



# CIRCUIT ENGINEERING DISTRICT #7 CED #7 COUNTY ENERGY DISTRICT AUTHORITY

## Investigative Audit Report

April 14, 2020

**Cindy Byrd, CPA**  
State Auditor & Inspector

**Circuit Engineering District #7  
CED #7 County Energy District Authority**

**Investigative Audit Report  
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**TO THE HONORABLE DISTRICT ATTORNEYS OF DISTRICTS 2, 3, 4, AND 26**

Presented herein is the investigative audit report of Circuit Engineering District #7 and CED #7 County Energy District Authority.

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 our engagement.

This report is addressed to, and is for the information and use of, the requesting District Attorneys, as provided by statute. This report is also a public document pursuant to the Open Records Act, 51 O.S. §§ 24A.1, *et seq.*

Sincerely,



CINDY BYRD, CPA  
OKLAHOMA STATE AUDITOR & INSPECTOR





**Circuit Engineering District #7  
CED #7 County Energy District Authority  
Investigative Audit Report**

**Why We Performed This Audit**

In accordance with 74 O.S. § 212(H), our investigative audit was conducted in response to a request from the District Attorneys who serve the counties comprising the Circuit Engineering District #7. This included District Attorneys Angela Marsee, Ken Darby, Mike Fields, and Christopher Boring.

**Executive Summary**

- Circuit Engineering District #7 (CED7) and the CED #7 County Energy District Authority (Authority) entered in to a joint-venture agreement, with the primary purpose “to engage in the business of manufacturing and marketing of a proprietary formula road repair and maintenance product.” It was determined that the authorization for the acquisition, construction, and equipping of an asphalt emulsion plant to engage in a business for this purpose is not in compliance with the law. Since neither CED7 nor the Authority has the statutory authorization to engage in the production and selling of road emulsion, the joint venture would also not be statutorily authorized to do so. (Pg. 6)
- A \$2,350,000 loan was obtained by the Authority to proceed with the building of the asphalt emulsion plant. The joint-venture agreement reflected that the financial obligation between the two entities would be shared 50/50. The entities did not comply with the terms of the agreement. The total payback of \$2,677,902.55, was funded approximately 67% from CED7 and 33% from the Authority. (Pg. 7)
- Although the payment of money by CED7 to the Authority is allowable under *60 O.S. § 176.1(D)*, some of the loan payments funded by CED7 were not properly presented to, or approved by, the CED7 board of directors. The payments were included in the board’s consent agenda, not presented as agenda items for full consideration by the board. Loaning funds to the Authority should not have been included in the consent agenda as a routine payment of claims. (Pg. 9)
- Requests, discussions, and votes to implement prepayment plans, assess fees, or charge dues to member counties to support the funding of the emulsion plant and the production of the asphalt emulsion product were presented to the CED7 board over a period of

## Circuit Engineering District #7 Investigative Audit

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several months. However, we found no evidence that any of these funding methods were ever implemented. (Pg. 10)

- CED7 and the Authority were non-compliant with several matters related to the joint venture. A portion of the loan was not properly filed with the Secretary of State's office, funds between the two entities were comingled in violation of the joint-venture agreement, and the agreement was not filed publicly as required by law. (Pg. 12)
- Counties incorporated the specific 7 Oil emulsion product into their term bid listings. This impeded vendors, other than the Authority (7 Oil), from either bidding on the product or it prevented them from bidding in a manner that would comply with bid limitations. (Pgs. 13-16)

Although not prohibited, it was also noted that 7 Oil products were bid at higher amounts in the member counties. This appears to undermine the objective of the joint venture, which was to reduce costs for CED7 member counties. (Pg. 16)

Counties should *not* have limited their bid solicitations to an emulsion produced by only one vendor. Such limitations resulted in restricted, noncompetitive bidding practices. (Pg. 16)

There was also consideration that the 7 Oil emulsion could be presented as a sole-source product. Per an Oklahoma Department of Transportation (ODOT) analysis, the 7 Oil emulsion was not a "proprietary or exclusive formula" and did not constitute a sole-source product, or one to be narrowly bid. (Pg. 17)

- CED7 and Authority revenues were determined to be unrestricted funds, most of which were received as payments for services rendered. These funds were available to be used for the governmental purposes of CED7 (Pg. 18)
- CED7 directly employed the Authority (7 Oil's) personnel in violation of statute. This included eight employees in FY17 and six employees in FY18, resulting in payroll costs of \$182,661 and \$163,798, respectively. According to statute, the financial activity of the two entities should be maintained "separate and independent." (Pg. 20)
- Between 2010 and 2013, almost \$17,000 in payments were made to Executive Director Monte Goucher's family members. (Pg. 21)
- Other notable issues included the improper transfer of property from CED7 to the Authority, Open Meeting violations by the CED7 board, and the improper repayment of loans taken by employees from the CED7 401(a) retirement plan. (Pg. 22-26)

## Background

Pursuant to 69 O.S. § 687.1, counties may “create a circuit engineering district with any other county or counties” to allow county governments to “make the most efficient use of their powers [...] that will accord best with geographic, economic, population and other factors influencing the needs and development of *county government*.”

The original intent of a circuit engineering district included project-focused assistance for its member counties, a shared engineer between counties in an advisory capacity, engineering expertise that counties could not afford alone, help for small, rural counties, and help with a county five-year plan.

In October 1998, 11 counties<sup>1</sup> in the southwestern part of the state formed Circuit Engineering District #7 (CED7).



In October 2010, pursuant to the Oklahoma Energy Independence Act<sup>2</sup>, CED7 created the CED #7 County Energy District Authority (Authority). The Authority is a public trust as provided for in 60 O.S. §§ 176, *et seq.*

Pursuant to the Interlocal Cooperation Act<sup>3</sup>, public agencies may contract with each other “to make the most efficient use of their powers” and “to provide services and facilities in a manner [...] that will accord best with geographic, economic, population and other factors influencing the needs and development of *local communities*.” These governmental units may also create an entity to carry out their cooperative functions. In 2012, CED7 and the Authority contracted with each other to create a joint venture to produce and sell an asphalt emulsion under the name of “7 Oil Joint Venture”.

### **Audit Request**

The State Auditor & Inspector’s Office (SA&I) was requested to examine the joint-venture agreement between CED7 and the Authority, including the construction of an asphalt emulsion production plant, along with other financial issues of CED7. When SA&I initially engaged in the audit and requested<sup>4</sup> *public records* from CED7’s Executive Director Monte Goucher, he refused to provide the documents until after the CED7 board met and had been presented the records request.<sup>5</sup> On the same day, Derryberry & Naifeh, CED7’s legal counsel also requested that “all future correspondence” be sent to the law firm.

On July 10, 2017, SA&I responded to legal counsel, stating that CED7 is a public entity and, as such, their records are subject to the Oklahoma Open Records Act, and that CED7 is required by law to cooperate with SA&I during the course of the audit.<sup>6</sup>

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<sup>1</sup> Beckham, Blaine, Custer, Dewey, Greer, Harmon, Jackson, Kiowa, Roger Mills, Tillman, and Washita counties.

<sup>2</sup> 19 O.S. §§ 460.1 *et seq.*

<sup>3</sup> 74 O.S. §§ 1001 and 1004

<sup>4</sup> June 26, 2017

<sup>5</sup> 20 days later

<sup>6</sup> 74 O.S. § 215

In a phone conversation with SA&I on July 19, 2017, Goucher stated he believed that the need for some of the requested records was questionable and that he thought that three of the four district attorneys requesting the audit just “went along with the request” of the state auditor. The records requested were still not provided at that time.

After the unsuccessful attempts to obtain records, along with the unproductive initial discussions with Goucher, SA&I contacted the requesting district attorneys to discuss the resistance being presented by Goucher. Per the district attorneys, Goucher was petitioning for the investigation to be withdrawn. Goucher had:

- Requested that three of the four requesting attorneys, either directly or through a third party, withdraw their audit request.
- Told one of the requesting attorneys that the audit request was disguised as a district-attorney request but that the state auditor at the time had “duped” the district attorneys into making the request.
- Told two of the requesting attorneys that the state auditor, in office at the time of the audit request, wanted media attention and was on a “political witch hunt.”
- “Blew up” and told one of the district attorneys that there would be “PR” consequences if the audit proceeded, to which the district attorney told Goucher that he was getting close to “obstructing justice.”
- Requested two state representatives to intervene in the audit process.

