

PETITION AUDIT REPORT

TOWN OF MEDICINE PARK

June 1, 2009 through June 30, 2013



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

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Oklahoma State Auditor & Inspector

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May 30, 2014

To the Citizens and Petitioners of the
Town of Medicine Park, Oklahoma:

The petition request from Medicine Park citizens for this special audit was a product of suspicions that individuals in public leadership positions were not exercising proper fiduciary oversight of public funds and/or were inappropriately diverting public funds for private use.

Based on these allegations, our investigative efforts were directed toward the relationships held and transactions conducted between the Town of Medicine Park, the Medicine Park Economic Development Authority, and the Medicine Park Museum of Natural Science, Inc.

Our investigation revealed a series of events that indicated an absence of governmental oversight for an economic development project financed with public funds:

- Acceptance of certain contractual conditions by the Authority, thereby resting responsibility for the Museum's development, construction, and management under the control of a non-profit corporation;
- Fund balance transfers from an account entrusted to the Authority to a corporation's bank account, thereby placing the acceptance of financial support and expenditure of public funds at the discretion of a private entity; and
- Individuals serving in dual capacity roles as Town Trustees, Authority Trustees, and Museum Directors, which, in and of itself, may not be inappropriate but creates a conflict of interest when clear lines of separation and authority are crossed, leading to citizen mistrust in the relevant governing boards.

A State of Oklahoma Supreme Court decision, rendered as early as 1946, plainly states that public funds may not be appropriated to a private corporation without governmental supervision or control. Without doubt, the Authority relinquished fiduciary oversight and governmental control with the transfer of public funds to the Museum, regardless of the length of time the Museum controlled these project donations and expenditures.

Financing the construction and operation of the museum is an appropriate use of the Authority for economic development purposes and the formation of a private not-for-profit foundation to support the museum is a worthwhile endeavor; however, the Museum appeared to be structured as an "*alter ego*" to the Authority, thereby circumventing the authority and duties of MPEDA.

Forfeit of the Authority's fiduciary responsibility presents a breach of public trust; when coupled with a growing mistrust in the governing boards' leadership, as evidenced by the citizen petition request itself, could seriously undermine public confidence in the future management of the Town government.

An effort to rebuild this trust and restore public confidence requires a clear understanding of the lines of responsibility between the Authority and the Museum. As a public trust, MPEDA should resume authority over the construction, management, and operation of the museum project and a written contractual agreement defining duties of the private foundation and the Authority should be established. Further, a corrected deed of the property transaction should be filed; rescinding the conditional provision which allows for the possible reversion of the property back to the original donors and a withdrawal should be made of any contractual provision which allows for the control of public funds by a private entity without governmental supervision.

Most importantly, issues concerning the construction and operation of the museum should be discussed and documented in a manner consistent with the Open Meeting Act and the Open Records Act. The citizens of Medicine Park should expect no less than a full account of public funds and an assurance of proper fiduciary oversight of such funds. Fulfilling these responsibilities will go a long way toward restoring trust and confidence in the management of the Town of Medicine Park's government.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Jones". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

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INTRODUCTION

The *Town of Medicine Park* (hereinafter Town), located in Comanche County Oklahoma, operates under the statutory Town Board of Trustees form of government, as outlined in **11 O.S. § 12-101, et. seq.** The Board consists of five (5) Trustees each nominated at large without regard to their place of residence within the corporate limits of the Town. These same five Trustees serve as the Board for the Public Works Authority (hereinafter PWA)

On March 18, 2014, the Medicine Park Public Works Authority added a surcharge of \$5.50 per month to each utility account to cover the cost of this audit.

As of June 30, 2013, the Town Board was comprised of the following:

- Dwight Cope Mayor
- Candace McCoy Vice-Mayor
- Buddy Dye Trustee
- Odus Hennessee Trustee
- Marty Hill Trustee

Other town officials as of June 30, 2013 were:

- Lee Hibbetts Clerk
- Karin Julin-McCann Bookkeeper/ Court Clerk

The *Medicine Park Economic Development Authority* (hereinafter MPEDA or Authority) is a public trust of the Town. It was established in April 1995 under **60 O.S. §§ 176-180.**

As of June 30, 2013, the MPEDA Board was comprised of the following:

- Candace McCoy Chairperson
- Charles Callich Trustee
- Dwight Cope Trustee
- Buddy Dye Trustee
- Brian Morris Trustee

The *Medicine Park Museum of Natural Science, Inc.* (hereinafter MPMNS or Museum) was incorporated as a not-for-profit corporation under the provisions of **18 O.S. § 1001** on February 23, 2010.

At June 30, 2013, the MPMNS Board was comprised of the following:

- Dwight CopePresident
- David McCoy Vice President
- Candace McCoy Secretary/Treasurer
- Phil Kennedy Member
- Bill King Member
- Jean Schucker Member

Other Museum officials as of June 30, 2013 were:

- Doug Kemper Executive Director
- Rainette RowlandAssistant to the Executive Director
- Clark Brown Director of Marketing & Creative Services

The *Medicine Park Planning and Preservation Commission* (hereinafter PPC) shall be composed of at least five (5) voting members and has jurisdiction over all land within the corporate limits of the Town of Medicine Park.

At June 30, 2013, the PPC Commission was comprised of the following:

- Hank Sabine Chairperson
- Clark Brown Secretary
- Mike Hibbetts Member
- David McCoy Member
- Charley Wright Member

OVERVIEW

The Medicine Park Economic Development Authority was established in 1995 as a public trust of the *Town of Medicine Park* under the provisions of **60 O.S. § 176-180**. A distinct purpose of the Authority was to promote, finance and develop recreational, cultural, tourism and entertainment facilities within the boundaries of the Town of Medicine Park.

Consistent with this defined purpose, Town and MPEDA trustees began planning for the development of a regional natural science museum in Medicine Park during the early months of 2009. If successfully implemented, MPEDA and the Town Board held that such a museum would benefit Medicine Park through greater economic development, increased sales-tax collections, and growth in population.

In June 2009, MPEDA hired Doug Kemper as the Executive Director/Project Manager for the future museum. Kemper had previously served as an initial planner of the Oklahoma Aquarium in Jenks. During the final months of 2009, planning, sketching and phase development continued. The first donation to the Museum was received in December 2009, between this time and September 2012, individual and business donors contributed more than \$71,000 for museum construction.

In February 2010 the *Medicine Park Museum of Natural Science* (Museum) was incorporated as a not-for-profit entity by Dwight Cope, Candace McCoy, and David McCoy. The Internal Revenue Service granted the Museum tax-exempt status on March 4, 2011; and the Museum was registered as an Oklahoma Charitable Organization on June 29, 2012.

Since 2009, individuals served in dual capacity roles as Town Trustees, MPEDA Trustees and Museum Officers/Directors. Specifically, Dwight Cope and Candace McCoy served on all three boards including the Town of Medicine Park, MPEDA and the Museum beginning in April 2013.

As the progression of the museum project continued, the Town Board authorized MPEDA, in 2011, to incur debt as a guarantor of a \$300,000 Comanche County Industrial Development Authority (CCIDA) Loan and to provide a minimum of \$90,000, over a three-year period, for design and development of the Museum.

On July 22, 2011, David and Candace McCoy donated eight (8) acres of land to MPEDA for the specific and sole purpose of locating and developing the Museum, a non-profit 501C(3) institution. A “*Property*

Donation Agreement” was executed in conjunction with this agreement with two issues addressed as conditions of the property donation. Acceptance of the first condition rested responsibility for the Museum’s development, construction, and management and operations under the control of a non-profit incorporated entity; thereby placing associated public funds at the discretion of a private entity.

