



CITY OF PAULS VALLEY GARVIN COUNTY, OKLAHOMA

Citizen Petition Audit

June 5, 2024

Cindy Byrd, CPA
State Auditor & Inspector

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TO THE CITIZENS OF THE CITY OF PAULS VALLEY, OKLAHOMA

Pursuant to 74 O.S. § 212(L), a citizen petition audit of the City of Pauls Valley has been completed.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide services to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement. This report is a public document pursuant to the Oklahoma Open Records Act, 51 O.S. §§ 24A.1, *et seq.*

Sincerely,

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR



City of Pauls Valley

Citizen Petition Audit Report

Why This Audit Was Performed

This audit was performed at the request of the citizens of the City of Pauls Valley, pursuant to 74 O.S. § 212(L). The citizens requested a review of concerns occurring between 2015 and 2020.

Petition Objectives

The City of Pauls Valley (City) is a charter city and operates under a council-manager form of government in accordance with 11 O.S. §§ 10-101, *et. seq.* The City oversees public safety, sanitation, water and sewer, streets, recreation, and general administrative services for the community.

A citizen petition, verified by the Garvin County Election Board, requested a review of eight concerns. These concerns are addressed in the following report.

1. Determine if financing arrangements (notes, loans, etc. and their associated collateral) including a \$500,000 loan made to Southern Plains, have been properly managed.
2. Determine if sales tax revenue has been used according to its designated purposes.
3. Evaluate the recall petition process and related communications and results.
4. Review contracts, lease agreements, and bid processes of the hospital facility and the ambulance service.
5. Determine if the City has failed to pay wages and related benefits to former hospital employees.
6. Review the City's management/relationship with the nursing home facilities across the state of Oklahoma.
7. Review possible violations of the Open Meeting Act and the Open Records Act.
8. Review payments to selected personnel (contract labor, legal services, etc.).

Objective 1**Financing Arrangements**

Petition Objective *Determine if financing arrangements (notes, loans, etc. and their associated collateral) including a \$500,000 loan made to Southern Plains, have been properly managed.*

Loan

In 2019, the City began negotiating the sale of the hospital with Southern Plains Medical Center, Inc. (Southern Plains). The city council approved a lease between the Pauls Valley Hospital Authority (PVHA) and Southern Plains for the period of September 1, 2019, through June 30, 2020, for the property to be used as an urgent care facility pending a sale to Southern Plains.

The hospital had fallen into disrepair, and its license had been terminated. To satisfy the Oklahoma Department of Health's plan of correction to reinstate the license, the City had to reopen the medical center and regain its license prior to selling the property.

Repairs to the hospital, to be completed by Southern Plains, were estimated at \$500,000. Southern Plains was unable to secure a loan to fund the project without collateral. On February 25, 2020, the city council approved Ordinance 972, which authorized the City to pledge the hospital property, owned by the City, as collateral for a loan between Southern Plains and the Pauls Valley National Bank. Southern Plains agreed to purchase the property for \$5 million after the hospital license was reinstated.

On April 15, 2020, the hospital property was pledged as collateral for the \$500,000 loan obtained by Southern Plains. Southern Plains paid off the \$500,000 mortgage as part of the closing costs of the final sale of the hospital.¹

No Finding *The City did not loan Southern Plains funds, instead, they provided collateral for the company to obtain financing.*

Okla. Const. art. X, § 17 prohibits a municipality from loaning its credit to a corporation. However, as addressed in 2004 OK AG 15, the use of public property and funds, as long as it serves a legitimate public purpose, has been deemed allowable. The Opinion states in conclusion:

Municipalities are prohibited by Okla. Const. art. X, § 17 from investing public funds in private enterprise. Expenditures resulting in a public use or purpose are not gifts and are not prohibited by Okla. Const. art. X, § 17.

In Ordinance 972, the City declared the following:

WHEREAS, the City considers it to be a top priority and in the best interests of the City, especially with the current pandemic creating a shortage in hospital resources, to provide and/or to facilitate the provision of adequate health care within the City including the operation of a full-service licensed hospital within the City for the general benefit and welfare of the City and its citizens, and to promote the general welfare, economic security and prosperity of the City;

¹ A total payoff to Pauls Valley National Bank of \$513,139.08, which included principal and interest.

