

DISTRICT ATTORNEY REQUEST

CITY OF DUNCAN

July 7, 2010 through June 30, 2016



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

CITY OF DUNCAN
STEPHENS COUNTY, OKLAHOMA
DISTRICT ATTORNEY REQUEST
JULY 27, 2010 - JUNE 30, 2016

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Report Highlights

WHY THIS AUDIT WAS CONDUCTED

The State Auditor & Inspector's Office performed the audit in response to a request by District Attorney Jason Hicks, as provided for in **74 O.S. § 212(H)**. The engagement objectives were to ensure that the retirement transactions and the leave compensation paid for the retiring city manager of the City of Duncan were proper.

WHAT WE FOUND

- **Retirement transactions for City Manager James Frieda appeared proper. (Pg. 1)**
- **The leave compensation paid to City Manager James Frieda appeared reasonable. (Pg. 1)**



Oklahoma State Auditor & Inspector

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October 6, 2016

The Honorable Jason Hicks
District Attorney, District 6
Stephens County Courthouse
101 S 11th, Room 303
Duncan, Oklahoma 73533

District Attorney Jason Hicks:

Pursuant to your request, and in accordance with **74 O.S. § 212(H)**, we performed procedures to determine if the retirement transactions and leave compensation paid for and to the Duncan city manager were proper.

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 our engagement.

This report 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". The signature is fluid and cursive.

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

BACKGROUND

The City of Duncan is organized under the Council-Manager form of government as outlined in **Article 10 of Title 11 of the Oklahoma Statutes**, although the City operates under its own charter, as allowed by **Article 13 of Title 11**.

The City is governed by the City Council, which consists of five members elected at large to three-year terms, four of whom serve from individual districts and one of whom serves as the mayor. The Council appoints a city manager, who is the chief executive officer and head of the administrative branch of the city government.

The City Councilors and mayor as of June 30, 2016 were:

Ritchie Dennington	Mayor
Tommy Edwards	Councilor
Ricky Mayes	Councilor
Mike Nelson	Councilor
Jimmy Peters	Councilor
Patty Wininger	Councilor

James Frieda retired from the City of Duncan effective June 30, 2016, serving as the city manager from July 27, 2010, through June 30, 2016. Prior to being named the city manager, Frieda served the City as a contract city attorney for 26 years.

We performed procedures to determine if the retirement transactions made for, and the leave compensation paid to, Frieda upon his retirement were proper.

OBJECTIVE I Determine if the retirement transactions for City Manager James Frieda were proper

Finding Retirement transactions for City Manager James Frieda appeared proper.

James Frieda was employed with the City of Duncan from July 27, 2010, through June 30, 2016. Frieda's retirement plan was managed through the International City/County Management Association Retirement Corporation during his employment.

Per Frieda's contracts¹, the City agreed to contribute to the retirement plan an amount equal to 10% of his wages, and he agreed to contribute an amount equal to eight percent of his wages. Frieda's eight percent was deducted from his pay.

SECTION 14 - Retirement:

Employee desires to participate in the IMCA-RC or similar retirement plan. The Employer agrees to contribute 10% of the Employees wages to the plan. The Employee agrees to contribute 8% of the wages to the plan. The parties agree that the contribution is the same percentage contributions as allowed for the prior City Manger.

During Frieda's employment, the City contributed a total of \$77,025.67 to his retirement plan. Personal contributions withheld during his employment totaled \$61,596.43. The percentages contributed were confirmed and appeared proper.

OBJECTIVE 2 Determine if the leave compensation paid to City Manager James Frieda was proper

Finding The leave compensation paid to City Manager James Frieda appeared reasonable.

The Council approved one-year employment agreements with Frieda each of the six years that he was employed as the city manager. On August 11, 2015, the Council approved Frieda's sixth, and last, one-year employment contract.

Frieda's final employment contract allowed an accrual of vacation and sick leave not to exceed 90 days of each. Frieda's contracts for at least the prior three years also included the same leave-accrual amounts.

¹ All contracts (July 27, 2010 – June 30, 2016) contained the same retirement provision.

