

CITIZEN PETITION AUDIT

CITY OF GEARY

January 14, 2019

*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



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

CITY OF GEARY
CITIZEN PETITION AUDIT
JULY 1, 2014 THROUGH MAY 31, 2017

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Oklahoma State Auditor & Inspector

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January 14, 2019

TO THE PETITIONERS AND CITIZENS OF THE CITY OF GEARY

Pursuant to your request and in accordance with the requirements of 74 O.S. § 212(L), we performed an audit of the City of Geary for the period July 1, 2014 through May 31, 2017; however, when the examination warranted this scope was expanded.

The objectives of our audit primarily included, but were not limited to, the concerns noted in the citizens petition. The results of this audit, related to these objectives, are presented in the accompanying report.

Because the procedures of our engagement did not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City of Geary for the period July 1, 2014 through May 31, 2017.

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.

This report is addressed to and is for the information and use of the petitioners and citizens of the City of Geary. This report is also a public document pursuant to the Oklahoma Open Records Act in accordance with 51 O.S. §§ 24A.1, *et seq.*

Sincerely,

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

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

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Executive Summary

WHY WE CONDUCTED THIS AUDIT

We performed the audit at the request of the citizens of the City of Geary pursuant to 74 O.S. § 212(L). The scope of the petition was July 1, 2014 through May 31, 2017; however, when the examination warranted this scope was expanded.

WHAT WE FOUND

City Council and Authority Board agendas and meeting minutes did not always concur as required by statute and two executive sessions were not adequately addressed in the minutes. (Pg. 3)

Gas line and water line replacement contracts were not properly bid as required by the Public Competitive Bidding Act. Some gas line replacement work was performed without prior approval of the Council. (Pg. 8)

No concerns were identified related to the exchange of land made between the City, the Geary Economic Development Authority, and a local church. There were also no concerns noted in conjunction with the land donated for the building of the Fire Sub-Station or in the land acquisitions related to the Family Dollar retail store. (Pg. 15)

An assessed fine for violation of 'Failure to Abate Nuisance' charged to a local citizen appeared inconsistent with charges or fines assessed to other property owners for similar violations. It was also noted that a city official was not assessed a code violation or fine for an apparent violation of city ordinance. (Pg. 19)

Funding utilized in the Fire Sub-Station project appeared suitable and properly sourced and the main construction contract for the Station was bid. However, some other costs associated with the completion of the Station were not bid. (Pg. 24)

The City did not properly encumber all funds prior to the expenditures being incurred and the approval of several purchases by the Council could not be verified. (Pg. 24)

The City and Utility Authority met statutory audit requirements; however, the Economic Development Authority did not obtain an annual audit, or the required waiver request allowed by statute. (Pg. 29)

City officials resided within the boundaries of the wards they represented and all but one had the required "oath of office" on file. However, three trustees of the Economic Development Authority did not have an "oath of office" on file. (Pg. 32)

City of Geary – Citizen Petition Audit

Introduction

The City of Geary (City) is organized under the statutory aldermanic form of government, as outlined in 11 O.S. §§ 9-101, *et seq.*

During the period under review the City was governed by a mayor, who is elected at large, and the City Council which consisted of five members, one elected from each city ward. On February 8, 2018, the Council approved ordinance #2018-02 to consolidate ward five into ward four, reducing the number of city council members to four.

The Geary Utility Authority (Authority) is a public trust established under 60 O.S. §§ 176 *et seq.* The Authority provides utility services to the residents of the City. The City Council members also serve as the Board for the Authority.

The Geary Economic Development Authority (GEDA) is also a public trust established under 60 O.S. §§ 176 *et seq.* The GEDA was created to stimulate economic development on behalf of the City of Geary.

The City operates on a fiscal year that runs from July 1 through June 30.

City of Geary officials as of June 30, 2017, the end of the petition audit period, were:

Bobby Allan	Mayor
John Burns	Council Member
Warren “Trey” Carter	Council Member
Ronnie Wheeler	Council Member
Craig Wright	Council Member
Mary Hays.....	City Clerk/Treasurer

Under the Aldermanic Form of Government, per 11 O.S. § 9-105.4, the Mayor’s duties as Chief Executive Officer include to “supervise and control all administrative departments, agencies, officers, and employees, act promptly on a charge of neglect or violation of duty of any officer or employee...”

Per 11 O.S. § 9-108, the designated powers of the City Council include the authority to enact legislation, raise revenue, make appropriations, regulate salaries and wages, and oversee all other fiscal affairs of the City.

The Petition

In early 2016, a small group of citizens from the City of Geary became dissatisfied with the actions of city government. It was alleged that some council members were not responding to the concerns of the citizens and that the activity of the council was not being fully disclosed.

When a perceived lack of openness in government continued, the citizens sought a “Citizen Petition Request for Special Audit”¹ through the State Auditor and Inspector’s Office (SA&I). The required signatures necessary to complete the petition process, as authorized under 74 O.S. § 212(L), were confirmed by the Blaine and Canadian County Election Board Secretaries in August 2017. The petition objectives as included in the Citizen Petition were:

1. Review possible violations of the Open Meeting Act and Open Records Act.
2. Review contracts to replace gas and water lines; including bidding requirement compliance.
3. Review authority to impose community service requirements on local students.
4. Review approval, payments, and overall management of selected City land transactions.
5. Review possible inconsistencies in applying local ordinance fines and utility billing charges.
6. Review the funding and transactions surrounding the building of the fire sub-station.
7. Determine that all required audit requirements have been met for the City of Geary, the Geary Utility Authority, and the Geary Economic Development Authority.
8. Determine if board members reside within the appropriate boundaries of their wards, and if appointed, board and commission members have been properly seated.

The results of our investigation related to these objectives are included in the following report.

¹ See the entire “Citizen Petition Request for Special Audit” at Attachment A.

OBJECTIVE I OPEN MEETING ACT AND OPEN RECORDS ACT

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

Summary of Findings:

- **For seven of twenty-four City Council, Geary Utility Authority and Geary Economic Development Authority board agendas and meeting minutes reviewed, the agenda items and meetings minutes did not concur as required by statute.**
- **Ten executive sessions were held during the twenty-four council and board meetings reviewed. The meeting minutes for two of these meetings did not adequately address the actions of the Council related to the executive sessions.**
- **The City had not established policies and procedures to insure compliance with statutes that require accessibility of city records by the public.**

Open Meeting Act

Minutes for a total of 24 meeting dates were reviewed to determine if council meetings were held properly and in accordance with statute. We reviewed 10 city council agendas and meeting minutes; 10 Geary Utility Authority board agendas and meeting minutes; and four Geary Economic Development Authority board agendas and meeting minutes.

Finding For seven of twenty-four City Council, Geary Utility Authority and Geary Economic Development Authority board agendas and meeting minutes reviewed, the agenda items and meetings minutes did not concur as required by statute.

Statutes require that meeting agendas include all items of business to be transacted in the corresponding meeting of a public body, 25 O.S. §311(B)1 states in part:

All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting...

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Likewise, the minutes of the meeting shall document all actions taken by the public body as presented on the agenda as required by 25 O.S. § 312(A) which states in part:

The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body.

The agenda of two city council meetings reflected items for discussion; however, no documentation of discussion, action, or no action was noted for the item in the corresponding minutes.

- The February 10, 2015 meeting minutes mentioned finding a location for a school farm project would be discussed at a later date.

Finding a location for a school farm project will be discussed at the March meeting.

This item was not noted as a discussion item on the corresponding February 10th agenda. The item could have been considered part of “unforeseen business” which was an item on the agenda. However, the minutes did not include sufficient documentation to determine if the farm project discussion was introduced in the meeting as “unforeseen business.”

25. Consider, discuss and take action on any unforeseen business

- The March 10, 2016, agenda item #11, “Consider, discuss, and take action on giving the employees a cost of living raise,” was not addressed in the minutes.

Four agendas reflected items to be discussed in a Geary Utility Authority meeting; however, no documentation of discussion, action, or no action was noted on the items in the corresponding minutes.

- The July 7, 2014 agenda item #3, which stated “Consider, discuss and take action on the monthly Public Works Director report from Jeff Choate,” was not addressed in the minutes.
- The February 5, 2015 agenda item #10, which stated “Consider, discuss, and take action on repairs for gas/sewer/water lines on private property,” was not addressed in the minutes.

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- The April 7, 2016 agenda item #12, which stated “Approve March 10th minutes,” was not addressed in the minutes.
- The August 11, 2016 agenda item #5, which stated “Consider, discuss, and take action on a discussion with Kenny Sullivan, Sullivan and Associates, LLC, to bore Highway 270/281 to lay an eight (8) inch water line to a housing development for Don Bishop,” was not addressed in the minutes.

