

# Garza/Gonzalez & Associates

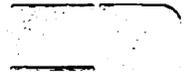
CERTIFIED PUBLIC ACCOUNTANTS

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**SHERIFF'S DEPARTMENT  
MAVERICK COUNTY  
Confiscated Funds  
Eagle Pass, Texas**

**Report on Findings and Recommendations**

Three Years Ended September 30, 2012



CONFIDENTIAL - SECURITY INFORMATION  
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CERTIFIED PUBLIC ACCOUNTANTS

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Sheriff Tom Schmerber  
Maverick County, Texas

We were engaged to audit the financial statements of the Maverick County Sheriff Department Confiscated Funds (the Fund) for the three year periods ended September 30, 2010, 2011, and 2012 and have disclaimed our report thereon dated February 2, 2016.

In the course of performing our audit we made certain observations regarding the Fund accounting, internal control, and compliance with applicable laws and regulations. Our observations and recommendations are noted in this report. This information is intended solely for the use of management and should not be used for any other purpose.

This letter does not affect our report dated February 2, 2016, on the financial statements of the Maverick County Sheriff Department Confiscated Funds for the three years ended September 30, 2010, September 30, 2011 and September 30, 2012.

We would like to acknowledge the courtesy and assistance extended by the personnel of Sheriff's Department and the Maverick County Auditor's Department, during the course of our audit.



February 2, 2016

**SHERIFF'S DEPARTMENT  
MAVERICK COUNTY  
CONFISCATED FUNDS  
Eagle Pass, Texas**

**REPORT ON FINDINGS AND RECOMMENDATIONS**

**Three Years Ended September 30, 2012**

**Financial Statements/Audits**

The Confiscated funds (the Fund) financial statements that we were engaged to audit were included in the Maverick County (the County) financial statements annual financial reports for each the three years ended September 30, 2010, September 30, 2011, and September 2012. We noted that for 2010, the Fund was reported as an agency fund; as such, no statement of Revenues and Expenditures was reported. In subsequent years, the Fund was properly reclassified as a special revenue fund.

Also, we noted that in 2010 the Sheriff's Department received \$324,121 in Equitable Sharing program funds from the U.S Treasury Department. An additional \$68,998 was received in 2012. This program is considered federal financial assistance and is subject to the OMB Circular A-133 single audit requirements. The County did not comply with the A-133 requirements in that the Equitable Sharing program was omitted from the Schedule of Expenditures of Federal Awards. Also, it appears that the program may have qualified as a major program in 2010 or 2011 (based on the level of program expenditures) and thus may have required testing for compliance with laws and regulations.

We recommend that in the future, any Equitable Sharing Program funds expended be reported in the Schedule of Expenditures of Federal Awards in the County's Single Audit section of the annual financial report. The program should be subjected to audit requirements as required by federal regulations.

**Accounting Records**

The Sheriff's Department maintains control and oversight of confiscated funds. The Fund's accounting records for the three year period ended September 30, 2012 were maintained by the Sheriff's Department personnel during that time period. The records provided to us by the present Sheriff's Department staff consisted of Excel spreadsheets, bank statements, and three file boxes. We noted that the file boxes did not contain any 2010 expenditure supporting documentation (Invoices, receiving report, P.O's, etc.).

Further, we noted that no general ledgers were available for our review during the audited period. Instead, Excel spreadsheets listing cash receipts and disbursements were provided. The spreadsheet columns denote the grant/source of the funds received/spent. No general ledgers or formal books of account were maintained. Additionally, there was no audit trail between the financial statements presented in the County's annual financial reports and the spreadsheets maintained by the County Sheriff's Department.

Lastly, the Texas Code of Criminal Procedure, Section 59.06 (c), state that asset forfeiture funds should be deposited with the county treasurer in the county depository in the manner in which county funds are generally handled.