Based on the City's declaration that the sale of the hospital was a top priority and a public purpose and the defined allowability in 2004 OK AG 15 of such, it appears that the loaning of the credit of the City to facilitate the continued health care of the community and the eventual sale of the hospital would constitute an allowable use of the City's credit.

Other Financing Arrangements

No Finding We found no evidence that financing arrangements were mismanaged.

Between 2013 and 2017, the Pauls Valley Municipal Authority (PVMA) and the PVHA financed multiple sales tax revenue notes totaling more than \$13.4 million to fund renovations and provide cash flow to the hospital as the City worked to keep the facility operational. Despite efforts to restructure debt, update facilities, and provide the hospital with operating capital, the hospital closed on October 12, 2018. After the closure, the PVMA issued the Series 2018 Sales Tax Revenue Note, totaling \$4.8 million, using the proceeds to refinance hospital debt and pay outstanding payroll to hospital employees following the facility closure.²

Hospital Related Sales Tax Revenue Notes	
Series 2013	\$3,150,000
Series 2014	\$1,025,000
Series 2014A	\$5,155,000
Series 2014B	\$991,000
Series 2015	\$2,041,000
Series 2017	\$1,100,000
Series 2018	\$4,800,000
Total	\$18,262,000

The proceeds of the hospital related notes were used for the following purposes.

Disbursement of Note Proceeds	
Purpose	Amount
Hospital Operating Funds	\$6,187,450
Payoff Sales Tax Revenue Notes	\$5,679,102
Hospital Operating Room Remodel	\$4,945,960
Hospital Payroll	\$609,369
Repay PVMA For Hospital Expenses	\$300,000
Public Finance Group	\$115,250
Garvin Agee Carlton, P.C.	\$148,200
Interest	\$137,919
Municipal Finance Services	\$81,750
Additional Attorney Fees	\$53,000
Administrative Fees	\$4,000
Total	\$18,262,000

Payment of the revenue notes came from the collection and assignment of sales tax revenue. Beginning in June 2014, the City entered into multiple *Sales Tax Agreements* with the PVMA and the PVHA, binding sales tax revenue to secure payment of the indebtedness. The use of sales tax to fund all facets of hospital operations and to pay for debt already issued *or to be issued* was approved by a vote of the people on March 4, 2014.³ As of June 30, 2022, the principal and interest due on hospital-related debt was \$9.8 million.⁴ The .5% dedicated sales tax will continue to be collected to service these debt payments.

² Payments also included \$50,000 in legal fees and \$45,597 in interest.

³ As defined in Ordinance 951.

⁴ FYE June 30, 2022 Independent Audit Report

The hospital-related financing arrangements were properly approved by the appropriate boards, approved by the citizens, and funded through a vote of the people. We found no evidence that the management of the financing arrangements was mismanaged.

Objective 2

Sales Tax

Petition Objective *Determine if sales tax revenue has been used according to its designated purposes.*

The citizens of Pauls Valley have approved a sales tax rate of 4.5%, of which 3.25% is used for general government operations and 1.25% is restricted. The restricted sales taxes are dedicated to the improvement and maintenance of city streets, the advancement of city parks, recreation facilities and related programs, and in support of the hospital.

Sales Tax	Rate
General Govt	3.25%
Streets	.50%
Hospital	.50%
Recreation	.25%
Total	4.50%

The petitioners were concerned that restricted sales tax revenues were not used for the purpose approved by voters. The City and the PVHA bank accounts, sales tax ballots, purchase orders, and invoices were examined to verify sales tax monies were used for their intended purpose.

Sales Tax Revenue

No Finding *Sales and use tax revenues received from the Oklahoma Tax Commission were recalculated according to the voter-approved sales tax rates; these amounts were then verified to deposited and posted amounts per the City's records with no exceptions noted.*

Sales Tax Expenditures

For FYE⁵ 2019 and FYE 2020, a sample of transactions from the general government, street, recreation, and hospital funds were reviewed to verify that expenditures were made in accordance with any restricted sales tax purpose and properly approved by the city council.

No Finding *No exceptions were noted regarding the use of restricted sales tax funds for its predefined purposes.*

There were four instances where purchases were not properly approved. These four transactions, totaling \$233,861, were erroneously left off the financial reports submitted for approval during the June 23, 2020, meetings. Once notified of the error, the city council and PVMA trustees approved the expenditures on April 12, 2022. It was also verified that these four transactions were for a public purpose. No further exceptions were noted.

