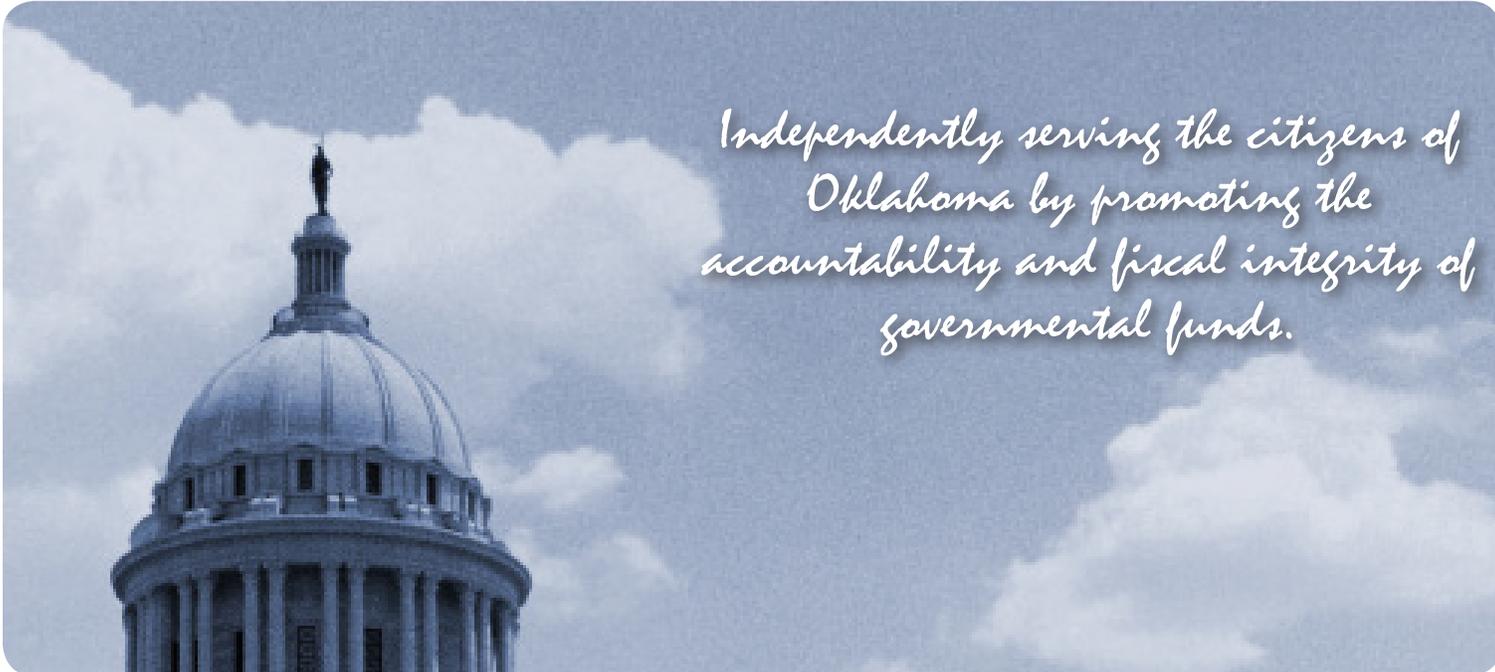


INVESTIGATIVE REPORT

PAWNEE COUNTY

July 1, 2007 through June 10, 2010



*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

**PAWNEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
PAWNEE COUNTY SHERIFF
PAWNEE COUNTY, OKLAHOMA
SPECIAL INVESTIGATIVE REPORT
JULY 1, 2007 THROUGH JUNE 10, 2010**

This publication, issued by the State Auditor and Inspector, as authorized by **74 O.S. 2011 § 212(H)**, has not been printed, but is available on our agency's website (www.sai.ok.gov) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to **74 O.S. 2011 § 3105.B**.



Oklahoma State Auditor & Inspector

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

June 18, 2012

Mr. Hollis Thorp, District Attorney
District Attorney District #26
407 Government Street, Suite 10
Alva, Oklahoma 73717

Transmitted herewith is the Special Audit Report for the Pawnee County Board of County Commissioners and the Pawnee County Sheriff.

Pursuant to your request, and in accordance with the requirements of **74 O.S. 2011 § 212(H)**, we performed a special audit for the period July 1, 2007 through June 30, 2010.

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

Because our investigative procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of Pawnee County, Oklahoma for the period July 1, 2007 to June 30, 2010.

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

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our special audit.

This report is addressed to and intended solely for the information and use of the District Attorney, District #26, and should not be used for any other purpose. Consequently, this document is *not* a public document, but is part of the investigation and/or litigation files of the District Attorney. Until its release by the District Attorney's office, it may be kept confidential pursuant to the **Oklahoma Open Records Act**, in accordance with **51 O.S. 2011, § 24A.12**.

Sincerely,

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

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BOARD OF COUNTY COMMISSIONERS

Gary PogueDistrict 1
(June 2003 – December 2010)

David Wilkins.....District 1
(January 2011 – Present)

Joe AllenbaughDistrict 2
(January 2001 – December 2008)

Dale VanceDistrict 2
(January 2009 – November 2010)

J. T. AdamsDistrict 2
(March 2011 – Present)

Dwight WoodrellDistrict 3
(January 2007 – March 2009)

Dale Carter.....District 3
(July 2009 – Present)

PAWNEE COUNTY SHERIFF

Roger PriceSheriff
(November 2004 – November 2010)

Mike WatersSheriff
(December 2010 – Present)

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Introduction

Article 17 of the Oklahoma Constitution provides for the establishment of the seventy-seven (77) counties and provides that each shall be a separate body politic and corporate.

The Board of County Commissioners (“BOCC”) is the chief administrative board for the county. Three County Commissioners are elected to administer each of three road and highway districts. Each district’s County Commissioner is a member of the BOCC, which has overall responsibility for the administration of county financial affairs and operations, including approval of all contracts, final approval of expenditures, awarding of bids, approval of county wide policies, approval of the annual financial report and estimate of needs and other matters related to the general supervision of programs, facilities and governing activities of the county.

The Commissioners must act as a Board when entering into contracts or other agreements affecting the County’s general administration and operations. Consequently, actions taken by the Board must be voted on and approved by a majority of the Commissioners. The BOCC business meetings are open to the public and are subject to the provisions of the Open Meetings Act and the Open Records Act.

Other elected county officials include the County Assessor, County Clerk, County Treasurer, County Sheriff, County Court Clerk, and District Attorney. The County Commissioners and other county officials hire deputies and assistants to help them accomplish their public duties. The duties and responsibilities of each official are generally prescribed by statute, primarily Titles 19 (Counties and County Officers), 20 (Courts), 51 (Officers), 61 (Public Buildings and Public Works), 62 (Public Finance), 63 (Public Health and Safety), 68 (Revenue and Taxation) and 69 (Roads, Bridges and Ferries).

The general qualifications, duties, and responsibilities of the County Commissioners are described in Title 19, Chapter 10, §§321-350. The general qualifications, duties, and responsibilities of the County Sheriff are described in Title 19, Chapter 12, §§510-564.

On September 7, 2010, a Grand Jury was convened in Pawnee County and tasked with looking at certain transactions related to the County Commissioner’s Office and the Sheriff’s Office. On September 29, 2010, the Grand Jury issued a final report in which the Grand Jury found sufficient grounds to return two (2) accusations for removal from office of Pawnee County Commissioner Dale Vance and Pawnee County Sheriff Roger Price.

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Former Commissioner Dale Vance resigned from office effective November 23, 2010, as part of a 3-year deferred prosecution agreement. The civil trial for removal from office for former Sheriff Roger Price was begun on November 1, 2010. Price was found guilty on two counts of the accusation and removed from office as of November 3, 2010.

As a result of the Grand Jury's recommendation, Hollis Thorp, District Attorney, District #26, who served as the legal advisor for the Grand Jury, requested the State Auditor and Inspector conduct a "full investigative audit" of the Pawnee County Board of County Commissioners' office and the Pawnee County Sheriff's Office.

The Office of State Auditor and Inspector conducted a special audit/investigation of the records of the Pawnee County Board of County Commissioners' office and the Pawnee County Sheriff's Office, primarily those records relating to the objectives noted in the Table of Contents page of this report.

All dollar amounts included in our report are rounded to the nearest dollar, unless otherwise specified.

The County's fiscal year begins July 1 and ends June 30 of the following calendar year. In this report, fiscal years are abbreviated by using the ending calendar year. For example, the fiscal year of July 1, 2010 to June 30, 2011, will be identified as "FY11."

The results of our special audit/investigation are presented in this report.

Objective I. Review expenditures related to the recycling plant project.

Background

On October 13, 2009, the Board of County Commissioners (BOCC) began a discussion regarding the construction of a landfill and recycling facility in Pawnee County.

