

SPECIAL AUDIT REPORT

SPERRY PUBLIC SCHOOL DISTRICT

July 1, 2005 through June 30, 2011



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

SPERRY PUBLIC SCHOOL DISTRICT

SPECIAL AUDIT REPORT

JULY 1, 2005 THROUGH JUNE 30, 2011

This report has been prepared at the request of the Attorney General of Oklahoma. Pursuant to **74 O.S. 2001, § 18f**, the Attorney General may request audit services from the Oklahoma State Auditor and Inspector to assist in any cases to be tried or in any matters to be investigated. Consequently, this document is *not* a public document, but is part of the investigation and/or litigation files of the Attorney General and therefore may be kept confidential pursuant to the **Oklahoma Open Records Act**, in accordance with **51 O.S. 2001, § 24A.12**.



Oklahoma State Auditor & Inspector

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December 21, 2011

Honorable E. Scott Pruitt
Oklahoma Attorney General
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Transmitted herewith is the Special Audit Report of the Sperry Public School District, Sperry, Oklahoma.

Pursuant to the Attorney General request and in accordance with the requirements of **74 O.S. 2001, § 18f**, we performed a special audit with respect to the Sperry Public School District for the period July 1, 2005 through June 30, 2011.

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

Because 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 the Sperry Public School District for the period July 1, 2005 through June 30, 2011.

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 insure 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.

This report is addressed to and intended solely for the information and use of the Oklahoma Office of the Attorney General and should not be used for any other purpose.

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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BOARD OF EDUCATION AS OF JUNE 30, 2011

Jeff Carter.....President
Gary Juby Vice President
April Bowman.....Clerk
Derrell Morrow Member
Cindy Wilson Member

SUPERINTENDENTS

Jerry Burd
July 1994 through March 2008

Don Raleigh
March 2008 through June 2008

Dr. Rayma Harchar
July 2008 through April 2009

Dr. Jim Sisney
April 2009 through June 2011

Dr. Brian Beagles
July 1, 2011 to present

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Introduction

The Sperry Public School District is part of the Oklahoma State System of Public Education as described in **70 O.S. § 1-101 *et seq.***, the **Oklahoma School Code**.

The Board of Education (“Board”) of the Sperry Public School District (“District”) is responsible for the supervision, management, and control of the District as provided for in **70 O.S. § 5-117**.

Both the Board and the District are subject to the provisions of the **Oklahoma School Code** and the **Oklahoma Constitution**, as well as other statutes found in various titles including, but not limited to, Title 25 (Definitions and General Provisions), Title 51 (Officers), Title 61 (Public Buildings and Public Works), Title 62 (Public Finance), and Title 68 (Revenue and Taxation).

The District is audited annually by private independent auditors, and the FY09 and FY10 audits were available for our review. In addition, an “agreed upon procedures” report done for the Board by an independent audit firm dated October 13, 2010, was also available for our review.

The Office of the State Auditor and Inspector conducted a special audit of the records of the District, primarily those records relating to the objectives noted in the index.

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

The District’s fiscal year starts July 1 and ends June 30. 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 the special audit are in the following report.

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Objective I. Review purchase of school buses

Background

On December 20, 2006, a fire in the District's bus barn resulted in the damage and loss of District vehicles and equipment, including the District's buses. On December 26, 2006, the Board voted unanimously to declare an emergency.

The minutes read:

Motion was made by Tim Teel and seconded by Larry Eddings to authorize the Superintendent to make necessary decisions regarding restoration of damage to bus barn, maintenance and contents.

The minutes read further:

Motion was made by Tim Teel and seconded by Larry Eddings to declare emergency conditions resulting from sudden, unexpected happening to avoid the Public Competitive Act.

The rebuilding or repair of the bus barn would be subject to the **Public Competitive Bidding Act, 61 O.S. § 101, et seq.** Statutory provisions found at **70 O.S. § 9-109** would govern the purchase of transportation equipment.

On December 28, 2006, the District purchased one (1) 2006 bus from an Oklahoma City vendor in the amount of \$63,000. On January 2, 2007, the District purchased four (4) 2007 buses at \$65,000 each from a Fort Gibson, Oklahoma vendor.

The four (4) buses purchased from the Fort Gibson vendor, TransNational Bus and Coach (TransNational), were the focus of this objective. There were several allegations related to this transaction which will be addressed separately. The allegations included:

1. The bus purchase was a scheme that personally benefited the superintendent.
2. The emergency declared was questionable.
3. The buses were junk and purchased from a "chop shop" in Fort Gibson, Oklahoma.

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4. The 2007 model buses were actually 2006 model buses with questionable odometer readings.
5. The buses did not comply with Oklahoma's school bus specifications.

Findings

Allegation #1 – The bus purchase was a scheme that personally benefited the superintendent.

There were two parts to the allegation. The first was a presumed act of arson, followed by the emergency purchase of the four buses from a preferred vendor designated by the former superintendent, Jerry Burd. The implication was that there was some type of arrangement or scheme between Burd and the vendor in which Burd received something in return.

The cause of the fire was the first aspect of this concern to be addressed. We contacted North American Insurance Company (NAICO) and interviewed the attorney that handled the bus barn fire settlement. An investigation by NAICO determined the fire was not arson, but rather a wiring issue with a bus. That wiring issue later involved litigation and will be discussed again at the end of this objective.

The second step of the alleged scheme would require either manipulation of the bid process and/or avoidance of the bidding process in order to ensure the vendor participating in the scheme receives the contract. In regard to the alleged vendor scheme, we interviewed both Burd and the proprietor of TransNational.

Both individuals interviewed denied knowing one another prior to this transaction. In an interview, the vendor stated that it was through the media that he had learned the District was in need of buses. His salesman had seen or heard the story about the District having a fire and needing buses to start the Spring semester. The owner of TransNational made the initial contact with the District, then submitted a written proposal that was accepted.

