subject:** FW: Investment Committee Meeting  
**Date:** Wednesday, December 11, 2024 10:21:50 AM  
**Attachments:** [Burleigh County Investment Committee Agenda.docx](#)

---

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Schmidt, Taylor  
**Sent:** Friday, May 3, 2024 4:01 PM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** Investment Committee Meeting

Good afternoon,

I've been going over some of our investment procedures and would like to discuss them in person. I've attached an agenda that is a rough outline of what I've been looking at. Would everyone able to make room in your calendars for an Investment Meeting sometime next week? Let me know what times will/won't work.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

## APPENDIX E.2.

### Burleigh County Investment Committee Agenda

Date: TBD

This is the agenda  
from the May  
Investment  
Committee meeting.

1. Interest Allocation
  - a. Investment Policy Review
    - i. Section 2 Line 1 – Pooling of Funds
  - b. Sweep Account Interest Allocation
    - i. Allocating sweep account interest based on Average Daily Balance
    - ii. Removing non general fund dollars from sweep account
    - iii. Amend Pooling of Funds Policy
2. Cash Flow
  - a. Investment Policy Review
    - i. Section 2 Line 1b – Interest Rate Risk
    - ii. Section 2 Line 2 – Liquidity
    - iii. Section 8 Line 1– Diversification Bids
    - iv. Section 8 Line 2 – Maximum Maturities
    - v. Section 8 Line 3 – Competitive Bids
  - b. Cash Flow considerations
    - i. Interest Rate Risk Example
    - ii. Negative Cash
    - iii. Investment Maturities vs Cash Flow Needs
3. Reporting
  - a. Investment Policy Review
    - i. Section 9 Line 1 – Methods
    - ii. Section 9 Line 2 – Performance Standards
    - iii. Section 9 Line 3 – Marking to Market
  - b. Investment Market Value
  - c. Investment Evaluation
  - d. Investment Report

## APPENDIX E.3.

### September 10, 2024 - Investment Meeting Agenda

- I. WF Zero Balance Account
  - a. PEG set at \$10m for a time
  - b. lowered to \$3m
  - c. Should lower to \$0
    - i. Did we contact WF about lowering PEG to \$0?

Brandi emailed Wells Fargo to lower the PEG to \$1.5m.

Taylor asked for terms of the account but did not get terms from WF. Taylor said no PEG is required, per WF 50% of clients use \$0 balance. No additional fee – fees based on transactions. Fee is approximately \$1273 per month.

At \$3m PEG we are losing \$12,000 per month in interest on the sweep at current rates.

At zero balance we would earn \$12,000 per month in interest at current rates.

At \$1.5m PEG we lose \$6000 a month in potential interest @ current rates

ND State Treasurer operates with a zero balance account.

**Action item: Brandi will inquire with Wells Fargo about lowering PEG to \$0 and if that will increase fees.**

- II. Concentration of credit at Financial Institution
  - a. We have \$30m in First International
  - b. We have \$68m as of 9/5/2024
  - c. 43.5% of cash is at FIL
    - i. This seems to be over-concentrated
    - ii. ACTION ITEM: Determine what is the max % of total cash we are willing to keep at a given financial institution (15%? 25%?, etc)
    - iii. If First international is over the max, then the recommendation is to move the all/most/some of account # 661 out and into other financial institutions/investments
  - d. We have \$20m in Wells Fargo cash + \$6/7/8m in WF investments
    - i. This seems to be over-concentrated as well
    - ii. General Fund is \$5m over last year at this time due to increased RE taxes

Mark trying to consolidate banks down to 5, perhaps 6.

Finance Dept suggests expanding on the policy to define what % is a concentration at a financial institution, and what % is a concentration in a maturity and/or what % should we have in a given maturity or type

## APPENDIX E.3.

Action item: Mark wants to consolidate banks and stay in ND banks. Finance will look at banks to see if any can be removed. See what kind of investments we have and how long it will take to get out of there. Can we mature investments out of BNC

- III. Concentration of investments by maturity
  - a. We have approximately \$50m in money markets/sweep
    - i. \$20m WF
    - ii. \$15.8m FIL 662
    - iii. \$13.5M FIL ARPA
  - b. Per policy we should be diversified in our maturity of investments
  - c. Money markets will decline due to rate cuts
  - d. ACTION ITEM: Determine the maturity distribution for reserves and ARPA (i.e. 3month/6month/9month)
- IV. Concentration of investments by type
  - a. We are heavily in money markets
  - b. Our other investments are mostly CDs
  - c. Treasuries have a higher yield
    - i. For example our money markets are probably invested in short term (1month) Treasuries on a rolling basis
    - ii. Money markets must be in allowable investments per NDCC
    - iii. FIL makes money by discounting their investments (if Treasuries are 5.5%, FIL gives us 5.25% and pockets the difference)
  - d. ACTION ITEM: Determine the mix of investments by type (this may need to be revisited as rates change)

Mark would like to move cash into more of an even mix between the various investment types (CD, Fixed Income, Money Market, CD, Treasuries)

Mark would like to trial an investment mix and evaluate how it is going. At that point if it is going well, we can draft a policy or guidelines

Taylor mentioned first international money market is mostly reserves and can probably be invested for a longer period.

Action Item: Finance will create a hypothetical investment mix for Mark to review. We will focus on Reserves at this point in time

- V. Cash forecast
  - a. Historically the county has invested reserves
  - b. The county should consider investing operating cash
    - i. We collected 95%+ of our taxes by Feb 15
    - ii. These could be invested to mature as we need to pay bills throughout the year

## APPENDIX E.3.

- c. To do so requires a cash forecast
- d. Finance can assist but the Auditor/Treasurer should review
- e. **ACTION ITEM: Draft a cash forecast auditor to review**

### VI. ~~Negative Cash~~

- a. ~~Having negative cash makes cash forecasting difficult~~
- b. ~~For example, if the general fund has \$5m but CenComm has \$1m then the general fund really has \$4m~~
- c. ~~Negative cash is causing us to over-allocate interest to certain funds such as CenComm~~
- d. ~~For example, Provident Building has negative cash but has an investment~~
- e. ~~Fort Rice has negative cash but has an investment~~
- f. ~~Etc~~
- g. ~~ACTION ITEM: Correct the negative cash balances [this is a recommendation the Commission voted to adopt]. We may need to change the accounting practices to use payable/receivable or due to/from OR use cash forecasting to avoid going negative~~

### VII. Investment checklist

- a. Do we need to develop a checklist where everyone involved signs off or initials off on a checklist for each investment?
- b. Checklist could be saved and stored the with record of investment

**ACTION ITEM: Finance will prepare an investment checklist for Auditor to review**



## APPENDIX E.4.

**From:** [Schmidt, Taylor](#)  
**To:** [Splonskowski, Mark D.](#); [Caya, Brandi M.](#)  
**Cc:** [Jacobs, Leigh](#); [Binder, Pamela J.](#)  
**Subject:** Investment Mix  
**Date:** Thursday, September 19, 2024 11:54:28 AM  
**Attachments:** [image001.png](#)

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Good morning,

These tables show our current cash and investment mix as of 08/31/2024 (July fixed income balances). As we discussed in our investment meeting, per investment policy diversification of financial institution and investment type are the County's top investment priorities. The Finance Department recommends keeping no more than 25% of County funds at any bank (except BND) and no more than 50% of County investments in one investment type (except treasuries). As you can see below, based on Finance's recommended maximum allocation, we are over-concentrated in First International and Wells Fargo and are over-concentrated in money market accounts.

These are only guidelines that can and should be reviewed on a regular basis and revised as needed. The goal is to have a broad set of guidelines to provide a reasonable rationale for investment decisions that align with the investment priorities in our investment policy. Once we're in agreement on strategy, our office can create some cash flow forecasts and suggest specific investments for specific funds. This will be a significant undertaking that will take some time. We would start with recommendations of investments for general fund reserves currently held at First International.

**Mark, do you have any thoughts on this allocation before we move forward?**

### **Investment Report notes:**

**This email is in response to a request from Auditor Splonskowski in the Sept. 10th investment Committee meeting. This is noted as an "Action Item" in the meeting minutes. Despite the Deputy Finance Director deliberately waiting until after the Final Budget Hearing to send this email, he received no response until recently, after the Q1 2024 investment report was delivered and this email, and the non-response from the Auditor/Treasurer, was mentioned in a public hearing.**

## APPENDIX E.4.

Bank	Combined Balance	Current %	Max %	Difference	Amount Under/(Over)
BNC	1,196,248.92	1.73%	25.00%	23.27%	16,102,766.03
BND	1,027.40	0.00%	100.00%	100.00%	69,195,032.41
Bravera Bank	7,184,787.67	10.38%	25.00%	14.62%	10,114,227.28
Bremer	2,733,461.05	3.95%	25.00%	21.05%	14,565,553.90
Choice Bank	1,029,280.15	1.49%	25.00%	23.51%	16,269,734.80
First International Bank	30,974,435.22	44.76%	25.00%	-19.76%	(13,675,420.27)
Wells Fargo	26,076,819.40	37.69%	25.00%	-12.69%	(8,777,804.45)
<b>Total</b>	<b>69,196,059.81</b>	<b>100.00%</b>			

Investment Type	Combined Balance	Current %	Max %	Difference	Amount Under/(Over)
Fixed Income	8,996,528.99	13.00%	50.00%	37.00%	25,601,500.92
Money Market	54,378,474.78	78.59%	50.00%	-28.59%	(19,780,444.88)
CD	5,821,056.04	8.41%	50.00%	41.59%	28,776,973.87
Treasuries	-	0.00%	100.00%	100.00%	69,196,059.81
<b>Total</b>	<b>69,196,059.81</b>	<b>100.00%</b>			

Thanks,

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

(701) 712-8354

[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

316 N 5<sup>th</sup> St Ste 104

Bismarck, ND 58501

[www.burleigh.gov](http://www.burleigh.gov)

## APPENDIX E.5.

**From:** [Splonskowski, Mark D.](#)  
**To:** [Schmidt, Taylor](#); [Caya, Brandi M.](#)  
**Cc:** [Jacobs, Leigh](#); [Binder, Pamela J.](#); [Splonskowski, Mark D.](#)  
**Subject:** RE: Investment Mix  
**Date:** Wednesday, December 4, 2024 2:52:06 PM  
**Attachments:** [image001.png](#)

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Hey, I'm going through my old emails and found this one. I Mostly agree with this breakdown however Id like to discuss it and steps moving forward in person. Would we be able to set up a time next week along with the meeting on the Audit findings? Thanks

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Thursday, September 19, 2024 11:54 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Subject:** Investment Mix

Good morning,

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These are only guidelines that can and should be reviewed on a regular basis and revised as needed. The goal is to have a broad set of guidelines to provide a reasonable rationale for investment decisions that align with the investment priorities in our investment policy. Once we're in agreement on strategy, our office can create some cash flow forecasts and suggest specific investments for specific funds. This will be a significant undertaking that will take some time. We would start with recommendations of investments for general fund reserves currently held at First International.

**Mark, do you have any thoughts on this allocation before we move forward?**

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Investment Type	Combined Balance	Current %	Max %	Difference	Amount Under/(Over)
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Treasuries	-	0.00%	100.00%	100.00%	69,196,059.81
<b>Total</b>	<b>69,196,059.81</b>	<b>100.00%</b>			

Thanks,

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

(701) 712-8354

[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

316 N 5<sup>th</sup> St Ste 104

Bismarck, ND 58501

[www.burleigh.gov](http://www.burleigh.gov)

# TIMELINE OF RETURN ON INVESTMENT BY TERM IN OFFICE

	AUDITOR/TREASURER VETTER		AUDITOR/TREASURER SPLONSKOWSKI		DEPUTY AUDITOR/TREASURER		TOTAL
	1/1/2023 - 3/31/2023	4/1/2023 - 12/31/2023	1/1/2024 - 9/30/2024	1/1/2023 - 12/31/2023	1/1/2024 - 9/30/2024		
Bank of North Dakota - Burleigh County	\$ (89,779.03)	\$ (146,385.72)	\$ (292,528.73)	\$ (236,164.75)	\$ (292,528.73)	\$	(528,693.48)
Bank of North Dakota - Morton County	(27,743.64)	(50,056.97)	(83,340.43)	(77,800.61)	(83,340.43)		(161,141.04)
Bank of the West	(10,540.62)	-	-	(10,540.62)	-		(10,540.62)
BNC National Bank	(21,095.86)	(13,456.60)	(10,561.69)	(34,552.46)	(10,561.69)		(45,114.15)
Bravera Bank	(6,902.47)	(6,277.80)	(12,465.70)	(13,180.26)	(12,465.70)		(25,645.97)
Choice Bank	(29,894.38)	(6,281.85)	(20,254.30)	(36,176.22)	(20,254.30)		(56,430.52)
First Interational Bank	(204,615.86)	(79,165.47)	(59,669.25)	(283,781.33)	(59,669.25)		(343,450.58)
Wells Fargo (Sweep) - General Fund	(1,886.49)	(2,353.79)	(32,189.89)	(4,240.28)	(32,189.89)		(36,430.17)
Wells Fargo (Sweep) - "PEG"	(27,163.97)	(105,254.64)	(104,154.40)	(132,418.61)	(104,154.40)		(236,573.01)
	<u>\$ (419,622.31)</u>	<u>\$ (409,232.84)</u>	<u>\$ (615,164.40)</u>	<u>\$ (828,855.14)</u>	<u>\$ (615,164.40)</u>	<u>\$</u>	<u>(1,444,019.54)</u>

# Q1 2024 SUMMARY

Bank	Investment Type	Average Balance	Interest Earned 1/1/2024 - 3/31/2024	Benchmarked Interest	Difference Over/(Under) Benchmark
<b>Bank of North Dakota</b>	Money Market	\$ 4,746,089.98	\$ 7,021.61	\$ 63,047.87	\$ (56,026.26)
<b>Wells Fargo</b>	Sweep "PEG"	3,000,000.00	5,495.34	39,871.23	(34,375.89)
	Sweep Money Market	22,906,371.37	256,755.18	267,047.55	(10,292.37)
<b>First International Bank</b>	CDs	7,500,000.00	43,006.85	49,670.55	(6,663.70)
	Money Market	25,453,683.60	330,505.64	341,960.24	(11,454.60)
<b>BNC National Bank</b>	CDs	1,147,018.68	40,011.78	44,030.75	(4,018.97)
	Money Market	47,608.09	59.36	640.30	(580.94)
<b>Choice Bank</b>	CDs	5,384,094.00	65,759.62	75,159.46	(9,399.84)
	Money Market	28,768.92	236.37	387.37	(151.00)
<b>Bravera</b>	CDs	680,000.00	8,578.43	9,053.13	(474.70)
	Money Market	4,098,409.78	52,423.60	55,223.15	(2,799.55)
<b>Subtotal, Burleigh</b>					(136,237.82)
<b>Bank of North Dakota</b>	Money Market - Morton	3,473,362.15	3,245.89	29,222.31	(25,976.42)
<b>Subtotal, Morton</b>					(25,976.42)
<b>Total</b>					<u><u>\$ (162,214.23)</u></u>

# Q2 2024 SUMMARY

Bank	Investment Type	Average Balance	Interest Earned 4/1/2024 - 6/30/2024	Benchmarked Interest	Difference Over/(Under) Benchmark
<b>Bank of North Dakota</b>	Money Market	\$ 17,320,843.07	\$ 9,827.64	\$ 87,544.78	\$ (77,717.14)
<b>Wells Fargo</b>	Sweep "PEG"	3,000,000.00	3,787.46	40,163.02	(36,375.56)
	Sweep Money Market	25,600,621.21	325,332.91	338,507.73	(13,174.82)
<b>First International Bank</b>	CDs	700,000.00	3,739.73	4,031.42	(291.69)
	Money Market	30,313,062.29	380,399.02	404,249.33	(23,850.31)
<b>BNC National Bank</b>	CDs	1,147,018.68	27,319.79	30,516.67	(3,196.88)
	Money Market	49,145.88	62.16	657.95	(595.79)
<b>Choice Bank</b>	CDs	750,000.00	37,622.56	45,290.03	(7,667.47)
	Money Market	107,365.95	1,677.43	2,767.89	(1,090.46)
<b>Bravera</b>	CDs	913,509.34	20,163.32	20,930.26	(766.93)
	Money Market	4,141,050.27	51,478.92	55,437.29	(3,958.37)
<b>Subtotal, Burleigh</b>					(168,685.43)
<b>Bank of North Dakota</b>	Money Market - Morton	5,998,776.62	2,444.89	21,754.72	(19,309.83)
<b>Subtotal, Morton</b>					(19,309.83)
<b>Total</b>					<u><u>\$ (187,995.26)</u></u>

# Q3 2024 SUMMARY

Bank	Investment Type	Average Balance	Interest Earned 7/1/2024 -9/30/2024	Benchmarked Interest	Difference Over/(Under) Benchmark
<b>Bank of North Dakota</b>	Money Market	\$ 12,343,382.36	\$ 20,348.29	\$ 179,133.63	\$ (158,785.34) <i>f</i>
<b>Wells Fargo</b>	Sweep "PEG"	3,000,000.00	3,542.27	36,945.22	(33,402.95)
	Sweep Money Market	21,740,609.26	273,699.01	282,421.71	(8,722.70)
<b>First International Bank</b>	CDs	700,000.00	8,821.92	9,510.03	(688.11)
	Money Market	30,306,040.72	386,658.96	403,379.80	(16,720.84)
<b>BNC National Bank</b>	CDs	1,147,018.68	13,833.99	14,982.26	(1,148.28)
	Money Market	109,455.65	163.93	1,184.76	(1,020.83)
<b>Choice Bank</b>	CDs	934,094.00	18,180.74	19,967.35	(1,786.61)
	Money Market	29,199.66	234.38	393.30	(158.92)
<b>Bravera</b>	CDs	913,509.34	27,050.69	27,737.23	(686.54)
	Money Market	4,193,030.54	52,696.71	56,476.31	(3,779.60)
<b>Subtotal, Burleigh</b>					(226,900.72)
<b>Bank of North Dakota</b>	Money Market - Morton	3,503,893.40	4,986.43	43,040.61	(38,054.18) <i>f</i>
<b>Subtotal, Morton</b>					(38,054.18)
<b>Subtotal, with bond-related activity</b>					(264,954.91)
<b>Less bond-related activity</b>					(88,875.52)
<b>Total</b>					\$ (353,830.43)

*f* Of these amounts, \$88,876 were due to the bidding agent advising us to liquidate our investments so we could re-structure our portfolio to mature alongside our bonds to maturity at 2032. \$76,188 was Burleigh and \$12,688 was Morton.



**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, April 3, 2025 5:14 PM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** FW: BC Investment Funds - Bank Locations Managed by BC Auditor

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**From:** Jacobs, Leigh  
**Sent:** Thursday, April 3, 2025 1:58 PM  
**To:** curt [REDACTED]  
**Subject:** RE: BC Investment Funds - Bank Locations Managed by BC Auditor

Hi Curtis,

I've attached a couple of reports we presented to the Commission late last year.

As to #1 below:

BND, First International, and Wells Fargo were the biggest beneficiaries under Splonskowski. That information is on the "Timeline of Investment Return by Auditor.pdf" attached.

First International also benefited hugely under Auditor Leo Vetter, because during 2022, the County had tens of millions of dollars in a money market at First International earning .25% all year. Meanwhile, our Wells Fargo money market was increasing rates almost monthly. I believe Wells Fargo finished 2022 at around 4% while First International was still .25%. The County did not transfer funds from First International to Wells Fargo during this time period.

As to #2:

On the "Timeline" document above, investments performed at approximately \$1,000,000 below the benchmark under Splonskowski. Of this, about \$130,000 was Morton's from our shared detention center bond account. Another \$75,000 was because we had to sell our portfolio at BND to buy a new portfolio with the correct maturities to pay off our bond.

So realistically, I would say banks benefitted to the tune of \$815,000 since April 1, 2023.

I hope that helps.

Please let me know if you have any questions about the attached.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

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**From:** curt [REDACTED]  
**Sent:** Thursday, April 3, 2025 11:46 AM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** BC Investment Funds - Bank Locations Managed by BC Auditor  
**Importance:** High

You don't often get email from [curt@envisionnrg.com](mailto:curt@envisionnrg.com). [Learn why this is important](#)

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Good Morning Mr. Jacobs,

I am inquiring about the above-referenced subject.

Can you please quickly tell me:

1. what are the Bank names where the BC Auditor has left Investment Funds sit in "minimal earning accounts" versus investing in higher interest earning accounts/instruments (i.e., US Treasuries)?  
Specifically, I want to know: what Banks "benefitted financially" from BC Auditor Splonskowski's lack of action and timeliness in the Investing/management of BC's cash funds?
2. And without doing any additional work, I would like to know what has been that benefit to those bnaks since April 1, 2023 to-date (or conversely, the lost opportunity earnings/costs to BC taxpayers? I don't need it by bank but aggregate approximate numbers is fine.

Respectfully,

Curtis Jundt



**From:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Sent:** Wednesday, March 26, 2025 1:35 PM  
**To:** Bitner, Brian <bccbitner@nd.gov>; Bakken, Steven <BCCBAKKEN@nd.gov>  
**Cc:** Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** CenCom Cash Management Timeline

Good afternoon,

Back in November Leigh and I worked with the Auditor's office and the Director of CenCom to get some of the cash in the CenCom fund invested. You can see in the "Investment Discussion" pdf that this process took some time and 20 emails. One of the investments that was made was a CD purchased maturing on March 22<sup>nd</sup> to provide cash flow for our annual CenCom building lease payment.

The Auditor's office received the invoice for the CenCom building lease and entered the payment into our accounting software on March 14<sup>th</sup>. That check (presumably mailed on March 18<sup>th</sup> after it was approved by the commission on March 17<sup>th</sup>) cleared Wells Fargo on March 21<sup>st</sup>, **1 day** before the CD purchased to fund this payment matured, **4 days** before funds from the CD were deposited into Wells Fargo to cover the payment, and **40 days** before the payment was due.

Paying this invoice both before the funds were available from the maturity of the CD and before the due date of the invoice caused multiple issues. The first issue is that when the check cleared, the CenCom fund only had \$304,646.66 in cash, which was not enough to cover the \$402,460.93 check. The remaining \$97,814.27 was covered by cash from other funds held in the Wells Fargo operating account. The second issue is that by paying the invoice 40 days before the due date, the CenCom fund lost the opportunity to earn an additional \$1,764 in interest.

**Below is a timeline of all the events mentioned above.**

**11-18-2024:** Auditor Splonskowski sends an email (attached) to CenCom Director Dannenfelzer requesting advice on a maturing CD in the CenCom fund.

**11-19-2024 – 11-27-2024:** An email discussion takes place (attached) between Auditor Splonskowski, Deputy Auditor Caya, Finance Director Jacobs, and me regarding the investment of CenCom funds. One of my recommendations is to purchase an investment that matures around the time of the annual CenCom building lease payment (typically March).

**11-22-2024:** A CD of \$460,000 is purchased maturing on 03/22/2025 to provide cash flow for the annual CenCom lease payment.

**12-03-2024:** Treasuries are purchased at BND leaving \$53,950.16 in cash in the CenCom fund.

**03-10-2025:** The quarterly transfer of 911 fees to the CenCom fund is completed. The Q4 transfer is \$250,696.50 bringing the Cen Com fund's cash balance up to \$304,646.66.

**03-14-2025:** The CenCom annual building lease invoice (attached) of \$402,460.93, due 04/30/2025, is entered into the accounting software.

**03-17-2025:** The payment for the CenCom building lease invoice is approved at the Burleigh County Commission Meeting.

**03-21-2025:** A check covering multiple invoices, including payment for the CenCom lease invoice, clears the County's Wells Fargo Operating account (attached). This transaction brings the CenCom fund's cash balance down to negative -\$97,814.27. This negative cash balance is essentially a loan from the General Fund.

**03-22-2025:** The CD purchased on 11-22-2024 matures. It is unclear where these funds were held upon maturity of the CD.

**03-25-2025:** \$150,000 of the matured CD funds are deposited into Wells Fargo via check (attached), the remaining amount is reinvested into a new CD. This brings the cash balance in the CenCom fund up to positive \$52,185.73. This deposit "paid back" the \$97,814.27 loan from the General Fund.

**04-30-2025:** This was the due date of the CenCom annual lease. If interest rates hold steady around 4% and we had waited to send the check until this date, the CenCom fund could have earned an additional \$1,764 in interest.

Please let me know if you have any questions.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

## Schmidt, Taylor

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**From:** Mike Dannenfelzer <mdannenfelzer@bismarcknd.gov>  
**Sent:** Monday, November 18, 2024 4:29 PM  
**To:** Splonskowski, Mark D.  
**Cc:** Jacobs, Leigh; Schmidt, Taylor; Caya, Brandi M.; Splonskowski, Mark D.  
**Subject:** RE: Invested funds

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Mark,

The only funds that need to remain available would be the lease for 2024 (figure \$500,000), which I don't believe the City would have billed yet. It's not \$500k but off the top of my head that would make sure the 911 share is covered.

Other than that, it just depends on what is left but maybe leave \$200,000 in cash and the remainder could be reinvested. That would protect us if we had to do something on an urgent basis on the building (ex. carpet or other repairs).

Mike

**Michael Dannenfelzer**  
Communications Director



Central Dakota Communications Center (CenCom)  
4200 Coleman St | Bismarck | ND | 58503  
T: 701.255.5200  
Website: [bismarcknd.gov/24/](http://bismarcknd.gov/24/)

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**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Monday, November 18, 2024 4:04 PM  
**To:** Mike Dannenfelzer <mdannenfelzer@bismarcknd.gov>

**Cc:** Jacobs, Leigh <ljacobs@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>; Mark Splonkowski <msplonskowski@nd.gov>

**Subject:** Invested funds

**CAUTION: \*\*\*External Email - Use caution clicking links or opening attachments\*\*\***

Good evening Mr. Dannenfelzer, there is an investment that will be maturing in the CenCom Building fund 2911 this week. I need to know the liquidity needs of these funds before reinvesting them. Please let me know your needs regarding this fund as soon as possible. Thank you.

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

## Schmidt, Taylor

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**From:** Schmidt, Taylor  
**Sent:** Wednesday, November 27, 2024 9:56 AM  
**To:** Caya, Brandi M.; Jacobs, Leigh  
**Cc:** Splonskowski, Mark D.  
**Subject:** RE: Investment Recommendation: CenCom CD

Here's a quick comparison:

6 Month Comparison		
	FIBT	BND
Rate	4.25%	4.45%
Investment	300,000.00	300,000.00
Interest Earned	6,375.00	6,675.00
Fees (Worst Case)	-	(150.00)
Net Interest	6,375.00	<b>6,525.00</b>
Effective Rate	4.25%	<b>4.35%</b>

6 Month Comparison		
	FIBT	BND
Rate	4.25%	4.45%
Investment	300,000.00	300,000.00
Interest Earned	6,375.00	6,675.00
Fees (Likely)	-	(20.00)
Net Interest	6,375.00	<b>6,655.00</b>
Effective Rate	4.25%	<b>4.44%</b>

The top table assumes the worst case, that we pay \$150 in fees on a single 6-month treasury.

The bottom table assumes a more likely fee scenario based on Kristopher's email below and the assumption that the county would hold multiple treasuries at BND and allocate the monthly fee to each treasury.

**In either case it seems to me that the treasury would provide the better return.**



## RE: Burleigh County Treasury Purchases



Schmidt, Taylor

To ● Ahmann, Kristopher G.

Cc ● Carlisle, Jonas S.



Mon 5:04 PM

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**From:** Ahmann, Kristopher G. <[kahmann@nd.gov](mailto:kahmann@nd.gov)>

**Sent:** Monday, November 25, 2024 4:08 PM

**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Cc:** Carlisle, Jonas S. <[jcarlisle@nd.gov](mailto:jcarlisle@nd.gov)>

**Subject:** RE: Burleigh County Treasury Purchases

Good afternoon Taylor,

I apologize for the delay. Burleigh would have to open a new safekeeping account (as all the others are trust related), and fill out the required forms and paperwork. How much is Burleigh looking to invest in this potential account?

Safekeeping and other associated fees at BND would be a monthly account maintenance fee, a holding fee (per security fee), and transactional fee (interest payments, maturity, etc).

For example, if you held one Treasury security it would be roughly \$105 annually. Two securities would be about \$120, \$135 for three, so on and so forth.

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

(701) 712-8354

[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

316 N 5<sup>th</sup> St Ste 104

Bismarck, ND 58501

[www.burleigh.gov](http://www.burleigh.gov)

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**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Sent:** Wednesday, November 27, 2024 9:34 AM

**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** RE: Investment Recommendation: CenCom CD

In his email it indicates that they “have safekeeping fees that would apply, monthly account maintenance (flat monthly fee), holding fee (per security charge), and transactional fees (interest payments, maturities, etc).”

I have never reached out for Treasury rates and terms in the past as the previous Deputy Auditor/Treasurer had not trained me in on these nor had she invested funds in these types of accounts during her time so there is a lack of

knowledge on how these work on my side. Therefore, I have not calculated estimated earnings on a CD compared to a Treasury. Would this be something your department could assist me with?

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

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**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Wednesday, November 27, 2024 9:13 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Good morning,

Did Kristopher mention any additional fees at BND other than the \$100-150 mentioned in his email? I know that we are also discussing creating an account at BND to invest sales tax proceeds, so any monthly fees would most likely be "spread out" over multiple investments.

To me it seems that even if we assumed there was a \$150 annual fee for each investment, we would still get a better rate of return on treasuries vs CDs.

**Have you calculated our estimated earnings in a CD and compared them to the earnings from a US treasury at BND after fees are deducted?**

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

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**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Tuesday, November 26, 2024 4:51 PM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Received a respond from Kris at BND. See attachment.

To me it sounds like there are a lot of 'other fees' that would be charged for an account with BND and would not get the best rate of return on our investments. Thoughts?

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

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**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Friday, November 22, 2024 3:28 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

The email I attached in the previous email is the only contact I received from BND. None of my questions were answered. I sent them a follow up, but I haven't heard anything yet. Based on his mention of already working with you, I wasn't sure if he had given you any details yet.

I think Bravera is the priority for this afternoon. I doubt BND can get us everything we need in time to make an informed decision on the other investments. If they do, I would recommend investing the rest in whatever is the highest yield for the previously discussed terms.

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

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**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Friday, November 22, 2024 3:14 PM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD  
**Importance:** High

Leigh's email below stated:

**'We will reach out to BND and follow up with what we learn.'**

Sorry, I was under the impression he was reaching out to them and would circle back.

Yes – the attached email is the same – it got lost in my inbox as there are so many emails it is hard to keep up. I will respond to Kristopher.

I had already taken the funds out and deposited them immediately into the Wells Fargo account to avoid any missed interest earned while this was being finalized. I can reach out to Bravera and see if I can get a CD opened today. If so, how much? The \$460,000?

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

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**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Friday, November 22, 2024 2:22 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Kristopher did respond to me and gave me the impression that he was already working with you on this issue. Were you able to iron out any of the details?

The issue we're running into is that we may not have enough time to get all the legwork needed to get these funds invested before end of day. We really only have two options:

1. Let the proceeds remain in FIBT until we've secured the best rates (BND or elsewhere)
2. Pick the highest yielding investment that we can purchase today.

There are risks in each scenario. I recommend at a minimum we wire the funds to Bravera and get the 4-month purchased ASAP (assuming we can secure the special rate).

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
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316 N 5<sup>th</sup> St Ste 104  
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[www.burleigh.gov](http://www.burleigh.gov)

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**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Friday, November 22, 2024 1:17 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Any updates from BND? I would like to reach out to the financial institutions to get these funds invested asap. Thank you.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

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**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Friday, November 22, 2024 10:18 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

**We will reach out to BND and follow up with what we learn.**

Per the BND Website, "Customers may request the purchase or sale of any government security through BND with corresponding safekeeping fees for deliveries waived.

BND offers this service to state agencies, communities and municipalities in North Dakota. If you have questions, [contact us](#) or call (701) 328-5678.”

The treasury rates we are getting from BND in the trust account are very, very close to the posted rate on the Treasury website. We are not paying anywhere close to 50 basis points like we are at Bremer. A 50 basis point fee might be rational if you are in the stock market making 12-15%, but it's an unacceptably high fee for investing in government bonds, which is pretty much all we can invest in per Century Code.

My only concern about BND is that we haven't been re-investing our funds timely, and their money market pays only a fraction of what we are getting in First International, so if we fail to promptly re-invest our funds at BND they will sit in a money market earning an order of magnitude less than they would earn under the same circumstances at First International.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

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**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Thursday, November 21, 2024 4:58 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

I 100% agree, things need to be modified for us to have more focus on our investments.

I have not reached out to Bravera yet as I wanted to make sure the suggested breakdown would be OK with the rest of the investment committee before proceeding.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Thursday, November 21, 2024 4:51 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

This is really something we should discuss in a timely manner rather than the day the investment matures. We had an investment meeting September 10<sup>th</sup> where the Finance Department tried to establish some policies to guide our investing decisions, but we didn't receive a response from the first action item we sent out.

**We should take whatever gets us the best rate net of fees.** If our accounting system is not adequate to handle investments (including fees) for an organization our size, then we need to address that. This is something I referenced in the August 5<sup>th</sup> Commission meeting, and the Commission voted to adopt a handful of recommendations which I've sent to the County Auditor twice but received no response. The recommendations included revamping the ledger, and I suspect our investment spreadsheet needs to be revamped, too.

#### **Have we reached out to Bravera about the 4month CD?**

BND would be a good choice if we can stay on top of our investments as they mature so they don't sit in the BND money market. We pay BND \$5,000 a year to manage about \$40m in our trust account, and we're paying Bremer \$10,000 to manage about \$2.7m.

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**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Thursday, November 21, 2024 4:21 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Just got a call from Kojo. There is a fee for this account as well.....it would be 50 basis points. Not sure how much that would come to for these investments and if we would still want to proceed. He did state that if we were to proceed, to have the fee come out of the existing account, but now that gets to be a balancing nightmare on accounting for it on our side.

Let me know asap and I will let Kojo know to start or stop doing any paperwork he has going.

*Brandi Caya  
Deputy Auditor/Treasurer  
Burleigh County  
(701) 222-6719*

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**From:** Caya, Brandi M.  
**Sent:** Thursday, November 21, 2024 4:10 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Good afternoon,

I have reached out to Bremer and they are able to open a separate account for the fundings. Kojo would be able to do paperwork and get that sent to us within the next few days.

Therefore, this is the possible breakdown for the \$1,100,000 (*rounded up*) in the 2911 GL account:

- \$40,000 (rounded up from \$36,000) to be left in the Cash GL (Reminder that this will increase again when the 4<sup>th</sup> quarter E911 entry is posted in January/February)
- \$460,000 to be invested in Bravera for 4 months at the 4.57% APY
- \$300,000 to be invested in Bremer for 7 months (maturing at 4.41% APY in June 2025)
- \$300,000 to be invested in Bremer for 10 months (maturing at 4.43% APY in September 2025)

Let me know if you think this is OK and I will proceed with getting these processed.

Thank you,

Brandi Caya  
Deputy Auditor/Treasurer  
Burleigh County  
(701) 222-6719

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Wednesday, November 20, 2024 4:09 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** RE: Investment Recommendation: CenCom CD

Good afternoon,

1. I would recommend against investing with BND outside the trust account because their money market yields so poorly, so we lose the buffer we have at other banks like FIL or WF if things don't get reinvested in a timely manner.
2. It appears the 4month at Bravera is 4.57% which beats out the other CDs in the rates you provided and also beats the Yield to Maturity in Bremer's Treasury Ladder provided by Kojo which was 4.48% for March 2025
3. Kojo's quote doesn't have a six month maturity for Treasuries but the 7 month is 4.41% which beats the comparable CDs, the closest of which is 4.25% at FIL
4. Kojo's quote doesn't have a nine month maturity for Treasuries but the 10 month is 4.43% which beats the comparable CDs, the closest of which is 4.10% at Bravera

If we purchase Treasuries with Bremer, they should be held in a separate account, otherwise CenComm will get dragged into our Bremer fixed income portfolio.