The proposed project consisted of converting a 416 acre limestone quarry into a multi-system “green” recycling facility. A total of eight (8) technologies and nine (9) different systems of processing equipment were considered for the landfill.

One process considered for the proposal was converting curbside trash into a “biomass” that can be fermented into ethanol fuel, diesel, etc. Other processes included recycling used tires into “end use” products and obtaining cedar oil from red cedar trees.

The meeting minutes for the November 6, 2009 Pawnee County Public Programs Authority (“Authority” or PCPPA), reflect the county commissioners had requested the Authority to pay \$6,000 per month to Craig Treiber, who was going to act as a consultant for the recycling plant project. The minutes read:

Commissioners request the PCPPA pay \$6000.00 per month to cover cost of consultant for the Recycling center for Pawnee County. Lynn wells [sic] moves that the PCPPA hire Craig L. Treiber as a consultant to the county while further investigating a recycling center, Larry Yates 2nd the motion, all ayes. No money amount is set in stone and the PCPPA would like to negotiate. [emphasis added]

On November 9, 2009, the BOCC minutes included the following:

Chairman Pogue then yielded the floor to Commissioner Vance, who explained the County would like to construct and run a recycling plant in the County. Representative Duncan felt he could help facilitate with State Offices. Discussion by all present. The Pawnee Public Programs Authority had given the Commissioners permission to hire a consultant for the project and the Authority would pay for the services. Motion by Carter to hire Craig Treiber, Consultant for the project, pending the Assistant District Attorney’s Opinion, Seconded by Vance. Carter, Vance, and Pogue vote Aye.

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On November 25, 2009, the Authority issued the first payment to Craig Treiber for services through the end of November in the amount of \$4,200. The minutes for the November 25, 2009, Authority meeting indicated the trust was willing to pay Treiber a maximum of "\$12,000."

In addition, the Authority was also willing to pay up to \$500 per month in expenses. Concerning the Treiber consulting services, the *Authority* meeting minutes also reported, "Discussed the *possibility* the County Commissioners would pay for the third month..." [emphasis added].

Between November 17, 2009 and January 6, 2010, the Authority paid Treiber \$12,000, which included \$11,632 in consulting fees and a reimbursement of \$368 for mileage and supplies.

Once the Authority reached the \$12,000 "cap" discussed in its November 25th meeting minutes, the Board of County Commissioners (BOCC) began paying Treiber from the County's Sales Tax Account, starting in January 2010. We reviewed the BOCC meeting minutes and found no mention in those minutes indicating the County would begin paying for Treiber's consulting fees, which raises the issue of whether a Board decision was made outside of an "open meeting" and contrary to state law.

Between January 13, 2010 and April 19, 2010, Treiber was paid \$28,568 for consulting services and was reimbursed \$1,832 for mileage and supplies from County Sales Tax funds.

During the period from mid-November 2009 through May 3, 2010 (approximately six months), Treiber was paid a total of \$42,400 from funds of both the County and the Authority, which included \$40,200 for consulting fees and \$2,200 for reimbursements related to mileage and supplies.

On May 17, 2010, the County Commissioners voted to discontinue the recycling project. The BOCC minutes included:

Discussion regarding Recycling Center Project for Pawnee County...Pogue made a motion to pursue the cedar tree project but, "can" the trash recycling project and do not spend another dime on it. Anywhere we put it there will be trouble. The public is against the project. Seconded by Carter. Vance stated the County needs industry. Motion made and seconded. VOTE: Pogue and Carter vote Aye. Vance-Against.

Although the minutes reflected the cedar tree project would be pursued, Commissioner Carter stated the cedar tree project has also been terminated, as of the date of fieldwork.

Finding #1

The Board of County Commissioners did not execute a contract with the paid consultant for the “proposed” recycling facility.

The primary records for the consulting transactions were the paid purchase orders and attached invoices. Apparently, no *written contract* was ever approved by either the Authority or the BOCC.

Ordinarily, if there are questions about payments being made to a vendor for services or products provided, we would review any contracts that were entered into by the parties, in this case the Authority, the County, and Treiber. There was no inter-local agreement between the Authority and the County. There were no written contracts between either the Authority or the County and the consultant.

The \$40,200 in payments to Treiber made by the Authority and the County were supported by invoices listing the description of services mostly as “consulting recycling center.” We noted that each of Treiber’s five invoices to the County indicated the order number was “verbal 11/09/09,” apparently indicating some type of “verbal contract,” following the loosely worded, nonspecific Authority motion, approved at its November 6, 2009 meeting:

“...hire Craig L. Treiber as a consultant to the county while further investigating a recycling center, Larry Yates 2nd the motion, all ayes. No money amount is set in stone and the PCPPA would like to negotiate.”

Without a written contract, there was no documentation for:

1. The parties to the contract;
2. The term, i.e. the specific length of the contract (30 days, 8 weeks, 6 months, 1 year);
3. The total dollar amount of the contract;
4. The description of the specific services, or work product to be delivered by the consultant;
5. The deadline(s) for the delivery of the services, or work product being agreed to;

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6. The “performance” measures or standards for the County or the public to judge whether the County was receiving what it was paying for;
7. The penalties or remedies for “failure to perform,” according to the provisions of a contract.

The lack of documentation and the discussion reported in the BOCC May 17, 2010 minutes, led us to wonder *how long* would the BOCC have continued paying the consulting fees, *if there had been no public concern and opposition to the project and the rising costs involved.*

Finding #2

The final payment to the consultant was an “advance” payment, contrary to state law.

Based on the County’s purchase order records, *at least portions* of the consulting services for the months of January through April were paid *in advance*. Generally, the purchase orders and invoices were processed and encumbered in the first half of the month, with the payments being rendered before the end of each of the first four months of 2010.

The final payment, as it turned out, was clearly paid almost entirely in “advance.” The consulting services for the month of May were invoiced on April 19 and paid May 3, the *first BOCC meeting date* and the *first business day* for the month of May 2010. For all practical purposes, county purchase order #3098 in the amount of \$6,000 was a non-interest bearing loan to Treiber, which is contrary to the Constitution of Oklahoma.

Article X § 17 of the Constitution of Oklahoma:

The Legislature shall not authorize any county or subdivision thereof, city, town, or incorporated district, to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or levy any tax for, or to loan its credit to any corporation, association, or individual.
[emphasis added]

As noted in our Background section, the BOCC voted on May 17 to terminate the project with still two full weeks left in May for which Treiber had *already been previously paid* on May 3, in effect paying \$3,000 for no services whatever for the final two weeks in May 2010.

Finding #3

The lack of a contract and apparent poor communication directly resulted in differing expectations and understanding related to the recycling project.

Without a documented agreement of the terms and conditions of the contract, misunderstandings, differing expectations, disputes, and wasted public funds and resources were virtually inevitable.

In an interview, former Commissioner Vance stated, *“At the time the project was cancelled, they were three months away from getting the thing started.”* In other words, the County and its public trust would have been paying the consultant for nine months *before* *“...getting the thing started.”* However, the other two commissioners were under the impression that permits and funding *would be obtained* in three-to-four months. They had anticipated the consultant would be paid for those three-to-four months.

The likelihood that permits would have been obtained in three-to-four months seemed highly improbable given our discussions with the Oklahoma Department of Environmental Quality (ODEQ). When we spoke with ODEQ, we were told no permits had been applied for and the permit process could have taken as much as one year *after* the permit application process had started.

During our interview with Treiber, he stated his role was to get the project through the regulation and procedures phase. Commissioner Vance believed Treiber’s role was to “lead us to the finalization of the business plan.” Commissioners Carter and Pogue believed Treiber’s role was to determine the feasibility of the project and to obtain the funding and permits.

The above statements and expectations are a practical illustration of why written contracts with specified terms and conditions are necessary for consultants, engineers, and other professional services.

Finding #4

The County had little to show for the “work product” of the consultant.

One of the concerns expressed to us was a lack of apparent work being done or work product having been produced by the consultant. According to the consultant, he had been hired to assist with the “regulations and procedures” that were going to be required of the project.

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We spoke with officials at ODEQ who said they had been contacted by Craig Trieber and others, in relation to the recycling project; however, no application had been received.

Judy Duncan, ODEQ Customer Services Director, indicated the first step in obtaining permits would have been having a “permit assistance meeting.” According to Duncan, she had had *no contact* with Trieber, the consultant, *after January 8, 2010*, a date just after the final payment by the Authority and *before the first of five payments* by the County.

When asked what steps would have been required to setup a permit assistance meeting, Duncan said a phone call would have been sufficient. According to Duncan, no permits had been applied for during the approximate six months Trieber was being paid consulting fees.

The project would most likely have been a “Tier 3” project (highest impact level), requiring publication, scheduled public hearings, time to evaluate public responses, and an appeals process. As previously noted, Duncan had indicated the permit process alone could have taken as long as a year, assuming the project application and all paperwork had been filed in good order.

