



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

---

Charlie Janssen  
State Auditor

Charlie.Janssen@nebraska.gov

PO Box 98917  
State Capitol, Suite 2303  
Lincoln, Nebraska 68509  
402-471-2111, FAX 402-471-3301  
[www.auditors.nebraska.gov](http://www.auditors.nebraska.gov)

August 29, 2018

Joseph Gaul, Director  
Scotts Bluff County Detention Center  
2522 7<sup>th</sup> Street  
Gering, NE 69341

Mark Overman, County Sheriff  
Scotts Bluff County Sheriff  
1825 10<sup>th</sup> Street  
Gering, NE 69341

Mark Masterton, Chairman  
Scotts Bluff County Board of Commissioners  
2410 4<sup>th</sup> Avenue  
Scottsbluff, NE 69361

Dear Sirs:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding certain practices over inventory of the Scotts Bluff County (County) Detention Center (Detention Center). In response thereto, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. While doing so, the APA requested certain financial information from the County. Based upon the outcome of the preliminary planning work, including a review of the information received, the APA has determined that it is unnecessary for this office to perform a separate financial audit or attestation at this time.

Nevertheless, during the course of the preliminary planning work, we noted certain internal control or compliance matters, or other operational concerns within the County, that are presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

### **Background**

Neb. Rev. Stat. § 23-347 (Reissue 2012) requires each county officer to make and file an annual inventory statement with the County Board detailing all county personal property in possession of the officer. Further, the statute requires the County Board to review these inventories to verify their accuracy. That law reads as follows:

*Within two calendar months after the close of each fiscal year, each county officer shall make, acknowledge under oath, and file with the county board of his or her county an inventory statement of all county personal property in the custody and possession of said county officer. The county board in each county shall examine into each inventory statement so filed, and, if said statement is correct and proper in every particular, the county board shall deliver each of said inventory statements to the clerk of the county for filing as a public record in said county clerk's office in a manner convenient for reference.*

On August 21, 2007, the County Board implemented a policy that all items valued over \$100 must be included in these annual inventories.

The APA received inventory statements from the last 10 years for the Detention Center and 5 years for the County Sheriff. The following table details the number of high-risk items (e.g., computers, weapons, etc.) by office, as of the 2017 inventory statements.

<b>Item</b>	<b>Quantity – County Sheriff</b>	<b>Quantity – Detention Center</b>
Weapons (including handguns, rifles, Tasers, etc.)	111	0*
Radios	37	2
Cameras (including digital, video, and body-worn)	30	0
Computers/Tablets	18	1
Printers	2	4

\*A subsequent list was provided to the APA containing 42 weapons on hand. See the **Comments and Recommendation** section below for additional information.

### **Comments and Recommendations**

#### **1. Weapons Unaccounted For and Sold**

Noticing that none of the inventory statements submitted by the Detention Center during the past decade, including the most recent one in 2017, indicated possession of weapons, the APA requested verification of that detail. On June 20, 2018, the Detention Center responded to the APA’s inquiry by providing a separate list of 42 weapons in its possession, including a variety of handguns, shotguns, and Tasers, as well as an AR15 rifle.

In addition to the 42 weapons in its possession, the Detention Center noted 14 other weapons that could either not be accounted for or had already been sold. More detailed information regarding those missing items is provided below.

#### ***Weapons Unaccounted For***

The following seven handguns on the Detention Center’s weapons list are currently unaccounted for:

- Six Ruger P95 semi-automatic pistols were reportedly traded to a gun dealer for different handguns. Per the current Detention Center Director, his predecessor and another employee traveled to “Old West Guns” in Kearney, Nebraska, to exchange these firearms. This appears to have happened prior to November 2016. The current Director, who started in November 2016, had no documentation supporting his claim, and the APA was unable to verify this trade with the gun dealer, as the current owner had no documentation on file.

- One Sig Sauer Sp2022 semi-automatic pistol was checked out to an employee who was terminated in May 2016; however, this employee did not return the weapon, and the Detention Center has not attempted to retrieve the handgun.

In response to the APA’s inquiry regarding the disposition of the missing weapons, the current Director wrote in a June 20, 2018, email message, “In summary, there was a lack of documentation from my predecessors.” Further, the County Board does not appear to have been made aware of the unaccounted for firearms, as these items were not included on the original inventory presented to that governing body. See **Comment and Recommendation Number 2** for additional information on this matter.

***Weapons Sold***

The Detention Center’s weapons list also included seven weapons that had been sold previously to current or former Detention Center employees. The Director turned over to the Scotts Bluff County Sheriff’s Department \$1,195 in cash and checks received for the guns sold in March 2016. The APA confirmed that the Sheriff’s Office retained these funds in its investigative file. However, there is no documentation for how much money was received for the sale of each weapon.

