



Cherokee County Commissioners Special Audit Report July 1, 1997 – June 30, 2002

JEFF A. McMAHAN, CFE
OKLAHOMA OFFICE OF
THE STATE AUDITOR
AND INSPECTOR

Why the audit was performed

The District Attorney for
District 27 requested the
audit pursuant to 74 O.S.
2001, § 212(H).

Summary of Audit Findings

- ✓ A possible false claim against the County in the amount of \$6,000 may have been submitted by the District 1 Commissioner. **Pgs. 7 and 8**
- ✓ Payment was made in advance for bridge construction projects. **Pgs. 8, 9, 13 and 15**
- ✓ Bridges paid in advance were not constructed in a timely manner. **Pg. 14**
- ✓ Receiving reports were signed by the contractor and secretary for services not provided/received. It appears these records were prepared to enable the contractors to be paid in advance. **Pgs. 10 and 17**
- ✓ Vendors signed affidavits indicating the work and/or services shown on the invoice had been completed on the same date the contract was executed. **Pgs. 11 and 13**
- ✓ Invoices were not sufficiently itemized to describe the work performed. **Pgs. 12, 13, 16, 17 and 18**
- ✓ The total amount of the contracts was not encumbered pursuant to 62 O.S. § 310.2. **Pgs. 12, 14 and 16**
- ✓ A bridge was constructed on private property. **Pg. 13**
- ✓ Possible conflict of interest – Commissioner’s son awarded bridge construction contracts and flood damage repairs. **Pgs. 14 and 18**. The lowest bid was not awarded in several instances. A bid was not awarded as advertised in one instance. **Pgs. 11, 15 and 16**
- ✓ Inconsistencies were noted on signatures regarding contracts, receiving reports, and non kickback affidavits for some road rejuvenation and bridge repair contracts. **Pgs. 16 and 17**
- ✓ The required Federal form 1099 was not issued to the son of the District 1 Commissioner for work performed in District 3. **Pg. 18**
- ✓ Questionable work hours and unauthorized paid leave were noted. **Pg. 18**
- ✓ Possible private use of a County vehicle, possible personal use of County fuel, and the possible inappropriate use of County employees were noted. **Pg. 19**
- ✓ The lease of a County barn to a private association may be improper. **Pg. 19**

To view a copy of the entire report, please visit our website at: www.sai.state.ok.us.

If you have questions or would like to contact our office, please call (405) 521-3495.

CHEROKEE COUNTY COMMISSIONERS
CHEROKEE COUNTY
SPECIAL AUDIT REPORT
JULY 1, 1997 THROUGH JUNE 30, 2002

This publication is printed and issued by the State Auditor and Inspector as authorized by 74 O.S. 2001, § 212(H). Pursuant to 74 O.S. 2001, § 3105(B), 35 copies have been prepared and distributed at a cost of \$66.00. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.



STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR

JEFF A. McMAHAN
State Auditor and Inspector

December 23, 2002

Honorable Gene Haynes
District Attorney-District No. 12
219 S. Missouri, Room 1-111
Claremore, Oklahoma 74017

Transmitted herewith is the Special Audit Report of the Cherokee County Commissioners, Cherokee County, Oklahoma. We performed our special audit in accordance with the requirements of 74 O.S. 2001, § 212(H).

A report of this type is critical in nature; however, we do not intend to imply that our report failed to disclose commendable features in the present accounting and operating procedures of the County Commissioners.

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government which is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our Office during the course of our special audit.

Sincerely,

A handwritten signature in black ink that reads "Jeff A. McMahon".

JEFF A. McMAHAN
State Auditor and Inspector

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CHEROKEE COUNTY COMMISSIONERS
CHEROKEE COUNTY
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BOARD OF COUNTY COMMISSIONERS

Maxie Thompson District No. 1
Bobby Botts District No. 2
Jim Gower District No. 3
G.V. Gulager former District No. 2
(Prior to January 2001)



STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR

JEFF A. McMAHAN
State Auditor and Inspector

Cherokee County Board of Commissioners
Cherokee County Courthouse
213 W. Delaware Street
Tahlequah, Oklahoma 74464

Pursuant to your request and in accordance with the requirements of **74 O. S. 2001, § 212(H)**, we performed the procedures enumerated below with respect to the Cherokee County Commissioners, Cherokee County, Oklahoma, for the period July 1, 1997 through June 30, 2002.

The objectives of our special audit primarily included, but were not limited to, the areas presented by the District Attorney. Our findings and recommendations related to these procedures are presented in the accompanying report.

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the Cherokee County Commissioners for the period July 1, 1997 through June 30, 2002. Further, due to the test nature and other inherent limitations of a special audit report, together with the inherent limitations of any internal control structure, there is an unavoidable risk that some material misstatements may remain undiscovered. This report relates only to the accounts and items specified above and does not extend to any financial statements of the County Commissioners taken as a whole.

This report is intended to provide information to the District Attorney and the Cherokee County Board of Commissioners. This restriction is not intended to limit the distribution of the report, which is a matter of public record when released.

Sincerely,

A handwritten signature in black ink that reads "Jeff A. McMahon".

JEFF A. McMAHAN
State Auditor and Inspector

October 28, 2002

INTRODUCTION

The Board of County Commissioners is the chief administrative body for the County. County Commissioners are responsible for maintaining and constructing the County roads and bridges.

