



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley
State Auditor

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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:

OMB's EXPRESS POLICE SUPPLY
11333 Strang Line Rd. Lenexa, KS 66215
800.866.9739 FAX 913.567.1566

INVOICE
Please Remit To:
OMB Police Supply
PO Box 20223
Overland Park, KS 66225
SHIP TO (IF OTHER THAN SOLD TO)

YOUR ACCOUNT NO: SUTTON PD
0000661702 122 S SAUNDERS AVE
SUTTON, NE 68979-2051

SHIP TO: SUTTON PD
PO BOX 430
SUTTON, NE 68979-0430

LANDONBERGER07-0028 08/03/07

OUR INV. NO. / ORDER NO. 08/03/07
INVOICE DATE 08/03/07
SHIPMENT DATE 08/03/07
PAYMENT DUE BY 09/02/07

ORDERED	QUANTITY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED AMOUNT
1	1	LG114 83 9HS	Safariland Double Mag Pouch 77 83 9HS	29.99	29.99
1	1	L6209 CL	Safariland Hidden Snap Cuff Case 90 Clarino	28.99	28.99
1	1	LG172 WKIII CL	38 Pepper Spray WKIII Clarino Hidden Snap	27.99	27.99
1	1	LG055 CL STR	7911 Flashlight Holder Clarino Stinger	23.99	23.99
1	1	LG059 CL	7916 Silent Key Holder Clarino	18.99	18.99
1	1	LG056 21	7913 Baton Holder 21" Clarino	20.99	20.99
1	1	LG058 CL	79155 Pager / Glove Case Clarino	18.99	18.99
1	1	LG057 CL	79145 Radio Holder - Swivel Clarino	38.99	38.99

SALES TAX 17.99 \$
TOTAL DUE 226.91

Take out of Tracey's Pay check
PO out 23 may 08

Sioux Sales Company
The Police Store
714 Jackson Street • P.O. Box 3276 • Sioux City, Iowa 51102 • Telephone (712) 250-1569

INVOICE NO. 157513
NO STATEMENT WILL BE SENT. PLEASE PAY FROM INVOICE.
DATE 8/14/07

TO: Sutton Police Department
122 S. Saunders
Sutton, NE 68979

CUSTOMER ORDER NO. RCD BROWN
CUSTOMER ORDER DATE
OUR ORDER NO. PHONE
TERMS Net 30
SALESMAN KB/t

NO. OF PACKAGES 1
DATE SHIPPED 8/8/07
SHIPMENT DATE 8/8/07
SHIPMENT TYPE FACTORY DIRECT

CASH WILL CALL CHARGE C.O.D. PAID OUT MISC. RET'D P.O. ON ACCT. CREDIT MEMO

QTY. ORDERED	BACK ORDERS	DESCRIPTION	QTY. SHIPPED	UNIT PRICE	AMOUNT
1		GAG K381 Hi-Gloze IJ Holster S&W M&P40	1	119.95	119.95

TOTAL 119.95
SALES TAX 9.95
SHIPPING & HANDLING 9.95
PAY THIS AMOUNT 129.90

Take out of Tracey's Pay check

ALL INVOICES OR PARTIAL INVOICES PAID BY INDIVIDUAL OR PERSONAL CHECKS SUBJECT TO 1% PER MONTH SERVICE CHARGE ON ACCOUNTS OVER 30 DAYS. ANNUAL % RATE 18%
CUSTOMER COPY

OMB GUNS
11227 STRANG LINE RD
LENEXA KS 66215

Invoice
Date 3/18/2008 Invoice # 451

Bill To: TRACEY LANDENBERGER
SUTTON PD
221 SOUTH SAUNDERS
SUTTON, NE 68979

Ship To: TRACEY LANDENBERGER
SUTTON PD
221 SOUTH SAUNDERS
SUTTON, NE 68979

Rep: S.O. No. 439 P.O. No. Terms Project

Item	Description	Ordered	Prev. Invo...	Invoiced	Rate	Amount
RF031 SHIP	OBCWA3F16M4 SHIPPING, HANDLING AND PAPERWORK PROCESSING FEE	1	0	1	895.00	895.00
		1	0	1	30.00	30.00

Personal For Tracey out of Pay check

This is Mini Weapen. also can you up the amount to 830 out of my checks

Bushmaster .223 REM Rifle

ENTERED

Sales Tax (0.0%) \$0.00
Total \$925.00
Payments/Credits \$0.00
Balance Due \$925.00

Sales Tax 7% 64.75
989.75

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:

Inventory List		POLICE						
Date Purchased	Check #	Description	Purchased From	Serial #	Value	Date Sold or Disposed	Disposed	Amount Sold For
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.

