

**PITTSBURG COUNTY
BOARD OF COUNTY
COMMISSIONERS**

**JUNE 26, 2006 THROUGH
SEPTEMBER 29, 2008**



**SPECIAL
AUDIT**



Oklahoma State Auditor
& Inspector

BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008

This publication is printed and issued by the State Auditor and Inspector as authorized by 74 O.S. 2001, § 212(H) and 74 O.S. 2001, § 3105. Twenty-five copies have been prepared and distributed at a cost of \$50.66. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

STATE AUDITOR AND INSPECTOR

STEVE BURRAGE, CPA
State Auditor

MICHELLE R. DAY, ESQ.
Chief Deputy



2300 N. Lincoln Boulevard State Capitol, Room 100 Oklahoma City, OK 73105-4801 Phone (405) 521-3495 Fax (405) 521-3426 www.sai.ok.gov

June 23, 2010

Honorable Jim Bob Miller
District Attorney, District 18
Pittsburg County Courthouse
McAlester, Oklahoma 74501

Transmitted herewith is the Special Audit Report of the Board of County Commissioners, Pittsburg County, Oklahoma. We performed our special audit in accordance with the requirements of **74 O.S. § 212(H)**.

A report of this type tends to be critical in nature; however, failure to report commendable features in the present accounting and operating procedures of the entity should not be interpreted to mean they do not exist.

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government, which is accountable to the people of the State of Oklahoma.

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.

Sincerely,

A handwritten signature in blue ink that reads "Steve Burrage".

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

TABLE OF CONTENTS

	PAGE
Board of County Commissioners.....	ii
State Auditor and Inspector's Report	1
Introduction	2
Objectives, Findings, and Recommendations	3

INDEX OF OBJECTIVES

- I. Review officials' salary increase for travel allowance and determine if it was proper3

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

**PITTSBURG COUNTY ELECTED OFFICIALS
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

Gene Rogers..... Commissioner, District 1
June 26, 2006 through September 29, 2008

Kevin Smith Commissioner, District 2
June 26, 2006 through September 29, 2008

Randy Crone Commissioner, District 3
June 26, 2006 through April 30, 2008

Donald Mathis..... Commissioner, District 3
September 2, 2008 through September 29, 2008

Debbie Burch County Clerk
June 26, 2006 through September 29, 2008

Cerita Morely Treasurer
June 26, 2006 through September 29, 2008

Jim Kelley Assessor
June 26, 2006 through September 29, 2008

Cynthia Eller Court Clerk
July 2006 through September 29, 2008

Jerome Amarato Sheriff
June 26, 2006 through September 29, 2008

STATE AUDITOR AND INSPECTOR

STEVE BURRAGE, CPA
State Auditor

MICHELLE R. DAY, ESQ.
Chief Deputy



2300 N. Lincoln Boulevard State Capitol, Room 100 Oklahoma City, OK 73105-4801 Phone (405) 521-3495 Fax (405) 521-3426 www.sai.ok.gov

Mr. Kevin Smith, Chairman
Board of County Commissioners
Pittsburg County
115 E. Carl Albert Parkway
McAlester, Oklahoma 74501

Dear Mr. Smith:

Pursuant to the District Attorney's request and in accordance with the requirements of **74 O.S. § 212(H)**, we performed a special audit with respect to the Board of County Commissioners, Pittsburg County, Oklahoma for the period June 26, 2006 through September 29, 2008.

The objectives of our special audit primarily included, but were not limited to, the County officials' travel allowance/salary. Our findings related to these procedures are presented in the accompanying report.

Because the above procedures do not constitute an audit in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of Pittsburg County for the period June 26, 2006 through September 29, 2008. Further, due to the test nature and other inherent limitations of a special audit report, together with the inherent limitations of any internal control structure, there is an unavoidable risk that some material misstatements may remain undiscovered. This report relates only to the accounts and item specified above and does not extend to any financial statements of the County.

This report is intended solely for the information and use of the District Attorney and the Board of Commissioners, and should not be used for any other purpose. This report is also a public document pursuant to the **Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.)** and shall be open to any person for inspection and copying.

