



TOWN OF OCHELATA

Citizen Petition Audit

December 5, 2022

Cindy Byrd, CPA
State Auditor & Inspector

**Town Of Ochelata
Washington County, Oklahoma**

**Investigative Audit Report
December 5, 2022**



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TO THE CITIZENS OF THE TOWN OF OCHELATA

Pursuant to 74 O.S. §212(L), we have completed a citizen petition requested audit of the Town of Ochelata.

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

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Cindy Byrd".

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

Introduction

The Town of Ochelata (Town) is organized under the statutory Town Board of Trustees form of government.¹ The Board consists of five elected trustees, who choose one of themselves to serve as mayor. The town clerk and the town treasurer are also elected.

Between July 2016 and December 2018 the board of trustees included the following:

- Rick Barnes
- Syd Barnes
- Richard Cook
- Chad Gavellas
- Archie Medlock
- Carl Smith
- Tracy Taylor

The Ochelata Utilities Authority (OUA) and the Ochelata Economic Development Authority (OEDA) are public trusts² created to provide utility services and promote economic development for the Town. The town trustees serve as the trustees of both Authorities.

A citizen petition, verified by the Washington County Election Board requested an audit of the following four objectives:

- Review possible violations of the Open Meeting Act and Open Records Act including acting without a quorum and failure to provide town records.
- Review the appointment of the town clerk, possible nepotism, improper pay advances, and salary increases.
- Review possible failure by board members to meet statutory training requirements or risk being removed from office.
- Review possible misuse of public funds, improper reconciliation of town accounts, and failure to properly execute and file the annual *Estimate of Needs*.

¹ 11 O.S. §§ 12-101 - 12-114

² 60 O.S. §§ 176 - 180.4

Open Meeting Act and Open Records Act

There were allegations the Board violated the Open Meeting Act, including not properly posting agendas, holding meetings without a quorum present, and board member votes and attendance not being appropriately documented. There were also allegations the Open Records Act was violated when public records were not made available to citizens upon request.

Agendas and minutes of 92 separate meetings,³ occurring between July 1, 2016, and December 31, 2018, were reviewed. According to the minutes, meetings were held only when a quorum of trustees was present. However, the following concerns were noted.

Finding The OUA held an improper executive session.

Governing boards may hold executive sessions to discuss “the employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee.”⁴ When doing so, they must discuss specific individuals and not simply employment positions in general,⁵ and they may not discuss contracting with independent contractors.⁶

The agenda for the March 29, 2018, OUA meeting allowed for a possible executive session to “discuss and vote on the option of hiring a town employee or using a contracted company to do the water meter work and to maintain waste plant operations.”

(A) Executive Session: Call for a vote to go into Executive Session to:

1) Discuss and vote on the option of hiring a town employee or using a contracted company to do the water meter work and to maintain waste plant operations. This will include the scope of duties to be fulfilled and salaries that can be paid, pursuant to Title 25 O.S. Section 307.B(1).

The minutes of the meeting reflected that the Board held the executive session before voting to hire a waste-plant-operations manager.

1) Executive Session: Mayor Richard Cook made a motion that the Board of Trustees go into an Executive Session for the purpose of deciding to hire an employee or to take contract bids for operations of the water meter work and waste plant. Archie Medlock seconded the motion. Votes were cast as follows: Tracy Taylor – Aye, Archie Medlock – Aye, Richard Cook – Aye, and Chad Gavellas – Aye. Motion carried.

Mayor Richard Cook asked that all present leave the room with the exception of the Board members and the Clerk. Orders were obeyed pursuant to Title 25 O.S. Section 307. B(1).

³ A combination of Board, OUA, and OEDA meetings.

⁴ 25 O.S. § 307(B)(1)

⁵ 2006 OK AG 17

⁶ 2005 OK AG 29

Finding ***The Town, the OUA, and the OEDA held meetings without giving advance public notice of the meeting locations.***

Every governing board must provide “advance public notice specifying the time and place” of its meetings.⁷

The Town, the OUA, and the OEDA meeting agendas did not specify the location of their meetings.