Acceptance of the second condition presented the possibility that progress and improvements would be completed on the donated land, but the property would revert back to the McCoy’s ownership in an enhanced state without due consideration given in return for public financing. To address criticism of the “*reversion clause*” in the Property Donation Agreement, on September 6, 2012, David and Candace McCoy executed a document stating, “*The McCoy’s release all claims with the stipulation the site must be used for the MPMNS or a like purpose....*”

As management of the Museum’s finances was uncertain, MPEDA voted in June 2012 to transfer all funds from the MPEDA Museum account to the non-profit Museum. From June 2012 until May 2013, all financial support received and all expenditures made were carried out under the authority and control of the private non-profit Museum.

A portion of the Museum funds was returned to MPEDA in March and May 2013. However, more than \$230,000 of the original transfer of funds remained with the Museum. In addition, the funding by MPEDA of Museum expenditures continued. During the period of May 2013 through October 2013, the Museum incurred over \$39,000 in expenses. On December 31, 2013, the Museum invoiced MPEDA for reimbursement of these expenses. MPEDA paid this invoice in full.

The petition request from Medicine Park citizens for the special audit was circulated in February, 2013 and certified as having the necessary signatures by the Comanche County Election Board on February 15. Petitioner concerns involved allegations that individuals in public leadership positions were not exercising proper fiduciary oversight of public funds and/or were inappropriately diverting public funds for private use.

Objective I Determine if possible violations of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act have occurred

Background

Public policy of Oklahoma directs “*that the people are vested with the inherent right to know and be fully informed about their government*”. The Open Meeting and Open Records Acts, as outlined in **25 O.S. §§ 301-314 and 51 O.S. §§ 24A.1 - 24A.29** respectively, were designed “*to encourage and facilitate an informed citizenry’s understanding of the governmental processes and governmental problems*” by granting public access to the meetings and records of government officials.

If individuals or organizations believe that their rights to public access are threatened, a barrier of mistrust between public servants and the citizens can develop. Familiarity with each of these acts is essential to any public body seeking to operate effectively.

The Office of State Auditor & Inspector conducted a review of the board meeting minutes and open records requests for Medicine Park, for the period of July 1, 2009, through June 30, 2013. The potential violations of these acts reported are marginal when considered on an individual basis; however, an accumulation of open-meeting and open-records violations over time can create a disruption in the management of any public entity.

Open Meeting Act

Finding 1

The Medicine Park Economic Development Authority conducted executive sessions that were not allowable under state statute.

25 O.S. § 311(B)(2) stipulates, “*If a public body proposes to conduct an executive session, the agenda shall contain sufficient information for the public to ascertain that an executive session will be proposed, identify the items of business and purposes of the executive session, and state specifically the provision of Section 307 of this title authorizing the executive session.*”

On July 19, 2012, MPEDA entered into an executive session “*to discuss issues with MPEDA’s contractual agreement with the Medicine Park Museum of Natural Science and possible monies owed to Doug Kemper*”. The meeting agenda cited **25 O.S. § 307(B)(1)** as authority for the executive session which permits “*....discussing the employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee*”.

2005 OK AG 29 opined, in part, *“While a public body may hold an executive session to discuss hiring ‘an individual salaried public officer or employee’, it cannot do so if it is merely awarding a contract to an independent contractor.”*

Discussion of monies owed to an independent contractor does not appear to meet the criteria for an executive session pursuant to **25 O.S. §307(B)(1)**. As such, MPEDA should not have discussed obligations owed to Doug Kemper, an independent contractor, in an executive session.

Additionally, on May 14, 2013, MPEDA entered into an executive session to, *“Discuss and Take Action to convene in Executive Session....to discuss status of the Marty Hazelwood MPEDA loan.”* The meeting agenda cited **25 O.S. § 307(B)(1)** as authority for this executive session.

Discussion of a board member’s MPEDA loan also does not appear to meet the definition of an executive session as established under this statute.

Finding 2

The Medicine Park Museum of Natural Science did not conduct public meetings as required by the Oklahoma Open Meeting Act.

25 O.S. § 304(1) defines public bodies in part as *“all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, or any entity created by a public trust, including any committee or subcommittee composed of any of the members of a public trust”*.

1980 OK AG 215 opined, *“The Open Meeting Act applies to meetings of the board of directors of a nonprofit corporation, where such corporation has contracted with a city and a public trust for the operation, maintenance, and improvement of public property, and where the city makes annual appropriations to the public trust to pay to the corporation as an operating fee, where such meetings are held for the purpose of discussing business concerning such matters.”*

This opinion further states, *“...courts from other jurisdictions have not hesitated to apply open meetings statutes to corporate instrumentalities which have been charged with performing public functions and exercising decision-making authority on behalf of governmental entities. Such decisions have brought corporate entities within the ambit of open meetings statutes, even though the strict letter of the open meetings statutes involved may not have specifically embraced corporations exercising delegated public functions or decision-making authority.”*

The Medicine Park Museum of Natural Science is a private, non-profit organization that received funding from MPEDA, state agencies, counties and a public trust authority. As such, the Museum was entrusted with expending public funds and administering public property, and, therefore, would appear to be subject to the Open Meeting Act. Public meetings were not held by the Museum.

Finding 3

The Medicine Park Economic Development Authority appears to have conducted meetings at scheduled times.

The citizen petitioners of Medicine Park showed concern that MPEDA board meetings were not held at the appointed time. Specifically, that the meetings started earlier than was indicated on the meeting agenda, thus allowing business to be conducted before the public was in attendance.

25 O.S. § 303 stipulates that all meetings of public bodies “*shall be held at specified times and places which are convenient to the public and shall be open to the public*” and “*shall be preceded by advance public notice specifying the time and place of each such meeting to be convened as well as the subject matter or matters to be considered at such meeting*”.

60 O.S. § 178(D) stipulates, “*Meetings of trustees of all public trusts shall be open to the public to the same extent as is required by law for other public boards and commissions.*”

MPEDA meeting notices specified that meetings would begin at 7:00 p.m. “*or immediately following PPC*”; referring to the Town Planning & Preservation Commission. Between July 1, 2009, and June 30, 2013, MPEDA held 41 meetings. According to the meeting minutes, MPEDA called 16 meetings to order earlier than 7:00 p.m., with start times ranging from 6:37 p.m. to 6:59 p.m.

Although meetings began prior to 7:00 p.m., the meeting agenda properly advised that meetings might begin prior to 7:00 p.m. stating, “*or immediately following PPC*”. We could find no statutory requirement that would not allow MPEDA to conduct meetings following another meeting, as long as this information was properly communicated in the meeting agenda.

Finding 4

Executive session issues were acted upon in a case where the meeting agenda did not authorize such action.

25 O.S. § 311(B)(1) stipulates, “*All agendas required pursuant to the provisions of this section shall identify all items of business to be*

transacted by a public body at a meeting, including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act.”

The July 19, 2012, MPEDA meeting agenda included an item to “*discuss and take action to enter into Executive Session*”, but excluded a proposal to take action on the matter discussed in the executive session.

According to subsequent meeting minutes, MPEDA ended the executive session and took immediate action; voting to authorize payments to Doug Kemper, although taking action was not specified on the meeting agenda.

Open Records Act

Finding 1

Some open records requests submitted to the Town were not met in a timely manner.

51 O.S. § 24A.5 provides in part, “*A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.*”

60 O.S. § 178(D) stipulates, “*Records of the trust and minutes of the trust meetings of any public trust shall be written and [...] available for inspection by any person during regular business hours.*”

The Office of State Auditor & Inspector reviewed open records request from March 2009 through July 2013. The *average* number of business days between a request and the Town’s delivery of records was approximately four days, which would seem to constitute “*prompt, reasonable access*”.

However, two requests; one made on March 19, 2013, and another made on May 2, 2013, were not met for 23 days and 53 days, respectively. To fulfill the request made on March 19 required 88 copies and approximately 8 hours of research; the request from May 2 involved providing 13 copies and approximately 1 hour of research time.