The buses were sold to the school as “used” transportation, an issue that will also be discussed later in our conclusion to this objective. “Used” buses were exempt from the provisions of **70 O.S. § 9-109**, so that would tend to confirm the “avoidance” of competitive bidding aspect of the allegation.

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We noted above that the one 2006 model purchased from a different vendor was priced at \$63,000, while the 2007 models purchased from TransNational were priced at \$65,000. According to our information, all five (5) buses were “71 passenger” International buses. It would not appear that the District had been “gouged” with an exorbitant price that would or could include any potential “kickback” amount unless the other vendor for the 2006 model bus had done much the same thing. However, the other vendor was not part of the allegation.

We spoke with the school superintendent of another district who indicated that he had never done business with TransNational and preferred to do business with two other vendors. This superintendent indicated he thought the prices paid were reasonable, and stated that he had paid more for some “used” buses in his experience.

We attempted to obtain the State Department of Education “price list” for new buses for FY07, in order to compare *those* “new” prices with the prices paid by the District in January 2007. The “price list” is described in **70 § O.S. 9-109**. Officials at the State Department of Education informed our office there were no price lists available for purchases of “new” buses, and that certain provisions of **70 § O.S. 9-109** have not been administered or enforced *since approximately 2001*.

Based on the information developed in the other four allegations and in the absence of other corroborating evidence or information, we could not substantiate this allegation. The above paragraphs do raise several issues that we believe need further examination or review, and which we will address later in this objective.

Allegation #2 – The emergency declared was questionable.

The Board minutes for December 26, 2006, show that the Board voted unanimously in declaring an emergency and not to competitively bid the buses. Therefore, it was a Board action to declare an emergency and not entirely former Superintendent Burd’s decision.

It was alleged the District acted in haste when declaring an emergency, even though there were other options available. One of those options mentioned was that other schools had offered to loan or lease the District some of their buses.

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We interviewed Jerry Burd and Don Raleigh, former assistant superintendent, regarding the FY07 bus purchase. The reasons in making the decision to purchase buses (new or used) are outlined below:

1. The issue of borrowing and leasing buses was considered, but there were concerns on the dependability of the “loaner” bus idea. If another district has a bus that is not in use, it was believed the chances were that a “loaner” would not be one of the better buses, and consequently may have maintenance issues.
2. They believed there could be potential insurance and liability issues and questions may have arisen if the bus was involved in an accident.
3. There was a two-week “window” to obtain buses before the students started back to school.
4. They knew at some point the District would have to go through the purchase process anyway.
5. Insurance proceeds were going to be used for the purchase of the buses, so they reasoned why not go ahead and purchase new ones.
6. Paying lease and insurance costs while going through the process of buying new buses would have ultimately cost the District more.

The reasoning used by District officials to declare an emergency and to decide to purchase buses rather than utilizing the “loaner” or “lease” options, would seem more a matter of judgment and the Board’s unanimous decision rather than a question of law or compliance with a rule or regulation.

Allegation #3 – Buses were junk and purchased from a “chop shop” in eastern Oklahoma.

The definition of a chop shop according to Wikipedia, “in motor vehicle theft, a chop shop is a location or business which disassembles stolen automobiles for the purpose of selling them as parts.” The implication was that the buses purchased by the District were assembled from parts from stolen and/or previously wrecked buses.

We obtained vehicle titles for the four buses. The titles showed the buses were 2007 models with the following VIN numbers and miles:

- 4DRBUAFP37B341250 - 721

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- 4DRBUAFP37D341247 - 715
- 4DRBUAFP57B341248 - 698
- 4DRBUAFP77B341249 - 698

In an interview, the vendor stated the buses were purchased from a dealer in Kankakee, Illinois, which likely explains the miles at the time of title registration. According to Google Maps, the distance between Kankakee, Illinois and Fort Gibson, Oklahoma is “678” miles using route I-44.

At the time of field work, three of the four buses were parked in the bus barn while the fourth was in the shop. We located the Federal Certification Label for each bus above the driver’s seat. The Federal Certification Label for each of the buses showed the bus was manufactured by IC Corporation “12 Mo. 06 Yr.” Therefore, the buses were manufactured less than one month before being purchased by the District. The labels did not show any signs of tampering.



We also obtained vehicle title histories from the Oklahoma Tax Commission. Title histories showed the buses were manufactured by IC Corporation and initially sold to a dealer in Kankakee, Illinois. The buses were then sold to TransNational, which in turn sold the buses to the District. The title histories refute the allegation that the buses were purchased from a “chop shop.”

Based on the title histories and the timeframe between the date the buses were manufactured versus the purchase date by the District, we found no basis for the buses being purchased from a “chop shop” or that the buses were the products of a “chop shop.”

Allegation #4 – The 2007 buses were actually 2006 models.

The concern stems from District records referring to the buses as 2006 models. As indicated in the preceding section, we reviewed the vehicle titles which reflected 2007 models and the buses were manufactured in December 2006.

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The question was raised whether the odometer was tampered to reflect fewer miles traveled by the buses. This concern stems from the amount of maintenance required for these four buses. According to Gary Cartwright, the four (4) buses from TransNational have required considerably more repairs than the other buses. Although, the majority of the repairs were covered by warranty, there were concerns over the amount of down time. Documentation obtained indicates these were newly manufactured buses. Newer vehicles are not necessarily “immune” to high maintenance costs.

Allegation #5 - Buses did not comply with Oklahoma specifications.

There were three concerns or parts to this issue; one being the buses did not comply with Oklahoma specifications; the second that a former District maintenance employee certified the buses had complied with Oklahoma specifications; and third, additional costs were incurred for required updates to the buses.

1. Concern: The buses did not comply with Oklahoma specifications.

Approximately 1½ year after the purchase of the buses, in April 2008, the District was notified by the State Department of Education that the buses did not comply with Oklahoma specifications.

Former District officials told us they were unaware of the State specifications. In an interview, the vendor stated he does business in “36 States” but also admitted he did not keep up with specifications for each and every State.