Finding ***The Board improperly discussed and acted on items without proper public notice.***

Governing boards may take action at regularly scheduled meetings regarding “new business” as matters “not known about or which could not have been reasonably foreseen prior to the time of the posting” of the agenda.⁸ The law does not allow for discussion of “old business.” Old business would simply be items of business that were previously discussed or tabled from prior meetings and should be listed on the meeting agendas.

Instead of giving proper advance public notice on its meeting agendas, the Board voted under “old business” to allow an individual to continue platting and mapping the cemetery, voted to schedule a board workshop, announced that materials for repair work at the park could be purchased from a local lumber store and billed to the Town, and discussed the mowing of town properties. These items should have been noted as separate items on the posted meeting agendas.

Old Business: Discussion was opened regarding an agreement to trade an old town owned lawn mower to Gene Herren. Richard Cook made a motion that he would get with Gene and complete the terms of the agreement. Rick Barnes seconded the motion. Votes were cast as follows: Tracy Taylor – Aye, Archie Medlock – Aye. Rick Barnes – Aye, Richard Cook – Aye. Motion carried.

The minutes for one special meeting of the OUA indicated the trustees discussed under “New Business” which town officials should be signers on the Town’s bank accounts.

New Business: Richard Cook opened a discussion regarding the authorized signers on the Towns Bank accounts. Betty Barnes stated that as the new Mayor, Richard needed to be added and Syd Barnes needed to be removed. Rick Barnes suggested adding Margie Eldridge as she is the new Clerk.

Tracy Taylor made a motion that all Trustees be added to the banking accounts. There was discussion on the numbers of signers allowed by banks. It was suggested that someone check with the banks and get suggestion from them based on the bank’s policies. There was no second for this motion. Tracy rescinded her motion. Richard made a motion that discussion be tabled and both Richard and Tracy will check with banks for input and this issue will on the agenda for a vote at the next meeting. Tracy seconded this motion. Votes were cast as follows: T. Taylor – Aye, R. Cook-Aye. R. Barnes-Aye. Motion carried

The discussion was not proper new business as defined by the Open Meeting Act which states:

⁷ 25 O.S. § 303

⁸ 25 O.S. § 311(A)(10), 1981 OK AG 92, and 1982 OK AG 114

“New business”, as used herein, shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of the posting.

Finding The town treasurer improperly withheld public records from a citizen.

The purpose of the Open Records Act is “to ensure and facilitate the public’s right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power.”⁹

A citizen provided an audio recording of a conversation with the town treasurer while in the process of requesting town records. In the recording, the citizen requested town information and asked how long it would take to provide the requested copies. The citizen also provided the Town with a written request for the financial records.

Town Treasurer Doris Young responded by asking, “*What is this for?*”, and “*I am not sure of anything. I am not going to (make copies) until I check some things out.*” The treasurer repeatedly asked why the citizen was requesting the information and said, “*We are entitled to ask those questions and as to why you want it.*”

Young also stated to the citizen, “*I’ve seen stuff on the Town that you’ve reported that’s false,*” and, “*You’re giving false statements out there, and I’m not going to give you stuff and have you go out and do what you’re doing now.*”

Based on these documented conversations, it appears the town treasurer withheld public records from a citizen because the citizen publicly criticized the Town.

Subsequent to these issues, the Town implemented a log to document open record requests and began maintaining documentation of citizen requests.

Payroll, Nepotism, and Appointments

Allegations were presented that the town clerk was improperly appointed, that improper nepotism existed between trustees and other elected positions, and that employees were improperly paid.

Position Appointment

Margie Eldridge was *elected* town clerk in April 2017. There was no evidence to support the claim that Eldridge was *improperly appointed* as town clerk.

⁹ 51 O.S. § 24A.2

Official Results - Municipal/Annual School Runoff					
Election Date: 04/04/2017					
TOWN OF OCHELATA					
FOR TOWN CLERK TOWN OF OCHELATA				1 of 1 Precincts Completely Reporting	
	ABSENTEE MAIL	EARLY VOTING	ELECTION DAY	TOTAL	
MARGIE ELDRIDGE	2	0	21	23	54.76%
MICHELE RADER	0	0	19	19	45.24%
	<u>2</u>	<u>0</u>	<u>40</u>	<u>42</u>	

Nepotism

Nepotism laws¹⁰ do not prohibit relatives from serving at the same time in elective positions and do not apply to board members serving public trusts. Although some of the trustees, the town clerk, and the town treasurer were related at different points in time, they were duly elected, and their positions did not appear to violate nepotism and conflict-of-interest laws.

