



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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State Auditor

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May 29, 2019

Robin LaPage, Board Chair
Village of Alvo
135 Main Street
Alvo, NE 68304

Dear Ms. LaPage:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding a Village of Alvo (Village) Fire and Rescue Squad (Department) bank account being controlled by David Morgan, former Village Board (Board) Chair. It has been alleged that Mr. Morgan refused to surrender control of the bank account to the Village after being removed from Department functions by a majority vote of the Board. It has been alleged also that Mr. Morgan absconded with Department assets, including a computer, after his removal.

In response to the concerns received, 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. However, as of May 28, 2019, the APA had received neither a financial audit nor an audit waiver request from the Village, which should have included the Department's fiscal details. The information contained herein will be considered should the Village request an audit waiver in the future.

During the course of our preliminary planning work, the APA noted certain issues that merit corrective action, as presented below.

Legal Status of the Department

At present, a conflict exists between Mr. Morgan and the Village regarding the legal status of the Department – especially pertaining to the handling of public funds while conducting business in its own name. This disagreement is exacerbated by the lack of any records documenting the creation and operation of the Department. So scant is any such documentation, in fact, that uncertainty exists regarding not only when and how the Department was created but also the terms of its service.

The Department has made no filings with the Nebraska Secretary of State to exist as a separate legal entity, which would appear to support the position that it functions as a division of the Village. Additionally, the Village owns the Fire Station building out of which the Department operates and has always paid for the Department's insurance. If, as indicated by these facts, the Department is actually a division of the Village, concession would have to be made to Board oversight, including control of the bank account at issue and its activity.

The Department has maintained the bank account at Farmers & Merchants Bank of Ashland, since 1995. In September 2000, the bank account was held under the name of “Alvo Rescue Squad Annette Dougherty,” and the Federal Tax Identification Number (FTIN) was 47-0689378. However, this FTIN was later changed to 35-2278429, and the name was altered to simply “Alvo Rescue Squad.” Both of these FTINs are different than the one used by the Village. The APA has included a copy of the current signature card for this bank account in **Attachment A** hereto.

Mr. Morgan has been the sole signer on all checks drawn upon the Department bank account from January 2016 through February 2019. However, according to the signature card shown in **Attachment A**, there were several other authorized signers on the account during that period. Per correspondence received by the APA, the majority of those other signers were once Emergency Medical Technicians (EMT) within the Department.

On October 22, 2018, the Board held an emergency meeting to assert its claimed authority over the Department. At that meeting, the Board discussed the Department’s personnel and voted to freeze all of its assets. In addition to removing Leslie Krings and Mike Krass, the Board suspended Karen Morgan and Mr. Morgan from the Department. The minutes of that meeting reflect Mr. Morgan’s suspension, as follows:

Motion made by Ben Glantz to suspend Dave Morgan from all Alvo Fire & Rescue functions until further investigation can be completed. He will also surrender all access to Alvo Fire and Rescue in a timely manner (2 weeks), including all passwords, account information, bank information for ALL accounts, vehicle titles, and any other pertinent information pertaining to Alvo Fire & Rescue. Roll call vote; Ben Glantz-YES, Taylor Glantz-YES and Robin LaPage-YES.

Later, at the November 6, 2018, Board meeting, Mr. Morgan was advised, according to the minutes, that “he is not allowed to be in the fire and rescue side of the building and the locks will be changed.”

Despite these formal actions by the Board, all of the individuals removed from the Department were still authorized signers on the Department’s bank account as of March 21, 2019.

As a subdivision of the Village, and subject to the control thereof, the Department’s ability to expend public funds, including those in the bank account at issue, would be subject to Neb. Rev. Stat. § 17-711 (Cum. Supp. 2018), which states the following:

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

In addition, 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.

Bank Account Activity

Between January 2016 and February 2019, the Department received funds from the State of Nebraska, EMS Billing Services, INC, Eagle Raceway, I-80 Speedway, the Lancaster County Event Center, and others. Upon receipt, those monies were deposited into the Department’s bank account, absent any oversight or control by the Village.

