

INVESTIGATIVE AUDIT REPORT

# No. 9 AREA VOLUNTEER FIRE DEPARTMENT

September 4, 2018



*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

**NO. 9 AREA VOLUNTEER FIRE DEPARTMENT  
LONGTOWN, PITTSBURG COUNTY, OKLAHOMA  
INVESTIGATIVE AUDIT REPORT  
FOR THE PERIOD JULY 1, 2015 THROUGH JUNE 30, 2017**

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This report was prepared by the Oklahoma State Auditor & Inspector's Office following a request by the Oklahoma Attorney General's Office under **74 O.S. § 18f**. This report has not been printed but is available on the State Auditor & Inspector's Office's website ([www.sai.ok.gov](http://www.sai.ok.gov)) and in the Oklahoma Department of Libraries' Publications Clearinghouse Digital Prairie Collection ([digitalprairie.ok.gov/cdm/search/collection/audits](http://digitalprairie.ok.gov/cdm/search/collection/audits)).



# Oklahoma State Auditor & Inspector

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September 4, 2018

## **TO THE HONORABLE MIKE HUNTER, OKLAHOMA ATTORNEY GENERAL**

Pursuant to your request and in accordance with **74 O.S. § 18f**, our office performed an investigation of the No. 9 Area Volunteer Fire Department for the period of July 1, 2015 through June 30, 2017.

The objectives of the investigation primarily included, but were not limited to, the concerns noted in your request letter. The results of the investigation, related to these objectives, are presented in the accompanying report.

Because the procedures of this engagement did not constitute an audit conducted in accordance with generally accepted auditing standards, our office does not express an opinion on the account balances or financial statements of the No. 9 Area Volunteer Fire Department.

The goal of the State Auditor and Inspector's Office is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide services to the taxpayers of Oklahoma is of utmost importance.

Our office wishes to express appreciation to the No. 9 Area Volunteer Fire Department for the assistance and cooperation extended to our office during the course of our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones". The signature is written in a cursive style with a long, sweeping tail on the letter "s".

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

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## Executive Summary

### WHY WE CONDUCTED THIS AUDIT

The Honorable Mike Hunter, Attorney General for the State of Oklahoma, under the authority of **74 O.S. § 18f**, requested the assistance of the Oklahoma State Auditor and Inspector in conducting an investigative audit of the books and records of the No. 9 Area Volunteer Fire Department of Longtown, Oklahoma.

### WHAT WE FOUND

- The Department's firefighters improperly serve as members of the fire-protection district's Board of Directors. The conflict of the firefighters and the Board being one and the same was a significant barrier in the oversight and management of the finances of the Department and had an overreaching effect on the organization and administration of the Department. (Page 18)
- The Department did not prepare annual budgets as required by law. (Page 19)
- Internal controls surrounding the Department's management of revenues and expenditures were almost non-existent. (Page 12)
- From July 2015 through June 2017, the Department expended \$1,528.73 on Christmas party costs, gifts, and flowers, expenses that did not appear to be for a public purpose. (Page 10)
- Supporting documentation was not always sufficient to definitively verify that some expenditures were for departmental purposes. Some reimbursement payments included sales tax resulting in additional cost to the Department. (Page 11)
- Revenue sources of the Department were comingled between three separate bank accounts contrary to law. (Page 9)
- The Department was not charging non-members the fire call fee required in the Department's bylaws. (Page 9)
- The Board of Directors violated the Open Meeting Act in one executive session and meeting agendas were not prepared in compliance with the Open Meeting Act. (Page 14)
- Expenditures administered through the Pittsburg County Clerk's office from county sales tax funds appropriated to the Department appeared to be consistent with the Department's purpose and allowable under law. However, three of the 11 purchase orders reviewed were not timely encumbered. (Page 4)
- We found no evidence that financial records and board minutes were not available to the public; however, two meeting agendas, along with the minutes for one board meeting, could not be provided. (Page 16)
- Operational Assistance Grant proceeds appeared to be expended by the Department consistent with the Department's purpose and in accordance with applicable law and grant guidelines. (Page 6)

## No. 9 Area Volunteer Fire Department – Investigative Audit

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### **Background**

On July 14, 1976, the No. 9 Area Volunteer Fire Department (hereinafter the “Department”) was incorporated to provide rural fire-protection in the Longtown area of Pittsburg County. It was initially formed as a charitable corporation to provide fire-protective service both to its members and to nonmembers either within or without the unincorporated area.