⁵ FYE – Fiscal Year Ending June 30

Recreation Sales Tax

Finding **Recreation sales tax revenue totaling \$375,000 was provided by the City to the Pauls Valley General Hospital without authorization or city council approval.**

On September 6, 2018, \$375,000 was withdrawn from the Community Center Fund savings account, an account funded by both general government and recreation sales tax.⁶ Although there were sufficient unrestricted general government funds available to cover the transaction, a cashier's check was obtained for the \$375,000 and issued to the "Pauls Valley General Hospital" without documented authorization or approval from the city council.

Objective 3**Recall Petition**

Petition Objective **Evaluate the recall petition process and related communications and results.**

There were two attempts to recall city council members; the first was on January 24, 2019, and the second on March 8, 2019.

On the first petition, concerned citizens sought to recall councilors Jocelyn Rushing, Patrick Grimmett, and Gary Alfred, citing the following reasons for their removal:

1. NONFEASANCE RELATED TO THEIR DUTIES AND PERFORMANCE AS COUNCILMEMBER AND HOSPITAL AUTHORITY MEMBER
2. MALFEASANCE RELATED TO THEIR DUTIES AND PERFORMANCE AS COUNCILMEMBER AND HOSPITAL AUTHORITY MEMBER.
3. OPEN MEETINGS VIOLATIONS
4. PERMANENT AND ONGOING HARM TO THE HEALTH, WELFARE, AND SAFETY OF THE CITIZENS OF PAULS VALLEY, RELATED TO THE CLOSURE OF PAULS VALLEY REGIONAL MEDICAL CENTER.
5. FINANCIAL MISMANAGE RELATED TO THE MASSIVE DEBT STILL OWED BY THE PAULS VALLEY REGIONAL MEDICAL CENTER.

The City denied the first recall petition in accordance with Section 7.2 of the city charter, which states the petition "***shall be signed by 20 or more registered qualified electors of the city.***" The citizen's recall petition included signatures of individuals who were not registered to vote or who were ineligible to vote due to residing outside of the city limits. As a result, there were not enough valid signatures to proceed with the petition.

The city charter requires the city clerk to review the petition within one month of filing and ascertain whether it has been prepared and circulated as required. The city clerk met this obligation, and the citizen petitioner was notified on February 5, 2019, of the failed petition.

⁶ Until July 2014, the savings account was funded with general government sales tax; after July 2014, the city changed the funding of the account to recreation sales tax.

On the second petition, the citizens sought to recall councilors Rushing and Grimmer for the same reasons as noted above. There were not enough valid signatures to proceed with the petition against Rushing. However, there were 20 authorized signatures, as required by the city charter, for the petition to proceed against Grimmer. In accordance with charter requirements, Grimmer issued a response to the petition, which the city clerk forwarded by certified mail to the citizen who led the petition process. The petitioner did not accept delivery of the certified mail on three separate occasions and failed to file a response within the allotted time.

No Finding *There was no evidence to suggest that the City failed to properly manage the recall petition process.*

Objective 4

Ambulance Service Agreement

Petition Objective *Review contracts, lease agreements, and bid processes of the hospital facility and the ambulance service.*

Per the petitioners, the scope of this objective was specific to the question of whether the City's hiring of an ambulance service complied with bidding laws. On October 12, 2018, the hospital was abruptly closed, leaving the community without ambulance service. The city manager made the decision that immediate service was necessary to protect the citizens and chose to obtain temporary services in order to allow the time necessary to receive and evaluate bids for a new full-time ambulance service provider.

Wadley's Ambulance Service was hired to provide services from October 12, 2018, until October 23, 2018. No contract was approved for these services. Wadley's was paid \$12,568.15 on October 25, 2018, for the services provided. City Ordinance Section 2-85 specifies that supplies, materials, equipment, or contractual services that do not exceed \$20,000 may be purchased without competitive bidding.

No Finding *The payment to Wadley's Ambulance did not violate the ordinance, as the bid limit of \$20,000 was not exceeded.*

The Pauls Valley Ambulance Service District reviewed ambulance service bid proposals at a meeting on October 23, 2018, and awarded the services to Mercy.

Objective 5

Hospital Wage Payments

Petition Objective *Determine if the City has failed to pay wages and related benefits to former hospital employees.*

The petitioners were concerned that former hospital employees' wages or related benefits were not paid after the facility closed.

