



CITY OF PIEDMONT

PIEDMONT MUNICIPAL AUTHORITY

Special Audit Report

August 10, 2021

Cindy Byrd, CPA
State Auditor & Inspector

**City of Piedmont
Piedmont Municipal Authority**

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TO THE PIEDMONT CITY COUNCIL AND THE CITIZENS OF PIEDMONT

Presented herein is the special audit report of the City of Piedmont. 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 services 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 a public document pursuant to the Oklahoma Open Records Act in accordance with 51 O.S. §§ 24A.1, *et seq.*

Sincerely,



CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR





City of Piedmont Piedmont Municipal Authority

Special Audit Report

Why We Performed This Audit

The City of Piedmont requested an audit in accordance with 74 O.S. § 227.8, to address the purchase of two vehicles acquired in February 2020. Concerns were voiced as to whether proper bid procedures were followed regarding these purchases and whether the transactions were addressed properly in respect to compliance with the Open Meetings Act.

Objectives

The following audit objectives were developed to respond to the City's request:

1. Determine if competitive bid procedures were required and followed in the purchase of two vehicles acquired in February 2020.
2. Determine if the Open Meetings Act was violated regarding the two vehicle purchases made in February 2020.

Summary of Findings

- *Prior council approval was not obtained, and competitive bids were not solicited, for the two vehicles purchased in February 2020. Both transactions violated the City of Piedmont Code of Ordinances and the City Charter.*
- *Phone calls conducted between the city manager and a majority of council members were for the purpose of obtaining approval to purchase vehicles in February 2020. These calls resulted in what appears to be an action of the council conducted outside of an official meeting, a circumvention of the Open Meetings Act.*

Details on What Was Found

Objective 1 *Determine if competitive bid procedures were required and followed in the purchase of two vehicles in February 2020.*

Two vehicles were purchased¹ in February 2020; a 2019 Dodge Ram purchased on February 10, 2020, in the amount of \$32,998 and a 2018 Chevrolet Silverado purchased on February 6, 2020, in the amount of \$25,198.

¹ One vehicle was funded by the City of Piedmont and one by the Piedmont Municipal Authority (PMA). Per city officials PMA purchases were conducted under the City's Code of Ordinances at the time of this purchase.

Finding *Prior council approval was not obtained, and competitive bids were not solicited, for the two vehicles purchased in February 2020. Both transactions violated the City of Piedmont Code of Ordinances and the City Charter.*

Section 4-3 of the City of Piedmont Charter gives authority to the City Manager to make purchases for the City “subject to any regulations which the council may prescribe.” The Charter also states:

*Every such contract or purchase exceeding an amount to be established by ordinance shall require the **prior** approval of the Council. (Emphasis added)*

The Piedmont Code of Ordinances, *Section 7-203*, establishes procedures requiring *prior* council approval for purchases exceeding \$10,000. The ordinance also requires all expenditures of more than \$10,000 be competitively bid. The ordinance states in relevant part:

*B. **Before** a contract shall be entered into, or any such purchase made involving the expenditure of **more than Ten Thousand Dollars (\$10,000.00)**...such contract or sale shall:*

- 1. Be approved by the City Council;*
- 2. Be submitted for competitive bidding, except as provided in this Chapter. (Emphasis added)*

Purchase and Approval of the 2019 Dodge Ram

Acquisition of the 2019 Dodge Ram was not approved by the City Council prior to purchase. Check #2252 for \$32,998, payment for the Dodge Ram, was written on February 10, 2020, and cleared the bank on February 19th, five days before being presented to the Council for approval.

The February 24, 2020, city council meeting agenda included discussion, consideration, and possible action to approve the 2019 Dodge Ram. In that meeting, the City Council tabled the approval “until receiving legal opinion² and an answer from the District Attorney.”³

In the same meeting, upon presentation of the monthly claims list, the Council did in-fact approve the disbursement of funds for the purchase of the Dodge Ram as part of the consent agenda claims list. It appears the council did not review all of the claims presented prior to the consent agenda approval vote as reflected in their subsequent vote to table the purchase.

