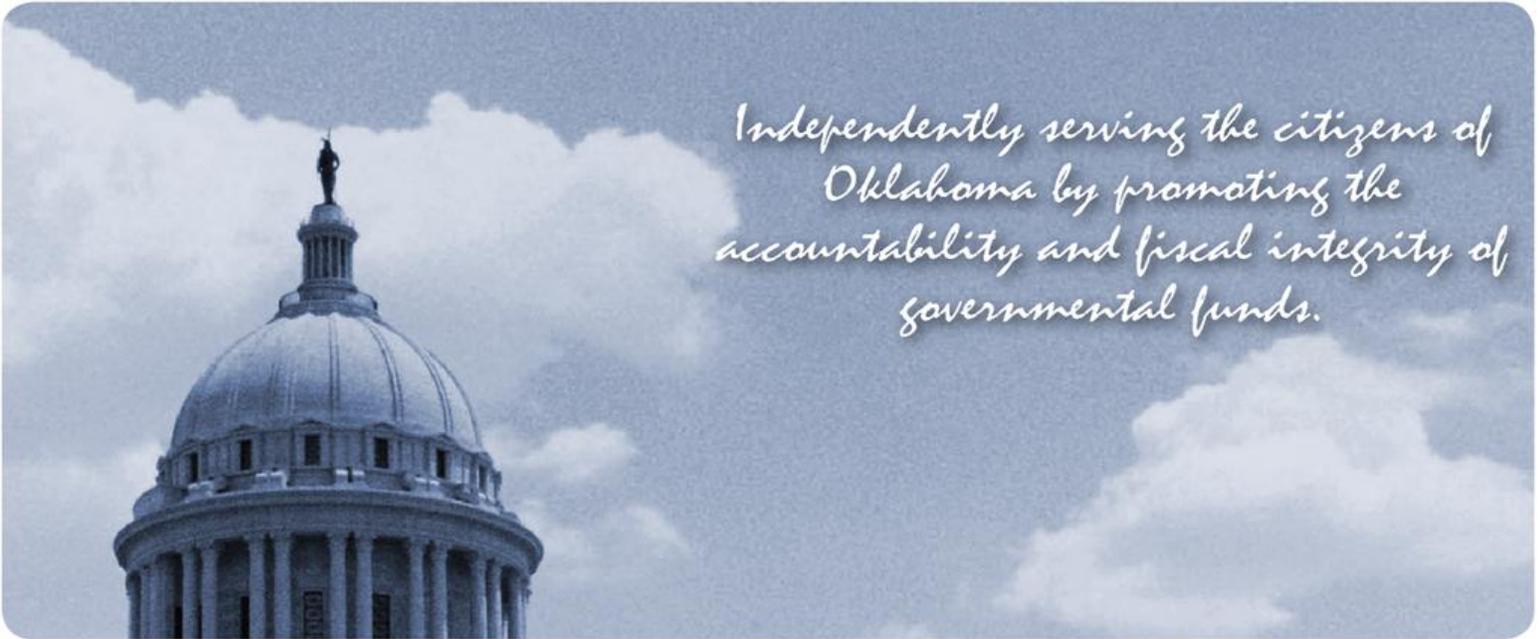


PETITION AUDIT REPORT

# TOWN OF SPAVINAW

For the period July 1, 2008 through December 31, 2012



*Independently serving the citizens of  
Oklahoma by promoting the  
accountability and fiscal integrity of  
governmental funds.*



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

**TOWN OF SPAVINAW**  
**MAYES COUNTY, OKLAHOMA**

**PETITION AUDIT REPORT**

**APRIL 28, 2015**



# Oklahoma State Auditor & Inspector

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

April 28, 2015

To the Petitioners and Citizens of the  
Town of Spavinaw:

Transmitted herewith is the Petition Audit Report for the Town of Spavinaw.

Pursuant to your request and in accordance with the requirements of **74 O.S. § 212(L)**, we performed a petition audit with respect to the Town of Spavinaw for the period July 1, 2008 through December 31, 2012.

The objectives of our audit primarily included, but were not limited to, the concerns noted in the citizen petition. The results of this audit, related to these objectives, are presented in the accompanying report.

Because the investigative procedures of a petition audit 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 the Town of Spavinaw.

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 also wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our engagement.