Payroll

Finding

There was no official town ordinance defining the compensation to be paid to the town clerk and the town treasurer for their elected positions. There was also no ordinance in place specifying the salary to be paid for additional duties performed by the town clerk and the town treasurer. Both ordinances are required by law.

In January 2007, Ordinance No. 2007-01 reflected, “the clerk/treasurer holding office will be compensated at the rate of \$125.00 per month.” In January 2011, Ordinance No. 2011-01-01 separated the position of town clerk-treasurer into two positions, but no ordinance was created or updated to define how each elected position would be paid. Failure to set compensation for town elected officials is a violation of 11 O.S. § 12-113, which states:

“The compensation of all elected town officials shall be fixed by ordinance.”

Additionally, the Board did not approve an ordinance for the pay of the town clerk and the town treasurer for duties performed not related to their elected positions of town clerk and town treasurer.

The Town may employ and pay the clerk and the treasurer to perform duties not related to their elected positions, but such pay must be provided for separately by ordinance as defined in 11 O.S. §§ 12-109(5) and 12-110(3).

The Board is granted the power to regulate salaries and wages for employees through 11 O.S. § 12-106. Although the officials were duly appointed and elected,

¹⁰ 21 O.S. § 481 and 11 O.S. § 8-106

the Board failed to adequately document the establishment of wages through official ordinances as required by law.

Finding ***The Town and the OUA did not withhold state and federal income tax from most wages paid and did not report or submit payroll taxes to the proper governmental agencies. Also, on at least 15 occasions, employee payroll checks were issued early.***

Employers, including municipalities, are required to withhold and remit employment taxes to both the federal and state governments. During the period of July 1, 2016, through December 31, 2018, the Town and the OUA did not withhold taxes from board members' and employees' pay and did not submit the required tax forms to report such withholdings.

Medicare, Social Security, and state and federal taxes were withheld for some employees, while others were paid without the required withholdings. No taxes were withheld or remitted for the compensation paid to the town trustees.

Paychecks were often issued early, at times up to three weeks before the end of the applicable pay period.

Finding ***Between March 2013 and December 2016, former Mayor Sydney Barnes was paid as an employee of the OUA, a conflict of interest with his position as a board member of the Trust.***

Town Ordinance No. 2011-01-03 was approved in February 2011, setting the compensation of the mayor at \$2,500 per month. The ordinance also provided that the mayor would “make a good faith effort to devote at least 40 hours a week to the Town’s business.”

Since the law requires that compensation of certain officers shall be set by ordinance, the compensation of the Mayor shall be \$2,500.00 per month.*

Sydney Barnes was an elected board member and was the mayor from at least May 2011 through February 2017. Under this ordinance, the Town was authorized to pay Barnes \$2,500 per month for his mayoral duties.

Barnes was not paid by the Town, but, instead, invoiced the OUA for payment as the Operations Manager of the Wastewater Treatment Plant (WWTP) at \$1,250 every two weeks. On occasion, Barnes also voted on OUA business directly related to his work as the plant operator. The payments to Barnes appear to have created a

conflict of interest between Barnes, an OUA board member,¹¹ and the OUA. Title 60 O.S. § 178.8(A) prohibits a trustee from selling services to the trust:

...a conflict of interest shall be deemed to exist in any contractual relationship in which a trustee of a public trust...shall directly or indirectly buy or sell goods or services to, or otherwise contract with such trust.