Sincerely,

A handwritten signature in blue ink that reads "Steve Burrage".

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

June 23, 2010

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

INTRODUCTION

The Board of County Commissioners is the chief administrative body for the county. County Commissioners are also responsible for maintaining and constructing the county roads and bridges.

The Commissioners must act as a Board when entering into contracts or other agreements affecting the county's welfare. Thus, actions taken by the Board are voted on and approved by a majority of the Commissioners. The Board of County Commissioners' business meetings are open to the public.

As the county's chief administrative body, the three County Commissioners must make major financial decisions and transactions. The Board has the official duty to ensure the fiscal responsibility of the other county officers who handle county funds. The review and approval procedures empowered to the Board of County Commissioners are a means to provide the public with a fiscally efficient system of county government.

The Oklahoma State Auditor and Inspector (OSAI) conducted a special audit of the records of the Board of County Commissioners, Pittsburg County, primarily those records relating to the objectives expressed by the District Attorney. The results of the special audit are in the following report.

BOARD OF COUNTY COMMISSIONERS FIDUCIARY RESPONSIBILITY

The Board of County Commissioners for Pittsburg County has an obligation to act in the best interest of the County as a whole. This fiduciary responsibility requires that all funds belonging to the County be handled with scrupulous good faith and candor. Such a relationship requires that no individual shall take personal advantage of the trust placed in him or her. When the Board of County Commissioners accepts responsibility to act in a fiduciary relationship, the law forbids them from acting in any manner adverse or contrary to the interest of the County.

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

OBJECTIVE

Review officials' salary increase for travel allowance and determine if it was proper.

FINDING

On June 26, 2006, the Board of County Commissioners approved a "Resolution to Combine Elected Officials Travel with Salaries." The Resolution was signed by all elected officials in office on that date. The Resolution states:

The Board of County Commissioners, Pittsburg County, met in regular session on June 26, 2006.

WHEREAS, Pursuant to IRS regulations regarding taxing monthly mileage for officials, the Board of County Commissioners of Pittsburg County and all other elected county officials of Pittsburg County agree to transfer travel allowance based on Oklahoma State Statute Title 19 Section 165A to their salary account. Travel allowance for some officers was increased in order that all salaries would be the same amount.

WHEREAS, any changes made to this resolution must be passed by the majority of the elected county officers.

NOW THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Pittsburg County do hereby approve the resolution to combine mileage with salaries for all elected officials.

The Pittsburg County Board of County Commissioners included the travel allowance in the County officials' budgeted salary accounts on the 2007-08 Estimate of Needs and Financial Statements of the Fiscal Year 2006-07.

The practice of including the officials' travel allowance with their salaries continued until September 29, 2008 at which time the Board of County Commissioners approved a Resolution rescinding the Resolution of June 26, 2006. The Resolution was signed by all County officials at the present time.

In lieu of reimbursement of actual travel expenses within the County, the officers may receive a monthly travel allowance as set forth in **19 O.S. § 165(A)**. The following schedule reflects the statutory travel allowance by officer during the audit period.

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

- **June 26, 2006 through October 31, 2006:**
 - Commissioners \$600.00
 - Sheriff \$600.00
 - Assessor \$400.00
 - County clerk \$300.00
 - County treasurer \$300.00
 - Court clerk \$300.00

- **November 1, 2006 through September 29, 2008:**
 - Commissioners \$600.00
 - Sheriff \$600.00
 - Assessor \$500.00
 - County clerk \$400.00
 - County treasurer \$400.00
 - Court clerk \$400.00

Effective July 1, 2006, all of the officials' salaries were increased by \$600.00 per month, in accordance with the Resolution dated June 26, 2006. The salary increase for the Commissioners and Sheriff did not exceed the statutory travel allowance. The Assessor, County Clerk, Treasurer, and Court Clerk salaries were increased in excess of their allowable statutory travel allowance, as noted below. The schedule reflects the increase in the officials' salary in excess of their travel allowance as provided in **19 O.S. § 165(A)** from June 26, 2006 through September 29, 2008.

