SPECIAL AUDIT

TOWN OF RYAN RYAN UTILITIES AUTHORITY

Fiscal year 2005 & February 1, 2008 through February 28, 2009





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

TOWN OF RYAN

RYAN UTILITIES AUTHORITY

SPECIAL AUDIT REPORT

FISCAL YEAR 2005 & & FEBRUARY 1, 2008 THROUGH FEBRUARY 28, 2009 2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

April 14, 2011

Citizens and Petitioners Town of Ryan, Oklahoma

Transmitted herewith is the Special Audit Report of the Town of Ryan and the Ryan Utilities Authority. We performed our special audit in accordance with the requirements of **74 O.S. 2001**, § **212(L) (1,7)**.

A report of this type tends to be critical in nature. Failure to report commendable features in the accounting and operating procedures of the entity should not be interpreted to mean that they do not exist.

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

Sincerely,

GARY A. JONES, CPA, CFE

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OKLAHOMA STATE AUDITOR & INSPECTOR

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BOARD OF TRUSTEES

(As of February 28, 2009)

James Ellsbury	Mayor
Sandy Farris	
Deonna Charmasson	Trustee
John Dale	Trustee
Carol Wyler	Trustee

Town Clerk Jeanne Fuller

Town Treasurer Dianne Williams



Oklahoma State Auditor & Inspector

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

Mr. John Dale, Mayor Town of Ryan 614 Washington Street Ryan, OK 73565

Dear Mr. Dale:

Pursuant to the Citizens Petition request and in accordance with the requirements of **74 O.S. 2001, § 212 (L) (1,7)** we performed a special audit, with respect to the Town of Ryan and the Ryan Utilities Authority, for Fiscal Year 2005 and the period February 1, 2008 through February 28, 2009.

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

Because the above 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 Town of Ryan or the Ryan Utilities Authority for Fiscal Year 2005 and the period February 1, 2008 through February 28, 2009.

Further, due to the test nature and other inherent limitations of a special audit report, together with the inherent limitations of any internal control structure, there is an unavoidable risk that some material misstatements may remain undiscovered. This report relates only to the accounts and items specified above and do not extend to any financial statements of the Town of Ryan and the Ryan Utilities Authority taken as a whole.

This report is intended solely for the information and use of the Town of Ryan and the Ryan Utilities Authority and should not be used for any other purpose. This report is also a public document pursuant to the **Oklahoma Open Records Act** (51 **O.S. 2001, § 24A.1** *et seq.*), and shall be open to any person for inspection and copying.

Sincerely,

GARY A. JONES, CPA, CFE

OKLAHOMA STATE AUDITOR & INSPECTOR

March 24, 2011

INTRODUCTION

The Town of Ryan, Oklahoma is organized under the statutory town board of trustees form of government, as outlined in 11 O.S. § 12-101, et seq.

11 O.S. § 12-101, states:

The form of government provided by Sections 12-101 through12-114 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 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 Ryan Utilities Authority (RUA or Authority) is a public trust established under **60 O.S. § 176** *et seq.* The Ryan Utilities Authority operates a utility service providing electricity, water, sewer, and garbage service to the residents of the Town of Ryan. 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 annually. In addition, the Town prepares an annual financial statement, presenting the financial condition of the Town at the close of the previous fiscal year, in accordance with the requirements of **68 O.S. § 3002**.

The Office of the State Auditor and Inspector conducted a special audit of the records of the Town and Authority, primarily those records relating to the objectives expressed by the citizen's petition.

The results of the special audit are in the following report.

FIDUCIARY RESPONSIBILITY

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

I. OBJECTIVE	Review utility payments of Board Members.
BACKGROUND	One of the primary concerns of the petitioners was for us to determine if members of the Ryan Utility Authority (RUA) had actually paid their utility bills during a period believed to be in February or March of 2004 (Fiscal Year 2003-04).
	When we reviewed the utility billing records, we determined the actual time frame when the Board Members' past due bills became an issue was March, 2005 (Fiscal Year 2004-05) rather than February or March, 2004.
FINDINGS	Three Board members accumulated over \$13,000 in unpaid utility bills, prior to voting on a "grace period" that permitted those same Board members to pay the bills without having to pay the accumulated penalties.
	During a special meeting held March 15, 2005, the RUA Board voted to allow a "grace period" in which RUA customers could pay past due bills without having to pay penalties. The meeting minutes reflect the following motion, second, and vote:
	DISCUSS AND OR ACTION ON DELINQUIENT UTILITY BILLS. MOTION BY BUSSEY AND SECONDED BY ELLSBURY: ALL PAST DUE BILLS PAID IN FULL BY APRIL 4 TH , 2005 PENALTIES WILL BE WAVED. ALL PAST DUE BILLS NOT PAID BY MAY 1 ST , 2005 WILL BE SUBJECT TO CUT OFF. ALL PREVIOUS WRITTEN

