

PETITION AUDIT REPORT

TOWN OF DEWAR

July 1, 2007 through December 31, 2011



*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 DEWAR

PETITION AUDIT REPORT

JULY 1, 2007 THROUGH DECEMBER 31, 2011



Oklahoma State Auditor & Inspector

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

March 14, 2013

Citizens and Petitioners
Town of Dewar, Oklahoma

Transmitted herewith is the Petition Audit Report for the Town of Dewar and the Dewar Public Works Authority.

Pursuant to your request and in accordance with the requirements of **74 O.S. § 212(L)**, we performed a petition audit for the period July 1, 2007, through December 31, 2011.

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

Because a petition 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 of Dewar or the Dewar Public Works Authority for the audit period.

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

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

This report has been prepared for the citizens and registered voters of the Town of Dewar, and for town and state officials with oversight responsibilities, as provided by statute. Pursuant to **74 O.S. § 212(L)**, 10% of the registered voters of a political subdivision of the State may request the State Auditor and Inspector to audit the books and records of the political subdivision. This document is a public document pursuant to the Oklahoma Open Records Act, **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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BOARD OF TRUSTEES AS OF DECEMBER 31, 2011

Mike Deckard..... Mayor
Mary Durbin..... Vice-Mayor
Dottie Neighbors..... Member
Janet Turner Member
George Powell..... Member

**Town Clerk/Treasurer
As of December 31, 2011**

Sandra Thompson

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EXECUTIVE SUMMARY

We performed a petition audit, pursuant to the Citizens' request, and in accordance with the requirements of **74 O.S. 2011, § 212(L)**. This report addresses issues identified by the petitioners and other concerns that we identified during the course of our audit. The audit period for our review was July 1, 2007 through December 31, 2011.

Our report notes some compliance issues with the Open Meeting Act and Open Records Act, but we also report that some of the issues have already been investigated by the Okmulgee County Sheriff's Office and reviewed by the District Attorney. The District Attorney commented in a letter dated August 6, 2012, that the method for a particular decision by the town board "was not proper."

Concerning alleged irregularities in the Town's purchasing policies and procedures, we report on four allegations and make some recommendations for improvement in purchasing documentation and approvals. We observed the language for **Chapter 5, Section 1-5-1, Paragraph B (1)** of the **Dewar Town Code** describes a procedure for approving an emergency expenditure, which *if followed as described*, would itself be an **Open Meeting Act** violation. We also report there was no apparent violation of the **Public Competitive Bidding Act**, which was one of the four allegations.

Concerning two allegations about the proposed new town park, we concluded there was no substantiation for the concern that the Town had wasted an opportunity to obtain certain property at a minimal cost, while opting to purchase some other property instead. Also, we found the proposed park properties had not been "condemned" by a government agency, as had been alleged. The state agency's inspection indicated that some environmental clean-up would likely be required, but there was no evidence the land had been officially "condemned," due to environmental hazards.

Concerning the allegation that the Town owed a substantial debt to the City of Henryetta for its bulk water supply purchases, the information we developed completely refuted this rumor, which we found to be without basis. In addition, we found no substantiation for improper transfers between funds or departments under the fifth objective.

Concerning an allegation related to the Town's disposition of surplus property, we report a partial substantiation that the Town has no formal policy for how to dispose of its surplus items and has been using an informal method of disposition that resulted in some inconsistencies and a lack of clarity in how items were disposed. Concerning a second allegation regarding missing firearms, we believe the allegation to be unsubstantiated and a combination of various older issues that were misconstrued and misunderstood.

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We found an alleged theft of Labor Day 2011 funds raised by the Town's volunteer firefighters for the Muscular Dystrophy Association to be another allegation that was completely without basis. We obtained payment information and copies of MDA receipt/thank you letters for the funds raised for three consecutive years, 2009 through 2011.

Finally, we found an alleged nepotism issue to be a misunderstanding of the language of the various nepotism statutes and without basis.

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Introduction

The Town of Dewar, Oklahoma (Town) is organized under the statutory town board of trustees form of government, as outlined in **11 O.S. § 12-101, et seq.** Title **11 O.S. § 12-101**, states:

The form of government provided by Sections 12-101 through 12-114 of this title shall be known as the statutory town board of trustees 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.

In addition, the Town and its public trust authority are subject to the provisions of some other sections in Title 11 (Cities and Towns), as well as other statutes found in various titles including, but not limited to, Title 25 (Definitions and General Provisions), Title 51 (Officers), Title 60 (Property, Chapter 4 Uses and Trusts), Title 61 (Public Buildings and Public Works), Title 62 (Public Finance) and Title 68 (Revenue and Taxation).

The Dewar Public Works Authority (DPWA or Authority) is a public trust established under 60 O.S. § 176 et seq. The Authority operates a utility service providing water, sewer, and sanitation service to the residents of the Town of Dewar. The Town Board of Trustees serve *ex officio* as the Board of Trustees for the Authority.

A private, independent audit firm audits the Town and the Authority. Audit reports were made available for our review.

Any references to the “Town” should be assumed to also apply to the Dewar Public Works Authority, unless otherwise specified.

All dollar amounts in this report are rounded to the nearest dollar, unless otherwise indicated.

The Town/Authority’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 Office of the State Auditor and Inspector conducted a petition audit of the records of the Town, primarily those records relating to the objectives noted in the index and in the petitioners requests. The results of the petition audit are in the following report.

Objective I: Review possible violations of the Open Meeting Act and Open Records Act.

Background The Open Meeting Act allegation was a generic concern regarding the actions taken on matters discussed in executive sessions.

