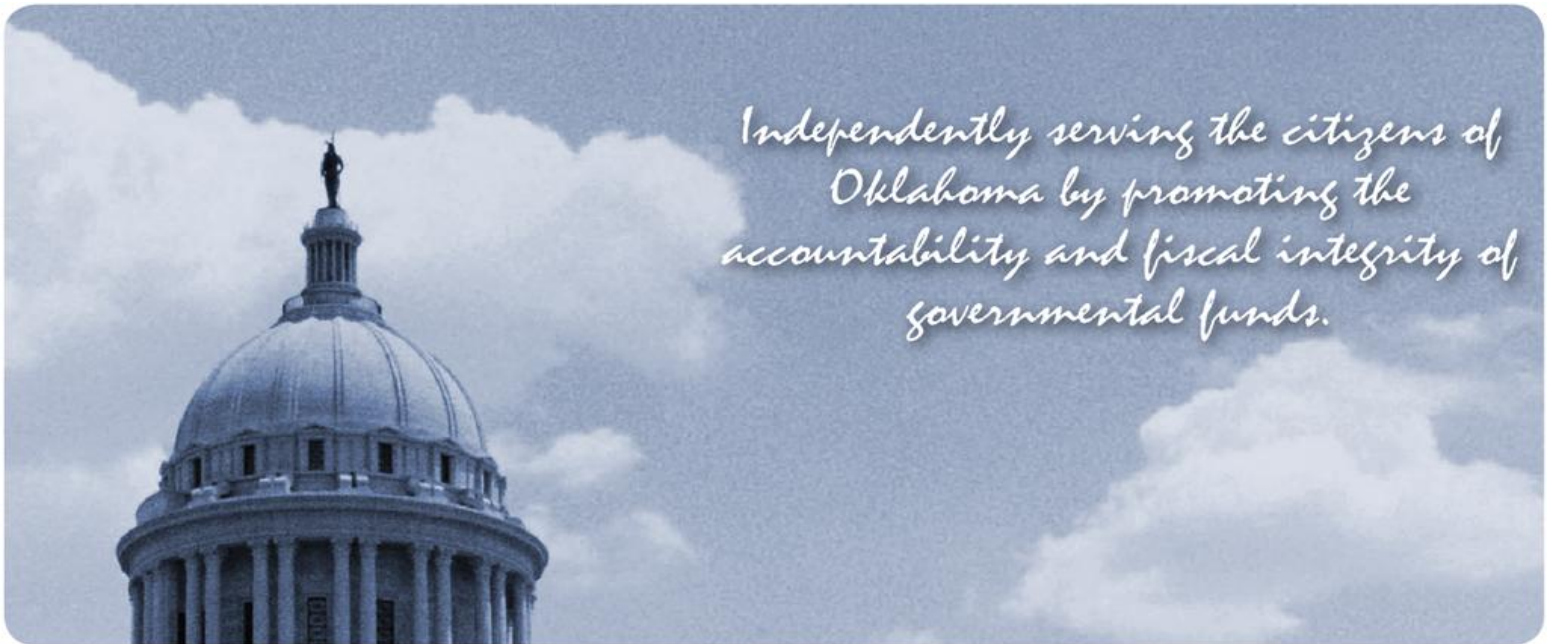


PETITION AUDIT REPORT

CITY OF KONAWA

For the period July 1, 2011 through December 31, 2013



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

CITY OF KONAWA
SEMINOLE COUNTY, OKLAHOMA
PETITION AUDIT REPORT
JULY 1, 2011 THROUGH DECEMBER 31, 2013

This publication, issued by the Oklahoma State Auditor and Inspector's Office as authorized by 74 O.S. § 212(L), has not been printed but is available on our agency's website (www.sai.ok.gov) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to 74 O.S. § 3105.B.



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

April 6, 2015

To the Petitioners and Citizens of the
City of Konawa:

Transmitted herewith is the Petition Audit Report for the City of Konawa.

Pursuant to your request and in accordance with the requirements of **74 O.S. § 212(L)**, we performed a petition audit with respect to the City of Konawa for the period July 1, 2011 through December 31, 2013.

The objectives of our audit primarily included, but were not limited to the concerns noted in the citizen petition. The results of this audit, related to these objectives, are presented in the accompanying report.

Because the investigative procedures of a petition audit do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City of Konawa for the period July 1, 2011 through December 31, 2013.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance. We also wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our engagement.

This document is a public document pursuant to the Oklahoma Open Records Act, in accordance with **51 O.S. § 24A.1, et seq.**

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gary A. Jones', is written over a light blue horizontal line.

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

TABLE OF CONTENTS

	Page
INTRODUCTION	1

OBJECTIVES

I. Possible misuse, mismanagement, or misappropriation of grant funds and other public funds, including but not limited to those intended for the repair, maintenance, and upgrades to the City’s water and sewer systems.....	2
II. Possible irregularities in the city purchasing policies and procedures, including but not limited to possible violations of the Public Competitive Bidding Act and potential conflicts of interest between city personnel and competing vendors.	5
III. Review possible discrepancies in utility billing records related to past due/delinquent accounts, adherence to city ordinances, and reconciliation	9
IV. Possible violations of the Oklahoma Open Meeting Act, Oklahoma Open Records Act, and Oklahoma Records Management Act	14
V. Possible irregularities in the issuance of citations, adjudication of municipal court matters, and lack of appropriate record keeping of the court’s legal processes	19
VI. Review City’s hiring practices and possible dual office holding with regard to the City Charter, ordinances, practices, or policies. Verify CLEET compliance of eligible personnel and review allegations of intimidation and unprofessional behavior by police officers	21
VII. Review the Cemetery Care Fund	25
VIII. Review City Council elections and position appointments	27

INTRODUCTION The City of Konawa, Oklahoma is organized as a statutory council-manager form of government as outlined in **11 O.S. § 10-101, et seq.**, which states:

The form of government provided by Sections 11-10-101 through 11-10-121 of this title shall be known as the statutory council-manager form of city government. Cities governed under the statutory council-manager form shall have all the powers, functions, rights, privileges, franchises and immunities granted, or which may be granted, to cities. Such powers shall be exercised as provided by law applicable to cities under the statutory council-manager form, or if the manner is not thus prescribed, then in such manner as the council may prescribe.