Despite his initial resistance, Goucher ultimately cooperated with SA&I and, to SA&I’s knowledge, did not hinder the ensuing audit process.

## History of the Organization

In January 2012, without any prior discussion documented in official meeting minutes, the Authority voted to authorize Monte Goucher to purchase “a proprietary property (asphalt emulsion formula) to produce oil products for the benefit of the member Counties of the District.” Three months later, in April 2012, the Authority contracted to purchase an asphalt emulsion formula from its inventor for \$575,000.

The emulsion product was patented in 1993, but the product ingredients and preparation instructions became public upon the patent expiration in 2011. According to Goucher, although the patent had expired prior to the Authority’s purchase, the purchase of the formula was necessary because a number of details and nuances, along with the intellectual knowledge and notes of the inventor, were needed to properly produce the emulsion product.

In May 2012, CED7 voted to transfer ownership of 3.39 acres of land to the Authority “for its use in promoting specific projects, economic growth and development within the district.” Six months later, CED7 voted to transfer ownership of another 4.14 acres to the Authority for the same specified purposes. Also, in May 2012, the Authority voted to authorize Goucher to enter into a design/purchase agreement for an asphalt emulsion plant, including the purchase of specialty equipment, a building, a security fence, and all related permits.

On June 26, 2012, CED7 and the Authority entered into a joint-venture agreement to engage in the business of manufacturing and marketing an asphalt emulsion formula road repair and maintenance product through 7 Oil Joint Venture. CED7 pledged \$400,000 of certificates of deposit as an initial capital contribution to the joint venture and the Authority contributed the proprietary rights and formula to the asphalt emulsion product.

The agreement reflected that in the event additional capital contributions were required, such capital contributions would be made equally.

On July 30, 2012, the Office of Attorney General (OAG) approved the joint-venture agreement between CED7 and the Authority, finding the joint venture “to be in compliance with the provisions of the Interlocal Cooperation Act.” The Act requires the OAG to determine whether any interlocal agreement is in “proper form and compatible with the laws of the state.”<sup>7</sup> However, per the OAG, “approval of the Agreement plainly did not include approval of, or even a review of or opinion on, the actual operation of the joint venture under the Act.”

In December 2012, the Authority<sup>8</sup> obtained a \$2,000,000 commercial loan to finance the acquisition, construction, and equipping of the emulsion plant. The note was structured to be due in semi-annual installments over eight years at an interest rate of 5%. In October 2013, the Authority increased the amount of the note by \$350,000.

## Details On What We Found

### *Joint-Venture Agreement*

CED7 and the Authority created a “Joint Venture Agreement” (Agreement) under the name of “7 Oil Joint Venture (7 Oil).” The primary purpose of the Venture was “to engage in the business of manufacturing and marketing of a proprietary formula road repair and maintenance product.”

Under 74 O.S. § 1008, part of the Interlocal Cooperation Act, public agencies may contract with each other to perform any governmental service, activity, or undertaking which any of the public agencies entering into the contract is *authorized by law to perform*. Since neither CED7 nor the Authority has the

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<sup>7</sup> 74 O.S. § 1004(F)

<sup>8</sup> The mortgage listed the mortgagor as “Circuit Engineering District #7, an Oklahoma public trust,” while the loan agreement, promissory note, and security agreement, which were all dated the same as the mortgage, listed the borrower/debtor as “CED #7 County Energy District Authority, an Oklahoma public trust.”





Generally, when governmental entities are created by statute, their powers are limited to those granted by the applicable statute and may not be enlarged by the entity itself.<sup>10</sup> Caselaw holds that “an agency created by statute may only exercise the powers granted by statute and cannot expand those powers by its own authority.”

County energy district authorities are also governmental entities created by statute. Title 19 O.S. § 460.2a allows circuit engineering districts to establish county energy district authorities. Their creation is pursuant to the provisions of the state Energy Independence Act, limiting county energy district authorities to only the powers authorized by the Act.<sup>11</sup>

The statutory authorizations of both CED7 and the Authority do not reflect the power to manufacture, market, and sell asphalt road emulsion.

**Funding of Emulsion Plant**

In June 2012, after voting to enter into the joint venture, CED7 approved a “resolution of intent to financially support the CED7 County Energy District Authority.” Six months later, the Authority obtained a \$2,000,000 commercial loan, which was increased to \$2,350,000 in October 2013.

The joint-venture agreement reflected that, after the initial ownership investments as shown here in Exhibit “A”, all additional capital contributions would be made equally.

EXHIBIT "A"		
Name and Address of Venturer	Percentage of Ownership	Initial Capital Contribution
Circuit Engineering District #7 1779 Marshall Road Clinton, OK 73601	50%	\$400,000.00
CED #7 County Energy District Authority 1779 Marshal Road Clinton, OK 73601	50%	Property described herein as the "Product"
PRODUCT: Rubberized Chemical Emulsion a/k/a "Rubber Asphalt Anionic Emulsion Product"; former Patent Number 5,177,130 issued January 5, 1993.		

The \$400,000 initial capital contribution by CED7 was the pledging of a \$400,000 certificate of deposit as collateral for the Authority’s \$2,350,000 loan. The initial contribution by the Authority was the “Product” presented in Exhibit “A”, which was the asphalt emulsion patent purchased for \$575,000 in October 2012.<sup>12</sup>

The loan payoff encompassed multiple payments between July 2013 and December 2019. CED7 funded 67% of the loan and the Authority paid 33% of the loan, a total cost of \$2,677,902.55.

*Funding of  
Emulsion Plant*

<sup>10</sup> 1954 OK 327, cited by 2017 OK AG 11

<sup>11</sup> 19 O.S. § 460.4

<sup>12</sup> The patent purchase was paid off in October 2019.

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**Finding** *CED7 and the Authority did not comply with the joint-venture agreement's requirement of 50/50 capital contributions.*

The joint-venture agreement provided that, as long as the Joint Venture has any outstanding mortgage indebtedness, then income or gain<sup>13</sup> shall be first applied to outstanding mortgage indebtedness allocated 50% to the Authority and 50% to CED7. Any income or gain would be used to reimburse CED7 for its initial capital contribution once the mortgage indebtedness was paid off. The mortgage was paid off as of December 2019.

Loan Payments

Loan Payment Schedule				
Date of Payment	CED7 (funds loaned to Authority)		Authority (Authority funded)	
	Principal	Interest	Principal	Interest
07/12/2013		\$25,831.87*		
12/11/2013			\$44,926.43	\$589.02
06/30/2014		\$64,244.10*		
09/22/2014			\$116,740.59	\$20,524.81
12/16/2014			\$172,786.99	\$28,722.51
06/29/2015		\$46,572.44*		
07/30/2015	\$144,824.18	\$10,112.88		
12/16/2015	\$167,313.59	\$34,195.91		
06/21/2016		\$41,881.84		
08/16/2016			\$45,592.79	\$14,034.87
08/23/2016	\$100,000.00*			
12/01/2016			\$180,241.27	\$21,268.23
06/20/2017		\$34,794.12		
08/21/2017			\$152,868.74	\$13,846.64
02/27/2018	\$174,471.46	\$27,038.04		
06/25/2018	\$185,662.65	\$15,846.85		
12/07/2018	\$183,810.12	\$17,699.38		
12/07/2018	\$310,568.36			
06/26/2019	\$193,573.68	\$8,331.82		
11/22/2019			\$77,196.38	\$1,650.61
12/05/2019				\$139.38
Totals	\$1,460,224.04	\$326,549.25	\$790,353.19	\$100,776.07
<b>Total Payout</b>	\$2,677,902.55			
	\$1,786,773.29		\$891,129.26	
	<b>CED7 Amount Loaned to Authority</b>		<b>Authority Funded</b>	
	67%		33%	
*Approved as consent agenda item.				

