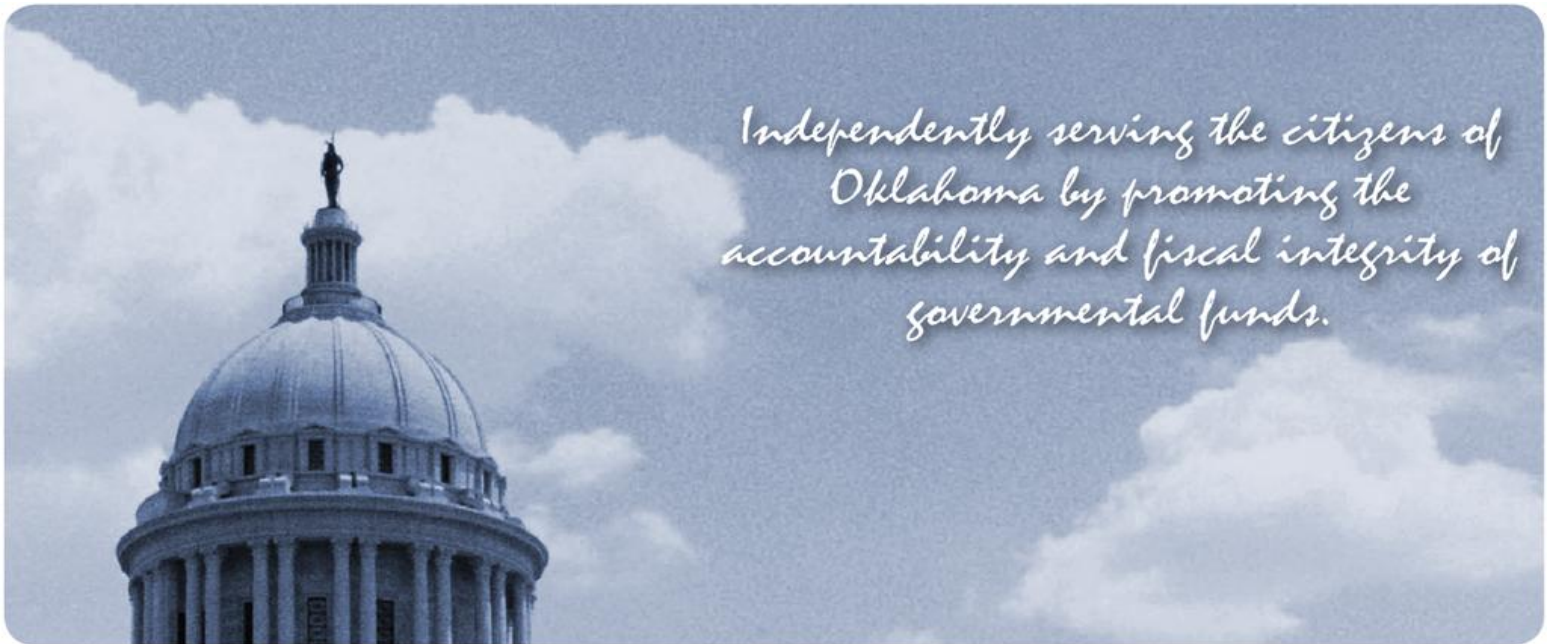


PETITION AUDIT REPORT

# CITY OF BLACKWELL

July 1, 2011 through July 31, 2014



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



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

**PETITION AUDIT REPORT**  
**FOR THE**  
**CITY OF BLACKWELL**  
**KAY COUNTY, OKLAHOMA**  
**JULY 1, 2011 THROUGH JULY 31, 2014**

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



# Oklahoma State Auditor & Inspector

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

June 5, 2015

To the Petitioners and Citizens of the  
City of Blackwell:

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

Pursuant to your request and in accordance with the requirements of **74 O.S. § 212(L)**, we performed a petition audit with respect to the City of Blackwell for the period July 1, 2011 through July 31, 2014.

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

Because the investigative procedures of a petition audit do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City of Blackwell for the period July 1, 2011 through July 31, 2014.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

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

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**City Officials**

(As of June 30, 2014)

Max Wirtz ..... Mayor

Nita Carroll, Ward 1 ..... Vice Mayor/City Councilor

Jon Webb, Ward 2.....City Councilor

Piccola Hudsonpillar, Ward 3 .....City Councilor

Brad Bechtel, Ward 4.....City Councilor

Mark Skiles ..... City Manager

Cynthia Neumayer .....City Clerk

**City Officials**

(As of June 5, 2015)

Max Wirtz ..... Mayor

Richard Braden, Ward 1 .....City Councilor

Jon Webb, Ward 2..... Vice Mayor/City Councilor

Tom Beliel, Ward 3.....City Councilor

T.J. Greenfield, Ward 4.....City Councilor

Thomas L. “Chip” Outhier..... City Manager

Cynthia Neumayer .....City Clerk

**Citizen Petition Objectives**

The citizens of the City of Blackwell requested the following be investigated as part of the State Auditor and Inspector's Petition Audit:

- I.** Possible misuse, mismanagement, or misappropriation of settlement funds, and creation and operation of the Blackwell Public Trust.
- II.** Possible misuse, mismanagement, or misappropriation of sales tax funds intended for the repair, maintenance and upgrade of city streets.
- III.** Possible irregularities in city purchasing policies and procedures including but not limited to possible violations of the Public Competitive Bidding Act.
- IV.** Possible irregularities and/or potential conflicts of interest in hiring practices between and/or by city personnel and with competing vendors.
- V.** Review possible discrepancies in utility billing records related to past due/delinquent accounts, adherence to city ordinances, and reconciliation.
- VI.** Possible violations of the Oklahoma Open Meeting Act, the Oklahoma Open Records Act and the Oklahoma Records Management Act.
- VII.** Possible irregularities in the issuance of code enforcement citations, adjudication of municipal matters and lack of appropriate record keeping.
- VIII.** Possible irregularities in the sale or disposal of city owned property and equipment and inadequate record keeping.

**Introduction**

The City of Blackwell (“City”) is organized under the statutes of the State of Oklahoma and operates under the council-manager form of government, with a Charter as provided for in **11 O.S. § 13-101** which states:

*Any city or town containing a population of two thousand (2,000) inhabitants or more, as shown by the latest federal census or other census recognized by the laws of Oklahoma, may frame a charter for its own government.*

In addition to the City, our audit also included several trusts formed under the provisions of **60 O.S. 176-180, et.seq.** The trusts included:

- The Blackwell Public Trust
- The Blackwell Municipal Authority
- The Blackwell – Tonkawa Airport Authority

In accordance with a “Citizen Petition Request for Special Audit” verified by the Kay County Election Board Secretary in a letter dated September 24, 2014, the Office of State Auditor and Inspector has conducted a petition audit of the City of Blackwell, primarily relating to the objectives listed in the accompanying *Table of Contents*.

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



## **Background**

Prior to the commencement of fieldwork, petitioners were interviewed to obtain detailed information related to the broad range of concerns identified in the citizen's petition. The petitioners defined twenty-six (26) specific concerns which are summarized below.

The citizen petition defined the period under review as July 1, 2011 through July 31, 2014. Some of the concerns identified in our discussions with petitioners referenced a time outside of this initial audit period. We did, at times, expand our review to address concerns covering time frames prior and beyond July 1, 2011 through July 31, 2014.

1. The petitioners expressed several overall concerns related to two investment accounts established with Smelter Settlement proceeds; including the amounts gained or lost, the amounts paid in management fees, current status of the accounts, and whether or not a city council member received a finder's fee.
2. The petitioners expressed concerns as to whether or not the City Council was not receiving an itemized quarterly financial report as required by the City Charter.
3. The petitioners expressed a generalized concern over the City's compliance with the Oklahoma Open Meeting Act and a specific concern related to executive session meeting minutes.
4. The petitioners expressed a concern that the former City Manager used preferential treatment in the bidding process related to the sale of scrap metal.
5. The petitioners expressed a concern that City funds had been used to remediate an issue concerning a privately owned fence.
6. The petitioners expressed a concern that the City stopped issuing 10-day notices, as required by law, for code enforcement violations related to grass height.
7. The petitioners expressed a generalized concern related to the City's accountability for the funds received from the sale of surplus items.
8. The petitioners expressed a concern that the City renewed the contract for the former City Manager without a performance evaluation, as required by

the City Charter; and questioned the timing of his contract renewal and subsequent termination the following month.