We also found no indication that any financial backing had been obtained during the approximate six months Trieber was paid as a consultant. According to Trieber he had attended meetings with various officials and had indicated that funding would have *potentially* come from a private company, CleanTech, and from federal grants. As of the conclusion of the consulting period and the termination of the apparently “verbal” agreement, no definite funding had been obtained.

During our interview with Trieber, he said that in the six-month period he had researched companies and attended meetings. Trieber also prepared and provided us a copy of the “Pawnee County Recovery and Recycling Facility Preliminary Scope and Technology Review,” which appears to be little more than a plant description and a description of the different processes. Trieber indicated that no permits or funding had been obtained, because the project had been terminated “before reaching that stage.”

The document presented as work product listed 12 reportedly green technology and recycling companies by name and 11 various processes or ideas for recycling tires, vegetable oil and other waste for biodiesel, products from the use of red cedar trees, recycling lead batteries, and

similar concepts. The language was general with few specifics related to Pawnee County.

In an interview, Treiber said he knew of the technology that Clean Tech (one of the companies mentioned) has had for about “seven or eight years.” Treiber, when asked if anyone had actually built a commercial plant operating with this technology, said that there were two plants “in Australia” using this technology. He was unable to recall the name and/or the locations where these two plants were allegedly operating.

Commissioner minutes do not record how the consultant’s activity or performance was monitored by the BOCC, nor was the consultant held accountable for the apparent lack of progress after approximately six months and \$42,400 in fees and reimbursements.

Finding #5

Treiber was hired as a “consultant,” not as an “engineer.”

One concern expressed to us by citizens was that Treiber did not have an engineering degree. We noted throughout our interviews and reviews of the meeting minutes that Treiber was hired as a consultant and not as an engineer. The November 9, 2009 BOCC minutes reflect, in relevant part:

Motion by Carter to hire Craig Treiber, *Consultant* for the project pending the Assistant District Attorney’s Opinion, Seconded by Vance. Carter, Vance and Pogue vote Aye.
[emphasis added]

Treiber listed “Oil,” “Gas,” “CBM,” “Environmental,” “Mining,” “Operations,” “Management,” “Consulting,” and “Green Issues” on his business card. Treiber *volunteered* that he *did not have a degree*, but he had a lot of “real world” experience.

Interestingly, the resume’ that was provided to our investigative team listed a “B.S. Degree in Industrial Administration,” with “Masters Degree Credits in Labor Relations.” Apparently recently updated, the resume’ also included Treiber’s consulting job with “Pawnee County, Oklahoma” as the most recent entry for “Corporate Background.”

However, based on the November 9, 2009 meeting minutes and our interviews with the Commissioners, and absent any records to the contrary, Treiber was hired as a “consultant” and not as an engineer.

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Finding #6 **Highway funds were used for trips to view seemingly unrelated recycling projects, contrary to state law.**

During our interview with Treiber, we asked if the anticipated technology of the recycling plant was currently in use. Treiber responded the technology was in use in Australia, but he couldn't recall where exactly.

Apparently in an effort to see something resembling what was proposed for Pawnee County, the BOCC expended \$2,295.74 for travel related expenses for commissioners to tour recycling facilities in California and Missouri. However, the processes used at these facilities were not the same as what was being considered for the Pawnee plant.

Commissioners Vance and Pogue traveled to Sacramento, California in December 2009, to tour a recycling center. Airfare and expenses for both commissioners totaled \$1,653.25. Commissioner Carter did not go on the California trip.

In March 2010, all three commissioners visited a facility in St. Louis, Missouri. Commissioners Vance and Pogue were reimbursed \$106.89 and \$535.60, respectively, for travel expenses to tour the Missouri facility. Commissioner Carter attended this trip but did not file any claim for reimbursement for travel expenses.

The reimbursements for both trips were paid from the County's highway funds. County highway funds are restricted to expenditures related to the county's roads and highways, as set forth in **69 O.S. § 1503 (a)** which provides:

All monies raised for the use of county highways in each county, or apportioned to each county for road purposes, from any source, including all funds and monies derived by law, levy, taxation, or appointment shall, unless otherwise provided by law, be placed in the county treasury in a fund to be known as the county highway fund, to be expended on order of the board of county commissioners on county highways as defined herein, or on state highways within their respective counties including the lighting thereof, if in the judgment of the board of county commissioners, such expenditure would be just and equitable and for the best interest of the county. [emphasis added]

Conclusion While it is commonplace and understandable that a public entity would consider efforts to support "economic development," some basic business

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and common sense principles should be employed to evaluate any potential project. Interviews with the two commissioners that voted to terminate the project indicated that both expected to pay the consultant for “three-to-four months.” The understanding or implication that “permits” and “funding” for a relatively large and complex environmental recycling project could be obtained in “three-to-four months” was dubious at best.

There appeared to be insufficient planning and research, prior to committing county and public trust funds to the effort. There was no apparent selection process or an insufficient selection process for the project consultant, followed by no written contract. Just some phone calls to prior employers or references or checking of credentials may have provided valuable insight into the background of the consultant and the potential for a good result, *before* the BOCC determined to pursue the project.

All of the above resulted in another predictable and all-too-frequent example of a publicly perceived “waste” of public funds. The results were nearly \$45,000 (counting the BOCC travel reimbursements) of public funds expended, with hardly anything but a dubious and very “preliminary” scope and review document to show for it.

Recommendations

1. The BOCC should ensure that written contracts be executed for any consulting or other professional services. Contracts should adequately describe all terms and conditions and be reviewed by the District Attorney’s office, which serves as the legal counsel for the County.
2. Contracts should include reasonable performance measures, timetables and penalties for nonperformance.
3. Some basic research and inquiry for any economic development ideas and concepts should be undertaken before committing public funds. A few phone calls to any state agencies that may be involved, such as the Oklahoma Department of Environmental Quality, the Oklahoma Department of Commerce, or the regional council of governments (COGs), could provide some objective feedback, guidance, or leads as to where reliable information can be obtained.
4. BOCC minutes should include more detail concerning “...all matters considered by the public body, and all actions taken by such public body,” in accordance with **25 O.S. § 312** of the Open Meeting Act.

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5. County highway funds should only be used for county road and highway expenditures, in accordance with **69 O.S. § 1503 (a)**. Economic development funds from some other fund and budget account should be used to reimburse the County Highway Fund for the travel reimbursements described above.

Objective II. Review circumstances regarding the sale of District #2 scrap metal.

Background

One of the issues the grand jury examined during its term related to the sale of scrap metal from the District 2 barn and a subsequent “donation” by a local resident of \$15,644.10 to the county.

Former Commissioner Dale Vance, as well as other people interviewed, told us the City of Pawnee, which owns the land the county barn is situated on, had inquired of Vance about cleaning up the area around the barn and doing something about the old equipment that had accumulated over the years.

Former Commissioner Vance said that he attended a council meeting where he explained to the City Council he was in the process of getting the land cleaned up. The City of Pawnee meeting minutes for the meeting held January 20, 2009, included the following:

Dale Vance, Pawnee County Commissioner, addressed the Council regarding the County Barn located on city property near the lake. The Mayor stated he had received several complaints about the condition of the property. Mr. Vance assured the Council he would clean the area. He wanted a solid lease agreement before he made improvements to the area. No action was taken. The Mayor stated he would discuss options with the city attorney.

According to Vance, he contacted the Yaffe Company, a scrap metal recycler, and met with officials from the company in May or June of 2009. A representative from the Yaffe Company came to the county barn and because of the low price of scrap metal, determined it was not economically viable for the company to haul off the metal.

We spoke with officials from the Yaffe Company who recalled relatively the same scenario with regards to the economic viability of cleaning up the scrap metal.

We researched scrap metal prices in 2009 and found, from various news sources, that scrap metal prices had apparently taken a dramatic downward turn. One news source quoted a recycler, referencing the market trend at the time, “Nobody wants it [scrap iron]. I couldn’t give it away.”

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According to Vance, around Christmas he had revisited the idea with a Yaffe Company official again and they were supposed to come back to do the cleanup, but never did. Officials from the Yaffe Company we contacted could not recall clearly but said with regard to the second contact that they “may have put him off.”

According to Vance, he was contacted by a local man, Jack Barlow, who was in the “scrapping” business. Vance and Barlow worked out a deal whereby Barlow would clean up the county barn property using assistance from county employees and would sell the scrap iron on a 60/40 percentage split with 60% going to Barlow and 40% to the County.

During an interview with Vance, he said that Barlow was supposed to retain all of the proceeds until such time as the yard was cleaned to his (Vance’s) satisfaction. Early on, according to Vance, Barlow contacted him and told him he didn’t have any way to account for the funds, because Barlow “couldn’t have a checking account.” The reason for this dilemma was not specified.

Vance said he then contacted a local bank and asked the local bank to make arrangements to retain the 40% until such time as the project was completed. The local banker confirmed that he had been contacted by Vance concerning the 60/40 split and retaining the funds.

