

PETITION AUDIT REPORT

TOWN OF ROCK ISLAND

July 1, 2011 through June 30, 2013



*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

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PETITION AUDIT REPORT
JULY 1, 2011 THROUGH JUNE 30, 2013



Oklahoma State Auditor & Inspector

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October 24, 2013

To the Citizens and Petitioners of the
Town of Rock Island, Oklahoma

Transmitted herewith is the Petition Audit Report for the Town of Rock Island. Pursuant to **74 O.S. § 212(L)**, 10% of the registered voters of a political subdivision may request that our office audit the books and records of a political subdivision. Pursuant to this request, and in accordance with those requirements, we performed a special audit of the Town of Rock Island for the period July 1, 2011, through June 30, 2013.

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

Our goal 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 that Town officials extended to our office during the course of our audit.

This report has been prepared for the citizens of Rock Island and for town and state officials with oversight responsibilities. This document is a public document pursuant to **51 O.S. § 24A.1, et seq.**

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones".

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

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EXECUTIVE SUMMARY

We performed a petition audit, pursuant to a request from the citizens of Rock Island, and in accordance with the requirements of **74 O.S. § 212(L)**. This report addresses issues concerning the Town of Rock Island for the period July 1, 2011 through June 30, 2013.

The legitimacy of the town's incorporation has been challenged resulting in lawsuits and a response from the Office of the Attorney General, who respectfully declined to challenge the existence of the Town of Rock Island.

We determined that the police department has the authority to enforce the traffic laws of the town. The police chief and reserve officers are properly certified and the town radars have been properly calibrated. A recent "Speed Trap Investigation" by the Department of Public Safety revealed no current violations of the applicable statute; however, this issue should possibly be revisited in the future.

Rock Island is currently not in compliance with the audit filing requirements as defined in **11 O.S. § 17-105**. However, an audit of the town is in progress and should be completed in the near future. Additionally, a review of the town trustee's municipal officer educational training determined that all current trustees are in compliance with required statutory training.

Although not part of the citizen petition, we noted minor exceptions in the Town's compliance with the Open Record Act and Open Meeting Act and some weaknesses in the Town's internal controls.

INTRODUCTION

Rock Island is a small town in Leflore County, Oklahoma. The town population was 646 according to the 2010 Census. The Town of Rock Island is organized under the statutory Town Board of Trustees form of government, as outlined in **11 O.S. § 12-101, et. seq.** Rock Island is governed by the Town Board of Trustees, which consists of five members. The trustees select one of their members to serve as mayor.

The Town operates under the Oklahoma Town Meeting Act, as outlined in **11 O.S. § 16-301, et. seq.** The Town Board holds a biennial town meeting at which registered voters elect the town trustees and consider any questions raised by initiative or referendum.

Town Trustees as of June 30, 2013 were:

David Tucker	Mayor
Frank Morris	Treasurer
Melissa Hays	Clerk
Jackie Edwards.....	Member
Linda Sweeten.....	Member

The Town Board also appoints three citizens and two of its own members to a Police Commission. The Police Commission oversees management of all police activity, submitting decisions made to the town board of trustees for approval.

Police Commission members as of June 30, 2013 were:

Jesse Paul Hargrove	Chairman
Charlene Kelly	Member
Nathan Robison.....	Member
Linda Sweeten.....	Member
David Tucker	Member

The Town of Rock Island currently contracts with a private law firm, Hamilton, Warren, & Bovos, for legal services and a private, independent audit firm, Kershaw & Associates, for auditing services.

Objective I Determine as to the legal incorporation of the Town pursuant to state law including whether or not the Leflore County Board of County Commissioners acted timely in the issuance of an order declaring its incorporation as stated in 11 O.S. § 3-105 and in the Board’s establishing the subdivision’s current boundaries.

Town Incorporation

Background

A timeline of the significant events occurring in the legal process of the town’s incorporation is presented below.