The Konawa Public Works Authority (KPWA) is a public trust organized under the provisions of **60 O.S. § 176, et seq.** to furnish utility services, to promote development of industry and to further the performance of any municipal functions. The Trustees of the KPWA are the same as the municipality of the City of Konawa.

The City Council and Authority Trustees as of December 31, 2013 were:

Virginia Simms, Mayor Ward One
Open Ward Two
LaTrelle Davis Ward Three
James Blackwood..... Ward Four
Tiffany Nunley At Large

In accordance with a petition verified by the Seminole County Election Board Secretary, the Office of State Auditor and Inspector has conducted a special petition audit of the City, primarily relating to the objectives listed in the accompanying *Table of Contents*.

The results of our inquiry are included in the following report and were prepared for the citizens and registered voters of the City of Konawa, along with public officials with oversight responsibilities.

Objective I **Possible misuse, mismanagement, or misappropriation of grant funds and other public funds, including but not limited to those intended for the repair, maintenance, and upgrades to the City’s water and sewer systems.**

Background

The City of Konawa has experienced ongoing problems with its aging water utility infrastructure in maintaining both water quality and quantity for its residents. The City has faced water pressure and storage issues requiring the City to issue “boil notices” when there have been reason to suspect that the water delivered to the public could be contaminated. In addition, the City has experienced several instances of complete water loss to its utility customers.

The concerns expressed to us were related to the lack of progress in addressing the City’s ongoing issues with their water system. There were no specific concerns communicated as it would relate to the misuse, mismanagement, or misappropriation of grant or other funds.

On August 13, 2010, the Oklahoma Department of Commerce (ODOC) awarded a Community Development Block Grant (CDBG) to the City of Konawa in the amount of \$245,840. The grant’s purposes included installing backup power for wells and the treatment plant, relining the underground storage tank and replacing approximately one mile of corroded main line. The funding period for the contract was August 13, 2010 through August 13, 2012.

From April 2011 through August 2011, the City incurred costs for the project totaling \$245,840, which included construction/repair costs totaling \$234,324.67, inspection costs of \$9,515.33, and \$2,000 in administrative fees.

On January 23, 2012, the Central Oklahoma Economic Development District (COEDD) approved a Rural Economic Action Plan (REAP) grant in the amount of \$49,000. The purpose of the grant was to replace the filter media at the water treatment plant, connect the backwash tank to the water treatment plant piping, extend well casing, and construct an elevated platform.

The City also received a (REAP) grant through the Oklahoma Water Resources Board (OWRB) to replace pipe at the well field and for the construction of two towers to raise the wellheads above the 100-year flood plain level. On February 25, 2013, \$98,435 in grant proceeds was deposited by the City. The \$86,344 in expenses incurred for the projects were as follows:

- \$3,499 in construction costs for the well towers,
- \$69,413 in construction costs for the well field transmission line,
- \$9,568 for engineering services,
- \$3,864 for inspection services.

On April 9, 2013, the final inspection was conducted and the project was completed.

There was \$12,091 in funds remaining from the project. On October 11, 2013, the City submitted a letter to OWRB requesting approval to use the remaining balance to reimburse the KPWA for expenses already incurred. The OWRB subsequently provided approval for the use of the remaining funds.

The City has applied for and/or received other grants or funding to address their water utility infrastructure and sewer issues.

Because the ODOC, COEDD, and OWRB ensure grant monies are used for their intended purpose, we did not perform additional procedures.

The ODOC, COEDD, and OWRB have procedures in place to ensure grant monies are used for their intended purpose.

- ODOC routinely performs monitoring visits to review contract files for compliance with financial and programmatic requirements. On January 12, 2012, the ODOC performed a monitoring visit to review files for Contract 14312 CDBG 10. The ODOC found no financial or programmatic problems that would require corrective action by the City.
- The \$49,000 COEDD grant was a reimbursement grant. The COEDD required invoices as proof of the expenses before releasing funds to the City of Konawa. This process of verification was confirmed.
- The OWRB has a requirement that the recipient must submit invoices and bank statements showing the expenditures upon completion of the project. This step provided reasonable assurance that the \$98,000 REAP grant proceeds were used for their intended purpose.

Finding

The City has significant issues with its water delivery infrastructure.

One of the overall concerns expressed to us was that although the City has obtained grants to fix the water system, they continue to experience system difficulties.

According to officials with the Oklahoma Water Resources Board (OWRB) Konawa has a 50 year old system that is worn out. OWRB officials stated the city is trying to hold the system together with patchwork and temporary fixes.

Objective II Possible irregularities in the city purchasing policies and procedures, including but not limited to possible violations of the Public Competitive Bidding Act and potential conflicts of interest between city personnel and competing vendors.

Background

Two specific purchasing concerns were brought to our attention by citizen petitioners, the construction of a canopy/balcony on the front of the City Hall building and the purchase of police cars for the City Police Department.

Sections 7-33 and 7-34 of the City Code define the process of purchasing and competitive bidding.

Sec. 7-33 – Council Prior Approval Required

Every contract for, or purchase of supplies, materials, equipment, or contractual services for more than Two Thousand Five Hundred Dollars (\$2,500.00) shall require the prior approval of the City Council; and under no circumstances may such contract or purchase be made without first obtaining the approval of the Council.

Sec. 7-34 Competitive Bidding

The City Purchasing Agent shall make every effort to create competitive conditions when purchasing supplies, equipment, or contractual services. All purchases should be made in such a way as to create the greatest savings for the City.

1. Small Purchases: Supplies, materials, equipment or contractual services whose cost does not exceed Two Thousand Five Hundred (\$2,500) in a single transaction. Small purchases may be made directly from local vendors; however, obtaining three (3) verbal/written quotes is preferred.
2. Medium Purchases: Supplies, materials, equipment or contractual services whose cost are greater than \$2,501 but less than \$25,001 shall require three (3) written quotes or bids.
3. Large Purchases: Supplies, materials, equipment or contractual services whose cost are greater than \$25,001 shall require advertising and a sealed bid process where bids are opened in a public meeting at a designated time and place.