SECTION 12 - Vacation, Sick and Military Leave:

- A. Employee shall accrue vacation during the term of employment at the rate of three (3) days per month. Accrual of vacation at any given time shall not exceed ninety (90) days.
- B. Employee shall accrue sick leave at the rate of three (3) days per month. Accrual of sick leave shall not exceed ninety (90) days.

Per Frieda's leave records, he had accumulated 90 days of sick leave and 90 days of vacation leave as of June 30, 2016.

Frieda's contract provided for the payment of all accumulated leave at his time of resignation, which would consist of a total of 180 days.

SECTION 5 - Resignation:

In the event Employee voluntarily resigns his position with Employer, Employee shall give employer ninety (90) days prior written notice unless the parties agree otherwise.

Upon the Employees resignation the Employer shall pay Employee all accumulated and earned vacation pay, sick pay and accrued benefits.

Per Frieda's final earnings statement, pay was made in the amount of \$117,378 for 180 days² of accrued leave time paid out on July 20, 2016. This amount was approved by the council in their May 24, 2016 meeting.

ITEM #11: CONSIDER ANY ACTION IN RELATION TO THE EXECUTIVE SESSION.

Vice-Mayor Mayes stated as part of Jim Frieda's retirement package, his approved benefits will include pay for sick time in the amount of \$58,689.00 and pay for vacation in the amount of \$58,689.00 totaling \$117,378.00. David Hammond made note that this was subject to the availability of funds.

The total was calculated as follows:

Calculation of Final Leave Compensation (10-Hour Day)	
Final Salary Amount	\$135,636.80
Weekly Salary (52 weeks per year)	\$2,608.40
Hourly Rate (40 hours per week)	\$65.21
Daily Pay (Hourly x 10 hours per day)	\$652.10
Total Leave Amount Paid (180 days x daily pay)	\$117,378

² Based on 10-hour days.

Alternative Leave Calculation

As discussed, Frieda’s contract allowed for payment of 180 total days of leave - 90 days of sick leave and 90 days of vacation leave. His leave calculation was based on a *10-hour work day*, resulting in 1,800 hours of compensated leave.

Effective October 2008, and for all of James Frieda’s employment, the Duncan City offices were open 10 hours per day, Monday through Thursday³. Per Frieda’s time records, he worked 10-hour days during his term of employment.

However, it was noted in the 2016 ‘Proposed Budget Report’ that the City Manager Salaries & Wages was footnoted as including a retirement contract obligation of \$93,903.

13-510100	Salaries & Wages	CURRENT YEAR NOTES: includes retirement contract obligations of \$93,903.00
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This amount would be the final leave compensation due to Frieda based on an eight-hour day, as shown in the calculation below. Per the personnel director, this initial retirement obligation was calculated on an eight-hour day because Frieda’s contract was not clear⁴ on the matter.

Calculation of Final Leave Compensation (8-Hour Day)	
Final Salary Amount	\$135,635.80
Weekly Salary (52 weeks per year)	\$2,608.38
Hourly Rate (40 hours per week)	\$65.21
Daily Pay (Hourly x 8 hours per day)	\$521.68
Total Leave Amount (180 days x daily pay)	\$93,902.40

If the City had compensated Frieda based on an eight-hour work day, it would have resulted in compensation of 1,440 hours instead of 1,800 hours⁵, resulting in pay of \$93,902.40 instead of pay of \$117,378, a variance of \$23,475.60.

³ With the exception of the utility offices, which were open eight hours per day, five days per week.

⁴ Frieda’s contract was silent as to the number of hours to be compensated, it only noted total days of leave allowed.

⁵ 180 x 8 = 1,440; 180 x 10 = 1,800

Summary

At the time James Frieda was employed with the City of Duncan, city employees were working a 10-hour work day. Frieda continued working a 10-hour day until retirement.

Frieda's contract did not address leave in number of hours worked, but only in number of days worked. Since Frieda's work schedule was based on a 10-hour day, his leave compensation being calculated and paid on a 10-hour day appeared reasonable.

However, it is recommended going forward, that the City define their leave policy and all future employment contracts in hours instead of days.

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 & 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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