



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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July 9, 2018

Kevin Hood, Secretary/Treasurer  
Thedford Volunteer Fire Department  
PO Box 302  
Thedford, NE 69166-0302

David Hamilton, Secretary/Treasurer  
Thedford Rural Fire District  
38783 Brownlee Rd  
Thedford, NE 69166

Dear Fire Department and District Members:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the finances of the Thedford Volunteer Fire Department (Department) and the Thedford Rural Fire Protection District (District). As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested certain financial information regarding the Department and the District. Based upon the outcome of this preliminary planning work, including a review of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

However, during the course of the preliminary planning work, the APA noted certain issues that need corrective action, as presented below.

### ***Legal Status***

At one time, the Department operated as a nonprofit corporation within the State of Nebraska, having made the necessary filings with the Nebraska Secretary of State. In June 1985, however, the Department became an inactive organization due to the non-payment of taxes. As a result, for auditing purposes, we have questions regarding the legal status of the Department – especially, as addressed in greater detail below, with regard to the handling of public funds while conducting business in its own name.

Responding to our questions about the Department's operating authority, an attorney for the Nebraska State Volunteer Firefighters Association stated the following:

*You do not need to create an entity under the Secty. of State. I suspect sometime the VFD set up a Corp. and let it die [sic] Most VFD's exist as a subdivision of their town or Rural District. You do not want to be a corp. because you could loose [sic] the protections of the Political Subdivisions Tort Claims Act (This will appear in my latest article of the Nebr. Firefighter.) The authority you exist under is the political subdivision that created you, which is the Thedford Rural District.*

At present, we are unaware of any formal action by the District authorizing the Department to operate as one of its subdivisions. Although Neb. Rev. Stat. § 13-903(3) (Reissue 2012) classifies “volunteer firefighters,” among others, as employees of a political subdivision for purposes of the Political Subdivisions Tort Claims Act, that designation is not necessarily applicable otherwise.

***Federal and State Funds***

Between July 2016 and April 2018, the Department received funds directly from both the Nebraska State Treasurer and the United States Department of Agriculture Forest Service. Upon receipt, those monies were deposited into a separate bank account maintained solely by the Department.

The following table shows the funds at issue:

<b>Deposit Date</b>	<b>Source</b>	<b>Amount</b>
11/1/2016	Mutual Finance Organization (MFO)	\$3,650.00
4/27/2017	Mutual Finance Organization (MFO)	\$3,650.00
10/24/2017	USDA Forest Service	\$8,140.00
11/1/2017	Mutual Finance Organization (MFO)	\$3,940.00
<b>Total</b>		<b>\$19,380.00</b>

If merely a subdivision of the District, the Department lacks authority to receive direct funding, unless so authorized by its parent organization. Additionally, the APA questions the authority of a subdivision of the District to maintain a separate bank account – much less, deposit into that account funds that should have been received instead by the District – without first receiving express permission to do so.

No less important, any grant funds received by the Department – or, for that matter, any other subdivision of the District – should be included on the annual budget required to be submitted to the APA under the Nebraska Budget Act, which is set out at Neb. Rev. Stat. § 13-501 (Reissue 2012) et seq. Upon reviewing past budgets submitted by the District, the APA found that none of the grant funds obtained by the Department were included therein.

Finally, as reflected in the above table, the Department received direct disbursements of mutual finance organization (MFO) funds, totaling \$11,240; however, the Department has no authority to receive such disbursements. Neb. Rev. Stat. § 35-1202 (Reissue 2016) defines a “mutual finance organization” as follows:

*For purposes of the Mutual Finance Assistance Act, mutual finance organization means a group of rural or suburban fire protection districts, cities, or villages which enter into an agreement pursuant to section 35-1204 to cooperate for purposes of financing operational and equipment needs for fire protection, emergency response, or training within their joint areas of operation.*

Volunteer fire departments do not fall within the above definitional language. Likewise, Neb. Rev. Stat. § 35-1206 (Reissue 2016) specifies that distributions from the Mutual Finance Assistance Fund may be received by “[r]ural and suburban fire protection districts or mutual finance organizations.” No provision is made for MFO distributions directly to volunteer fire departments.