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We recommend that all funds received by the Sheriff's office be accounted for in the Maverick County's official general ledger. Further, we recommend that records in support of Fund expenditures be maintained by the County auditor's office. This should improve the accountability and control of confiscated funds. The Sheriff's office may still maintain control and accountability over the confiscated funds under these conditions.

**2010 Expenditure Records**

Records in support of the 2010 disbursements totaling \$514,155 (\$79,418 in confiscated funds and \$434,737 of other programs) could not be located; as such, we could not audit such expenditures. In addition, the Sheriff Department indicated that computer files/records were deleted prior to the present Sheriff and his staff taking office in 2013.

We recommend that the Sheriff Department consider obtaining legal advice and or an investigation to ensure that no illegal destruction of public records occurred. Additionally, the Sheriff Department should establish record retention policies to ensure that all records are retained as required by federal, state and/or county laws.

**Comingling of Funds**

The Equitable Sharing program and the Equitable Sharing Agreement require that program funds not be commingled with other funds. The Equitable Sharing Agreement states "*The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds.*" Under the provisions of Texas Code of Criminal Procedure, Section 59.06(c), state asset forfeiture funds should be deposited with the county treasurer in the county depository in the manner in which county funds are generally handled.

We noted that the Sheriff Department received funds from various governmental entities including the Equitable Sharing Program funds from the US Department of Treasury and confiscated funds from the Maverick County District Attorney's Office, MRGDC 911 funds, and other sources. All such funds were deposited in one checking account titled "Confiscated Funds." No books of account were maintained, only Excel Spreadsheets were maintained for the years under review. The spreadsheets attempted to account for expenditures for each funding source; however, this was not auditable since check supporting documentation did not indicate the program/grant that the expenditure was charged to. In some cases, disbursements were posted to a particular program in the Excel spreadsheet column when funds had long been depleted. For example the disbursement schedules indicate that the Equitable Sharing program funds had been used up in 2011; however, checks were posted to that column through the end of 2011 causing a deficit of \$125,108. The cash balance of the Federal and State combined confiscated funds balance at September 30, 2012 was a deficit of \$167,481.

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We recommend that funds be separately accounted for as required by federal and state regulations. In addition checks and support documentation should indicate the program/grant that the expenditure is being charged to.

**Equitable Sharing Program Reporting- Federal Non Compliance**

The Equitable Sharing program requires that an annual report where the Agency Head [County Sheriff] and the governing Body Head [Maverick County Official] *"under penalty of perjury, the undersigned officials certify that they have read and understand their obligations under the Equitable Sharing Agreement and that the information submitted in conjunction with this document [the report] is an accurate accounting of the funds received and spent by the Agency [Sheriff's Office] under the Justice and/or Treasury Guides during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture."*

During our testing of the Equitable Sharing Agreement and Certification reports for the years 2010, 2011, and 2012, we noted that the expenditures reported do not agree with/or to the Excel spreadsheet that the Sheriff's Department uses to track expenditures. No documentation exists in support of the amounts reported. For 2012 the expenditures reported appear to be the amount of the receipts and not the actual expenditures. Differences in expenditures reported in the various years are noted below:

<b>Expenditures</b>			
<b>Year</b>	<b>Per Spreadsheet</b>	<b>Certification Reports</b>	<b>Difference Over (Under)</b>
2010	\$ 79,419.12	\$ 90,567.44	\$ 11,148.32
2011	324,876.31	171,468.88	(153,531.43)
2012	667,728.21	68,998.13	(598,730.08)

We recommend that future equitable sharing reports be based on the books of account. The reports should be audited by the County Auditor's Office and documentation in support of the figures reported should be retained.

**Budgets**

Chapter 59 of the Code of Criminal Procedure Forfeiture of Contraband requires proceeds awarded under this chapter to a law enforcement agency may be spent by the agency after a budget for the expenditure of the proceeds has been submitted to the commissioners court. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioner's court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioner's court or governing body at or after the time the proceeds are awarded.