The Commissioners must act as a Board when entering into contracts or other agreements affecting the County's welfare. Thus, actions taken by the Board are voted on and approved by a majority of the Commissioners. The Board of County Commissioners' business meetings are open to the public.

As the County's chief administrative body, the three County Commissioners must make major financial decisions and transactions. The Board has the official duty to ensure the fiscal responsibility of the other County officers who handle County funds. The review and approval procedures empowered to the Board of County Commissioners are a means to provide the public with a fiscally efficient system of County government.

EASEMENT

PAYMENT OF \$6000.00 FOR EASEMENT

On September 4, 2001, all three (3) Commissioners voted to approve the purchase of an easement from an individual for \$6,000.00 in District No. 1. According to the "EASEMENT for Public Highway", the Easement contains a strip of land 25 feet on each side of the centerline totaling 1.25 acres. Based on our review, no other easements for land were obtained on either side of this property. The existing County road was only widened in front of this property. Purchase order no. 1000 was issued on September 16, 2001 to this individual and was signed by all three Commissioners. On September 6, 2001, a warrant was issued to this individual in the amount of \$6,000.00.

FINDING: Based on a review of documentation, the following findings were noted:

1. According to the Joint Tenancy Warranty Deed, dated March 21, 1997, the owner of the land is the District No. 1 Commissioner and his spouse. The individual mentioned in the Commissioners' meeting and the spouse only have a life estate. This is reflected on the Tax Rolls and Tax Receipts. The minutes of September 4, 2001 meeting do not reflect the District No. 1 Commissioner has an interest in the property. Therefore, it appears the District No. 1 Commissioner may have submitted a false claim against the County in the amount of \$6,000.00.

As provided by **21 O.S. 2001, § 341:**

"Every public officer of...any county...and every deputy or clerk of any such officer...receiving any money or other thing of value on behalf of or for account of this state or any department of the government of this state or any bureau or fund created by law and in which this state or the people thereof, are directly or indirectly interested, who either:

First: Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money or anything of value received by him as such officer...on behalf of this state, or any subdivision of this state, or the people thereof, or in which they are interested[.]

Third: Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any moneys so received by him, on behalf of the state, city, town, district or county, or the people thereof, or in which they are interested; or

Fourth: Fraudulently alters, falsifies, cancels, destroys or obliterates any such account; or

Fifth: Willfully omits or refuses to pay over to the...county...any money or interest, profit or perquisites arising therefrom, received by him under any duty imposed by law so to pay over the same shall, upon conviction thereof, be deemed guilty of a felony and shall be punished by a fine of not to exceed Five Hundred Dollars (\$500.00), and by imprisonment in the State Penitentiary for a term of not less than one (1) year nor more than twenty (20) years[.]"

The Easement filed with the County Clerk listed the individual as the landowner, not the County Commissioner.

In addition, **62 O.S. 2001, § 372** provides:

"Every officer of...any county...who shall hereafter order or direct the payment of any money...belonging to...such county...in settlement of any claim known to such officers to be fraudulent or void, or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made or attempted to be made, for...any such county...by any officer thereof, and every person, having notice of facts, with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money, shall be paid...shall be jointly and severally liable to the...county...for triple the amount of all such sums of money so paid...as a penalty, to be recovered at the suit of the proper officers of...such county...or of any resident taxpayer thereof, as hereinafter provided."

2. We reviewed the County Clerk's land records beginning July 1990 to present for easements. We noted no easements in the area which exceeded \$25.00. There were no easements issued to Cherokee County exceeding \$1.00. It does not appear that the other two Commissioners questioned the easement even though the cost was \$6,000.00 or 240 times as much as the highest price they had paid in the past.

3. The warrant was not signed for when it was received from the County Clerk's office. Therefore, it could not be determined who obtained the warrant.

4. The County constructed a new fence along the Easement. The laborer who constructed the fence along the Easement also constructed a fence along the backside of the property. In an interview, the laborer stated he was paid cash by the District No. 1 Commissioner for the fence along the backside of the property. However, the County did build the fence along the Easement, which is on the property owned by the Commissioner. It appears the Commissioner personally benefitted by the County constructing a new fence along the Easement. This benefit appears to be prohibited by **21 O.S. 2001, § 341** previously cited.

5. On September 13, 2001, the \$6,000.00 warrant was cashed at a local bank. The name of the individual with the life estate appears on the back of the warrant. We received a sworn statement from this individual indicating the endorsement on the check is not her signature and she never received the \$6,000.00. The account number listed on the back of the warrant is an account owned by this individual and her spouse along with the District No. 1 Commissioner.

BRIDGES

DISTRICT NO. 1

PAYMENT FOR BRIDGE NOT YET CONSTRUCTED

FINDING: The County advertised for bids to construct a box bridge on Steely Hollow Road. The advertisement did not stipulate the project was for labor only. An engineering firm estimated the total cost of the project for labor and materials at approximately \$85,000.00. The County received bids from two contractors, one in the amount of \$63,450.00 and the other for \$62,500.00. The \$62,500.00 bid contained a stipulation that it was for labor only; however, the \$63,450.00 bid did not contain any such stipulation. On February 19, 2002, the bid for labor was awarded to the contractor with the \$62,500.00 bid.