This report is a public document pursuant to the Oklahoma Open Records Act, in accordance with **51 O.S. § 24A.1 et seq.**

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

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

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## INTRODUCTION

**Organization**     The Town of Spavinaw is organized under the statutory Town Board of Trustees form of Government as outlined in **11 O.S. § 12-101, et seq.** which states:

The form of government provided by Sections 11-12-101 through 11-12-114 of this title shall be known as the statutory town board of trustee's form of government. Towns governed under the statutory town board of trustees form shall have all the powers, functions, rights, privileges, franchises and immunities granted, or which may be granted, to towns. Such powers shall be exercised as provided by law applicable to towns under the town board of trustees form, or if the manner is not thus prescribed, then in such manner as the board of trustees may prescribe.

The legislative branch of the town government consists of the five members of the board of trustees. The five members of the board are elected at large in staggered terms. The mayor is elected by the board from among its members.

The Board of Trustees for the Town of Spavinaw as of the date of this report consist of:

- Jim Winn, Mayor
- Johnny Gifford, Vice-Mayor
- Diane Finley
- Roy McClish
- Charlie Thompson

The Board of Trustees for the Town of Spavinaw as of December 2012, when the petition was initiated consisted of:

- Chris Shocklee, Mayor
- Fred Stewart, Vice-Mayor
- Johnny Gifford
- Deborah Lanning
- Terril Metcalf

**Petition**     In December 2012, the residents of the Town of Spavinaw submitted a signed petition requesting a special audit. In January 2013, the Mayes County Election Board verified petition signatures in accordance with **74 O.S. § 212 (L)(6)**.

**Audit Scope**      The Citizen’s Petition defined the scope of the Town of Spavinaw Special Audit as “July 1, 2008 to the present”. The “present” at the time the petition was signed and submitted was December 31, 2012. As such, the original scope of the audit was July 1, 2008 through December 31, 2012.

Between March 2013 and July 2013, four new trustees were seated on the board. The audit of Spavinaw was postponed during this time of transition. In June 2013, officials from the State Auditor and Inspector’s (SAI) office met with the petitioners regarding their concerns. At that time, Spavinaw had not obtained an annual financial audit since 2008. The petition audit was postponed once more while the town worked to have their annual financial statements brought up to date and an independent financial audit performed. The “Annual Financial Statements and Independent Auditor’s Report” for the fiscal years ending June 30, 2013, and June 30, 2014, were both released December 31, 2014.

On September 19, 2014, SAI officials met with Mayor Jim Winn and Vice-Mayor Johnny Gifford to discuss completion of the petition audit. It was discovered during this meeting that a large portion of the Town’s records for the original audit period were missing and had possibly been destroyed.

Because records were not readily available for the original time frame of the petition, the five objectives contained in the citizen petition were reviewed, to the extent possible, for varying periods between July 1, 2008 through June 30, 2014. The results of our related investigation follow.

**OBJECTIVE I** Possible irregularities in Town purchasing policies and procedures, including possible violation of the Oklahoma Public Competitive Bidding Act, city ordinances, and procedures.

**OBJECTIVE II** Possible irregularities and/or misuse of public funds.

**Background**

The two objectives noted above embodied a broad spectrum of possible irregularities concerning purchasing, bidding, and the misuse of public funds. This, coupled with the missing Town records, hindered a thorough evaluation of the Town's purchases.

Through interviews with Town officials we were able to determine the following specific petition concerns involving purchasing and misuse of public funds.

- Possible duplicate payroll payments
- Possible misuse of petty cash funds
- Possible non-deposit of collections

Purchasing policies and procedures for the Town of Spavinaw were limited. Outside of competitive bidding requirements, we noted only two specific policies governing Town purchasing and payments.

**Chapter 4, Section 2-4-2**, of the Town Code defines "*Authorized Purchases and Sales*" as:

*All purchases of supplies, materials, equipment, and contractual services for the town, and any sales thereof by the town, shall be made by the board of trustees, or pursuant to authorizations granted by it, and subject to its supervision and control.*

**Chapter 7, Section 1-7A-2D** of Town Code designates that the town clerk shall:

*Countersign all warrants properly and legally drawn by the president of the board of trustees.*

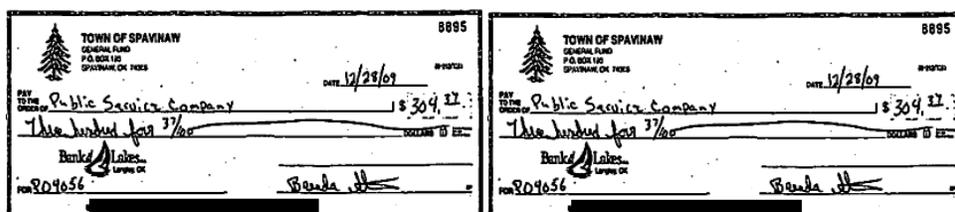
Based on bidding criteria defined in Town Code and state law, we did not find any projects which would fall within the town or state competitive bidding requirements.

