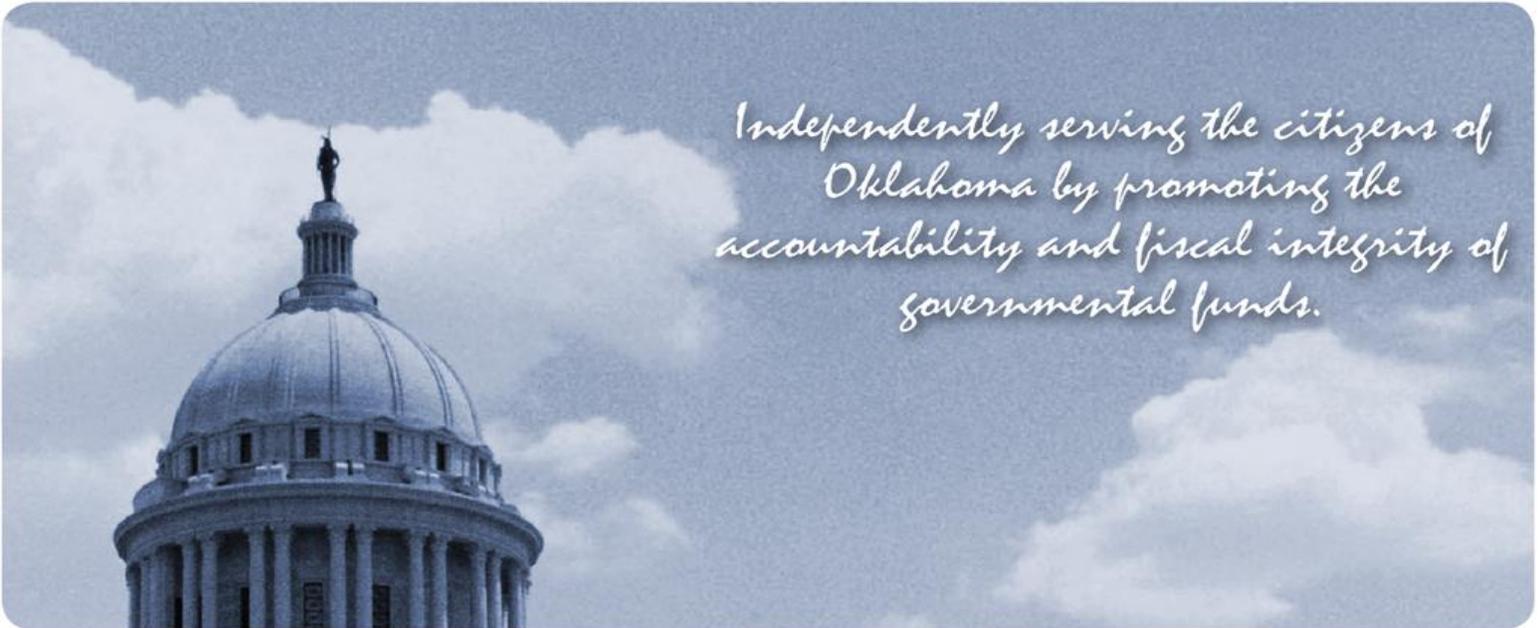


INVESTIGATIVE AUDIT

CITY OF HENRYETTA

HENRYETTA MUNICIPAL AUTHORITY

For the period July 1, 2010 through June 30, 2012



*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

City of Henryetta
Henryetta Municipal Authority
Investigative Audit
July 1, 2010 through June 30, 2012



Oklahoma State Auditor & Inspector

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

March 13, 2015

To the Citizens and Petitioners of the
City of Henryetta, Oklahoma

Pursuant to your request and in accordance with the requirement of **74 O.S. § 212(L)**, we performed an investigative audit of the City of Henryetta and the Henryetta Municipal Authority. Transmitted herewith is our report on that investigation.

The objectives of our investigation primarily included, but were not limited to, the areas noted in the Citizens' petition. Our findings related to those objectives are presented in the accompanying report.

Because investigative procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City of Henryetta or the Henryetta Municipal Authority.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government while maintaining our independence as we provide this service to the taxpayers of Oklahoma.

This report has been prepared for the citizens of Henryetta and for city and state officials with oversight responsibilities. 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 that reads "Gary A. Jones".

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

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Introduction

The City of Henryetta (“City”) is organized under the Council-Manager form of government as outlined in **11 O.S. § 10-101, et. seq.** which states:

The form of government provided by Sections 11-10-101 through 11-10-121 of this title shall be known as the statutory council-manager form of city government. Cities governed under the statutory council-manager form shall have all the powers, functions, rights, privileges, franchises and immunities granted, or which may be granted, to cities. Such powers shall be exercised as provided by law applicable to cities under the statutory council-manager form, or if the manner is not thus prescribed, then in such manner as the council may prescribe.

The City is governed by the City Council which consists of five members, four of which are elected from wards of the City, and a fifth member elected at large. The Council then elects, from its membership, one member to serve as the Mayor and one member to serve as the Vice-Mayor.

The City Council as of October 2014, consisted of:

- Bill Goodner, Mayor.
- Audie Cole, Vice Mayor.
- Henry Koelzer, Member.
- Denny Hold, Member.
- Jennifer Clason, Member.

The Henryetta Municipal Authority (“HMA”) is the utility system that provides water and sewer services to the residents of the City. The HMA is overseen by the HMA Board which consists of the same members as those who serve on the City Council.

The State Auditor and Inspector conducted a special investigative audit as a result of the Citizens’ petition and in accordance with **74 O.S. § 212(L)**. The results of this special investigative audit are contained in the following report.

Objective I **Determine if the City has complied with the Oklahoma Open Meeting Act.**

Summary of Findings and Conclusions

- **The City has no formalized process for a citizen to be added to the council meeting agenda.**
 - **Meeting minutes included business and actions not included on the meeting agenda.**
 - **We found no exceptions to the City Council’s use of executive sessions.**
 - **The City does not keep minutes for executive sessions.**
 - **We noted other exceptions in our comparison of the meeting agendas and meeting minutes.**
-

Background

In an effort to obtain some clarification and specificity concerning the alleged violations, we met with the petitioner at the outset of our investigation. During our meeting, we determined concerns related to the Open Meeting Act included:

- Several requests had been made to be placed on the agenda for the City Council meeting, without success.
- A generalized concern that comparing the agendas to the meeting minutes, with respect to executive sessions, would reveal violations of the Open Meeting Act.

Finding

The City has no formalized process for a citizen to be added to the council meeting agenda.

During our interview with the petitioner, he stated that since 2011, he has made several requests to be added to the council agenda without success.

We reviewed the City’s code book related to Chapter 2, City Council, to determine if the City had a formalized process for a citizen to make a request and be placed on the agenda for a city council meeting.

The Code book in Chapter 2 does not include a process for a citizen to be placed on a council meeting agenda. According to the City Attorney, the City has no formal process for being added to a council agenda. However,

it is also noted that the Oklahoma Open Meeting Act does not provide a process for citizens to be included on meeting agendas.

The meeting minutes for the City Council meeting held on February 15, 2011, reflected the following under the provisions for new business:

[*Citizen 1*] addressed the Council and requested to be on the next month's agenda. He stated there were several topics he wanted to address. The first being Eagle Picher [sic] site regarding it being a hot site. Secondly, he wanted to discuss the Henryetta Strategic Business Plan that had not been updated. He would like to discuss the Nichols Park and Bathhouse grant that had been granted a few years ago. He advised he would like to discuss City Government and some things that were going on with it.

[*Citizen 2*] addressed the Council regarding the County Offices that were closing in Henryetta and moving to Okmulgee. He stated part of the reason was suppose [sic] to be because of the rent and bills. He asked if the Council could waive the rent for the benefit to keep the offices open here.

Councilman Dickey advised he thought this was only part of the reason for moving the offices.

Following discussion it will be placed on next month's agenda for consideration.

When we reviewed the agenda and meeting minutes for the next meeting, held on March 15, 2011, we found no discussion related to the topics raised by either of these citizens.

We noted the March 15, 2011 meeting minutes did include:

Mayor Larney read City Code Section 10.610 that prohibited citizens from interfering with city business meetings. He stated Section 10.610 can be used if the Mayor fails to recognize a person and they talk without being recognized, also if they won't obey the rules regarding time or invitation, they can be removed from the council meeting.

Following the warning from Mayor Larney the meeting minutes reflected the following:

[*Citizen 2*] inquired if everything was on the agenda that was supposed to be. He stated he understood that [*Citizen 1*] was supposed to be on the agenda, and he did not see it and questioned if it was going to come under new business. Mayor Larney advised it was not on the agenda and he would not be

able to speak. Patterson stated it was requested by [Citizen 1] at the prior meeting and he was assured it would be.

City Manager Eldridge advised he was asked to be specific on his request. He stated it is listed in the written minutes as well as being on tape, but not the specifics of what he wanted to speak about.

Patterson inquired of the City Attorney how many signatures were required to call a Special Meeting to discuss specific agenda items of citizens. City Attorney Lou Ann Moudy advised only one – a written request must be presented with specific agenda items given to the City Manager.

An email dated March 16, 2011, from City Attorney Moudy to the petitioner reflected the following, in part, related to being placed on the agenda:

You allege that failure to have your items on the agenda were some type of intentional conspiracy. There was and is no conspiracy. If there was an oversight, you had plenty of time to ask to be placed on the agenda before Monday at 5:00 p.m. or to ask to be recognized during new business. You did neither.

City Attorney Moudy advised us she previously tried to meet with the petitioner in question in order to narrow down the issues to be placed on the agenda. According to Moudy, during the course of that meeting the petitioner “stormed out of my office.”

The April 19, 2011 meeting minutes and agenda reflected the citizen in question had been placed on the agenda, and discussed during the meeting, issues related to the following topic items:

- Discussion regarding Eagle Picher site.
- Discussion regarding Nichols Park Bath House.
- Discussion regarding city government.

The topics and discussion reflected in the meeting minutes appear to be the same issues that the citizen had asked to discuss during the February 15, 2011, meeting.

We received an email from the City Attorney which included an email from the petitioner dated November 25, 2011. In the email, the petitioner references the issues related to then City Manager Eldridge and the

firefighter's pension. The email indicated an attached file named "October%202011 Firefighter Union Bd. Minutes.pdf".

The email included, in part:

I am shocked that this matter has not been offered on the agenda to be discussed by the city council. This is a serious matter with comparable liability.

Please consider this my formal request to be on the on the agenda [sic] for December in which case I will have researched the matter and have questions for the City Manager; council members and others who have been aware of this matter.

During an interview with the City Attorney, she said the petitioner was not placed on the agenda related to the Firefighter issue for the following reasons:

1. The petitioner had no independent knowledge of the situation.
2. Robert Jones, Executive Director for the Firefighters Pension Fund, was going to be at the same meeting to discuss the issue at hand.
3. The issue was a personnel issue.
4. There was concern about the adversarial posture between the petitioner and then City Manager Eldridge.

The City Attorney also provided that it was her position that "open meetings are to conduct city business and not a forum for citizens to be able to have an 'open mike night' and it is certainly not a place for making personal attacks on employees."

On August 18, 2014, we sent an email to the petitioner asking for any additional information related to the agenda issues. No further information concerning agenda placement was provided.

Finding

Meeting minutes included business and actions not included on the meeting agenda.

25 O.S. § 311 provides that meetings of public bodies must be preceded by an agenda that has been publically posted and "shall identify all items of business to be transacted by a public body..."

We reviewed the agenda for the meeting minutes for the December 20, 2011 City Council meeting. We noted the agenda contained 27 separately numbered items, none of which related to issues concerning the firefighter's pension. The last item on the agenda, adjournment, was item #27.

Item #26 on the agenda was listed as "Discuss/Act on New Business". **25 O.S. § 311** defines "new business" as "any matter not known about or which could not have been reasonably foreseen prior to the time of posting."

The meeting minutes reflected item #26, as follows:

DISCUSS/ACT ON AUTHORIZING THE FILING OF A DECLARATORY JUDGEMENT ACTION SEEKING A JUDICIAL DETERMINATION OF THE REQUIREMENT FOR THE CITY OF HENRYETTA TO MAKE CONTRIBUTIONS TO THE OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM ON BEHALF OF THE CITY'S FIRE MARSHAL.

The meeting minutes reflected the City Council voted on and approved the issue.

The meeting minutes reflected item #27, as follows:

DISCUSS/ACT ON RETAINING THE LOVE LAW FIRM OF OKLAHOMA CITY TO REPRESENT THE CITY OF HENRYETTA IN ANY DECLARATORY JUDGMENT ACTION REGARDING THE OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM.

The meeting minutes reflected the City Council voted on and approved the issue.

The meeting minutes reflected item #28, as follows:

PRESENTATION BY MR. ROBERT JONES, EXECUTIVE DIRECTOR OF THE OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, REGARDING PENSION SYSTEM'S RULES AND REGULATIONS FOR CREDITED SERVICE TIME IN THE PENSION SYSTEM AND A REQUEST THAT THE CITY OF HENRYETTA STOP SUBMITTING PAYMENTS TO THE SYSTEM ON BEHALF OF THE FIRE MARSHAL.

There was no vote taken as a result of item #28.

The meeting minutes reflected item #29, as follows:

DISCUSS/ACT ON NEW BUSINESS.

There was no new business to be discussed.

Based on our review of the agenda items and the meeting minutes, the City Council considered and acted upon items that were not included on the agenda for that meeting.

Finding

We found no exceptions to the City Council's use of executive sessions.

During our interview with the petitioner, it was alleged that a review of council meeting agendas would disclose "hundreds of violations" related to executive sessions.

We reviewed the council meeting minutes for the FY10-11 and FY11-12 year, and prepared a schedule of each meeting (both regular and special), noting if the meeting minutes reflected that an executive session had occurred.

In cases where an executive session was noted in the meeting minutes, we reviewed the minutes to determine if the executive session fell within the scope of an allowable topic for executive sessions in accordance with **25 O.S. § 307**.

We noted no exceptions to that testing procedure.

We performed a second test to determine if executive sessions followed the procedures of **25 O.S. § 307** with respect to:

- The executive session was noted on the agenda.
- The executive session was voted on and was authorized by a quorum, and the vote was publically cast and recorded.

We noted no exceptions to that testing procedure.

During our interview with the petitioner, it was stated that meeting agendas did not specify the purpose of the executive sessions. For the agendas reviewed, we found that agendas were stating the purpose of the executive session.

For example, the agenda for the September 20, 2011, included the following:

Discuss/Act on entering into Executive Session under 25 O.S. §307(B)(4) for confidential communications between the City and its attorney, Lou Ann Moudy concerning a pending investigation, claim or action relating to the Oklahoma Firefighters Pension Fund and the City of Henryetta. It is the advice of Lou Ann Moudy that the disclosure of the communications would seriously impair the ability of the public body to process the pending investigation, litigation or proceeding in the public interest.

The agenda item, which was fairly typical of the agenda items related to executive sessions, included the purpose of the executive session, the statute authorizing the executive session, and the general purpose of the session.

We did note instances where the proposed executive session agenda item included less information. For example, the April 17, 2012 agenda included the following item proposing an executive session:

Discuss/Act upon the recommendation of Lou Ann Moudy, Attorney for the City of Henryetta to enter Executive session under 25 O.S. § 307 B(4) for confidential communications between the Council and its attorney concerning a pending investigation, claim, or action. It is the advice of Ms. Moudy that disclosure of the communications will seriously impair the ability of the Council to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest.

In these instances the first example noted above identifies the specific pending litigation being discussed and its relation to the City and the Oklahoma Firefighters Pension Fund. The second example noted above only identifies that the council and the city attorney are going to discuss *some* pending investigation, litigation, or proceeding in the public interest.

25 O.S. § 307(B)(2) provides the following:

If a public body proposes to conduct an executive session, the agenda shall:

- a. contain sufficient information for the public to ascertain that an executive session will be proposed;
- b. identify the items of business and purposes of the executive session; and**

- c. state specifically the provision of Section 307 of this title authorizing the executive session.

The city should consider, when feasible, identifying what pending litigation is proposed to be discussed during an executive session in order to keep the public as informed as possible as to the purpose of each session.

Finding

The City does not keep minutes for executive sessions.

25 O.S. § 312 requires the “proceedings of a public body shall be kept... in the form of written minutes...” On January 27, 1997, the Oklahoma Attorney General’s Office, in response to a question related to executive session minutes, published **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.

According to the City Manager, the City, on the advice of their City Attorney, does not keep or maintain minutes for the Council’s executive sessions.

Finding

We noted other exceptions in our comparison of the meeting agendas and meeting minutes.

We reviewed and compared the meeting agendas to the meeting minutes for the entire period of July 1, 2010 through June 30, 2012. The purpose of our review was to determine if the City was complying with the following requirements:

1. Do the agenda items reflect and correspond to the meeting minutes as required by **25 O.S. § 311**?
2. Do the meeting minutes reflect the members present and absent at each meeting as required by **25 O.S. § 312**?
3. Do the meeting minutes reflect the manner and time of notice for the meeting being held as required by **25 O.S. § 312**?
4. Do the meeting minutes reflect a recorded vote for each member as required by **25 O.S. § 312**?
5. Do the meeting minutes reflect the actions taken by the board as required by **25 O.S. § 312**?

During the period July 1, 2010 through June 30, 2011, records reflected the City Council had met on 19 separate occasions. In our review of the FY10-11 minutes we noted one exception.

The meeting minutes for the meeting held on April 19, 2011, reflected the following discussion and action that was not included on the agenda for the proposed meeting:

ITEM #22: DISCUSS/ACT ON THE APPOINTMENT OF TWO MEMBERS OF THE COUNCIL TO SERVE ON A COMMITTEE TO REVITALIZE THE STRATEGIC PLAN FOR HENRYETTA.

Under Item #22, Councilman Dombek made a motion to have Board Members Dickey and Cole serve on the committee. The motion was seconded by Councilman Siberts and the affirmative votes were recorded for each of the members.

During the period July 1, 2011 through June 30, 2012, records reflected the City Council had met on 19 separate occasions. In addition to the exceptions related to the December 20, 2011, meeting previously noted on Page 6 under this objective, we also noted the following exceptions:

1. The agenda for the October 11, 2011, meeting incorrectly identified the meeting date as October 6, 2011.
2. No agenda could be provided for a budget workshop on June 5, 2012. No action was taken during the workshop.

Objective II **Determine if the City has complied with the Oklahoma Open Records Act.**

Summary of Findings and Conclusions

- **The City has complied with three Open Records Act requests.**
 - **The City has not complied with thirteen Open Records Act requests.**
-

Background

During a meeting with the petitioner to clarify the alleged violations, we determined the issues related to the Oklahoma Open Records Act specifically related to records that the City had failed to provide.

We noted the majority of the requests made to the City were requests from late 2013 and 2014. Although these requests were not made during the audit period in the Citizens' Petition we chose to address them, as this is a continuing issue between the petitioner and the City.

Finding

The City has complied with three Open Records Act requests.

The City provided documents which included a form titled "REQUEST FOR RECORD COPY" which citizens can complete in making records request. We found three such forms in the records provided.

The forms did not include the request date. The forms specified the records being requested and, in two cases, the date the records had been provided, as well as the related costs associated for records reproduction. The third request did not reflect a date when the records had been provided.

According to the current City Manager, the records that had been requested in the third request had been retrieved and copied, however the petitioner never returned to pick the records up. We noted the records that had been requested were attached, by paperclip, to the request.

We contacted the petitioner and provided him with the copies of the three requests and asked if these requests had been fulfilled. He responded that he had received the requested records except for the records related to the third request. Again, it appears he had not returned to city hall to retrieve them.

In the petitioner's response to us, he noted that he objected to having been charged for the records that were provided, and wanted to be reimbursed for the \$18.75 he had been charged.

Finding

The City has not complied with thirteen Open Records Act requests.

Between November 25, 2013 and July 15, 2014, the petitioner made thirteen additional records requests pursuant to the Open Records Act.

Although the request dates are not inclusive of the audit period defined in the audit petition¹, the circumstances related to these requests continues to be an on-going issue for the City. As such, we determined that we would address these requests.

The City does not deny that it has not complied with the thirteen Open Records requests.

The City's non-compliance with these requests appears to be primarily related to the level of disruption that would be caused by fulfilling the requests made, and whether or not the requestor should be compelled to pay costs associated with his requests.

Provisions of the Open Record Act, specifically **51 O.S. § 24A.5 (3)**, discuss costs related to requests made under the Act. The provisions provide in relevant part:

[A] public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. **However, if the request:**

- a. is solely for commercial purpose, or
 - b. would clearly cause excessive disruption of the essential functions of the public body,**
- then the public body may charge a reasonable fee to recover the direct cost of record search and copying;**
[emphasis added]

¹ The petition included the period July 1, 2010 through June 30, 2012.

In a three-page written response, the City identified several reasons for not providing the records requested. A summary of the primary reasons the City had not complied included:

1. The requests made by the petitioner would involve substantial time and effort to research and identify records requested due to the broad nature of the requests.
2. The petitioner's position that he desires to "inspect" records, and therefore not incur a cost for reproduction, was unreasonable. The City would still incur significant costs associated with having an employee supervise a citizen's inspection to ensure original documents were not altered.
3. Three of the records requests were for records that did not exist.
4. Two of the requests for records would require extensive review and redactions for either attorney/client privileged information or private citizen's information which is not subject to disclosure.
5. The petitioner requesting the documents, by his actions, has created an environment in which City employees are fearful for their personal safety. In various emails he has accused City employees of various crimes, and of being incompetent, liars, cheats, thieves, or conspirators to commit crimes against the citizens.

We have addressed each of these five issues in greater detail.

City Response #1

The requests made by the petitioner would involve substantial time and effort of City employees to research and identify records requested due to the broad nature of the requests.

Provisions of the Open Record Act, specifically **51 O.S. § 24A.5(3)**, discuss costs related to requests made under the Act. As previously noted, the provision would allow the City to charge a fee, "if the request... would clearly cause excessive disruption of the essential functions of the public body..."

The City contends some of the requests received were so broadly worded so as to include virtually any document or record created by the City. One example, according to the City's response, was a request made by the petitioner on November 25, 2013 for the following records:

..any and all records related to emails or any other correspondence to and from PAST CITY MANAGER RAYMOND ELDRIDGE WITH THE WORDS "SHEWARD", "BUCK", "HOWARD", "ROB", "BARRIS", "DUKE", "RON", "ROBERT", "FROST", "MICHAEL/MIKE", "DICKY", "RICE", "ED/EDDIE", "STEVE", "NORMAN", "DONNA", "WHITE", "CINDY", "TYLER", "ANGEL", "ELLIS", "LOU", "ANN", "MOUDY", "OKLAHOMA", "FIREFIGHTER", "RETIREMENT", "PENSION", "FUND", SINCE FEBRUARY 2012 BE MADE AVAILABLE TO ME FOR INSPECTION.

A similar request for records was made on January 10, 2014, for the following records:

...any and all records related to emails or any other correspondence to and from POLICE CHIEF STEVE NORMAN WITH THE WORDS "SHEWARD", "BUCK", "HOWARD", "RAYMOND", "ELDRIDGE", "HERB", "TITSWORTH", "ROB", "BARRIS", "DUKE", "RON", "ROBERT", "FROST", "MICHEAL/MIKE", "DICKY", "RICE", "ED/EDDIE", "STEVE", "NORMAN", "DONNA", "WHITE", "CINDY", "TYLER", "ANGEL", "ELLIS", "LOU", "ANN", "MOUDY", "OKLAHOMA", "FIREFIGHTER", "RETIREMENT", "PENSION", "FUND", SINCE FEBRUARY 2012 BE MADE AVAILABLE TO ME FOR INSPECTION.

We are cognizant the inclusion of some of the keywords taken by themselves, such as "Oklahoma", would potentially mean any record or email that had been written, regardless of the subject matter, by either the former city manager or the current police chief.

City Response #2

The petitioner's position that he desires to "inspect" records, and therefore not incur a cost for reproduction, was unreasonable. The City would still incur significant costs associated with having an employee supervise a citizen's inspection to ensure original documents were not altered.

The thirteen records requests included language related to "inspecting" the records. For example, the November 25, 2013 request previously noted included:

Please note that I am asking to inspect these records. I reserve, however, the right to request copies when the records are examined.

In response, the City states that even if there were no costs related to copying the records, there would still be a substantial disruption to the City in compiling the records because of the broad nature of the requests.

The City's response also noted that two of the requests would require "extensive review and redaction for attorney/client privileged information or private information of citizens or personnel which is not subject to disclosure."

We recognize that in order for the City to provide redacted records for inspection the original records would first need to be reproduced, and then any appropriate redactions made on the copies of the records, rather than on the originals.

In addition, we also recognize the City would have an obligation to ensure, during such an inspection, that no records were destroyed, secreted or altered. The only reasonable means the City would have to assure that no records were altered would be to have a city employee, or representative, observe a citizen during inspection.

The petitioner provided a document to us in which he discusses meeting agendas that were available for review. In that document he writes:

When available, a clerk brings it to the hallway for me to review while she sets [sic] there watching my every move. On one occasion the Fire Chief set [sic] with her during my examination.

This is a form of harassment and intimidation.

City Response #3 Three of the records requests were for records that did not exist.

On January 10, 2014, the petitioner made a request for the contract between City Attorney Lou Ann Moudy and the City. According to the City Manager, Ms. Moudy is a salaried City Attorney and, therefore no contract exists. The records reflect the same.

On January 11, 2014, a request was made for records related to a business trip to Dallas, Texas by two council members. According to the City Manager, he is unaware of any council members traveling to Dallas, Texas on a City related trip.

On July 15, 2014, a request was made for a copy of the City Charter. The City of Henryetta is not a charter city, therefore no city charter exists.

City Response #4 Two of the requests for records would require extensive review and redactions for either attorney/client privileged information or private citizen's information which is not subject to disclosure.

On November 25, 2013, the petitioner requested a detailed listing of each monthly invoice submitted by the City Attorney to the City, along with invoices from any third-party attorneys the City has utilized. The request also included any related approvals and agreements between the City and other attorneys.

On July 15, 2014, the petitioner requested records related to “calls by citizens to the police for any reason” for the period from January 1 through June 30, 2014.

The City’s response to these requests was that both requests would require extensive review and redaction of the records, for both attorney/client information as well as private information of citizens, which may not be subject to disclosure.

On June 11, 2014, the following request was made:

Records requested for review are all calls “in take logs”, OSBI Report to include homicides, rape/molestations, robbery, assaults, breaking and entering, larceny, vehicles reported stolen; citation log providing reconciliation of citations provided by the state, detective report log and or case logs, records documenting police drawing weapons on citizens, and communications with victims, case resolution index log, or related providing case intake and resolution percentage, log of reports provided to victims on their individual case, and any other related records of “police enforcement protocol” exercised by the city of Henryetta.

The City’s answer to this request is the same as the response addressed in City Response #1, as to the request being so overly broad the City would be unable to comply.

This request appears to also be a request that would require a significant amount of time to redact personal identifying information that may be included in the police department’s investigative files.

In addition, **74 O.S. § 150.5.D**, referencing the Oklahoma State Bureau of Investigation states:

All records relating to any investigation being conducted by the Bureau, including any records of laboratory services provided to law enforcement agencies pursuant to paragraph 1 of Section 150.2 of this title shall be confidential and shall not be open to the public [...]

As such the City would be prohibited, by law, from providing access to the OSBI reports.

City Response #5

The petitioner requesting the documents, by his actions, has created an environment in which City employees are fearful for their personal safety. In various emails, he has accused City employees of various crimes and of being incompetent, liars, cheats, thieves, or conspirators to commit crimes against the citizens.

The City provided numerous emails purportedly having been received from the petitioner. We reviewed the emails and, from our review, noted several emails in which the on-going communication between the petitioner and various City officials appeared to be on a non-professional level. The emails contained accusations and language unsuitable for this report.

We interviewed four employees who work at City Hall. All four of the employees witnessed a physical confrontation between the petitioner and then City Manager Eldridge. All four expressed at least some level of concern for their safety.

In an email, dated September 23, 2014, City Attorney Lou Ann Moudy made the following recommendation:

It is my advice to not respond to...emails as any attempt to engage...in a rational discussion of issues has resulted in escalated accusations and harassment. I recommend that you instruct department heads to ask employees to not respond to his emails, accusations or threats for their own safety.

Objective III Review the circumstances related to contributions paid to the Oklahoma Firefighters Pension and Retirement System (OFPRS) as well as the dual offices held and related compensation paid, resulting from the various positions of the former City Manager.

*Summary of
Findings and
Conclusions*

- The meeting minutes were vague on what positions were held and what responsibilities were being accepted and/or appointed.
- The City was not in compliance with state law requiring that cities with paid fire departments maintain a full-time fire chief.
- The title of “fire chief” appeared to be in name only. As such, the firefighter pension fund did not accept the related pension contributions.
- The City discontinued submitting pension payments on behalf of the former City Manager Raymond Eldridge, after OFPRS notified the City that Eldridge’s appointment to city manager prohibited him from serving as full-time fire chief.
- The city manager portion of Eldridge’s salary was not submitted to OFPRS for credit towards his firefighter’s pension.
- The City Manager/Fire Chief was receiving compensation for dual offices contrary to state law and City Code.
- The City Manager appointed himself to a previously non-existent position of City Fire Marshal.
- The position of “Fire Marshal” appeared to be in name only.
- OFPRS did not accept the pension contributions of Eldridge during his term as fire marshal.
- The City continued to submit Eldridge’s pension contribution checks after OFPRS stated they would no longer be accepted.
- The City did not advertise the Fire Marshal position.
- Eldridge received a clothing allowance subsequent to his appointment as fire marshal, and during his transition to “volunteer city manager”.

Background

The specific concerns related to the firefighter pension payments and the issue of dual office holding included:

- The City's appointment of their Fire Chief to the position of interim city manager and then to full-time city manager.
- The City paying the dual positions of city manager and fire chief/fire marshal contrary to state law.
- The City allowing the City Manager to appoint himself as the City Fire Marshal.
- The City's possible submission of unallowed pension payments while holding various positions within the City.

On June 23, 2006, Fire Chief Raymond Eldridge was appointed to serve as interim city manager while continuing to serve as the City Fire Chief. On December 19, 2006, the City Council appointed Eldridge to serve as the full-time city manager while he maintained his position as City Fire Chief.

As the full-time fire chief, Eldridge would have been eligible to participate in the Oklahoma Firefighters Pension and Retirement System (OFPRS). In a letter dated July 11, 2007, OFPRS notified Eldridge that his appointment to the full-time city manager position would prohibit him from continuing to accrue pension service credit.

In July 2009, an amendment to **11 O.S. § 29-102**, a statute related specifically to municipal fire departments, prohibited cities with a paid fire department from having one individual serve as both the city manager and the fire chief simultaneously. On June 30, 2009, the City Council authorized Eldridge to remain as city manager and accepted his resignation as fire chief.

After the City Council accepted Eldridge's resignation as fire chief, City Manager Eldridge appointed himself to the newly created position of City Fire Marshal, while continuing to act as the "Volunteer City Manager".

After Eldridge became City Fire Marshal, the City resumed sending pension contributions to OFPRS. OFPRS took the position that Eldridge was a member of the fire department in title only, and rejected the pension contributions.

On April 4, 2012, a Petition for Declaratory Judgment was filed on behalf of the City for a determination by the Court regarding the pension contributions.

On April 25, 2013, Eldridge resigned as "Volunteer City Manager" and on May 21, 2013, the City Council abolished the fire marshal position.

This Petition was the first of many court filings. The status of Eldridge's pension held by the City has yet to be resolved.

Finding

The meeting minutes were vague on what positions were held and what responsibilities were being accepted and/or appointed.

On June 23, 2006, the City Council initially appointed then Fire Chief Raymond Eldridge as interim city manager, increasing his salary by \$700, from \$3,139.70 to \$3,839.70.

The meeting minutes provide in relevant part:

Interim City Manager Donna White resigned effective midnight Friday June 23rd, 2006 Fire Chief Raymond Eldridge was appointed Interim City Manager with an increase of \$700.00 a month for extra duties while holding position of Interim City Manager.

On December 19, 2006, the City Council voted in favor of appointing Raymond Eldridge as the permanent City Manager with an annual salary of \$52,000.

The minutes read in relevant part:

Vice-Mayor Siberts made the motion to appoint Interim City Manager Raymond Eldridge to permanent City Manager with the salary of \$52,000.00 per year.

As shown, the minutes state that Eldridge was appointed to the position of permanent City Manager. However, the minutes fail to address what additional roles Eldridge would hold, if any, in addition to his position as City Manager.

While not reflected in the meeting minutes, payroll records show that effective December 19, 2006, Eldridge was paid for the positions of City Manager *and* Fire Chief, in the amounts of \$14,203.60 and \$37,796.40, respectively, a total of \$52,000 annually.

Documentation also shows that at the time of his appointment to City Manager, Eldridge retained the position of Fire Chief, with the knowledge and approval of the City Council.

Because the meeting minutes were silent on the dual roles, we asked city officials their recollection of the meeting. City Clerk Donna White believed the intent of the Council was to allow Eldridge to serve as both Fire Chief and City Manager.

City Councilman Phil Siberts, who was a council member at the time of the appointment, also believed the Council intended for Eldridge to retain his position as Fire Chief while also serving as City Manager.

Former City Councilman Richard Larney, who was a council member at the time of the appointment, said he believed the intent of the city council was that Eldridge would hold the position of City Manager and that Eldridge would not hold any other position.

The Council's lack of establishing a clear definition of Eldridge's job duties and responsibilities set the stage for turmoil and confusion throughout his term of employment.

Finding

The City was not in compliance with state law requiring that cities with paid fire departments maintain a full-time fire chief.

There is a statutory requirement that all cities with a paid fire department shall maintain a full-time fire chief.

11 O.S. § 29-102 provides in relevant part:

All cities having a paid fire department shall have one full-time fire chief whose primary duty shall be the administration of the fire department...

When Eldridge was appointed permanent City Manager on December 19, 2006, it did not appear that he continued to fulfill his duties as the full-time fire chief.

We interviewed current Fire Chief David Bullard, who was a lieutenant while Eldridge was serving as the fire chief. According to Bullard, after Eldridge was appointed as city manager, he did not perform any of the duties of fire chief, did not go on runs, and was rarely in the fire station.

We also interviewed fire department Captain Rohatch who worked under Eldridge; he stated that Eldridge appeared to hold the fire chief position in name only.

Finding

The title of "fire chief" appeared to be in name only. As such, the firefighter pension fund did not accept the related pension contributions.

On July 11, 2007, OFPRS sent a letter to Eldridge notifying him that his appointment as city manager on December 19, 2006, prohibited him from

also serving as fire chief, and that service credit would not accrue while he was serving as city manager.

OFPRS officials indicated, in an interview, that their position was that once a firefighter or fire chief is promoted to a city manager position, they are no longer a participating member of the firefighter pension system.

OFPRS officials believed that despite claims that Raymond Eldridge was serving as city manager and fire chief, the practicality of the matter was he was the city manager and not a full-time fire chief as required by statute.

Finding **The City discontinued submitting pension payments on behalf of the former City Manager Raymond Eldridge, after OFPRS notified the City that Eldridge's appointment to city manager prohibited him from serving as full-time fire chief.**

Another concern expressed was that the City continued sending Eldridge's pension contributions to OFPRS, after receiving a legal opinion that Eldridge was prohibited from serving as both the full-time fire chief and city manager. We found this was not the case.

A July 11, 2007, letter from OFPRS served as notification that Eldridge's appointment to city manager prohibited him from serving as fire chief. The City's payroll records reflected that on the next subsequent payroll period after the July 11, 2007 letter, Eldridge was no longer included in the pension reports submitted to OFPRS for the time he remained as fire chief.

Finding **The city manager portion of Eldridge's salary was not submitted to OFPRS for credit towards his firefighter's pension.**

A concern was expressed that the city manager portion of Eldridge's salary was added to his fire department salary, and the total amount credited towards his firefighter's pension. We found this was not the case.

A comparison of city payroll records to OFPRS pension reports confirmed that only the fire chief portion of Eldridge's salary was submitted for credit towards his firefighter's pension.

Finding **The City Manager/Fire Chief was receiving compensation for dual offices contrary to state law and City Code.**

In an interview, Eldridge stated that he was told by the city attorney at the time, that he could hold both positions of city manager and fire chief. Documentation shows that Eldridge held both positions with the

knowledge and approval of the City Council. However, the issue was not the holding of both positions, but the receiving of compensation for those positions.

The OFPRS Executive Director requested an Attorney General Opinion related to Eldridge *servicing* as both the city manager and fire chief. On June 23, 2008, the Attorney General issued **2008 OK AG 15** in which it was found that there were no *per se* statutory violations. While this opinion addressed the dual *office* issue the question of *compensation* was not addressed.

Relevant to this issue, **11O.S. § 10-112** provides in part:

...The city manager may appoint himself or the council or other authority may appoint or elect him, to other offices and positions in the city government...**but he may not receive compensation for service in such other offices or positions...** [Emphasis added]

We also reviewed city ordinances for any ordinances that pertained to the city manager holding two positions.

According to **City Code § 2-302(B)**:

The City Council, by majority vote, may appoint any other City official department head to serve concurrently as the acting City Manager; however said appointee **may only receive compensation for one or the other position, but not both positions**, as the salary or compensation have been determined. No person serving on the City Council or any person who has served on the City Council within the last two years may be appointed as the acting City Manager. [Emphasis added]

For the approximately six month time period that Eldridge simultaneously held the positions of *acting* city manager and fire chief, it would appear both statute and City Code would have applied. As previously noted, Eldridge received \$700 a month for his interim city manager compensation, in addition to his fire chief salary.