CITY OF SUTTON

Hofmann Guns
 03-5029 · Miscellaneous - P
 03-5029 · Miscellaneous - P
 03-5051 · New Equipment - P

2/9/2010

police - ammo/batteries/gun cleaning
 ammo
 Tactical hand gun - S&W 4046

32641

14.00
 95.00
 385.00

See Invoice 5013

See Invoice 5003

See Invoice 5010

PAYMENT RECORD

Sutton State Bank

894.00

LR22MALH1 FAXES OFFICE PLUS 600-658-4072 PRINTED IN U.S.A.

Hofmann Guns, LLC
 1409 2nd Avenue East
 Sutton, NE 68979

Voice: 402-984-5111
 Fax:

INVOICE
 Invoice Number: 005003
 Invoice Date: Feb 4, 2009
 Page: 1
 Duplicate

Bill To: SUTTON PD
 Ship to:

Customer ID	Customer PO	Payment Terms	
SPD		Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Airborne		3/6/09

Quantity	Item	Description	Unit Price	Amount
1.00		S&W M&P 45		
1.00		ESCORT 12 GAUGE <i>- traded</i>	285.00	285.00
7.00		BOXES 45 TAP	13.00	91.00
1.00		BOXES 12 GAUGE	4.00	4.00
1.00		TRADED BERETTA PX4 FOR M&P		

Subtotal: 380.00
 Sales Tax:
 Total Invoice Amount: 380.00
 Payment/Credit Applied:
TOTAL: 380.00

Check/Credit Memo No:

The Escort 12 Gauge shotgun appears to have been traded in on invoice 5010, but it does not appear to have been paid for based on this invoice; only the ammunition was paid on check 32641.

Hofmann Guns, LLC
 1409 2nd Avenue East
 Sutton, NE 68979

Voice: 402-984-5111
 Fax:

INVOICE
 Invoice Number: 5010
 Invoice Date: Jun 26, 2009
 Page: 1
 Duplicate

Bill To: SUTTON PD
 Ship to:

Customer ID	Customer PO	Payment Terms	
SPD		Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Airborne		7/26/09

Quantity	Item	Description	Unit Price	Amount
1.00		S&W 4046 TACTICAL <i>Hand gun</i>	385.00	385.00
1.00		TRADE IN ESCORT 12 GAUGE	285.00	-285.00

Subtotal: 100.00
 Sales Tax:
 Total Invoice Amount: 100.00
 Payment/Credit Applied:
TOTAL: 100.00

Check/Credit Memo No:

Per check number 32641, the City paid Hofmann \$385 for the hand gun; however, this invoice noted a \$285 credit.

Hofmann Guns, LLC
1402 2nd Avenue East
Sutton, NE 68979

Voice: 402-984-5111
Fax:

INVOICE
Invoice Number: 5013
Invoice Date: Dec 4, 2009
Page: 1
Duplicate

Bill To: SUITON PD
Ship to:

Customer ID	Customer PO	Payment Terms		
SFD		Net 30 Days		
Sales Rep ID	Shipping Method	Ship Date		
	Airborne	1/3/10		
Quantity	Item	Description	Unit Price	Amount
2.00		GUN CLEANING TOM ARM&P	10.00	20.00
4.00		BATTERIES	2.50	10.00
12.00		BOXES 45 ACP 50RDS.	32.00	384.00
Subtotal				414.00
Sales Tax				
Total Invoice Amount				414.00
Payment/Credit Applied				
TOTAL				414.00

Check/Credit Memo No:

005013

HOFMANN GUNS
SUTTON, NE 68979
402-984-5110

Name: *Sutton PD - Tom/Tracy* Date: 20
Address: Cust. Or No.
Del. To. Via

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD.	PAID OUT
QUAN	DESCRIPTION				PRICE	AMOUNT
2	Gun cleaning				10	\$20.00
4	Batteries				2.50	\$10.00
12	Boxes 45ACP 50rd boxes				\$32	\$384.00
TAX						
TOTAL						

ALL claims and returned goods MUST be accompanied by this bill. Rec'd by

GSCC-653-2
Thank You

- 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.