One agenda reflected an item to be discussed in a Geary Economic Development Authority meeting; however, no documentation of discussion, action, or no action was noted on the item in the corresponding minutes.

- The March 16, 2015 agenda item #9. A., which stated “Discussion on Family Dollar,” was not addressed per the minutes.

Finding

Ten executive sessions were held during the twenty-four council and board meetings reviewed. The meeting minutes for two of these meetings did not adequately address the actions of the Council related to the executive sessions.

The minutes related to executive sessions should document the actions of the public body. Title 25 O.S. § 307(E)3 states in part:

Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on **any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.** [Emphasis added]

The August 7, 2014, City Council agenda indicated an executive session would be held to discuss Waylan Upchego, Jarod Hicks, and Megan Morgan (Kennedy).

26. Consider, discuss, and take action on going into executive session, pursuant to Title 25 Section 307 B-1, for the purpose of discussing hire, fire, promote, demote, discipline, or resignation Waylan Upchego, Jarod Hicks, and hire Megan Morgan (Kennedy) as part timer dispatcher.
--

The corresponding minutes reflected the executive session was entered into to discuss personnel issues related to Waylan Upchego, Steve Cerbu, and Megan Morgan (Kennedy).

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Cozetta Johnson made the motion seconded by Tabitha Kiener to go into executive session, pursuant to Title 25 Section 307 B-1, at 8:34 pm, for the purpose of discussing hire, fire, promote, demote, discipline, or resignation of Waylan Upchego, Steve Cerbu, and hire Megan Morgan (Kennedy) as a part time dispatcher. Ayes: Bobby Allen, Ernest Allen, Ronnie Wheeler, Tabitha Kiener, and Cozetta Johnson. Nays: None.

The minutes did not reflect any specific action had been taken related to Jarod Hicks or Steve Cerbu.

The July 7, 2014, Geary Utilities Authority agenda item #6 indicated action was to be taken in executive session on Allen Sessions, Mary Hays and Doug Harmon.

6. Consider, discuss, and take action on going into executive session, pursuant to Title 25, Section 307, B-1, for the purpose of discussing hire, fire, promote, demote, discipline, or resignation of Allen Sessions, Mary Hays, and hire Doug Harmon for part time salaried natural gas effective measures.

The minutes for the July 7, 2014 meeting did not indicate the board met in executive session at all and did not document any discussions or tabling of the session.

We recommend agendas include all expected business topics to be discussed at council and board meetings and that the minutes of all meetings document all action taken, not taken, or items tabled for each agenda item listed.

Open Records Act

Finding

The City had not established policies and procedures to insure compliance with statutes that require accessibility of city records by the public.

The City did not maintain records documenting the date in which open records requests were solicited, nor were records maintained documenting when records had been provided to an inquiring party. Because records were not maintained, we could not determine if open records requests were provided in a reasonable timeframe as required by statute. Title 11 O.S. § 22-132.1 states in part:

The governing body shall establish policies and procedures to preserve and protect the records of the municipality consistent with other provisions of law providing for the confidentiality of such records where appropriate and *the accessibility of such records for inspection by the public.* [Emphasis added]

Additionally, 51 O.S. § 24A.5 of the Open Records Act states in relevant part:

A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions. A delay in providing access to records shall be limited solely to the time required for preparing the requested documents and the avoidance of excessive disruptions of the public body's essential functions. In no event may production of a current request for records be unreasonably delayed until after completion of a prior records request that will take substantially longer than the current request.

We recommend the City establish written policies and procedures outlining the accessibility of city records for inspection by the public. To further comply with statute the City should consider establishing a log for recording all records requested, including the date and time that such requests are fulfilled.

OBJECTIVE II REPLACEMENT OF GAS AND WATER LINES

Petition Objective Review contracts to replace gas and water lines, including bidding requirement compliance.

Summary of Findings:

- **The lowest bid was not awarded for the initial gas line replacement contract and the decision for this award was not properly documented as required by 61 O.S. § 117.**
- **After the initial bid for the gas line replacement contract was awarded, the City decided not to perform the work under that contract. Instead, work was performed and paid without proper bids or quotes and without prior Council approval being properly noted in the minutes.**
- **The Geary Utility Authority entered into three annual agreements with Harrison Construction for FY2016, FY2017, and FY2018 for amounts of \$49,900, \$49,999 and \$49,999, respectively, without obtaining bids.**
- **The City did not solicit bids for water line replacement projects as required by the Public Competitive Bidding Act.**

Gas Line Replacement

In April 2012, the City of Geary solicited bids to replace approximately 3 miles of gas pipeline. Based on the documentation provided, two companies, Harrison Construction and the Fishel Company, submitted bids on the project.

The Fishel Company² bid was properly completed with quantity amounts and price calculations for a total bid of \$143,252.38. The bid from Harrison Construction³ provided unit pricing but did not include the quantity amounts or the calculated totals for the project.

We applied the estimated quantity amounts of the Fishel Company bid to the unit pricing of the Harrison Construction bid in an attempt to evaluate the lower cost bid. The Harrison Construction bid, utilizing the Fishel Company quantities, calculated to \$166,340.80. Based on this evaluation, it appeared the Fishel Company bid was the lowest bid. However, the bid was awarded to Harrison Construction for the same amount as the Fishel Company proposal, \$143,252.38.

² See the full Bid Schedule for The Fishel Company at Attachment A.

³ See the full Bid Schedule for Harrison Construction at Attachment B.

Finding **The lowest bid was not awarded for the initial gas line replacement contract and the decision for this award was not properly documented as required by 61 O.S. § 117.**

Per City Council members, Harrison Construction was awarded the contract because they had previously provided services to the City, not based on the lowest bid proposal. Although the lowest bid does not have to be accepted, if not accepted, documentation should be prepared and maintained stating the reason for not accepting such bid. According to 61 O.S. § 117:

If an award is made to other than the lowest bidder, the awarding public agency shall accompany its action with a publicized statement setting forth the reason for its action. Such statement shall be placed on file, open to public inspection and be a matter of public record.

The contract between the City and Harrison Construction was to commence approximately June 5, 2012 and be completed by December 5, 2012. Per review of the City’s records, Harrison Construction did not perform any work on this project during the stated time frame of the contract.

Finding **After the initial bid for the gas line replacement contract was awarded, the City decided not to perform the work under that contract. Instead, work was performed and paid without proper bids or quotes and without prior Council approval being properly noted in the minutes.**

After awarding a bid to Harrison Construction for work to be completed prior to December 2012, the City determined adequate funds were not available to complete the contract. However, Harrison Construction was then paid \$75,171.35⁴ between July 1, 2012 and December 30, 2012 for *non-contracted* work that was reflected by the City as “repair work.” This work was completed without bids or quotes as required by 61 O.S. § 103(B) which states:

B. Except as provided in subsection D of this section, other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

⁴ Five payments for \$6,862.50, \$9,039.85, \$15,708.50, \$15,818.00, and \$27,742.50 for a total of \$75,171.35.

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These transactions were also not documented as approved by the Council as required per city ordinance § 7-503(C) which states:

C. For all purchases or contracts for goods, services or capital over \$25,000, city council approval shall be obtained prior to the time the commitment is made, and such approval shall be recorded in the minutes of the council.

Finding

The Geary Utility Authority entered into three annual agreements with Harrison Construction for FY2016, FY2017, and FY2018 for amounts of \$49,900, \$49,999 and \$49,999, respectively, without obtaining bids.

Based on discussions with former Mayor Leslie Swinerton and current Mayor Bobby Allen, Harrison Construction did not perform the initial 2012 gas line replacement project due to other jobs becoming a priority for the City and adequate city funds not being available.

The Geary Utility Authority then entered into agreements with Harrison Construction for gas line replacement. No documentation was provided indicating bids had been solicited for the services provided in these agreements. Allen acknowledged bids were not obtained, indicating the agreements were *negotiated* on a per foot basis not to exceed the agreement amounts.