Finding **The Board minutes were vague and did not appear to adequately describe all matters brought before the Board.**

From our review of town board minutes for the period of July 2007 through December 2011, we noted many cases in which minutes were vague, making it difficult to determine what exactly transpired. For example, the May 13, 2010, meeting minutes read in relevant part:

9. Neighbors made a motion to enter into Executive Session. Deckard seconded. Vote aye: Neighbors, Powell and Deckard. Time: 7:16 p.m.
10. Powell made a motion to reconvene back into Open Session. Neighbors seconded. Vote aye: Neighbors, Powell and Deckard. Time: 8:23 p.m.
11. Neighbors made a motion to let the Mayor handle decision made in Executive Session. Powell seconded. Vote aye: Neighbors, Powell and Deckard.

There is no indication in the meeting minutes what the subject of the executive session was. Furthermore, in this instance, it appeared the board reached some sort of a decision during the executive session. The board then reconvened its “public” meeting and voted to let the mayor “handle” the decision, without disclosing the issue being considered. In this example, the vote *for the actual decision* was not recorded, just the vote authorizing the mayor *to implement* the board’s decision.

This is contrary to **25 O.S. § 307** which states, in part:

... [A]ny 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.

Additionally **25 O.S. § 312(A)** states, in part:

- A. 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

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actions taken by such public body. The minutes of each meeting shall be open to public inspection and shall reflect the manner and time of notice required by this act.

Another example was the October 9, 2008, meeting minutes in which agenda item #7 simply read, “No sealed bids received” and agenda item #8 read, “Not needed.” There was no indication for item #7 describing the project or equipment that sealed bids were solicited for, and no explanation why item #8 was not needed.

The District Attorney received one complaint pertaining to the Open Meeting Act, which was addressed in a letter to Mayor Deckard, dated August 6, 2012. In the letter, the District Attorney mentioned a situation involving a “phone poll” that may have been a violation of the Open Meeting Act.

Paragraph 4 of the letter reads:

The investigation reports submitted raised some issues that need to be addressed. First, the “phone poll” process as applied in this situation may have inadvertently violated the Open Meeting Law. The poll which resulted in an action taken to deposit city property onto private land constituted the conducting of “business” of the City of Dewar. The public had no notice of or opportunity to participate in the debate about the decision, which is the purpose of the Open meeting [*sic*] Law. While this Office offers no opinion about the correctness of the decision made, the way in which it was made was not proper.

In an interview, Mayor Deckard indicated that he asked employees to contact board members and ask them if it was “ok” to store dirt owned by the Town on his property until the Town needed it.

Subsequently, the subject matter of the phone poll (the dirt) was formally discussed in an open session of a board meeting. The August 9, 2012, minutes show that the mayor was storing the dirt from the sewer project until it could be placed on the proposed site for the park. The Board ultimately approved the following motion:

Mayor Deckard is making the motion that the dirt from the sewer project that is on the Red Barn property be moved to the proposed site of the park as soon as DEQ and EPA gives the Town permission in writing to move forward with the cleanup of the proposed park...

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Since this issue had already been reported to the District Attorney and investigated by the Okmulgee County Sheriff's Office, we did not believe it necessary for us to address this matter any further.

Finding

An alleged violation of the Open Records Act could not be substantiated.

The Open Records Act concern related to a specific situation involving a citizen's request for board meeting minutes. In an interview, the citizen indicated he went to town hall to obtain copies of board meeting minutes which were not provided until two weeks later. The citizen claimed some of the minutes were missing, and when he asked for the agendas, he was denied copies. The citizen also provided us with the name of a "witness" who he claimed could confirm that he was denied copies of the agendas.

We made several attempts to contact the "witness" but were unsuccessful.

We also interviewed Deputy Town Clerk Wilbourn, who did recall the situation and denied that she had refused to provide records. In the interview, Wilbourn explained, the citizen requested several years of records on the last day of the Town's fiscal year. Wilbourn indicated that she informed the citizen that she was unable to fulfill his request at that time and would provide his requested copies when time permitted at a later date.

Wilbourn added that as she was making copies, she realized some of the minutes were not signed, so she waited until she obtained signatures before providing all of the records to the citizen within two weeks. In regards to the agendas, Wilbourn indicated, in the interview, that she informed the citizen that most of the agendas were in storage and in separate packets. According to Wilbourn, the citizen indicated that he no longer wanted the agendas.

51 O.S. § 24A.5 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; provided:

..5. A public body must provide prompt, reasonable accesses to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent disruptions of its essential functions.

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Conclusion

Statutes require records of public bodies be open to the public; however, statutes also provide that public bodies may establish reasonable procedures to prevent disruptions. In this case, records were requested on the last day of the fiscal year, which is typically a busy time for municipalities and other public entities.

In a small town, such as Dewar, with limited resources and personnel, two weeks does not seem unreasonable in providing several years of board minutes to a citizen. It appeared the other “missing” copies were eventually provided, leaving the issue of the alleged denial of the agendas.

With the alleged denial of the agendas, we were faced with a “he said, she said” situation. On one hand, the citizen claimed he was denied copies of the agendas, but on the other hand, the deputy town clerk stated the citizen no longer wanted the agendas. Also, we were unable to verify the citizen’s position that he was denied the agendas, since our several attempts to contact his “witness” were unsuccessful. For these reasons, we were unable to substantiate this allegation.

Recommendations

We recommend town officials seek additional training for requirements related to the Open Meeting Act.

Also, some record or documentation of a citizen’s request for public records should be considered as a possible means of avoiding future misunderstandings and/or allegations. Such a record could include the nature (description) of the citizen’s request and the Town official(s) response(s), including dates.