**I think reading Taylor's email the recommendation would be a 4 month CD at Bravera and 6 & 9 month Treasuries at Bremer, if we can account for them separately from the fixed income portfolio**

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Wednesday, November 20, 2024 3:30 PM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Investment Recommendation: CenCom CD

I did reach out to BND and she stated that she had to get in contact with another team as her side is the bonds.

For Bravera, it is new money into their bank; not new customers.

The lease payment is received sometime in February or March and due before the end of March.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Sent:** Wednesday, November 20, 2024 2:36 PM

**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Investment Recommendation: CenCom CD

Brandi,

Looking at the quotes you attached, it appears that based on the treasury quotes Mark received yesterday from BND (attached) a 3-month treasury would pay a better rate than all the CDs except Bravera. **Is the Bravera rate for new money or only new customers?** For the 6- and 9-month terms it appears the treasury quotes from Bremer which you attached in your email are also better than all the CD rates expect maybe Wells Fargo. **Can Wells Fargo “lock-in” that estimate of 4.75% at 9 months?** The 4-month CD would mature around 03/21/2025. **Would that timing work? When is the lease payment due?**

**Ultimately, we recommend following the investment policy. Assuming we are safely diversified, and meeting liquidity needs we should choose whatever investment has the maximum yield.**

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Sent:** Wednesday, November 20, 2024 11:31 AM

**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Investment Recommendation: CenCom CD

All,



Attached you will find the investment options for the cd that is to mature on the 21<sup>st</sup> as well as Bremer Bank's rates. I have never reached out for Treasury investments before so I am unsure of how this all works if we were to go with those.

Let me know what everyone's thoughts are and I will take action.

Thank you,

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Tuesday, November 19, 2024 11:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Subject:** Investment Recommendation: CenCom CD

Mark,

Once this CD matures fund 2911 will have a combined cash balance of roughly \$1.1M. I don't think we need to leave \$200K in cash in the fund, I would suggest closer to \$50K as there are regular deposits into this account. That would leave \$1,050,000 available to invest on 11/21.

I recommend the following three investments:

1. An investment for an amount and maturity closely matching the upcoming lease payment that we typically pay in March. The 2024 lease was \$400,636.81 due March 31 paid by us on March 14<sup>th</sup>. I am unsure of the lease amount or due date for 2025. We may have to settle for a 3-month term maturing around 2/21/2025
2. Half of remaining investable funds to be invested for 6 months.
3. The other half of the remaining investable funds to be invested for 12 months.

We never did establish bank/maturity/security type limits, but based on the information we have for this specific fund these investments should be a good balance of having cash available and locking in a return.

The next step would be to get bids for CD's matching these maturities. Treasuries may have a higher yield, but I'm not sure if we'd have time to set that up before this investment matures.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Mike Dannenfelzer <[mdannenfelzer@bismarcknd.gov](mailto:mdannenfelzer@bismarcknd.gov)>  
**Sent:** Monday, November 18, 2024 4:29 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

Cc: Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** RE: Invested funds

\*\*\*\*\* **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

Mark,

The only funds that need to remain available would be the lease for 2024 (figure \$500,000), which I don't believe the City would have billed yet. It's not \$500k but off the top of my head that would make sure the 911 share is covered.

Other than that, it just depends on what is left but maybe leave \$200,000 in cash and the remainder could be reinvested. That would protect us if we had to do something on an urgent basis on the building (ex. carpet or other repairs).

Mike

**Michael Dannenfelzer**

Communications Director



Central Dakota Communications Center (CenCom)

4200 Coleman St | Bismarck | ND | 58503

T: 701.255.5200

Website: [bismarcknd.gov/24/](http://bismarcknd.gov/24/)

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---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Monday, November 18, 2024 4:04 PM

**To:** Mike Dannenfelzer <[mdannenfelzer@bismarcknd.gov](mailto:mdannenfelzer@bismarcknd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Mark Splonkowski <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** Invested funds

**CAUTION:** \*\*\*External Email - Use caution clicking links or opening attachments\*\*\*

Good evening Mr. Dannenfelzer, there is an investment that will be maturing in the CenCom Building fund 2911 this week. I need to know the liquidity needs of these funds before reinvesting them. Please let me know your needs regarding this fund as soon as possible. Thank you.

*Mark Splonskowski*

Burleigh County Auditor/Treasurer



City of Bismarck  
PO Box 5503  
Bismarck, ND 58506  
(701) 355-1615

## INVOICE

DATE: 12/31/2024  
DUE DATE: 04/30/2025  
CUSTOMER NO: 132  
INVOICE NO: EMCC-2024-00000012  
DEPARTMENT: 145 Finance

BURLEIGH COUNTY AUDITOR  
X

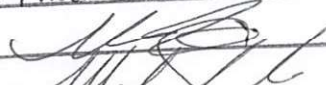
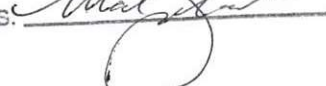
BISMARCK, ND 58501

Billing Inquiries:  
Central Dakota Comm. Center  
(701)222-6727

Description	Quantity	Unit Price	Total Price
Cen Comm Bldg Lease- 911 Facility Fee	2024 CEN COMM BLDG LEASE - 911 FACILITY FEE	1 \$402,460.9300	\$402,460.93

Invoice Total: \$402,460.93  
Prepaid Amount: -\$0.00

Balance Due: \$402,460.93

Date: 3-14-25  
GL No: 211.49120.00335  
Dept Head:   
Auditor/Treas: 

ENTERED  
3/14/25 HW



# Details

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Date/Time Printed: 03/26/2025 07:39 AM PT

Account Number 229232558

Account Name COUNTYBURLE

Check 132370

Amount 949,763.52 USD Debit

Status CHECK PAID

Posting Date 03/21/2025

As of Date 03/21/2025

Issue Date 03/14/2025

Payee CITY OF BISMARCK

Item Sequence 008589862063

Bank ID 091300010

Additional Item Details CHECK 0000041 +000000035698598



# Details

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Date/Time Printed:	03/26/2025 07:38 AM PT
Account Number	229232558
Account Name	COUNTYBURLE
Customer Reference	2040
Amount	150,000.00 USD Credit
1 Day Float	150,000.00
BAI Code	301
Transaction Type	COMMERCIAL DEPOSIT
Posting Date	03/25/2025
As of Date	03/25/2025
Item Sequence	002687684117
Bank ID	091300010
Additional Item Details	DEPOSIT 0000005 +000000019787053

**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Thursday, December 5, 2024 5:12 PM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Subject:** RE: Negative Cash in CenComm Fund

I agree with your email sent on August 29. This account has had a history of being in the red since 2020 but if we could make the adjustments below that would be a good way to begin fixing this issue. As discussed in other emails, CenCom should have enough funds in Money markets to cover the difference. If we could make the book entries to clean this up as well as move the funds into the correct accounts, we can at least stop the current issue. Then we can address the interest earnings.

---

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, December 5, 2024 4:54 PM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Subject:** FW: Negative Cash in CenComm Fund

Here is the email I sent. This relates directly to the accounting recommendations (cash management).

The comment that you have received no plans is factually not correct.

---

**From:** Jacobs, Leigh  
**Sent:** Thursday, August 29, 2024 4:06 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** Negative Cash in CenComm Fund

Good afternoon all,

Earlier this month the Commission voted to adopt a handful of recommendations that came out of our audit report. One of these is the correct the negative cash balance in funds. One of these funds

that we should fix this month is fund #2908 – CenComm. As of today, CenComm has a negative cash balance in Wells Fargo of \$996,734.71, meaning it is borrowing money from other funds. Most likely, the borrowed funds are coming from the general fund. I think the entry to fix this would be as follows:

	Dr	Cr
2908.11111.11110	\$996,734.71	
2908.11111.12110		\$996,734.71

(we should use the actual amount in fund 2908.11111.11110 when we make the adjusting entry)

	Dr	Cr
1001.11111.12110	\$996,734.71	
1001.11111.11110		\$996,734.71

The first entry will increase the CenComm Wells Fargo account to \$0 and reduce the investment account to approximately \$500,000 (I think the plan was originally to use the investment to pay for enhancements). The second entry will increase the Investment account in the General Fund and reduce the Wells Fargo account in the general fund. The investment is held at First International Bank. We can do a physical transfer to Wells Fargo if we wish, but this entry should fix things on the books.

The challenge with this situation is that we have a Joint Powers Agreement with the City that governs the fees we receive for CenComm. The JPA requires that all the interest earned on 911 fees stay in the CenComm fund. Since we have effectively loaned money to CenComm (fund 2908) from the General Fund while allowing the fund to keep all the interest on its investment, we are over-allocating investment income to this fund and away from the General Fund. On the other hand, we have positive cash in fund 2911 (our 2nd CenComm fund), and we are **not** allocating the interest earned in this fund to CenComm. So, we are both over-allocating in fund 2908 and under-allocating in fund 2911. Overall, I think we have overpaid CenComm; however, once we correct the negative cash in fund 2908, **we will be out of compliance with our joint powers agreement unless we start allocating interest from the sweep account to CenComm fund 2911**. The other option is to create a new bank account at Wells Fargo and keep our CenComm fund in a separate account.

I will look back at the last couple of years and see if we can estimate how much we have overpaid CenComm. It might be wise to ask Julie to weigh in on this and see if we can transfer the over-payment out of the CenComm enhancement fund to our general fund since this is basically just an accounting error. Please let me know if you have any questions.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353



**From:** [Caya, Brandi M.](#)  
**To:** [Splonskowski, Mark D.](#)  
**Subject:** RE: Fund 2908 Negative Cash Issue  
**Date:** Thursday, December 5, 2024 12:35:12 PM  
**Attachments:** [image001.png](#)

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For your review and changes:

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We finally had a chance to discuss the 2908 account; my apologies on the delay.

1. It looks like it has been negative for quite some time – since 2020 when they started paying for the software, radios, building, equipment, etc. There is somewhat of a trend that they are getting their cash back to positive but probably not for quite some time. Therefore, the thought process is to do journal entries every single month similar to the journal entry Taylor had created to rectify the negative cash balance monthly. However, to avoid doing the monthly entry constantly, thoughts on moving all of the allocated 2908 FIBT funds to the 2908 WF account? The 2908 investment FIBT account would be zero and the 2908 WF cash account would then be back to a positive amount and we would not have to worry about doing these monthly journal entries? We can then revisit investing funds in 2025 once the 2024 books are closed for this account.

2 & 3) We would appreciate it if you could provide us with the correcting journal entries to fix the interest earned allocations we placed to the 2908 account. I am unsure of how far back we can go as the prior years books are ‘closed’?

4) Allocation of the earned Sweep account is going to be a beast as there are all of the GL accounts in the WF account that make up this balance and how to allocate as well as how far back to go for corrections. Our thoughts are to take care of the 2908 account first and then tackle the Sweep Account interest and now bank fees as our next task list item?

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, December 5, 2024 8:29 AM  
**To:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Splonskowski, Mark D. <msplonskowski@nd.gov>; Caya, Brandi M. <brcaya@nd.gov>  
**Subject:** RE: Fund 2908 Negative Cash Issue

I’m not persuaded we need a legal opinion OR that we will get one if we ask, because this is really an accounting error, and we never received the last legal opinion we asked for about this issue (again, most likely because it’s an accounting issue not a legal issue)

However if we ask for a legal opinion or even some legal counsel, we should wait until we have done #3 below, because we will need to talk to the City about this and explain why we are transferring money out of the CenComm account (the over-allocation of interest). We may need to have some legal “backing” if it becomes contentious (I doubt it will).

I proposed a journal entry to fix this error on August 29, 2024. Since that date we have exchanged dozens of emails, had several meetings, and we have not succeeded in fixing a simple accounting error that is costing the county money – around \$3,000 per month. That’s nearly 100 days without fixing this issue.

The easiest way fix this is a book transfer to get the 2908 Cash account up to \$0. If/when it goes negative again, we would correct it again with a book transfer. Wash, rinse, repeat until fixed.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Thursday, December 5, 2024 7:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Good morning,

I think we're still looking for a consensus on the nature of the issue and how we are going to fix it long term. The goal of my original email in this chain is to stop over-allocating interest as of 10/01/2024. I suggested a journal entry to correct the negative cash without physically transferring money.

If we do a physical transfer today, that will stop the over-allocation of interest as of today.

Whether the over allocation stops 10/01/2024, 12/05/2024 or next year, we have multiple issues to address. Below are my recommendations:

1. Negative cash in fund 2908 needs to be corrected with a book transfer. I would recommend posting this entry with a date of 10/1 as October investment activity has not yet been recorded. **Finance can provide the entry to be posted by the Auditor's Office.**
2. The amount of investment income overallocation needs to be corrected for 01/01/2024-09/30/2024 (or whatever date negative cash is corrected). **Finance can calculate this over allocation and provide the entry to be posted by the Auditor's Office.**
3. We need to determine how far back into prior years we can correct his over-allocation.
4. We need to verify with the State's Attorney that any interest earned on the cash balance (most likely held in Sweep at WF) in 2908 needs to be allocated to fund 2908. We should also verify if we are allowed to allocate a portion of our checking account fees or charge a flat admin fee (2.5%). – **Our office can provide the monthly interest and fee allocation to be posted by the Auditor's Office.**

The first priority is the October investment activity. **Does your office plan to post the book transfer on 10/01/2024 to correct negative cash. If yes, I will send an entry and use the updated investment balance to calculate October's investment activity. If not, I will record the October investment activity with the incorrect overallocation.**

Thanks,

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

(701) 712-8354

[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

316 N 5<sup>th</sup> St Ste 104

Bismarck, ND 58501

[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Wednesday, December 4, 2024 4:11 PM

**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

Taylor,

Is there any further information you need before taking the referred to funds out o the Money Market and correcting this?

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Sent:** Friday, November 29, 2024 10:15 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

I believe all of it.

*Brandi Caya*

*Deputy Auditor/Treasurer*

*Burleigh County*

*(701) 222-6719*

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Friday, November 29, 2024 10:02 AM

**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

How much of that is in money markets?

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Sent:** Friday, November 29, 2024 10:01 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

There is a balance of 1.6M in the investment account of 2908.11111.12110

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Friday, November 29, 2024 9:25 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Can we verify how much in funds are in Money markets, and if there is sufficient amounts to correct this? If that is the case I'd like to get this cleared up asap.

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Friday, November 29, 2024 8:57 AM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Good morning,

Following up on this email. Taylor, Thank you for looking into this again and you are correct, it will be continuing to go negative as we just had to issue payment to the City of Bismarck for 3<sup>rd</sup> quarter and 3<sup>rd</sup> qtr collected funds from the City of Mandan to the City of Bismarck. The figure is now \$-937,733.81. **Would it be better for us to take all of the funds in the investment account and move it to cash due to this?** I am thinking these funds are just in the money market account and are liquid (not in a locked in CD) so we would not have to wait for a CD maturity date.

Thank you for bringing this up as I would like to have a detailed discussion of how to correctly allocate the Wells Fargo Sweep interest and how it should be spread throughout the accounts; as well as the monthly fee we will now be assessed due to having a zero balance in the PEG account.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Friday, November 22, 2024 11:54 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** Fund 2908 Negative Cash Issue  
**Importance:** High

Good morning, Brandi,

I'm working through October's investment activity and wanted to see if we could take another crack at

addressing the negative cash issue in CenCom.

As you can see below, fund 2908 currently has a negative cash balance of \$725,910.61. I recommend transferring \$725,910.61 from investments to WF cash to correct this issue. Based on the current investment balance in fund 2908, they receive 10% of the monthly interest in FIBT. The interest income for October in FIBT was \$66,872.84. This means using the current fund 2908 investment balance, fund 2908 would be credited with interest revenue of **\$6,687.28**. Their investment balance should be no more than \$893,443.10 which would only earn them **\$3,675.76**.

**If we don't address the negative cash, we will be crediting fund 2908 with \$3,011.52 of excess interest.**

County of Burleigh	
General Ledger - Cash Balances	Fiscal Year: 2024-2024
FUND / DEPARTMENT / ACCOUNT	Year To Date
2908 - COMMUNICATIONS CENTER	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$725,910.61)
12110 - INVESTMENTS	\$1,619,353.71
2908 - COMMUNICATIONS CENTER Total:	\$893,443.10
Grand Total:	\$893,443.10
End of Report	

I have attached an entry to temporarily fix the negative cash. This entry eliminates the need to physically transfer funds. The account will most likely go negative again in the future, but we can continue making entries as necessary.

**Ultimately the decision to post this entry is for your office to make. Please let me know your decision so I know how to proceed with recording the October Investment Activity.**

**Please note that if we correct this negative cash issue, we will most likely be out of compliance with our JPA for CenCom if we continue to not allocate Wells Fargo Sweep Interest.** Based on the Finance Department's understanding of the JPA, all interest earned on 911 fees needs to stay in fund 2908. Any interest earned on these funds in Wells Fargo should be credited to 2908. I've attached the email we sent the State's Attorney on 09/30 but we have not received a response. We would be happy to offer solutions to avoid being out of compliance, and to correct our previous compliance issues.

Please let me know if you have any questions,

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104

## TAX ATTRIBUTES 2024

REAL ESTATE+MH  
Tax at 95%

TOTAL

Updated mobile home and REA 07/25/14

colored cells are entered into IV

Delinquent Tax, Penalty and Interest, and Telecom Tax are all included in MH and RE tax @ 100% (MH and RE are at 95% due to early payment discounts)

TOTAL  
INCOME

4 GENERAL  
5 CANFIELD  
6 PHOENIX  
7 FLORENCE LAKE  
8 LYMAN  
9 RIVERVIEW  
0 BURNT CREEK  
1 LINCOLN  
2 COUNTY ROAD & BRIDGE Increased Inlieu and hmst by 125%  
3 FORT RICE  
4 JOB DEVELOPMENT  
5 COUNTY LIBRARY  
6 SENIOR CITIZENS  
7 VETERAN SERVICE  
8 COUNTY AGENT reduced Inlieu and hmst by 13%  
9 WEED CONTROL  
0 JAIL M & C

5,267,818

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**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, December 12, 2024 3:52 PM  
**To:** Bitner, Brian <bccbitner@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Subject:** FW: Fund 2908 Negative Cash Issue

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**From:** Jacobs, Leigh  
**Sent:** Thursday, December 12, 2024 3:49 PM  
**To:** Caya, Brandi M. <brcaya@nd.gov>; Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Mark & Brandi,

RE: the negative cash,

We recommended:

1. A book transfer to bring the negative cash in fund 2908 to \$0, done monthly along with the investment journal entries as long as necessary until the account stabilized above \$0 (this probably wouldn't take very many months)
2. Setting up a new bank account in Wells Fargo for the fund 2911 cash so we don't have to deal with the Sweep interest allocation going forward

OR

3. After Brandi suggested eliminating the entire balance in 2908's investments and transferring them to cash, we suggested doing this as a book transfer and back dating it to 10/1 so our investment spreadsheet agreed with the ledger

On 12/10/2024, we cashed out 2908's investment at First International and physically transferred it to Wells Fargo without back dating to 10/1/2024 as Finance had requested.

**At this point, you've refused to do anything that the Finance Department suggested to fix the negative cash issue in fund 2908.**

The activity in fund 2908 on December 10<sup>th</sup> has departed far from the Finance Department's original recommendations. It's not a good use of our taxpayer-funded salaries to make repeated recommendations that you refuse to adopt. **We will do our best to work with whatever decision you make re: the negative cash in 2908 and in other funds as attached.**

Regarding the Commission-adopted accounting recommendations, of which fixing negative cash is one, Mark indicated in an email dated 12/4/2024, *"I would definitely like to get these all addressed before the end of the year if possible."*

I've attached the cash and investment balances as of 12.12.2024. There is a total of \$4.9m in **negative** cash that needs to be adjusted. Of particular concern are funds with negative cash balances but a positive investment balance.

Please let us know when you've made the adjusting entries to fix the \$4.9m in remaining negative cash balances, and we can move on to the other items on the list of accounting recommendations the Commission adopted and that Auditor Splonskowski expressed his eagerness to address.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Wednesday, December 11, 2024 11:16 AM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Sorry for the delay on this...running tax statements has been a beast again this year (*in which I am almost done so Leigh and Taylor can work on the TLR and SPC reports*) and I wanted time to walk thru this entry to confirm it is being done properly.

I can do the journal entry Taylor had provided and date it as of 10/1/2024;

2908.11111.11110	Transfer Enhancement Fund FIBT to Wells Fargo	725,910.61	
2908.11111.12110	Transfer Enhancement Fund FIBT to Wells Fargo	-	725,910.61
1001.11111.12110	Transfer General Fund Wells Fargo to FIBT	725,910.61	
1001.11111.11110	Transfer General Fund Wells Fargo to FIBT	-	725,910.61

The balance after this entry in the 2908 account would be zero, however, there have been entries posted since 11/22/2024 when the above figure was obtained. Would you like me to do another journal entry in order to zero out this 2908 cash account balance as of 11/30/2024 with the journal date of 11/30/2024? This way Taylor can get both month's investment journal entries posted?

2908.11111.11110	Transfer Enhancement Fund FIBT to Wells Fargo	211,823.20	
2908.11111.12110	Transfer Enhancement Fund FIBT to Wells Fargo	-	211,823.20
1001.11111.12110	Transfer General Fund Wells Fargo to FIBT	211,823.20	
1001.11111.11110	Transfer General Fund Wells Fargo to FIBT	-	211,823.20



Once Taylor is able to post his entries, I am thinking I need to reverse the above journal entries back with a December date (so it does not alter the GL balances view for those months) and then the 1<sup>st</sup> International ACH transfer that I just did will take care of the 2908 investment account and no longer be on the books nor on the investment spreadsheet to account for.

Thoughts?

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Monday, December 9, 2024 2:17 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Brandi,

Are you back dating this transfer from CenComm to the General Fund to October 1 as per Taylor's email below? In that case this would show up as a book transfer from October 1 – the present.

In that case the ACH transfer mentioned below would need to hit the books in December as a transfer between general fund accounts rather than from CenComm to the General Fund.

If we don't back date the transfer from CenComm to the General Fund, then I think we **cannot** use the correct interest allocation for October and November because our interest journal entry wouldn't agree with the books, **meaning we will continue to overpay this fund through at least November, possibly part of December.**

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Monday, December 9, 2024 1:44 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Good afternoon,

We have decided to transfer the balance of the 2908 GL as of 11/18/2024 from First International Bank to Wells Fargo in the amount of \$1,619,353.71 today. This transfer from 1<sup>st</sup> Intl to WF will be an ACH transfer and will

be processed today/tomorrow (*depending on bank cut off times*) and credited to our WF account within a day or two. This will then display a zero balance in the investment GL 2908 account 2908.11111.12110 and clean up the negative cash balance in 2908.11111.11110. Taylor will be able to process his journal entry(s) based off of this transaction.

I agree, it would be great to have the 911 fees in a separate bank account, but it would have to do quarterly entries similar to how we handle the ARPA funds as our Operating Account is thru Wells Fargo and this is where checks are issued out of. Amounts would consist of the check(s) issued to the City of Bismarck, funds received from the City of Mandan as a paper check, and as well as our own GL allocations we do on a quarterly basis.

If you have any questions, please let me know.

Thank you,

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Sent:** Friday, December 6, 2024 1:43 PM

**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

To summarize the ideas being discussed:

1. A journal entry to bring CenComm fund 2908 cash balance to 0 with a book transfer from investments to the general fund
2. A journal entry to convert the entire First International money market to cash

Either one is probably fine. Please let us know once the entry is done so Taylor can do the investments journal entry for October.

We will look retrospectively at the interest issue to understand if the county has over or under paid on a historical basis (I think we have over paid). We will put a file together that makes sense to a third party because we may need to explain this if we transfer money out of that fund

Re: the Wells Fargo Sweep interest allocation. I think I suggested we create a new bank account for the 911 fees. That would solve the problem going forward

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Sent:** Thursday, December 5, 2024 2:29 PM

**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

We were able to discuss the 2908 account even further ; my apologizes on the delay.

1. It looks like it has been negative for quite some time – since 2020 when they started paying for the software, radios, building, equipment, etc. There is somewhat of a trend that they are getting their cash back to positive but probably not for quite some time. Therefore, the thought process is to do journal entries every single month similar to the journal entry Taylor had created to rectify the negative cash balance monthly. However, to avoid doing the monthly entry constantly, thoughts on moving all of the allocated 2908 FIBT funds to the 2908 WF account? The 2908 investment FIBT account would be zero and the 2908 WF cash account would then be back to a positive amount and we would not have to worry about doing these monthly journal entries? We can then revisit investing funds in 2025 once the 2024 books are closed for this account.

2 & 3) We would appreciate it if you could provide us with the correcting journal entries to fix the interest earned allocations we placed to the 2908 account. I am unsure of how far back we can go as the prior years books are 'closed'?

4) Allocation of the earned Sweep account is going to be a beast as there are all of the GL accounts in the WF account that make up this balance and how to allocate as well as how far back to go for corrections. Our thoughts are to take care of the 2908 account first and then tackle the Sweep Account interest and now bank fees as our next task list item?

*Brandi Caya  
Deputy Auditor/Treasurer  
Burleigh County  
(701) 222-6719*

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Sent:** Thursday, December 5, 2024 8:29 AM

**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>

**Subject:** RE: Fund 2908 Negative Cash Issue

I'm not persuaded we need a legal opinion OR that we will get one if we ask, because this is really an accounting error, and we never received the last legal opinion we asked for about this issue (again, most likely because it's an accounting issue not a legal issue)

However if we ask for a legal opinion or even some legal counsel, we should wait until we have done #3 below, because we will need to talk to the City about this and explain why we are transferring money out of the CenComm account (the over-allocation of interest). We may need to have some legal "backing" if it becomes contentious (I doubt it will).

I proposed a journal entry to fix this error on August 29, 2024. Since that date we have exchanged dozens of emails, had several meetings, and we have not succeeded in fixing a simple accounting error that is costing the county money

– around \$3,000 per month. That’s nearly 100 days without fixing this issue.

The easiest way fix this is a book transfer to get the 2908 Cash account up to \$0. If/when it goes negative again, we would correct it again with a book transfer. Wash, rinse, repeat until fixed.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Thursday, December 5, 2024 7:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Good morning,

I think we’re still looking for a consensus on the nature of the issue and how we are going to fix it long term. The goal of my original email in this chain is to stop over-allocating interest as of 10/01/2024. I suggested a journal entry to correct the negative cash without physically transferring money.

If we do a physical transfer today, that will stop the over-allocation of interest as of today.

Whether the over allocation stops 10/01/2024, 12/05/2024 or next year, we have multiple issues to address. Below are my recommendations:

1. Negative cash in fund 2908 needs to be corrected with a book transfer. I would recommend posting this entry with a date of 10/1 as October investment activity has not yet been recorded. **Finance can provide the entry to be posted by the Auditor’s Office.**
2. The amount of investment income overallocation needs to be corrected for 01/01/2024-09/30/2024 (or whatever date negative cash is corrected). **Finance can calculate this over allocation and provide the entry to be posted by the Auditor’s Office.**
3. We need to determine how far back into prior years we can correct his over-allocation.
4. We need to verify with the State’s Attorney that any interest earned on the cash balance (most likely held in Sweep at WF) in 2908 needs to be allocated to fund 2908. We should also verify if we are allowed to allocate a portion of our checking account fees or charge a flat admin fee (2.5%). – **Our office can provide the monthly interest and fee allocation to be posted by the Auditor’s Office.**

The first priority is the October investment activity. **Does your office plan to post the book transfer on 10/01/2024 to correct negative cash. If yes, I will send an entry and use the updated investment balance to calculate October’s investment activity. If not, I will record the October investment activity with the incorrect overallocation.**

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Wednesday, December 4, 2024 4:11 PM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Taylor,  
Is there any further information you need before taking the referred to funds out o the Money Market and correcting this?

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Friday, November 29, 2024 10:15 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

I believe all of it.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Friday, November 29, 2024 10:02 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

How much of that is in money markets?

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Friday, November 29, 2024 10:01 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

There is a balance of 1.6M in the investment account of 2908.11111.12110

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Friday, November 29, 2024 9:25 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Can we verify how much in funds are in Money markets, and if there is sufficient amounts to correct this? If that is the case I'd like to get this cleared up asap.

---

**From:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Sent:** Friday, November 29, 2024 8:57 AM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** RE: Fund 2908 Negative Cash Issue

Good morning,

Following up on this email. Taylor, Thank you for looking into this again and you are correct, it will be continuing to go negative as we just had to issue payment to the City of Bismarck for 3<sup>rd</sup> quarter and 3<sup>rd</sup> qtr collected funds from the City of Mandan to the City of Bismarck. The figure is now \$-937,733.81. **Would it be better for us to take all of the funds in the investment account and move it to cash due to this?** I am thinking these funds are just in the money market account and are liquid (not in a locked in CD) so we would not have to wait for a CD maturity date.

Thank you for bringing this up as I would like to have a detailed discussion of how to correctly allocate the Wells Fargo Sweep interest and how it should be spread throughout the accounts; as well as the monthly fee we will now be assessed due to having a zero balance in the PEG account.

*Brandi Caya*  
*Deputy Auditor/Treasurer*  
*Burleigh County*  
*(701) 222-6719*

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Friday, November 22, 2024 11:54 AM  
**To:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>  
**Cc:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Subject:** Fund 2908 Negative Cash Issue  
**Importance:** High

Good morning, Brandi,

I'm working through October's investment activity and wanted to see if we could take another crack at addressing the negative cash issue in CenCom.

As you can see below, fund 2908 currently has a negative cash balance of \$725,910.61. I recommend transferring \$725,910.61 from investments to WF cash to correct this issue. Based on the current investment balance in fund 2908, they receive 10% of the monthly interest in FIBT. The interest income for October in FIBT was \$66,872.84. This means using the current fund 2908 investment balance, fund 2908 would be credited with interest revenue of **\$6,687.28**. Their investment balance should be no more than \$893,443.10 which would only earn them **\$3,675.76**.

**If we don't address the negative cash, we will be crediting fund 2908 with \$3,011.52 of excess interest.**

County of Burleigh	
General Ledger - Cash Balances	Fiscal Year: 2024-2024
FUND / DEPARTMENT / ACCOUNT	Year To Date
2908 - COMMUNICATIONS CENTER	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$725,910.61)
12110 - INVESTMENTS	\$1,619,353.71
2908 - COMMUNICATION S CENTER Total:	\$893,443.10
Grand Total:	\$893,443.10
End of Report	

I have attached an entry to temporarily fix the negative cash. This entry eliminates the need to physically transfer funds. The account will most likely go negative again in the future, but we can continue making entries as necessary.

**Ultimately the decision to post this entry is for your office to make. Please let me know your decision so I know how to proceed with recording the October Investment Activity.**

**Please note that if we correct this negative cash issue, we will most likely be out of compliance with our JPA for CenCom if we continue to not allocate Wells Fargo Sweep Interest.** Based on the Finance Department's understanding of the JPA, all interest earned on 911 fees needs to stay in fund 2908. Any interest earned on these funds in Wells Fargo should be credited to 2908. I've attached the email we sent the State's Attorney on 09/30 but we have not received a response. We would be happy to offer solutions to avoid being out of compliance, and to correct our previous compliance issues.