- September 1989 – An election was held with the members of the community voting to incorporate the town and to establish the corporate limits.
- December 2003 – A filing of historical documents to evidence the incorporation of the Town of Rock Island was made with the Oklahoma Secretary of State’s Office.
- March 2004 – The Board of Commissioners of Leflore County approved a resolution to *retroactively* “confirm and acknowledge receipt” of the 1989 election results and “confirm, acknowledge, and establish the incorporation of the town.”
- September 2011 – A lawsuit was filed in the District Court of Leflore County, *Dennis Morris v. Rock Island*, CV-2011-110. Plaintiff Dennis Morris was seeking a declaratory judgment on the municipal incorporation of Rock Island; specifically requesting that the Court declare judgment as to the valid existence of Rock Island, Leflore County, Oklahoma, its legal formation and boundaries.
- December 2011 – The Court dismissed all formation and existence issues on the grounds that those issues must be brought by the State, and not by a private citizen. However, the Court determined the three mile territory violation, pursuant to 11 O.S. § 2-104, may be brought by a private citizen.
- September 2012 – The retroactive resolution of the Leflore County Commissioners previously approved in March 2004, as noted above, was filed with the Oklahoma Secretary of State.

- November 2012 – The Office of the Attorney General of the State of Oklahoma responded to a complaint by Mr. Paul Tankersley so answering:

“We have received your complaint asserting the Town of Rock Island, Oklahoma, has no actual corporate existence and requesting that we undertake legal action to challenge its existence. In looking into your complaint and comparing the evidence of the existence of that town found in the possession of the Office of the Secretary of the State of Oklahoma to the applicable law, we believe the town legally exists and its existence cannot be challenged. Accordingly, we respectfully decline to challenge the existence of the Town of Rock Island, Oklahoma, at this time.”

- May 2013 – A rendering of a decision in the lawsuit, CV-2011-110, was released. The Court expounded on the issues presented in the case but chose to only render a conclusive decision as it related to the three mile territory violation as follows, “The Court determines the appropriate relief is to exclude the real property owned by Dennis Morris from the Town of Rock Island.”

Subsequent Event

- September 2013 – A lawsuit was filed in the District Court of Leflore County, *Dennis Morris v. Rock Island Leflore County OK*, CV-2013-00104.

Summary

The incorporation of the Town of Rock Island has been an unfolding story for over twenty years. As demonstrated by the progression of events, the issue of the incorporation of the Town is a continuing matter of law and judicial interpretation, as evidenced by the subsequent lawsuit filed September 2013; and, as such, is not an issue to be determined by an auditing entity.

Addressing the specific issue of the petitioners as to whether or not the Leflore County Board of County Commissioners acted timely in the issuance of an order declaring its incorporation as required by **11 O.S. § 3-105**, we acknowledge that there does not appear to be any evidence that an order declaring the town as incorporated was filed within the 20 day period following the vote of the people in September 1989.

Objective II Determine as to whether or not the Town has the legally established authority and jurisdiction to enforce various traffic laws, to fine motorists, and whether or not there is any limitation as to its fining authority.

Law Enforcement Authority

Criteria A board of trustees, under the authority of **11 O.S. § 12-111**, may appoint a chief of police, who shall enforce municipal ordinances and have such other powers, duties and functions as may be prescribed by law or ordinance.

Title **11 O.S. § 34-101** states in part:

“A municipal police officer shall at all times have the power to make or order an arrest for any offense against the laws of this state or the ordinances of the municipality.....In addition to regular full-time municipal police officers, reserve municipal police officers may also be appointed by the chief of police.”

It is a requirement of **11 O.S. § 34-102**, that any person elected or appointed to the position of chief of police of a municipality meet minimum qualifications which shall include being certified as a peace officer in this state by the Council on Law Enforcement Education and Training (CLEET), or meet all requirements necessary for CLEET certification and obtain such certification within six months of assuming the position of chief of police.

Finding On May 27, 2010, the Town Board of Trustees approved and adopted a town ordinance establishing a police department. The head of the police department is the chief of police appointed by the board of trustees. The chief of police is an officer of the town and has supervision and control of the police department.