The table below details the sale of the seven Detention Center weapons:

<b>Weapon</b>	<b>Sold Date</b>	<b>Sold To</b>	<b>Sold For</b>	<b>Approximate Value*</b>
Ruger P95	3/15/2016	Employee #1	**	\$283
Sig Sauer Sp2022	3/14/2016	Employee #2	**	\$415
Sig Sauer Sp2022	3/16/2016	Employee #3	**	\$415
Remington 870 12 Gauge Shotgun	Unknown	Employee #3		\$591
Sig Sauer Sp2022	3/17/2016	Employee #4	**	\$415
Sig Sauer Sp2022	3/29/2016	Employee #5	**	\$415
Remington 870 12 Gauge Shotgun	Unknown	Employee #6		\$591
<b>Totals</b>			<b>\$1,195</b>	<b>\$3,125</b>

\*Approximate values were estimated using the bidding website gunbroker.com. The APA included the average price listed for each weapon; however, the actual value would depend on the quality, model, and any additional items (e.g., magazines, ammunition) that may have been bundled with it.

\*\*For the guns sold in March 2016, there was no documentation to determine the amount received for each weapon.

Further, there is no documentation, whether in meeting minutes or elsewhere, of the County Board having approved the sale of the weapons.

Neb. Rev. Stat. § 23-3115 (Reissue 2012) states, in relevant part, the following:

- (1) *The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property, other than mobile equipment, which is obsolete or not usable by the county and which has a value of less than two thousand five hundred dollars. In making such authorization, the county board or purchasing agency may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions.*

\* \* \* \*

- (3) Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usual by the county as prescribed . . . shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser.
- (4) The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged.

The trade and sale of the 14 firearms addressed in this comment violated the provisions of § 23-3115, as listed partially above, in these three particulars, at least: 1) the transactions were not authorized by the County Board; 2) the details of the transactions were not submitted to the County Board; and 3) the funds received from the transactions were not submitted to the County Treasurer.

Additionally, it should be noted that § 23-3115 provides for the “sale” of a county’s surplus personal property; no provision is made in statute for the trade of such items. While this may seem a fine distinction, it is a very real one nonetheless.

Discussing how the power of a political subdivision is strictly limited by the provisions of the enabling legislation, the Nebraska Supreme Court has made the following observation:

*Political subdivisions "are purely entities of legislative creation. They do not exist independent of some action of the legislative department of government bringing them into being. All the powers which they can possess are derived from the creator. Unlike natural persons they can exercise no power except such as has been expressly delegated to them, or such as may be inferred from some express delegated power essential to give effect to that power." Traditionally, Nebraska has required strict construction regarding the authority granted to a political subdivision.*

Nebraska League of Sav. and Loan Associations v. Johnson, 215 Neb. 19, 24, 337 N.W.2d 114, 117 (1983) (internal citations omitted). The Court has stated even more forcefully the following:

*Statutes granting powers to municipalities are to be strictly construed, and where doubt exists, such doubt must be resolved against the grant.*

L.J. Vontz Const. Co., Inc. v. City of Alliance, 243 Neb. 334, 341, 500 N.W.2d 173, 177 (1993).

The APA has accumulated the weapons listings provided by the Detention Center; however, the APA did not independently observe each of the weapons on hand. Additional weapons may have been sold or are still unaccounted for that were not reported to the APA.

Without formal procedures to ensure that all weapons belonging to the County are properly inventoried and sold according to State statute, there is an increased risk for not only the loss, theft, or misuse of County property but also violation of the law.

We recommend the Detention Center implement formal procedures to ensure all weapons are properly inventoried and sold in accordance with applicable statutory provisions.

## **2. Inaccurate Inventory**

As noted already, the APA requested and received a subsequent list of weapons in the possession of the Detention Center. That list included 42 weapons – none of which had been reported to the County Board on the statutorily required annual inventory statement. In reviewing past annual

inventory statements submitted by the Detention Center, the APA noted that the following items were removed from the 2013 and subsequent statements; however, the APA believes that some, if not all, of these items are still maintained by the office.

Item	Quantity
Computer Equipment (e.g., Computers, Monitors, Laptops, etc.)	94
Office Equipment (e.g., Office Phones, Scanners, etc.)	36
Radios	3
Cameras	1

As noted in the “Background” section herein, § 23-347 requires the County Board to “examine into each inventory statement so filed” to determine “if said statement is correct and proper in every particular.” Based upon a review of its meeting minutes, the County Board does not appear to have addressed either the accuracy of the inventory statements or any of the items added to or removed from them over the years.

It should be noted that Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2016), of the Open Meetings Act, which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014, Cum. Supp. 2016, Supp. 2017) provides the following:

*Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.*

Lack of mention in the County Board’s meeting minutes regarding approval of the Detention Center’s inventory statements over the past five years indicates noncompliance with either § 23-347 or § 84-1413(1).

Additionally, the annual inventory statements for both the Detention Center and the County Sheriff appear often to have been submitted late to the County Board. Section 23-347 also requires the annual inventory statements to be submitted “[w]ithin two calendar months after the close of each fiscal year.” Because the County’s fiscal year ends on June 30, the inventory statements were due by no later than the following September 1 – a deadline that was frequently missed.

