

PETITION AUDIT REPORT

CITY OF ELK CITY

July 1, 2007 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 ELK CITY
PETITION AUDIT REPORT
JULY 1, 2007 THROUGH JUNE 30, 2011



Oklahoma State Auditor & Inspector

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

September 23, 2013

To the Citizens and Petitioners
City of Elk City, Oklahoma

Transmitted herewith is the Petition Audit Report for the City of Elk City and its public trusts. Pursuant to **74 O.S. § 212(L)**, 10% of the registered voters of a political subdivision may request that our office audits the books and records of the political subdivision.

Pursuant to your request, and in accordance with those requirements, we performed a special audit for the period July 1, 2007 through June 30, 2012.

The objectives of our special audit primarily included, but were not limited to, the areas noted in your petition. Our findings and recommendations related to these objectives are presented in the accompanying report.

Because a special audit 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 City or its public trusts.

Our goal 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 that city officials and employees extended to our office during the course of our audit.

This report has been prepared for the citizens of Elk City and for city and state officials with oversight responsibilities. This document is a public document pursuant to **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

In accordance with the provisions of **11 O.S. § 13-101** the City of Elk City (“City”) has established and approved a City Charter providing for the creation of a City Commission. The Charter provides, in part:

Except as otherwise provided in this Charter, all powers of the City shall be vested in a commission composed of a Mayor and four Commissioners.

The Elk City Public Works Authority (“ECPWA”) is a public trust established under **60 O.S. § 176 et seq.** The ECPWA operates a utility service providing water, sewer, and sanitation service to the residents of the City.

A private, independent audit firm audits the City and Authority. Audit reports were made available for our review. All dollar amounts in this report are rounded to the nearest dollar, unless otherwise indicated.

The Office of the State Auditor and Inspector conducted a petition audit of the records of the City and ECPWA, primarily those records relating to the objectives noted in the index and in the petitioners requests. The results of the petition audit are in the following report.

Objective I: Review the City’s bidding and purchasing procedures.

Background

Oklahoma state law provides for various forms of government under which a city can be operated. These types of government include:

- Aldermanic.
- Council-manager.
- Statutory strong mayor-council.
- Town board of trustees.
- Municipal charter.

The type of government a city is formed under will, in many cases, determine the method and applicable laws relating to the operation of the city with respect to bidding and purchasing.

The City of Elk City (“City”) was formed under the provisions of the *Municipal Charter* form of government as defined in Title **11 O.S. § 13-101**. Oklahoma Attorney General Opinion **2004 OK AG 15**, stated, in part:

The Oklahoma Supreme Court analogized a city’s charter to a constitution, and stated that a charter supersedes the laws of the state regarding “merely municipal affairs.”

Title **11 O.S. § 13-109** provides:

Whenever a charter is in conflict with any law relating to municipalities in force at the time of the adoption and approval of the charter, the provisions of the charter shall prevail and shall operate as a repeal or suspension of the state law or laws to the extent of any conflict.

Finding

The City’s bidding requirements were governed by archaic bidding requirements established, and not updated, for 83 years.

On April 9, 1929, the City adopted a charter that remained relatively unchanged until April 9, 2012. One amendment, related to revenue from gas and oil, was adopted in 1950. We address the lack of updates to the Charter later in this report.

Article VI Section 19(1) of the City Charter provides:

...Except in cases of emergency the City Manager shall procure competitive proposals and bids for supplies for competitive dealers where the estimated costs exceed two hundred dollars (\$200.00). The competitive bids shall be kept on file in his office. The City Manager may without requisition, in the case of emergency, order supplies, goods, or materials, not exceeding in value the sum of one hundred dollars (\$100.00). The commission shall make rules governing the letting of contracts or making purchases by the City Manager, but no contract or purchase where the amount exceeds two hundred dollars (\$200.00) shall be valid unless approved by the commission.

This bidding requirement, established 83 years earlier, still applied in 2012. According to the U.S. Bureau of Labor Statistics website, \$200 in 1929 would be equal to \$2,685 in 2012. The antiquated \$200 bid requirement in 2012 likely would have hindered daily operations as administered by city officials.

In the absence of an authorized amendment, the City technically was compelled to follow the purchasing requirements and restrictions set forth in the 1929 City Charter.

Finding

The City Commission ignored the Charter and adopted ordinances contradicting the Charter.

While the City Charter established a \$200 threshold for bidding requirements and commission approval, the City chose to ignore the City Charter and adopted ordinances which appeared to contradict the City Charter.

The Elk City Code of Ordinances was re-codified on April 4, 1985. According to Subsection 1 of Article 5 Section 1-76 of the Elk City Code of Ordinances:

1. Except as otherwise provided in Subsection 2 (below), before the City Manager makes any purchase of, or contract for, supplies, materials, equipment or contractual services, he shall submit to at least three (3) persons, firms or corporations dealing in and able to supply the same, or to a smaller number if there are not three (3) dealing in and able to supply the same, a request for quotation or invitation to bid and specifications, to give them

opportunity to bid. As an alternative, said City Manager may publish notice of the proposed purchase in a newspaper of general circulation within the City or County. The City Manager shall favor a person, firm or corporation in the City when this can be done without additional cost to the City, but they shall submit requests for quotation to those outside the City when necessary to secure bids or to create competitive conditions, or when they think that they can make a saving for the City. All bids shall be sealed and opened in public at a designated time and place. The City Commission may repeatedly reject all bids and may again submit to the same or other persons, firms or corporations, the request for quotations or invitation to bid, or again publish notice of the proposed purchase. The City Commission shall purchase from the bidder whose bid is most advantageous to the City, considering price, quality, date of delivery and the like; in the event of a tie, said City may cast lots to determine from whom to make a purchase, or may divide the purchase among those tying, always accepting the bid or bids most advantageous to the City.

Subsection 2 of the same ordinance included the following:

The City Manager may purchase, or authorize the purchase of the following without giving an opportunity for competitive bidding:

- a. Supplies, materials, equipment or contractual services, the cost of which does not exceed the applicable dollar amount established by current State Law in a single transaction;

The ambiguity and contradictory nature of the City Charter and the City Ordinances was addressed by then City Manager Dumas during a City Commission meeting held on October 5, 2009. The meeting minutes reflected the following:

Dumas stated that there appears to be a great deal of ambiguity and inconsistency between the City Charter and the City Code concerning bidding.

While the City Charter required bids be obtained for the purchase of supplies exceeding \$200, Subsection 2 established a considerably less restrictive bid requirement contrary to the City Charter. The State law bid requirement for public construction is set forth in **61 O.S. § 103(A) and (B)**:

A. Unless otherwise provided by law, all public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.

B. Except as provided in subsection D of this section, other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be let and awarded to the lowest bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

According to State Law, there are no requirements concerning a City's purchase of materials, supplies, or equipment. There is a similar bidding requirement for public trusts which applies to trusts such as the Elk City Public Works Authority (ECPWA).

However, the bidding requirements set forth in **60 O.S. § 176(H)** are not limited to only public construction, but include the purchase of materials, supplies, and equipment. According to **60 O.S. § 176(H)**:

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

Conclusion

However archaic the language and provisions in the City Charter, the City did not follow the proper steps in amending the Charter until April 2012. Based on **11 O.S. § 13-109** and **2004 OK AG 15**, a city's charter prevails over State law and over city ordinances. Although an ordinance was passed indicating the City would adhere to State statutes for bidding guidelines, the provisions of the City Charter prevail over ordinances passed by the Commission.

Objective II: Review the relationship between the City and Authorities.

Background

As previously discussed, the City's charter established a \$200 maximum on the purchase of supplies before competitive bids were required. The City subsequently adopted an ordinance, contrary to the City Charter, that provided the City follow bidding guidelines set by State law, which pertains only to public construction contracts.

On October 5, 2009, the minutes reflect a discussion concerning the ambiguity between the City Charter and City Code. The minutes read in relevant part:

The Commission discussed the competitive bidding requirements. Dumas stated that there appears to be a great deal of ambiguity and inconsistency between the City Charter and City Code concerning bidding. He stated that it appears to him that the Charter would require competitive bids for all purchases regardless of value, unless in an emergency. He stated that quite likely that since shortly after the Charter was adopted in 1929 the deviation from written requirements were fairly common practice.

The October 5, 2009 meeting was the first discussion, we found, in which the City acknowledged the City Charter was not followed. Instead of adhering to the City Charter, information we obtained indicated the City's purchasing practices conformed to City ordinances.

Finding

There was a lack of separation between the City and ECPWA.

The ECPWA was created under **60 O.S. § 176 et seq.** to "*operate, construct and administer any public works.*" Although the City Commissioners also serve *ex officio* as the Board of the Authority, the City and the Authority are two distinct and separate legal entities.

According to **60 O.S. § 176.1 A:**

A. Except as provided..., a public trust duly created in accordance with the provisions of Section 176 et seq. of this title shall be presumed for all purposes of Oklahoma law to:

1. Exist for the public benefit;
2. Exist as a legal entity separate and distinct from the settler and from the governmental entity that is its beneficiary;
3. Act on behalf and in the furtherance of a public function or functions for which it is created even though facilities financed by the public trust or in which the public trust has an ownership interest may be operated by private persons or entities pursuant to contract.