Subsequent Event

Three office staff of the Town and one town board trustee went to the Attorney General’s seminar on the Open Meeting Act and Open Records Act, held in McAlester, on November 29, 2012.

Objective II: Review possible irregularities in Town purchasing policies and procedures, including but not limited to possible violations of the Public Competitive Bidding Act.

Background

The specific allegations related to this concern involved expenditures by the mayor without board approval, the purchase of locks and security cameras placed on private property, the use of Town employees on private property and a generic concern that the Town was violating the Title 61 Competitive Bidding Act.

We were provided the name of an individual who could allegedly provide information on purchasing irregularities. However, we made several attempts to contact this person, but were unsuccessful. Because of the limited amount of time it took to address the purchase of the locks and security cameras, we addressed this issue even though the purchases were subsequent to the time period noted in the petition request.

Since we were provided only a few specific concerns related to this allegation, we also selected a sample of expenditures and tested for proper documentation and approvals.

Findings

Allegation #1 – The mayor can spend \$1,000 without board approval.

This allegation stems from a generic concern that the mayor can spend up to \$1,000 without board approval. We reviewed state statutes, ordinances, and policies to determine if the mayor had the authority to expend up to \$1,000 without board approval.

According to **11 O.S. § 12-106**) establishes:

Without limitation of the foregoing, the board may:

3. Raise revenue, establish rates for services and taxes, make appropriations, *regulate salaries and wages and all other fiscal affairs of the town*, subject to limitations as may now or hereafter be imposed by the Oklahoma Constitution and law; [emphasis added]

Title **11 O.S. § 12-106** establishes that the board of trustees may regulate fiscal affairs of the town, which would be established by ordinance.

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According to **Chapter 5, Section 1-5-1, Paragraph B (1)** of the **Dewar Town Code**:

1. The Mayor shall be authorized to approve payments up to one thousand dollars (\$1,000). In an emergency situation, any purchase over one thousand dollars (\$1,000); at least three (3) board members shall be contacted by the town clerk-treasurer for their approval. In the event that the board members cannot be reached, the mayor shall take appropriate action.

We confirmed the authority of the mayor to expend up to \$1,000 in town funds without board approval, which is authorized by **11 O.S. § 12-106** and **Chapter 5, Section 1-5-1, Paragraph B (1)** of the **Dewar Town Code**.

Conclusion

There is no basis for the allegation or concern, as it was presented.

However, we observed that the language of the town code section concerning the “emergency situation” and the contacting of three board members (a quorum) is of *questionable legality*. If that language is followed, and a board “approval” action occurs as a result of the town clerk-treasurer “polling” a quorum of the board, an Open Meeting Act violation would result.

Title **25 O.S. § 306** states:

No informal gatherings or any electronic or telephonic communications, except teleconferences as authorized by Section 3 of this act, among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter. [emphasis added]

Allegation #2 – Locks purchased with Town funds were placed on private property. Town employees worked on private property.

The first part of this allegation stems from a concern that Town funds were used to purchase locks which were placed on the mayor’s private property.

On May 4, 2012, the Town purchased four locks totaling \$54.96 from Wal-Mart. In an interview, Mayor Deckard confirmed that a lock was purchased for the gate securing Town dirt stored on his property. According to Deckard, the lock was purchased to replace the previous lock which had been vandalized.

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The second part of this allegation stems from a concern that Town employees were used to work on the mayor's private property and private property belonging to each board member. The allegation included the use of a bulldozer, borrowed from the City of Henryetta, for use on the mayor's property. The source of the concern provided the name of the employee who allegedly performed the work on private property.

We interviewed the employee who allegedly worked on the mayor's private property and private property belonging to each board member. The employee, recalled working on the mayor's "red barn" property on two occasions. According to the employee, there was one instance in which he and other employees moved dirt and cleaned up a ditch. There was another instance in which the employee recalled using a bulldozer, which was borrowed from the City of Henryetta, on the mayor's property.

In an interview, Mayor Deckard indicated there was one instance in which he instructed employees to mow around the dirt on the "red barn" property. The dirt was owned by the town, and he had received some complaints, so he instructed employees to mow the park and the "red barn" property. According to Deckard, the employees spent approximately 30-45 minutes mowing his property. To clarify, this is the same dirt, referred to earlier in this report that was removed from the sewer project and stored on the mayor's property for later use by the Town.

Mayor Deckard denied that there was any bulldozer work done on his property. According to Mayor Deckard, there were instances in which a backhoe or dump truck was used on the Town's property, which is behind his property.

Conclusion

The purchase of the locks and the use of employees on private property were reported to the District Attorney. The District Attorney issued a letter to the mayor citing these issues, making some recommendations to the Town Board and indicating use of public employees and equipment on private property "is an improper use of those resources."

Since this issue was reported to the District Attorney and investigated by the Okmulgee County Sheriff's Office, we did not address this matter any further.

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Allegation #3 – Town funds were used to purchase surveillance cameras that were placed on private property.

This allegation stems from a concern that surveillance cameras purchased with Town funds were placed on Mayor Deckard's private property and private property belonging to a town employee.

On May 14, 2012, the Town expended \$757.00 on two surveillance cameras and a "2YR ADH PLAN" and on May 16, 2012, two monitors were purchased with one year replacement plans for \$210.00.

The July 12, 2012, minutes reflect under new business:

In New Business: Deckard explained to the council and all who were present that the Town had purchased cameras for Crime prevention.

Although the program appears to be open to the public, town officials confirmed cameras have been installed for only two individuals, Mayor Deckard and one other town employee.

We interviewed town officials to determine the procedures for distributing the systems and whether the public was notified of their availability.