Please let me know if you have any questions,

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

# County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
1001 - GENERAL FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$2,468,108.31
12110 - INVESTMENTS	\$16,226,109.87
1001 - GENERAL FUND Total:	\$18,694,218.18
2021 - AMERICAN RESCUE PLAN	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$2,469,709.20)
11117 - ARP - FIRST INTERNATIONAL BANK & TRUST	\$13,259,428.17
2021 - AMERICAN RESCUE PLAN Total:	\$10,789,718.97
2022 - LATCF GRANT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$100,000.00
2022 - LATCF GRANT Total:	\$100,000.00
2024 - CAPITAL IMPROVEMENT PLAN	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$86,867.35
2024 - CAPITAL IMPROVEMENT PLAN Total:	\$86,867.35
2107 - CANFIELD UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$31,709.02
2107 - CANFIELD UNORG TOWNSHIP Total:	\$31,709.02
2113 - PHOENIX UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$17,160.29
2113 - PHOENIX UNORG TOWNSHIP Total:	\$17,160.29
2114 - FLORENCE LAKE UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$121,860.64)
2114 - FLORENCE LAKE UNORG TOWNSHIP Total:	(\$121,860.64)
2118 - LYMAN UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$96,756.03
2118 - LYMAN UNORG TOWNSHIP Total:	\$96,756.03
2123 - RIVERVIEW UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$490,415.37)



# County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
2123 - RIVERVIEW UNORG TOWNSHIP Total:	(\$490,415.37)
2124 - BURNT CREEK UNORG TWP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$437,736.83
12110 - INVESTMENTS	\$113,191.84
2124 - BURNT CREEK UNORG TWP Total:	\$550,928.67
2138 - LINCOLN UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$493,631.30
12110 - INVESTMENTS	\$113,191.84
2138 - LINCOLN UNORG TOWNSHIP Total:	\$606,823.14
2140 - COUNTY ROAD & BRIDGE	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$2,472,688.47
12110 - INVESTMENTS	\$541,499.12
2140 - COUNTY ROAD & BRIDGE Total:	\$3,014,187.59
2151 - FORT RICE UNORG TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$190,070.78)
12110 - INVESTMENTS	\$113,191.84
2151 - FORT RICE UNORG TOWNSHIP Total:	(\$76,878.94)
2160 - SPEC ROAD & BRIDGE FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$1,610,419.56
12110 - INVESTMENTS	\$1,000,000.00
2160 - SPEC ROAD & BRIDGE FUND Total:	\$2,610,419.56
2210 - SOCIAL SERVICES	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$831,196.43
2210 - SOCIAL SERVICES Total:	\$831,196.43
2240 - NATIONAL OPIATE SETTLEMENT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$216,544.87
2240 - NATIONAL OPIATE SETTLEMENT Total:	\$216,544.87
2802 - JOB DEVELOPMENT AUTHORITY	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$9,502.53

# County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
2802 - JOB DEVELOPMENT AUTHORITY Total:	\$9,502.53
2902 - COUNTY LIBRARY	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$3,905.72
2902 - COUNTY LIBRARY Total:	\$3,905.72
2905 - SENIOR CITIZENS	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$364,337.50)
12110 - INVESTMENTS	\$875,108.03
2905 - SENIOR CITIZENS Total:	\$510,770.53
2908 - COMMUNICATIONS CENTER	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$681,631.90
2908 - COMMUNICATIONS CENTER Total:	\$681,631.90
2910 - EMERGENCY FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$136,156.45
12110 - INVESTMENTS	\$1,385,538.22
2910 - EMERGENCY FUND Total:	\$1,521,694.67
2911 - CENTRAL DAKOTA COMMUNICATIONS CENTER	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$53,950.16
12110 - INVESTMENTS	\$1,060,000.00
2911 - CENTRAL DAKOTA COMMUNICATIONS CENTER Total:	\$1,113,950.16
2913 - PROVIDENT BUILDING	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$499,214.39)
12110 - INVESTMENTS	\$1,518,239.21
2913 - PROVIDENT BUILDING Total:	\$1,019,024.82
2920 - VETERAN SERVICE	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$24,973.37
12110 - INVESTMENTS	\$162,337.61
2920 - VETERAN SERVICE Total:	\$187,310.98
2921 - MONUMENT DONATIONS	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$4,514.00

## County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
2921 - MONUMENT DONATIONS Total:	\$4,514.00
2960 - COUNTY AGENT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$89,931.94)
12110 - INVESTMENTS	\$269,427.29
2960 - COUNTY AGENT Total:	\$179,495.35
2970 - WEED CONTROL	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$247,758.53
12110 - INVESTMENTS	\$109,591.51
2970 - WEED CONTROL Total:	\$357,350.04
2980 - COUNTY PARK	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$127,463.34
12110 - INVESTMENTS	\$412,938.74
2980 - COUNTY PARK Total:	\$540,402.08
2982 - MISSOURI VALLEY COMPLEX	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$106,996.32
12110 - INVESTMENTS	\$5,536,360.56
2982 - MISSOURI VALLEY COMPLEX Total:	\$5,643,356.88
2985 - COUNTY JAIL MAINT & CONST	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$1,765,938.08
12110 - INVESTMENTS	\$1,131,917.97
2985 - COUNTY JAIL MAINT & CONST Total:	\$2,897,856.05
2986 - COUNTY PRESERVATION FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$248,467.09
12110 - INVESTMENTS	\$377,197.96
2986 - COUNTY PRESERVATION FUND Total:	\$625,665.05
2987 - K-9 PATROL PROGRAM	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$55,867.12
2987 - K-9 PATROL PROGRAM Total:	\$55,867.12
2988 - SHERIFF DRUG ASSET FORFEI	
11111 - ASSETS	

## County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
11110 - WELLS FARGO OPERATING	\$147,036.02
2988 - SHERIFF DRUG ASSET FORFEI Total:	\$147,036.02
2989 - ST ATT DRUG ASSET FORFEIT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$178,649.79
12110 - INVESTMENTS	\$269,731.67
2989 - ST ATT DRUG ASSET FORFEIT Total:	\$448,381.46
2990 - HAZARDOUS CHEMI PREPARDNS	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$23,613.16
2990 - HAZARDOUS CHEMI PREPARDNS Total:	\$23,613.16
2992 - SOBRIETY 24/7 PROGRAM	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$133,377.16
2992 - SOBRIETY 24/7 PROGRAM Total:	\$133,377.16
2993 - DETENTION COMMISSARY	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$553,660.94
2993 - DETENTION COMMISSARY Total:	\$553,660.94
2994 - BURLEIGH CO PARKING FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$21,772.23)
2994 - BURLEIGH CO PARKING FUND Total:	(\$21,772.23)
4140 - MCKENZIE HAUL ROAD	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$442,625.22)
4140 - MCKENZIE HAUL ROAD Total:	(\$442,625.22)
5101 - SPECIAL ASSESSMENT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$34,971.30
5101 - SPECIAL ASSESSMENT Total:	\$34,971.30
5152 - PRAIRIE PINES PAVING	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$18,480.25
5152 - PRAIRIE PINES PAVING Total:	\$18,480.25
5154 - SECLUDED ACRES 2ND & 3RD	
11111 - ASSETS	

# County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
11110 - WELLS FARGO OPERATING	\$14,493.59
5154 - SECLUDED ACRES 2ND & 3RD Total:	\$14,493.59
5155 - SECLUDED ACRES WEST	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$10,679.40
5155 - SECLUDED ACRES WEST Total:	\$10,679.40
5158 - SKYLINE ESTATES	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$67,941.70
5158 - SKYLINE ESTATES Total:	\$67,941.70
5159 - SPIRITWOOD ESTATES	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$148,736.94
5159 - SPIRITWOOD ESTATES Total:	\$148,736.94
5160 - HIGH PLAINS COUNTRY ESTATES & 2ND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$46,431.82
5160 - HIGH PLAINS COUNTRY ESTATES & 2ND Total:	\$46,431.82
5161 - METRO INDUSTRIAL PARK 1ST & 2ND REPLATS	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$73,031.28
5161 - METRO INDUSTRIAL PARK 1ST & 2ND REPLATS Total:	\$73,031.28
5162 - IMPERIAL VALLEY SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$24,329.01
5162 - IMPERIAL VALLEY SUBDIVISION Total:	\$24,329.01
5163 - CRESTED BUTTE SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$129,951.15
5163 - CRESTED BUTTE SUBDIVISION Total:	\$129,951.15
5164 - IMPERIAL VALLEY	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$5,693.10
5164 - IMPERIAL VALLEY Total:	\$5,693.10
5165 - RAY MAR 3RD SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$10,489.66

## County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
5165 - RAY MAR 3RD SUBDIVISION Total:	\$10,489.66
5166 - TWIN BUTTES SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$51,908.27
5166 - TWIN BUTTES SUBDIVISION Total:	\$51,908.27
5167 - VISTA SOUTH/PT OF SOUTHRIDGE SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$58,779.75
5167 - VISTA SOUTH/PT OF SOUTHRIDGE SUBDIVISION Total:	\$58,779.75
5168 - RUSTIC ACRES 1ST REPLAT SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$19,655.59
5168 - RUSTIC ACRES 1ST REPLAT SUBDIVISION Total:	\$19,655.59
5169 - HAY CREEK PINES	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$105,825.72
5169 - HAY CREEK PINES Total:	\$105,825.72
5170 - SABOT'S/EDEN'S/OAKLAND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$7,307.57
5170 - SABOT'S/EDEN'S/OAKLAND Total:	\$7,307.57
5171 - RIVERSIDE 2ND VALCOR	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$22,523.38
5171 - RIVERSIDE 2ND VALCOR Total:	\$22,523.38
5172 - GRANDE PRAIRIE 4TH	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$8,293.89
5172 - GRANDE PRAIRIE 4TH Total:	\$8,293.89
5173 - COUNTRY CREEK 1ST-5TH SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$31,382.88)
5173 - COUNTRY CREEK 1ST-5TH SUBDIVISION Total:	(\$31,382.88)
5174 - OLIVE TREE SUBDIVISION	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$10,053.36
5174 - OLIVE TREE SUBDIVISION Total:	\$10,053.36

## County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
5175 - TOWNE & COUNTRY/MORGAN COUNTRY EST	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$59,367.51
5175 - TOWNE & COUNTRY/MORGAN COUNTRY EST Total:	\$59,367.51
5176 - FALCONER ESTATES	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$161,266.47)
5176 - FALCONER ESTATES Total:	(\$161,266.47)
6001 - HEALTH INSURANCE	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$849,609.39
11116 - BCBS HEALTH INSURANCE ACCOUNT	\$472,255.35
12110 - INVESTMENTS	\$1,700,000.00
6001 - HEALTH INSURANCE Total:	\$3,021,864.74
8004 - STATES ATTY WITNESS FEES	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$7,982.95)
8004 - STATES ATTY WITNESS FEES Total:	(\$7,982.95)
8006 - WATER RESOURCE MANAGEMENT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$1,230.81
8006 - WATER RESOURCE MANAGEMENT Total:	\$1,230.81
8013 - STATE MARRIAGE LICENSE	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$420.00
8013 - STATE MARRIAGE LICENSE Total:	\$420.00
8031 - MOBILE HOME TAX	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$18.44
8031 - MOBILE HOME TAX Total:	\$18.44
8033 - TAX ESTIMATE	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$54.78
8033 - TAX ESTIMATE Total:	\$54.78
8037 - 24/7 SOBRIETY PROGRAM	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$21,634.00

## County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
8037 - 24/7 SOBRIETY PROGRAM Total:	\$21,634.00
8040 - FLEXIBLE BENEFITS	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$58,104.05
8040 - FLEXIBLE BENEFITS Total:	\$58,104.05
8047 - NDAC MARRIAGE LICENSE	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$459.00
8047 - NDAC MARRIAGE LICENSE Total:	\$459.00
8050 - FLOWERS FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$6,071.78
8050 - FLOWERS FUND Total:	\$6,071.78
8052 - PAYROLL FUND	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$1,649,035.19
8052 - PAYROLL FUND Total:	\$1,649,035.19
8066 - VISION ZERO	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$14,942.44)
8066 - VISION ZERO Total:	(\$14,942.44)
8067 - LAW ENFORCEMENT BLOCK GRT	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	(\$15,822.50)
8067 - LAW ENFORCEMENT BLOCK GRT Total:	(\$15,822.50)
8329 - MCCLUSKY GOODRICH SCH DIST	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$2.32
8329 - MCCLUSKY GOODRICH SCH DIST Total:	\$2.32
8433 - MENOKEN TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$12.63
8433 - MENOKEN TOWNSHIP Total:	\$12.63
8435 - STERLING TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$35.96
8435 - STERLING TOWNSHIP Total:	\$35.96



# County of Burleigh

## General Ledger - Cash Balances

Fiscal Year: 2024-2024 From Date:12/1/2024 To Date:12/31/2024

FUND / DEPARTMENT / ACCOUNT	Year To Date
8439 - APPLE CREEK TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$31.49
8439 - APPLE CREEK TOWNSHIP Total:	\$31.49
8440 - BOYD TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$180.09
8440 - BOYD TOWNSHIP Total:	\$180.09
8445 - MISSOURI TOWNSHIP	
11111 - ASSETS	
11110 - WELLS FARGO OPERATING	\$7.32
8445 - MISSOURI TOWNSHIP Total:	\$7.32
Grand Total:	\$58,608,053.92

End of Report

# BURLEIGH COUNTY

## HUMAN RESOURCES DEPARTMENT

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**PAMELA J BINDER, SPHR, SHRM-SCP**  
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:  
MEGAN MARTIN  
DESIREE HILBORN  
LINDSAY BROWER

April 14, 2025

Mr. Zachary Greenberg  
Labor Commissioner  
North Dakota Department of Labor and Human Rights  
600 East Boulevard Ave Dept. 406  
Bismarck, ND 58505-0340

RE: Burleigh County Auditor/Treasurer Conduct

Dear Mr. Greenberg,

I am writing this letter to you as I do not know what else I can do in this situation. I would like to make a complaint regarding harassment and retaliation by Burleigh County Auditor/Treasurer Mark Splonskowski. I do not believe that this falls under the personal Human Rights Complaint process. The reason that I do not believe that this falls under the personal Human Rights Complaint process is that the harassment and retaliation is due to the duties that I must perform as the Burleigh County Human Resource Director. I will explain the progression of incidents below:

- On October 17, 2025, as part of my position duties, I had a conversation with the former Elections Coordinator Lisa Hart. During this conversation Lisa Hart told me some things that alarmed me. Based on the comments that I heard from Lisa Hart, and a pattern of past behavior with another former employee, I created a Memo to File. The Memo to File talks about my concerns of a hostile workplace. I never said that Lisa Hart claimed the Auditor/Treasurer's office was a hostile workplace. I concluded my Memo to File with the recommendation to perform a hostile work environment investigation within the Auditor's office.
- I report directly to the five member Burleigh County Commission. As these five individuals are my managers, I sent the Memo To File that I created regarding my conversation with Lisa Hart to each of them via email. I recommended initiating a formal workplace investigation. As the Auditor/Treasurer is an elected position and my position is appointed, I felt that I needed Commission approval to move ahead with this workplace investigation. I also sent the Memo to File to States Attorney Julie Lawyer as our legal counsel for Burleigh County.
- States Attorney Julie Lawyer did contact me and asked if I wanted her investigator to investigate the hostile workplace environment concerns. The investigator Rob Fontenot was already assigned to investigate a potential Hatch Act violation in the Auditor's office. I agreed to have Investigator Rob Fontenot perform the preliminary investigation. State's Attorney Julie Lawyer provided my October 17, 2025 Memo To File to Rob Fontenot to use

# BURLEIGH COUNTY

## HUMAN RESOURCES DEPARTMENT

---

**PAMELA J BINDER, SPHR, SHRM-SCP**  
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:  
MEGAN MARTIN  
DESIREE HILBORN  
LINDSAY BROWER

in his investigation. I also provided to both States Attorney Julie Lawyer and Investigator Rob Fontenot an additional letter from another former employee in the Auditor's office that expressed her concerns about the Auditor's office being a hostile work environment. I believed that there was a pattern of a hostile work environment enough to perform a formal investigation.

- On October 22, 2024 I received a telephone call from Auditor/Treasurer Mark Splonskowski. He was on his speaker phone, in his office, and had Deputy Auditor Treasurer Brandi Caya in his office. There was another person, I believe it was Deputy Auditor Tax Equalization Director Alan Vietmeier. The only person that talked was Auditor/Treasurer Mark Splonskowski. Auditor/Treasurer Mark Splonskowski asked me if I had given a report to Rob. I told him that Rob had the report. (I was assuming Auditor/Treasurer Mark Splonskowski meant Rob Fontenot). After there was a clarification that it was Rob Port, a reporter for the Fargo Forum, I said that I did not give the report to him. It was given to Rob Fontenot in States Attorney Julie Lawyer's office. He proceeded to demand that I send him a copy of my report. I explained to Auditor/Treasurer Mark Splonskowski that because I had not released the report and there is an active investigation in process, I would need to contact States Attorney Julie Lawyer to get her opinion on whether it should be released.
- I contacted States Attorney Julie Lawyer and discussed the release of my report. States Attorney Julie Lawyer told me that the report; although accidentally released to Rob Port; was still part of an active investigation, and as such; cannot be released to anyone else at this time.
- I responded to Auditor/Treasurer Mark Splonskowski that per States Attorney Julie Lawyer's legal opinion, I cannot release my report to him as it is exempt under the Open Records law because it is part of an active investigation.
- I was devastated by the release of my confidential report, and I was very concerned with the impact this would have on Lisa Hart. I did contact my Portfolio Holder Brian Bitner to inform him of the breached report. Brian Bitner informed me that he was the person who released the report. We had a conversation regarding the Open Records law and that Commissioners cannot release reports that they did not create as it is not their records. Commissioner Brian Bitner was under the assumption that everything they received was part of open records and when Rob Port called him and wanted some information on the resignation of Elections Coordinator Lisa Hart, he thought that he was obligated to provide the report as part of the open records law. I explained that we have a formal process for Open Records requests and that some information should have been redacted prior to the release of the report.
- On October 23, 2024 I received an email chain from Auditor/Treasurer Mark Splonskowski making accusations that I violated the exempt records law and their needed to be ramifications for the release of this report. I responded to Auditor/Treasurer Mark Splonskowski on October 23, 2024 at 10:54AM that I did not release any records and I did not violate any law on my part.

# BURLEIGH COUNTY

## HUMAN RESOURCES DEPARTMENT

---

PAMELA J BINDER, SPHR, SHRM-SCP  
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:  
MEGAN MARTIN  
DESIREE HILBORN  
LINDSAY BROWER

- Auditor/Treasurer Mark Splonskowski sent an email string to States Attorney Julie Lawyer and the email string included emails back and forth between Auditor/Treasurer Mark Splonskowski and Rob Port. Auditor/Treasurer Mark Splonskowski had requested the report from Rob Port and Rob Port gave him the report on October 22, 2024 at 2:51pm. Auditor/Treasurer Mark Splonskowski sent me another request for the report on October 22, 2024 at 4:09pm.
- Auditor/Treasurer Mark Splonskowski already had my report in his possession as he received it from Rob Port on October 22, 2024. Rob Port even tells Auditor/Treasurer Mark Splonskowski that he received the report from Commissioner Brian Bitner. Even though Auditor/Treasurer Mark Splonskowski knew all along who sent the report, he still accused me of violating the law and demanded an investigation into me and my HR department for this violation.
- The email string also includes an email response from States Attorney Julie Lawyer where she responds to Auditor/Treasurer Mark Splonskowski asking what is the legal violation that was committed by the HR department. There is another email from States Attorney Julie Lawyer to Auditor/Treasurer Mark Splonskowski telling him his emails aren't appropriate. Especially given that Mr. Port told you he received it from Commissioner Bitner.
- I felt that he was trying to retaliate against me for creating the report. I have created other reports on incidents within Burleigh County and if the investigation does not warrant any concerns, the investigation is closed, and nothing comes of the report. This was the first time my investigation report has been shared publicly. I feel that because of the public release of my report, Auditor/Treasurer Mark Splonskowski is retaliating against me to try and get me terminated from the HR Director position.
- After the November 14, 2024 Executive Assistant -Elections Coordinator interviews Auditor/Treasurer Mark Splonskowski came into the HR Department and requested to talk with HR Assistant Desiree Hilborn. HR Assistant Desiree Hilborn ushered Auditor/Treasurer Mark Splonskowski into her office. Auditor/Treasurer Mark Splonskowski shut the door after he went into HR Assistant Desiree Hilborn's office. He proceeded to slide a folded sheet of paper over the desk to her. HR Assistant Desiree Hilborn unfolded the piece of paper and read the contents. On the paper was a written complaint about me. HR Assistant Desiree Hilborn told Auditor/Treasurer Mark Splonskowski that she cannot accept a complaint about her direct manager. She consulted with me, and I told her to tell Auditor/Treasurer Mark Splonskowski that he needed to give the formal complaint to the Commissioners. You always go up in the Org Chart and not down. HR Assistant Desiree Hilborn was very intimidated that Auditor/Treasurer Mark Splonskowski would come to her and make a complaint against her manager. This gave HR Assistant Desiree Hilborn anxiety about the whole situation. On November 27, 2024 at 4:19pm Auditor/Treasurer Mark Splonskowski sent an email to my newest HR Assistant Lindsay Brower. He requested that she send him a grievance form. HR Assistant Lindsay Brower forwarded the email to HR Assistant Desiree Hilborn to process as HR Assistant Desiree Hilborn has more tenure in the HR Department. HR Assistant Desiree

# BURLEIGH COUNTY

## HUMAN RESOURCES DEPARTMENT

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**PAMELA J BINDER, SPHR, SHRM-SCP**  
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:  
MEGAN MARTIN  
DESIREE HILBORN  
LINDSAY BROWER

Hilborn sent the Grievance Form and Grievance Policy and Procedures to Auditor/Treasurer Mark Splonskowski. Auditor/Treasurer Mark Splonskowski sent the completed grievance form back to HR Assistant Desiree Hilborn and HR Assistant Desiree Hilborn informed Mark Splonskowski that per the grievance policy, this is not a grievable event as this process is part of the Recruitment policy.

- Auditor/Treasurer Mark Splonskowski completed a grievance form on me, the HR Director because he wanted to pick all of the members on the interview panel for the Deputy Auditor/Treasurer position that was currently open. Burleigh County's Recruitment Policy states "The Human Resources Team, in conjunction with the Department Head/Supervisor will determine the interview questions, composition of the interview panel and the date, time and place of interviews. Our past practice also allows the Commissioner that holds the portfolio of the department to sit on the interview panel if they request to do so. Commissioner Bitner and then Commissioner Bakken both asked to be on the interview panel as this position is important to the Finances of Burleigh County. Auditor/Treasurer Mark Splonskowski turned in his grievance form to Commissioner Wayne Munson. This was placed on the agenda for the Burleigh County Commission meeting on December 2, 2024. When the item came up on the agenda, Auditor/Treasurer Mark Splonskowski did not provide any copies of the grievance to the other four commissioners. He stated that he could read the contents of the grievance form out loud to the commissioners. This was during a public meeting that was being recorded. Commissioner Wayne Munson declined to allow Auditor/Treasurer Mark Splonskowski to continue with the grievance because Mark did not provide copies for each of the Commissioners to review prior to the Burleigh County Commission meeting. The Commissioners voted to table this item until the December 16, 2024 meeting. On December 10, 2024 at 8:21am Auditor/Treasurer Mark Splonskowski sent an email rescinding his grievance form and taking this off the December 16<sup>th</sup> Burleigh County Commission meeting agenda. I believe that Auditor/Treasurer Mark Splonskowski originally pushed the grievance on the HR department and myself to intimidate us. Two of my HR Assistants were very intimidated by Auditor/Treasurer Mark Splonskowski's accusations and behavior during this process.
- Starting February 5, 2025, I started receiving emails from Auditor/Treasurer Mark Splonskowski regarding sending W-2 forms versus 1099 forms to temporary election workers. This led to a series of email trails and discussion meetings regarding the temporary election workers and what tax form Burleigh County needs to provide to these temporary election workers. If Auditor/Treasurer Mark Splonskowski would have listened and taken notes in the February 22, 2024 meeting that we had regarding the process for paying the temporary election workers, he would have known that these thirty-two temporary election workers needed to be hired on as employees in the payroll system. Instead, he waited until after the 2024 payroll for Burleigh County had been closed and the 2024 W-2 reporting process had been completed within our payroll system to tell me that he needs the HR department to issue 2024 W-2 forms for these thirty-two temporary election workers. Both



# BURLEIGH COUNTY

## HUMAN RESOURCES DEPARTMENT

---

PAMELA J BINDER, SPHR, SHRM-SCP  
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:  
MEGAN MARTIN  
DESIREE HILBORN  
LINDSAY BROWER

my HR Assistant Megan Martin, who processes the payroll, and I told Auditor/Treasurer Mark Splonskowski repeatedly that we cannot issue 2024 W-2 forms for temporary election workers that were not hired and paid through the payroll system in 2024. I said that we do not have the appropriate forms completed within the required time limits to hire them as employees for 2024. These thirty-two temporary election workers were paid through the Accounts Payable process in the Auditor's office. The W9 form was completed by each temporary election worker, and they were treated as 1099 form employees. To be fair Auditor/Treasurer Mark Splonskowski was not the only person telling us that these temporary election workers needed to be provided W-2 forms for 2024. The difference is that the finance director did not try to pressure me into providing 2024 W-2 forms for these thirty-two employees. I repeatedly informed Auditor/Treasurer Mark Splonskowski that because we did not officially hire these temporary election workers and we did not have any payroll records for the temporary election workers; in my opinion issuing these thirty-two temporary election workers 2024 W-2 forms would be committing fraud. Auditor/Treasurer Mark Splonskowski then called my portfolio holder - Commissioner Brian Bitner and proceeded to tell him that I needed to be disciplined for refusing to help fix the 2024 W-2 forms for the temporary election workers. Commissioner Bitner called me and asked me for my explanation on this. I told him that in my opinion that would be committing fraud. After he heard my side of the conversation, Commissioner Bitner agreed with me and told me to do what I thought was correct as I know the labor laws better than he does.

- At the very ending of the March 17, 2025 Burleigh County Commission meeting the Commissioners addressed the temporary election workers situation and asked Mark Splonskowski to explain what happened. While up at the podium, Auditor/Treasurer Mark Splonskowski was blaming the HR department and myself for this mistake. I felt as though he was trying to have me take the blame for his mistakes. I did approach the podium and I told the Commissioners how the events happened. I felt as though I had to defend myself even though I did nothing wrong.
- On March 21, 2025 Auditor/Treasurer Mark Splonskowski was a guest on the KFYR Kafe with Daryl Lies and in this radio podcast, Auditor/Treasurer Mark Splonskowski blamed me for not doing my job. He stated that the HR Director should have been in charge of recruiting the temporary election workers. In North Dakota Century Code and in the ND Secretary Of State's Election Officer's Manual it clearly states that the County Auditor is in charge of recruiting temporary election workers because the County Auditor is in charge of the election process and can remove election workers if needed. Auditor/Treasurer Mark Splonskowski deliberately mislead Daryl Lies into thinking that I was not doing my job and that I was not qualified to be an HR Director. I have been in the Human Resources career field for approximately twenty-seven years most of those years have been at a Manager or Director level. I applied for the HR Director position and had to go through the normal hiring process. After I was offered the HR Director position, I had to be appointed by the Burleigh County Commission by majority vote. I believe that Auditor/Treasurer Mark Splonskowski

# BURLEIGH COUNTY

## HUMAN RESOURCES DEPARTMENT

---

PAMELA J BINDER, SPHR, SHRM-SCP  
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:  
MEGAN MARTIN  
DESIREE HILBORN  
LINDSAY BROWER

deliberately tried to slander my name and reputation in this public forum. I was never given a chance to defend myself and my reputation. Because of this, there are community members that truly believe that I am not qualified for the position of HR Director and have made accusations that I should be removed from my position. I feel that this is another incident in his campaign to retaliate against me and my HR Department.

I have the documents that backup everything that I have stated in this letter. What I am requesting from you is guidance on what my options are to stop this harassment and retaliation! Auditor/Treasurer Mark Splonskowski is an elected official and as such he feels that he is untouchable. This has caused him to intentionally break both Federal and North Dakota Department of Labor laws. He also thinks that he is right in trying to pressure me into what I truly feel is knowingly committing fraud. This act would be a violation of the HR Ethics code. I am an HR certified professional, and I refuse to compromise the HR ethics code.

I am just trying to do my job in the best and most professional way possible. My Human Resources Department employees are caught in the middle of these incidents, and they also feel fear of losing their jobs over this. I feel that my name and human resources reputation and career, along with my HR Assistants' careers, are in jeopardy because of the slanderous accusations on me and my department as retaliation from this elected official.

I need to know what I can do in this situation. Please let me know my options.

Sincerely,



Pamela J. Binder, MBA, SPHR, SHRM-SCP  
Burleigh County HR Director

**From:** [Splonskowski, Mark D.](#)  
**To:** [Binder, Pamela J.](#); [Lawyer, Julie A.](#)  
**Subject:** Lisa Resignation  
**Date:** Wednesday, October 23, 2024 12:10:36 PM  
**Attachments:** [Memo to File - Telephone Conversation with Lisa Hart.pdf](#)

---

Here is my communication with Rob Port and the information he sent me. Is this not your memo?

---

**From:** Rob Port <[robport@gmail.com](mailto:robport@gmail.com)>  
**Sent:** Tuesday, October 22, 2024 3:31 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** Re: Media inquiry

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. **\*\*\*\*\***

I received it by way of an open records request to Commissioner Bitner. He referenced the document and I asked for it.

--

Rob Port  
Columnist  
t: 701-721-1860 | e: [rport@forumcomm.com](mailto:rport@forumcomm.com)  
Forum News Service, a Forum Communications Company  
101 5th St. N. Fargo, ND 58102

On Tue, Oct 22, 2024, 3:05 PM Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)> wrote:

Thank you, would it be possible for you to tell me who gave you this report?

---

**From:** Rob Port <[robport@gmail.com](mailto:robport@gmail.com)>  
**Sent:** Tuesday, October 22, 2024 2:51 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** Re: Media inquiry

You don't often get email from [robport@gmail.com](mailto:robport@gmail.com). [Learn why this is important](#)

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. **\*\*\*\*\***

Certainly, it is attached.

--

Rob Port  
Columnist



t: 701-721-1860 | e: [rport@forumcomm.com](mailto:rport@forumcomm.com)  
Forum News Service, a Forum Communications Company  
[101 5th St. N. Fargo, ND 58102](#)

On Tue, Oct 22, 2024, 2:48 PM Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)> wrote:

Can you please send me the report you were referring to in the phone call?

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

---

**From:** Rob Port <[robport@gmail.com](mailto:robport@gmail.com)>  
**Sent:** Tuesday, October 22, 2024 1:03 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Subject:** Media inquiry

You don't often get email from [robport@gmail.com](mailto:robport@gmail.com). [Learn why this is important](#)

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Hello Mr. Splonskowski,

I am working on a story regarding the resignation of Lisa Hart. Could you give me a call? My phone number is 701-721-1860.

Thank you,

--

**Rob Port**  
**COLUMNIST**  
**t:** 701-721-1860 | **e:** [rport@forumcomm.com](mailto:rport@forumcomm.com)  
Forum Communications Company  
[101 5th St. N. Fargo, ND 58102](#)



**From:** Schmidt, Taylor <schmidt.taylor@nd.gov>

**Sent:** Thursday, March 13, 2025 4:32 PM

**To:** Bitner, Brian <bccbitner@nd.gov>; Bakken, Steven <BCCBAKKEN@nd.gov>; Schwab, Steve Personal <bisgate@bis.midco.net>; Munson, Wayne <bccmunson@nd.gov>; Woodcox, Jerry <bccwoodcox@nd.gov>

**Cc:** Jacobs, Leigh <ljacobs@nd.gov>

**Subject:** Election Worker Pay Reporting Timeline

Good Afternoon,

The below timeline summarizes 4 meetings and over 40 emails regarding election worker pay reporting. All emails mentioned are attached in the PDF.

**Early January 2025** – I began the process of preparing 1099s for 2024. This process involves creating a list of all vendors paid more than \$600 and then removing those vendors exempt from 1099s. During this process I realized Burleigh County had paid multiple election workers over \$600. Looking at past election years, it appeared did not send 1099s to any election workers. Research indicated that we should send them W2's, but after talking with HR they informed me only the few election workers that were "onboarded" received W2s. I decided to **NOT** send election workers 1099s as I did not believe that to be correct.

**01-27-2025** – The Deputy Auditor/Treasurer sent me an email (*attached*) regarding an election worker concern about not receiving a 1099 yet. I told her I didn't think election workers received 1099s and that I would **NOT** be preparing them. I asked her to do some research on what we've done in the past and let me know what she found out.

**01-29-2025** – I sent the 1099s to Presort to be mailed (*attached*). None of the 1099s were for election workers.

**02-04-2025** - Staff from the Auditor's office sent me an email (*attached*) about a concern about a different election worker not receiving a 1099. I advised her that I did **NOT** prepare them because my understanding is that they do not receive 1099s but instead a W2 and that she should reach out to the County Auditor.

**02-06-2025** –Finance Director Jacobs, Auditor Splonskowski, the Elections Coordinator, and I have a meeting regarding the budget input and discuss election worker pay reporting. I make it clear that I don't think they receive 1099s but rather W2s and suggest that Auditor

Splonskowski should get a tax opinion.

**02-13-2025** – The Elections Coordinator sends out a list of election workers receiving more than \$600 (*attached*). Finance Director Jacobs responds via email citing the IRS and suggesting they should be sent W2s. Auditor Splonskowski requests a meeting for 02/14

**02-14-2025** – Finance, Auditor, and HR staff meet and discuss the issue. I make it clear that W2s not 1099s should be sent and that there are penalties for filing late. There is some staff disagreement, so Auditor Splonskowski decides to get a tax opinion before moving forward. *This meeting was recorded by HR.*

**02-20-2025** – After a phone conversation, Auditor Splonskowski receives an email (*attached*) from Blaine Johnson at Crowley Fleck directing Burleigh County to file 1099s for election workers. Auditor Splonskowski asks a clarifying question saying that Finance thinks they should be W2s. Blaine clarifies that election workers are likely employees, and as employees, anyone over \$600 needs a W2. Finance staff is **NOT** included in this email exchange.

**02-24-2025** – Auditor Splonskowski calls me, summarized in my email (*attached*), saying that Blaine from Crowley Fleck advised Burleigh County to send 1099s. He also noted that most other counties send W2s, and that Burleigh County would be sending W2s in future years. He then stated the Auditor's Office is preparing 1099s for the 2024 election workers and asked if I could e-file them with the IRS. I told him that before I e-filed with the IRS I would like a written opinion stating that W2s are the correct form to file for election workers as it contradicted IRS guidance. He said he had requested a written opinion from Blaine but had **NOT** received it yet and would let me know when he did.

**02-25-2025** – Finance Director Jacobs emails HR Director Binder (*attached*) to loop her into the situation and she responded with the email chain from 02-20-2025 between Blaine and Auditor Splonskowski before Blaine's clarifying opinion that they should receive W2s. Finance Director Jacobs emails Blaine requesting clarification on the original opinion to send 1099s **unaware Blaine had already given a clarifying opinion to send W2s**. Blaine responds stating that in the original email that he and Auditor Splonskowski had not discussed the employee vs independent contractor issue and that after concluding that election workers are likely employees, they need to be sent W2s. He attached his recommendation to send W2s from 02-20-2025 sent to Auditor Splonskowski **ONLY**. In response to Finance Director Jacobs, he again reiterated that election workers need W2s.

**02-25-2025 (2)** – Auditor Splonskowski replied to my 02-24-2025 summary email (*attached*) confirming my understanding of our call as correct and stating that Blaine has **NOT** sent him another emailed opinion. He then asked for Finance Director Jacobs' input.

**02-26-2025** – Finance Director Jacobs responds to Auditor Splonskowski (*attached*) and reiterates that his understanding is that Election workers need to be sent W2s. He then

questioned why Auditor Splonskowski told me on the 24<sup>th</sup> we received an opinion send 1099s when on the 20<sup>th</sup> he had received an opinion to send W2s.

**02-26-2025** – The Elections Coordinator emails Finance Director Jacobs and HR Director Binder (*attached*) to request they join a call with Crowley Fleck regarding election worker pay. Finance agrees to have a call on 02/27.

**02-27-2025** – During the call Blaine Johnson and Jared Le Fevre from Crowley Fleck explain the determination of an employee vs contractor, that election workers are generally employees and that employees need to receive W2s. They advise Auditor Splonskowski to send W2s and make him aware that the increased penalty window is only a few days away. They also advise Auditor Splonskowski that our IRS payroll reporting forms may need to be amended. *This call was recorded in Teams.*

**There was further communication between the Auditor's Office and Crowley Fleck after the 02/27 meeting, but I was not invited to those calls or forwarded any emails.**

**03-04-2025** – States Attorney Lawyer responds to a question from Auditor Splonskowski (*attached*). She confirms election workers receive W2s and to file them as soon as possible. Auditor Splonskowski asks for HR's assistance uploading the file to the IRS. HR Director Binder says they cannot create an IRS file other than for employees paid through Visions and directs him to the IRS instructions. She then expresses concerns regarding other employee reporting issues. Auditor Splonskowski requests another meeting to discuss.

**03-05-2025** – Finance attends a call with States Attorney Lawyer, Auditor Splonskowski, and the Election Coordinator. States Attorney Lawyer again advises Auditor Splonskowski to file W2s. She also advises him to fill out all the necessary IRS payroll reporting forms. *This call was recorded in Teams.*

**2024 W2 Penalties:** The deadline to file W2s for 2024 was January 31, 2025. If the W2s were filed by March 2<sup>nd</sup> the late penalty would be \$3,840. If the W2s were filed after March 3<sup>rd</sup> but before August 1<sup>st</sup> the late penalty would be \$8,320. If the IRS determines we have demonstrated an intentional disregard of the filing requirement, the penalty would be \$42,240 regardless of when we file.

This email is for information purposes only; please do not respond to this email.

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354

## Schmidt, Taylor

---

**From:** Schmidt, Taylor  
**Sent:** Monday, January 27, 2025 3:36 PM  
**To:** Ripplinger, Ronda  
**Subject:** RE: D. Houdek

Ronda,

From what I can tell we have not issued 1099s in the past and so I am not currently including them.

I'm seeing conflicting info online on whether they need a W2, 1099, or nothing at all. Maybe Al would know what we've done in the past? If not, maybe this would be something to run by Brandi or another County Auditor.

Let me know what you find out.

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Ripplinger, Ronda <roripplinger@nd.gov>  
**Sent:** Monday, January 27, 2025 8:06 AM  
**To:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Subject:** D. Houdek

Taylor,

Just had a call from a Duane Houdek and he worked the elections this past year and is wondering if he is getting a 1099 and if so how much is on it if you could please give him a call his number is 701-527-1580.

Please and Thank you!

*Ronda D. Ripplinger*

Deputy Auditor/Treasurer

Burleigh County Auditor/Treasurer Office

221 N. 5<sup>th</sup> Street, PO Box 5518

## Schmidt, Taylor

---

**From:** jasone@presortplus.net  
**Sent:** Wednesday, January 29, 2025 8:19 AM  
**To:** Schmidt, Taylor  
**Subject:** RE: Burleigh County 1099s

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Got it thank you.

---

**From:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Sent:** Wednesday, January 29, 2025 8:16 AM  
**To:** jasone@presortplus.net  
**Subject:** RE: Burleigh County 1099s

I was unable to get that link to work in my browser. I've attached the files to this email.

Please let me know if you need anything else.

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** [jasone@presortplus.net](mailto:jasone@presortplus.net) <[jasone@presortplus.net](mailto:jasone@presortplus.net)>  
**Sent:** Wednesday, January 29, 2025 8:11 AM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** RE: Burleigh County 1099s

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<ftp://24.111.20.206>

user =customer      password= today123

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Wednesday, January 29, 2025 8:06 AM

To: [jasone@presortplus.net](mailto:jasone@presortplus.net)

Subject: RE: Burleigh County 1099s

Can I get a link to the FTP site?

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

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**From:** [jasone@presortplus.net](mailto:jasone@presortplus.net) <[jasone@presortplus.net](mailto:jasone@presortplus.net)>  
**Sent:** Wednesday, January 29, 2025 8:08 AM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** RE: Burleigh County 1099s

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If you want to email them or I have an ftp site, whatever works best for you. And we can have those mailed today.

---

**From:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Sent:** Wednesday, January 29, 2025 8:04 AM  
**To:** Jason Erickson <[jasone@presortplus.net](mailto:jasone@presortplus.net)>  
**Subject:** RE: Burleigh County 1099s

Total of 61 pages. Should I send them via email or do you have an upload link?

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Jason Erickson <[jasone@presortplus.net](mailto:jasone@presortplus.net)>  
**Sent:** Tuesday, January 28, 2025 4:13 PM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** RE: Burleigh County 1099s

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Yes we can process them. How many pages? I'll let production know so we can run them right away.