² See legal opinion at Attachment 1.

³ An answer from the District Attorney was not requested.

In the April 27, 2020 council meeting, the claims list for February, which included the 2019 Dodge Ram, was presented again as part of the Consent Agenda for approval. The April minutes reflected “PAGE #24” as the claim being approved. “PAGE #24” refers to the original page number the transaction was listed on in the “My Check Approval Register” or claims list.

**f) Recognition/Approval of February Purchase Order/Disbursements for the City (Claims List).
(PAGE #24)**

Vendor Number	Vendor Name	Invoice #	Invoice Description	Account Number	Distribution Amount
2396	ENTERPRISE VEHICLE EXCHANGE	8100019130	CITY INSPECTOR 2019 DODGE RAM TRUCK	03 01-73481	32,998.00
Fund 03 Total:					32,998.00
Report Total:					32,998.00

Purchase and Approval of the 2018 Chevrolet Silverado

The 2018 Chevrolet Silverado was purchased on February 6, 2020, for \$25,198, without prior approval by the Council, and was paid for on the same day with check #57391. The check cleared the bank on February 11th, thirteen days before the transaction was presented to the Council for approval. The agenda item to approve the Silverado purchase, as reflected in the February 24, 2020, meeting, was tabled. The claim for the Silverado was not included in the February 24, 2020, claims listing for consent agenda approval, so as of the February council meeting the claim had not been approved.

The claim was subsequently placed on the April 27, 2020, Consent Agenda for approval. The approval of the February claim in the April meeting is reflected as “PAGE #89” in the minutes as shown. “PAGE #89” refers to the original page number the transaction was listed on in the “My Check Approval Register” or claims list.

**b) Recognition/Approval of February Purchase Order/Disbursements for the City (Claims List).
(PAGE #89)**

Piedmont, OK		My Check Approval Register				
Packet:	APPKT06128 - 2/06/20 PMA AP PROCESS					Check Date: 02/06/2020
Vendor Set:	02 - PMA					
Vendor Number	Vendor Name	Invoice #	Invoice Description	Account Number	Distribution Amount	
Fund: 40 - PIEDMONT MUNICIPAL AUTHORITY						
2396	ENTERPRISE VEHICLE EXCHANGE					
APPMA	Check	INV0019142	2018 CHEVROLET SILVERADO 1500	40-09-71570	25,198.00	
Fund 40 Total:					25,198.00	
Report Total:					25,198.00	

On February 22, 2021, the independent auditor reported to City County the non-approval of a vehicle as a “significant event.” The letter stated in part:

There was one significant event that warranted further communication. The City purchased two used vehicles (pickups) during the year. The purchases did not appear to be subject to state bidding requirements, although we did not determine if more restrictive local ordinances may have applied to these purchases. There appeared to be adequate funds in the budget to cover these purchases, eliminating the need for any amendments to the budget. These purchases were subject to council approval. One vehicle was included in the claims list and approved however the other was not. We reviewed the documentation for both purchases, which included invoices and cancelled checks, and that documentation agreed with the accounting records.

Competitive Bids

City Manager Jason Orr stated two department heads were refusing to drive their personal vehicles and the City was in immediate need to buy these employees vehicles to conduct city business. Orr said he was concerned about liability issues for the city and that he believed “no one had questioned the bid process” for the vehicles purchased.

According to Orr, he “looked up” three different used vehicles online for the best price. Orr provided two emails which contained pricing information for two Dodge Rams. No additional bid documentation was provided.

No evidence could be provided to verify that either the Dodge Ram or the Chevrolet Silverado were competitively bid as required.

Objective 2 Determine if the Open Meetings Act was violated regarding the two vehicle purchases made in February 2020.