The buses were manufactured for operation in the State of Illinois and not for Oklahoma. This would be the principal reason why the buses sold to the District did not comply with Oklahoma specifications. The manufacturer’s sticker indicated the buses conform to Illinois safety standards. The sticker for each bus reads:

“This bus conforms to all applicable provisions of Illinois minimum safety standards for type 1 school buses in effect on the first day of 12 mo. 06 yr.”

Since our interviews indicated the buses did not comply with Oklahoma specifications, and District officials were unaware of State specifications, the basic issue becomes whether it was the District’s responsibility to

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ensure its buses meet State and Federal specifications or standards. The Oklahoma Administrative Code (OAC) speaks to this issue.

OAC 210:30-5-1(e) (4) provides in relevant part:

The responsibility for compliance with Federal and State bus specifications rests with dealers and manufacturers.

Therefore, it was not the District's responsibility to ensure the buses complied with Oklahoma bus specifications, but rather the vendor's responsibility, which in this case was TransNational.

2. Concern: A district employee certified that the buses met Oklahoma specifications.

The employee in question was the former transportation director. This former employee had allegedly certified the buses complied with Oklahoma specifications, and only later was the District notified by the State Department of Education that the buses did NOT meet Oklahoma specifications and to "park the buses."

There appeared to be some confusion between actually certifying that buses comply with Oklahoma specifications versus merely performing safety inspections. It may be that the District's annual safety inspections had been misconstrued as some type of certification that the buses complied with Oklahoma specifications.

There were two Oklahoma safety standards that the buses did not comply with, one being the buses only had one of the required two safety windows *on each side*, and the other issue was the seats were not fire retardant. Again, the buses were manufactured to meet State of Illinois requirements, not Oklahoma's.

In an interview, the former transportation director stated he had NOT certified the buses had complied with State law and knew of no such requirement. He added that after Oklahoma discontinued the law requiring annual safety inspections, he began performing his own annual safety inspections on the buses.

We obtained a copy of a District annual safety inspection. The inspection performed by the former transportation director did not include whether bus windows and seats met State requirements. The type of inspection

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performed was for tasks such as checking lights, turn signals, tire pressure, etc. Nonetheless, as previously reported, compliance with State specifications is NOT the responsibility of the District, according to the Oklahoma Administrative Code citation above.

3. Concern: Additional costs were necessary.

Because the buses did not comply with Oklahoma specifications, some additional costs were incurred. Although in an interview, the vendor indicated he had corrected the deficiencies, former and current, District employees recall otherwise. Through interviews, we were informed that the buses were initially taken to the vendor to make the necessary corrections. However, District employees were not satisfied with the vendor's progress and retrieved the buses before the required repairs were completed.

With the assistance of the International bus plant in Tulsa, District employees made the necessary changes to comply with State standards. According to a District employee, two employees spent approximately 100 hours each to complete the required repairs. The required changes did add additional costs to the buses, which were not recovered by the District.

Conclusion

We found four of the five initial allegations concerning the District's FY07 emergency purchase of buses to be either refuted, or the information developed was inconclusive. However, findings noted in the first allegation, along with the final allegation being confirmed, raises multiple issues that we believe should be addressed by the State Board of Education and/or the Legislature, and in a timely manner. The multiple issues involve policies and procedures for financial accountability for the purchase of public school transportation, as well as potential safety issues also related to public school transportation vehicles.

Earlier, we reported that the District's 2006 bus barn fire was the result of faulty wiring in one of the previously owned buses. Our interview with NAICO's attorney firm indicated that the insurance company had "settled" on that issue without litigation, because the evidence in that case had not been well preserved. However, it was also mentioned that *another* bus insured by NAICO in the manufacturer's same number series as the District's bus, had been involved in *another* fire approximately two (2) years later. The evidence in that event was better preserved and NAICO was going forward with that litigation.

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The issue of the bus fire(s) seems all the more significant when combined with the fact that the buses purchased for the District were manufactured according to State of Illinois specifications that apparently did not require “fire retardant” seats in 2006. The provision of the Oklahoma Administrative Code that places responsibility on “dealers and manufacturers” to ensure compliance with Oklahoma’s specifications for school transportation equipment, appears to us to be weak, partially misdirected, and ineffective, based on the findings in this report.

Although not a routine purchase for most Oklahoma school districts, when they do occur, bus purchases are not insignificant. School districts often require bond issues and a vote by district voters in order to pay for the school’s transportation needs.

Earlier in Allegation #1, we found that any bid requirement for “new” bus purchases, as outlined in **Title 70 § O.S. 9-109**, *was effectively bypassed by a simple dealer to dealer purchase and transfer of title, technically making the buses sold to the District “used,” and therefore “exempt” from bidding.* We believe the “used” exemption found in Title 70 represents a significant and unjustified statutory exemption, considering the costs that school districts incur to issue bonds and to purchase new and/or “used” buses.

The FY07 “emergency” bus purchase for Sperry Public School District cost \$260,000 (actually \$323,000 counting the cost of the 5th bus purchased); a) would not have been required to be bid under the existing “used” exemption (even without the “emergency” declaration); b) resulted in the purchase of buses that did not meet Oklahoma’s school bus safety requirements; and c) which in turn resulted in more costs for the District.

In addition, recent interviews with State Department officials have indicated that some provisions of **Title 70 § O.S. 9-109** were at some point found to be difficult to administer and consequently have been ignored for at least the past decade, with no apparent effort to modify, improve or replace the statute.

We conclude the above issues are a matter of some urgency that ought to be addressed by appropriate regulation and/or legislation.

- Recommendations**
1. As a “quick fix” for the specifications issue, we recommend the State Board of Education promulgate emergency changes to the Oklahoma

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Administrative Code to have school districts' transportation directors do what our auditors did, i.e. *look at the manufacturer's labels*, identify what federal and state specifications the buses and other transport vehicles were manufactured to comply with and confirm whether those specifications match Oklahoma's school bus safety requirements.

