

**DISTRICT ATTORNEY
DISTRICT 1**

**PROPERTY
FORFEITURE FUND**

FOR THE YEAR ENDED
JUNE 30, 2007

**STATUTORY
REPORT**



Oklahoma State Auditor
& Inspector

**JAMES M. BORING, DISTRICT ATTORNEY
DISTRICT 1
STATUTORY REPORT
PROPERTY FORFEITURE FUND
FOR THE YEAR ENDED
JUNE 30, 2007**

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STATE AUDITOR AND INSPECTOR

STEVE BURRAGE, CPA
State Auditor

MICHELLE R. DAY, ESQ.
Chief Deputy



2300 N. Lincoln Boulevard State Capitol, Room 100 Oklahoma City, OK 73105-4801 Phone (405) 521-3495 Fax (405) 521-3426 www.sai.ok.gov

December 1, 2009

James M. Boring, District Attorney
District 1

Transmitted herewith is the statutory report for the District Attorney of District 1, Cimarron, Texas, Beaver, and Harper Counties, Oklahoma (the District), for the fiscal year ended June 30, 2007. A report of this type is critical in nature; however, we do not intend to imply that there were not commendable features in the present accounting and operating procedures of the District.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the conduct of our procedures.

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

Sincerely,

A handwritten signature in blue ink that reads "Steve Burrage".

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

TABLE OF CONTENTS

Introductory Information ii

Statutory Report of State Auditor and Inspector..... 1

Property Forfeiture Fund Analysis..... 3

Schedule of Findings and Responses..... 4

INTRODUCTORY INFORMATION

Most district attorneys in the state have a Property Forfeiture Fund. The fund is not subject to fiscal year limitations and is to be used for enforcement of controlled dangerous substances laws, drug abuse prevention and education, and is maintained by the District Attorney to be used at his or her discretion for those purposes. The revenues for said fund come from the proceeds of forfeited assets.

Any cash, vehicles, real property, or other assets used in the commission of or acquired as a result of a crime as described in the Uniform Controlled Dangerous Substances Act is presumed to be forfeitable.

Asset forfeiture is an effective law enforcement tool used by local district attorneys to deprive criminals of their ill-gotten gains by seizing the proceeds of criminal activity and property used to facilitate crime. The proceeds of seized, forfeited assets make a substantial contribution to the investigation and prosecution of drug related offenses.

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Statutory Report

James M. Boring
District Attorney, District 1
Texas County Courthouse
Guymon, Oklahoma 73942

For the purpose of complying with 74 O.S. §212 (E) and 63 O.S. §2-506, we have performed each of the following procedures as they relate to the records of the Property Forfeiture Fund for the fiscal year 2007:

- Examine a group of receipts and deposit slips for propriety.
- Review sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with 63 O.S. §§ 2-506 and 2-508.
- Review the distribution of proceeds of the sale for selected cases to determine the distribution was in accordance with Court order pursuant to 63 O.S. §2-506.K.
- Determine whether expenditures tested were supported by approved claims, invoices, and independent verification that goods or services paid for were received.
- Determine whether the District Attorney prepared and submitted an annual report to the Board of County Commissioners showing the total deposits, total expenditures, beginning and ending balances in accordance with 63 O.S. §2-506.L.3.
- Determine whether the District Attorney reconciles the balance with the County Treasurer monthly.

Our engagement was limited to the procedures performed above and was less in scope than an audit performed in accordance with accounting standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any general-purpose financial statements of Cimarron, Texas, Beaver, or Harper County.

Based on our procedures performed, the District was properly receipting and depositing the proceeds of forfeitures; forfeited assets were sold after proper notice at public auction to the highest bidder; the proceeds of forfeitures were distributed as directed by Court orders; the District Attorney prepared and submitted an annual report to the Board of County Commissioners; and the District Attorney reconciled the balance of the Property Forfeiture Fund with the County Treasurer's records monthly. With respect to expenditures being supported by approved claims, invoices, and independent verification that goods or

services paid for were received and other matters noted during our engagement, our findings are presented in the accompanying schedule of findings and responses.

We have included in this report a detailed analysis of the Property Forfeiture Fund.

This report is intended for the information and use of the District Attorney and Cimarron, Texas, Beaver, and Harper County officials. However, this report is a matter of public record and its distribution is not limited.

