



OKLAHOMA SECRETARY OF STATE

Operational Audit

For the period January 1, 2014 through June 30, 2022

Cindy Byrd, CPA
State Auditor & Inspector

**Audit Report of the
Oklahoma Secretary of State**

**For the Period
January 1, 2014 through June 30, 2022**



September 25, 2023

TO THE OKLAHOMA SECRETARY OF STATE

We present the audit report of the Oklahoma Secretary of State for the period January 1, 2014 through June 30, 2022. 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 wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.) and shall be open to any person for inspection and copying.

Sincerely,

A handwritten signature in blue ink that reads "Cindy Byrd".

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

**Oklahoma Secretary of State
Operational Audit**

Background

The Office of the Secretary of State (the Agency or SOS) is the official repository and filing agency of all official acts of the governor, legislation and state questions, business entity filings, state agency rules and regulations, agriculture lien filings, notary public applications, athlete agency registrations, and bonds of public officials and employees.

The Governor appoints, with confirmation by the Oklahoma Senate, the Secretary of State to serve a four-year term that runs concurrently with the term of the Governor. The Agency currently has a staff size of 29 that consists of administration, legal, and information services.

The following table summarizes the Agency's sources and uses of funds for fiscal years 2021 and 2022 (July 1, 2020 through June 30, 2022).

Sources and Uses of Funds for FY 2021 and FY 2022

	2021	2022
Sources:		
Domestic Limited Liability Co.	\$ 10,282,003	\$ 10,480,335
Foreign Limited Liability Co	1,564,765	1,775,825
Credit Card/Notary Fees	1,662,446	1,700,179
Copies/Certified Documents	739,083	772,007
Charity/Registration/Permit	232,053	225,112
Printing Incl. Sale of Publctns	103,750	97,880
Other Filings-Domestic/Foreign	91,772	87,755
Total Sources	\$ 14,675,872	\$ 15,139,093
Uses:		
Personnel Services	\$ 3,210,704	\$ 2,985,296
Administrative Expenses	1,301,754	1,012,353
Professional Services	739,773	755,910
Assistance, Payments to Local Govn'ts	110,075	30,110
Property, Furniture, Equipment	21,086	14,667
Travel	934	2,183
Transfers Out	6,500,000	7,800,000
Total Uses	\$ 11,884,326	\$ 12,600,519

Sources: Oklahoma state accounting system (unaudited, for informational purposes only)

LLC Sources are registration fees from companies inside and outside Oklahoma. Transfers Out represent funds swept from agency accounts by the legislature.

**Scope and
Methodology**

Our audit was conducted in response to 74 O.S. § 212, which requires the State Auditor and Inspector’s office to audit the books and accounts of all state agencies whose duty it is to collect, disburse, or manage funds of the state.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessment of materiality and risk for the period January 1, 2014 through June 30, 2022. To assess risk and develop our audit objective, we held discussions with management, surveyed employees, and performed data analysis and prior audit follow-up. These procedures included:

- Reviewing revenue, expenditure, and asset-related data from the state accounting system and gathering information from Agency personnel to assess the related financial processes and trends for any notable risks.
- Reviewing the Agency’s HR All Actions Report from the state accounting system to assess personnel changes.
- Reviewing a selection of payroll approval documentation for payroll changes that occurred during the audit period and gathering information regarding the payroll approval processes.
- Reviewing inventory listings and discussing the inventory process with staff.
- Reviewing pertinent statutes, regulations, and contracts, and assessing related risks.

Two objectives related to revenue transfers and payments classified as program reimbursements were developed as a result of the procedures performed, as discussed in the body of the report. No other significant risks or findings were identified.

We utilized sampling of transactions to achieve our objectives. To ensure the samples were representative of the population and provided sufficient, appropriate evidence, the random sample methodology was used. We identified specific attributes for testing each of the samples and when appropriate. We did not project our results to the population.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, errors or fraud may occur and not be detected. Also, projections of any evaluation of internal control to

future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Internal Control Considerations

The Government Accountability Office (GAO) emphasizes the importance of internal controls at all levels of government entities. Their *Standards for Internal Control*¹ outline the five overarching components of internal control: the control environment, risk assessment, information and communication, monitoring, and detailed control activities. Any component considered significant to our audit objectives is assessed during our procedures and included as appropriate in this report.

The *Standards for Internal Control* underscore that an internal control system is effective only when the five components of internal control are operating together in an integrated manner. They also stress that documentation is a necessary part of an effective internal control system and is required to demonstrate its design, implementation, and operating effectiveness.

¹ *Standards for Internal Control in the Federal Government*, or the “Green Book,” sets standards and the overall framework for an effective internal control system in federal agencies and is treated as best practices for other levels of government. Last update 2014, accessible online at <https://www.gao.gov/products/GAO-14-704G>.

OBJECTIVE I Determine whether revenues were transferred to the appropriate funds in accordance with 62 OS § 34.57 and the State Accounting Manual.

Conclusion Revenues were transferred to the appropriate funds in accordance with 62 OS § 34.57 and the State Accounting Manual.

Objective Methodology To accomplish our objective, we performed the following:

- Documented our understanding of the revenue processes through discussion with management and review of documentation
- Reviewed a random sample of 12 monthly query reports from the Agency’s internal revenue system (12% of audit period months) and documents supporting adjustments to the transfers that were made in the state accounting system to determine the revenues were transferred to the appropriate fund.

No findings were identified as a result of these procedures.

OBJECTIVE II Determine whether payments classified as program reimbursement and litigation costs were allowable under statutes 74 O.S. §§ 581 and 1008.

Conclusion Certain payments classified as program reimbursement and litigation costs were not allowable under statutes 74 O.S. §§ 581 and 1008. See discussion below.

Objective Methodology To accomplish our objective, we performed the following:

- Evaluated reimbursement and litigation payments reported in the state accounting system and identified payments to the Governor’s office for further procedures.
- Reviewed the contract supporting the reimbursement and litigation payment and related invoices and discussed the payments with SOS staff.
- Reviewed the details of 74 O.S. §§ 581 and 1008, as well as 74 O.S. 2011, § 6, 74 O.S. Supp. 2012, § 1207(B), 74 O.S. § 10.3, and A.G. Opinion 00-54, 279.

FINDINGS AND RECOMMENDATIONS

Payments for Governor’s Special Counsel Do Not Comply with State Statute A Memorandum of Understanding (MOU) between the SOS and the Office of the Governor (OG), states that the OG has retained services² for special counsel on the Native American Affairs pursuant to 74 O.S. 2011, § 6. It should be noted that the Secretary of State, Brian Bingman, also serves as the State’s Native American Liaison under 74 O.S. Supp.2012, § 1207(B). The MOU indicates that its purpose is to provide the State of Oklahoma and its citizens with the most efficient and responsive services possible, and that state entities on occasion enter into agreements that allow both parties to receive necessary services to carry out the mission of their respective agencies.

The MOU further states that the OG will provide the legal services³ and will invoice the SOS on a monthly basis for the cost and expenses. Payments for the legal counsel were paid directly by the OG, and then the SOS reimbursed the OG for an amount up to and no more than \$10,000 each month. The SOS paid a total of \$90,000, classified as program reimbursement and litigation costs, to the OG for legal services associated with the MOU. We reviewed invoices submitted by the legal counsel to the OG, and they did not include details of the service that was provided, only that the invoice was regarding special counsel for Native American

² The contract for the legal services were between the Governor’s Office and Ryan Leonard, PLLC.
³ Service Agreement effective November 1, 2020 between the Governor’s Office and Ryan Leonard, PLLC.

Affairs. One invoice did include mileage reimbursement for a roundtrip to Tulsa for a McGirt Victims Forum. Through additional research, we found a news article from October 30, 2020, where Governor Kevin Stitt announced the hiring of attorney Ryan Leonard to serve as Special Counsel for Native American Affairs. The article stated, "In his role, Leonard will assist the Governor and his administration on issues arising from the US Supreme Court's recent decision in the McGirt v. Oklahoma, through which the Court ruled the Creek Nation reservation still exists within the State of Oklahoma."

Although Secretary Bingman holds the position of Secretary of State and Cabinet Secretary for Native American Affairs, the funding related to his positions is only for the operations of the Secretary of State's Office. The Cabinet Secretary of Native American Affairs does not receive funding of any type. Also, according to 74 O.S. § 10.3, the Cabinet Secretary position does not provide the authority to grant or delegate purchasing within an agency. Further, A.G. Opinion 00-54, 279, suggests the functions of cabinet secretaries "are no more than giving opinions and performing clerical work." Therefore, as cabinet secretaries under the plain language of the statute generally are not authorized to adjudicate rights or possess other powers associated with an agency, they are not agencies.

Title 74 O.S. §§ 581 and 1008 - which the contract cites as the legal allowance for the contract - allow state agencies to contract with each other for one to provide to the other its own labor and/or equipment. Under this MOU, the Governor's Office is not providing to the Secretary of State's Office labor or equipment, and the SOS is not receiving any benefit from this contract.

Recommendation:

Management should ensure they are receiving a service or benefit for payments that are made to other agencies to ensure compliance with 74 O.S. §§ 581 and 1008.

Views of Responsible Officials:

The Secretary of State's letter of response is available on the next page.

Auditor's Response:

We would like to clarify the service or benefit should be provided by the party with whom the Agency is contracting.



Brian Bingman
*Oklahoma Secretary of State
and Native American Affairs*

September 13, 2023

The Honorable Cindy Byrd
Oklahoma State Auditor and Inspector
123 State Capitol
2300 North Lincoln Boulevard
Oklahoma City, Oklahoma 73122

Dear Auditor Byrd,

This shall serve as the Office of the Secretary of State's response to the single finding identified in your office's draft Audit Report for the period of January 1, 2014, through June 30, 2022.

As more particularly described below, the Office of the Secretary of State ("Office") did receive services and benefits from Ryan Leonard and complied with state statute.

The payments for Mr. Leonard's services from the Office were in compliance with state statute and made pursuant to a valid Memorandum of Understanding ("MOU"). The MOU was reviewed, edited, and approved by multiple lawyers in the Office of the Attorney General, which was contracted to provide legal services to the Office.

Historically, the Secretary of State has served as Oklahoma's primary representative to foreign governments and tribal governments. This is why, for example, the International Protocol office was located within the Secretary of State's office as recently as 2021. And, more specifically, the Office has previously employed a Deputy Assistant of Native American Affairs.

Mr. Leonard helped the Office fulfill its duty of representing the state to other governments in a variety of ways. This included meeting with tribal leaders and tribal delegations from a wide range of tribal governments during the term of the MOU. Secretary Bingman and staff were kept apprised of Mr. Leonard's interactions at weekly and bi-weekly meetings where the office would provide Mr. Leonard additional direction. While Secretary Bingman and Mr. Leonard did, from time to time, appear jointly on behalf of Oklahoma, it was not uncommon for Mr. Leonard to appear in the Secretary's absence.

The agency will continue to work with the Attorney General's office to ensure all Memorandums of Understanding between the office and other agencies remain in compliance with applicable law.

Sincerely,

A handwritten signature in blue ink that reads "Brian Bingman".

Brian Bingman
Secretary of State and
Native American Affairs

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STATE AUDITOR & INSPECTOR



Cindy Byrd, CPA | State Auditor & Inspector

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