**General Purchasing Overview**

General Fund bank statements were reviewed and a sample of checks was scheduled for 14 months of activity between July 2009 through December 2013. In addition, we scheduled a sample of checks paid through the CLEET and Police Department checking accounts for the period July 2009 through April 2010.

**Finding**

**Of the 316 checks scheduled, nine contained only one signature, and one check was not signed; all in violation of Town Code requiring dual signatures.**



The majority of checks paid through the General Fund appeared to be for payroll, utilities, and routine expenditures such as insurance, fuel, maintenance, or for payments to state, federal, and county agencies.

However, the checks reviewed did not contain sufficient information in the memo section for identifying what service or product was purchased and no supporting documentation, including, but not limited to, purchase orders, receipts, or invoices could be provided.

We also noted, and Mayor Winn confirmed, that a trustee or the town clerk will occasionally sign a blank check for the purchase of supplies with the second signature applied at the time of purchase.

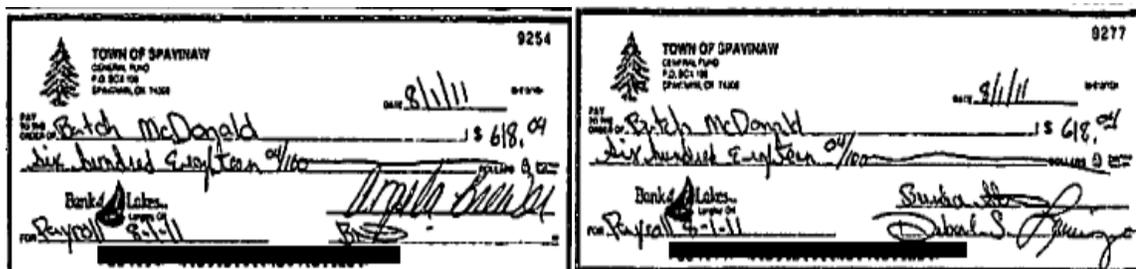
**Recommendation**

While the Town of Spavinaw has a detailed competitive bidding process outlined in their Town Code for large purchases and construction contracts, we could find no guidelines defining general purchase amounts, procedures and approvals.

We recommend the Board of Trustees consider developing policy to require at a minimum, purchase orders documenting the encumbrance of funds, invoices and/or receipts supporting all purchases made, and policies to govern the process required and approvals necessary to adequately complete financial transactions. We further recommend that blank checks not be signed prior to a purchase being incurred.

**Possible Duplicate Payroll Payments**

One concern of the petitioners was that the former Chief of Police was allegedly paid twice for the same pay period. The checks in question, Checks 9254 and 9277, both display the same issue date and same payroll date in the memo section.



**Finding**

**No evidence of duplicate payroll payments was found.**

Records indicate Check 9254 was cashed on August 2, 2011, and Check 9277 was cashed September 6, 2011. The Chief did not receive a check annotated as being for September 1, 2011. We scheduled all checks payable to the Chief and the Town Clerk from July 2009, until they left office in April 2013 and May 2013, respectively. No duplication of pay for any specific pay period was found. Based on our review, Check 9277 appears to be the payroll check for September 1, 2011.

However, without proper supporting payroll documentation available, the specific payroll period each employee was being compensated for could not be definitively determined.

**Recommendation**

The Town should consider implementing payroll policies and procedures and a time reporting system. Employee's time and compensation should be adequately documented to guard against both under and over payment.

**Possible Misuse of Petty Cash Funds**

According to the town clerk, the current funding limit for petty cash is \$300. Between July 2009 and September 2013, 19 checks totaling \$2,704.28 were written payable to "Cash" or "Brenda Stewart" with a memo indicating "petty cash reimbursement". Seven of the checks were written out of the Street and Alley account and 12 from the General Fund account.

**Finding**                    **Although each check in question was countersigned by a trustee, no documentation could be provided to support the expenditures reimbursed from petty cash.**

**Recommendation**

The Town should evaluate their need for a petty cash fund and maintain the minimum amount necessary to meet their needs. No petty cash reimbursements should be made without complete and adequate supporting documentation.