60 O.S. § 176.1 D, provides in relevant part:

Except where the provisions of the trust indenture or of Section 176 et seq. of this title, or of any other law written specifically to govern the affairs of public trusts, expressly requires otherwise, **the affairs of the public trust shall be separate and independent from the affairs of the beneficiary in all matters or activities** authorized by the written instrument creating such public trust including, but not limited to, the public trust's budget, expenditures, revenues and general operation and management of its facilities or functions; provided, that either the public trust or the beneficiary may make payment of money to the other unless prohibited by the written instrument creating such public trust or by existing state law. (emphasis added)

Although state statutes require the City and ECPWA to operate as "separate and distinct entities", we had difficulty in determining if some transactions were transactions of the City or transactions of the ECPWA. We cite the following examples:

The Declaration of Trust for the ECPWA reads in relevant part:

The purposes of this Trust, for and on behalf of the Beneficiary as hereinafter described, are:

- (a) To furnish and supply to the inhabitants, owners of occupants of property, and to industrial, commercial and mercantile establishments and enterprises within the corporate limits of the Beneficiary Municipality...utility services and physical facilities (including but not restricted to water, sanitary sewer, gas, solid waste disposal, garbage and trash collection...) for all purposes that the same be authorized or proper as a function of the Beneficiary; and to fix, demand and collect charges, rates and

fees for said services and facilities to the same extent as the Beneficiary itself might do...

The language in the Declaration of Trust for the ECPWA showed the Trust (ECPWA) was responsible for providing utility service and had the authority to “fix, demand and collect charges, rates and fees...”

According to Article 1, Section 20-1 of the municipal code:

The City of Elk City, Oklahoma shall provide water, wastewater and solid waste collection and disposal services to residents of said community.

Article 1 Section 20-2 provides:

Every resident within the corporate limits of the City of Elk City, Oklahoma and every commercial or industrial establishment shall utilize the municipal utility system of said City, unless it is impossible to do so, and pay fees as established by the City Commission of the City of Elk City, Oklahoma.

These two sections of the municipal code specified utility services were a function of the City. However, the section below stated that the water system was a function of the ECPWA.

While Article 2 Section 20-42 states:

All water rates, tap fees, meter deposits, etc.; used from the municipal waterworks system of the City of Elk City, Oklahoma, shall be established by resolution of the Elk City Public Works.

To further complicate the relationship, the City established a Capital Improvement Fund, also referred to as the Capital Construction Fund. The Capital Improvement Fund is a fund comprised of a portion of sales tax collection which is shared by the City, ECPWA and the Industrial Authority. The Capital Improvement Fund was created on June 7, 1976, when the City Commission adopted Resolution 1976-10. Resolution 1976-10 reads in relevant part:

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF ELK CITY in regular meeting assembled:

1. There is hereby created a Capital Improvement Fund pursuant to the provisions of House Bill 1443 of the 1975 Oklahoma Legislature;
2. Said fund shall be nonfiscal and shall contain accounts for both general and specific projects.

On June 22, 1977, the City Commission adopted Resolution 1977-18 authorizing the transfer of 3/4ths of 1% of city sales tax to the Capital Improvement Fund. The wording in Resolution 1977-18 was subsequently changed by adopting Resolution 1977-27, which was passed on November 7, 1977.

Resolution 1977-27 read in relevant part:

...the City Treasurer... is authorized and directed to transfer 3/4ths of one cent (1¢) of the funds collected from the City Two Cents Sales Tax to the Capital Improvement Fund...

Expenditures from the Capital Improvement Fund were made on City purchase orders and approved by the City Commissioners, the ECPWA and Industrial Authority Boards.

Finding

There was a lack of distinction between City and ECPWA concerning equipment purchased from the Capital Improvement Fund.

On December 17, 2007, a city purchase order was created to acquire a \$75,000 Vactor Model 2115 sewer machine mounted on a truck chassis.

The equipment was paid for from the Capital Improvement Fund, a fund utilized by the City, ECPWA, and the Industrial Authority. The purchase was approved by the City Commission, the ECPWA Board, and the Industrial Authority Board. Because each of the Boards approved the payment and the payment was made from the Capital Improvement Fund, we cannot definitively determine *which entity actually purchased the equipment*.

If the equipment was purchased by the City, the amount exceeded the \$200 limit specified by the City Charter and the equipment should have been competitively bid. However, if the Charter bid provision was ignored, as was standard practice, and the City ordinance was applied, the City was not obliged to competitively bid the equipment since neither the ordinance nor State Law include equipment purchases.

If the equipment was purchased by the ECPWA, then the provisions of **60 O.S. § 176(H)** would apply and require competitive bidding.

As previously noted, the function of providing water/sewer services rested with both the City and the ECPWA, depending on which municipal code was referenced.

Because of the lack of distinction between the City and ECPWA, we were unable to determine whether expenditures from the Capital Improvement Fund were for City or ECPWA purposes. Interviews with City officials confirmed that there was no distinction made on whether equipment purchased from the Capital Improvement Fund were purchases for the City or ECPWA.

Although the City ignored the City Charter with regard to competitive bidding requirements, the statutory bidding requirements for the City and ECPWA are different. By statute, ECPWA equipment purchases in excess of \$50,000 required competitive bids, while equipment purchased by the City has no *statutory* bidding requirement.

During FY2011-12 the City changed the process for purchases from the Capital Improvement Fund. Currently the City is now able to track equipment purchased from the Capital Improvement Fund and expenditures can be traced to the department making the purchase.

Finding

The City may have used sales tax revenues contrary to the voter approved purpose.

Since the Capital Improvement Fund was used for general fund, ECPWA and Industrial Authority purchases, sales tax revenue may have been used contrary to its original purpose. A timeline of the various sales taxes voted by the people and the creation of the Capital Improvement Fund is provided below:

- On July 16, 1968, the voters voted to approve Ordinance No. 465 which provided for a 1% sales tax to support the functions of the municipal government.
- On September 25, 1973 the voters voted for an additional 1% sales tax in which the first \$600,000 was to be used toward the construction of the hospital. Future revenues were to be appropriated to the General Fund for functions of the municipal government.

- On June 22, 1977 Resolution 1977-18 was passed authorizing the transfer of 3/4th of 1% of city sales tax to the Capital Improvement Fund. The resolution was subsequently amended on November 7, 1977 when Resolution 1977-27 was passed placing 3/4ths of one cent from the City sales tax to the Capital Improvement Fund, leaving 1 ¼% for the General Fund.
- On August 4, 1981, the voters passed Ordinance No. 746 increasing the sales tax from 2% to 3%. The additional 1% was to be used to pay the \$5,975,000 in indebtedness of the ECPWA.
- On February 23, 1988, the voters voted in favor of passing Ordinance No. 870 which extended the third 1% sales tax increase indefinitely to ECPWA.
- On July 17, 1991, Resolution 1991-29 was passed, which moved the additional 1% sales tax to pay the ECPWA indebtedness to the Capital Improvement Fund.

The 3/4ths of one cent originally passed by the voters for municipal functions was ultimately deposited into the Capital Improvement Fund. In addition, the 1% ECPWA sales tax was also transferred to the Capital Improvement Fund, by Resolution 1991-29, comingling funds from both the City sales tax and the ECPWA sales tax.

Based on the records, and as confirmed by city officials, the Capital Improvement Fund was used for purchases for all three entities: the City, the ECPWA, and the Elk City Industrial Authority. However, the City and its Authorities should have existed as “separate and distinct” entities.

As previously noted, the City changed the process for making purchases from the Capital Improvement Fund during FY2011-12. Currently, the City is able to track equipment purchased from the Capital Improvement Fund and expenditures can be traced back to the department making the purchase.

Objective III: Specific concerns related to bid violations, conflicts of interest, collusion, kickbacks, and other allegations.

Background

Objectives I and II included broad areas of identified concern. Examining records related to more specific concerns involving bidding issues.

The following nine (9) specific concerns related to bid practices, collusion, and kickback schemes:

- Bids were not obtained for a D8 bulldozer that was purchased for \$500,000 from Warren Caterpillar.
- Bids were not obtained for several pieces of equipment purchased from Midwest Farm Supply.
- Fuel was purchased from Hutchinson Oil without obtaining bids or quotes.
- Asphalt/concrete was purchased from Caswell Construction without obtaining bids.
- The D.E.H. Backhoe Service contract was not competitively bid.
- City equipment and fuel were provided to a private contractor.
- Late payment to a contractor of an alleged \$27,488 invoice on the “Pioneer Center” project, coincident with the former city manager’s legal proceedings in federal court and related attorney fees.
- City ordinance passed to limit competition and benefit city attorney’s sign business.
- Potential kickbacks to former city manager.

Specific Concern

Bids were not obtained for the D8 bulldozer purchased for \$500,000 from Warren Caterpillar.

On March 25, 2008 the City entered into a lease purchase agreement with Warren Caterpillar for a D8T Track Type Tractor for the construction of the new landfill. The terms of the agreement included monthly payments of \$10,584 for 34 months and a final payment of \$197,336. On March 18, 2009, the City Commissioners voted to trade in the bulldozer and on July 23, 2009 the bulldozer was traded in on a compactor. The compactor was not competitively bid.

The City Ordinance Code Section 20-1 provides the City shall provide “water, wastewater and solid waste collection and disposal.” The ECPWA Trust Indenture provides that ECPWA shall provide “solid waste disposal, garbage and trash collection...”

The discussion and purchase of the bulldozer appeared to have been for construction of a landfill, a role apparently shared by both the City and ECPWA, depending on which municipal code is cited.

The discussion related to the bulldozer occurred in the City Commission meeting. The lease agreement reflected that the agreement was between the City and Caterpillar Financial Services. The lease agreement was signed by the then Mayor for the City.

Since the lease agreement / purchase appeared to have been executed by the City, there would have been no *statutory* bidding requirement. However, bidding was required under the provisions of the City Charter, which set a \$200 bid requirement threshold. If the lease agreement was a purchase for the ECPWA, then the statutory requirements under **60 O.S. § 176(H)** required a competitive bid for equipment purchases over \$50,000.

Specific Concern Bids were not obtained for several pieces of equipment purchased from Midwest Farm Supply.

We obtained the accounts payable report for payments made to Midwest Farm Supply. There were numerous expenditures which exceeded \$200 threshold that were not competitively bid as required by the City Charter. One of the purchases included a tractor in the amount of \$20,453.

The tractor, purchased from the Capital Improvement Fund for cemetery use, was not bid. City ordinances and State statutes do not require bids for purchases of municipal equipment; however, the tractor should have been competitively based on the bid requirements of the City Charter.