Sincerely,



STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

December 16, 2008

**JAMES M. BORING, DISTRICT ATTORNEY
DISTRICT 1
STATUTORY REPORT
JUNE 30, 2007**

PROPERTY FORFEITURE FUND ANALYSIS

BEGINNING CASH BALANCE ON JULY 1, 2006 \$ 181,028

INCOME

Cash forfeited	1,539,948
Court ordered assessments	80,129
Value non-cash assets forfeited and sold	45,931
Other	<u>56,342</u>

TOTAL INCOME (before distributions) 1,722,350

DISTRIBUTION TO OTHER AGENCIES

Cash returned to other agencies	523,744
Equipment purchased for other agencies	<u>31,316</u>

TOTAL DISTRIBUTIONS 555,060

EXPENDITURES BY DISTRICT ATTORNEY

Personnel and benefits	223,800
Cost of prosecution/investigation	3,228
Education/prevention	6,935
Equipment-furniture-software	178,032
Operating expense	73,427
Storage & towing	4,925
Travel – meals – per diem – lodging	10,155
Other: Forfeiture sale expense	11,491
Special operations	2,079
Grant match money	44,083
Building purchase	110,000
Construction expense	<u>97,358</u>

TOTAL EXPENDITURES 765,513

ENDING CASH BALANCE ON JUNE 30, 2007 \$ 582,805

SCHEDULE OF FINDINGS AND RESPONSES

Finding 2007-1—District Attorney Property Forfeiture Fund Expenditures

Criteria: Accountability and stewardship are overall goals in evaluating management's accounting of funds. To help ensure a proper accounting of funds, the expenditures should be supported by approved claims, invoices, and independent verification that goods or services were received.

Condition: The testing of 16 purchases from the Texas County District Attorney's Office revealed the following:

1. Seven of the 16 expenditures tested did not have a supporting invoice attached.
2. Sixteen of the 16 expenditures tested did not have a claim with approval for the expenditure.
3. Ten of the 16 expenditures tested did not have any indication that the goods or services were received.

Additionally, 5 purchases from the Harper County District Attorney's Office revealed the following:

1. None of the 5 purchases had a claim for approval.
2. Three claims did not have indication that the goods and/or services were received.
3. One purchase did not have an invoice or other supporting documentation.

Effect: Absent or inaccurate documentation could result in misappropriation of funds.

Recommendation: OSAI recommends the District Attorney implement policies and procedures to ensure that all expenditures have a claim approving the expenditure, have the original invoice and receipt attached to the approved claim, and have receiving reports and/or other indication for receipt of goods/services.

Views of responsible officials and planned corrective actions: In order to address your concerns regarding the receipt of goods and services, I have prepared a new form (Receiving Report) that all employees will be required to complete upon the receipt of all goods and services. This form will be attached to the receipt, delivery ticket, or invoice received for all goods and services provided to our offices. This form has been drafted to substantially comply with the procedures followed by the county relating to the receipt of goods and services.

An additional "Approval for Payment" form has been prepared and is being used in all of my counties. This form requires my financial secretary in Texas County or my office secretary in each of my other counties to verify that all billing statements are correct and supported by appropriate receipts, tickets, and/or invoices. The "Approval for Payment" form must then be submitted to me or one of my assistants in charge of my outlying counties with all supporting documentation attached for final approval prior to payment. This form basically requires the secretary to match and verify all receipts, tickets, and invoices

with monthly billings to insure the accuracy of all billings prior to submission to me or a designated assistant for final approval for payment.

Finding 2007-5—Construction Contract

Criteria: Title 61 O.S. § 103.B of the Public Competitive Bidding Act of 1974 states in part, "...public construction contracts less than Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder by receipt of written bids. No work shall be commenced until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency."

Condition: It appears that the contract between the District 1 District Attorney and Jake's Construction was intended to serve as a guideline for the contracted cost of \$50,000. No bids were actually submitted for the project and the contract specifically allowed additional expenditures to be incurred that, when added to the contract with Jake's Construction, exceeded the statutory limit of \$50,000. The District Attorney reported construction expense of \$97,358.29 on the Property Forfeiture Analysis for fiscal year June 30, 2007. This construction expense was for the remodeling of a building called the Law Enforcement Center purchased by the District Attorney from property forfeiture funds.

The District Attorney entered into a "Construction Contract for Law Enforcement Center" with Jake's Construction for the remodeling of the law enforcement center.

The contract stated in part,

"Jake's agrees to provide general contractor services as well as the primary labor for completion of the remodeling of the building in accordance with DA bid specifications at a price not to exceed \$50,000.00.