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Federal Equitable Sharing program guidelines also requires that federal funds be budgeted. Per our inquiries, the Sheriff's Department does not prepare nor submits budgets to the County Commissioner's Court.

We recommend the Sheriff's Department implement a budget process of federal and state forfeiture funds received in the future.

**Procurement**

The equitable sharing program requires that rules and regulations of the local jurisdiction (the County) be followed. Based on the expenditures tested, we noted that the Sheriff Department does not have any written purchasing/procurement policies in place. We selected and tested fifty six (56) transactions. Nineteen (19) of the transactions for the purchase of goods or services should have followed state procurement regulations. We were unable to locate documentation to indicate that the County's procurement regulations were followed.

We recommend that the Sheriff's Department follow the same purchasing/procurement policies of Maverick County.

**Expenditures not Permissible**

We selected a sample of fifty- six (56) transactions of the Equitable Sharing Program to determine if charges were permissible based on the equitable sharing guidelines. Based on our testing thirty-five (35) of the fifty-six (56) expenditures tested appear not to be permissible based on the Equitable Sharing Program guidelines. The transactions that do not appear permissible are noted below:

- Three (3) credit card payments totaling \$3,379 were spent on gasoline, lodging, and meals. There was no supporting documentation indicating the business purpose of the charges.
- Twenty-two (22) checks totaling \$136,342 were paid to Maverick County for payroll costs. However, the payroll costs may not be properly charged to the Equitable Sharing Program since the Equitable Sharing Program had a deficit cash balance. Federal guidelines do not allow payroll expenses, except for temporary employees or for overtime pay.
- Six (6) instances were noted where employees received a payroll loan from the equitable sharing funds. Each check was made payable to an employee in the amount of \$1,000. Although the loans appear to have been repaid by the employees, lending funds is not a permissible use of equitable sharing funds.
- Four (4) checks issued in 2010 selected for testing did not have supporting documentation.

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- On November 8, 2010, a 2006 Dodge Ram truck was purchased from Auto Showplace for \$12,055. We were unable to locate documentation for this transaction. Further, as noted in the following finding, this vehicle is apparently being used by the county fire department.
- In 2011, \$15,981 of equitable sharing funds were spent on computer networking costs. This appears to be a normal cost of the County and does not appear to be a permissible use of equitable sharing funds.

We recommend that in the future the Sheriff Department personnel obtain training on confiscated fund guidelines. In addition, sufficient documentation should be retained to justify that the costs were spent on law enforcement activities allowable by program guidelines and applicable state laws.

**Vehicles**

Seventeen (17) vehicles were purchased during the three year audit period ended September 30, 2012 at a total cost of \$464,587. Our review noted the following:

- Eleven (11) of those vehicles were properly accounted for as active or no longer in use.
- A vehicle (2006 Dodge Ram 1500) is being used by the fire department. Such use does not appear to be a permissible use of funds. Generally funds must be used for law enforcement activities.
- Five (5) vehicles could not be accounted for by the Sheriff Department's staff. Three (3) of these vehicles were purchased from Caldwell County Chevrolet/Ford. Invoices containing vehicle identification could not be located or obtained from the vendor.

We recommend that the Sheriff department further investigate the location and ownership of the five missing vehicles. Further, future vehicles purchased with confiscated funds must be used for law enforcement activities.

**Chapter 59 Asset Forfeiture Reports**

Per our inquiries, Chapter 59, Asset Forfeiture Reports, were not filed by the Sheriff's Department for the 2010 to 2012 years. We noted that the Sheriff Department received \$506,238 in forfeiture funds during the three year period. Further, per the current Sheriff Department staff and inquiries to the State of Texas, no such reports were filed by the Maverick County Sheriff's Department from 2004 to 2012. These annual reports are required to be filed with the State Attorney General's Office in accordance with State law.

We recommend that the Sheriff's Department file reports required by State law.