Specific Concern Fuel was purchased from Hutchinson Oil without obtaining bids or quotes.

The City obtained an annual bid for fuel beginning in 2009. The City advertised the

Hutchinson Oil Company	
Unleaded Gasoline-Regular Grade-Tanker	\$151,015.32
Diesel Fuel Undyed-#2 Ultra Low Sulphur-Tanker	\$205,803.45
Total Bid Price	\$356,818.77

acceptance of sealed bids for fuel in the November 4 and November 11, 2009 issues of the local newspaper, the Elk Citian.

On December 7, 2009, the City Commission awarded the fuel bid from Hutchinson Oil Company. The minutes reflect that this bid was in lieu of obtaining monthly quotes. City Clerk Sipes indicated that prior to 2009, local vendors were called for quotes and the lowest quote was accepted.

Based on the City Charter \$200 threshold bid requirement, the fuel contract should have been competitively bid.

Bid specifications indicated the contract term was for one year with an option to renew for four additional years. We found no documentation indicating that the contract had been renewed since the 2009 original bid award.

Specific Concern Asphalt/concrete was purchased from Caswell Construction without obtaining bids.

The City bid asphalt and concrete on an annual basis. Documentation relating to the bids reflected the asphalt was based on a per ton basis while the concrete was based on a price per cubic yard.

The City was taking bids for asphalt and concrete. While the City was taking bids, the bid language seemed vague concerning the time period covered by the awarded bids. Due to the vagueness of the bids awarded, we had difficulty in determining the transition between the various projects and related bids. We cite the following as examples:

- The City solicited sealed asphalt bids with a December 1, 2008 deadline and no expiration date for the 12,000 tons of asphalt the City expected to use in 2009.
- On April 6, 2009 the City Commissioners awarded the 2009 concrete bid to Caswell Construction with no indication of the time frame or expiration. A second bid proposal from Dolese reflected the prices were firm until March 31, 2010 which does not coincide with either a fiscal year or calendar year.
- The subsequent asphalt bid contained an April 7, 2010 deadline with no documentation of an expiration date. The bid specifications contained language showing the approximate tons

the City expected to use during 2010; however, the City was accepting bids two months before the end of the 2010 fiscal year and three months into the 2010 calendar year.

- Bids were obtained for 2011 concrete in August 2010 with no documentation showing the term of the bid. The bid documentation from Dolese, indicated that the prices were good until December 2011.

Neither the bid documents nor the meeting minutes were clear on what time period was included in the bids. With no clear expiration terms for the bids, we cannot determine the transition between the various bids for asphalt and concrete to ensure bids were obtained for each year.

According to the City Clerk, the previous bid price was used until the next bid was awarded.

Specific Concern City was contracting with D.E.H. Backhoe Services without competitive bidding.

We obtained the accounts payable report for payments made to D.E.H Backhoe Services. There were numerous expenditures which exceeded the \$200 threshold that were not competitively bid as required by the City Charter.

The owner of D.E.H. Backhoe Services was subsequently employed by the City. Records reflected no payments to D.E.H Backhoe services once the owner was employed by the City.

Specific Concern A contract laborer used City equipment.

The City awarded bids to Melvin Boyce, a water department employee, for the demolition and removal of debris from dilapidated buildings. Boyce reportedly worked after hours and on weekends in relation to these contracts.

During 2007 and 2008, Boyce was paid a total of \$12,600 for work performed involving the following six projects:

Address	Description	Amount
919 N. Van Buren	"Tear down haul away and bring in fill dirt if needed"	\$5,000
808 W. Ave. A	"Remove house haul away bring in fill dirt"	\$1,000
1420 S. Randolph	"Tear down haul away bring in fill dirt"	\$2,700
1013 W Ave B	"Tear down haul away and bring in fill dirt if needed"	\$2,000
202 S. Washington	"Tear down haul away bring in fill dirt"	\$1,100
416 Jackson	"Tear down haul away and bring in fill dirt if needed"	\$800
	Total	\$12,600

The City Clerk confirmed that Boyce was an employee of the water department from October 5, 2003 through July 18, 2008. The City Clerk also confirmed that Boyce used City equipment as part of the demolition and removal projects. As a water department employee, Boyce could conceivably be considered an employee of the ECPWA rather than an employee of the City.

In an interview, former City Manager Hylton indicated that if the contractor was not a city employee, he would not allow the contractor to use city equipment since they were not "certified" to do so.

The City Charter in effect at the time states "no officer or employee of the City, elective or appointive, shall be interested directly or indirectly in any contract involving \$100 or more to or with the City..."

No officer or employee of the City...shall be interested, directly or indirectly, in any contract involving one hundred dollars (\$100.00) or more to or with the City...having any contract or sub-contract in this amount, and all such contracts with such City officers or employees shall not be valid as against the City

Additionally, **11 O.S. § 8-113(A)(1)(2)** states in relevant part:

A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in:

1. Selling, buying, or leasing property, real or personal, to or from the municipality;
2. Contracting with the municipality

The City, in accepting the bid from Boyce, appeared to have considered Boyce an employee of the ECPWA rather than the City. **60 O.S. § 178.8**

provides a public trust may not contract with members of the Board of Trustees or their families, but does not apply to employees of a public trust.

If Boyce was considered a City employee, and by virtue of that position allowed to use public equipment, then award of a contract for private services may violate both the City Charter, as well as **11 O.S. § 8-113(A)(1)(2)**.

Regardless, the City appeared to have considered Boyce to be a private contractor who was allowed to use public equipment in furtherance of his private endeavors. In doing so, the City may have violated **Article X § 15A of the Constitution of Oklahoma:**

A. Except as provided by this section, the credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State, nor shall the State become an owner or stockholder in, nor make donation by gift...to any company, association, or corporation.

The City Clerk indicated that the demolition and debris removal for dilapidated buildings is now being performed by a local company.

Specific Concern

A late payment to a contractor of a \$27,488 invoice on the “Pioneer Center” project coincided with, and may have actually been used to pay for the former city manager’s legal fees.

The crux of the allegation involved collusion or a scheme between a general contractor and former City Manager Guy Hylton. The alleged scheme involved the general contractor submitting fictitious invoices in order to receive funds that were then diverted to Hylton to pay for legal fees.

Although the allegation specifically mentioned \$27,488, we found no payments for this amount or a combination of payments which added to this amount. It appeared the allegation was actually referring to a payment to the general contractor in the amount of \$35,897.

Although we could not determine exactly when the “Pioneer Center” was completed, Commission meeting minutes reflected that the center was *near* completion on September 4, 2007. City records showed that the general contractor submitted an invoice, dated December 12, 2008, for

CITY OF ELK CITY
RELEASE DATE: SEPTEMBER 23, 2013

\$35,897.43, which was over a year after minutes showed the “Pioneer Center” was *near* completion. The \$35,897.43 payment was a reimbursement for invoices that were paid by the general contractor. The invoices are described in the following table:

Invoice Date	Vendor	Description	Amount
1/31/08	American Building Specialties, Inc.	Restroom Accessories	\$1,890.00
6/16/08	A.R.K. Ramos	Cast Bronze Plaque	\$1,196.54
11/16/07	Culver Electric	Final Hookup on Building Logo	\$526.50
1/24/08	Daktronics, Inc.	Fiber Optic Cable	\$1,314.50
1/2/08	Daktronics, Inc.	Statement Balance Due	\$800.00
11/7/08	Elk City Ace Home Center	Concrete Epoxy & Sprayer	\$50.37
1/2/08	Elk City Ace Home Center	Nuts, Bolts, Paintbrush	\$13.22
3/5/08	J&B Graphics Inc.	Cabinet and Installation	\$13,268.00
12/17/07	J&B Graphics Inc.	Elk Head Sign and Installation	\$15,760.00
1/2/08	J&B Graphics Inc.	Sign Type B2 (Section Signs)	\$795.00
11/5/08	Maxwell Supply Company	Enviroseal 7 Clear Water Base	\$104.04
9/30/08	Southwest Building Materials, LTD	3 Cartons 2x2 Stratus 40 SF/Ctn	\$179.26
		Total	\$35,897.43

We contacted the general contractor and asked for documentation indicating that the invoices had been paid by the contractor. The contractor provided us with canceled checks representing all of the payments, except for the \$800 payment to Daktronics.

In an interview, the contractor stated the reason for the delay in submitting a bill for reimbursement was that he had waited until the project was completed, and all the invoices were in before seeking reimbursement from the City.

We were unable to substantiate the specific amount of \$27,488 that originally was given as the basis for the concern. Our review of the \$35,897 late payment to the general contractor did not support the allegation as described by petitioners.

Specific Concern The City passed an ordinance to limit competition and benefit the city attorney’s sign business. A conflict of interest issue exists with the City contracting with the city attorney’s sign business.

The specific allegation includes two parts which are separately addressed. The first allegation stems from a resolution passed fourteen years ago by the City Commissioners. On February 1, 1999, the commission passed Resolution 1999-8 imposing a moratorium on billboards.

Resolution 1999-8 reads in relevant part:

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR
AND CITY COMMISSIONERS OF THE CITY OF ELK CITY,
OKLAHOMA:

1. That a moratorium should be imposed upon the construction and erection of billboard signs within the corporate city limits of Elk City;
2. That during the tenure of said moratorium, no permit shall be granted for the construction and erection of a billboard sign within the corporate city limits of Elk City, Oklahoma...

Resolution 1999-8 imposed a suspension of *all* permits for the construction and erection of billboard signs within the corporate city limits, which included the city attorney's sign business.

The city clerk confirmed that there have been no permits issued, including permits to the city attorney's sign company. The city clerk also stated that no permits had been sought but, most likely, this was because inquiries regarding erection of a new billboard were answered with a statement that no new billboards were permitted in city limits.

An ordinance banning the erection of new billboards is not unique to the City. We found a similar ordinance, passed in the City of Enid, which banned the erection of new billboards after January 6, 2009.