<sup>13</sup> From the sale of 7 Oil.

**Board Approvals**

**Finding**      *According to 60 O.S. § 176.1(D), loaning of, or payment of, funds by CED7 to the Authority would be allowable.*

Statutes provide for payment of money between a public trust and a beneficiary, 60 O.S. § 176.1(D) states in part:

***[...] 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]*

**Finding**      *Four of 13 transactions incurred in the loaning of funds to the Authority were not properly approved by the CED7 board.*

Although the payment of money from the CED7 to the Authority is allowable, 4 of 13 transactions approved by the CED7 board were not presented as agenda items or approved independently in the minutes. Instead, they were included for approval under the “BOARD CONSIDERATION AND VOTE TO PAY ALL LEGAL AND JUST CLAIMS OF CED7,” their consent agenda.

The loaning of funds by CED7 to the Authority would not be a routine approval of the “legal and just claims of CED7.” Consideration and approval of the loaning of funds by the CED7 board would appear to require full notice to the public, via an agenda item, along with discussion and approval by the board in an open meeting.

**Finding**      *There were instances of the loaning of funds by CED7 to the Authority being presented to the CED7 board in a misleading manner by former Executive Director Monte Goucher.*

In June 2018, Goucher requested the CED7 board “assist 7Oil with cash flow by paying the full amount due on the note payable.” The minutes of the June 2018 meeting indicated that Goucher informed the board that, in past years, CED7 had paid the interest on the payment “but this year, in the interest of paying down the note,” he suggested CED7 make the full payment.

The statement made by Goucher that only the interest payment on the loan had been funded by CED7 in the past was not correct. Prior to the June 2018 payment, CED7 had already funded three **full** loan payments (*principal and interest*) for the benefit of 7 Oil. Full loan payments made prior to June 2018 included:

- July 2015 - \$154,937.06
- December 2015 - \$201,509.50
- February 2018 - \$201,509.50

**Board Approvals  
Not Proper**

Six months later, the December 2018 payment was also loaned to the Authority by CED7. The full December payment of \$201,509.50, along with an additional principal payment of \$310,568.36 was loaned to the Authority, for a total amount of \$512,077.86. These payments were funded by cashing in CED7 certificates of deposit.

**BOARD CONSIDERATION AND VOTE TO APPROVE LOAN TO "7OIL" JOINT VENTURE FOR THE NOTE PAYABLE DUE DECEMBER 21<sup>ST</sup>, 2018**

After an explanation of the state of finances for the energy district, Monte Goucher outlined three possible options for payments on the current loan. Tim Bingham made a motion to cash in CED7's two CD's to pay the current amount due and put the balance on the principal of the loan. The CD's total \$512,077.86 and the current loan payment is \$201,509.50, leaving \$310,568.36 to be applied to principal. Kirk Butler seconded the motion. Motion carried as follows: **Aye:** Joe Don Dickey, Johnny Davis, Steven Fite, Brian Hay, Kirk Butler, Tim Bingham, Melvin Salisbury, Jr., Lyle Miller, Raydell Schneberger, Gary Lewis, Mike Allen **Nay:** None

**Funding By Member Counties**

***Finding We found no evidence that member counties supplemented, loaned, or directed funds to CED7 or the Authority for payment of the asphalt emulsion product.***

A concern was presented that CED7 member counties had been pressured to assist in the funding of the Authority and the 7 Oil Venture. In the October 27, 2015, **Authority** board meeting, under new business<sup>14</sup>, a discussion was held requesting that "the board get with their fellow commissioners" to help decide how the upcoming payment would be made.

*Funding by  
Member  
Counties*

**Authority Meeting**

**NEW BUSINESS:**

7 OIL Plant Loan Payment is coming due by December 31, 2015 in the amount of \$201,507.50. Monte is asking the board to get with their fellow commissioners and decide how this payment should be made. Will need a resolution to this at the November meeting. Two (2) Options were presented to the board.

**Option #1**

CED7 Pay Partial Payment with Counties assessed the rest which will be divided by the counties who have not purchased product.

**Option #2**

Assess a dues structure per all 11 counties. Six (6) board members said they had no problem with doing the dues structure. Lyle mentioned he will talk with his commissioners re: option #2 (he does not like option #1) and Raydell will talk with his commissioners he is not sure how they feel.

In the November 17, 2015, **CED7** board meeting, Goucher presented a request for each member county to pay \$15,000 to be used in payment of the Authority's 7 Oil

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<sup>14</sup> According to 25 O.S. § 311(A)(10) "new business" shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of the agenda posting. This item should not have been addressed in "new business". The payment due in December 2015 would have been known prior to the October 2015 meeting. See additional Open Meeting findings at Page 24.

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plant loan. A motion was made to deny this assessment of dues payable. The motion failed, and the issue was subsequently tabled.

### CED7 Meeting

#### BOARD DISCUSSION ON CED7 ASSOCIATE MEMBERSHIPS AS ALLOWED IN ARTICLE IV SECTION 3B OF THE CED7 BYLAWS:

Monte mentioned this to the board, no discussion.

#### BOARD CONSIDERATION AND ACTION TO AUTHORIZE EXECUTIVE DIRECTOR TO ASSESS DUES TO MEMBER COUNTIES FOR THE PURPOSE OF LOANING MONEY TO THE CED7 ENERGY DISTRICT TO MAKE EMULSION PLANT DECEMBER LOAN PAYMENT TO INTERBANK.

Monte presented to the board CED7 and Energy District Statutes.

If each county would loan CED7 \$15,000 and CED7 could cover the remaining balance.

Brian Hay mentioned that he received a letter from his DA's office (which covers Beckham, Roger Mills, Custer and Washita counties) advising the counties to not pay dues. Lyle Miller mentioned he is the one who visited with the DA and sent our agenda to ACCO and county commissioners statewide.

Motion was made by Brian Hay and seconded by Lyle Miller to Deny the assessment of dues payable to CED7 to cover the loan on the 7oil plant. The motion failed as follows:

**AYE:** Johnny Davis, Lyle Miller, Brian Hay and Raydell Schneberger **NAY:** Jonathon Cross, Melvin Jr., Salisbury, Steven Fite, Gary Lewis, Kirk Butler, Tim Bingham and Joe Don Dickey.

Motion was made by Melvin Jr., Salisbury and seconded by Jonathon Cross to table this item. Motion carried as follows:

**Aye:** Johnny Davis, Joe Don Dickey, Kirk Butler, Gary Lewis, Raydell Schneberger, Melvin Jr., Salisbury, Jonathon Cross, Tim Bingham and Steven Fite **NAY:** Lyle Miller and Brian Hay

The letter from the "DA's office" referred to in the above minutes was direction from District Attorney Angela Marsee<sup>15</sup>, dated November 16, 2015, which stated, in part:

*It has come to our attention that some of you have been asked to help pay the loan payment due from 7-Oil Energy to Interbank...This loan is not a legal obligation of Circuit Engineering District #7 or individual counties...Structuring a loan payment as dues or prepayment for emulsion product does not lift the statutory or constitutional prohibitions. County commissioner[s] cannot legally spend tax payer money in this fashion.*

At the request of Goucher, CED7's legal counsel<sup>16</sup> wrote an opinion stating that CED7 could borrow from or assess fees against its member counties and then loan that money to the Authority for the Authority to use to make loan payments. The issue was also presented as a December 15, 2015, CED7 agenda item but resulted in "no action."

#### BOARD CONSIDERATION AND VOTE TO ASSESS MEMBER COUNTIES (AS A LOAN) FOR SERVICES RENDERED IN CARRYING OUT ITS FUNCTIONS:

President Joe Don Dickey stated that there would be no action on this item. Jim Barber requested that this item be discussed. Mr. Barber stated that his District Attorney has taken the position that the CED cannot assess its member counties for the purpose of making a loan to the Energy District. Monte informed the board that this was the reason for no action on this agenda item. Joe Don stated that Monte would be looking into trying to resolve the issue in the future.