At the time of the "grace period" vote, three of the five RUA Board Members had outstanding RUA utility balances totaling \$13,434.06 shown in the table on the following page:

ARRANGEMENTS WILL BE HONORED AS WRITTEN BEFORE APRIL 15^{TH} , 2005. BUSSY, CHARMASSON, COX,

ELLSBURY, PEWITT YES [emphasis in original]

Date	Account	Board Member	Account Balance	Total Balance
3/11/2005	1871	Ely Charmasson	\$3,846.09	\$3,846.09
3/11/2005	2164	Tammy Cox	\$1,051.77	
3/14/2005	2163	Tammy Cox	\$4,127.03	\$5,178.80
3/11/2005	504	Eddie Pewitt	\$3,533.96	
3/11/2005	505	Eddie Pewitt	\$875.21	\$4,409.17
		Total	\$13,434.06	\$13,434.06

During the March 15 through April 4, 2005 grace period, Board Members Charmasson and Pewitt paid their outstanding balances and, *as a result of their vote to allow a grace period*, did not have to pay their past due penalties of \$964.73 and \$757.60, respectively.

Board Member Cox paid her outstanding balances on two accounts on August 2, 2005, outside of the grace period. She *did* pay the outstanding penalty amounts that had been assessed to her account.

We observed that the above Board members had been permitted to accumulate the unpaid balances over a period of time, an opportunity not afforded to other residents/utility customers of the Town/Authority.

The practical effect of the unwritten Board policy to not enforce its "cut off" procedure on Board members was to "loan" those Board members over \$13,000 of Authority revenues. The practical effect of the "grace period" was to make the "loans" interest free.

We obtained RUA payment records for the March 15 through April 4, 2005 grace period. From the payment records, we reviewed the customer accounts for all payments of \$200.00 or more to determine if other RUA customers benefited from the Board's action.

We found payments of \$200.00 or more had been made on 27 accounts. Of the 27 accounts we found, other than the two Board Members, only two of those 27 accounts would have qualified for the waiving of penalties.

The total number of utility accounts for the Ryan Utilities Authority runs approximately 500. Again, it appears the three-week (Mar 15 – Apr 4) "grace period" could only help five (5) individuals, basically 1% of RUA customers, of whom 3 of the 5 (60%) were on the Board.

The fact that so few utility customers could have received a significant benefit from the "grace period" further illustrates the unique status the Board members had afforded to themselves in accruing over \$13,000 in unpaid bills without having their utility services "cut off".

One RUA customer (account #2345) received a waiver of \$17.80 in penalties while another customer (account #1320) paid off their balance, including a penalty amount of \$14.79 that should have been waived.

Subsequent to the Board's grace period vote, we identified the payments made by the Board Members and traced those payments to RUA bank deposits. The payments we reviewed, which were related to the large past due balances, included the following:

Date	Act#	Board Member	Account Name	Payment	Penalties Waved	Deposited
3/31/2005	1871	Ely Charmasson	Eli & Donna Charmasson	\$2,811.57	\$964.73	4/1/2005
8/2/2005	2163	Tammy Cox	Tammy Cox	\$4,843.79	\$0.00	8/2/2005
8/2/2005	2164	Tammy Cox	Tammy Cox	\$1,239.06	\$0.00	8/2/2005
3/23/2005	504	Eddie Pewitt	Sherry Pewitt	\$2,824.37	\$709.59	3/23/2005
3/23/2005	505	Eddie Pewitt	Kut & Kurl Sherrie's	\$827.20	\$48.01	3/23/2005

Another, less egregious, action by the Board, took place in November 2006 and involved credits given for night light charges.