According to the banker, Barlow would bring cash and a weigh ticket for the sale of the metal. A bank official or employee would then calculate the 60/40 split and prepare a cashier’s check for the 40% portion made payable to “Dale Vance County Commissioner Dist #2” or some variation of the payee including “Dale Vance Co. Comm. #2,” “Dale Vance Commissioner Dist #2,” or “Dale Vance Pawnee Co. Comm. 2” (Attachment A).

The bank retained the cashier’s checks in what was considered by the bank as a “customer file.” The “customer file” is essentially a filing cabinet where the bank would store various documents at the request of bank customers.

According to Vance, once the yard was cleaned up to his satisfaction, he then contacted Barlow, told him to retrieve the cashier’s checks, come to the courthouse, and have a picture made making a “donation” to the county. Vance stated this had been the plan from the outset.

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Barlow said that he was surprised when Vance called him to get the cashier's checks and bring them to the county to make a "donation."

On May 26, 2010, a local newspaper printed a picture with a caption reflecting "Big Donation" and reflecting that Barlow was donating \$15,644.10 to the county. Barlow told us that the newspaper article "surprised" him, because anyone who knows him knows he doesn't have money to be making any donations to anyone.

According to Barlow, he did not keep any kind of list of the property he took to the scrap metal yard. He did recall that he took three or four dump trucks. Likewise, Commissioner Vance did not maintain a list of what property had been removed by Barlow and presumably sold for scrap and took Barlow's word for what was sold.

Finding #1

The BOCC, and in particular District #2 Commissioner Vance, failed to follow statutes related to disposal of county property.

State law governs the procedures for the sale and disposition of county owned property. Oklahoma state law includes statutory provisions, as well as an Attorney General opinion, related to the procedures that should be followed concerning the sale and disposition of property belonging to the county.

19 O.S. § 421.1.C provides for the procedures to be followed when a county is going to dispose of property when the original cost of the items exceeds \$500.00 or more. The procedures defined by the statute include the following:

1. The board of county commissioners shall give notice of such sale by publication in a newspaper of general paid circulation in the county for two (2) successive weekly issues;
2. Bids for such tools, apparatus, machinery or equipment on sale shall be in writing, sealed and delivered to the county clerk of such county;
3. At the next regular meeting of the board of county commissioners after the expiration of fifteen (15) days from the date of first publication of notice of the sale, the board of county commissioners shall open such bids and award such tools, apparatus, machinery or equipment to the highest and best bidder with the option of rejecting all bids; and

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4. The board of county commissioners may hold a public auction in lieu of advertising for sealed bids as provided above. Such auction shall be advertised as provided herein.

Attorney General Opinion **1999 OK AG 26** addressed the intent of **19 O.S. § 421** stating, in part:

[I]t is clear that the legislative intent enunciated in 19 O.S. 421.1 (1998) is that a county will receive full value when it sells surplus property.

Title **19 O.S. § 421.1** is not a new statute. The requirements of **19 O.S. § 421.1** were clear. The statute is referenced once in the OSU Extension Service “county clerk handbook,” eleven (11) times in the “county commissioners’ handbook,” and eleven (11) times in the “county purchasing handbook.”

In addition to the county receiving an objective full value of the property being sold, the bidding process or the public auction process would have also given equal access for all citizens to have had the opportunity to bid on and purchase the county property being disposed of.

Finding #2

“Fair value” for county property was not determined, due to the process or method used for disposal.

During the interviews we conducted, the idea of an individual making a “donation” was offered as a method for the county to dispose of property owned by the county. For example, Jack Barlow, as a result of the scrap metal transaction, “donated” \$15,644.10 to the county. We also address separately in this report two other “donations” to the county, one for a road grader and one for a FEMA trailer purchased by the county.

During our interview with former Commissioner Vance, he stated he believed there was a difference between giving away something that had been declared as “junk” versus something declared as “surplus.”

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On February 27, 2009, the Board of County Commissioners passed Resolution #0809-30 declaring 17 items of county property as “junk and of no value.” This list included six dump trucks including truck #592-302-0220 (“the 220 truck”).

On April 5, 2011, during our audit fieldwork, we observed the “220” truck was currently in use by the county and was still being used for hauling rock.

We then reviewed resolutions passed by the Commissioners and found on November 9, 2009, the BOCC passed Resolution #0910-37 placing four vehicles back into service that were “previously in surplus.”

The 220 truck, as well as another county truck #592-302-0232, were both placed back into service after having been declared as “junk and of no value,” based on Resolution #0809-30. Based on these resolutions, we can only conclude the BOCC was using the term “junk” and “surplus” arbitrarily.

In some cases, where an item of county property was declared “junk,” the property was given away with the “quid pro quo” of the person receiving the county property making a “donation” at some point later. We strongly disagree with the position that declaring county property “junk” somehow negates the requirements of **19 O.S. § 421.1**. Consequently, we also strongly disagree that giving county property (even “junk”) to any private sector individual or business in exchange for a “donation” was in any way a legitimate method of disposal.

Finding #3

There was an almost total disregard for the accountability for county property “sold” and/or “donated.”

As noted previously, neither former Commissioner Vance nor Jack Barlow kept any records related to the type(s) or quantity of equipment and materials removed from the yard and sold for scrap metal. Based on interviews with Barlow and other county employees, apparently four or five dump trucks were hauled off and sold for scrap.

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Based on inventory records, it appeared the trucks that were sold for scrap were likely purchased as older “used” equipment by the county for costs ranging from \$1,500 to \$4,800.

Oklahoma State Law **19 O.S. § 421** states, in relevant part:

From and after the effective date of this act, each board of county commissioners of the several counties in the state shall within thirty (30) days after the disposition of any tools, apparatus, machinery, and equipment belonging to the county or leased or otherwise let to it or any department thereof, the original cost of which is more than Five Hundred Dollars (\$500.00), *whether sold, exchanged, junked, leased or let* where authorized by statute, shall enter, or cause to be entered, in the minutes of the proceedings of the board the fact of such disposition, including complete description of item, serial number, the date property was acquired, the name and address of the person or firm from whom property was acquired, the cost price at time of acquisition or contract price if acquired under lease-rental agreement, the date of disposition, the name and address of the person or firm to whom property transferred, the price received therefor and the reason for disposition. [emphasis added].

We reviewed the meeting minutes for the period February 2010 through June 30, 2010, to determine if there had been any recording of the disposition of the 17 items that were declared “junk and of no value” by Resolution #0809-30.

We found no dispositions were recorded in the meeting minutes.

We contacted the metal companies, Ponca Iron & Metal, Inc. and WW Recycling, and attempted to identify the heavy equipment, graders, and dump trucks sold on behalf of the county. Neither business was able to provide any records relating to vehicle identification numbers or other identifying numbers that would allow us to determine, with any degree of certainty, what items were actually sold by Barlow on behalf of the County.

We obtained copies of the cashier’s checks comprising the \$15,644 from the Treasurer’s office. The \$15,644 was deposited into the Highway Cash account with the notation on the Treasurer’s Miscellaneous Receipt as “DONATION TO DIST #2 FROM JACK BARLOW (29 CASHIERS CHECKS).” The receipt was dated May 21, 2010.

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The Oklahoma State Bureau of Investigation (OSBI) provided us with copies of 35 weigh tickets that had been provided to the OSBI by Barlow during their investigation.

The weigh tickets reflected the sale of \$38,610 in scrap metal sales to two scrap metal recycling yards in Ponca City. We were able to reconcile the 35 weigh tickets to 28 of the cashier's checks based on the "60/40" split agreement with Barlow having received \$23,166 (60%) and the 28 cashier's checks deposited with the county totaling \$15,444 (40%).

The twenty-ninth cashier's check was in the amount of \$200.00. During our interview with Barlow, he stated the \$200.00 amount was from the sale of a motor belonging to the County, rather than being sold as "scrap."

The weigh tickets provided by Barlow covered a time period from February 2, 2010 through May 11, 2010. We contacted the scrap metal companies to see if any additional weigh tickets existed for Barlow during this time period.

Ponca Iron & Metal, Inc. provided eight additional weigh tickets for the same time period, reflecting the sale of scrap metal totaling \$2,284. One of the additional weigh tickets, dated March 26, 2010 for stainless steel, was in the amount of \$82.40. The weigh in time was 10:52 and the weigh out time was 11:07.

One of the weigh tickets for county property that Barlow provided to the OSBI was a ticket dated March 26, 2010, in the amount of \$2,236. The ticket indicated the weigh in time as 9:49 and the weigh out time as 10:39, basically the same date and same time of day as the ticket for "stainless steel" above that was not reported to the OSBI.

According to the general manager, Ponca Iron & Metal, Inc. will issue a separate weigh ticket for items such as copper, brass, aluminum, and stainless steel, because these items were weighed separately.