Due to this ongoing lack of control, the Village was unable to gain access to the Department’s bank account to provide the APA with information regarding its activity. Therefore, on March 15, 2019, the APA subpoenaed the account’s statements and other information from Farmers & Merchants Bank of Ashland. The statements received by the APA show all deposit and withdrawal activity, including check images, from January 2016 through February 2019, as summarized in the table below:

Department Monthly Bank Activity	Deposits/Other Credits	Checks/Other Debits	Balance
Beginning Balance			\$ 2,601.86
Jan-16	\$ 0.06	\$ 243.15	\$ 2,358.77
Feb-16	\$ 0.05	\$ 333.44	\$ 2,025.38
Mar-16	\$ 89.97	\$ 1,379.78	\$ 735.57
Apr-16	\$ 467.03	\$ 677.66	\$ 524.94
May-16	\$ 182.81	\$ 171.85	\$ 535.90
Jun-16	\$ 11,154.59	\$ 166.52	\$ 11,523.97
Jul-16	\$ 509.54	\$ 221.80	\$ 11,811.71
Aug-16	\$ 392.09	\$ 359.23	\$ 11,844.57
Sep-16	\$ 475.48	\$ 525.23	\$ 11,794.82
Oct-16	\$ 4,070.41	\$ 13,549.34	\$ 2,315.89
Nov-16	\$ 344.33	\$ 746.23	\$ 1,913.99
Dec-16	\$ 2,491.72	\$ 205.89	\$ 4,199.82
Jan-17	\$ 0.10	\$ 530.65	\$ 3,669.27
Feb-17	\$ 3,037.07	\$ 851.06	\$ 5,855.28
Mar-17	\$ 143.77	\$ 1,759.93	\$ 4,239.12
Apr-17	\$ 405.86	\$ 147.93	\$ 4,497.05
May-17	\$ 258.37	\$ 2,649.05	\$ 2,106.37
Jun-17	\$ 1,134.86	\$ 734.20	\$ 2,507.03
Jul-17	\$ 1,603.42	\$ 799.64	\$ 3,310.81
Aug-17	\$ 2,339.94	\$ 273.03	\$ 5,377.72
Sep-17	\$ 3,298.84	\$ 1,801.97	\$ 6,874.59
Oct-17	\$ 4,823.33	\$ 4,731.24	\$ 6,966.68
Nov-17	\$ 2,780.64	\$ 1,426.90	\$ 8,320.42
Dec-17	\$ 185.83	\$ 1,416.35	\$ 7,089.90
Jan-18	\$ 285.77	\$ 1,429.40	\$ 5,946.27
Feb-18	\$ 6,147.14	\$ 3,373.58	\$ 8,719.83
Mar-18	\$ 1,157.59	\$ 1,455.25	\$ 8,422.17
Apr-18	\$ 2,370.16	\$ 2,872.73	\$ 7,919.60
May-18	\$ 2,812.85	\$ 1,788.99	\$ 8,943.46
Jun-18	\$ 4,560.45	\$ 6,603.87	\$ 6,900.04
Jul-18	\$ 0.35	\$ 1,720.51	\$ 5,179.88
Aug-18	\$ 7,709.97	\$ 6,353.07	\$ 6,536.78
Sep-18	\$ 487.07	\$ 2,321.99	\$ 4,701.86
Oct-18	\$ 1,444.04	\$ 884.68	\$ 5,261.22
Nov-18	\$ 6,446.38	\$ 320.99	\$ 11,386.61
Dec-18	\$ 531.96	\$ 1,838.83	\$ 10,079.74
Jan-19	\$ 528.39	\$ 4,167.81	\$ 6,440.32
Feb-19	\$ 0.49	\$ 79.17	\$ 6,361.64
Total Bank Activity	\$ 74,672.72	\$ 70,912.94	

While reviewing the documentation received from the bank, the APA observed several debit card transactions by the Department for gas, food, and other miscellaneous expenses from various vendors, including Sam’s Club, Best Buy, Shopko, Hy-Vee, Staples, Amazon.com, and Menards.