Gas Line Replacement Agreements	
Agreement Period	Amount
July 1, 2015 through June 30, 2016	\$49,900
July 1, 2016 through June 30, 2017	\$49,999
July 1, 2017 through June 30, 2018	\$49,999

The City represented it could not afford to engage in the full contract amount initially bid for the replacement of gas lines. As such, they chose to enter agreements each fiscal year for what work could be completed up to \$49,999. Under the Public Competitive Bidding Act⁵, all contracts exceeding \$50,000 shall be awarded through sealed, competitive bids. Title 61 O.S. § 131 of the Act states:

No contract shall be split into partial contracts for the *purpose* of avoiding the requirements of this act. All such partial contracts shall be void. [Emphasis added]

It could not be determined if city officials chose to enter agreements without bidding “for the purpose of avoiding” the Competitive Bidding Act. Even if the gas line replacement contracts were not bid for the purpose of *avoiding*

⁵ Title 61 O.S. §§ 103, *et seq.*

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the Public Competitive Bidding Act, they should have still been bid under § 103(B) which requires contracts for \$50,000 or less:

... be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor.

The City’s accounting records reflected the following payments were made to Harrison Construction. None of the payments made by the City or the Authority to Harrison Construction were bid.

Payments for Gas Line Replacement and Related Costs				
Dates	Recorded as Line Replacement Cost	Recorded as Equipment Cost	Recorded as Line Repair Cost	Total Paid
7/1/2012 – 12/30/2012	\$0	\$0	\$75,171.35	\$75,171.35
1/1/2013 – 6/30/2013	\$72,939.15	\$0	\$0	\$72,939.15
7/1/2013 – 6/30/2014	\$118,877.30	\$0	\$0	\$118,877.30
7/1/2014 – 6/30/2015	\$50,170.85	\$0	\$0	\$50,170.85
7/1/2015 – 6/30/2016	\$24,848.90	\$11,950.00	\$0	\$36,798.90
7/1/2016 – 6/30/2017	\$34,359.55	\$14,340.00	\$0	\$48,699.55
7/1/2017 – 1/30/2018	\$14,434.00	\$3,605.00	\$0	\$18,039.00
Totals	\$315,629.75	\$29,895.00	\$75,171.35	\$420,696.10

Water Line Replacement

The City of Geary was issued a consent order by the Department of Environmental Quality to replace water lines for customers who received water that had tested high for nitrates. A new water line was proposed to reduce the nitrate levels in the water.

Finding

After rejecting the initials bids for the water line replacement project, the City did not bid the services or supplies procured to complete the project as required by the Public Competitive Bidding Act.

The City of Geary hired Glenn Sullivan & Associates as the engineer for the water line replacement project. They were to prepare the bid specifications and evaluate the bids received.

The following four bids were originally received:

Vendor	Amount Bid
Christian Construction	\$99,631.00
Circle B Underground	\$149,844.00
SMC Utility Construction	\$185,630.00
Wee Construction	\$313,294.00

Per the August 11, 2016 Geary Utility Authority board minutes, the Board decided to not accept any of the bids received. Instead, per Mary Hays, City Clerk/Treasurer, the City decided to utilize their own labor and equipment and find a company who would assist the City in replacing the water line. By utilizing labor and equipment already available, the City anticipated saving money.

Once the bids were rejected, Public Works Director Jeff Choate was directed to obtain quotes from companies who would be willing to assist the City with the water line replacement project. Choate reported to the Authority board on September 8, 2016, that a quote had been received to install four miles of 4” water line with the City providing the materials. The board minutes did not indicate the amount of the quote or the cost of the materials and no documentation was provided verifying if other quotes had been solicited.

The agreement for installation of the water line was entered into with Powells Services on August 26, 2016 for \$49,999. The corresponding water line supplies were purchased on July 1, 2016, Purchase Order 7675, for \$41,280. A combined total for the project was \$91,279.

This project was not bid as a public construction project exceeding \$50,000 as required by the Public Competitive Bidding Act, nor were the individual purchases of the transaction bid as required for public construction projects of less than \$50,000. As reflected in 61 O.S. § 103(A) public construction projects of more than \$50,000 should be let and awarded by sealed bids and projects of less than \$50,000 should be awarded by written bids or competitive quotes.

Summary

The City and the Authority should comply with the Public Competitive Bidding Act when required. Although it was represented that the intentions of city officials in not bidding selected contracts was for the purpose of “saving money,” multiple contracts and agreements were entered into by the City and/or the Authority in violation of law.

OBJECTIVE III

COMMUNITY SERVICE

Petition Objective *Review authority to impose community service requirements on local students.*

Background

Petitioners represented that former Mayor Leslie Swinteron exceeded her authority in disciplinary measures taken against local students who entered the city swimming pool after hours.

In May 2014, ten members of the high school football team entered the municipal swimming pool after hours. The incident was witnessed by a city employee who notified the Geary Police Department. No citations were issued by the police.

If a citation had been issued, City Ordinances 6 §§ 101-131 would have governed the matter through the municipal court of the City of Geary. Since citations were not issued, punishment through the municipal judicial system was not relevant.

When the incident was brought to the attention of former Mayor Leslie Swinerton, a letter was prepared by the Mayor and sent to the parents of the juveniles involved.⁶

The letter prohibited the students from swimming at the Geary Swimming Pool until they completed eight hours of community service for the City. According to Ms. Swinerton, everyone who was provided a letter *voluntarily* completed the eight hours of community service.

Mayoral duties in an aldermanic form of government are defined at 11 O.S. § 9-105 which states in part:

The mayor shall be chief executive officer of the administrative branch of the government of the city. The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the Governor for purposes of military law. The mayor shall:

8. *enforce the city ordinances*; and 10. have such other powers, duties, and functions as may be prescribed by law or by ordinance.
[Emphasis added]

Finding

Based solely on the statute noted above, it appeared the mayor had the authority to “*enforce the city ordinances*,” however, determining the actual delineation of that authority would include a legal determination that is outside the scope of the State Auditor’s Office.

⁶ See a copy of the letter at Attachment C.

OBJECTIVE IV

LAND TRANSACTIONS

Petition Objective *Review approval, payments, and overall management of selected City land transactions.*

Summary of Findings:

- **No concerns were identified related to the exchange of land between the City of Geary, the Geary Economic Development Authority, and the Beulah Land Church of God in Christ.**
- **No concerns were identified related to a 3-acre parcel of land donated for the building of the Fire Sub-Station.**
- **The land transactions made during the acquisition of property for the Family Dollar retail store were properly approved and we found no evidence of improper profiting by city officials.**
- **The Geary Utility Authority erroneously paid \$3,000 to an individual who did not appear to have good title to a section of the property obtained for the construction of the Family Dollar retail store.**

Based on our inquiry with city officials and the examination of records, three land transactions occurred during the period under review. These transactions were evaluated for proper approval, payment, and overall management.

1. Exchange of land between the City of Geary, Geary Economic Development Authority, and the Beulah Land Church of God in Christ;
2. Donated 3-acre parcel of land for the building of the Fire Sub-Station;
3. Acquisition of property for the Family Dollar Store.

Finding

No concerns were identified related to the exchange of land between the City of Geary, the Geary Economic Development Authority, and the Beulah Land Church of God in Christ.

The petitioners questioned how the Geary Economic Development Authority (GEDA) obtained ownership of property that was traded by them to the Beulah Land Church of God in Christ. It was questioned if any city officials had ownership rights or profited in any way as a result of the land exchange.

The Beulah Land Church of God in Christ (Church) originally owned **Property A**⁷ and the City of Geary (City) originally owned **Property B**⁸.

Property A was located on the main highway through Geary and was determined to have economic development potential for the City. Property B was adjacent to the Church and could provide the Church with additional space and parking.

Property A

The City acquiring Property A from the Church was approved by GEDA on March 16, 2015.

Agenda Item 8

After much discussion, the Authority will acquire the Beulah Land Church of God parsonage. The Church will give a mortgage to the Authority in the amount of \$3,000 for the Authority to pay in full. The Church will then pay installments of \$100-200 until the amount of \$3000 is paid in full. The Authority will own this property and by paying the \$3000, will release the lien against it.

Jim made a motion to authorize Ray Vincent to go forth with this process. Brent second the motion. Vonda, Jim, Bobby, Brent, & Crystal were in favor. Eric opposed. Motion passes.

There was a judgement and lien of \$3,000 on **Property A**. The City agreed to pay the outstanding note on **Property A** in order to obtain a lien release from the holding bank. In return, the Church entered into a mortgage agreement in the amount of \$3,000 with GEDA with **Property B** held as collateral. The Church paid the mortgage in full in February 2016, leaving Property A in full ownership of GEDA.

Property B

The City was conveyed the title of **Property B** from the Blaine County Commissioners on June 12, 2007. The City conveyed **Property B** to GEDA who then deeded the property to the Church on April 13, 2015.

This exchange appeared to be beneficial to both parties. The Church received property it could use for its patrons and the City, through GEDA, obtained control of property with potentially more economic benefit for its citizens.