Based on interviews, the availability of the surveillance systems were communicated to the public at the July 12, 2012, board meeting and by word of mouth.

To the Citizens of the Town of Dewar,

The Town has recently purchased cameras for crime prevention. If you have a problem area around your house or neighborhood where you suspect any illegal activity is going on, call us at Town Hall and the Town Council and a representative of the Town will determine if the cameras will be a benefit to your neighborhood. If we catch someone doing something illegal, they can and will be prosecuted to the full extent of the law. This program has already begun, and in the areas where it has been used, we have seen a decrease in complaints concerning speeding, littering, vagrancy, and curfew violations. We feel this will benefit our Town and our citizens tremendously.

Police Chief Watkins, who is responsible for distributing the surveillance systems, indicated when incidents are reported to him, he informs the victim of the availability of the surveillance systems.

According to one official, a surveillance system was placed on Mayor Deckard's property for two reasons: one to test the system, the other was to catch vandals in the act. According to Watkins, after a citizen's request for a system, the mayor's system was immediately removed. Watkins added the citizen later changed their mind on wanting a system. During our fieldwork, this camera was at city hall.

A town official indicated that citizens can sign up for the program and are required to sign a contract before the system is installed. We were provided a list consisting of six citizens, interested in surveillance systems.

On June 12, 2012, an employee signed a contract for the installation of the second system. At the time of our fieldwork, the system remained on the employee's property and officials were in the process of attempting to relocate systems. Subsequent to our fieldwork, Chief Watkins indicated one of the systems had been relocated to another citizen's property.

Allegation #4 – The Town is violating the Public Competitive Bidding Act.

There appeared to be some confusion concerning the meaning and the requirements of the Public Competitive Bidding Act of 1974. The Act requires competitive bidding for construction projects exceeding \$50,000.

According to, **61 O.S. § 103A:**

Unless otherwise provided by law, all public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder, by open competitive bidding after work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.

The issue presented to us was a generic concern over the sale of surplus items and the fact that the items were not bid. Since the sale of surplus items does not pertain to the Public Competitive Bidding Act, we addressed the sale of surplus property under Objective VI of this report.

We did, however, review expenditures for fiscal years 2010 and 2011 for large construction projects. We found one project, the Wastewater Collection System Improvement project, was subject to competitive bidding requirements. Documentation showed that the project was competitively bid, as required by **61 O.S. § 103(A)**.

Finding

Purchase order documentation should be improved.

We judgmentally selected a sample of 25 expenditures and tested approval signatures and proper documentation. The Town is using a fairly standard version of a municipal purchase order that has several signature lines: “purchasing” officer or department head, a “certification” that the goods or services purchased was “a just and true debt” of the Town, and lines for the signatures of the town board, including the mayor. None of the purchase orders reviewed had any certifying or approving signature by any town official.

A few did not have an itemized statement or invoice attached and one \$2,500 payment to a vendor had a statement filed to document the payment, but with no corresponding purchase order. Purchasing documentation is often an issue or problem in small public entities, so these observations are not unique to the Town.

Title **62 O.S. § 310.1** includes the following:

The appropriate officer shall attach the itemized invoice together with delivery tickets, freight tickets or other supporting information to the original of the purchase order and, after approving and signing said original copy of the purchase order, shall submit the invoices, the purchase order and other supporting data for consideration for payment by the governing board. All invoices submitted shall be examined by the governing board to determine their legality. The governing board shall approve such invoices for payment in the amount the board determines just and correct.

Title **62 O.S. § 310.1a** states in full:

The officer, deputy or employee receiving satisfactory delivery of merchandise shall acknowledge such fact by signing the invoice or delivery ticket and *no purchase order shall be approved for payment by the governing board unless the required signed invoices or delivery tickets are attached thereto.*
[emphasis added]

The Dewar Town Code (previously cited) authorized the mayor to approve purchases of \$1000 or less, without board pre-approval, but as noted above, none of the purchase orders of any amount in our sample had a signature approval.

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Recommendations We recommend the town board consult with legal counsel to determine the legality of security cameras purchased with public funds being placed on private property for “crime prevention.”

The Town’s legal counsel should also review **Chapter 5, Section 1-5-1, Paragraph B (1)** of the **Dewar Town Code** and determine how to modify its language to avoid potential Open Meeting Act violations.

We recommend procedures be implemented to ensure the board members’ signatures are included on purchase orders documenting their approval, that attached invoices, statements, and receipts have the signatures of department heads or other employees with firsthand knowledge of the transaction to document the goods or services were received by the Town and ensure all required documentation is attached to purchase orders.

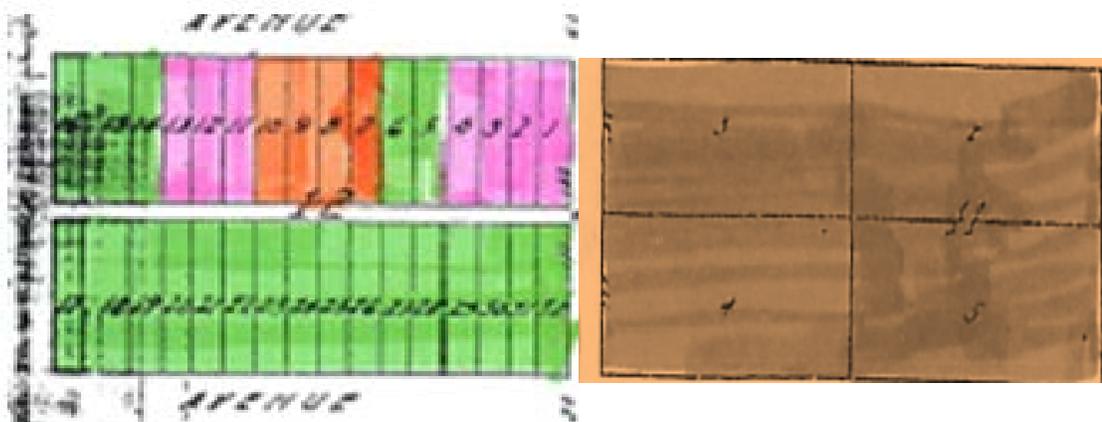
Objective III. Review possible irregularities concerning the purchase of land to build a “water” park.