Finding

The City Manager appointed himself to a previously non-existent position of City Fire Marshal.

Concerns were expressed to us that City Manager Eldridge had self-appointed himself to the position of fire marshal without the approval of the City Council.

An amendment to **11 O.S. § 29-102**, effective on July 1, 2009, specifically prohibited a city with a paid fire department from allowing the city manager to also serve as the fire chief. City Manager/Fire Chief Eldridge consulted with the Love Law Firm who reportedly told him he could “self-demote” to another position within the City.

On June 30, 2009, the day prior to the statute taking effect, the City Council voted in favor of allowing Eldridge to retain his position as city manager and resign from his fire chief position. The minutes reflected:

Lonsdale made the motion to allow the City Manager to retain his position and resign as Fire Chief.

Contemporaneous to the City Council’s action, Eldridge, in his capacity as city manager, appointed David Bullard to the fire chief position and assumed the position of fire marshal, along with maintaining his city manager duties. The minutes gave no indication that Eldridge was going to retain or create a new position for himself.

Beginning July 1, 2009, documentation showed that Eldridge considered himself fire marshal and “volunteer city manager”, but his rate of pay remained unchanged.

According to **City Code § 2-304**:

The City Manager shall be the chief executive officer and head of the administrative branch of the City government. He shall execute the laws and administer the government of the City and shall be responsible therefor to the Council. He shall:

- A. Appoint, and when necessary for the good of the service, remove, demote, lay off or suspend all heads of administrative departments and other administrative officers and employees of the City except as otherwise provided by law...

City Code § 2-206 states:

All powers of the City, including the determination of matters of policy, shall be vested in the Council. Without limitation of the foregoing, the Council may:

- E. Create, change and abolish offices, departments and agencies other than those established by law, and assign additional functions and duties of offices, departments and agencies established by this chapter.

Relevant to this issue, **11O.S. § 10-112** provides in part:

...The city manager may appoint himself or the council or other authority may appoint or elect him, to other offices and positions in the city government...but he may not receive compensation for service in such other offices or positions...

The city manager has the power to appoint himself to an additional position within city government, but may not receive compensation for such.

Finding

The position of “Fire Marshal” appeared to be in name only.

The City obtained a legal opinion addressing the legality of Eldridge serving as city manager and fire marshal.

The opinion from the Love Law Firm indicated there were no legal prohibitions that would apply to the dual position holding of city manager and fire marshal.

The opinion, dated June 28, 2011, is summarized as follows:

There is no legal prohibition which would apply to the above arrangement. An individual may hold the position of City Manager and Fire Marshal as long as the Council approved the arrangement.

Once again because the council and meeting minutes were unclear, we asked City Clerk Donna White what she believed was the intent of the Council. White stated that she believed the intent of the Council was to allow Eldridge to remain as city manager and to assume another position in the fire department. According to White, she did not recall any mention of Eldridge volunteering as city manager, nor a discussion pertaining to compensation.

Former Councilman Phil Siberts believed the intent of the Council was to allow Eldridge to serve as a volunteer city manager while holding some other position within the fire department.

Former Councilman Richard Larney believed the intent of the council was to allow Eldridge to be the full-time city manager, and that Eldridge would hold no other positions.

We interviewed David Bullard who served as the fire chief during the time Eldridge held the title as fire marshal. Chief Bullard stated he only

realized Eldridge was serving as the fire marshal when Eldridge ordered a fire marshal badge.

Bullard also stated that Eldridge did not have an office in the fire station, did not perform inspections or complete reports, nor did Eldridge complete any paperwork that would be associated with serving as the fire marshal.

We reviewed Henryetta City Code for the duties of the fire chief and fire marshal. The City Code does not provide for a fire marshal position.

In addition to Chief Bullard, we also interviewed Fire Captain Mike Rohatch who has served with the City Fire Department for 28 years. Rohatch stated that when a position was open in the fire department the position was normally posted on a bulletin board at the fire station. Rohatch said the job title of fire marshal was never posted.

Rohatch believed that Eldridge created the fire marshal position for himself. Captain Rohatch held that Eldridge did not conduct inspections, did not wear a uniform, and was never on the work schedule.

We obtained a summary report from the fire department reflecting the firefighter's responses to incidents during the period July 1, 2009 through June 4, 2012. During this period Eldridge reportedly responded to 63 of the 2,338 incidents or approximately 2.7%. According to Fire Chief Bullard, the 2.7% may be inflated as Eldridge was credited for responding to incidents while he was at city hall and was "covering the fire station."

One of the expected duties of fire marshal is to perform code inspections. We randomly selected twenty-five inspection reports during the period Eldridge was serving as fire marshal. None of the reports reviewed were signed by Eldridge.

As the fire chief, Bullard would have been responsible for reviewing time records for Eldridge, who was serving as the fire marshal. Bullard stated that he had never seen time cards from Fire Marshal Eldridge.

With Eldridge's appointment to fire marshal, Chief Bullard was placed in the position of supervising Eldridge, as the fire marshal, while Eldridge, as the city manager, was Bullard's supervisor.

This dual supervisor/subordinate issue became more evident when the firefighters union filed a grievance against Eldridge, as a member of the fire department, which was ultimately decided by Eldridge, as the city manager.

Eldridge, as the city manager, denied the grievance against Eldridge, as a member of the fire department. Whether the denial of the grievance was valid or not, this situation created a perceived, if not actual, conflict of interest.

Finding

OFPRS did not accept the pension contributions of Eldridge during his term as fire marshal.

OFPRS officials continued to have concerns related to Eldridge's pension payments after he resigned as fire chief and became fire marshal. OFPRS officials believed that Eldridge was holding the fire marshal position in name only and declined to accept his pension contributions.

On June 9, 2010, the City discovered that since November 2009, OFPRS had not been accepting pension contribution payments *for all* of the members of the Henryetta Fire Department because of the issues related to Eldridge and his city manager / fire marshal position.

On August 10, 2010, Eldridge sent a letter informing OFPRS that the City would begin separating his pension contributions from the other firefighters. OFPRS began accepting pension contribution payments for the other members of the Henryetta Fire Department and continued to return Eldridge's contributions.

On August 19, 2010, OFPRS notified Eldridge that they were not recognizing his credit service time while he held both the city manager and fire chief/fire marshal positions. OFPRS reimbursed the City for contributions that had previously been accepted on behalf of Eldridge.

Finding

The City continued to submit Eldridge's pension contribution checks after OFPRS stated they would no longer be accepted.

The petitioner expressed a concern that although the City received legal advice concerning the payments to OFPRS being improper, the City continued to make the pension payments on behalf of Eldridge.

On December 20, 2011, an OFPRS representative addressed the Council and requested the City discontinue submitting payments to the system on behalf of the fire marshal. The City continued to submit payments to OFPRS on behalf of Eldridge until the fire marshal position was abolished on May 21, 2013.

In an interview, the city clerk stated that she believed the City had a responsibility to send the payments. The City was advised by the city attorney and accountant to continue submitting the contributions.

Finding **The City did not advertise the Fire Marshal position.**

There was a concern that the Fire Marshal position was not advertised.

City Code § 2-1001 states:

Any position that is open shall not be filled until it has been advertised publicly in local newspapers at least seven days prior.

We concur that the fire marshal position was not advertised.

Finding **Eldridge received a clothing allowance subsequent to his appointment as fire marshal, and during his transition to “volunteer city manager”.**

It was alleged that Eldridge received a clothing allowance for the fire chief position after he was appointed city manager.