⁷ **Property A** - Lots fourteen (14), fifteen (15) and sixteen (16), in block seventeen (17), in Erick's addition to the City of Geary, Oklahoma, LESS AND EXCEPT a tract of land deeded out in Book 625 at Page 47.

⁸ **Property B** - Lots thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), in block five (5), in Crain's addition to the City of Geary, Blaine County, Oklahoma, Book 960 at Page 341.

Upon review of county property title records, we found no evidence that any city council members had personal interest in either tract of land exchanged.

Finding

No concerns were identified related to a 3-acre parcel of land donated for the building of the Fire Sub-Station.

The City was donated a 3-acre parcel of land by Gene and Marcia Ellison for the construction of a Fire/EMS Sub-Station. No money was exchanged between the grantors, the Ellison's, and the grantee, the City. The city council approved this action March 11, 2013.

Ronnie Wheeler made the motion seconded by Bobby Allen to approve the quit claim deed from Gene and Marcia Ellison for property to be used for a Fire/EMS Sub Station. Ayes: Cozetta Johnson, Ernest Allen, Tabbitha Kiener, Bobby Allen, and Ronnie Wheeler. Nays: None.

Finding

The land transactions made during the acquisition of property for the Family Dollar retail store were properly approved and we found no evidence of improper profiting by city officials.

Family Dollar desired to establish a store in Geary, Oklahoma. Upon their selection of a preferred location, several entities and/or individuals were involved in successfully establishing the new Family Dollar retail store.

The involved parties included:

- ARCP FDCCC1404, LLC - Family Dollar;
- Triple C Development, Inc. – construction company for Family Dollar;
- See Realty – realtor for Family Dollar;
- Wright Siding Inc./Tommy and Mary Wright– owners of Lots 12, 13 and N/2 of Lot 14 Block 27;
- First United Methodist Church – owner of Lots 10 and 11 Block 27;
- Linda Tucker and Bank of Union/FDIC, S/2 of Lot 14 Block 27;

The First United Methodist Church sold their property for the building of the Family Dollar retail store to Triple C Development, Inc. for a price of \$95,000. This contract was contingent upon receipt of a fully executed contract for the sale of additional property near the future Family Dollar site owned by Wright Siding, Inc./Tommy and Mary Wright and upon a fully executed demolition contract with the City.

Wright Siding, Inc./Tommy and Mary Wright⁹ sold their adjacent property to Triple C Development, Inc. for a price of \$75,000 contingent upon a fully executed contract with the First United Methodist Church and a fully executed demolition contract with the City. Both contracts with Triple C Development, Inc. were satisfied.

Finding

The Geary Utility Authority erroneously paid \$3,000 to an individual who did not appear to have good title to a section of the property obtained for the construction of the Family Dollar retail store.

During the City’s progression of assisting in the procurement of property for the Family Dollar retail store, the receipt of conflicting title ownership information for the south half of Lot 14 Block 27 resulted in the Authority compensating two purported owners of the property.

A payment of \$2,500 for the above noted property was made to the FDIC in conjunction with a Quit Claim Deed dated May 23, 2014. Subsequent to this transaction, a Commitment for Title Insurance reflected that an additional Warranty Deed would be required to obtain clear title since “Linda Tucker had an outstanding interest in the subject premises, that was never conveyed before now.” Based on this information, the Authority paid Linda Tucker \$3,000 to obtain clear title.

Our review of the property records reflected Linda Tucker had previously granted a Warranty Deed to a third party on March 9, 1992, indicating she had already conveyed her interest in title to said property and should not have been paid the \$3,000.

⁹ Mary Wright is an employee of the City. However, the business conducted by Wright, as part of the Family Dollar land transactions, was with Triple C Development, Inc., not the City of Geary. As such, the prohibited conduct statute defined at 11 O.S. § 8-113 prohibiting transactions between a municipal employee and the municipality would not be applicable.

OBJECTIVE V INCONSISTENT APPLICATION OF FINES AND CHARGES

Petition Objective *Review possible inconsistencies in applying local ordinance fines and utility billing charges.*

Summary of Findings:

- **The assessed fine for violation of ‘Failure to Abate Nuisance’ charged to Ms. Elesha Bingham appeared inconsistent with charges or fines assessed to other property owners for similar violations.**
- **A city official was not assessed a code violation or fine for an apparent violation of city ordinance.**
- **The utility deposits in question were applied consistently and we found no evidence that the petitioner’s business was charged for trash services not rendered.**

Local Ordinance Fines - Property

The City of Geary, per the Code of Ordinances, adopted the International Property Maintenance Code. This Code constitutes minimum requirements and standards for premises, structures, the responsibility of owners, operators, and occupants, along with administration, enforcement and penalties.

The City employs two code enforcement officers to enforce the City’s ordinance codes. Upon the determination a city ordinance code has been violated, the code enforcement officers issue citations or notices for the citizen to appear before a hearing officer and/or the city clerk who then establishes corrective action (i.e. fine, allotment of additional time to correct violation, etc.)

The petitioners alleged that Ms. Elesha Bingham, a resident of Geary who was admittedly in violation of city nuisance codes, was ticketed and fined inconsistently when compared to similar situations.

Finding

The assessed fine for violation of ‘Failure to Abate Nuisance’ charged to Ms. Elesha Bingham appeared inconsistent with charges or fines assessed to other property owners for similar violations.

Based on a review of the city’s “Tickets Filed Report” for dates between July 1, 2014 and May 31, 2017, and of our evaluation of fines imposed for

City of Geary – Citizen Petition Audit

the same period, Elesha Bingham was the only citizen charged under city ordinance § 8-101 – Failure to Abate Nuisance.

City ordinance § 8-101 states:

It is unlawful for any owner, occupant or persons otherwise in possession or control of any lot, tract or parcel of land situated wholly or in part within the corporate limits of the City of Geary to allow trash or weeds to grow, stand or accumulate upon such premises. It is the duty of such owner, occupant or persons otherwise in possession or control to remove or destroy any such trash or weeds.

Ms. Bingham was initially served a “Notice to Abate Nuisance”, from the city council, on March 30, 2012, for “High grass & weeds, trash & etc.” on her property. City officials provided Bingham written notice to abate nuisance an additional three times over a three-year period.¹⁰ She was subsequently issued a ticket for failure to abate nuisance on February 12, 2015 and was found guilty on April 25, 2016. Ms. Bingham was fined \$10,000 with \$9,500 suspended resulting in a net fine of \$500.

First Appearance Hearing held.
FOUND GUILTY AT TRIAL. FINED 10,000.00 - 9500.00 SUSPENDED - 90 DAYS PROPERTY TO BE IN COMPLIANCE WITH THE COURT.
PROPERTY WILL BE REGULARLY BE TAKEN PICTURES OF WITHOUT PERMISSION. APPLY 150.00 BOND + ORDERED TO PAY 350.00
APPEAL BOND SET AT 20000.00.

There were also concerns presented by Ms. Bingham that city officials entered her property without permission. City ordinance §8-103.3 and 103.4 does grant the right of entry on a citizen’s property upon finding that the condition of the property constitutes a detriment, or a hazard, and that the property would benefit by the removal of such conditions.

In contrast to Ms. Bingham’s fine, thirty-four similar violations were issued for property related nuisances under ordinance § 8-301 - Nuisance – Public/General instead of ordinance § 8-101. All projected fines under § 8-301 were less than \$135 per ticket, or in some instances, the violations were dismissed.

We evaluated the details of two of the additional properties which appeared to be similar in nature to Ms. Bingham’s property:

Property 1 - 135 N. Broadway
Property 2 - 205 and 217 S. Aurora Ave¹¹

¹⁰ June 26, 2013; March 3, 2014; April 30, 2014

¹¹ Considered one property because of same ownership.

The owners of both Properties 1 and 2 were notified of violations of city ordinance and received multiple letters from city officials to clean-up the properties. These notifications dated back to 2008.

The owner of Property 1 was contacted by city officials three times over a period of two and a half years from the date of the first notice of violation. This property owner was eventually fined \$250, \$125 for two tickets, for violations of city ordinance § 8-301.

The owner of Property 2 was contacted by city officials 15 times over a 7-year period for violations of ordinance § 8-301. Similar to Ms. Bingham, several Notice To Abate Nuisances were issued indicating “high grass and weeds” were problematic on the properties. The owner of the property was ticketed on August 14, 2015, for \$135. However, per the court docket no fine was ultimately assessed. Per city staff, the nuisance was abated to the City’s satisfaction prior to the hearing date and all fines were dismissed.