In the table below, the APA has summarized the amounts paid to vendors that received at least \$500 from the Department between January 2016 and February 2019:

Vendor	Amount
IN *MED TECH RESOURCES	\$ (22,016.04)
Physio Control Inc	\$ (10,854.20)
Fiala's Truck Repair	\$ (8,488.48)
Motorola	\$ (2,605.00)
EMS BILLING SERV	\$ (2,592.47)
Staples 00119008 Lincoln NE	\$ (2,543.25)
CASEYS GEN STORE 2968 EAGLE NE	\$ (1,950.56)
ALS Affiliates	\$ (1,490.00)
Alvo Rural Fire Board	\$ (1,385.90)
Alvo Volunteer Fire Department	\$ (1,250.00)
SHAFFER COMMUNICATIONS	\$ (1,216.37)
SHELL OIL 10015216004 GREENWOOD NE	\$ (935.00)
FIRST WIRELESS 4028956100 NE	\$ (898.75)
City of Lincoln CK Payment	\$ (820.00)
ROUND THE BEND STEAKHO ASHLAND NE	\$ (748.74)
DEA REGISTRATION 202-307-5604 VA	\$ (731.00)
CVS/PHARMACY #08626 LINCOLN NE	\$ (609.83)
PROV ENRLMNT FEE PAYMENT	\$ (560.00)
FLAGPOLE COUNTRY PAYNESVILLE MN	\$ (535.00)
BRYAN MEDICAL CENTER E 877-5779277 NE	\$ (500.00)
Sub-Total of Other Vendors	\$ (8,182.35)
Total Checks/Debits	\$ (70,912.94)

Without adequate supporting documentation, the APA could not determine if these expenses were appropriate for the Department or if any of them might have been personal in nature.

Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) of the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. § 49-1401 (Cum. Supp. 2018) et seq., restricts the use of resources under the “official care and control” of a public official or public employee, as follows:

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.

Per subsection (7) of that same statute, “[A]ny person violating this section shall be guilty of a Class III misdemeanor”

Department Assets

According to Cass County records dated December 17, 2018, both of the Department’s ambulances were recently titled in the Village’s name. The ambulances had been titled previously in the name of the Alvo Rescue Squad – with the 1990 ambulance having been purchased from the Oakland Rural Fire District and the 1997 ambulance having been purchased from the City of Wilber. The APA confirmed the purchase of the 1997 Ford ambulance with the City of Wilber. See **Attachment B** for a copy of the City of Wilber resolution approving the sale.

Additionally, it has been alleged that Mr. Morgan absconded with Department assets, including a computer. The APA has been informed, however, that no current listing of Village assets exists. Consequently, we are unable to opine upon the validity – or lack thereof, as the case may be – of that claim.

The Village should create and maintain an up-to-date inventory of its assets not only as a best practice in general but also to safeguard public property from misuse or theft.

Overall

Due to the fragmentary and incomplete nature of the Village financial records provided to the APA, the legal status, along with the attendant responsibilities, of the Department remains unclear. As noted already herein, however, certain indicators suggest that the Department may well be a subdivision of the Village. Those include the following: 1) the lack of any filings with the Nebraska Secretary of State denoting the independence of the Department; 2) payment by the Village of the Department's insurance costs; 3) Village ownership of the Fire Station building used to headquarter the Department; 4) the Board's exercise of its apparent authority to remove certain individuals, including Mr. Morgan, from the Department's personnel; and 5) the recent titling of the Department's vehicles in the name of the Village.

Should these – and possibly other – factors prove dispositive in determining that the Department is indeed a municipal subdivision, all financial activity of the Department should be reflected in the accounting records, including the annual budget filings and audit/audit waiver requests, of the Village.

Likewise, given such a determination, all Department property, including the bank account at issue, should be placed under the control of the Village.

Per Neb. Rev. Stat. § 17-501 (Cum. Supp. 2018) villages are “bodies corporate and politic” and have the power “to acquire and hold real and personal property.” Neb. Rev. Stat. § 17-606(1) (Cum. Supp. 2018) designates the Village Treasurer, moreover, as “the custodian of all money belonging to the . . . village,” directing him or her to “keep a separate account of each fund or appropriation and the debts and credits belonging thereto.”

Additionally, Neb. Rev. Stat. § 13-504 (Cum. Supp. 2018) of the Nebraska Budget Act (Act) requires this State's political subdivisions to prepare, either annually or biannually, a proposed budget statement that contains, among other things, the following information:

- Revenue from all sources for the immediately preceding fiscal year or biennial period.
- Actual and estimated revenue from all sources for the current fiscal year or biennial period, as well as the amount of the current fiscal year's actual or estimated expenditures.
- An estimate of revenue from all sources for the immediately ensuing fiscal year or biennial period.
- A uniform summary of the proposed budget statement, containing a “grand total” of all funds maintained by the governing body.
- An actual or unencumbered cash balance that includes “deposits and investments of the political subdivision as well as any funds held by the county treasurer for the political subdivision.”