A review of the credentials of the town’s police chief and reserve officers confirmed that all appointed were CLEET certified and met the minimum qualifications necessary to be peace officers in the State of Oklahoma. As such, the officers of the Town of Rock Island had the statutory authority to enforce the traffic laws of the town.

As part of our audit, we verified that the Police Department's Doppler traffic radars were certified, and determined to be properly calibrated as of January 2013.

Fining Authority

Criteria Every municipality is required by **11 O.S. § 14-109**, to compile and publish, in a permanent form, its penal ordinances at least once every ten years. Each municipality must also publish biennial supplements to the permanent volume of compiled ordinances.

Title **11 O.S. § 14-110**, also requires municipalities to adopt a resolution notifying the public of the publication. A copy of the resolution must be filed in the office of the county clerk and a copy must be deposited in the county law library of the county in which the municipality is located. Ordinances which have been compiled and filed in accordance with these sections must be judicially noticed in all court proceedings.

Finding The Town of Rock Island has compiled and published its penal code as required by law. The Code was placed on record in the Leflore County Law Library and a notice of publication was filed with the County Clerk's Office of Leflore County.

The filing of such ordinances in accordance with law is relevant because according to **11 O.S. § 14-111(E)**, any municipality that does not comply with the above noted statutes is prohibited from levying fines over Fifty Dollars (\$50.00) for violations of its ordinances.

To address the question of the citizen's petition as to whether or not there is any limitation as to the towns fining authority, we refer to **14 O.S. § 14-111(C)**, where maximum fines are assigned to a municipality. During our review of the "Schedule of Basic Fines" adopted by the town, we found no evidence that the Town of Rock Island exceeded its maximum fining authority.

Speed Trap Investigation - Conducted by the Department of Public Safety

Although not part of the initial Citizen's Petition, in discussions with concerned citizens it was brought to our attention that the District Attorney of Leflore County had requested the Department of Public Safety (DPS) to conduct a "Speed Trap Investigation" on the Town of Rock Island. Both the concerned citizens we spoke with and town officials we interviewed knew of the investigation, but

neither had knowledge of the investigation's outcome. Many involved asked if we could obtain information concerning the final result of this investigation.

The investigation was requested by the Leflore County District Attorney under the authority of **47 O.S. § 2-117(D)(4)**, which allows the DPS, upon request, to investigate the traffic-related enforcement practices of a municipal law enforcement agency and the receipts and expenditures of the municipality. An investigation can be requested when it is believed the enforcement practices are being conducted within the boundaries of and on the outskirts of the municipality, and for the purpose of generating more than fifty percent (50%) of the revenue needed for the operation of the municipality.

We acquired a copy of the DPS investigative report dated July 21, 2011. In their investigation they reviewed the Town's financial information for fiscal years 2008, 2009, and 2010. The police department was not established until May 2010, as such, there were no revenues generated by police activity in any of these fiscal years. The fiscal year 2011 financial information was not yet available at the time the investigation was performed so it could not be determined if the 50% revenue limit had been exceeded.

The report concluded, "Based upon this investigation and the financial reports available at this time, the Town of Rock Island is not in violation of Oklahoma State Statute Title 47 Chapter 2, Section 2-117 D.4." The DPS report indicated that the District Attorney may renew his request for an investigation when further revenue figures become available.

Objective III Determine possible irregularities in the financial reporting of various types of revenue and failure to comply with annual financial auditing requirements.

Financial and Auditing Requirements

Criteria Title **11 O.S. § 17-105**, requires the governing body of each municipality, with an income of \$25,000 or more to its general fund during a fiscal year and with a population of less than 2,500, to have prepared, by an independent licensed public accountant or a certified public accountant, an annual financial statement audit or an agreed-upon-procedures engagement.

Such audit or agreed-upon-procedures engagement must be ordered within thirty days of the close of the fiscal year and copies must be filed with the State Auditor and Inspector within six months after the close of the fiscal year.

If a municipality does not file a copy of its audit or agreed-upon-procedures report, the State Auditor and Inspector must notify the Oklahoma Tax Commission, which withholds from the municipality its monthly allocations of gasoline taxes until the audit report is filed as defined in **11 O.S. §17-107**.