Local Ordinance Fines - Vehicles

The ordinances discussed above referred to code violations for “High grass & weeds, trash & etc.” The petitioner’s alleged other violations of city code were not addressed by the City concerning vehicles. Specifically, the possession of inoperable or “junk” vehicles by a city official.

Finding

A city official was not assessed a code violation or fine for an apparent violation of city ordinance.

The property at 312 N. Arapahoe was brought to our attention by the petitioners as a property in possible violation of city ordinance. Per the petitioners, the property contained “junk vehicles” but no violations had been assessed the property owner of record. The property at 312 N. Arapahoe was owned by a city official.

Upon personal observation of the city official’s residence, located within the city limits, although not in violation of “High grass & weeds, trash & etc.,” there were two vehicles which appeared to be abandoned, inoperable, and without current license plate tags parked on the premises.

Per the Tickets Filed Report, there was no evidence the city official was ever ticketed with a Notice of Violation of city ordinance. However, under city ordinance § 8-401 through § 8-404, inoperative vehicles, or a “junk motor vehicle,” as defined in code, that is inoperative and on any public or private property for more than ten days is a public nuisance offense. A “junk motor vehicle” is defined in § 8-402 as:

...any motor vehicle, which does not have lawfully affixed thereto both an unexpired license plate or plates and a current motor vehicle safety inspection certificate and the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded....

Additionally, under ordinance § 8-404,

Any person who violates any provision of this chapter, by doing any act prohibited or declared to be unlawful thereby, or declared to be an offense or misdemeanor thereby, is guilty of an offense and, upon conviction thereof, shall be punished as provided in § 1-108 of this code. Each day upon which any such violation continues shall constitute a separate offense.

Based on our observation, the city official’s vehicles would have constituted a violation of code. However, the issuance of a code violation is a subjective process and is left to the opinion of a code enforcement officer.

City officials and code enforcement officers should perform periodic risk assessments to determine if priorities exist within the community which would result in the enforcement of selected ordinances above others.

Utility Billing Charges

Petitioners claimed the requirement for payment of a utility deposit was not consistently applied between two local businesses. It was alleged that a petitioner’s business was required to pay a \$400 utility deposit when a neighboring business was not charged an equal deposit amount. It was also alleged the petitioner’s business was charged for trash services even though the business had “opted out” of receiving the service.

Finding

The utility deposits in question were applied consistently and we found no evidence the petitioner’s business was charged for trash services not rendered.

Both businesses in question paid a \$400 utility deposit for utility services received. The deposit amounts required were consistent in nature and both were recorded in the City’s “Period Deposits” report.

In a review of six months of utility billing records, we found no evidence that either business in question had been charged for trash collection services. We did identify the petitioner’s business was provided a \$35 credit adjustment for trash services on October 2015 which indicated trash service had been previously billed, but we found no evidence of additional billing.

City of Geary – Citizen Petition Audit

Twenty-three customer accounts, including multiple city officials and employee accounts, were evaluated to determine if utility costs had been properly billed on a monthly basis. We also recalculated the rates charged to 15 customer accounts to determine if utility rates had been consistently applied.

The accounts reviewed had been billed monthly and the rates were consistently applied. There were no unexplained adjustments to any of the accounts reviewed, and late charges, when applicable, were assessed and billed accordingly.

OBJECTIVE VI FUNDING AND TRANSACTIONS OF THE FIRE SUB-STATION

Petition Objective *Review the funding and transactions surrounding the building of the fire sub-station.*

Summary of Findings:

- **The City of Geary complied with the statutory provision of 61 O.S. § 103(A) by obtaining sealed bids and selecting the lowest bid proposal to construct the Fire/EMS Sub-Station.**
- **Some costs for the Fire/EMS Sub-Station were not included in the original bid award but should have been bid per 61 O.S. § 103(B).**
- **For 12 of 48 purchase transactions reviewed, the city did not properly encumber funds prior to the expenditure being incurred. Additionally, purchase orders were prepared on the same date an invoice was dated for 16 of 48 purchases, also indicating funds were not encumbered prior to services rendered.**
- **Upon the review of the city council minutes, it could not be verified that nine of 48 purchases had been properly approved through the consent agenda or as a direct prior approval by the city council.**
- **Funding utilized in the Fire Sub-Station project appeared suitable and properly sourced.**

Background

The City of Geary desired to build a Fire/EMS Sub-Station (Station) near I-40 and Highway 281 in Blaine County. The City initially contracted with Cowan Engineering Group for engineering consulting services on September 11, 2013. The initial project estimate for the Station in March 2014 was \$1,221,360.

The council determined the initial estimate was too costly and met several times subsequent to March 2014 searching for funding and cost cutting measures in their attempt to construct the Station.

Utilizing the plans the Cowan Engineering Group prepared, the Council discussed their requests with two additional architect and consulting firms; D.C. Associates and Wilson & Associates. D.C. Associates was hired for architectural services for the new ‘Fire Station Building’ in a special meeting held October 2, 2014.

City of Geary – Citizen Petition Audit

The Council subsequently solicited and received sealed bids from three companies for the construction and build-out of the Station. The contract was awarded to Cedar Ridge General Contracting, LLC.

City records reflected the total cost of the Station project was \$537,426.32.

Total Cost of Fire/EMS Sub-Station Project	
Vendor	Amount
Cedar Ridge General Contracting, LLC	\$365,600.00
Cowan Group Engineering	\$87,410.77
D.C. Associates	\$50,192.00
Millie Vance Consultant	\$9,287.63
Oklahoma Contractor Supply	\$6,508.40
Jorge Leyva	\$5,162.11
ACME Fence	\$4,439.88
Standard Testing	\$1,970.88
Indaco Metals	\$1,800.00
Debbie Harrison	\$1,425.00
Dub Ross Co.	\$1,306.70
Bollenbach Concrete	\$750.00
Canadian County District #3	\$620.50
Terracon	\$591.40
Geary Star	\$218.00
The El Reno Tribune	\$105.16
Hinton True Value	\$37.89
Total	\$537,426.32

Bidding

Finding

The City of Geary complied with the statutory provision of 61 O.S. § 103(A) by obtaining sealed bids and selecting the lowest bid proposal to construct the Fire/EMS Sub-Station.

Title 61 O.S. §103(A) states in part:

Unless otherwise provided by law, all public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974....

The City of Geary’s initial advertisement for bids in February 2015 resulted in rejection of all bids at the March 19, 2015 city council meeting. Sealed bids were let a second time in June 2015 with three qualified bids received. The City Council approved Cedar Ridge General Contracting, LLC, the lowest bidder at \$370,000, on July 6, 2015.

Finding

Some costs for the Fire/EMS Sub-Station were not included in the original bid award but should have been bid per 61 O.S. § 103(B).

It appears the Council was diligent in seeking the lowest cost contractor to construct the Fire/EMS Sub-Station; however, documentation could not be provided to support bids obtained for products or services not included in the agreement with the construction contractor. Specifically, documentation could not be provided to verify quotes were obtained for the services of a grant administrator, plumbing supplies, or materials and labor to construct a fence around the new Station.

Title 61 O.S. §103(B)(C) defines bidding requirements for construction projects for any public improvements, specifically improvements with a cost of less than \$50,000 but more than \$5,000, stating in relevant part:

.... other construction contracts for the purpose of **making any public improvements** or constructing any public building or making repairs to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor. [Emphasis added]

Based on our review of Council minutes, we did not find documented bids or quotes for the building of a fence. This service was contracted by the City for a public improvement in conjunction with the building of the Station and paid on Purchase Order No. 7602 in the amount of \$5,162.11. As such, written bids or competitive quotes should have been obtained and documented.

Overall Purchasing Process

We reviewed the overall procurement process of expenditures related to the Fire Sub-Station. The City exercises a purchasing process as governed by 62 O.S. § 310.1 and 11 O.S. § 17-102 to encumber and pay for items purchased. Requirements under statute include, but are not limited to:

- All purchase orders shall be submitted prior to the time a purchase commitment is made.
- Certification should be obtained that sufficient unencumbered balances exist in the designated appropriation account and that the amount of the purchase order has been entered against the appropriation.

- Invoices shall be provided in writing that sufficiently itemize and clearly describe each item purchased and the total price and date of the purchase.

Finding

For 12 of 48 purchase transactions reviewed, the city did not properly encumber funds prior to the expenditure being incurred. Additionally, purchase orders were prepared on the same date an invoice was dated for 16 of 48 purchases, also indicating funds were not encumbered prior to services rendered.