On June 1, 2009, upon approval of the Pittsburg County Commissioners, the Department “converted to a county fire department organized pursuant to the provisions of” **19 O.S. § 351(D)**.

Title **19 O.S. § 351(D)** also provides for the Board of County Commissioners to appoint the Board of Directors of the Department. (hereinafter the “Board” or the “Directors”) The initial Directors were appointed by the Board of County Commissioners and were comprised of volunteer firefighters of the Department. Subsequent directors have been elected internally, not appointed by the County Commissioners as required by law.<sup>1</sup>

Title **19 O.S. § 351(D)(5)** governs the operations of the Department and provides that the *board of directors* of a county fire department organized pursuant to this subsection shall have the following powers and duties, among others:

- to manage and conduct the business affairs of the department;
- to appoint the fire chief, fire company officers, and employees sufficient to maintain and operate the equipment owned by the county fire department;
- to construct or otherwise acquire from available funds suitable firehouses and other buildings or structures suitable for the housing of equipment and supplies of the county fire department, or for carrying on its own business and affairs;
- to employ such officers and employees as may be required from available funds, fix their compensation, and prescribe their duties;
- to prepare an annual budget and follow existing laws pertaining to the budget process such as public notice, public hearings, protest periods, and filing requirements in the same manner as they apply to other forms of government in Oklahoma.

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<sup>1</sup> See detailed finding at Page 19.

## No. 9 Area Volunteer Fire Department – Investigative Audit

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The Board of Directors as of June 30, 2017, were:

- Danny Choat, Fire Chief
- Mike Rhodes, Assistant Fire Chief
- Tom Gable, Treasurer
- Steven Houdesheldt, Secretary
- Will Moore, Member

### *Objectives*

Under the authority of the Attorney General’s Office the State Auditor and Inspector’s Office was requested to perform an investigate audit of the No. 9 Area Volunteer Fire Department, for the fiscal years ending June 30, 2016 and 2017, to determine whether:

1. Sales tax revenues were expended for purposes provided by law and were consistent with the Department’s corporate purpose;
2. Grant proceeds were deposited and expended for purposes provided by law and consistent with the Department’s corporate purpose;
3. Revenues, other than sales tax revenues and grant proceeds, were deposited and expended for purposes provided by law and consistent with the Department’s corporate purpose;
4. Meetings of the Board of Directors were held in compliance with the Open Meeting Act;
5. Records were made available to the public as required by the Open Records Act.

**OBJECTIVE I**

**SALES TAX REVENUES**

*Objective*                      *Determine whether sales tax revenues were expended for purposes provided by law and were consistent with the Department’s corporate purpose.*

*Summary of Findings:*

- **Expenditures administered through the Pittsburg County Clerk’s office from county sales tax funds appropriated to the Department appeared to be consistent with the Department’s purpose and allowable under law.**
- **Three of the 11 purchase orders reviewed were not timely encumbered.**

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*Finding*                      **Expenditures administered through the Pittsburg County Clerk’s office from county sales tax funds appropriated to the Department appeared to be consistent with the Department’s purpose and allowable under law.**

Title **68 O.S. § 1370(E)** allows a county to levy a sales tax “designated for a particular purpose”. In 2008, Pittsburg County voters approved a one-quarter percent (.25%) sales tax, the proceeds which are to be utilized for the funding of the fire-protections services of the fire departments in the county.

The Pittsburg County Clerk’s Office administers the Departments expenditures of sales tax funds. The transactions are processed through the County’s purchase order system, encumbered on a county purchase order, certified by the County Clerk’s office and approved by the Board of County Commissioners.

At the beginning of FY2016, Pittsburg County held \$103,705.74 of sales-tax proceeds earmarked for the No. 9 Area Volunteer Fire Department. Additional sales-tax proceeds are earmarked for the Department monthly.

During the audit period, the County expended \$118,661.50 for the Department, resulting in a Department balance with the County at the end of FY2017 of \$107,952.05.