Canopy Construction

The meeting minutes for the March 8, 2012, City Council meeting, reflect that the City considered three bids for the construction of a canopy for the City Hall building project:

1. “Dewayne Sexton/Thomas Aldrid” in the amount of \$16,650.
2. “Thomas Welding” in the amount of \$19,803.
3. “Armitage Welding” in the amount of \$21,275.

Finding

The City followed the provisions of City Code in contracting for the construction of the City Hall canopy project.



The Thomas Welding and Armitage Welding bids were submitted on what appeared to be company letterhead indicating a business name and telephone number. The bid reportedly submitted by Sexton consisted of a materials list dated March 2, 2012, quoted to Aldridge Metal Works, and contained no information as to the date of the bid or the name, address or phone number of the bidder.

The former city manager, who was present when the bids were opened, stated that all the bids were received in sealed envelopes and opened at the same time in front of the mayor.

The meeting minutes for March 8, 2012, reflected the Council voted on and approved the low bid from “Dewayne Sexton/Thomas Aldrid” in the amount of \$16,650. Subsequently, three purchase orders were issued to “Dewayne Sexton/Thomas Aldrid” in the cumulative amount of \$16,650.

Based on the records provided, it appears the City followed the provisions in the City Code for construction of the canopy which would have been considered to be a “medium purchase.”

Part of the concern surrounding the canopy project was that the son of Deputy City Manager Anita Aldridge was employed with the winning contractor Dewayne Sexton. Anita Aldridge confirmed that her son did work for Sexton at the time the awning was built.

Prohibited conduct is defined in **11 O.S. § 8-113** stating in part:

- A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in:
 - 2. Contracting with the municipality;
- C. Provisions of this section shall not apply where competitive bids were obtained consistent with municipal ordinance

The employment of Aldridge’s son on a City project, bid consistent with the City’s municipal ordinances, would not appear to be a violation of statute.

Police Car Purchase

Citizen concerns were presented that the City purchased police vehicles prior to being properly approved and that the vehicles had not been appropriately bid.

Finding

The police vehicle purchase was properly and timely approved by the City Council.

The meeting minutes for a Special Meeting held on December 23, 2013, reflected the following:

Motion made by Councilor Blackwood, and Second by Councilor Davis, to approve the lease/purchase of three police cars from Automax Hyundai with a purchase price of \$60,612.00 less trade in value of four combined police vehicles in the amount of \$13,500.00 with a total purchase price of \$47,112.00.
Aye: Blackwood, Davis, Nunley and Simms Nay:

The sales contract to Automax Hyundai for the three vehicles was dated December 26, 2013, subsequent to Council approval.

Finding

The Board did not follow City bid requirements in the purchase of police vehicles.

Records provided by the City revealed quotes from Ada Ford, Automax Hyundai, and from an unknown Dodge dealership.

The quote from Ada Ford for a 2014 Ford Escape and a 2014 Ford Fusion was faxed to the attention of “Jason” three hours before the city council meeting on December 23, 2013. The quote from Ada Ford did not include

any information on trade-in values. The quoted prices for the two vehicles were \$21,586 and \$20,572, respectively.

The Dodge dealership quote consisted of copies of the window stickers for a 2013 Dodge Dart and a 2014 Dodge Charger. The quote found in the city file was not dated and did not contain any dealership or contact information. There was no documentation of the consideration for the trade-in value of the vehicles.

Automax Hyundai submitted a faxed quote on December 19, 2013, on two Elantra's and one Veloster Turbo. The quote included the trade-in value of three Crown Victorias and a Chevrolet Tahoe. The quoted prices for the vehicles were \$18,851, \$18,802, and \$22,959; \$60,612 total, with a net cost of \$47,112, including trade-in consideration.

In the City Council Meeting of December 23, 2013, the Council identified two costs in the purchase of the vehicles, a 'before trade-in' purchase price of \$60,612 and an 'after trade-in' price of \$47,112. Both of these amounts would classify the purchase as being a "large purchase" as defined in City Code. As previously noted, City policy concerning purchasing requires "large purchases," those exceeding \$25,001, to be advertised, with sealed bids opened in a public meeting.

The police vehicles appeared to have been properly approved by the Council prior to completion of the transaction. However, the police car purchase should have been handled as a "large purchase" through sealed bids as defined in **City Code Section 7-34**.

Objective III Review possible discrepancies in utility billing records related to past due/delinquent accounts, adherence to city ordinances, and reconciliation.

Background

Two citizen petition concerns were communicated in relation to utility billing accounts. The first concern alleged a disparity in how overdue utility accounts were handled, asserting that some customers were given time extensions for payment of past due balances, while other customers had their utility services cutoff.

The second concern alleged that the City had charged customers a higher sewer rate prior to the rate increase having actually been enacted.

Overdue Accounts

The City Charter and the City’s “Application for City Services” define when bills are due and provide what policy or criteria exist for the termination of delinquent accounts.

Chapter 19 Section 19-7 of the City Charter states in relevant part:

In the event said bill is not paid by the 10th of each month, then the connection **may** be cut off without notice by the department; and in this event, an additional charge of Twenty-five Dollars (\$25.00) shall be added to said water bill for turning water on again. *[emphasis added]*

The City’s application for city services provides the following:

I fully understand that the bill for WATER, SEWER, GARBAGE & EMS is due by the 10th of each month.... After the 15th of each month, I fully understand that if my Utility Bill is unpaid, my household water will be disconnected...

Chapter 19 Section 19-1(b) of the City Charter provides:

It is the responsibility of the City Manager to see that it *[utility services]* is operated in a businesslike manner in accordance with Ordinance provisions and other policies adopted by the Council.

The use of the language in **Chapter 19 Section 19-7**, “may be cut off” combined with the language contained in **Chapter 19 Section 19-1(b)** that it is the responsibility of the City Manager to ensure the utility operates in a “businesslike manner” infers some level of discretionary judgment would be allowed in dealing with delinquent utility accounts.

Finding

The City is not consistent in dealing with past due accounts.

The City has allowed customers with delinquent accounts to execute a written agreement, called a Deferred Payment Agreement. These agreements include an acknowledgement of the delinquent amount along with the manner, or additional payment amount the customer agrees to make in order to bring the balance current.