Elected Official	Statutory Allowed Travel	Amount Travel Increased by Resolution	Exceeded Allowable Travel by Statute
Assessor	\$13,100	\$16,200	\$3,100
County Clerk	\$10,400	\$16,200	\$5,800
Treasurer	\$10,400	\$16,200	\$5,800
Court Clerk	\$10,100	\$15,600	\$5,500

The Court Clerk took office subsequent to the Resolution of June 26, 2006, being signed and did not sign the Resolution. At the time she took office, the salaries had been established for the officers.

The yearly salaries for the Pittsburg County officials, including the increase for travel allowance, for the Fiscal years 2007, 2008, and 2009 were \$51,633.84, \$54,633.84, and \$54,633.84, respectfully. The salaries did not exceed the maximum allowed by statute for the elected officials for the fiscal years 2007, 2008, and 2009, which were \$56,250, \$56,550, and \$57,250, respectfully. However, it appears the elected officials voted on and/or received raises during

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

their terms of elected office contrary to the provisions of the Constitution of Oklahoma and Oklahoma Statutes.

Article 23 § 10 of the **Constitution of Oklahoma** provides, in part:

that no salary of any public official shall be changed after his or her election or appointment during his or her term of office “unless by operation of law enacted prior to such election or appointment.”

Oklahoma Statute 19 O.S. § 180.77 provides:

County officers shall not receive any salary increases during their term of office unless by operation of law enacted prior to their election or appointment.

RECOMMENDATION OSAI recommends the District Attorney review this finding to determine what action, if any, may be required.

FINDING During a discussion with the current District One and Two County Commissioners, they stated that they did drive a County-owned vehicle part of the time and their personal vehicle the rest of the time for the period June 26, 2006 through September 29, 2008. District Three Commissioner stated he drove his personal vehicle and did not drive a County-owned vehicle. The District Three Commissioner took office September 2, 2008.

During a discussion with the former District Three Commissioner, he stated he drove a County-owned vehicle part of the time and his personal vehicle the rest of the time.

During a discussion with the Sheriff, he stated that he drove a County-owned vehicle part of the time and his personal vehicle the rest of the time during the period in question. He also stated that he used his personal boat and an all terrain vehicle for County business.

OSAI requested all officers provide a statement on an OSAI affidavit form to confirm if they did or did not drive a County-owned vehicle from June 26, 2006 through September 29, 2008. The current District Three Commissioner, County Clerk, Treasurer, Assessor, and Court Clerk prepared and signed the affidavits stating they had not driven a County-owned vehicle during this period.

District One and Two Commissioners originally stated they would complete the affidavits and return them to the auditor. However, the affidavits were not received, and OSAI contacted the County Commissioner’s office to determine if the Commissioners had completed the affidavits. The Commissioners’ secretary

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

informed the auditor that the Commissioners were not going to prepare and sign the affidavits. Also, the Sheriff denied the request to complete an affidavit stating that he was not going to sign anything until he talked to his attorney.

Documentation, "Official's Travel Questionnaire" and a memo, was obtained from the audit workpapers of Pittsburg County's audit for fiscal years ending June 30, 2006 and 2007. The questionnaire was dated January 8, 2008. The questionnaire was presented to all officials, asking "Do you drive a County-owned vehicle?" County Commissioners District One and Two, former County Commissioner District Three, and the Sheriff answered the question "yes" and signed the form. The memo, written by an OSAI auditor, states that while performing the audit at the County barns, he observed District One and Two Commissioners and former District Three Commissioner driving County-owned vehicles. The vehicles were identified and verified to the County's inventory. The following list reflects the Commissioner and the County-owned vehicle driven.

- Commissioner District One – Ford Lariat pick-up
- Commissioner District Two – Chevrolet 2500 HD extended cab pick-up
- Former Commissioner District Three – Chevrolet Tahoe sports utility vehicle

The following schedule shows the amount received as travel allowance in their salary by the Commissioners and Sheriff, from June 26, 2006 through September 29, 2008, while driving a County-owned vehicle.