Specific Concern **There is a conflict of interest issue with the City contracting with the city attorney's sign company.**

During an interview, Steven Holloway, City Attorney for Elk City, stated that he was the owner of Mesa Advertising LLC ("Mesa") which owns billboards in Elk City.

The City's payroll records reflected Holloway received pay under the identifier "Employee HOLL03" which included withholdings for "FICA Employee" and "FICA Employer" as well as "Medicare Employee Portion" and "Medicare Employer Portion." According to the City Clerk, Holloway was considered a city employee.

In a letter provided to our office, Holloway asserted that he is not an employee of the city, but is rather an independent contractor and has

satisfied “approximately 20 IRS Criteria distinguishing me as an Independent Contractor rather than an employee.”

The contract for advertising services was executed between Mesa and the Western Oklahoma Tobacco Control Coalition (“WOTCC”). The WOTCC is a program under the Youth and Family Services, a division of the City of Elk City that reporting to the city manager.

According to the City Attorney, the WOTCC contract was supported by federal funds as part of the tobacco settlement agreement. We confirmed through the State of Oklahoma website that the WOTCC was a grantee under the Tobacco Settlement Endowment Trust. Accordingly, the funds paid as a result of the contract were not city funds.

Beginning November 5, 2008 Mesa contracted with the WOTCC for billboard display advertisement. From November 2008 through October 2010, Mesa was paid a total of \$7,025 . All of those payments were made on City of Elk City purchase orders.

According to Section 23 of the City Charter:

No officer or employee of the City, elective or appointive, shall be interested, directly or indirectly, in any contract involving one hundred (\$100.00) or more to or with the City,...and all such contracts with such City officers or employees shall not be valid as against the City, provided: any contract for a greater sum than one hundred dollars (\$100.00) in which any officer or employee has an interest as hereinbefore described shall be published once a week for two (2) successive weeks. Any time within fourteen (14) days after the first publication any taxpayer may file a written protest with the City Clerk. Within three (3) days after filing with the City Clerk, the City Manager shall hear the protest and decide whether or not to stand by the contract on its merit. The protesting taxpayer, or any other taxpayer, shall have his right in court to review the final action of the City Manager. No contract shall be valid against the City in favor of any of its officers or employees unless the proof show [sic] conclusively that the contract is based exclusively on its merits.

Also, **11 O.S. § 8-113** provides in relevant part:

A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer,

employee, or spouse of the officer or employee has a proprietary interest shall engage in:

1. Selling, buying, or leasing property, real or personal, to or from the municipality;
2. Contracting with the municipality; ...

The language of the both the Charter and **11 O.S. § 8-113** refer to contracts with the city or municipality. The Charter states that no “employee of the City... shall be interested directly or indirectly, in any contract...” **11 O.S. § 8-113** states provides that “no municipal officer or employee... shall engage in... contracting with the municipality.”

In this instance, Mesa contracted with WOTCC rather than the City. However, the funds were administered by the City, the payments were made with City purchase orders, and the payments were approved by the City Commission.

Conclusion

This objective covered a number of specific allegations and concerns as addressed to the Office of State Auditor and Inspector. The overall conclusion could be described as a “mix” of both confirmed and unfounded allegations. With regard to confirmed issues, the City has taken steps to address and correct issues such as the commingling of City and trust authority transactions and to utilize the appropriate statutory or internal bid policy moving forward.

Objective IV: Possible irregularities and review costs associated with an Elk City public trust initiative to implement a “wireless” network, as an additional city utility.

Background

The 2006 audit report for the City included the recommendation that the “city must diversify its industrial base to even out the cyclical nature of the oil and gas industry.” The city manager at this time, Guy Hylton, sought various ways to increase the city’s revenue so that it lessened its dependence on the oil and gas industry.

In an effort to diversify revenue sources in 2005, the city purchased a wireless fidelity or WIFI system from Elite Digital. According to Hylton, the city did not have high speed internet service at the time of the purchase, and he believed high speed internet would be important in an effort to induce industry to move to the city.

Some specific concerns were expressed relating to the wireless network implemented by Elk City that included:

1. The purchase of the WIFI system from Lee Marable, a part owner of Elite Digital, and the subsequent hiring of Marable to operate the system.
2. Consulting fees paid to Marable in relation to the WIFI system.
3. The commingling of public and private funds reported in a 2006 audit letter by the City’s CPA.

Finding

Lee Marable was not an owner, co-owner, or associate of Elite Digital. Marable was not subsequently hired to operate the WIFI system.

The WIFI system was purchased in December, 2005 from Kevin Weeks, who was the owner of Elite Digital. We interviewed Weeks, who stated that he owned the company jointly with his wife and that Lee Marable was not a co-owner, employee, or associate of Elite Digital.

We also interviewed Lee Marable, who stated that he was not a co-owner, employee, or otherwise associated with Elite Digital. He also indicated that he was not hired to operate the WIFI system and, in fact, had gone to

work for the city in 2002, several years before the city purchased the WIFI system.

Records obtained from the City also showed that Marable was employed by the City on July 29, 2002, over three years before the City purchased the WIFI system.

Finding

Marable was paid as a consultant on the WIFI system, as well as various other systems, after he separated employment from the City. We found what appeared to be a discrepancy in the amount paid in one billing cycle.

Marable separated his employment with the City on June 1, 2008. Between June 1, 2008 and October 31, 2008 Marable was paid \$29,160 in consulting fees at the rate of \$45.00 per hour. The consulting fees were paid for Marable's consultations concerning several areas that were not necessarily related to the WIFI system.

Marable indicated that he had served as a consultant for a period after he separated from the City. He also stated that he consulted on various areas in addition to the WIFI system. The City Clerk confirmed that Marable had consulted in several different areas.

We reviewed the documentation related to how Marable was paid to possibly determine the percentage of consulting work performed and specifically related to the WIFI system.

Marable would send the City an email indicating the amount of time worked and, in some cases, a description of the work performed. In instances where the work in various areas was listed, there was no hourly accounting for the time related to each project area. For example, one email reflecting 72 hours work included the following accounting:

Change city's Domain administrator account password. Had to work on many server applications over the two weeks due to the changing of administrator account password. Worked on getting all of the backups working again. Still working on City Hall backup. Had to work with PD twice to get the timeclock working.

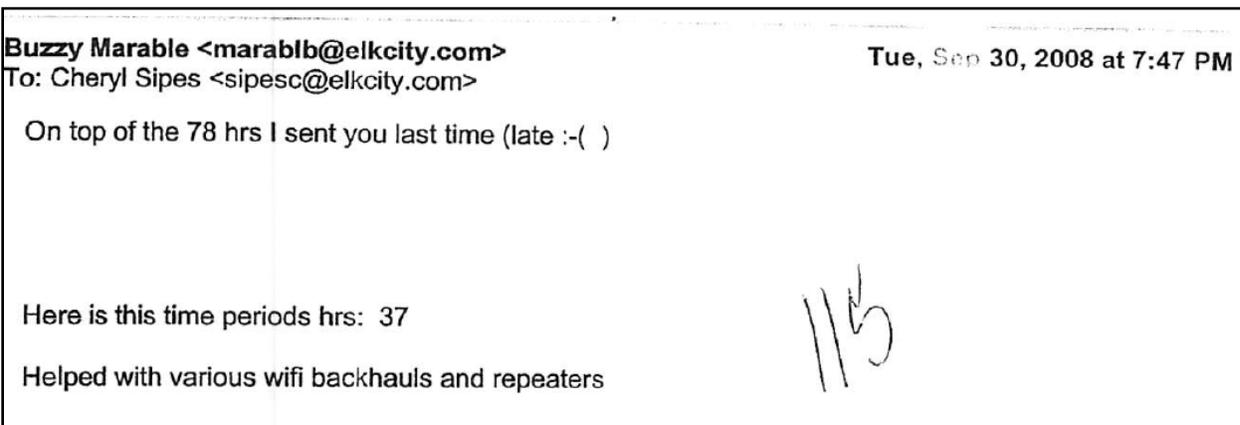
Another email, representing 80 hours for a total \$3,600, reflected work on the WIFI system, burglar alarms, ordering parts and researching equipment. Moreover, some of the emails did not include a description of the work performed but only the number of hours billed.

Because of the generic nature of the records related to the \$29,160 in consulting fees paid to Marable, we are unable to determine an amount paid that was specific to the WIFI system.

Discrepancy in hours billed.

On Thursday, September 18, 2008, Marable sent an email to the City indicating that he had worked 70 hours for the time period. City Clerk Sipes replied to the email, noting the deadline for submitting time was Wednesday, the day prior, and that the hours would be added to the next billing cycle.

On September 30, 2008 Marable sent another email, shown below:



On October 3, 2008, Marable was issued a payment for \$5,174.18. The amount corresponded to a payment for 115 hours at the rate of \$45 per hour.

Although 8 hours, an equivalent \$360, had been added to the previous pay period between the time of the first email (September 18, 2008) and the second email (September 30, 2008), we are unable to determine which of the two, the 70 hours or the 78 hours, represented the actual hours worked.

Finding

During the transition period between the WIFI system being owned by Elite Digital and being taken over by the City, existing customer payments were temporarily held in an account not belonging to the city.

The City, as part of the city's independent audit process, received a management letter dated August 10, 2006, from the Hunter & Gibbons CPA firm stating, in relevant part:

The Elk City Online fund intermingled monies with a "holding account" that did not belong to the City or a component unit of the city. According to Oklahoma Statutes, deposits of a city government must be secured with acceptable collateral, which was not the case throughout much of the year.

We interviewed J.L. Gibbons of Hunter & Gibbons, who only vaguely remembered the issue from 2006. According to his recollection, the issue stemmed from a pre-existing billing system that was in place at the time the city purchased the WIFI system.