The following table details not only those tardy submissions but also other concerns noted with the filing of the inventory statements during the past five years.

Inventory Year	Due Date	Detention Center	County Sheriff
		Date Received	Date Received
2013	9/1/2013	11/27/2013	8/30/2013
2014	9/1/2014	N/A (A)	9/2/2014
2015	9/1/2015	10/27/2015	9/1/2015
2016	9/1/2016	8/17/2016 (B)	8/29/2016
2017	9/1/2017	9/5/2017 (C)	9/15/2017 (C)

(A) Inventory was unable to be provided for 2014.

(B) No Board approval of this inventory was noted.

(C) Board minutes were unavailable to verify Board approval.

Neb. Rev. Stat. § 23-350 (Reissue 2012) provides the following penalty for failure to file a timely and accurate annual inventory statement with the County Board:

*Any county officer, including any member of any county board, who shall fail to file such inventory statements or who shall willfully make any false or incorrect statement therein, or who shall aid, abet, or connive in the making of any false or incorrect statement therein shall be guilty of a Class III misdemeanor. As part of the judgment of conviction, the court may decree such officer guilty of malfeasance in office for a palpable omission of duty and subject to removal under section 28-924.*

When accurate annual inventory statements are not filed in a timely manner, there is an increased risk of loss, theft, or misuse of County assets. The county officials at fault face possible criminal sanctions, moreover, for the failed or improper filings. Likewise, failure by the County Board to review and approve those statements not only heightens further the risk of loss, theft, or misuse of County assets but also constitutes noncompliance with statute.

We recommend the County Board implement procedures to ensure all annual inventory statements are received timely, as well as reviewed for accuracy, in compliance with State statute.

*County Sheriff Response: In questioning my Lieutenants that are responsible, I know how and why three of the five inventories listed were turned in late. We did not know the deadline was set in statute. We were over the deadline by two days in 2014, one day in 2015, and 15 days in 2017. Ultimately that is my responsibility and we will remedy that.*

### **3. Inadequate Policies**

Both the Detention Center and the Scotts Bluff County Sheriff lack adequate policies and procedures for the disposal of County weapons. Such guidelines are needed to help ensure compliance with § 23-347, as discussed previously herein.

Similarly, neither the Detention Center nor the County Sheriff has sufficient internal controls for the proper management of ammunition.

- The Detention Center has no policies or procedures in place to track the receipt and subsequent use of purchased ammunition. The Detention Center could explain only that “there is a ‘rough inventory of ammunition kept’. There should be between 10,000 – 2,000 [sic] rounds of ammunition kept in the armory for trainings.”
- The County Sheriff has some minimal procedures in place regarding the purchase of ammunition; however, there are no policies or procedures to track the receipt and subsequent use of purchased ammunition.

Good internal controls and sound business practices require policies and procedures for the disposal of County weapons. Such policies and procedures should also include internal controls for the proper inventory and management of ammunition, including documentation of the amount of ammunition on hand, when it is used, and by whom.

Without such policies and procedures, there is an increased risk that weapons or ammunition may be lost or stolen or otherwise misappropriated.

We recommend the Detention Center and the County Sheriff implement policies and procedures for governing the disposal of County weapons. Such policies and procedures should ensure also that ammunition is properly inventoried and managed.

*County Sheriff Response: In regards to the Sheriff's Office lacking adequate policies and procedures for the disposal of County Weapons: We are very meticulous and have excellent records reflecting the acquisition and disposal of all of our weapons. We may need to address the policy, but the procedure we use is sound. We replaced/traded firearms on one occasion since 2011. We traded in handguns to a law enforcement vendor because the night sights were nearing the end of their useful life. Our agency never sells firearms to our officers or anyone else. When we trade firearms, if an officer wishes to purchase one, he or she would have to purchase it back from the vendor/federal firearms licensee that we trade it to. The officer would have to complete all of the same paperwork that any civilian would have to complete. We will provide the records upon request. All of our firearms are inventoried and accounted for.*

*In regards to the Sheriff's Office having no policies or procedures in place to track the receipt and subsequent use of purchased ammunition: Ammunition that we receive is ordered, maintained, and distributed to officers by our firearms instructors. The ammunition is stored in locked private offices or storage rooms that can only be accessed by the firearms instructors and command staff. We may need to address this policy, but the procedure is sound. All of our ammunition is inventoried and accounted for.*

\* \* \* \* \*

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the County's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and recommendations that we hope will prove useful to the County.

Draft copies of this letter were furnished to the County to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal responses received have been incorporated into the letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time. The Scotts Bluff County Detention Center and the Scotts Bluff County Board of Commissioners declined to respond.

Additionally, a copy of this letter is being forwarded to the Scotts Bluff County Attorney.

This communication is intended solely for the information and use of the entity and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

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

Sincerely,



Mary Avery  
Special Audits and Finance Manager  
Phone: 402-471-3686  
mary.avery@nebraska.gov

cc: Scotts Bluff County Attorney