During an interview with the City Manager, he stated that the use of payment agreements for past due accounts was stopped in February 2013, when he took over as interim city manager. In our review, we found payment agreements dated subsequent to February 2013. The City Manager said he was unaware that City employees were continuing to enter into agreements with customers with delinquent accounts.

Finding

The City was inconsistent in levying the \$25 disconnect fee.

As noted previously, **Chapter 19 Section 19-7** of the City Charter provides that in the event utilities are cut off a \$25 disconnect fee may be assessed.

We reviewed a sample of utility accounts that had been assessed a \$25 disconnect fee, noting several inconsistencies in the application of the fee. On June 11, 2012, Account #01-3080.13 had a \$0 balance. No payments were posted in July or August; on August 24, 2012, a \$25 disconnect fee was assessed to the account. At the time the fee was applied, the account had an outstanding balance of \$114.60.

Account #01-5321.18 had a \$0 balance on July 10, 2012. On August 24, 2012, a \$25 disconnect fee was assessed to the account. At the time the fee was assessed, the account had an outstanding balance of \$60.29.

In both of these instances the City was within their authority to disconnect the accounts and assess a fee, as both accounts were past due and both had an outstanding balance that remained unpaid after the 10th of the month, as defined in **Chapter 19 Section 19-7** of the City Charter.

However, while these accounts were assessed a disconnect fee, we found other accounts with significantly higher past due balances that had not been disconnected or were not assessed the \$25 disconnect fee.

For example, on March 30, 2012, Account #02-2280.00 had an outstanding balance of \$948.84. By September 11, 2012, no additional payments had been posted to the account and the balance had increased to

\$1,440.64. Despite no payments having been posted to the account during this five month period, the City did not assess the \$25 disconnect fee or disconnect the account.

Similarly, on May 11, 2011, a \$285 payment was posted to Account #03-1120.07 leaving an outstanding balance of \$341.29. No additional payments were posted to the account when, on January 24, 2012, the account balance had reached \$1,243.43. At that time, eight months later, the account was disconnected and assessed the \$25 fee.

The Deferred Payment Agreements for delinquent balances ranged from \$69.60 to a high of \$3,487.81.

Finding

The City did not enforce the terms of the Deferred Payment Agreements.

Account #02-2280.00 had an agreement with the City allowing a \$50 payment every two weeks “until caught up.” According to the agreement dated March 22, 2011, the account had a delinquent balance of \$315.98, although the account records reflected the account balance was actually \$645.09.

Between March 22, 2011, and September 24, 2012, the delinquent balance increased to \$1,240.64. Despite the agreement requiring the account holder to make \$50 additional payments “until caught up,” the account was allowed to continue *increasing*. The agreed upon \$50 payments were not made and at no point between March 22, 2011, and September 24, 2012, was the account assessed a disconnect fee.

The City entered into an agreement with the account holder for account #01-3481.07 on September 29, 2011. At the time of the agreement, the account had a past due balance of \$294.05. The customer agreed to pay \$200 that day and pay future regular bills, plus an additional \$25 “until caught up.”

A \$200 check payment was posted to the account on the day of the agreement, September 29, 2011. However, on November 1, 2011, the account reflected a returned check debit in the amount of \$220.00 leaving an account balance of \$478.78. A few days later, on November 8, 2011, the City entered into another agreement with the customer who made a \$300 cash payment leaving an account balance of \$178.78.

According to the new agreement, the customer was to pay the current bill plus an additional \$20 “until caught up.” Between November 8, 2011, and January 24, 2012, the account balance grew to \$348.49. On January 24,

2012, the City assessed a \$25 disconnect fee. The same day a cash payment was posted in the amount of \$300 leaving an account balance of \$48.39.

On November 16, 2012, the City entered into a 3rd agreement with the account holder. The customer paid \$200 the same day and was to pay \$20 per month towards the remaining \$128.69 balance. Between November 16, 2012, and January 11, 2013, the account balance rose to \$287.84 without the assessment of a disconnect fee and despite having not followed the payment agreement.

Finding

The City cannot provide written documentation for payment agreements.

In April 2014, the City provided an accounting of past due accounts which reflected that 11 delinquent accounts currently had payment agreements. Of these 11 accounts, we could only locate two of the corresponding agreements in the records provided by the City.

According to City officials, some of the agreements were verbal agreements rather than written, or agreements were documented in notes or in some manner other than being an official written “Deferred Payment Agreement.” As such, these agreements were not filed as part of the centralized method of keeping the agreements in a three-ring binder.

Finding

Payment agreements are being made by City officials without the knowledge of the City Manager.

City officials conveyed the lack of consistency in payment agreements stemmed from having too many employees entering into the agreements. Agreements were being made by whoever was working at the time a customer came in to discuss their bill.

When we reviewed the written agreements provided by the City, we noted the agreements had been signed by eight different representatives of the City. We have no way to know how many other verbal agreements may have been entered into on behalf of the City and who may have made those agreements.

Having multiple employees entering into payment agreements results in undocumented agreements being made and agreements made without the knowledge of the City Manager, the person ultimately tasked with the responsibility of ensuring the utilities are operated in a businesslike manner. City officials agreed the City has not been consistent in managing delinquent accounts.

We recognize the need to consider extenuating circumstances concerning past due or delinquent accounts on a case-by-case basis. The City's policy appears to allow exceptions and appears to have contemplated the need for exceptions by the use of the word "may" be cut off rather than "shall" be cut off.

In order to prevent future inconsistencies we recommend the City adopt specific written procedures concerning the evaluation and review of delinquent accounts. We recommend the City also designate employees authorized to enter into payment agreements.

Sewer Rates

Some utility customers maintain their own water wells and do not receive water from the City, although they are connected to and use the City's sewer system. These are called "sewer only" customers. It was alleged that sewer rates that were increased under a new ordinance were charged to "sewer only" customers prior to the rate taking effect.

City Ordinance No 13-450 was passed and approved March 19, 2013, to take effect April 2013. The ordinance states in relevant part:

- (3) Residences having their own water wells shall be charged a flat rate of \$28.50 for sewer usage.