According to Gibbons, the issue was addressed and was not an issue in the next year's audit report. Gibbons stated that there was no indication of missing funds, only that funds were temporarily held in an account other than a city account.

During the 2006 time period, Leah Leatherman served in various capacities related to the WIFI system including customer accounts. Leatherman also recalled there had been some period of time during the purchase and transition of the WIFI system where she viewed an online account to determine those customers who had paid their bills.

Leatherman was unable to recall the name of the billing system, but thought that it was already in place when the city purchased the WIFI system. She remembered that the system dealt only with credit cards payments rather than with cash or check payments.

Based on the management letter from the audit firm and our interview with the audit firm, there was no indication that funds were missing. The issue of funds being temporarily held in a non-city account appears to have been the result of a pre-existing billing system in place when the city acquired the WIFI system.

Conclusion

The WIFI system was not purchased from Marable nor was he hired by the City to maintain a system the City allegedly purchased from him. Marable, in fact, was hired several years prior to the City purchasing the WIFI system.

The City paid Marable as a consultant after he left the employment of the City. We found nothing inherently improper with the City paying this former employee to serve as a consultant.

Recommendations We recommend the City determine, if possible, whether the \$360 paid to Marable in 2008 was an overpayment. If it can be determined that the payment was an overpayment, the city should seek reimbursement.

Objective V. Possible irregularities and a review of costs associated with an Elk City public trust authority's initiative to create an electric utility service, as an additional city utility.

Background

The concern outlined in the petition related to the public trust authority "initiative to create an electric utility service." We determined the more specific concerns related to four separate areas. Those areas included:

- The City contributed four million in in-kind or cash to the Great Plains Regional Medical Center (GPRMC) to obtain a "commercial account" for its start-up electric utility.
- The City paid Caswell Construction for the dirt work, parking lot, etc., for the new hospital without a bid.
- The chairman of the hospital board set up an arrangement with Former City Manager Hylton in return for a noncompetition clause.
- The City extended utility services to a parcel of land outside the city limits at an additional cost of \$100,000 to the City rather to the land owners.

We addressed each of these areas individually.

Specific Concern

The City contributed four million in in-kind or cash to the Great Plains Regional Medical Center (GPRMC) to obtain a "commercial account" for its start-up electric utility.

Background

Most major cities in Oklahoma have instituted some form of an economic development initiative. Economic development may consist of policy or actions that promote the standard of living or economic health of a community.

Such actions may include a multitude of separate areas including infrastructure, environment, literacy, health and safety, as well as incentives to private business to locate, relocate, or expand in the

community. Because economic development projects span over months or years, it is often difficult to measure the long term effect of any given economic development project.

Finding

We were not able to substantiate the allegation.

On June 4, 2007, the Elk City Industrial Authority approved a Site Development Agreement with Farmers Union Hospital d/b/a Great Plains Regional Medical Center (GPRMC). An excerpt of the agreement, shown right, details the work the Authority, acting on behalf of the City, agreed to perform.

B. It has been established that the Hospital desires to acquire, construct and equip a replacement medical center on the Hospital Property (the "Project"). The construction of the replacement medical center will require sitework improvements including, but not limited to:

- demolition of certain existing site improvements and structures prior to starting sitework improvements (but shall not to include demolition of the main hospital building);
- mass excavation;
- underground utility connections;
- backfilling and compaction of soils;
- site surface drainage via curbs and gutters;
- site paving of parking areas;
- site concrete for sidewalks and retaining walls, as required; and
- other sitework improvements, to be specified, which shall be mutually agreed upon by both parties.

The agreement also indicated that as a recognized economic development project, assistance would be provided by the Authority and the City. The Agreement included the following provision:

E. Recognizing that economic development is a legitimate public purpose for which public funds may be expended (Burkhart v. City of Enid, 771 P.2d 608), the Authority and the City hereby agree to assist the Hospital with the Project, as hereinafter set forth.

We found no documentation indicating four million in funds were provided to the GPRMC; instead, based on records provided, the City expended \$1,599,322.50 related to the site preparation noted above.

We did not question if the hospital project legitimately could be considered an economic development project. The hospital, in addition to providing medical services to the community, is the largest employer in Elk City, employing 410 employees.

The Supreme Court of Oklahoma in **1989 OK 45, 771 P.2d 608** concluded:

Economic development is a public purpose for which a municipality may expend public funds. A municipality may spend public funds for economic development in concert with private actors provided that constitutional requirements are met.

We are unable to substantiate that the *intent* of the hospital project was to gain an electric utility customer.

Specific Concern **The City paid Caswell Construction for the dirt work, parking lot paving, and related work done on the hospital project without bids.**

Finding **We were not able to substantiate the allegation.**

The work performed at the hospital site in relation to concrete and asphalt was performed under two separate bids. Each year the City competitively bid concrete and asphalt work for repairs and construction. The annual bid, based on tonnage units, was initially used for part of the hospital concrete and asphalt project.

Between February, 2009 and November, 2009, the City paid Caswell Construction \$569,243 from the annual contract bid in relation to the hospital project. On November 2, 2009 the City Commission accepted bids related to the hospital paving project in the amount of \$500,264, with a 5% contingency fee (\$525,278 bid with contingency).

Purchase Order 10001868 was created reflecting the \$500,264 amount. Between December 7, 2009 and March 1, 2010, an additional \$493,397 was charged against the second bid.

Based on the documentation we reviewed, it appears the concrete and asphalt work was performed under two separate bids: the City's annual bid and a specific bid finishing the project.

Specific Concern **The chairman of the hospital board set up an arrangement with Former City Manager Hylton in return for a noncompetition clause.**

Background The concern stemmed from Ordinance No. 1089, passed by the City Commission, on July 18, 2007. Ordinance No. 1089 requires that a permit be obtained prior to the construction of some medical facilities:

- No new hospital or ambulatory surgical care facility can be developed without obtaining a permit from the City Clerk.

- An application must be submitted which includes a demonstration of the hospital's or ambulatory surgical care facility's impact on any existing hospital and surgical services in the City.
- The application for permit must be accompanied by a filing fee of (1%) of the capital cost of the proposed the facility with a minimum fee of \$1,000.00 and a maximum of \$30,000.00.

Finding

An ordinance establishing a permit process for future hospitals and ambulatory surgical care facilities appeared to be a common practice.

The July 18, 2007, City Commission meeting minutes reflected a lengthy discussion concerning the aspects of passing Ordinance No. 1089. A hospital spokesman addressed the City Commissioners and expressed his concern of the financial viability of the hospital if there was a competing imagining center or ambulatory surgery center at some future date.

A local physician opposed the ordinance stating, "...he hated for the Commission to take the approach that he would be excluded to run his business to support his family..."

In the July 18, 2007, City Commission meeting minutes the spokesman for the GPRMC indicated other cities such as Grove, McAlester, Yukon, Duncan, Muskogee, Norman that have comparable ordinances. We obtained Ordinance No. 1544 from the City of Duncan, which showed similar language as Elk City's Ordinance No. 1089.

Ordinance No. 1089 was discussed at a public meeting of the City Commission. The Board of Commissioners, by a vote of 3-1, approved Ordinance No. 1089 in what appeared to be a publically cast and recorded vote made during a regular meeting of the City Commission.

We found no evidence to support that former City Manager Guy Hylton had colluded or engaged in an arrangement with the chairman of the hospital board in passing Ordinance No. 1089.

Specific Concern

The City extended utility services to a parcel of land outside the city limits at an additional cost of \$100,000 to the City and at no cost to the land owners.

Finding

The allegation was unfounded.

On September 19, 2007, the owners of the Bull & Bear Ranch L.L.C., requested an 11 acre parcel of land be annexed into the City limits for a housing development.

City of Elk City	
P O Box 1100	
Elk City, OK 73648	
(580) 225-3230	
02/07/2008 9:25 AM	
Receipt No. 0239493	
CR	13,270.80
reimbursement for water line t	
o addition	13,270.80

Total	13,270.80
Cash	0.00
Check 1007	13,270.80

Change	0.00
Bull & Bear Ranch, LLC	
Customer #: 000000	
.	
Cashier: sipes	
Station: CHERYLS	

On October 1, 2007 Ordinance No. 1093 was passed annexing the property classifying it as R-4, Residential Estates District. The property was subsequently divided into 5 lots, each consisting of 2 to 2 1/2 acres.

The owners of the Bull & Bear Ranch, L.L.C. stated that they had paid for the backhoe service to dig the waterlines and reimbursed the city for the additional expense of laying the water line. We obtained a receipt from the city reflecting a payment of \$13,270.80 for “reimbursement for water line to addition.”

We were also provided with an invoice from a private contractor for dirt work related to the water lines. The invoice was to the Bull & Bear property owners in the amount of \$11,415.00 and was dated November 10, 2007, a month following the annexation of the property.

Based on the date of the dirt work invoice, the City appeared to have annexed the land as city property prior to the installation of the water line. Secondly, and perhaps more importantly, the property owner stated that he had reimbursed the city for the expense of installing the water line. We obtained a receipt from the city that corroborates his statement.

Conclusion

This objective covered a number of specific allegations and concerns as addressed to the Office of State Auditor and Inspector. We were not able to substantiate any of the allegations included in this objective.

Objective VI: Possible irregularities and a review of the costs associated with an Elk City public trust authority’s initiative known as the “Rock Yard”.

Background

The City operates a “rock yard” that sells rock to various companies. The concerns related to the rock yard consisted of three specific concerns:

- The rock yard was not profitable and was used as a subsidy to a private company, Caswell Construction.
- Caswell Construction trucks were able to circumvent the rock yard scales by using a back gate entrance.
- The City was not collecting past due balances owed in relation to rock yard accounts.

We have addressed each of these specific concerns separately.

Specific Concern

The rock yard was not profitable and was used as a subsidy to a private company, Caswell Construction.

Finding

The concern was unfounded.