While reviewing RUA meeting minutes, we discovered a similar occurrence in November 2006. The November 7, 2006, minutes reflect the RUA Board voted on and approved giving Board Members Grace Thorn and James Ellsbury credits of \$297.00 and \$594.00, respectively for "night light charges."

Board Member Ellsbury was absent from this meeting and consequently did not participate in the vote dismissing \$594.00 in charges on his account.

Board Member Thorn was present and did vote in favor of her \$297.00 charge off.

- DISCUSS AND OR ACTION ON UTILITY DEPARTMENT MATTERS:
 a. ELECTRIC DEPT.
 - 1. REFUND OF NIGHT LIGHT CHARGE FOR:
 - a. GRACE THORN. MOTION BY HARSHAW AND SECONDED BY DUNCAN TO CREDIT GRACE THORN'S UTILITY BILL FOR 3 YEARS OF 1 NIGHT LIGHT CHARGE OF \$8.25 (\$297.00) DUNCAN, GILLUM, HARSHAW, THORN YES
 - b. JAMES & PAULA ELLSBURY. MOTION BY HARSHAW AND SECONDED BY DUNCAN TO CREDIT JAMES & PAULA ELLSBURY'S UTILITY BILL FOR 3 YEARS OF 2 NIGHT LIGHT CHARGES AT \$8.25 PER NL (594.00) DUNCAN, GILLUM, HARSHAW, THORN YES

During the same meeting four other ordinary residential accounts were considered. The Board voted to allow credits of \$297.00 on two accounts and voted to take "no action" on the other two non-board member accounts.

Conclusion:

Although we were able to determine the Board members' payments on the past due accounts were collected and deposited in the RUA bank account, we question if the vote taken by the Board and subsequent benefits given to some board members may have violated **21 O.S. § 341** which states, in part:

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

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

In addition, we question if the Board's vote may have also been contrary to the provisions of the Constitution of Oklahoma, Article X § 11 which states:

The receiving, directly or indirectly, by any officer of the State, or of any county, city, or town, or member or officer of the Legislature, of any interest, profit, or perquisites, *arising from the use or loan of public funds* in his hands, or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office. (emphasis added)

RECOMMENDATIONS

- 1. The Town/RUA Board should carefully evaluate future policy decisions for potential conflicts of interest and/or the "appearance of impropriety," and keep in mind its fiduciary duty to place the interests of the Town and its public trust, ahead of personal considerations.
- 2. The RUA Board should review the finding in relation to RUA customer account #1320 to determine if a credit should be issued to the account for the \$14.79 in penalties collected during the Board authorized grace period.
- 3. The apparent Board conflict of interest has been referred to the District Attorney for legal review and evaluation to determine what action, if any, may be appropriate.

II. OBJECTIVE Review receipts and deposits of the Ryan Utilities Authority.

BACKGROUND

When a customer makes an RUA payment for water, sewer, electric and/or garbage, that payment is entered into the RUA billing computer system. A report is then generated reflecting the total payments made and the composition (cash and/or check) of the payments being made.

The report, referred to as a "run report" is then reconciled to the cash drawer and the money is deposited into the RUA bank account.

In cases where a customer makes a RUA payment, and does not have a copy of their bill at the time of the payment, a receipt is issued indicating the payment amount and composition of the payment.

PROCEDURES

We performed three tests related to the RUA receipts and deposits. First, we compared the run reports to the bank deposits for the 13 month period February 1, 2008 through February 28, 2009. This testing included verifying the composition and total amounts of bank deposits to the total amounts and composition indicated on the run reports.

Second, we randomly selected 50 receipts and judgmentally selected 25 receipts (all cash) for testing. The purpose of the second test was to determine if the receipted funds are being properly applied to the accounts and are reflected on the run reports.

Third, we selected 25 RUA customer accounts and obtained customer history records for the February 2008 through February 2009 time period. The purpose of this test was to determine that all payments reflected on the customer accounts also appeared on the posting reports, and to determine if improper or questionable adjustments were being made to the accounts.

In addition to the utility billing payments, we also tested 50 meter deposit certificates issued between February 1, 2008 and December 29, 2008, to determine if funds collected for meter deposits were being properly deposited.

FINDINGS

There were no findings as a result of applying these procedures.