Background

There were two concerns related to the land purchased to build a “water park.” It was alleged that a local business owner offered to lease property to the Town for one dollar for a 100 year lease. Instead of taking the offer, the Town purchased land adjacent to the property owned by the mayor.

The implication was that the mayor would ultimately receive sewer services since his property was adjacent to the “water park” land, thereby increasing his property value. Instead of using land for \$1.00 for 100 years, it was also alleged that the land purchased for the “water park” had been condemned by the EPA.

Shown below is a plat map which includes the land intended for the future park site:



From board minutes and documentation provided, we prepared the following timeline of events pertaining to land acquired for the town park:

- On March 10, 2011, both the Town Board of Trustees and DPWA Board voted to locate and/or purchase property for the park.
- On May 9, 2011, the DPWA purchased Lots 2-4 and Lot 5 less S. 15’ Block 11 of the “Robinson property” in Henryetta Townsite (highlighted in brown).
- On May 12, 2011, the DPWA donated the “Robinson property” to the Town of Dewar.

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- On June 9, 2011, the town board voted to use the “Robinson property” as a park.
- On July 14, 2011, the DPWA voted to approve the purchase of Henryetta Townsite, Lots 7-10, Block 12 (highlighted in orange).
- On August 8, 2011, the Town of Dewar purchased Lots 7-10, Block 12 of Henryetta Townsite.
- A Town letter dated August 25 to a local business owner, offered \$1,000 per lot for Lots 1-4 and 11-13, Block 12 (highlighted in pink).
- On September 15, 2011, Mayor Deckard donated the use of Lots 5, 6, 14, 15, and 16 of Block 12 in Henryetta Townsite (top row highlighted in green). The bottom row, highlighted in green, is also land owned by Mayor Deckard.
- On September 15, 2011, the local business owner submitted a counter offer, which expired on September 23, 2011, to sell seven lots in Henryetta Townsite at \$2,000 per lot.

Finding

Allegation #1 - The town purchased land for the water park when land could have been acquired for one dollar on a 100 year lease.

An interview with Mayor Deckard and a review of board minutes indicated the land was acquired for a city park with a pavilion and walking trails and was not intended for a water park as purported. Mayor Deckard also stated there were no plans to bring sewer services to the park.

Lots numbered 1-4 and 11-13 of Block 12 (highlighted in pink) are owned by a local business owner. According to Mayor Deckard, the one dollar for 100 years lease offer never happened. The mayor had approached the owner to see if the owner would donate the lots in exchange for naming the street leading to the park after the owner.

The private land owner asserts there *was* an offer for a 100 year lease for his land to the Town, but the Town was not interested in leasing, so there is some disagreement over whether there was ever that specific “lease” offer discussed.

There was an apparent Town offer in August 2011 of \$1,000 per lot (\$7,000 total) to purchase the private owner’s lots in Block 12. The letter from the Town is dated August 25. In a September 15 letter, the owner acknowledges the Town’s “letter” and countered with a \$2,000 per lot offer.

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On the same date (September 15, 2011) as the counter offer, Mayor Deckard donated the *use* of lots numbered 5, 6, 14, 15, and 16 (top row highlighted in green), but NOT the ownership to the Town for the proposed park. The hand written document, which was signed by Mike Deckard as the private land owner and attested by the deputy town clerk, stipulated several conditions, depending on the future use or non-use of the lots for park purposes and setting a maximum value of \$1,000 for the potential sale or donation of the lots to the Town.

Conclusion

We could not sufficiently substantiate the issue of whether there was a specific lease offer on the table with regard to the local business owner's property. The lots purchased by the Town and the donated "use" of the mayor's lots (as indicated in the handwritten document) *bracket* the lots owned by the local business owner on both sides.

Therefore, from the beginning, it appeared the intent of the Town was to acquire other properties for the proposed park *in addition* to, rather than *instead of*, the local business owner's lots. We concluded there was no substantiation for the concern that the Town had somehow wasted an opportunity for acquiring property rights at a minimal cost to the Town and opted to acquire other property *instead*, which was the allegation presented to us.

Finding

Allegation #2 - Land acquired for the park was condemned by the EPA.

The Environmental Protection Agency (EPA) referred to in the allegation *funded* an environmental assessment that was done by the Oklahoma Department of Environmental Quality (DEQ). We obtained an inspection report submitted by DEQ dated December 19, 2011. According to the DEQ report, an assessment was performed addressing environmental conditions in respect to "*Henryetta Townsite 1 Block 11 Lots 2, 3, 4, 5 less the south 15' of Block 11 and Block 12 lots 1 through 16*". The land described in the background section of this objective, shows the land inspected by DEQ included lots the Town has acquired for the proposed park site.

The report submitted by DEQ did **not** show that the land was condemned; however, the report did indicate that some clean up would be necessary. The proposed park area sits on land "adjoining properties...of the Eagle Picher Lead Co..." which operated a smelting business from 1916 until 1969, according to DEQ's report.