Finding 2

A written schedule of fees charged for records requests was not posted with the county clerk as required by statute.

51 O.S. § 24A.5(3) requires that any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

On April 16, 2013, the Town Board voted to “*adopt the Oklahoma City fee schedule for request for inspection and copying of records, changing the CD copy charge to \$10 to reflect the current charge the Town previously adopted*”.

We obtained the Oklahoma City fee schedule and determined that fees charged by the Town of Medicine Park are the same as Oklahoma City, as adopted and approved by the Medicine Park Board.

We confirmed the Town’s fee schedule was posted at town hall but was not posted with the County Clerk’s Office as required by **51 O.S. § 24A.5(3)**.

Finding 3

The Museum does not comply with the Oklahoma Open Records Act.

51 O.S. § 24A.3(2) defines a public body as “*any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust, or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof.*”

The Museum is a private, non-profit organization that received funding from MPEDA as well as state agencies, county government, and a public trust authority. As such, the Museum was entrusted with the expending of public funds and the administration of public property, and therefore, would appear to be subject to the Open Records Act.

Objective II Determine if possible conflicts of interest exist between Town Trustees and the Medicine Park Museum of Natural Science, Inc.

Conflicts of Interest - Board Relationships

As of June 30, 2013, Dwight Cope and Candace McCoy served on the Board of the Town of Medicine Park, the Medicine Park Economic Development Authority Board, and the Museum Board. David McCoy served as the Town's Fire Chief, as a member of the Planning & Preservation Commission, and as an officer of the Museum Board.

Although there could be a perceived conflict of interest and fiduciary duties may be in conflict when working on each side of the same transaction, a review of the relevant statutes identified no statutory provisions that prohibit individuals from serving on boards concurrently, or from holding multiple positions within a municipality.

Conflicts of Interest - Financial

- On February 1 and March 20, 2013, the Museum paid McCoy Development \$6,055 for cobblestone and brick labor and \$1,300 for building materials, respectively. Candace McCoy, co-owner of McCoy Development and an MPEDA trustee at the time of payment signed the checks as a Museum Director.

60 O.S. § 178.8(A) stipulates that a conflict of interest shall exist in any contractual relationship in which a trustee of a public trust, or any for-profit firm or corporation in which such trustee or any member of his or her immediate family is an officer, partner, or principal stockholder, shall directly or indirectly buy or sell goods or services to, or otherwise contract with, such trust.

Although MPEDA did not make the payment directly to McCoy Development, the funds used in payment were MPEDA funds transferred to the Museum; a transfer of public funds for use by a private entity.

- Dwight Cope is the Mayor of Medicine Park and an MPEDA trustee. His spouse contracts with the Town as a Bath Lake Swim Monitor during the summer months.

This contract could constitute a violation of **11 O.S. § 8-113(A)(2)** which stipulates that 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 contract with the municipality.

Conflicts of Interest - Revolving Loan Fund

Since the mid-1990s, MPEDA has operated a Revolving Loan Fund. The purpose of these funds is to foster “*economic development*” in Medicine Park by providing business loans.

The two initial funding sources of the Revolving Loan Fund were a Rural Business Enterprise grant of \$100,000 from the U.S. Department of Agriculture and an OK-LEAP grant of \$100,000 from the Oklahoma Department of Commerce.

Prior to 2011, MPEDA’s management of the Revolving Loan Fund program was inadequate. As required by the MPEDA Trust Indenture, the Town did not maintain files to support loan transactions; or the files provided were insufficient or incomplete.

Most of the MPEDA loan fund records were provided by a former contract employee of the Town. Additional information was obtained from the Oklahoma Department of Commerce.

- In February 2001 and August 2006, MPEDA made a loan to Marty Hazelwood Hill’s business, Winery of the Wichita’s (hereinafter Winery). Hill was not an MPEDA trustee when the loans were initially awarded. Hill was an MPEDA trustee, however, when the loans were refinanced in May 2010 and February 2011.

On two occasions the MPEDA Board approved credit to be applied to the revolving loan of Hill. A \$5,146 credit was approved on May 11, 2010, and a \$1,000 credit was approved on March 7, 2011. Hill was an MPEDA trustee at the time of these transactions and voted for the approval of the March 7 credit:

Item 2: Loan Credit to Winery for Waterline Construction: Candace moved to recommend to PWA to approve a credit of \$5,146.10 be applied to the Winery of the Wichitas Revolving Loan for waterline construction. Second by Dwight Cope. Marty Hazelwood abstained. All others voted aye, motion carried.

15. \$1000 Credit for M. Hazelwood RFL Loan: Dwight Cope moved to approve a \$1,000 credit on the current MPEDA revolving loan for Marty Hazelwood for miscellaneous MPEDA event support via the Winery of the Wichitas/Buffalo Bistro. Second by L. Hibbetts. All voted aye, motion carried.

Entering into new financing agreements and applying payments defined as “credits”, totaling more than \$6,000, while serving as a trustee at the same time, appeared to be a violation of **60 O.S. § 178.8(A)**. This statutory provision stipulates that a conflict of interest shall exist in any contractual relationship in which a trustee of a public trust, or any for-profit firm or corporation in which such trustee or any member of his or her immediate family is an officer, partner, principal stockholder, shall directly or indirectly buy or sell goods or services to, or otherwise contract with, such trust.

In July 2011, Hill was removed as an MPEDA trustee, but remained a trustee of the Town Board. In October 2011, the Bank of the Wichita’s foreclosed on the Winery’s mortgage. After this foreclosure, the following three transactions took place:

Transaction One - The Town of Medicine Park accepted the following invoice and then purchased the restaurant equipment from the lien holder of the Winery. The Town paid the creditors \$2,927.22, issued on Check 1086, from the MPEDA Museum Fund account:

PURCHASER: THE MEDICINE PARK MUSEUM OF NATURAL SCIENCE MEDICINE PARK TOWN HALL- GENERAL DELIVERY MEDICINE PARK , OK 73557		SELLER : FINANCIAL PACIFIC LEASING LLC 3455 S. 344 TH WAY #300 FEDERAL WAY, WA 98001		
DATE OF INVOICE: 11/01/2011		DATE DUE: 11/08/2011		
DESCRIPTION OF EQUIPMENT BEING INVOICED :				
Lease Name	Lease #	Equipment Description	S/N: or VIN. # :	Sale \$
WINERY OF THE WICHITA'S LLC	1.0548657. 902	RESTAURANT SEE ONE PAGE EQUIPMENT LIST FOR DETAILS	SEE ATTACHED	\$2,927.22
TOTAL ~				\$2,927.22

SOLD BY : Financial Pacific Leasing, L.L.C.	ACCEPTANCE :
F.P.L. AGENT : <i>Annette Fister</i>	SIGNATURE : <i>James K. Robertson</i>
TITLE: REMARKETING SPECIALIST	TITLE : <i>Mayor, Town of Medicine Park</i>

On December 7, 2011, the Town reimbursed Hill an amount of \$700 from the MPEDA Museum Fund account issued on Check 1090. Approvals for these expenditures were not identified in the Town or MPEDA Board minutes.

As noted in the preceding invoice, the equipment purchased through these transactions was “*stacked in a semi-trailer*” outside of the Medicine Park Community Center. At the time of this investigation, the equipment remained stored in the trailer unused by the Town or the Museum.

In addition to questionable approvals, processes and the possible waste or ineffective use of public funds; these transactions appeared to be a violation of **Article X Section 11** of the Oklahoma Constitution which prohibits town officers from directly or indirectly receiving any interest, profit, or perquisites arising from the use or loan of public funds in his or her hands, or of moneys to be raised through his or her agency for town purposes.

- Mike Hibbetts was a current member of the Planning & Preservation Commission and a former MPEDA trustee. His spouse, Lee Hibbetts, was a former town clerk and a former MPEDA trustee.

