



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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October 31, 2019

Roger Gallaway, Mayor  
City of Sidney  
1115 13th Avenue  
P.O. Box 79  
Sidney, NE 69162

Dear Mr. Gallaway:

As you know, the Nebraska Auditor of Public Accounts (APA) has been contacted regarding the City of Sidney's (City) purchase of a building previously owned by Cabela's/Bass Pro Shop.

The issue raised pertains to the City's use of excess utility revenues from the Electric Department to pay for the real estate purchase. In response to that concern, 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 from the City. 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.

Nevertheless, we have noted a certain internal control or compliance matter that is presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

### **Background Information**

According to the Cheyenne County Assessor, the City formally purchased the property located at 812 13<sup>th</sup> Avenue on July 9, 2019, from Cabela's Wholesale Inc, for \$1,000,000. The City Council held several public meetings to discuss this planned purchase, including the following:

- On April 9, 2019, the City Council met to discuss purchasing the property; however, the purchase resolution did not pass due to a tie vote.
- On April 12, 2019, the City Council held a special meeting to discuss again purchasing the property. A motion was approved to hold a public hearing on April 23, 2019.
- On April 23, 2019, Resolution No. 20190404, approving the purchase of the property, passed, as follows:

*Arterburn moved, Sherman seconded "That Resolution 20190404 regarding the property purchase be passed and adopted." Roll call vote: Yeas: Arterburn, Gallaway and Sherman. Nays: Radcliffe and Olsen. Motion passed.*

A copy of the approved resolution is included below:

RESOLUTION NO. 20190404

WHEREAS, the City of Sidney, Nebraska recognizes that the Cabela's Old Corporate building located at 812 13<sup>th</sup> Avenue is available for sale and it is being proposed the City purchase said building from Cabela's, LLC for \$1,000,000 which would include the building, all furniture, fixtures and equipment in the building, and the parking lot to the south on 14<sup>th</sup> and Illinois Street; and

WHEREAS, the Mayor and City Council have determined that the building purchase is an investment of Electric Department funds to grow the utility and expand the utility customer base in the City; and

WHEREAS, the price of the building in comparison to the appraised value and the value of the furniture, fixtures and equipment being sold as a part of the deal makes the purchase by the electric department a good investment; and the building investment will provide a greater return on investment in comparison to current market interest rates; and

WHEREAS, as a part of the purchase and sale agreement, the City will take ownership of the lease agreement between Bass Pro Shops and UST Global and UST Global is responsible for all operating costs associated with the building, including utilities, property taxes and basic maintenance; and

WHEREAS, the property will continue to generate property tax revenue and since the tenant of the building is a taxable entity, the property taxes will still be collected; and since the renovation of the building utilized TIF funding and the taxes continue to be paid, all the TIF payment provisions will stay in place until the payments are made in full; and

WHEREAS, a Public Hearing was properly advertised and was held at this meeting as per Revised Statutes of Nebraska No. 18-1755.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Sidney, Nebraska that they should execute the contract for 812 13<sup>th</sup> and the parking lot south on 14<sup>th</sup> and Illinois between Cabela's LLC, a subsidiary of Bass Pro Shops Group and the City of Sidney, Nebraska by reference into this Resolution as if fully set forth; and

BE IT FURTHER RESOLVED that Roger Gallaway, Mayor, is hereby directed to execute the contract and all other documents necessary to facilitate the purchase between Cabela's LLC, a subsidiary of Bass Pro Shops Group and the City of Sidney, Nebraska.

PASSED AND APPROVED THIS 23<sup>rd</sup> day of April, 2019.

The following is a picture of the building located at 812 13<sup>th</sup> Avenue:



*Courtesy: Cheyenne County Assessor*

### **Comment and Recommendation**

#### **1. Improper Use of Funds**

Based upon our analysis of the relevant documentation obtained – later confirmed by City representatives – excess utility funds were used to purchase the former Cabela’s/Bass Pro Shop building. As copied in full above, Resolution No. 20190404 designates the purchase as “an investment of ElectricDepartment (sic) funds to grow the utility . . . .” Similarly, an April 23, 2019, memorandum to the City Council and the Mayor from Ed Sadler, the City Manager, and Melissa Norgard, the Economic Development Director, reiterates, “The building purchase is an investment of electric department funds to grow the utility . . . .” That same memorandum says, “The funds for the purchase will come from the electric fund.”