Finding For the fiscal year ending June 30, 2012, the Town of Rock Island did not comply with the annual financial auditing requirements as defined in statute. For the first time, in the fiscal year ending June 30, 2012, the Town's general fund revenue exceeded \$25,000. This amount of general fund revenues placed Rock Island under the compliance of **11 O.S. § 17-105**, requiring an annual financial statement audit or an agreed-upon-procedures engagement to be completed and filed by December 31, 2012.

After being notified by the State Auditor's Office on November 19, 2012, that the Town was not in compliance with statute, the Board voted on December 4, 2012, to have an independent audit firm conduct an audit for fiscal year 2012, and the two years subsequent. It is our understanding that this audit is currently in progress with the accounting firm of Kershaw and Associates.

As of the date of this report the requisite audit requirement has not been met. As a result, permission has not been given to the Oklahoma Tax Commission to release the Town's gasoline tax.

Objective IV Determine possible violations of 11 O.S. § 8-114 requiring municipal officers to satisfy certain education requirements or cease to hold their elected office.

Municipal Training

Background

Title 11 O.S. § 8-114 states in part:

“Each person elected or appointed for the first time as an officer of a municipality...shall be required within one year after taking the oath of office to attend an institute for municipal officials. A person elected or appointed to a municipal office who fails to satisfy the education requirements of this section shall cease to hold the office commencing at the next scheduled meeting of the governing body following the first-year anniversary of the person’s taking the oath of office.”

When first enacted, the statute specified that it applied to each person elected for the *first time* to a position of a municipality on or after January 1, 2005, or appointed for the first time on or after July 1, 2006.

Finding

All current Town of Rock Island trustees are in compliance with municipal training requirements. Current trustees, Jackie Edwards and Linda Sweeten, attended the institute for municipal training in November 2005, and June 2009, respectively; both within one year of being elected to office.

Current trustee, Melissa Hays, was first elected in 2003, prior to the enactment of the above referenced statute. As such, her attendance at an institute for municipal officers training was not required.

Current trustee and Mayor, David Tucker, was first elected as a trustee in 2001, prior to the enactment of the above referenced statute. He did not serve from 2009 to 2013, but was re-elected in April 2013, and is a current trustee. Since David Tucker was first elected prior to 2005, he was not required to complete municipal training.

Current trustee, Frank Morris, was first elected as a trustee in April 2013, and has until April 2014, to complete his municipal training.

It should also be noted that former trustees Frank White and Nathan Robison, who both served as town trustees until April 2013, were in compliance with municipal training requirements.

Other Concerns

Open Records Act and Open Meeting Act

Background

The Oklahoma Open Records Act and the Oklahoma Open Meeting 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.

The potential violations of these acts reported below appear to be minor when considered on an individual basis. However, an accumulation of open meeting and open record violations over time can create a disruption in the management of any public entity.

Criteria

The Oklahoma Open Records Act, **51 O.S. § 24A.8**, specifically stipulates that law enforcement agencies shall make available for public inspection, if kept, records including, but not limited to, an arrestee description, name, date of birth, conviction information and disposition of warrants.

Finding

In August 2012, an ‘Open Records Request’ was received by town officials requesting “all traffic tickets for the last year.” Although a ticket log was eventually released to this citizen, all names had been redacted.

According to statute, the release of traffic tickets, including names, should be made available for public inspection. The Town of Rock Island Board of Trustees should become familiar with information available for release under the Open Records Act and strive to comply with each request to the best of their ability.

Criteria

The Oklahoma Supreme Court held, in **1978 OK 53**, that boards or commissions that are established by public bodies must comply with the Open Meeting Act if they “exercise actual or de facto decision-making authority on behalf of” their parent public bodies, as opposed to, for example, performing “purely administrative or ministerial tasks”.

Finding

The Town of Rock Island uses a Police Commission to oversee management of the police department's activities. The Commission votes on matters related to Police Department activities and submits these items to the Town Board for final approval.