**Possible Non-Deposit of Collections**

A concern was raised by the petitioners that money had allegedly been collected from the payment of traffic tickets but not deposited. Town officials could not provide any records of tickets issued or receipts written for the audit period of July 2008 through December 2012. Without any records to reconcile deposit information with, we were unable to determine the validity of this concern.

**Finding**                    **In reviewing deposit information through the bank statements, it was noted that deposits were not being made on a timely basis.**

Although it could not be determined definitively without collection records, bank statements indicated that in some instances deposits were made no more than once a week, sometimes less.

**Recommendation**

The Town should implement policies to establish the receipting of all funds collected and the timely deposits of all receipts. Citations issued should be written at a minimum, in duplicate, with copies maintained and reconciled to collections receipted and deposited. All other monies collected by the Town should be appropriately receipted on pre-numbered receipts, timely deposited and reconciled with daily receipt records and monthly bank statements.

**Segregation of Duties**

**Finding**                    **Internal controls surrounding the town's financial data are almost non-existent.**

The Spavinaw town clerk also serves as the town treasurer. The clerk/treasurer accepts payments, makes the deposits, posts the payments, writes the checks, reconciles the bank statements and has access to the

bank accounts. We recognize that small towns such as Spavinaw do not have the manpower to establish a system that allows for a complete separation of financial duties. However, allowing one person to handle all aspects of a financial transaction greatly increases the risk that fraud will occur.

**Recommendation**

We recommend the Board develop a process of review and reconciliation of key financial areas that includes, at a minimum, two individuals. The processes of collection and deposit of funds and reconciliation of bank statements should be separate functions.

**OBJECTIVE III Possible irregularities and violations of the Oklahoma Open Records Act and the Oklahoma Records Management Act.**

**Background**

The Oklahoma Open Records Act and the Oklahoma Records Management Act are public policies of the State of Oklahoma that are designed to encourage and facilitate an informed citizenry.

These statutory policies were written so that the people are empowered with the ‘right to know’ and can be fully informed about their government. If individuals or organizations believe that their access rights are threatened, a barrier of mistrust between public servants and the citizens could develop. Familiarity with each of these Acts is essential to any public body seeking to operate effectively.

**Oklahoma Open Records Act**

**Finding**

**No allegations were presented by the petitioners concerning specific violations of the Oklahoma Open Records Act and we found no evidence of any violations of the Act in regards to providing citizens access to Town records.**

**51 O.S. § 24A.5** of the Oklahoma Open Records Act states in part:

*...all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours;*

According to town officials, all of the Town’s current records are maintained at Town Hall and are available for review by all citizens.

**Recommendation**

Although we found no evidence that the Town had not provided citizens access to Town records, we recommend the Town become pro-active in complying with all aspects of the Open Records Act. The Town should consider implementing the following policies and procedures to help insure future compliance with the Act:

- Establish reasonable procedures which protect the integrity and organization of its records, but allow access to the public;

- Establish fees to be charged under the Act and post a written schedule of the fees at its principal office and with the county clerk;
- Designate certain persons who are authorized to release records for the Town, with at least one person available at all times to release records during regular business hours;
- Post and maintain a written notice at its principal office and with the county clerk designating when records are available for inspection, copying or mechanical reproduction; setting forth the name, mailing address, and telephone number of the individual in charge of the records; and describing in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday;
- Develop a standard “Records Request” form to assist citizens in their official records request.

**Oklahoma Records Management Act**

**Finding**

**The Town of Spavinaw financial records were not properly safeguarded.**

A significant portion of the Town of Spavinaw documents requested in completion of this investigation were not available for review. Documents not available include, but was not limited to, meeting agendas, meeting minutes, documents pertaining to traffic citations and court proceedings, receipts for monies collected and invoices, receipts and purchase orders supporting expenditures made.

The Records Management Act at **67 O.S. § 207 and 209** state in relevant part:

*The governing body of each county, city, town...whether organized and existing under charter or under general law shall promote the principles of efficient records management for local records. Such governing body shall, as far as practical, follow the program, established for the management of state records. The Administrator shall, insofar as possible, upon the request of a governing body provide advice on the establishment of a local records management program.*

*All records made or received by or under the authority of or coming into the custody, control or possession of public officials of this state in the course of their public duties shall not be mutilated, destroyed, transferred, removed,*

*altered or otherwise damaged or disposed of, in whole or in part, except as provided by law.*

The Open Records Act at **51 O.S. § 24A.4** states:

*In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.*

It could not be determined how the records in question became missing.