2. The emergency code changes should include a "certification" report to be filed with the State Department of Education with a timely *first* report deadline, followed by an annual certification report afterwards. The report should require the basic make, model, manufacturer information, VIN numbers, the federal and state specifications identified on labeling, and whether the transport unit complies.
3. The State Department of Education might consider an online "database" to facilitate reporting and require only periodic "updates" of *changes* to school district transport fleets, with an annual "certification" feature or a hardcopy certification form.
4. With regard to bid requirements and exemptions found in **Title 70 § O.S. 9-109**, we recommend a somewhat less urgent and more deliberate evaluation to include the State Department of Education and legislative staff, in order to prepare OAC code changes and/or legislative changes deemed appropriate.
5. For failure to comply or willful violations of any *new* regulatory code or legislation for the purchase of school transportation equipment, we recommend regulatory and/or criminal penalties comparable to those penalties prescribed for violations of the Title 61 Public Competitive Bidding Act for "public construction" projects.

Objective II. Worker's compensation claim for business manager's sister

Background

One allegation concerned a potential worker's compensation and/or payroll fraud involving a relative of the District's Business Manager. The basis for the allegation appeared to be primarily the family relationship between the Business Manager and the other school employee (they were sisters) and that the duties of the Business Manager included maintaining the personnel and payroll records for the District.

Finding

We obtained and reviewed the following records:

1. A copy of the "Report of Absence for Support Personnel" for the employee in question, signed by the employee's supervisor.
2. A copy of the FY09 personal leave record for the employee in question.
3. Copies of the payroll authorization printouts for the employee for the months of April and May 2009.
4. A copy of the Oklahoma School Assurance Group's "Annual Claim Listing" for calendar year 2009.

The OSAG claim listing reported for the employee:

- | | |
|------------------------|----------|
| 1. Medical incurred: | \$13,500 |
| 2. Indemnity incurred: | \$ 7,548 |
| 3. Total Reserves: | \$13,497 |

We interviewed a representative of OSAG who stated the District is partially "self-insured" for worker's compensation claims. OSAG pays 70%, and the District pays 30% of any worker's compensation indemnity claim, so the indemnity cost was shared during the time period of the employee being on worker's compensation.

We reviewed the District's records that were provided. We interviewed the former supervisor (former elementary school principal). The employee's supervisor confirmed to us the time period the employee had been off work for the claimed injury. We interviewed the present Superintendent. We interviewed the Business Manager. We interviewed

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a representative from Consolidated Benefits Resources, LLC, (CBR) the third party claims administrator contracted by OSAG.

According to CBR's records, the individual in question filed a claim for workers compensation for an injury on April 2, 2009. She had surgery on May 27, 2009, and was released from all restrictions pertaining to the operation as of October 8, 2009.

Conclusion Based on our interviews and the documentation reviewed, we concluded there was no substantiation for this allegation.

Recommendation No recommendation is provided for this objective.

Objective III. Determine if a conflict of interest exists

Background A concern was raised about a possible conflict of interest involving a Board member. Specifically, a Board member had used his or her position to influence the District into purchasing fuel from a company, which also did business with the Board member's father-in-law. The implication was the Board member's father-in-law would get a better price by adding the District's volume to his company's fuel purchases.

The definition of a conflict of interest is set forth in **62 O.S. § 371 (A)**:

Except as otherwise provided in this section...nor any district board of any school district in the state...shall make any contract with any of its members, *or which any of its members shall be directly or indirectly interested.* All contracts made in violation of this section shall be wholly void. (emphasis added)

Finding We interviewed District employees and a representative from the company selling the fuel to the District. The above statute addresses contracts between the District and the members of the Board, or businesses owned by the members of the Board. The statute continues and defines what is meant by "indirectly interested."

Conclusion We found this allegation to be unsubstantiated. The issue of a company owned by a Board member's father-in-law doing business with a fuel vendor, who also happens to do business with the District, does not constitute a conflict of interest, as defined in **62 O.S. § 371 (A)**.

Recommendation No recommendation is provided for this issue.

Objective IV. Determine if the District paid the personal legal fees of a former superintendent

Background

The concern was that the District's insurance carrier NAICO (National American Insurance Company) paid the legal fees for former superintendent Jerry Burd's personal lawsuit. Allegedly, NAICO in turn then billed the District \$5,000 for the school's "deductible" portion of the loss.

NAICO is the District's legal liability insurance carrier. On June 18, 2007, the District paid NAICO \$5000 for the insurance deductible for Claim # OS060485. The issue was whether NAICO had paid legal fees for case # CJ-2006-3717, which had resulted in the \$5,000 deductible paid by the District. The case involved a libel/slander lawsuit naming a former Sperry School employee, a "John Doe" and a "Jane Doe" as the three (3) defendants, with Jerry Burd as the plaintiff. *The case was dismissed on July 17, 2006.*

Finding

Subsequent to the dismissal of case # CJ-2006-3717, a courtesy petition was submitted by the attorney for one of the former defendants. A courtesy petition is effectively a lawsuit that is not formally filed yet. The petition was submitted by the plaintiff's attorney to provide notice of the intent to file a lawsuit. We obtained a copy of the petition from NAICO.

According to the petition, one of the previous defendants was intending to sue Jerry Burd, who would then be the defendant in the new lawsuit. The petition named Jerry Burd "*individually and as Superintendent for Sperry Public Schools.*"

The naming of Burd in his capacity of superintendent of the Sperry Public School District was the reason NAICO became involved. We also received a copy of a letter issued from NAICO to Burd. Essentially, the letter provided notice to Burd of the intent to provide defense in the lawsuit naming him as the defendant, less any restrictions under the provisions of the insurance policy. The parties ultimately reached an agreement, and the settlement was paid by NAICO. No new lawsuit was formally filed.