----- Original message -----

From: "Schmidt, Taylor" <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

Date: 1/28/25 3:45 PM (GMT-06:00)

To: [jasone@presortplus.net](mailto:jasone@presortplus.net)

Subject: Burleigh County 1099s

Good afternoon,

Would you be able to assist in printing and mailing our 1099s for this year? I've got the files in PDF. Would you be able to get them mailed tomorrow?

Thanks,

**Taylor Schmidt**

**Deputy Finance Director**

Burleigh County

(701) 712-8354

[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)

316 N 5<sup>th</sup> St Ste 104

Bismarck, ND 58501

[www.burleigh.gov](http://www.burleigh.gov)



## Schmidt, Taylor

---

**From:** Schmidt, Taylor  
**Sent:** Tuesday, February 4, 2025 3:42 PM  
**To:** Wilder, Haley  
**Subject:** RE: 1099 Question - Dennis Piker

Haley,

I did reach out to Rhonda about this, but I know it's been crazy down there.

In the past it appears that we have not sent 1099s to election workers, so I did not include them this year. I've seen some documentation from the IRS that we should be sending them W2's but after talking to HR it appears this has not been the case in the past.

It may be best to run this by the County Auditor and get his opinion.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Wilder, Haley <[hwilder@nd.gov](mailto:hwilder@nd.gov)>  
**Sent:** Tuesday, February 4, 2025 3:32 PM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** 1099 Question - Dennis Piker

Good afternoon Taylor,

Dennis Piker, an election worker, stopped by the office this afternoon to check on the status of his 1099 for 2024. Do you have any info I could pass along to him?

I verified his mailing address is 2411 Seneca Dr in Bismarck. Thank you!

**Haley Wilder**  
**Accounting Technician**  
**BURLEIGH COUNTY AUDITOR/TREASURER OFFICE**  
221 N. 5<sup>th</sup> Street, PO Box 5518 | Bismarck, ND 58501  
Office: (701)222-6694 | Direct: (701) 712-2891  
Fax: (701) 222-7528 | [hwilder@nd.gov](mailto:hwilder@nd.gov)

## Schmidt, Taylor

---

**From:** Splonskowski, Mark D.  
**Sent:** Thursday, February 13, 2025 4:19 PM  
**To:** Martin, Megan M.; Jacobs, Leigh; Larson, Thomas; Binder, Pamela J.  
**Cc:** Schmidt, Taylor; Ripplinger, Ronda  
**Subject:** RE: 1099s For Election Workers

That would be great!

---

**From:** Martin, Megan M. <megmartin@nd.gov>  
**Sent:** Thursday, February 13, 2025 4:18 PM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Jacobs, Leigh <ljacobs@nd.gov>; Larson, Thomas <laronsthomast@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Ripplinger, Ronda <roripplinger@nd.gov>  
**Subject:** RE: 1099s For Election Workers

Sure, we can all meet at 9am in the HR Conference room.

Thank you,

**Megan Martin**  
**HR Assistant II/Payroll and Benefits**  
**Burleigh County Human Resources**  
**316 N 5th St Suite 106**  
**Bismarck ND 58501**  
[megmartin@nd.gov](mailto:megmartin@nd.gov)  
**Phone: (701) 222-6669 ext 602**  
**Fax: (701) 221-3395**

---

**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Thursday, February 13, 2025 3:42 PM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>; Larson, Thomas <laronsthomast@nd.gov>; Martin, Megan M. <megmartin@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>  
**Cc:** Schmidt, Taylor <schmidt.taylor@nd.gov>; Ripplinger, Ronda <roripplinger@nd.gov>  
**Subject:** RE: 1099s For Election Workers

Can we meet and discuss this tomorrow morning?

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

---

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, February 13, 2025 2:14 PM  
**To:** Larson, Thomas <laronsthomast@nd.gov>; Splonskowski, Mark D. <msplonskowski@nd.gov>

Cc: Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Ripplinger, Ronda <[roripplinger@nd.gov](mailto:roripplinger@nd.gov)>

Subject: RE: 1099s For Election Workers

Per the IRS:

## “Reporting requirements

Section 6041(a) applies to payments of compensation that are not subject to withholding of FICA or income tax. If an election worker's compensation is not subject to withholding of FICA tax, the Section 6041(a) reporting requirements apply to payments that aggregate \$600 or more in any taxable year. Under Regulation section 1.6041-2(a)(1), compensation subject to income tax withholding is taken into account in determining whether the \$600 reporting requirement applies. **Government entities must file a Form W-2 for election workers who receive payments of \$600 or more, even if no FICA and income tax were withheld.”**

This is black and white to me, but I’m not a tax guy so I’ll withhold judgment until we hear back from Brady Martz (which may take until after busy season).

I understood that these all went out the door as 1099s – was that not a correct understanding?

Either way, they’re late

---

From: Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

Sent: Thursday, February 13, 2025 11:45 AM

To: Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

Cc: Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Ripplinger, Ronda <[roripplinger@nd.gov](mailto:roripplinger@nd.gov)>

Subject: 1099s For Election Workers

Good Morning,

Attached is the list of election workers who made \$600 or more during either the primary, general, or both elections. We are getting quite a few calls from these election workers who are upset that they have not received this yet. I know that we are looking into this, but just wanted to put this information out there. The W-9’s for these workers should all be attached and entered in Visions. They are listed under the vendor ‘Election Workers’ as a remit address so the W-9s are attached to the general vendor of ‘Election Workers’.

Thomas.

**Thomas Larson**

*Executive Assistant / Elections Coordinator*

**BURLEIGH COUNTY AUDITOR/TREASURER OFFICE**

221 N. 5<sup>th</sup> Street, PO Box 5518 | Bismarck, ND 58501

Office: (701)222-6694 | Direct: (701)712-6210

## Schmidt, Taylor

---

**From:** Blaine Johnson <bjohnson@crowleyfleck.com>  
**Sent:** Thursday, February 20, 2025 1:50 PM  
**To:** Splonskowski, Mark D.  
**Subject:** RE: Tax Reporting for Poll Workers

Mark,

That will depend on whether the poll workers are classified as employees (W-2) or independent contractors (1099). Based on my research they are likely employees, but jurisdictions seem to apply both methods and there is a fair amount of dispute about the proper classification.

IRS Publication 963 indicates that poll workers are generally employees. They are trained to follow uniform procedures established for the polling place. They are directed by a supervisor. These are classic traits of an employee. The employer exercises a fair amount of control over the performance of the employee, as opposed to independent contractors who have flexibility over scheduling and the performance of the task as long as the end result is obtained satisfactorily.

W-2 should be completed for each employee if any of the following apply:

- You withheld any income, social security, or Medicare tax from wages regardless of the amount of wages; or
- You would have had to withhold income tax if the employee had claimed no more than one withholding allowance (for 2019 or earlier Forms W-4) or had not claimed exemption from withholding on Form W-4; or
- You paid \$600 or more in wages even if you did not withhold any income, social security, or Medicare tax.

Note that the withholding of FICA can be impacted by the State's Section 218 Agreement with Social Security, if applicable.

More information is available from the IRS: <https://www.irs.gov/government-entities/federal-state-local-governments/election-workers-reporting-and-withholding#:~:text=Some%20State%20Section%20218%20Agreements,threshold%20amount%20or%20more%2C%20o>  
[r](#)

**BLAINE JOHNSON**  
100 West Broadway, Suite 250  
P.O. Box 2798  
Bismarck, ND 58501  
Main: 701.223.6585 | Fax: 701.222.4853  
Direct: 701.224.7531

**CROWLEY | FLECK** PLLP  
ATTORNEYS

WITH OFFICES IN MONTANA, NORTH DAKOTA, AND WYOMING:

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

---

**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Thursday, February 20, 2025 1:01 PM  
**To:** Blaine Johnson <bjohnson@crowleyfleck.com>  
**Subject:** RE: Tax Reporting for Poll Workers

This message was received from an external email account. Please use caution when opening messages, attachments or external links from unknown senders.

Thank you for your response. Our Finance Department has looked into this as well and they said that we should have given the election workers W-2's. Are the 1099's just a way to correct 2024? I just want to make sure we get 2024 done correctly so we can move forward.

Thanks.

---

**From:** Blaine Johnson <[bjohnson@crowleyfleck.com](mailto:bjohnson@crowleyfleck.com)>

**Sent:** Thursday, February 20, 2025 8:54 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** Tax Reporting for Poll Workers

You don't often get email from [bjohnson@crowleyfleck.com](mailto:bjohnson@crowleyfleck.com). [Learn why this is important](#)

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Mark,

The County is required to file 1099s for the poll workers for payments of \$600 or more. IRC Sec. 6041A is the statutory citation. There are many IRS forms and pamphlets about this too if the County wants to see what the IRS says. For income for services, the 1099s were due Jan. 31. For forms late in 2025, see this chart of penalties. <https://www.irs.gov/payments/information-return-penalties>. I would submit the late-filed forms and be prepared to pay the penalty, but wait for the IRS to contact the County about the penalty. It's possible the IRS could not assess. The County can request a waiver of penalty for good cause. If the County has a good reason it didn't file, there is a penalty waiver form. Some examples may be bad tax advice from a tax professional.

Hope this helps.

**BLAINE JOHNSON**

100 West Broadway, Suite 250

P.O. Box 2798

Bismarck, ND 58501

Main: 701.223.6585 | Fax: 701.222.4853

Direct: 701.224.7531

**CROWLEY | FLECK** PLLP  
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WITH OFFICES IN MONTANA, NORTH DAKOTA, AND WYOMING:

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

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## Schmidt, Taylor

---

**From:** Schmidt, Taylor  
**Sent:** Monday, February 24, 2025 10:52 AM  
**To:** Splonskowski, Mark D.  
**Cc:** Larson, Thomas; Jacobs, Leigh  
**Subject:** 2024 Election Workers 1099

Mark,

Below is a summary of our call this morning. Please let me know if any of this is incorrect or if anything else needs to be added.

Crowley Fleck advised you to send 1099s to all 2024 election workers over the \$600 threshold rather than W2s. This advice came from a phone conversation with a tax attorney and an emailed opinion was requested. Your office will be preparing the 1099s and sending them to election workers and I'll be uploading the file to the IRS. **I would like to have a written opinion stating that we should send these election workers 1099s rather than W2s before I file with the IRS as this advice contradicts the IRS guidance on election workers.**

For future elections, the County will be treating all election workers as employees and issuing W2s. We are currently exploring our options for onboarding (HR, Dakota Staffing, Frontier Payroll etc.). Grand Forks fully onboards their employees and issues W2s. Cass and Ward issue W2s as well.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

## Schmidt, Taylor

---

**From:** Blaine Johnson <bjohnson@crowleyfleck.com>  
**Sent:** Tuesday, February 25, 2025 2:48 PM  
**To:** Jacobs, Leigh  
**Cc:** Splonskowski, Mark D.; Schmidt, Taylor  
**Subject:** RE: Tax Reporting for Poll Workers  
**Attachments:** RE: Tax Reporting for Poll Workers; Revenue Ruling-00-6.pdf

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Leigh,

I am attaching a subsequent email to Mark that provides some additional light on the W2/1099 issue. Mark and I did not discuss the facts that factor into an employee vs. independent contractor analysis in the initial phone call. In a follow up discussion, I mentioned filing the 1099s for 2024 as soon as possible but further agreed that the poll workers should be treated as employees and that W-2s should be issued going forward.

Based on my understanding of amounts paid to poll workers in 2024, all poll workers were under the threshold for withholding of FICA or income tax with the exception of any impact a Section 218 agreement may have (I have not reviewed any such agreement). I also assumed that no poll worker was employed by the county for services which would require withholding. The issuance of a 1099 vs W2 when there is no withholding would result in the same information being reported to the IRS.

Thank you for providing Rev. Rul. 2000-06 which confirms the W-2 is the proper course of action, especially given the possibility that a poll worker could exceed the withholding exemption or be subject to a Section 218 agreement requiring such information to be provided.

**BLAINE JOHNSON**

100 West Broadway, Suite 250  
P.O. Box 2798  
Bismarck, ND 58501  
Main: 701.223.6585 | Fax: 701.222.4853  
Direct: 701.224.7531



WITH OFFICES IN MONTANA, NORTH DAKOTA, AND WYOMING:

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---

**From:** Jacobs, Leigh <ljacobs@nd.gov>

**Sent:** Tuesday, February 25, 2025 1:11 PM

**To:** Blaine Johnson <bjohnson@crowleyfleck.com>

**Cc:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>

**Subject:** FW: Tax Reporting for Poll Workers

This message was received from an external email account. Please use caution when opening messages, attachments or external links from unknown senders.

Good afternoon Blaine,

I am following up from an email you sent to Auditor Splonskowski regarding 1099 payments to election workers.

To be clear, I was not on the phone call with you and Auditor Splonskowski, so I don't know what set of facts you were given. That said, I am trying to reconcile your advice to send 1099s to election workers with the IRS guidance from their website:

<https://www.irs.gov/government-entities/federal-state-local-governments/election-workers-reporting-and-withholding>

**"Election workers are common-law employees;** however, IRC section 3121(b)(7)(E) and (F)(iv) provide specific rules for determining whether amounts paid to election workers are subject to FICA taxes."  
[emphasis added]

"Section 6041(a) applies to payments of compensation that are not subject to withholding of FICA or income tax. If an election worker's compensation is not subject to withholding of FICA tax, the Section 6041(a) reporting requirements apply to payments that aggregate \$600 or more in any taxable year. Under Regulation section 1.6041-2(a)(1), compensation subject to income tax withholding is taken into account in determining whether the \$600 reporting requirement applies. **Government entities must file a Form W-2 for election workers who receive payments of \$600 or more, even if no FICA and income tax were withheld.**"  
[emphasis added]

This guidance comes from Revenue Ruling 2000-6.

<https://www.irs.gov/pub/irs-irbs/irb00-06.pdf>

Thanks in advance and please send a bill for your time.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353



---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Sent:** Tuesday, February 25, 2025 12:27 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Subject:** FW: Tax Reporting for Poll Workers

Leigh & Taylor,

Read the email chain and you will see the opinion from Crowley Fleck.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**  
Burleigh County Human Resources  
316 N 5<sup>th</sup> St., Suite 106  
Bismarck, ND 58501  
[pjbinder@nd.gov](mailto:pjbinder@nd.gov)  
Phone: 701-222-6669  
Cell Phone: 701-954-9875  
Fax: 701-221-3395

---

**From:** Binder, Pamela J.  
**Sent:** Thursday, February 20, 2025 1:32 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Martin, Megan M. <[megmartin@nd.gov](mailto:megmartin@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Subject:** RE: Tax Reporting for Poll Workers

Mark,

Reading the Attorney's email, it looks like he gave you your answer. He said process the 1099 forms as soon as possible. I would recommend that if you do not know how to print the 1099's from Infinite Visions you should go online to Tyler University and view their training sessions and training materials for the 1099 Year End process.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**  
Burleigh County Human Resources  
316 N 5<sup>th</sup> St., Suite 106  
Bismarck, ND 58501  
[pjbinder@nd.gov](mailto:pjbinder@nd.gov)  
Phone: 701-222-6669  
Cell Phone: 701-954-9875  
Fax: 701-221-3395

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Thursday, February 20, 2025 12:54 PM

**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Martin, Megan M. <[megmartin@nd.gov](mailto:megmartin@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Subject:** FW: Tax Reporting for Poll Workers

This is what I received this morning regarding the election workers for 2024. Thoughts?

---

**From:** Blaine Johnson <[bjohnson@crowleyfleck.com](mailto:bjohnson@crowleyfleck.com)>

**Sent:** Thursday, February 20, 2025 8:54 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** Tax Reporting for Poll Workers

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Mark,

The County is required to file 1099s for the poll workers for payments of \$600 or more. IRC Sec. 6041A is the statutory citation. There are many IRS forms and pamphlets about this too if the County wants to see what the IRS says. For income for services, the 1099s were due Jan. 31. For forms late in 2025, see this chart of penalties.

<https://www.irs.gov/payments/information-return-penalties>. I would submit the late-filed forms and be prepared to pay the penalty, but wait for the IRS to contact the County about the penalty. It's possible the IRS could not assess. The County can request a waiver of penalty for good cause. If the County has a good reason it didn't file, there is a penalty waiver form. Some examples may be bad tax advice from a tax professional.

Hope this helps.

**BLAINE JOHNSON**

100 West Broadway, Suite 250

P.O. Box 2798

Bismarck, ND 58501

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Direct: 701.224.7531

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## Schmidt, Taylor

---

**From:** Splonskowski, Mark D.  
**Sent:** Tuesday, February 25, 2025 4:21 PM  
**To:** Schmidt, Taylor  
**Cc:** Larson, Thomas; Jacobs, Leigh  
**Subject:** RE: 2024 Election Workers 1099

Good afternoon,

I believe this overview of our conversation is correct, Blaine has not sent me another emailed opinion as I requested yet. However, I would like to get Leigh's input based on his questions for Blain before moving forward. Thanks

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

---

**From:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Sent:** Monday, February 24, 2025 10:52 AM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Cc:** Larson, Thomas <larsonthomas@nd.gov>; Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** 2024 Election Workers 1099

Mark,

Below is a summary of our call this morning. Please let me know if any of this is incorrect or if anything else needs to be added.

Crowley Fleck advised you to send 1099s to all 2024 election workers over the \$600 threshold rather than W2s. This advice came from a phone conversation with a tax attorney and an emailed opinion was requested. Your office will be preparing the 1099s and sending them to election workers and I'll be uploading the file to the IRS. **I would like to have a written opinion stating that we should send these election workers 1099s rather than W2s before I file with the IRS as this advice contradicts the IRS guidance on election workers.**

For future elections, the County will be treating all election workers as employees and issuing W2s. We are currently exploring our options for onboarding (HR, Dakota Staffing, Frontier Payroll etc.). Grand Forks fully onboards their employees and issues W2s. Cass and Ward issue W2s as well.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501

## Schmidt, Taylor

---

**From:** Jacobs, Leigh  
**Sent:** Wednesday, February 26, 2025 10:58 AM  
**To:** Splonskowski, Mark D.; Schmidt, Taylor  
**Cc:** Larson, Thomas; Bitner, Brian  
**Subject:** RE: 2024 Election Workers 1099

Mark,

Blaine's response to me was as follows: "Thank you for providing Rev. Rul. 2000-06 which confirms the W-2 is the proper course of action,"

In an email to you on 2/20/2025 at 1:50pm, Blaine wrote:

"That will depend on whether the poll workers are classified as employees (W-2) or independent contractors (1099). Based on my research they are likely employees"

And

"IRS Publication 963 indicates that poll workers are generally employees. They are trained to follow uniform procedures established for the polling place. They are directed by a supervisor. These are classic traits of an employee"

And

"W-2 should be completed for each employee if any of the following apply:...

- You withheld any income, social security, or Medicare tax from wages regardless of the amount of wages; or
- You would have had to withhold income tax if the employee had claimed no more than one withholding allowance (for 2019 or earlier Forms W-4) or had not claimed exemption from withholding on Form W-4; or
- **You paid \$600 or more in wages even if you did not withhold any income, social security, or Medicare tax."**

The sentence I emphasized in bold is the exact situation we've been discussing for the past month about the 32 election workers who earned more than \$600 last year but have not yet received their tax information from the County.

Considering Blaine Johnson described the exact situation we are dealing with as requiring a W-2 on Thursday February 20<sup>th</sup>, it's unclear to me why on Monday February 24<sup>th</sup> you called Taylor and assured him you received an opinion from a tax attorney saying the election workers should be paid with 1099s.

Nevertheless, I have not changed my opinion on this matter and would concur with Blaine Johnson's statement which I quoted in bold above.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St

Bismarck, ND 58501  
701-712-8353

---

**From:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Sent:** Tuesday, February 25, 2025 4:21 PM  
**To:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Cc:** Larson, Thomas <laronstomas@nd.gov>; Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** RE: 2024 Election Workers 1099

Good afternoon,  
I believe this overview of our conversation is correct, Blaine has not sent me another emailed opinion as I requested yet. However, I would like to get Leigh's input based on his questions for Blain before moving forward.  
Thanks

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

---

**From:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Sent:** Monday, February 24, 2025 10:52 AM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Cc:** Larson, Thomas <laronstomas@nd.gov>; Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** 2024 Election Workers 1099

Mark,

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Crowley Fleck advised you to send 1099s to all 2024 election workers over the \$600 threshold rather than W2s. This advice came from a phone conversation with a tax attorney and an emailed opinion was requested. Your office will be preparing the 1099s and sending them to election workers and I'll be uploading the file to the IRS. **I would like to have a written opinion stating that we should send these election workers 1099s rather than W2s before I file with the IRS as this advice contradicts the IRS guidance on election workers.**

For future elections, the County will be treating all election workers as employees and issuing W2s. We are currently exploring our options for onboarding (HR, Dakota Staffing, Frontier Payroll etc.). Grand Forks fully onboards their employees and issues W2s. Cass and Ward issue W2s as well.

Thanks,

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

## Schmidt, Taylor

---

**From:** Larson, Thomas  
**Sent:** Wednesday, February 26, 2025 1:54 PM  
**To:** Jacobs, Leigh; Binder, Pamela J.  
**Cc:** Splonskowski, Mark D.; Schmidt, Taylor  
**Subject:** Election 1099's

Good Afternoon,

Mark wanted me to reach out to you as he is out of state for the rest of the week. Would there be a time in the next couple days to have a call amongst ourselves with Blaine Johnson from Crowely & Fleck? This call would be regarding what needs to be done for the election workers in 2024. If its ok, please let me know of a time that would work for you and I will get that to Mark so he can plan it with Blaine.

Thank you for your time.

Thomas.

### Thomas Larson

*Executive Assistant / Elections Coordinator*

#### **BURLEIGH COUNTY AUDITOR/TREASURER OFFICE**

221 N. 5<sup>th</sup> Street, PO Box 5518 | Bismarck, ND 58501

Office: (701)222-6694 | Direct: (701)712-6210

Fax: (701) 222-7528 | [LarsonThomas@ND.gov](mailto:LarsonThomas@ND.gov)

## Schmidt, Taylor

---

**From:** Jacobs, Leigh  
**Sent:** Wednesday, March 5, 2025 9:23 AM  
**To:** Schmidt, Taylor  
**Subject:** FW: Election Worker tax forms

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Sent:** Wednesday, March 5, 2025 9:22 AM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Leigh,

I hope so because those are very hefty fines. I have to admit, it seems a little odd to me that election workers do not have to provide proof that they are a U.S. citizen to work the elections.

Sincerely,

***Pamela J. Binder***, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**  
Burleigh County Human Resources  
316 N 5<sup>th</sup> St., Suite 106  
Bismarck, ND 58501  
[pjbinder@nd.gov](mailto:pjbinder@nd.gov)  
Phone: 701-222-6669  
Cell Phone: 701-954-9875  
Fax: 701-221-3395

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Wednesday, March 5, 2025 9:18 AM  
**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>  
**Subject:** RE: Election Worker tax forms

We might have an out for the I-9s.


[Questions and Answers | USCIS](#)




https://www.uscis.gov/i-9-central/form-i-9-resources/questions-and-answers

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[Home](#) > [I-9 Central](#) > [Form I-9 Resources](#) > Questions and Answers

## Questions and Answers

### Who Needs to Complete Form I-9?

Are election judges and poll workers exempt from completing Forms I-9 in accordance with U.S. Department of Justice memo dated Feb 18, 1988 signed by John R. Schroeder? 

Yes, Immigration and Customs Enforcement (ICE) continues to adhere to this policy. For more information, please contact

As far as a meeting, I am not sure what more I could possibly add to the discussion with Auditor Splonskowski than I have already addressed, but I think I need to hear what Auditor Splonskowski plans to do.

Mostly, I want to stay informed about what is happening, because I was left out of the initial phone call with Crowley Fleck and of the emails which followed, and Auditor Splonskowski subsequently misrepresented that conversation in an attempt to convince our Deputy Finance Director to use his login to the IRS to file 1099s for these election workers.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Sent:** Wednesday, March 5, 2025 9:11 AM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Julie & Leigh,

I am unable to meet either today or tomorrow as I am working on a time sensitive project for Commissioner Munson. He wants a couple scenarios on what the appointed auditor position would look like so they have that for the next meeting.

He also requested that I do research with other counties on the auditor and treasurer duties.

Julie,

Unless you know of something, I researched the I-9 form dilemma and I do not see a way out of getting assessed fines if we do end up going through an I-9 audit. In June 2024 the DHS raised the penalties for I-9 form noncompliance. Also, just so you know we are required to use the E-verify system for our I-9 reporting. I have attached an article that listed the new penalty amounts.

As far as the tax forms, The two IRS publications state what he needs to do. He just has to read through them to get the information. It is no different than what any of us has had to do when we need the information.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR

**HR Director/Risk Management Director**

Burleigh County Human Resources

316 N 5<sup>th</sup> St., Suite 106

Bismarck, ND 58501

[pjbinder@nd.gov](mailto:pjbinder@nd.gov)

Phone: 701-222-6669

Cell Phone: 701-954-9875

Fax: 701-221-3395

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>

**Sent:** Wednesday, March 5, 2025 8:48 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

I could meet this morning or else 4-5pm today

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Wednesday, March 5, 2025 8:30 AM

**To:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

Both those times today work for me.

---

**From:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>

**Sent:** Wednesday, March 5, 2025 2:36 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** Re: Election Worker tax forms

I don't know how much help I would be, but I'm available today from 9-10:30 or 3-5. I'm not available tomorrow.

Julie

**CONFIDENTIALITY STATEMENT**

*This communication and any documents or files transmitted with it are covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., and are confidential and intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or other use of the contents of this message is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail to the address shown and delete this email, including all associated attachments from all storage locations.*

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 4:17 PM  
**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Is everyone else on this email willing to meet?

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 4:09 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Mark,

I have other projects that I need to get done with deadlines and I do not have time to meet again about this subject.

I have provided you with the information that is needed in order for you to get the W-2 forms out. Please use the tools that I have provided.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**  
Burleigh County Human Resources  
316 N 5<sup>th</sup> St., Suite 106  
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[pjbinder@nd.gov](mailto:pjbinder@nd.gov)  
Phone: 701-222-6669

Cell Phone: 701-954-9875  
Fax: 701-221-3395

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 2:52 PM  
**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Can we all meet up in person and discuss this? I think it would be more beneficial and quicker to meet. Im available tomorrow and Thursday.

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 10:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Mark,

The actual forms cannot be uploaded through the IRS portal to the Social Security Administration. Our payroll system generates an electronic HTML coded report of the needed W-2 information and that is what gets uploaded. If the correct HTML fields are not completed and correctly formatted the whole file errors out. We do not have the ability to electronically upload this data as we are not computer programmers that can build HTML code files. Because these W-2s could not come through our payroll system in 2024, they must be mailed to the address that is listed on the IRS tax publication for the Instructions on completing the 2024 -W-2s whatever that is. I have attached the IRS 2024 W-2 and W-3 instruction publication from the IRS for you.

Which 941 Form are you going to amend? Also, are you going to amend the 940 Form as well? I believe you would need to file an amended 940 and/or 941 Form, however, I do not know the process for certain as I have never had to do this before? I know when we had an issue with a change in the 941 form Megean had to call the IRS to figure out how to fix the form. Just to make you aware, she was on the phone on hold waiting to talk to a representative from the IRS for 6 hours. I have attached IRS Publication 15. The 941/940 forms are discussed in section 13. Since you as the Auditor and you normally sign these forms as the only listed authorized signor for Burleigh County, you just must sign the completed correction forms whatever that may be.

Also, what are you going to do about the federal mandated reporting requirements for employees? New Hire Reporting for Child Support (this is past the 30-day deadline for reporting, so I do not know what to do with that).

The Human Resources office did not receive any paperwork to hire these employees, so I am assuming that the I-9 Forms were not completed within the 3 days of employment. If we get audited by U.S. Immigration and Customs Enforcement (ICE), where do I direct them? If the Burleigh Morton Detention Center does sign a contract with ICE to detain illegal immigrants within the Detention, part of the process is that ICE audits all Burleigh County I-9 forms. I have been told that it is part of their due diligence checklist.

We will also have to amend our next quarterly reporting file for the NDACo CEGGroup so we can report the correct wages to WSI as this is a legal requirement as well. We may have to request certain data for that file feed and pay a penalty if we are accessed from WSI.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR

**HR Director/Risk Management Director**

Burleigh County Human Resources

316 N 5<sup>th</sup> St., Suite 106

Bismarck, ND 58501

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Phone: 701-222-6669

Cell Phone: 701-954-9875

Fax: 701-221-3395

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Tuesday, March 4, 2025 9:56 AM

**To:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

Julie,

Thank you for the clarification.

Pam, would you be willing to help us get these? We have the W-2's filled out, but we could use assistance uploading the information to social security as well as amending our 941 form.

Thanks.

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

---

**From:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>

**Sent:** Monday, March 3, 2025 11:47 PM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** Election Worker tax forms

Mark:

The short answer is that you need to get W-2s to any election worker who earned \$600 or more OR any wage that is FICA taxable (per the Section 218 Agreement we have with Social Security Administration) as soon as possible as the W-2s are already overdue and subject to a penalty of \$130 per statement.

The long answer is that to determine which tax form should be issued to election workers (W-2 or 1099), we first have to figure out their status.

Federal courts have looked at the definition of employment under the ND Administrative Code for Job Service North Dakota (N.D.A.C. § 27-02-14-01) and Workforce Safety and Insurance (N.D.A.C. § 92-01-02-49) to determine if a worker is an employee (W-2) or an independent contractor (1099). See *Oil & Gas Transfer L.L.C. v. Karr*, 928 F.3d 1120 (8<sup>th</sup> Cir 2019)

“... we apply the substantive law of North Dakota to determine whether Karr was an employee or an independent contractor. Under North Dakota law, ... “The person that asserts that an individual is an independent contractor under the common-law test ... has the burden of proving that fact.” N.D.C.C § 65-01-03(1). “The central question in determining whether an individual is an employee or independent contractor is: Who is in control?” This is determined by the common-law “right-to-control” test. N.D.A.C. §§ 27-02-14-01(5)(a), 92-01-02-49(1)(a). “The right to control is dispositive, whether or not it has been exercised.”

As such, since the County controls when, where, and how the election worker does the work, requiring them to attend election worker training sessions, requiring them to follow established routines and schedules, and having the right to dismiss or terminate without liability, election workers would be considered “employees”.

In looking at the guidance from the IRS, if the election worker was paid less than \$600 per taxable year, no reporting of wages needs to occur. If the worker is paid more than \$600 per taxable year, then a W-2 must be issued to the worker. BUT you also must look at whether the wages paid are subject to FICA tax. The Social Security Administration has some guidance regarding when Social Security and Medicare taxes must be paid for election workers. [https://www.ssa.gov/slge/election\\_workers.htm?tl=0%2C1%2C2%2C3](https://www.ssa.gov/slge/election_workers.htm?tl=0%2C1%2C2%2C3). FICA taxes don't have to be paid for wages of less than \$2,300 unless subject to a “Section 218 Agreement”. North Dakota is listed as having an agreement (current through June 2015), which is available through the State Social Security Administrator, Zerina Arapovic at Job Service, Bismarck (<https://www.ncssa.org/statessadmin-northdakota.html>). We need to know what that threshold is to determine if a W-2 needs to be issued to anyone earning LESS than \$600 per year for FICA.

Based on the guidance from federal courts, it appears election workers are “employees” of the County and W-2s must be issued to the workers - no later than January 31 of the following year - if they earned “taxable income” during the taxable year.

Every election worker who earned over \$600 in 2024 from election work must get a W-2.

IF our Section 218 Agreement requires payment of FICA taxes for earned wages that is anything less than \$600, a W-2 must be issued to those workers as well.

Obviously, that deadline has passed. There is an option for a 30-day extension, but we don't meet the criteria for the extension as it requires one of the following:

- A catastrophic event in a federally declared disaster area that made the filer unable to resume operations or necessary records unavailable;
- Fire, casualty or natural disaster affected operation of the filer;
- Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns;
- The filer was in the first year of establishment; OR
- The filer did not receive data on a payee statement in time to prepare an accurate information return.

(See <https://www.irs.gov/pub/irs-pdf/f8809.pdf>). Even then, the extension is only for 30 days and that 30 days expired today and does not cover the deadline to furnish the forms to the worker, those are granted for 15 days, unless the need for up to a total of 30 days is clearly shown. Since the election workers were not set up in the payroll system, W-2s cannot be generated from that system. Since election workers were paid through the accounts payable procedure through the Auditor / Treasurer's Office, the Auditor / Treasurer is responsible for issuing the W-2s. The form can be found here - <https://www.irs.gov/pub/irs-pdf/fw2.pdf> and the W-2s should be issued as soon as possible. W-2s also need to be filed with the Social Security Administration. You may want to consult with Human Resources or the Finance office to ensure proper reporting of taxable wages.

These forms should be provided to the workers and filed as soon as possible. Per the IRS website, the penalty for **each statement** that was not provided / filed on time is \$130 per statement.

Sincerely,

Julie Lawyer  
State's Attorney  
Burleigh County  
514 E Thayer Ave  
Bismarck, ND 58501  
Phone: (701) 222-6672  
FAX: (701) 221-6897  
e-service: [bc08@nd.gov](mailto:bc08@nd.gov)

*CONFIDENTIALITY STATEMENT*

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## Minutes from 3/20/2025 meeting on Election Worker W2s

Time: 2:00pm to 2:30pm

Attendees: Leigh Jacobs, Taylor Schmidt, Mark Splonskowski, Ronda Ripplinger, Thomas Larson

1. W2s sent out were for 2025
  - a. This was due to those being the first result on the IRS webpage – 2024s are in the historical section due to the date being past the 1/31 deadline
  - b. The W2s with the file name captioned “NEW” were for election workers who contacted the Auditor/Treasurer’s Office about the mistake
    - i. These were revised for 2024
2. Finance raised the concern that we may have a legal requirement to send 2024 W2s to all election workers
  - a. We may also have an obligation to send a 2025 W-2 C showing “\$0” earned income for 2025
3. Finance recommended sending a summary of our concerns to Crowley Fleck
  - a. Auditor/Treasurer drafted an email while we were in the meeting and sent it
    - i. The email inquired about the need to send 2024 W2s to all workers, not only the ones who contacted us
    - ii. The email also inquired about the need to send 2025 W-2 C



**From:** [Binder, Pamela J.](#)  
**To:** [Splonskowski, Mark D.](#); [Lawyer, Julie A.](#); [Larson, Thomas](#)  
**Cc:** [Jacobs, Leigh](#); [Bitner, Brian](#)  
**Subject:** RE: Election Worker tax forms  
**Date:** Tuesday, March 4, 2025 10:41:09 AM  
**Attachments:** [IRS Instruction for filing 2024 forms W-2 and W-3.pdf](#)  
[IRS Publication 15.pdf](#)

---

Mark,

The actual forms cannot be uploaded through the IRS portal to the Social Security Administration. Our payroll system generates an electronic HTML coded report of the needed W-2 information and that is what gets uploaded. If the correct HTML fields are not completed and correctly formatted the whole file errors out. We do not have the ability to electronically upload this data as we are not computer programmers that can build HTML code files. Because these W-2s could not come through our payroll system in 2024, they must be mailed to the address that is listed on the IRS tax publication for the Instructions on completing the 2024 -W-2s whatever that is. I have attached the IRS 2024 W-2 and W-3 instruction publication from the IRS for you.

Which 941 Form are you going to amend? Also, are you going to amend the 940 Form as well? I believe you would need to file an amended 940 and/or 941 Form, however, I do not know the process for certain as I have never had to do this before? I know when we had an issue with a change in the 941 form Megean had to call the IRS to figure out how to fix the form. Just to make you aware, she was on the phone on hold waiting to talk to a representative from the IRS for 6 hours. I have attached IRS Publication 15. The 941/940 forms are discussed in section 13. Since you as the Auditor and you normally sign these forms as the only listed authorized signor for Burleigh County, you just must sign the completed correction forms whatever that may be.

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Sincerely,

***Pamela J. Binder***, SPHR, SHRM-SCP, MBA, MM/HR

**HR Director/Risk Management Director**

Burleigh County Human Resources

316 N 5<sup>th</sup> St., Suite 106

Bismarck, ND 58501

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**Subject:** RE: Election Worker tax forms

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*Mark Splonskowski*

Burleigh County Auditor/Treasurer

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**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** Election Worker tax forms

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as soon as possible as the W-2s are already overdue and subject to a penalty of \$130 per statement.