On February 20, 2002, the contractor and the District No. 1 Commissioner signed the contract. Also, on this date, the contractor submitted an invoice for first payment for labor. Further, on this

same date, the receiving report was completed and signed by the contractor and a secretary for District No. 1. On March 4, 2002, the contractor was issued a warrant in the amount of \$40,000.00 as a partial payment.

As of October 10, 2002, dirt work has been performed; however, the construction of the bridge has not started. The contract signed by the contractor states the project must be completed within 30 days of contract or a penalty of \$100.00 a day will be in effect. The contract was signed on February 20, 2002. It appears the penalty noted on the contract would be effective beginning April 4, 2002.

The \$40,000.00 payment for labor before the project began appears to be contrary to **Article X, § 17 of the Constitution of Oklahoma**, which states in pertinent part:

"The Legislature shall not authorize any county...to loan its credit to any corporation, association, or individual."

In addition, **19 O.S. 2001, § 641** states:

"If any county treasurer or other officer...charged with the...disbursement of the public money...belonging to the...county...shall convert to...the use of any other person, body corporate or other association...in any way whatever, any of such public money...for any other purpose; or shall use the same...in any other manner or form whatever...such county...officer...shall be guilty of an embezzlement of so much of said money or other property...Upon conviction thereof, such county...officer...shall be guilty of a felony[.]"

The contract did not provide for a partial payment according to **19 O.S. 2001, § 8(A)**, which provides in pertinent part:

"Any public works contract shall provide for partial payment based upon work completed."

RECOMMENDATION: We recommend the County issue payments only upon completion of projects in accordance with **Article X § 17 of the Constitution of Oklahoma, 19 O.S. 2001, § 641** and **19 O.S. 2001, § 8**.

QUESTIONABLE BID

FINDING: The contractor who submitted the \$63,450.00 bid noted above, submitted no other bids for bridge construction in the three (3) years reviewed. The signature and the handwriting on the bid were inconsistent with signatures and handwriting on other documents previously submitted by the contractor. Information on the bid was not completed and this vendor could not provide a clear explanation of how the bid was calculated.

PAYMENTS IN ADVANCE

FINDING: We reviewed the documentation for fifteen (15) bridges. Of the fifteen (15) bridge projects reviewed, there were thirteen (13) instances wherein the contractors received approximately one-half (½) the amount of the bid prior to construction. The District No. 1 Commissioner stated that it was his policy to pay contractors one-half (½) in advance. However, we noted two (2) of the seven (7) contractors were paid upon completion. It was also noted six (6) projects that received payment in advance had contracts signed by the vendor and the District No. 1 County Commissioner, and stated the County shall not deliver payment until an inspection has been made of the services performed.

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We were able to obtain additional documentation for three (3) bridge projects. Based on the documentation reviewed, we noted the following:

On June 29, 1998, bridge project no. CBR111C (016) was awarded to a contractor for \$34,800.00. The first payment of \$17,400.00 was issued on July 31, 1998. The second payment of \$17,400.00 was issued on January 20, 1999. On June 4, 1999, a dozer company was paid to tear down the old bridge. Concrete was ordered for the bridge at various times during the period August 1999 through December 1999.

On March 20, 2001, the bridge on Baron Road was awarded to the same contractor for \$25,400.00. Also, on March 20, 2001, the County issued a warrant in the amount of (\$12,700.00) for the first payment. On May 17, 2001 the contractor was issued a warrant in the amount of \$12,700.00 for the second payment. Cam locks were rented on October 19, 2001 and lumber and other materials were invoiced at various times in October and December 2001.

On September 4, 2001, the bridge on Rice Road was awarded to this same contractor for \$22,500.00. On September 6, 2001, the County issued a warrant in the amount of (\$11,250.00) for the first payment. On October 23, 2001, the County issued a warrant in the amount of \$11,250.00 for the second payment. On December 11, 2001, an individual was paid for clean up and on December 13, 2001, concrete was ordered.

Based on the documentation reviewed for these three projects, it appears the contractor was paid the entire amount of the bid prior to receiving the construction materials necessary to undertake the project.

The practice of issuing payment prior to receiving services appears to be contrary to **Article X § 17** of the **Constitution of Oklahoma** and **19 O.S. 2001, § 641**, previously cited.

In addition, the contracts did not provide for partial payment in accordance with **19 O.S. 2001, § 8** also previously cited.

RECOMMENDATION: We recommend the County only issue payments upon completion of projects in accordance with **Article X § 17** of the **Constitution of Oklahoma**, **19 O.S. 2001, § 641** and **19 O.S. 2001, § 8**.

RECEIVING REPORTS

FINDING: There were thirteen (13) instances in which vendors and a District No. 1 secretary signed receiving reports, indicating services were received, prior to completing the project. This applies to the instances in which the contractors received payments in advance. It appears these records were prepared to enable the contractors to be paid in advance. Submitting such a claim may be prohibited by **21 O.S. 2001, § 341**, previously cited, and may also violate **21 O.S. 2001, §§ 461, 462** and **587**.

21 O.S. 2001, § 461 states:

"Every clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the penitentiary not exceeding five (5) years, and in addition thereto forfeits his office."