Hofmann Guns, LLC
1402 2nd Avenue East
Sutton, NE 68979

Voice: 402-984-5111
Fax:

INVOICE
Invoice Number: 5022
Invoice Date: May 27, 2010
Page: 1
Duplicate

Bill To: SUITON PD
Ship to:

Customer ID	Customer PO	Payment Terms		
SFD		Net 30 Days		
Sales Rep ID	Shipping Method	Ship Date		
	Cust. Pickup	6/29/10		
Quantity	Item	Description	Unit Price	Amount
1.00		CASE 223 (1000 RDS.) AMMO	425.00	425.00
1.00		CASE 45 ACP (1000 RDS) AMMO	400.00	400.00
9.00		BOXES HORNDAY 45 ACP AMMO	14.00	126.00
6.00		BOXES 9MM AMMO	14.00	84.00
ABOVE ITEMS PICKED UP BY TOM WHITE				
Subtotal				1,035.00
Sales Tax				
Total Invoice Amount				1,035.00
Payment/Credit Applied				
TOTAL				1,035.00

Check/Credit Memo No:

City did not own a .223 rifle or a 9mm during this time, per the inventory listing.

005022

HOFMANN GUNS
SUTTON, NE 68979
402-984-5110

Name: *Sutton PD* Date: 20
Address: Cust. Or No.
Del. To. Via

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD.	PAID OUT
QUAN	DESCRIPTION				PRICE	AMOUNT
1	Case 1000rds. 223					425.00
1	Case 45ACP 1000rds					400.00
9	Boxes Hornday 45ACP ccnts/Tax				14	126.00
6	Boxes 9mm 50rds/box				14	84.00
TAX						
TOTAL						1035.00


ALL claims and returned goods MUST be accompanied by this bill. Rec'd by

GSCC-653-2
Thank You

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
"Community Peace Through Law"



Monday, July 28, 2008

RE: Guns


The following list is of guns that the Sutton Police Dept. currently has in its inventory. We are in the process of looking into the best possible trade prices for these weapons.

- 1- Marlin semi auto 22cal Serial #98409690
- 1- Smith and Wesson 38cal Model 10-6 Serial #D375696
- 1- Coast to Coast 112 gauge pump short barrel Serial # J265191
- 1- Smith and Wesson Model 916A 12 gauge pump short barrel Serial #21B333
- 1- Marlin semi auto 22cal Serial #02135728

It does not appear that any of these guns are on the inventory listing as of December 2010, with the exception of the Mossberg 12 gauge.

- 1- .32 Cal short barrel nickel plated Serial #140123

Tracey Landenberger Chief of Police Sutton



122 S. Saunders Av., Sutton, Nebraska 68979
suttonpolice@mainstaycomm.net

SUTTON POLICE DEPARTMENT
Chief Tracey Landenberger #4306
Asst. Chief Tom White #43061
122 South Saunders
Sutton, NE 68979
402-773-5545 Office 402-773-4110 Fax

Reference: Inventory Sutton Police Weapons.

The Sutton Police Dept. has the following weapons in inventory for police dept. use. These weapons are all currently issued and in service. This reflects several changes from the last inventory due to the trading and acquiring of new Taser Weapons.

- 1. Smith and Wesson M&P .45 cal serial number MRL0581 *Tommy*
- 2. Smith and Wesson M&P .45 cal serial number MPY3313 *Tracey*
- 3. Escort 12 gauge shotgun serial number 133037
- 4. Mossberg 12 gauge shotgun unable to get will when gun gets cleaned due to having to take parts off to see number.
- 5. Taser Model X15 X26 serial number X00-572065
- 6. Taser Model X15 X26 serial number X00-538734