While we were able to reconcile the \$2,236 weigh ticket to a cashier's check representing 40% of the total, the additional \$82.40 ticket had not been provided to the OSBI. Although the County's percentage from this single ticket item would represent less than \$33.00, it demonstrates how a lack of accountability could have led to the County not having received the full amount due from the scrap metal arrangement.

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Similarly, with regard to the additional weigh tickets totaling \$2,284 (including the \$82.40 ticket), we had no means to determine if this represented sales of scrap metal that belonged to the County or sales from some other business venture Barlow may have been involved in.

We were able to reconcile the cashier's checks to the weigh tickets provided. However, because neither Barlow nor former Commissioner Vance had kept a record of the county property sold as scrap, there was no means to verify that all county property had been accounted for due to the following two reasons:

1. Due to the lack of records, we could not determine whether the 28 tickets represented the total amount of sales of all county property; and
2. As noted previously, Barlow stated he sold a county "motor" intact for the price of \$200, indicating at least one instance of county property that was sold intact, rather than for "scrap" value. Records were insufficient to determine whether other items, if any, may have been "sold" outright and for presumably more value than "scrap."

Finding #4

There was a repeated failure to deposit the funds collected from Barlow in the manner prescribed by state law.

Oklahoma state law provides in several statutes the procedures for how county commissioners are to handle money coming into their possession on behalf of the county.

19 O.S. § 681 provides the "county treasurer is hereby designated and made the official depository for all moneys ... proceeds from the sale of property ... that may be received by any county officer, county board, county commission..." [emphasis added]

19 O.S. § 682 provides "[I]t shall be the duty of each and every county officer, county board ... to deposit daily in the official depository designated in Section 681 ... all monies, checks, drafts, funds ... of every kind received or collected by virtue or under color of office..." [emphasis added]

Clearly, state law provides that all funds coming into possession of the county commissioners are required be deposited with the county treasurer. Title **19 O.S. § 682** requires the deposits to be "daily," in practical terms

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not later than the next “business” day that the county treasurer’s office is open.

In this case, however, the deal between former Commissioner Vance and Barlow included having Barlow take the cash to a local bank to calculate the split, then having the local bank hold on to these funds for several months rather than depositing the funds with the county treasurer.

During our interview with Vance, he stated he had contacted local banker Morris McKill only after Barlow had told him he (Barlow) had no means to hold the money. During our interview with Morris McKill, he stated former Commissioner Vance had contacted him prior to Barlow coming to the bank.

Because of the arrangements made by Vance, the bank began holding the funds from the scrap metal sales in a “customer file” rather than the funds being deposited with the county treasurer, as required by state law.

Vance was asked, during our interview, why he did not have Barlow deposit the funds with the county treasurer. At first, Vance stated he just “never thought about that.” Later in the interview, Vance stated he looked at the entire project as one event and wanted to have Barlow make one lump sum “donation” to the county at the conclusion of the project.

Finding #5

According to interviews, at the time, other county officials were not aware of the scrap metal deal or the initial failure to deposit the collections with the county treasurer.

We reviewed the minutes for the BOCC meetings for the period January 1, 2009 through May 31, 2010, and found no mention in those minutes related to former Commissioner Vance disposing of scrap metal or of having some kind of contract, verbal or otherwise, with Barlow.

On May 26, 2010, the local Pawnee CHIEF newspaper published a photograph of Jack Barlow making the “donation” to the county. Pictured in the photograph were several county officials, including County Clerk Marcelee Welch and Assistant District Attorney Jeff Jones.

We spoke with both County Clerk Welch and ADA Jones, who both indicated they had been contacted that same day by Vance and asked if they wanted to have their picture taken for the newspaper with a local resident making a “donation” to the county.

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County Clerk Welch said she previously had a general conversation with former Commissioner Vance concerning the selling of scrap metal. According to Welch, she told Vance the property should be put in lots and then the lots put out for bid. She stated she had no other conversations with Vance concerning the sale of any scrap metal.

During our interview with former Commissioner Vance, he said he blamed former ADA Jeff Jones for not having told him how to handle the sale of the scrap metal. However, when we interviewed ADA Jones, he stated he was never asked how to handle the sale of scrap metal, the first he learned anything about the deal was when he participated in the “publicity stunt” in front of the courthouse.

During our interview with Vance, he said then Commissioner Pogue told him to “donate” the scrap metal to someone and then have that person make a “donation” (of cash) back to the county. We interviewed former Commissioner Pogue who denied having given such advice to Vance.

Former Commissioner Pogue told us the first time he learned of the scrap metal deal was when the Commissioners were returning from the recycling trip to Missouri (March 12, 2011), and Vance received a telephone call in reference to a vehicle at the county barn with scrap metal loaded on it. Commissioner Dale Carter also said it was during this trip that he learned of the Vance and Barlow deal.

Recommendation We have provided a copy of our report to the District Attorney having jurisdiction over Pawnee County for his review to determine if any actions, in addition to those already taken by the Grand Jury, and subsequent prosecutorial plea agreements, may be warranted.

Objective III. Review the sale of a road grader to a private citizen.

Background

A January 2, 2009, County inventory listed District #2 as having a “77 Gallion Grader,” County identification #592-307-0213. On February 27, 2009, the Board of County Commissioners passed Resolution #0809-30 declaring the same “1977 Gallion Grader T500” as being “junk and of no value.” The grader was deleted from the subsequent inventory report on March 7, 2011.

The original purchase order for the grader was well beyond the statutory retention of records requirement (five years for purchase orders and county claims, under **19 O.S. § 155.2**). The Galion¹ grader, according to the inventory reports, was purchased on February 22, 1977, with an original cost of \$59,160.00.

The Pawnee County Sheriff’s Office had been contacted about the “missing” grader and determined the grader was in the possession of Bob Rice, a local resident.

We interviewed Rice who told us:

1. He (Rice) had been told by a neighbor (a county employee) that former Commissioner Vance was cleaning up the barn area;
2. Rice contacted Vance to see about purchasing the Galion grader;
3. Rice said former Commissioner Vance told Rice that he (Vance) could not sell the grader, but could give him (Rice) the grader; *and*
4. Rice could, in turn, make a “\$100 to \$200 donation” to the county.

We interviewed former Commissioner Vance who told us:

1. He had been contacted by Rice about purchasing the grader;
2. He had explained to Rice that he (Vance) could not sell the grader; *but that*
3. He (Vance) would “donate” it to Rice, who could then, in turn, “donate” “\$300 to \$400” to the county.

¹ The correct name is Galion, not Gallion, see photo page 24. The grader was manufactured by Galion Iron Works.

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Findings

The County did not take bids as required by statute for the sale of county property.

Oklahoma state law **19 O.S. 421.1** provides the authorized procedures for the sale or disposal of county property, “the original cost of which exceeded Five Hundred Dollars (\$500.00).” The requirements of **19 O.S. 421.1** include, in relevant parts:

The board of county commissioners shall give notice of such sale by publication in a newspaper of general paid circulation in the county for two (2) successive weekly issues;

Bids for such tools, apparatus, machinery or equipment on sale shall be in writing, sealed and delivered to the county clerk of such county;

The board of county commissioners may hold a *public auction* in lieu of advertising for sealed bids as provided above. [emphasis added]

We found a similar Galion grader for sale and indicating the weight to be approximately 12 tons. Using a conservative weight of between 8 to 12 tons, the grader may have been worth between \$960 and \$1,440, if only as “scrap” metal, based on prices available at the time. It seems certain that the grader was “worth” more than “\$100 to \$200” or “\$300 to \$400,” depending on whose recollection of the mutual “donation” verbal agreement is used.

The BOCC appeared to have attempted to avoid the requirements of **19 O.S. 421.1** by declaring the grader to be “junk and of no value.” We disagree. **Title 19 O.S. 421.1** does not provide any exceptions for the current estimated value to be used in determining whether the statute applies. *The statutory requirement is explicit*, applying to equipment where “the *original cost* of which exceeded Five Hundred Dollars (\$500.00)” [emphasis added].

Conclusion

Based on the inventory records from the county, the original cost of the grader was \$59,160 in 1977; therefore, the statutory procedures should have been followed without regard to any current *estimated* value. OSAI recommends following the proper procedures *in order to specifically establish the fact* of whether or not even items that are “junked” have at least “some” or “no value.”

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Current Status

Although the condition of the grader at the time of the “donation” to Mr. Rice does not appear to be relevant to the requirements of **19 O.S. 421.1**, we do want to address the condition as reported to us to provide some additional information and context to assist the County in resolving this issue.

According to documentation we were provided, the grader had been “operating earlier but needed throttle adjustment from time to time.” The same documentation suggested “comparable” motor graders found on the web, in equipment catalogs, or auctions, ranged from “\$1,100-\$6,000.”

According to county employees we interviewed, the grader had sat for five or six years, did not have tires, and had some issue with the blade gearing. Another employee thought the steering was broken. Another county employee said the grader had no brakes, had to be run “wide open,” and could be heard for miles.