9. The petitioners expressed a concern related to landscaping payments made for the city-owned fairgrounds, although no landscaping had been performed.
10. The petitioners expressed a concern that code enforcement violations were unclear and vague, such that the person cited could not determine the reason they had been cited.
11. The petitioners expressed a concern that the police department had purchased tasers prior to obtaining council approval.
12. The petitioners expressed a concern that a code enforcement officer had been given a raise, subsequently terminated, and a friend of the city manager was hired to fill the vacant position.
13. The petitioners expressed a concern the City had purchased police cars from the statewide contract, had not bid them properly, and had shown preferential treatment in the purchasing process.
14. The petitioners expressed a generalized concern related to the City's firefighters having not received the correct amount of pay.
15. The petitioners expressed a concern related to a local resident having been charged for utility services after the date the City had disconnected the services.
16. The petitioners expressed a concern that the City had used sales tax money earmarked for streets to pay for electrical system improvements at the City's Trapp Addition.
17. The petitioners expressed a concern that the City had not acquired bids for insurance.
18. The petitioners expressed a concern about the amount of money the City has expended for legal fees in relation to a petition seeking to recall city council members.
19. The petitioners expressed a concern related to the City not taking bids for the removal of dilapidated structures as required by the City Charter.

20. The petitioners expressed a concern related to an employee being terminated after having received an award.
21. The petitioners expressed a generalized concern related to the accountability for code enforcement citations and alleging the City was using code enforcement fines to keep the City afloat.
22. The petitioners expressed a concern that State Emergency Management Grant funds were used to pay the code enforcement/emergency management director salary.
23. The petitioners expressed a concern that the City had leased airport property for \$400 per acre, although an agreement had allegedly been reached to lease the property for \$500 per acre.
24. The petitioners expressed a generalized concern related to the amount of the City of Blackwell budget.
25. The petitioners expressed a generalized concern related to the expenditures of the City's hotel/motel tax.
26. The petitioners expressed a generalized concern related to the expenditure of funds received from a sewer customer surcharge.

Concern 1 Smelter Proceeds Investment Account

**Background** The petitioners expressed several overall concerns related to two investment accounts established with Smelter Settlement proceeds; including the amounts gained or lost, the amounts paid in management fees, current status of the accounts and whether or not a city council member received a finder's fee.

On February 4, 2010, the City reached a \$54,000,000 settlement agreement with various companies collectively referred to as "Freeport", in relation to the operation of a zinc smelter facility on real property located in the City. As a result, the City received and invested part of the proceeds of the settlement.

The petitioners expressed their concerns by asking us to answer six (6) questions related to the investment of the settlement money:

1. How much was initially invested?
2. How much money has been made or lost on the investments?
3. What fees are being charged in relation to the investments?
4. What is the current status of the investments?
5. Did the investment company pay a finder's fee?
6. Did City Councilman Brad Bechtel benefit from the Geneva investment?

**Question 1: How much was initially invested?**

On August 5, 2010, the Blackwell Public Trust ("BPT") received a wire transfer in the amount of \$34,393,201.09 as a result of the settlement agreement.

The meeting minutes for the BPT dated September 1, 2010, reflected the board considered various investment options and ultimately voted on and approved investing \$30 million with Geneva Advisors, L.L.C. ("Geneva") and \$4.3 million with BancFirst.

On September 3, 2010, a wire transfer was made in the amount of \$30,000,000 to Charles Schwab & Company, representing funds to be managed by Geneva. On September 9, 2010, a wire transfer was made in the amount of \$4,374,803 to the BancFirst Trust Department.

**Question 2: How much money has been made or lost on the investments?**

In an annual report as of December 31, 2014, Geneva reported the investment has increased from the initial \$30,000,000 to \$41,010,311. In addition, between the initial investment date of September 3, 2010 and December 31, 2014 the City has withdrawn \$799,146 from the account. The current valuation of the investment,

combined with the withdrawals from the account, represent a gain of \$11,809,457.

The initial amount invested with BancFirst on September 9, 2010 was \$4,374,803. In an annual report dated December 31, 2014, BancFirst reported the market value of the investment, as \$6,572,320, an increase of \$2,197,517.

**Question 3: What fees are being charged in relation to the investments?**

We contacted a representative of Geneva and requested an accounting of management fees. As of December 31, 2014, Geneva has received fees totaling \$925,636.

We contacted a representative of BancFirst and asked for an accounting of management fees. As of December 31, 2014, BancFirst has received fees totaling \$145,155.

**Question 4: What is the current status of the investments?**

The original \$30,000,000 investment held with Geneva had a valuation of \$41,010,311 as of December 31, 2014. Those funds continue to be under the management of Geneva. The original \$4,374,803 investment held with BancFirst had a valuation, as of December 31, 2014, of \$6,572,320. Those funds continue to be under the management of BancFirst.

**Question 5: Did the investment company [Geneva] pay a finder's fee?**

The specific concerns expressed to us related to City Councilman Brad Bechtel's alleged association with Geneva Advisors, L.L.C., and whether or not Councilman Bechtel had received a finder's fee or other benefit from Geneva, in relation to the investment account of the City.

We contacted Geneva and inquired as to whether a finder's fee had been paid in relation to the investment account. According to Geneva, they had been introduced to the City of Blackwell by the Charles Schwab office in Oklahoma City. Geneva is a participant in the "Schwab Advisors Network" (SAN), which means a representative of Charles Schwab could introduce a potential client to the SAN advisor. If the client hires the advisor, then Charles Schwab would receive a recurring part of the fee charged by the advisor.

The fees paid to Charles Schwab under this relationship would be paid from the margins received by the advisor [Geneva]. Geneva stated they had paid no other fees to any person outside of the Schwab program.

According to Geneva, they were introduced to the City of Blackwell through the SAN program and an investment advisor in Oklahoma City, not by Councilman Bechtel.

**Question 6: Did City Councilman Brad Bechtel benefit from the Geneva Investment?**

We contacted Councilman Bechtel and asked if he had received any type of finder's fee, benefit, gift or emolument from Geneva or anyone else as a result of the BPT investment with Geneva. Bechtel stated he did not.

We also contacted Geneva and asked if they had paid any form of a finder's fee or provided any type of gift or emolument to Councilman Bechtel. Geneva responded that they "absolutely did not compensate Brad Bechtel" or any other individual other than through the Charles Schwab SAN program discussed in response to Question 5 above.

Concern 2 Quarterly Financial Reporting

**Background** The petitioners expressed concerns as to whether or not the City Council was receiving an itemized quarterly report as required by the City Charter.

**Finding** **The City has not complied with the Charter requirements of printing a quarterly "itemized statement of all receipts and expenses".**

**Article IX Section 3** of the **City Charter** states in relevant part:

*The city council at the end of each quarter of the fiscal year, shall cause to be printed a detailed, itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding quarter.*

In addition, **Article III Section 5** of the **City Charter** states in relevant part:

*The city council shall designate an official city paper, and all legal publications required to be published by law or by this Charter shall be published in the official city paper.*

According to City officials, the requirement set forth by **Article IX Section 3** that the itemized statement of all receipts and expenses of the city be printed, also requires that the report be published in a newspaper as required by **Article III Section 5**.

City officials agree they have not complied with these Charter requirements for a number of years due to concerns related to cost, and more importantly, privacy issues associated with the publication of detailed receipts and records. They also indicated they believe they fall under the requirements, and have adopted, the Federal Trade Commission's Red Flag Rule<sup>1</sup> related to curbing the potential for identity theft.

Since taking office in November 2014, the current City Manager has had discussions with the Mayor in an effort to reach a reasonable resolution in satisfying the requirements of the Charter, while still affording a reasonable level of protection of privacy to the citizens of Blackwell.