As of December 2010

<p>SUTTON POLICE DEPARTMENT Chief Tracey Landenberger #4306 122 South Saunders Sutton, NE 68979 402-773-5545 Office 402-773-4110 Fax</p> <p>6-20-11</p> <p><u>Sutton Police Dept. Inventory as of 6-21-11</u></p> <p>1- HP Desktop Computer Model P6130Y Serial #CNX2403PD 1- HP Monitor Model HP2159MON Serial #CNT921X2KY 1- HP Desktop Computer Model Eg120Y Serial #3CR92217BJ 1- HP Monitor Model HP2159MON Serial #CNT918Z526 1- Orsair Desktop Computer Serial #115481 - hand m down 1- Monitor Serial #CN15H4KWA16156Y 1- Gateway Desktop Computer Serial #003292H200 From Bass 1- Monitor Serial #70601252139 hand m down 1- Radioshack phone answer machine serial #80300110 2- AT&T desktop phone model #1070 Serial #D6XKII03B1070 1- Universal I.D. laminator model #84525 Serial #NFU0099 1- Emerson Color T.V. Serial #NOVV41313119 1- GoldStar Color T.V. no # 1- Motorola Mobile radio mounted in office No # 1- Sony stereo system in office no # 1- Panasonic desk phone Serial #KT3186W 1- Lanier Copy Machine Serial #D1101 2- Redwood Saunder Desks 4- Black office desk chairs 1- Lorax 4 camera security system. in office. 1- Uniden Police Scanner Serial #15002424 1- Dorm size refrigerator 5- Red visitor chairs in office 14- Metal folding chairs 3- White Folding Tables 1- Conference Table 6- Red Conference Table chairs 2- Red Visitor Chairs (Conference area) 1- Whirlpool Refrigerator 1- Magic Chef Microwave Serial #DJ09X00321 1- MR. Coffee Coffee maker Model # TF13 3- Large metal storage lockers (1 in bathroom-2 in garage)</p>	<p>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 # _____ # _____ 2- Sig Sauer 556 Rifle # _____ # _____ 1- Mossberg Tactical 12 guage shotgun # _____ 1- Escort Marine Finish 12 guage shotgun # _____ 2- Taser X26C Tasers # _____ # _____ 2- Motorola CP185 handheld Radios 2- Motorola HT1550 handheld radios 4- Motorola Pagers 2- tactical vests 2- Gator Hawk body armor 2- Knee pads 2- Goggles 2- Motorola Verizon Cell phones</p> <p><u>RE: Throw Phone Inventory</u> - Home Land Security</p> <p>The following list contains all equipment assigned to Chief T. Landenberger #4306 of the Sutton Police Dept. for use with the throw phone.</p> <ol style="list-style-type: none"> 1. Phone Console IA. Power Cord IB. Car Charger 2 Throw Phone and 100ft cable on orange spool 3 Primary Negotiator Headset W/Push to talk (PPT) device 4 Coach Negotiator Headset W/PTT device 5 Additional Headset with RCA Jack 6 Additional Headset with RCA Jack 7 Spare PPT cable device 8 Video Interface Module w/ Cables attached 9 Video Interface Cable 10 Two (2) sets 6ft audio/video cable 11 Two (2) sets 15ft Audio Cable for item #5-#6 12 Duplex Jack 13 Enhanced Landline Module
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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
9/8/2009	\$42.77	Coke, Dinner Plates, Cutlery, Miracle Whip, Crackers, Bread, Kit Kats, Snickers, Cheese, Ham,	The Department office received water and smoke damage from a fire next door that destroyed the old NAPA building. Purchases	Unknown

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 vendors 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:

Summary for Sherrie Bartell: 402-762-5147 (Includes Plan Change)

Your Plan

Plan from 3/30 – 4/20
Nationwide Email & Data 400
 \$67.06 monthly access charge
 400 monthly allowance minutes
 \$.25 per minute after allowance

Friends & Family

M2M National Unlimited
 Unlimited Mobile to Mobile

M2M National Unlimited
 Unlimited Mobile to Mobile

UNL Night & Weekend Min
 Unlimited OFFPEAK

UNL Night & Weekend Min
 Unlimited OFFPEAK

Plan from 3/21 – 3/29
Data Package/2GB
 \$30.00 monthly access charge
 2 monthly gigabyte allowance
 \$10.00 per GB after allowance

Plan from 3/30 – 4/20
Email & Data EVDO Unlimited
 Unlimited monthly megabyte

Beginning on 06/04/10:
 18% Access Discount

Beginning on 11/28/11:
 20% – Feature Discount

Beginning on 03/30/12:
 25% Access Discount

Your Plan, continued

500 MSG Allowance + UNL IN MSG
 \$10.00 monthly access charge
 Unlimited monthly M2M Text
 Unlimited monthly M2M PIX & Video
 500 monthly message allowance
 \$.10 per message sent after allowance
 \$.02 per message Rcv'd after allowance

Have more questions about your charges?
 Get details for all your Usage Charges at
vzw.com/mvbusinessaccount.