We obtained and reviewed the supporting documentation and invoices for 11 county processed purchase orders, totaling \$38,233.50, or 32% of the total expended for the audit period. The County’s expenditures for the



Department appeared to be consistent with the Department’s purpose and allowable under law.

***Finding***

**Three of the 11 purchase orders reviewed were not timely encumbered.**

Purchasing procedures for county expenditures are defined in **19 O.S. § 1505** and require counties to prepare purchase orders and *encumber* funds prior to expenditures being incurred.

Encumbering is a reservation of appropriated monies used primarily to avoid over expenditure of a specific fund. Contracts or purchases entered into should be encumbered prior to the goods being received or the services rendered to ensure that funds to pay the incurred obligation exist.

Three of the 11 purchase orders reviewed were not timely encumbered:

- Purchase Order No. 874 was requisitioned and encumbered on July 30, 2015, for a “Mini-Split Heat Pump” totaling \$2,000. The invoice and receiving report indicated that the unit was installed on July 28, 2015, two days prior to being requisitioned.
- Purchase Order No. 2242 was requisitioned and encumbered on September 7, 2016, for a “2015 Kubota RTV” totaling \$15,999. The invoice indicated that the vehicle was ordered or purchased on August 19, 2016, at least three weeks prior to being requisitioned.
- Purchase Order No. 9759 was requisitioned and encumbered on May 25, 2017, for an oil change, lube, and air conditioner repair totaling \$2,000. The vendor invoice reflects that the order was opened on May 24, 2017, the day before the service was encumbered.

In accordance with law, all county purchases should be requisitioned and encumbered prior to the goods being received or the services being rendered.

**OBJECTIVE II**

**GRANT REVENUES**

*Objective*                      *Determine whether grant proceeds were deposited and expended for purposes provided by law and consistent with the Department’s corporate purpose.*

*Summary of Findings:*

- **Operational Assistance Grant proceeds appeared to be expended by the Department consistent with the Department’s purpose and in accordance with applicable law and grant guidelines.**

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*Background*

Oklahoma Forestry Services (OFS), a division of the Oklahoma Department of Agriculture, Food, & Forestry, distributes “Operational Assistance Grants”, funding for rural fire departments serving communities with populations less than 10,000 that depend either fully or partially on volunteer firefighters.

Grant funds can be used for purchasing items such as firefighting equipment, insurance premiums, equipment maintenance, and personal protective gear.

For fire departments in Pittsburg County, the Kiamichi Economic Development District of Oklahoma (KEDDO) administers the grant funds on behalf of OFS. After OFS disburses the funding, the Departments subsequently submit to KEDDO proof of their expenditures.

Allowable expenditures are defined in **19 O.S. § 901.56(F)** which provides as follows:

Any amount so distributed from the Rural Fire Protection Program Fund to any eligible participant shall be expended only for the maintenance of its fire department, the purchase, construction, maintenance, repair and operation of its fire stations, fire apparatus and equipment, the purchase, rental, installation or maintenance of fire hydrants, the payment of insurance premiums upon fire stations, fire apparatus and equipment, and insurance premiums for injuries or death of fire fighters, as otherwise provided by law. Provided, however, that no monies shall be expended from the fund for any purpose relating to the water supply systems of any participant, nor for the improvement or construction of such systems nor for any other appurtenances relating to the distribution or use of such water supply system. Monies so distributed from the Rural Fire Protection Program Fund to any eligible participant may also be expended, in an amount not to exceed ten percent (10%) of the allocated funds or

## No. 9 Area Volunteer Fire Department – Investigative Audit

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the sum of (\$1,000.00) in the aggregate during any period of one (1) year, whichever is larger, for the expense of any fire fighters attending a certified fire school.

### ***Finding***

**Operational Assistance Grant proceeds appeared to be expended by the Department consistent with the Department’s purpose and in accordance with applicable law and grant guidelines.**

The Department received Operational Assistance Grants of \$4,289.96 and \$3,817.42, in FY2016 and FY2017 respectively. The proceeds were deposited into and disbursed from the Department’s general bank account.

### **FY2016**

On August 31, 2015, OFS disbursed the full grant amount of \$4,289.96 to the Department. The Department subsequently paid \$4,420.00 to Casco Industries for boots, which was the expenditure designated by the Department for the use of the grant proceeds.