"Jake's shall submit billings every thirty days during the remodeling project. All billings from Jake's that include materials provided for the job shall be supported by separate receipts."

The payments made to Jake's totaled \$49,428.49 for Jake's construction labor and various other subcontractors for heating, air conditioning, electrical, lumber and materials, and plumbing.

There was no indication that this bid was awarded to the lowest responsible bidder as provided by 61 O.S. § 103.

Additionally, the statements submitted by Jake's Construction did not include detailed itemized invoices attached to support the statement.

The contract further states,

"DA will obtain all necessary construction permits from the City of Guymon."

**JAMES M. BORING, DISTRICT ATTORNEY
DISTRICT 1
STATUTORY REPORT
JUNE 30, 2007**

“It is agreed that the DA will pay for various materials for the project that are expected to be less than \$10,000.00, excluding any specialty materials provided by subcontractors such as electrical, heating/cooling, and plumbing equipment and materials that will be billed and paid for through and as a part of the general contract.”

“All cost or expenses associated with the installation of a telephone system and security system, if installed, are specifically excluded from this contract. The DA shall be solely responsible for the purchase and installation of any such equipment, including all labor associated therewith.”

“Further, the DA shall separately contract for the purchase of any and all carpet and tile the DA may choose to install in the building.”

OSAI noted that additional expenses of \$47,929.80 were incurred while remodeling the Law Enforcement Center building.

Those expenses include:

Building Supplies	\$2,246.79
Building Materials	\$31,855.11
Misc. Material and Labor	\$5,463.14
Equipment Purchases and Rentals	\$6,066.56
Fees and Permits	\$2,298.20
Total	\$47,929.80

Effect: It does not appear that the contract was in accordance with the Public Competitive Bidding Act of 1974.

Recommendation: OSAI recommends the District Attorney adhere to the Public Competitive Bidding Act with regard to construction cost.

Views of responsible officials and planned corrective actions: It is my opinion that the requirements of 61 O.S. § 101 et seq. were followed in the remodeling project for the task force office space.

Title 61 O.S. § 102.7 provides, “Public Improvement” means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, provided that the amount of less than Fifty Thousand Dollars, (\$50,000.00) and used for the purposes of completing a single project, equipment or supplies by a public agency, or any personal property...”

My office prepared the initial plans and specifications for the remodeling contract on the property that was purchased by the county to house my task force. At that time, the remodeling plan was based upon doing only such remodeling work as would be necessary in order to get the building to a usable condition

**JAMES M. BORING, DISTRICT ATTORNEY
DISTRICT 1
STATUTORY REPORT
JUNE 30, 2007**

for my task force. After preparation of the bid plans and specifications, numerous contractors were contacted regarding a request for them to submit a bid for the remodeling project. At that time, all of the known contractors other than Jake's Construction indicated that they were busy with other contracts and were not interested in even reviewing the plans for a remodel job. After Jake's looked over the plans and inspected the building, he advised that they would only do the job on an hourly labor cost basis, plus the cost of materials. He estimated that the total cost for all labor and materials would exceed \$50,000.00, but was sure the labor cost would be less than that amount.

Without anyone else expressing a willingness to consider the remodeling project, I revised the bid specifications and after inviting several contractors to submit a bid, the only bid received was from Jake's. I then entered into the contract with Jake's.

The total expenditures relating to the remodeling contract with Jake's Construction as bid and contracted were as follows:

Jake's Labor & Subcontractor Expenses	\$46,204.49
A/C Contract	1,761.95
Materials Paid Directly by DA	8,151.82
Glass doors	<u>4,389.09</u>
	\$60,507.35

Please note that the total payments to Jake's pursuant to the contract were \$46,204.49. This included the cost of the electrical subcontractor and all of the electrical work and all necessary plumbing and plumbing fixtures. Pursuant to the contract with Jake's, the heat and air conditioning work was supposed to be billed and paid through Jake's. This work was provided by Guymon Heating & Air. Rather than billing Jake's, they billed my office for this work. After discussing the bill being sent to me rather than Jake's, it was agreed with Jake's that I would go ahead and pay the bill, but that it would count toward his contract limit. I and my agents were maintaining almost continuous onsite supervision of the project, and the billings received appeared to be satisfactory at the time they were received; however, in looking back over the same, it would have been more prudent to require more detail in the billing statements.

At the completion of the contract with Jake's, the total paid to him and the amount which should be considered a part of his contract would be \$46,204.49 plus the A/C cost of \$1,761.95 for a total of \$47,966.44.