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The report provided in relevant part:

Due to the past use of the property and potential contamination found on the subject property, the environmental professionals working on this site believe that cleanup of lead and other heavy metals will be necessary.

We interviewed DEQ officials who indicated that through their title search of the property, they had determined the land had **not** been condemned. This allegation was not substantiated.

Recommendation No recommendation is necessary.

Objective IV: Review alleged accumulated debt owed to the City of Henryetta for water supply.

Background

The Town of Dewar purchases wholesale water from the City of Henryetta for resale to the residents of Dewar. It was alleged that the Town of Dewar had accumulated a debt in excess of \$250,000 owed to the City of Henryetta for the purchase of its water supply.

Finding

We obtained the customer account history for the Town of Dewar from the City of Henryetta for the period January 2010 through September 2012. Based on the account history provided, the Town of Dewar paid the amount owed in full each month for the period we reviewed. The account showed a -\$0- balance owed on September 26, 2012.

In addition, we asked Kimberly Wilbourn, deputy town clerk, to provide us with invoices and cancelled checks for payments to the City of Henryetta for the period of January 2009 through December 2011. Ms. Wilbourn was able to provide the requested documents and we reviewed the documentation provided. The Town of Dewar paid the full invoiced amount each month during the 36 month period reviewed, corroborating the customer account history provided by the City of Henryetta.

Conclusion

There was no evidence that the Town of Dewar owed the City of Henryetta any money for an overdue bulk water bill, especially not a balance *in excess of \$250,000*. The records of both the City of Henryetta and the Town of Dewar indicated the Town's bills for bulk water supply were and are being paid routinely and on time.

We consider this allegation to be refuted and without basis.

Recommendation

No recommendation is necessary.

Objective V. Review transfers between town funds and/or departments.

Background

There were three allegations or concerns related to this objective. It was alleged that funds were transferred from the general fund, police department, and several other funds, to finance the purchase of the land for the park. It was also alleged, the Town may have obtained a grant to purchase the land.

There was also a concern related to funds transferred from OMAG to the general fund.

Findings

Allegation #1 - Funds were transferred to purchase the land for the park.

On March 29, 2011, the DPWA issued check number 3063 in the amount of \$1,000 in earnest money for the purchase of land for the site of the future park. On May 9, 2011, the DPWA issued check number 3102 in the amount of \$9508.19 for the final payment plus closing costs.

On June 27, 2011, the Town of Dewar purchased a second tract of land to be used for the future park. On June 27, 2011, the Town of Dewar issued check number 5294 in the amount of \$1,000 in earnest money for the property. On August 4, 2011, check number 5375 was issued from the Town of Dewar in the amount of \$6,755 for the final payment plus closing costs.

According to the July 14, 2011 meeting minutes, the DPWA voted to purchase the second tract of land; however, the payment was issued from the Town of Dewar's general fund. A town official indicated this was a mistake and the land should have been purchased from the DPWA.

We reviewed board minutes, police department transactions, and bank reconciliations for transfers. The transfers noted were unrelated to the land purchases for the new park.

Conclusion

The initial land for the park was purchased with DPWA funds, and we found no documentation indicating any funds were transferred to the DPWA to finance the purchase of the park. Apparently, the purchase of the second piece of property was inadvertently paid from the Town's general fund.

We were not able to substantiate the allegation regarding improper transfer of funds for the land purchases.

Allegation #2 – The Town may have received a grant to purchase the land.

We reviewed 2011 financial records and meeting minutes for both the Town of Dewar and DPWA and found no documentation indicating a grant was obtained to purchase land for the park.

There appeared to be no substantiation for this “allegation.” We observed that even if grant funds had been used to purchase the property, there would be no violation of law or contract, unless the purchase of the proposed park property was not the contracted and approved purpose for the grant funds.

Allegation #3 - Transfer from OMAG to the general fund.

The Oklahoma Municipal Assurance Group (OMAG) provides life, health, liability, workers compensation, and property insurance coverage to municipalities.

This allegation appears to stem from board meeting minutes in which the trustees voted to remove funds from OMAG.

For example the November 13, 2008, minutes read:

Goodman made a motion to approve removing Escrow money (\$15,000) from OMAG (worker’s comp) to be put in General Account. Powell seconded. Vote aye: Goodman, Neighbors and Powell.

We contacted officials with OMAG for an explanation of the escrow process for workers compensation premiums paid for coverage of Town employees. According to the OMAG officials, a portion of the workers compensation premium is deposited to the loss fund, which is set aside to pay claims.

After a two year period, the municipality has the option to apply the balance towards their premium, receive a check, or deposit the amount in an escrow account. The escrow account is an account held by OMAG which draws interest for the municipality. Municipalities may draw against the escrow account by either receiving a check or applying the amount toward their premium.

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We obtained the escrow activity for Town of Dewar from November 30, 1993 to June 11, 2012. We reviewed the documentation and receipts obtained from OMAG and Town of Dewar and found no documentation indicating that \$15,000 was removed from escrow and deposited with the Town.

The activity showed deposits to the escrow account from the loss fund have been applied towards premiums since 2008. When asked, Mayor Deckard did not recall this particular board decision. We question whether this was actually anything more than an error in the minutes or a mistaken description of the action by the board; nonetheless, we did not find anything improper regarding the use of the escrow account.

Another example was the May 12, 2011, DPWA meeting minutes which read:

Powell made a motion to use \$5,915.66 out of Escrow account with OMAG to pay Workers Comp. for July 1st, 2011 to June 30th, 2012. Durbin seconded. Vote aye: Powell, Neighbors, Turner, Durbin and Deckard.