**Recommendation**

We recommend the Town keep and maintain records of all financial transactions as required by law. The Board should review relative statutes and consider seeking advice on establishing a local records management program.

**OBJECTIVE IV Possible irregularities and violations of the Oklahoma Open Meeting Act.**

**Background**

**Title 1 Chapter 6** of Town Code conveys that the Town of Spavinaw will comply with the Oklahoma Open Meeting Act. The Open Meeting Act defines the laws governing public meetings in the State of Oklahoma as recorded in **25 O.S. §§ 301-314**.

Board of Trustee meeting minutes and agendas, for July 1, 2009 through June 30, 2014, were reviewed for compliance with the following:

- Proper documentation of agendas and minutes;
- Agenda items concur with meeting minutes;
- Members present and absent were recorded;
- Actions taken were documented with recorded votes;
- Proper use of Executive Session.

**Proper Documentation of Agendas and Minutes**

**Finding**

**In 21 of the 60 months under review, July 1, 2009 through June 30, 2014, Town officials could provide no documentation that a regular monthly board meeting had occurred.**

According to Town Code, *regular* board meetings should, at a minimum, be held on a monthly basis.

**Chapter 5, Section 1-5-3A** of Town Code states:

*The board of trustees shall hold regular meetings on the second Thursday of **each month** at seven thirty o'clock (7:30) P.M.; provided, that if such meeting falls on a holiday, the regular meeting shall be held at that time on the next Thursday which is not a holiday.[Emphasis added]*

Town records indicate that 57 board meetings were held between July 1, 2009 and June 30, 2014. Thirty-nine of these meetings were “regular” monthly meetings and 18 of these meetings were defined as “special meetings”.

**Finding**

**Meeting minutes that were available were not always officially recorded, with some minutes documented through notes taken on copies of the agendas.**

According to **25 O.S. § 312**:

*The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings....*

**Finding**                    **Of the 57 documented meetings, we noted 16 instances in which minutes for the board meeting existed, but no corresponding agenda could be provided.**

Prior public notice of each board meeting, an agenda, should be provided as required by law. **25 O.S. § 303** states in part:

*All meetings of public bodies...shall be preceded by advance public notice specifying the time and place of each such meeting to be convened as well as the subject matter or matters to be considered at such meeting, as hereinafter provided.*

In addition, **25 O.S. § 311.9** requires that the agenda for each meeting must be filed in a prominent public place at least 24 hours in advance. Special meetings require 48 hours notice. These agenda notices should also include the date, time, and place of the meeting.

**Finding**                    **Of the 41 agendas available for review, one did not appear to be properly posted with the dates, times, and place of the reflected meeting.**

The agenda for a special meeting held on October 13, 2011, did not reflect a posting date or time.

**Agenda Items Concur With Meeting Minutes**

**Finding**                    **Of the 57 documented board meetings, only 32 had documentation to support both the agenda and the minutes of the corresponding meeting.**

We reviewed these agendas and minutes to determine that items posted on the agendas were properly addressed and documented in the minutes and that items discussed in the meeting were given proper advance notice on the agenda.

The agendas and corresponding minutes for these meetings appeared to properly convey both the agenda items to be discussed and the discussion

of those items. We also noted no items discussed in the minutes that had not been properly posted in the agenda.

### **Members Present and Absent Recorded**

25 O.S. § 312A states in part:

*The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body. [Emphasis added]*

#### **Finding**

**In the minutes available for review, we noted two instances in which the attendance of all trustees was not recorded and five instances where the trustees names were recorded, but neither their absence nor presence was documented.**

### **Actions Taken Documented With Recorded Votes**

25 O.S. § 305 requires that:

*In all meetings of public bodies, the vote of each member must be publicly cast and recorded.*

25 O.S. § 312A states in part:

*The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body. [Emphasis added]*

#### **Finding**

**We found that the minutes of 13 of the 57 documented board meetings did not properly record the votes and actions taken by the board.**

Two examples include minutes from the meetings of May 22, 2013 and August 20, 2013.

The minutes from May 22, 2013, did not record a vote being taken.

A motion was made by Jim Winn and seconded by Roy McClish to keep the Police cars and not surplus them.

Discussion of Representative from Grand Gateway to speak on grants will be discussed at the next regular business meeting.

Minutes from August 20, 2012, show no documentation of motions or votes.

