

NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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October 31, 2012

Fred Figi, President Sutton City Council 107 W. Grove St. Sutton, NE 68979

Dear Mr. Figi:

As you know, the Auditor of Public Accounts (APA) has a hotline and an email address where citizens can anonymously report suspected issues of waste, abuse, or fraud within government. In connection with this, we help to provide accurate information to taxpayers and attempt to correct misperceptions the taxpayers may have about government. We feel this is a valuable service to the State's taxpayers.

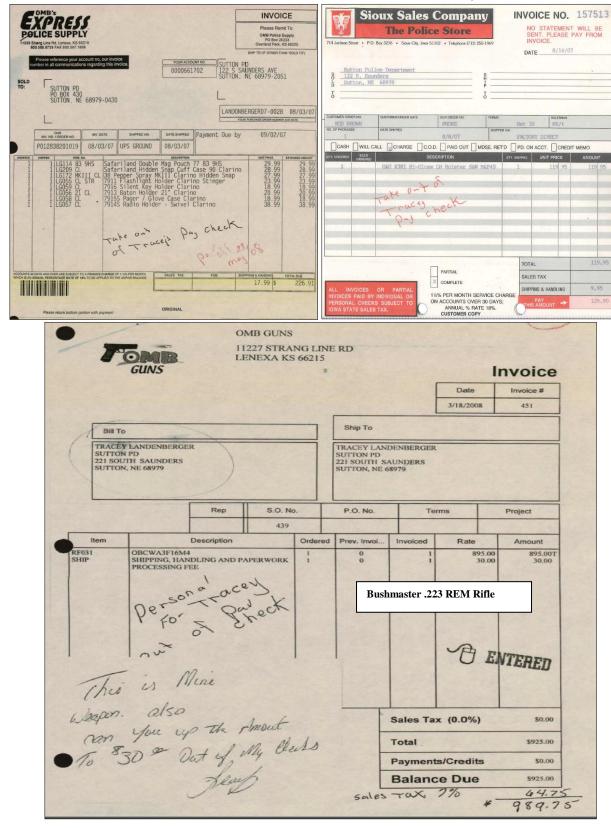
The APA received concerns regarding certain expenditures made by the City of Sutton (City) Police Department (Department). In response to those allegations, the APA examined certain expenditures during the period October 1, 2009, through August 31, 2012. The following issues were identified:

Personal Gun and Related Purchases

One of the concerns brought to the APA's attention involves the purchases of guns and related items for personal use. The APA found that the City purchased duty gear, a holster, and a rifle for the personal use of Tracey Landenberger, City of Sutton Police Chief (Chief). These items were purchased for \$1,346.56, as follows:

Invoice Date	Vendor	Personal Items Purchased	Total
8/3/2007	OMB's Express Police Supply	Duty Gear: Including magazine holder, cuff case, pepper spray, flashlight holder, baton holder, etc.	\$226.91
8/14/2007	Sioux Sales Company	Holster	\$129.90
3/18/2008	OMB Guns (Note)	Bushmaster .223 REM semi-automatic rifle	\$989.75
		Total	\$1,346.56

Note: Per the City's accounting system, the City paid only \$925 for the personal gun, and someone added the sales tax amount of 7% after the fact, as noted on the invoice below. The APA also noted, per the City's accounting system, the City paid \$925 on both April 8, 2008, and June 11, 2008; both transactions referenced invoice number 451. Based on the City's accounting system, it appears the City paid OMB Guns \$925 twice for the personal gun of the Chief.



The APA has included the three invoices summarized in the above chart, as follows:

After the purchases were made, the City deducted amounts needed to reimburse the City for those expenditures from the Chief's biweekly payroll checks. In addition to avoiding the payment of sales tax, the Chief received a discount on some of the items by purchasing them through the Department.

For the first two purchases, the City deducted \$25 per biweekly pay check between September 2007 and May 2008, totaling \$427. The City could not account for or explain the \$70.19 difference between the \$356.81 for those two purchases and the \$427 withheld.

For the rifle purchase, the Chief requested \$30 to be deducted from his biweekly paychecks in order to pay back the City. From June 2008 through January 2010, the City deducted a total of \$1,370, which was \$380.25 more than required to pay back the City. On January 29, 2010, the City repaid the Chief \$300 to make up part of what had been deducted erroneously. However, per his pay stub, the City did not pay the Chief the remaining \$80 owed to him, indicating the money was withheld was to compensate the City for the public funds the Chief used to fill up his personal vehicle at a local gas station. (See "Gas Purchases" later in this letter.)