21 O.S. 2001, § 462 states:

"Every person not an officer such as is mentioned in the last section,¹ who is guilty of any of the sets specified in that section, is punishable by imprisonment in the penitentiary not exceeding five (5) years, or in a county jail not exceeding one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment."

21 O.S. 2001, § 587 states:

"Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor."

RECOMMENDATION: We recommend receiving agents verify goods and/or services are received before signing the receiving reports.

SWORN STATEMENTS

FINDING: In the instances noted above, vendors also signed an Affidavit indicating the work and/or services shown by the invoice had been completed on the same date the contract was executed. This practice also appears to be subject to **21 O.S. 2001, § 341** and **62 O.S. 2001, § 310.9**, which states:

"A. [O]n every invoice submitted to any county...for payment of an architect, contractor, engineer or supplier of materials of One Thousand Dollars (\$1,000.00) or more, the sworn statement required by Section 3109 of Title 74 of the Oklahoma Statutes shall be required.

B. Any county...executing a contract with any architect, contractor, supplier or engineer for work, services or materials which are needed on a continual basis from such architect, contractor, supplier or engineer under the terms of such contract...may require that the architect, contractor, supplier or engineer complete a signed and notarized affidavit...which shall apply to all work, services or materials completed or supplied under the terms of the contract or contracts[.]"

The Affidavits contained the following language pursuant to **74 O.S. 2001, § 3109:**

"The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affidavit further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant."

3. The county or local subdivision may recover from the vendor the full amount paid pursuant to the purchase order if the statement adopted and affirmed by the vendor is false."

LOWEST BID NOT ACCEPTED

Bids of \$37,500.00, \$36,800.00 and \$12,500.00 were submitted to the County for labor to construct a 10x6x24 triple box bridge on Shiloh Road. On March 20, 2002, the Commissioners voted to accept the bid of \$36,800.00 and the \$12,500.00 bid was not considered because it was not comparable.

The District No. 1 Commissioner stated the \$12,500.00 bid was not comparable because it was too low in comparison to the other bids. However, according to an engineer, the total cost to construct a bridge for labor and materials is approximately \$65.00 a square foot. Therefore, the total cost of this bridge would be approximately \$48,000.00.

As required by **19 O.S. 2001, § 1505(B)(4)**:

"4. The board of county commissioners, in an open meeting, shall open the sealed bids and compare them to the state contract price. The board of county commissioners shall select the lowest and best bid based upon the availability of material and transportation cost to the job site within (30) days of the meeting. . . The board of county commissioners shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and best bid, the reason for such conclusion shall be recorded."

Therefore, rejecting a bid because it is too low appears to be contrary to the above-cited statute.

RECOMMENDATION: We recommend Commissioners award contracts to the lowest and best bidder. If the lowest bid is not the best bid then the minutes should reflect a valid reason for not accepting the lowest bid in accordance with **19 O.S. 2001, § 1505(B)(4)**.

LACK OF PROPER DOCUMENTATION

FINDING: Invoices submitted by the contractors for the bridge projects did not contain any descriptions of the work completed or the dimensions of any of the bridges. The only information provided on the invoices were "labor for bridge" and the amount involved. This practice appears to be contrary to **19 O.S. 2001, § 1505(E)(9)** which provides:

"9. The invoice shall state the name address of the vendor and must be sufficiently itemized to clearly describe each item purchased, the unit price when applicable, the number or volume of each item purchased, the total price, the total purchase price, and the date of purchase[.]"

RECOMMENDATION: We recommend internal control procedures be implemented to ensure payment is only remitted based on an itemized invoice in accordance with **19 O.S. 2001, § 1505(E)(9)**.

NOT ENCUMBERING PROPERLY

FINDING: For the instances in which vendors were paid one-half ($\frac{1}{2}$) the bid amount in advance, the County only encumbered one-half ($\frac{1}{2}$) the bid amount. When the bid is awarded, the County is obligated for the entire amount of the bid. The County is encumbering one-half ($\frac{1}{2}$) for the advance payment and the other one-half ($\frac{1}{2}$) for the second payment. This practice appears to be contrary to **62 O.S. 2001, § 310.2** which states in pertinent part:

"The amount and purpose of each purchase order or contract shall be charged against the appropriation as made by the excise board or governing body at the time purchase is made or contract let and the balance in the appropriation account after such charges are deducted shall constitute the unencumbered balance available."

RECOMMENDATION: We recommend internal control procedures be implemented to ensure the total amount of the obligation is encumbered at the time the obligation is incurred.

DISTRICT NO. 2

PAYMENTS IN ADVANCE

FINDING: We reviewed the documentation for thirty-two (32) bridges. Of the thirty-two (32) bridge projects reviewed, there were twenty-five (25) instances in which the contractors were paid the entire amount in advance.

The practice of issuing payment prior to receiving services appears to be contrary to **Article X § 17 of the Constitution of Oklahoma** previously cited. In addition, the contracts did not provide for partial payment in accordance with **19 O.S. 2001, § 8** also previously cited.

RECOMMENDATION: We recommend the County only issue payments upon completion of projects in accordance with **Article 10 § 17 of the Oklahoma Constitution** and **19 O.S. 2001, § 8**.