We obtained documentation from the City’s annual auditor showing the revenues and expenses for the rock yard. For the period July 2007 through June 2011, the rock yard revenue exceeded expenses and records reflected an overall profit of \$1,334,605.91. A summary profit/ loss summary is provided in the table below:

City of Elk City Rock Yard Profit/Loss			
Date	Revenue	Expense	Profit / (Loss)
FY 2007	\$ 3,415,743	\$ 2,808,583	\$ 607,160.28
FY 2008	\$ 2,203,522	\$ 2,333,931	\$ (130,409.68)
FY 2009	\$ 2,352,864	\$ 2,000,678	\$ 352,185.39
FY 2010	\$ 1,709,392	\$ 1,565,590	\$ 143,801.79
FY 2011	\$ 2,406,270	\$ 2,044,402	\$ 361,868.13
			\$ -
Total	\$ 12,087,790	\$ 10,753,184	\$ 1,334,605.91

Based on the documentation provided by the City's independent auditor, the rock yard was profitable for the five year period reviewed.

Specific Concern **Caswell Construction's trucks were not crossing the scales at the City owned rock yard and, therefore, not being charged for materials.**

Background Trucks arriving to the rock yard first proceed over the scales to obtain the tare weight or the weight of the truck when empty. After the truck is loaded, the truck again drives over the scales to obtain the gross rate. The amount billed is based on the difference between the tare weight and gross weight.



If a truck avoided driving over the scales, there would be no record of the event, as the records only include those trucks that drove over the scales and were weighed and recorded.

To determine if Caswell Construction was avoiding the scales, we first determined if Caswell was billed by the City for materials from the rock yard.

Finding **Over a three year period Caswell Construction paid the City over \$4 million for rock and sand hauled from the rock yard. Almost 50% of the materials from the rock yard were sold to Caswell Construction.**

We obtained a summary for the period July 2007 through June 2010 showing invoice and payment information for Caswell Construction. Caswell Construction paid the City over \$4 million for rock and sand hauled from rock yard based on this document.

We also performed a comparison of the amount invoiced to Caswell versus the amount invoiced to other companies for the period December 2010 through June 2011. Of the \$1,096,514 in materials sold from the rock yard, 49.6% of the sales were billed to Caswell Construction.

Because Caswell Construction paid in excess of \$4 million for materials sold out of the rock yard for a three year period and accounted for almost half of the material sales in a six month period, we could not substantiate

the allegation that Caswell Construction is or was avoiding the rock yard scales.

Two of the specific concerns related to the amount of rock loss occurring at the yard and the possibility that trucks were avoiding the scales by using a back entrance to the yard.

There was no significant amount of rock loss.

The city's CPA firm, Hunter & Gibbons, reviews the City's purchases, sales, and inventory of rock at the rock yard. The CPA firm compared the amount of inventory against sales and purchases to determine if an abnormal amount of rock loss was occurring.

Through a series of measurements and calculations Hunter and Gibbons estimates the percentage or *rock loss*. According to J.L. Gibbons, the measurements for determining rock loss are not 100% accurate and may vary by 5%. Also, some loss is expected due to moisture or other conditions.

Gibbons estimated the rock loss for 2010 at -3.45% and at +.78% for 2011. According to Gibbons, there was never a material difference in the amount of rock loss based on these annual calculations.

The allegations related to inventory and rock loss were not supported, based on the annual calculations performed by the City's independent audit firm.

Caswell Construction's location and ability to enter and exit the yard without monitoring.

The basis for this allegation is the existence of a back gate to the rock yard. The gate is located close to the Caswell Construction yard therefore, "that would make it possible for a truck to enter and leave the Rock Yard without crossing the scales or showing up on monitoring equipment."

Since the allegation, as communicated, involved avoiding the monitoring system and the scales, there would be no records that could either confirm or refute the allegation, other than the estimated rock loss calculations. Again, these calculations, performed by the Hunter & Gibbons firm, do not support the allegation.

Specific Concern **The City was not collecting the balance due from rock yard accounts.**

Finding **The City was collecting the balance due from rock yard customers.**

We obtained an accounts receivable report for the last seven months of December 2010 through June 2011. During the time period, a total of nineteen (19) customers obtained materials from the rock yard.

Of the nineteen (19) customers obtaining materials from the rock yard, only two (2) carried a balance for over 90 days. One company, Canyon Oilfield Services, showed an over 90 day balance of \$158.60. The second company, Atlas Equipment, showed a 90 day balance of \$17,062.76. This amount was paid in full on October 4, 2011.

For the period examined, the overdue balances represented 3.9% of the total sales. The vast majority of this 3.9% of was attributable to the \$17,062 balance owed by Atlas Equipment that was paid on October 4, 2011.

Based on the records reviewed, we found no basis for the allegation that the City was not collecting amounts owed from rock yard sales.

Conclusion This objective covered a number of specific allegations and concerns as addressed to the Office of State Auditor and Inspector. We found the specific allegations or concerns to be unsubstantiated.

Objective VII. Possible irregularities in the sale of city property to a developer, prior to the new Wal-Mart Supercenter being built.

Background

This concern stemmed from the City's purchase of land in 2003, and its subsequent sale of the property in 2008.

The City originally purchased 72.67 acres located on the south side of Interstate I-40 at a cost of \$2000 per acre for the purpose of expanding the industrial park. City records show that one half of the \$145,340 purchase price was paid from the Capital Improvement Fund and the other half paid from the Industrial Development Authority.

Finding

We found no irregularities in the sale of the property.

On October 7, 2007, the City and Elk City Land Development, LLC (ECLD), entered into an Option to Purchase Real Estate agreement. According to the agreement, ECLD would pay the City a \$10,000 fee for the option to purchase up to seventy-eight acres at a cost of \$6,000 an acre.

The agreement further stipulated that ECLD had the right to exercise its option to purchase the land within 6 months from the date of the agreement. If the option was not exercised, the agreement would be considered null and void and the City would retain the \$10,000. The City received the \$10,000 option payment on October 25, 2007.

The option period would have expired on April 25, 2008. Although the option to purchase agreement had expired, and we found no written exercise of the option, ECLD and the City closed on the purchase of a 55.95 acre tract of land for \$6,000 per acre on June 23, 2008. The City's profit on the sale totaled \$223,800.

Based on the Seller's Settlement agreement, the \$10,000 was applied to the \$335,700 purchase price. On June 23, 2008 the City deposited \$325,120.50¹ which represented the final balance owed by ECLD.

¹ The \$579.50 difference was a result of the shared abstract fees and closing costs.

Also, an April 7, 2008, repurchase agreement, later amended on May 5, 2008, gave the City the option to repurchase the property if the land was not utilized for commercial purposes within four years.

The repurchase agreement provided in relevant part:

Should Development (ECLD) not utilize any portion of that property...for commercial development within four years of its purchase from City, City shall have the right to repurchase said property for the sum of \$6000 per acre.

On June 1, 2009, the City entered into a construction agreement with Wal-Mart wherein the City agreed to construct and install traffic signals, extend utilities, etc. Based on the date of the agreement, ECLD began using the land for commercial development, as required by the repurchase agreement.

Conclusion

Based on the records reviewed, we found no irregularities in the sale or purchase of the property, other than the expiration of the first purchase option, and the possibility that a second option agreement may have been required from the developer.

Objective VIII: Determine if there was a misuse of federal grant funds.

Background The specific concern related to stemmed from an alleged payment of \$10,000 to Mayor Teresa Mullican and a “bonus” payment, of an unknown amount, paid to the former city manager’s spouse, Suzanne Hylton. The payments were purportedly made from the proceeds of a grant obtained by the City in 2006.

Finding **Records of the federal grant were beyond federal record retention requirements. Accounts payable records showed only one payment to Mayor Mullican for a hotel reimbursement and no bonuses paid to Hylton’s spouse.**

The City received a federal grant from the Institute of Museum and Library Services to complete the Route 66 museum. The federal grant consisted of \$98,100 in federal funds and \$116,046 in City matching funds for the period August 1, 2005 through July 31, 2006.

Record retention requirements for federal grants extend to three years beyond the audit reporting deadline, which was December 31, 2006, for FY05-06. The City was not required to maintain the grant records beyond December 31, 2009.

Although not required, the City maintained computer based records related to the grant expenditures. From the computer based records, specifically the accounts payable records, we were able to review payments made to Mullican and Hylton from fiscal year 2004 to present.

Based on the accounts payable records, Mullican received one payment of \$1,094.16 for a hotel reimbursement on September 7, 2004. Hylton received one payment for \$81.66 on January 18, 2006, and another payment of \$59.91 on July 18, 2007. Both payments, which totaled \$139.57, were for “items for displays” or “display materials”.

We found no indication that Mullican received a \$10,000 payment or that Hylton received a “bonus” payment from the grant.

Objective IX. Perform an analysis of any subsidies provided to the Elk City Golf and Country Club.

Background

The Elk City Golf and Country Association, Inc. (“Association”) is a non-profit entity incorporated on March 31, 1955 with a duration period of fifty (50) years².

The City and the Association have entered into various contracts and agreements dating back to April 1, 1955. The 1955 contract included language indicating the Association desired to lease land owned by the City for the purpose of creating a golf course. The same Agreement reflected that the City recognized the creation of the golf course “for the benefit of the City.”

The City agreed to the contract and leased the Association 160 acres of land for \$1 per year for twenty five (25) years. The 1955 lease included the following language:

It is understood and agreed that the Association shall pay for all labor and materials performed and furnished in the construction... of the ... golf course ... and that the City shall in no way be liable for or responsible for any moneys, bills, or credits in connection with the construction and operation of the golf course.

It is further understood and agreed that the Association shall have complete control and authority over the management, operation and control of the golf course...

On February 14, 1969, the City Commission considered a proposal from the Association seeking to purchase 6.9 acres of the 160 acres of land leased from the City in order to construct a clubhouse. The City Commission approved the sale of the 6.9 acres. Subsequently, a warranty deed was provided to the Association conveying the 6.9 acres from the City to the Association.