The APA requested a listing of guns purchased or issued by the City for the Department from October 2009 through August 2012. The following list was provided to the APA on September 18, 2012:

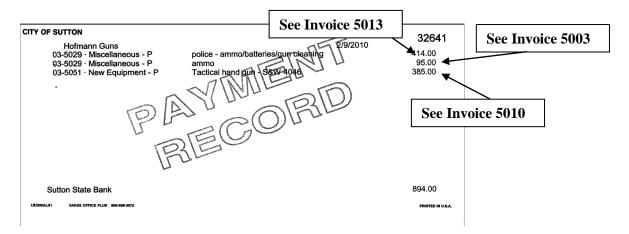
Date Purchased	Check #	Description	Purchased From	Serial #	Value	or Disposed	Disposed	Amount Sold
11/11/2008	31558	Lenova ThinkPad - lap top for car	ERC Communications		\$ 899.00			
11/11/2008	31558	Lenova ThinkPad - lap top for car	ERC Communications		\$ 899.00			
11/11/08	31581	Smith & Wesson M & P .45 Cal	Sioux Sales Company	MRL0581	\$ 455.00			
01/03/09	31693	Smith & Wesson M & P .45 Cal	Hofmann Guns	MPY3313	\$ 605.18			
01/13/09	31693	Escort 12 Gauge Shotgun	Hofmann Guns	133037	\$ 215.00			
		Taser Model X15 X26	Received from Grant	X00-572065	\$ 1,200.00			
		Taser Model X15 X26	Received from Grant	X00-538735	\$ 1,200.00			
01/11/11	33426	Sig Sauer Swat 5.56 Rifle	Hofmann Guns	JT016024	\$ 1,050.00			
01/11/11	33426	Sig Sauer Swat 5.56 Rifle	Hofmann Guns	JT016013	\$ 1,050.00			
02/14/12	34373	LCD Monitor	Best Buy (VISA)	HP S2031	\$ 89.99			
03/23/12	34460	Battery Charger	Cummins Central Power		\$ 163.50			
05/14/12	34549	In Car Video System	Legal Tek	RX 1130305	\$ 7,750.00			

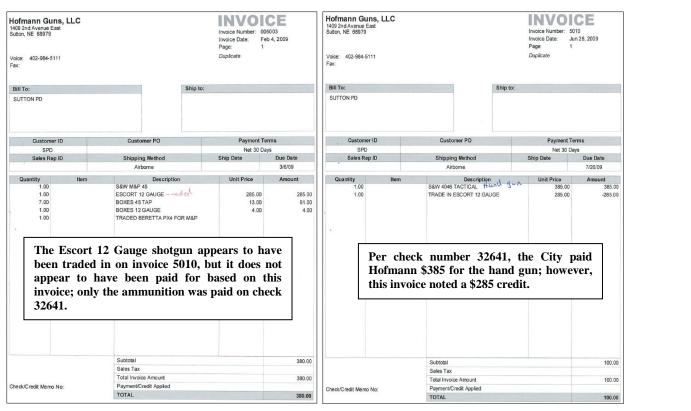
From this list, as compared to City expenditures, the APA identified other City purchases that may be problematic:

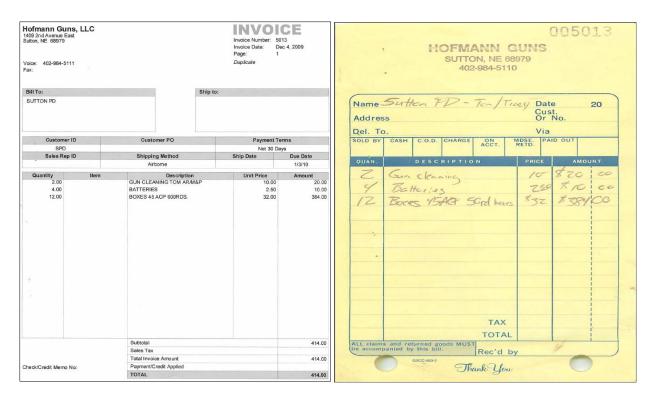
• On February 9, 2010, the City paid Hoffman Guns for ammunition, batteries, gun cleaning, and a tactical handgun, totaling \$894. Three invoices were attached to the payment and were dated February 4, 2009, June 26, 2009, and December 4, 2009.

The invoice dated June 26, 2009, included the trade of an Escort 12 Gauge Shotgun (credit of \$285) for a S&W 4046 Tactical handgun (\$385), with a difference of \$100 due. However, the City's payment record for that transaction shows \$385 as the total amount paid. The tactical handgun does not appear on the inventory listing above, but an Escort 12 Gauge Shotgun does. Based on the information provided, the APA was unable to determine which guns were actually traded in or purchased by the City. The City Clerk

did not have an explanation for the differences in invoice amounts. See invoices related to the gun purchases below.