RECOMMENDATION No recommendation is provided.

III. OBJECTIVE

Review the separation of the Town and Authority business.

BACKGROUND

The Ryan Utilities Authority was established under 60 O.S. § 176 et seq. to "operate, construct and administer any public works". Although the Town's Board of Trustees also serve ex officio as the Board of the Authority, the Town and the Authority are two distinct and separate legal entities.

Oklahoma State Statutes **60 O.S. § 176-1 A**, states in part:

- A. Except as provided..., a public trust duly created in accordance with the provisions of Section 176 et seq. of this title shall be presumed for all purposes of Oklahoma law to:
 - 1. Exist for the public benefit;
 - 2. Exist as a legal entity separate and distinct from the settler and from the governmental entity that is its beneficiary;
 - 3. Act on behalf and in the furtherance of a public function or functions for which it is created even though facilities financed by the public trust or in which the public trust has an ownership interest may be operated by private persons or entities pursuant to contract.

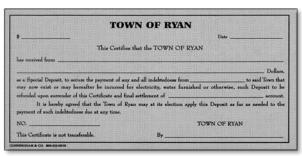
Title **60 O.S.** § **176-1 (D)**, states, in relevant part:

Except where the provisions of the trust indenture or of Section 176 et seq. of this title, or of any other law written specifically to govern the affairs of public trusts, expressly requires otherwise, the affairs of the public trust shall be separate and independent from the affairs of the beneficiary in all matters or activities authorized by the written instrument creating such public trust including, but not limited to, the public trust's budget, expenditures, revenues and general operation and management of its facilities or functions; provided, that either the public trust or the beneficiary may make payment of money to the other unless prohibited by the written instrument creating such public trust or by existing state law. (emphasis added)

During a meeting with the citizen petitioners a concern was expressed with regards to utility deposits having been returned to RUA customers in the form of checks drawn on the Town account rather than the RUA account.

FINDINGS

When deposits for utility services are collected, a receipt is issued with the bold letters "Town of Ryan" shown at the top. Additionally, the funds from the utility deposits



are deposited into an account named "Meter Fund Town of Ryan."

When utility deposits are returned to RUA customers the payments are made with checks from the meter fund which also state "Town of Ryan." This appears to be an accounting/bookkeeping procedure that pre-dates the existence of the Ryan Utilities Authority, which was created in September, 1968. Normally, a service deposit fund would be titled and reported the same as the related operating fund/account, in this case the RUA "enterprise" fund.

The recent audit reports filed by the Town report the RUA as a "component unit" and the "enterprise fund" of the Town, which is appropriate under current financial reporting standards. The "Meter Fund" is accounted for and reported as a "special revenue fund" of the Town.

We also noted the Meter Fund had an "unrestricted" cash balance of \$39,588, as of June 30, 2009. The "unrestricted" designation indicates a possible accumulation of interest revenue and/or a substantial amount of former meter deposits that possibly should have been transferred to the RUA operating account as revenue, but were not for some unknown reason

We also found that the "cut off" policy for utility services was set by ordinance with the heading "AN ORDINANCE OF THE TOWN OF RYAN, STATE OF OKLAHOMA."

However, the minutes reflect the **RUA Board** had voted on and "passed" a Town Ordinance that was signed by the Mayor and Vice-Mayor, **although** the **Town Board minutes recorded no such action being voted on by the Town Board.**

The September 8, 2005 RUA meeting minutes reflect the following:

DISCUSS AND OR ACTION ON APPROVING ORDINANCE 2005-2 AMENDING CHAPTER 16 ARTICLE 1 SECTION 16-6 (UTILITY BILLS DUE WHEN; DELINQUENCY) MOTION BY COX AND SECONDED BY ELLSBURY TO APPROVE ORDINANCE 2005-2 AMENDING CHAPTER 16 ARTICLE 1 SECTION 16-6 (UTILITY BILLS DUE WHEN; DELINQUENCY) COX, ELLSBURY, PEWITT **YES**

Ordinance 2005-2 includes the following language:

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RYAN that Chapter 16, Article 1, Section 16-6 is

hereby amended to change [when] Service will be cut off shall read as follows:

We reviewed the Town Board of Trustee meeting minutes for September 8, 2005 and did not find any reference to Ordinance 2005-2.