The Department submitted the invoice, canceled check, and required Operational Grant Expenditure Worksheet to KEDDO as supporting documentation for the \$4,289.96 received in grant proceeds.

It appears the FY2016 grant proceeds were properly expended.

### **FY2017**

On August 18, 2016, OFS disbursed \$1,908.71 to the Department for the *first half* of the 2017 grant proceeds. The Department paid \$2,383.90 to Casco Industries for nozzles, hoses, lite trackers, couplers, and fittings, which were the expenditures designated by the Department for the use of the first half of the grant proceeds.

Corresponding documentation, including an invoice and an Operational Grant Expenditure Worksheet, was submitted to KEDDO as supporting documentation.

On May 11, 2017, OFS disbursed \$1,908.71 to the Department for the *second half* of the 2017 grant proceeds. On June 1, 2017, the Department paid \$3,836.00 to Casco Industries for helmets, the expenditure designated by the Department for the second half of the grant proceeds.

Corresponding documentation, including an invoice and an Operational Grant Expenditure Worksheet, was submitted to KEDDO as supporting documentation.

It appears the FY2017 grant proceeds were properly expended.

**OBJECTIVE III**

**OTHER REVENUE**

*Objective*

*Determine whether revenues, other than sales tax revenues and grant proceeds, were deposited and expended for purposes provided by law and consistent with the Department's corporate purpose.*

*Summary of Findings:*

- **The Department was not charging non-members the fire call fee required in the Department's bylaws.**
- **Revenue sources of the Department were comingled between three separate bank accounts contrary to law.**
- **From July 2015 through June 2017, the Department expended \$1,528.73 on Christmas party costs, gifts, and flowers, expenses that did not appear to be for a public purpose.**
- **Supporting documentation was not always sufficient to definitively verify that some expenditures were for departmental purposes. Some reimbursement payments included sales tax resulting in additional cost to the Department.**
- **We found no evidence that Danny Choat received any personal benefit from DISH Network transactions reimbursed through the Department.**
- **Internal controls surrounding the Department's management of revenues and expenditures were almost non-existent.**

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*Background*

Revenues managed by the Department, other than sales tax revenue and grant proceeds, included annual membership dues and donations.

In relation to annual membership dues, citizens within the Department's fire-protection district who choose to pay annual membership dues are considered "members" of the district and, as such, do not have to pay the Department's fee for responding to a fire on their property and may vote at the Department's annual meetings.

Firefighters distribute cards on the doors of homes in the district each year for citizens to submit with their membership dues if they choose to pay them. The Department's bylaws stipulate that annual membership dues are \$50 per property.

If a citizen in the district does not participate in the annual membership drive, and does not purchase a membership, the fee for responding to a non-member fire call is \$265 per fire truck, per call.

According to Department records, the Department had approximately 587 members who paid dues in 2017.

***Finding***

**The Department was not charging non-members the fire call fee required in the Department’s bylaws.**

Article V of the Department’s current by-laws dictates a \$265 per truck charge for a fire call of a non-member. Article V states:

**Article V**

**Section 1      Non-Member fire call fee is \$265.00 per truck. All fire calls will be made regardless of membership status.**

According to Chief Choat, the Department does not currently charge the fee when responding to a fire on a non-members property. Per Choat, although the fire call fee is not charged, the Department would submit a claim to the homeowner’s insurance company for reimbursement if services were provided. We found no evidence that insurance reimbursements had been received during the audit period.

The Department should comply with the stated by-laws and bill the required \$265 per truck charge when responding to non-member fire calls.

***Finding***

**Revenue sources of the Department were comingled between three separate bank accounts contrary to law.**

The Department maintains three bank accounts the “General Account”, the “Special Events Account”, and the “Fireworks Account”.

The “General Account” included deposits of grant proceeds, annual dues, donations, and reimbursements. The “Special Events Account” included deposits of annual dues and the “Fireworks Account” included deposits of donations and annual dues.

Funds from the Special Events Account and the Fireworks Account were transferred to the General Account to be disbursed. The General Account was the only bank account that had checks available for disbursement.