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“... we apply the substantive law of North Dakota to determine whether Karr was an employee or an independent contractor. Under North Dakota law, ... “The person that asserts that an individual is an independent contractor under the common-law test ... has the burden of proving that fact.” N.D.C.C § 65-01-03(1). “The central question in determining whether an individual is an employee or independent contractor is: Who is in control?” This is determined by the common-law “right-to-control” test.

N.D.A.C. §§ 27-02-14-01(5)(a), 92-01-02-49(1)(a). “The right to control is dispositive, whether or not it has been exercised.”

As such, since the County controls when, where, and how the election worker does the work, requiring them to attend election worker training sessions, requiring them to follow established routines and schedules, and having the right to dismiss or terminate without liability, election workers would be considered “employees”.

In looking at the guidance from the IRS, if the election worker was paid less than \$600 per taxable year, no reporting of wages needs to occur. If the worker is paid more than \$600 per taxable year, then a W-2 must be issued to the worker. BUT you also must look at whether the wages paid are subject to FICA tax. The Social Security Administration has some guidance regarding when Social Security and Medicare taxes must be paid for election workers. [https://www.ssa.gov/slge/election\\_workers.htm?tl=0%2C1%2C2%2C3](https://www.ssa.gov/slge/election_workers.htm?tl=0%2C1%2C2%2C3). FICA taxes don’t have to be paid for wages of less than \$2,300 unless subject to a “Section 218 Agreement”. North Dakota is listed as having an agreement (current through June 2015), which is available through the State Social Security Administrator, Zerina Arapovic at Job Service, Bismarck (<https://www.ncsssa.org/statessadmin-northdakota.html>). We need to know what that threshold is to determine if a W-2 needs to be issued to anyone earning LESS than \$600 per year for FICA.

Based on the guidance from federal courts, it appears election workers are “employees” of the County and W-2s must be issued to the workers - no later than January 31 of the following year - if they earned “taxable income” during the taxable year.

Every election worker who earned over \$600 in 2024 from election work must get a W-2. IF our Section 218 Agreement requires payment of FICA taxes for earned wages that is anything less than \$600, a W-2 must be issued to those workers as well.

Obviously, that deadline has passed. There is an option for a 30-day extension, but we don’t meet the criteria for the extension as it requires one of the following:

- A catastrophic event in a federally declared disaster area that made the filer unable to resume operations or necessary records unavailable;
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- Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns;
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- The filer did not receive data on a payee statement in time to prepare an accurate

information return.

(See <https://www.irs.gov/pub/irs-pdf/f8809.pdf>). Even then, the extension is only for 30 days and that 30 days expired today and does not cover the deadline to furnish the forms to the worker, those are granted for 15 days, unless the need for up to a total of 30 days is clearly shown. Since the election workers were not set up in the payroll system, W-2s cannot be generated from that system. Since election workers were not paid through the accounts payable procedure through the Auditor / Treasurer's Office, the Auditor / Treasurer is responsible for issuing the W-2s. The form can be found here - <https://www.irs.gov/pub/irs-pdf/fw2.pdf> and the W-2s should be issued as soon as possible. W-2s also need to be filed with the Social Security Administration. You may want to consult with Human Resources or the Finance office to ensure proper reporting of taxable wages.

These forms should be provided to the workers and filed as soon as possible. Per the IRS website, the penalty for **each statement** that was not provided / filed on time is \$130 per statement.

Sincerely,

Julie Lawyer  
State's Attorney  
Burleigh County  
514 E Thayer Ave  
Bismarck, ND 58501  
Phone: (701) 222-6672  
FAX: (701) 221-6897  
e-service: [bc08@nd.gov](mailto:bc08@nd.gov)

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**From:** [Binder, Pamela J.](#)  
**To:** [Jacobs, Leigh](#); [Lawyer, Julie A.](#)  
**Subject:** RE: Election Worker tax forms  
**Date:** Wednesday, March 5, 2025 9:10:50 AM  
**Attachments:** [DHS Announces Higher Fines for Form I-9 Violations - Jacobson Lawrence.pdf](#)

---

Julie & Leigh,

I am unable to meet either today or tomorrow as I am working on a time sensitive project for Commissioner Munson. He wants a couple scenarios on what the appointed auditor position would look like so they have that for the next meeting.

He also requested that I do research with other counties on the auditor and treasurer duties.

Julie,

Unless you know of something, I researched the I-9 form dilemma and I do not see a way out of getting assessed fines if we do end up going through an I-9 audit. In June 2024 the DHS raised the penalties for I-9 form noncompliance. Also, just so you know we are required to use the E-verify system for our I-9 reporting. I have attached an article that listed the new penalty amounts.

As far as the tax forms, The two IRS publications state what he needs to do. He just has to read through them to get the information. It is no different than what any of us has had to do when we need the information.

Sincerely,

***Pamela J. Binder***, SPHR, SHRM-SCP, MBA, MM/HR

**HR Director/Risk Management Director**

Burleigh County Human Resources

316 N 5<sup>th</sup> St., Suite 106

Bismarck, ND 58501

[pjbinder@nd.gov](mailto:pjbinder@nd.gov)

Phone: 701-222-6669

Cell Phone: 701-954-9875

Fax: 701-221-3395

---

**From:** Jacobs, Leigh <ljacobs@nd.gov>

**Sent:** Wednesday, March 5, 2025 8:48 AM

**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>; Lawyer, Julie A. <JLAWYER@nd.gov>; Binder, Pamela J. <pjbinder@nd.gov>; Larson, Thomas <larsonthomas@nd.gov>

**Cc:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** RE: Election Worker tax forms

I could meet this morning or else 4-5pm today

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Wednesday, March 5, 2025 8:30 AM  
**To:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Both those times today work for me.

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**From:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>  
**Sent:** Wednesday, March 5, 2025 2:36 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** Re: Election Worker tax forms

I don't know how much help I would be, but I'm available today from 9-10:30 or 3-5. I'm not available tomorrow.

Julie

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 4:17 PM  
**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Is everyone else on this email willing to meet?

Mark Splonskowski

Burleigh County Auditor/Treasurer

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>

**Sent:** Tuesday, March 4, 2025 4:09 PM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

Mark,

I have other projects that I need to get done with deadlines and I do not have time to meet again about this subject.

I have provided you with the information that is needed in order for you to get the W-2 forms out. Please use the tools that I have provided.

Sincerely,

***Pamela J. Binder***, SPHR, SHRM-SCP, MBA, MM/HR

**HR Director/Risk Management Director**

Burleigh County Human Resources

316 N 5<sup>th</sup> St., Suite 106

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Phone: 701-222-6669

Cell Phone: 701-954-9875

Fax: 701-221-3395

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Tuesday, March 4, 2025 2:52 PM

**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

Can we all meet up in person and discuss this? I think it would be more beneficial and quicker

to meet. Im available tomorrow and Thursday.

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>

**Sent:** Tuesday, March 4, 2025 10:41 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

Mark,

The actual forms cannot be uploaded through the IRS portal to the Social Security Administration. Our payroll system generates an electronic HTML coded report of the needed W-2 information and that is what gets uploaded. If the correct HTML fields are not completed and correctly formatted the whole file errors out. We do not have the ability to electronically upload this data as we are not computer programmers that can build HTML code files. Because these W-2s could not come through our payroll system in 2024, they must be mailed to the address that is listed on the IRS tax publication for the Instructions on completing the 2024 -W-2s whatever that is. I have attached the IRS 2024 W-2 and W-3 instruction publication from the IRS for you.

Which 941 Form are you going to amend? Also, are you going to amend the 940 Form as well? I believe you would need to file an amended 940 and/or 941 Form, however, I do not know the process for certain as I have never had to do this before? I know when we had an issue with a change in the 941 form Megean had to call the IRS to figure out how to fix the form. Just to make you aware, she was on the phone on hold waiting to talk to a representative from the IRS for 6 hours. I have attached IRS Publication 15. The 941/940 forms are discussed in section 13. Since you as the Auditor and you normally sign these forms as the only listed authorized signor for Burleigh County, you just must sign the completed correction forms whatever that may be.

Also, what are you going to do about the federal mandated reporting requirements for employees? New Hire Reporting for Child Support (this is past the 30-day deadline for reporting, so I do not know what to do with that).

The Human Resources office did not receive any paperwork to hire these employees, so I am assuming that the I-9 Forms were not completed within the 3 days of employment. If we get audited by U.S. Immigration and Customs Enforcement (ICE), where do I direct them? If the Burleigh Morton Detention Center does sign a contract with ICE to detain illegal immigrants within the Detention, part of the process is that ICE audits all Burleigh County I-9 forms. I have been told that it is part of their due diligence checklist.

We will also have to amend our next quarterly reporting file for the NDACo CEGGroup so we can report the correct wages to WSI as this is a legal requirement as well. We may have to request certain data for that file feed and pay a penalty if we are accessed from WSI.

Sincerely,



**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR

**HR Director/Risk Management Director**

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Tuesday, March 4, 2025 9:56 AM

**To:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

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**Subject:** RE: Election Worker tax forms

Julie,

Thank you for the clarification.

Pam, would you be willing to help us get these? We have the W-2's filled out, but we could use assistance uploading the information to social security as well as amending our 941 form.

Thanks.

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

---

**From:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>

**Sent:** Monday, March 3, 2025 11:47 PM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

**Cc:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** Election Worker tax forms

Mark:

The short answer is that you need to get W-2s to any election worker who earned \$600 or more OR any wage that is FICA taxable (per the Section 218 Agreement we have with Social Security Administration) as soon as possible as the W-2s are already overdue and subject to a penalty of \$130 per statement.

The long answer is that to determine which tax form should be issued to election workers (W-2 or 1099), we first have to figure out their status.

Federal courts have looked at the definition of employment under the ND Administrative Code for Job Service North Dakota (N.D.A.C. § 27-02-14-01) and Workforce Safety and Insurance (N.D.A.C. § 92-01-02-49) to determine if a worker is an employee (W-2) or an independent contractor (1099). *See Oil & Gas Transfer L.L.C. v. Karr*, 928 F.3d 1120 (8<sup>th</sup> Cir 2019)

“... we apply the substantive law of North Dakota to determine whether Karr was an employee or an independent contractor. Under North Dakota law, ... “The person that asserts that an individual is an independent contractor under the common-law test ... has the burden of proving that fact.” N.D.C.C § 65-01-03(1). “The central question in determining whether an individual is an employee or independent contractor is: Who is in control?” This is determined by the common-law “right-to-control” test.

N.D.A.C. §§ 27-02-14-01(5)(a), 92-01-02-49(1)(a). “The right to control is dispositive, whether or not it has been exercised.”

As such, since the County controls when, where, and how the election worker does the work, requiring them to attend election worker training sessions, requiring them to follow established routines and schedules, and having the right to dismiss or terminate without liability, election workers would be considered “employees”.

In looking at the guidance from the IRS, if the election worker was paid less than \$600 per taxable year, no reporting of wages needs to occur. If the worker is paid more than \$600 per taxable year, then a W-2 must be issued to the worker. BUT you also must look at whether the wages paid are subject to FICA tax. The Social Security Administration has some guidance regarding when Social Security and Medicare taxes must be paid for election workers.  
[https://www.ssa.gov/slge/election\\_workers.htm?tl=0%2C1%2C2%2C3](https://www.ssa.gov/slge/election_workers.htm?tl=0%2C1%2C2%2C3). FICA taxes don't have to be paid for wages of less than \$2,300 unless subject to a “Section 218 Agreement”. North Dakota is listed as having an agreement (current through June 2015), which is available through the State Social Security Administrator, Zerina Arapovic at Job Service, Bismarck (<https://www.ncsssa.org/statessadmin-northdakota.html>). We need to know what that threshold is to determine if a W-2 needs to be issued to anyone earning LESS than \$600 per year for FICA.

Based on the guidance from federal courts, it appears election workers are “employees” of the County and W-2s must be issued to the workers - no later than January 31 of the following year - if they earned “taxable income” during the taxable year.

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- The filer did not receive data on a payee statement in time to prepare an accurate information return.

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These forms should be provided to the workers and filed as soon as possible. Per the IRS website, the penalty for **each statement** that was not provided / filed on time is \$130 per statement.

Sincerely,

Julie Lawyer  
State's Attorney  
Burleigh County  
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TAX

# DHS Announces Higher Fines for Form I-9 Violations



**JACOBSON**  
LAWRENCE & COMPANY

Accounting, Tax, and Advisory firm



## DHS Announces Higher Fines for Form I-9 Violations

The Department of Homeland Security (DHS) announced higher fines for employers failing to comply with Form I-9 (Employment Eligibility Verification) rules. With a new administration in Washington, D.C. later this month, Immigration and Customs Enforcement (ICE) will focus more on worksite enforcement, including I-9 inspections.

---

## Increased Penalties for I-9 Violations

As of **June 28, 2024**, the fines are:

- **I-9 Paperwork Violations:** \$281 to \$2,789 per Form I-9
  - **Knowingly Employing Unauthorized Alien:**
    - **First Offense:** \$698 to \$5,579 per violation
    - **Second Offense:** \$5,579 to \$13,946 per violation
    - **Third or More Offense:** \$8,369 to \$27,894 per violation
  - **E-Verify Employers** – Failure to Inform DHS of Continuing Employment Following Final Nonconfirmation: \$973 to \$1,942 per employee.
- 

## DOJ Penalties for Document Abuse and Discriminatory Practices

The Department of Justice (DOJ) also increased penalties for:

- **Document Abuse:** \$230 to \$2,304 per violation
- **Unfair Immigration-Related Employment Practices:**
  - **First Offense:** \$575 to \$4,610 per individual
  - **Second Offense:** \$4,610 to \$11,524 per individual
  - **Third or More Offense:** \$6,913 to \$23,048 per individual

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## Steps to Improve I-9 Compliance

To avoid penalties, employers should:

1. Review I-9 Procedures.
2. Train Employees Handling I-9 Compliance.
3. Conduct Periodic Internal Audits.

**Best Practice:** Make I-9 compliance a key part of business operations. Train employees thoroughly and focus on hiring, reverification, and regular audits. Start compliance efforts well before ICE inspections.

[← Back to Insights](#)

## Let's Get To Work

We're here to help every step of the way. Contact us today to discuss how our personalized attention and industry-specific solutions help you maximize your potential.

[Get in Touch](#)



**JACOBSON**  
LAWRENCE & COMPANY

Accounting, Tax, and Advisory firm

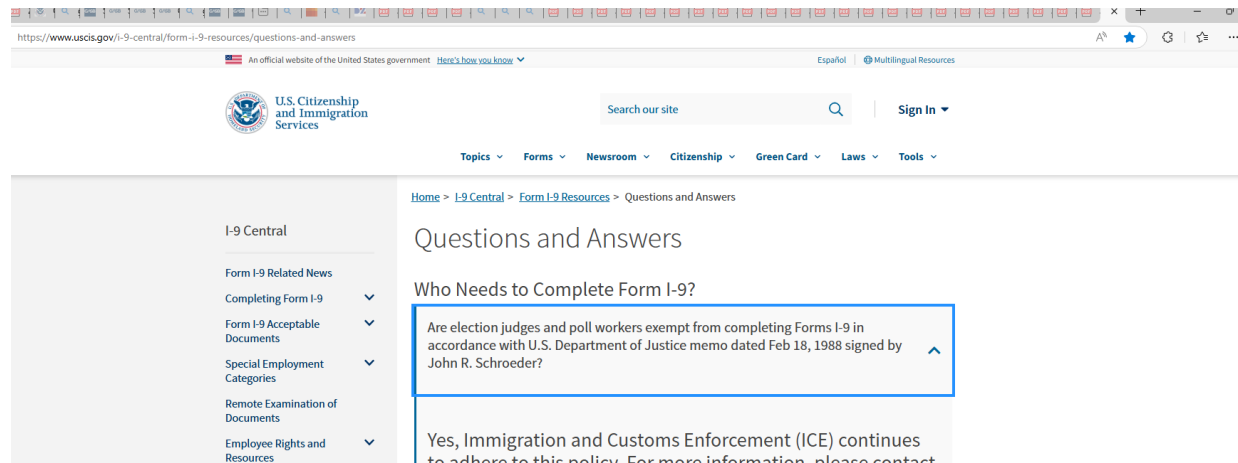
Empowering your Business with Solutions,  
Services, and Support

**From:** [Jacobs, Leigh](#)  
**To:** [Binder, Pamela J.](#); [Lawyer, Julie A.](#)  
**Subject:** RE: Election Worker tax forms  
**Date:** Wednesday, March 5, 2025 9:18:21 AM  
**Attachments:** [image001.png](#)

---

We might have an out for the I-9s.

[Questions and Answers | USCIS](#)



As far as a meeting, I am not sure what more I could possibly add to the discussion with Auditor Splonskowski than I have already addressed, but I think I need to hear what Auditor Splonskowski plans to do.

Mostly, I want to stay informed about what is happening, because I was left out of the initial phone call with Crowley Fleck and of the emails which followed, and Auditor Splonskowski subsequently misrepresented that conversation in an attempt to convince our Deputy Finance Director to use his login to the IRS to file 1099s for these election workers.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Binder, Pamela J. <pbinder@nd.gov>  
**Sent:** Wednesday, March 5, 2025 9:11 AM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>; Lawyer, Julie A. <JLAWYER@nd.gov>  
**Subject:** RE: Election Worker tax forms

Julie & Leigh,

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Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**

Burleigh County Human Resources

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**Cc:** Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

I could meet this morning or else 4-5pm today

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**Sent:** Wednesday, March 5, 2025 8:30 AM

**To:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

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**From:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>

**Sent:** Wednesday, March 5, 2025 2:36 AM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** Re: Election Worker tax forms

I don't know how much help I would be, but I'm available today from 9-10:30 or 3-5. I'm not available tomorrow.

Julie

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Sent:** Tuesday, March 4, 2025 4:17 PM

**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms

Is everyone else on this email willing to meet?

*Mark Splonskowski*

Burleigh County Auditor/Treasurer

---

**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>

**Sent:** Tuesday, March 4, 2025 4:09 PM

**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>

**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>

**Subject:** RE: Election Worker tax forms



Mark,

I have other projects that I need to get done with deadlines and I do not have time to meet again about this subject.

I have provided you with the information that is needed in order for you to get the W-2 forms out. Please use the tools that I have provided.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**  
Burleigh County Human Resources  
316 N 5<sup>th</sup> St., Suite 106  
Bismarck, ND 58501  
[pjbinder@nd.gov](mailto:pjbinder@nd.gov)  
Phone: 701-222-6669  
Cell Phone: 701-954-9875  
Fax: 701-221-3395

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**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 2:52 PM  
**To:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Can we all meet up in person and discuss this? I think it would be more beneficial and quicker to meet. Im available tomorrow and Thursday.

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**From:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 10:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Cc:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Mark,

The actual forms cannot be uploaded through the IRS portal to the Social Security Administration. Our payroll system generates an electronic HTML coded report of the needed W-2 information and that is what gets uploaded. If the correct HTML fields are not completed and correctly formatted the whole file errors out. We do not have the ability to electronically upload this data as we are not computer programmers that can build HTML code files. Because these W-2s could not come through our payroll system in 2024, they must be mailed to the address that is listed on the IRS tax publication for the Instructions on completing the 2024 -W-2s whatever that is. I have attached the IRS 2024 W-2 and W-3 instruction publication from the IRS for you.

Which 941 Form are you going to amend? Also, are you going to amend the 940 Form as well? I believe you would need to file an amended 940 and/or 941 Form, however, I do not know the process for certain as I have never had to do this before? I know when we had an issue with a change in the 941 form Megean had to call the IRS to figure out how to fix the form. Just to make you aware, she was on the phone on hold waiting to talk to a representative from the IRS for 6 hours. I have attached IRS Publication 15. The 941/940 forms are discussed in section 13. Since you as the Auditor and you normally sign these forms as the only listed authorized signor for Burleigh County, you just must sign the completed correction forms whatever that may be.

Also, what are you going to do about the federal mandated reporting requirements for employees? New Hire Reporting for Child Support (this is past the 30-day deadline for reporting, so I do not know what to do with that).

The Human Resources office did not receive any paperwork to hire these employees, so I am assuming that the I-9 Forms were not completed within the 3 days of employment. If we get audited by U.S. Immigration and Customs Enforcement (ICE), where do I direct them? If the Burleigh Morton Detention Center does sign a contract with ICE to detain illegal immigrants within the Detention, part of the process is that ICE audits all Burleigh County I-9 forms. I have been told that it is part of their due diligence checklist.

We will also have to amend our next quarterly reporting file for the NDACo CEGGroup so we can report the correct wages to WSI as this is a legal requirement as well. We may have to request certain data for that file feed and pay a penalty if we are accessed from WSI.

Sincerely,

**Pamela J. Binder**, SPHR, SHRM-SCP, MBA, MM/HR  
**HR Director/Risk Management Director**  
Burleigh County Human Resources  
316 N 5<sup>th</sup> St., Suite 106

Bismarck, ND 58501  
[pjbinder@nd.gov](mailto:pjbinder@nd.gov)  
Phone: 701-222-6669  
Cell Phone: 701-954-9875  
Fax: 701-221-3395

---

**From:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Sent:** Tuesday, March 4, 2025 9:56 AM  
**To:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>  
**Cc:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** RE: Election Worker tax forms

Julie,  
Thank you for the clarification.  
Pam, would you be willing to help us get these? We have the W-2's filled out, but we could use assistance uploading the information to social security as well as amending our 941 form.  
Thanks.

*Mark Splonskowski*  
Burleigh County Auditor/Treasurer

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**From:** Lawyer, Julie A. <[JLAWYER@nd.gov](mailto:JLAWYER@nd.gov)>  
**Sent:** Monday, March 3, 2025 11:47 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Larson, Thomas <[laronstomas@nd.gov](mailto:laronstomas@nd.gov)>  
**Cc:** Binder, Pamela J. <[pjbinder@nd.gov](mailto:pjbinder@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>  
**Subject:** Election Worker tax forms

Mark:

The short answer is that you need to get W-2s to any election worker who earned \$600 or more OR any wage that is FICA taxable (per the Section 218 Agreement we have with Social Security Administration) as soon as possible as the W-2s are already overdue and subject to a penalty of \$130 per statement.

The long answer is that to determine which tax form should be issued to election workers (W-2 or 1099), we first have to figure out their status.

Federal courts have looked at the definition of employment under the ND Administrative Code for Job Service North Dakota (N.D.A.C. § 27-02-14-01) and Workforce Safety and Insurance (N.D.A.C. § 92-01-02-49) to determine if a worker is an employee (W-2) or an independent contractor (1099). See *Oil & Gas Transfer L.L.C. v. Karr*, 928 F.3d 1120 (8<sup>th</sup> Cir 2019)

"... we apply the substantive law of North Dakota to determine whether Karr was an employee or an independent contractor. Under North Dakota law, ... "The person that asserts that an individual is an independent contractor under the common-law test ... has the burden of proving that fact." N.D.C.C. § 65-01-03(1). "The central question in determining whether an individual is an employee or independent contractor is: Who is in control?" This is determined by the common-law "right-to-control" test. N.D.A.C. §§ 27-02-14-01(5)(a), 92-01-02-49(1)(a). "The right to control is dispositive, whether or not it has been exercised."

As such, since the County controls when, where, and how the election worker does the work, requiring them to attend election worker training sessions, requiring them to follow established routines and schedules, and having the right to dismiss or terminate without liability, election workers would be considered "employees".

In looking at the guidance from the IRS, if the election worker was paid less than \$600 per taxable year, no reporting of wages needs to occur. If the worker is paid more than \$600 per taxable year, then a W-2 must be issued to the worker. BUT you also must look at whether the wages paid are subject to FICA tax. The Social Security Administration has some guidance regarding when Social Security and Medicare taxes must be paid for election workers. [https://www.ssa.gov/slge/election\\_workers.htm?tl=0%2C1%2C2%2C3](https://www.ssa.gov/slge/election_workers.htm?tl=0%2C1%2C2%2C3). FICA taxes don't have to be paid for wages of less than \$2,300 unless subject to a "Section 218 Agreement". North Dakota is listed as having an agreement (current through June 2015), which is available through the State Social Security Administrator, Zerina Arapovic at Job Service, Bismarck (<https://www.ncssa.org/statessadmin-northdakota.html>). We need to know what that threshold is to determine if a W-2 needs to be issued to anyone earning LESS than \$600 per year for FICA.

Based on the guidance from federal courts, it appears election workers are "employees" of the County and W-2s must be issued to the workers - no later than January 31 of the following year - if they earned "taxable income" during the taxable year.

Every election worker who earned over \$600 in 2024 from election work must get a W-2.  
IF our Section 218 Agreement requires payment of FICA taxes for earned wages that is anything less than \$600, a W-2 must be issued to those workers as well.

Obviously, that deadline has passed. There is an option for a 30-day extension, but we don't meet the criteria for the extension as it requires one of the following:

- A catastrophic event in a federally declared disaster area that made the filer unable to resume operations or necessary records unavailable;
- Fire, casualty or natural disaster affected operation of the filer;
- Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns;
- The filer was in the first year of establishment; OR

- The filer did not receive data on a payee statement in time to prepare an accurate information return.

(See <https://www.irs.gov/pub/irs-pdf/f8809.pdf>). Even then, the extension is only for 30 days and that 30 days expired today and does not cover the deadline to furnish the forms to the worker, those are granted for 15 days, unless the need for up to a total of 30 days is clearly shown. Since the election workers were not set up in the payroll system, W-2s cannot be generated from that system. Since election workers were paid through the accounts payable procedure through the Auditor / Treasurer's Office, the Auditor / Treasurer is responsible for issuing the W-2s. The form can be found here - <https://www.irs.gov/pub/irs-pdf/fw2.pdf> and the W-2s should be issued as soon as possible. W-2s also need to be filed with the Social Security Administration. You may want to consult with Human Resources or the Finance office to ensure proper reporting of taxable wages.

These forms should be provided to the workers and filed as soon as possible. Per the IRS website, the penalty for **each statement** that was not provided / filed on time is \$130 per statement.

Sincerely,

Julie Lawyer  
State's Attorney  
Burleigh County  
514 E Thayer Ave  
Bismarck, ND 58501  
Phone: (701) 222-6672  
FAX: (701) 221-6897  
e-service: [bc08@nd.gov](mailto:bc08@nd.gov)

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**BURLEIGH COUNTY COMMISSION  
MEETING MINUTES  
MARCH 17<sup>th</sup>, 2025**

**5:00 PM** *Invocation by Chaplain and Pledge of Allegiance*

Chairman Bitner called the regular meeting of the Burleigh County Commission to order.

Roll call of the members: Commissioners Bakken, Schwab, Woodcox, and Chairman Bitner present. Commissioner Munson was absent.

Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Woodcox to approve the meeting agenda with discussion on Comm. Bakken's trip to Washington DC being added to other business. All members present voted 'AYE'. Motion carried.

Chair Bitner listed the following meeting minutes which still needed approval; December 16<sup>th</sup>, 2024, and March 3<sup>rd</sup>, 2025 meeting minutes as well as the approval of the bills.

- Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Schwab to approve the bills. All members present voted 'AYE'. Motion carried.
- Motion by Comm. Woodcox, 2<sup>nd</sup> by Comm. Schwab to approve the March 3<sup>rd</sup>, 2025 meeting minutes. All members present voted 'AYE'. Motion carried.
- Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Woodcox to table the December 16<sup>th</sup>, 2025 meeting minutes. All members present voted 'AYE'. Motion carried.

The following abatements were presented for the Board's consideration; a complete copy of which are on file and available for inspection in the office of the Burleigh County Auditor/Treasurer.

Owner	Tax Year	Legal Description	Credit Type	Current MV	Reduced MV
Jade Falcon	2024	Lot 13, Block 4, Pheasant Valley	80% Disabled Veteran	\$642,000	\$480,000
Jascon & Carla Rundquist	2024	Lot 9, Block 7, Sattler's Sunrise 7th	100% Disabled Veteran	\$158,300	\$140,300
Harvey & Barbara Jackson	2024	N 16' of Lot 28, all Lot 29, & S17' of Lot 30, Block 38, Fisher	50% Homestead Credit	\$139,700	\$69,850
Janice Nesja	2024	Unit 4 3312 Arrowhead Condos, Lot 22, Block 1, Pebble Crk 8th Replat	50% Homestead Credit	\$311,800	\$211,800
Gary & Paula Hofland	2023	Unit 8 Bldg 1403 Baumgartner's Sharloh Lp Condos, Lot 8, Block 4, East Hills Add Replat	100% Homestead Credit	\$1,100	\$0

Gary & Paula Hofland	2024	Unit 8 Bldg 1403 Baumgartner's Sharloh Lp Condos, Lot 8, Block 4, East Hills Add Replat	50% Homestead Credit	\$3,400	\$1,700
Curtis Mertz	2025	1985 Schult 48 x 28, serial #RF198858AB	50% Homestead Credit	\$28,103	\$14,052
Greg & Tracey Runyon	2025	2002 Atlantic 27 x 56	50% Homestead Credit	\$60,329	\$30,164
Clifton Erickson	2024	S50' of N200' of W1/2 less W30' of Blk 17, Block 17, Lincoln	100% Homestead Credit	\$220,400	\$20,400
Charles & Sandra Ketterling	2023	Lot 2, Block 11, Lincoln Replat of B11	50% Homestead Credit	\$223,800	\$123,800
Charles & Sandra Ketterling	2024	Lot 2, Block 11, Lincoln Replat of B11	50% Homestead Credit	\$237,500	\$137,500
Michael Brown	2023	Unit 12 & garage 1 bldg 2106 Washington Court Condos, Lot B of Lot 1, Block 13, Replat Homan Acres	100% Homestead Credit	\$113,200	\$0
Michael Brown	2024	Unit 12 & garage 1 bldg 2106 Washington Court Condos, Lot B of Lot 1, Block 13, Replat Homan Acres	100% Homestead Credit	\$119,200	\$0
James & Cynthia Vollmer	2024	Lot 6, Block 2, Indian Hills	50% Homestead Credit	\$284,200	\$184,200
Todd & Gabrielle Sutton	2024	N10' of Lot 23, all Lot 24, & S10' of Lot 25, Block 67, McKenzie & Coffin's	90% Disabled Veteran	\$238,100	\$197,600
Nancy & Jorge PichardoQuezada	2024	Lot 1, Block 1, Southbay 4th Add 2nd Replat	70% Disabled Veteran	\$230,200	\$156,700
Duane & Juanita Martin	2025	2016 Fairmont 28 x 64, serial #MY16-128538ABK	50% Homestead Credit	\$111,821	\$55,910
Robert Christenson	2023	Lot 14, Block 19, Morningside Heights	100% Homestead Credit	\$217,300	\$17,300
Mary Wieben	2024	Lot 12, Block 17, Washington Heights 10th	50% Homestead Credit	\$295,000	\$195,000

Curtis Mertz	2023	1985 Schult 48 x 28, serial #RF198858AB	50% Homestead Credit	\$28,103	\$14,051
Curtis Mertz	2024	1985 Schult 48 x 28, serial #RF198858AB	50% Homestead Credit	\$28,103	\$14,051
Larry Enszt	2025	1995 Royalton 16 x 76, serial #9423361A	100% Homestead Credit	\$34,145	\$0
Ernest Erhardt	2024	Lot A of Lots 8-9, North Star Acres	50% Homestead Credit	\$384,000	\$284,000
Daryl & Twila Wanner	2025	1994 Schult 64 x 28, serial #R263514AB	50% Homestead Credit	\$55,158	\$27,579
Marty & Judy Grothe	2023	1990 Marshfield Executive 17 x 76, VIN #062339	100% Homestead Credit	\$26,290	\$0
Tim Heckelsmiller	2024	1981 Chicasaw 70 x 14, VIN #6544w	Mobile home removed from lot in 2024	\$10,349	\$0
Tracy & Cynthia Vanous	2023	Lots 1, 2, and 4, Block 1, Schultz	50% Homestead Credit	\$352,300	\$252,300
Amelia Schweitzer	2024	Unit 4 Calgary Condos, Lot 3, Block 1, North Hills 7th	100% Homestead Credit	\$182,500	\$0
Jeffery & Victoria Haas	2024	Unit 4 & garage 4 (bldg 872) San Angelo Dr Condo Assoc, Lots 3-5, Block 2, Cottonwood Lake 5th	50% Homestead Credit	\$208,600	\$108,600
Kenneth & Alvinia Buchholz	2024	Lot 5, Block 20, Meadow Valley 4th	50% Homestead Credit	\$245,700	\$145,700
Marlene Streeper	2024	Unit 3084 Pheasant Run Condo, part of Lot 4, Block 2, Tatley Meadows V	50% Homestead Credit	\$185,000	\$92,500
Carleton & Yvonne Logan	2023	Lot 11, Block 2, the Pointe	100% Homestead Credit	\$350,700	\$150,700
Carleton Logan	2024	Lot 11, Block 2, the Pointe	100% Homestead Credit	\$367,100	\$167,100
Roger Allen & Sandra Thomsen	2024	Lot 10-11 less 10' x 117.5' tract in Lot 11, Block 2, Baldwin Townsite	50% Homestead Credit	\$74,100	\$37,050

Motion by Comm. Bakken, 2<sup>nd</sup> by Comm. Woodcox to approve the Jade Falcon, Jascon & Carla Rundquist, Harvey & Barbara Jackson, Janice Nesja, Gary & Paula Hofland, Curtis Mertz, Greg & Tracey Runyon, Clifton Erickson, Charles & Sandra Ketterling, Michael Brown, James & Cynthia Vollmer, Todd & Gabrielle Sutton, Nancy & Jorge PichardoQuezada, Duane & Juanita Martin, Robert Christenson, Mary Wieben, Curtis Mertz, Larry Ensz, Ernest Erhardt, Daryl & Twila Wanner, Marty & Judy Grothe, Tim Heckelsmiller, Tracy & Cynthia Vanous, Amelia Schweitzer, Jeffery & Victoria Haas, Kenneth & Alvinia Buchholz, Marlene Streeper, Carleton & Yvonne Logan, Carleton Logan, Roger Allen & Sandra Thomsen abatements and the consent agenda in its entirety. All members present voted 'AYE'. Motion carried.

Chair Bitner started the public hearing regarding the plan on redesignating the elective office of Burleigh County Auditor/Treasurer to appointive office and handed the meeting over to Vice-Chair Bakken.

- Vice-Chair Bakken listed information on the upcoming public hearings. March 22<sup>nd</sup> at 10:00am in Wilton and at 2:00pm in Sterling. March 29<sup>th</sup> at 10:30am in Bismarck and April 7<sup>th</sup>, 2025 at the regularly scheduled 5:00pm commission meeting. Comm. Bakken also made note of the online form for comments located at Burleigh.gov.
- Vice-Chair Bakken opened the public hearing to the public for comment. Mike Connelly, Kyle Engelhardt, Jonathan Hooker, Travis Jensen, Ryan Marquart, Tim Mattson, Francis Schweitzer, Trina Schweitzer all spoke against the Auditor/Treasurer position becoming an appointed position. Joe Gross and Michelle Jundt spoke in favor of the Auditor/Treasurer position becoming an appointed position. Vice-Chair Bakken passed the meeting back to Chair Bitner.
- Chair Bitner responded to a news article regarding a cut to the Senior Citizen's budget. He spoke on a comment that he heard about the Finance Department being forbid to assist the Auditor/Treasurer in the County budgeting process and that it never happened. On request, Finance Director Leigh Jacobs spoke on this comment and referenced three different occasions the Finance Department met with the Auditor/Treasurer to work on the budget. He also referenced a meeting that occurred in 2024. There was discussion regarding the delay in posting the budget on the county website. Chair Bitner then listed the audit adjustments from the 2023 audit performed by the State Auditor's Office.

County Engineer Marcus Hall presented a resolution to waive the pavement policy, at this time, for the proposed plat for Ski Haven LLP. Motion by Comm. Bakken, 2<sup>nd</sup> by Woodcox to approve the resolution to waive the pavement policy, at this time, for Ski Haven LLP. All members present voted 'AYE'. Motion carried.