The Open Meeting Act, 25 O.S. § 301, *et. seq.* provides for transparency in government and requires the minimum acceptable standards of “openness” for meetings of public bodies in Oklahoma.⁴ The Act defines all aspects of the

⁴ 1981 OK AG 69

requirements of a governing body to conduct an entities business in full view of the public. Section 302 of the Act states:

It is the public policy of the State of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems.

Finding *Phone calls conducted between the city manager and a majority of council members were for the purpose of obtaining approvals for the purchase of vehicles in February 2020. These calls resulted in what appears to be an action of the council conducted outside of an official meeting, a circumvention of the Open Meetings Act.*

First, it should be noted that City Manager Orr is not a voting member of the governing body and as such would individually not be subject to an Open Meetings Act violation. It would be expected that, on occasion, Orr would discuss matters individually with council members in advance of a meeting. A majority of the city councilors, along with City Manager Orr, agreed phone calls were made to council members *prior* to the purchase of the vehicles.⁵ If these calls were solely to advise council members of future agenda items, then there would be no violation of law.

However, it was the opinion of three councilors, who were all called by Orr, that he was seeking approval, or a “vote count”, to proceed with the purchase of the two vehicles. In addition, a video of the February 24, 2020, council meeting, also included a discussion regarding the purchases in question. During the meeting one of the councilors was upset Orr had not contacted him. In the meeting, Orr stated the council member was not contacted “*because I knew how you were going to vote.*”

According to Orr, he did not take a “straw poll” or obtain approval “behind closed doors” for the purchase of the vehicles. However, according to a majority of council members, the calls conducted by Orr were made to receive approval for the purchase of the vehicles. Section 305 of the Open Meetings Act states:

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

The authorization obtained by council members prior to the purchase of the vehicles via telephonic communication were neither publicly cast nor publicly recorded, resulting in what appears to be an action of the council conducted outside of an official meeting, a circumvention of the Open Meetings Act.

⁵ The exact timing of these calls could not be verified without a review of private phone records which was not performed.

Final Thoughts

SA&I was presented numerous differing opinions as to what transpired surrounding the purchase of the vehicles and the related conduct and intent of the City Manager. There were also concerning statements made by council members regarding their lack of knowledge of the requirements of the City's required bidding and purchasing requirements. It was likewise of concern that a legal opinion was obtained by the City Manager to provide guidance on these issues based on what appears to be a misleading presentation of the issue.⁶

The interest of public officials, both elected and non-elected, should always be transparency and an attitude of openness and service to the public they serve. In this instance, the requirements of purchasing and approvals were clearly defined and could have been easily followed. The purchases in questions should have been placed on a public meeting agenda, competitively bid, and fully approved by the Council prior to payment.

⁶ See legal opinion at Attachment 1.

Attachment 1

DAVID L. WEATHERFORD

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March 23, 2020

Mr. Jason Orr
City Manager
City of Piedmont
P.O. Box 488
400 Edmond Road NW
Piedmont, OK 73078

Re: Open Meeting Issue

Mr. Orr:

A. ISSUE PRESENTED:

Based on our discussion, it is my understanding you have requested a legal opinion concerning the following issue:

Is the Open Meeting Act violated when the City Manager advises each individual council member of a purchase that would be on a future agenda for a budget amendment?

B. MATERIALS REVIEWED:

In reviewing the above issue, I have reviewed the City of Piedmont City Charter, the Oklahoma Open Meeting Act, Oklahoma Attorney General Opinions interpreting the OMA, and numerous materials from other states and their interpretation of their open meeting acts concerning alleged violations of the act. Most importantly, a new opinion from the Oklahoma Attorney General's office dated March 13, 2020, provides specific guidance on this issue (see attached).