**Summary** *Although the request, discussion, and vote to implement dues and/or assess fees was presented to the CED7 board over a period of several months, we found no evidence that dues or prepayment for emulsion products were ever implemented by the CED7 board.*

<sup>15</sup> District Attorney Marsee represents Beckham, Custer, Roger Mills, and Washita counties.

<sup>16</sup> Derryberry & Naifeh, LLP

Other Joint Venture Compliance Issues

**Finding** *Funds of the Joint Venture were comingled with the funds of the Authority in violation of the joint-venture agreement.*

Other  
Issues

The joint-venture agreement identified three separate and distinct entities, CED7, the Authority, and 7 Oil Joint Venture. The agreement specified that the activities and business of the joint venture would be conducted under the name of “7 Oil Joint Venture” and that 7 Oil’s funds were to be deposited into, and checks to be drawn upon, an account in 7 Oil’s name. The agreement further stated that “Funds of this Venture shall not be comingled with the funds of any other person, venture, partnership, corporation or any other entity.”

The Authority opened a bank account and utilized it for deposits related to energy district activity that occurred prior to the formation of the Joint Venture. This bank account was then utilized as 7 Oil’s bank account, a separate bank account was not established for 7 Oil.

When operations began for 7 Oil, loans, deposits, and expenditures incurred for 7 Oil were executed from the same bank account as the Authority, comingling the funds of each entity. Monte Goucher was the executive director for CED7 and the Authority and was also the manager of 7 Oil.

**Finding** *The October 2013 increase of the Authority loan was not filed with the Secretary of State’s Office, as required by 60 O.S. § 178.2.*

In October 2013, the Authority increased the amount of its taxable obligations from \$2,000,000 to \$2,350,000.

**CONSIDERATION AND ACTION UPON MOTION TO INCREASE PRIOR AUTHORIZATIONS IN THE TOTAL AGGREGATE AMOUNT OF \$2,000,000 BY AN ADDITIONAL \$350,000 IN TAXABLE OBLIGATIONS, THE PROCEEDS OF WHICH TO BE USED TO ACQUIRE, CONSTRUCT, AND EQUIP A NEW ASPHALT EMULSION PLANT TO BE OWNED AND AUTHORIZED BY THE AUTHORITY; AUTHORIZING THE PRIVATE PLACEMENT OF THE OBLIGATIONS WITH INTERBANK – CLINTON, AND WAIVING COMPETITIVE BIDDING WITH REGARD TO THE SALE THEREOF:**

After much discussion, motion was made by Johnny Davis and seconded by Tim Bingham to increase prior authorizations with Interbank – Clinton by an additional \$350,000 in taxable obligations to be used for the acquisition, construction, and equipment necessary to operate the asphalt emulsion plant. The motion carried with the following results:

**Aye:** Joe Don Dickey, Ray Hughes, James Gee, Tim Bingham, James E. Covey, Steven Fite, Cary Carrell, Melvin Salisbury, Jr., Johnny Davis, & Jonathon Cross.

**Nay:** None.

Title 60 O.S. § 178.2 states in part:

*At least five (5) business days prior to the delivery of and payment for bonds, notes or other evidences of indebtedness by any public trust... there shall be filed with the Secretary of State a preliminary copy of the official statement, prospectus or other offering document pertaining to the issuance....*

The filing for the original note of \$2,000,000 was completed on December 31, 2012. No filing could be found for the subsequent offering of \$350,000.

FILED - Oklahoma Secretary of State #5012293693 12/31/2012

**FINAL  
PRIVATE PLACEMENT MEMORANDUM**

**\$2,000,000  
CED #7 County Energy District Authority  
Taxable Revenue Note  
(7 Oil Asphalt Emulsion Plant Project)  
Series 2012**

***Finding The Joint Venture Agreement between CED7 and the Authority was not filed publicly as required by law.***

The Interlocal Cooperation Act, 74 O.S. § 1005, requires interlocal-cooperation agreements “be filed with the county clerk and with the Secretary of State” prior to their entry into force.

The OAG included in its ‘Letter of Approval’ advisement that, “before the Agreement enters into force, the Agreement, along with a copy of this Letter of Approval, must be filed with the appropriate County Clerk(s) and the Oklahoma Secretary of State.”

The Joint Venture Agreement was not filed with either entity as required. However, after communication of the issue by SA&I to CED7 legal counsel, copies of the Joint Venture Agreement and the OAG ‘Letter of Approval’ were filed with the Secretary of State’s Office on February 21, 2020. We found no evidence the Agreement was ever filed with the county clerk’s office.

***Finding The Joint Venture has not been dissolved as directed by the Agreement.***

Article XI of the Joint Venture Agreement provided for “Events Causing Dissolution,” stating the Joint Venture would dissolve upon the earliest to occur of the eight defined events. The last qualifying event stated the Joint Venture would dissolve, “In any event, at 12:00 midnight on the 30th day of June, 2017.”

As of the day of this report, the Joint Venture has not been dissolved. Goucher and CED7 legal counsel could not answer why the dissolution clause was included in the Agreement and why the entities had not complied with it.

## **Bidding of Emulsion Product**

### **Bidding of Emulsion Product**

Counties are required to bid and award materials contracts for road emulsion.<sup>17</sup>

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<sup>17</sup> Although statutes allow such contracts for periods not to exceed twelve months, most counties choose to bid items on a six-month contract; these are also commonly referred to as term bids.



Prior to awarding such contracts, counties must:

- solicit sealed bids;
- compare bid prices to the prices the State is paying for like materials;
- award the contracts to the lowest and best bidder; and
- record the reason the lowest bid, if not selected, was not considered to be the best bid.<sup>18</sup>

Allegations were conveyed that the bidding process for emulsion was established to direct the awarding of term bids to the Authority's 7 Oil product. There were also allegations that Goucher had "strong-armed" counties into purchasing the 7 Oil product, resulting in a circumvention of bidding laws. Evidence suggests that the "push" for purchasing 7 Oil and supporting the CED7 emulsion product began even prior to the completion of the formula and the Authority's ability to sell the product.

*Bidding of  
Emulsion*

Between June and October of 2012, the CED7 member counties<sup>19</sup> approved resolutions that declared an *intent* to purchase emulsion oils (chipping, patching, seal coat, and base) from the Authority (7 Oil). A copy of Beckham County's resolution reflected the following. Other resolutions were similar in nature.

WHEREAS, if BECKHAM County has funds available to purchase emulsion oils (chipping, patching, seal coat, and base) during the fiscal year and;

THEREFORE, BECKHAM County does hereby declare its intent to purchase emulsion oils (chipping, patching, seal coat, and base) from the CED#7 County Energy District Authority;

The emphasis placed on counties to purchase the 7 Oil product continued with a strongly worded letter from Goucher to CED7 member counties. The letter, dated July 1, 2015, reflected:

*I want to emphasize that your 7 Oil facility is in a "critical" stage for a start-up company. Financial obligations to our lender have to be met and we as a district are very close to not being able to meet that obligation. The most fair and viable way to sustain your company is to support the facility thru the purchase of emulsion oil.<sup>20</sup>*

**Finding**

***Counties incorporated the specific 7 Oil product or other product specifications into their term bid listings. This impeded vendors, other than 7 Oil, from either bidding on the product or it prevented them from bidding in a manner that would comply with the bid limitations.***

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<sup>18</sup> 19 O.S. § 1505(B)

<sup>19</sup> Per the Harmon County Clerk, the Harmon County Commission did not complete a resolution.

<sup>20</sup> See entire letter at Attachment 2.

## Circuit Engineering District #7 Investigative Audit

SA&I examined bid documents from seven of CED7's 11 member counties submitted during the periods of July 2016 through June 2018. All of the examined counties wrote bid solicitations that could result in restricted bidding. Some counties' bid solicitations listed the 7 Oil emulsion's unique names.