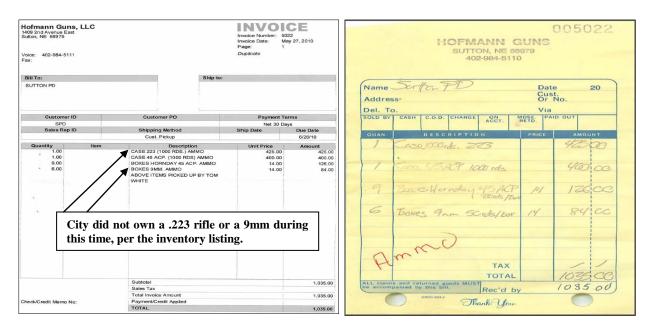






• On June 8, 2010, the City paid Hoffman Guns for one case of .223 (1000 rounds) ammunition, totaling \$425, and six boxes of 9 mm (50 rounds per box) ammunition, totaling \$84. Based on the inventory listings provided by the City, the Department had neither a 9 mm firearm nor a .223 rifle as of June 8, 2010.

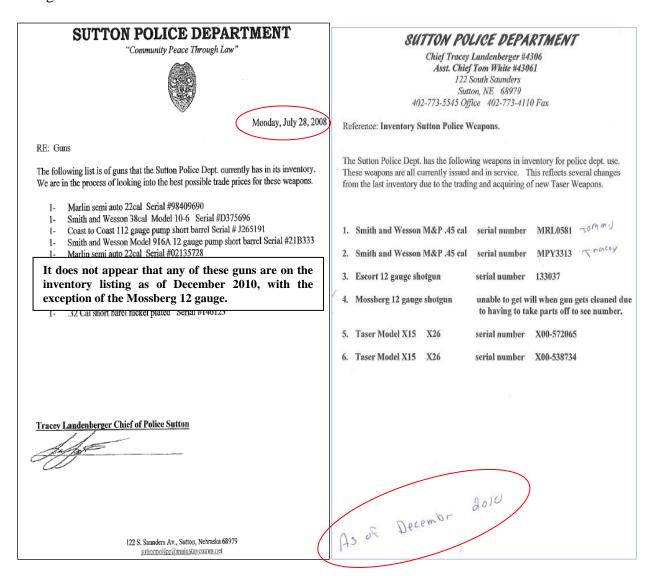
However, as noted above, in 2008, the City purchased a .223 rifle for the Chief's personal use. Because the City did not include a .223 rifle on its inventory at that time, it appears the \$425 worth of ammunition for that particular caliber was for the personal use of the Chief. See ammunition invoices below.



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The APA also requested and received copies of previous Department gun inventories. The inventory list dated July 28, 2008, included a number of different guns that did not appear to be in service, with an explanatory note from the Chief saying, "We are in the process of looking into the best possible trade prices for these weapons." The guns in question are not included on the current inventory listing, and there was no indication of their disposition.

Additional inventories of guns, as of December 2010 and June 21, 2011, listed a Mossberg shotgun that does not appear on the most recent inventory listing. According to the City Clerk, that omission was an inadvertent oversight, and the gun should be included on the most recent listing. See inventories below.



SUTTON POLICE DEPARTMENT Chief Tracey Landenberger #4306 122 South Saunders Sutton, NE 68979 402-773-5545 Office 402-773-4110 Fax 6-20-11 Sutton Police Dept. Inventory as of 6-21-11	2- Sets BDU uniforms (Navy) 2- sets BDU uniforms (Black S.R.T.) 2- winter coats 1- Radiological radiation meter 2-winter coats 2- windbreaker jackets 2- Smith and Wesson M&P 45 CAL handgun ##
1- HP Desktop Computer Model P6130Y Serial #CNX2403PD	2- Motorola CP185 handheld Radios
1- HP Monitor Model HP2159MON Serial #CNT921X2KY	2- Motorola HT1550 handheld radios
1- HP Desktop Computer Model Eg120Y Serial #3CR92217BJ	4- Motorola Pagers
1- HP Monitor Model HP2159MON Serial #CNT918Z526	2- tactical vests
1- Orsair Desktop Computer Serial #115481 - hand m. down	2- Gator Hawk body armor
1- Monitor Serial#CN15H4KWA16156Y	2- Knee pads
1- Gateway Desktop Computer Serial #003292H200 From 12 and	2- Goggles
1- Monitor Serial #70601252139 hand on down	2-Motorola Verizon Cell phones
1-Radioshack phone answer machine serial #80300110	
2- AT&T desktop phone model #1070 Serial #D6XKH03B1070 1- Universal I.D. laminator model #84525 Serial #NFU0099	
1- Universal I.D. laminator model #84525 Serial #NF U0099 1- Emerson Color T.V. Serial #NOVV41313119	1
1- GoldStar Color T.V. no #	RE: Throw Phone Inventory
1- Motorola Mobile radio mounted in office No #	
1- Sony stereo system in office no #	The following list contains all equipment assigned to Chief T. Landenberger #4306 of the
1- Panasonic desk phone Serial #KT3186W	Sutton Police Dept. for use with the throw phone.
1- Lanier Copy Machine Serial #D1101	
2- Redwood Saunder Desks	1. Phone Console
4- Black office desk chairs	1A. Power Cord
1- Lorax 4 camera security system. in office.	1B. Car Charger
1-Uniden Police Scanner Serial #15002424	2 Throw Phone and 100ft cable on orange spool
1- Dorm size refrigerator	3 Primary Negotiator Headset W/Push to talk (PPT) device
5- Red visitor chairs in office	4 Coach Negotiator Headset W/PTT device
14- Metal folding chairs	5 Additional Headset with RCA Jack
3- White Folding Tables	6 Additional Headset with RCA Jack
1- Conference Table	7 Spare PPT cable device
6- Red Conference Table chairs	8 Video Interface Module w/ Cables attached
2- Red Visitor Chairs (Conference area)	9 Video Interface Cable
1- Whirlpool Refrigerator	10 Two (2) sets 6ft audio/video cable
1- Magic Chef Microwave Serial #DJ09X00321	11 Two (2) sets 15ft Audio Cable for item #5-#6
1- MR. Coffee Coffee maker Model # TF13	12 Duplex Jack
3- Large metal storage lockers (1 in bathroom-2 in garage)	13 Enhanced Landline Module
	I L