According to records obtained from OMAG, the \$5,915.66 reflected in the minutes above was applied towards the worker's compensation premium.

On June 11, 2012, the remaining \$6,309.45 balance in the escrow account was applied toward the most recent premium.

Conclusion We found nothing improper pertaining to the OMAG escrow account.

Recommendation We recommend the DPWA reimburse the Town of Dewar for the purchase amount of the second tract of land that was approved by the DPWA, but mistakenly paid by the Town general fund.

Objective VI: Review possible irregularities in the disposition of surplus property.

Background

There were two parts related to this allegation, which were addressed separately. It was alleged that surplus property is only offered to employees and board members without providing the public the opportunity to purchase the property through a bidding process or public auction.

It was alleged that in September 2011 several weapons were stolen from the police department's evidence locker. Employees were required to sign a "confidentiality agreement," and there was no mention of the theft in the board minutes.

Findings

Allegation #1 - The Town does not solicit bids or hold auctions for the sale of surplus property.

Title 62 O.S. § 335 requires:

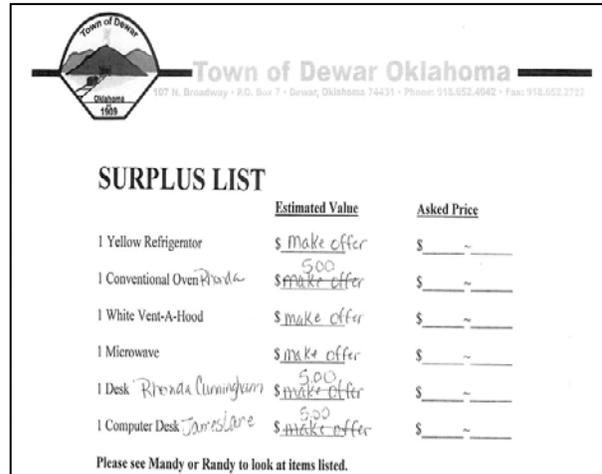
When any money is due any county, city, town or school district in this state from *sale, lease or rental or any public property*, or royalty, or for compensation for service of public employees or other purpose, it shall be paid over to the lawful treasurer thereof. [emphasis added]

However, there does not appear to be a statutory guideline in Title 11 "Cities and Towns" or Title 62 "Public Finance" addressing how a municipality should or may dispose of its surplus property.

We would normally obtain the policy for the sale and/or disposal of surplus property and determine if the policy was being followed. However, through a review of policies and an interview with the deputy town clerk, we determined that there apparently was no written policy for the sale or disposal of surplus property. The Town Code is silent concerning this issue.

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According to the deputy town clerk, the practice has been to post notices listing the surplus items at the Midway Convenience Store, town hall and in the school superintendent's office for 10 days. An example of a surplus list is shown right. If no bids were received, then items were offered first to employees and then board members.



From our review of board minutes, we did find cases in which the board voted to surplus or sell property. We cite the following board minute examples:

On June 12, 2008

Durbin made a motion to surplus the goat that was signed over to the Town of Dewar. Neighbors seconded. Vote aye: Neighbors, Durbin and Deckard.

On July 14, 2011

New business. Sell surplus list to employees first then the Town the Council.

On January 13, 2011

Powell made a motion to sell 1998 Ford Crown Vic... and the 2006 Dodge Charger...after putting on surplus list and selling both vehicles after stripping all the accessories off both vehicles with the accessories to be sold separately. Neighbors seconded. Vote aye: Neighbors, Powell and Deckard.

On April 14, 2011

Powell made the motion to surplus the existing cabinets, stoves, ovens, etc. located in the Dewar Community Center. Durbin seconded. Vote aye: Neighbors, Powell, Durbin, Turner and Deckard.

In addition to the generic concern related to the sale of surplus property, we were also provided a specific issue involving a purported storage building. It was alleged that the storage building had collapsed from

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heavy snow, was declared surplus and was placed on Mayor Deckard's property.

Based on an interview with the deputy town clerk and a review of board minutes, the storage building in question was actually three (3) carport type structures.

On February 12, 2009, the board voted to surplus three carports destroyed in an ice storm. The minutes reflect:

Powell made a motion to surplus 2 benches that set in front of Town Hall and also the 3 carports that were destroyed in the ice storm. Goodman seconded. Vote aye: Neighbors, Goodman, Powell and Deckard.

According to the deputy town clerk, the Town built another structure from the proceeds of an insurance settlement. The metal from the original structures was moved to the mayor's property to provide space for the construction of the new structure. After the new structure was constructed, the metal was moved back to the storage lot on town property. We visually verified a stack of metal on town property that was purportedly from the structures destroyed by the ice. There are plans to use the metal to construct a dog kennel for animal control.

Conclusion

We found no statutory bidding or auction requirement for the sale of municipal surplus property. In the absence of a Town policy, there were no written guidelines that could be used as a basis to determine if proper procedures were followed. Because of the lack of a written policy or procedures, there appeared to be some inconsistencies with the disposition of surplus property.

For example, there were cases in which items were surplus and sold and other cases in which items were surplus and then were retained to be used by the Town, such as the metal from the destroyed carports. From the minutes, there were cases in which we couldn't determine whether surplus items were intended for sale or considered "junk" for disposal.

Allegation #2 - Weapons were missing from the inventory of the police department.

Through interviews, we confirmed that firearms were discovered missing from the police department sometime in 2010. The missing firearms were purchased with grant funds from the U.S. General Services Administration (GSA).

We attempted to contact the former police chief, who was employed at the time of the discovery of the missing firearms, but we were unsuccessful. The current police chief, Steve Watkins (hired August 2012), was unable to locate any records pertaining to the incident, including any documentation that identified the specific firearms missing or any type of reliable inventory.