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It appeared that public and non-public funds were comingled between the three bank accounts. According to **19 O.S. § 351(D)(8)(b)**, public funds should not be comingled with other revenue sources. The statute provides:

Funds raised by a nonprofit organization for the purpose of supporting the fire protection services of a county fire department organized pursuant to the provisions of this subsection, whether such funds were raised before or after a corporate fire department converts to a county fire department, shall not be comingled with public funds and shall be used only for designated benevolent or charitable purposes, including, but not limited to, fire protection purposes.

Best practices also suggest that revenue sources be retained and accounted for separately so that the integrity of the funds can be maintained and the purposes for which the funds were intended are more easily adhered to.

***Finding***

**From July 2015 through June 2017, the Department expended \$1,528.73 on Christmas party costs, gifts, and flowers, expenses that did not appear to be for a public purpose.**

Based on **2001 OK AG 30**, expenditures from public funds for “meals and refreshments” and gifts for the benefit of private individuals or groups would not be allowable. Expenditures may be allowable if such purpose is a “public purpose” and does not specifically benefit private individuals or groups. The Opinion states:

Public funds can only be appropriated for a **public purpose** and must be used in furtherance of a governmental function as opposed to benefitting private individuals or groups. [Emphasis added]

A total of \$1,528.73 was expended for Christmas party costs, gifts, and flowers, none of which appeared to be for a public purpose or for Department services. These costs were for the benefit of private individuals or groups.

Date	Check No.	Payee	Purpose	Amount
12/5/15	1212	Rib Crib	Christmas Party Food	\$571.57
12/5/15	1213	Mike Rhodes	Baby Gift Reimbursement	\$269.26
12/5/15	1214	Sheila Hunt	Christmas Gift Reimbursement	\$120.14
12/5/15	1216	Danny Choat	Christmas Gift Reimbursement	\$341.85
12/14/15	1218	Eufaula Flower Shoppe	Funeral Flowers	\$62.00
12/13/16	1263	Danny Choat	Christmas Gift Reimbursement	\$163.91
			Total	\$1,528.73

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Check 1212 - According to Choat, this \$571.57 expenditure was for the 2015 Department Christmas party. Per Choat, approximately 35 people, firefighters and family members, would have been in attendance.

Check 1213 - This \$269.26 check was reimbursement to Rhodes for numerous baby items. According to Rhodes and Choat, two firefighters' wives had babies and the Department provided baby gifts for them.

Check 1214 - This \$120.14 reimbursement check was allegedly for 2015 Christmas gifts. The Department was not able to provide a receipt for the disbursement.

Check 1216 - This \$341.85 check was purportedly a reimbursement for gifts at the 2015 Christmas party. The purchase included an engraved plaque, a four-piece Craftsman Lithium combo kit, and numerous packages of candy.

Check 1218 - According to Choat, this \$62.00 check was for a delivery of flowers to a Department member for a death in the family.

Check 1263 - This check included \$163.91 of costs for two engraved plaques and \$39.75 for 15 gift bags reportedly for the 2016 Christmas party.

Our review also noted four checks totaling \$287.49 expended for meals for firefighters. Although *individual* firefighter meal costs could be construed as a non-public purpose, meals, along with snacks and drinks provided to firefighters during the performance of their duties, would appear to be an appropriate and allowable expense in the “furtherance of a governmental function” as defined in the Attorney General Opinion noted above.

### ***Finding***

**Supporting documentation was not always sufficient to definitively verify that some expenditures were for departmental purposes. Some reimbursement payments included sales tax resulting in additional cost to the Department.**

Numerous other expenditures reviewed reflected goods or services that appeared to be for departmental purposes. However, the purchases were not made directly to the vendor but were instead paid as check reimbursements to a firefighter. In those instances, although the items purchased seemed appropriate for a public purpose, the supporting documentation was not always sufficient to definitively verify that these costs were for departmental purposes.

In addition, the payment and subsequent reimbursements included sales tax, resulting in additional costs to the Department that were not warranted. Title **68 O.S. § 1356(1)** exempts governmental subdivisions from paying state sales taxes.

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For example, The True Value purchase shown here was reimbursed to Mike Rhodes for \$164.97 for weed killer and a grinder kit. No additional documentation or notes were provided in support of a Department purpose.

The purchase should have been made via a Department check in the name of the Department with the tax-exempt status applied. For circumstances in which firefighter purchased items are unavoidable, a full explanation of the need and use of the item should be documented.