In March 2007, Hibbett’s business, Medicine Park Real Estate, received an MPEDA Revolving Loan. The loan was refinanced in March 2011. The loan was awarded when Mike Hibbetts was a trustee and refinanced when Lee Hibbetts served as an MPEDA trustee. These transactions appeared to be a conflict of interest under **60 O.S. § 178.8(A)**.

- Clark Brown, a member of the Town’s Planning & Preservation Commission, received two loans through the MPEDA Revolving Loan Fund program. Two separate \$5,000 credits were applied to Brown’s loans on December 8, 2009, and February 8, 2011.

The credits were applied in exchange for “*providing graphic-design services to the Museum project*” and for “*additional design work in support of the Museum project*”.

The granting of credit for an MPEDA Revolving Loan fund transaction in exchange for work performed for the non-profit Museum could be considered a violation of **Article 10 Section 15** which states, “*...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, subscription to stock, by tax, or otherwise, to any company, association, or corporation.”

Nepotism

- In July 2011, Dwight Cope, voted to approve payment to his spouse in the form of a stipend for the position of Bath Lake Monitor with the Town of Medicine Park. Cope’s vote of approval could be considered a violation of **21 O.S. § 481(A)** which prohibits officers from voting for the appointment of their spouses to any position in any department of the municipal government of which such officer is a member, when the compensation of such appointee is to be paid out of the public funds of such office.

Additionally, Cope’s wife and daughter were paid through the Town’s Planning and Preservation account for temporary work in December 2013 and January 2014. We found no evidence that the Planning and Preservation Commission was authorized to hire for the Town. The purchase orders submitted for these payments were requested by Cope:

Vendor	P.O. No.	1401474
Shelly Cope PO Box 103 Medicine Park, OK 73557	Date	12/23/2013
	Account	PPC
	Requested By	D. Cope

11 O.S. § 8-106 stipulates that no elected or appointed official or other authority of the municipal government shall appoint or elect any person related by marriage or blood within the third degree to any governing body member or to himself or herself or, in the case of a plural authority, to any one of its members, to any office or position of profit in the municipal government.

- The Planning & Preservation Commission voted in May 2013 to contract with Town Trustee Gordon Dye’s son for work on weekends from May to September. As previously noted, we identified no evidence that the Planning & Preservation Commission possessed hiring authority for the Town.

Payments for the son's employment were made from various Town accounts including the General Fund, the MPEDA Marketing Fund and the Planning and Preservation Fund. As a town trustee, Dye possessed voting authority for expenditures from these funds. As such, the employment of Dye's son could be considered a violation of **11 O.S. § 8-106.**

Objective III Determine if possible irregularities exist with expenditures associated with the Medicine Park Economic Development Authority and the Medicine Park Museum of Natural Science, Inc.

Background The scope of the audit addressed under this objective was more-narrowly defined to include animal acquisitions for the Museum and the Museum Project Manager/Executive Director's compensation.

Additional concerns related to Museum expenditures appear in other sections of this report that are more appropriate for consideration.

Animal Purchases

Finding **Animals were purchased for the Museum, resulting in a financial loss in excess of \$7,300.**

Otters – On March 6, 2012, two otters were purchased from an animal dealer in Ohio for a cost of \$5,000 using funds from the MPEDA Museum Account. Museum officials did not take possession of the otters because there was no place to house the animals. As a result, the dealer was paid more than \$3,000 in additional funds to feed and house the otters.

The otters were eventually sold to another buyer. The dealer has retained the \$5,000 with the expectation of providing otters to the Museum in the future.

Porcupines – On May 3, 2012, two porcupines were purchased from an animal dealer in Minnesota for a cost of \$2,000 using funds from the MPEDA Museum Account. Both porcupines subsequently died while in the possession of Museum officials.

Prairie Dogs – On May 14, 2012, four prairie dogs were purchased from a business in Oklahoma City at a cost of \$300 using funds from the MPEDA Museum Account. One prairie dog died soon after the purchase; another later escaped into the wild; and the remaining two prairie dogs died of “*natural causes*”.

Cougar – On May 24, 2012, a cougar was purchased from an animal park in Missouri at a cost of \$2,000 from MPEDA Museum Account funds. On June 7, at Doug Kemper's request, town officials stopped payment on the check and issued a \$2,000 check to Kemper from the same account as

“reimbursement” for a personal check that he purportedly sent to the animal park manager in payment for the cougar. A copy of this check could not be provided.

Lisa Roberts, a former zookeeper who assisted the Museum, subsequently returned the cougar because Museum officials did not have a place to house the animal. We contacted the animal park, but they had no record of the Museum’s purchase or return.

While current and former Museum officials agreed that acquiring animals as infants prior to display is ideal, officials acknowledged that the animals were acquired prematurely.

Museum Project Manager /Executive Director Contracts

Doug Kemper was the Project Manager and hired Executive Director for the Museum. Based on meeting minutes and available documentation, he appeared to have had a contractual agreement with MPEDA beginning in June 2009 through June 2010, and from August 2010 through April 2012. During this time, MPEDA paid Kemper \$40,000. Subsequent to these contracts, the Museum paid Kemper \$22,000 through May 2013.

On September 23, 2009, MPEDA discussed, but did not approve, a memorandum of understanding with Kemper. Section 3.2 of the proposed agreement is provided in its entirety:

3.2. Support. MPEDA shall provide whatever support is necessary, feasible and appropriate, to the Museum Consultant, including the provision of an appropriate living space and Museum Office space, at no charge (to be provided at the "Sanders House"). All Municipal utility expenses at this site shall be paid by MPEDA or the Town Board of Trustees.

On November 10, MPEDA approved the agreement with the following modifications:

1. removal of the word “necessary” from Section 3.2
2. removal of the last sentence from Section 3.2
3. addition of the provision that MPEDA would consider reimbursement of related expenses, with appropriate receipts, as needed

Between September 2009 and March 2014, the Town paid approximately \$4,557 for electric service at the Sanders House, where Doug Kemper resided and worked. In addition, the Town did not bill for approximately

\$2,000 of water and sewer services for the Sanders House during this same time period.

There appeared to be brief periods of time when Doug Kemper's contracts with MPEDA and/or the Museum lapsed, but he continued to receive compensation. Likewise, copies of unsigned and undated documents at Town Hall appeared to be versions or drafts of agreements between MPEDA and Kemper; posing difficulties in determining who Kemper worked for, what time period he was under contract, and the compensation he was to receive.

Objective IV Determine if a possible diversion of Town and public trust funds has occurred

Petitioner concerns with regard to the possible diversion of Town and public trust funds were a common theme encountered throughout this audit and are addressed in several sections of the report. As “*diversion*” of public funds can cover a broad spectrum of possibilities, our review primarily focused on instances where there appeared to be a diversion of such funds without proper governmental oversight. Specific examples of the use of public funds by a private entity, absent of governmental oversight, are contained in Objective V: Possible conversion of public property to personal use, but similar issues are addressed in other objectives throughout the report.

Objective V Determine if public property has been converted to personal use

Background Citizens expressed concern that public funds were diverted to support a private entity or possibly to benefit private individuals. The flow of funds, transactions, authority and oversight between MPEDA, a public institution, and the Museum, a non-profit entity, were evaluated.

Finding **On June 27, 2012, all funds in the MPEDA Museum Fund bank account were transferred to the MPMNS, Inc. non-profit account allowing control of these public funds by a private entity.**

On June 12, 2012, MPEDA approved a transfer of funds to the Museum. A fund balance of \$256,509 was then transferred from the MPEDA Museum account to the MPMNS, Inc. on June 27.