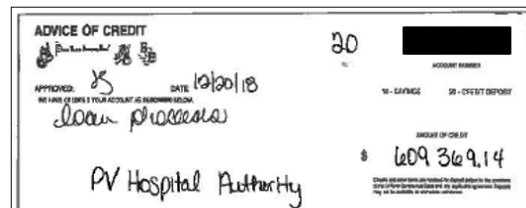
After the hospital closed on October 12, 2018, city officials met with hospital employees and discovered that the hospital management company had been handwriting payroll checks for the net payroll amount and had failed to pay the employees payroll taxes and other elective withholdings. The employees had not been paid for two payroll periods or for their paid time off

(PTO). The City stepped in and agreed to pay the employees for the two outstanding payroll periods and to pay the unpaid payroll taxes and withholdings. The City elected not to pay the PTO.

As the beneficiary of the PVHA, the City did not have an obligation to pay the PVHA's debts. As noted in 60 O.S. §§ 4-176.1(D), the affairs of the public trust shall be separate and independent from the affairs of the beneficiary, including expenditures, general operations, and management of facilities. The statute states in the relevant part:

Except where the provisions of the trust indenture ... or of any other law written specifically to govern the affairs of public trusts, expressly requires otherwise, the affairs of the public trust shall be separate and independent from the affairs of the beneficiary in all matters or activities authorized by the written instrument creating such public trust including, but not limited to, the public trust's budget, expenditures, revenues and general operation and management of its facilities or functions ...

Although not required to accept the PVHA debt, the City acted in conjunction with the PVMA to pay the employees. The PVMA financed a \$4.8 million bond on December 20, 2018, using \$609,369 of the proceeds to pay the Pauls Valley General Hospital outstanding payroll.



No Finding *Hospital employee payroll registers were reconciled to wages due. No exceptions were noted except for the three employees discussed below.*

Three former hospital employees filed a lawsuit on December 13, 2018, asserting the PVHA d/b/a Pauls Valley General Hospital did not pay approximately 150 employees the wages and other benefits due after the facility closed on October 12, 2018. The lawsuit requested the court accept the case as a class action and claimed the PVHA committed fraud because they concealed the knowledge that the hospital was having difficulties funding payroll. On June 7, 2021, the court dismissed the claims for class certification and fraud.

The three employees filed an amended petition on July 7, 2021, claiming their earned wages or benefits between March 1, 2018 and October 12, 2018, were not paid. The lawsuit was dismissed on December 1, 2022.

The payroll funds for the three employees were placed in reserve in a certificate of deposit on March 29, 2021, and remained on deposit as of June 16, 2022, in the amount of \$26,441.13.

Objective 6

Nursing Home Facilities

Petition Objective *Review the City's management/relationship with nursing home facilities across the State of Oklahoma.*

NewLight Healthcare LLC., a hospital administration company, approached the PVHA about participating in the federally funded Upper Payment Limit (UPL) program. The purpose of the program was to increase provider reimbursement levels for Medicaid providers. To participate,

the City would be required to be the owner of licenses for nursing homes across the state of Oklahoma. With these licenses, the City would leverage federal dollars to bridge the gap between Medicaid and Medicare payments up to the UPL limit. The nursing homes would receive additional funding under the program, and the City would receive additional funding for medical-related services. The PVHA approved participation in the UPL program on May 24, 2016.

Consideration of approving the Pauls Valley Hospital Authority to participate in the Oklahoma Healthcare Authority Nursing Facility Upper Payment Limit Program with possible action.
Trustee Patrick Grimmett, seconded by Vice-Chairman Jocelyn Rushing, made a motion to approve participation.
Yes: Grimmett, Rushing, Montgomery, Parrish and Alfred No: None Absent: None

Finding The City expended \$27,491.99 in an attempt to participate in the federally funded Upper Payment Limit program. The program was never approved in the state of Oklahoma, and all nursing home licenses were eventually relinquished.

The City launched the participation process in anticipation of the rules eventually being approved for the state by the federal government. The process began on November 8, 2016, when the city council approved letters of intent with nursing homes that planned to take part in the program. The City then obtained nursing home licenses in the City's name to establish a history of receiving and paying funds before completing an application to participate in the UPL program with the state.

The City approved opening bank accounts for the nursing homes on March 14, 2017, and began receiving Medicaid deposits at that time. When deposits were received, they were remitted directly to the nursing homes.