We also noted on two occasions where the Department returned items for a credit and received \$27.10 in cash refunds. These amounts were not deposited into the Department's bank accounts. According to Rhodes and Choat, that cash was expended for subsequent Department purposes. However, no records for those expenditures could be provided.



### ***Finding***

**We found no evidence that Danny Choat received any personal benefit from DISH Network transactions reimbursed through the Department.**

During the audit period, the Department paid approximately \$112 each month for DISH Network services. It was confirmed that the service was installed at the fire station.

The DISH Network statements for July, August, and September 2015 reflected the service address as the residential address of Choat. The statements from October 2015 forward reflected the service address as the fire station. All of the statements reflected the same account number.

According to a DISH Network employee, the earlier statements reflected Choat's residential address because DISH required the account to be associated with an individual. The Department listed Choat as the Department's contact person and as a result, DISH Network tied the Department's account to Choat's personal account.

For a three-month period, Choat paid both bills, and the Department reimbursed him for the payments. Beginning October 2015, the Department was invoiced for and paid their own billing directly. There was no evidence



that Choat received any personal benefit from the DISH Network transactions.

***Finding***

**Internal controls surrounding the Department’s management of revenues and expenditures were almost non-existent.**

In addition to the receipting and purchasing issues noted above, the following weaknesses in the Department’s controls were noted:

- On occasion, board members signed blank checks in advance of payment;
- There was no evidence that bank reconciliations were being performed on a consistent basis;
- Receipts were not issued for monies received; and
- Deposits were not always made in a timely manner.

Internal controls should be implemented to help protect the assets of the Department. Blank checks should never be signed. Checks should be presented to the Directors with proper supporting documentation and be signed only upon approval by the Board.

Receipts should be issued for all monies collected and deposits should be made by next day when possible. In addition, records should be maintained of all receipts and expenditures and reconciled to the bank statements monthly.

**OBJECTIVE IV OPEN MEETING ACT**

**Objective** Determine whether meetings of the Board of Directors were held in compliance with the Open Meeting Act.

**Summary of Findings:**

- The Board of Directors violated the Open Meeting Act in an executive session held on June 8, 2015. It was also noted that agendas were not prepared in compliance with the Open Meeting Act and agendas and minutes did not clearly state all actions of the Board.

**Background**

Danny Choat prepares the Monthly Meeting Agenda for each month’s Board of Director’s meeting by photocopying a form and handwriting the month’s agenda information on it as shown here in a clip of a 2017 Agenda.

**6. Treasurers Report:**  
**7. Chiefs Report:**  
**8. Unfinished / Old Business:**  
**9. Agenda Items:** ① Road Sign, ② Recruit Firefighters, ③ Reports  
④ Gun Tickets ⑤ Fire Scenes.

The Board secretary subsequently completes the minutes for each meeting by recording the meeting activity on a photocopied form titled “Monthly Meeting Notes”. A portion of this form is shown below.

7. Chiefs Report: Fire Calls  
Grass 5, Structure 3, Auto \_\_\_\_\_, Boat \_\_\_\_\_, False Alarm \_\_\_\_\_,  
First Responder \_\_\_\_\_, Traffic Control \_\_\_\_\_, Stand By \_\_\_\_\_, Chemical  
\_\_\_\_\_, Auto accident \_\_\_\_\_, Home accident \_\_\_\_\_, Medical \_\_\_\_\_, Storm  
Watch \_\_\_\_\_, Storm Damage \_\_\_\_\_, Rescue: Land \_\_\_\_\_, Water \_\_\_\_\_,  
Other: Type : \_\_\_\_\_, # \_\_\_\_\_.  
Motion to Accept By: TOM, Sec. by: Will,  
Votes: Steve: /yes, —no, —, Mike: /yes, —no, —, Tom: /yes, —no, —,  
: —yes, —no, —, Will: /yes, —no, —, Danny: /yes, —no, — **CARRIED**  
**8. Unfinished / Old / Business:** N/A None  
Discussion : \_\_\_\_\_  
Action : \_\_\_\_\_  
Motion by: \_\_\_\_\_ second by \_\_\_\_\_, No Vote needed  
\*Votes: \_\_\_\_\_

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We reviewed the documentation for 12 board of director meetings for compliance with the Open Meeting Act<sup>2</sup>, including but not limited to:

- Agenda was posted at least 24 hours in advance and included the time and place of the meeting;
- Agenda listed the purpose of the meeting and included all items to be discussed;
- Minutes listed the board members present and the votes of each member as required;
- Any executive sessions held were defined on the agenda and administered properly;
- Minutes clearly reflected all matters considered and all actions taken.