We contacted a representative from the Oklahoma Office of Management and Enterprise Services (OMES) who opened an investigation regarding the missing firearms on September 13, 2010. The OMES representative began the investigation, which was turned over to the Office of Inspector General for the GSA. As a result of the investigation, the Town of Dewar was required to repay \$751 to GSA for the missing firearms.

The only possible reference to weapons missing from the police department “evidence locker” was an incident described by Chief Watkins that occurred in 2009, prior to Watkins becoming police chief. A suspect had a gun confiscated. This gun supposedly was put into the evidence locker but later could not be found. The town was ordered by the court to buy a new weapon for the individual.

The August 11, 2011, board minutes reflect that employees were asked to sign a “confidentiality form.” The “confidentiality agreement” that employees were required to sign was actually labeled a “suppression order,” although the distinction between the two terms is uncertain. In an interview with the deputy town clerk, the suppression order pertained to a child abuse case filed with the police department in which some information had been “leaked” to the public by one Town employee.

By signing the suppression order, the Town’s employees agreed not to discuss Town business with non-employees or media outlets, unless authorized by the town board. The signing of the 2011 suppression order appeared to be completely unrelated to the two missing firearms issues from 2009 and 2010.

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Conclusion

We consider the first allegation to be partially substantiated. The Town needs to implement a written policy, preferably added to the Town Code, to govern the declaration of surplus or junk property and the method(s) of disposal of such property.

Concerning the second allegation regarding missing firearms, we believe the allegation to be unsubstantiated and a combination of various issues that were misconstrued and misunderstood.

Furthermore, both missing firearms issues had already been addressed. The 2009 “evidence locker” missing gun was apparently addressed in a court decision, and the 2010 missing police department firearms was addressed by a combined state and federal investigation that resulted in the Town reimbursing the federal government for the missing weapon(s).

Recommendations

We recommend the board establish a written policy on the sale and disposal of surplus property. For items that could have some fair market value, the policy should include method(s) of disposal giving the public equal opportunity to purchase such items, by sealed bid or open public auction, to determine what the “fair market value” may be.

We recommend the police department maintain a perpetual inventory of departmental equipment and assets, and separately, maintain a perpetual inventory of the property and/or evidence items secured in the police department’s evidence locker.

Commendation

The current police chief has contacted the Oklahoma State Bureau of Investigation for assistance in performing an inventory of the evidence locker. We concur with this decision.

Objective VII. Review alleged theft of funds from the Dewar Volunteer Fire Department fundraiser.

Background

This allegation stems from a concern that funds collected by the volunteer fire department for the “Fill-the-Boot” program for the Muscular Dystrophy Association (MDA) became missing and were never recovered.

This concern specifically relates to the funds collected in September 2011, around the Labor Day holiday. It was alleged the funds disappeared from the evidence room at town hall, and a police report was never filed for the theft.

Finding

We interviewed a firefighter, the mayor, and deputy clerk, none of whom could recall a case in which proceeds from an MDA fundraiser were ever placed in the evidence room or locker at town hall.

We obtained canceled checks issued to MDA showing the following amounts were donated to the organization:

- Dewar Volunteer Firefighters Association (DVFA) check #337, issued 9/25/09, payable to MDA in the amount of \$3,934.68, cleared the bank on 9/29/09.
- DVFA check #345, issued 9/21/10, payable to MDA in the amount of \$7,064.50, cleared the bank on 9/24/10.
- DVFA check #1014, issued 9/16/11, payable to MDA in the amount of \$10,935.69, cleared the bank on 9/19/11.

We also obtained a copy of a letter from MDA thanking the Dewar Fire Department for their 2011 donation of \$10,935.69. Copies of letters from MDA were also obtained for 2009 and 2010.

We consider this allegation refuted and without basis.

Recommendation

No recommendation is necessary.

Objective VIII. Review allegations of nepotism among town personnel.

Background

This allegation related to a concern that town employees were related to each other, specifically that the custodian is the deputy town clerk's daughter.

Nepotism is addressed in **21 O.S. § 483**, which provides:

It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint and furnish employment for any person whose services are to be rendered under his direction and control and paid for out of the public funds, and who is related by either blood or marriage within the third degree to any other executive, legislative, ministerial or judicial officer when such appointment is made in part consideration that such other officer shall appoint and furnish employment to any one so related to the officer making such appointment.

Also, according to **21 O.S. § 487**:

Under the designation executive, legislative, ministerial or judicial officer as mentioned herein are included...mayors, clerks, councilmen, trustees, commissioners and other officers of all incorporated cities and towns...

The ***Title 11*** statute for municipal nepotism and dual office holding reads, in part:

No elected or appointed official or other authority of the municipal government shall appoint or elect any person related by affinity or consanguinity within the third degree to any governing body member or to himself or, in the case of a plural authority, to any one of its members to any office or position of profit in the municipal government.

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Finding **We found no cases of nepotism, as defined by the above statutes.**

The deputy town clerk confirmed that the custodian is her daughter. However, based on the statutes cited above, nepotism does not appear to apply in this case. According to our final interviews, the daughter was initially hired as a part-time custodian by the mayor, and recently was moved to full-time status with both secretarial and custodial duties by action of the board.

Through interviews with board members, we found no other indication that the mayor or any of the current board members were related to any Town employees.

We were not able to substantiate this allegation.

Recommendation No recommendation is necessary.

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.



OFFICE OF THE STATE AUDITOR AND INSPECTOR

2300 N. LINCOLN BOULEVARD, ROOM 100

OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV