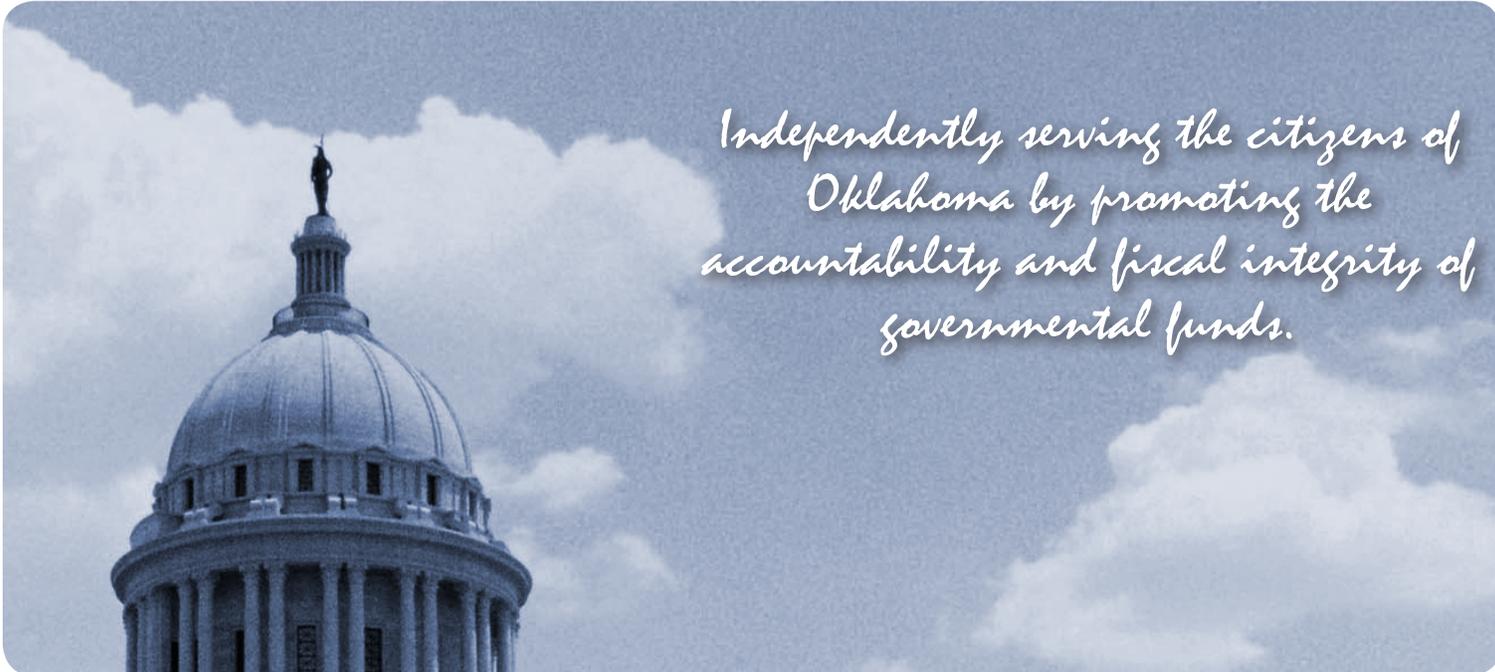


SPECIAL INVESTIGATIVE REPORT

CLAYTON PUBLIC SCHOOL DISTRICT

September 1, 2011 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

Clayton Public School District

Special Investigative Report

September 1, 2011 through June 30, 2012



Oklahoma State Auditor & Inspector

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October 30, 2012

Board of Education
Clayton Public School District
Clayton, Oklahoma 74536

Transmitted herewith is the Special Investigative Report of the Clayton Public School District, Clayton, Oklahoma.

Pursuant to your request, and in accordance with the requirements of **74 O.S. § 227.8**, we performed a limited inquiry, primarily for the period September 1, 2011 through June 30, 2012.

The objectives of our inquiry included the areas noted in your board request. Our findings and recommendations related to these objectives are presented in the accompanying report.

Because our limited inquiry is not 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 Clayton Public School District for the audit period.

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 wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our limited inquiry.

This report has been prepared for the Board of Education of the Clayton Public School District, and for school and state officials with oversight responsibilities, as provided by statute. This document is a public document pursuant to the Oklahoma Open Records Act, **51 O.S. § 24A.1, et seq.**

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Jones', is written over a horizontal line.

GARY JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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Objectives

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Board of Education
(As of September 12, 2011)

Brian Schumann.....President
Donnie McCarn.....Clerk
Pam Jackson.....Member
LeeAnna Martin.....Member
Angela Hollingsworth.....Member

Superintendent
Randall Erwin

Introduction

The Clayton Public School District is part of the Oklahoma State System of Public Education, as described in **70 O.S. § 1-101 et seq.**, of the **Oklahoma School Code**.

The Board of Education (“Board”) of the Clayton Public School District (“District”) is responsible for the supervision, management, and control of the District, as provided for in **70 O.S. § 5-117**.

Both the Board and the District are subject to the provisions of the **Oklahoma School Code**, as well as other statutes found in various titles including, but not limited to, Title 25 (Definitions and General Provisions), Title 51 (Officers), Title 61 (Public Buildings and Public Works), Title 62 (Public Finance), and Title 68 (Revenue and Taxation).

All dollar amounts included in the report are rounded to the nearest dollar, unless otherwise specified.

The District’s fiscal year starts July 1 and ends June 30. In this report, fiscal years are abbreviated by using the ending calendar year. For example, the fiscal year of July 1, 2011 to June 30, 2012, will be identified as “FY12.”

In a request letter dated April 2, 2012, the Board requested the Oklahoma State Auditor and Inspector (OSAI) review a bid opening for propane fuel, conducted at the September 12, 2011, board meeting.

The Office of State Auditor and Inspector conducted a limited inquiry of the District, primarily relating to the objectives listed in the *Table of Contents*. The results of our limited inquiry are included in the following report.

In responding to the Board’s request, the OSAI Special Investigative Unit contracted with the Office of Juvenile Affairs for an investigator to review the Board’s actions and related allegations. OSAI appreciates the assistance of the Office of Juvenile Affairs in addressing the Board’s concerns.

Objective I. Review the allegation that the Board did not follow proper procedures in awarding the FY12 propane bid.

Background

The Clayton Public School District bids its contract for the school's propane fuel shortly after each new fiscal year begins on July 1. The District's policy concerning the purchasing of supplies and equipment is to obtain "quotes" for purchases from \$2,000 to \$10,000 in amount, and "All purchases exceeding \$10,000 will require sealed and notarized bids and Board of Education approval."

In the September 12, 2011, board meeting, the Board received sealed bids from three propane vendors, as follows:

- McCraw Oil's bid was cost, plus 17.5 cents.
- Dale's Propane's bid was cost, plus 18 cents.
- Clayton Fuels' bid was cost, plus 19 cents.

Initially, Board member Pam Jackson moved to accept the low bid by McCraw Oil, but the motion failed for lack of a second.

Board member Donnie McCarn asked if the school board had to accept the lowest bid. School Superintendent Erwin advised they did not have to accept the lowest; they could accept the best bid. After a discussion, the school board voted to accept the bid by Dale's Propane, even though that bid was a half-cent more than McCraw Oil's bid.

Board members Angela Hollingsworth, Brian Schumann, and Donnie McCarn voted in favor of Dale's Propane's bid. Board member Pam Jackson voted no. Board member LeeAnna Martin was not present.

According to interviews, the Board's decision to accept Dale's Propane's bid was based on the following:

- Dale's Propane was located in Clayton, whereas McCraw Oil was located 35 miles away in Antlers, Oklahoma.
- The school board felt if there were an emergency, Dale's Propane would provide a quicker response, which would be a better service.
- The half-cent cost difference was negligible. The additional half-cent cost to the District was estimated at

approximately \$74, based on the number of propane gallons used the previous year.

Finding #1 The Board did not err in its award of the FY12 propane bid to Dale's Propane.

Public entity boards have some discretion in evaluating bids provided in response to bid solicitations. There is no absolute requirement that a public board *must* accept the lowest bid, without regard to other factors that may be considered in addition to the price, such as quality, past history of nonperformance by a vendor, financial condition of a vendor (if known to be a risk), potential conflicts of interest, as well as other possible considerations.

The Board has a duty to evaluate and select the “lowest and best” bid or quote, not necessarily just the lowest. The Board could legally award the contract to other than the lowest bidder, if there was sufficient justification showing the accepted bid was the best bid. In this case, the Board decided to accept the bid from the second lowest vendor, due to the conclusion that Dale's Propane was more readily available in the event of an emergency and the actual estimated difference in cost, based on the prior year's usage, was minimal.

Conclusion In the allegation it had failed to follow appropriate procedure and that it made an improper decision by *not* accepting the *lowest* bid for propane for the 2011-12 school year, the Clayton Board of Education is exonerated.

Finding #2 The propane fuel contracts for FY09 and FY10 were awarded contrary to 62 O.S. § 371 (A).

62 O.S. § 371 (A) states, in part:

Except as otherwise provided in this section, no board of county commissioners, nor city council, nor board of trustees of any town, *nor any district board of any school district in this state*, nor any board of any local subdivision of this state *shall make any contract with any of its members*, or in which any of its members *shall be directly or indirectly interested*. All contracts made in violation of this section shall be wholly void. [emphasis added]

In addition to the **Title 62** conflict of interest statute, **70 O.S. § 5-124 (A)** states, in part:

Except as otherwise provided in this section, no board of education of any school district in this state shall make any contract with any of its members or with any company, individual or business concern in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void. A member of a board of education shall be considered to be interested in any contract made with any company, individual, or any business concern if the member of the board of education or any member of the immediate family of the member owns any substantial interest in same.

The Oklahoma Liquefied Petroleum (or “LP”) Gas Administration oversees vendor permits for retailers selling propane fuel. The LP Gas Administration's records indicated Dale Jackson and Justin Jackson (son of Dale Jackson) were co-owners of Clayton Fuels when Class 1 permits were issued in calendar years 2006, 2007, and 2008. Justin Jackson was listed as the sole owner of Clayton Fuels on the Class 1 permit issued on July 29, 2009.

On February 10, 2010, Dale Jackson and Jimmy Long met with LP Gas Administrator Bill Glass to start the sale of 100% of the stock of Clayton Fuels to Jimmy Long. Dale Jackson was identified as the owner of Clayton Fuels.

Jimmy Long was listed as the sole owner of Clayton Fuels on the Class 1 permit application when the permit was issued on April 12, 2010. That permit expired on August 31, 2010. Long was issued another permit on August 18, 2010 and another permit on September 19, 2011. Long sold Clayton Fuels to McCraw Oil in early 2012.

A copy of Warranty Deed Individual Tenancy was obtained from Jane Dunlap, Pushmataha County Clerk. The deed indicated Dale Jackson and Justin Jackson sold Clayton Fuels, Inc., to Jimmy Long on February 22, 2010.

A review of the minutes of the Clayton Board of Education's awarding of the propane contracts for the time period Pam Jackson (wife of Dale Jackson) was on the school board (2007-2012) indicated:

- August 13, 2007 (school year 2007-08), accepted Dale's Propane's bid. Pam Jackson was absent.
- July 14, 2008 (school year 2008-09), *Clayton Fuels* was awarded the contract. Pam Jackson was absent. LP Gas permits

listed Dale Jackson and Justin Jackson as co-owners of Clayton Fuels.

- July 13, 2009 (school year 2009-10), *Clayton Fuels* was awarded the contract. Pam Jackson abstained. Dale Jackson was still a co-owner of Clayton Fuels on that date. Note: The Class I renewal permit issued by the LP Gas Administration on July 29, 2009, listed Justin Jackson as the owner. However, Dale Jackson was listed as the owner of Clayton Fuels when the business was sold to Jimmy Long on February 22, 2010.
- August 9, 2010 (school year 2010-11), Clayton Fuels was awarded the contract after Pam Jackson made the motion to accept it. Records indicate Jimmy Long was the sole owner of Clayton Fuels at this time.
- September 12, 2011 (school year 2011-12), Dale's Propane was awarded the contract.

Pam Jackson made a motion to accept McCraw Oil's bid. McCraw Oil was in negotiations to purchase Clayton Fuels at the time.

The information developed in this objective indicated Dale Jackson was the full and/or part owner with Justin Jackson until February 2010.

Conclusion

Although Pam Jackson did not vote during the years that Dale Jackson owned Clayton Fuels, the Board should not have accepted the bid submitted by Clayton Fuels. Accepting the bids from Clayton Fuels, in which board member Pam Jackson was “directly or indirectly interested,” was contrary to **62 O.S. § 371 (A)**.

Recommendation #1

The Board’s minutes for the September 11, 2011, meeting indicated the bid from Dale’s Propane was accepted “after a brief discussion” but did not otherwise identify the reason or justification for not accepting the lowest bid. We recommend the minutes also include a brief description of the reason(s) for not accepting the low bid in a bid decision, as a matter of public record.

Recommendation #2

The District’s legal counsel should be consulted concerning the FY09 and FY10 propane contracts awarded contrary to **62 O.S. 371 (A)**.

Objective II. Review the allegation that a county commissioner tried to influence the Board's bid decision following the September 2011 meeting.

Background

On September 12, 2011, the Clayton Board of Education awarded the propane contract for the upcoming school year. There were three bidders. McCraw Oil from Antlers, Oklahoma, was the lowest bidder. Dale's Propane, in Clayton, Oklahoma, was next to the lowest bid. Clayton Fuels was the highest bidder. The school board accepted the bid by Dale's Propane, because it was the lowest local vendor to bid.

Jimmy Long, Pushmataha County Commissioner - District 3, was the owner of Clayton Fuels at the time of the school's winter 2011-12 bid solicitation. Clayton Fuels had held the propane contract with the school for the three previous years, the first two while owned or part owned by Dale Jackson, and the third while owned by Jimmy Long. Long was also in negotiations with McCraw Oil to sell Clayton Fuels to McCraw Oil, a sale that was finalized in January 2012.

According to witnesses, Long was upset, because Clayton Fuels lost the September 12 bid. Brian Schumann, the Board president, indicated Long was upset when Long came to his residence after the school board meeting. Supposedly, Long had spoken with school board members LeeAnna Martin and Pam Jackson about calling a special school board meeting to change the vote. Schumann claimed Long told him (Schumann) that he would be the swing vote to change the propane contract award.

Schumann stated when he told Long that he was not going to call for a special school board meeting, Long said, "It would be the biggest mistake you ever made in your life." Schumann asked why. Long replied, "Well, you won't work for the county again." Long also said, according to Schumann, "I (Long) won't do anymore work for the school. You won't have a job again for the county."

Schumann works with Powell Construction. The "work" and the "jobs" allegedly referred to by Long were potential bridge and construction jobs that are awarded by the Board of County Commissioners of Pushmataha County from time to time. Also, according to witnesses, there was a

second heated discussion between Schumann and Long the following morning on September 13.

Finding

The allegation against District 3 Commissioner Jimmy Long was not confirmed due to conflicting accounts and insufficient corroboration of the alleged influence.

We interviewed Brent Powell of Powell's Construction. Powell said he tried to stay out of it. Powell stated, prior to this incident, his company had done a lot of work for Pushmataha County, but they have not done any work since the incident. According to Powell, Long first told him that he (Powell) was not going to get any more work from the county, because Schumann would not call a special meeting of the school board.

Powell said, on another occasion, Long told him that as long as Schumann was working for him, he would not get any more work from the county. Powell said he would not bid on any other county projects, because Long would be the project inspector. Powell stated it could cost him more than he made on the bridge, if Long did not like the completed project and demanded that something be redone.

Powell had assumed Powell's Construction's name has been removed from the bid list, because he had not received any bid packets since September 2011. According to Linda Cunningham, the purchasing agent for Pushmataha County, no one has told her not to send bid packets to Powell's Construction or advised her to remove Powell's Construction's name from the bid list. Cunningham provided a copy of the list, showing all of the companies that the county uses for various projects. Powell's Construction was on the list under bridge contractors.

Cunningham insisted she sent bid packets to Powell's Construction on two District 2 bridge projects, one in June and the other in July of 2011. Powell did not submit a bid on either project. Brent Powell stated he did not submit a bid, because District 2 Commissioner Jerry Duncan had rejected the low bid by Powell's Construction submitted on a bridge project on April 25, 2011.

According to the Pushmataha County commissioner meeting minutes, Duncan had rejected Powell's Construction bid, because Powell's Construction "had not built the wing walls on previous bridges to the bridge specifications." However, immediately following the rejection of

Powell Construction's bid on the two-bridge contract under Agenda Item #14, on Agenda Item #15, a second bid for the "Buddy Ramey Bridge" was awarded to Powell Construction with all commissioners, including Duncan, voting "aye" for that bridge contract.

While the two bid awards appear contradictory, we observed that the situation illustrated the latitude of county commissioners to make purchasing and bid decisions within their respective road districts, and the ability of a county commissioner to influence at least those decisions that concern primarily his or her road district.

The most recent bridge project was awarded to C&C Construction on May 29, 2012. The project was in District 3 in the Minnetonka Camp. Cunningham advised she did not send Powell's Construction a bid packet, because she thought they were not doing work on bridges any longer. Cunningham formed this opinion, because Powell's Construction had not submitted bids on the last two projects that she had mailed to the company, and she thought someone had told her Powell's Construction was no longer doing work on bridges.

Cunningham thought she had received that information from Brent Powell's daughter-in-law, who is her babysitter. Cunningham stated none of the county commissioners had told her to not send Powell's Construction a bid packet. Cunningham advised the project was advertised in the newspaper. Even though Powell's Construction was not mailed a bid packet, they still could have obtained one and submitted a bid. Brent Powell stated, had his company received a bid packet, he would not have submitted a bid, because of the conflict between Long and Schumann.

Purchase order payments by the county clerk's office indicated Powell's Construction was paid for nine projects from July 2010 to July 14, 2011. Powell's Construction has not done any work for Pushmataha County since July 14, 2011. C&C Construction has completed, and has been paid for, two bridge projects since September 2011. One was on November 14, 2011, and the other was the bridge at Minnetonka Camp on June 25, 2012.

According to interviews with District 1 Commissioner Mike Brittingham and District 2 Commissioner Jerry Duncan, neither has heard Long indicate Powell's Construction was not going to do any more work for the county.

Conclusion

There was no evidence to indicate Jimmy Long has removed or attempted to remove Powell's Construction from the county's bidder list.

Some interviews and accounts of circumstances were contradictory to some extent. There was no way to independently verify whether Long had told Schumann or Powell that Powell's Construction would no longer get work from Pushmataha County, unless Schumann called for a special school board meeting to overturn the previous propane bid award. Long refused to be interviewed, and through his attorney, Long has denied the allegation.

Since September 2011, there have been four county projects involving companies on the bridge contractors' list. C&C Construction has completed two bridge projects, while Carter Construction has done two minor projects that did not require bids. Powell Construction has not attempted to bid, due to the perceived financial risk(s) involved in dealing with the county since September 2011.

The information developed concerning this allegation against Commissioner Long was inconclusive, due to a lack of corroborating evidence.

Recommendation

There is no recommendation for this objective.

Objective III. Review the allegation that the Board erred in its decision due to an alleged safety violation related to the winning bidder.

Background

Dale's Propane had the propane contract with the District during the 2007-08 school year. Clayton Fuels was awarded the contract for the next three years and then lost the contract to Dale's Propane for the 2011-12 school year.

After the contract was awarded to Dale's Propane on September 12, 2012, former Clayton Fuels owner Dale Jackson produced a letter from Vaughn Pugh. Pugh was a former teacher and employee of Clayton Fuels.

In the letter, Mr. Pugh indicated he (Pugh) had found unsafe gas lines while performing leak tests, after Clayton Fuels was awarded the propane contract for the 2008-09 school year. Dale Jackson took this letter to Clayton Schools Superintendent Erwin. However, Dale Jackson did not provide Erwin with a copy of the letter.