None of the inventories of guns included a 9 mm firearm, for which ammunition was purchased, as noted above. The APA also noted the gun inventories were performed by the Department, without an independent verification from anyone else in the City.

The City's purchases of firearms and other items for the personal use of the Chief appear problematic for a number of reasons. Aside from any potential liability to the City relating thereto, such purchases give rise to both constitutional and statutory concerns. To start, Article XIII, section 3, of the Nebraska State Constitution prohibits extending the credit of the State to a private individual or enterprise. Specifically that constitutional provision says:

"The credit of the state shall never be given or loaned in aid of any individual, association, or corporation, except that the state may guarantee or make long-term, low-interest loans to Nebraska residents seeking adult or post high school education at any public or private institution in this state. Qualifications for and the repayment of such loans shall be as prescribed by the Legislature." (Emphasis added.)

According to the Nebraska Supreme Court, the above language applies to both the State and its governmental subdivisions.¹

Additionally, Neb. Rev. Stat. § 49-14,101.01(1) (Reissue 2010) states:

"A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public

¹ Japp v. Papio-Missouri River Natural Resources Dist., 273 Neb. 779, 787, 733 N.W.2d 551, 558 (2007).

office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated."

Subsection (2) of that same statute provides:

"A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain."

Subsection (7) says, in relevant part, ". . . any person violating this section shall be guilty of a Class III misdemeanor . . ."

The arrangement by which the City has made personal purchases for the Chief and allowed him to make reimbursement payments, on an installment basis, appears not only to run afoul of Article XIII, section 3, but also to have set the stage for a possible violation of § 49-14,101.01.

We recommend:

- The City implements a formal policy to prohibit any future expenditure of public funds to purchase items for the personal use of municipal employees.
- The City takes greater care in the physical inventory procedures of the Department to ensure all items are properly included.
- The annual inventory of equipment is completed by someone outside the Department.
- The City consults with the City Attorney and/or the County Attorney regarding the potential ramifications of any misuse of City funds. The APA will refer this matter to both the Nebraska Accountability and Disclosure Commission and the Nebraska Attorney General.

Food Purchases

City purchases from Brown's Thrift Store were evaluated, and the APA requested the City provide the purpose for each food purchase.

A charge account was created at the store for City employees to make purchases that are later billed to the City. The food purchases of the Department included pop, candy, meat, cheese, crackers, snacks, and other items. The City does not have a consistent policy regarding food-related purchases, according to the City Clerk. The following is a summary of food purchases from Brown's Thrift Store by the Department:

Date	Amount	Description	City of Sutton Response	Attendees
		Coke, Dinner Plates,	The Department office received	
9/8/2009	\$42.77	Cutlery, Miracle Whip,	water and smoke damage from a	Unknown
9/6/2009	Φ 4 2.77	Crackers, Bread, Kit Kats,	fire next door that destroyed the	Clikilowii
		Snickers, Cheese, Ham,	old NAPA building. Purchases	