Officer	Amount
Commissioner district one	\$16,200
Commissioner district two	\$16,200
Former Commissioner district three	\$13,200
Sheriff	\$16,200

Based on the documentation and interviews, it appears District One and Two Commissioners, former District Three Commissioner, and the Sheriff drove a County-owned vehicle and received a travel allowance contrary to **Oklahoma Attorney General Opinion 99-68**, which finds in pertinent part:

Both the monthly travel allowances of Section 165 and the use of a county-owned vehicle under Section 19 O.S. 180.43(C) are "in lieu of" receiving a mileage reimbursement under Section 164. The use of a county-owned vehicle is also "in lieu of" the Section 165 monthly travel allowance. In the absence of contrary intention, words used in any statute are to be understood in their ordinary sense. See 25 O.S. 1 (1991). "In lieu of "means" in the place of; instead of." Webster's Third

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

New International Dictionary 1306 (3d ed. 1993). Statutes must be given a sensible construction, bearing in mind the evils intended to be avoided or the remedy afforded. *See AMF Tubescope Co. v. Hatchel*, 547 P.2d 374, 379 (Okla. 1976). The "in lieu" provisions of these three statutes are obviously designed to prevent double recovery of travel expenses. For example, a county official driving a personal vehicle for official business purposes cannot receive both a mileage reimbursement and a monthly travel allowance for the same expenses, nor could a sheriff or county commissioner receive either mileage for miles driven in a county vehicle or a monthly travel allowance for a month in which the official drives a county vehicle for business purposes. By the express language of Section 19 O.S. 180.43(C), the automobile provided to a sheriff pursuant to Section 19 O.S. 180.43(C) is "in lieu of" receiving either the travel reimbursement of Section 164 or the monthly travel allowance of Section 165. A sheriff who has been provided a vehicle for use in performing official duties may not receive a travel allowance pursuant to Section 165.

...

A county sheriff or county commissioner who is receiving a monthly travel allowance may use a county-owned vehicle only under the circumstances set forth in Section 165. To find otherwise would result in double recovery of travel expenses because the travel allowance is for reimbursement of all business-related travel within the county during a given month and the use of a county vehicle in the same month would give the official overlapping travel allowances - a situation the statute is designed to prevent.

21 O.S. § 341 states in part:

Every public officer of the state or any county, city, town, or member or officer of the Legislature, and every deputy or clerk of any such officer and every other person receiving any money or other thing of value on behalf of or for account of this state or any department of the government of this state or any bureau or fund created by law and in which this state or the people thereof, are directly or indirectly interested, who either:

First: Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in the officer's or person's hands or money to be raised through an agency for state, city, town, district, or county purposes; or

...

Shall, upon conviction, thereof, be deemed guilty of a felony and shall be punished by a fine of not to exceed Five Hundred Dollars (\$500.00),

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

and by imprisonment in the State Penitentiary for a term of not less than one (1) year nor more than twenty (20) years and, in addition thereto, the person shall be disqualified to hold office in this state, and the court shall issue an order of such forfeiture.

...

In addition, **19 O.S. § 641** states in part:

If any county ... officer or person charged with the collection, receipt, safekeeping, transfer or disbursement of the public money, or any part thereof, belonging to the state or to any county ... of the state shall convert to the officer's or person's own use or to the use of any other person ... in any way whatever, any of such public money, or any other funds, property, bonds, securities, assets or effects of any kind received, controlled or held by such officer or person by virtue of such office or public trust for safekeeping, transfer or disbursement ... or for any other purpose ... or shall loan the same, with or without interest ... or in any manner knowingly participate in such act, such county treasurer, or other officer or person shall be guilty of an embezzlement.

RECOMMENDATION OSAI recommends the District Attorney review this finding to determine what action, if any, may be required.

FINDING OSAI reviewed purchase orders and claims submitted by the County officers from June 26, 2006 through September 29, 2008 to verify mileage claimed was for out-of-county travel. It appears the mileage reimbursed on the purchase orders and claims was for out-of-county travel, which is an allowable reimbursement.

RECOMMENDATION No recommendation required.