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The letter sent from NAICO to Burd references claim # OS060485 which was consistent with the claim number listed on the invoice from NAICO for the \$5,000 deductible. The letter clearly indicated the defense provided by NAICO was for the “courtesy petition” in which Burd was the named defendant as “Superintendent for Sperry Public Schools.”

Conclusion

We concluded that NAICO did not pay the legal fees for Jerry Burd’s earlier personal lawsuit. The legal obligation paid by NAICO was for the settlement of the “courtesy petition” lawsuit that named Burd as the defendant. This was not a personal expense of Burd, since he was identified in his capacity as “Superintendent of Sperry Public Schools.”

Recommendation

No recommendation is provided for this objective.

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Objective V. Questionable employment

Background

Dr. Jim Sisney was hired as Interim-Superintendent of Sperry Public Schools on April 28, 2009, and then as Superintendent for the following two school years ended June 30, 2011. Dr. Sisney resigned that position effective July 1, 2011.

A document dated September 1, 2009, lists “Bill Denton” as an expert witness for Dr. Sisney in connection with a lawsuit related to Broken Arrow Public Schools. During Dr. Sisney’s tenure at Sperry Public Schools, two employees were hired who were related to Mr. Denton: one for the support staff position of Director of IT and the other for the position of temporary teacher.

Findings

The first individual was hired for the school years ended June 30, 2010, and June 30, 2011, as Director of IT. The employee date on the first contract (FY10) was March 8, 2010, and the Board signatures were undated. For FY11, the Board voted to hire this individual in the Board minutes, dated June 14, 2010. The President of the Board and the Clerk of the Board signed the employment contract. The date appears to be November 2010. The employee signed his FY11 employment contract on September 22, 2010. He was provided a salary of \$56,650 for the school years 2009/10 and 2010/11, which was a 70% increase over the prior IT Director’s salary and a 60% increase over the average IT Director’s salary of the prior two school years.

The second individual was hired for the school year ended June 30, 2011, as a temporary teacher. We were unable to locate a line-item in the minutes that showed where the Board voted to hire this individual. However, the President of the Board and the Clerk of the Board signed her employment contract also. None of the signatures on the employment contract were dated, and no other dates were given on the contract other than the employment period of August 1, 2010 through May 31, 2011.

Conclusion

While some may question the circumstances for the hiring of these two individuals, in the end, the contracts do not appear to be illegal. The Board, not the Superintendent, executed both contracts.

Recommendation

See recommendations made under Objective VIII: Extra-Duty Contracts.

Objective VI. Review the purchase of SMART Boards

Background

There were actually two issues related to this objective. The first issue related to bond proceeds that were used to purchase SMART Boards, rather than some wireless computer labs described in a school newsletter. Secondly, it was alleged that the SMART Boards were purchased from a company that ultimately became former Superintendent Jerry Burd's future employer.

SMART Board is a series of interactive whiteboards developed by SMART Technologies.

Findings

SMART Boards were purchased in lieu of wireless computer labs.

This issue stemmed from an October 2005 Sperry Schools Newsletter informing school patrons of the upcoming October 11, 2005, school bond election. A section of the newsletter called "Superintendent's Focus" describes portable computer labs as one of the proposed uses of the bond proceeds under Proposition I.

According to the newsletter:

"Wireless Labs

The monies would purchase a portable lab for each building. The labs will also allow for us expand our technology opportunities to more teachers and students. For instance allowing a math teacher to use the computers 1st period and science or language arts teacher the following period."

We obtained a copy of the newsletter from a citizen from the Sperry School District. Since this was in 2005, this letter was apparently circulated as a means to inform the public of the upcoming bond election. Although the newsletter describes wireless, portable computer labs rather than SMART Boards, our primary focus was to determine what the citizens actually voted for.

We obtained a sample ballot used for the October 2005 bond election from the county election board. The ballot describes the following purpose(s) of the bond issue:

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“...to provide funds to be issued in series for the purpose of constructing, equipping, repairing, and remodeling school buildings, acquiring school furniture, fixtures, and equipment and acquiring and improving school sites...”

The term “equipment” noted on the ballot does not specifically restrict the District to purchase portable computer labs, such as those described in the newsletter. Equipment is a broad term that encompasses a wide range of items, and which could include SMART Boards purchases. Therefore, the purchase of the SMART Boards, as opposed to wireless, portable computer labs, would be consistent with the *actual generic language of the ballot* that the voters approved.

The vendor used for the purchase of the SMART Boards.

It was alleged that former Superintendent Jerry Burd changed from purchasing wireless computer labs to purchasing 40 - 50 SMART Boards from Peak Uptime, which eventually became Burd’s future employer. The implication was that there was some type of arrangement between Jerry Burd and Peak Uptime, from which Burd gained personally.

We obtained payments to Peak Uptime for our audit period. District records only showed three purchases from Peak Uptime. The following was the only payment to Peak Uptime, *while Burd was superintendent*:

- Purchase order #687 from the general fund in the amount of \$7,140 for the purchase of 1 laptop and 8 toners with monitors.

The expenditures from bond funds did not appear on District records (see Objective XIII). We determined the District used the lease/purchase mechanism for its 2005 bond funds. In this scenario, the District did not actually issue the payments. Rather, requests were submitted through the Stephen L. Smith Corporation to RCB bank who ultimately issues the payments. Since the school did not maintain or obtain copies of those records, (payment requests, invoices and list of checks issued), we had to acquire the invoices from RCB Bank and Stephen L. Smith Corporation.

The SMART Boards allegedly purchased from Peak Uptime were actually purchased from ConXts Technology Solutions, LLC. An invoice dated March 1, 2007, indicated 42 smart boards with projectors and accessories were purchased from ConXts in the amount of \$116,226. In addition, the District purchased 30 Acer XD 1170D 2000 Lumens, projector kits;

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surround sound systems and installation on May 11, 2007, for a total of \$43,890.