On March 20 and May 14, 2013, \$200,051 and \$64,979, respectively, were transferred from the MPMNS, Inc. back to the MPEDA Museum Fund account. According to MPMNS, Inc. financial statements, the transfers were comprised of the following:

Unexpended CCIDA funds transferred on June 27, 2012	\$240,359.37
Department of Agriculture grant received January 15, 2013	25,000.00
Credit for reimbursement of off-road diesel fuel used for project	(328.91)
Total funds to be returned to MPEDA	\$265,030.46

According to **Oklahoma Supreme Court Case 1946 OK 211 (VFW v. Childers)**, "...public money may not be appropriated to a private corporation or organization, operating entirely without governmental supervision or control, no matter how wholesome may be the purpose or function of such organization nor how beneficial its activities may be to that portion of the public with which it comes in contact".

These transfers placed public funds under the control of a private organization without governmental oversight.

Finding **The Museum was reimbursed for expenses incurred independent of MPEDA oversight.**

On November 1, 2013, the Museum submitted documentation for reimbursement of \$39,280.75 in expenses incurred by the Museum from

May through October 2013. MPEDA paid the claim on purchase order 141161 on December 31, 2013.

Two of the supporting invoices submitted with this request for reimbursement were stamped with the following:

This order is entered by Medicine Park Aquarium & Natural Sciences Center, Inc. as an agent for the Town of Medicine Park. All materials and equipment contained in this invoice will be used exclusively for and will become a part of the Medicine Park Aquarium & Natural Sciences Center Project, which is owned by the Town of Medicine Park.

These expenditures were incurred at the sole discretion of the Museum without public oversight or compliance with state statute.

Finding

The land donated for the planned museum was donated with a conditional limitation and the possibility of a reversion back to the original owners.

David and Candace McCoy executed a “*Warranty Deed*” donating an eight-acre piece of property to the Medicine Park Economic Development Authority on July 22, 2011. The accompanying Property Donation Agreement included two conditions of the donation:

Condition One:

“It is further stipulated, as a condition of the property donation to MPEDA, that neither MPEDA nor the municipality of Medicine Park will serve as the authority for development, construction and operations of the MPMNS but rather will contract in perpetuity with the non-profit MPMNS, Inc. for these duties and responsibilities for development, construction and for the management and operations of the MPMNS.”

Condition Two:

“Should the MPMNS not be completed and opened in a timely manner over a 5 year period from the date of this agreement or at any time in the event of dissolution and/or discontinuing operations of the MPMNS or MPMNS, Inc., the property ownership will revert back to the donating parties, David and/or Candace McCoy or their heirs.”

Four days later, a one-page Individual Warranty Deed, dated the same day as the Agreement, was filed with the Comanche County Clerk's Office. This warranty deed conveyed the eight acres from the McCoy's to the "*Medicine Park Economic Authority*" as follows:

TO HAVE AND TO HOLD said described premises unto the said party of the second part, and to its heirs and assigns forever free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

While the deed did not explicitly refer to a possible future reversion back to the McCoy's, it transferred the land with a limitation that did not specify what the "*restrictions of record*" were:

SUBJECT TO covenants, conditions, easements and restrictions of record and **LESS AND EXCEPT** all interest in and to all of the oil, gas and/or other minerals, lying, in, on, under or that may be produced from said premises.

In attempt to clarify the reversion clause of the original Property Donation Agreement; on September 6, 2012, the McCoy's signed a document titled "*Written Confirmation to Verbal Understanding for 8 Acre Property Donation*". This document read, in its entirety:

"In written clarification of a verbal understanding agreement regarding the 8 acre property donation site to MPEDA for the purpose of developing, constructing and operating the Medicine Park Museum of Natural Sciences or whatever entity it may be named, Candace and David McCoy have always intended and stated to the Board of Directors that in regards to their "revision clause", their desire was to have the 8 acre property donation utilized for the MPMNS. The McCoys release all claims with the stipulation the site must be used for the MPMNS or a like purpose and prohibit a different or future Town or MPEDA Board from choosing to use the site for something like a Public Works or Municipal Building in lieu of the intended projects."

While the "*Written Confirmation to Verbal Understanding for 8 Acre Property Donation*" appeared to be an attempt to "*undo*" the possibility of reversion in the deed, there were several reasons why it may not have accomplished this goal:

1. The "*understanding*" regarding the land was written rather than "*verbal*", as stated in the title *and* the body of the document.
2. Only the McCoy's signed the document which was not acknowledged or accepted by MPEDA or Museum officials.
3. Nothing concerning the deed or the Property Donation Agreement was actually amended in writing or on record.

Finding

The County performed work on the land for the planned museum which could be considered an improper use of public funds should the land revert back to the original owners. The County completed this work without a cooperative agreement.

Between January 2012 and November 2013, Comanche County District 3 employees performed approximately \$87,236 worth of work on the proposed museum land.



19 O.S. § 339(A)(17) allows a county commissioner to utilize county-owned equipment, labor, and supplies on town-owned property and stipulates that cooperative agreements may be general in terms of routine maintenance or specific in terms of construction and agreed to and renewed on an annual basis.

Town Clerk Lee Hibbetts wrote and faxed letters to Comanche County District 3, requesting assistance at the museum site. A letter from January 23, 2013 states:

The Town of Medicine Park officially requests continued assistance from Comanche County with regard to materials associated with the construction of the block wall at the site of the Medicine Park Aquarium and Natural Sciences Center Project.

A purchase order for materials can be obtained from Karin McCann, Town Bookkeeper, 580-529-2825. The Town of Medicine Park appreciates your consideration and support of this effort.

Approval to officially request assistance from the County was not found in the minutes of the meetings of the Town Board or MPEDA; and, as of December 2013, the County did not have a cooperative agreement in place with the Town or MPEDA. Absent of an official agreement, the scope of the work to be performed could not be determined.

Objective VI Determine possible misuse of grant and loan funds for the Medicine Park Economic Development Authority related to the Medicine Park Museum of Natural Science, Inc.

Background

The Office of State Auditor & Inspector conducted a review of grant and loan funds received by the Town, MPEDA, or the Museum in support of building the museum. Each grant and loan was evaluated for compliance with its respective contract or agreement. The specific grants and loan reviewed were:

- Comanche County Industrial Development Authority Loan
- McMahon Foundation Grant
- Oklahoma Historical Society Grant
- Oklahoma Department Of Wildlife Conservation Grant
- Oklahoma Department Of Agriculture Pass-Through Funding

Comanche County Industrial Development Authority Loan

On August 12, 2011, the Comanche County Industrial Development Authority (CCIDA), a county public trust, agreed to loan \$300,000 to the Medicine Park Museum of Natural Science, Inc., for “*the construction and development*” of the Museum. The Medicine Park Economic Development Authority was sole guarantor for the loan.

The contract was executed by Dwight Cope, Museum president; Candace McCoy, MPEDA chairperson; and Charles Kelsey, CCIDA chairman. Under contract provisions, loan proceeds of \$300,000 were to be disbursed when certain milestones were met, as shown below:

1. LOAN OF \$300,000. The Authority agrees to loan Museum the sum of \$300,000 to be used for the construction and development of the Medicine Park Museum of Natural Science. Loan proceeds will be disbursed when the Authority, in its sole discretion, determines that the following milestones have been achieved: (a) \$100,000 will be advanced when the Museum has obtained at least \$250,000 in pledged donations of cash or in-kind goods and services for the Project; (b) \$100,000 will be advanced when the Museum has obtained at least \$500,000 in pledged donations of cash or in-kind goods and services for the Project; and the final advance of \$100,000 will be made when the Museum has obtained a total of at least \$750,000 in pledged donations of cash or in-kind goods and services for the Project.

The proceeds were disbursed to the Museum by cashier’s check on August 15, 2011, three days after the loan agreement was executed. According to a CCIDA trustee, the funds were paid out to the Museum in one

installment because all criteria for the three \$100,000 advances were met at the time of contract execution.

CCIDA loaned the funds contingent on the Museum investing \$3,657,000 in pledged donations of cash or in-kind goods and services for the construction and development of the Museum within two years and creating at least 20 new full-time jobs in Comanche County. The Museum was required to repay the loan only if the capital investment was not made by August 12, 2013.