FINDING The Resolution dated June 26, 2006, increased the officials' salary by their travel allowance as set forth in **19 O.S. § 165**. Including the travel allowance in the officials' salary, employer contributions were paid by the County to Medicare, Oklahoma Public Employees Retirement System (OPERS), and Social Security on the allowance amount. Also, workers compensation insurance (workers comp) was paid on the travel allowance. The following schedule documents the employer contributions paid on the officers' travel allowance for the period June 26, 2006 through September 29, 2008.

BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008

Official	Total	MQFE Medicare	OPERS	Social Security	Workers Comp
Commissioners:					
District one	\$ 3,867.46	\$ 211.91	\$ 2,133.02	\$ 906.06	\$ 616.47
District two	\$ 3,900.43	\$ 218.16	\$ 2,133.02	\$ 932.79	\$ 616.47
District three	\$ 54.77	\$ 8.70	\$ 87.01	\$ 37.20	\$ 21.86
Former district three	\$ 3,223.19	\$ 189.18	\$ 1,710.02	\$ 808.86	\$ 515.13
County Clerk	\$ 2,553.50	\$ 149.16	\$ 1,372.02	\$ 637.81	\$ 394.51
Treasurer	\$ 2,541.90	\$ 146.97	\$ 1,372.02	\$ 628.41	\$ 394.51
Assessor	\$ 3,226.95	\$ 189.97	\$ 1,727.52	\$ 812.22	\$ 497.25
Court Clerk	\$ 2,440.25	\$ 137.16	\$ 1,334.51	\$ 586.43	\$ 382.15
Sheriff	\$ 3,985.99	\$ 234.92	\$ 2,133.02	\$ 1,004.42	\$ 613.63

The monthly travel allowance should not have been treated as part of the County officers' salary as stated in **Attorney General's Opinion 87-117**. According to IRS regulation Publication 15, Circular E, employers are required to withhold Social Security and Medicare tax on non-accountable plans, such as monthly travel allowance. However, OSAI finds no authority for the County to pay contributions to OPERS or workers compensation insurance on the officers' monthly travel allowance.

1987 OK AG 117 states:

It is, therefore, the official opinion of the Attorney General that fixed monthly travel allowances in lieu of reimbursement for actual travel expenses as provided in **19 O.S. 1981, § 165** do not constitute part of the county officer's salary as contemplated by **19 O.S. 1981, §§ 180.58**.

For purposes of the Oklahoma Public Employees Retirement System, **74 O.S. § 902(9)** states in part:

'Compensation' means all salary and wages, as defined by the Board of Trustees, including amounts deferred under deferred compensation agreements entered into between a member and a participating employer, but exclusive of payment for overtime, payable to a member of the System for personal services performed for a participating employer but shall not include compensation or reimbursement for traveling, or moving expenses, or any compensation in excess of the maximum compensation level[.]

The current District Three Commissioner and the Court Clerk took office after the travel allowance was included in the officials' salary.

RECOMMENDATION OSAI recommends the District Attorney review this finding to determine what action, if any, may be required.

**BOARD OF COUNTY COMMISSIONERS
PITTSBURG COUNTY
SPECIAL AUDIT REPORT
JUNE 26, 2006 THROUGH SEPTEMBER 29, 2008**

DISCLAIMER

Throughout this report there are numerous references to state statutes and legal authorities, which appear to be relevant to issues raised by the District Attorney and 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 and such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.

The inclusion of cites to specific statutes or other authorities within this report does not, and is not intended to, constitute a determination or finding by the State Auditor and Inspector that the Pittsburg County Board of Commissioners or any of the individuals named in this report or acting on behalf of the Board of Commissioners have violated any statutory requirements or prohibitions imposed by law. All cites and/or references to specific legal provisions are included within this report for the sole purpose of enabling interested parties to review and consider the cited provisions, independently ascertain whether or not the Board of Commissioner's policies, procedures, or practices should be modified or discontinued, and to independently evaluate whether or not the recommendations made by this Office should be implemented.



**OFFICE OF THE STATE AUDITOR AND INSPECTOR
2300 N. LINCOLN BOULEVARD, ROOM 100
OKLAHOMA CITY, OK 73105-4896**

WWW.SAI.OK.GOV