The UPL program was ultimately not approved for participation in the State of Oklahoma.⁷ After the rule was revoked, the City incurred additional costs to transfer the nursing home licenses back to the nursing homes. The expenditures related to the UPL program were properly approved. The UPL venture did not materialize, resulting in an overall cost to the City of \$27,491.99.

Objective 7

Open Meeting Act and Open Records Act

Petition Objective Review possible violations of the Open Meeting Act and the Open Records Act

Open Meeting Act

City council members serve as trustees for the PVMA, PVHA, and the Pauls Valley Ambulance Service District (PVASD). The minutes and agendas for a sample of 80 board and/or city council meetings, occurring between July 2014 and June 2020, were evaluated for compliance with the

⁷ Oklahoma Rule 317:30-5-136 was revoked on September 14, 2020.

Open Meeting Act.⁸ An additional 25 meeting minutes were evaluated for the handling of “New Business” only.

Finding The City, the PVHA, and the PVMA improperly addressed items under “New Business” 32 times contrary to the Open Meeting Act.

The Open Meeting Act⁹ defines “New Business” as “any matter not known about, or which could not have been reasonably foreseen prior to the time of the posting” of the agenda for a regularly scheduled meeting. An agenda for a regularly scheduled meeting is required to be posted at least 24 hours prior to the meeting.

City Council

City councilors improperly conducted “New Business” three times for matters that should have been known prior to the meeting. For example, on July 10, 2018, the city council voted to approve a change order for the airport project and amend a contract with a vendor. Change orders and amendments to contracts are ongoing matters that should have been known or foreseen at least 24 hours in advance of a meeting¹⁰ and would not be appropriate under “New Business.”

New Business:		
James Frizell presented a Change Order from KSA for the airport project.		
Vice-Mayor Jocelyn Rushing, seconded by Councilman Patrick Grimm, made a motion to approve the change order.		
Yes: Rushing, Grimm, Parrish and Alfred	No: None	Absent: Montgomery
Councilman Patrick Grimm, seconded by Vice-Mayor Jocelyn Rushing, made a motion to make the following amendments to the contract with LTC Group:		
-Amend to a 90 day termination		
-Amend from a calendar year to a fiscal year		
Yes: Grimm, Rushing, Parrish and Alfred	No: None	Absent: Montgomery

PVMA

The PVMA trustees violated the Open Meeting Act two times under “New Business.” Trustees voted to approve resolutions including approval for a grant and an interlocal agreement as part of new business, both of which are items that would not meet the unforeseen, unknown criterion.

PVMA Meeting minutes from November 18, 2014 and August 9, 2016

New Business:		
James Frizell presented a resolution for approval regarding an OWRB Grant for a drought plan.		
Trustee Michael Parrish, seconded by Trustee Patrick Grimm, made a motion to approve the resolution.		
Yes: Parrish, Grimm, Jacobson and Alfred	No: None	Absent: Rushing
New Business:		
Vice-Chairman Jocelyn Rushing, seconded by Trustee Patrick Grimm, made a motion to enter into an interlocal agreement with the State of Oklahoma regarding the 430 acre lagoon property.		
Yes: Rushing, Grimm, Montgomery, Parrish and Alfred	No: None	Absent: None

PVHA

The PVHA trustees violated the Open Meeting Act 27 times by discussing or approving items under “New Business” that did not meet the definition of new business, items that should have reasonably been known about or foreseen prior to the posting of an agenda, including:

⁸ 25 O.S. §§ 301 et. seq.

⁹ 25 O.S. § 311(A)(10)

¹⁰ 25 O.S. § 311(A)(9)

- Approving the hospital audits for FYE 2015 and FYE 2016
- Approving new hospital bylaws
- Approving the opening or closing of checking accounts
- Adding or removing authorized signers from bank accounts
- Approving contracts with physicians and vendors
- Approving sick leave and PTO plans for employees
- Approving special meeting minutes
- Approving the disposal of surplus items
- Approving the appointment of six members to the PVGH Advisory Committee
- Approving the sale of the Valley Hospice license for \$100,000

The city attorney indicated that the hospital management company, on several occasions, would inform the City the day of a scheduled meeting that items needed to be addressed. City Clerk Kira Davis said the management company was aware agenda items were to be provided on or before Thursday prior to Tuesday meetings but, in many instances, did not comply.

The city attorney said requests to include agenda items were denied on several occasions, but hospital management often claimed that items had just come to their attention or were crucial prior to the next scheduled meeting. Several actions were deemed necessary and addressed as “New Business” for the continuity of hospital operations. The city attorney asserted that the circumstances complied with the statutes related to “New Business.”