The allegation specifically pertained to the purchase of the SMART Boards with bond funds. The SMART Boards were purchased from ConXts Technology Solutions and not Peak Uptime as alleged. Internet articles indicated that approximately a year later in early 2008, Peak Uptime purchased ConXts Technology Solutions and added its products and services to its own business. The subsequent merger may have caused some confusion among school patrons.

Conclusion

There was one payment of \$7,140 to Peak Uptime initiated by Superintendent Burd, plus \$160,116 in purchases from ConXts Technology Solutions, as a result of the 2005 bond issue. The total amounts involved would seem unlikely to induce a business to hire a former superintendent, based only on those transactions. Peak Uptime has continued to make further IT company acquisitions since 2008.

Recommendation

No recommendation is provided for this objective.

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Objective VII. Review bids and change orders for metal roof

Background

This issue specifically relates to the replacement of the flat roof on the elementary building. It was alleged that after receiving the low bid, the successful bidder immediately began submitting change orders to the original bid. The implication was that the successful bidder submitted a lowball bid to obtain the contract and then submitted subsequent change orders in an effort to receive additional funds.

Finding

As with the SMART Boards, disbursements for the construction of the elementary school roof were done through lease purchase funds (2005 bond proceeds), with payments issued by RCB Bank rather than the District. Again, the District had minimal records pertaining to the project, so documents were obtained from the architect, The Stacy Group and Stephen L. Smith Corp.

The bids received for the elementary roof are detailed in the table to the right. On February 12, 2007, the Board awarded the contract for the roof on the elementary school building to the low bidder, BRB Roofing, in the amount of \$135,900. Subsequent to the award, BRB Roofing submitted change orders totaling \$19,150, resulting in an adjusted contract amount of \$155,050.

Bidder	Base Bid
BRB Roofing	\$135,900
Allwine Roofing	\$157,500
Advanced Roofing	\$163,421
Metal Roof Contractors	\$245,000

Even if BRB Roofing's original bid of \$135,900 had included the change order totals of \$19,150, it still would have been the "lowest" bid at \$155,050. Therefore, we cannot conclude that BRB Roofing intentionally submitted a "low ball" bid, and then subsequently "profited" by change orders that may have changed the bid selection, if the change orders had been known in February 2007.

Recommendation

No recommendation is provided for this objective.

Objective VIII. Camera installations

Background

It was alleged that indoor security cameras had been installed on the outside of the bus barn.

Findings

With the assistance of the school Treasurer, we compiled a list of major pertinent transactions with DLSS, the company who had installed the original cameras on school property. We had the school's head of maintenance review this list and asked him to provide a narrative of the timeline of events that led up to the allegation noted above. He said that DLSS had installed the original cameras around the bus barn and had replaced some equipment after a fire in 2006 had damaged the equipment. Subsequent to June 29, 2007, the school only paid DLSS for minor repairs due to lightning strike damage and regular monthly charges.

We also spoke with the current head of bus maintenance about this matter. Per discussions with these men, they believe the cameras in question were installed around the bus barn and that the allegations that the outside cameras were actually "for inside use only" came from a company that bid to replace or repair the cameras and camera equipment that had been damaged in a second bus barn fire in 2008.

Before reviewing the bus barn cameras, the head of maintenance took us to the Sperry High School where the primary monitoring and recording equipment is kept. It was noted, per review of the monitor, that several of the cameras installed both inside and outside of the school were not in proper working order.

High School camera



Monitor



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We observed only two of the cameras that were operable were set at an angle and clear enough to be of any use. The others were either not working, tilted so that they did not capture anything useful, or so blurry that it was not clear what they were pointed at. The recording device appeared to be working properly.

The head of maintenance said that while one of the old High School principals use to monitor the cameras from time to time, they have been left unattended for the past several years and the past several Superintendent administrations. We then observed the bus barn cameras.

The bus barn camera system was separate from the High School. Since the 2008 fire, the camera system has not been in working order at the bus barn. The monitor and some of the wiring have not been replaced. An outside camera for the bus barn and the monitor are pictured below:



As noted in our interviews, both the head of maintenance and the current head of bus maintenance mentioned three electronic companies that arrived at the bus barn in 2008 to provide the school with bids to replace the damaged equipment. One of those companies alleged that the cameras installed on the outside of the bus barn were not outside cameras but rather “inside” cameras. The head of bus maintenance said that the other two companies did not mention anything about the quality of the cameras already installed.

Neither individual could recall the name of the company that made the allegation. They mentioned that the bidding documentation should be kept in the administrative office. However, per our review of the bidding files located in the Superintendent’s office, and even with the help of the Assistant Superintendent, we could not locate these specific bids or the names of the companies that had bid.

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Ultimately, the school did not award the bid to any of the companies. The camera equipment at the bus barn has not been repaired or replaced since the fire in 2008.

Conclusion

Documentation was not sufficient to determine whether or not the cameras installed on the outside of the bus barn or any other building on the school campus was an “inside” camera. We concluded that the issue was not a priority for the past several years, likely due to the frequent turnover in school administrations since 2008.

Recommendation

We recommend the Board revisit this matter to determine how best to utilize the District’s remaining operable cameras and monitoring equipment.

Objective IX. Extra-duty contracts

Background

Dr. Jim Sisney was hired as Interim-Superintendent of Sperry Public Schools on April 28, 2009, and then as Superintendent for the following two school years ended June 30, 2011. Dr. Sisney resigned his position effective July 1, 2011.

Prior to his tenure at Sperry Public Schools, Dr. Sisney had been the Superintendent for Broken Arrow Public Schools during a period in which the Broken Arrow school district was under an investigative audit by the State Auditor and Inspector's office. Objective #16 of the special audit report on the Broken Arrow Public Schools for the period July 1, 2006 through March 31, 2009, reads in part:

A concern related to us involved the former Superintendent Jim Sisney giving questionable payroll increases, or stipends, to selected administrative employees.

According to the District Payroll Director, the stipends appeared to be a way to show favoritism towards selected employees. During an interview with former Superintendent Sisney, he stated that stipends were a means to increase an employee's pay and were based on "judgment."