Concern 3      Oklahoma Open Meeting Act/Executive Sessions

**Background** The petitioners expressed a generalized concern over the City's compliance with the Oklahoma Open Meeting Act and a specific concern related to executive session meeting minutes.

**Finding**      **The City has not maintained minutes from executive sessions.**

We noted during a review of the meeting minutes for calendar year 2012, the City met in executive session three (3) times. The executive sessions themselves were identified on the meeting agendas and appeared to be for a proper purpose, but minutes were not kept.

**25 O.S. § 312** requires that the proceedings of a public body be kept in the form of written minutes, and be an official summary of the proceedings.

On January 27, 1997, the Oklahoma Attorney General's Office, in response to a question related to executive session minutes, published Attorney General Opinion **1996 OK AG 100**, stating in part:

*The Oklahoma Supreme Court has held that the requirements for minutes be kept and recorded also applies to executive sessions.*

*The Legislature has explicitly recognized that the requirement to keep a summary of the proceedings in the form of written minutes extends to executive sessions...*

The City Clerk was under the impression that the executive session minutes were being taken by either the attorney or the mayor, as she was not present during the

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<sup>1</sup> <http://www.ftc.gov/consumer-protection/red-flags-rule>.

Council's executive sessions. According to the City Attorney, during the executive sessions in which he had been present, he had made every effort to ensure compliance with the requirements of the Oklahoma Open Records Act by ensuring the members stay on topic, do not take any actions and do not vote.

During those sessions he has taken notes and kept a record of those meetings; however, he was unsure whether those notes and records were preserved. The City Clerk was not aware if any of the minutes or notes that had been taken during the executive sessions were preserved by the City. No executive session meeting minutes were provided.

Based on our discussions with City officials part of the reason for minutes of executive sessions having not been maintained may have been because of a misunderstanding of who should be responsible for taking and preserving those minutes.

The Attorney General Opinion **1996 OK AG 100** was answering in response to the question as to whom may take minutes during an executive session and, specifically, must those minutes be taken by the board's minute clerk. The opinion concluded that executive session minutes do not have to be recorded by the minute clerk, but rather the board may choose to designate one of its own members to keep the executive session minutes.

**Finding**      **We found no other issues with the City's compliance with the Oklahoma Open Meeting Act as it relates to meeting minutes and agendas.**

Although the petitioners were specifically concerned with the Oklahoma Open Meeting Act as it applies to the requirement concerning meeting minutes taken during executive sessions, we performed an overall review of the meeting minutes and agendas for the calendar year 2012.

We noted no additional exceptions.

Concern 4	Sale of Scrap Metal
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**Background**      The petitioners expressed a concern that the former City Manager used preferential treatment in the bidding process related to the sale of scrap metal.

The petitioners were specifically concerned that the City had bypassed a local scrap iron vendor in favor of selling scrap metal to a vendor from a neighboring city.



**Finding**      **The City does not have a charter or code requirement that the sale of scrap metal be bid. Although not required, the City did use a bidding process in two of three scrap metal sales.**

We reviewed the City's scrap metal sales from July 2011 through June 2014. During this period the City had sold scrap metal on three occasions.

On November 21, 2011, the City received \$3,583.60 from a Ponca City dealer for the sale of scrap copper and aluminum. There was no documentation in the files indicating bids had been solicited.

On June 6, 2013, the City accepted bids for the sale of individual scrap items. Bids were awarded to both a local vendor and a private citizen. As a result of this sale, the City received \$3,880.40 from the local vendor, and \$4,767.80 from the private bidder.

On October 2, 2013, the City again accepted bids for the sale of scrap metal. The City received two bids, one from a local vendor and the other from a private citizen. The bid was awarded to the local vendor and the City received \$13,153.60 as a result of the sale.

Concern 5      Fence Remediation

**Background**    The petitioners expressed a concern that City funds had been used to remediate an issue concerning a privately owned fence.

**Finding**      **The City reimbursed a citizen \$260.74 to help correct a property code issue, subsequent to the citizen receiving a waiver from the Board of Adjustments.**

On August 23, 2010, the City sent a letter to a local resident notifying him that a fence surrounding his home was not in compliance with city code. On September 23, 2010, the resident appealed the code issue to the City's Board of Adjustment, and as a result, the Board of Adjustments voted on and approved to "*allow the updates on his property as it is.*"

On October 6, 2010, the city manager sent an email to the resident requiring the fence be relocated and shortened; but also offering "*to reimburse you for the expense associated with posts/cement necessary to remediate the situation to the City's satisfaction.*"

According to then City Manager Mark Skiles, since the Board of Adjustment issued a waiver that should not have been issued, he believed the City should reimburse the resident for some of the expense incurred.

**Finding**      **A portion of the \$260.74 citizen reimbursement for fence repairs was paid from donated funds.**

On November 4 and November 30, 2010, purchase orders were issued directing payment to the citizen in the amount of \$60.74 and \$200, respectively. The \$200 “cleared” out the Mayor’s Challenge account, with the remaining amount paid from the City’s general fund.

In July 2008 and July 2009, then Mayor Mark Cordell donated \$500 and \$350, respectively, to the City to be used as part of a “Mayors Challenge” project. The \$850 in funds had been placed in an account designated as the “Mayors Challenge” account. Because the funds were personal funds donated by Mayor Cordell the funds were under his discretionary control.

On November 30, 2010, a purchase order was issued from the Mayors Challenge account directing payment to the citizen in the amount of \$200. The purchase order included the description, “*clear Mayor’s account per Mark Cordell on [resident name] fence.*” Included with the purchase order was a handwritten notation reflecting the payment should include the notation, “*Per Mayor Cordell.*”

**Article 1 Section 4** of the City Charter provides:

*The City of Blackwell is hereby vested with full power under the constitution and laws of Oklahoma, to receive and hold property, both real and personal, by gift or otherwise for charitable and humane purposes, with full power to use such means as may be necessary to put in force and carry out the terms of any gift, donation or bequest for the uses and purposes for which said gift, donation or bequest may be made. [emphasis added]*

The language in the Charter appears to both allow the City to accept a donation and to use “*such means as may be necessary*” to ensure the terms or purpose of the donations are fulfilled.

Former Mayor Cordell, who in this instance is also the donor of the funds, told us that he had approved the \$200 payment from the Mayors Challenge account to the resident in relation to the fence remediation.

Concern 6      Code Enforcement 10-Day Notices

**Background** The petitioners expressed a concern that the City had stopped issuing 10-day notices, as required by law, for code enforcement violations related to grass height.

**Finding**      **For approximately two months, the City did not issue 10-day notices for code violations related to weeds and grass.**

**11 O.S. § 22-111(A)** provides a municipal governing body may cause property within the municipality to be cleaned of trash and weeds or grass to be cut or mowed, in accordance with certain procedures. One of those procedures is defined in **11 O.S. § 22-111(A)(1)** which requires “[A]t least a (10) days’ notice shall be given to the owner of the property... before the governing body holds a hearing or takes action.”

The May 17, 2010, City Council meeting minutes reflected in relevant part:

*Management Comments. City Manager Skiles stated “Effective June 1, 2010, a 10 day letter will no longer go out concerning weeds and grass” and added “if in violation of the city code, tickets will be written.”*

We obtained a listing and reviewed the citations issued and associated documentation related to “uncut grass” for the calendar year 2010. Between June 3, 2010 and August 4, 2010, the City discontinued issuing 10-day notices. During this time period, there were 43 citations issued for uncut grass violations. Of the 43 citations issued, 27 were dismissed, 15 were paid, and 1 citation was issued with a 10-day notice and paid.

The City began issuing the required 10-day notices again, after August 4, 2010. From August 2010 through December 2010, we noted two additional instances where a \$94 fine was paid with no documentation indicating a 10-day notice had been issued.

We provided the City a listing of the citations in which a payment had been received and that there appears to have been no 10-day notice issued. According to the current City Manager, the City will take the appropriate steps to identify, notify and refund the citations that had been issued and paid in 2010 without the required notice.