Based on the defined criteria, if the Rock Island Police Commission exercises any decision-making authority, either actual or de facto, then it must comply with the Open Meeting Act, including posting agendas and keeping minutes with recorded votes.

Internal Control

Background

An understanding of the Town's internal control procedures was not necessary to respond to the objectives of this petition audit. As such, a complete internal control review of the Town of Rock Island was not performed. However, while interviewing town officials and observing financial practices of the town, some internal control weaknesses were detected. These weaknesses are reported below.

Criteria

Segregation of duties is the most basic element of an internal control structure. Segregation of duties is dividing responsibilities among two or more individuals in a way to help prevent a transaction error or a misappropriation from occurring.

Segregation of duties should include requiring more than one signature on all payments being issued and providing for an independent reconciliation of payments being made. Additionally, the person handling cash transactions and recording of receipts should not be the individual preparing and making the deposit.

Title **11 O.S. § 27-112**, requires that all of the fees, fines, and forfeitures which come into the municipal court be paid by the clerk of the court to the municipal treasurer. The court clerk must make duplicate receipts for the fees, fines, and forfeitures collected. One copy of the receipt should be retained by the municipal treasurer together with a detailed statement of all costs, the style of the case in which they were paid, and the name of the party paying the same.

Additionally, **51 O.S. § 24A.4**, requires every public official to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions.

Finding

The limited availability of staff for the Town of Rock Island precludes maintaining an optimal system of internal control; however, there are measures that can be implemented to help strengthen the controls over town resources.

Checks/Disbursements

The town maintains five bank accounts with two town officials listed as the signatories on each account. Currently only one signature is required to process a payment from these accounts. We suggest that the town require two actual signatures on checks and that supporting documentation be available at the time of signing.

Collections/Deposits

At present, traffic fines are the main revenue source collected by the Town. The court clerk collects the fines paid for traffic citations through the mail which is delivered to a mailbox in front of Town Hall; through a locked drop-box in front of the police department; or directly from ticket recipients during court proceedings. Receipts are not written for all monies collected and copies of receipts are not given to the treasurer.

Until deposited, funds collected are maintained in the possession of the court clerk, either at her home in a file or in the trunk of her car. The court clerk makes deposits into the police department account, but funds are not deposited daily.

Traffic Ticket Accountability

Traffic tickets issued by the Town of Rock Island police chief and officers include five copies. Four copies should be submitted to the court clerk with one copy maintained by the writing officer. The tickets should be held by the court clerk until disposition of the charge has been made and fines levied have been collected or dismissed. We suggest that all tickets be filed in numerical order and maintained as public record for review as required.

An attempt was made to collect and reconcile tickets written to fines collected to deposits made. Currently the clerk and/or the chief of police do not maintain copies of all tickets written. When collections are received, they are not deposited daily and the mode of payment made (e.g., cash, check, or money order) is not documented. As such, a reconciliation of collections to deposits could not be completed.

Summary/Suggestions

The internal control weaknesses summarized above are some of the issues that typically occur in a limited staff environment. Below are some specific recommendations which could be adopted by the Town to increase oversight of financial activity, protect the individuals performing the duties in question and improve the overall management of the Town's resources.

- Checks should require two actual signatures and the depository bank should be notified of the "two signature" policy;
- 'Two signatures required' should be clearly printed on blank check forms;
- Blank checks should never be signed in advance;
- All revenue should be receipted on sequentially numbered receipts and note mode of payment;
- One copy of each receipt should be maintained by the clerk and the treasurer;
- All checks should be immediately endorsed "For Deposit Only;"
- Deposits should be made daily as required by statute;
- A copy of all traffic tickets should be maintained by the chief of police and the court clerk;
- Mode of payment should be noted on each ticket;
- Tickets, collections, and deposits should be reconciled and copies of reconciliations be retained for audit and management purposes;
- Bank statements should be received and reconciled by someone independent of the check writing process; and
- No single individual should control all aspects of a transaction.

While not part of the petition request, the internal control issues we chose to address are intended to assist the town officials as they move forward to better serve the community.

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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