Date	Amount	Description	City of Sutton Response	Attendees
		Summer Sausage, Chips, and Snack Mix	were for those who were working after hours on repairing the city building.	
10/29/2009	\$19.34	Chips, Club Crackers, Cheese, Summer Sausage and Dr. Pepper 12 Pack	Training with fire department.	Tracey Landenberger, Tom White (Officer), and several members of the SVFD.
12/16/2009	\$95.87	Crackers, Cheese Puffcorn, Chips, Foam Plates, Cheese, Coke, Mountain Dew, Pepsi, Christmas Candy and Holiday Tree Cakes and Brownies, Summer Sausage, Cherry Cordials, Cheese Spread and Cookies	Carbon Dioxide Training.	Tracey Landenberger, Tom White, Tracy Kistler (Part time Department Employee), Greg Thompsen (Harvard PD), and Shawn Julich (Harvard PD).
12/16/2009	\$32.98	Keebler Club Crackers and Meat	Carbon Dioxide Training.	Same as above.
1/14/2010	\$26.93	Cheese, Cheese Spread, Creme Wafers, Tostitos Dip Strips, Coke 12 Pack, Wimmers Summer Sausage	Firearms handling and safety.	Tracey Landenberger, Tom White, Rod Wilkerson (Edgar PD) and Greg Thompsen.
3/15/2010	\$28.72	Dinner Plates, Crackers, Cutlery, Chips, Summer Sausage, Candy Eggs, Cheese, Coke 12 Pack	Terrorist emergency response and procedure.	Tracey Landenberger and Tom White.
4/8/2010	\$7.33	Coke and Dr. Pepper 12 Packs	For Department refrigerator to use while on calls after hours and for questioning people.	Unknown
4/14/2010	\$51.64	Cookies, Forks, Cups, Plates, Glade Oil Fan and Refills, Summer Sausage, Diet Pepsi, Mountain Dew, Pepsi, Paring Knife, Cheese, and Crackers	Evidence collection and preservation.	Tracey Landenberger, Tom White, Greg Thompsen, and Sean Julich.
6/8/2010	\$6.34	Multi Flavor Biscuits and Large Milk Bone Dog Biscuits	The Chief also acts as the City's animal control officer and, from time to time, uses the items for dog control/stray pickups.	N/A
6/24/2010	\$105.96	36.67 pounds of Brach's Pick a Mix at \$2.89 per pound	Annual dug out day's parade (public relations).	Unknown
2/22/2011	\$19.93	Folgers Coffee, Coke, Dr. Pepper, and Non Food for \$1.09	For Department refrigerator, which is used by staff while on calls after hours and for questioning people.	Unknown
4/13/2011	\$74.15	Chips, Deli Rolls, Hamburger Buns, Oreos, Zip Lock Container, Twizzlers, Reese/Kiss/Rolo Assort., Ham, Summer Sausage, Bread, Cheese, Turkey,	Clay County LEPC meeting (Local Emergency Planning Committee).	Unknown

Date	Amount	Description	City of Sutton Response	Attendees
		Miracle Whip, Coke,		
		Cherry Coke, Meat, and		
		Candy Eggs.		
6/25/2011	\$55.92	18.7 pounds Brach's Pick A Mix at \$2.99 per pound	Annual dug out day's parade (public relations).	Unknown
9/22/2011	\$37.93	Ground Beef, Hamburger Buns, Licorice, Hot Dogs, Hot Dog Buns, Dinner Plates, Oreo Cookies, Cherry Mash, Chips, and American Singles Cheese	Police Training - Annual Firearms Certification.	Tracey Landenberger, Blake Smidt (Officer), Chris Carlsen (Officer), Greg Thompsen, Sean Julich, and individuals from Clay County Sheriff's Office including Jeff Franklin, Dustin Friesen, Paul Kimminau and Paul Fujan.
10/31/2011	\$16.91	Baby Ruth, Chocolates, Snickers, Kit Kats, and Whoppers	Halloween candy for handing out to preschool children at Department office (public relations).	Unknown
1/10/2012	\$50.81	Potato Chips, Fritos, Summer Sausage, Bologna, Reese's, Cheese, Dr. Pepper, Coke, Cookies, Nutty Bars, and Crackers	At this time cannot find the training paper work (CPR Training)	Unknown
1/11/2012	\$3.99	Crackers	At this time cannot find the training paper work (CPR Training)	Unknown
2/23/2012	\$20.48	Potato Chips, Pretzels, Summer Sausage, Cheese, Crackers, and a Bakery Item	Each year, there is a home show, and the Department had a booth and handed items out. This was cleared with City Administrator.	Unknown
2/23/2012	\$29.62	Dr. Pepper, Chex Mix, Photo Batteries, Summer Sausage, and Coke	Each year, there is a home show, and the Department had a booth and handed items out. This was cleared with City Administrator.	Unknown
2/24/2012	\$2.19	Popcorn	Each year, there is a home show, and the Department had a booth and handed items out. This was cleared with City Administrator.	Unknown
2/25/2012	\$9.51	Butter Seasoning, Salt, and Popcorn	Each year, there is a home show, and the Department had a booth and handed items out. This was cleared with City Administrator.	Unknown
5/16/2012	\$7.72	Granola Bars, Dr. Pepper, and Powerade	For Department refrigerator, which is used by staff while on calls after hours and for questioning people.	Unknown
5/16/2012	\$25.82	Coke, Kleenex, Water, Toilet Paper, and Paper Towels	For Department refrigerator, which is used by staff while on calls after hours and for questioning people. Non-food for police restrooms.	Unknown
6/27/2012	\$98.84	Brach's Pick A Mix (26.9	Annual dug out day's parade.	Unknown