***Disbursement of Funds***

The Department’s claim to function as a subdivision of the District gives rise to yet another issue – the apparently improper expenditure of public funds. The Local Government Miscellaneous Expenditure Act, which is found at Neb. Rev. Stat. § 13-2201 (Reissue 2012) et seq., places strict

parameters upon certain expenditures of public funds by local governments, including rural and suburban fire protection districts. As a subdivision of the District, the Department could reasonably be expected to abide by the same restrictions upon expenditures that apply to its parent organization.

Additionally, Neb. Rev. Stat. § 35-901(6) (Reissue 2016) requires the expenditure of all public funds by the Department to be submitted, approved by the “taxing authority supporting” it, namely the District, and properly published, as follows:

*All expenditures of public funds as defined in the Nebraska Budget Act for support of a volunteer department or its purposes shall be submitted as claims, approved by the taxing authority supporting such department or its purposes, and published as required by law. All such claims shall be properly itemized for proposed expenditure or reimbursement for costs already incurred and paid except as may be otherwise permitted pursuant to section 35-106.*

According to Neb. Rev. Stat. § 13-503(7) (Cum. Supp. 2016) of the Nebraska Budget Act, the term “public funds” means “all money, including nontax money, used in the operation and functions of governing bodies.” Any funds received by the Department attach to the District to which it belongs – and, therefore, may be assumed to be used for the operation and function of that governing political subdivision. Consequently, such funds are subject to the requirements of § 35-901(6).

### ***Overall***

At present, the Department appears to function as a corporate entity of sorts. If the Department wishes to operate in such an autonomous capacity and enjoy the benefits of corporate status, certain filing requirements with the Nebraska Secretary of State must be met. Even if, on the other hand, the Department is truly a division of the District, State statute must be followed regarding the receipt and reporting of Federal/State funds received and expended.

### ***Corrective Action Needed***

The Department should take appropriate steps to resolve any concerns regarding its legal status.

The District should recover all funds, including Federal and State grant monies, received by the Department during the period that the Department has held itself out as an unincorporated subdivision of the District. The District must reflect properly in its annual budget all such funds received.

As a division of the District, the Department must comply with the requirements of the Local Miscellaneous Expenditure Act when spending public funds.

If the recommended corrective action is not taken, the APA will refer this information to the Thomas County Attorney and the State Attorney General.

*District Response: See **Attachment A** for the Thedford Rural Fire Protection District’s meeting minutes from June 27, 2018, which outline the planned corrective actions on this matter.*

**APA Response: Based on the information in the District’s meeting minutes, as well as our related discussions with District representatives, the District appears to be on the right track for addressing the issues raised herein. In undertaking the proposed actions, the District should implement controls to ensure that any monies due to it are deposited accordingly.**

\* \* \* \* \*

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 entity's policies or procedures.

Draft copies of this letter were furnished to the entity's to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into the letter.

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

Sincerely,

A handwritten signature in cursive script that reads "Mary Avery".

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

THEDFORD RURAL FIRE PROTECTION DISTRICT MINUTES

The TRFPD held their monthly meeting on June 27, 2018 at the Fire Hall in Thedford as advertised in the June 21 edition of the Thomas Co Herald. Chairman Mike Finney called the meeting to order at 7:05 PM and stated the Open Meetings Act was posted and available for the public's review. Members present were Mike Finney, Bert Wilde, Ray Blackford, and Dave Hamilton. Member Shane Pettit was absent. Guests present were EMT Captain Loren Eaton, Pat Neben, Shirley Hanna, Wade Neben Jim Mills, Martin Novak, Kevin Hood, Russ Reiser, Tony Garner and Roy Licking.

Sec/Treas Hamilton read the minutes from the May 2, 2018 meeting. Blackford moved and Wilde seconded to approve the minutes as read. Roll call vote: Blackford—Aye, Finney—Aye, Wilde--Aye, Hamilton—Aye; Pettit absent. The motion carried.