According to Bob Rice, when he obtained the grader, it had no wheels or tires; the hydraulic pumps were bad; and the motor had “frozen up.” Rice owned a Galion grader, which we observed on his property, and said he was able to take parts from the other grader to make the county grader workable.



We observed the “junked” county grader (pictured at left), parked in a field and being repaired at the time. We observed it was leaking hydraulic fluid from several hydraulic cylinders.

We had no means to reliably determine the value of the grader at the time of the transaction in question. As noted above, OSAI’s position is that the process of either selling the equipment at public auction or accepting sealed bids, as specified in **19 O.S. 421.1**, would have been the most objective means to determine what the “fair value” was at the time.

During our interview with Rice, he stated he had not paid the county the “donation,” because of the circumstances that came to light surrounding the sale or “donation” of the grader, and he was not sure what he should do at that point.

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Although Rice has not made the “donation” to the county, it would appear he may have some claim to an “ownership interest” in the grader, as a result of the grader now having some parts and/or labor associated with it that were paid or supplied by Rice.

Although there has been no finding that the road grader has, in fact, been embezzled or stolen, **22 O.S. 1321 (G)** provides, in relevant part:

[W]hen money or property *alleged* to have been stolen or embezzled, comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by Section 1322 of this title to direct the disposal thereof. [emphasis added]

Clearly, the ownership of the grader is in dispute, and there had been an allegation by citizens of the county that the grader had been stolen or “diverted,” as the case may be. Based on **22 O.S. 1321 (G)**, the ownership interest question would best be resolved by a magistrate.

Recommendations

1. The BOCC should always follow the requirements of **19 O.S. 421.1** for the disposal of county property, specifically property, which has an “original cost” that exceeds \$500.00.
2. The BOCC should seek the legal advice of the District Attorney to determine what action needs to be taken to resolve the ownership interests between the County and Rice.
3. We recommend the Pawnee County Sheriff contact Rice and optionally:
 - a. Ask Rice to cease using the equipment until such time as the ownership interest is determined; *or*
 - b. If deemed necessary by the Sheriff, to take possession of the grader until such time as the ownership interest can be resolved.
4. This report has been provided to the District Attorney for his evaluation of any additional actions that may be warranted.

Objective IV. Review County reporting of taxable fringe benefits for use of county owned vehicles.

Background

The original concern expressed to us was focused on former District #2 foreman B.R. Spears having been provided a county (District #2) pickup truck, which was used to commute from his home in Garber, Oklahoma to Pawnee, Oklahoma, a distance of 51 miles one way, according the Oklahoma Department of Transportation mileage chart.

Findings

Although the county had a policy in place as early as 2009 concerning the use of county owned vehicles for commuting purposes, the policy was not implemented until 2011. Taxable fringe benefits may not have been reported for all county employees that were provided the use of a county owned vehicle for calendar years 2009 and 2010.

B. R. Spears was employed as the District #2 foreman from January 2009 through March 2011. During this time period, Spears was provided a County owned pickup truck to commute to and from work from his home in Garber, Oklahoma. During an interview with Spears, he said he only had to drive about 25 miles before he could start “checking roads” for Pawnee County.

IRS Publication 15B provides the guidelines for “commuting” with employer provided vehicles. The use of a County vehicle for commuting to and from an employee’s “duty station” is a taxable fringe benefit and should be included on the employee’s W-2.

In addition to the use of the county owned vehicle, the County also paid the turnpike fees incurred during the commutes. We reviewed the fees for *one month*, which totaled \$19.80. Twenty-seven months (January 2009 through March 2011) of turnpike fees would amount to over \$500. Payment of those turnpike fees would also be considered a taxable fringe benefit under the same IRS guidelines.

We obtained the Employee Personnel Policy Handbook of Pawnee County and noted the 2009 Policy Handbook addressed the use of county owned vehicles and the potential for being considered for IRS purposes, as a “taxable fringe benefit.” One portion of the policy included:

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Under certain circumstances, employees may be instructed by the appropriate elected official to drive a county-owned vehicle to and from the employee's home to the employee's regular place of work. Although, such use may be proper under the Oklahoma State Constitution (under appropriate circumstances), such use may be still considered as a taxable fringe benefit by the I.R.S. Code. [emphasis in the original]

The policy also states:

For those employees in positions where the elected official has determined that the personal use of a county-owned vehicle is solely for the benefit of the county, (such as to commute to and from work), each employee will be required to complete a Personal Use of County Owned Vehicle Agreement. In this Agreement, each employee will select, from among the valuation methods for which they qualify, the valuation method to be used in determining the amount of taxable fringe benefit...

Beginning with the 2011 calendar year, the county began having employees sign a personal use agreement and began procedures to report the use of a county owned vehicle as a taxable fringe benefit reported on the employee's W-2 wage earnings statement.

When we reviewed the personal use agreements, we noted other employees had also entered into agreements with the county for the use of county vehicles. These employees included Derrick Fagg, Jim Parker, and Roger Woodrell.

Derrick Fagg did not begin using a county vehicle for commuting purposes until after he had signed the vehicle use agreement. The two other employees, Jim Parker and Roger Woodrell, began using county vehicles for their commutes in July, 2010, six months before the implementation of the vehicle use agreements.

Conclusion

In 2009, the County had an existing policy concerning the use of county-owned vehicles, which specifically addressed the IRS taxable fringe benefit issue. However, it failed to enforce its own policy with regard to the District #2 foreman's use of a county provided pickup.

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Recommendation We recommend the County Commissioners consult with the District Attorney and/or a qualified tax practitioner to determine if the County needs to file amended W-2s for any of its employees.

Objective V. Review an alleged purchase of mobile homes from the Internet site eBay.com.

Background

This concern stemmed from Commissioner Vance having reportedly purchased two FEMA trailers off the eBay.com Internet website. The concern expressed was that there had been no discussion or motion to act on the purchase, that there were no records of the transaction, and that former Commissioner Vance may have been reimbursed improperly for the Internet purchase.

Additional concerns were expressed that one of the trailers had been transferred to the Ralston Senior Citizens without a board action authorizing the transfer.

Findings

None. The allegation was not substantiated.

On May 17, 2010, the county approved purchase order #4058 for the purchase of two Cavalier mobile homes in the amount of \$1,000.00 each. The mobile homes were purchased from the Oklahoma Department of Central Services (DCS) and not from eBay.com. We traced the approval of the purchase order to the minutes of the May 17, 2010, meeting.



FEMA trailer used by Ralston Senior Citizens group.

We contacted DCS and were told DCS received a letter dated March 22, 2010, from Commissioner Vance indicating the purpose of the mobile home purchase was to be for the Ralston Senior Citizens, as they "...have no facility of their own at this time."

The Ralston Senior Citizens group was using one of the two mobile homes at the time of fieldwork. The senior citizens group had paid the county a "donation" for the purchase price of the trailer. The "donation" was for the full

\$1,000 purchase and deposited with the County Treasurer on June 10, 2010, with the notation "Donation for FEMA trailer house District #2."

In addition to paying a "donation" to the county for the trailer, the senior citizens group also paid for the expense related to having the trailer

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transported from Mississippi. The treasurer for the Ralston Senior Citizens group provided us with the invoice from Sport Trucking, Inc. of Ardmore, Oklahoma, and a copy of the check payment in the amount of \$5,500.

On August 2, 2010, the Board of County Commissioners approved purchase order #4310 in the amount of \$4,750, to Sport Trucking for transporting the second trailer purchased by the County from Mississippi to Pawnee. We traced the approval of the purchase order to the meeting minutes of the August 2, 2010, meeting.

The second trailer purchased by the County was located at the District #2 county barn. The trailer was not being used at the time of fieldwork.

Both trailers were being reported on the County's District #2 inventory, at the time of fieldwork.

Part of the DCS (state agency) and General Services Administration (federal agency) agreement with the "donee" (Pawnee County, District #2) states:

All items of property shall be placed in use for the purposes(s) for which acquired within 1 year of receipt and shall be continued in use for such purpose(s) for 1 year from the date the property was placed in use.

According to officials with the Ralston Senior Citizens group, once an 18-month waiting period has expired, they expected to have the title to the trailer transferred to the senior citizens group.

Conclusion

No purchasing statutes appeared to have been bypassed or ignored. The purchase of the two mobile homes was handled through the Oklahoma Department of Central Services, not through eBay.com.

Former Commissioner Vance was not reimbursed for the Ralston trailer home. The Ralston Senior Citizen's group reimbursed the County for the mobile home they currently use, and also paid for the transport of that mobile home from Mississippi, according to the records provided.

Recommendation

We did not review the County's "purpose" for the second mobile home. We recommend the County review its intentions for the use of the second mobile home and notify the DCS accordingly.

Objective VI. Review an alleged kickback scheme involving former county jail inmates.