County States Attorney Julie Lawyer presented a request for a salary variance for an investigator position. Motion by Comm. Schwab, 2<sup>nd</sup> by Comm. Bakken to approve the salary variance. All members present voted 'AYE'. Motion carried.

The Commission had a discussion regarding the rental agreement between Burleigh County and the City of Bismarck for the City/County Building and the Courthouse. Comm. Bakken noted that the City of Bismarck was inquiring about the rental agreements and any changes that might take place that would affect those. Chair Bitner stated that the County has to wait until the Provident Building remodel finish date is established to make a decision on the City/County Building and that no changes are needed at the Courthouse.

County Emergency Management Director Mary Senger presented a request for a County burn ban. Mary stated that she has heard back from all but one Fire Chief and they are all for instituting these restrictions. Chair Bitner made note of a local fire and commended the staff that responded and extinguished it. Comm. Bakken, 2<sup>nd</sup> by Comm. Woodcox to institute the burn ban. All members voted 'AYE'. Motion carried.

In other business, Comm. Bakken discussed his trip to Washington DC for a carbon sequestration conference. Comm. Schwab spoke about the Summit Carbon Pipeline and reminded people of the Primary Residence Property Tax Credit which can be applied for until March 31<sup>st</sup>, 2025. Comm. Schwab brought up an issue regarding Election Workers and the delay in receiving their tax forms. He asked Auditor/Treasurer Splonskowski to come up and answer some questions. Splonskowski, Human Resources Director Pam Binder, and the Commission had a discussion regarding the Election Worker tax forms. Chair Bitner requested a copy of the meeting recordings and emails, mentioned by Binder, be sent to him and the State's Attorney. Comm. Bakken noted the upcoming public hearing dates and a reminder of the online form to submit comments.

Meeting Adjourned

---

Mark Splonskowski,  
County Auditor/Treasurer

---

Brian Bitner,  
Chairman



**From:** [Jacobs, Leigh](#)  
**To:** [Lawyer, Julie A.](#); [Bitner, Brian](#); [Binder, Pamela J.](#)  
**Subject:** FW: 2025 W-2s sent out for 2024 tax year  
**Date:** Thursday, March 20, 2025 12:03:24 PM  
**Importance:** High

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FYI,

We have reached out to the Auditor/Treasurer to see if he will meet with us today to discuss this evolving W-2 situation in which the Auditor/Treasurer sent out 2025 W2s for the 2024 tax year. We need to understand exactly what has been done to fix it. We may need to reach out to Crowley Fleck again.

The way things are going, this is creating a tax headache for our election workers, not to mention liability for the County.

I've not yet received a response. If any of you wish to join a potential meeting, please let me know.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Jacobs, Leigh  
**Sent:** Thursday, March 20, 2025 11:41 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Ripplinger, Ronda <[roripplinger@nd.gov](mailto:roripplinger@nd.gov)>; Larson, Thomas <[larsonthomas@nd.gov](mailto:larsonthomas@nd.gov)>  
**Subject:** 2025 W-2s sent out for 2024 tax year  
**Importance:** High

Good morning,

We reviewed the W-2s in the W:/ drive and noted that they appear to be for tax year 2025. We also noted that there are 3 files which are captioned "NEW" that are W-2s for the 2024 tax year. I do not see where we have filled out forms W-2 C – corrected wage and tax statement. Nor can I tell from what's on the drive whether 2025 W-2s were submitted to the IRS.

This could create a tax headache for our election workers. I can envision a scenario where a tax professional receives a 2025 W-2 from an election worker and files it away for the next year. We really need to evaluate where we are with all the facts to come up with a solution.

**Can we meet today to discuss this?**

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Friday, March 21, 2025 10:55 AM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Cc:** Senger, Mary H. <msenger@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Subject:** W2s (redacted), Burleigh Audit findings, 1099 Letter

Chair Bitner,

I'm attaching some of the things we've discussed recently.

The first is the redacted W-2s. This contains an example of one of the 2025 W2s initially sent out around March 6<sup>th</sup>, and an example of one of the "NEW" 2024 W2s sent this week or prepared this week. I have also included notes from our meeting yesterday where myself, Taylor Schmidt, Auditor Splonskowski, Ronda Ripplinger, and Thomas Larson met to discuss the current situation.

I was dismayed at our meeting yesterday to see our Election Coordinator, Thomas Larson, accept the blame and responsibility for filling out the wrong W-2. Auditor Splonskowski was completely silent during and after Thomas' explanation of his mistake, and Auditor Splonskowski never accepted responsibility. In my opinion, this error is due to a lack of review by management caused by Auditor Splonskowski's lack of skill, knowledge, experience. I know Taylor can attest that in public accounting, every single word, formula, and number got management review and approval before it left the building. Lacking the expertise to review the tax forms himself, Auditor Splonskowski should have sent the W2s off to Crowley Fleck for review prior to sending them out.

The next is the "Management Letter" from our annual audit from 2016 through 2023. This doesn't include our findings per se, but it includes any accounting adjustments the State Auditor's Office made to bring our books into compliance with GASB. On the first page of this document I have a summary. Fiscal Year 2023 required nearly twice the accounting adjustments as any prior year.

Please let me know if you have any questions.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501

22222		a Employee's social security number [REDACTED]		OMB No. 1545-0029	
b Employer identification number (EIN) 45-6002204			1 Wages, tips, other compensation \$1,215.00		2 Federal income tax withheld
c Employer's name, address, and ZIP code  BURLEIGH COUNTY 221 N 5TH ST PO BOX 5518 BISMARCK, ND 58501			3 Social security wages		4 Social security tax withheld
			5 Medicare wages and tips		6 Medicare tax withheld
			7 Social security tips		8 Allocated tips
d Control number			9 [REDACTED]		10 Dependent care benefits
e Employee's first name and initial [REDACTED]  [REDACTED]  [REDACTED]  f Employee's address and ZIP code			11 Nonqualified plans		12a
			13 Statutory employee Retirement plan Third-party sick pay <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		12b
			14 Other		12c
					12d
15 State ND	Employer's state ID number	16 State wages, tips, etc. \$1,215.00	17 State income tax	18 Local wages, tips, etc.	19 Local income tax
					20 Locality name

Form **W-2** Wage and Tax Statement  
Copy 1—For State, City, or Local Tax Department

2025

Department of the Treasury—Internal Revenue Service

NOTES ON THIS FILE:

This file was named "FIRST\_NAME LAST\_NAME" as in "JOHN DOE"

This file was retrieved from the Auditor/Treasurer's "W" drive

The Date Modified on this file is 3/6/2025 at 12:52 PM

22222		a Employee's social security number [REDACTED]		OMB No. 1545-0008	
b Employer identification number (EIN) 45-6002204			1 Wages, tips, other compensation \$1,308.75		2 Federal income tax withheld
c Employer's name, address, and ZIP code  BURLEIGH COUNTY 221 N 5TH ST PO BOX 5518 BISMARCK, ND 58501			3 Social security wages		4 Social security tax withheld
			5 Medicare wages and tips		6 Medicare tax withheld
			7 Social security tips		8 Allocated tips
d Control number			9 [REDACTED]		10 Dependent care benefits
e Employee's first name and initial Last name Suff. [REDACTED]  [REDACTED]  [REDACTED]			11 Nonqualified plans		12a
			13 Statutory employee Retirement plan Third-party sick pay <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		12b
			14 Other		12c
					12d
f Employee's address and ZIP code					
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax
ND	45-6002204	\$1,308.75			
					20 Locality name

Form **W-2** Wage and Tax Statement  
Copy 1—For State, City, or Local Tax Department

2024

Department of the Treasury—Internal Revenue Service

**NOTES ON THIS FILE:**

This file was named "FIRST\_NAME LAST\_NAME - NEW" as in "JOHN DOE - NEW"

This file was retrieved from the Auditor/Treasurer's "W" drive.

The Date Modified on this file is 3/18/2025 at 10:43 AM.

**From:** [Bitner, Brian](#)  
**To:** [Larson, Thomas](#); [Splonskowski, Mark D.](#); [Lawyer, Julie A.](#); [Jacobs, Leigh](#)  
**Subject:** Election worker  
**Date:** Monday, March 24, 2025 7:56:58 AM

---

Election worker Gaylynn Becker has not received a 1099 or w2 for 2024 election pay. He did receive a 1099 concerning his pay and travel as a member of the Human Service Zone Board.

His contact number is 701-527-1740.

He needs immediate attention as he plans to meet with his tax preparer tomorrow. Please see to it that he has needed documentation even if it must be hand delivered today.

b

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Tuesday, January 28, 2025 9:07 AM  
**To:** Bakken, Steven <BCCBAKKEN@nd.gov>; Bitner, Brian <bccbitner@nd.gov>  
**Subject:** FW: 2024 Mill Levy Report

1/2

---

**From:** Renee Kipp <reneek@burleighsenioradults.org>  
**Sent:** Monday, January 27, 2025 10:21 AM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** FW: 2024 Mill Levy Report

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. **\*\*\*\*\***

Hi Leigh,

I sent this report on January 13<sup>th</sup>, please see below.

The one that needs signature and then send to the state is the consolidated ML Final Report w-sig.

Please let me know if you have any questions.

Thank you!

Renee Kipp  
Executive Director  
Burleigh County Senior Adults Program  
315 N 20<sup>th</sup> Street  
Bismarck, ND 58501  
701-255-4648 (Office)  
701-877-1679 (Direct)  
[reneek@burleighsenioradults.org](mailto:reneek@burleighsenioradults.org)

-----Confidentiality Statement-----

*This transmission is intended only for the use of the individual to whom it is addressed and may contain information that is made confidential by law. If you are not the intended recipient,*

*you are hereby notified any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please respond immediately to the sender and then destroy the original transmission as well as any electronic or printed copies. Thank you!*

---

**From:** Renee Kipp  
**Sent:** Monday, January 13, 2025 10:57 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Bakken, Steven <[bccbakken@nd.gov](mailto:bccbakken@nd.gov)>  
**Subject:** 2024 Mill Levy Report

Good Morning Auditor Splonskowski,

Attached you will find our 2024 Mill Levy report. I have included the consolidated report which is submitted to the State Treasurer, and a copy of each individual report.

Please let me know that you received this email and feel free to contact me if you have any questions.

Thank you!

Renee Kipp  
Executive Director  
Burleigh County Senior Adults Program  
315 N 20<sup>th</sup> Street  
Bismarck, ND 58501  
701-255-4648 (Office)  
701-877-1679 (Direct)  
[reneek@burleighsenioradults.org](mailto:reneek@burleighsenioradults.org)

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**SENIOR CITIZENS MILL LEVY/MATCH ANNUAL REPORT**  
OFFICE OF STATE TREASURER  
SFN 58180 (9-2022)

**NDCC 57-15-56**

Reporting Period January 1, 2024 through December 31, 2024			
Name of City or County Burleigh County Senior Adults Program			
Address 315 N 20th Street	City Bismarck	State ND	Zip Code 58501
Contact Person Renee Kipp			
Title Executive Director		Telephone Number (701) 255-4648	
During this reporting period, how many seniors did you serve with <b>ONLY</b> Mill Levy/Match Funds? 3084			

**NOTE: Wherever the term "Mill Levy Dollars" is used it is meant to include ALL Mill Levy/Match Funds.**

1. Amount of Mill Levy/Match Dollars on hand on January 1. (this is the balance as stated on the previous report)	\$162,858.12																																					
2. Amount of Mill Levy/Match Dollars received this reporting period (January 1 through December 31)	\$1,229,125.00																																					
3. Total Mill Levy/Match Funds available for the year (Add lines 1 and 2)	\$1,391,983.12																																					
4. During this reporting period, indicate below how the Mill Levy/ Match dollars were spent for the following: <div style="margin-left: 40px;">a. Administrative or Maintenance of Senior Center (Example: Utilities, supplies, insurance, etc.) <span style="float: right;">\$1,131,655.64</span></div> <div style="margin-left: 40px;">b. Services/Programs:</div> <table border="1" style="width: 100%;"><thead><tr><th>Mill Levy/Match Services</th><th>Mill Levy/Match Number of Units</th><th>Mill Levy/ Match Dollars Spent</th></tr></thead><tbody><tr><td>Congregate Meals</td><td>35,702</td><td>\$50,994.43</td></tr><tr><td>Home Delivered Meals</td><td>116,139</td><td>\$451,375.18</td></tr><tr><td>Outreach</td><td></td><td></td></tr><tr><td>Chore</td><td></td><td></td></tr><tr><td>Health</td><td>20,216</td><td>\$43,065.71</td></tr><tr><td>Transportation</td><td>1,893</td><td>\$2,969.87</td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td><b>TOTAL Section b</b></td><td>173,950</td><td>\$548,405.19</td></tr></tbody></table> <div style="margin-left: 40px;">c. Other (not Admin/Mtnc/Prog/Services) <span style="float: right;">\$0.00</span></div>		Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent	Congregate Meals	35,702	\$50,994.43	Home Delivered Meals	116,139	\$451,375.18	Outreach			Chore			Health	20,216	\$43,065.71	Transportation	1,893	\$2,969.87	Other			Other			Other			Other			<b>TOTAL Section b</b>	173,950	\$548,405.19	
Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent																																				
Congregate Meals	35,702	\$50,994.43																																				
Home Delivered Meals	116,139	\$451,375.18																																				
Outreach																																						
Chore																																						
Health	20,216	\$43,065.71																																				
Transportation	1,893	\$2,969.87																																				
Other																																						
Other																																						
Other																																						
Other																																						
<b>TOTAL Section b</b>	173,950	\$548,405.19																																				
5. Total of 4a, 4b, 4c:	\$1,680,060.83																																					
6. Amount of Mill Levy/Match Dollars left at year end (December 31) (Subtract line 5 from line 3):																																						
7. Anticipated purpose for ending balance (if any mill levy/match funds are remaining)																																						

The individual signing this report makes the following assurances:

YES	NO	(Please Initial)
rak		1. The organization is incorporated as a non-profit organization.
rak		2. The budget was approved by the membership and governing board.
rak		3. The Mill Levy dollars received were kept in a separate fund.
rak		4. Generally accepted accounting principals were followed.
rak		5. Funds were expended for the purposes budgeted.
rak		6. The money applied for under this section (NDCC 57-15-56) was used for the purpose of establishing or maintaining services and programs for senior citizens, including the maintenance of existing senior citizen centers which provide informational, health, welfare, counseling and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services.

INDIVIDUAL COUNTY / CITY COMMISSIONS MAY REQUIRE ADDITIONAL INFORMATION NOT CONTAINED IN THIS REPORT.

**PROVIDERS OF SERVICE:**

**FORWARD THIS ANNUAL REPORT TO YOUR COUNTY / CITY AUDITOR BY JANUARY 15.**

**ELECTRONIC SIGNATURES ARE ACCEPTED.**

Signature: 	
Title: Executive Director	Date: 1/13/2025

**FOR COUNTY / CITY AUDITORS ONLY:**

\_\_\_\_\_ I certify that the Mill Levy/Match Funds received in the previous year have been budgeted for the same purposes permitted for the expenditure of the proceeds of that as levied under section 57-15-56 of the North Dakota Century Code.

Please send only <b>ONE</b> report for your County / City by February 1 to:		
<b>OFFICE OF STATE TREASURER</b> <b>600 EAST BOULEVARD AVENUE – DEPT. 120</b> <b>BISMARCK, ND 58505-0600</b>		
County / City Reporting		
Auditor's Signature		
Telephone Number	E-mail Address	Date

\* Electronic signatures are accepted by the Office of State Treasurer.

**SENIOR CITIZENS MILL LEVY/MATCH ANNUAL REPORT**

OFFICE OF STATE TREASURER

SFN 58180 (9-2022)

**NDCC 57-15-56**

Reporting Period

January 1, 2024

through December 31, 2024

Name of City or County

SE Burleigh Golden Age Club

Address

2600 236th Street NE

City

McKenzie

State

ND

Zip Code

58572

Contact Person

Barbara Knutson

Title

Chair

Telephone Number

(701) 390-6767

During this reporting period, how many seniors did you serve with **ONLY** Mill Levy/Match Funds?

w/BCSAP numbers

**NOTE: Wherever the term "Mill Levy Dollars" is used it is meant to include ALL Mill Levy/Match Funds.**

1. Amount of Mill Levy/Match Dollars on hand on January 1. (this is the balance as stated on the previous report)	\$2,290.86																																					
2. Amount of Mill Levy/Match Dollars received this reporting period (January 1 through December 31)	\$4,500.00																																					
3. Total Mill Levy/Match Funds available for the year (Add lines 1 and 2)	\$6,790.86																																					
4. During this reporting period, indicate below how the Mill Levy/ Match dollars were spent for the following:																																						
a. Administrative or Maintenance of Senior Center (Example: Utilities, supplies, insurance, etc.)																																						
	\$4,050.00																																					
b. Services/Programs:																																						
<table border="1"><thead><tr><th>Mill Levy/Match Services</th><th>Mill Levy/Match Number of Units</th><th>Mill Levy/ Match Dollars Spent</th></tr></thead><tbody><tr><td>Congregate Meals</td><td>inw/ BCSAP</td><td>\$400.00</td></tr><tr><td>Home Delivered Meals</td><td>Numbers</td><td>\$1,200.00</td></tr><tr><td>Outreach</td><td></td><td></td></tr><tr><td>Chore</td><td></td><td></td></tr><tr><td>Health</td><td>inw/ BCSAP numbers</td><td>\$400.00</td></tr><tr><td>Transportation</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>TOTAL Section b</td><td></td><td>\$2,000.00</td></tr></tbody></table>	Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent	Congregate Meals	inw/ BCSAP	\$400.00	Home Delivered Meals	Numbers	\$1,200.00	Outreach			Chore			Health	inw/ BCSAP numbers	\$400.00	Transportation			Other			Other			Other			Other			TOTAL Section b		\$2,000.00		
Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent																																				
Congregate Meals	inw/ BCSAP	\$400.00																																				
Home Delivered Meals	Numbers	\$1,200.00																																				
Outreach																																						
Chore																																						
Health	inw/ BCSAP numbers	\$400.00																																				
Transportation																																						
Other																																						
Other																																						
Other																																						
Other																																						
TOTAL Section b		\$2,000.00																																				
c. Other (not Admin/Mtnc/Prog/Services)																																						
5. Total of 4a, 4b, 4c:	\$6,050.00																																					
6. Amount of Mill Levy/Match Dollars left at year end (December 31) (Subtract line 5 from line 3):	\$740.86																																					
7. Anticipated purpose for ending balance (if any mill levy/match funds are remaining) Rent and Supplies																																						

**The individual signing this report makes the following assurances:**

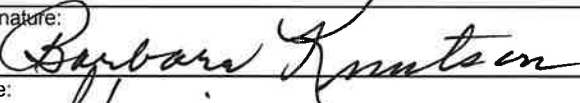
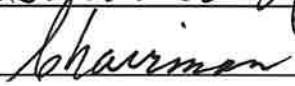
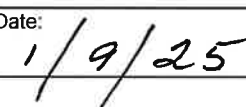
YES	NO	(Please Initial)
✓		1. The organization is incorporated as a non-profit organization.
✓		2. The budget was approved by the membership and governing board.
✓		3. The Mill Levy dollars received were kept in a separate fund.
✓		4. Generally accepted accounting principals were followed.
✓		5. Funds were expended for the purposes budgeted.
✓		6. The money applied for under this section (NDCC 57-15-56) was used for the purpose of establishing or maintaining services and programs for senior citizens, including the maintenance of existing senior citizen centers which provide informational, health, welfare, counseling and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services.

INDIVIDUAL COUNTY / CITY COMMISSIONS MAY REQUIRE ADDITIONAL INFORMATION NOT CONTAINED IN THIS REPORT.

**PROVIDERS OF SERVICE:**

**FORWARD THIS ANNUAL REPORT TO YOUR COUNTY / CITY AUDITOR BY JANUARY 15.**

**ELECTRONIC SIGNATURES ARE ACCEPTED.**

Signature: 	
Title: 	Date: 

**FOR COUNTY / CITY AUDITORS ONLY:**

\_\_\_\_\_ I certify that the Mill Levy/Match Funds received in the previous year have been budgeted for the same purposes permitted for the expenditure of the proceeds of that as levied under section 57-15-56 of the North Dakota Century Code.

Please send only <b>ONE</b> report for your County / City by February 1 to:  <b>OFFICE OF STATE TREASURER 600 EAST BOULEVARD AVENUE – DEPT. 120 BISMARCK, ND 58505-0600</b>		
County / City Reporting		
Auditor's Signature		
Telephone Number	E-mail Address	Date

\* Electronic signatures are accepted by the Office of State Treasurer.



# SENIOR CITIZENS MILL LEVY/MATCH ANNUAL REPORT

OFFICE OF STATE TREASURER

SFN 58180 (9-2022)

NDCC 57-15-56

Reporting Period

January 1, 2024

through December 31, 2024

Name of City or County

Golden Wing Club

Address

25401 227th Ave NE

City

Wing

State

ND

Zip Code

58494

Contact Person

Arlene Olson

Title

Treasurer

Telephone Number

(701) 226-6682

During this reporting period, how many seniors did you serve with **ONLY** Mill Levy/Match Funds?

**NOTE: Wherever the term "Mill Levy Dollars" is used it is meant to include ALL Mill Levy/Match Funds.**

1. Amount of Mill Levy/Match Dollars on hand on January 1. (this is the balance as stated on the previous report)	\$33,987.96																																				
2. Amount of Mill Levy/Match Dollars received this reporting period (January 1 through December 31)	\$30,000.00																																				
3. Total Mill Levy/Match Funds available for the year (Add lines 1 and 2)	\$63,987.96																																				
4. During this reporting period, indicate below how the Mill Levy/ Match dollars were spent for the following:																																					
a. Administrative or Maintenance of Senior Center (Example: Utilities, supplies, insurance, etc.)																																					
	\$29,459.79																																				
b. Services/Programs:																																					
<table><thead><tr><th>Mill Levy/Match Services</th><th>Mill Levy/Match Number of Units</th><th>Mill Levy/ Match Dollars Spent</th></tr></thead><tbody><tr><td>Congregate Meals</td><td>W/BCSAP numbers</td><td>\$275.00</td></tr><tr><td>Home Delivered Meals</td><td>W/BCSAP numbers</td><td>\$2,925.00</td></tr><tr><td>Outreach</td><td></td><td></td></tr><tr><td>Chore</td><td></td><td></td></tr><tr><td>Health</td><td>W/BCSAP numbers</td><td>\$400.00</td></tr><tr><td>Transportation</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>TOTAL Section b</td><td></td><td>\$3,600.00</td></tr></tbody></table>	Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent	Congregate Meals	W/BCSAP numbers	\$275.00	Home Delivered Meals	W/BCSAP numbers	\$2,925.00	Outreach			Chore			Health	W/BCSAP numbers	\$400.00	Transportation			Other			Other			Other			Other			TOTAL Section b		\$3,600.00	
Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent																																			
Congregate Meals	W/BCSAP numbers	\$275.00																																			
Home Delivered Meals	W/BCSAP numbers	\$2,925.00																																			
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Health	W/BCSAP numbers	\$400.00																																			
Transportation																																					
Other																																					
Other																																					
Other																																					
Other																																					
TOTAL Section b		\$3,600.00																																			
c. Other (not Admin/Mtnc/Prog/Services)																																					
5. Total of 4a, 4b, 4c:	\$33,059.79																																				
6. Amount of Mill Levy/Match Dollars left at year end (December 31) (Subtract line 5 from line 3):	\$30,928.17																																				
7. Anticipated purpose for ending balance (if any mill levy/match funds are remaining) REPLACE BACK DOOR/ENCLOSURE, A/C, ROOF																																					

**The individual signing this report makes the following assurances:**

YES	NO	(Please Initial)
X		1. The organization is incorporated as a non-profit organization.
X		2. The budget was approved by the membership and governing board.
X		3. The Mill Levy dollars received were kept in a separate fund.
X		4. Generally accepted accounting principals were followed.
X		5. Funds were expended for the purposes budgeted.
X		6. The money applied for under this section (NDCC 57-15-56) was used for the purpose of establishing or maintaining services and programs for senior citizens, including the maintenance of existing senior citizen centers which provide informational, health, welfare, counseling and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services.

INDIVIDUAL COUNTY / CITY COMMISSIONS MAY REQUIRE ADDITIONAL INFORMATION NOT CONTAINED IN THIS REPORT.

**PROVIDERS OF SERVICE:**

**FORWARD THIS ANNUAL REPORT TO YOUR COUNTY / CITY AUDITOR BY JANUARY 15.**

**ELECTRONIC SIGNATURES ARE ACCEPTED.**

Signature:	
Arlene Olson	
Title:	Date:
Treasurer	1/2/2025

**FOR COUNTY / CITY AUDITORS ONLY:**

\_\_\_\_\_ I certify that the Mill Levy/Match Funds received in the previous year have been budgeted for the same purposes permitted for the expenditure of the proceeds of that as levied under section 57-15-56 of the North Dakota Century Code.

Please send only <b>ONE</b> report for your County / City by February 1 to:		
<b>OFFICE OF STATE TREASURER</b> <b>600 EAST BOULEVARD AVENUE – DEPT. 120</b> <b>BISMARCK, ND 58505-0600</b>		
County / City Reporting		
Auditor's Signature		
Telephone Number	E-mail Address	Date

\* Electronic signatures are accepted by the Office of State Treasurer.



**SENIOR CITIZENS MILL LEVY/MATCH ANNUAL REPORT**  
OFFICE OF STATE TREASURER  
SFN 58180 (9-2022)

NDCC 57-15-56

Reporting Period January 1, 2024 through December 31, 2024			
Name of City or County eastern Rural Burleigh (WRT)			
Address 3750 E Rosser Ave	City Bismarck	State ND	Zip Code 58501
Contact Person Carol Anderson			
Title Director		Telephone Number (701) 224-1876	
During this reporting period, how many seniors did you serve with ONLY Mill Levy/Match Funds?			

**NOTE: Wherever the term "Mill Levy Dollars" is used it is meant to include ALL Mill Levy/Match Funds.**

1. Amount of Mill Levy/Match Dollars on hand on January 1. (this is the balance as stated on the previous report)	\$0.00																																				
2. Amount of Mill Levy/Match Dollars received this reporting period (January 1 through December 31)	\$8,500.00																																				
3. Total Mill Levy/Match Funds available for the year (Add lines 1 and 2)	\$8,500.00																																				
4. During this reporting period, indicate below how the Mill Levy/ Match dollars were spent for the following: a. Administrative or Maintenance of Senior Center (Example: Utilities, supplies, insurance, etc.) b. Services/Programs:																																					
<div style="border: 1px solid black; padding: 5px; display: inline-block;">Transit Rides</div>																																					
<table border="1"><thead><tr><th>Mill Levy/Match Services</th><th>Mill Levy/Match Number of Units</th><th>Mill Levy/ Match Dollars Spent</th></tr></thead><tbody><tr><td>Congregate Meals</td><td></td><td></td></tr><tr><td>Home Delivered Meals</td><td></td><td></td></tr><tr><td>Outreach</td><td></td><td></td></tr><tr><td>Chore</td><td></td><td></td></tr><tr><td>Health</td><td></td><td></td></tr><tr><td>Transportation</td><td>(Total - 1721) 507</td><td>\$7,000.00</td></tr><tr><td>Other (Annual bus match)</td><td></td><td><del>\$2,000.00</del></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td><b>TOTAL Section b</b></td><td>507</td><td>\$7,000.00</td></tr></tbody></table>	Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent	Congregate Meals			Home Delivered Meals			Outreach			Chore			Health			Transportation	(Total - 1721) 507	\$7,000.00	Other (Annual bus match)		<del>\$2,000.00</del>	Other			Other			Other			<b>TOTAL Section b</b>	507	\$7,000.00	
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5. Total of 4a, 4b, 4c:	\$9,000.00																																				
6. Amount of Mill Levy/Match Dollars left at year end (December 31) (Subtract line 5 from line 3):																																					
7. Anticipated purpose for ending balance (if any mill levy/match funds are remaining)																																					

**The individual signing this report makes the following assurances:**

YES	NO	(Please Initial)
X		1. The organization is incorporated as a non-profit organization. <i>QA</i>
X		2. The budget was approved by the membership and governing board. <i>CA</i>
	X	3. The Mill Levy dollars received were kept in a separate fund. <i>CA</i>
X		4. Generally accepted accounting principals were followed. <i>QA</i>
X		5. Funds were expended for the purposes budgeted. <i>QA</i>
X		6. The money applied for under this section (NDCC 57-15-56) was used for the purpose of establishing or maintaining services and programs for senior citizens, including the maintenance of existing senior citizen centers which provide informational, health, welfare, counseling and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services. <i>QA</i>

INDIVIDUAL COUNTY / CITY COMMISSIONS MAY REQUIRE ADDITIONAL INFORMATION NOT CONTAINED IN THIS REPORT.

**PROVIDERS OF SERVICE:**

**FORWARD THIS ANNUAL REPORT TO YOUR COUNTY / CITY AUDITOR BY JANUARY 15.  
ELECTRONIC SIGNATURES ARE ACCEPTED.**

Signature: <i>Carol Anderson</i>	
Title: Director	Date: 1/2/2025

**FOR COUNTY / CITY AUDITORS ONLY:**

\_\_\_\_\_ I certify that the Mill Levy/Match Funds received in the previous year have been budgeted for the same purposes permitted for the expenditure of the proceeds of that as levied under section 57-15-56 of the North Dakota Century Code.

Please send only <b>ONE</b> report for your County / City by February 1 to:		
<b>OFFICE OF STATE TREASURER</b> <b>600 EAST BOULEVARD AVENUE – DEPT. 120</b> <b>BISMARCK, ND 58505-0600</b>		
County / City Reporting		
Auditor's Signature		
Telephone Number	E-mail Address	Date

\* Electronic signatures are accepted by the Office of State Treasurer.





**SENIOR CITIZENS MILL LEVY/MATCH ANNUAL REPORT**  
OFFICE OF STATE TREASURER  
SFN 58180 (9-2022)

**NDCC 57-15-56**

Reporting Period
January 1, 2024 through December 31, 2024

Name of City or County Burleigh County (ALL ENTITIES)			
Address 315 N 20th Street	City Bismarck	State ND	Zip Code 58501
Contact Person Renee Kipp			
Title Executive Director		Telephone Number (701) 255-4648	
During this reporting period, how many seniors did you serve with <b>ONLY</b> Mill Levy/Match Funds? 3084			

**NOTE: Wherever the term "Mill Levy Dollars" is used it is meant to include ALL Mill Levy/Match Funds.**

1. Amount of Mill Levy/Match Dollars on hand on January 1. (this is the balance as stated on the previous report)	\$199,136.94																																					
2. Amount of Mill Levy/Match Dollars received this reporting period (January 1 through December 31)	\$1,272,125.00																																					
3. Total Mill Levy/Match Funds available for the year (Add lines 1 and 2)	\$1,471,261.94																																					
4. During this reporting period, indicate below how the Mill Levy/ Match dollars were spent for the following: <div>a. Administrative or Maintenance of Senior Center (Example: Utilities, supplies, insurance, etc.) <div>\$1,165,165.43</div></div> <div>b. Services/Programs: <table><thead><tr><th>Mill Levy/Match Services</th><th>Mill Levy/Match Number of Units</th><th>Mill Levy/ Match Dollars Spent</th></tr></thead><tbody><tr><td>Congregate Meals</td><td>35,702</td><td>\$51,669.43</td></tr><tr><td>Home Delivered Meals</td><td>116,139</td><td>\$455,500.18</td></tr><tr><td>Outreach</td><td></td><td></td></tr><tr><td>Chore</td><td></td><td></td></tr><tr><td>Health</td><td>20,216</td><td>\$43,865.71</td></tr><tr><td>Transportation</td><td>3,614</td><td>\$9,969.87</td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><td><b>TOTAL Section b</b></td><td>175,671</td><td>\$561,005.19</td></tr></tbody></table><div>c. Other (not Admin/Mtnc/Prog/Services) <div>\$2,000.00</div></div></div>		Mill Levy/Match Services	Mill Levy/Match Number of Units	Mill Levy/ Match Dollars Spent	Congregate Meals	35,702	\$51,669.43	Home Delivered Meals	116,139	\$455,500.18	Outreach			Chore			Health	20,216	\$43,865.71	Transportation	3,614	\$9,969.87	Other			Other			Other			Other			<b>TOTAL Section b</b>	175,671	\$561,005.19	
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5. Total of 4a, 4b, 4c:	\$1,728,170.62																																					
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7. Anticipated purpose for ending balance (if any mill levy/match funds are remaining)																																						

**The individual signing this report makes the following assurances:**

YES	NO	(Please Initial)
rak		1. The organization is incorporated as a non-profit organization.
rak		2. The budget was approved by the membership and governing board.
rak		3. The Mill Levy dollars received were kept in a separate fund.
rak		4. Generally accepted accounting principals were followed.
rak		5. Funds were expended for the purposes budgeted.
rak		6. The money applied for under this section (NDCC 57-15-56) was used for the purpose of establishing or maintaining services and programs for senior citizens, including the maintenance of existing senior citizen centers which provide informational, health, welfare, counseling and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services.

INDIVIDUAL COUNTY / CITY COMMISSIONS MAY REQUIRE ADDITIONAL INFORMATION NOT CONTAINED IN THIS REPORT.

**PROVIDERS OF SERVICE:**

**FORWARD THIS ANNUAL REPORT TO YOUR COUNTY / CITY AUDITOR BY JANUARY 15.**

**ELECTRONIC SIGNATURES ARE ACCEPTED.**

Signature: 	
Title: Executive Director	Date: 1/13/2025

**FOR COUNTY / CITY AUDITORS ONLY:**

\_\_\_\_\_ I certify that the Mill Levy/Match Funds received in the previous year have been budgeted for the same purposes permitted for the expenditure of the proceeds of that as levied under section 57-15-56 of the North Dakota Century Code.

Please send only <b>ONE</b> report for your County / City by February 1 to:  <b>OFFICE OF STATE TREASURER 600 EAST BOULEVARD AVENUE – DEPT. 120 BISMARCK, ND 58505-0600</b>		
County / City Reporting		
Auditor's Signature		
Telephone Number	E-mail Address	Date

\* Electronic signatures are accepted by the Office of State Treasurer.

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Tuesday, January 28, 2025 9:10 AM  
**To:** Bitner, Brian <bccbitner@nd.gov>; Bakken, Steven <BCCBAKKEN@nd.gov>  
**Subject:** FW: Calendar Year 2024 Senior Mill Spending Report

2/2

I will send the report down to the Auditor for signature (it requires a signature for the County Auditor)

This is the report that we submit to receive our matching grant from the state for Senior Citizens.. It's over a half million dollars. I had the same problem with the County Auditor trying to get his signature for the LAP Program for the Weed Board.

---

**From:** Quintus, Makenzie H. <mhquintus@nd.gov>  
**Sent:** Tuesday, January 28, 2025 8:39 AM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** RE: Calendar Year 2024 Senior Mill Spending Report

Hi Leigh,  
We have not seen the report for Burleigh County.

Thanks,  
Makenzie

---

**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Monday, January 27, 2025 2:29 PM  
**To:** Quintus, Makenzie H. <[mhquintus@nd.gov](mailto:mhquintus@nd.gov)>  
**Subject:** RE: Calendar Year 2024 Senior Mill Spending Report

Good afternoon,

Have you received this report back from Burleigh County?

Thanks

Leigh Jacobs, CPA

Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Quintus, Makenzie H. <[mhquintus@nd.gov](mailto:mhquintus@nd.gov)>  
**Sent:** Thursday, January 2, 2025 8:43 AM  
**To:** NDACO Auditors <[auditors@ndaco.org](mailto:auditors@ndaco.org)>  
**Cc:** Krivoruchka, Nicole <[nkrivoruchka@nd.gov](mailto:nkrivoruchka@nd.gov)>; Schmidt, Gail <[schmidtgail@nd.gov](mailto:schmidtgail@nd.gov)>  
**Subject:** Calendar Year 2024 Senior Mill Spending Report

\*\*\*\*\* **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

**MEMORANDUM**

TO: County Auditors  
FROM: Makenzie Quintus, Cash Management & Distribution Analyst  
RE: Calendar Year 2024 Senior Mill Spending Report  
DATE: January 02, 2025

As we begin to move quickly through the New Year the Office of State Treasurer is providing a gentle reminder that the Senior Citizens Mill Levy/Match Annual Report (SFN 58180) is due on February 1. The distribution of these funds occurs in February each year. A fillable form is available on the state website at <http://www.nd.gov/eforms/Doc/sfn58180.pdf>. I have also attached the form to this email for your convenience.