The Treas then gave the Financial Report and presented the bills to be paid. The Financial report is attached to these minutes. The bills to be paid were:

Custer Public Power.....	\$241.08.....	utilities
Consolidated.....	130.60.....	telephone
Thed Vol & Rescue Squad....	400.00.....	annual fee for Page My Cell service
Arnold Insurance.....	9,271.00.....	Property, Liability & Business Auto Insurance
	<u>                    </u>	
	\$10,042.68	

After insurance discussion led by Rudy Vickers representing Arnold Insurance Agency, Blackford moved and Finney seconded to approve the Financial Report and pay the bills. Roll Call vote: Blackford-Aye, Finney-Aye, Wilde-Aye and Hamilton-Aye; Pettit absent. The motion carried. Mr Vickers then told the board that the premiums for the Accident and Sickness Policy and the Workmens Comp Policy would be due in July and August respectively.

As it relates to insurance coverage, Wade Neben informed the board that the roof on the Old Fire Hall Annex building has a significant leak and needs some immediate attention. Rudy Vickers will be

contacted about the matter.

The Treasurer then passed out a copy of the projected budget expenses for FY 18-19. That projected budget is attached to these minutes. It was noted that these projections would have to be combined with projections from the EMS and VFD to come up with a final budget to present to the County commissioners by August 1, 2018. Arrangements will be made to include the EMS Captain and Treasurer, the VFD Chief and Treasurer and the TRFPD President and Treasurer and the District's Accountant R J Meyer in a committee meeting to draft a budget before the next regular meeting on July 10, 2018 to finalize the budget for approval by the full board.

Discussion then turned to the letter from the Auditor of Public Accounts and the required changes that need to be made to comply with state law. Hamilton moved and Blackford seconded that the Thedford Volunteer Rescue Squad and the Thedford Voluntary Fire Department be officially named as sub-divisions of the Thedford Rural Fire Projection District. The motion stated further that the District, the Department, and the EMS must comply with NE Rev Stat 13-2201, 35-1206, 13-501 and 13-503 going forward. A Roll Call vote was taken: Blackford-Aye, Finney-Aye, Wilde-Aye and Hamilton-Aye; Pettit absent. Motion carried.

Blackford moved and Finney seconded to establish 2 separate funds. The TVFD may establish a trust fund. All donations, contributions, or bequests and all money raised by the TVFD shall be deposited in the trust fund. The same applies for the Thedford Voluntary Rescue Squad. The trust funds shall not be considered public funds to be used by the rural district. Funds or contract fees received by the TVFD or the EMS in consequence of the performance of fire or rescue SHALL NOT be deposited in a trust fund. Such funds are public funds of the taxing authority (TRFPD) and SHALL be deposited in the accounts of the TRFPD. All members present voted Aye; Pettit was absent. Motion carried.

Hamilton moved and Wilde seconded to authorize the TVFD to complete the application for the Mutual Financial Organization on behalf of the TRFPD. Roll Call vote: Blackford-Aye, Finney-Aye, Wilde-Aye, Hamilton-Aye; Pettit absent. The motion carried.

After receiving legal advice to establish interlocal agreements between the TRFPD and entities who receive fire protection and rescue services, the board appointed EMT Captain Loren Eaton to communicate with the Halsey and Purdum Fire Departments and the Valentine National Wildlife Refuge and the NE National Forest to encourage them to enter into such an agreement.

The report from the TVFD included their election of officers at their last meeting:

Fire Chief-----Russ Reiser	Ass't Fire Chief-----Dan DeNaeyer
Thedford Captain-----Ross Bryant	Brownlee Captain-----Tony Garner
Seneca Captain-----Roger Licking	Co-Training Director---- Spencer Burke
Co-Training Director-----Robert Mills	Secretary/Treasurer-----Kevin Hood
Ass't Secretary/Treasurer--Gordon Needs	

**EMS Report:**

Captain Eaton reported more than normal ambulance calls so far in 2018; a joint training with Mullen with a simulated mass casualty situation; a SIM Truck here for an August 27, 2018 training; the desperate need for more ambulance drivers; and that we need to be planning and budgeting for an ambulance to replace Unit 2.

Hamilton moved to add the names of Josie Dreher and Martin Novak to the insurance roster. Wilde seconded. Roll Call vote: Blackford-Aye, Finney-Aye, Wilde-Aye, Hamilton-Aye. Pettit absent. The motion carried.

Chairman Finney adjourned the meeting at 9:50 PM.