Background

This concern stemmed from an allegation that former Sheriff Roger Price would arrest individuals so that they could be released from jail, hired by former District #2 Commissioner Vance as temporary or part-time employees to be paid with county funds, which in turn provided the new "county" employees with the means to pay Vance "rent" for rental property owned by Vance.

It was alleged that this was a "conflict of interest" and a means for Vance to recoup his investment in a former "motel" property that had been converted to "low rent" apartments.

No further specific information was provided.

Findings

None. We were not able to substantiate the allegation.

We obtained a list of all employees hired by the County during the term of former Commissioner Vance and then compared that listing to persons who had been booked into the Pawnee County Jail. We noted six former inmates had been released from the Pawnee County Jail and then subsequently hired by the county.

Two of the six had been hired more than three months after having been released from the Pawnee County Jail. One of those two was hired to work for District 1 and not for District 2. A third had been in the Pawnee County jail, but had been arrested by a Pawnee Police Officer, not Sheriff Price or any member of the sheriff's office.

We were able to locate and interview two of the remaining three former inmates. Both stated they had never rented or otherwise been involved in a business transaction wherein they owed former Commissioner Vance any money.

We were unable to locate the only remaining former inmate, who currently has an outstanding arrest warrant in Pawnee County; however, we were able to determine that he was hired by the county on March 30, 2009. At

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the time he was hired, he gave an address for the local community assistance program (Friends House), where he lived from March 28, 2009 through August 25, 2009, and again during the period January 8, 2010 through May 24, 2010.

According to a case manager, who works for the assistance program, the former inmate may have lived in the apartments owned by Vance between August 25, 2009 and January 8, 2010, but she was not certain. If so, *this would have occurred nearly five months after the inmate was released from jail and hired by the county.*

During an interview with former Commissioner Vance, he provided the name of the only person he could recall having rented an apartment to, who *subsequently* worked for the county. We determined this person was not a former inmate of the Pawnee County Jail.

We also contacted the city utilities for Pawnee and asked for records relating to the six former county inmates. According to the municipal utility records, four had never had city utilities, and the remaining two had utilities ending in 2008, with no activities since that time.

Conclusion

We are unable to substantiate the allegation as expressed to us.

We should note, in addition, that *if* former Commissioner Vance had rented apartments to county employees, this does not appear to constitute a violation of the conflict of interest statute, as defined by **62 O.S. § 371** which states, in relevant part:

Except as otherwise provided in this section, no board of county commissioners, nor city council, nor board of trustees of any town, nor any district board of any school district in this states, nor any board of any local subdivision of this state shall make any contract with any of its members, or in which any of its members shall be directly or indirectly interested.

Although the provisions of **62 O.S. § 371** may prevent the Board of County Commissioners from contracting with Commissioner Vance or a business owned by Vance, the law would not appear to preclude former Commissioner Vance as an individual from renting apartments to county employees, even while in office. The rental transaction would be a “private” sector transaction not involving public funds.

Recommendation

No recommendation is provided for this objective.

Objective VII. Review the Board of County Commissioners inventory records.

Background

Under **19 O.S. § 178.1** and **19 O.S. § 1502**, the Board of County Commissioners is directed to administer a system of inventory for consumable supplies and equipment owned and/or leased by the county. Generally, consumable supplies “purchased in lots” of \$500 or more, and equipment items “having an original cost” of \$500 or more, are required to be recorded, periodically inventoried, and reported.

Inventory items and equipment used for “construction and maintenance of roads and bridges” are covered under **19 O.S. § 1502 (A)** and all other items *not* used for “construction and maintenance of roads and bridges” are covered under **19 O.S. § 1502 (B)**.

In addition, **69 O.S. § 645** requires:

The board of county commissioners shall cause each piece of county-owned, rented or leased road machinery and equipment, and each automobile and truck, to be marked in accordance with the provisions of this section. County-owned automobiles, trucks, road machinery and equipment *shall be conspicuously and legibly marked* PROPERTY OF (name of county) COUNTY, and leased automobiles, trucks, road machinery and equipment shall be conspicuously and legibly marked LEASED BY (name of county) COUNTY, *on each side*, in upper case letters, on a background of sharply contrasting color. [emphasis added]

The proper identification of county owned vehicles and equipment is an important control on the use or misuse of county property, allowing other county employees and/or the public to recognize and identify situations in which the use of county property may be inappropriate or an “abuse.”

Findings

The County did not have their entire vehicle fleet clearly marked as required by statutes. Items that have been “junked” still appear on the inventory lists. Inventory lists were not up-to-date with respect to transfers between county districts.

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We obtained inventory printouts from the County Commissioner's office and then visually verified the equipment reflected on the inventories for each district. We noted the following exceptions.



District 1

Three county-owned pickups were not clearly identified as being county property, as required by **69 O.S. § 645**. With the exception of the license plate on the rear of the vehicle, the pickups would not be readily identified as being county owned vehicles. In addition to the pickups, we noted a 2007 John Deere tractor also did not have a county identification number.

A 1993 Chevrolet pickup #99-1243 had been transferred from District 1 to District 2. The pickup was still listed on the District 1 inventory, as well as being listed on the District 2 inventory.

A 1965 Hough Loader was junked, but still appeared on inventory for District 1.

We tested the consumable inventory and found no notable exceptions.

District 2

A turnover inventory audit was performed by the State Auditor's Office in March 2011, with no exceptions reported. During our inventory test we noted a majority of the equipment did not have county identification numbers, as required by statutes.

We noted no other exceptions.

We tested the consumable inventory and noted no notable exceptions.

District 3

We noted one Chevrolet pickup was not clearly identified as being a county owned vehicle, as required by statute.

We tested the consumable inventory and noted no notable exceptions.

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Recommendations We recommend the County ensure all road district vehicles and equipment are properly marked, in accordance with the provisions of state law, and that inventory records be updated to reflect equipment transfers between road districts and to properly record items that have been junked, and which should be removed from inventory.

Objective VIII: Review the evidence and equipment inventory records of the sheriff's office.

Background

There were no specific allegations related to the equipment inventory of the sheriff's office. As part of a general review of sheriff's office operations, we tested the equipment and evidence/property records.

The Sheriff's equipment inventory is covered by the same statute as the County Commissioners equipment inventory, i.e. **19 O.S. § 1502**, under subsection (B).

Findings

None.

The County Audit Division of the OSAI performs what is referred to as "turnover" audits of elected officials' offices when a transition is made from one official to another. The OSAI last performed a turnover audit on the sheriff's office in November 2010, when Mike Waters became the interim Sheriff.

The turnover audit performed in November included tests of equipment inventory, no exceptions were noted. Because an inventory test had recently been conducted, we performed limited testing of both the inventory and evidence procedures.

No exceptions were noted during our equipment inventory testing.

We reviewed the methodology used by the sheriff's office for both receiving and storing evidence, as well as releasing evidence when warranted. Evidence is maintained in a vault built into the courthouse. The Undersheriff is responsible for maintaining the evidence room. The Undersheriff maintains one key to the vault. A second key is kept in the Sheriff's safe.

Undersheriff Johnson keeps the evidence records both on a computer, as well as keeping a paper backup in three ring binders. The three-ring binders contain the following documents:

- An evidence log with the case identifiers, defendant name, date and time received.

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- If the property has been released, a receipt for the released property.
- If the release is because of a court action, a copy of the court action.
- A copy of the driver's license or other photo identification of the person to whom the property was released.

When property is being released, the person retrieving the property must have valid photo identification. The Undersheriff will run an NCIC background check to make sure there are no issues related to releasing firearms to someone that could have a felony conviction or other problem.

We judgmentally selected some evidence items to visually verify, as well as to verify the items were properly marked and were stored in the locations indicated on the Sheriff's evidence logs and records.

We noted no exceptions in this test of evidence and property records.

Recommendation No recommendation is provided for this objective.

Objective IX. Review the Sheriff's Office handling of forfeiture cases.

Background

There were no specific allegations related to the property forfeitures. As part of a general review of sheriff's office operations, we reviewed the records and "property forfeiture" processes.

Under the provisions of **63 O.S. 2-501** and **63 O.S. 2-503.1a, et al**, property related to drug crimes may be seized and forfeited. These statutes describe the procedures and processes for forfeiting "drug" property.

Findings

None.

During 2008 and 2009, according to the District Court Clerk, ten (10) forfeiture cases were filed. Of those cases seven (7) were filed by the District Drug Task Force and three (3) were filed by staff members of the Sheriff's Office.

Much of the property forfeited was sold at a Sheriff's sale on November 7, 2009. According to Sheriff Waters, the sheriff's office had utilized an auction company, the McFarland Auction Company, to handle the sale of the forfeited property. McFarland handled all of the paperwork and then paid the District Attorney and/or the sheriff's office the proceeds that were obtained from the sale.

Nine (9) of the ten (10) forfeitures filed were CDS (Controlled Dangerous Substance) forfeitures. Any amounts remaining after the sale of the property would be deposited with the county treasurer in an account under the control of the District Attorney.