Furthermore, Neb. Rev. Stat. § 19-2903 (Reissue 2012) of the Nebraska Municipal Auditing Law (Law) requires all municipalities of this State to undergo an annual audit, as follows:

The municipal authorities of each municipality shall cause an audit of the municipality's accounts to be made by a recognized independent and qualified accountant as expeditiously as possible following the close of the fiscal year for such municipality and to cover all financial transactions and affairs of the municipality for such preceding fiscal year.

* * * *

A village which is required to conduct an audit under subdivision (4) of section 84-304 and which owns or operates any type of public utility or other enterprise which substantially generates its own revenue shall have that phase of the village's affairs reported separately from the other functions of such village, the result of the audit shall appear separately in the annual audit report made by the accountant to the village, and the audit shall be on a cash or accrual basis at the discretion of the village.

Neb. Rev. Stat. § 19-2904 (Reissue 2012) of the Law adds, in relevant part, the following:

The annual audit report shall set forth, insofar as possible, the financial position and results of financial operations for each fund or group of accounts of the municipality.

Neb. Rev. Stat. § 84-304(4)(b) (Cum. Supp. 2018) permits a political subdivision to request an audit waiver from the APA, as follows:

The Auditor of Public Accounts may waive the audit requirement of subdivision (4)(a) of this section upon the submission by the political subdivision of a written request in a form prescribed by the auditor. The auditor shall notify the political subdivision in writing of the approval or denial of the request for a waiver.

The Village Audit Waiver Request Form prepared by the APA requires the petitioning village to complete a “statement of actual cash receipts, disbursements, and balances” for the year. The information contained therein is reviewed when a determination is made whether to approve the waiver request.

As the above statutory provisions make clear, all funds belonging to the Village should not only be subject to municipal control and oversight but also be declared for both budgetary and auditing purposes.

Corrective Action Needed

The Village should take the following corrective action:

- A determination should be made regarding the Department's legal status.
- If the Department is determined to be a municipal subdivision, the Village should exercise immediate control over all Department property, including the bank account at issue, and all financial activity of the Department should be reflected in the accounting records, including the annual budget filings and audit/audit waiver requests, of the Village.
- If the Department is determined to be a municipal subdivision, the Village should implement controls to ensure that all funds received by or expended for the Department are managed and utilized in accordance with the statutory requirements specified herein, including not only Neb. Rev. Stat. § 17-711 (Cum. Supp. 2018) and Neb. Rev. Stat. § 17-606(1) (Cum. Supp. 2018) but also the applicable provisions of both the Local Government Miscellaneous Expenditure Act and the Nebraska Political Accountability and Disclosure Act.
- The Village should create and maintain an up-to-date inventory of its assets. If, after a thorough review of that asset listing, Village property is found to be missing, immediate action should be taken to recover those lost or misappropriated assets.

The APA will refer this information to the Village Attorney, the Cass County Attorney, and the Nebraska Accountability and Disclosure Commission.

Village Response: The Village of Alvo has been in dire straits with previous clerks, Dave Morgan as Rescue captain and Dave Morgan as Chairman of the Village Board of Trustees.

Dave Morgan, as Chair, was supposed to submit the Audit Waiver among other items, which he failed to do and this current Board of Trustees is constantly currently cleaning up these messes.

As for the Rescue Squad, Dave Morgan would NOT allow any board member to view any documents, bank records or any accounts payable or receivable during his tenure as Rescue Captain. Dave Morgan did not allow any board member to take inventory of any supplies on the Rescue side of the Village entities. Then Dave took the computer and all records of volunteers, patients and supplies, and was approached by the Cass county Sheriff, Dave Morgan told the Sheriff that he “owned” all the items he took from the Village Hall. The Sheriff did not pursue the complaint filed by the Village of Alvo.

While we admit the Village is in disarray and needs to be more diligent in keeping record of every item under its jurisdiction, we stand by this Board of Trustees as we work through all of the lawsuits by Dave Morgan against the Village of Alvo and we strive to make changes with the assistance of a village attorney we are actively using which itself is a major change from the past.

Dave Morgan is currently suing the Village of Alvo, claiming to own the Rescue squads and all monies in the account at the Ashland bank, which account as you know he opened but not as a village account. Dave was told to move that account to the bank where all other Village of Alvo accounts exists but he refused, saying he owned the accounts and didn't have to do what the Board asked even though Dave asked the Board to approve members and very few expenditures.