The purpose for utilizing a purchase order system is to ensure funds are available and set aside, or encumbered, prior to the purchase transaction. Title 62 O.S. § 310.1(A) states in part:

Unless otherwise provided by ordinance, officers, boards, commissions and designated employees of cities and towns... shall submit all purchase orders and contracts prior to the time the commitment is made,

The City should encumber all purchase transactions prior to incurring the obligation. Encumbering funds helps insure that funds are available and properly documents their availability prior to an expense being incurred.

Finding

Upon the review of the city council minutes, it could not be verified that nine of 48 purchases had been properly approved through the consent agenda or as a direct prior approval by the city council.

Chapter 5 § 7-503(C) of the city's ordinances defines the required approval procedure for purchases over \$25,000 stating in part:

.... council approval shall be obtained prior to the time the commitment is made, and such approval shall be recorded in the minutes of the council.

Ordinance further states, as to purchases of less than \$25,000 in § 7-503(D)(2):

...the invoices or claim forms along with the related supporting documentation shall be submitted to the city council for consideration and approval of payment....

All expenditures of the City should be properly documented as approved in the council minutes, either as a direct prior approval or as part of the consent agenda. Such approvals help insure that expenses are not incurred without proper oversight.

The overall expenditures incurred for the building of the Station appeared to be reasonable and utilized for the purpose intended. It also appears effort was made by the council to complete the Station in a cost-effective manner. However, as noted, the administrative application of the purchasing process did not fully comply with statute and ordinance.

Project Funding

The funding sources for the Fire/EMS Sub-Station were as follows:

Funding for the Fire/EMS Sub-Station	
Source	Amount
Welch State Bank (Loan/Lease)	\$217,364.70
Construction Fund	\$165,595.94
Community Development Block Grant	\$150,000.00
General Fund	\$4,465.68
Total	\$537,426.32

Finding

Funding utilized in the Fire Sub-Station project appeared suitable and properly sourced.

The use of funding sources was voted upon and approved by the Council throughout the project as needed. Upon review of the city council minutes, the loan/lease agreement from Welch State Bank, and other funding details of the Construction Fund and the General Fund, these funding sources appeared to be suitable and appropriately utilized for the construction of the Fire Sub-Station.

The City of Geary’s grant application to the Oklahoma Department of Commerce requesting Community Development Block Grant funds described the grant funds were to be utilized as follows:

This project is the construction of a desperately needed Fire Substation. Plans are to construct a 60' x 130' metal training room, office, kitchen, sleeping quarters and showers. The Substation will be located 8 1/2 miles south of the Highway 281, within the city limits of Geary. One of the bays will be used to house an ambulance. The City of Geary, Department covers 142 square miles, challenging at best. The substation will ensure a higher level of fire protection response time, more volunteers in closer proximity, increased training opportunities and ability to house additional will give the City of Geary the ability to provide a higher level of fire protection and emergency services to the residents and throughout the surrounding rural area.

Based on our observation of project records, grant funds were properly expended for the intended purpose.

OBJECTIVE VII

AUDIT REQUIREMENTS

Petition Objective ***Determine that all required audit requirements have been met for the City of Geary, the Geary Utility Authority, and the Geary Economic Development Authority.***

Summary of Findings:

- **The City of Geary and the Geary Utility Authority met the required audit requirements imposed by statute.**
- **The Geary Economic Development Authority did not obtain an annual audit, or in lieu of an annual audit, the required waiver request allowed under statute.**

The petitioners, as concerned citizens of the City, desired to ensure the governmental establishments of the City had been audited in accordance with applicable legal requirements.

Finding

The City of Geary and the Geary Utility Authority met the required audit requirements imposed by statute.

Title 11 O.S. § 17-105(A) defines the audit requirements for municipalities stating:

The governing body of each municipality with an income of Twenty-five Thousand Dollars (\$25,000.00) or more to its general fund during a fiscal year shall cause to be prepared...an annual financial statement audit to be conducted in accordance with auditing standards generally accepted in the United States of America and "Government Auditing Standards" as issued by the Comptroller General of the United States. Such audit shall be ordered within thirty (30) days of the close of each fiscal year. Copies shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year...

The audit requirements are further delineated in § 17-105(B) based on a municipality's income and population¹², allowing for an agreed-upon-procedures engagement in place of a financial statement audit. The City of Geary chose to receive a financial statement audit.

¹² The City of Geary's income exceeded \$25,000 annually in the general fund and the City's population as of the 2010 census was 1,280.

City of Geary – Citizen Petition Audit

The Geary Utility Authority, a trust, was created July 2, 1962, under the provisions of 60 O.S. §§ 176 to 180. Audit requirements for the Authority are defined in 60 O.S. §180.1 which states in part:

The trustees of every trust created for the benefit and furtherance of any public function with the State of Oklahoma or any county or municipality as the beneficiary or beneficiaries thereof must cause an audit to be made of the financial statements of the trust, such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust. The audit shall be filed in accordance with the requirements set forth for financial statement audits in Section 212A of Title 74 of the Oklahoma Statutes.

The Geary Utility Authority’s financial activity was included as a component unit of the City of Geary’s annual financial statement audit.

For fiscal years ended June 30, 2015, 2016, and 2017, the City and the Authority complied with applicable audit requirements and properly submitted annual audits to SA&I within six months of the fiscal year end as required by law.

Fiscal Year Ending	Date Submitted to SA&I
June 30, 2015	November 5, 2015
June 30, 2016	December 14, 2016
June 30, 2017	December 8, 2017

Finding

The Geary Economic Development Authority did not obtain an annual audit, or in lieu of an annual audit, the required waiver request allowed under statute.

The Geary Economic Development Authority (GEDA) was created November 8, 2012, under 60 O.S. §§ 176 *et seq.* As noted above, 60 O.S. § 180.1 requires every trust created under this title “to cause an audit to be made of the financial statements.” In addition, the trust indenture states:

The Trust shall cause to be prepared annually at the close of each fiscal year of the Trust, an audit of the funds, financial affairs and transactions of the Trust, including but not limited to all fees, salaries and expenditures in exact amounts and listing to whom paid. Such audit is to be certified with an unqualified opinion of an independent, certified public accountant. A copy of such annual audit shall be filed within the time period and in conformity with the provisions of Oklahoma law related thereto. Unless hereafter changed by resolution of the Trustees, the fiscal year of the Trust shall be identical with the fiscal year of the Beneficiary. The cost of the foregoing audits shall be paid from the Trust Estate.

City of Geary – Citizen Petition Audit

However, 60 O.S. §180.1(C) allows a public trust with less than \$50,000 in revenue and assets to receive a waiver of the audit requirements. The statute states in relevant part:

Public trusts which have less than Fifty Thousand Dollars (\$50,000.00) in revenue and less than Fifty Thousand Dollars (\$50,000.00) in assets, and for whom an annual financial statement audit is not required by another law, regulation, or contract and any public trust which did not have financial activity exceeding Fifty Thousand Dollars (\$50,000.00) since its last audit **may apply to the State Auditor and Inspector for a waiver of the requirements of subsections A and B of this section.** [Emphasis added]

Based on our review of GEDA bank statements, neither revenue nor assets exceeded \$50,000 during fiscal years ending June 30, 2015, 2016, or 2017. Therefore, an annual audit was not required of GEDA. However, a waiver request as required by 60 O.S. § 180.1.C was not obtained.

OBJECTIVE VIII

RESIDENCY AND SEATING OF COUNCIL

Petition Objective **Determine if Board Members reside within the appropriate boundaries of their wards, and if appointed, board and commission members have been properly seated.**

Summary of Findings:

- **City Council/Authority officials serving between July 2014 and May 2017 properly resided within the boundaries of the wards they represented.**
- **Of 11 city officials reviewed, all had a properly executed “loyalty oath” on file with the municipal clerk and all but one had an appropriately filed constitutional “oath of office” on file.**
- **We found no evidence that three trustees of the Geary Economic Development Authority took the oath of office as required by law.**
- **The Geary Economic Development Authority currently operates with nine board of trustee members when the ‘Trust Indenture’ defines the number of trustees as eight.**
- **A signed, notarized copy of the Geary Economic Development Authority Trust Indenture could not be located.**

Background

The City of Geary operates as an Aldermanic form of government per 11 O.S. §§ 9-101 *et seq.* Under the Aldermanic form of government, a mayor is elected at large, and one or two council members are elected from each city ward. The elected officials shall be residents and registered voters of the city, and the council members shall be actual residents of their respective wards.

During the period under review, the City operated with an elected mayor and five (5) city council members, one from each of the five wards as defined in Chapter 2 § 1-202 of the city ordinances.