According to 11 O.S. § 14-105 provides:

Every ordinance enacted by a governing body shall be entered in an ordinance book immediately after passage. The entry shall contain the text of the ordinance and shall state the date of passage, the page of the journal containing the record of the final vote on its passage, the name of the newspaper in which the ordinance was published, and the date of publication. Compilations or codes of municipal law or regulations need not be enrolled in full in the book of ordinances, but the ordinance adopting by reference or enacting such compilation or code shall be entered and a copy of the compilation or code shall be filed and kept in the office of the municipal clerk.

According to 11 O.S. § 14-106:

No ordinance having any subject other than the appropriation of monies shall be in force unless published or posted within fifteen (15) days after passage. Every municipal ordinance shall be published at least once in full, except as provided for in Section 14-107 of this title. When publishing the ordinance, the publisher or managing officer of the newspaper shall prefix to the ordinance a line in brackets stating the date of publication as "Published _______", giving the month, day, and year of publication.

Although the RUA Board has the authority to address some issues related to the utility services it administers, it does not have the authority to create or vote on utility service policies that must be included in town ordinances. In this instance, the RUA Board approved a "Town Ordinance" that fell under the purview of the Town Board.

Procedurally, there should be a clear and unambiguous division between actions voted by the RUA Board and actions voted by the Town Board. If the Town and RUA do not adequately differentiate between the two boards, one likely result could be Open Meeting Act confusion, inadvertent violations and subsequent OMA based legal challenges to actions taken by one or both boards.

RECOMMENDATIONS

- 1. The Town/RUA Board(s) should consult their audit firm to determine the source(s) of "unrestricted" cash in the Meter Fund and determine what options the Town/RUA may have to utilize the "unrestricted" cash balance.
- 2. The Town and RUA should implement improvements in its agendas and Board minutes to clearly record and report the discussion, decisions and/or actions of each Board as separate and distinct entities, as required by state statutes.
- 3. Proposed changes in utility service policies should be first approved in a resolution passed by the Authority Board, then subsequently confirmed and implemented in a *Town ordinance* approved by the Town Board.
- 4. We also recommend that the Town Board of Trustees adopt procedures to ensure ordinances are properly approved, filed, and adhered to in accordance with Oklahoma Statutes.

IV. OBJECTIVE Review the criteria for the termination of utility services.

FINDING

Town Ordinance 2005-2, approved by the RUA Board, implemented the following in relation to delinquent utility bills:

- 1. Service will be cut off if bill is not paid by the 21st day of the month, an additional charge of twenty-five dollars (\$25.00) will be added for restoring service.
- 2. Bills rendered when service is disconnected shall be due and payable at the time bills are presented or sent to customers.

Ordinance 2005-2 eliminated from the Town Code an older provision that allowed for a hearing related to the termination of utility service. Currently, there are no formal discretionary provisions to address situations which may arise in which a utility customer might be allowed utility service for some period of time beyond the 21st day of the month.

We spoke with the Town Clerk and Town Treasurer, who are also employees of the RUA and administer utility service collections. They stated the informal (and unauthorized) practice has been to allow a utility customer until the 3rd of the next month to pay their utility bills before service is terminated.

Additionally, the customary procedure has been to permit the Clerk and Treasurer some latitude to allow an RUA customer to go beyond the 3rd of the month, if there is some extenuating circumstance, such as a death in the family or a customer having been hospitalized.

The current practice is to allow customers until the 3rd of the month before their utility services are terminated, which does not comply with Ordinance 2005-2. The Town/RUA Board(s) routinely meet on the 1st Thursday of each month and, therefore, meet no later than the 7th of each month.

RECOMMENDATIONS

- 1. The Town/RUA Board should adhere to the Town Ordinances' approved by the Town Board, or modify the policy or ordinance to provide clear guidance for deviations from prescribed deadlines.
- 2. We also recommend that the RUA Board exercise its governing control by having RUA staff members provide the Board with a monthly updated list of delinquent accounts.
- 3. The monthly list would allow for the RUA Board to determine what action, if any, may be required on delinquent accounts during their routine monthly meetings, and in general better monitor the collection process.

DISCLAIMER

In this report, there may be references to state statutes, Attorney General's opinions and other 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

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