BRIDGE BUILT ON PRIVATE PROPERTY

FINDING: On December 1, 2000, a 3x4x14 bridge was constructed on private property at a cost of \$7,450 for labor only. The former District No. 2 Commissioner stated the private road was dedicated to the County in 1988. However, we were unable to locate any action indicating this road was dedicated to the County, in either the minutes or Resolutions. Submitting a claim for payment for a bridge on private property appears to be subject to **19 O.S. 2001, § 641** previously cited. According to the current District No. 2 Commissioner, he removed the bridge at the property owner's request. We visually verified the former location of the bridge at approximately 100 yards from the County road.

RECEIVING REPORTS AND SWORN STATEMENTS

FINDING: There were twenty-five (25) instances in which vendors and three (3) District No. 2 secretaries signed receiving reports, indicating services were received, prior to completing the projects.

This applies to the instances in which the contractors received payments in advance. Therefore, it appears these records were prepared to enable the contractors to be paid in advance. Submitting such claims may be prohibited by **21 O.S. 2001, § 341** and **19 O.S. 2001, § 641** both previously cited.

In addition, as noted with District No. 1, vendors also signed Affidavits indicating work was completed before finishing the project. This practice also appears to be subject to **21 O.S. 2001, § 341, 74 O.S. 2001, § 3109, 21 O.S. 2001, §§ 461, 462 and 587**, all previously cited.

RECOMMENDATION: We recommend receiving agents verify goods and/or services are received before signing the receiving reports. Also, Affidavits should only be signed at the time work is completed in accordance with **74 O.S. 2001, § 3109**.

LACK OF PROPER DOCUMENTATION

FINDING: Invoices submitted by the contractors for twenty-five (25) out of thirty-two (32) of the bridge projects reviewed, did not contain any description of the work completed or the dimensions of the bridges. The only information provided on the invoices were "labor for bridge" and the amount

involved. As previously noted, this practice appears to be contrary to 19 O.S. 2001, § 1505(E)(9) previously cited.

RECOMMENDATION: We recommend internal control procedures are implemented to ensure payment is only remitted based on an itemized invoice in accordance with 19 O.S. 2001, § 1505(E)(9).

FAILING TO PROPERLY ENCUMBER

FINDING: We noted two (2) instances in which the County did not encumber the funds until after the vendor submitted an invoice. This practice appears to be contrary to 62 O.S. 2001, § 310.2 (cited earlier) and 19 O.S. 2001, § 1505(C)(1,2) which provides in pertinent part:

"C. After selection of a vendor, the procedure for the purchase, lease purchase, or rental of supplies, materials, and equipment used by the county shall be as follows:

1. The county purchasing agent shall prepare a purchase order in quadruplicate and submit it with a copy of the requisition to the county clerk;

2. The county clerk shall then encumber the amount stated on the purchase order and assign a sequential number to the purchase order[.]"

It was further noted that in one (1) instance, the purchase order and receiving report were signed prior to the County receiving the estimates from the vendors. The practice appears to be subject to 21 O.S. 2001, § 341 19 O.S. 2001, § 641 both previously cited.

RECOMMENDATION: We recommend internal control procedures be implemented to ensure total amount of the obligation is encumbered at the time the obligation is incurred.

BRIDGES PAID FOR IN ADVANCE NOT CONSTRUCTED IN A TIMELY MANNER

FINDING: We noted four (4) instances in which the County paid the vendor, on behalf of the former County Commissioner, the entire amount of the award in November 2000 and the construction of the bridges was not started until January 2001. It was also noted that the bridges were not constructed at the grid locations as indicated on the approved purchase order. Therefore, it appears these records were prepared to enable the contractors to be paid in advance. Submitting such claims may be prohibited by 21 O.S. 2001, § 341, 62 O.S. 310.9, 74 O.S. 3109 and 19 O.S. 2001, § 641, all previously cited.

RECOMMENDATION: We recommend purchase orders be approved for payment after the County Commissioner and the receiving agent verify that the goods and/or services have been received.

DISTRICT NO. 3

POSSIBLE CONFLICT OF INTEREST

FINDING: In the June 19th, 2000 Commissioners' meeting, the District No. 1 Commissioner made a motion to award a bid of \$31,200.00 to his son for the construction of 3 box bridges in District #3. All three Commissioners voted to accept the bid. Further, the District No. 1 Commissioner signed the purchase order for approval.

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On February 4th, 2002, the District No. 1 Commissioner's son was awarded a bid of \$28,235.00 to construct the Goodman Bridge. The District No. 1 Commissioner voted to approve the bid and he also signed the purchase order for approval. These instances appear to be contrary to **69 O.S. 2001, § 630** which provides:

"[N]o County Commissioner... shall be either directly or indirectly interested in any contract for the construction or building of any bridge or culvert, or of any improvement of any road or parts of road coming under the provisions of this Code¹."

In addition **61 O.S. 2001, § 114** states:

"The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest or otherwise in any such contract. Contracts entered into in violation of this section shall be void. Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office."

RECOMMENDATION: We recommend in instances in which a possible conflict of interest occurs, the conflict be disclosed to the other two Commissioners and reflected in the minutes of the meeting. In addition, the Commissioner involved with the conflict should abstain from voting on and signing the contract.