"7C" ANIONIC RUBBERIZED EMULSION	N/B	N/B	\$2.15	N/B	N/B
"7B" ANIONIC RUBBERIZED EMULSION	N/B	N/B	\$2.25	N/B	N/B
"7P" ANIONIC RUBBERIZED EMULSION	N/B	N/B	\$2.00	N/B	N/B
"7S" ANIONIC RUBBERIZED EMULSION	N/B	N/B	\$1.75	N/B	N/B
"7SR" ANIONIC RUBBERIZED EMULSION	N/B	N/B	N/B	N/B	N/B

Some counties requested bids for "other modified polymer/latex emulsion oil," "other asphalt emulsion products," or "other road oil compounds." Almost no vendors besides CED7 bid on such solicitations. When one did, at a lower price, the County Commission rejected that bid and accepted the Authority's bid due to the amount to be applied would be at a lesser rate with the "CED product."

*Awarded 7C to CED  
due to amount to be  
applied. Less rate with  
CED  
Product*

When another vendor bid at a lower price, the County Commission rejected the bid and accepted the 7 Oil bid, justifying the selection as the best bid for the "patented" product, as noted in these minutes:

**Motion made by Carl Don Campbell to accept bid from CED#7 for all Anionic rubberized emulsion, "7C" for chip seal application because of previous success with this patented medium cured latex base product. Buddy Carnes seconded the motion with Davis, Campbell and Carnes voting aye.**

Some of the bid solicitations included bids required by square-yard and gallons-per-square-yard, as Goucher preferred. These bid solicitations also asked bidders if they offered product warranties. Of course, no one met these warranties and specifications except 7 Oil.

One vendor filed written complaints with some of the counties about their bid solicitations, noting that bidders cannot accurately bid by square-yard since county employees apply however much of the product that they choose, and another vendor bid, but made note that it would bill by the gallon.

In June 2017, the county commissions of Carter and Cotton counties, which are not members of CED7, awarded emulsion contracts to a vendor other than 7 Oil. In response to that action, Goucher filed a written complaint with the counties, stating in part:

**Circuit Engineering District #7  
Investigative Audit**

*The commissioners have awarded "7C" to Ergon Emulsions and their product "RS-1HP"....Let me clearly state that "RS-1HP" is NOT the same product or even similar in nature as Ergon claims....our product is much cheaper on a "per mile" basis and we offer a 1-year warranty on chip loss that easily makes our bid the "best bid" which is a perfectly legal basis to award upon...we strongly protest the substitution of "RS-1HP" as a "7C" equivalent [emphasis in original].*

**Summary** *Counties may not restrict their bid solicitations in ways that result in restricted, noncompetitive bidding, which could result in paying higher prices for goods or services.*

*Counties should not have limited their bid solicitations to the 7 Oil product, an emulsion produced by only one vendor. Such limitations resulted in restricted, noncompetitive bidding practices.*

**Finding** *CED7 bid its road emulsion at higher costs to its member counties than to some non-member counties.*

*Higher Price for  
Non-Member  
Counties*

In mid-2017, the Authority bid \$1.70/gallon for the "7OIL-7C" product in Comanche County and for an "Anionic Oil" in Stephens County, two non-member counties.

Comanche County Bid Record #36 – May 1, 2017 – October 1, 2017

7OIL - "7C"	NB	NB	NB	NB	\$1.70
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Stephens County Bid 2017-25 – May 8, 2017

ANIONIC OIL	N/B	1.70	1.70	N/B
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During the same time period, the Authority bid \$2.00/gallon for its emulsion in the member counties of Beckham, Custer, Roger Mills, Washita, and Tillman counties, as shown below.

Custer County Bid – June 12, 2017 and Tillman County Bid – June 5, 2017

<b>7 OIL—CHIPPING "7C" ANIONIC RUBBERIZED EMULSION (LATEX BASED) FOR CHIP SEAL APPLICATION</b>
\$ <u>2.00</u> /GALLON

The bid placed in Custer County for the 7 Oil product was accompanied with a sales flyer<sup>21</sup> asserting that the county could "STRETCH YOU[R] DOLLARS WITH 7 OIL EMULSIONS!!!!!!!"

<sup>21</sup> See full-page flyer at Attachment 3

**Circuit Engineering District #7  
Investigative Audit**

Bidding the 7 Oil product at a higher amount in the member counties, although not prohibited, appears to undermine the objective of the joint venture, which was to reduce costs for CED7 member counties.

***Finding*** *The 7 Oil road emulsion is not unique enough to be considered a sole-source product.*

The bidding practices discussed above were largely in part based on CED7 advocating that the 7 Oil product was unique and a proprietary formula. Although the formula was patented, it was not exclusive, according to engineers from ODOT’s Materials Division.

ODOT engineers examined roads that had been surfaced with the 7 Oil road emulsion. The engineers also reviewed results of emulsion tests that CED7 had obtained from MeadWestvaco-Ingevity, Interstate Testing Services, and Nalco Champion. According to the engineers:

- The emulsion is not a proprietary or exclusive formula.
- Only one blend of the emulsion is not produced by other companies, but others could produce it.
- The only way to know how the emulsion performs is to use and monitor it over time, “which could take years”.

Based on ODOT’s analysis, the 7 Oil road emulsion does not appear to constitute a sole-source product, a product to be narrowly bid, or a product that would be available from only one supplier.

**Revenues**

**CED7 Revenues**

CED7’s primary revenue sources included bridge-inspection fees, construction-engineering fees, construction-inspection fees, and grants. The revenues were received primarily from ODOT, the Oklahoma Cooperative Circuit Engineering District Board (OCCEDB), and CED7’s member counties.

<b>CED7 Revenue Sources</b>				
<b>Source</b>	<b>FY17</b>	<b>Percent of Revenue</b>	<b>FY18</b>	<b>Percent of Revenue</b>
ODOT	\$2,700,457	66.4%	\$2,219,452	60.5%
Member Counties	\$987,851	24.3%	\$1,062,706	29.0%
OCCEDB	\$311,352	7.7%	\$367,612	10.0%
Local Governments	\$61,033	1.5%	\$6,738	.2%
Other	\$5,790	.1%	\$11,735	.3%
<b>Total</b>	<b>\$4,066,483</b>		<b>\$3,668, 243</b>	

**Revenues**

**Authority Revenues**

The Authority’s primary revenue source was road-emulsion sales, most of which were made to CED7 member counties. The Authority had revenues of \$1,224,179 in FY17<sup>22</sup> and \$1,191,076 in FY18, totaling \$2,415,255.

Sales to the member counties for this same time period accounted for 95% of the Authority’s revenues. Amounts by county were as follows:

<b>Summary of Member County Purchases of Emulsion</b>			
Beckham	\$386,126	Tillman	\$204,505
Harmon	\$300,730	Dewey	\$191,861
Jackson	\$282,662	Roger Mills	\$180,601
Greer	\$237,007	Kiowa	\$157,147
Custer	\$231,084	Washita	\$128,424
Total			\$2,300,147

***Finding***      ***CED7 and Authority revenues were not restricted funds.***

Concerns were presented that CED7 and the Authority were utilizing restricted funds improperly. We found no evidence of this. The sources of revenue received are presented below, including a discussion as to why they are not restricted.

**Oklahoma Department of Transportation**

ODOT expends monies on county road and bridge projects through the County Improvements for Roads and Bridges (CIRB) Fund. These monies are disbursed for projects that the ODOT Transportation Commission chooses from proposals provided by counties through the circuit engineering districts. ODOT bids and manages the projects.

CED7 is paid from the CIRB Fund for engineering and drafting work performed on ODOT projects for CED7’s member counties. CED7 also manages the CIRB program for ODOT within CED7’s counties, and ODOT pays CED7<sup>23</sup> up to \$75,000 annually for these services.

If counties choose not to use CED7’s design services, they may use other engineering consultants chosen by ODOT through a qualifications-based selection process.

<sup>22</sup> FY – Fiscal Year Ending June 30

<sup>23</sup> Along with other circuit engineering districts.

In FY17 and FY18, CED7 received \$4,919,909 from the CIRB Fund. These revenues were payments for services rendered and, as such, the monies would not be considered restricted for CED7 purposes.