Rates in effect prior to April 2013 were defined in **Chapter 19-12(3) of the City Charter and Code** which states in part:

- (3) Residences having their own water wells shall be charged a flat rate of Twenty One Dollars and Twenty Five Cents (\$21.25) for sewer usage.

Finding

Billing rate increases were properly applied.

We reviewed the billing statements for both February and March 2013, and identified twenty-eight (28) accounts with the billing code "SEWER – NO WATER." Each of the accounts had been charged the correct \$21.25 per month for this two month period.

We found no evidence that the City had charged the higher \$28.50 rate until after the effective date of April 1, 2013.

Objective IV Possible violations of the Oklahoma Open Meeting Act, Oklahoma Open Records Act, and Oklahoma Records Management Act.

Background The concerns defined in the petition consisted of three separate but related elements.

1. Compliance with the Oklahoma Open Meeting Act.
2. Compliance with the Oklahoma Open Records Act.
3. Compliance with the Oklahoma Records Management Act.

Open Meeting Act

One specific concern of the petitioners was related to a town hall meeting held on January 29, 2013. It was alleged that the public was not allowed to attend this meeting, causing a violation of the Oklahoma Open Meeting Act.

Through interviews with current and past city officials we determined there were actually two meetings held on January 29, 2013. The first meeting was described as a ‘meet and greet’ gathering with the key parties introducing themselves to one another.

City officials do not deny that the public was prevented from attending the first meeting. The concern was that because a quorum of the board was present, the City had possibly violated the Oklahoma Open Meeting Act.

The Open Meeting Act, specifically **25 O.S. § 304**, provides the definition of a meeting as used in the Act as follows:

“Meeting” means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a videoconference. Meeting shall not include informal gatherings of a majority of the members of the public body when no business of the public body is discussed.

According to both current and past City officials, although a quorum of City council members were present at the introduction meeting, no business was conducted.

Although the “meet and greet” gathering may not have met the definition of a meeting, as defined in **25 O.S. § 304**, the City did create an agenda for the meeting as shown below:

- | |
|---|
| <ol style="list-style-type: none">1. Call to Order & Roll call2. Invocation3. Pledge of Allegiance4. Introduction of City Council and City Staff to Senator Susan Paddock, ODEQ, OWRB, USDA Rural Development, ORWA and COEDD staff. prior to the Town Hall Meeting5. Adjourn |
|---|

City officials may have contributed to the confusion concerning the introduction meeting by notifying the public of a planned meeting through the creation of an agenda. However, the meeting itself does not appear to be an official meeting as defined in statute. The meeting appeared to have no purpose other than to provide an opportunity for introductions to take place with no business or actions being discussed.

We also reviewed other City Council meeting agendas and minutes for the period July 2011 through December 2013, for compliance with the Open Meeting Act. In our review we noted the following issues.

Finding

Actions taken under new business did not appear to satisfy the statutory definition of new business.

25 O.S. § 311A(9) states, “New business”, as used herein, shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of posting.

The June 27, 2012 meeting minutes, reflected the following motions under “New Business”:

- A. Motion made by Councilor Blackwood, seconded by Councilor Davis, to accept bid from Professional Ambulance Sales and Service cost of 2012, Model Type III, Ford remount \$79,802.00, to be paid with County Sales Tax monies.
- B. Motion made by Councilor Blackwood, seconded by Councilor Davis to approve payment to the Pump Shop, invoices #9481 & 10143, for the 2011-12, Reap Grant.
- C. Motion made by Councilor Blackwood, Second by Councilor Davis, to reclassify to exempt and Wage adjustments on the following: City Manager, Police Chief, Assistant Chief, EMS/EM Management Director, Deputy Clerk/Court Clerk.

The awarding of a bid, approval of invoices and reclassifying employees does not appear to satisfy the criteria of new business as defined by **25 O.S. § 311**.

Finding

In the minutes reviewed, there were instances in which motions were seconded but no final vote was recorded, or where neither a motion nor a vote was recorded.

25 O.S. § 305 requires that, “In all meetings of public bodies, the vote of each member must be publicly cast and recorded.” In reviewing minutes we noted the following:

- In all but six of the meeting minutes reviewed, there was a motion made and seconded to adjourn the meeting but no vote was recorded.
- The minutes for the September 8, 2011 meeting, reflected a motion that was seconded with no vote for an agenda item.
- Although an agenda item in the September 13, 2012 meeting was to consider and take action to name the new Emergency Management Director, the minutes did not reflect a motion, or vote.
- In the minutes of the May 9, 2013 meeting no motion or vote for agenda items #6 and #8 was taken.
- The minutes for the February 14, 2013 meeting, reflected a motion and second to enter into executive session but no vote was recorded.

Finding

Agendas did not identify the items of business and purpose of the executive sessions as required by law.

25 O.S. § 311 requires that agendas identify the items of business and purpose of an executive session and state specifically the provision of **25 O.S. § 307** authorizing the executive session.

The meeting agendas for June 27, 2012, February 14, 2013, May 16, 2013, and October 16, 2013, did not state the specific provision of statute authorizing the executive session.

Open Records Act

An allegation was presented that the City had failed to provide records in compliance with the Oklahoma Open Records Act. We were provided the name of one citizen who had purportedly requested information that had not been provided.

Finding

We found no violations of the Open Records Act.

We contacted the citizen in question who stated that she had requested documentation from City Clerk Wanda Lowry two or three years ago. The request was a verbal request and according to the citizen, Clerk Lowry said she would have to find the records. The citizen could not recall if she ever returned to city hall to retrieve the requested records or not. Clerk Lowry had no recollection of the citizen having ever requested any records.

No further issues concerning the Open Records Act were noted.

Records Management Act

The Records Management Act (the Act) is defined in **67 O.S. § 201 et.seq.** The purpose of the Act is defined in **67 O.S. § 202** as follows:

The Legislature declares that programs for the efficient and economical management of state and local records will promote economy and efficiency in the day-to-day record-keeping activities of state and local governments and will facilitate and expedite government operations.