Date	Amount	Description	City of Sutton Response	Attendees
		lbs @ \$3.49/lb) and		
		Hershey Bars		
6/28/2012	\$26.95	Water, Gatorade, and Misc Grocery Item	Annual dug out day's parade. Due to the extreme heat water was handed out.	Unknown
	\$898.65			

A number of the food purchases noted above appear questionable in light of the lack of supporting documentation and per the statutory criteria noted below. On December 16, 2009, the Department purchased six 12-packs of pop (72 cans) including Coke, Pepsi, and Mountain Dew for a Carbon Dioxide Training involving only five individuals. The APA also questions the handing out of chips, pretzels, summer sausage, cheese, crackers, and a bakery item for the home show booth and continuously filling up the Department refrigerator with pop and other items for use by the Department after hours.

The APA also noted two other purchases, totaling \$35, for items including batteries and cleaning supplies, made by an Officer's spouse for the Department. The individual made the purchases at Brown's Thrift Store, using the charge account on behalf of the City and the Department, even though she was not a City employee.

The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. §§ 13-2201 through 13-2204 (Reissue 2007, Cum. Supp. 2010), specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions.

Section 13-2203(1)(b) of the Act states:

"Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies[.]"

However, § 13-2203(1)(a) does permit:

"The expenditure of public funds for the payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings, whether incurred within or outside the boundaries of the local government, if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body."

Such permissible expenditures include, under § 13-2203(1)(a)(iii):

"Meals and lodging at a rate not exceeding the applicable federal rate unless a fully itemized claim is submitted substantiating the costs actually incurred in excess of such rate and such additional expenses are expressly approved by the governing body[.]"

Additionally, § 13-2203(2) allows public funds to be expended for:

- "(a) Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and
- (b) Nonalcoholic beverages and meals:
- (i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident;
- (ii) Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or
- (iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed twenty-five dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body..."

We recommend the City implement a formal policy to ensure compliance with the Act by restricting all expenditures of public funds for food and nonalcoholic beverages to qualifying events or functions only.

Other Items Noted

Gas Purchases

The City has established local charge accounts with three different Sutton gas stations: BG's Corner; CPI Cooperative Producers, Inc.; and George's 66 Service. Per discussion with the City Clerk, the City tries to support all local businesses by rotating among venders when purchasing gasoline for its vehicles and equipment.

The City does not properly monitor the purchase of gasoline by its employees, but instead relies upon the local vendors to ensure employees are not using the City's account to fill up their personal vehicles. No record was kept of which vehicle was filled for each gas receipt or charge, and no vehicle logs were maintained showing when vehicles were filled with gas, mileage usage, or where vehicles were being used.

The City has also allowed the Department to maintain gas cards that can be used after work hours, when no gas station attendants are on site. In response to the APA's questions regarding the purchase of gasoline by City employees, the City Clerk stated, "The City of Sutton will change its current policy to reflect who is allowed to use the gas cards and address that using the card is not allowed for personal vehicles."

Another concern brought to the APA's attention involved the Chief filling up his personal vehicle at one of the gas stations mentioned above. When the APA inquired about this concern, the City Clerk claimed to be unable to recall when the incident occurred. However, as

mentioned above, the City deducted \$80 on January 29, 2010, from a reimbursement check paid to the Chief. According to the City Clerk, the entire incident was the result of the Chief misunderstanding how the City's gasoline station charge accounts were to be used, and the matter was handled internally by the Mayor. Due to the lack of documentation for gasoline purchases, the APA was unable to determine if other purchases of gasoline were made by the Chief for personal use.

The APA noted the following gasoline charges recorded by the City in its QuickBooks accounting software that were paid by the Department from October 1, 2009, through August 22, 2012.

Vendor	FYE 2010	FYE 2011	FYE 2012	Total
BG's Corner	\$1,701.57	\$1,436.41	\$991.17	\$4,129.15
Cooperative Producers Inc.	\$1,200.30	\$813.30	\$1,408.10	\$3,421.70
George's 66 Service	\$1,178.35	\$2,179.12	\$2,582.98	\$5,940.45
Total	\$4,080.22	\$4,428.83	\$4,982.25	\$13,491.30

Finally, the APA received a concern regarding possible personal use of City vehicles to drive back and forth to Lincoln. As pointed out already, the City neither maintains vehicle mileage logs nor tracks vehicle usage. Due to this lack of controls, the APA could not determine if the City vehicles were used for personal use.