**Cooperative Circuit Engineering District Board**

OCCEDB distributes tax proceeds from the Circuit Engineering District Revolving (CEDR) Fund to the circuit engineering districts. Although the “intent” of some of the pertinent tax statutes pertaining to this fund is for the funds to be used for the maintenance of public highways and bridges, the statutes do not put specific restrictions on the monies.<sup>24</sup> As such, these monies appear to be unrestricted.

Additionally, OCCEDB conducts auctions on behalf of counties and provides a percentage of the proceeds to the circuit engineering districts. As such, these monies are also unrestricted.

In FY17 and FY18, CED7 received \$609,086 from the CEDR Fund and \$69,878 from auction proceeds through OCCEDB.

**CED7 Member Counties**

CED7’s member counties paid CED7 monies for services rendered, primarily for bridge inspections and construction engineering and inspections. As such, these funds are also unrestricted. CED7 received a total of \$2,050,556 in FY17 and FY18.

**Expenditures**

**Executive Director Position**

Goucher served as the executive director of CED7 from May 2005 through December 2018. The Authority appointed him as its executive director when it was created in October 2010. The joint-venture agreement designated him as the manager of the joint venture in June 2012.

For Goucher’s last three full years of employment with CED7, he was paid the following salaries.

*Executive  
Director Position*

- FY2016 - \$133,750
- FY2017 - \$145,000
- FY2018 - \$145,000

No salary was paid for the position of executive director of the Authority or for the position of manager of the joint venture.

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<sup>24</sup> 68 O.S. § 500.2(A)

On December 4, 2018, before Goucher’s employment ended, the board voted<sup>25</sup> “to approve a consulting agreement for administrative assistance from Goucher for one year, with the option to cancel, by either party, with 30 days’ notice.”

The consulting agreement was between CED7 and Value Added Management, LLC, Goucher’s personal engineering firm, and provided:

- CED7 would pay Goucher \$6,250 per month;
- CED7 would reimburse Goucher for mileage, general-liability insurance, and errors-and-omissions insurance (if required); and
- The agreement would remain in full force and effect indefinitely until terminated by either party with 30 days written notice.

At the same meeting, the board voted 7-4<sup>19</sup> to appoint Brian Young as the interim operations manager; seven months later, he was appointed as the CED7 executive director. As of December 2019, Young’s salary was \$87,000, \$58,000 less than the previous executive director.

***Finding***      ***There was no official board action taken to change the executive director position of the Authority and the joint venture’s manager position at the time of Goucher’s resignation.***

At the time of Goucher’s resignation, he was the executive director of the Authority and the manager of the joint venture. These positions were automatically conveyed to the new executive director without an official vote of the Authority board or a change in the joint-venture agreement.

Both positions should have been officially appointed and/or designated as required by the legal structure of the applicable entity.

**Payroll**

A review of payroll-related activity reflected that CED7’s payroll included all Authority (7 Oil) employees. This included eight employees in FY17 and six employees in FY18, resulting in payroll costs of \$182,661 and \$163,798, respectively. According to statute, the payroll activity of the two entities should be maintained “separate and independent.”

**Payroll**

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<sup>25</sup> The vote was 7-4. Mike Allen, Tim Bingham, Lyle Miller, and Raydell Schneberger voted against the motion.

Title 60 O.S. § 176.1(D) states in part:

*[...] 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.*

CED7 did not “make payment of money” to the authority as directed by statute, but instead directly employed the Authority’s personnel in violation of law.

**Related-Party Payments**

***Finding*** ***Nearly \$17,000 in payments were made to Executive Director Monte Goucher’s family members between 2010 and 2013, in violation of statute.***

Between 2010 and 2012, Monte Goucher’s son received 16 checks, totaling \$13,204, from CED7. Per the memo lines on some of the checks, the pay was for contract labor, per diem, trailer usage, pay period bonus, and labor.

In late 2012 and early 2013, Goucher’s then-wife also received five \$750 checks from CED7, totaling \$3,750. According to the checks’ memo lines, these payments were for a fifth-wheel rental. Meeting minutes do not appear to reflect board approval for any of these payments.

Title 21 O.S. § 481(A) prohibits executive officers from appointing family members to any positions or duties in the officers’ government entity when the pay or compensation for the positions or duties is to be paid out of the public funds of the government entity.

Title 21 O.S. § 344(A) provides, that every public officer, authorized to sell or lease any property, or make any contract in his or her official capacity, who voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor.

**Miscellaneous Expenditures**

SA&I’s original objectives included the review of expenditures from CED7 and the Authority. After the CED7 employee embezzlement<sup>26</sup> came to light, CED7 engaged two independent accounting firms to perform an internal investigation and an agreed-upon procedures engagement to evaluate and analyze the accounting records of CED7 for the period of January 1, 2010 through July 14, 2017.

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<sup>26</sup> Discussed below under “Special Investigation of CED7 Embezzlement”



## Circuit Engineering District #7 Investigative Audit

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It was determined that a review of expenditures by SA&I for the same time period would be a duplication of effort. The results of the agreed-upon procedures engagement can be found in the Independent Accountants Report on Applying Agreed Upon Procedures released by FSW&B Certified Public Accounts, PLLC, on January 18, 2018.

Expenditures of interest in FY17 and FY18 included the following:

<b>CED7 Expenditures</b>		
<b>Payee</b>	<b>Purpose</b>	<b>Amount</b>
Jerry Dean <sup>27</sup>	Consulting	\$105,718
LeRoy Briggs	Consulting	\$53,277
RSMeacham CPAs/FSW&B CPAs	Audit Costs <sup>28</sup>	\$51,580
Capital Plus	Lobbying Firm	\$24,150
Restaurants/Grocery/Food Vendors	Food/Dining	\$20,874
	Total	\$255,599

### **Authority Expenditures**

In FY17 and FY18, \$1,211,902 and \$1,376,940, respectively, was expended from the *Authority* bank account. The majority of the expenditures were related to the asphalt emulsion plant. Among the expenditures were purchases of plant equipment, ingredient materials, emulsion-trucking charges, and building-utility payments.

## Other Issues

### **CED Involvement with ODOT Projects**

As previously noted, ODOT expends CIRB Funds on county projects. Counties may choose to use their CED for design services, or ODOT can select consultants through a qualifications-based selection process. Some county commissioners expressed frustration with Goucher’s attempts to influence the CIRB Fund process.

Custer County Commissioners Lyle Miller and Kurt Hamburger represented that CED7 had hindered some of their projects from being funded through CIRB funds. According to Miller, he and Hamburger have not submitted additional requests because their funding is “tied up” in the planned work for Lawter Road, a major road in Hamburger’s District. The planned work gets postponed every year, allegedly because of a lack of complete funding. Other projects are not allowed to be funded until the Lawter Road project is fully funded and completed.

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<sup>27</sup> A former county commissioner of Roger Mills County and a former CED7 board member.

<sup>28</sup> Special audit costs, including procedures performed concerning the CED7 embezzlement.

In December 2018, Hamburger requested that ODOT handle an aspect of a road project in his district instead of utilizing CED7. An ODOT official informed Goucher of the request, and Goucher communicated in writing the following email to ODOT:

*CED7 does not object to Commissioner Hamburger requesting that Division 5 handle the inspection. It should be noted that CED7 Board of Directors have not authorized the use of CIRB funds to pay for the inspection by Division 5 or an assigned consultant. Any use of CIRB funds for the cost of inspection must be approved by the CED7 Board of Directors as **outlined in the rules** for the program. Custer County needs to be aware that they may be liable for the cost of the inspection unless ODOT does it for free or if the CED7 board of directors give their blessing to pay for the inspection from the CIRB account in which the board needs to know what this cost will be up front before work begins.[Emphasis added]*

In this e-mail, Goucher forcefully attempted to gain more authority for CED7 than it has under the CIRB program. He responded to the ODOT e-mail in less than 20 minutes, stating that “CED7 does not object to” Division 5 handling the inspection and consistently referred to the authority of the CED7 Board of Directors:

- “CED7 Board of Directors have not authorized” the use of CIRB funds...
- ... “must be approved by the CED7 Board of Directors”....
- “[T]he CED7 board of directors [must] give their blessing to” ....
- “[T]he board needs to know”....