The respective Senior Centers/Senior Service Programs in your county should submit their annual reports to you by January 15, 2025. Each County Auditor must compile the information in a single report for the county and submit it to the Office of State Treasurer by February 1, 2025 to qualify for the matching grant from the state.

Please mail, email or fax the signed report to:

North Dakota Office of State Treasurer  
600 East Boulevard Avenue – Dept. 120  
Bismarck, ND 58505-0600  
Fax: (701) 328-3002  
Email: [treasurer@nd.gov](mailto:treasurer@nd.gov)

If you have any questions or need assistance with this process you may contact the Office of State Treasurer at 701-328-2643.

Makenzie Quintus  
Cash Management & Distribution Analyst  
Phone: 701-328-4666  
Fax: 701-328-3002

[mhquintus@nd.gov](mailto:mhquintus@nd.gov)

[www.treasurer.nd.gov](http://www.treasurer.nd.gov)



**From:** [Lawyer, Julie A.](#)  
**To:** [Jacobs, Leigh](#)  
**Cc:** [Bitner, Brian](#); [Bakken, Steven](#)  
**Subject:** RE: Primary Residence Credit Distribution Deadline Question  
**Date:** Wednesday, April 23, 2025 12:37:00 PM

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Yes, per the statute, within 14 days after receiving payment, the county treasurer “shall apportion and distribute the payment” as outlined below. The “no later than June 30<sup>th</sup>” is due to the statute requiring the state tax commissioner to provide each county auditor the sum of the credits allowed by June 1<sup>st</sup>. The June 30<sup>th</sup> deadline is in the event the payment from the state tax commissioner is received after June 15<sup>th</sup>, then the 14-day window is shorter because all distributions have to be made by June 30<sup>th</sup>.

It’s not within 14 days or by June 30<sup>th</sup>, whichever is later; it’s 14 days or by June 30<sup>th</sup>, whichever is first.

Julie

**CONFIDENTIALITY STATEMENT**

*This communication and any documents or files transmitted with it are covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., and are confidential and intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or other use of the contents of this message is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail to the address shown and delete this email, including all associated attachments from all storage locations.*

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**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Wednesday, April 23, 2025 11:31 AM  
**To:** Lawyer, Julie A. <JLAWYER@nd.gov>  
**Cc:** Bitner, Brian <bccbitner@nd.gov>; Bakken, Steven <BCCBAKKEN@nd.gov>  
**Subject:** Primary Residence Credit Distribution Deadline Question

Good morning Julie,

On March 28<sup>th</sup>, the County received over \$10.7M from the ND Treasurer for primary residence credits. My question is, based on the NDCC, what is our deadline for distribution?

Best I can tell, here is the applicable passage from NDCC:

**57-02-08.10. Primary residence credit - Certification - Distribution. (Effective through June 30, 2026)**

**5. Within fourteen days of receiving the payment from the state treasurer, but no later than June thirtieth of each year after 2024, the county treasurer shall apportion and distribute the payment to the county and to the taxing districts of the county on the same basis as property taxes for the preceding year were apportioned and distributed.**

As of this writing, Auditor/Treasurer Splonskowski has not been distributed to the various taxing districts. I am reading the above passage as giving us a 14 day deadline from when we receive the cash, but I would like to know your opinion, if you don’t mind.

Thanks

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

**From:** [Lawyer, Julie A.](#)  
**To:** [Jacobs, Leigh](#); [Splonskowski, Mark D.](#)  
**Cc:** [Ripplinger, Ronda](#); [Schmidt, Taylor](#); [Bitner, Brian](#)  
**Subject:** RE: Interest earned on late Primary Residence Credit Payments  
**Date:** Friday, April 25, 2025 1:51:00 PM

---

Leigh:

Thanks for sending this out. Just confirming that yes, since the statute gives us up to 14 days to distribute the funds, any interest earned on the funds after the 14<sup>th</sup> day should also go to the entity receiving those funds.

Julie

**CONFIDENTIALITY STATEMENT**

*This communication and any documents or files transmitted with it are covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., and are confidential and intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or other use of the contents of this message is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail to the address shown and delete this email, including all associated attachments from all storage locations.*

---

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Friday, April 25, 2025 1:37 PM  
**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>  
**Cc:** Ripplinger, Ronda <roripplinger@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Lawyer, Julie A. <JLAWYER@nd.gov>  
**Subject:** Interest earned on late Primary Residence Credit Payments

Good afternoon Mark,

I spoke with Chair Bitner this week about the lateness in distributing the Primary Residence Credits. One concern was with interest the County earned on the approximately \$9M of cash we were holding for other entities. Chair Bitner brought the concern to State's Attorney Lawyer who confirmed that the County is legally allowed to apportion the interest earned on those funds during the period when the funds were considered late to distribute. By my count, April 11<sup>th</sup> was the last day of the fourteen-day window the County had to distribute those funds. Fortunately, we know the daily interest rate earned on those funds and can calculate precisely how much interest each entity is entitled to.

I understand that your office was apportioning those funds yesterday, and I believe the transfers were submitted to Wells Fargo. We'll have to check on the bank statements to see on what date the funds left our account. Once we know this, I've asked Taylor to calculate the interest owed to each of the various entities, and then we can help prepare the necessary journal entries to apportion the cash. I think we can have all this information together by early next week.

Thanks and please let me know if you have any questions.

Leigh Jacobs, CPA



**From:** Jacobs, Leigh <ljacobs@nd.gov>

**Sent:** Wednesday, May 7, 2025 11:14 AM

**To:** Splonskowski, Mark D. <msplonskowski@nd.gov>

**Cc:** Ripplinger, Ronda <roripplinger@nd.gov>; Bitner, Brian <bccbitner@nd.gov>; Bakken, Steven <BCCBAKKEN@nd.gov>; Schmidt, Taylor <schmidt.taylor@nd.gov>

**Subject:** Primary Residence Credit Interest Apportioning

Mark,

I've attached a workpaper we prepared to calculate the interest the County earned on PRC funds during the late period. This is based on the same allocation used to disperse the PRC. Per the State's Attorney's advice, we should disperse the interest earned during the late period.

Since the interest is currently sitting in the general fund, we'll need to do a journal entry to move it into the various apportioning funds, and from there disperse it as needed.

Please let me know if you have any questions.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

Account	Name	PRC Amount	Day Due	Day Sent	Days Late	Average Daily Interest Rate - Wells Fargo	Interest Due
2107.11111.11110 Total	CANFIELD UNORG TOWNSHIP	93.86	4/11/2025	4/21/2025	10.00	4.20%	0.11
2118.11111.11110 Total	LYMAN UNORG TOWNSHIP	51.10	4/11/2025	4/21/2025	10.00	4.20%	0.06
2123.11111.11110 Total	RIVERVIEW UNORG TOWNSHIP	8,609.14	4/11/2025	4/21/2025	10.00	4.20%	9.89
2124.11111.11110 Total	BURNT CREEK UNORG TWP	29,886.39	4/11/2025	4/21/2025	10.00	4.20%	34.35
2138.11111.11110 Total	LINCOLN UNORG TOWNSHIP	35,216.65	4/11/2025	4/21/2025	10.00	4.20%	40.48
2140.11111.11110 Total	COUNTY ROAD & BRIDGE	155,869.76	4/11/2025	4/21/2025	10.00	4.20%	179.14
2151.11111.11110 Total	FORT RICE UNORG TOWNSHIP	5,937.23	4/11/2025	4/21/2025	10.00	4.20%	6.82
2802.11111.11110 Total	JOB DEVELOPMENT AUTHORITY	5,157.14	4/11/2025	4/21/2025	10.00	4.20%	5.93
2902.11111.11110 Total	COUNTY LIBRARY	30,851.07	4/11/2025	4/21/2025	10.00	4.20%	35.46
2905.11111.11110 Total	SENIOR CITIZENS	28,841.40	4/11/2025	4/21/2025	10.00	4.20%	33.15
2920.11111.11110 Total	VETERAN SERVICE	25,728.34	4/11/2025	4/21/2025	10.00	4.20%	29.57
2960.11111.11110 Total	COUNTY AGENT	21,815.38	4/11/2025	4/21/2025	10.00	4.20%	25.07
2970.11111.11110 Total	WEED CONTROL	20,516.97	4/11/2025	4/21/2025	10.00	4.20%	23.58
8001.11111.11110 Total	STATE REVENUE FUND	45,263.95	4/11/2025	4/28/2025	17.00	4.19%	88.35
8002.11111.11110 Total	SOIL CONSERVATION	39,242.24	4/11/2025	4/28/2025	17.00	4.19%	76.59
8003.11111.11110 Total	GARRISON DIVERSION	45,263.95	4/11/2025	4/28/2025	17.00	4.19%	88.35
8006.11111.11110 Total	WATER RESOURCE MANAGEMENT	63,417.71	4/11/2025	4/28/2025	17.00	4.19%	123.78
8101.11111.11110 Total	CITY OF BISMARCK	2,210,363.07	4/11/2025	4/28/2025	17.00	4.19%	4,314.14
8102.11111.11110 Total	CITY OF REGAN	216.92	4/11/2025	4/28/2025	17.00	4.19%	0.42
8128.11111.11110 Total	CITY OF WING	3,296.61	4/11/2025	4/28/2025	17.00	4.19%	6.43
8138.11111.11110 Total	CITY OF LINCOLN	147,376.38	4/11/2025	4/28/2025	17.00	4.19%	287.65
8161.11111.11110 Total	CITY OF WILTON	5,300.02	4/11/2025	4/28/2025	17.00	4.19%	10.34
8201.11111.11110 Total	BISMARCK CITY PARK	939,603.96	4/11/2025	4/28/2025	17.00	4.19%	1,833.90
8238.11111.11110 Total	LINCOLN PARK DISTRICT	32,404.99	4/11/2025	4/28/2025	17.00	4.19%	63.25
8261.11111.11110 Total	WILTON CITY PARK	537.09	4/11/2025	4/28/2025	17.00	4.19%	1.05
8301.11111.11110 Total	BISMARCK SCHOOL DISTRICT	4,621,341.54	4/11/2025	4/25/2025	14.00	4.19%	7,428.33
8306.11111.11110 Total	HAZELTON MOFFIT SCH DIST	5,838.16	4/11/2025	4/28/2025	17.00	4.19%	11.39
8325.11111.11110 Total	NAUGHTON SCHOOL DISTRICT	5,748.46	4/11/2025	4/28/2025	17.00	4.19%	11.22
8326.11111.11110 Total	KIDDER COUNTY SCHOOL DIST	2,286.04	4/11/2025	4/28/2025	17.00	4.19%	4.46
8328.11111.11110 Total	WING SCHOOL DISTRICT	7,303.45	4/11/2025	4/28/2025	17.00	4.19%	14.25
8333.11111.11110 Total	MENOKEN SCHOOL DISTRICT	20,521.14	4/11/2025	4/28/2025	17.00	4.19%	40.05
8335.11111.11110 Total	STERLING SCHOOL DISTRICT	17,789.78	4/11/2025	4/28/2025	17.00	4.19%	34.72
8339.11111.11110 Total	APPLE CREEK SCHOOL DIST	72,518.05	4/11/2025	4/28/2025	17.00	4.19%	141.54
8345.11111.11110 Total	MANNING SCHOOL DISTRICT	8,478.78	4/11/2025	4/28/2025	17.00	4.19%	16.55
8361.11111.11110 Total	WILTON SCHOOL DISTRICT	47,238.17	4/11/2025	4/28/2025	17.00	4.19%	92.20
8403.11111.11110 Total	GRASS LAKE TOWNSHIP	375.44	4/11/2025	4/28/2025	17.00	4.19%	0.73
8405.11111.11110 Total	WILSON TOWNSHIP	301.40	4/11/2025	4/28/2025	17.00	4.19%	0.59
8408.11111.11110 Total	TRYGG TOWNSHIP	20.86	4/11/2025	4/28/2025	17.00	4.19%	0.04
8409.11111.11110 Total	PAINTED WOODS TOWNSHIP	1,301.54	4/11/2025	4/28/2025	17.00	4.19%	2.54
8410.11111.11110 Total	ECKLUND TOWNSHIP	606.97	4/11/2025	4/28/2025	17.00	4.19%	1.18
8411.11111.11110 Total	GHYLIN TOWNSHIP	405.69	4/11/2025	4/28/2025	17.00	4.19%	0.79
8412.11111.11110 Total	SCHRUNK TOWNSHIP	20.86	4/11/2025	4/28/2025	17.00	4.19%	0.04
8415.11111.11110 Total	THELMA TOWNSHIP	46.93	4/11/2025	4/28/2025	17.00	4.19%	0.09
8416.11111.11110 Total	GLENVIEW TOWNSHIP	2,718.84	4/11/2025	4/28/2025	17.00	4.19%	5.31
8417.11111.11110 Total	CHRISTIANIA TOWNSHIP	29.20	4/11/2025	4/28/2025	17.00	4.19%	0.06
8420.11111.11110 Total	CLEAR LAKE TOWNSHIP	135.58	4/11/2025	4/28/2025	17.00	4.19%	0.26
8421.11111.11110 Total	HARRIET TOWNSHIP	65.70	4/11/2025	4/28/2025	17.00	4.19%	0.13
8422.11111.11110 Total	LEIN TOWNSHIP	138.71	4/11/2025	4/28/2025	17.00	4.19%	0.27
8425.11111.11110 Total	NAUGHTON TOWNSHIP	2,007.58	4/11/2025	4/28/2025	17.00	4.19%	3.92
8426.11111.11110 Total	FRANCES TOWNSHIP	253.42	4/11/2025	4/28/2025	17.00	4.19%	0.49
8427.11111.11110 Total	ROCK HILL TOWNSHIP	71.96	4/11/2025	4/28/2025	17.00	4.19%	0.14
8431.11111.11110 Total	HAY CREEK TOWNSHIP	42,272.91	4/11/2025	4/28/2025	17.00	4.19%	82.51
8432.11111.11110 Total	GIBBS TOWNSHIP	13,316.79	4/11/2025	4/28/2025	17.00	4.19%	25.99
8433.11111.11110 Total	MENOKEN TOWNSHIP	2,197.39	4/11/2025	4/28/2025	17.00	4.19%	4.29
8434.11111.11110 Total	MCKENZIE TOWNSHIP	1,528.89	4/11/2025	4/28/2025	17.00	4.19%	2.98
8435.11111.11110 Total	STERLING TOWNSHIP	1,417.30	4/11/2025	4/28/2025	17.00	4.19%	2.77
8436.11111.11110 Total	DRISCOLL TOWNSHIP	873.95	4/11/2025	4/28/2025	17.00	4.19%	1.71
8437.11111.11110 Total	CROMWELL TOWNSHIP	252.38	4/11/2025	4/28/2025	17.00	4.19%	0.49

8439.11111.11110 Total	APPLE CREEK TOWNSHIP	16,088.82	4/11/2025	4/28/2025	17.00	4.19%	31.40
8440.11111.11110 Total	BOYD TOWNSHIP	1,931.45	4/11/2025	4/28/2025	17.00	4.19%	3.77
8441.11111.11110 Total	LOGAN TOWNSHIP	128.28	4/11/2025	4/28/2025	17.00	4.19%	0.25
8442.11111.11110 Total	TAFT TOWNSHIP	203.37	4/11/2025	4/28/2025	17.00	4.19%	0.40
8443.11111.11110 Total	ESTHERVILLE TOWNSHIP	250.30	4/11/2025	4/28/2025	17.00	4.19%	0.49
8445.11111.11110 Total	MISSOURI TOWNSHIP	1,803.17	4/11/2025	4/28/2025	17.00	4.19%	3.52
8446.11111.11110 Total	TELFER TOWNSHIP	1,525.76	4/11/2025	4/28/2025	17.00	4.19%	2.98
8447.11111.11110 Total	MORTON TOWNSHIP	637.21	4/11/2025	4/28/2025	17.00	4.19%	1.24
8448.11111.11110 Total	LONG LAKE TOWNSHIP	446.36	4/11/2025	4/28/2025	17.00	4.19%	0.87
8452.11111.11110 Total	CROFTE TOWNSHIP	1,465.27	4/11/2025	4/28/2025	17.00	4.19%	2.86
8453.11111.11110 Total	SIBLEY BUTTE TOWNSHIP	46.93	4/11/2025	4/28/2025	17.00	4.19%	0.09
8661.11111.11110 Total	WILTON AMBULANCE DISTRICT	5,963.30	4/11/2025	4/28/2025	17.00	4.19%	11.64
8701.11111.11110 Total	BISMARCK RURAL FIRE DIST	203,782.67	4/11/2025	4/28/2025	17.00	4.19%	397.74
8707.11111.11110 Total	BRADDOCK RURAL FIRE DIST	19.82	4/11/2025	4/28/2025	17.00	4.19%	0.04
8728.11111.11110 Total	WING RURAL FIRE DISTRICT	433.85	4/11/2025	4/28/2025	17.00	4.19%	0.85
8735.11111.11110 Total	STERLING RURAL FIRE DIST	1,559.14	4/11/2025	4/28/2025	17.00	4.19%	3.04
8761.11111.11110 Total	WILTON RURAL FIRE DIST	2,432.04	4/11/2025	4/28/2025	17.00	4.19%	4.75
							15,715.82

**From:** Jacobs, Leigh <ljacobs@nd.gov>

**Sent:** Thursday, March 13, 2025 11:07 AM

**To:** Bitner, Brian <bccbitner@nd.gov>; Schwab, Steve Personal <bisgate@bis.midco.net>; Woodcox, Jerry <bccwoodcox@nd.gov>; Munson, Wayne <bccmunson@nd.gov>; Bakken, Steven <BCCBAKKEN@nd.gov>

**Subject:** Auditor/Treasurer's calculation of 2023 Fund Balance percentage from 2023 Preliminary & Final Budget Hearings

Good morning Chair Bitner and Commissioners,

I have attached a workpaper I prepared last year showing an error in the fund balance calculation found in Auditor/Treasurer Splonskowski's July 19, 2023 preliminary budget memo. The error was repeated at the final budget hearing later that year. Auditor/Treasurer Splonskowski claims in his memo, "current general fund reserves below 40%".

In the attached, I demonstrate how this is not the case, and that the current general fund reserves were 51.3% - not 40%. At the time, audited general fund reserves were \$16,715,688. For reserves to be below 40% of our appropriation, they would need to be around \$13,000,000 – approximately \$3.7m below the actual number. See the math below:

Calendar year 2023 General Fund Appropriation less transfers out: \$32,570,543 \* 39.99% = \$13,024,960.

As you may recall, we finished the 2023 fiscal year with around \$16.6m in general fund reserves.

This email is for informational purposes only. Please do not reply to this email.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

# Notes from State Auditor's Office

## **57-15-27. Interim fund.**

The governing body of any county, city, park district, or municipality, other than a school district, which is authorized to levy taxes may include in its budget an item to be known as the "interim fund" which must be carried over to the next ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the municipality may be legally extended, for that portion of such fiscal year prior to the receipt of taxes therein. In no case may the interim fund be in excess of the amount reasonably required to finance the municipality for the first nine months of the next ensuing fiscal year. The interim fund may not be in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources.

**The interim fund (cash reserve) is calculated using the CURRENT year appropriation, not including transfers.**

Budget Summary Letter Following 13Sept23 meeting • Saved to K Drive

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Schulz, Justin R.

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3. \$4,582 for Public Health.  
4. \$332,500 for a Capital Improvement Fund.  
5. That leaves an actual decrease outside of numbers 1-3 of \$442,969.

In the 2024 budget, the County Commission will use a collection of \$30,817,361 in property tax revenues, which is an increase of \$8,047,809 from the previous year. New growth amounts to \$511,845 for a net difference of \$7,535,964 on existing parcels.

This equates to an increase on a \$300,000 home inside city limits of \$119.88 and outside of city limits of \$120.69 for an increase of 8.88 and 8.94 mills respectively.

As we have discussed over the last six months, the 2023 budget included a use of \$5,500,000 of reserve funds to be used to balance the budget for ongoing operational costs. This is an unsustainable activity and with our current general fund reserves below 40%, it is recommended that we cannot utilize reserve funds again this year to cover that \$5,500,000 of the \$8,047,809 increase.

Debt service funds are established to collect special assessments annually and make payments on existing debt service. These funds are budgeted based on the annual debt service needed to pay for special assessment bonds using special assessment collections.

The County Commission approved a salary increase of a step and 3% COLA. This was based on data from CPI reports and the Kiplinger Letter. Along with this data, it was identified that recruiting and retention of employees is experiencing some significant hurdles.

The Health Insurance committee recommends an 8% increase in the plan premiums this year with a \$500,000 General Fund Loan payback in 2024.

The County continues to have new construction in both residential and commercial development within the county. This creates opportunities for new growth but, also creates challenges to increase services and provide infrastructure maintenance and improvements. Many estimates were made based on the information available at the time this budget was approved. The County Commission and Budget Committee continue to monitor inflationary impacts on operations to create strategies to offset cost increases while creating minimal impact on the taxpayers as the county continues to grow and expand.

2

Text Predictions: On Accessibility: Investigate

Focus

This screenshot is from a presentation by Auditor Splonskowski at the 9/20/2023 Final Budget hearing

# County of Burleigh

221 NORTH 5TH STREET • P.O. BOX 5518 • BISMARCK, NORTH DAKOTA 58506-5518

July 19, 2023

Honorable Commissioners:

The following is the preliminary budget for Burleigh County for calendar year 2024. The document contains the budgets for the General, Special Revenue, and Debt Service Funds.

The budget process is coordinated by the Finance Department under direction of the Budget Committee, County Commissioners, Department Directors, and the Auditor/Treasurer. The Budget Committee consists of Commissioner Munson, Commissioner Matthews, Auditor/Treasurer Splonskowski, and Deputy Finance Director Schulz. Burleigh County uses best practices to prepare the annual budget by using annual revenues for ongoing operational costs and cash reserves/fund balance for one-time expenditures. These methods serve as the keys for a balanced budget.

**The County's goal for the 2024 budget is to maintain services at the current level and to remain sustainable in future years while making the adjustments needed to better balance the budget.**

The County is continuing to recover from the impacts of COVID-19 and the rapid inflationary period that followed. The County continues to monitor these factors to best address them.

The Budget Committee identified areas of significant need for the 2024 budget. The Budget Committee focused on:

1. Remodel of the Provident Building to consolidate our departments currently within the City/County Building into the Provident Building already owned by the County.
2. Infrastructure needs including:
  - a. Construction of 66<sup>th</sup> Street SE Railroad Overpass (\$2,801,812 for 2024).
  - b. Replacement of a bridge on 236<sup>th</sup> St SE and removal of a bridge on 102 Ave SE (\$1,500,000 total cost with Federal Funds covering all but \$150,000).
  - c. Replacement of a bridge on Apple Creek Road one half mile east of 80<sup>th</sup> Street (\$1,440,000 total cost with Federal Funds covering all but \$144,000).
3. Update the Boiler System within the Courthouse (\$1,130,000 from ARPA funds).
4. Employee retention and recruitment.
5. Addition of a County Administrator within the county to aid in county management related to both past and future growth.
6. Public Health – Discussions between the City and County have resulted in the creation of an independent Health Board that is equally represented by both entities. A proposal from the city of an expense split of 75% City and 25% County will more closely match the split in population for the given areas. This will lead to an increase of about \$285,000 to the County Public Health budget.
7. Address revenues to better match them with ongoing operational costs.

The Budget Committee approved only 4 additional positions (FTEs) requested in the 2024 budget. FTEs that were approved included: Four full-time positions within the Highway Department and a reduction of six temporary employees.

The total 2024 General Fund Expenditure Budget is \$35,594,973, with \$25,750,219 or 72% coming from Salary and Fringe Benefits.

The County used the 2023 true and full property valuation for the 2024 property tax calculations. Property values

increased on average 9.08% from the previous year.

The expenditure Budget for 2024 is \$79,460,469 compared to 2023 at \$71,250,381 for an increase of \$8,210,088. Of the \$8,210,088, \$2,801,812 is a transfer from the Special Road Fund to pay for the construction of 66<sup>th</sup> St SE Railroad Overpass and \$2,400,000 is also a transfer from the same account. That leaves an actual expense increase of \$3,008,276 or 4.2%. That increase consists of the following:

1. \$2,323,278 for Salary and Fringe Benefits.
2. \$660,000 (1 Mill) for the Highway Department.
3. \$285,246 for Public Health.
4. That leaves an actual decrease outside of numbers 1-3 of \$260,248.

In the 2024 budget, the County Commission will use a collection of \$31,165,518 in property tax revenues, which is an increase of \$8,395,966 from the previous year. New growth amounts to \$511,845 for a net difference of \$7,884,121 on existing parcels.

This equates to an increase on a \$300,000 home inside city limits of \$129.33 and outside of city limits of \$130.28 for an increase of 9.58 and 9.65 mills respectively.

As we have discussed over the last six months, the 2023 budget included a use of \$5,500,000 of reserve funds to be used to balance the budget for ongoing operational costs. **This is an unsustainable activity and with our current general fund reserves below 40%,** it is recommended that we cannot utilize reserve funds again this year to cover that \$5,500,000 of the \$8,395,966 increase.

Debt service funds are established to collect special assessments annually and make payments on existing debt service. These funds are budgeted based on the annual debt service needed to pay for special assessment bonds using special assessment collections.

The County Commission approved a salary increase of a step and 3% COLA. This was based on data from CPI reports and the Kiplinger Letter. Along with this data, it was identified that recruiting and retention of employees is experiencing some significant hurdles.

The Health Insurance committee recommends an 8% increase in the plan premiums this year with a \$500,000 General Fund Loan payback in 2024.

The County continues to have new construction in both residential and commercial development within the county. This creates opportunities for new growth but, also creates challenges to increase services and provide infrastructure maintenance and improvements. Many estimates were made based on the information available at the time this budget was approved. The County Commission and Budget Committee continue to monitor inflationary impacts on operations to create strategies to offset cost increases while creating minimal impact on the taxpayers as the county continues to grow and expand.

A summary of Expenditures and Revenues for the 2024 General Fund Balance is:

Revenue:	\$35,094,973
Expenditure:	\$35,594,973
Difference:	(\$500,000) This difference is made up by a \$500,000 loan payback from the Health Insurance Fund to the General Fund.

Justin Schulz  
Deputy Finance Director

Mark Splonskowski  
Burleigh County Auditor/Treasurer/Tax



FINAL BUDGET OF BURLEIGH COUNTY, NORTH DAKOTA  
CALENDAR YEAR BEGINNING JANUARY 1, 2023

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA

I, Leo Vetter, County Auditor, do hereby respectfully submit to the Board of County Commissioners, the Preliminary Budget for the twelve-month period beginning January 1, 2023 and ending December 31, 2023. This budget was studied and examined by the Board of County Commissioners and changes made as deemed necessary. Upon a motion made, seconded and carried, the budget was ordered published after the recommended changes were made.

TO THE TAXPAYERS OF BURLEIGH COUNTY, NORTH DAKOTA

We, the Board of County Commissioners of Burleigh County, North Dakota, hereby give notice that we have examined into the several budget estimates filed by the several officers, institutions or undertakings, supported wholly or in part by Burleigh County, and from such examination in our opinion for the calendar year beginning January 1, 2023 the following amounts are necessary:

FINAL BUDGET		
County Board	\$	495,388
Juvenile Court	\$	281,000
County Auditor/Treasurer	\$	830,055
County Tax Equalization	\$	473,499
State's Attorney	\$	4,898,641
County Recorder	\$	433,189
Superintendent of Schools	\$	72,000
Public Administrator	\$	6,300
Courthouse, Buildings & Grounds	\$	511,254
Elections	\$	208,500
City/County Building Utilities	\$	226,516
Printing, Publishing and Supplies	\$	23,000
Telephone and Postage	\$	128,000
Technology	\$	146,000
Information Technology	\$	300,000
Human Resources	\$	574,827
Liability and Property Insurance	\$	200,000
County Building, Planning and Zoning	\$	456,963
County Sheriff	\$	7,984,384
County Detention Center	\$	10,926,025
Emergency Management	\$	334,703
Ambulance Services	\$	1,500
Police Youth Bureau	\$	87,781
County Nursing	\$	295,418
Human Service Zone	\$	700,000
Boat Ramps	\$	100,600
Kimball Bottoms Boat Ramp	\$	36,955
Driscoll, Sibley Park and Mitchell Lake	\$	13,800
City Recreation	\$	310,000
Advertising	\$	84,571
Communications Center	\$	847,475
Victim Witness	\$	573,699
Abandoned Cemetery	\$	8,500
Transfers Out	\$	350,000
GENERAL FUND BUDGET	\$	32,920,543
		less \$350,000 transfer out
		32,570,543
		<--2023 Appropriation - denominator of fund balance calculation

# BURLEIGH COUNTY

## Balance Sheet – Governmental Funds

December 31, 2022

	General Fund	Special Revenue Fund	Capital Project Fund	Debt Service Fund	Total Governmental Funds
<b>ASSETS</b>					
Cash and Investments	\$ 16,865,214	\$ 35,458,455	\$ 1,333,507	\$ 23,604,706	\$ 77,261,882
Accounts Receivable	59,708	318,549	35	-	378,292
Intergovernmental Receivable	1,419,099	906,441	966,623	1,983,351	5,275,514
Interfund Loan Receivable	2,700,000	-	-	-	2,700,000
Taxes Receivable	120,462	38,234	-	-	158,696
Special Assessment Receivable	-	-	-	3,603,041	3,603,041
Inventories	-	1,829,495	-	-	1,829,495
Total Assets	\$ 21,164,483	\$ 38,551,174	\$ 2,300,165	\$ 29,191,098	\$ 91,206,920
<b>LIABILITIES AND DEFERRED INFLOWS OF RESOURCES</b>					
<b>Liabilities</b>					
Accounts Payable	\$ 1,001,353	\$ 1,623,090	\$ 55,180	\$ -	\$ 2,679,623
Salaries Payable	360,665	214,823	-	-	575,488
Retainage Payable	-	6,000	-	-	6,000
Grants Received in Advance	-	14,476,329	-	-	14,476,329
Total Liabilities	\$ 1,362,018	\$ 16,320,242	\$ 55,180	\$ -	\$ 17,737,440
<b>Deferred Inflows of Resources</b>					
Taxes Receivable	\$ 120,462	\$ 38,234	\$ -	\$ -	\$ 158,696
Special Assessment Receivable	-	-	-	3,603,041	3,603,041
Taxes Received in Advance	2,966,315	1,010,288	-	109,506	4,086,109
Total Deferred Inflow Of Resources	\$ 3,086,777	\$ 1,048,522	\$ -	\$ 3,712,547	\$ 7,847,846
Total Liabilities And Deferred Inflows Of Resources	\$ 4,448,795	\$ 17,368,764	\$ 55,180	\$ 3,712,547	\$ 25,585,286
<b>FUND BALANCE</b>					
<b>Nonspendable</b>					
Inventory	\$ -	\$ 1,829,495	\$ -	\$ -	\$ 1,829,495
Interfund Loan Receivable	2,700,000	-	-	-	2,700,000
<b>Restricted</b>					
Capital Project Funds	-	-	2,936,136	-	2,936,136
Conservation & Econ. Develop.	-	550,170	-	-	550,170
Culture and Recreation	-	5,910,701	-	-	5,910,701
Debt Service	-	-	-	25,533,867	25,533,867
General Government	-	1,007,416	-	-	1,007,416
Health and Welfare	-	712,629	-	-	712,629
Highways and Bridges	-	6,621,281	-	-	6,621,281
Other	-	590,532	-	-	590,532
Public Safety	-	2,362,948	-	-	2,362,948
<b>Committed</b>					
Jail Commissary	-	370,461	-	-	370,461
Parking Lot	-	69,128	-	-	69,128
Provident Building	-	1,471,870	-	-	1,471,870
<b>Unassigned</b>					
General Fund	14,015,688	-	-	-	14,015,688
Negative Funds	-	(314,221)	(691,151)	(55,316)	(1,060,688)
Total Fund Balances	\$ 16,715,688	\$ 21,182,410	\$ 2,244,985	\$ 25,478,551	\$ 65,621,634
Total Liabilities and Fund Balances	\$ 21,164,483	\$ 38,551,174	\$ 2,300,165	\$ 29,191,098	\$ 91,206,920

Dec 31, 2022 Fund Balance -  
rolls over and becomes Jan 1  
2023 fund balance (numerator  
in fund balance calculation)

The notes to the financial statements are an integral part of this statement.

**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, March 13, 2025 9:11 AM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** FW: Tax Information Needed: Bismarck Public School District, ND

FYI

Colliers is looking for information for a bond issue for Bismarck Public Schools. They have not heard a response from Auditor Splonskowski. The same thing happened in September with a Water Resource District bond issue. Colliers requested the same information of Auditor Splonskowski but heard no response and sent an email to me asking for help.

---

**From:** Schmidt, Taylor <schmidt.taylor@nd.gov>  
**Sent:** Thursday, March 13, 2025 8:49 AM  
**To:** Jacobs, Leigh <ljacobs@nd.gov>  
**Subject:** FW: Tax Information Needed: Bismarck Public School District, ND

**Taylor Schmidt**  
**Deputy Finance Director**  
Burleigh County

(701) 712-8354  
[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)  
316 N 5<sup>th</sup> St Ste 104  
Bismarck, ND 58501  
[www.burleigh.gov](http://www.burleigh.gov)

---

**From:** Shannon Grimmond <[Shannon.Grimmond@colliers.com](mailto:Shannon.Grimmond@colliers.com)>  
**Sent:** Thursday, March 13, 2025 8:47 AM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>;  
Vietmeier, Alan R. <[avietmeier@nd.gov](mailto:avietmeier@nd.gov)>  
**Subject:** RE: Tax Information Needed: Bismarck Public School District, ND

\*\*\*\*\* **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

**2<sup>nd</sup> Request.**

We do need this information as soon as possible.

Thank you

**Shannon Grimmond**

Financial Analyst  
Colliers Securities

[shannon.grimmond@colliers.com](mailto:shannon.grimmond@colliers.com)

Direct: +1 605 332 5082 | Mobile: +1 605 366 6428

Main: +1 605-339-9800 | +1 800-339-1111

110 South Phillips Avenue, Ste 203 | Sioux Falls, SD 57104 | U.S.A.

[Colliers.com](http://Colliers.com)



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---

**From:** Shannon Grimmond

**Sent:** Wednesday, March 5, 2025 4:56 PM

**To:** Mark Splonskowski <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>; Taylor Schmidt <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Alan R  
Vietmeier <[avietmeier@nd.gov](mailto:avietmeier@nd.gov)>

**Subject:** Tax Information Needed: Bismarck Public School District, ND

Our firm is working with the Bismarck Public School District to complete their Continuing Disclosure requirements for their outstanding bond issues. Please fill in the missing information in the tables below for your County's portion of the School District.

Please let me know if you have any questions!

Thanks, and have a great day!

Shannon

**Valuations and Trend in Valuations**

<u>Year</u>	<u>Full &amp; True Valuation</u>	<u>Assessed Valuation</u>	<u>Taxable Valuation</u>
2024			\$662,812,203
2023	\$13,521,627,171	\$6,760,813,590	629,690,677
2022	12,444,751,329	6,222,375,665	575,746,039
2021	11,328,306,597	5,664,153,305	527,541,526
2020	10,954,140,198	5,477,070,103	510,836,379
2019	10,665,798,820	5,332,899,410	491,304,437
2018	10,443,114,987	5,221,557,498	481,058,486

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Sources: Burleigh County Finance Office, Bismarck Public School District

Assessed Values (AV) are 50% of Full & True Value. Farmland and commercial property having a Taxable Value (TV) of 10% &

Residential Taxable Value is 9% of the Assessed Value. Utility Property Values are set by the State with a TV of 10% of AV.