### Finding

**The Board of Directors violated the Open Meeting Act in an executive session held on June 8, 2015. It was also noted that agendas were not prepared in compliance with the Open Meeting Act and agendas and minutes did not clearly state all actions of the Board.**

According to the minutes of the June 8, 2015 board meeting, an executive session was held with the Board discussing the treasurer’s authority and petty cash expenditures, neither subject of which public bodies may discuss in executive sessions per **25 O.S. § 307(B)**.

The executive session was also not included on the meeting agenda<sup>3</sup>, the Board did not vote to enter the executive session<sup>4</sup>, and issues were voted on while in executive session<sup>5</sup>, all violations of the Open Meeting Act.

Other additional issues noted concerning compliance with the Open Meeting Act included:

#9 Area Vol. Fire Dept. 2015 Monthly Meeting Business * EXECUTIVE SESSION CONTINUED *
1. DISCUSSION: PETTY CASH IN OFFICE DRAWER TOTAL \$55.00 DOLLARS, WITH RECEIPTS FOR MARLBORO CIGARETTES TWO TIMES AND BEARD TRIMMER? PETTY CASH LABELED TILL JULY MEETING FOR MORE INFO FROM DANNY.
2. STEVE THRASHER WAS NEVER REIMBURSED FOR FUEL EXPENSE FOR RUBOMAS THAT HE BROUGHT TO THE CROWDER-BLOCKER FIRE MONTHS AGO, RECEIPTS WERE TURNED IN. THE BOARD AGREED TO PAY STEVE BACK \$50.00 DOLLARS OUT OF THE PETTY CASH.
3. SECRETARY AND TREASURER POSITION ON THE BOARD. MARK MADE MOTION THAT TOM AS TREASURER TAKES OVER ALL MONIES AND DUTIES AS TREASURER STARTING NEXT MONTHS BUSINESS MEETING (JULY). MOTION SECONDED BY: STEVEN H. ALL IN FAVOR, NO OPPOSE, MOTION PASS MARK MADE MOTION STEVEN H. TO SUBSTITUTE FOR TOM DURING ANY ABSENCE, VACATION ETC., SINCE STEVEN H. IS SECRETARY. MOTION SECONDED BY TOM, ALL IN FAVOR, MOTION PASS  MOTION TO END EXECUTIVE SESSION BY MARK MOTION SECONDED BY KREG ALL IN FAVOR TIME: 1928

<sup>2</sup> The Open Meeting Act is defined in **25 O.S. §§ 301-314**.

<sup>3</sup> Required by **25 O.S. § 307(E)(1)**.

<sup>4</sup> Required by **25 O.S. § 307(E)(2)**.

<sup>5</sup> Required by **25 O.S. § 307(E)(3)**.

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- Agendas were not dated so it could not be determined if agendas were posted at least 24 hours in advance of meetings;
- Agendas did not list a time and place of each meeting as required;
- Agendas and minutes did not always clearly state matters considered and actions taken.

It was also alleged that firefighters had met to discuss business before the official board meetings. Any discussions among a quorum of board members outside of public meetings would be a violation of the Open Meeting Act. Parties on both sides of the allegation were interviewed, there was not sufficient evidence to definitively support that meetings had been held outside of a public meeting forum.

**OBJECTIVE V**

**OPEN RECORDS ACT**

*Objective*                      *Determine whether records were made available to the public as required by the Open Records Act.*

*Summary of Findings:*

- **We found no evidence that financial records and board minutes were not available to the public.**
- **Two meeting agendas, along with the minutes for one board meeting, could not be provided.**

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*Background*

Allegations were received that Fire Chief Danny Choat:

- had not allowed board members access to receipts or bank statements at board meetings;
- had not provided meeting agendas to board members prior to meetings;
- had not provided copies of prior meeting minutes to board members;
- did not have meeting minutes available on file at the fire station.