67 O.S. § 207 of the Act provides:

The governing body of each county, city, town, village, township, district, authority or any public corporation or political entity whether organized and existing under charter or under general law **shall promote the principles** of efficient records management for local records. Such governing body shall, **as far as practical, follow the program**, established for the management of state records. The Administrator shall, insofar as possible, upon the request of a governing body provide advice on the establishment of a local records management program. *[emphasis added]*

Oklahoma Attorney General Opinion **2001 OK AG 46** also addresses the Act as it relates to local governments and concludes, in relevant part:

Although the Archives and Records Commission has no authority over records and archives of political subdivisions of the State, the Records Management Act, 67 O.S. 1991 & Supp. 1999, §§ 201 to 215, requires State political subdivisions to follow the program established for the management of State records "as far as practical." What is "practical" is a **question of fact beyond the scope of an Attorney General Opinion. 74 O.S. Supp. 2000, § 18b(A)(5).** *[emphasis added]*

Attorney General Opinion **2001 OK AG 46** states the practicality of compliance with the Act is a “question of fact.” The generally accepted legal definition of a “question of fact” is a matter that is to be determined by a jury.

Finding

We found no violations of the Records Management Act.

Under these criteria there are no definitive requirements for municipality records management. Throughout our audit we requested numerous documents and records which the City was able to provide. Since no specific allegations were presented by the citizen petitioners as to the City’s non-compliance with the Records Management Act, no further review was done in relation to records management.

Objective V **Possible irregularities in the issuance of citations, adjudication of municipal court matters, and lack of appropriate record keeping of the court's legal processes.**

Background This petition objective was not supported with detailed allegation information. As such, we reviewed a sampling of court docket cases for record keeping procedures and for consistency of fines applied. The one specific concern presented, that a court reporter was not present during municipal court proceedings was addressed.

Finding **We noted two instances in which the court docket did not reflect the disposition of the case, and four instances in which the case number was not reflected on the court docket.**

We reviewed sixty-five cases from the January 2013 through December 2013 court dockets, to determine if fines were consistent with the fine schedule in the City Code and dispositions had been recorded. Based on the procedures performed we noted the following:

- There were two instances in which the docket did not reflect the disposition of the case.
- There were four instances in which the case number was not reflected on the docket.

With the exception of these findings, the dispositions of cases were recorded on the court docket and fines charged appeared consistent with City Code.

Finding **Irregularities in the issuance of citations is beyond the scope of the State Auditor and Inspector's role related to audits requested by petition.**

Petitioners questioned the actions and activities of the City's police force in relation to when City officers do or do not issue citations.

74 O.S. § 212(L), relating to audits being conducted as a result of a citizen's petition, provides:

The State Auditor and Inspector shall audit the **books and records** of any subdivision of the State of Oklahoma upon petition signed by the requisite number of voters registered in the subdivision and meeting the requirements set out in this subsection [*emphasis added*].

The concern expressed essentially requested the State Auditor to perform an audit of the officer's discretionary judgment on when, or if, a citation should or should not have been issued. Such an evaluation is beyond the scope of our engagement.

Finding

The City Charter does not require a court reporter for municipal court proceedings.

According to **Article V Section 32 of the Konawa City Charter:**

There shall be a municipal judge, who shall be an officer of the city appointed by the city manager for an indefinite term. The council may suspend or remove the municipal judge or an acting judge at any time by a vote of a majority of all its members. The municipal judge shall have original jurisdiction to hear and determine all cases involving offences against the charter and ordinances of the city; provided that the council by ordinance may create a minor violations bureau with authority to dispose of cases arising out of designated minor violations, such as minor traffic and parking violations, on request of accused persons who desire to plead guilty and pay fines and costs. **The municipal judge shall keep a record of all proceedings of the municipal court, of the disposition of all cases, and of all fines and other money collected.** The style of all processes shall be in the name of the city. The municipal judge may administer oaths, make and enforce all proper orders, rules and judgments, and punish for contempt. [Emphasis added]

Based on the above language, the City Charter provides that the municipal judge shall be responsible for keeping a record of the court proceedings. The City Charter does not appear to require a court reporter for municipal court proceedings.

Objective VI **Review City’s hiring practices and possible dual office holding with regard to the City Charter, ordinances, practices, or policies. Verify CLEET compliance of eligible personnel and review allegations of intimidation and unprofessional behavior by police officers.**

Background

The specific concerns expressed to us in regards to this objective consisted of:

1. The City Manager was holding two positions within the City, serving as both the city manager and the police chief.
2. Some officers employed by the City may not have been in compliance with Council on Law Enforcement Education and Training (CLEET) requirements.
3. The City’s police force has acted improperly in their conduct and behavior.

Dual Office Holding

In a letter to the City, dated January 29, 2013, Police Chief Cris Epperly submitted his resignation notifying the City he was resigning effective February 28, 2013. According to Joe Leeds, Rita LoPresto, the City Manager at the time, made the resignation effective immediately and appointed Assistant Police Chief Joe Leeds to the police chief position.

On February 14, 2013, the City Council voted on and approved terminating City Manager LoPresto. During the same meeting the Council voted on and approved Joe Leeds as the interim city manager. On the same day, the now “interim city manager” Leeds, reinstated Cris Epperly to the police chief position and Leeds reverted back to his original position as assistant chief.

In May 2013, Chief Epperly resigned from the police department. During an interview Leeds stated that when Chief Epperly resigned he did not, as the interim city manager, appoint himself to the police chief position but rather assumed those duties as the next in command in the police department.

Finding

The City Council may have violated the City Charter by authorizing pay for the interim city manager while he also served as police chief.

The language in both the City Charter as well as state law, as noted below, provides that one person may serve in more than one position within the City government. The City Charter also allows for the city manager to hold more than one position although he “may not receive compensation for service in such other offices or positions.”

Article VII Section 43 of the City Charter provides, in relevant part:

[T]he city manager may appoint himself, or the council may appoint or elect him, to other positions in the city government, subject to any regulations which the council may make by ordinance; but he may not receive **compensation** for service in such other offices or positions. [*emphasis added*]

Title 11 O.S. § 8-106 states in relevant part:

A person may hold more than one office or position in a municipal government as the governing body may ordain. A member of the governing body shall not receive compensation for service in any municipal office or position other than his elected office.

We reviewed the City Charter to determine if **Article VII Section 43**, which prohibits the city manager from receiving pay for two positions, makes a distinction between the “city manager” and the “interim city manager.”