Charges

Monthly Access Charges

Nationwide Business Talk 200 Refund 03/30 – 04/20	-24.83
\$34.99/mo / 22 days refunded	
18% Access Discount 03/30 – 04/20	4.47
Nationwide Email & Data 400 03/30 – 04/20	47.59
\$67.06/mo / 22 days on new plan	
25% Access Discount 03/30 – 04/20	-11.90
Nationwide Email & Data 400 04/21 – 05/20 (month in advance)	67.06
25% Access Discount 04/21 – 05/20	-16.77
Data Package/2GB Refund 03/30 – 04/20	-21.29
\$30.00/mo / 22 days refunded	
20% – Feature Discount 03/30 – 04/20	4.28
500 MSG Allowance + UNL IN MSG 04/21 – 05/20	10.00
Total Monthly Access Charges	\$58.99

Usage Charges

Voice	Allowance	Used	Billable	Cost
Old SharePlan (03/21 – 03/29)	minutes (shared) 56	102	---	---
New SharePlan (03/30 – 04/20)	minutes (shared) 284	208	---	---
Mobile to Mobile	minutes unlimited	150	---	---
Mobile to Mobile (03/30 – 04/20)	minutes unlimited	536	---	---
Night/Weekend	minutes unlimited	424	---	---
Total Voice				\$5.00

Messaging

Text	Allowance	Used	Billable	Cost
Text (03/30 – 04/20)	messages unlimited	960	---	---
Unlimited M2M Text	messages unlimited	532	---	---
Unlimited M2M Text (03/30 – 04/20)	messages unlimited	300	---	---
UNL M2M Picture & Video	messages unlimited	9	---	---
Text, Picture & Video	messages 500	194	---	---
Total Messaging				\$5.00

Data

Megabyte Usage	Allowance	Used	Billable	Cost
Megabyte Usage (03/30 – 04/20)	megabytes unlimited	254	---	---
Gigabyte Usage (03/21 – 03/29)	gigabytes 1	5	4	-40.00
Total Data				\$40.00

Total Usage Charges **\$40.00**

Verizon Wireless® Surcharges

Fed Universal Service Charge	1.12
Regulatory Charge	.16
Sutton Occupation Surchg	1.34
Total Surcharges	\$2.62

Taxes, Governmental Surcharges and Fees

Enhance Wireless 911 Surchage	.50
NE Dual-Party Relay Surchage	.05
NE Universal Service	1.95
Total Taxes, Governmental Surcharges and Fees	\$2.50

Total Current Charges for 402-762-5147 **\$103.71**

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 Date	Vendor	Location	Amount	Sales Tax 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.

 KUSTOM SIGNALS, INC. 1010 West Chestnut, P O Box 947 Chanute, KS 66720-0947 (620) 431-2700 fax (620) 431-2734		Invoice No. 355133	
SOLD TO:		INVOICE	
Name SUTTON POLICE DEPT Address 122 S SAUNDERS AVE PO BOX 430 SUTTON NE 68979 Attn: ACCOUNTS PAYABLE		Date 5/5/2008 Customer No. 35121 Order No. 212984 SO Customer PO VBL TRACEY Terms NET 30	
SHIP TO:		Remit To:	
Name SUTTON POLICE DEPT Address 122 S SAUNDERS AVE SUTTON NE 68979 Attn: STACEY LANDEBERGER		Kustom Signals, Inc P. O. Box 411882 Kansas City, MO 64141-1882 Attn: Accounts Receivable	
Qty	Description	Unit Price	TOTAL
2	EAGLE IIX SERIAL NUMBERS XE13107 Should Be XE13536 XE13144	266.00	532.00
LESS AMOUNT OF \$1,200.00 PAID BY NE OFFICE OF HWY SAFETY LESS AMOUNT OF \$1,000.00 PAID BY CLAY COUNTY ATTORNY OFFICE			
			\$532.00
		Tax	
		TOTAL	\$532.00
F.E.I.N. 43-1757730			
ORIGINAL INVOICE			

XE13107 – Traded in for XE13536,
 APA confirmed this with Vendor on
 October 1, 2012.
 XE13144 – Broke and sitting in
 Department office.

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