“New Business” should not be used to discuss items or make decisions due to a lack of planning by the City, their authorities, or management. The spirit of the Open Meeting Act is to allow the public reasonable access to their government’s actions. As noted in 1982 OK AG 114, “The Open Meeting Law, because it is enacted for the public’s benefit, is to be construed liberally in favor of the public.” By conducting business without appropriate notice to the public, the governing body is operating without regard for the public’s right to transparency.

Executive Sessions

Finding The PVHA did not properly disclose the specific purpose for an executive session and discussed business in the executive session that did not meet statutory requirements.

The reason for executive sessions held by the City, the PVHA, and the PVMA was not specifically noted on the agendas. Instead, a summary of three possible purposes of a session was listed as “a.”, “b.”, or “c.”, on every agenda, whether an executive session was to be held or not, as noted in the example below.

PVHA Minutes September 5, 2018

Consideration of action to cease general operations of the Pauls Valley General Hospital and to take required steps to proceed to close hospital operations.
No Action Taken

Consideration of an executive session for the purpose of:

- a. Confidential communication between a public body and its attorney concerning a pending investigation, claim, or action as authorized by 25 Okla. Stat. § 307(4);
- b. Discussing negotiations concerning employees and representatives of employee groups as authorized by 25 Okla. Stat. § 307(2);
 1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee.
- c. Discussing the purchase or appraisal of real property as authorized by 25 Okla. Stat. § 307(3);

With the Possibility of returning to open session to take action thereon.

Trustee Shirl Montgomery, seconded by Vice-Chairman Jocelyn Rushing, made a motion to enter into an executive session with Frank Avignone, Tonda Garrison, Elizabeth Staggs and Matt Thompson.

Yes: Montgomery, Rushing, Grimmer, Parrish and Alfred No: None Absent: None

Vote to return to open session to take action thereon.

Trustee Shirl Montgomery, seconded by Trustee Michael Parrish, made a motion to acknowledge the return to open session.

Yes: Montgomery, Parrish, Grimmer, Rushing and Alfred No: None Absent: None

For the example shown, the PVHA held a special meeting on September 5, 2018, to discuss the hospital closure. Per the city clerk, the hospital was struggling to fund payroll, and Frank Avignone, the hospital administrator, was requesting financial support. The minutes indicated that no action was taken on the agenda item of ceasing general operations of the hospital; the trustees then entered an executive session with Avignone and other hospital-related personnel. The minutes did not indicate the specific purpose of the executive session, which is required by statute which states, “No public body shall hold executive sessions unless otherwise specifically provided.”

Statute¹¹ also defines the specific reasons a body may enter an executive session; the discussion of ceasing the general operations of the hospital does not appear to comply with any of the statutorily defined purposes.

Non-Agenda Discussions

Finding ***In at least 12 separate meetings, the City and the PVMA trustees, along with the city manager and the city attorney, discussed items not listed on the agenda contrary to the Open Meeting Act.***

Between July 8, 2014, and December 8, 2020, the City and the PVMA consistently listed three comment sections on their meeting agendas.

The open comment agenda items were used to discuss business that would be expected to be included on the agenda and posted at least 24 hours prior to a meeting to provide adequate notice to the public.

9.	Trust Manager comments.
10.	Trust Attorney comments.
11.	Trustee comments.
12.	Adjourn.
POSTED: 3:00 P.M., FRIDAY, NOVEMBER 8, 2019 AT PAULS VALLEY CITY HALL.	

For example, the city manager presented a utility rate increase proposal to trustees on January 12, 2016, and a discussion was held on why the rate increase was needed and how it would be implemented. This discussion was not included on the agenda. As a result, the citizens were not

¹¹ 25 O.S. § 307

properly notified and would not have had the opportunity to attend and participate in the discussion.

Trust Manager Comments:

James Frizell presented a proposal to raise the utility rates. A discussion was held on why the rate increase is needed and how it would be implemented.

In a city council meeting on August 8, 2017, the city manager requested approval to seek bids on the sale of property, a question that would be expected to be placed on the meeting agenda for discussion.

Trust Manager Comments:

James Frizell informed the Authority that there were 22 acres on the backside on the lagoon. It is inaccessible due to the river and he would like to put it out to bid. The Authority agreed to let him go out for bid on the acreage.