On August 6, 2013, CCIDA amended the loan agreement as follows:

- The Museum's required investment of pledged cash donations or in-kind goods or services was reduced from \$3,657,000 to \$1,500,000.
- The date on which the Museum was required to repay the loan if it failed to make the capital investment was extended from August 12, 2013, to May 31, 2014.
- The date on which the Museum repaid any portion of the loan not offset by newly created jobs was extended from June 30, 2023, to June 30, 2024.

According to CCIDA trustee Mike Mayhall, the investment of funds date would be extended again. The trustees were aware of the delay caused by the audit and continued to fully support the project.

McMahon Foundation Grant

On December 30, 2010, MPEDA requested a \$1.8 million matching grant for the capital development of the Medicine Park Museum of Natural Science, from the McMahon Foundation, a philanthropic non-profit foundation located in Lawton, Oklahoma. On February 8, 2011, MPEDA was notified by the Foundation that the request was denied.

On April 22, 2011, the Museum and MPEDA jointly requested a \$750,000 matching grant from the Foundation. On May 2, 2011, the Museum was notified by the Foundation that it would provide a \$500,000 matching grant for the project. However, on August 7, 2012, the Foundation notified the Museum that it rescinded the grant "*due to the significant changes in the scope of the project*".

The Museum then requested a \$375,000 grant on September 5, 2012, informing the Foundation that proposed Museum plans were scaled back through removal of the 'Zoo' and by greater focus on the 'Aquarium'.

On October 2, 2012, the Foundation notified the Museum of its approval of a \$300,000 grant:

I am pleased to inform you that the board approved a grant in the amount of \$300,000.00 to Medicine Park Museum of Natural Science Inc. aka Medicine Park Aquarium & Natural Sciences Center. This grant will be paid on January 15, 2013.

The Museum received the grant on January 15, 2013.

Oklahoma Historical Society Grant

An Agreement was entered into, effective August 1, 2011, between the Oklahoma Historical Society (OHS) and the Museum to provide an OHS grant in the amount of \$11,452 toward the museum development project.

In consideration for these funds, the Museum agreed to prepare planning or construction documents, to provide support for development of materials to interpret, promote, or market the museum and to provide support for essential operational or maintenance expenses in the museum or on the grounds. All grant funds were to be fully expended between August 1, 2011, the execution date of the contract, and June 30, 2012 and were to be paid quarterly to the Museum on a reimbursement basis.

Prior to execution of the agreement on July 14, 2011, MPEDA voted to dedicate the grant to cover a portion of the deferred payments to Doug Kemper, the Museum project manager:

5. Deferred Contract Services/Kemper: C. McCoy moved to dedicate the \$12,000 grant from the Historical Society to cover a portion of the deferred payment to D. Kemper, begin full \$2000 monthly payment to D. Kemper in July, 2011, and pay off the balance owed to D. Kemper as funds become available. Second by D. Cope. All voted aye, motion carried.

Payments to Kemper would have been an acceptable use of the grant. However, according to Museum financial reports, the funds were not expended for this purpose, but were used for a Web site, marketing materials, newsletter, rack cards, and signs.

According to an OHS official, expenditures made under the Oklahoma Historical Society Grant met the provisions of the agreement.

Oklahoma Department of Wildlife Conservation Grant

On December 22, 2011, the Oklahoma Department of Wildlife Conservation (ODWC) notified the Museum that a \$100,000 grant was

available on a reimbursement basis. The funds were to be split evenly between the Sport Fish Restoration Program and the Wildlife Restoration Program. Fund disbursements were to be made on a reimbursable basis with the Museum first completing the work, and then invoicing ODWC.

On November 30, 2012, in response to information provided by Doug Kemper concerning a change in the Museum's focus "*to fish only*", an ODWC official communicated that ODWC remained committed to the project and that the \$100,000 grant was to come exclusively from the Sport Fish Restoration Program funds. As of December 2013, no grant funds had been paid to the Museum.

The ODWC was awaiting release of this audit report before disbursing grant funds to the Museum.

Oklahoma Department of Agriculture Pass-through Funding

On June 26, 2012, a state legislator wrote a letter to MPEDA officials, which included the following:

This letter is to inform you that as the Chairman of the Appropriations and Budget Sub-Committee on Natural Resources and Regulatory Agencies I was able to secure 25,000 dollars for MPEDA (Medicine Park Economic Development Authority) to be used in the development of the Medicine Park Museum of Natural History. This money has been encumbered within the Department of Agriculture and should be distributed to MPEDA in the near future.

An invoice dated September 14, 2012, was provided to the Oklahoma Department of Agriculture, Food, & Forestry (ODAFF). The invoice listed "*FY 2013 Pass Through Funding*" for \$25,000 and was represented as sent from the Medicine Park Economic Development Authority. However, this invoice showed the Museum's telephone number and David and Candace McCoy's business mailing address.

The ODAFF comptroller wrote the following in a memo, dated November 19, 2012, to the Oklahoma Office of State Finance (OSF):

This payment is for a legislatively directed pass through for economic development and the organization receiving the funds is a not-for-profit. If you have any questions, please do not hesitate to contact me.

On the same day, OSF issued an electronic debit of \$25,000 to the Town of Medicine Park's volunteer fire department as the "*vendor on file*" with

ODAFF. On November 21, 2012, the Town's Fire Department bank account received a direct deposit of \$25,000 from the State of Oklahoma.

Later, on December 14, 2012, \$25,000 was transferred from the Fire Department account to the MPEDA-Marketing account. On January 14, 2013, MPEDA issued a \$25,000 check to transfer the ODAFF funding to the Museum.

Objective VII Determine if possible violations of multiple regulatory agency requirements exist

Background

The citizens' petitioners requested an investigation of possible violations regarding regulatory requirements overseen by the Oklahoma Department of Transportation (ODOT), the Oklahoma Department of Environmental Quality (ODEQ), the Oklahoma Department of Agriculture, the Oklahoma Tax Commission, and the Internal Revenue Service. Specifically, the concern was that appropriate regulatory permits and approvals were not obtained in the construction of the Museum.

Oklahoma Department of Transportation

Finding 1

The Museum entrance and driveway was constructed without the proper permit.

69 O.S. § 1210 requires that no culvert, driveway, fence to stock-pass, or mailbox be constructed or maintained on the right-of-way of any designated state or federal highway by any person without the prior approval of the Oklahoma Department of Transportation.

We verified that two ODOT permits were requested by the Town of Medicine Park as part of the construction of the Museum driveway and installation of an "under highway" waterline.

On August 26, 2010, the Town requested approval from ODOT to construct a commercial driveway from State Highway 49 to the planned Museum site. As shown below, ODOT officials rejected the request:

THE HEREIN TERMED "OWNER" REQUESTS PERMISSION TO CONSTRUCT ONE DRIVEWAY(S) DESCRIBED BELOW AND AS SHOWN ON THE DRAWING(S) ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, FOR THE PURPOSE OF PROVIDING ACCESS TO A _____ WITH HIGHWAY _____
Type of Development or Establishment
FRONTAGE OF 120' ±, ALONG HWY 49 AND _____ ALONG _____

REJECTED

On May 13, 2013 the Town requested a Utility Permit to bore under Highway 49 for installation of a waterline. On May 30, 2013, ODOT awarded Utility Permit #16-1126 for boring under Highway 49 near the Museum site.

Written confirmation was provided verifying that the Driveway Permit was rejected and the Waterline Permit was awarded. These permits

appeared to be the only permits applied for with ODOT by the Town of Medicine Park during the period under review:

On May 13, 2013 a Waterline Permit was approved to cross SH-49 to Mr. Tommy Brock for the Town of Medicine Park and a Driveway Permit was requested on August 26, 2010 that was rejected for not meeting our requirements and lack of information.