The APA has sought unsuccessfully for any express statutory authority for the City to expend excess utility funds for the purchase of real estate.

Among the general powers granted to a city of the first class under Neb. Rev. Stat. § 16-201 (Reissue 2012) is the authority to “purchase, lease, lease with option to buy, or acquire by gift or devise and to hold real and personal property within or without the limits of the city . . . .”

At the same time, however, Neb. Rev. Stat. § 16-691.01 (Cum. Supp. 2018) provides a more specific directive for the handling of surplus utility funds. That statute allows such monies to be invested in “interest-bearing securities of the State of Nebraska or any political subdivision thereof, in certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation, or in interest-bearing securities of the United States upon an order for that purpose drawn by the board of public works upon the city treasurer.”

Additionally, Neb. Rev. Stat. § 16-691.02 (Cum. Supp. 2018) permits certain excess utility revenues to be transferred to a city’s General Fund, as follows:

*The mayor and city council of any city of the first class may, by resolution, direct and authorize the city treasurer to dispose of the surplus electric light, water, or natural gas distribution system funds, or the funds arising from the sale of electric light and water properties, by the payment of outstanding electric light, water, or natural gas distribution system warrants or bonds then due and by the payment of all current amounts required in any revenue bond ordinance in which any part of the earnings of the electric light or water utility or natural gas distribution system are pledged. The excess, if any, after such payments, may be transferred to the general fund of such city at the conclusion of the fiscal year.*

(Emphasis added.) While § 16-201 does grant a city of the first class the general authority to purchase real estate, the more specific provisions in § 16-691.01 and § 16-691.02 for the allowable handling of utility revenues must take precedence.

As noted at the outset of this comment, the APA has found no express statutory authority – including in § 16-691.01 or § 16-691.02 – authorizing surplus utility funds to be expended directly for the purchase of real estate. However, the language highlighted above in § 16-691.02 authorizes such funds to be transferred to the General Fund of a city of the first class; from there, presumably, they may be expended as legally directed by the city council.

On October 10, 2019, the APA consulted with J. Leef, an attorney with Sonntag, Goodwin & Leef, P.C., who represents the City in this matter. During that conversation, Ms. Leef explained that the City’s intent had been to comply with the law by making an interfund loan, from the Utility Fund to the General Fund, of the money needed to purchase the former Cabela’s/Bass Pro Shop building. Then, as permitted under § 16-691.02, to repay that loan amount with a transfer of surplus utility funds to the General Fund at the end of the fiscal year.

Because that strategy lacked proper documentation, however, Ms. Leef proposed to take action by presenting the City Council with an explanatory resolution detailing the steps to take to ensure the proper handling and expenditure of the excess utility funds at issue.

Good internal control requires procedures to ensure that excess utility funds are handled in strict conformity with applicable statutory provisions, and proper documentation thereof is created and maintained.

Without such procedures, there is an increased risk for not only noncompliance with applicable laws but also the loss or misuse of public monies.

We recommend the City implement procedures to ensure excess utility funds are handled in strict conformity with applicable statutory provisions, and proper documentation thereof is created and maintained. Additionally, we recommend the City Council take proper action, per legal counsel’s guidance, to remedy concerns with the past expenditure of such funds. The APA will be forwarding a copy of this letter to the Cheyenne County Attorney.

*City Response: As corrective action, the City has passed a Resolution making it clear that there is a loan from electric to general and that the funds will be transferred from Electric to General in accordance with the loan document, and the state statutes.*

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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 policies or procedures of the City. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful.

Draft copies of this letter were furnished to the City 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 this letter. Such responses have been objectively evaluated and recognized, as appropriate, in the letter. Any response indicating that corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the City. 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,

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

cc: City Attorney  
Cheyenne County Attorney