LOW BID NOT ACCEPTED

FINDING: As noted above, the District No. 1 Commissioner's son was awarded a bid to construct three box bridges. The bid submitted by the Commissioner's son was for the purpose of supplying the labor to construct three box bridges at \$31,200.00. However, the minutes do not reflect bids submitted by two other contractors. One bid for labor totaled \$34,200.00, which is higher than the bid awarded; however, the other bid for labor was only \$18,748.50. This bid is considerably lower than the bid awarded to the Commissioner's son. Therefore, since the lowest bid was not reflected in the minutes, this appears to be contrary to **19 O.S. 2001, § 1505(B)(4)** previously cited.

Further, if the estimated cost to construct three 4x4x24 box bridges is \$65.00 a square foot, the estimated total to construct the three bridges is \$18,720.00.

RECOMMENDATION: We recommend Commissioners award contracts to the lowest bidder. If the lowest bid is not the best bid then the minutes should reflect a valid reason for not accepting the lowest bid as required by **19 O.S. 2001, § 1505(B)(4)**.

PAYMENTS IN ADVANCE

FINDING: The contractor received ½ of the bid for the Goodman Bridge in advance. Paying for services in advance appears to be contrary to **Article X § 17 of the Constitution of Oklahoma, 19 O.S. 2001, § 8** and **19 O.S. 2001, § 641**.

RECOMMENDATION: We recommend the County only issue payments upon completion of projects in accordance with **Article X § 17 of the Constitution of Oklahoma, 19 O.S. 2001, § 8** and **19 O.S. 2001, § 641**.

NOT ENCUMBERING BID TOTAL

FINDING: Instances in which the vendor is paid one-half (½) the amount in advance; the County only encumbers one-half (½) the bid amount. Only encumbering ½ the amount when the obligation is incurred appears to be contrary to **62 O.S. 2001, §310.2** previously cited.

RECOMMENDATION: We recommend internal control procedures be implemented to ensure total amount of the obligation is encumbered at the time the obligation is incurred.

BIDS NOT AWARDED AS ADVERTISED

FINDING: It was noted that the advertised bids for the Goodman Bridge were for construction of a drainage structure to be built using ODOT Standards and the materials and construction methods shall meet the current ODOT specifications. However, it was noted that the County Commissioners accepted a bid that was submitted for "labor only" with no description of what "labor only" included.

RECOMMENDATION: We recommend internal control procedures be implemented to ensure that bids are properly solicited and awarded as prescribed by **19 O.S. 2001, § 1505**.

LACK OF PROPER DOCUMENTATION

FINDING: Invoices submitted by the contractors for one (1) out of two (2) of the bridge projects we reviewed, did not contain any description of the work completed or the dimensions of the bridges. The only information provided on the invoices were "labor for bridge" and the amount involved. As previously noted, this practice appears to be contrary to **19 O.S. 2001, § 1505(E)(9)**.

RECOMMENDATION: We recommend internal control procedures are implemented to ensure payment is only remitted based on an itemized invoice in accordance with **19 O.S. 2001, § 1505(E)(9)**.

COST OF BRIDGES

We prepared a schedule for all three (3) districts comparing actual cost to estimated cost (\$65.00 per square foot) see appendix.

CONTRACT LABOR

DISTRICT NO. 1

QUESTIONABLE SIGNATURES

FINDING: During fiscal years 1997-98 and 1998-99, the first cousin of the District No. 1 Commissioner was issued 5 warrants totaling \$12,495.00 for "road rejuvenation" and "bridge repairs". There were some noticeable inconsistencies in the signatures of this individual on contracts, receiving reports and non-kickback affidavits. Attached to purchase order no. 285 dated July 15, 1998, the signature on the receiving report and the non-kickback affidavit was misspelled. Further, all 5 of the warrants appeared to have been endorsed by the individual and deposited to the bank account of the convenience store owned by the District No. 1 County Commissioner. The warrants, which appeared to be cashed, were endorsed over to the Commissioner's spouse and the store.

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We noted several other instances in which signatures of two (2) other individuals on contracts, receiving reports and non-kickback affidavits were noticeably inconsistent.

LACK OF DOCUMENTATION

FINDING: From July 1999 through June 2002, we selected for review all payments, which appeared to be for contract labor. Contract labor totals are as follows:

| FISCAL YEAR | NUMBER OF PAYMENTS | AMOUNT |
|-------------|--------------------|-------------|
| 1999-00 | 10 | \$41,995.00 |
| 2000-01 | 17 | \$54,991.00 |
| 2001-02 | 14 | \$36,900.00 |

Payments for contract labor ranged from clearing right-of-ways and fence work to road and bridge rejuvenation. Amounts for clearing right-of-ways and fence work ranged from \$700.00 to \$2,499.00. Road and bridge rejuvenation payment amounts ranged from \$2,499.00 to \$7,499.00. None of the invoices provided any description of the work performed or how the amounts were determined. Locations were not specified. In some instances it appears the County provided the invoice; however, the vendor did not sign the invoice. It appears itemized invoices are required by **19 O.S. 2001, § 1505(E)(9)**.

RECOMMENDATION: We recommend internal control procedures are implemented to ensure payment is only remitted based on an itemized invoice in accordance with **19 O.S. 2001, §1505(E)(9)**.