Article III Section 20 of the City Charter provides for the position of “acting city manager” in the event the city manager should be absent, suspended, or terminated. While **Article III Section 20 of the City Charter** provides for the appointment of an “acting city manager” it is silent as to any distinction between the powers or restrictions that may differentiate between the city manager and the “interim” city manager.

Following the resignation of Chief Epperly in May 2013, the meeting minutes for the June 25, 2013 Special Meeting reflected the Council voted on and approved the following motion:

Motion made by Councilor Brewer and Second by Councilor Davis, for Joe Leeds, to be paid an annual salary of \$22,500.00 to be Police Chief and to be paid Interim City Manager annual salary to be \$22,500.00. When Joe Leeds decides to no longer be Interim City manager the Police Chief salary will be renegotiated.

Mayor Virginia Simms was not present at the June 25, 2013, meeting. According to Mayor Simms, when she later learned of the June 25, 2013 action by the Council, she was concerned the action may have conflicted with the City Charter.

As a result of the potential conflict the Council held a Special Meeting on October 16, 2013, and corrected the action. The meeting minutes reflected the following motion and approval:

5. Motion made by Councilor Blackwood, Second by Mayor Simms, for Joe Leeds to remain Interim city Manager with salary to remain \$45,000 per year.
Aye: Blackwood, Brewer, Davis and Simms Nay: None

As of January 2015, Leeds continues to serve as both the interim city manager and the police chief.

Council on Law Enforcement Education and Training

70 O.S. § 3311 created the Council on Law Enforcement Education and Training (CLEET). CLEET is responsible for ensuring that peace officers in the State of Oklahoma are in compliance with certain requirements related to training and education.

Under the provisions of this law, CLEET may suspend the certification of any peace officer in the state for failure to adhere to the defined training requirements.

Because of the condition of the records maintained by the police department, the City had some difficulty in providing a list of full-time and reserve officers. We instead obtained a listing from CLEET of the 54 officers that reportedly had served with the City of Konawa at various times during the July 1, 2011 through December 31, 2013, audit period.

Finding

Two of the officers specifically named by the petitioners were in compliance with CLEET requirements.

A specific concern was raised by the petitioners in relation to two City Police Officers. The records provided by CLEET reflected both of the Officers in question were in compliance with CLEET requirements during their employment with the City.

Finding

Two officers' certifications were suspended for not meeting training requirements. Corrective action was taken and both officers were reinstated.

A specific concern was expressed about Chief Leeds in relation to his CLEET certification status. On February 13, 2014, CLEET sent notification to Chief Leeds that he had not met continuing education requirements for 2013. Chief Leeds made up the training deficiency and paid a reinstatement fee, as a result, his Final Order of Suspension and Final Order of Reinstatement was completed and approved on the same day, April 21, 2014.

Reserve Officer Chris Bittle's certification was suspended on March 26, 2012, for having not completed the required firearms training. Officer Bittle subsequently received the training and his certification was reinstated on April 17, 2012. Officer Bittle subsequently resigned from the force on May 18, 2012.

Police Conduct

The petitioners expressed concerns that the City's police officers actions and activities with respect to issuing citations and making arrests were possibly inappropriate. Petitioners alleged that police officers were writing citations that were unwarranted, as well as issuing citations to only a select group of individuals or not issuing citations to specific individuals.

Finding

Irregularities in police officer conduct is beyond the scope of the State Auditor and Inspector's role related to audits requested by petition.

Issues related to intimidation and unprofessional behavior by the City's police officers is beyond the scope of the State Auditor and Inspector's role related to audits requested by petition. As stated earlier and reiterated here, **74 O.S. § 212(L)** provides that:

The State Auditor and Inspector shall audit the **books and records** of any subdivision of the State of Oklahoma upon petition signed by the requisite number of voters registered in the subdivision and meeting the requirements set out in this subsection [*emphasis added*].

Allegations of intimidation and unprofessional behavior by law enforcement authorities does not fall within the purview of reviewing or auditing the "books and records" of any subdivision of the State of Oklahoma.

Objective VII Review the Cemetery Care Fund.

Background A concern was brought to our attention that cemetery funds had been improperly transferred to other City accounts. It was also alleged that a donation made to the Cemetery Fund had not been handled appropriately.

On further inquiry, it was determined the donation in question was approximately 10 years prior. Because this donation was before our audit period and prior to any record retention requirements, we were unable to address this specific donation. We did review the Cemetery Fund financial activity for the period July 2011 through December 2013.

Finding **The allegation that the City was transferring monies to and from the Cemetery Care Fund was unsubstantiated.**

We reviewed a detail account ledger for the Cemetery Care and Donation Fund which provided a breakdown of revenues and expenditures for the cemetery. This report showed no transfers in or out. We also reviewed bank statements for the Donation & Cemetery Care account and noted no transfers in or out of the account.

We found no evidence that monies had been transferred inappropriately to and from the Cemetery Care Fund.

Finding **The City has complied with the statutory 12.5% capital outlay requirement in the Cemetery Care Fund.**

The City combines donations and other revenue for various city departments, including the cemetery, into a donation and cemetery care fund which is maintained in a separate bank account.

Although the collections are combined into one fund, the City accounts for the monies separately. The City also deposits a portion of revenue from grave openings into a cemetery savings account.

During the period July 2011 through December 2013, a total of \$11,401 in cemetery revenue was recorded. The following sources of income comprise this revenue:

- \$3,215 in donations
- \$367 from an overpayment on a vendor account
- \$525 from the sale of a mower
- \$375 from lot sales
- \$6,911 from grave openings
- \$8 interest

Because donations are combined with other revenue sources we could not trace expenditures related to specific donations, therefore we reviewed expenditures as a whole.

From July 2011 through December 2013, there was \$12,512 in expenditures designated for the cemetery. Cemetery expenditures were classified as follows:

- \$8,328 for materials and supplies, of which \$5,841 was expended for a zero turn mower,
- \$664 was expended for equipment repairs,
- \$1,980 was expended for grave openings and closings,
- \$1,540 was used for cemetery software.