The Open Meeting Act specifies that agendas **shall** identify all items of business to be transacted by a public body at a meeting. A discussion of a proposal to raise utility rates and a discussion of termination agreements would be an item that should have been placed on the agenda for prior public notice. Discussion of items without prior public notice would violate the Open Meeting Act and limit transparency for the public.

Open Records Act

The Open Records Act¹² is intended to promote transparency in government; it establishes the public policy of the state and declares that “the people are vested with the inherent right to know and be fully informed about their government.” The Act further requires that “All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours...”

Between March 2018 and June 2020, a total of 26 open records requests were reviewed for compliance with the law.

Finding The City did not comply with all open record requests in a timely manner.

The Open Records Act states that a “public body must provide prompt, reasonable access to its records.” “Prompt” and “reasonable” are not specifically defined and would be subjective to each request situation. However, a delay in providing access to the records should be limited to the time required for preparing the requested documents and the avoidance of excessive disruptions of a public body’s essential functions.

Thirteen of the 26 requests reviewed were fulfilled in a timely manner, which was deemed to be less than 30 days. In 10 instances, the requests were not fulfilled in a timely manner, taking between 54 and 132 days to provide the requested records. In three instances, the response time could not be determined.

¹² 51 O.S. §§ 24A.1 et seq.

The City has a responsibility to provide reasonable and prompt access to public records and should work to improve its compliance with the Open Records Act. The City's average response time to open records requests was 37 days.

The City should consider implementing policies and procedures to define administrative procedures to be followed in response to open record requests to help ensure timely and accurate completion.

Objective 8

Contractual Services

Petition Objective *Review payments to selected personnel (contract labor, legal services, etc.).*

Petitioners were concerned that former hospital employees hired as independent contractors were not paid properly and that selected payments were not allowable according to the contracts. Specific concerns were also voiced concerning the possible lack of contracts with the city attorney, James Carlton of Garvin Agee Carlton, P.C., who provided legal services to the City and their related trust authorities.

Independent Contractors

Finding *The City hired four contract labor employees without the prior approval of the city council as required by city ordinance.*

In October and November 2018, former City Manager Frizell signed "Independent Contractor Agreements" with four individuals authorizing work to be performed in conjunction with the hospital closeout. After the hospital abruptly closed, Frizell stated that the City needed assistance in shutting down the facilities. The four former hospital employees were hired to conduct equipment inventory, shut down utilities and prepare the building equipment and systems for non-use, calculate employee wages and benefits, release medical records, and process the storage of employee and medical records.

There was no evidence the contracts were authorized in advance by the city council as required by City Ordinance Section 2-84, which requires all contracts in excess of \$500 to receive prior approval from the council. Frizell acted outside his authority by signing the agreements without city council approval.

City Ordinance 2-84

(b) Every contract for, or purchase of, supplies, materials, equipment or contractual services for more than five hundred dollars (\$500.00) shall require the prior approval of the council, unless approved in the annual budget.

The contracts were not approved in the budget until a year-end budget adjustment was made on June 30, 2019, several months after Frizell authorized the contracts.

The independent contractors received a total of \$336,879 in compensation.

Contractor	Period Paid	Amount
Doug Frazee	Oct 2018 – Feb 2021	\$289,045
Stephanie Dancer	Nov 2018 – Feb 2019	\$20,714
Carol Steele	Nov 2018 – Mar 2019	\$19,620
Jeanette Hicks	Nov 2018 – Feb 2019	\$7,500
Total		\$336,879

Finding Doug Frazee received compensation of \$53,945 in excess of the authorized contract amount.

Frazee served as an independent contractor, providing maintenance, administration, and hospital termination services. Frazee's contract specified he was to work forty hours per week at a rate of \$2,000 weekly. The agreement did not provide for any payments other than the agreed-upon weekly pay.

Work onsite at the hospital 40 hours per week during business week (M-F) excluding holiday

Frazee signed invoices weekly, indicating the contract payment amount due for each week. Beginning on November 29, 2018, Frazee began to document "extra hours" on the invoices for overtime pay.