## General Fund Property Tax Levied and Collected

<b>Fiscal Year</b>	<b>Amount of Levy</b>	<b>Amount Collected as of 02/29/2025</b>	<b>Amount Without Discount</b>	<b>Percentage Collected</b>
<b>2024/2025</b>				
<b>2023/2024</b>	\$44,078,348			
2022/2023	40,283,073			
2021/2022	36,920,907	36,711,650		99.43
2020/2021	35,758,547	35,557,798		99.44
2019/2020	34,391,311	34,338,473		99.85
2018/2019	33,669,283	33,669,236		99.99

Source: Burleigh County Finance Office

## 10 Largest Taxpayers in 2024

<b>10 Largest Taxpayers - 2024</b>	<b>2024 Market Value</b>	<b>% of BPSD's Market Value</b>

Source: Burleigh County Finance Office

## 2023 for Reference Only

<b>10 Largest Taxpayers - 2023</b>	<b>2023 Market Value</b>	<b>% of BPSD's Market Value</b>
Montana Dakota Utilities Co	\$121,901,460	0.90%
Kirkwood Mall Acquisition LLC	70,240,800	0.52%
Bnsf Railway Company	50,682,776	0.37%
Dakota Upreit Limited Partnership	50,542,600	0.37%
Sterling Properties LLLP	49,900,300	0.37%
Waterford On West Century LLC	45,500,900	0.34%
Medcenter One Inc % Sanford Bismarck	34,174,300	0.25%
1605 Plains Realty LLc	32,233,000	0.24%
Menard Inc	31,786,600	0.24%
Dakota Upreit LTD Partnership	<u>31,558,100</u>	<u>0.23%</u>
Total	\$518,520,836	3.83%

**Shannon Grimmond**

Financial Analyst  
Colliers Securities  
[shannon.grimmond@colliers.com](mailto:shannon.grimmond@colliers.com)  
Direct: +1 605 332 5082 | Mobile: +1 605 366 6428  
110 South Phillips Avenue, Ste 203 | Sioux Falls, SD 57104 | U.S.A.  
[Colliers.com](http://Colliers.com)



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**From:** Jacobs, Leigh <ljacobs@nd.gov>  
**Sent:** Thursday, March 13, 2025 10:53 AM  
**To:** Bitner, Brian <bccbitner@nd.gov>  
**Subject:** FW: Burleigh County Water Resource District

Here is the first incident with Colliers back in September where they were unable to get a response from the Auditor re: information for a bond issuance for Water Resource District

---

**From:** Jacobs, Leigh  
**Sent:** Thursday, September 19, 2024 2:25 PM  
**To:** John Lundby <John.Lundby@colliers.com>; Corrie Bertrand <Corrie.Bertrand@colliers.com>  
**Subject:** FW: Burleigh County Water Resource District

Good morning John and Corrie,

I asked the County Auditor to work on this since we're have a little more time than we originally thought. I think they're office will have a little better handle on the billings and the values.

I might recommend reaching out to them in a week to see if they've made any progress. Please keep me in the loop, I can jump in again if necessary

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** Jacobs, Leigh  
**Sent:** Wednesday, September 18, 2024 3:18 PM  
**To:** Splonskowski, Mark D. <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>  
**Cc:** Caya, Brandi M. <[brcaya@nd.gov](mailto:brcaya@nd.gov)>; Bitner, Brian <[bccbitner@nd.gov](mailto:bccbitner@nd.gov)>; Woodcox, Jerry <[bccwoodcox@nd.gov](mailto:bccwoodcox@nd.gov)>; [kjathome@midco.net](mailto:kjathome@midco.net); Water Resource District <[dwrburleighwrld@gmail.com](mailto:dwrburleighwrld@gmail.com)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Subject:** FW: Burleigh County Water Resource District

Good afternoon,

Mark, please see the original email below. Basically, Colliers sent this request Sept 4<sup>th</sup>. They said, "I am having trouble reaching Mark and unfortunately now we are under a time crunch." I started working on this after I got the email because of the time crunch Colliers referred to, but I followed up with John and it looks like we have more time after John talked to Scott Wegner.

I will pass this project back to you since your office is the appropriate source for this type of information.

Per John Lundby below, they will need this information in the coming weeks. I'm sure staff on the Equalization side can complete this without too much trouble.

Please let me know if you have any questions.

Leigh Jacobs, CPA  
Finance Director  
Burleigh County  
316 N. 5<sup>th</sup> St  
Bismarck, ND 58501  
701-712-8353

---

**From:** John Lundby <[John.Lundby@colliers.com](mailto:John.Lundby@colliers.com)>

**Sent:** Wednesday, September 18, 2024 2:47 PM

**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Corrie Bertrand <[Corrie.Bertrand@colliers.com](mailto:Corrie.Bertrand@colliers.com)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>

**Subject:** Re: Burleigh County Water Resource District

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

Good afternoon, Leigh.

We were just informed by Scott Wegner that the WRD will not be ready to issue in early October as we have been planning.

Therefore, we do not have a time crunch as we had been anticipating. If you could get this information in the next few weeks, that would be greatly appreciated!

Please call with any questions.

**John Lundby**  
Senior Vice President



Colliers Securities  
Direct: +1 701 222 1617 | Mobile: +1 701 595 4387  
120 N 3<sup>rd</sup> Street, Ste. 150 | Bismarck, ND 58501 | USA

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**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Wednesday, September 18, 2024 2:30:56 PM  
**To:** Corrie Bertrand <[Corrie.Bertrand@colliers.com](mailto:Corrie.Bertrand@colliers.com)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** John Lundby <[John.Lundby@colliers.com](mailto:John.Lundby@colliers.com)>  
**Subject:** RE: Burleigh County Water Resource District

When do you need this information?

---

**From:** Corrie Bertrand <[Corrie.Bertrand@colliers.com](mailto:Corrie.Bertrand@colliers.com)>  
**Sent:** Tuesday, September 17, 2024 4:03 PM  
**To:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** John Lundby <[John.Lundby@colliers.com](mailto:John.Lundby@colliers.com)>  
**Subject:** RE: Burleigh County Water Resource District

You don't often get email from [corrie.bertrand@colliers.com](mailto:corrie.bertrand@colliers.com). [Learn why this is important](#)

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. **\*\*\*\*\***

Wonderful. Thank you so much!

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**From:** Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Sent:** Tuesday, September 17, 2024 4:01 PM  
**To:** Corrie Bertrand <[Corrie.Bertrand@colliers.com](mailto:Corrie.Bertrand@colliers.com)>; Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>  
**Cc:** John Lundby <[John.Lundby@colliers.com](mailto:John.Lundby@colliers.com)>  
**Subject:** RE: Burleigh County Water Resource District

Received, I will start right away

---

**From:** Corrie Bertrand <[Corrie.Bertrand@colliers.com](mailto:Corrie.Bertrand@colliers.com)>  
**Sent:** Tuesday, September 17, 2024 3:37 PM  
**To:** Schmidt, Taylor <[schmidt.taylor@nd.gov](mailto:schmidt.taylor@nd.gov)>; Jacobs, Leigh <[ljacobs@nd.gov](mailto:ljacobs@nd.gov)>  
**Cc:** John Lundby <[John.Lundby@colliers.com](mailto:John.Lundby@colliers.com)>  
**Subject:** FW: Burleigh County Water Resource District

Some people who received this message don't often get email from [corrie.bertrand@colliers.com](mailto:corrie.bertrand@colliers.com). [Learn why this is important](#)

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open

attachments unless you know they are safe. \*\*\*\*\*

Hi Taylor and Leigh,

Our firm is currently working with the Burleigh County Water Resource District. I am having trouble reaching Mark and unfortunately now we are under a time crunch. I was hoping your office could help with the request below. Please let me know if this is something you are able to complete.

Thank you!  
Corrie

---

**From:** Corrie Bertrand

**Sent:** Wednesday, September 4, 2024 2:30 PM

**To:** Mark Splonskowski <[msplonskowski@nd.gov](mailto:msplonskowski@nd.gov)>

**Subject:** Burleigh County Water Resource District

Hi Mark,

Our firm is working with the Burleigh County Water Resource District on an upcoming bond issue and we are in need of the information below. Please fill out the missing information at your earliest convenience.

Thank you,  
Corrie

#### **BURLEIGH COUNTY WATER RESOURCE DISTRICT VALUATIONS**

<u>Year</u>	<u>Market Valuation</u>	<u>Assessed Valuation</u>	<u>Taxable Valuation</u>
2023			667,772,123
2022	\$13,192,708,409	6,596,354,222	611,474,432
2021	12,219,591,543	6,109,795,787	563,139,379
2020	11,729,072,989	5,864,536,512	543,951,940
2019	11,485,261,298	5,741,130,665	525,302,097

#### **Water District Tax Levies and Collections (Mill Levies)**

<u>Levy for Year of</u>	<u>Amount of Levy</u>	<u>Tax Collections as of ___/___/2024</u>	<u>Percent of Levy Collected</u>
2023		----In Process----	
2022			
2021			
2020			
2019	\$ 891,170		
2018	768,841	\$ 766,563	99.70%
2017	750,408	750,384	99.99
2016	711,400	711,400	100.00

**Burleigh County Tax Levies and Collections (Mill Levies)**

<b>Levy Year/ Pay Year</b>	<b><u>Total Tax Levy</u></b>	<b><u>Tax Collections</u></b>	<b><u>Percent of Levy Collected</u></b>
2023/24		----In Process----	
2022/23	\$ 19,603,504		
2021/22	17,677,562	\$ 17,571,750	99.40%
2020/21	17,424,087	17,342,254	99.53
2019/20	17,266,947	17,241,467	99.85
2018/19	15,245,495	15,245,480	99.99
2017/18	17,250,445	17,250,445	100.00
2016/17	20,530,335	20,530,335	100.00

**Largest Property Taxpayers**

The ten largest property taxpayers in the Water District are identified below:

<b><u>Largest Taxpayers</u></b>	<b><u>2023 Assessed Value</u></b>

**Corrie Bertrand**

Administrative Supervisor

Colliers Securities

[corrie.bertrand@colliers.com](mailto:corrie.bertrand@colliers.com)

Direct: +1 605 339 2301

Main: +1 605 339 9800 | +1 800 339 1111

110 South Phillips Avenue, Suite 203 | Sioux Falls, SD 57104 | United States



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# Summary of Accounting Adjustments from Past Audits

Fiscal Year 2016 – NONE (0)

Fiscal Year 2017 – TWO (2)

Fiscal Year 2018 – ONE (1)

Fiscal Year 2019 – SEVEN (7)

Fiscal Year 2020 – TEN (10)

Fiscal Year 2021 – TWO (2)

Fiscal Year 2022 – NONE (0)

Fiscal Year 2023 – EIGHTEEN (2)

## STATE AUDITOR

JOSHUA C. GALLION  
Phone (701) 328-2241  
Fax (701) 328-1406



Local Government Division:  
FARGO OFFICE  
MANAGER – DAVID MIX  
Phone: (701) 239-7252 Fax: (701) 239-7251

STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
STATE CAPITOL  
600 E. BOULEVARD AVENUE - DEPT. 117  
BISMARCK, NORTH DAKOTA 58505

Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of Burleigh County for the year ended December 31, 2016, and have issued our report thereon dated April 28, 2017. Professional standards require that we provide you with the following information related to our audit.

**OUR RESPONSIBILITY UNDER AUDITING STANDARDS GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA, GOVERNMENT AUDITING STANDARDS AND THE UNIFORM GUIDANCE**

As stated in our engagement letter dated February 2, 2017, our responsibility, as described by professional standards, is to plan and perform our audit to obtain reasonable, but not absolute, assurance about whether the financial statements are free of material misstatement. Because of the concept of reasonable assurance and because we did not perform a detailed examination of all transactions, there is a risk that material errors, fraud, or other illegal acts may exist and not be detected by us.

In planning and performing our audit, we considered Burleigh County's internal control over financial reporting to determine our auditing procedures for expressing our opinion on the basic financial statements and not to provide an opinion on internal control over financial reporting. We also considered internal control over compliance with requirements that could have a direct and material effect on each major federal program in order to determine our auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance, and for reporting on the schedule of expenditures of federal awards required by the Uniform Guidance.

As part of obtaining reasonable assurance about whether Burleigh County's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit. Also, in accordance with the Uniform Guidance, we examined, on a test basis, evidence about Burleigh County's compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of its major federal programs for expressing an opinion on Burleigh County's compliance with those requirements over each major federal program. While our audit provides a reasonable basis for our opinion over compliance for each major federal program, it does not provide a legal determination on Burleigh County's compliance with those requirements.

**SIGNIFICANT ACCOUNTING POLICIES/QUALITATIVE ASPECTS OF ACCOUNTING PRACTICES**

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. Application of existing policies was not changed during the year ended December 31, 2016. We noted no transactions entered by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

**BURLEIGH COUNTY**Management's Letter - Continued

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Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements is useful lives of capital assets.

**CORRECTED AND UNCORRECTED MISSTATEMENTS**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. None of the misstatements detected because of audit procedures were material, either individually or in the aggregate, to the financial statements taken as a whole.

**DISAGREEMENTS WITH MANAGEMENT**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**MANAGEMENT REPRESENTATIONS**

We have requested certain representations from management that are included in the management representation letter dated April 28, 2017.

**MANAGEMENT CONSULTATIONS WITH OTHER INDEPENDENT ACCOUNTANTS**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the county's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**DIFFICULTIES ENCOUNTERED IN PERFORMING THE AUDIT**

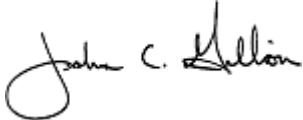
We encountered no significant difficulties in dealing with management in performing and completing our audit.

**OTHER AUDIT FINDINGS OR ISSUES**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Board of County Commissioners and management of Burleigh County, is not intended to be, and should not be used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.



Joshua C. Gallion  
State Auditor

Fargo, North Dakota  
April 28, 2017

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STATE AUDITOR  
JOSHUA C. GALLION  
Phone (701) 328-2241



Local Government Division:  
FARGO OFFICE  
MANAGER – DAVID MIX  
Phone: (701) 239-7252

STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
STATE CAPITOL  
600 E. BOULEVARD AVENUE - DEPT. 117  
BISMARCK, NORTH DAKOTA 58505

Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of Burleigh County for the year ended December 31, 2017, and have issued our report thereon dated June 1, 2018. Professional standards require that we provide you with the following information related to our audit.

**Our Responsibility Under Auditing Standards Generally Accepted in The United States of America, Government Auditing Standards and The Uniform Guidance**

As stated in our engagement letter dated March 1, 2018, our responsibility, as described by professional standards, is to plan and perform our audit to obtain reasonable, but not absolute, assurance about whether the financial statements are free of material misstatement. Because of the concept of reasonable assurance and because we did not perform a detailed examination of all transactions, there is a risk that material errors, fraud, or other illegal acts may exist and not be detected by us.

In planning and performing our audit, we considered Burleigh County's internal control over financial reporting to determine our auditing procedures for expressing our opinion on the basic financial statements and not to provide an opinion on internal control over financial reporting. We also considered internal control over compliance with requirements that could have a direct and material effect on each major federal program in order to determine our auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance, and for reporting on the schedule of expenditures of federal awards required by the Uniform Guidance.

As part of obtaining reasonable assurance about whether Burleigh County's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit. Also, in accordance with the Uniform Guidance, we examined, on a test basis, evidence about Burleigh County's compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of its major federal programs for expressing an opinion on Burleigh County's compliance with those requirements over each major federal program. While our audit provides a reasonable basis for our opinion over compliance for each major federal program, it does not provide a legal determination on Burleigh County's compliance with those requirements.

**Significant Accounting Policies/Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. Application of existing policies was not changed during the year ended December 31, 2017. We noted no transactions entered by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.



**BURLEIGH COUNTY****Management's Letter - Continued**

Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements is useful lives of capital assets.

**Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial and report them to the appropriate level of management. Management has corrected all such misstatements. The schedules below titled "Audit Adjustments" lists all misstatements detected as a result of audit procedures were corrected by management:

**AUDIT ADJUSTMENTS - PRIMARY GOVERNMENT**Prior Period Adjustments:Capital Asset & Debt Errors:

Net Investment in Capital Assets	\$	2,705,567	
Construction in Progress		144,126	
Machinery & Vehicles		26,810	
Bond Discount		32,735	
Buildings			\$ 2,893,292
Infrastructure - Accum. Depr.			15,946

Change in Accounting Principle:

Unrestricted Net Position	1,162,756	
Beginning OPEB liability		1,162,756

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated June 1, 2018.

**Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the county's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

**BURLEIGH COUNTY****Management's Letter - Continued**

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This information is intended solely for the use of the Board of County Commissioners and management of Burleigh County, is not intended to be, and should not be used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/s/

Joshua C. Gallion  
State Auditor

Fargo, North Dakota  
June 1, 2018

## STATE AUDITOR

JOSHUA C. GALLION  
Phone (701) 328-2241



Local Government Division  
FARGO OFFICE  
MANAGER – CRAIG HASHBARGER  
Phone (701)239-7250

STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
FARGO OFFICE BRANCH  
1655 43<sup>RD</sup> STREET SOUTH, SUITE 203.  
FARGO, NORTH DAKOTA 58103

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**GOVERNANCE COMMUNICATION**

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Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of Burleigh County, North Dakota, for the year ended December 31, 2018 which collectively comprise Burleigh County's basic financial statements, and have issued our report thereon dated July 24, 2019. Professional standards require that we provide you with the following information related to our audit.

**Our Responsibility Under Auditing Standards Generally Accepted in The United States of America, Government Auditing Standards and by the Uniform Guidance**

As stated in our engagement letter dated April 8, 2019, our responsibility, as described by professional standards, is to plan and perform our audit to obtain reasonable, but not absolute, assurance about whether the basic financial statements are free of material misstatement. Because of the concept of reasonable assurance and because we did not perform a detailed examination of all transactions, there is a risk that material errors, or fraud may exist and not be detected by us.

In planning and performing our audit, we considered Burleigh County's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the basic financial statements and not to provide an opinion on internal control over financial reporting.

As part of obtaining reasonable assurance about whether Burleigh County's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit.

**Significant Accounting Policies/Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. Application of existing policies was not changed during the year ended December 31, 2018. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements presented by management and are based on management’s knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements is useful lives of capital assets.

**Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. Management has corrected all such misstatements. The schedule below lists all misstatements detected as a result of audit procedures that were corrected by management. These adjustments account for Burleigh County’s off-book accounts for the detention center remodel into its financial statements.

Expenditures	7,861,864	
Cash	750,700	
Revenue		248,729
Other Financing Sources		8,363,835

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor’s report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated July 24, 2019.

**Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to the County’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

The following presents our informal recommendation:

\* \* \* \* \*

<b>FRAUD RISK ASSESSMENT</b>
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Burleigh County does not currently prepare a fraud risk assessment of the entire entity. If Burleigh County does not prepare an adequate fraud risk assessment, there is an increased risk of fraudulent financial reporting, asset misappropriation, and corruption.

Fraud risk governance is a key component of entity-wide governance and the internal control environment according to the COSO framework principles. This entity-wide governance addresses the manner in which the board of directors and management meet their respective obligations to achieve Burleigh County's goals in reporting, reliance, and accountability.

We recommend the Burleigh County prepare a fraud risk assessment in order to identify areas of concern within the entity to appropriately mitigate the risk of fraudulent financial reporting, misappropriation of assets, and corruption.

\* \* \* \* \*

This information is intended solely for the use of the Board of County Commissioners and management of Burleigh County, and is not intended to be, and should not be, used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/S/

Joshua C. Gallion  
State Auditor

Fargo, North Dakota  
July 24, 2019

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## GOVERNANCE COMMUNICATION

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Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of Burleigh County, North Dakota, for the year ended December 31, 2019 which collectively comprise Burleigh County's basic financial statements, and have issued our report thereon dated June 29, 2020. Professional standards require that we provide you with the following information related to our audit.

### **Our Responsibility Under Auditing Standards Generally Accepted in The United States of America, Government Auditing Standards and by the Uniform Guidance**

As stated in our engagement letter dated March 17, 2020, our responsibility, as described by professional standards, is to plan and perform our audit to obtain reasonable, but not absolute, assurance about whether the basic financial statements are free of material misstatement. Because of the concept of reasonable assurance and because we did not perform a detailed examination of all transactions, there is a risk that material errors, or fraud may exist and not be detected by us.

In planning and performing our audit, we considered Burleigh County's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the basic financial statements and not to provide an opinion on internal control over financial reporting.

As part of obtaining reasonable assurance about whether Burleigh County's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit.

### **Significant Accounting Policies/Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. Application of existing policies was not changed during the year ended December 31, 2019. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements is useful lives of capital assets.

### **Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. Management has corrected all such misstatements. The schedule below lists all misstatements detected as a result of audit procedures that were corrected by management. These adjustments account for Burleigh County's off-book accounts for the detention center remodel into its financial statements.

<b>2019 Adjustments</b>	<b>Audit Adjustments</b>	
	<b>Debit</b>	<b>Credit</b>
<b>Capital Project Funds</b>		
<u>Reclass Intergovernmental Rec'v to Debt Service Fund</u>		
Revenue	1,893,037	
Capital Project Fund Balance		1,893,037
<u>Remove Current Sales Tax Revenue</u>		
Revenue	8,647,489	
Current Year Double Counted Cash		8,647,489
<u>Prior Period Adjustment - Reclass Prior Rec'v to Debt Service Fund</u>		
Capital Project Fund Balance	1,571,028	
Revenue		1,571,028
<u>Prior Period Adjustment - Reclass Prior Rec'v to Debt Service Fund</u>		
Capital Project Fund Balance	1,590,618	
Cash		1,590,618
<b>Debt Service Funds (Recording Off Book Activity at BND)</b>		
<u>Record Off Book Activity</u>		
Expenditure	11,886,777	
Other Financing Sources	2,855,688	
Revenue		8,656,960
Off Book Cash		6,085,505
<u>Record Intergovernmental Receivable for Off Book Activity</u>		
Intergovernmental Receivable	1,893,037	
Revenue		1,893,037
<u>Record Prior Period Adjustment for Prior Year Receivable in Off Book Funds</u>		
Revenue	1,571,028	
Debt Service Fund Balance		1,571,028

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated June 29, 2020.

**Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the County's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Board of County Commissioners and management of Burleigh County, and is not intended to be, and should not be, used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/S/

Joshua C. Gallion  
State Auditor

Bismarck, North Dakota  
June 29, 2020



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## GOVERNANCE COMMUNICATION

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Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of Burleigh County, North Dakota, and the respective changes in financial position for the years ended December 31, 2020 which collectively comprise Burleigh County's basic financial statements, and have issued our report thereon dated June 30, 2021. Professional standards require that we provide you with the following information related to our audit.

### **Our Responsibility Under Auditing Standards Generally Accepted in the United States of America, Government Auditing Standards**

As stated in our engagement letter dated April 28, 2021, our responsibility, as described by professional standards, is to plan and perform our audit to obtain reasonable, but not absolute, assurance about whether the basic financial statements are free of material misstatement. Because of the concept of reasonable assurance and because we did not perform a detailed examination of all transactions, there is a risk that material errors, or fraud may exist and not be detected by us. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities.

In planning and performing our audit, we considered Burleigh County's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide an opinion on the effectiveness of internal control over financial reporting.

As part of obtaining reasonable assurance about whether Burleigh County's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit. Also, in accordance with the Uniform Guidance, we examined, on a test basis, evidence about the Burleigh County's compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on its major federal programs for the purpose of expressing an opinion on the Burleigh County's compliance with those requirements over the major federal programs. While our audit provides a reasonable basis for our opinion over compliance for the major federal programs, it does not provide a legal determination on the Burleigh County's compliance with those requirements.

### Significant Accounting Policies/Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. Application of existing policies was not changed during the years ended December 31, 2020. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements is useful lives of capital assets.

### Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. Management has corrected all such misstatements. The schedules below list all misstatements detected as a result of audit procedures that were corrected by management.

	<b>Audit Adjustments</b>	
	<b>Debit</b>	<b>Credit</b>
<b>General Fund</b>		
<u>Record Accounts Payable</u>		
Expenditures	26,429	
Accounts Payable		26,429
<u>Record Intergovernmental Receivable and Reclass COVID Reimbursement</u>		
Charge For Services Revenue	3,793,319	
Intergovernmental Revenue		3,793,319
<b>Special Revenue Funds</b>		
<u>Record Equipment Lease</u>		
Expenditures	509,188	
Other Financing Sources		509,188
<u>Record Prior Period Adjustment to adjust fund balance</u>		
Revenue - PPA	2,959	
Special Revenue Fund Balance - PPA		2,959
<b>Capital Project Funds</b>		
<u>Reclass Intergovernmental Rec'v to Debt Service Fund</u>		
Revenue	1,468,454	
Capital Project Fund Balance		1,468,454
<u>Remove Current Sales Tax Revenue</u>		
Revenue	9,297,894	
Current Year Double Counted Cash		9,297,894

	Audit Adjustments	
	Debit	Credit
<b>Debt Service Funds (Recording Off Book Activity at BND)</b>		
<u>Record Off Book Activity</u>		
Expenditure	4,902,766	
Other Financing Sources	522,345	
Off Book Cash	2,050,107	
Revenue		7,475,218
<u>Record Intergovernmental Receivable for Off Book Activity</u>		
Intergovernmental Receivable	1,468,454	
Revenue		1,468,454
<u>Record Prior Period Adjustment to adjust fund balance</u>		
Revenue - PPA	466,101	
Debt Service Fund Balance - PPA		466,101
<b>Government Wide Activities</b>		
<u>Record Prior Period Adjustment to adjust cost of capital asset</u>		
Capital Assets - PPA	157,552	
Expenditures - PPA		157,552

#### Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

#### Management Representations

We have requested certain representations from management that are included in the management representation letter dated June 30, 2021.

#### Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the County's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

#### Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Board of County Commissioners and management of Burleigh County, is not intended to be, and should not be used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/S/

Joshua C. Gallion  
State Auditor

Bismarck, North Dakota  
June 30, 2021

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## GOVERNANCE COMMUNICATION

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September 29, 2022

Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of Burleigh County, North Dakota, for the year ended December 31, 2021. Professional standards require that we provide you with information about our responsibilities under general accepted auditing standards (and, if applicable, *Government Auditing Standards* and the Uniform Guidance), as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated May 25, 2022. Professional standards also require that we communicate to you with the following information related to our audit.

### Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. No new accounting policies were adopted, and the application of existing policies was not changed during 2021. We noted no transactions entered into by Burleigh County during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the governmental activities financial statements were:

Management's estimate of the useful lives of capital assets is based on past history of each classification of capital assets. We evaluated the key factors and assumptions used to develop the useful lives capital assets in determining that is reasonable in relation to the financial statements taken as a whole.

### Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. The attached schedule summarizes uncorrected misstatements of the financial statements. Management has determined that their effects are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. The uncorrected misstatements or the matters underlying them could potentially cause future period financial statements to be materially misstated, even though, in our judgment, such uncorrected misstatements are immaterial to the financial statements under audit.

**2021 Passed Adjustments**

	<b>Audit Adjustments</b>	
	<b>Debit</b>	<b>Credit</b>
<b>Government Fund Adjustments</b>		
<b>Special Revenue Funds</b>		
<u>Passed Audit Adjustment for Unrealized Loss on Investments</u>		
Other Financing Sources - Unrealized Loss on Investments	265,500	
Interest Income		265,500

The following material misstatements detected as a result of audit procedures were corrected by management.

**2021 Adjustments**

	<b>Audit Adjustments</b>	
	<b>Debit</b>	<b>Credit</b>
<b>Government Wide Activities</b>		
<u>Record Adjustment and PPA to move project back to CIP</u>		
Capital Assets - Nondepreciable	1,381,980	
Capital Assets - Nondepreciable PPA	53,216	
Capital Assets, Depreciable, Net		1,435,196

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated September 29, 2022.

**Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the County's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

**Other Matters**

We applied certain limited procedures to the *budgetary comparison information, schedule of employer's share of net pension liability and employer contributions, schedule of employer's share of net OPEB liability and employer contributions, and notes to the required supplementary information* which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the *schedule of expenditures of federal awards and notes to the schedule of expenditures of federal awards*, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

**Restrictions on Use**

This information is intended solely for the use of the board of county commissioners and management of Burleigh County, and is not intended to be, and should not be, used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/S/

Joshua C. Gallion  
State Auditor

Bismarck, North Dakota  
September 29, 2022

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## GOVERNANCE COMMUNICATION

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July 25, 2023

Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of Burleigh County, North Dakota, for the year ended December 31, 2022. Professional standards require that we provide you with information about our responsibilities under general accepted auditing standards (and, if applicable, *Government Auditing Standards* and the Uniform Guidance), as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated April 12, 2023. Professional standards also require that we communicate to you with the following information related to our audit.

### Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. No new accounting policies were adopted, and the application of existing policies was not changed during 2022. We noted no transactions entered into by Burleigh County during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the governmental activities financial statements were:

Management's estimate of the useful lives of capital assets is based on past history of each classification of capital assets. We evaluated the key factors and assumptions used to develop the useful lives capital assets in determining that is reasonable in relation to the financial statements taken as a whole.

### Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.



### Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. None of the misstatements detected as a result of audit procedures were material, either individually or in the aggregate, to the financial statements taken as a whole.

### Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

### Management Representations

We have requested certain representations from management that are included in the management representation letter dated July 25, 2023.

### Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the County's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

### Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

### Other Matters

We applied certain limited procedures to the *budgetary comparison information, schedule of employer's share of net pension liability and employer contributions, schedule of employer's share of net OPEB liability and employer contributions, and notes to the required supplementary information* which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the *schedule of expenditures of federal awards and notes to the schedule of expenditures of federal awards*, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

**Restrictions on Use**

This information is intended solely for the use of the board of county commissioners and management of Burleigh County, and is not intended to be, and should not be, used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/S/

Joshua C. Gallion  
State Auditor

Bismarck, North Dakota  
July 25, 2023

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## GOVERNANCE COMMUNICATION

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July 1, 2024

Board of County Commissioners  
Burleigh County  
Bismarck, North Dakota

We have audited the financial statements of the governmental activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of Burleigh County, North Dakota, for the year ended December 31, 2023. Professional standards require that we provide you with information about our responsibilities under general accepted auditing standards (and, if applicable, *Government Auditing Standards* and the Uniform Guidance), as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated March 6, 2024. Professional standards also require that we communicate to you with the following information related to our audit.

### Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Burleigh County are described in Note 1 to the financial statements. No new accounting policies were adopted, and the application of existing policies was not changed during 2023. We noted no transactions entered into by Burleigh County during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements presented by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the governmental activities financial statements were:

Management's estimate of the useful lives of capital assets is based on past history of each classification of capital assets. We evaluated the key factors and assumptions used to develop the useful lives capital assets in determining that is reasonable in relation to the financial statements taken as a whole.

### Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and report them to the appropriate level of management. Management has corrected all such misstatements. The schedules list all misstatements provided by management or detected as a result of audit procedures that were corrected by management.

**2023 Adjustments - Primary Government**

	<b>Audit Adjustments</b>	
	<b>Debit</b>	<b>Credit</b>
<b>General Fund</b>		
<u>Establish a Due From Other Funds Asset to Offset Negative Cash Balances in Special Revenue and Debt Service Funds</u>		
Due From Other Funds	\$ 1,721,451	\$ -
Cash	-	1,721,451
<u>Remove February 2024 State Aid from Intergovernmental Receivables</u>		
Revenue	496,424	-
Intergovernmental Receivable	-	496,424
<u>Reclassify Interest Income to Change in Investment Market Value OFS</u>		
Interest Income	156,293	-
Change in Investment Market Value	-	156,293
<u>To Record Reimbursement from Morton County for BMDC</u>		
Expenditures	148,099	-
Charge for Service Revenues	-	148,099
<u>Reclassify Salary Expenses to Contracted Service Expenses</u>		
Contracted Service Expenses	120,370	-
Salary Expenses	-	120,370
<u>Reclassify Interest Income from Internal Service Fund to Transfer In</u>		
Interest Earnings	75,671	-
Transfer In	-	75,671
<b>Special Revenue Fund</b>		
<u>Establish a Due to Other Funds Asset to Offset Negative Cash Balances in Special Revenue Fund with the General Fund</u>		
Cash	\$ 1,691,164	\$ -
Due to Other Funds	-	1,691,164
<u>Adjustment to Decrease Inventory for 2023 Used Amount</u>		
Expenditures	579,738	-
Inventory	-	579,738
<u>Adjustment to Record Retainage Payable</u>		
Expenditures	82,390	-
Retainage Payable	-	82,390
<u>Reclassify Interest Income to Change in Investment Market Value OFS</u>		
Interest Income	271,702	-
Change in Investment Market Value	-	271,702

**2023 Adjustments - Primary Government**

	<b>Audit Adjustments</b>	
	<b>Debit</b>	<b>Credit</b>
<b>Special Revenue Fund</b>		
<u>Reclassify Prairie Dog Funds from a Transfer In to Intergovernmental Revenue</u>		
Transfers In	4,160,080	-
Intergovernmental Revenue	-	4,160,080
<u>Reclassify Miscellaneous Revenue to Intergovernmental Revenue and Sale of Assets</u>		
Miscellaneous Revenue	\$ 755,539	\$ -
Sale of Assets	-	330,000
Intergovernmental Revenue	-	425,539
<b>Debt Service Fund</b>		
<u>Establish a Due to Other Funds Asset to Offset Negative Cash Balances in Debt Service Fund with the General Fund</u>		
Cash	\$ 30,286	\$ -
Due to Other Funds	-	30,286
<u>Adjustment to Record Off-Book Activity for the 2020 Sales Tax Bond</u>		
Cash	31,924,816	-
Intergovernmental Receivable	2,106,392	-
Fund Balance, December 31, 2023	-	34,031,208
Principal Expense	2,647,750	-
Interest & Fees Expense	781,718	-
Net Change Fund Balance, December 31, 2023	9,338,908	-
Sales Tax Revenue	-	11,518,431
Interest Earnings	-	208,780
Miscellaneous Revenue	-	1,041,165
<b>Internal Service Fund</b>		
<u>Prior Period Adjustment to Record Missed Payable from 2022</u>		
Net Position, January 1, 2023 PPA	\$ 224,159	\$ -
Accounts Payable PPA	-	224,159
<u>Reclassify Interest Expense to Transfer Out</u>		
Transfer Out	75,671	-
Interest Expense	-	75,671
<b>Government Wide Activities</b>		
<u>Prior Period Adjustment to Remove 66th St Project from CIP, Reclassify Assets 4578 &amp; 4579 to CIP, and to add back Asset 4053 to Capital Assets</u>		
Net Position, January 1, 2023 PPA	351,030	-
Capital Assets - Nondepreciable PPA	-	30,758
Capital Assets, Depreciable, Net PPA	-	320,272
<u>Adjustment to Record Current Period Capital Asset Additions for Assets 4578 &amp; 4579</u>		
Capital Assets - Nondepreciable	61,450	-
Expenditures	-	61,450

**2023 Adjustments - Water Resource District****Fund Level Adjustments**To Record Audit Found Payables

Expenditures

Accounts Payable

To Record Retainage Payable

Expenditures

Retainage Payable

**Audit Adjustments****Debit****Credit**

150,829

-

-

150,829

11,050

-

-

11,050

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, or reporting matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated July 1, 2024.

**Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the County's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

**Other Matters**

We applied certain limited procedures to the *budgetary comparison information, schedule of employer's share of net pension liability and employer contributions, schedule of employer's share of net OPEB liability and employer contributions, and notes to the required supplementary information* which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the *schedule of expenditures of federal awards and notes to the schedule of expenditures of federal awards*, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

**Restrictions on Use**

This information is intended solely for the use of the board of county commissioners and management of Burleigh County, and is not intended to be, and should not be, used for any other purpose. We would be happy to meet with you and any member of your staff to discuss any of the items in this letter in more detail if you so desire.

Thank you and the employees of Burleigh County for the courteous and friendly assistance we received during the course of our audit. It is a pleasure for us to be able to serve Burleigh County.

/S/

Joshua C. Gallion  
State Auditor

Bismarck, North Dakota  
July 1, 2024