The alleged safety issue was presented as another justification or reason to overturn the bid award and give the propane contract to the low bidder, i.e. McCraw Oil.

Finding

The Board did not err with regard to awarding the propane bid to an alleged unsafe vendor. The allegation was not substantiated.

Erwin said Vaughn Pugh allegedly recanted the letter's allegation, saying Dale Jackson wrote the letter, and he (Pugh) had signed it. In an interview, Pugh indicated that Dale Jackson had asked him to write the letter after Clayton Fuels lost the propane contract with the school. According to Pugh, he fixed several small leaks when Clayton Fuels took over the propane contract from Dale's Propane in the fall of 2008.

When one propane company takes over a propane contract from another propane company, the new company is required to perform pressure and leak tests on the whole propane system. A "Form 4" is completed on each system and sent to the Oklahoma Liquefied Petroleum (or "LP") Gas Administration.

We were unable to locate any Form 4's reflecting Clayton Fuels performed the required tests for the school system during a three-year time period. When Clayton Fuels sold the business to McCraw Oil, the Form 4's would have been transferred to McCraw Oil. On August 27, 2012, Lonnie Henson, the manager for McCraw Oil in Clayton, provided the file for Clayton Schools, where the Form 4's were kept.

There were no Form 4's in the file for the three-year time period in question. There was a copy of a propane bid by Vaughn Pugh from Clayton Fuels for the 2008-09 school year. Written on the top was "Accepted Bid." A sticky-note on the bid stated: "Red Tag 5 leaks need repaired before pressure test can be performed." There was no other information, nor was there a date on the sticky note.

Dale Coker (owner of Dale's Propane) stated that after he had received the contract for the 2011-12 school year, he had fixed a leak in the school cafeteria that Clayton Fuels had not been able to locate. Jerry Alexander, the school maintenance supervisor, confirmed this.

Superintendent Erwin stated Dale Jackson had told him Clayton Fuels had spent thousands of dollars repairing the gas system. Alexander stated Clayton Fuels did *not* spend thousands of dollars to fix a gas problem. Pugh said the leaks were "small" and generally required tightening a connection.

The LP Gas Administration did not have copies of the Form 4 inspection reports completed by Dale's Propane after the company received the award in 2011. Dale Coker stated he sent the forms in. The District and Dale's Propane each have their copies.

Randall Erwin could only locate one Form 4 from Clayton Fuels during the initial interview. Sharon Wren is the school secretary. On August 28, Wren indicated she had the forms from school year 2008-09 on her desk. She said Vaughn Pugh had signed them. Wren indicated she would email these forms, as well as locate and forward the forms for the following two years. Wren later advised that she was unable to locate the Form 4's for other school years.

Each one of these companies has accused the other of inferior work. Each propane company claims to have fixed leaks left by the previous propane provider. There was no *documentation* to support either side's claim(s).

Conclusion

This allegation was solely based on a letter that Vaughn Pugh said he had signed at the request of Dale Jackson. The letter was written four years after Pugh discovered and fixed several small leaks when Clayton Fuels took over the propane contract four years ago from Dale's Propane. Pugh said the leaks were small and generally required tightening a connection.

Dale Jackson told Erwin that Clayton Fuels had spent thousands of dollars repairing the gas system. The District's maintenance supervisor refuted Jackson's statement. There is no credible evidence to support the allegation that Dale's Propane had a safety issue when it held the school system's propane contract four years previously. We concluded the Board had not erred with regard to an alleged safety issue, brought up after the fact, by awarding the propane contract to Dale's Propane on September 12, 2011.

We observed that Dale Jackson was exhibiting an unusual interest in the bid proposal of a business enterprise that he presumably had sold to Jimmy Long in early 2010. Through phone conversations with Pam Jackson and Jackson's attorney, we were informed that Dale Jackson declined to be interviewed.

Recommendation

The LP Gas Administration should address any further inquiry into the safety issue and proper documentation being provided by these companies.

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.



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