Concern 7      Sale of Surplus Property

**Background**      The petitioners expressed a generalized concern related to the City’s accountability for the funds received from the sale of surplus items. We found no City charter, code or ordinance governing the sale of surplus property.

The July 2011 through June 2014 city council minutes were reviewed for equipment that had been approved for surplus. Five items, that had been declared surplus, were selected for review, to determine the disposition of the item and to ensure proceeds from the sale had been properly accounted for.

We found no exceptions in the surplus process for four of the items; two police cars and two ambulances.

**Finding      The City did not insure all of the proceeds related to the surplus and sale of one police car had been transferred to a City bank account.**

On April 15, 2013, the City Council approved the surplus of a 2000 Ford Crown Victoria. On July 10, 2013, the vehicle was sold on eBay for \$910. On July 16, 2013, the City received \$410 of the proceeds from the sale. We were initially unable to verify that the City had received the remaining \$500.

The eBay account used in this sales transaction was an account setup and managed by the City's web administrator who was responsible for transferring monies collected from the eBay sale, via PayPal, into the City's account. No City official had access to the PayPal account.

On February 25, 2015, we contacted the web administrator who stated that the funds received from the eBay sale would not have been automatically deposited into a PayPal account. According to the web administrator, the funds would remain in the PayPal account until she manually transferred the funds from the PayPal account to the City's bank account.

The web administrator stated that she did not transfer all funds from the PayPal account because other fees, including the City's website fees, were automatically withdrawn from the account. The web administrator provided a PayPal report reflecting the \$500 had been received on July 14, 2013, and remained in the account.

After this issue was brought to the City's attention, the web administrator transferred the \$500 from the PayPal account to the City's bank account. We verified the funds were received into the City's account on February 27, 2015.

The web administrator stated that she was reluctant to give anyone else access to the PayPal account because she had used her personal credit card information when initially establishing the account. We expressed our concerns to City officials with respect to the web administrator having the only access, and therefore oversight, of an account that was linked with the City's bank account. The City Manager agreed and the web administrator closed the account effective April 7, 2015.

Concern 8    City Manager Contract

**Background**    The petitioners expressed a concern that the City renewed the contract for the former City Manager without a performance evaluation, as required by the City Charter; and questioned the timing of his contract renewal and subsequent termination.

**Finding**        **No City Charter or ordinance provision requiring a performance review of the City Manager existed.**

The City Manager’s employment contract contained the following provision:

*Salary review shall be encompassed in a performance evaluation of the Manager pursuant to City ordinance, in conjunction with budget preparation and at a designated anniversary date.*

Although the contract language refers to an ordinance requiring a performance evaluation, we were unable to identify that any such ordinance actually existed. We also reviewed the City Charter and found no requirement for a performance review.

**Finding**        **Performance evaluations were not performed in accordance with contract requirements.**

The City Manager’s terms of employment were based on a contract originally entered into on August 6, 2008. From August 2008 to July 2014, the contract was renewed by making amendments to the original 2008 contract. The requirement for an annual performance review was a contractual requirement and not one required by Charter or ordinance.

The City Manager’s contract included the following provision requiring performance evaluations.

*The City may evaluate the performance of the Manager at any time; however an annual performance evaluation shall be conducted by the Council on or about the first of March of each year.*

The employment contract required an annual performance evaluation on or about the first of March. City records showed performance evaluations had been performed or signed on the following dates:

- October 17, 2011
- November 5, 2012
- October 8, 2013

The 2011-12 contract amendment was signed on July 6, 2011, the related performance evaluation was not performed until October 17, 2011. The 2012-13 and 2013-14 contract amendments were signed November 5, 2012 and October 8, 2013, respectively, with performance evaluations dated the same day as the contracts. The 2014-15 contract, dated June 16, 2014, was signed prior to the City Manager's termination and included no performance evaluation.

The City Manager's performance evaluations were not performed in accordance with contract requirements. We concur with the allegation that a performance evaluation was not performed prior to or contemporaneous with the approval of the City Manager's 2014-15 employment contract.

**Finding**

**The City Manager's contract was renewed in June 2014, and he was terminated the following month. The City Council has the authority to contract with and terminate the City Manager at any time with or without cause.**

The minutes for the June 16, 2014, council meeting reflected the City Council approved the City Manager's contract. The minutes reflected:

**Consider and Possible Action on City Manager's Contract.**

Motion was made by Bechtel, seconded by Hudsonpillar to approve the City Manager's Contract as presented. Roll yeas: Carroll, Hudsonpillar, Bechtel; Nays: Wirtz, Webb; Absent: None

The minutes for the subsequent meeting held on July 7, 2014, reflected the City Council terminated the City Manager without entering into executive session or without discussion. The minutes read:

**Consideration and Take Action on City Manager's Contract**

Motion was made by Carroll, seconded by Hudsonpillar to terminate Mark Skiles, without cause, to be paid in a lump sum. Payment will be paid from the General Fund. Roll, yeas: Carroll, Hudsonpillar and Bechtel. Nays: Wirtz, Webb. Absent: None. Motion carried

We reviewed the City Charter, City Ordinances and the City Manager's contract terms to determine the authority of the City Council related to the hiring and termination of the City Manager.

According to **Article IV Section 1** of the City Charter:

*The city council shall appoint a city manager, who shall be the administrative head of the municipal government under the direction and*

*supervision of the city council; and the city manager shall hold office at the pleasure of the city council.*

The 2014-15 City Manager's contract reads in relevant part:

*The City reserves the right to terminate the services of the Manager at any time, with or without cause. The performance of duties of the office of Manager, as outlined herein, constitutes merely an employment at will. Therefore a severance is appropriate in the mutual interest of the parties hereto.*

*c. In the event the City desires to terminate the Manager's employment without cause during the term of this contract, the City shall pay to the Manager a severance payment in the amount equal to nine (9) months aggregate salary, benefits, including health, dental and vision insurance, longevity and performance incentives, and deferred compensation, and including all earned sick leave, vacation, holiday, and other accrued benefits to the date of termination, payable in nine (9) equal monthly payments.*

Per the City Charter, the City Manager serves at the pleasure of the City Council. Based on the terms of the 2014-15 City Manager's contract, the City Council had the authority to terminate the City Manager at any time, with or without cause. Therefore, there is nothing to preclude the City Council from approving a contract with the City Manager at one meeting and terminating his employment the next.

**Finding**      **The approval of the 2014-15 employment contract, increased the city manager's severance package by \$2,028, resulting from a 3% across the board salary increase.**

The citizens concern, as presented to us, implied that the FY 2014-15 contract was approved in an effort to increase the City Manager's severance package. We compared the terms related to compensation in the 2013-14 and the 2014-15 contracts to determine what effect, if any, the contract renewal had on the severance package.

The severance payment terms were unchanged between the approval of the 2013-14 and the 2014-15 contracts. The City Manager's base salary was the only change in compensation between the two contract years, increasing from \$90,125 to \$92,829, as a result of a 3% across the board raise received by all city employees.

The terms of the City Manager's contract, which existed prior to the 2014-15 contract renewal, required the City Council to pay a severance package equal to nine months of salary and benefits. The 2014-15 contract renewal increased the

severance package by \$2,028 due to the 3% increase in base salary resulting in a total severance package amount received by the former City Manager of \$125,459.

**Concern 9 Fairground Landscaping**

**Background** The petitioners expressed a concern related to landscaping payments made for the city-owned fairgrounds, alleging payments were made and no landscaping had been performed.

**Finding** **We were unable to obtain sufficient information to continue with this concern.**

In discussions with citizen petitioners, they were unable to provide any specific information to define this concern. The petitioners referred us to a former Blackwell resident to obtain more specific information. The former resident was also unable to provide any additional information related to this concern.

**Concern 10 Code Enforcement Violations**

**Background** The petitioners expressed a concern that code enforcement violations were unclear and vague, such that the person cited could not determine why they had been cited.