ODOT Letter 1

As previously noted, Comanche County District Three employees completed \$87,236 worth of work on the proposed Museum land. This work was conducted under **19 O.S. § 339** which allows a board of county commissioners to use county-owned equipment, labor and supplies at their disposal on property owned by municipalities. However, the work completed for the Town included creating the driveway at the Museum site without implementing a Cooperative Agreement.



Oklahoma Department of Environmental Quality

Finding 1

The Town of Medicine Park's non-compliance with requirements of the Oklahoma Department of Environmental Quality were corrected.

The Oklahoma Department of Environmental Quality (ODEQ) requires compliance with the Oklahoma Pollution Discharge Elimination System Act as noted in **27A O.S. § 2-6-201**. Under the authority of this act, ODEQ issues Storm Water General Permits for "*construction activities*".

ODEQ Storm-Water Inspection Report Complaint 133667, dated February 14, 2013, noted the following deficiencies in compliance of the Town of Medicine Park Museum construction:

- The facility's general permit expired and no permit existed regarding non-allowable discharges.
- The facility did not have a Storm Water Pollution Prevention Plan.
- The facility did not implement any best-management practices.
- Silt and rock fines were running off of the property onto the highway and rock was needed to keep the mud off the highway.

A follow up Inspection Report was completed by the ODEQ on March 1, 2013. All previous violations were corrected.

Storm-Water Inspection Report Complaint 134644, filed May 17, 2013, showed the following deficiencies:

- The house next to the entry had storm water soil and gravel enter the property from the construction site.
- The silt fence was in bad repair.
- Need instruction on how to protect the house.

Below is written confirmation verifying that all complaints were cleared through the follow up Inspection Report completed on June 3, 2013:

RE: Complaint Number 134644

Dear David Early:

The Department of Environmental Quality (DEQ) has determined that the violation associated with the above referenced complaint has been corrected. Therefore, this complaint will be closed by our agency. Thank you for correcting the violation and eliminating a threat to the environment.

Oklahoma Department of Wildlife Conservation

Although not specifically included on the Petition, citizens expressed concerns over the breeders licensing process through the Oklahoma Department of Wildlife Conservation (ODWC). As a point of fact in addressing these concerns, we determined that individuals representing the Museum were granted breeder licenses through the ODWC. Doug Kemper was issued a Non-Commercial Wildlife Breeder's License. This license was issued to Kemper as the Executive Director of the Medicine Park Museum of Natural Science for possession of "various species of crotalid reptiles". The license was approved by an ODWC game warden and was effective April 17, 2012.

On June 19, 2012, the ODWC granted Lisa Roberts a Commercial Wildlife Breeder's License under Permit Number 7661. This license was applied for under the business name of 'Medicine Park Museum'. This license was granted for species of wildlife including: two porcupine, one mountain lion, and four prairie dogs. According to the assistant chief of the ODWC's Law-Enforcement Division, caging requirements allowed Museum officials to keep these animals in Roberts' garage.

There were several mitigating circumstances surrounding who received which Wildlife Breeders License, why these licenses were needed, and the relationship of the license to other certifications and appointments within the animal-management profession. As with the purchase of the animals, the obtaining of licenses was premature and appeared to cause confusion among workers. At this time, no licenses are required of those involved in museum development.

Other Regulatory Agencies

Of the agencies listed in the Citizen Petition, no regulatory requirements of the Oklahoma Department of Agriculture, the Oklahoma Tax Commission or the Internal Revenue Service were identified that we considered within the directive of this engagement.

Objective VIII Other Issues

Purchasing

During the course of our review we observed questionable purchasing procedures while reviewing Town, MPEDA and Museum transactions. As a result, we chose to evaluate a sample of expenditure transactions to determine compliance with relevant purchasing law and policy.

11 O.S. §17-102 provides that any invoice against a municipality must be presented in writing and examined in the manner provided by municipal ordinance or in absence of such ordinance by other applicable law.

The Town of Medicine Park **Code of Ordinances Section 1-60(6)** authorizes the mayor to contract for and purchase, or issue purchase authorization for, all supplies, materials, and equipment for the offices, departments, and agencies of the Town if the expenditures are less than \$500 each. Any purchase over \$500 shall require prior approval of the Town Board of Trustees.

Code of Ordinances Section 1-61(4) authorizes the town clerk to issue purchase orders for the purpose of obtaining supplies, materials, equipment, or contractual services that do not exceed \$250. All other purchases require board approval.

62 O.S. § 310.1(A) requires that designated employees of cities and towns submit all purchase orders and contracts prior to the time the commitment is made and no purchase order or contract shall be valid unless signed and approved by the purchasing officer and certified as above set forth by the officer or clerk charged with keeping the appropriation and expenditure records.

Cities and towns may elect to pay claims and invoices pursuant to the provisions of **11 O.S. § 17-102(A)** which provides for the adoption of an ordinance to ensure adequate internal controls against unauthorized or illegal payment of invoices.

Finding

The Town of Medicine Park did not follow proper purchasing procedures.

Ten of the twelve purchasing transactions reviewed were not properly encumbered, and seven of twelve were not properly approved. Detailed aspects of the transactions reviewed follow:

- On August 29, 2011, Checks 1722, 1723 and 1724 for \$600, \$1,200 and \$1,500 respectively, were issued from the MPEDA Marketing Fund for “Cash” to pay three performers appearing in the Mayor’s Blues Ball. Dwight Cope signed as having received the checks on September 2, 2011.

With the exception of approval for a \$500 down payment for the first performer, we found no approval for these payments in MPEDA meeting minutes. Minutes were reviewed for July 2010 through October 2011.

Payments to the performers exceeding \$500 were not appropriately approved by the Town Board of Trustees in direct conflict with Town Code of Ordinances Section 1-60(6).

- Toni Capra, the Town’s legal counsel, purchased the following items at an auction on December 8, 2011:
 - Walk-in cooler – \$3,100
 - Dishes – \$600
 - Cookware – \$75
 - Sheet pans – \$30

On December 12, the Town paid the auction service, Armes, Hines, & McIntyre, for these purchases. The cooler was purchased with Check 1092 drawn on the MPEDA Museum Fund account; the other items were purchased with Check 1292 from the Medicine Park Community Center Grant account.

62 O.S. § 310.1(A) requires that designated employees of cities and town submit all purchase orders and contracts prior to the time the commitment is made and no purchase order or contract shall be valid unless signed and approved by the purchasing officer and certified as above set forth by the officer or clerk charged with keeping the appropriation and expenditure records.

The purchase orders for these transactions were dated December 12 and noted that the purchased items were “*approved by Cope*”. Approval for these expenditures was not found in the minutes of the Town Board or MPEDA. The purchases exceeded the mayor’s approval authority and were purchased before properly encumbered.

- Dwight Cope made six eBay purchases, totaling \$778 in June 2011, four eBay purchases, totaling \$352 in September 2011, and another online purchase of \$98 in September 2011. These purchases consisted of parts for “*hot-rod*” vehicles. There is a “*Grease Monkey’s Rat-Rod Show*” in June and a “*Rockin’ the Park / Vintage Car Show*” in October, although neither are listed on the Town’s Web site as “*sanctioned*” by the Town. None of the purchases made by Cope were properly requisitioned or encumbered.
- Dwight Cope made an eBay purchase of \$55 in February 2012, a \$277 online purchase in March 2012, and another \$290 eBay purchase in May 2012. The purchases were for music-performance equipment. None of the purchases made by Cope were properly requisitioned or encumbered.
- On May 21 and 22, 2012, town officials issued checks for \$1,500 and \$1,350 and \$1,000 drawn on the MPEDA Marketing Fund for cash to pay three performers appearing in the Red Dirt Ball. Dwight Cope signed as having received the checks on May 25, 2012. The minutes of the October 11, 2011, MPEDA meeting recorded approval of \$2,500 for the 2012 Red Dirt Ball event.
- Purchases were incurred by David McCoy on behalf of the Medicine Park Public Works Authority on July 8 and July 11, 2011 for \$175 each. These purchases were made without prior approval or encumbrance. McCoy was reimbursed \$350 for the purchases by the Town of Medicine Park on August 4, 2011.
- In May 2012, town officials purchased supplies from Comanche Home Center in Lawton; \$844 was paid from the Museum Fund account, and \$172 was paid from the Planning & Preservation Fund account. These transactions were not encumbered, with the purchase order and payment dated June 4, 2012.