Per Article VI of the Geary Utility Authority Trust Indenture, trustees of the Authority are the same as the governing board of the “Beneficiary.” The “Beneficiary” of the Authority is the City of Geary, as such the City Council and the Authority Board are one in the same.

ARTICLE VI

THE TRUSTEES

(1) The Trustees of this Trust shall be citizens and residents of the Beneficiary, who are the persons presently constituting the _____ Mayor _____, and members of the governing board of the Beneficiary, and

Residency

Finding

City Council/Authority officials serving between July 2014 and May 2017 properly resided within the boundaries of the wards they represented.

Residency requirements for becoming a city council member under an aldermanic government are defined in 11 O.S. § 16-109 which states in part:

To be eligible to become a candidate for a political party nomination in a municipality's partisan primary election, or an independent candidate in such municipality's general election, a person must for at least six (6) months prior to filing a declaration of candidacy be a registered voter at an address within the municipality or in the ward if an office is from a ward.

We obtained and reviewed a map of the ward districts and the residential addresses of Council/Authority members who served in office between July 2014 through May 2017. Based on this information, it was verified the officials did reside within the wards they represented for a six-month period prior to election as required by law.

There were also questions raised from the citizen petitioners as to the residency requirements for the trustees of GEDA. Specifically, if a trustee for GEDA could reside outside the city limits. We found no evidence that residency requirements were required for trustees appointed to GEDA.

It should also be noted, according to 60 O.S. § 176(B), a trust can engage in activities outside of their beneficiaries¹³ geographic boundaries. The statute states:

Any trust created pursuant to the provisions of this section, in whole or in part, may engage in activities outside of the geographic boundaries of its beneficiary, so long as the activity provides a benefit to a large class of the public within the beneficiary's

¹³ The City of Geary is the beneficiary for the Geary Economic Development Authority.

geographic area or lessens the burdens of government of the beneficiary and which does not solely provide a benefit by generating administrative fees.

Oath of Office

Finding

Of 11 city officials reviewed, all had a properly executed “loyalty oath” on file with the municipal clerk and all but one had an appropriately filed constitutional “oath of office” on file.

Title 11 O.S. § 8-103 requires “any officer, elected or appointed” to take and subscribe to the oath or affirmation of office as required by the *Oklahoma Constitution* and file such oath with the municipal clerk. Article 15 § 1 of the *Constitution* states:

All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation:

"I,, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as to the best of my ability."

In addition, 51 O.S. § 36.1 requires every officer and employee of a municipality or a public authority to complete a “loyalty oath.” The statute states in relevant part:

Every officer and employee of...a municipality, public agency, public authority...who, on or after July 1, 1953, is appointed or elected to office, or who after said date is employed, for a continuous period of thirty (30) days or more, in order to qualify and enter upon the duties of his office or employment and/or receive compensation, if any, therefor, shall first take and subscribe to the **loyalty oath** or affirmation required by this act and file the same as hereinafter set forth. [Emphasis added]

In determining if city officials were “properly seated,” we reviewed oath of office and loyalty oath documentation for 11 city officials. Of the 11 reviewed, all had properly executed loyalty oaths on file with the municipal clerk, and all but one had an appropriately filed constitutional “oath of office” on file.

The one official that did not have a “oath of office” on file is no longer an official of the City.

Finding

We found no evidence three trustees of the Geary Economic Development Authority took the oath of office or completed a loyalty oath as required by law.

Title 60 O.S. § 178(A) requires trustees of a public trust take the oath of office required of an elected public officer, the statute states in relevant part:

Every person hereafter becoming a trustee of a public trust first shall take the oath of office required of an elected public officer...The oaths of office shall be administered by any person authorized to administer oaths in the State of Oklahoma, and shall be filed...in the office of the clerk of the municipality in a trust wherein any municipality is the beneficiary.

Signed oath of office attestations or loyalty oath certificates for GEDA trustees Bobby Allen, Todd Glasgow, and Brent Williams could not be located.

Other Issues

Finding

The Geary Economic Development Authority currently operates with nine board of trustee members when the ‘Trust Indenture’ defines the number of trustees as eight.

Per Article VII of the GEDA Trust Indenture there should be eight (8) trustees, with at least one Trustee being a member of the Geary City Council.

<p>Article VII The Trustees</p>
<p>(1) The Trustees shall be appointed by the City Council of the City of Geary by a majority vote.</p>
<p>(2) The number of Trustees shall be eight (8). At least one Trustee shall be a member of the Geary City Council.</p>

Per the secretary of the GEDA Board, GEDA currently has nine appointed board members. We recommend the GEDA operate by the established Trust Indenture, or if nine members are desired, consider amending the number of board members required.

Finding

A signed, notarized copy of the Geary Economic Development Authority Trust Indenture could not be located.

A fully executed Trust Indenture for the GEDA could not be provided. An unsigned copy, dated November 8, 2012, was utilized in our evaluation of all GEDA related questions because a signed, notarized copy was not available.

ATTACHMENT A

(Bid for The Fishel Company-Page 1)

04/06/2012 FRI 14:17 FAX 4058842005 City of Geary 001/002

**City of Geary
Gas Pipeline Replacement Project
BID SCHEDULE**

Item No.	Description	Est. Qty.	Unit Price	Estimated Total Cost Per Item
1	2" Yellow PE 2406 Per Linear Foot (Linear foot includes tie-ins, coupling fittings, and tracer wire)	linear ft <i>15,628</i>	\$ per linear ft. <i>6.69</i>	<i>\$104,557.32</i>
2	4" Yellow PE 2406 Per Linear Foot (Linear foot includes tie-ins, coupling fittings, and tracer wire.)	linear ft <i>900</i>	\$ per linear ft. <i>26.80</i>	<i>\$24,120.00</i>
3	Rebuild old meter setting with poly service tee, 1" poly pipe and anodeless riser/tracer wire up to 15 feet	# of services <i>1</i>	\$ per service <i>1,669.40</i>	<i>\$1,669.40</i>
4	Rebuild meter setting with new fittings and new meter, 1" poly pipe and anodeless riser/tracer wire up to 15 feet	# of services <i>1</i>	\$ per service <i>3,234.77</i>	<i>\$3,234.77</i>
5	Rebuild old or new meter setting with poly service tee, 1" poly pipe and anodeless riser/tracer wire over 15 feet	# of services <i>1</i>	\$ per service <i>3,262.86</i>	<i>\$3,262.86</i>
6	2" End Caps for Abandoned Lines	#end caps <i>1</i>	\$ per end cap <i>565.20</i>	<i>\$565.20</i>
7	4" End Caps for Abandoned Lines	#end caps <i>1</i>	\$ per end cap <i>931.59</i>	<i>\$931.59</i>
8	17 lb anode	# anodes <i>1</i>	\$ per anode <i>329.03</i>	<i>\$329.03</i>
9	Hourly labor rates with three persons and Trac Hoe	per hour <i>1</i>	\$ per hour <i>291.86</i>	<i>\$291.86</i>
10	Road Bore up to and including 2"	per 2" bore <i>1</i>	\$ per 2" bore <i>1208.00</i>	<i>\$1,208.00</i>
11	Road Bore from 3" to 4" Bore	per 3" to 4" bore <i>1</i>	\$ per 3" to 4" bore <i>2,023.00</i>	<i>\$2,023.00</i>
12	Concrete Cuts, Removal, and Replacement	# concrete <i>1</i>	\$ per sq ft <i>30.74</i>	<i>\$30.74</i>
13	Asphalt Cuts, Removal, and Replacement	# asphalt <i>1</i>	\$ per sq ft <i>32.67</i>	<i>\$32.67</i>
14	Repair Leak on Steel Main	<i>1</i>	\$ per hour <i>507.82</i>	<i>\$507.82</i>
15	Repair Leak on Steel Service	<i>1</i>	\$ per hour <i>506.77</i>	<i>\$506.77</i>
	TOTAL ESTIMATED PROJECT COST			<i>\$143,252.38</i>

All bidding is based on on-site inspection and measurement in which feet will be measured by bidder to determine estimated footage needed for 2" and 4" polyethylene pipe and attendant fittings including total number of bends as well as all service connections of 1" poly with anodeless risers. All estimated costs and measurements must to be included in the Bid Schedule.