Goucher’s characterization of the CIRB Fund program was incorrect. According to ODOT, they were not aware of the “rules” to which Mr. Goucher referred to in his letter. They also communicated that:

- The CIRB agreement between the County and ODOT gave ODOT the authorization needed to expend CIRB funds for construction and inspection without CED7 board approval.
- CED7 already approved the five-year plan, which included the project in question.
- ODOT does not require additional approvals from CED7 to use CIRB funds for inspection, regardless of who handles the inspection.
- Division 5 has the decision-making authority regarding whether ODOT, a consultant, or CED7 does the inspection.

The CIRB Fund consists of state monies, and the circuit engineering districts serve to assist the State in distributing those monies. Those monies do not belong to the circuit engineering districts and the districts do not control the funds. Furthermore, the boards, not the directors of the circuit engineering districts, have decision-making authority over these funds.

**Transfer of Property**

**Finding**     ***In 2012, ownership of 7.53 acres of land was improperly transferred from CED7 to the Authority.***

On May 22, 2012, CED7 voted to transfer ownership of 3.39 acres of land to the Authority “for its use in promoting specific projects, economic growth and development within the district.” Six months later, in December 2012, CED7 also voted to transfer ownership of another 4.14 acres to the Authority for the same specified purposes.

Under 60 O.S. §§ 176(A) & 176.1(D), a trust beneficiary may *lease* property to its trust authority and *charge* and *expend funds* for, and make *payment of, money* to its trust authority. However, the statutes do not reflect the capacity to authorize a beneficiary to transfer ownership, or legally deed, property to its trust authority.

**Open Meeting Act**

**Finding**     ***CED7 and the Authority did not comply with some provisions of the state Open Meeting Act.***

- 1) The minutes of the October 22, 2013, Authority board meeting reflect that the board discussed, in executive session, the possible hire of Crowe and Dunlevy as intellectual-property attorneys. The motion carried with a full vote of the board. The minutes of the July 28, 2015, CED7 meeting reflect the board discussed, in executive session, the restructuring of a consultant agreement with Jerry Dean.

**Open Meeting  
Act**

Public bodies are not allowed to discuss contracts with independent contractors in an executive session. Both the contract with the law firm and the contract with the consultant are not authorized for discussion in executive session. According to 2005 OK AG 29:

*Discussing and awarding a contract for professional services when the recipient will be an independent contractor, rather than a public officer or employee of the public body, is not a proper subject for an executive session.*

- 2) The minutes of the June 25, 2019, CED meeting reflect that the board, in executive session, discussed “employee evaluations and salary changes.” The minutes specifically state that “THE BOARD DISCUSSED THESE ITEMS

AND NO OTHER ITEMS.” However, the board subsequently voted to promote its interim operations manager to executive director. This action would not be covered under “employee evaluations and salary changes.”

According to 25 O.S. § 311(B)(2) of the Open Records Act:

*If a public body proposes to conduct an executive session, the agenda shall:*

- a. contain sufficient information for the public to ascertain that an executive session will be proposed,*
- b. identify the items of business and purposes of the executive session, and*
- c. state specifically the provision of Section 307 of this title authorizing the executive session.*

- 3) Minutes of CED meetings have not recorded the vote of each board member regarding entering and exiting executive sessions. According to 25 O.S. § 305:

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

### **Special Investigation of CED7 Embezzlement**

Immediately after engaging in our audit, an employee came forward admitting to an embezzlement of CED7 funds. An internal investigation of the alleged embezzlement was performed by R.S. Meacham, CPAs & Advisors (Meacham).

After completion of the internal investigation, and notification of appropriate law enforcement agencies, FSW&B Certified Public Accountants, PLLC (FSW&B), was engaged to perform a follow-up investigation. Their objective was to accumulate and quantify evidence supporting the conclusion of the internal investigation performed by Meacham and to gather evidence to determine the extent and methods of the suspected embezzlement.

*Embezzlement*

Upon completion of the agreed-upon procedures engagement, FSW&B concluded:

*“In our opinion, based on the evidence accumulated to date with both the internal Meacham report and our additional procedures, \$99,300.36 is the amount in which restitution should be based.”*

Per FSW&B, the methods utilized in the embezzlement included:

- 1) Improper use of a company-issued debit card for personal purposes;
- 2) Unauthorized payments made to the perpetrator;
- 3) Overpayments of payroll to the perpetrator through unauthorized additions to payroll checks or overpayment of longevity and unused annual leave;
- 4) Repayment of loans due the 401(a) plan from the perpetrator and other employees which were not deducted from their payroll but instead paid by under-contributing company contributions to the plan; and
- 5) Payment of unauthorized comp time.

Part of the embezzlement investigation, as discovered and calculated by the independent CPA firm, included loans taken by CED7 employees from their 401(a) plans. This concern included nine employees in addition to the embezzlement perpetrator. These loans were not repaid with employee post-tax earnings as required by the plan but were being repaid with the CED7 payroll match contributions.

**Finding** *The matching contributions to CED7’s 401(a) plan were improperly utilized for the repayment of employee loans.*

Employee loan payments were not deducted from employees’ post-tax earnings as required but were repaid with the 12% retirement matching amounts funded by CED7. The total outstanding employee loans owed was \$171,522.61. The estimated investment earnings due from the lack of new contributions to the plan was \$52,220.25.

The CED7 board voted to “make whole” the estimated investment earnings amount of \$52,220.25 not earned from the lack of new contributions. The \$171,522.61 owed by CED7 employees was treated as early retirement plan distributions and taxed accordingly.<sup>29</sup>

*Retirement  
Loans*

Employee	Loan Amt Repaid		Total Payment Due
	through Payroll	Est Earnings @ 10%	
Brian S Young	31,165.18	6,900.38	38,065.56
Debbie K Walpole	26,027.00	9,390.81	35,417.81
Drew C Mahanay	15,580.00	3,306.08	18,886.08
Jonathan R Jenkins	3,939.43	1,413.11	5,352.54
Kristopher R Carlisle	1,600.00	80.63	1,680.63
Melissa Weaver	2,015.20	852.30	2,867.50
Monte W Goucher	63,684.22	24,390.41	88,074.63
Rodney Cabaniss	7,222.00	977.83	8,199.83
Terry C Black Jr.	16,400.00	3,643.21	20,043.21
Tony J. Worcester	3,889.58	1,265.48	5,155.06
<b>Grand Total</b>	<b>171,522.61</b>	<b>52,220.25</b>	<b>223,742.86</b>

As reported by FSW&B, the number of individuals involved in not paying back their loans – employees who should have been aware, understood, or reported the fact that the repayment of their loan had not been withheld from their paycheck – was questionable.

On July 24, 2018, the CED7 board voted to “disallow loans through the Lincoln Financial 401(a) plan.







<sup>29</sup> Table information as reported by FSW&B.

**Final Thoughts**

As conveyed in this report, the principal finding is that the operation of an asphalt emulsion plant is not in compliance with law. However, a decision as to how, or if, the operation of this plant should continue is beyond the authority of this office. We propose that the statutes governing circuit engineering districts be evaluated and that the Legislature consider change.

If circuit engineering districts are to continue, they should revisit the Legislature's original intent for them. They should be project-focused, including road and bridge help and expertise for small rural counties, and provide unbiased assistance to all counties in accomplishing their five-year transportation plans.

**Attachment 1**

-  **Oklahoma Statutes Citationized**
-  **Title 69. Roads, Bridges, and Ferries**
-  **Chapter 1 - Oklahoma Highway Code of 1968**
-  **County Road Improvement Act**
-  **Article Article 6 - County Road System**
-  **Section 687.1 - Authority to Create Circuit Engineering Districts**

Cite as: 89 O.S. § 687.1 (OSCN 2020), County Road Improvement Act

A. The board of county commissioners of any county in this state may create a circuit engineering district with any other county or counties. The objectives of the circuit engineering district shall be:

1. To allow county governments to make the most efficient use of their powers by enabling them to cooperate with each other and other units of government on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of county government;
2. To provide research and research support to county government;
3. To provide assistance to county governments in performing the functions delegated by law including, but not limited to, the operation of road maintenance, construction, inspection, and equipment purchases and management;
4. To conduct public discussion groups, forums, panels, lectures, and other similar programs;
5. To present courses of instruction and education;
6. To obtain, develop and present scientific and all other types of information relative to the operation of the public transportation system in this state;
7. For long-range planning and growth of the transportation system within the circuit engineering district and other circuit engineering districts within this state; and
8. To provide services to counties in a coordinated manner that will improve the quality of the transportation system and be cost effective.