The image shows two screenshots of a payment invoice form. The left screenshot is titled "Payment Invoice for Service Provide to Terminate Hospital Services" and contains the following fields: Name (Last, First, MI) Frazee, Douglas, R; Address (redacted); City, State, Zip Oklahoma City, OK, 73107; Phone (redacted); Signature (Doug Frazee); and Date 11/14/2018. The right screenshot shows the "Pay Period" section with the following fields: Name (Last, First, MI) Frazee, Douglas, R; Address (redacted); City, State, Zip Oklahoma City, OK, 73107; Phone (redacted); SSN (redacted); Beginning 2/27/2020; Ending 3/4/2020; Payment Amount \$2,000.00; Extra hours 10 hrs. @ \$500.00; and TOTAL \$2,500.00. The signature field is signed Doug Frazee and the date is 3/4/2020.

Frazee recorded extra hours on 100 of the 120 invoices submitted for payment. In total, 1077 extra hours were reported above the contracted 40-hour weekly work schedule, resulting in \$53,945¹³ in pay exceeding authorized contract payments. Frizell admitted he was aware that Frazee had on occasion worked more hours than specified in the contract, but stated he believed it was limited. He was unable to explain the reason for the extra hours or excess pay.

Legal Services

As previously discussed, per City Ordinance Section 2-84, contractual services for more than \$500 require prior approval of the council or approval in the annual budget. Contractual services of a professional nature do not have to be bid.¹⁴ For FYE 2020 and FYE 2021, the employment

¹³ During the two pay periods of December 10, 2018, and December 17, 2018, Frazee's extra pay was miscalculated, resulting in \$95 of pay in excess of the \$50 per hour amount.

¹⁴ City Ordinance Section 2-85(b)(5)

of James Carlton as the City Attorney did receive prior approval from the council through a “Fee Agreement.”

FYE 2020 Fee Agreement

**SECTION ONE
PURPOSE OF EMPLOYMENT**

CLIENT retains ATTORNEYS to represent it as follows: James W Carlton Jr. (CARLTON) shall serve as City Attorney for CLIENT pursuant to the provisions of the Charter of the City of Pauls Valley Oklahoma (City), and shall serve as general counsel for all public trusts of which the City is a beneficiary. CARLTON may be assisted from time to time by other members of ATTORNEYS’ firm on matters as may be deemed necessary.

For FY 2014 through FY 2019, the attorney was paid without a fee agreement or contract. As explained in the email below, the employment (retainer) of the attorney during these years was managed through approval in the annual budget, which is allowable per ordinance. Any additional fees and services were to be approved throughout the year as incurred. It was verified that the attorney retainer was approved in the annual budget. Subsequent payments throughout the years were traced to approval in the applicable board or city council minutes, with no exceptions noted.

From: [James W. Carlton, Jr.](#)
To: [Kira Davis](#)
Cc: [James Frizell](#)
Subject: Contract
Date: Friday, May 21, 2021 8:50:49 AM
Attachments: [Fee Agreement FY 22.docx](#)

Kira:

I clarified with James what contract he was wanting from me. As you know, I had prepared a contract for FY 2021 (7-1-20 through 6-30-21). The contract we did for FY 2020 (7-1-2019 through 6-30-2020) he had me prepare just because Skip was asking for one. For years prior to that, we had had no contract and James said he was fine with not having a contract and just operating by fees approved in the annual budget and any other fees presented throughout the year above the regular retainer amount which he presents to the council and they approved. But, because of the recent events he wanted to go ahead and have another contract in place for the upcoming FY. Therefore, attached is a contract for upcoming FY (7-1-2021 through 6-30-2022). This is the one he wants to present to council. Just through I’d go through all that for your clarification. Let me know if you have any questions.

Jay

[website](#)



James W. Carlton, Jr.

Attorney & Counselor at Law

Certified Public Accountant

405-238-1000 | fax: 405-238-1001

james.carlton@gaclawyers.com | gaclawyers.com

101 East Grant Ave, Pauls Valley, OK 73075

Between July 2014 and December 2020, the city attorney and his firm provided various services to the City and the related trusts, receiving compensation totaling \$525,332.

Summary of Payments to Garvin, Agee, & Carlton, P.C. July 2014 – December 2020	
Purpose of Legal Services	Amount
Monthly Retainer	\$250,865
Legal Fees & Issuance Costs from Note/Bond Proceeds	\$209,125
Lawsuits	\$20,482
Sale of Hospital	\$20,457
UPL Legal Fees	\$17,692
Code Updates/Miscellaneous	\$6,111
Christmas Bonus	\$600
Total	\$525,332

DISCLAIMER *In this report, there may be references to state statutes and legal authorities that 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 in 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.*