**Finding** **We found the citations issued for code violations to be clear and sufficiently worded, so that a person could reasonably determine what the code citation had been issued for.**

We randomly selected twenty-five (25) citations that had been issued for various code violations during the 2012 calendar year. Our review found the language contained on the citations was clear and unambiguous. We have included a table of the citations we reviewed and the language contained on the citations below:

No.	Citation Number	Offense Date	Language On Citation
1	C002440	6/25/2012	Accumulation of junk or trash on the premises
2	C002443	7/2/2012	Accumulation of junk or trash on the premises
3	C002448	7/2/2012	High Grass or Weeds that Exceed 12" in Height are a public nuisance
4	C002449	7/2/2012	High Grass or Weeds that Exceed 12" in Height are a public nuisance
5	C002450	7/2/2012	Household Appliance Improperly Stored on the Premises
6	C002451	8/8/2012	Accumulation of junk or trash on the premises
7	C002452	8/8/2012	Downed tree limbs on premises
8	C002455	8/8/2012	Accumulation of junk or trash on the premises
9	C002456	8/8/2012	Accumulation of junk or trash on the premises



10	C002457	8/8/2012	Accumulation of junk or trash on the premises
11	C002489	10/22/2012	Accumulation of junk or trash on the premises
12	C002490	10/22/2012	Accumulation of junk or trash on the premises
13	C002991	11/8/2012	Grass or Weeds That Exceed 12 Inches in Height on the premises
14	C002697	6/11/2012	Grass or weeds in excess of 12 inches tall
15	C002698	6/18/2012	Accumulation of junk or trash on the premises
16	C002699	6/18/2012	Accumulation of junk or trash on the premises
17	C002700	6/18/2012	Accumulation of junk or trash on the premises
18	C002701	7/2/2012	Household Appliance Improperly Stored on the Premises
19	C002702	7/2/2012	High Grass or Weeds that Exceed 12" in Height are a public nuisance
20	C002703	7/2/2012	High Grass or Weeds that Exceed 12" in Height are a public nuisance
21	C002704	7/2/2012	High Grass or Weeds that Exceed 12" in Height are a public nuisance
22	C002706	7/2/2012	High Grass or Weeds that Exceed 12" in Height are a public nuisance
23	C002706	7/2/2012	Accumulation of junk or trash on the premises
24	C002709	7/9/2012	Inoperative vehicle on the premises
25	C002700	6/18/2012	Accumulation of junk or trash on the premises

Based on our test sample it appears the citations contained language sufficient enough for a reasonable person to understand the code violation as stated.

**Concern 11    Police Department Taser Purchase**

**Background** The petitioners expressed a concern that the police department had purchased tasers prior to obtaining council approval.

**Finding**        **We found City Council approval was obtained prior to the purchase of the tasers.**

On March 7, 2011, the City Council authorized the purchase of tasers for the police department. The minutes reflected the following:

*According to Police Chief LeValley the total cost of the Tasers is approximately \$15,400. The monies will come from a District Court Fund from certain arrests which are reallocated to the agency which made the arrest. These monies are sent to the arresting agencies and can only be used for certain equipment and education.*

*Motion was made by Hudsonpillar, seconded by Wirtz, to purchase tasers for the Blackwell Police Department...Motion carried.*

Funds were encumbered for the purchase of eighteen tasers and fifty taser cartridges on Purchase Order #11-49651 dated March 24, 2011, in the amount of \$15,766.55.

On March 31, 2011, the City was invoiced \$1,097.45 for fifty taser cartridges. The City subsequently received an invoice, dated April 11, 2011, for the eighteen

tasers at a cost of \$14,669.10. The City encumbered funds and purchased the tasers subsequent to City Council approval.

Concern 12 Code Enforcement Officer Employment

**Background** The petitioners expressed a concern that a former code enforcement officer had been given a raise, subsequently terminated, and a friend of the city manager was hired to fill the position.

**Finding** **We found no correlation between the code enforcement officer’s pay increase and subsequent termination. It was also determined that issues related to this concern had been previously litigated.**

Jim Inmon, the Code Enforcement Officer, received a payroll increase in July 2011, and was subsequently terminated on August 2, 2011. The payroll increase was part of a 3% across-the-board COLA<sup>2</sup> raise received by all city employees and appeared to have no correlation with performance or termination.

In our review of pay increase and pay grade issues, it was also noted that Inmon, the former Code Enforcement Officer, had filed a Tort Claim against the City which included issues related to his pay and pay grade changes during the July-August 2011 time period.

On August 6, 2012, a “General Release and Settlement Agreement” was entered into in which the former Officer received a monetary settlement and agreed to “not file any complaints or charges against the City”. As such, it appears this concern and any related employment and pay issues have already been addressed through legal proceedings.

**Finding** **The City Manager has the authority to hire and fire employees.**

The Code Enforcement Officer was terminated on August 2, 2011 and a new Code Enforcement Officer was hired on August 15, 2011.

**Article IV Section 2** of the **City Charter**, related to the powers and duties of the city manager, provide, in relevant part:

*The city manager shall have the following powers and duties...to appoint, discipline and remove all heads of departments and all subordinate officers and employees of the city except the municipal judge, and the city attorney...*

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<sup>2</sup> Cost of living adjustment.

Based on provisions of the City Charter, the City Manager had the authority to fire and subsequently hire the code enforcement officers.

One issue that could restrict a city manager's hiring decision relates to nepotism, which is defined in **Article II Section 13** of the **City Charter**, which provides:

*The laws of the State of Oklahoma relating to nepotism shall apply to the officers and employees of the city, and no officer or employee shall be employed by said city who is either a relative either by blood or marriage of the officer making the appointment within the degree of relationship prohibited by the laws of the State of Oklahoma; and the violation of this section shall work a forfeiture of the office of both the appointee and the officer making the appointment.*

Although the City Manager and the replacement Code Enforcement Officer may have been friends, there is no statutory or City Charter provision which would preclude the City Manager from hiring him.

Concern 13    Police Car Purchases

**Background** The petitioners expressed a concern the City had purchased police cars from the statewide contract, had not bid them properly, and had shown preferential treatment in the purchasing process.

Bid requirements for the City are defined in **Article III Section 6** of the **City Charter**, which provides in relevant part:

*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.*

The \$5,000 threshold amount was established by voters on April 7, 1970, and has remained unchanged for 45 years. According to the United States Department of Labor the \$5,000 threshold set in 1974, adjusted for inflation, would represent \$23,800 today.

On October 9, 2007, a proposition to amend the threshold from \$5,000 to \$50,000 was voted down. As such, the City is still required to conform to the \$5,000 bidding requirements established almost 45 years ago.

**Finding      The City did not comply with their Charter in the purchase of police vehicles.**

The City Charter places requirements on the Council with respect to obtaining sealed bids. It appears the City relied on the statewide bidding procedures performed by the State of Oklahoma, rather than the requirements defined in the City Charter.

The State of Oklahoma bids items, including police vehicles, through a sealed bid process. According to officials with the State of Oklahoma Office of Management and Enterprise Services, local governments often use the statewide contract in lieu of local bidding procedures.

When a statewide contract is awarded for the purchase of vehicles, the contract includes *which specific* dealership has been awarded the contract. When a local government makes a purchase from the statewide contract, the purchase *should* be made from the specific vendor awarded the statewide contract bid.

Between July 2011 and July 2014, the City purchased five police vehicles from Vance Chevrolet in Perry, Oklahoma, as reflected in the table below:

Date	Description	Amount
3/7/2014	2014 Chevrolet Impala	\$21,708.00
3/7/2014	2014 Chevrolet Impala	\$21,708.00
7/19/2013	2013 Chevrolet Impala	\$20,968.50
7/31/2013	2013 Chevrolet Impala	\$20,968.50
11/23/2011	2012 Chevrolet Tahoe	\$24,999.00

In November 2011, the City purchased the 2012 Tahoe from Vance Chevrolet who had been awarded the statewide contract for Tahoe police vehicles. However, when the City purchased the 2013 and 2014 Impalas from Vance Chevrolet, the statewide contracts had been awarded to Hudiburg Chevrolet.

Although local governments are *allowed* to make purchases through the statewide contract, these purchases should be made with the specific vendor awarded the contract.

**Concern 14      Firefighter Compensation**

**Background**      The petitioners expressed a generalized concern related to the City firefighters having not received the correct amount of pay.

The petitioners were unable to provide specific information related to this concern and, instead, referred us to a City firefighter. We met with the firefighter who expressed three concerns:

1. Overtime pay is calculated based on base pay only. The firefighter believed that incentive and longevity pay should be included with base pay when calculating overtime.
2. Firefighters were not properly compensated when working out-of-class. Firefighters had filled in shifts for positions in a higher classification and had not received the compensation that corresponded with the higher class position.
3. Firefighter positions were not filled for several months, requiring firefighters to work overtime to fulfill minimum shift requirements.

The firefighter's union and the City enter into annual contracts setting forth the terms and conditions related to firefighter employment. Included in each of the annual contracts is a provision for a grievance process which provides firefighters the ability to express any challenges or concerns related to the interpretation, application or enforcement of the terms of the contract.

The concerns expressed to us pertained to the terms and conditions of the annual negotiated contracts approved by both parties and under these terms a grievance process exists to address contract issues. As such, the concerns were not addressed as part of our petition audit.

**Concern 15 City Resident Utility Service Charges**

**Background** The petitioners expressed a concern related to a local resident having been charged for utility services after the date the City had disconnected the services.

**Finding** **The resident and the City are currently in litigation on this matter.**

On December 13, 2006, a local resident and his spouse filed suit in the District Court of Kay County stemming from a series of events occurring in 2005. On May 15, 2014, an Amended Petition was filed and the case is pending.

We did not address this concern because it stemmed from events that occurred in 2005 and 2006, well before the time period defined in the citizen's petition, and because it continued in litigation as of the date of this report.

Concern 16 Sales Tax Funded Improvements

**Background** The petitioners expressed a concern that the City had used sales tax money earmarked for streets to pay for electrical system improvements at the City's Trapp Addition.

**Finding** **The improvements made to the Trapp Addition electrical system were part of a multi-phase project paid from a tax specifically approved for purposes which included electrical system upgrades, and from a loan secured by utility system revenues.**

Ordinance 2699 provided for a 1½% sales tax to be used for, "*costs associated with the planning, acquisition and construction of improvements to streets, water, sewer and **electric systems** serving the City.*" The Ordinance was approved by the City Council on May 4, 1999, and was approved by the voters on July 13, 1999.

The tax collection period for Ordinance 2699 was extended by Ordinance 2753 from the original date of September 30, 2009, to September 30, 2030. This ordinance was approved by the City Council on November 7, 2005, and approved by the voters on January 10, 2006.

On January 10, 2008, the Blackwell Municipal Authority ("BMA") obtained a Utility System and Sales Tax Revenue Note Series 2008 ("Note") in the amount of \$2,325,000. The transcript of the note reflected the proceeds were to be used to construct defined improvements to city-owned water and electric systems and to pay specific costs associated with the issuance of the Note.

A related report titled "Summary of Series 2008 Note for Electric and Water System Projects" included as Phase 1 of the project, "Conversion of Trapp Addition" and included projected improvements to the Trapp Addition electrical system.

The transcript of the Note, in relation to repayment included:

REPAYMENT OF THE NOTE ISSUED:

The Note issued will be repaid from certain water, sanitary sewer, solid waste management, and electric system revenues and certain revenues generated by a sales tax levied pursuant to Ordinance No. 2699 of The City of Blackwell, Oklahoma, as amended by Ordinance No. 2753 of The City of Blackwell, Oklahoma.

We obtained a listing of the requisitions and disbursements paid from the Note and reviewed a sample of the associated invoices, determining that Note disbursements were being made for upgrades to the Trapp Addition project as allowed under Ordinance.

Concern 17 Purchase and Bidding of Insurance

**Background** The petitioners expressed a concern that the City had not acquired bids for insurance.

**Finding** **The City did not bid insurance, paid from their General Fund, as required by the City Charter.**

Payments made from the General Fund were subject to the bidding requirements of **Article III Section 6** of the **City Charter**, which provides in relevant part:

*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 therefore, 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.*

The City utilizes a local insurance agency, Loftis & Wetzel, for its insurance needs. Loftis & Wetzel represents several insurance carriers including the Oklahoma Municipal Assurance Group (OMAG).

We reviewed the payments to Loftis & Wetzel for FYE 2012, 2013 and 2014. The City and the Blackwell Municipal Authority (“Authority”) had issued payments to Loftis & Wetzel totaling \$635,402 as reflected in the following table:

Year	General Fund	Trust Authority	Total
2011-12	\$132,220	\$69,074	<b>\$201,294</b>
2012-13	\$133,450	\$98,215	<b>\$231,665</b>
2013-14	\$132,652	\$69,791	<b>\$202,443</b>
	<b>\$398,322</b>	<b>\$237,080</b>	<b>\$635,402</b>

Because the City Charter requires bids for contracts of \$5,000 or more, and does not exclude contracts for professional services, the City should have obtained bids in their purchase of insurance paid from the General Fund.

The Authority is a public trust created under **60 O.S. 176-180, et.seq.** with bid requirements set forth in **60 O.S. § 176(H)** which states, in relevant part:

*Contracts for construction, labor, equipment, material or repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to a public invitation to bid...*

Insurance does not fall under “*construction, labor, equipment, materials or repairs*” as defined in **60 O.S. § 176(H)**. Therefore, payments for insurance from the Authority would not appear to require bids.

Concern 18    Recall Petition

**Background** The petitioners expressed a concern about the amount of money the City has expended for legal fees in relation to a petition seeking to recall city council members.

A group of citizens sought to recall four city council members pursuant to provisions in the City Charter. An action was filed in the District Court of Kay County, the case is on-going and under appeal.

**Finding**    **The City has spent \$137,981 for legal fees in relation to the recall petition.**

On November 21, 2013, the City received a “Petition for Recall” for the removal and recall of the following members of the city council:

- Brad Bechtel
- Nita Carroll
- John Mark Cordell
- Piccola Hudsonpillar

To date, the City has expended \$137,981 for legal fees in relation to this petition and the subsequent appeals process.

Concern 19    Dilapidated Structure Removals

**Background** The petitioners expressed a concern related to the City not taking bids for the removal of dilapidated structures. They specifically questioned payments made to Clark Contracting Company.

**Finding**    **Two payments of \$5,000 were not bid in accordance with City Charter provisions.**

We reviewed vendor payment lists, purchase orders and associated documentation related to payments to Clark Contracting Company (Clark). During the FYE 2012, 2013, and 2014, Clark received payments totaling \$472,351, \$460,851 from the Blackwell Public Trust Authority (“BPT”) and \$11,500 from the City.



**Article III Section 6** of the **City Charter** provides in relevant part:

*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...*

Purchase Order #12-52761, dated April 27, 2012, was issued to Clark in the amount of \$25,600. The purchase order reflected seven separate line items including three items paid from Recreation Sales Tax funds totaling \$11,500 and four items paid from funds of the BPT.

The three projects paid from Recreation Sales Tax funds related to the demolition of the Monkey Park pool (\$5,000), pavilion (\$5,000) and pavilion canopy (\$1,500). The projects, whether combined or separated, would have required either separate bids for the pool and pavilion expenditures or one bid covering all three projects.

**Finding**      **The remaining projects were paid from BPT funds; no bidding was required.**

The \$460,851 in remaining costs associated with the demolition of dilapidated structures was paid with funds from the BPT.

The BPT Trust Indenture provides for an allocation of funds to be provided to the City for purposes of “Community Enhancement Projects.” The Indenture provides the following definition:

*“Community Enhancement Project” means projects other than Sewer Projects, Water Projects and Street Projects that results in the enhancement of Beneficiary [City], as determined by the governing body of Beneficiary [City], including but not limited to the demolition of dangerous or dilapidated structures. [Added]*

The Indenture places no restrictions on the Trust with respect to bidding requirements. However, **60 O.S. § 176(H)** provides, in relevant part:

*Contracts for construction, labor, equipment, material or repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid...*

The purchase orders and payments made to Clark, in nearly all cases, reflected payments that had been combined from multiple demolition projects. We found

no single payment that exceeded the \$50,000 threshold requirement of **60 O.S. § 176(H)** even when multiple projects were combined in a single payment.

Concern 20 Employee Termination

**Background** The petitioners expressed a concern related to an employee being terminated subsequent to receiving an award.

The City’s personnel manual **Section A.1** provides, in relative part:

*Employment with the City is **at-will** for an indefinite period of time, unless terminated by either the City or the employee, with or without cause. This means that either party may end the relationship at any time. [Emphasis in original]*

**Article IV Section 2** of the **City Charter** provides, in relative part:

*The city manager shall have the following powers and duties...to appoint, discipline and remove all heads of departments and all subordinate officers and employees of the city except the municipal judge, and the city attorney...*

**Finding** **The termination of an employee is provided for in the City Charter.**

Based on the language in the City’s personnel manual as well as the language contained in the City Charter, employees serve “at will” and the City Manager has the authority to terminate employees.

The facts, circumstances, and decision relating to whether or not the termination of the employee in question was justified was a discretionary decision and beyond the scope of review by the State Auditor and Inspector.

Concern 21 Code Enforcement Fines

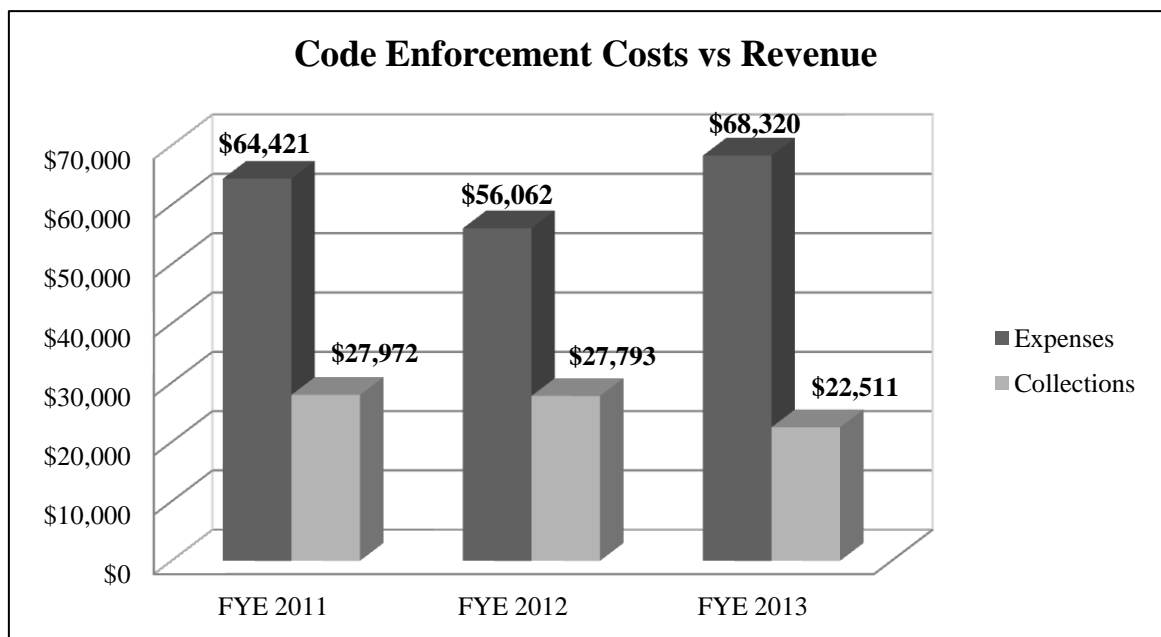
**Background** The petitioners expressed a generalized concern related to the accountability for code enforcement citations and alleging the City was using code enforcement fines to keep the City afloat.

**Finding** **It does not appear that code enforcement fines were used as a means to keep the city afloat.**

We performed an overall evaluation of code enforcement citation procedures, along with the related fines collected in comparison to code enforcement costs. Based on court reports, the City issued 833 citations for code enforcement infractions during the 3-year period ending June 30, 2011, 2012 and 2013.

We obtained court reports reflecting the total amounts collected from code enforcement violations and reviewed the City's independent auditor's reports for the same fiscal years for code enforcement expenses.

The total amount of the collections for code enforcement fines does not represent the total amount retained by the City. The City is statutorily required to submit a portion of those fines to various other entities including CLEET<sup>3</sup> and the OSBI<sup>4</sup>. The graph below reflects the differences between the amounts collected and the overall costs attributed to code enforcement efforts.



Even if the City had retained 100% of the code enforcement fines collected, the amounts would have been insufficient to cover the costs related solely to the code enforcement function of the City. When total code enforcement collections are compared to total overall expenses of the governmental activities of the City, the collection amounts are less than 1% for each of the three years evaluated.

<sup>3</sup> Council on Law Enforcement Education and Training.

<sup>4</sup> Oklahoma State Bureau of Investigation.

**Finding All code enforcement citations could not be accounted for.**

According to City officials, each citation in a book of citations used by code enforcement consisted of one original and two copies. The original copy would be retained for the court file, one copy given to the person to whom the citation had been issued, and one copy placed in a file folder related to the specific property.

Copies were not maintained in the book of citations as would typically be expected for a duplicate receipt book. Additionally, if a code enforcement citation had been voided, the citation and all copies were discarded.

We reviewed selected code enforcement citations to determine what level of accountability existed for the citations issued or voided. Of the 25 citations selected for review, 11 (44%) were missing from the court packets. The same citations were also not included on a City report of code citations issued.

Concern 22 State Emergency Management Grant Funds

**Background** The petitioners expressed a concern that State Emergency Management Grant funds were used to pay the code enforcement/emergency management director salary.

**Finding Grant funds were not used to pay the salary of the Code Enforcement Officer/Emergency Management Director.**

A review of the July 2011 through June 2014 payroll records showed the salary for the Code Enforcement Officer/Emergency Management Director was paid from the following sources:

- One half of the salary was paid from the Emergency Preparedness Department in the General Fund.
- One fourth of the salary was paid from the Code Enforcement Department in the General Fund.
- The remaining one fourth was paid from the Code Enforcement Department in the Utility Authority Fund.

Grant proceeds were not used to pay the salary of the Code Enforcement Officer/Emergency Management Director as alleged.

For the period July 2011 through June 2014, the City received a total of \$32,500 in proceeds from Emergency Management Performance Grants obtained through the State of Oklahoma Department of Emergency Management.

Records reflected the City has spent \$1,804.56 from the grant funds received. The expenditures included payments such as an LCD TV, a desktop computer with monitor, shirts, repairs and shipping cost.

Concern 23    Airport Property Lease

**Background**    The petitioners expressed a concern that the City had leased airport property for \$400 per acre, alleging an agreement had been reached to lease the property for \$500 per acre.

On December 14, 2011, the City of Blackwell, acting on behalf of the Blackwell Tonkawa Airport Authority (“Authority”), approved a three-year lease of 74.2 acres of land to Turner Oil & Gas Company for \$400 per acre. On February 8, 2012, the City received payment of \$29,687.60 for the lease payment.

**Finding**        **We found no evidence that an agreement to lease the property for \$500 per acre ever existed.**

In discussions with Airport Authority Board members, it was stated that there were no agreements, verbal or written, to lease the airport property at \$500 per acre.

A Board Member stated the City leasing the property for \$400 per acre was the result of having made a hurried decision and if the City had taken longer to consider the action the land *could have possibly* been leased for \$500 per acre.

An additional concern arose during our investigation as to whether the funds received by the City should have been paid to the Authority rather than the City. The City had already become aware of this issue and as a result, on February 6, 2015, the \$29,687.60 that had been received by the City in 2012 was transferred to the Authority.

The 3-year lease on the property expired in December 2014. As of the date of our inquiry there had been no offers to lease the land. According to the current City Manager, any future negotiations concerning the lease of airport property will be the responsibility of the Blackwell-Tonkawa Airport Authority.

Concern 24 City of Blackwell Budget

**Background** The petitioners expressed a generalized concern questioning the total amount of the City of Blackwell budget.

A report had been obtained by a petitioner reflecting the City of Enid population and annual budget. According to the petitioner, this document reported that the City of Enid budget was less than the budget of the City of Blackwell, when the population of Blackwell was over 40,000 less than the City of Enid.

The annual audit report for the City of Enid, for the year ending June 30, 2013, reflected expenditures totaling \$67,898,824. As such, it appears the report obtained by the petitioner reflecting a total annual budget for Enid of \$1,068,195, was incorrect.

**Finding** **The City’s overall reported expenditures are comparable to similar sized cities.**

We obtained census and audit reports and compared the City of Blackwell’s FYE 2013 expenditures to four (4) cities of similar populations.

In our comparison, we noted only one of the other cities provided an electric service as part of their utility services, and therefore, reported expenditures under business-like units. We did not include expenditures related to electricity for either city in our comparison.

We noted the four cities had average FYE 2013 expenditures of \$10,150,925. This average amount is comparable to the City of Blackwell’s reported FYE 2013 expenditures of \$10,108,494.

Concern 25 Hotel/Motel Tax

**Background** The petitioners expressed a generalized concern related to the expenditures of the City’s hotel/motel tax.

On August 18, 1992, the City Council adopted Ordinance No. 2584 authorizing the City of Blackwell to levy and collect a six percent (6%) hotel/motel tax to be used for the exclusive purpose of “encouraging, promoting and fostering conventions, conferences, and tourism development in the City of Blackwell.” A proposition for the hotel/motel tax was subsequently voted on and approved by the citizens of Blackwell.

The City entered into a “Tourism Development Contract” (Contract) with the Blackwell Chamber of Commerce (Chamber) on April 15, 1993, to implement the purposes of Ordinance No. 2584. The Contract was re-executed on July 15, 1997, to continue the association between the City and the Chamber. The Contract provides in relevant part:

*The Chamber shall use its best efforts to develop a program which promotes conventions, conferences and tourism in the City of Blackwell and shall use all funds provided pursuant to this Agreement exclusively for such purposes.*

**Finding      The City Council was not fulfilling their oversight responsibility as required by Ordinance and Contract provisions.**

According to **Section 2-31 of Ordinance No. 2584:**

*The Board of Commissioners shall have the general oversight and responsibility for the expenditure of funds collected pursuant to the provisions of this article and said Commissioners are hereby specifically authorized to contract with the Blackwell Chamber of Commerce or other non-profit entity to implement the purpose set out herein.*

The Contract between the City and the Chamber included the following provision related to reports and oversight:

*The Chamber shall provide the City with a detailed report of the expenditure of the funds received pursuant to this Agreement in the preceding quarter on or before the 15<sup>th</sup> day of January, April, July, and October of each year. Further the Chamber shall provide the City on or before June 15<sup>th</sup> of each year a proposed plan of work for the utilization of such funds to be received the following fiscal year.*

Based on the provisions of **Ordinance No. 2584**, and the language contained in the Contract between the City and the Chamber, the City has an obligation to provide oversight of the funds and the Chamber has an obligation to provide quarterly reports to the City concerning the expenditure of the funds.

The Chamber has not provided the required quarterly reports to the City and, according to city officials; the City has not enforced the quarterly report requirement contained in the Contract.

The total tax collected for each year is shown below. Currently the City remits \$5,460 a month (\$65,520 annually) of this tax to the Chamber.

- \$202,138.55 for fiscal year 2011-12.
- \$275,078.02 for fiscal year 2012-13.
- \$274,086.52 for fiscal year 2013-14.

**Chamber of Commerce Activity**

Because no quarterly reports were available from the City, we obtained reports related to the expenditure of the hotel/motel tax directly from the Chamber of Commerce. Because the Chamber combines the hotel/motel tax money with other sources of revenue received, we could not clearly delineate the expenditures paid solely by the hotel/motel tax proceeds.

An overall summary of Chamber expenditures is reflected in the table below:

Expense	Fiscal Year 2011-12	Fiscal Year 2012-13	Fiscal Year 2013-14
Comm. Beautification	\$4,025.89	\$1,575.17	\$465.33
TOHS Museum	\$4,000.00	\$4,000.00	\$4,000.00
Advertising	\$6,885.21	\$6,443.91	\$15,460.88
Events	\$6,775.10	\$7,985.34	\$11,273.78
Depot Project	\$1,285.99	\$50,000.00	\$11,200.00
Marketing Promotions	\$3,874.70	\$1,017.09	\$1,796.89
Administration	\$28,999.92	\$29,000.00	\$28,999.92
Postage	\$90.00	\$0.00	\$51.60
Office Supplies	\$0.00	\$14.09	\$0.00
Membership Dues	\$75.00	\$50.00	\$0.00
Meetings/Travel	\$712.38	\$0.00	\$0.00
Miscellaneous	\$77.60	\$797.78	\$94.20
<b>Totals</b>	<b>\$56,801.79</b>	<b>\$100,883.38</b>	<b>\$73,342.60</b>

The City also utilized hotel/motel funds. Expenses paid by the City included payments for the golf course, Summerfest and the Christmas light display, expenditures that appear to comply with the purposes of the hotel/motel tax ordinance.

As of June 30, 2014 there was a balance of \$593,648.82 in the hotel/motel tax fund.



Concern 26 Sewer Customer Surcharge

**Background** The petitioners expressed a generalized concern related to the expenditure of funds received from a sewer customer surcharge. Because the City has ongoing problems with the sewer lines, the petitioners questioned how those funds have been used in relation to sewer repairs.

On December 17, 2002, the City Council approved Resolution No. 12-17-02 B authorizing the addition of a capital improvement surcharge to customer billings. The resolution reads in relevant part:

*THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the City of Blackwell, Oklahoma, that the following rates and charges shall be collected for sewer services provided to customers of the Blackwell Municipal Authority in the City of Blackwell. Capital Improvement Surcharge: All Usage: \$0.6200 per 100 cu ft of water metered to the user.*

On October 20, 2008, the Blackwell Municipal Authority passed Resolution 10-20-08MA providing for a second surcharge of \$6.00 per month dedicated to sewer system improvements, including sewer lines.

**Finding** **The fees received from sewer surcharge billings have been credited to the Sewer Capital Improvement Fund. Expenditures from the fund were used for sewer related projects.**

Both sewer surcharges were billed through the Blackwell Municipal Authority. A monthly journal entry is prepared that credits the Sewer Capital Improvement Fund for the amount billed.

The following annual totals represent the amounts credited to the Sewer Capital Improvement Fund each fiscal year resulting from the first surcharge:

- \$185,320 for fiscal year 2011-12
- \$179,362 for fiscal year 2012-13
- \$161,140 for fiscal year 2013-14

The following annual totals represent the amounts credited to the Sewer Capital Improvement Fund from the second surcharge:

- \$213,924 for fiscal year 2011-12
- \$209,855 for fiscal year 2012-13
- \$208,033 for fiscal year 2013-14

The resolutions allow for expenditures to be made for maintenance, operations, repairs and capital improvements. The table below represents a summary of the expenditures made from the Sewer Capital Improvement Fund.

Expense / Project	Fiscal Year 2011-12	Fiscal Year 2012-13	Fiscal Year 2013-14
Engineering Fees	\$5,029	\$9,250	\$900
Basin 3	\$42,659	--	--
Stevens Street Project	\$154,020	\$84,776	--
Diversion Dam	\$1,343	--	\$191
Sewer main 3 <sup>rd</sup> St	\$2,383	--	--
Repair Sewer	--	\$4,995	--
Sludge Removal	--	\$11,101	\$195
Replace Piston Pump	--	\$20,395	--
Depreciation Expense	--	\$34,445	--
Waste Water Treatment Plant	--	--	\$1,569
Replace Lincoln Ave Sewer	--	--	\$56,700
Ferguson & 8 <sup>th</sup> St Project	--	--	\$5,150
<b>Totals</b>	<b>\$205,434</b>	<b>\$164,962</b>	<b>\$64,705</b>

As of June 30, 2014, there was a balance of \$1,583,494 in the Sewer Capital Improvement Fund.

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



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

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