Expenditure requirements for cemetery care are set forth in **11 O.S. § 26-109**, which provides:

In all municipally owned cemeteries where lots are sold or charges made for interments, **not less than** twelve and one-half percent (12.5%) of all monies received from the sale of lots and interments shall be segregated and set aside as a permanent fund to be known as the “Cemetery Care Fund”. The Cemetery Care Fund principal shall be expended for purchasing lands for cemeteries and making capital improvements as defined in Section 11-17-110 of this title, if necessary. The balance of the fund may be invested in the manner provided by law for investment of municipal funds. The interest from the investments shall be used for the same purposes as the principal or in improving, caring for, and embellishing the lots, walks, drives, parks, and other necessary improvements on such cemeteries. [emphasis added]

Capital improvements are defined in **11 O.S. § 17-110**, which provides in relevant part:

For the purpose of creating a capital improvement fund and expending money there from, capital improvement shall mean all items and articles, either new or replacements, not consumed with use but only diminished in value with prolonged use, including but not limited to...machinery, equipment...

Revenues from the sale of lots and grave openings (interments) totaled \$7,286 for the period. Based on the requirements of **11 O.S. § 26-109**, the City would have been required to expend “not less than” \$911 on capital improvements or purchasing land.

The \$5,841 purchase of the zero turn mower would have satisfied the 12.5% statutory requirement set forth in **11 O.S. § 26-109**.

Objective VIII Review City Council elections and position appointments.

Background

A citizen alleged that the City was not conducting elections for vacant council positions but rather, a council member would resign, allowing the sitting council to appoint a person of their choosing to complete the term.

It was also alleged that an elected council member was not allowed to take office in a timely manner.

The Board consists of five elected positions comprised of one person from each of the four Wards of the City and a fifth person elected “at-large” or from the City as a whole. All five of the positions are elected for a three year term.

According to records provided by the Seminole County Election Board the City held elections for five positions during the audit period:

- The election for Wards 3 and 4 was held on January 11, 2011. The members elected ran unopposed.
- The election for the ‘at-large’ position was held on February 14, 2012. Three candidates filed for the position.
- The election for Wards 1 and 2 was held on January 8, 2013. The members elected ran unopposed.

Finding

We found no abuse by the Council related to Board appointments.

We reviewed the meeting minutes for the City Council for the audit period¹. The minutes reflected the Council voted on and approved five member appointments during the period.

We have summarized the circumstances of each appointment as follows:

- On November 10, 2011, the Board voted on and accepted the resignation of Councilor-at-large LaDonna Bryce. During the same meeting the Council voted on and approved James Blackwood to replace Bryce. This position was subsequently filled in the election of February 14, 2012, by Thomas Brewer, effective May 2012.
- On May 10, 2012, the Board voted on and accepted the resignation of Ward 4 Councilman Bob Rounsaville. During the same meeting the Board voted on and appointed James Blackwood to the Ward 4 position.

¹ July 1, 2011 through December 31, 2013.

- On June 27, 2012, the Board voted on and approved the removal of Ward 2 Councilman Larry Chesser for failure to meet training required by statute. At the time of his removal, Chesser had missed the last six consecutive meetings.
- On September 13, 2012, the Board voted on and accepted the resignation of James Blackwood from the Ward 4 position.
- On October 11, 2012, the Board voted on and approved Lindsey Johnston to fill the Ward 2 position last held by Larry Chesser.
- On March 13, 2013, the Board voted on and approved the reappointment of Blackwood to the unexpired term of Ward 4.
- On December 12, 2013, the Board voted on and approved the resignation of Councilman-at-large Tom Brewer. At the same meeting the Board voted on and approved Tiffany Nunley to the Councilman-at-large position.

When the Board accepted the resignation of Ward 4 Council member James Blackwood on September 13, 2012, the Board only had three members, the minimum required to have a quorum and conduct City business.

If one of those members were to be unavailable to attend a meeting the Board would be unable to conduct City business due to the lack of a quorum. If one of those three remaining members were to become incapacitated the Board would not only be unable to conduct the City's business, but would also be unable to form a quorum to vote on and replace the incapacitated member.

In four-of-five instances, the vacancies on the Council were created due to the resignation of a Council member. The single exception to that was the Board vote to remove Ward 2 Council member Larry Chesser on June 27, 2012, due to having failed to meet statutory training requirements.

It is within the clearly defined powers of the Council to fill vacancies on the Board by appointment. Based on our review it appears the Board only made appointments in an effort to ensure the Council would continue to have a quorum for future meetings. We are unable to substantiate the concern that the Board misused the appointment process.

Finding

We found no basis for a concern related to the denial of a duly elected member to participate in meetings.

Elections for the Council members occur on the second Tuesday of January in both odd and even numbered years to fill the expired terms.

The term of office for an elected council member begins the first Monday in May following the election.

During the audit period we noted the following elections and terms:

- On February 14, 2012, in accordance with a Resolution passed by the Board, an election was held and Thomas Brewer was elected as Councilman-at-large. Brewer was sworn in on May 21, 2012.
- An election was to be held on January 8, 2013, for Wards 1 and 2. Virginia Simms (Ward 1) and Lindsey Johnston (Ward 2) ran unopposed. Simms was the incumbent for Ward 1 and was already a sitting member of the Board. Johnston, who had previously been appointed to the Ward 2 position, resigned from the Board prior to the elected term of her office starting. The Ward 2 position remained vacant through the end of the audit period.

The petitioners expressed a specific concern related to Councilman Frank Shirley having been elected but not being allowed to serve on the Council until summer.

The Council passed Resolution 2013-05 calling for an election to be held on January 14, 2014, to elect members for Wards 3 and 4. As noted previously, the City Charter provides the terms of office of a councilman “shall begin at 7:30 o’clock P.M. on the first Monday in May following their election.”

We obtained meeting minutes documenting that Councilman Elect Frank Shirley was sworn in as a Council member for Ward 3 on May 5, 2014, the first Monday in May.

We found no basis for the concern that duly elected Council members were improperly denied participation in council meetings.

DISCLAIMER

In this report there may be references to state statutes and legal authorities which appear to be potentially relevant to the issues reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.



OFFICE OF THE STATE AUDITOR & INSPECTOR
2300 N. LINCOLN BOULEVARD, ROOM 100
OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV