



CITY OF BLACKWELL

Investigative Audit Report

July 8, 2021

Cindy Byrd, CPA
State Auditor & Inspector

**City of Blackwell
Kay County, Oklahoma**

**Investigative Audit Report
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**TO THE HONORABLE BRIAN HERMANSON, DISTRICT ATTORNEY,
DISTRICT 8**

Presented herein is the investigative audit report of the City of Blackwell.

The goal of the State Auditor & 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 addressed to, and is for the information and use of, the District Attorney, as provided by statute. This report is also a public document pursuant to the Oklahoma Open Records Act, 51 O.S. §§ 24A.1, *et seq.*

Sincerely,



CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR





City of Blackwell

Investigative Audit Report

Why This Audit Was Performed

In accordance with 74 O.S. § 212(H), District Attorney Brian Hermanson requested the State Auditor & Inspector's office perform an investigative audit of the City of Blackwell. The objective was to evaluate "contracts entered with the existing mayor without following the proper bidding laws."

Objectives

The following objectives were developed to respond to the request of the District Attorney:

1. Determine if transactions occurring between the City of Blackwell and G&C Concrete, a company co-owned by Mayor T. J. Greenfield, were in violation of law.
2. Determine if the Blackwell City Council was aware of and approved these transactions.
3. Report on other pertinent issues relative to the audit request.

City Officials (June 2016 – June 2020)

- Mayor – T.J. Greenfield
- Council Members – Tom Beliel, Richard Braden, Steve Marquardt, Jon Webb
- City Managers – Chip Outhier,¹ Janet Smith²
- City Attorney – Bryce Kennedy³

¹ Until November 2018

² From January 2019 – April 2021

³ A contracted position.

Background

The “existing mayor” as referred to in the District Attorney’s request was T.J. Greenfield. Greenfield was first elected to the Blackwell City Council in April 2015, was appointed mayor in June 2016, was elected mayor in February 2017, and remained the mayor through June 2020. In June 2020 Greenfield lost his bid for re-election.

Greenfield co-owned the G&C Concrete Company (G&C Concrete) from its inception until it closed in April 2018. The City made purchases from G&C Concrete prior to Greenfield becoming a councilor and continued purchasing from G&C Concrete after his election, through December 2017. The appropriateness of these transactions appeared to be questioned at times by city employees and city officials, including Mayor Greenfield, but we found no evidence that any definitive action was taken, or official legal opinion obtained, to support the purchases.

In the process of completing our objectives, it became evident that the City of Blackwell had been embroiled in conflict, strife, and political turmoil for many years. The political climate appeared toxic at times and the hostility between council members and selected city officials made it difficult to obtain the unbiased information required to complete our investigation. A significant portion of the information received during our investigation was conflicting, which significantly hindered our ability to confirm the exact circumstances surrounding the transactions being investigated.

The findings and details of this investigation were focused specifically on the objectives defined to meet the District Attorney’s request.

Summary of Findings

- *Transactions between G&C Concrete and the City of Blackwell, totaling \$129,489.50, appeared to violate Okla. Const. Art. X § 11. Mayor T. J. Greenfield directly profited from payments made to G&C Concrete, a company in which Greenfield was a co-owner.*
- *G&C Concrete purchases were paid for with a city credit card. The City Council did not receive copies of credit card statements for review or approval. Although there were some indicators the Council should have had knowledge of the G&C Concrete purchases, council members represented they had no knowledge the City was improperly doing business with G&C Concrete.*
- *The City of Tonkawa purchased assets from G&C Concrete as part of a business liquidation auction and sold them to the City of Blackwell without first taking*

possession of the items. The transactions created a straw purchase⁴ by Tonkawa on behalf of Blackwell. The purchase indirectly profited Greenfield and appeared to be a violation of the Constitution.

- *Two previous reports have been issued concerning the transactions between the City of Blackwell and G&C Concrete. Both concluded that the purchases profited Greenfield and were apparent violations of law.*

Details on What Was Found

1. Determine if transactions occurring between the City of Blackwell and G&C Concrete, a company co-owned by Mayor T. J. Greenfield, were in violation of law.

Finding Transactions between G&C Concrete and the City of Blackwell, totaling \$129,489.50, appeared to violate Okla. Const. Art. X § 11.

Mayor T.J. Greenfield, co-owner of G&C Concrete, was elected to the City Council in April 2015. Between the time Greenfield was elected and the time G&C Concrete closed in April 2018, the City paid Greenfield’s company \$129,489.50.

Calendar Year	Number of Transactions	Total
2015	20	\$26,735.60
2016	32	\$47,858.90
2017	33	\$54,895.00
Total	85	\$129,489.50

The purchases of material and labor from G&C Concrete by the City directly profited Mayor Greenfield, in apparent violation of Okla. Const. Art. X § 11 which states in part:

The receiving, directly or indirectly, by any officer of the State, or of any county, city, or town [...] of any interest, profit, or perquisites, arising from the use or loan of public funds in his hands [...] shall be deemed a felony.

The conflict of interest resulting from an elected city official conducting business with the municipality they serve, that directly or indirectly profits the official, is further established in 2001 OK AG 32 which states in part:

⁴ A “straw purchase” is any purchase where a buyer agrees to buy goods or services for someone who is often unable to purchase the items themselves.

The constitutional prohibition is plain and unconditional. No city official may receive, directly or indirectly, any interest, profit, or perquisite that arises from the use of public funds in his hands.

Title 21 O.S. § 341 also addresses the matter stating in part:

Every public officer of the state or any county, city, town [...] who either [...] Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in the officer's or person's hands or money to be raised through an agency for state, city, town, district, or county purposes [...] shall upon conviction, thereof, be deemed guilty of a felony [...] in addition thereto, the person shall be disqualified to hold office in this state [...].

According to Greenfield, he questioned the legality of his company continuing to do business with the City after he was elected but was told by City Manager Outhier it was allowable under 11 O.S. § 8-113.⁵

2. Determine if the Blackwell City Council was aware of and approved these transactions.

Finding ***G&C Concrete purchases were paid for with a city credit card. The Council did not receive copies of credit card statements for review or approval and council members⁶ represented they had no knowledge the City was improperly doing business with G&C Concrete.***

City Ordinance *Article II Sec. 2-22* requires all claims against the City be accompanied by a purchase order and approved by the City Council. The ordinance states in part:

Sec. 2-22. Accounts and claims.

Bills and accounts against the city may be considered or allowed at any meeting of the city council. All claims against the city shall be fully itemized and shall be accompanied by a purchase order issued by the city clerk. No account or claim shall be paid unless audited and allowed by the city clerk; provided, however, that the city clerk is authorized to pay the following taxes and invoices as they become due, without a purchase order or further approval of the city council:

Except as enumerated above, no account or claim shall be paid unless audited and allowed as set forth above and payment is approved by the city council. A complete record of claims and accounts paid, with or without a purchase order, shall be maintained by the city clerk. All claims and accounts shall be paid by check signed by the mayor and attested by the city clerk.

⁵ See 11 O.S. § 8-113 in its entirety at Attachment 2.

⁶ Council members Webb, Braden, Beliel and Marquardt all claimed they had no firsthand knowledge of the G&C Concrete purchases at the time they occurred.

City of Blackwell Investigative Audit

Between 2014 and 2017, more than 40 employees utilized city credit cards incurring costs in excess of \$1.9 million. None of the credit card charges were accompanied by purchase orders or approved by the City Council.

Credit card purchases were considered “direct payables.”⁷ As “direct payables,” credit card transactions were paid “directly” from invoices and statements instead of being paid after purchase orders were approved, as required by ordinance. Credit card payments were also recorded as “Handwritten Checks” in the accounting software resulting in the payments being excluded from the *Requisition Registers*. The *Requisition Registers* listed each requisition/purchase order and were routinely presented to the City Council for approval prior to meetings. Credit card payments were not part of the *Requisition Register* approval process nor were they approved separately.

2/06/2018 4:56 PM		DIRECT PAYABLES CHECK REGISTER				PAGE: 1	
PACKET:	06019	Direct Payables					
VENDOR SET:	01	AP VENDOR SET					
BANK:	AP	ACCOUNTS PAYABLE CLEARING					
VENDOR	I.D.	NAME	CHECK TYPE	CHECK DATE	DISCOUNT	AMOUNT	
37242		CARD SERVICES - UMB					
	I-DECBILLJAN18PMT	CARD SERVICES - UMB	H	1/19/2018		56,589.46	067412 56,589.46
** BANK TOTALS **			NO#	DISCOUNTS	CHECK AMT	TOTAL APPLIED	
REGULAR CHECKS:			0	0.00	0.00	0.00	
HANDWRITTEN CHECKS:			1	0.00	56,589.46	56,589.46	
PRE-WRITE CHECKS:			0	0.00	0.00	0.00	
DRAFTS:			0	0.00	0.00	0.00	
VOID CHECKS:			0	0.00	0.00	0.00	
NON CHECKS:			0	0.00	0.00	0.00	
CORRECTIONS:			0	0.00	0.00	0.00	
BANK TOTALS:			1	0.00	56,589.46	56,589.46	

Credit Card Payment – Check 67412

City of Blackwell Pooled Cash Account P.O. Box 350 Blackwell, OK 74631		IDENTIFICATION NUMBER XXXX XXXX 6500 0010		DATE 1/19/18	CHECK NUMBER 67412	NET AMOUNT **\$56,589.46**
FIFTY SIX THOUSAND FIVE HUNDRED EIGHTY NINE & 46/100						
PAY TO THE ORDER OF		CARD SERVICES PO BOX 875852 KANSAS CITY MO 64187-5852		 		

⁷ “Direct payables” were payment requests that did not require a purchase order.

City of Blackwell Investigative Audit

Mayor Greenfield's company, G&C Concrete, was paid with the City's credit card. From June 2016 through April 2018, Greenfield co-signed⁸ the credit card payment checks and was aware the credit card purchases were not being presented to the Council for approval. Other council members⁹ stated they were not aware the City was conducting business via credit card with G&C Concrete.

In June 2017, the City Council approved two payments to G&C Concrete that were mistakenly included on the *Requisition Register* as purchase orders (#17-62263 and #17-62112.) The purchase orders were eventually voided, and the charges were subsequently paid as one credit card transaction totaling \$776.25. However, the inclusion of these purchase orders on the *Requisition Register* suggested the Council had some knowledge the City was conducting business with G&C Concrete. There was also other underlying evidence that the Council should have had knowledge of the City doing business with G&C Concrete. During 2016 and 2017, the Council was briefed on multiple construction projects where G&C Concrete was the provider of materials.

REQ.#	VENDOR #	VENDOR NAME	DESCRIPTION	STAT	DEPT#	P.O.#	ORDERED	AMOUNT
17-62255	01-37684	HUMBAR CONTRACTING INC.	APP#1 -BASIN 10	N	ADM	17-62255	6/30/2017	62,337.60
17-62256	01-37684	HUMBAR CONTRACTING INC.	APP#2 - BASIN 10	N	ADM	17-62256	6/26/2017	85,496.85
17-62257	01-36190	TPI BILLING SOLUTIONS LLC	POSTAGE PURCHASED	N	VARIOUS	17-62257	6/30/2017	1,944.71
17-62258	01-37713	UTILITY HELP NET INC	FOUNDRY CONVERSION	N	ELECTRIC	17-62258	6/30/2017	4,207.50
17-62259	01-37508	BLUE CROSS BLUE SHIELD OF	BC/BS JOHNSTON	N	UTILITY	17-62259	6/14/2017	67.56
17-62260	01-37369	MONSOON CONSULTANTS	IRRIGATION MATTERS	N	ADM	17-62260	6/23/2017	675.00
17-62261	01-11250	GALAXIE BUSINESS EQ INC	VARIOUS ISSUES	N	VARIOUS	17-62261	6/28/2017	730.00
17-62262	01-11250	GALAXIE BUSINESS EQ INC	VARIOUS ISSUES	N	PIRE	17-62262	6/28/2017	85.00
17-62263	01-30540	G & C CONCRETE	FAIRGROUNDS CONCRETE	N	ADM	17-62263	6/28/2017	362.25
17-62264	01-32890	SOONER HEATING & AIR LLC	SENIOR CENTER MAIT	N	ADM	17-62264	6/29/2017	276.00

17-62110	01-37698	STAPLES	IPADS FOR COUNCIL	N	COUNCIL	17-62110	6/27/2017	1,974.00
17-62111	01-37498	HD SUPPLY WATERWORKS	RE STOCK PARTS	N	WATER	17-62111	6/27/2017	1,217.00
17-62112	01-30540	G & C CONCRETE	FAIRGROUNDS- CONCRETE	N	ADM	17-62112	6/22/2017	414.00
17-62113	01-18660	FARHA WHOLESALE CO	SEN CIT. SUPPLIES	N	ADM	17-62113	6/23/2017	33.59
17-62114	01-12040	BLACKWELL JOURNAL TRIBUNE	LIBRARY AD IN PAPER	N	LIBRARY	17-62114	6/26/2017	60.00

Bidding

The City Charter required the Council to approve all contracts. Additionally, any contract of \$5,000 or more was to be advertised and awarded to the lowest and best bidder.

Sec. 6. - Contracts involving more than \$5,000.00; procedure for letting; contracts under \$5,000.00.

All contracts involving an expenditure of \$5,000.00 or more shall be made by the city council only after the council shall have first procured specifications therefor, and before any such contract is made the council must cause a notice to be published in the official city paper setting forth for what purpose the expenditure is to be made and calling for sealed bids; and the contract shall be let only after the bids have been made and then only to the lowest and best bidder.

⁸ Checks were co-signed by the mayor and city clerk.

⁹ Steve Marquardt, Tom Beliel, and Richard Braden

City of Blackwell Investigative Audit

On October 19, 2017, the Council awarded bids for concrete, sand, and rock materials. G&C Concrete, along with three other companies, submitted bids.

Greenfield presented the following *Business Relationships Affidavit*¹⁰ with his G&C Concrete bids, improperly referencing 11 O.S. § 8-113¹¹ as justification for G&C Concrete's ability to do business with the City.

TJ Greenfield of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer or other party to the project is as follows:
I am the Mayor of Blackwell. However I am allowed to submit a bid pursuant to 11-8-113

The October 19, 2017, council minutes reflected the City Council was advised by legal counsel that the "Mayor, or any council member can bid on any project as long as there are two bids and it is publicly bid." This statement mirrors 11 O.S. § 8-113(C) which provides an exception to a city official engaging in business with the municipality they serve if competitive bids are obtained. The minutes of the meeting reflected the following:

Consider accepting all bids for Concrete and Authorize the Mayor to execute contract if appropriate. The City Attorney recommended taking the lowest bidder. The Mayor, or any council member can bid on any project as long as there are two bids and it is publicly bid. The recommendation is to take the lowest responsible bidder. Motion was made by Webb and seconded by Beliel to consider accepting lowest bid for Concrete from PC and Authorize the Mayor to execute contract if appropriate. Roll yeas: Greenfield, Webb, Beliel, and Marquardt. Nays: None. Motion Carried. Absent: Braden

The bids presented on October 19, 2017, resulted in three bid items awarded to G&C Concrete. After October 19, 2017, and prior to the closing of G&C Concrete in April 2018, the City purchased \$17,855.86 in materials from G&C Concrete based on the bid amounts awarded. The meeting minutes reflected the following bid awards.

Consider accepting all bids for Sand and Rock and authorize the Mayor to execute contract if appropriate. Accepting lowest responsible bids for Sand and Rock and authorize the Mayor to execute contract if appropriate. Motion was made by Webb second by Beliel to accept the lowest responsible bidder on each item following the bid sheet,
1 ½ Crusher Run: delivered, G & C @ \$19.00, picked up, G & C @ \$19.00.
Fill sand: delivered, G & C @ \$11.00, picked up, Sober Bros. @ \$6.00.
River Sand: delivered, Sober Bros @ \$14.50 picked up, Sober Bros @ \$6.75.
¾ Clean Rock: delivered, Diemer @ \$23.00 picked up, G&C @ \$24.00.
Grey Screenings, delivered, G & C @ \$18.00 picked up, G & C @ \$18.00.
Roll yeas, Webb, Beliel, and Marquardt. (Greenfield abstained which is a nay vote.) Nays: Greenfield, Motion Carried. Absent: Braden

¹⁰ See complete Affidavit at Attachment 1.

¹¹ See 11 O.S. § 8-113 in its entirety at Attachment 2.

Competitive bids are defined in 11 O.S. § 8-113(C) as an allowable exception to the prohibited conduct statute along with other exceptions as defined in Section B and F. These exceptions appear to conflict with the Okla. Const. Art. X § 11 and 21 O.S. § 341 which both clearly define that the receiving, directly or indirectly, of any interest, profit, or perquisites from the use of public funds by a public officer is unallowable. Bidding the materials and services purchased by the City from G&C Concrete did not appear to constitute compliance with the constitution or statute.

Even if one assumed incorrectly that 11 O.S § 8-113 overrode the constitutional provision previously cited, transactions between the City and G&C Concrete, totaling \$111,633.64, were still conducted without meeting the bid requirement cited in 11 O.S. § 8-113(C).

City of Blackwell Purchases With G&C Concrete	
Total Purchases	\$129,489.50
Purchases Bid	(\$17,855.86)
Purchases Not Bid	\$111,633.64

3. Report on other pertinent issues relative to the audit request.

Finding The City of Tonkawa purchased assets from G&C Concrete as part of a business liquidation auction and sold them to the City of Blackwell without first taking possession of the items. The transactions created a straw purchase¹² by Tonkawa on behalf of Blackwell. The purchase indirectly profited Mayor Greenfield and appeared to be a violation of the Constitution.

In April 2018, G&C Concrete sold equipment and materials in a business liquidation auction. On April 10, the City of Tonkawa purchased 116 concrete blocks and two snowplow blades at the auction. On April 17, seven days later, the Tonkawa City Council voted to dispose of all the blocks and one of the snowplows as surplus.

City of Tonkawa Council Minutes - April 17, 2018

City Manager presented a **Surplus of Concrete Blocks and Authorize City Manager to dispose at Best Price**
 Jack Evans made a motion to approve the Surplus of Concrete Blocks and Authorize City Manager to dispose at Best Price. Rick Allan seconded the motion.
 The following voted Aye: Charles Conaghan, Jack Evans, Kenneth Smith, Glenn Cope, and Rick Allan.

City Manager presented a **Surplus of 8 foot Snow Plow and Authorize City Manager to dispose at Best Price**
 Glenn Cope made a motion to allow the City Manager to Surplus of 8 foot Snow Plow and sell for the Best Price. Jack Evans seconded the motion.
 The following voted Aye: Charles Conaghan, Jack Evans, Kenneth Smith, Glenn Cope, and Rick Allan.

¹² A “straw purchase” is any purchase where a buyer agrees to buy goods or services for someone who is often unable to purchase the items themselves.

On April 23, the City of Blackwell issued Purchase Order 18-64174¹³ for \$5,113.50 to take ownership of these items and received an invoice¹⁴ from the City of Tonkawa on the same date. The purchase of the concrete blocks and snowplow from Tonkawa was approved in the May 3 Blackwell council meeting as part of the consent agenda, Mayor Greenfield voted yes on the purchase.

According to Blackwell's Street Department Director, Chuck Anderson, Blackwell took possession of the concrete blocks and the snowplow *directly* from G&C Concrete's location. It appears the City of Tonkawa never took possession of these items after they were purchased from G&C Concrete.

City officials presented several accounts of the G&C Concrete auction purchases.

- 1) Anderson stated that Blackwell's City Manager Chip Outhier instructed him to look at the items *prior* to the auction and inform him if he wanted anything for the Street Department.
- 2) Tonkawa City Manager Kirk Henderson¹⁵ stated he purchased the items at auction and sold them to Blackwell because Outhier requested he make the purchase and because the items were for the county fairgrounds which the City of Tonkawa also used. Henderson also stated that, Bryce Kennedy, legal counsel for both Tonkawa and Blackwell, told him the sale of items to Blackwell was permissible. Henderson and Outhier both acknowledged they discussed the purchase of these items *prior* to the auction.
- 3) Per Kennedy, he was "not comfortable" with the auction purchase but believed at the time that the statutes¹⁶ did not apply because there was public notice of the auction, which ensured competitive prices. Kennedy also stated that if Blackwell bought surplus items from Tonkawa "it would not be a direct violation of the statute."
- 4) According to Outhier,¹⁷ he bought the items after he "talked to the council members." However, council members Beliel, Braden, Marquardt, and Webb all stated they did not know about the transactions at the time they occurred. Outhier said that Kennedy stated that "in no way" could Blackwell purchase the items *directly* from G&C Concrete's auction.
- 5) Mayor Greenfield stated that he did "not know how the business transpired."

¹³ See Purchase Order at Attachment 3.

¹⁴ See Invoice at Attachment 4.

¹⁵ Prior to becoming Tonkawa's city manager, Henderson was Tonkawa's fire chief at the same time Outhier was Tonkawa's city manager.

¹⁶ 11 O.S. § 8-113

¹⁷ Outhier was the previous city manager of Tonkawa.

Outhier acknowledged the City could not buy directly from G&C Concrete so he utilized the City of Tonkawa to make the purchase on Blackwell's behalf. The auction sales directly profited Greenfield and appeared to violate Okla. Const. Art. X § 11 and 21 O.S. § 341 which both state that no public officer may receive, directly or indirectly, any interest, profit, or perquisite that arises from the use of public funds in their hands.

Finding ***City of Blackwell officials did not follow charter requirements when engaging with outside attorneys to conduct inquiries into the City's transactions with G&C Concrete.***

McMorrow-Love Review

Between October 2018 and February 2019, Margaret McMorrow-Love¹⁸ conducted an independent review of issues related to G&C Concrete. McMorrow-Love invoiced the City \$2,738.59 for her work. Meeting minutes did not reflect council discussion or approval for the services provided by McMorrow-Love.

City Charter, *Article III Section 6*, expressly provides that all contracts¹⁹ involving an expenditure of less than \$5,000.00 be made by city council only after "the council shall have first procured specifications." The meeting minutes did not reflect council discussion or approval of an agreement with McMorrow-Love.

On March 1, 2019, McMorrow-Love issued a report²⁰ addressing her "*Review of Issues Related to G & C Concrete.*" The report was addressed to legal counsel Bryce Kennedy and stated that the independent review had been conducted for the City of Blackwell at the request of Kennedy and Outhier.

McMorrow-Love's report stated, "...the documents produced pursuant to the Open Records request clearly reflect that the City continued to do business with G & C Concrete after Mr. Greenfield had been elected Mayor."

Haynes Investigation

On March 6, 2019, then City Manager Janet Smith emailed council members that it was her "recommendation that council appoint an independent Special Counsel to further investigate, inform and make recommendations" to the City following McMorrow-Love's review. On March 7, 2019, the City Council entered into Executive Session to discuss the hiring of a Special Counsel. The matter was tabled at that time.

¹⁸ An Oklahoma City attorney who had previously conducted legal work for the City.

¹⁹ A contract is defined in 15 O.S. § 1 as "an agreement to do or not to do a certain thing."

²⁰ See McMorrow-Love's report at Attachment 5.

One month later, on April 4, 2019, the Council voted 3-2²¹ to appoint R. Stephen Haynes as Special Counsel²² with payment for services “not to exceed \$5,000.00.”

Marquardt made a motion seconded by Beliel to appoint R. Stephen Haynes, at the cost of \$150.00 per hour, not to exceed \$5,000.00, as Special Legal Counsel to conduct investigations into allegations of improper contracts and /or purchases by the City from Blackwell Municipal Officers and /or employees (in violation of Title 11, O.S., Section 8-113, et seq.,) in addition to other possible violations of State and Municipal laws/ordinances as they may relate to financial transactions, accounting and improper payments, and further investigate the complaint of inappropriate conduct of a male supervisor against a female employee of the City: all together any other violations of Federal, State, or Municipal law with the City: all together any other violations of Federal, State, or Municipal law which may be discovered, disclosed or revealed during such investigation. Roll yeas: Braden, Beliel, and Marquardt. Nays: Greenfield and Webb. Motion Carried. Absent: None

On June 6, 2019, the Council approved payment to Haynes totaling \$4,875.20 “for April Services.” After this payment \$124.80 remained from the original approved amount of \$5,000.

The Council met on July 23, 2019, received Haynes report, and voted to pay Haynes an additional \$14,647.35 for the “Final Bill.” Meeting minutes reflected a discussion concerning previous invoices that were incorrect, and that “\$4,800.00 has been approved and the fact the final bill in the amount of \$14,647.35 exceeded the approved limit of \$5,000.00.” In spite of the fact that the invoice exceeded the previously approved limit, a motion carried to approve payment to Haynes.

A motion was made by
Tom Beliel and seconded by Steve Marquardt to approve payment to Law Offices of R. Stephen Haynes, P.C. in the amount of \$14,647.35 for Final Bill- Blackwell Special Counsel legal Services. Roll: Yeas: Marquardt, Braden, Beliel. Nays: Webb. Abstain: Greenfield. Motion Carried.

Smith’s city credit card was also used to pay for at least seven of Haynes’ hotel stays, totaling \$720. These charges increased the amount paid above the approved limit to \$15,242.55. Until the final bill was approved in the July 23 council meeting, there was never a documented commitment or authorization by the Council to pay Haynes any amount other than \$5,000 initially approved.

According to Haynes, his agreement with Blackwell was conditional on him holding his initial billing under \$5,000, until he had a better idea of the issues involved and what he anticipated would be necessary to complete the investigation. Haynes also stated he was initially advised that billing could not exceed \$5,000 for

²¹ Councilors Webb and Greenfield both voted to table the item until the State Audit was completed.

²² An Oklahoma City attorney who serves as the municipal judge in several communities across Oklahoma.

work performed during any single month and that all billing once submitted was subject to approval by the City Council.²³

After the Council initially voted to contract with Haynes, he “individually spoke with and advised” Smith,²⁴ Marquardt, Braden, and Webb that he “would accept the appointment with the initial \$5,000 approval and submit any additional billing later, all with the understanding that it would be solely up to the council to determine whether additional amounts would be paid.”

Haynes’ investigative report was presented to the City Council on July 23, 2019. Haynes concluded that exceptions to the prohibited conduct provisions of 11 O.S. § 8-113 would not apply to Blackwell officials. Per Haynes, he “was unable to determine where or how Mr. Outhier or Mayor Greenfield arrived at their erroneous interpretation of 11 O.S. § 8-113.”

Haynes further concluded that “Article 10, Section 11 of the Oklahoma Constitution, prohibits an elected official of Blackwell from doing business for profit with the City.”

In addition to addressing the conflicts of interest concerns between the City and Mayor Greenfield, Haynes’ report also addressed several other areas of city government including, but not limited to, purchasing procedures, staff training, and financial and budget information.²⁵

Final Thoughts

The discovery and reporting of the G&C Concrete transactions resulted in recognition by city officials of their lack of policies and procedures governing purchasing and credit card transactions. Subsequently, the City has made changes in their financial oversight including increasing employee awareness of conflict of interest activity, implementing council approval of credit card statements, and effecting more defined purchasing policies.

However, the City has continued to deal with administrative change. T.J. Greenfield was elected mayor again in a special election held in April 2021, and currently serves in that position. The employment of City Manager Janet Smith was terminated, and a newly appointed city manager took office in June 2021. The City has also seated two new council members in recent elections.

²³ The charter contract-bidding requirement does not provide that a contract may exceed the \$5,000 threshold if done so over a period of more than one month.

²⁴ Smith listed Haynes on her resume when applying for the Blackwell city manager position. She also acknowledged that he served as her personal attorney in other matters.

²⁵ See the “Report of the Special Counsel” at Attachment 6.

Attachment 1

BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF OKLAHOMA)

COUNTY OF KAY)

TJ Greenfield of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer or other party to the project is as follows:

I am the Mayor of Blackwell. However I am allowed to submit a bid pursuant to 11-8-113

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

I am the Mayor of Blackwell. However my company is allowed to submit a bid pursuant to 11-8-113

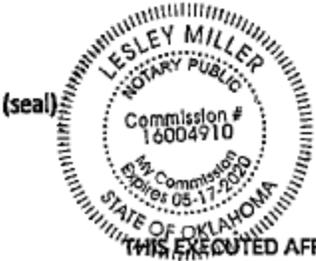
Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

SAME AS ABOVE

(If none of the business relationships hereinabove mentioned exist, affiant should so state.)

TJ Greenfield
Affiant

Subscribed and sworn to before me this 10th day of October, 2017.



Lesley Miller
Notary Public
My Commission Expires 5/17/2020

THIS EXECUTED AFFIDAVIT MUST ACCOMPANY YOUR PROPOSAL.

Attachment 2

Oklahoma Statutes Citationized

Title 11. Cities and Towns

Chapter 1 - Oklahoma Municipal Code

Article Article VIII - Officers - General Provisions

Section 8-113 - Prohibited Conduct

Cite as: O.S. §. ___

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:

1. Selling, buying, or leasing property, real or personal, to or from the municipality;
2. Contracting with the municipality; or
3. Buying or bartering for or otherwise engaging in any manner in the acquisition of any bonds, warrants, or other evidence of indebtedness of the municipality.

B. The provisions of this section shall not apply to any officer or employee of any municipality of this state with a population of not more than five thousand (5,000) according to the latest Federal Decennial Census, who has a proprietary interest in a business which is the only business of that type within five (5) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for any single activity and shall not exceed Fifteen Thousand Dollars (\$15,000.00) for all activities in any calendar year. Provided, however, such activity may exceed Fifteen Thousand Dollars (\$15,000.00) per year if the municipality purchases items therefrom that are regularly sold to the general public in the normal course of business and the price charged to the municipality by the business does not exceed the price charged to the general public.

C. Provisions of this section shall not apply where competitive bids were obtained consistent with municipal ordinance or state law and two or more bids were submitted for the materials, supplies, or services to be procured by the municipality regardless of the population restrictions of subsection B of this section, provided the notice of bids was made public and open to all potential bidders.

D. All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained in the main office of the awarding municipality for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record.

E. For purposes of this section, "employee" means any person who is employed by a municipality more than ten (10) hours in a week for more than thirteen (13) consecutive weeks and who enters into, recommends or participates in the decision to enter into any transaction described in subsection A of this section. Any person who receives wages, reimbursement for expenses, or emoluments of any kind from a municipality, any spouse of the person, or any business in which the person or spouse has a proprietary interest shall not buy or otherwise become interested in the transfer of any surplus property of a municipality or a public trust of which the municipality is beneficiary unless the surplus property is offered for sale to the public after notice of the sale is published.

F. For purposes of this section, "proprietary interest" means ownership of more than twenty-five percent (25%) of the business or of the stock therein or any percentage which constitutes a controlling interest but shall not include any interest held by a blind trust.

G. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor. Any transaction entered into in violation of the provisions of this section is void. Any member of a governing body who approves any transaction in violation of the provisions of this section shall be held personally liable for the amount of the transaction.

H. Notwithstanding the provisions of this section, any officer, director or employee of a financial institution may serve on a board of a public body. Provided, the member shall abstain from voting on any matter relating to a transaction between or involving the financial institution in which they are associated and the public body in which they serve.

Attachment 3

P U R C H A S E O R D E R					
CITY OF BLACKWELL / BLACKWELL MUNICIPAL AUTHORITY					
PURCHASE ORDER # 18-64174			04/23/2018		

ISSUED TO:		VEND #: 01-34890		SHIP TO:	
CITY OF TONKAWA				CITY OF BLACKWELL CITY HAL	
113 SOUTH 7TH				221 W BLACKWELL	
TONKAWA, OK 74653				BLACKWELL OK 74631	
				MERRY WHITHAM	

I HEREBY APPROVE THE ISSUANCE OF THIS PURCHASE ORDER.			I HEREBY CERTIFY THAT THE AMOUNT OF THIS ENCUMBRANCE HAS BEEN HAS BEEN ENTERED AGAINST THE DESIGNATED APPROPRIATION THIS ENCUMBRANCE IS WITHIN THE AUTHORIZED AVAILABLE BALANCE OF SAID APPROPRIATION.		
_____			MERRY WHITHAM		04/23/2018
ORDERED BY			APPROVED BY		DATE

UNITS	DESCRIPTION	G/L ACCOUNT		PRICE	AMOUNT

0.00	SNOW PLOW BLADE	001-543-493	SUPPLY/MISC	0.00	1,995.00
0.00	CONCRETE BLOCKS	801-504-979	FAIRGROUNDS EXPENSE	0.00	992.25
0.00	CONCRETE BLOCKS	801-504-979	FAIRGROUNDS EXPENSE	0.00	2,126.25

*** TOTAL ***					5,113.50
*** APPROVED FOR PURCHASE *** ** APPROVAL BY GOVERNING BOARD ***					
I HEREBY CERTIFY THAT THE MERCHANDISE AND/OR SERVICES DESCRIBED ABOVE HAVE BEEN SATISFACTORILY RECEIVED AND THAT THIS PURCHASE ORDER IS NOW A TRUE AND JUST DEBT OF THIS CITY. THIS PURCHASE ORDER IS THEREFORE APPROVED FOR CONSIDERATION FOR PAYMENT BY THE GOVERNING BOARD.			THIS PURCHASE ORDER IS APPROVED FOR PAYMENT IN THE AMOUNT INDICATED ABOVE.		
<i>Merry Whitham</i>		<i>5/4/18</i>	<i>Chip Outh</i>		<i>5/11/18</i>
OFFICER OR DEPARTMENT HEAD IN CHARGE		DATE	CITY MANAGER		DATE

**City of Blackwell
Investigative Audit**

Attachment 4

<p>113 South Seventh Street</p> <p>CITY HALL: (580) 628-2508</p> <p>E-mail: ctyoftonk@cableone.net URL: http://www.cityoftonkawa.com</p> <p>Bill To: Chip Outhier City of Blackwell 221 W. Blackwell Blackwell, OK 74631</p>	 <p>City of Tonkawa <i>Wheatheart of Oklahoma</i></p>	<p>Tonkawa, Oklahoma 74653-5014</p> <p>FAX: 580-628-5030</p> <p>E: April 23, 2018 :# 2018-13 FOR: <i>Snow Plow Blade and Concrete Blocks</i></p> <p>Terms: <u>Total Amount Due Upon Receipt</u></p>
---	--	---

Quantity	DESCRIPTION		AMOUNT
	Equipment		
1	Wester Pro Blus Blade 8' <i>DD-543-493</i>	\$	1,995.00
35	2X2X4 Concrete Blocks <i>SD-504-979</i>	\$	992.25
81	2X2X4 Concrete Blocks <i>SD-504-979</i>	\$	2,126.25
TOTAL		\$	5,113.50

Make all checks payable to: City of Tonkawa, 113 S. 7th Street, Tonkawa, OK 74653
 If you have any questions concerning this invoice, Call Nancy Skipper, City Clerk at 580-628-2508
 We will appreciate Prompt Payment of this Invoice

Chip

Attachment 5 (Page 1 of 4)

THE LOVE LAW FIRM

228 ROBERT S. KERR AVE., SUITE 540
OKLAHOMA CITY, OKLAHOMA 73102
(405) 235-3348 FAX: (405) 235-3863

MARGARET MCMORROW-LOVE
MML@LOVELAWFIRM.LEGAL

JOHN J. LOVE, OF COUNSEL
JJ@LOVELAWFIRM.LEGAL

March 1, 2019

Mr. Bryce Kennedy
1 Grand Center
Mezzanine Suite
Enid, Oklahoma 74701

Re: Review of Issues Related to G & C Concrete

Attorney Client Privilege/Work Product

Dear Mr. Kennedy:

The City of Blackwell, through you and the former City Manager, Chip Outlier, requested that this office conduct an independent review of the circumstances that led to the City continuing to purchase products from G & C Concrete after its major owner of the company, T.J. Greenfield, was elected Mayor.

Based on my interviews, it appears that the issue of the City's relationship with G & C Concrete became of interest following public statements in spring of 2018 that the City was contemplating the need for layoffs in order to balance the budget for FY 2018-2019. Prior to that time, I was advised that management had made comments to department heads that there might be the possibility of a COLA- as high as 3% and the department heads were allowed to convey this information to staff. Therefore, statements about layoffs came as a shock to the work force and to the public.

The Fraternal Order of Police submitted an Open Records Request for information regarding all transactions between the City and G & C Concrete. I was advised that the FOP turned these documents over to Chief of Police Dwayne Wood. When I spoke with Chief Wood, he indicated that he had an appointment with the District Attorney of Kay County to see if that office was going to look into the matter. I deferred preparing my report so as not to interfere in that matter.

Chief Wood recently advised that the District Attorney had agreed to review the matter and has referred the same to the Office of the State Auditor and Inspector. He expressed his understanding that representatives of that office will not be in Blackwell until at least April. Therefore, I have elected to provide you with this report.

In addition, during my initial interviews an unrelated issue was raised regarding [REDACTED]

Attachment 5 (Page 3 of 4)

and 1 ½" crusher rock. It is no longer in business. [REDACTED] advised that the City now uses the second lowest bidder for these items.

In connection with the bidding process, [REDACTED] stated that [REDACTED] had been instructed to prepare the bid documents. [REDACTED] had never performed this task before and was not sure how to proceed. Fortunately, [REDACTED] did confer with the then City Clerk who advised [REDACTED] to add certain key documents. I was not advised if further bidding documents have been prepared since the fall of 2017.

As you are aware, there are state statutes, referred to as the *qui tam* statutes, which allow citizens to file suit to seek recovery of monies not spent in an appropriate manner. Those statutes allow for treble damages and are considered as punitive in nature. However, before any suit can be filed, the taxpayers must make a demand on the City for action and the City must fail to take appropriate action within a reasonable time period. I have not been advised that any demand has been made. There is a two (2) year statute of limitation on any such claims.

In anticipation of continued citizen interest in this matter I feel it appropriate to bring to your attention certain other concerns raised in my interviews. [REDACTED] I interviewed who work at City Hall stated that there is a lack of full understanding of the proper purchasing procedures. Neither [REDACTED] nor [REDACTED] had ever seen a purchasing manual. It is my understanding that you have now provided a draft purchasing manual. [REDACTED] also felt that various department heads were unaware of the proper process to be followed.

The lack of a purchasing manual at the time may be of particular concern due to the widespread use of credit cards. It is my understanding that various employees are issued credit cards. They make their purchases and then turn in receipts by the end of the month. [REDACTED] noted that there could be times when the credit card payment is due before it is approved by the City Council depending on whether the council meets before the due date. Since the purchasing director left in July of 2018, I was advised that the credit limit on some credit cards has been raised to \$5,000.00. In addition, since the purchasing director left, department heads are now doing their own purchases but with limited training.

It was noted that in the fall of 2017, certain staff members raised concerns with Meredith Meacham about the amount of money spent during the first quarter of that fiscal year. The fear was expressed that if spending kept up at the same rate, the City would be in a deficit position by June of 2018. I was told that Ms. Meacham kept reassuring staff until February or March of 2018 when she advised that the financial situation was dire and that the City Council had to cease "reckless spending." A belief was expressed that perhaps the City Council did not fully understand the financial statements and that Ms. Meacham had not been sufficiently affirmative in her warnings on spending prior to the spring of 2018.

It may be helpful for the City to arrange for additional training for all department heads and City Hall staff on the budget and proper purchasing procedures. [REDACTED] stated that, although [REDACTED] had not identify issues of concern as of the time of [REDACTED] interview, [REDACTED] expressed [REDACTED] fear that the

Attachment 5 (Page 4 of 4)

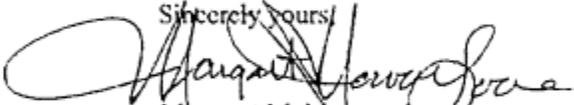
problems would develop down the road.

It may also be useful to make sure that all employees understand the chain of command in a council-manager form of government. If employees feel able to circumvent the chain of command, mixed messages can be conveyed that leads to confusion and morale issues. This is particularly true since the Mayor is the key figure in the G & C Concrete issue.

Finally, it is suggested that the City ensure annual or at least bi-annual training on the area of professional conduct/anti-harassment. Employees need to understand that they are free to bring concerns to the attention of the appropriate person and that there is a supervisory by-pass procedure in place.

If you should have any questions on the areas covered by this report, please feel free to contact the undersigned.

Sincerely yours,



Margaret McMorrow-Love

cc: Janet Smith
City Manager

Attachment 6 (Page 1 of 32)

REPORT OF THE SPECIAL COUNSEL
TO THE
CITY OF BLACKWELL
KAY COUNTY, OKLAHOMA
JULY 23, 2019

R. STEPHEN HAYNES, SPECIAL COUNSEL
Law Offices of R. Stephen Haynes, P.C.
P.O. Box 18202
Oklahoma City, Oklahoma 73154
405-627-9959
SHAYNES@HAYNESPC.COM

RECEIVED
SEP 10 2019
State Auditor
and Inspector

Attachment 6 (Page 2 of 32)

City of Blackwell
Report of Special Counsel
July 23, 2019

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City of Blackwell
Report of Special Counsel
July 23, 2019

BLACKWELL CITY OFFICIALS

T. J. Greenfield.....	Mayor
Richard Braden.....	Ward 1
Jon Webb.....	Ward 2
Tom Beliel.....	Ward 3
Steve Marquardt.....	Vice Mayor/Ward 4
Janet Smith.....	City Manager
Traci Hanebrink.....	City Clerk
Bryce Kennedy	City Attorney

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City of Blackwell
Report of Special Counsel
July 18, 2019

INTRODUCTION.

In delivering the facts, findings and recommendations set forth in this Report, undersigned Counsel became cognizant of the need and importance of providing some perspective to the investigation's findings through an examination and understanding of the historical events that ultimately gave rise to the appointment of the Special Counsel. Events in Blackwell during the past several years have, at times, lead to a deepening division within the Community over decisions taken by the City Council, City Management and Department Heads; decisions which resulted in an increase in public awareness, interest and participation by Blackwell citizens in monitoring municipal affairs. It has also lead to citizen action.

Attempting to review and investigate only the initial issues presented to Special Counsel in a vacuum would fail to acknowledge the root forces which have given rise to the questions, claims, rumors and suspicions initially provided to Counsel for review and would ignore the community's insistence that answers be provided.

In 2014, Blackwell held a Petition Recall Election, prompted principally by a proposed concerted enforcement effort of those Blackwell Municipal Ordinances that required inspection and qualification of rental property prior to its occupancy. The Ordinance activity followed a pledge by some Council Members to literally clean up Blackwell by addressing properties deemed by the subject Council Members, Code Enforcement Officers, Police and Fire personnel to be uninhabitable, or near uninhabitable, along with those structures that were believed to pose safety, fire and health risks. Citizens organized and voted to remove three of the five members of the Council. A fourth Council Member included in the recall, Mayor John Mark Cordell, lost reelection prior to removal. The remaining member who did not support the Ordinance enforcement, was not a subject of the removal effort.

In addition to the Recall Petition, Blackwell citizens filed an Audit Petition requesting that the Office of the Oklahoma State Auditor and Inspector address 26 specific Petitioner concerns and examine those concerns for the period July 1, 2011 through July 31, 2014. On June 5, 2015, the Oklahoma State Auditor and Inspector, Gary A. Jones, released his Office's Petition Audit Report which identified and provided responses to the Petition's questions and concerns. A copy of that Audit Report has been included in the Appendix to the Special Counsel's Report.

The consensus of those interviewed in this investigation suggested that the community activism which spawned the Recall Election and the Petition Audit also energized a watchdog conviction among the public and a greater skepticism that Blackwell officials could be trusted to serve the best interests of Blackwell's citizens without more public oversight. As a result, there was greater attendance at City Council Meetings, more vocal inquiry to the Council Members and additional scrutiny of the Council and Council Members by the local press.

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City of Blackwell
Report of Special Counsel
July 18, 2019

In the latter part of 2017, projections from Blackwell City Manager, Thomas L. "Chip" Othier, and Blackwell Chief Financial Officer, Meredith Meacham, indicated that the financial outlook for the 2018-2019 fiscal year was positive and that there would likely be funds available for across the board employee Cost of Living Adjustments in perhaps the three percent range. In addition, department heads were advised that staff positions appeared secure and that departments should be able to fill at least some staff vacancies. Department heads were authorized to release this information to employees. Following this announcement, management and staff morale was high.

In the Spring of 2018, there was an unexpected shift in financial projections and the Blackwell CFO advised the City Council that there needed to be an immediate reduction in spending and that new projections anticipated layoffs in order to balance the 2018-2019 FY Budget. This shift reached staff as a surprise and questions, rumors and accusations began to filter through Blackwell and City Hall regarding the reasons for the financial problems and those responsible. When senior staff and department heads were approached by what appears to have been an *ad hoc* budget committee, and directions were given to begin layoffs, tensions and claims increased. When the police department was advised that it would need to lay off officers and strong suggestions were made as to which officers should be laid off, the Fraternal Order of Police became involved and made an Open Records Request for information reflecting services and/or materials that were purchased by Blackwell from elected Blackwell officials. Documents provided have been included in the Appendix to Special Counsel's Report.

In order to address the underlying concerns and the propriety of these expenditures, former City Manager, Mr. Othier, and City Attorney Bryce Kennedy, contacted Oklahoma City attorney Margaret Love, whose practice concentration is municipal law, in October, 2018, with a request to review allegations regarding the propriety of businesses owned and controlled by members of the Blackwell City Council, contracting with, and being paid for services and materials provided to the City of Blackwell. From the information provided, it appears that Ms. Love contacted members of the Council and conducted recorded interviews with at least four employees regarding the questions posed. Counsel has reviewed the Blackwell City Council Agendas and Council Minutes for the relevant period, (Included in Appendix) but has been unable to find where the requested review by Ms. Love was considered or approved by the City Council, which suggests that Ms. Love's review was an informal request for general information by Mr. Othier and Mr. Kennedy. On March 1, 2019, Ms. Love's response outlining her review was delivered to City Manager Janet Smith¹ and Mr. Kennedy, and was reviewed in Executive Session during the March 7, 2019, Blackwell City Council Meeting.

¹Janet Smith became City Manager to Blackwell in January, 2019, following the resignation of Mr. Othier.

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City of Blackwell
Report of Special Counsel
July 18, 2019

Following that March 7, 2019, City Council Meeting, unresolved questions from Council Members, Staff, Employees, the Press and Citizens resulted in the recommendation by newly appointed City Manager Janet Smith to retain Special Legal Counsel to further investigate the questions addressed in Ms. Loves correspondence. On April 4, 2019, undersigned counsel was appointed to further investigate the questions raised in Ms. Love's correspondence, to investigate any additional questions or allegations that came to light during that investigation, to report findings as to fact and issues of law, make any recommendations deemed appropriate as to any discovered wrongful conduct or violations of law or Blackwell policy and present any recommendations as to policies and procedures which might be adopted to prevent future issues.

In addition to the appointment of Special Counsel, law enforcement inquiry has resulted in the Kay County District Attorney, Brian Hermanson's, official request for an audit of Blackwell. That request is currently pending as of the date of this Report and no exact date has been set for the commencement of that audit. Given what has been described as a significant number of requested and pending audits in Oklahoma, completion of the audit is not expected for some time. While Special Counsel's investigation is not a law enforcement investigation, it is anticipated that the information received from those interviewed will assist in resolving questions of fact, dispelling rumors and that the Report's recommendations will assist the Blackwell City Council and its Department Heads in taking a proactive approach to identify issues which need to be addressed, will promote a better understanding of applicable law and form the basis for adopting or revising policies and procedures prior to the return of the final audit report requested by the District Attorney.

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City of Blackwell
Report of Special Counsel
July 23, 2019

SCOPE AND PROCESS OF INVESTIGATION.

SCOPE:

In accordance with the correspondence to current Blackwell City Manager Janet Smith and City Attorney, Bryce Kennedy, Mr. Outhier and Mr. Kennedy consulted with Ms. Love regarding the following issues:

1. Review of the circumstances that led to the City of Blackwell continuing to purchase products from G & C Concrete after its major owner, T.J. Greenfield was elected Mayor.
2. Review of [REDACTED].
3. Review of the circumstances that led to the City of Blackwell purchasing products or services from then Vice Mayor, Jon Webb.

In addition, Ms. Love became aware of the additional following issues during the course of her review and included these items in her correspondence:

4. Lack of understanding of purchasing procedures by City Staff and the need for a Purchasing Manual.
5. A lack of understanding by the City Council of financial statements and information provided by Chief Financial Officer, Meredith Meachum, and Ms. Meachum's failure to be sufficiently affirmative in her warnings on spending prior to the Spring of 2018.
6. The need for additional training for all department heads and City Hall Staff on the budget and proper purchasing procedures.
7. The usefulness of making sure that all employees understand the "chain of command" in a Council-Manager form of government.

These issues served as the foundation for the scope of Special Counsel's initial investigation. A copy of Ms. Love's March 1, 2019, correspondence is included in the Appendix to the Report of Special Counsel.

Following the appointment of Special Counsel, Counsel began receiving additional information regarding other matters that Blackwell Council Members, Staff and Citizens believed warranted inclusion in the scope of Counsel's investigation or review.

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City of Blackwell
Report of Special Counsel
July 23, 2019

ISSUES CONSIDERED AND REVIEWED:

1. Review of the circumstances that led to the City of Blackwell continuing to purchase products from G & C Concrete after its major owner, T.J. Greenfield was elected Mayor.
2. Review of [REDACTED]
3. Review of the circumstances that led to the City of Blackwell purchasing products or services from then Vice Mayor, Jon Webb.
4. Review of the termination of former City Manager Thomas "Chip" Outhier's employment, lack of authority, benefits provided and adequate disclosure to the City Council of the facts and circumstances of the termination.
5. Lack of understanding of purchasing procedures by City Staff and the need for a Purchasing Manual and additional training for all Department Heads and City Staff on proper purchasing procedures.
6. A lack of understanding by the City Council of financial statements and information provided by Chief Financial Officer, Meredith Meachum, and Ms. Meachum's failure to be sufficiently affirmative in her warnings on spending prior to the Spring of 2018.
7. The usefulness of making sure that all employees and elected officials understand the "chain of command" and organizational requirements in a Council-Manager form of government, including:
 - a. Review for Council Members direct supervision and direction of Staff and Employees in violation of Oklahoma law;
 - b. Direct involvement by Council Members and City Attorney in disciplinary actions against Employees;
 - c. Council Members exerting direct influence on Department Heads in issues of layoffs and budget items;
 - d. Failure of the prior City Manager, Council Members and City Attorney to maintain reasonable communications with all Council Members regarding matters coming before the City Council for votes;

Attachment 6 (Page 9 of 32)

City of Blackwell
Report of Special Counsel
July 23, 2019

8. Review of reports of preferential treatment of new cannabis renting property from Blackwell Mayor, T. J. Greenfield.
7. Failure of Council to keep and maintain records of Executive Sessions.
8. Deficiencies in complying with recommendations and requirements identified in the 2014 Petition Audit.

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City of Blackwell
Report of Special Counsel
July 23, 2019

PROCESS:

In investigating the matters identified by Ms. Love's correspondence and those brought to the attention of Counsel during the course of the investigation, Counsel used his best efforts to follow a standardized process in receiving and evaluating reports, complaints and general information. Since investigations such as this can give rise to rumor and unsubstantiated claims, Counsel, while reviewing and giving consideration to each matter that came to Counsel's attention, determined that fairness required that review standards would attempt to separate claims that could not be reasonably substantiated from claims that carried with them evidentiary support through verifiable facts. As a result, while giving attention to and respecting the very few who asked to remain anonymous, Counsel required that for those claims made by individuals requesting anonymity Counsel required meaningful claim verification through two additional unrelated unnamed sources or verifiable documentary evidence or confirmation from reliable disclosed sources. Absent such confirmation, anonymous claims were either excluded from this Report or described as being unsupported. Where possible, Counsel has provided an opinion as to whether such claims within this category did or did not have reasonable merit or should be investigated further. While each person interviewed was advised their participation in Special Counsel's investigation was voluntary and that ultimate confidentiality could not be assured, each was requested to provide their input to assist in the process. Surprisingly, no person contacted refused to be interviewed. While each member of the Council was contacted requesting their input, Mayor T. J Greenfield and Council Member Jon Webb did not respond to Counsel's request and were not interviewed. All department heads provided input, along with various employees and members of the general public.

Ms. Loves billing documents (Included in Appendix to Report) reflect that she discussed the issues reviewed by her with Mayor Greenfield on February 21, 2019, and then Vice Mayor Jon Webb on November 29, 2018, and February 21, 2019. Neither Ms. Love's correspondence nor her billing reflect that any other members of the Council were interviewed or contributed to her review.

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City of Blackwell
Report of Special Counsel
July 23, 2019

CONFLICTS OF INTEREST:

G & C CONCRETE/T.J. GREENFIELD.

As described in the Introduction to this Report, former City Manager, Thomas L. "Chip" Outhier, and Blackwell City Attorney Bryce Kennedy, contacted Oklahoma City attorney Margaret Love in October, 2018, with a request to review allegations regarding the propriety of the City entering into contracts for materials and services with businesses owned and controlled by Members of the Blackwell City Council. As described in her June 5, 2019, correspondence and response, the initial question for review centered on the City of Blackwell "*continuing to purchase products from G & C Concrete after its major owner of the company, T. J. Greenfield, was elected Mayor.*" The same issue, or question, also appears to have been the focus of the Open Records Request by the Fraternal Order of Police which was filed following the announcement of the 2018-2019 FY Budget cuts and staff reductions.

During the course of interviews with Blackwell Staff, Special Counsel confirmed that then City Manager Outhier was questioned by [REDACTED] and [REDACTED] [REDACTED]² on more than one occasion regarding the propriety of the City continuing to contract with G & C Concrete/T. J. Greenfield after Mr. Greenfield became Mayor. Both [REDACTED] and [REDACTED] indicated that Mr. Outhier repeatedly assured them that he had received the opinion of the City Attorney, Mr. Kennedy, that because Mayor Greenfield was the sole provider of necessary materials and services within a 20 mile radius of Blackwell, the law permitted the City to contract with him. While [REDACTED] was also certain that Mr. Kennedy admonished against that interpretation of the law, including comments in an open Council Meeting, both Mr. Outhier and Mayor Greenfield chose to continue prohibited business dealings throughout the relevant period. It is clear that despite admonishment by Mr. Kennedy, questions from [REDACTED] and a conflicting opinion from Mr. Outhier, no request for a formal legal opinion was sought until Ms. Love was contacted in October 2018. Special Counsel was unable to determine where or how Mr. Outhier or Mayor Greenfield arrived at their interpretation of 11 O.S. § 8-113 which was cited as the authority to contract with G & C Concrete/T. J. Greenfield. In addition, while it remains unclear, Special Counsel's interview with Mr. Kennedy suggests that Mr. Outhier may have requested Ms. Love to focus her review on the interpretation and application of 11 O.S. § 8-113 without addressing conflicts of interest and prohibited transactions in a broader sense.

[REDACTED]

Attachment 6 (Page 12 of 32)

City of Blackwell
Report of Special Counsel
July 23, 2019

COUNCIL MEMBER JON WEBB.

In addition to services and materials provided regarding Mayor Greenfield and his business interests, Counsel has also reviewed documentation regarding labor, material and services provided by former Vice-Mayor and current Council Member Jon Webb, and has included those documents in the Appendix to the Report. While the same restrictions apply to both Mayor Greenfield and Council Member Webb, it is Special Counsel's understanding that after consultation with Mr. Kennedy, Council Member Webb reimbursed Blackwell for all payments made to him for those services. While the reimbursement is important as a remedial action or as restitution, Blackwell Officials, as well as Council Member Webb, should remain mindful that the liability for any violation under Article 10, Section 11, of the Oklahoma Constitution remains.

Even though 11 O.S. § 8-113, appears to have no controlling application to the circumstances under review, an understanding of its provisions is helpful in evaluating the lack of consideration given to its restrictions and those of the Oklahoma Constitution, and what may have motivated any misunderstanding or adherence to the subject prohibitions.

SECTION 8-113-PROHIBITED CONDUCT.

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:

- 1. Selling, buying, or leasing property, real or personal, to or from the municipality;**
- 2. Contracting with the municipality; or**
- 3. Buying or bartering for or otherwise engaging in any manner in the acquisition of any bonds, warrants, or other evidence of indebtedness of the municipality.**

B. The provisions of this section shall not apply to any officer or employee of any municipality of this state with a population of not more than five thousand (5,000) according to the latest Federal Decennial Census, who has a proprietary interest in a business which is the only business of that type within five (5) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for any single activity and shall not exceed Fifteen Thousand Dollars (\$15,000.00) for all activities in any calendar year. Provided, however, such activity may exceed Fifteen Thousand Dollars (\$15,000.00) per

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year if the municipality purchases items therefrom that are regularly sold to the general public in the normal course of business and the price charged to the municipality by the business does not exceed the price charged to the general public

C. Provisions of this section shall not apply where competitive bids were obtained consistent with municipal ordinance or state law and two or more bids were submitted for the materials, supplies, or services to be procured by the municipality regardless of the population restrictions of subsection B of this section, provided the notice of bids was made public and open to all potential bidders.

D. All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained in the main office of the awarding municipality for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record.

E. For purposes of this section, "employee" means any person who is employed by a municipality more than ten (10) hours in a week for more than thirteen (13) consecutive weeks and who enters into, recommends or participates in the decision to enter into any transaction described in subsection A of this section. Any person who receives wages, reimbursement for expenses, or emoluments of any kind from a municipality, any spouse of the person, or any business in which the person or spouse has a proprietary interest shall not buy or otherwise become interested in the transfer of any surplus property of a municipality or a public trust of which the municipality is beneficiary unless the surplus property is offered for sale to the public after notice of the sale is published.

F. For purposes of this section, "proprietary interest" means ownership of more than twenty-five percent (25%) of the business or of the stock therein or any percentage which constitutes a controlling interest but shall not include any interest held by a blind trust.

G. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor. Any transaction entered into in violation of the provisions of this section is void. Any member of a governing body who approves any transaction in violation of the provisions of this section shall be held personally liable for the amount of the transaction.

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H. Notwithstanding the provisions of this section, any officer, director or employee of a financial institution may serve on a board of a public body. Provided, the member shall abstain from voting on any matter relating to a transaction between or involving the financial institution in which they are associated and the public body in which they serve.

Title 11 O.S. § 8-113, was enacted in 1984, and has been amended several times since. Its intent was to assist small communities by easing what was perceived as a practical burden created by conflict of interest laws, by permitting limited circumstance dealings between public officials and the communities they serve. Although not fully addressed in Ms. Love's review, the exceptions to the Prohibited Conduct provisions of the Act, even if otherwise valid, would not apply to Blackwell officials. Other Oklahoma Statutes and Constitutional Provisions likely control the issues presented.

Under the provisions of 11 O.S. § 8-113, a city official is prohibited from non-bid contracting with the official's municipality unless (1) the city's population does not exceed 5,000; (2) the services or materials provided are not available anywhere within a distance of five miles from the city limits; (3) the contract does not exceed \$2,500.00; (4) the total amount of all contracts within a year from the city official does not exceed \$15,000.00, unless the items purchased are commonly sold to the general public at a price not exceeding that charged to the city. In addition, there is a provision that further excepts public officials who participate in a compliant competitive bidding process where there are at least two bids presented.

The exception provisions of the Act which permit a city to contract with its officials are clear and straight forward, especially the population qualification provision which limits exceptions to cities with a population of 5,000 or less. In speaking with Staff, Mr. Outhier reportedly referenced the Act by citation, suggesting that he had in fact read the statute. As City Manager he would have been expected to know the City's population. Absent some intervening influence, it is difficult to understand his interpretation of the Act and his belief that Blackwell would be a qualified city. As indicated, Special Counsel was unable to determine where or how Mr. Outhier or Mayor Greenfield arrived at their erroneous interpretation of 11 O.S. § 8-113.

While it is the opinion of Counsel that 11 O.S. § 8-113 is not applicable to the issues presented here, it is recommended that the Council, City Manager and Staff have a clear understanding as to its limitations, requirements and restrictions in order to avoid any future confusion as to its applicability to Blackwell.

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CONTROLLING LAW.

The principal law controlling the issue of conflict of interest in providing services to the City of Blackwell by City Officials is Article 10, Section 11, of the Oklahoma Constitution. It provides:

ARTICLE 10 SECTION 11, OKLAHOMA CONSTITUTION

§ 11. Officer receiving interest, profit or perquisites.

The receiving, directly or indirectly, by any officer of the State, or of any county, city, or town, or member or officer of the Legislature, of any interest, profit, or perquisites, arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office.

It has historically been the opinion of municipalities that this provision of the Oklahoma Constitution controls and prohibits all transactions between an official of a municipality and the municipality the official serves. While there are no specific interpretive cases directly on point which address the conflict between Article 10, Section 11 of the Oklahoma Constitution and 11 O.S. § 8-113, it is settled law that any conflict between an Act of the Oklahoma Legislature and a provision of Oklahoma's Constitution is resolved in favor of the Constitutional provision.³ While there are no Oklahoma Supreme Court cases directly on point, there have been numerous Attorney General Opinions holding that Article 10, Section 11, controls whether or not the exceptions to prohibited conduct found in 11 O.S. § 8-113, are valid.

In *Kiowas County Excise Bd. v. St. Louis-San Francisco Ry. Co.*, 1956 OK 157, 301 P.2d 677, the Oklahoma Supreme Court, in holding that Constitutional provisions which are clear and self-executing (such as Article 10, Section 11) cannot be modified by a statute enacted by the Legislature. In that case, the Court held:

The legislature has no power to abridge or extend a provision of the Constitution when the same is self-executing, by so-called construction or otherwise.

³See Article 5, Section 36, Oklahoma Constitution, "The authority of the Legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in the Constitution..."

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In discussing the issue in *Oklahoma Attorney General Opinion 2001 OK AG 32*, the Oklahoma Attorney General stated:

The constitutional conflict of interest provision found in the Oklahoma Constitution at Article 10, Section 11 is broader than the statute (11 O.S. § 8-113)....The constitutional prohibition is plain and unconditional. No city official may receive directly or indirectly, any interest, profit or perquisite that arises from the use of public funds in his hands. A conflict of interest exists when a city official has any interest that arises from the use of city funds by a private entity.....

Further at ¶6:

Since Oklahoma Constitution Article 10, Section 11, is a prohibition against receipt of interest, profit, or perquisites, not voting or recusal does not cure a conflict of interest. Pursuant to Section 11, if a conflict of interest exists, it cannot be avoided by any means.⁴

Further, 21 O.S. § 355, provides:

A. It shall be unlawful for any member of any board of county commissioners, city council or other governing body of any city, board of trustees of any town, board of directors of any township, board of education of any city or school district, to furnish, for a consideration any material or supplies for the use of the county, city, town, township, or school district.

B. The provisions of this section shall not apply to those municipal officers who are subject to Section 8-113 of Title 11 of the Oklahoma Statutes or to a member of any board of education of a school district in this state which does not include any part of a municipality with a population greater than two thousand five hundred (2,500) according to the latest Federal Decennial Census when the board member is the only person who furnishes the material or supplies within ten (10) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Five Hundred Dollars (\$500.00) for any single activity and shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for all activities in any calendar year.

⁴See also, *1995 OK AG 41*;

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C. It shall not be unlawful for any member of any board of county commissioners, city council or other governing body of any city, board of trustees of any town, board of directors of any township, or board of education of any school district to vote to purchase materials or supplies from a business that employs a member of the governing body or employs the spouse of a member if the member or the spouse of a member has an interest in the business of five percent (5%) or less.

In addition, 21 O.S. § 344, provides:

A. Except as otherwise provided in this section, every public officer, being authorized to sell or lease any property, or make any contract in his or her official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

B. The provisions of this section shall not apply to:

1. Municipal officers who are subject to the provisions of Section 8-113 of Title 11 of the Oklahoma Statutes; and

2. Conservation district board members participating in programs authorized by Section 3-2-106 of Title 27A of the Oklahoma Statutes.

Even if some later interpretation of the conflict between the provisions of Article 10, Section 11 of the Oklahoma Constitution and 11 O.S. § 8-113, held that the Statute is valid as to elected municipal officials, 21 O.S. § 344 and 21 O.S. § 355, above, make clear Oklahoma's requirement that the Prohibited Conduct Exceptions afforded by 11 O.S. § 8-113, are only available to municipalities that are qualified under the Act. Thus, given the population limitation and with the possible exception of competitively bid contracts, the providing of services and materials by G & C Concrete/Greenfield and Jon Webb, violate the conflict of interest laws of the State of Oklahoma.

The seriousness of the distinction between the Constitutional prohibition and 11 O.S. § 8-113, 21 O.S. § 344 and 21 O.S. § 355, is clear. Violation of Article 10, Section 11 is a felony punishable by imprisonment in the State Penitentiary for not more than two years and/or a fine of \$1,000.00 or both, plus forfeiture of office. Violation of 11 O.S. § 8-113, 21 O.S. § 344 and 21 § 355 is a misdemeanor punishable by imprisonment in the county jail for not more than one year and a fine not exceeding five hundred dollars. In addition, violation of both 11 O.S. § 8-113, 21 O.S. § 344 and 21 O.S. § 355 and Article 10 Section 11, render any such contracts void and subject to repayment.

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However, it is the opinion of Special Counsel in consultation with two consulting municipal attorneys, that Article 10, Section 11 of the Oklahoma Constitution, prohibits an elected official of Blackwell from doing business for profit with the City and that any provision of 11 O.S. § 8-113, which conflicts with Article 10, Section 11, would be declared unconstitutional. As a result, if prosecuted, those Members of the Council who have or continue to do business with the City of Blackwell could face prosecution ranging from the felony attached to Article 10, Section 11, to the misdemeanor offenses provided in 21 § 344, and 21 § 355, together with proceedings for removal from office and direct action by Blackwell or *qua tam* action by Blackwell citizens for recovery of all sums paid to those Members of the Council under such contracts. In addition, other sections of 11 O.S. § 8-113 provide that those Council Members approving a contract or payment in violation of the statute's provisions may be held personally liable for repayment of the sums paid pursuant to such contracts.⁵

Based upon the Special Counsel's limited search, those records reviewed reflect that Mayor Greenfield received a total of \$95,604.99 for labor, services and materials during 2016 and 2017. Council Member Webb received \$576.30. It is also Counsel's understanding that additional sums were paid to Mayor Greenfield for services provided to Blackwell through competitive bidding and subcontractor work, including Blackwell Fairground subcontract work totaling in excess of \$80,000.00. Due to time restrictions and the volume of documents available, Special Counsel conducted only a limited search and review of the documents which reflect payments made to G & C Concrete/J. T. Greenfield and Jon Webb. However, the documents reviewed suggest that the relationship and amount limitations requiring disclosure were exceeded. It is anticipated that the pending State Audit will provide a complete and accurate analysis of all such contracts.

THE TONKAWA TRANSACTION

In an attempt to arrive at an understanding to Ms. Love's question regarding how the City could continue to purchase products with businesses associated with Mayor Greenfield, and to further understand how the misinterpretation of 11 O.S. § 8-113, could have occurred, Counsel examined a transaction involving Blackwell's purchase of personal property declared as surplus by the City of Tonkawa.

On April 10, 2018, Lippard Auctioneers conducted what has been described as a liquidation auction of the real and personal property of G & C Concrete, the concrete business in which Mayor Greenfield is a principal owner. On that date, the City of Tonkawa purchased at the auction certain

⁵The Appendix to the Special Counsel's Report includes those contract and payments for materials and services provided by Mayor Greenfield and Council Member Webb which were reviewed by Counsel during his investigation.

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personal property described as 81 concrete blocks, 35 concrete blocks, a 8' snow plow blade and a 7' 6" snow plow blade. Seven days later on April 17, 2018, 81 concrete blocks, 35 concrete blocks and an 8' snow plow blade were declared surplus property by the City of Tonkawa upon council vote during its scheduled Tonkawa City Council Meeting. With the exception of the 7'6" snow plow blade, the Tonkawa City Council approved an agenda item to declare all of the materials and equipment purchased the week before surplus property and granted approval for the city manager to secure the best price for their disposal. Six days later on April 23, 2018, Tonkawa invoiced the City of Blackwell for 81 concrete blocks, 35 concrete blocks and an 8' snow plow blade. On May 3, 2018, the Blackwell City Council approved on the Consent Docket the purchase from Tonkawa of these items in the sum of \$5,113.50. None of the records located and reviewed by Special Counsel reflect any disclosure of the original source of the items other than their purchase from Tonkawa. Minutes for the May 3, 2018, City Council Meeting reflect that Mayor Greenfield voted in the affirmative to approve the purchase of the subject materials and equipment from Tonkawa. (Documentation of this transaction is included in the Appendix to the Report).

Two of the members of Blackwell's staff that were interviewed indicated that they became aware of the transaction with Tonkawa and have stated that there was a feeling shared among a number of employees that the transaction to purchase the materials and equipment was structured as it was in an attempt to conceal a potential conflict of interest. The Auction Offering Materials clearly identify the "Seller" as T. J. Greenfield. Sale of the property directly to Blackwell for the benefit of Mayor Greenfield, would likely constitute a violation of Article 10, Section 11, 21 O.S. § 344, and 21 O.S. § 355, as described above. Even though the property was being sold through a sales agent, Lippert Auctioneers, the purchase of the materials and equipment at auction by Blackwell would still likely constitute at least an indirect receipt by the seller of consideration from the sale of material and supplies for use by the City of Blackwell.

The larger concern is the adding of a second layer to the transaction *if* there was any attempted concealment. By coordination with the Tonkawa City Manager, Kirk Henderson, the transaction could constitute an indirect consideration and, absent an alternative explanation, suggest that the use of the Tonkawa layer could be viewed as an indication of actual knowledge, or at least a concerned question, that a direct purchase by Blackwell at Auction violated applicable law. The use of Tonkawa as a "straw man" could suggest that there was an attempt to conceal the transaction from the public. As previously indicated, Mayor Greenfield did not respond to Special Counsel's request for input to this Report. As a result no further information explaining an alternative purpose behind the structure of the transaction with Tonkawa has been suggested.

A determination that direct or indirect purchase of the subject materials and equipment was a violation of Article 10, Section 11, or 21 O.S. § 344, or 21 O.S. § 355, the coordinated concealment of the transaction by those involved may constitute a violation of 21 O.S. § 11-421, which provides:

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- A. If two or more persons conspire, either:**
- 1. To commit any crime; or**
 - 2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or**
 - 3. Falsely to move or maintain any suit, action or proceeding; or**
 - 4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or,**
 - 5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a conspiracy.**
- B. Except in cases where a different punishment is prescribed by law the punishment for conspiracy shall be a misdemeanor unless the conspiracy is to commit a felony.**
- C. Conspiracy to commit a felony shall be a felony and is punishable by payment of a fine not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary for a period not exceeding ten (10) years, or by both such fine and imprisonment.**

Beyond the ethical considerations arising when those in authority with a municipality profit from decisions that they are called upon to make, other serious consequences can result when a municipality contracts with its officials, officers and employees. As may be the case in Blackwell, performance, warranty and adequacy issues regarding construction work done through contracts or subcontracts by City Officials may result in claims and defenses against or by the Official, making the Official as an adversary to the City. In addition to those issues are sub-issues, such as whether a council member could be excluded from Executive Sessions of the City Council in which a claim, litigation or advice involving the Official's contract is being discussed with legal counsel. Also, there is often reluctance of city employees or supervisors to challenge decisions related to the work being performed by an official out of concern of retaliation. There are good reasons to enact prohibitions against a city doing business with its officials, officers and employees.

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In order to avoid future questions regarding conflicts of interest created when an Elected Official, does business with the City, consideration should be given to a review of current conflict of interest policies and the adoption of a written policy or Ethics Charter Amendment similar to those employed by other municipalities, in strictly barring such transactions. By doing so, the City can be better assured that both the City and its Officials are not exposed to the liability for violations.

It is also recommended that the City consult with legal counsel regarding any potential fallout arising from the transactions of record between Blackwell and Mayor Greenfield or his businesses. Any applicable bond documents should be reviewed by experienced bond counsel to determine whether there are potential defenses to payment on performance bonds arising from the contractor or subcontractor being legally disqualified to contract for such work. Bond counsel should also be consulted regarding relevant issues related to revenue bonds.

Further, a proactive approach by the City in its review and action, may prove to be beneficial in addressing any *qui tam* action since such actions provide the municipality the opportunity to cure issues. Finally, Counsel recommends that the Blackwell Council make a further inquiry as to the Tonkawa surplus materials purchase to assure the transaction was in compliance with conflict of interest and disclosure provisions of the law and to assure that an evaluation of Council Member exposure is addressed individually. While these matters should be of concern to all Members of the Council, given the issues, all interests of those involved may not be aligned and it is recommended that individual Council Members consult their own legal counsel for advice.

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[REDACTED]

[REDACTED]

OUTHIER'S DEPARTURE AS CITY MANAGER.

While [REDACTED] Mr. Outhier [REDACTED] no longer employed by Blackwell, the issue appears to have impacted the departure of Mr. Outhier. During the course of the interview with Staff, information was provided regarding Mr. Outhier's resignation and retirement. A review of his contract and Blackwell Personnel Policy indicate that his resignation would not have triggered any additional benefits or pay. However, the Minutes of the City Council for November 15, 2018, reflect Mr. Outhier's resignation and authorized the following:

M. Take Any Action Deemed Required to Such Executive Session.

Motion was made by Beliel and seconded by Webb to accept the retirement decision of Thomas "Chip" Outhier, Jr., and authorize his severance benefits consistent with our personnel policy. Roll Yeas: Greenfield, Braden, Webb, Beliel and Marguardt. Nays: None. Motion Carried. Absent: None.

(Minutes and relevant documents are included in Appendix)

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During Special Counsel's interview with City Attorney Bryce Kennedy, he indicated that as a result of the unexpected shift in financial projections in the Spring of 2018, and CFO Meredith Meacham's announcement to the City Council that new projections anticipated layoffs in order to balance the 2018-2019 FY Budget, resulted in concerns by Members of the City Council regarding the performance of Mr. Outhier. Mr. Kennedy indicated that he and Mr. Outhier were long time good friends and that he had advised Mr. Outhier early in his tenure as City Manager that "when it ever looked like he needed to go," Mr. Kennedy would tell him.

Shortly before the November, 2018, City Council Meeting at which the Council accepted Mr. Outhier's resignation, Mr. Kennedy approached Mr. Outhier and following discussions regarding the financial issues advised Mr. Outhier that "it was time to go." Several sources, including Mr. Kennedy, reported that Mr. Outhier resisted the idea of resigning and had later told citizens and Staff that he did not want to retire when first approached. However, Mr. Kennedy reported that he pointed out [REDACTED], at which time Mr. Outhier elected to tender his resignation.

Mr. Kennedy indicated that he had not had discussions regarding his approaching Mr. Outhier with other Blackwell Officials prior to his meeting with Mr. Outhier. Mr. Kennedy indicated that it needed to be done and that someone had to do it. This would be consistent with what other Staff related in their interviews regarding the lack of hands on, day to day activity of Mr. Outhier and the assumption of those duties often by Mr. Kennedy, Mr. Webb and Mayor Greenfield.

It is unclear how much the Members of the Council knew about Mr. Kennedy's conversation with Mr. Outhier, or [REDACTED], when they voted to accept his resignation. Recollections of Council Members of what occurred in Executive Session differ and minutes of Executive Sessions appear to be sketchy. Members of the Council who were interviewed and provided input to this Report indicated they did not know about Mr. Kennedy's conversation with Mr. Outhier. It is Special Counsel's understanding from Staff and Mr. Kennedy, that Mr. Kennedy was assigned to negotiate with Mr. Outhier regarding the terms of his severance benefits on termination of employment. Counsel was unable to locate either an agreement reflecting the final approval of the terms of the severance benefits with Mr. Outhier, nor minutes reflecting its approval by the Council. A copy of the Blackwell Personnel Policy is included in the Appendix to this Report.

It is the recommendation that the City Council conduct a further review of the circumstances regarding the resignation of Mr. Outhier, the records reflecting the terms and payment of severance benefits, whether there was policy compliance with any formal agreement for termination and benefits and whether the approval of the terms of those benefits are properly reflected in the minutes of the City Council. Further that the Personnel Policy be reviewed and revised to establish the process for future terminations and benefits.

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PURCHASING PROCEDURES AND STAFF TRAINING.

As recommended by Ms. Love in her review, Blackwell has undertaken a concerted effort to provide a comprehensive response to the lack of purchasing procedures and staff training. For what appears to be the first time, a proposal for a formal Purchasing Policy Manual is currently being reviewed and revised through the efforts of the current City Manager, Janet Smith, and City Attorney Bryce Kennedy. It is anticipated that it will be available for final consideration by the City Council in the near future. Special Counsel has reviewed the first comprehensive draft which not only details, but sets forth specific policies and criteria concerning the following topics:

1. **DEFINITIONS**
2. **AUTHORITY AND RESPONSIBILITIES**
3. **SUPPLIES AND CONTRACTUAL SERVICES**
4. **PUBLIC COMPETITIVE BIDDING**
5. **CONTRACTING FOR PROFESSIONAL SERVICES**
6. **INTERGOVERNMENTAL PURCHASING**
7. **PAYMENT PROCEDURES**
8. **STANDARDIZATION AND SPECIFICATIONS**
9. **PETTY CASH AND BANK CARD USE**
10. **DISPOSAL AND SURPLUS PROPERTY**
11. **SOCIO-ECONOMIC POLICIES**
12. **COMPLAINTS, DISPUTES AND REMEDIES**
13. **ETHICS**
14. **TRAVEL**
15. **FORMS**
16. **FIXED ASSET ACCOUNTING PROCEDURES**

Many of the topics addressed in the proposed policy manual will have substantial impact on the practical responses to other issues addressed in this Report and should prove to be useful as a roadmap in addressing these and other issues which may require the adoption of Amendments to the Blackwell City Charter, Ordinances and additional Municipal Policy.

In particular, Ms. Love indicated in her review that there were issues of Department Heads without previous experience in the Competitive Bidding Process being directed to prepare bid documents. The Purchasing Policy currently being prepared should resolve those issues with standardized procedures, forms and personnel assigned to prepare for and direct the bidding process. In addition, the Purchasing Policy Manual addresses petty cash and credit card purchasing identified as concerning issues.

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FINANCIAL INFORMATION AND BUDGET ISSUES.

Ms. Love's perception that there may have been a lack of understanding by the City Council regarding the City's financial statements and information provided by the Chief Financial Officer, Meredith Meacham, appears to have been directly on target. Staff members confirmed what was reported to Ms. Love that they had repeatedly raised concerns to Ms. Meacham and Mr. Outhier as early as October, 2017, that the amounts of money being spent, including overruns for the Community Center Project, would likely result in a deficit position for Blackwell before June, 2018. Staff indicated that Ms. Meacham continued to reassure both the Staff and Mr. Outhier through March, 2018, that the financial outlook for the City was positive and under control. As a result it does not appear that the Staff's concerns were forwarded to the Council or formally addressed by Ms. Meacham.

In their interviews, Staff stated that the Council and Mr. Outhier seemed to have had an over confident trust in Ms. Meacham's work, which may have resulted from what could be described as an extraordinarily informal working relationship which may have prevented the drawing of lines of professionalism usually found and helpful in such business relationships. While there is no suggestion of *any* improper conduct, and none should be inferred, providing and receiving professional services often times requires hard questions and hard answers. [REDACTED]

[REDACTED] reported that for some reason statements and financial documents from Ms. Meacham were rarely questioned or reviewed and, even when it appeared that Ms. Meacham was providing "bad news," there was little or no inquiry from the Council. Ms. Love's observation regarding Ms. Meacham's *"failure to be sufficiently affirmative in her warnings on spending prior to the Spring of 2018,"* may well have resulted from this close relationship.

With the termination of Meacham and addition of Crawford & Associates as the Blackwell CFO, input to policies, in conjunction with budget and operating oversight, systems coordination and staff education, should greatly assist in providing the City with an integrated system of accounting which can assure greater financial accuracy, transparency and responsiveness which should serve the City with reliable tools for future planning. Crawford has been brought into the process for the current budget and as a result, substantial number of accounting and funding errors by the prior CFO were revealed which ultimately will require remedial action by the Council to finalize the 2019-2020 budget. These errors appear to stem from a prior combination of failings, principally stemming from the prior lack of City Manager leadership and financial oversight.

Given the overall uncertainty of the integrity and reliability that has so far been disclosed regarding prior accounting, budget and audit practices, it may prove valuable for Crawford to document errors or omissions by the prior CFO to insure that an adequate record exists and explanation available for remedial action taken prior to and in conjunction with, the pending Oklahoma State Audit. Since the

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commencement, much less a final Audit Report, is likely still months away, Blackwell may want to engage in decision making which would be aided by an early identification of errors. Crawford should be consulted regarding instituting early corrective action and the effect of such action on the findings and recommendations of the final State Audit Report. Further, such action may provide the public with a showing of good faith effort. Finally, if the City would find itself in the position of having to assert a legal claim for losses resulting from such errors, early recognition of those errors could project to the public a proactive approach by the City in mitigating any resulting loss.

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CHAIN OF COMMAND ISSUES.

In her review, Ms. Love recognized that Blackwell was not immune to one of the most commonly occurring and disruptive characteristics of the “Council-City Manager” form of municipal government—*Chain of Command*. Serious conflicts commonly result from either a misunderstanding of the law or worse, the refusal to follow it.

Following her interview with staff, Ms. Love noted in her correspondence that *“It may be useful to make sure that all employees understand the “chain of command” in a Council-Manager form of government.”* While that is true, it is equally important that all Elected Officials understand and abide by the law while working within the chain of command limitations and framework.

Early in Special Counsel’s investigation it became clear that both elected and non-elected members of city government had historically been struggling with chain of command conflicts. Those employees who had earlier been interviewed by Ms. Love, reported to Special Council that they had advised her that the issue was creating what one employee described as a toxic environment. Although those interviewed all reported that the conflicts have dramatically dropped with the appointment of the new city manager, there have still been significant issues of improper instances of direct interaction between elected members of the Council and employees. Department Heads indicate that there have been far fewer incidents of Staff and General Employees departing from the lines of authority within the particular department than experienced a year ago. The applicable law governing chain of command is found in 10 O.S. § 10-107, which provides:

Except for the purposes of inquiry, the council and its members shall deal with the administrative service of the city solely through the city manager. The council and its members may not:

- 1. Direct or request the city manager or other authority to appoint or remove officers or employees;**
- 2. Participate in any manner in the appointment or removal of officers and employees of the city, except as provided by law; or**
- 3. Give orders on ordinary administrative matters to any subordinate of the city manager either publicly or privately.**

The Oklahoma Municipal Assurance Group’s (OMAG) *“Best Practices Handbook”* prepared for municipalities in Oklahoma, describes the issue of chain of command as, *“one of the most difficult issues to deal with between the city, the city manager and the city employees, is the question of involvement of the city council in personnel matters. This specific issue has, for whatever reason, caused continuing problems throughout the years.”*

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Those who run for office very often run on promises to “*get in and take charge*,” “*make sure things are done right*,” and “*make sure employees do their job*,” when in fact, their promises are directly contrary to the law. Often when confronted by the conflict between what an elected official believes should be their job and what their job actually is under the law, statements are made such as, “*my voters didn’t elect me to watch a city manager run things*.” While that may well be true, following the voter’s mandate is a clear violation of the law. As noted in the OMAG Handbook, “*The council is responsible for appointment of the city manager, but the city manager, and not the council, is responsible for all other employees of the city*.” If an elected official truly wants to “*run a city*” then the elected official needs to resign and apply for a city manager position, which sometimes happens.

In this day and age, cities rising to the level of a Council-City Manager form of government, have to be run by highly trained, skilled and professional managers in order to be competitive in a world of opportunities that must be fought for. Mayors and Council Members are expected to have the *thirty thousand foot view*, setting goals and policies for the betterment of their communities while their city managers strive to achieve those goals. For most part time public servants on city councils, the myriad of laws, regulations, procedures and policies that must be followed in running municipal government are beyond their training, available time and abilities. In explaining the law and its policy basis during a public meeting, a mayor of a community served by undersigned Counsel noted that after struggling for several months after his election as mayor with over involvement in daily operations, he suddenly became aware that, as he put it, “*If I was suppose to be running this city, I would be making more than \$100.00 per month*.” His comments reflect a recognition of the design and the purpose for which the laws that govern the authority of elected officials was enacted.

During the course of Special Counsel’s review of operational issues occurring during the period for which Mr. Outhier served as City Manager, those interviewed indicated that he was not well organized and became focused on narrow issues for which he had a particular interest, especially the Blackwell Community Center and Fair Grounds construction, which he had described as “his project.” Those interviewed indicated that much of the routine daily operational matters went through the former City Clerk for handling without success. During Special Counsel’s interview with the former City Clerk, [REDACTED], she acknowledged that her expertise and training was in the area of marketing and that she attempted to do a number of jobs for which she had no prior experience. It became clear during interviews that there was a substantial void in daily city management leadership, direction and financial oversight during Mr. Outhier’s term as City Manager.

As indicated by Mr. Kennedy, this void had to be filled and that he, Mayor Greenfield and then Vice Mayor Jon Webb, often intervened in an attempt to assure that daily operational requirements, issues and problems were attended to. While understandable from the standpoint of picking up the ball to assure that routine management issues were dealt with, it is unexplainable from the standpoint of the

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larger problem. The handling of city business, the interaction and directing of city employees in the performance of their jobs, which should have been done by the City Manager, not only constituted a violation of law, but created a void of in dependable central management at the helm. Staff was caught between what they were told sometimes by the City Manager, sometimes by the City Clerk, sometimes by the City's Elected Officials and sometimes by legal counsel. Anxiety, apprehension, frustration and frankly anger developed within the core City Hall Staff. The unexplainable part: the larger problem was, why the City Manager's lack of attention to daily operations was not immediately addressed and resolved.

Some of those interviewed suggested that, based on conversations between the City Manager and Mayor Greenfield which were overheard or which were later disclosed to those interviewed, the lack of dealing with assured job performance by the City Manager was, in part, a result of Council Member's preference to have hands on authority in daily operations. Again, the downside of intervention by elected officials (besides its illegality) is the lack of reliable and stable chain of command authority from a City Manager upon which Staff can rely, better understand and realize a greater job experience and performance.

There are several specific instances of improper intervention in matters governed by 10 O.S. § 10-107, that were reviewed by Special Counsel that are examples of actions which are substantially outside permissible activity of elected officials, including an incident on May 4, 2017, in which Mr. Kennedy and Mayor Greenfield met with an employee in a general labor position regarding excessive sick leave and was advised that he had marital issues and physical issues which had caused him to take excessive sick leave. A counseling session of sorts occurred and the exchange ended with the employee promising to do better. (Documentation included in the Appendix to the Report). This is a personnel issue that required the direct intervention of the City Manager and Personnel Supervisor in order to preserve consistent dealing with employees and to assure that both applicable law and personnel policy are complied with.

More recently, a senior department employee was contacted by Mayor Greenfield and in what the employee described as an agitated and loud conversation, demanded to know why water service had not been provided to a property owned by Mayor Greenfield. He went on to describe how the Mayor had wanted to appoint the employee City Manager and that he had a problem with the number of jobs he was performing for the City of Blackwell. This is an example of how direct contact by a Council Member can be perceived as an intimidation and why such communications are required to go through the chain of command. (Employee's Report is included in the Report Appendix).

During the Spring, 2018, unexpected shift in financial projections what Mr. Kennedy agreed was an *ad hoc* budget committee formed which directly approached Department Heads with specific budget and personnel cuts, even with Departments represented by collective bargaining. It is no wonder that this response to the budget crisis was met with a swift intervention of the FOP. This process

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further resulted in extremely hard feelings by Department Heads and their personnel, and fostered an atmosphere of distrust in both City Management and Council Member actions.

The statutory requirements and the recommendation of policy makers, including OMAG, point to *“never do”* requirements and practical recommendations for members of a city council. Those recommendations include:

Council members should never appear at city hall or other department of the city and attempt to direct personnel to perform any duties on behalf of the council member; if a council member believes that something is needed from a city employee, that request must be directed to the city manager who will then communicate that request to the appropriate employee in the correct setting;

Council members should not appear at emergency scenes unless requested by first responders. They should not expect to have any input into the handling of the situation or access any different than any other citizen;

Council members are not allowed by law to appear at public work sites and offer suggestions as to how the work can should be performed. Any input of that type is required to be directed to the city manager who can then communicate that direction, if appropriate, to the employees involved.

As noted by OMAG, the best rule of thumb is to keep in mind that council members should consider themselves no more than ordinary citizens when it comes to city employees and public facilities. In the Council-Manager form of government, is the policy and legislative component and has virtually no authority by law to engage in management of day to day activities.

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ADDITIONAL MATTERS REVIEWED.

1. CLAIM OF IMPROPER INFLUENCE.

While reviewing documents in City Hall, Special Council became aware of a disturbance by a husband and wife who were attempting to finalize requirements for obtaining a particular cannabis permit under Oklahoma's new law. Both of the applicants were distraught over learning that their operation could be in jeopardy due to a residential zoning prohibition for the proposed operation. The wife, who was extremely upset had drawn the attention of several citizens and employees. After Blackwell officials met with them and explained the issue and potential alternatives, the wife made the statement, "*We should have listened to everyone who told us that if you want your marijuana license, rent your property from the Mayor.*" Counsel made inquiry of the couple and asked to interview them later in the week.

Prior to that interview, Special Counsel made a number of inquiries to Staff, Employees and citizens to determine whether the comments of the wife had any merit. Apparently the statement is circulating in Blackwell and several of those interviewed indicated that local gossip had been sharing similar statements to that made by the wife regarding Mayor Greenfield. Several days later, Counsel met with the husband and asked about the source of their understanding regarding the statement. Responses were vague and did not carry reasonable indicia of reliability. Counsel contacted other cannabis license applicants, including one that had rented property from Mayor Greenfield. Following those interviews and checking property records, Special Counsel determined that not only was there no credible evidence indicating that Mayor Greenfield had engaged in any improper conduct to influence or assist any person who rented property from him in their pursuit of a cannabis related license, but that there was no evidence whatsoever supporting the subject matter of the gossip, nor was there any evidence to even suggest that he had offered or implied in any manner that renting his property or otherwise doing business with him would aid in an applicant's pursuit of licensing. This "rumor" appears to have simply started from Mayor Greenfield renting a small number of his properties to those seeking a license, together with the Mayor's expressed general professional interest in the subject matter.

2. EXECUTIVE SESSION RECORDS.

During the course of Counsel's investigation, request was made to review certain records of as Executive Session. At that time, Special Counsel was advised that such records consisted only of his sparse notes taken contemporaneously with the Executive Session and the available notes were provided. While Blackwell does better than most communities, it is recommended that the Council review the applicable law regarding minutes of meetings, including Executive Sessions, with the City Attorney and establish a policy for the taking and keeping of Executive Session records to insure compliance with 25 O.S. § 307, *et seq.*, and to assure that if needed such minutes are in a useful form in a secure and retrievable location.

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CONCLUSION.

Special Counsel has appreciated the opportunity to have been of service to the community of Blackwell. It has been a unique honor. Effort was made with the hope that our work in some measure better Blackwell and its citizens; that truly drove the effort. The hope for the work that has been done is that the findings and recommendations contained in this Report prove useful in not only individual decision making but in the Council setting a course to navigate the public issues confronting Blackwell in the future. When originally approached to consider assisting in a further review of the matters addressed by Margaret Love, days were spent in Blackwell, talking to employees and the general public alike before accepting the appointment. It was important to at least have a snapshot of the forces that drive the community one direction to another.

There is so much good in this place. Marvelous buildings, some new, some old, tell both an all to familiar story of changing times, hard times, and the visions of those past and present. But the people met and friendships born from our time here have assured that Blackwell is a survivor and its citizens are its caretakers through tough times. But most of all it is a place to call Home.

A firm belief exists that a corner has been turned here and that while there is much hard work ahead, there is much hard work laid behind. Thank you for your kindness, your generosity and your efforts.

DISCLAIMER

In this report, there are references to state statutes and legal authorities which appear to be potentially relevant to the issues reviewed by the State Auditor & Inspector's Office. This Office 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, prosecutorial, and/or judicial authorities designated by law.

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