In closing, the Village of Alvo Board of Trustees will work diligently to correct the items you have brought to our attention.

* * * * *

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 to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. The formal response received has been incorporated into the letter.

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

ALVO RESCUE SQUAD BANK ACCOUNT
SIGNATURE CARD

Attachment A

Business Account Agreement

Updated Tax ID # for Alvo Rescue
35-2278429 12-13-2018

Ownership of Account

Sole Proprietorship Corporation - Not for Profit Corporation - For Profit
 Partnership Limited Liability Co. **Organization**

Date Opened 5-25-1995 Initial Deposit \$ _____
 Opened By _____ Form: Cash _____
 Authorization Dated _____ Previous Bank _____
 Business Rescue Squad
 County and State of Organization _____
 Telephone No.'s _____
 All New Accounts Will Be Verified Through _____

Additional Information:

New Card Update: 10-29-2018

Type of Account New Existing Checking Money Market Time Deposit
 Savings _____

Account Name _____

Account Owner Name & Address Account Number 269

Alvo Rescue Squad
 135 Main Street
 PO Box 37
 Alvo, NE 68304

Number of Signatures Required for Withdrawal _____
 This is a Temporary account agreement.

Signature(s). The undersigned acknowledge(s) receipt of a completed copy of this agreement. The undersigned further authorizes the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following agreement(s)/disclosure(s):

Funds Availability Disclosure Terms & Conditions _____

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature(s)	Identifying Info.
(1) <u>David Morgan</u>	Signer David Morgan
(2) <u>Karen Morgan</u>	Signer Karen Morgan
(3) <u>Mikr Krass</u>	Signer Mikr Krass
(4) <u>Leslie Krings</u>	Signer Leslie Krings
<input type="checkbox"/> Facsimile Signature <u>Susan D. Smith</u>	Susan D. Smith
<u>Brianna Graham</u>	Brianna Graham
<u>Susan & Brianna</u>	Susan & Brianna both signers only.

Tax ID: 47-8689378
12-13-18

Backup Withholding Certifications

If not a "U.S. Person", certify foreign status separately.

By signing signature field (1) on this document, I certify under penalties of perjury that the statements made in this section are true and that I am a U.S. citizen or other U.S. person.

Taxpayer I.D. Number - TIN:
 The Taxpayer Identification Number (TIN) shown is my correct taxpayer identification number.

Backup Withholding. I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

Exempt Recipients. I am an exempt recipient under the Internal Revenue Service Regulations.
 Exempt payee code (if any) _____

FATCA Code. The FATCA code entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Account Agreement—Business
 Bankers Systems™ VMP®
 Wolters Kluwer Financial Services © 2015 To Reorder Form: 1-800-552-9410

AA-B 8/12015
Page 1 of 1

ALVO RESCUE SQUAD
CITY OF WILBER RESOLUTION FOR 1997 AMBULANCE

Attachment B

RESOLUTION # 2013-07
CITY OF WILBER, NEBRASKA

BE IT HEREBY RESOLVED by the City Council of the City of Wilber, Nebraska, as follows:

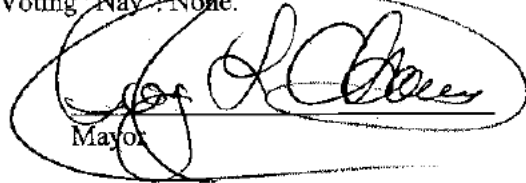
1. That the following described motor vehicle having been declared as surplus property:

A 1997 Ford Ambulance vehicle, VIN 1FDLE40FXVHC02942, was offered for sale by written sealed bid.
2. That the highest, and only, bid received is for the sum of \$5,500.00 to the Alvo Rescue Squad.
3. That said bid is accepted and the City Clerk is directed to give possession of said vehicle, along with a Certificate of Title thereto to the Alvo Rescue Squad, upon confirmation that payment made has met with bank approval.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wilber, Saline County, Nebraska, that the above Resolution is hereby approved.

Dated May 14, 2013.

Upon Roll Call Vote: Voting "Aye", Councilmen Sasek, Novak,
Lichart, and Hoch. Voting "Nay": None.


Mayor

ATTEST:

Louis L. Requej
City Clerk

(SEAL)