In light of the finding identified in our Broken Arrow Public Schools special audit report dated June 7, 2011, we examined the historical payroll, stipends, and extra-duty pay of select employees to determine if there were any significant changes implemented after Dr. Sisney became Superintendent.

Findings

In order to determine if stipends or extra-duty clauses changed significantly once Dr. Sisney became Superintendent, we tested a sample of employee payroll contracts for the school years ended June 30, 2011 (under Dr. Sisney) and June 30, 2008 (under Superintendent Burd). We noted no stipends paid to any employees selected for testing under either Superintendent in either year.

We tested employees from both years as follows:

1. All administrative employees.

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2. A sample of eight teachers who were employed in both years and under both administrations.
3. The two individuals reviewed in Objective V: Questionable Employment.

No support or 12-month employees were tested, as they are paid hourly, and their total pay for the year could not be compared to contractual agreements. For each employee tested in the groups noted above, we reviewed the employee's contract and extra-duty contracts, where applicable. We then compared the combined total salary to the employee's earnings per the Employee Earnings Audit report provided by the school's Business Manager. All discrepancies between these totals were reconciled satisfactorily.

All contracts were reviewed for proper signatures, dating, and Board approval. In a few instances, contracts were not dated. We noted no instances in which the Board did not approve (by signatures) an employee contract or the re-hiring of an employee group, or in which contracts were not signed by the employee, President of the Board, and Clerk of the Board.

In some instances, the board hired or approved the contract of an individual employee. In most cases, however, the employee group (support staff, teachers, 12-month staff, etc.) was presented before the board for a vote. In these cases, salaries were either presented by the Superintendent or set by a predetermined method. Teacher salaries were determined by state minimum standards. Each year the school's Business Manager presents a schedule of set pay rates for teachers meeting certain criteria, such as years of service and level of education obtained, in each board member's "board packet." Teacher salaries pertaining to the two years tested were set by the board in the following board meetings:

Teacher Salaries for 2010/11 – Approved in July 12, 2010 Board Meeting
Teacher Salaries for 2007/08 – Approved in July 17, 2007 Board Meeting

In reviewing the Board Minutes in which individuals or groups of employees were hired or rehired, it was noted that many of the Minutes were unclear as to which employees were being considered. Per further investigation, we determined that the Board received adequate documentation to make its hiring decisions, but that there was little or no reference to this documentation to be found in the Minutes.

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Conclusion Although there were some differences between the two administrations compared, we noted no instance in which such extra-duty payments lacked justification or Board approval, or which appeared to be awarded in a biased or arbitrary manner.

Recommendation We recommend that, where applicable, the Board Minutes record or reflect the existence of further documentation made available to the Board. For example, if the Minutes record the hiring of teachers or other staff by the Board, then it could be noted in the same Minutes that a listing of the names of those to be hired was made available to the Board prior to their approval.

As an alternative, the list of those employees hired could also be included with the official minutes, as supplemental information.

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Objective X. American Recovery and Reinvestment (ARRA) Funding

Background

During the time period for our special audit, July 1, 2005 through June 30, 2011, the Sperry Public School District received and utilized American Recovery and Reinvestment Act (ARRA) funds. Although no specific allegations of wrongdoing regarding ARRA expenditures was brought to our attention, we performed a brief test of ARRA expenditures due to the sensitive nature of these funds and the fact that they are required to be classified as “high risk” by the federal government, in accordance with OMB Circular A-133.

Findings

The Assistant Superintendent administered and maintained the records for ARRA program expenditures. We inquired how this process worked at the District. The Assistant Superintendent identified the various ARRA funds the school had been granted and provided documentation, such as notifications of grant awards, claim reports, payroll records, and invoices for these grants.

Since the inception of ARRA funded programs, the District has had the following ARRA Programs:

<u>Program #</u>	<u>Program Title</u>
516	Title I
622	Special Education
643	Pre-School Special Education
782	State Stabilization Fund
790	Education/Jobs

We focused our review of ARRA grants on the most recent FY11 school year. We performed the following procedures to test each grant used for teacher payroll and school supplies:

516 Title I – Title I funds were for underprivileged students. These funds were used for teacher payroll and school supplies. We tested expenditures for this grant by selecting two teacher salaries for one pay period and three vendors from which school supplies were purchased, and traced the specific transactions to supporting documentation. No lack of documentation or deficiency was noted.

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622 Special Education – Special Ed. funds were primarily used to pay Special Ed. teacher salaries. We tested expenditures under this grant by selecting two teacher salaries for one pay period and traced the specific transactions to supporting documentation. No lack of documentation or deficiency was noted.

643 Pre-School Special Ed – Pre-School Special Ed. funds were primarily used to pay pre-school teacher salaries. Total expenditures in FY11 were less than \$5,000 and considered inconsequential to the school budget as a whole. Therefore, no tests were performed on this federal award.

782 State Stabilization Fund – The State Stabilization Fund was used to supplement state funding during the state budget shortfall for FY11. Therefore, no specific purchases were associated with this grant as the state automatically included this grant in their regular funding. No testing was performed.

790 Education/Jobs – The Education/Jobs grant was used primarily for new teacher salaries. We tested expenditures under this grant by selecting two teacher salaries for the February 2011 pay period and two teacher salaries for the May 2011 pay period, and traced the specific transactions to supporting documentation. No lack of documentation or deficiency was noted.

Conclusion ARRA funded program expenditures tested appeared to have sufficient documentation.

Recommendation No recommendation is provided for this objective.

Objective XI. Review Field of Dreams account activity

Background

On November 2, 2000, the District and the local booster club executed a License Agreement in which the District donated the use of school land to the Sperry Booster Club “Field of Dreams” for the purpose of “*playing and practicing to play softball.*” The facilities were built through the use of private donations and beginning in April 2003, the youth began using the fields. The Field of Dreams collections and disbursements were processed through the District’s activity fund. The primary concern related to the Field of Dreams activity fund account was that the District was not using the account for the intended purpose.