² The Association’s Certificate of Incorporation expired in 2005 and has not been renewed.

On June 21, 1973, the City and the Association entered into another twenty five (25) year lease agreement for the golf course property, less the 6.9 acres deeded to the Association. The 1973 agreement appears to have been executed, in part, because of damage sustained to the golf course by the construction of a new City dam. The contract states, in part:

WHEREAS, the construction of the new dam ... has created certain maintenance problems for the Association in maintaining the ... golf course, and has created problems and liabilities not then within the contemplation of the parties at the time the original lease was signed, such leakage of the dam has increased maintenance costs of the greens and fairways and has required extensive repairs...

...

WHEREAS, the Association is now unable to carry on the maintenance of the greens and fairways on the present income to the Association and is in need of maintenance help on the golf course proper ...

The 1973 agreement also included the first mention of the City contributing towards the maintenance and upkeep of the golf course, stating, in part:

... The City recognizes the added expense of maintenance and upkeep of the greens and fairways caused by the construction of the lake... and further recognizes that the lake as so constructed has damaged or may in the future, completely destroy two fairways and two greens and the City therefore recognizes the need to assist in the maintenance of the golf course through its park budget.

The 1973 agreement also included language that the City would “consider sharing of costs of certain capital equipment needed to maintain the golf course.”

On November 18, 1998, the City and Association entered into a lease agreement also appearing to be the result of either additional or continued damage caused to the greens and fairways by construction of the dam. The 1998 lease reflected, in part:

WHEREAS, the construction of the new dam... has created certain maintenance problems ... and liabilities not then within the contemplation of the parties at the time the original lease was signed, such leakage of the dam has increased maintenance costs

of the greens and fairways and has required extensive repairs to the same, and,

WHEREAS, the problems caused by the construction of the dam for the new City lake has caused problems and damage to the golf course and has forced the expenditure of large sums of money by the Association to supplement water...

The 1998 agreement, which was the agreement in effect during our audit period, also recognized the City's need to assist in the maintenance of the golf course and fairways and willingness to "consider" sharing the costs of capital equipment needed to maintain the golf course, park and recreation area" on a case by case basis.

Finding

The City and Association have entered into a relationship that, over time, has blurred the line between the public land uses and a private enterprise.

Based on the language in the 1955 agreement, the City leased publicly owned land to the Association in order for this private entity to construct a golf course for the benefit of the City. The same agreement gave the private Association "complete control and authority over the management, operation and control" of the golf course that was to be constructed on public land at the sole expense of the Association.

After the golf course was constructed in 1973, another agreement was executed citing the 1955 agreement and stating that because of "problems and liabilities not then within the contemplation of the parties" the City now recognizes its need to "assist in the maintenance of the golf course through its park budget."

The City, in the 1973 agreement, agreed to assist with the maintenance of a golf course originally constructed entirely by a private association on the City's land.

In 1998 the City reiterated its need to assist the Association with the maintenance of the golf course while also recognizing the Association's continuance of "complete control and authority over the management, operation and control of the golf course."

The Association provided us with a "course guidebook" for the golf course. The guidebook referred to the City's and Associations relationship:

Soon they both joined forces to improve and operate the golf course, and from the start, the Elk City Golf & Country Club and the City of Elk City, have had a history of mutual cooperation in the operation of a facility that is both, fun and affordable for all, self funded, **and both “public and private” at the same time.**
[emphasis added]

Because of this public and private relationship, it was difficult to determine the dividing line between the City (public) and the Association (private).

The City has continued to provide funding to the Association through the salary of a city employee who is the groundskeeper of the land owned by the City. The golf course constructed on the City’s land continues to be managed and operated by a private entity.

Finding

The City has provided an employee to the Association at a cost of \$180,488 over five years. The City employee appeared to function more as an employee of the Association rather than of the City.

According to City officials, the City has one employee, Edmond Hughes, who has worked as a groundskeeper for the golf course for ten or more years. Hughes receives the benefits of a City employee, including participation in the City’s retirement system.

According to Hughes, he is a City employee hired by the “Greens Committee” of the Board of Directors for the Country Club with the approval of the City. Hughes has always understood that although he is a City employee, he actually works for the Board of Directors for the Country Club.

Between 2007 and 2011³, the City paid Hughes \$264,748. The Association, in turn, reimbursed the City \$84,260 towards Hughes’ pay, resulting in a net cost to the City of \$180,488:

³ Calendar years.

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Year (Calendar)	Total Paid by City	Amount Reimbursed By Country Club	Total Cost to City	% Paid by City	% Paid by Country Club
2007	\$50,818	\$23,217	\$27,601	54%	46%
2008	\$52,946	\$24,417	\$28,529	54%	46%
2009	\$52,952	\$24,417	\$28,535	54%	46%
2010	\$52,957	\$12,209	\$40,478	77%	23%
2011	\$55,076	\$0	\$55,076	100%	0%
Totals	\$264,748	\$84,250	\$180,488	68%	32%

The 1998 agreement was in effect during the 2007-2010⁴ period in which reimbursements payments were made from the Association to the City, including the provision that the Association spends “at least \$14,639.92 per year on the upkeep, maintenance and repair of the golf course” and that the City “agrees to appropriate the sum of \$600 per month for the purpose of maintaining and caring for the greens and fairways...”

Hughes understood that he was paid by the City and that the Country Club reimbursed the City for half of his pay. He does not know how that arrangement was made. Likewise, we asked the City Clerk about this 54%-46% pay arrangement and were told that she was unsure how this calculation was determined.

On July 20, 2011, the City and Association entered into another lease agreement. According to Hughes, as well as City Manager Archer, the 2011 agreement put in writing the practices that had already been a custom for the previous years. The 2011 agreement contains the following language related to the salary of a City employee who serves as a greens-keeper:

The City agrees to annually appropriate during the City’s normal budget process specific funds to aid in the maintaining and caring for the greens and fairways. This position will be a City employee who shall receive all the benefits of other City employees and whose salary shall be established in the same manner as other City employees. The greens-keeper position is classified at a grade 23 with a salary range as of July 1, 2011 from \$41,552.38 to \$58,942.85. The Association shall have the authority to hire or terminate the greens-keeper with the approval of the City Manager, which approval shall not be unreasonably withheld.

⁴ The last 2010 reimbursement payment was made on June 10, 2010.

Although the July 20, 2011, agreement reflected that the City would pay the entire salary, we noted the Association had stopped contributing a portion of Hughes salary. During calendar year 2011, the City paid \$55,076 in salary and benefits for Hughes to serve as the greens-keeper for the golf course, the amount of which is included in the preceding table.

Noting that the 2011 contract provisions seemed to give the Association control over a City employee, we asked Greens-Keeper Hughes about his job position. As previously noted, Hughes told us he has always understood that he worked at the direction of the Association Board of Directors.

In another example of the blurred lines between the public and private aspect of this joint golf course venture, we found that the City is paying for a City employee who works at the direction of and can be hired or terminated by the private entity, with the approval of the City and “which approval shall not be unreasonably withheld.”

Finding

The City has provided potable water to the Association. The water was not metered, and we have no means to determine the actual value of the water provided.

Over the years, the City has provided the Association with grey water from the City’s wastewater treatment plant. This arrangement has been mutually beneficial to both the City and the Association. The City has been provided a cost effective means to dispose of excess grey water, which otherwise would require additional expense related to daily testing of the water. The Association benefits by being provided water suitable for irrigation of the golf course.

Because of the drought conditions that have persisted in Western Oklahoma for the last several years, the Association was unable to obtain sufficient quantities of grey water from the City. As a result, the City provided unmetered potable water to the Association for irrigating the golf course.

Because the potable water was unmetered, we have no means to determine the quantity, cost or value related to the potable water that was provided to the Association.

Finding **The City has purchased equipment and supplies for the Association. The Association reimbursed the City for all of the purchases.**

In the Agreements between the City and the Association, the City agreed to assist the Association with the purchase of equipment necessary to maintain the golf course.

The 1973 Agreement included the following language:

The City shall consider sharing the cost of certain capital equipment needed to maintain the golf course, park and recreation area on a case by case basis when submitted by the Association to the City.

The 1998 Agreement, in effect during our audit period, included the following language:

The City shall consider the sharing of costs of certain capital equipment needed to maintain the golf course, park and recreation area on a case by case basis when submitted to the City.

According to City Manager Archer, when the Association needed the City to purchase an item a representative of the Association would meet with the City Manager. The Association representative would already know what item needed to be purchased, the cost, and where the item could be purchased. The City would then purchase the item using a City purchase order and following the City's procedures. Once the item was received the cost of the item would be reimbursed by the Association.

We asked the City for an accounting of all of the purchases the City made on behalf of the Association for our audit period⁵. The City provided records showing the purchase of chemicals and equipment on four (4) separate occasions. In each case, the Association reimbursed the City for the full amount of the purchase.

⁵ July 1, 2007 through June 30, 2011.

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Date	PO #	Vendor	Item(s)	Amount	Reimbursed
6/30/2008	900031	Northwest Golf Cars	Yamaha Utility Vehicle	\$4,525.00	\$4,525.00
2/4/2009	9003867	Estes, Inc.	Chemicals	\$11,106.00	\$11,106.00
2/13/2009	9004136	P&K Equipment	Fairway mower	\$8,500.00	\$8,500.00
8/7/2009	10000537	Outdoor Water Solutions	Deluxe air windmill	\$2,236.70	\$2,236.70
			Totals	\$26,367.70	\$26,367.70

In addition to the four (4) purchases noted above, a fifth purchase was made on June 30, 2008, for a greens mower, purchased from P&K Equipment. The City issued a payment for the \$26,375 purchase price. The payment was returned to the City by P&K Equipment, because the Association had already paid for the mower.

Finding

The use of the City’s tax exempt status for purchases made on behalf of the Association should be reviewed by the City and the Oklahoma Tax Commission.