B. The authority of the circuit engineering district shall be as follows:

1. To comply with and carry out the provisions of the Interlocal Cooperation Act;
2. To advise and assist its members with how to implement and make an effective transportation plan for the best interest of each member of the circuit engineering district;
3. To prepare such programs of research as may be necessary and advisable in carrying out its purposes;
4. To contract for services with persons, firms or units of government to carry out the purposes of the circuit engineering district;
5. To provide periodic reports for the circuit engineering district or for its members as may be required by federal or state legislation or regulations pertaining thereto, and as are within the scope and range of the purpose of the circuit engineering district;
6. To acquire and hold property for its use and to incur expenses to carry out its functions;

**Attachment 1 - continued**

- 7. To receive gifts, contributions and donations to carry out the purposes for which it is formed;
- 8. To assess its members for the services rendered in carrying out its functions;
- 9. To apply for, contract for, administer, receive and expend funds or grants from any participating member, the State of Oklahoma, the federal government, or any other source; and
- 10. To publish studies in connection with its work which may be of benefit to its members or other agencies within and outside of the circuit engineering district.

C. Circuit engineering districts may, by affirmative vote of their board, determine that the association representing the county commissioners of Oklahoma be designated to negotiate for services, required by law or necessity, on behalf of the circuit engineering districts.

D. The circuit engineering district shall conduct an independent audit upon completion of each fiscal year.

E. The board of directors may employ an attorney to provide legal research, advice and opinions on contracts and other matters which may come before the board of directors.

F. The State Auditor and Inspector shall prescribe the necessary rules, forms and procedures to provide for the efficient and timely means by which the pool purchase of supplies and equipment may be accomplished on behalf of the participating counties. The rules, forms and procedures developed by the State Auditor and Inspector for pool purchasing may be utilized by the Oklahoma Department of Transportation County Advisory Board in coordination with the circuit engineering districts for the purpose of pool purchasing utilizing funds from the County Road Machinery and Equipment Revolving Fund. For the purpose of obtaining access to pricing and bids available on a national level, counties shall be eligible to participate in such pool purchasing in a manner as determined by the State Auditor and Inspector.

G. Circuit engineering districts may participate in the County Road Machinery and Equipment Revolving Fund pursuant to the provisions of Section 302.1 of this title.

H. Circuit engineering districts are authorized to organize a statewide board consisting of the chairpersons duly elected by each of their respective circuit engineering districts. The statewide board organized pursuant to this section shall:

- 1. Have the power to conduct business, including the development of policies and procedures, incur expenses, and contract for services so long as such business furthers the provisions of this act;
- 2. Coordinate activities between circuit engineering districts;
- 3. Administer the Statewide Circuit Engineering District Revolving Fund, created pursuant to Section 687.2 of this title; and
- 4. Have authority to promulgate rules to carry out the provisions of this act.

I. A circuit engineering district created pursuant to this section shall be deemed a political subdivision of the state.

J. A district may hire up to one registered professional engineer per three counties within each circuit engineering district.

***Historical Data***

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Laws 1992, HB 2254, c. 80, § 12, emerg. eff. July 1, 1992; Amended by Laws 1998, HB 3275, c. 94, § 1, emerg. eff. July 1, 1998 ([superseded document available](#)); Amended by Laws 2001, HB 1772, c. 117, § 3, eff. November 1, 2001 ([superseded document available](#)); Amended by Laws 2007, SB 378, c. 113, § 1, emerg. eff. July 1, 2007 ([superseded document available](#)); Amended by Laws 2010, HB 2895, c. 134, § 2, eff. November 1, 2010 ([superseded document available](#)); Amended by Laws 2013, SB 1009, c. 193, § 1, emerg. eff. July 1, 2013 ([superseded document available](#)).

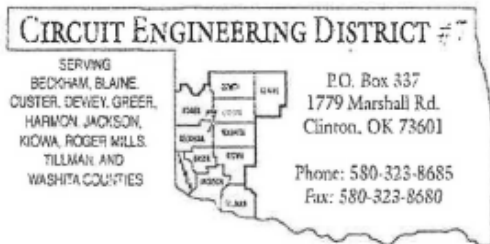
***Citationize<sup>®</sup> Summary of Documents Citing This Document***

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<b><i>Cite Name</i></b>	<b><i>Level</i></b>
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Attachment 2



DATE: July 1, 2015

TO: CED7 Member Counties

FROM: CED7 Energy District

SUBJECT: 7 Oil Discount

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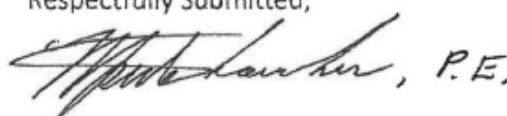
At this time I know that many of our county commissioners are facing a difficult task of addressing storm water related damage across the district. These unusual rain events has delayed the start of the "emulsion season" and has re-directed maintenance funds initially dedicated for this summer's chip and seal operations.

Having said that I want to emphasize that your 7 Oil facility is in a "critical" stage for a start-up company. Financial obligations to our lender have to be met and we as a district are very close to not being able to meet that obligation. The most fair and viable way to sustain your company is to support the facility thru the purchase of emulsion oil.

Last year was the first year of production and issues with the quality of the oil were exposed along with some field applications problems. Veteran commissioners have provided valuable input and many hours have been dedicated to improving the oil and providing application training to make the product successful going forward. The Board of Directors have recently adopted a "Warranty Policy" for our chipping oil, **THE ONLY WARRANTY OFFERED BY ANY EMULSION SUPPLIER. PERIOD!!**

It has been brought to my attention that the 7 Oil "bid price" is a cause of concern throughout the district so in an attempt to ease those concerns while still trying to meet our financial obligations coming due the CED7 Energy District will be selling 7 Oil at \$0.15 below the bid price of \$3.00/gallon. **When you purchase "7C" Oil this emulsion season you will be invoiced for \$2.85/gallon with a 1-year warranty.**

Respectfully Submitted;

 , P.E.

Attachment 3

**CED#7**  
**COUNTY ENERGY DISTRICT AUTHORITY**  
**7 OIL EMULSIONS**

**\*\*\*ATTENTION: COUNTY COMMISSIONERS\*\*\***

- 7 OIL WORKS!
- THE OIL YOU HAVE BEEN WAITING FOR IS HERE!
- DEVELOPED SPECIFICALLY FOR COUNTY ROADS!
- PERFORMANCE YOU EXPECT AND DESERVE!

**STRETCH YOU DOLLARS WITH 7 OIL EMULSIONS!!!!!!**

1 MILE PROJECT  
20' WIDE ROAD  
3/8" CHIPS  
1 YEAR WARRANTY ON MAJOR CHIP LOSS  
**OIL COST: LESS THAN \$6,000 PER MILE**  
CHIP COST: USE 2 LESS TRUCK LOADS OF GRAVEL

1 MILE PROJECT  
20' WIDE ROAD  
5/8" CHIPS  
1 YEAR WARRANTY ON MAJOR CHIP LOSS  
**OIL COST: LESS THAN \$6400 PER MILE**  
CHIP COST: USE 2 LESS TRUCK LOADS OF GRAVEL

*WHAT IS YOUR "CRS OIL" HORROR STORY?.....YOU DON'T HAVE  
TO TELL ANOTHER ONE.....MAKE THE CHANGE!*

***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 the State Auditor & Inspector's Office. This Office 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, prosecutorial, and judicial authorities designated by law.

O·K·L·A·H·O·M·A  
SAI  
STATE AUDITOR & INSPECTOR



**Cindy Byrd, CPA | State Auditor & Inspector**

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