Because the sale was conducted by a private company and not under the control of the sheriff's office, we did not review those sale records maintained by the private company.

Return of property:

There were four instances noted where the forfeiture was either denied or the forfeiture action was dismissed and the property was to be returned. We determined the property for these four cases had been returned as required.

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Currently in possession:

Two cases involved vehicles currently in the possession of the Sheriff. In case CS-08-119, the court forfeited a 1997 Dodge Dakota pickup. We visually verified this pickup was currently at the Osage County impound yard.

In case CV-2010-01, the court denied the order for forfeiture and ordered the vehicle returned. The court record reflects the Court Clerk mailed a copy of the order to the person listed on the court order, but that person has not claimed the vehicle as of the date of fieldwork. We visually verified this vehicle, a 1991 Chevrolet pickup, was also located at the Osage County Sheriff's impound yard.

The vehicle appeared to be of little value, which likely is why it has not been claimed by anyone (extensive rusting, bed rusted nearly off, paint faded, etc). As of the date of fieldwork, it remained in the possession of the District Attorney's office.

Cash Seizures:

Two cases involved "cash" seizures, CS-09-01 and CS-08-99. When cash is seized with the intent to forfeit, the cash is taken to the sheriff's office, counted, and then immediately deposited with the County Treasurer in the "District Attorney's Drug Fund" account in the official depository.

In case CS-09-01, the cash was ordered to be returned. The cash, \$2,600, was receipted by the sheriff's office on December 2, 2008, and turned over to and receipted by the District Attorney's office, also on December 2, 2008. The cash was ordered returned to the defendant on June 12, 2009. We obtained from the County Treasurer, a voucher register indicating the same amount was paid from account 802 (DA Drug Fund) also on June 12, 2009.

In case CS-08-99, \$2,718 was seized in addition to two vehicles. The cash was seized on February 27, 2008, by officers of the Drug Task Force and was ordered forfeited on July 8, 2008. We determined the money had been deposited in the District Attorney's Drug Fund Account on March 5, 2008.

We noted no exceptions during our testing of the forfeiture processes.

Recommendation No recommendation is provided for this objective.

Objective X. Review the Sheriff's Office inmate trust fund account.

Background

When an individual is arrested and booked into the county jail, certain procedures must be followed in relation to the personal items and property of the detainee. Records must be maintained and reasonable actions must be taken to ensure that the care and custody of the individual's property is accounted for and kept separate from the property of other inmates and detainees, until such time as the individual is released and/or delivered to the Oklahoma Department of Corrections.

Relevant statutes include the following:

19 O.S. § 531 (A.) Notwithstanding any other provisions of law, the county sheriff may establish a checking account, to be designated the "Inmate Trust Fund Checking Account", to be managed by the county sheriff and maintained separately from regular county funds. The checking account shall be subject to audit by the State Auditor and Inspector. The county sheriff shall deposit all monies collected from inmates incarcerated in the county jail into this checking account and may write checks to the Sheriff's Commissary Account for purchases made by the inmate during his or her incarceration and to the inmate from unencumbered balances due the inmate upon his or her discharge.

19 O.S. § 531 (C.) The State Auditor and Inspector shall prescribe procedures for the operation of the Inmate Trust Fund Checking Account...

Although not "technically" an "official depository" account of the County Treasurer, OSAI considers the following statute relevant and to be incorporated into the "prescribed procedures" for the Inmate Trust Fund Checking Account, as authorized under **19 O.S. § 531 (C.)** above:

19 O.S. § 682 *It shall be the duty of each and every county officer, county board, county commission and all members and employees of either thereof, to deposit daily in the official depository designated in Section 681 of this title, all monies, checks, drafts, orders, vouchers, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures and public charges of every kind received or collected by virtue or under color of office...*

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Finding

Inmate trust collections were not being deposited daily, as required by statute and OSAI prescribed procedures.

We reviewed the procedures used by the Sheriff's Office with regards to how inmate trust funds are handled.

When a detainee or inmate is booked into custody, the money in his possession is counted by the jailer in front of the detainee/inmate. The money is then placed in an envelope with the inmate's name and social security number. The amount of money received is also written on the outside of the envelope. The envelope containing the money is then placed in a safe.

On the following day, another sheriff's office employee retrieves the envelopes from the safe. The funds are counted and reconciled to the amount(s) recorded on the envelope(s). The employee then opens an "inmate trust/commissary" account for the inmate in the Sheriff's computer system. The envelopes are then destroyed because of the identifying information recorded on them.

Other than the funds taken from an inmate during the book-in process, the sheriff's office does not accept "cash" for the inmates' trust/commissary accounts. When a person brings in funds (cashier's check or money order) for an inmate, a receipt is generated from the computer system used for tracking the inmate trust/commissary accounts.

The sheriff's office employee who primarily handles the inmate trust/commissary accounts said she normally deposits the collections an average of four (4) times per month, contrary to the above statutes and OSAI prescribed procedures.

For the months of January 2011 through March 2011, we performed a receipt to deposit test. The computer system used for tracking the inmate trust/commissary account generates receipts that are numbered with a transaction number.

We traced each transaction on the Cash Report to the white copy of the receipt maintained by the sheriff's office. The yellow copy is provided to the person from whom the collection was received.

We also compared cash, checks and money orders receipted to the composition of checks and cash deposited into the inmate trust bank account. No exceptions were noted.

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Recommendation We recommend all funds collected “under color of office” be deposited daily, or the next immediate business day following collection, as required by statute and OSAI prescribed procedures for the Inmate Trust Fund.

DISCLAIMER In this report, there may be references to state statutes, Attorney General’s opinions and other legal authorities that 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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Attachment A

Deposit Sources For \$15,644.10 Deposit May 21, 2010					
	Date	##	Payee	Remitter	Amount
1	2/3/2010	82654	Dale Vance County Commissioner Dist #2	Jack Barlow	\$234.52
2	2/4/2010	82657	Dale Vance Commissioner Dist #2	Jack Barlow	\$237.12
3	2/4/2010	82658	Dale Vance Commissioner Dist #2	Jack Barlow	\$305.80
4	2/10/2010	82679	Dale Vance Commissioner Dist #2	jack Barlwo	\$1,019.56
5	2/11/2010	82684	Dale Vance Commissioner Dist #2	Jack Barlow	\$660.02
6	2/11/2010	82865	Dale Vance Commissioner Dist #2	Jack Barlow	\$293.70
7	2/17/2010	82700	Dale Vance County Commissioner Dist #2	Jack Barlow	\$377.64
8	2/18/2010	82703	Dale Vance Dist #2 County Commissioner	Jack Barlow	\$177.48
9	2/19/2010	82715	Dale Vance County Commissioner Dist #2	Jack Barlow	\$768.50
10	2/23/2010	82726	Dale Vance Dist #2 County Commissioner	Jack Barlow	\$1,097.94
11	2/24/2010	82730	Dale Vance County Commissioner Dist #2	Jack Barlow	\$372.36
12	2/24/2010	82733	Dale Vance County Commissioner Dist #2	Jack Barlow	\$599.14
13	3/1/2010	82746	Dale Vance County Commissioner Dist #2	Jack Barlow	\$437.32
14	3/1/2010	82748	Dale Vance County Commissioner Dist #2	Jack Barlow	\$445.69
15	3/4/2010	82757	Dale Vance County Commissioner Dist #2	Jack Barlow	\$192.00
16	3/8/2010	82767	Dale Vance County Commissioner Dist #2	Jack Barlow	\$959.32
17	3/8/2010	82768	Dale Vance County Commissioner Dist #2	Jack Barlow	\$994.70
18	3/9/2010	82775	Dale Vance County Commissioner Dist #2	Jack Barlow	\$826.60
19	3/16/2010	82784	Dale Vance Co. Comm. #2	Jack Barlow	\$943.50
20	3/16/2010	82785	Dale Vance Co. Comm. #2	Jack Barlow	\$813.26
21	3/17/2010	82789	Dale Vance Co. Comm. #2	Jack Barlow	\$264.85
22	3/18/2010	82795	Dale Vance Co Comm #2	Jack Barlow	\$249.56
23	3/26/2010	82821	Dale Vance Co Comm #2	Jack Barlow	\$894.36
24	4/6/2010	82855	Dale Vance County Commissioner Dist #2	Jack Barlow	\$72.48
25	4/9/2010	82862	Dale Vance County Commissioner Dist #2	Jack Barlow	\$200.00
26	4/16/2010	82869	Dale Vance County Commissioner Dist #2	Jack Barlow	\$293.78
27	4/21/2010	82879	Dale Vance Co. Comm. #2	Jack Barlow	\$748.24
28	4/26/2010	82892	Dale Vance County Commissioner Dist #2	Jack Barlow	\$784.60
29	5/12/2010	82939	Dale Vance Pawnee Co Comm. 2	Jack Barlow	\$380.06
					\$15,644.10



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