Under ordinary circumstances, when a city makes purchases for supplies or equipment that are for use on city property, the City is not required to pay sales tax on those purchases. If, for example, the City purchased a mower that was to be used for the City’s benefit, and the mower became an asset of the City, the tax exempt status would not be questioned.

In this case, however, the City purchased items that were for use on land owned by the City but controlled, operated and managed by the Association. Moreover, the Association reimbursed the City for the cost of the equipment and, as a result, City officials did not consider the items purchased to be city property. The purchased items also do not appear on the City’s asset inventory list.

In the July 20, 2011, agreement between the City and the Association, we noted the following language:

The City will coordinate with the Association on a case-by-case basis to allow the purchasing of equipment through the State of Oklahoma Purchasing Agreements and to utilize the City’s tax-exempt status for purchasing of specific materials and equipment to be utilized for maintaining or improving or caring for the golf course.

As previously noted, this type of “public and private” relationship causes a blurring of lines separating the public aspect from the private aspect.

Recommendation The Oklahoma Secretary of State has the Association recorded as a “domestic for profit business corporation.” Since the Association was originally a nonprofit corporation, as per its articles of incorporation, it should clarify its status and obtain a tax exemption under its own name, then administer its own purchasing, rather than using the City’s tax exempt status.

Subsequent Events During our fieldwork the City was in the process of purchasing two mowers for the Association. When we questioned the practice of the City purchasing items for the Association the purchase orders were cancelled. According to the City Manager, the City stopped the practice of buying items for the Country Club.

Objective X. **A review of the circumstances related to the city administration not implementing a new city charter twice passed by a vote of the people.**

Background

There are certain statutory and constitutional requirements that a City must follow when adopting and/or amending a municipal charter.

The City of Elk City sought to amend its City Charter. The publication requirements for municipal charters are set forth in **11 O.S. § 13-106**, which provides:

Within twenty (20) days after the receipt of the proposed charter from the board of freeholders, the governing body shall publish the proposed charter and an announcement of the date for the charter election in a newspaper of general circulation within the municipality once per week for three (3) consecutive weeks. The date for the charter election shall not be less than twenty (20) days nor more than thirty (30) days after the last publication.

11 O.S. § 13-107 requires approval of the proposed charter by the Governor.

The Oklahoma Constitution adds a distinction in the publication requirement noting whether the local publication is a daily or weekly paper. According to **Article 18 § 3a** of the **Constitution of Oklahoma**:

...Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twenty-one days, if in a daily paper, or in three consecutive issues, if in a weekly paper, and the first publication shall be made within twenty days after the completion of the charter; and within thirty days, and not earlier than twenty days after such publication, it shall be submitted to the qualified electors of said city at a general or special election, and if the majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the Governor for his approval...

Similarly, Attorney General Opinion, **1981 OK AG 27** provides in relevant part:

...a charter proposed for adoption by a municipality and notice of the charter election must be published in a newspaper of general circulation in the municipality. The proposed charter and election notice must be published in the newspaper a minimum of 21 days, if the paper is a daily publication, or in three consecutive issues of the newspaper, if the paper is a weekly publication.

The following timeline represents the events leading to the passing of the amended City Charter:

- The October 21, 2009, City Commission meeting minutes reflect the initial discussion related to amending the 1929 City Charter.
- On November 2, 2009, the City Commissioners authorized the creation of the Charter Review Committee to provide recommendations for the upcoming City Charter election.
- On May 19, 2010, the City Commissioners approved the proposed City Charter and authorized the calling of an election.
- On May 26, 2010, Resolution 2010-3 was adopted authorizing the calling of an election for the purpose of amending the City Charter.
- On July 27, 2010 a special election was held and the citizens voted in favor of the proposition amending the City Charter.
- The October 4, 2010 City Commission minutes reflect a discussion indicating that the Governor's office did not ratify the Charter amendments because the notice of election was not published in a local newspaper of general circulation. Also on this date, the City Commission approved Resolution 2010-5 calling for another election for the purpose of amending the City Charter.
- The notice of election for the second attempt to approve amendments to the City Charter was published in a local newspaper on March 18th, March 23rd and March 29th of 2011.

- On April 5, 2011 the citizens voted in favor of the proposed City Charter amendments.
- The Governor's office again declined to ratify the City Charter amendments. Specifically, Elk City published only a brief summary of the proposed changes rather than adequately describing the proposed language changes in the charter.
- The September 21, 2011 the City Commissioners discussed holding a third election to ratify amendments to the City Charter.
- On January 3, 2012, the City Commissioners approved Resolution 2012-1 calling for the third special election to approve amending the City Charter.
- The notice of election was published in a local newspaper twenty-one times from January 17, 2012 through February 14, 2012.
- On April 9, 2012 the amended City Charter was approved by the Governor.

Finding

Statutory and Constitutional requirements were not followed by the City, causing two failed attempts to approve the amended City Charter.

The City Commissioners began the process of amending the City Charter during the October 21, 2009 meeting. The Citizens subsequently approved the proposed changes to the City Charter on July 27, 2010. However, the City did not follow the provisions set forth in **11 O.S. § 13-106** requiring the notice of the election be publicized in a local newspaper of general circulation. Accordingly, the Governor's office declined to ratify the charter amendment.

On April 5, 2011, the citizens again voted in favor of amending the City Charter. However, based on an interview with a representative from the Governor's office, the publication did not adequately describe the language in the City Charter being changed.

There are significant publication costs required during the process of amending a charter because of the publication requirements. During the various attempts to amend the City's charter, a local newspaper published an article questioning the publication costs.

Title **11 O.S. § 13-111** indicates that amendments to a charter shall follow the requirements detailed in **Sections 13-106** and **13-107**. According to **11 O.S. § 13-106**, the proposed charter and the announcement of the election date shall be published in a local newspaper “once per week for three (3) consecutive weeks.” **11 O.S. § 13-106** makes no distinctions concerning daily or weekly publications.

Article 18 § 3a of the **Constitution of Oklahoma** makes a distinction between weekly and daily newspapers reflecting, in relevant part:

Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twenty-one days, if in a daily paper, or in three consecutive issues, if in a weekly paper...

Attorney General Opinion, **1981 OK AG 27** provides in relevant part:

...a charter proposed for adoption by a municipality and notice of the charter election must be published in a newspaper of general circulation in the municipality. The proposed charter and election notice must be published in the newspaper a minimum of 21 days, if the paper is a daily publication, or in three consecutive issues of the newspaper, if the paper is a weekly publication.

In the various attempts to change the City’s charter issues were raised in relation to the actual publication requirements, the three (3) day requirement delineated in **11 O.S. § 13-106** or the twenty one day (21) day requirement delineated in **Article 18 § 3a** and **1981 OK AG 27**.

With respect to the costs of publication for the failed attempts and the successful attempt, the City Attorney stated that he essentially erred on the side of caution using the broadest interpretation of what appeared to be conflicting requirements.

Objective XI. Review other areas of concern.

Background During our review of the City's records we noted city employees had been receiving a discounted rate for water and sewer services.

The practice/custom was that city employees would be billed the minimum water/sewer rates based on whatever the prevailing minimum billing was in effect at the time regardless of the actual water use.

Finding **Employees and officials may have been provided discounted services at a cost to the city in excess of \$50,000 per year.**

We obtained account histories for twenty (20) employees who had received the discounted rate. Using the account histories, we determined the usage amounts and the non-discounted charges for those consumption amounts. We then compared these calculated usage rates to the actual payments made by the city employees who had received a discounted price.

From the accounts tested, the City employees were provided discounts totaling \$8,900 for calendar year 2011 for an average of \$445 per account.

We asked the City Manager for an estimate of the number of accounts that may have received a discounted rate. Taking into account current and past employees, employee turnover, and retired employees the City Manager estimated between 120 and 150 accounts annually.

Based on the average discount per account of \$445 and the *estimation* of 120-150 accounts the City may have provided a discount of between \$53,400 and \$66,750 for calendar year 2011.

According to city officials, the discounted pricing has been a practice since the early 1980's. However, we are reluctant to provide an overall estimate of the discounts for preceding years due to fluctuations in the water and sewer billing rates. Moreover, 2011 may represent an anomaly in the average discounted amounts due to the drought conditions occurring in Western Oklahoma during 2011.

Finding **There was no authority for the discounted services.**

According to the city clerk, no authority had been found for the discounted rate that was applied to the city employees.

City Manager Anita Archer provided a copy of a letter that was mailed to employees. The letter, dated April 16, 2012, also noted that no authority had been found for the practice of billing employees only for minimal water usage. According to the letter, the practice was to end effective May 1, 2012.

A newspaper article, dated May 11, 2012, indicated the City Commission would “meet informally” to discuss possible pay raises for city employees to “offset the recently canceled practice of charging employees only the minimum water utility bill each month.”

On reviewing the meeting minutes for the Commission and the Public Works Authority, we found no discussions ending the practice of minimal billing for city employees. We found only one discussion relating to discounted water rates in 2012 minutes on May 7, 2012, a few days preceding the newspaper article:

Shelton also commented about the City employee water rates. Mullican stated that the Commission had discussed this issues in the budget meeting and it would also be discussing in the next meeting on Monday. She stated that at this time the Commission has to enforce the Resolution in affect at this time. Shelton also stated that the water rates has not been effect for the volunteers all this time, but only after taking over the ambulance service as a way of repaying them for all the licensing they had to do.

We reviewed the minutes for the subsequent meetings held on May 16, 2012 and June 4, 2012 but found no other discussion related to the discounted water issue.

Subsequent Event The practice of providing discounted water rates ended effective May 1, 2012. On June 3, 2013, the City Commission approved a motion “absorbing the lost revenue attributable to active and retired city employees discounted water rates incurred up to May 1, 2012.”

Based on the minutes, the decision to absorb the cost was made, in part, because of the substantial amount of time it would take to determine the exact amounts of the discounts over the previous decades.

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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