The supplies that were purchased from the Planning & Preservation Fund were subsequently shipped to David McCoy's business address.

Finding The Town reimbursed the mayor for time off from his job.

In December 2012 and January 2013, the Town reimbursed Mayor Dwight Cope \$60.00 and \$253.97, respectively, for leave taken from his full-time job to attend an Arts Council Conference and an Oklahoma Municipal League event.

60.00	-1.00	-60.00	DOCK PERSONAL
253.97	-1.00	-253.97	DOCK PAY

Finding The Town purchased alcoholic beverages for a political event.

On November 13, 2012, the Town Board approved support of a Republican caucus retreat for the state House of Representatives to be held in Medicine Park on December 2-3, 2012. The Town provided musicians for dinners and assumed other miscellaneous expenses. On November 30, Town Clerk Lee Hibbetts made purchases totaling \$386, which included eight bottles of wine and four cases of beer totaling \$157.

Police Department Loan

Finding MPEDA authorized a loan to the Medicine Park Police Department under the MPEDA Revolving Loan Fund program.

MPEDA approved a six-month loan at 3% interest, to the Police Department for the cost of a computer and printer on September 11, 2012. In a Town Board meeting on September 18, the Police Chief notified the Town Board of the loan.

We could find no authority that would allow MPEDA to award a loan to the Medicine Park Police Department under the Revolving Loan Fund Program.

Code of Ordinances

11 O.S. § 14-109 requires every municipality to codify and publish its penal ordinances in written form at least once every 10 years and publish supplements to the code every two years.

11 O.S. § 14-110 requires every municipality to adopt and file with the county clerk resolutions that notify the public of the publications of the compilations and supplements. The statute also requires every municipality to file copies of the compilations and supplements in the county law library.

11 O.S. § 14-111(E) prohibits any municipality that does not compile and publish its penal ordinances and file notification of the publication from levying fines over \$50 for violations of the ordinances.

Finding

The Town of Medicine Park did not update, publish or file notice of the publication of its Code of Ordinances in a timely manner.

As of March 2013, a 1995 copy of the Town of Medicine Park’s Code of Ordinances and a 2003 supplement to the Code were on file with the Comanche County Law Library.

On July 25, 2012, the Town Board voted to have the Association of South Central Oklahoma Governments (ASCOG) update and publish the Town Code. On March 15, 2013, the Board adopted the updated Code, filing a copy of the Code with the Comanche County Law Library on September 4, 2013.

Although not completed and filed in a timely manner, the Town of Medicine Park’s Code of Ordinance was in compliance with state statutes at the time of this audit.

Financial Management

Finding

The Town has exceeded budgeted appropriations in a number of funds, every year for the past five fiscal years.

68 O.S. § 3021 requires towns that do not operate under the Title 11 Municipal Budget Act to obtain approval from their respective counties’ excise boards for “*supplemental or additional appropriations for current expense purposes*” in a fiscal year.

The Town operates under the Title 68 Budget Statutes and contracts with the independent auditing firm Angel, Johnston, & Blasingame to prepare agreed-upon-procedures reports each fiscal year.

The Town has ended at least the past five fiscal years with expenditures exceeding appropriations in some funds. According to the agreed-upon-procedures reports, the Town had the following numbers of funds with

expenditures exceeding total appropriations at the end of the following fiscal years:

- FY13 – three
- FY12 – five, two of which had negative balances
- FY11 – nine
- FY10 – eight
- FY09 – three

Finding

The Town’s “*Estimate of Needs and Financial Statement*” for FY 2012, FY 2011, and FY 2010 were not filed in a timely manner with the Comanche County Excise Board.

Under **68 O.S. § 3002** the financial statements and budgets of all incorporated towns shall be filed with the county excise board on or before August 22 of each year. The financial statements and estimates shall have attached an affidavit showing the publication of the statements in some legally qualified newspaper published in such political subdivision.

Fiscal Year	Date Filed with Excise Board (due by August 22)
FY 2012	November 21, 2012
FY 2011	November 2, 2011
FY 2010	March 1, 2011

Medicine Park Economic Development Board of Trustees

The MPEDA Trust Indenture states, “*The Trustees of this Trust shall be five (5), all of whom must reside within the Beneficiary Town, and two (2) of whom shall also be members of the Town Board of Trustees.*”

As of June 30, 2013 the MPEDA Board included three (3) members who were currently serving on the Town Board of Trustees. This appears to be a violation of MPEDA’s Trust Indenture. As the Board sits, the MPEDA Board includes a quorum of the Town Board.

Charitable Organization Financial Statement

Dwight Cope registered the Medicine Park Museum of Natural Science, Inc. as an Oklahoma Charitable Organization on June 29, 2012. In signing,

Cope attested, under penalty of perjury, that the registration's contents were true and complete.

In completion of the 'Charitable Organization Financial Statement' as part of the filing, Cope reported that the Museum had not received any contributions, gifts or grants during the previous fiscal year. However, during the fiscal year prior to the registration filing date of June 29, 2012, the Museum received 17 donations totaling \$35,500.

APPENDIX

CITIZEN PETITION REQUEST FOR SPECIAL AUDIT BY THE STATE AUDITOR & INSPECTOR

We, the undersigned electors of the Town of Medicine Park, Comanche County, do hereby petition and request you to examine the books of said Town and its public trust authorities pursuant to 74 O.S. § 212(L), for the period June 1, 2009 through present. Specifically, our investigation will include:

1. Possible violation of the Oklahoma Open Records Act and Open Meeting Act.
2. Possible conflicts of interest between Town Trustees and the Medicine Park Museum of Natural Science, Inc.
3. Possible irregularities and a review of expenditures associated with the Medicine Park Economic Development Authority and the Medicine Park Museum of Natural Science, Inc.
4. Possible diversion of Town and public trust funds.
5. Possible conversion of public property to personal use.
6. Possible misuse of grant and loan funds to the Medicine Park Development Authority related to the Medicine Park Museum of Natural Science, Inc.
7. Possible violation of multiple regulatory agency requirements including, but not limited to, the Oklahoma Department of Transportation, the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, the Oklahoma Tax Commissioner and the Internal Revenue Service.

[The estimated cost of said investigation will range from \$15,000 to \$18,000, which shall be paid by the Town of Medicine Park, Comanche, County, Oklahoma, in accordance with 74 O.S. § 212(L)(7). The estimated cost is based on estimated audit hours and travel expenses.

We further understand that the circulators of the petition have thirty (30) days from the date this petition was emailed by the State Auditor and Inspector to obtain the requisite number of signatures and return it to the State Auditor and Inspector.

74 O.S. § 212(L)(8) The names of the signers of any petition shall be confidential and neither the State Auditor and Inspector, the county election board nor the county treasurer may release them to any other person or entity except upon an order from a court of competent jurisdiction.

A F F I D A V I T

We, the undersigned being of lawful age, upon oath or affirmation and subject to the criminal penalty for perjury, as prescribed by 21 O.S. § 500, to the best of his/her knowledge and belief declare that he/she is a resident of the Town of Medicine Park, an elector in Comanche County, and that he/she resides at the address designated on this petition.

NAME (PRINT)	ADDRESS (PRINT)	SIGNATURE	DATE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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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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