RECEIVING REPORTS

FINDING: In most instances, the contracts and the receiving reports were dated the same date. Based on the amounts paid and an interview with one of the vendors, it appears these projects lasted more than one day. Since it appears receiving reports were completed and signed by vendors and a District No.1 secretary before work was completed, this appears to be contrary to **21 O.S. 2001, § 341, 62 O.S. 2001, § 310.9, 74 O.S. 2001, § 3109 and 19 O.S. 2001, § 641**.

RECOMMENDATION: We recommend receiving agents verify goods and/or services are received before signing the receiving reports.

DISTRICT NO. 2

LACK OF DOCUMENTATION

FINDING: There were very few payments from District No. 2 for contract labor. We reviewed four (4) payments to individuals for mowing; two (2) of the payments did not provide documentation as to number of hours and amount per hour. As previously noted **19 O.S. 2001 § 1505(E)(9)** requires itemized documentation.

RECOMMENDATION: We recommend internal control procedures are implemented to ensure payment is only remitted based on an itemized invoice in accordance with **19 O.S. 2001 § 1505(E)(9)**.

DISTRICT NO. 3

POSSIBLE CONFLICT OF INTEREST

FINDING: There were very few payments from District No. 3 for contract labor. There were four (4) payments to the son of the District No. 1 Commissioner totaling \$13,000 for flood damage repairs. The District No. 1 Commissioner approved all the purchase orders for payment. Approving the payments may constitute a possible conflict of interest, which appears to be contrary to 69 O.S. 2001, § 630 and 61 O.S. 2001, § 114 both previously cited.

RECOMMENDATION: We recommend in instances in which a possible conflict of interest occurs, the Commissioner involved with the conflict should not be involved in approving the payments by signing the purchase orders.

LACK OF DOCUMENTATION

FINDING: As previously noted, the invoices did not provide any description of the work performed or how the amounts were determined. Itemized invoices appear to be required by 19 O.S. § 1505(E)(9).

RECOMMENDATION: We recommend internal control procedures are implemented to ensure payment is only remitted based on an itemized invoice in accordance with 19 O.S. § 1505(E)(9).

IRS FORM 1099

FINDING: The son of the District No. 1 Commissioner was paid \$31,200.00 in calendar year 2000 and \$13,000.00 in calendar year 2001. The Internal Revenue Service Form 1099-MISC requires a 1099 be issued to vendors receiving \$600.00 or more in a calendar year. The required Federal form was not issued to the son of the District No. 1 Commissioner.

RECOMMENDATION: We recommend internal control procedures be implemented to ensure vendors receiving \$600.00 or more are issued the required Federal Form 1099-MISC.

PAYROLL

QUESTIONABLE WORK HOURS OF AN EMPLOYEE

FINDING: A District No. 1 secretary is employed by the County at a rate of \$2,500.00 a month. Based on interviews, it appears this employee does not keep regular hours and is seldom at the Courthouse. It appears this employee is not maintaining an 8 hour-per-day schedule as prescribed by 61 O.S. 2001, § 3 which states:

"A. Except as provided in subsection B of this section, eight (8) hours shall constitute a day's work for all public employees not otherwise exempt from or covered by special provisions under the federal Fair Labor Standards Act, 29 U.S.C.A., Section 201 et seq. and regulations thereto."

UNAUTHORIZED LEAVE

FINDING: A part-time secretary is employed by District No. 1 at a rate of \$1,600.00 a month for an average of 20 hours a week. This employee is also the great-niece of the District No. 1 County

Commissioner. She started maintaining a timesheet beginning in August 2002. Based on a review of her timesheet for the months of August and September, this employee received paid leave for "Religion". Based on the Employee Personnel Policy Handbook, only full-time employees are entitled to sick and annual leave. Further, there is no provision for paid leave for "Religion". Therefore, it appears this employee received unauthorized paid leave at an approximate cost of \$440.00. Based on the lack of documentation, we were unable to determine if there were any other instances in which this employee received unauthorized paid leave. Unauthorized paid leave appears to violate **19 O.S. 2001, § 641**, previously cited.

RECOMMENDATION: We recommend the County seek restitution for the leave that exceeds policy and **19 O.S. 2001, § 641**.

USE OF COUNTY INVENTORY AND EMPLOYEES

POSSIBLE PRIVATE USE OF COUNTY VEHICLE

FINDING: On December 30, 1998, the County purchased a white 1998 Ford Expedition in the amount of \$28,853.00. Based on several interviews, it appears that the spouse of the District #1 Commissioner used this vehicle on a regular basis.

POSSIBLE USE OF COUNTY FUEL FOR PERSONAL USE

FINDING: Based on an interview, the spouse of the District No. 1 Commissioner used County fuel, on several occasions, for a personal vehicle.

POSSIBLE INAPPROPRIATE USE OF COUNTY EMPLOYEES

FINDING: Based on an interview, a County employee was used to work on vehicles and equipment belonging to the District No. 1 Commissioner, secretary, and another individual.

The above findings appear to violate **21 O.S. 2001, § 341** previously cited in this report.

LEASE AGREEMENT

QUESTIONABLE LEASE

FINDING: On May 21, 2001, the County Commissioners executed an agreement with the Green Country Coonhunters Association for the purpose of leasing the former District No. 2 County barn. The lease agreement provided for a term of 25 years at \$1.00 a year. There is no provision in the agreement as to the party responsible for maintenance, repairs, or liability. Further, there is no cancellation, remedy or renewal clause included in the agreement.