In a report, dated October 13, 2010, an independent auditing firm addressed specific areas including the Field of Dreams account. According to the report:

“...a payment on June 1, 2006 to the Diamond Baseball League for \$1,500.00 that was documented as being for “High School Baseball Fees – Summer” and it is my understanding that the Field of Dreams subaccount is supposed to be for the Little League Program. Additionally, there was a \$1,500.00 transfer on March 2, 2006 and two (2) \$1,500.00 “donations” to High School Softball and High School Baseball accounts that occurred on March 12, 2007.”

Finding

We obtained copies of the \$1500 payment, the \$1,500 transfer, and the two \$1500 donations. We concur that the \$1,500 payment for “*High School Baseball Fees – Summer,*” the \$1,500 transfer, and the two \$1,500 donations did not appear to be related to little league baseball nor softball. However, the records indicated that *booster club members* initiated these transactions.

In order to determine if the booster club was controlling the Field of Dreams account, we reviewed purchase requests contained in the activity fund files for FY06, FY07, and FY08 to determine the name(s) of the requestor(s). We reviewed “sponsor deposit receipts” for the name(s) of the individual(s) turning in funds to the District’s activity fund custodian. We confirmed that these individuals were all booster club members and not school employees.

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All of the requests reviewed indicated booster club members initiated disbursements. Revenue records indicated booster club members delivered the revenue turned into the District. Although the Field of Dreams was an account within the District's activity fund, the records indicated the booster club officers and membership controlled the account.

We also reviewed the ledgers for the Field of Dreams account for transfers from the account to verify they were initiated by the booster club. In addition to the transfers previously noted, we noted a transfer on March 13, 2008, in the amount of \$3,448 from the Field of Dreams account to Elementary Softball. The transfer was initiated by the booster club and approved by the school board on March 10, 2008.

Later, the booster club authorization(s) included a February 3, 2010, letter from the booster club president, indicating that the Sperry Elementary Booster Club had split the Elementary Softball from the Field of Dreams. This letter made specific reference to the March 10, 2008 transfers approved by the school board, and which had left a balance \$550. The February letter goes on to direct the school to split a large water bill, the result of a leak at the ball fields, between the Elementary Softball and Field of Dreams accounts, in the amount of \$385 to each.

On August 10, 2009, the License Agreement between the booster club and the district was terminated under two conditions, quoted as follows:

1. The existing Fields to be continued to be used for the youth of Sperry for Little League baseball and softball
2. All contributors names on complex, fields, dugouts, contributor board, and bricks to be kept in place.

The February 2010 transfer of \$385 apparently did not occur immediately, as the Field of Dreams account was closed on December 29, 2010, with the \$550 balance being transferred to the "Sperry Activity Fund," without identifying the specific account(s) the money was transferred to.

Documentation indicates the booster club officers and members controlled the above transactions, including transfers. It would seem any disagreement on how funds were used would be a dispute among officers and members of the booster club and not necessarily involve the District.

Recommendation No recommendation is provided for this objective.

Objective XII. Review expenditures for Project Essence (21st Century Grant)

Finding

The concern expressed to us specifically relates to the purchase of a Suburban with Project Essence funds (federal grant) that were supposed to be used for after school tutoring. Project Essence also went by “21st Century Grant.”

We obtained expenditure reports for the 21st Century Grant. The report for the 2004-05 fiscal year shows a -0- ending balance and was the final year there was any activity. Although the report was prior to our audit period, we did review expenditures for 2004-05 and noted no payments to any automobile dealers. The District was unable to provide any records prior to the 2004-05.

In an interview, former Superintendent Burd recalled purchasing a Suburban that was used for field trips for the kids.

The Suburban was apparently purchased prior to our audit period and beyond the 5-year statutory and typical 3-year federal grant record retention requirements. Consequently, we had no records to review to determine whether capital outlay was a permitted use of the federal grant funds.

Recommendation

No recommendation is provided for this objective.

Objective XIII. Other concerns

Background

Title 70 O.S. § 5-122 requires school financial records to be kept *a minimum* of 5 years:

“The clerk of the board of education of any school district is hereby authorized to destroy all claims, warrants, contracts, purchase orders and any other financial records, or documents, including those relating to school activity funds, on file or stored in the offices of the board of education of such district for a period of longer than five (5) years.”

Title 51 O.S. § 24A.4 requires:

“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 or accurate records of the receipt and expenditure of public funds reflecting all financial and business transactions related thereto, except that such records may be disposed of as provided by law.”

Findings

While conducting our audit, we noted numerous records which the District could not provide, and were presumably missing. For example, the district was unable to provide original records for PO#2008-11-535 to BRB in the amount of \$48,000. The only documentation that could be provided to support the \$48,000 payment to BRB was copies that were attached to a previous open records request.

The district was unable to provide any of the bid documentation, change orders, payment requests or invoices for the construction of the elementary school roof. The funding for the elementary school roof project was through lease purchase funds related to the 2005 bond issue. Those records were obtained from the architect, the Stacy Group and Stephen L. Smith Corporation.

The purchase of the SMART Boards was also done with lease purchase funds related to the 2005 bond issue. The district could not provide the lease purchase agreement, payment requests, invoices or payment documentation for the \$160,116 in expenditures. The lease purchase agreement and invoices were obtained from the Stephan L. Smith Corporation and payments were obtained from RCB Bank.

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Although the bond proceeds and lease purchase disbursements were handled through RCB Bank, they were still the District's expenditures, and according to the records we obtained from 3rd parties, the 5-year threshold had not yet expired. The District should have had those public records, and the District should have retained those public records for at least the statutory 5 years.

Recommendation

We recommend the District implement policy and procedure safeguards to ensure documentation regarding the expenditure of public funds is properly maintained, and that some record or memorandum be kept to document the disposal of financial records which have exceeded the five-year statutory threshold.

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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