For the time period Eldridge was fire chief, the payroll records did not reflect a clothing allowance was provided. However, we did note that subsequent to his appointment as fire marshal, and during his transition to “volunteer city manager,” Eldridge received a \$2,628 clothing allowance.

Objective IV **Review the possible misuse, mismanagement and/or misappropriation of grant funds and other funds, including but not limited to, funds intended for the City of Henryetta’s new \$9.5M water system.**

Summary of Findings and Conclusions

- **The City recognizes the water project does not work as designed. The City is pursuing legal action to remediate the engineering and construction issues.**
-

Background The concern, as related to us, was that the City had spent \$9.5M on a water project that once completed, did not work as expected.

Project Background According to officials with the Oklahoma Department of Environmental Quality (“ODEQ”) the City had significant issues with their water system that warranted the City exploring other sources for the City water supply.

During the March 20, 2007 meeting of the Henryetta Municipal Authority (“HMA”), the Board approved hiring NRS Consulting Engineers (“NRS”) to proceed with an evaluation of the water system. NRS would later become a part of the Mehlburger Brawley (“MB”) engineering firm.

For purposes of this section “NRS/MB” refers to NRS, Incorporated and the Mehlburger Brawley firm.

The HMA minutes for the October 23, 2007 meeting, included a presentation by an engineer with NRS, advising the Board that because of changes to the federal drinking water regulations, the City was no longer in compliance. The engineer discussed various options for the City to address the drinking water issue.

During the same meeting, the engineer also identified issues with the City’s water treatment plant, noting the City was under an ODEQ consent order and that the water treatment plant was in violation of current standards. At this same meeting, the Board discussed addressing possible solutions for funding of the necessary repairs to the water system.

The HMA minutes for the March 17, 2009 meeting, indicated the possibility of obtaining funding through ODEQ and the DWSRF (Drinking Water State Revolving Fund).

On September 21, 2009, the Board approved obtaining a “Drinking Water SRF loan” in the total amount of \$9.5M. During the same meeting the board awarded bids to various companies in relation to the water projects.

The Projects

The \$9.5M water project collectively consisted of five separate projects:

- Water treatment plant improvements/upgrade and expansion.
- Water distribution system improvements.
- The North Canadian River intake structure.
- A raw water line from the North Canadian River to treatment plant.
- Improvements to existing City water lines.

According to ODEQ inspection reports Wynn Construction was the contractor for the water treatment plant improvements and the North Canadian River intake structure.

Finding

The City recognizes the water project does not work as designed. The City is pursuing legal actions to remediate the engineering and construction issues.

On September 25, 2013, the City and HMA filed suit in the District Court of Okmulgee County against both NRS/MB and Wynn Construction.

According to the City/HMA petition to the Court, the NRS/MB firm was hired as the “City’s Professional Engineer” to deliver a design for the river intake structure and for the construction of a new water treatment plant. The Petition further states the City/HMA relied on the experience, expertise, and professional engineering of NRS/MB in the construction of the projects.

In addition to the NRS/MB engineering firm, the City has also alleged Wynn Construction failed to identify and correct defects in design, resulting in additional costs to the City. According to ODEQ officials, cities and towns that undertake projects such as the Henryetta water project, typically, rely on outside engineers hired by the city or town for the design and construction oversight of such projects.

According to the lawsuit, the water treatment plant only operates at 50% of the capacity the City/HMA believed would be the final output. In addition, the “SuperPulsator Building” has construction deficiencies and components of the building have structurally failed.

The petitioner’s concerns related to the management and oversight of the design and construction of the water projects are now the subject of litigation. With public funds expended for a project that purportedly does not work, we would expect the City to pursue whatever reasonable legal means are available to recover the taxpayer’s money.

Objective V **Review the possible irregularities and failure to adhere to city ordinances/policies, including the sale and/or disposal of city-owned property and/or equipment.**

Summary of Findings and Conclusions

- **Law enforcement authorities have previously investigated the concerns. Charges were filed and a City employee pled guilty to embezzlement.**
-

Background

The specific concerns expressed included:

- A former City employee used city-owned equipment to mow a cemetery that was not city-owned property.
- The same former City employee sold city-owned scrap metal and did not turn the proceeds over to the City.

Finding

Law enforcement authorities have investigated the issues raised. Charges were filed, and the now former City employee pled guilty.

On July 29, 2013, Police Chief Steve Norman sent a letter to District Attorney Rob Barris expressing concerns related to the allegations noted in the background above.

District Attorney Chief Investigator Robert Frost conducted an investigation into the matters related to the mowing of the cemetery and the sale of scrap metal. Investigator Frost also examined issues related to City employees working on personal equipment during the time they were ‘on-the-clock’ with the City.

As a result of the investigation, former City Employee George Powell was charged in Okmulgee County District Court with one count of embezzlement related to the mowing of the Senora Cemetery. On January 6, 2014, Mr. Powell pled guilty to the embezzlement charge and received a 2-year deferred sentence.

Because the concerns raised have already been reported, investigated and adjudicated by the appropriate legal authority, we did not pursue this matter further.

Objective VI Determine if the City complied with the requirements of CLEET concerning peace officer requirements and certifications.

Summary of Findings and Conclusions

- **The City's police force was in compliance with CLEET requirements.**
-

Background

We were asked to determine if the City's police department had complied with the requirements for certification as required by law.

70 O.S. § 3311 created the Council on Law Enforcement Education and Training (CLEET). CLEET is responsible for ensuring that peace officers in the State of Oklahoma are in compliance with certain requirements related to training and education.

Under the provisions of **70 O.S. § 3311.4** CLEET may suspend the certification of any peace officer in the state for failure to adhere to basic academy training requirements and continuing education requirements.

Finding

The City's police force was in compliance with CLEET requirements.

From the City's payroll records, we identified the peace officers working for the City during the audit period from July 1, 2010 through June 30, 2012. We then requested CLEET to verify those officers were in compliance with CLEET requirements.

Based on the response from CLEET, all of the City's peace officers were in compliance with CLEET requirements.

Objective VII Determine if the City has violated State Law and/or City Code related to nepotism.

Summary of Findings and Conclusions

- **There were no statutory prohibitions related to the supervisor-employee relationship.**
 - **The supervisor-employee relationship may have conflicted with City Code.**
 - **Any conflict that existed has been resolved by the retirement of the supervisor.**
-

Background

The specific concern related to hiring practices of the City involved an allegation of nepotism concerning the Water Superintendent Jeff Tedlock also being the supervisor for his son-in-law Jason Gold.

Gold was hired on August 30, 1993, and became Tedlock's son-in-law approximately four years later on August 23, 1997. In an interview, the city manager confirmed that one of Water Superintendent Jeff Tedlock's employees was his son-in-law, Jason Gold.

Finding

There were no statutory prohibitions related to the supervisor-employee relationship.

State statutes address nepotism in **11 O.S. § 8-106**, which provides:

No elected or appointed official or other authority of the municipal government shall appoint or elect any person related by affinity or consanguinity within the third degree to any governing body member or to himself or, in the case of plural authority, to any one of its members to any office or position of profit in the municipal government. **The provisions of this section shall not prohibit an officer or employee already in the service of the municipality from continuing in such service or from promotion therein.** A person may hold more than one office or position in a municipal government as the governing body may ordain. A member of the governing body shall not receive compensation for service in any municipal office or position other than his elected office. [Emphasis added]

11 O.S. § 8-106 states the appointing authority shall not "appoint or elect" a person who is related by marriage to a position within the municipality.

The statute specifically addresses an employee who is *already in the position*.

It was four years after Jason Gold had been hired by the City that he married Jeff Tedlock's daughter, thus becoming Mr. Tedlock's son-in-law. Since there was no family relationship 17 years ago when Mr. Gold was first hired, there does not appear to be a violation of state statute.

Finding

The supervisor-employee relationship may have conflicted with City Code.

According to **City Code § 2-902 (A)**:

The restrictions from nepotism are:

- A. A public official shall not advocate one of his relatives for appointment, employment, promotion, or advancement to a position in his agency or in an agency over which he exercises jurisdiction or control.

A public official is defined in **City Code §2-901**, which provides in relevant part:

PUBLIC OFFICIAL – An officer...an employee...to whom the authority has been delegated...to recommend individuals for appointment, employment, promotion, advancement...

The city manager confirmed that the water superintendent was in the position to recommend employees, including his son-in-law, for a promotion or advancement. During an interview, Jeff Tedlock confirmed that he was in the position to recommend his son-in-law for a promotion.

Because the water superintendent was in the position to recommend a promotion or advancement for a relative; this arrangement had the potential of creating a conflict with **City Code § 2-902(A)**.

Finding

Any conflict that existed has been resolved by the retirement of the supervisor.

Water Superintendent Tedlock retired from the City as of October 7, 2014. As such, any conflict with the City Code over the 17 year arrangement no longer exists.

Objective VIII Review the circumstances related to the number of abandoned houses in the City.

Summary of Findings and Conclusions

- **The City acknowledged there were a significant number of abandoned houses within city limits, but lacks the funding to attend to those structures.**
 - **The City completed an inspection on one specific property of new construction that was alleged to have not been inspected.**
-

Background

The initial concern expressed was related to the number of abandoned houses in the City. A secondary concern was that the City had not been inspecting new construction sites. There was no specific information related to the lack of code enforcement.

Finding

The City acknowledged there were a significant number of abandoned houses within city limits, but lacks the funding to attend to those structures.

According to City officials, the average cost to tear down a dilapidated structure is between \$4,000 and \$4,500 per structure. The cost estimation does not include any legal fees that may be associated with demolishing the structures.

The petitioner estimated that the City has 155 dilapidated structures. The City does not keep a listing of dilapidated properties, but believes the number of structures may total as high as 100 or more. Using the petitioner's estimation of 155 structures and the City's estimation of \$4,000 to \$4,500 per structure, the cost estimate to address these structures would range from \$620,000 to \$697,500.

According to City officials there is no specific budgeted amount for abatement, and they simply do not have the necessary funds to address the dilapidated structure issue. Officials stated if they had sufficient funding to address the problem they would.

In an effort to determine if this dilapidated structure issue was a problem unique to Henryetta, we met with officials from two neighboring cities. Officials from both cities' advised that the costs associated with dilapidated structures are an issue they faced as well. Officials from the City of Okemah stated that they had just obtained a \$4,500 quote to

remove a dilapidated structure. Officials with the City of Okmulgee also said that the \$4,000 to \$4,500 per structure estimation was reasonable.

The City of Okmulgee, between 2007 and 2014, spent over \$392,000 on abatement issues. They were able to recoup an estimated \$90,000 of that cost, representing an unreimbursed cost of \$302,000.

According to officials from both Okmulgee and Okemah, the cost associated with abatement of properties continues to be a financial issue faced by their respective cities.

Finding

The City completed an inspection on one specific property of new construction that was alleged to have not been inspected.

On September 18, 2014, the petitioner provided, via email, a 28-page “white paper” on the City of Henryetta. Included in the paper was a reference concerning the failure of the City to inspect new construction sites. The report reflected:

A serious problem to city organization is that citizens are constructing home additions, utility buildings, a variety of garages, mini apartments and other structures not in compliance with code.

The above paragraph included a footnote which reflected:

One block North of Main Street on 9th street on the east side of the street are 4 mini apartments that never so much as received a city inspection that I am aware of. The units are basically constructed under pole construction which is unacceptable for residential or multifamily construction.

Code Enforcement Officer Jody Agee, as well Fire Chief David Bullard both stated that they had inspected the apartments in question during the construction process and had required the owner to make necessary changes.

According to both, when inspections are done a sticker will be placed on the electrical box indicating to the electric company the property has been inspected. A sticker will also be attached to the gas meter, if the property has gas service.

On October 8, 2014, the audit team went to the property where inspection stickers were observed on each of the three power meter boxes. We confirmed these were the inspection stickers used by the City. According

to Mr. Agee, the structure is total electric and there is no gas service. We did not observe any gas meters on the property.

On October 9, 2014, we contacted the plumbing contractor who had performed at least part of the plumbing work on the property. According to the contractor, the City did visit the property and inspect the plumbing prior to the property being connected to the city water system.

The plumbing contractor was also aware of several instances where the City had halted construction on the property for various issues related to the roof trusses and electrical work.

According to Code Enforcement Officer Agee there is nothing in the City Code prohibiting “pole barn” construction.

Objective IX Determine the City’s responsibilities related to the site known as the “old Smelter site”. Determine if the City can promote the site for the purpose of an industrial park.

Summary of Findings and Conclusions

- **The City was not responsible for the cleanup; therefore, any allegations related to the remediation of the land are outside the scope of our investigation.**
 - **The EPA issued a Consent Order allowing the property to be used for commercial or industrial use.**
 - **The City utilizes the Site for industrial purposes in compliance with the Consent Order.**
-

Background

There were two concerns expressed to us in relation to a location known as the “old smelter site”, that the original cleanup of the contaminated site was insufficient, and that the City was promoting and utilizing the property, known as the Shurden Leist Industrial Park, even though the land was contaminated.

In 1974, Eagle-Picher Industries, Inc. donated property to the City. The property was the site where a smelter facility had existed at one time.

From the operations of the smelter, the land had been contaminated with lead and arsenic. Over the course of several years, waste believed to have originated from the smelter facility, had been used in residential areas, parking lots, playgrounds, etc.

At the request of the Oklahoma Department of Environmental Quality (ODEQ), the United States Environmental Protection Agency (EPA) became involved.

On August 10, 1996, the EPA initiated a removal action in which contaminated material was excavated “from the school track, three city parks, 93 alleys and 162 residential properties, and consolidated and capped contaminated material at the smelter facility.” Through September 1998, total costs incurred for the removal action reached almost \$7 million.

Finding

The City was not responsible for the cleanup; therefore, any allegations related to the remediation of the land are outside the scope of our investigation.

The cleanup of the smelter facility was an EPA project with the assistance of ODEQ. The City's involvement was limited to providing water and equipment to the project. The EPA provided the majority of the funding with contributions from ODEQ.

Documentation shows this was a federal and state project; therefore any allegations related to the remediation of the land, 18 years ago, are outside the scope of our investigation of the City of Henryetta.

Finding **The EPA issued a Consent Order allowing the property to be used for commercial or industrial use.**

As previously mentioned, a concern was expressed to us that the City was promoting and utilizing the property as an industrial park even though the land was contaminated.

We obtained a copy of the Consent Order between the EPA, ODEQ, and the City of Henryetta signed on March 28, 2000. The Consent Order prohibited the installation of water wells, residential use, and child care or nursing care; however, the Consent Order provides for commercial and industrial use.

We find it noteworthy that ODEQ nominated the Shurden Leist Industrial Park Project and the Henryetta Economic Development Authority for the 2006 Phoenix Award. The Oklahoma Secretary of the Environment supported the nomination of the award, for the redevelopment of the former smelter site into an industrial park.

Finding **The City utilizes the Site for industrial purposes, in compliance with the Consent Order.**

The City is currently using the property as an industrial park in compliance with the Consent Order. ODEQ monitors and oversees activities on the site.

Although the City is responsible to perform the necessary repairs to the cap of the facility, the oversight and monitoring responsibility rests with ODEQ. Therefore, any future issues concerning the Site would be addressed by ODEQ through their onsite monitoring.

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

WWW.SAI.OK.GOV