In addition, on February 19, 2002, the County approved purchase order no. 4539 in the amount of \$3,400.00 for the purpose of installing a new heating and air-conditioning unit in the District No. 2 County barn. We question County funds being used for this purpose since the County does not use this facility and has leased the building for 25 years. These actions appear to violate **19 O.S. 2001, § 641**.

Also, the purchase order was issued subsequent to the invoice, indicating proper encumbering procedures were not followed as required by **19 O.S. 2001, § 1505**.

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RECOMMENDATION: The County should seek legal counsel regarding the legality of the lease agreement. In addition, internal control procedures should be implemented to ensure proper encumbering procedures are followed in accordance with **19 O.S. 2001, § 1505**.

There may have been other areas of concern expressed which are not addressed. Because they were noted to be either (1) unfounded, or (2) sufficient information was not available to reach a definite conclusion, they are not set out and discussed in this report.

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

The inclusion of cites to specific statutes or other authorities within this report does not, and is not intended to, constitute a determination or finding by the State Auditor and Inspector that the Board of County Commissioners or any of the individuals named in this report or acting on behalf of the Board of County Commissioners have violated any statutory requirement or prohibition imposed by law. All cites and/or references to specific legal provisions are included within this report for the sole purpose of enabling the Administration and other interested parties to review and consider the cited provisions, independently ascertain whether or not Board of County Commissioners' policies, procedures or practices should be modified or discontinued, and to independently evaluate whether or not the recommendations made by this Office should be implemented.

**CHEROKEE COUNTY
BRIDGE ESTIMATED COST COMPARED TO BRIDGE ACTUAL COST (LABOR ONLY)**

| Bridge Location | Bridge Dimensions (Add 1 sq ft for walls) | Total Square Foot | Paid for Labor Only | Estimated Cost of Bridge in Place | Calculated Labor per Sq Ft | Engineer estimated Cost per Sq Ft |
|----------------------------|----------------------------------------------|-------------------------------|---------------------|-----------------------------------|----------------------------|-----------------------------------|
| District No. 1 | | | | | | |
| CR-111D(014) 3 Box Bridges | 8 x 24 8 x 24 6 x 24 | 216sqft 216sqft 168sqft | | | | |
| | | <u>600sqft</u> | <u>\$47,200</u> | <u>\$39,000</u> | <u>\$78.67</u> | <u>\$65.00</u> |
| NS 456.4 EW 66 | 6 X 24 | <u>168sqft</u> | <u>\$11,500</u> | <u>\$10,920</u> | <u>\$68.45</u> | <u>\$65.00</u> |
| NS 457.3 EW 72.7 | 6 x 24 | <u>168sqft</u> | <u>\$12,500</u> | <u>\$10,920</u> | <u>\$74.40</u> | <u>\$65.00</u> |
| NS 452 EW 66 | 3 x 24 | <u>96sqft</u> | <u>\$9,320</u> | <u>\$6,240</u> | <u>\$97.08</u> | <u>\$65.00</u> |
| Baron Road Bridge | 8 X 16 | <u>144sqft</u> | <u>\$25,400</u> | <u>\$9,360</u> | <u>\$176.39</u> | <u>\$65.00</u> |
| NS 451 EW 72.5 | 6 x 24 6 x 24 | 168sqft 168sqft | | | | |
| | | <u>336sqft</u> | <u>\$22,500</u> | <u>\$21,840</u> | <u>\$66.96</u> | <u>\$65.00</u> |

**CHEROKEE COUNTY
BRIDGE ESTIMATED COST COMPARED TO BRIDGE ACTUAL COST (LABOR ONLY)**

| Bridge Location | Bridge Dimensions (Add 1 sq ft for walls) | Total Square Foot | Paid for Labor Only | Estimated Cost of Bridge in Place | Calculated Labor per Sq Ft | Engineer estimated Cost per Sq Ft |
|---------------------|-------------------------------------------------|-------------------------------|---------------------------|-----------------------------------------|----------------------------------|-----------------------------------------|
| District No. 2 | | | | | | |
| NS 448 EW 79 | 3 x 24 | <u>96sqft</u> | \$7,200 | \$6,240 | \$75.00 | \$65.00 |
| NS 448.3 EW 79 | 3 x 15 | <u>60sqft</u> | \$7,450 | \$3,900 | \$124.17 | \$65.00 |
| NS 445.8 EW 77.0 | 3 x 24 | <u>96sqft</u> | \$7,000 | \$6,240 | \$72.92 | \$65.00 |
| NS 447.5 EW 79 | 3 x 15 | <u>60sqft</u> | \$7,450 | \$3,900 | \$124.17 | \$65.00 |
| District No. 3 | | | | | | |
| Goodman Bridge | 2.10 x 34 | <u>106sqft</u> | <u>\$28,325</u> | <u>\$6,890</u> | <u>\$267.22</u> | <u>\$65.00</u> |
| CB11- 3(001,2,3) | 4 X 24 4 X 24 4 X 24 | 120sqft 120sqft 120sqft | | | | |
| | | <u>360sqft</u> | <u>\$31,200</u> | <u>\$23,400</u> | <u>\$86.66</u> | <u>\$65.00</u> |
| | | | | | | |
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