*Finding*

**We found no evidence that financial records and board minutes were not available to the public.**

According to Danny Choat, the Department had never received any *official* open records requests.

When SA&I met Choat and Mike Rhodes at the fire station unannounced, supporting documentation for expenditures, including original receipts and invoices, were provided; along with board meeting agendas and minutes.

Although the above allegations were noted there was no evidence that board members or the public had been denied access to financial records.

*Finding*

**Two meeting agendas, along with the minutes for one board meeting, could not be provided.**

Although the majority of meeting minutes and agendas were made available, neither the agenda for the November 9, 2015 meeting, nor the

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minutes or agenda for the 2015 annual meeting held December 5, 2015, could be provided.

Title **25 O.S. § 312(A)** requires written minutes be maintained, the statute states:

The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body. The minutes of each meeting shall be open to public inspection and shall reflect the manner and time of notice required by this act.

The Department should insure that records of all meetings be written, and that such records, along with accompany agendas be maintained and available for public inspection.

**OTHER ISSUES**

*Summary of Findings:*

- **Department firefighters improperly serve as members of the fire-protection district’s Board of Directors.**
  - **The Department does not prepare annual budgets as required by law.**
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*Background*

The following issues, although not part of the original objectives of our investigation, were deemed significant in our overall analysis of the Department’s function. As noted in the findings throughout this report, the lack of oversight by the Board of Directors and the conflict of the firefighters and the Board being one and the same, seem to be a significant barrier in the management of the finances of the Department.

*Finding*

**Department firefighters improperly serve as members of the fire-protection district’s Board of Directors.**

The initial board of directors of the Department were appointed by the Pittsburg County Board of County Commissioners when the Department was established in June 2009. These directors were volunteer firefighters. The Department currently elects its own members each year, and the current five members continue to be firefighters, including the chief and the assistant chief.

The members of the Board of Directors should be appointed by the Pittsburg County Board of County Commissioners not elected internally. Title **19 O.S. § 351(D)(3)** provides that the directors of a county fire department be owners of real property in, and residents of, the fire-protection district and be appointed by the board of county commissioners. The statute states:

...the board of county commissioners shall appoint five directors, one of which shall hold his or her respective office for a term of five (5) years, one of which shall hold his or her respective office for a term of four (4) years, one of which shall hold his or her respective office for a term of three (3) years, one of which shall hold his or her respective office for a term of two (2) years, and one of which shall hold his or her respective office for a term of one (1) year.... Each year thereafter, ***there shall be appointed by the board of county commissioners*** for a term of five (5) years so many members as are necessary to replace all members whose terms are expiring on the board of directors for such county fire department. [Emphasis added]

The chief and assistant chief should not serve on the Board, but instead should be appointed by the Board. Title **19 O.S. § 351(D)(5)(d)** specifically directs that the powers and duties of the Board of Directors should be to:

...appoint the fire chief, fire company officers and employees (whether paid or volunteer), sufficient to maintain and operate the equipment owned by the county fire department...

The Office of Attorney General has opined<sup>6</sup> that a conflict of interest exists as a matter of law when officers, including chiefs and assistant chiefs, serve on the boards of directors for their districts “because holding both positions would violate the common[-]law rule that [...] offices are incompatible as a matter of law when one is subordinate to the other” and that the exemption in **51 O.S. § 6(A)(22)** does not apply in such situations. While the opinion specifically pertained to fire-protection districts organized under **19 O.S. §§ 901.1, et seq.**, its broad reasoning appears to apply to any fire department.

The Department and the Pittsburg County Board of County Commissioners should determine the process necessary to bring the Department’s Board of Directors in compliance with law.

***Finding***

**The Department does not prepare annual budgets as required by law.**

The Department does not prepare written budgets, as outlined in **19 O.S. § 351(D)(5)(j)** which requires the Board of Directors of a county fire department organized under this statute to:

...prepare an annual budget and follow existing laws pertaining to the budget process such as public notice, public hearings, protest periods and filing requirements in the same manner as they apply to other forms of government in Oklahoma.

The Department should begin the process of preparing an annual budget.

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<sup>6</sup> 2003 OK AG 47



***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 the State Auditor & Inspector's Office. This Office 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, prosecutorial, and/or judicial authorities designated by law.



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