We recommend the City formally adopt the gas station purchase account policy indicated by the City Clerk, as noted above, and establish procedures to monitor and track future vehicle usage and gas purchases. All gas receipts should indicate the plate number of the vehicle for which the gas is being purchased. The City should also consider maintaining vehicle mileage logs and tracking vehicle usage.

Cell Phones

The City pays for cell phones usage for various City employees. Recently, two members of the Department obtained smart phones, including one for the Chief in January 2012 and one for Blake Smidt (Officer) in May 2012. The City Administrator informed the Department that the City would not incur the extra cost of those more expensive phones and explained that any Department employees wishing to use smart phones would have to pay the difference in the cost. The City began deducting \$30 a month from the Chief's pay checks in April 2012 to cover the additional cost of the smart phone. The City also deducted \$60 in June and July 2012 to make up for previously missed months.

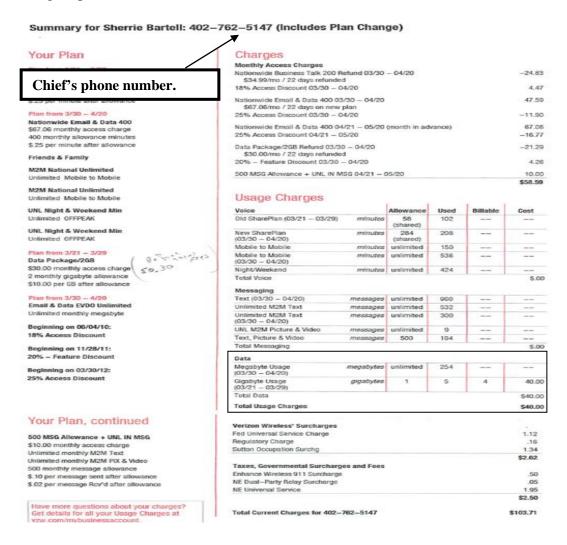
As for the smart phone provided to Officer Smidt, the City has made only one payroll deduction of \$30 from his May 18, 2012, paycheck. Per the City Clerk, work is being done with the monthly Verizon billings to correct the amount of deductions, due to changes in Verizon prices. According to Section 526, "Cell Phone Usage," of the City of Sutton Employee Handbook:

"Cell phone use is primarily intended for business-related calls. However, occasional, brief personal use is permitted within a reasonable limit. Cell phone invoices may be regularly monitored."

It does not appear that the City has properly monitored the use of these phones to ensure employee compliance with the City's policy.

During our examination of cell phone bills, the APA found a number of additional charges on the Chief's phone bills for texting, pictures, video, and data usage. According to the monthly Verizon billings, the City incurred over \$163 in extra charges because certain plan limitations were exceeded – such as the 500 texts per month limit and data limitations – between September 2011 and August 2012. In a one-month billing period, covering September 21, 2011, and October 20, 2011, the Chief sent and received more than 1,557 text messages, resulting in over \$31 in additional charges.

The following is an example of a Verizon invoice for the Chief's smart phone from March 21, 2012, through April 20, 2012:



Beginning March 30, 2012, the Chief's smart phone plan was changed to include unlimited megabyte usage. In addition, the Chief changed to unlimited messaging, including texts, pictures, and video, on May 2, 2012.

In her September 18, 2012, response to the APA's inquiry regarding the Chief's cell phone usage, the City Clerk indicated that the City intends to change its written policy regarding cell phone usage, specifically relating to the \$30 deduction from employee's pay.

Paying for a City employee's personal cell phone use, on a reimbursement basis, gives rise to Article XIII, section 3, concerns similar to those discussed already in relation to the gun purchase issue.

We recommend the City consult with the City Attorney and/or the County Attorney regarding the propriety of using public funds to pay for a City employee's private cell phone usage. The City should clarify its cell phone policy to ensure that personal use of work phones remains prohibited, even though the employee reimburses the City for the additional features of a smart phone. Finally, we recommend the City monitor and enforce its policies to ensure employees do not abuse their work cell phone privileges.

Credit Card Purchases

The City maintains an employee purchasing card that is controlled by the City Clerk. The APA noted the City has paid sales tax on certain purchasing card transactions by the Department, even though the City is tax exempt.

Title 316 NAC 1-093.046, which was promulgated by the Nebraska Department of Revenue, exempts a Nebraska city from paying sales tax.