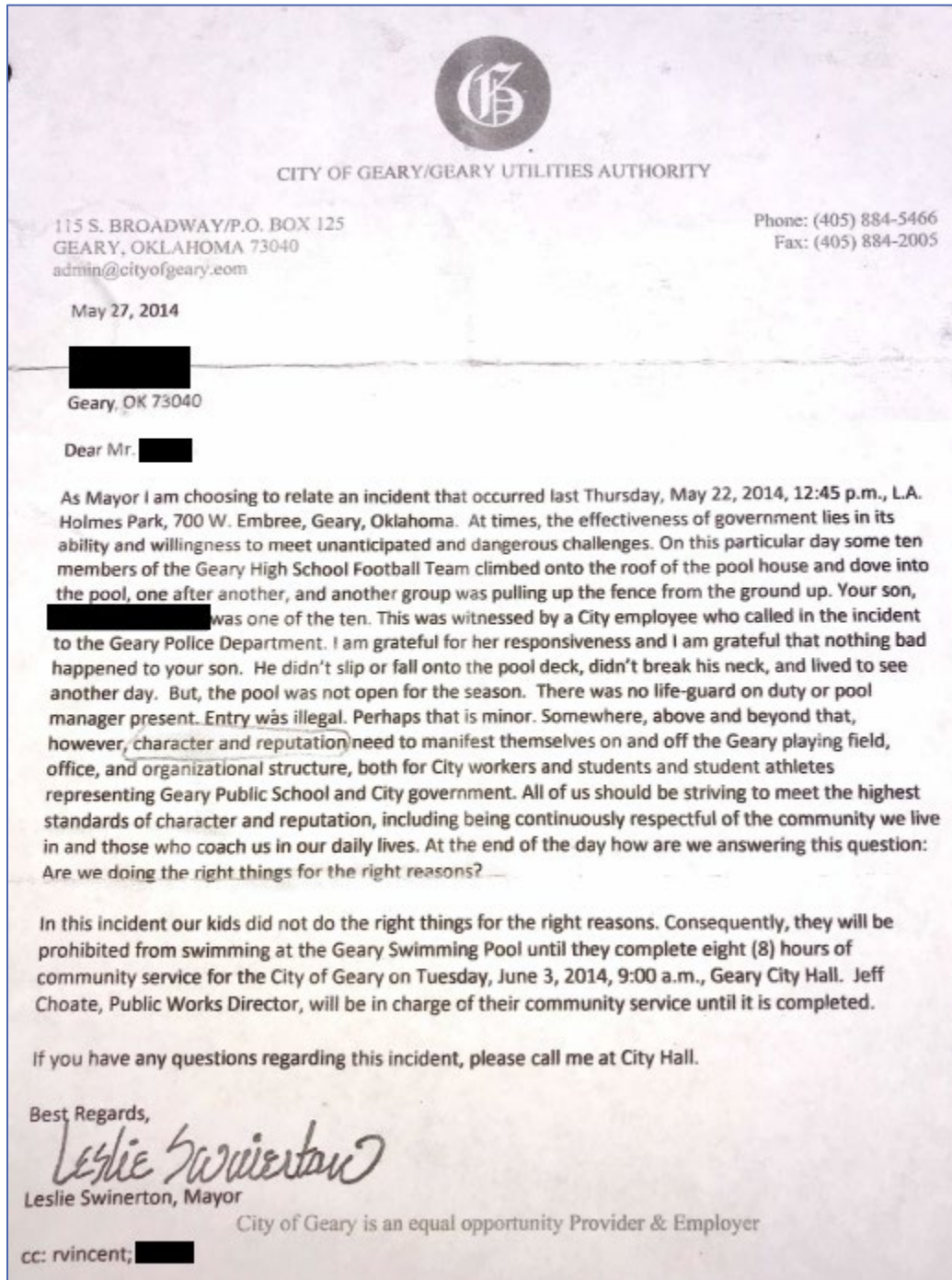
ATTACHMENT B

(Bid for Harrison Construction)

City of Geary Gas Pipeline Replacement Project BID SCHEDULE				
Item No.	Description	Est. Qty.	Unit Price	Estimated Total Cost Per Item
1	2" Yellow PE 2406 Per Linear Foot (Linear foot includes tie-ins, coupling fittings, and tracer wire)	linear ft	\$ per linear ft. 9.85	
2	4" Yellow PE 2406 Per Linear Foot (Linear foot includes tie-ins, coupling fittings, and tracer wire.)	linear ft	\$ per linear ft. 12.00	
3	Rebuild old meter setting with poly service tee, 1" poly pipe and anodeless riser/tracer wire up to 15 feet	# of services	\$ per service 350.00	
4	Rebuild meter setting with new fittings and new meter, 1" poly pipe and anodeless riser/tracer wire up to 15 feet	# of services	\$ per service 600.00	
5	Rebuild old or new meter setting with poly service tee, 1" poly pipe and anodeless riser/tracer wire over 15 feet	# of services	\$ per service 400.00	
6	2" End Caps for Abandoned Lines	#end caps	\$ 2.00 per end cap	
7	4" End Caps for Abandoned Lines	#end caps	\$ 4.00 per end cap	
8	17 lb anode	# anodes	\$ 100.00 per anode	
9	Hourly labor rates with three persons and Trac Hoe	per hour	\$ 50.00 per hour	
10	Road Bore up to and including 2"	per 2" bore	\$ 15.00 per 2" bore	
11	Road Bore from 3" to 4" Bore	per 3" to 4" bore	\$ 20.00 per 3" to 4" bore	
12	Concrete Cuts, Removal, and Replacement	# concrete	\$ 10.00 per sq ft	
13	Asphalt Cuts, Removal, and Replacement	# asphalt	\$ 20.00 per sq ft	
14	Repair Leak on Steel Main		\$ 50.00 per hour 20.00	
15	Repair Leak on Steel Service		\$ 20.00 per hour	
TOTAL ESTIMATED PROJECT COST				

All bidding is based on on-site inspection and measurement in which feet will be measured by bidder to determine estimated footage needed for 2" and 4" polyethylene pipe and attendant fittings including total number of bends as well as all service connections of 1" poly with anodeless risers. All estimated costs and measurements must to be included in the Bid Schedule.

ATTACHMENT C



ATTACHMENT D

CITIZEN PETITION REQUEST FOR SPECIAL AUDIT BY THE STATE AUDITOR & INSPECTOR

We, the undersigned electors of the City of Geary, Blaine County and Canadian County, do hereby petition and request you to examine the books of the City of Geary, the Geary Utility Authority, and the Geary Economic Development Authority pursuant to 74 O.S. § 212(L), for the period including, but not limited to, July 1, 2014 through May 31, 2017. Specifically, the investigation will include, at a minimum:

1. Review possible violations of the Open Meeting Act and Open Records Act.
2. Review contracts to replace gas and water lines, including bidding requirement compliance.
3. Review authority to impose community service requirements on local students.
4. Review approval, payments, and overall management of selected City land transactions.
5. Review possible inconsistencies in applying local ordinance fines and utility billing charges.
6. Review the funding and transactions surrounding the building of the fire sub-station.
7. Determine that all required audit requirements have been met for the City of Geary, the Geary Utility Authority, and the Geary Economic Development Authority.
8. Determine if board members reside within the appropriate boundaries of their wards and if appointed board and commission members have been properly seated.

Some of the concerns identified above may reference a time period shorter or longer than stated due to the nature of the concern and the time frame in which it is alleged to have occurred. The Office of the State Auditor is not precluded from examining other records or issues of which we become aware that may be outside the scope of the audit period stated on this petition.

The estimated cost of said investigation will range from \$50,000 to \$75,000, which shall be paid by the City of Geary, Blaine County and Canadian County, Oklahoma, in accordance with 74 O.S. § 212(L)(7). The estimated cost is based on estimated audit hours and travel expenses.

We further understand that the circulators of the petition have thirty (30) days from the date this petition was emailed by the State Auditor and Inspector to obtain the requisite number of signatures and return it to the State Auditor and Inspector.

74 O.S. § 212(L)(8) states the names of the signers of any petition shall be confidential and neither the State Auditor and Inspector, the county election board, nor the county treasurer may release them to any other person or entity except upon an order from a court of competent jurisdiction.

AFFIDAVIT

We, the undersigned being of lawful age, upon oath or affirmation and subject to the criminal penalty for perjury, as prescribed by 21 O.S. § 500, to the best of his/her knowledge and belief declare that he/she is a resident of the City of Geary, an elector in Blaine County or Canadian County, and that he/she resides at the address designated on this petition.

NAME (PRINT)	ADDRESS (PRINT)	SIGNATURE	COUNTY (BL or CA)	DATE
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

DUE BACK August 1, 2017 BY 5:00 PM

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.



OFFICE OF THE STATE AUDITOR & INSPECTOR
2300 N. LINCOLN BOULEVARD, ROOM 100
OKLAHOMA CITY, OK 73105-4896

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