4. Discussion of service fees for Oklahoma Municipal League in the amount of \$475.03. *Approved*

### Proper Use of Executive Session

Town of Spavinaw trustees entered into seven executive sessions during the time period of July 2009 through June 2014. In our review of these sessions we noted the following.

### **Finding**

**In three of the seven meetings where executive sessions were held, the agenda failed to meet the statutory requirement of identifying the items of business or failed to identify the specific provision of statute which would authorize the executive session.**

The section of the agenda regarding one executive session on March 21, 2011, is shown below as an example.

- IV. Discussion, Consideration, Possible Action and/or Executive Session and Vote
1. Discussion of 6 month contract with Chief of Police.
  2. Approval of new contract with Chief of Police.
  3. Discussion of Court Clerks School in Tulsa April 28<sup>th</sup> & 29, \$200.00
  4. Chief of Police to discuss the possibility of a new patrol car.

**25 O.S. § 311.12(B)(2)** governs how a proposed executive session should appear on the agenda, stating in part:

*If a public body proposes to conduct an executive session, the agenda shall: a. contain sufficient information for the public to ascertain that an executive session will be proposed; b. identify the items of business and purposes of the executive session; and c. state specifically the provision of Section 307 of this title authorizing the executive session.*

We noted that “Item IV” of the town’s agenda appeared to be used on several occasions as a generalized header. The October 17, 2011 agenda, shown below, shows the header being used even though the one item for discussion would not qualify for an executive session.

**IV. Discussion, Consideration, Possible Action and/or Executive Session as per title 25 section 307 and Vote**

1. Diane Robertson to renew lease on town property.

Old Business (items previously on the agenda)

On August 15, 2011, the board of trustees went into executive session and appeared to have discussed items which could not be legally considered in executive session. Upon exiting the executive session, one trustee made the motion to approve items 1-3 and 5-7 and table item 4. The motion was seconded and passed by a vote of the trustees. The seven items apparently discussed in executive session were:

- 1) The appointment of a mayor;
- 2) The appointment of a vice-mayor;
- 3) Appointing an employee to sign checks and update bank information;
- 4) Appointment of an emergency contact person for the town;
- 5) Approving a street and alley agreement;
- 6) Approving a jail agreement; and
- 7) Approving the repair of a leak in the police department roof.

While items 1) and 2) fall within the scope of an executive session, the other items do not, and therefore should not have been a part of the executive session.

**Finding**

**The Town Board held a “Special Executive Session”, not an authorized type of meeting defined under the Open Meeting Act.**

**25 O.S. § 303** states in part:

*All meetings of public bodies, as defined hereinafter, shall be held at specified times and places which are convenient to the public and shall be open to the public.*

**25 O.S. § 304** indicates that the only types of meetings allowable under law are “Regularly Scheduled,” “Emergency,” and “Special.” The agenda for the June 23, 2014 meeting, indicated that a” Special Executive Session” was held.

**25 O.S. § 307.E.2** requires that a majority vote by a quorum of members is needed to enter an executive session. The minutes of this meeting did not record a vote to enter an executive session and nor a vote to come out of the executive session.

**25 O.S. § 307.E.3** states in part:

*...any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.*

During the course of the “Special Executive Session”, a motion was made and a vote conducted. This motion and vote was not made in a publicly held meeting.

**Recommendation**

All but two of the findings noted above occurred prior to July 2013. This gives evidence that the current Board of Trustees is seeking to comply with the Oklahoma Open Meeting Act.

We recommend the Board continue to familiarize themselves with the requirements of the Act, including all laws governing agendas, minutes, voting and executive sessions. Trustees should also consider consulting with legal counsel before entering into any questionable meetings. In all situations, town officials should err on the side transparency and aid the public in their right to know.

**OBJECTIVE V Possible irregularities in the sale and/or disposal of town owned equipment.**

**Background**

The Town was unable to provide any records documenting inventory, or the sale or disposal of any town owned equipment. Due to the lack of such records and the petitioners being unable to provide specific allegations of any items improperly sold or disposed of, no investigation was performed in relation to this objective.

**Recommendation**

Although no work was done concerning this object, we do recommend that town officials establish inventory records for all town owned equipment. If, or when, the sale or disposal of town owned equipment occurs, proper documentation should be maintained and preserved to show the transaction in its entirety.

It is further recommended that the board develop a policy requiring the maintenance of an inventory list of town owned equipment, what items are required to be inventoried, and require regular scheduled verification of the items on the inventory list.

**Disclaimer**

In this report there may be references to state statutes and legal authorities which appear to be potentially relevant to the issues reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.



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