The City paid sales tax on the following Department purchases:

Transaction				Sales Tax	
Date	Vendor	Location	Amount	Paid	Description
10/14/2009	Menards	Hastings, NE	\$ 745.66	\$ 45.51	Saw, wood, insulation, nails, screws, etc.
10/20/2009	Menards	Hastings, NE	\$ 210.87	\$ 12.87	Electric water heater
10/21/2009	Menards	Hastings, NE	\$ 163.75	\$ 9.99	Paint, insulation, straps
10/28/2009	Menards	Hastings, NE	\$ 557.39	\$ 34.02	Pump, paint, tackle box, bags, bits
11/4/2009	Wal-Mart	Hastings, NE	\$ 47.93	\$ 2.93	Interior paint/primer
11/5/2009	Menards	Hastings, NE	\$ 85.09	\$ 5.19	Primer
12/3/2009	Menards	Hastings, NE	\$ 745.39	\$ 45.49	Refrigerator, microwave, coffeemaker, sink,
					countertop, cabinets
			Total	\$ 156.00	

The City has not requested a refund from the Nebraska Department of Revenue for the sales tax mistakenly paid on the above purchases.

We recommend the City establish procedures to ensure employees do not pay sales tax on City purchases and/or seek a refund from the Nebraska Department of Revenue when applicable.

Uniform Purchases

The City allows the Department to purchase uniforms and clothing. According to the City Clerk, no City policy exists regarding the purchase of uniforms and clothing by the Department; however, the Department is permitted to spend up to the budgeted amount per fiscal year – usually \$2500. The City has established an internal Department budget, including the \$2500 that is part of the overall City Budget. Per the City's invoices, the APA found a significant number of Department purchases for uniforms, pants, shirts, polos, and other related accessories, including boots and vests. The following is a summary of uniform-related purchases per QuickBooks:

	FYE 2010	FYE 2011	FYE 2012 (to 8/22/12)	Total
Uniform Purchases	\$2,554.73	\$3,039.28	\$1,870.78	\$7,464.79

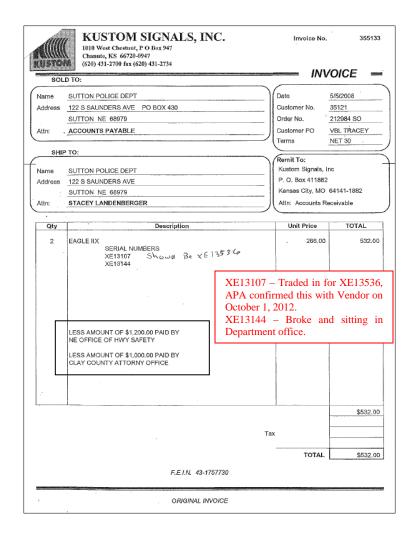
The amounts bought indicate a lack of monitoring of uniform and clothing purchases by the City. Given that the Department's uniform and clothing purchases have exceeded its budget for the past three fiscal years, it appears no one monitors what the Department buys. Based upon the scant documentation available, moreover, the APA could not determine whether all uniforms and clothing purchased were exclusively for the use of the Department or the City.

We recommend the City establish policies and procedures for ensuring all purchases of uniforms and other clothing are for the use of the Department or City only.

Radar Gun Purchases

The APA received concerns regarding the purchase of radar equipment by the Department and whether those devices were properly tracked and used only by Department personnel.

The APA found that the Department, in conjunction with Nebraska Office of Highway Safety (NOHS), purchased two Eagle radar guns from Kustom Signals, Inc., in May 2008. The total cost of the radars was \$2,732 and was split between the City (\$532), the Clay County Attorney's Office (\$1000), and NOHS (\$1200). See invoice below.



The Department's fixed asset inventory list, as of June 21, 2011, included two in-car radars and two handheld radar guns, similar to the ones purchased above. The APA also noted that, since 2009, the Department had annually recertified four radars in May of each year; however, as of October 1, 2012, the Department had not done the certification for 2012 on any of the radars on hand. The APA noted one of the radars (XE13536) certified did not match the invoice noted above. However, according to the City, one of the radars was originally traded for a different radar, and the second one is broken and remains out of service in the Department's office. The APA confirmed with Kustom Signals, Inc., that the Eagle radar XE13107 was replaced with Eagle radar XE13536 in 2008.

Based on the information received, there appears to be a lack of monitoring and tracking over radar and other equipment purchased by the Department.

Similar to the previous gun inventory recommendation above, we recommend the City take greater care in monitoring the Department's physical inventory procedures to ensure all items are properly tracked and that someone outside of the Department completes the annual equipment inventory. The City should

include item serial numbers to allow for the appropriate tracking and accounting of its fixed assets.

APA Overall Conclusion

The APA recommends the City Council consider making any and all changes necessary to address, in a timely manner, the issues identified herein. As recommended above, the City should consult with the City Attorney and/or the County Attorney regarding the ramifications of any possible misuse of City funds. The APA will also refer this letter to the Nebraska Accountability and Disclosure Commission and the Attorney General.

If you have any questions regarding the above information, please contact our office.

Sincerely,

SIGNED ORIGINAL ON FILE

Mike Foley State Auditor

cc: Sutton City Council Members

Sutton City Attorney
Clay County Attorney
Nebraska Attorney General

Nebraska Accountability and Disclosure Commission