C. DISCUSSION:

In answering this question, the issue becomes one of the Open Meeting Act restrictions placed on individual discussions about agenda items. The Open Meeting Act is found at title 25 of the Oklahoma Statutes, at sections 301-314. Although there is a specific definition of "meeting" at Section 304(2), it does not address this specific situation:

"Meeting" means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1

Attachment 1 – continued

of this title, together pursuant to a teleconference;

Clearly, the situation you describe does not constitute a "meeting" as defined in the Act and does not result in a violation of the "meeting" definition. The situation you have described was addressed specifically by 2020 OK AG 4, with the following specific questions and findings as follows:

- 1. Does the Oklahoma Open Meeting Act, 25 O.S.2011 & Supp.2019, §§ 301-314 (the "Act"), prohibit less than a majority of members of a public body from convening to discuss business of the public body if the gathering does not comply with the Act's requirements for a "meeting"?**

The AG answers this with a specific finding that is helpful for the situation you describe, as follows:

- A. The Open Meeting Act does not prohibit a minority of members of a public body from convening to discuss business of the public body, unless by doing so the members intend to circumvent the Act's requirements.**

Absent proof of an intent to violate the open meeting act, there is no prohibition against a minority of the full council from meeting to discuss a future agenda item.

- 2. Does the Act prohibit a member of a public body from presenting the same information related to the public body's business in separate sequential briefings, each with less than a majority of the body's members?**

Just as you have raised the question about sequential briefings, the AG addresses this issue and finds that the same briefing given to multiple members of the elected body, one after another, is not a violation of the open meeting act.

- B. The Open Meeting Act does not prohibit one member of a public body from presenting the same information at sequential briefings, each attended by a minority of the body's members, unless the briefings are intended to circumvent the Act.**

The AG discussion on this issues provides more detailed discussion; obviously, the fact that you were presenting information about a future agenda issue, with an explanation of what that item included, would indicate that there was simply an intent to provide updates to the elected body:

¶8 Based on the foregoing, we conclude the Act generally does not apply to serial informational briefings or discussions that include only a minority of members of a public body. See *Monkey Island Dev. Auth.*, 2003 OK CIV APP 64, ¶ 13, 76 P.3d at 88 ("[I]t is not a violation of the Open Meeting Act for less than a majority of a public body to meet." (emphasis in original)).

Attachment 1 – continued

However, where the facts demonstrate that members coordinated these briefings or discussions in order to avoid compliance with the Act, such conduct may be held to violate the Act. If members engage in vote-counting or other attempts to reach consensus in this context, it will likely be deemed a violation. But, any such determination will depend on facts specific to each situation.

- 3. If members of a public body convene and are provided with information related to the business of the public body, may the members be prohibited from taking that information with them following the presentation or be sworn to secrecy about the substance of the presentation?**

With this issue, the AG was addressing written material provided to individual members of the elected body, and specifically whether written material could be provided. The AG concluded:

- C. The Open Meeting Act does not address restrictions on materials provided to the members of a public body.

Clearly, the Open Meeting Act does not impose any restrictions; the AG concludes that while the distribution of written material could not constitute a violation of the act, the materials distributed may be subject to disclosure pursuant to the open records act.

- 4. Does the Act apply equally to (i) a public body convening solely to receive an informational briefing without taking action, and (ii) a public body convening to discuss specific actions that ultimately may be voted upon?**

Just as with the other issues, the AG provides clear guidance by answering the above question by finding that if a majority are together, the definition of “meeting” is met and an agenda is required.

D. CONCLUSION

Based on 2020 AG 14, unless there are additional facts that would show that there was a criminal intent to circumvent the Open Meeting Act, the act is not violated by a series of discussion about a future agenda item, by providing information on a future agenda item to all council members, or by informal meetings by less than a quorum of the elected body. Hopefully this fully addresses your issue; feel free to let me know if you have any questions.

Sincerely,



David L. Weatherford

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/or judicial authorities designated by law.

O·K·L·A·H·O·M·A
S·A·I
STATE AUDITOR & INSPECTOR



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