The materials purchased directly by my office that were associated with the remodeling contract with Jake's were \$8,151.82 for construction materials and \$4,389.09 for all of the interior glass doors, totaling \$12,540.91.

This brought the total cost of the remodeling contract paid by my office to \$60,507.35. My initial budgeting and estimate of the limit and total cost of what I wanted to spend for the remodeling project was \$60,000.00. I felt we did extremely well in estimating our expenses for the project by exceeding my estimate total by only \$507.35.

**JAMES M. BORING, DISTRICT ATTORNEY
DISTRICT 1
STATUTORY REPORT
JUNE 30, 2007**

Immediately prior to and extending through the time that the remodeling project was being worked, my office was extremely fortunate as far as additional seizures and forfeitures. These additional revenue funds made it possible to immediately consider and proceed with other work that was not planned as a part of the remodeling contract with Jake's.

It was apparent that we were going to be able to stay within our cost projection of around \$60,000.00 on the remodeling project, and with the new money seized I felt we would have more than sufficient money to proceed with installing carpet and tile throughout the building, rather than utilize the hard wood floors that were present. Additionally, after the interior walls were enclosed it became obvious that we needed to install the carpet to aid in reduction of sound transfer throughout the offices.

Several bids were obtained from carpet and tile companies and the lowest and best bid for the installation of carpet and tile was awarded with directions to proceed with installation at the earliest possible date. The total of this contract was \$19,314.20.

From the inception of the remodeling project, the plan was for my agents, with the assistance of trustees from the jail, to paint all of the interior walls. Painting and the cost thereof was specifically excluded from the contract with Jake's. With the additional seizures and forfeitures, I decided to proceed with having my agents paint all of the building. The paint was purchased at a cost of \$2,246.79 and the rental of a sprayer was \$503.43. All of the labor for painting was provided and performed by task force agents and trustees.

There were some additional items in the building that we wanted to change in the future as money became available. Included in these was the removal and enclosure of a large exterior window, enclosure of a heating and blower unit on the men's bathroom, and other minor modifications. By the time Jake's had finished all of the work covered by the original remodeling contract, I decided to move forward with doing some of the other work that we had not planned on doing until some time in the future, if we in fact ever decided to do so. I contracted with Jake's to do some of this additional work on an hourly basis for labor and materials that cost \$3,224.00.

While the construction project was under way my agents seized some large quantities of illegal drugs. We had discussed the possible need to build a steel enclosure in our evidence vault area to provide additional security from theft. After consultations with our local OSBI agent and others, we decided that we needed to not only build a steel enclosure, but that we needed to have an air circulation/exhaust system in the vault in order to avoid permeating the entire building with the smell of raw marijuana.

To take care of these issues, I purchased the steel necessary to construct a steel evidence locker, and made arrangements for the high school welding class to build the vault for us. The cost of the steel and construction was \$720.42. I also contracted with Guymon Heating & Air to install a ventilation system in the vault and the cost of that system was \$730.92. Neither of these projects had anything to do with the remodeling contract with Jake's.

**JAMES M. BORING, DISTRICT ATTORNEY
DISTRICT 1
STATUTORY REPORT
JUNE 30, 2007**

It also appears that other fees and expenses paid by my office have been included in some of your calculations as to the remodeling contract and cost incurred with Jake's. The building appraisal cost \$1,500.00 along with the abstracting cost of \$750.00. Both of these expenditures were directly associated with the purchase of the building by the county. I can see no basis upon which either of these expenses would be associated with the remodeling contract with Jake's.

As indicated in the summary response above, I believe the provisions of the statute were satisfied in that the contract with Jake's. When examined with the bid specifications and plans, the contract was very specific as to what Jake's was required to do, and an essential provision in the contract was that the cost of completing Jake's part of the contract would not exceed \$50,000.00.

The total payment to Jake's, including the final \$3,224.00 that was not a part of the remodeling contract, was less than \$50,000.00. The remaining \$48,137.55 of expenses picked up by your office includes many thousands of dollars that were not a part of the remodeling contract with Jake's; however, even if all of the other expenses for building materials, supplies, miscellaneous material and labor, equipment purchases and rentals, and fees and permits are included, I believe the ones of these expenses that could be appropriately associated with the remodeling contract would fall well within the authorization for expenditures provided by § 102.7.

In the event any further remodeling is considered, we will pay particular attention to the requirements of 61 O.S. § 101 et seq., and we will avoid combining any other work that would give the appearance of being associated with any project that is in progress.



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

WWW.SAI.OK.GOV