OCHELATA UTILITIES AUTHORITY - WATERWORKS REVENUE FUND				5726
<u>Vendor No</u> 15	<u>Vendor Name</u> SYDNEY BARNES	<u>Check Number</u> 5726	<u>Check Date</u> 8/31/2016	
<u>Purchase Order</u> 656941	<u>Invoice Number</u>	<u>Invoice Date</u> 8/31/2016	<u>Description</u> OPERATION MANAGER	<u>Inv. Amount</u> \$1,250.00

656941

OUA
ck # 5726

TO: <u>Syd Barnes</u>		SHIP TO:	
ADDRESS:		ADDRESS:	
REQ. NO.	FOR:	DATE: <u>8-31-2016</u>	
DATE REQUIRED:	HOW SHIP:	TERMS:	

QUANTITY	DESCRIPTION	PRICE	UNIT
1	<u>Operation</u>		
2	<u>manager</u>	<u>1250.00</u>	
3			
4			
5		<u>1250.00</u>	
6			
7			
8			
9			
10			
11			
12			

IMPORTANT
OUR ORDER NUMBER MUST APPEAR ON ALL INVOICES-PACKAGES, ETC.
PLEASE NOTIFY US IMMEDIATELY IF YOU ARE UNABLE TO SHIP COMPLETE ORDERS BY DATE SPECIFIED.

PLEASE SEND COPIES OF YOUR INVOICE.
PURCHASING AGENT: Retty Barnes

© REDIFORM® PURCHASE ORDER ORIGINAL TL141

The OUA’s minutes also confirm that Barnes reported to the OUA board as an employee of the OUA.

Operations Mgr. S. Barnes made a report that “Eilser” Meter Company will be sending replacement meters in September. Some meters not responding, are read by hand.

The OUA paid Barnes a total of \$116,250 from at least March 2013¹² to December 2016. The OUA did not withhold any payroll taxes from Barnes’ pay.

On January 9, 2017, Barnes resigned his employment as the manager of the WWTP but continued to serve as mayor until June 2017. Barnes’ resignation as the WWTP

¹¹ Town trustees by default serve as the board for the OUA.

¹² Bank statements with canceled checks could not be obtained for months prior to March 2013.

operations manager, and his continuance in the position of mayor, confirms that he was not paid \$2,500 per month as the mayor of the Town but was paid as an employee of the OUA.

Operations Mgr. S. Barnes is stepping down from managing the WWTP and Water. The Town will need to search for WWTP operator.

Statutory Training

Allegations were presented that some town officials did not comply with statutory training requirements as defined in 11 O.S. § 8-114. Per statute, town officials who are elected or appointed after 2005 are required to obtain training within one year of taking office and “cease to hold” their offices if they do not complete the training.

Town Clerk Eldridge and the trustees obtained their required training. Betty Barnes was not required to complete the statutory training because she took office prior to 2005.

Finding ***Town Treasurer Doris Young failed to obtain the statutorily required training.***

As previously noted, Doris Young was appointed treasurer on December 4, 2017. As of October 2019, Young had not obtained the mandatory training.

Town Management

Allegations were made that there were inadequate reconciliations of bank accounts and that town officials failed to properly file the Town’s annual *Estimate of Needs*.

Bank Reconciliations

Concerned citizens were specifically focused on the Board’s lack of review of bank statements and the related reconciliation of accounts. A review of these processes reflected the following:

- Clerical errors were made on check registers. Several checks were listed on the register with incorrect or duplicate check numbers.
- One check was listed on the treasurer’s reconciliation and on the bank statement but not on the check register presented to the Board for approval and, therefore, was not properly approved.

Estimate of Needs

The Town is required to prepare an *Estimate of Needs* and file it with the county Excise Board every year.¹³ The Excise Board then levies appropriations and files a copy of the Town’s budget with the County Clerk’s Office and with the State Auditor & Inspector’s (SA&I) office.¹⁴ If the Town does not file an *Estimate of Needs* with the Excise Board, the Excise Board estimates the Town’s needs and levies appropriations accordingly.¹⁵

Finding ***The Town’s fiscal year 2017-18 Estimate of Needs was not filed with SA&I as required by law, and the Town’s fiscal year 2018-19 Estimate of Needs was not submitted to the Excise Board or filed with SA&I.***

The Town’s *Estimate of Needs* for Fiscal Year 2017-18 was provided to the county Excise Board but not filed with SA&I. The Town’s *Estimate of Needs* for Fiscal Year 2018-19 was prepared but not provided to the county Excise Board or filed with SA&I.

Other Issues

Finding ***The Town Ordinances have not been codified since 1987.***

The Town is required to publish its penal code of ordinances “not less than once each ten (10) years” and to publish supplements to the code every two years.¹⁶ When the ordinances are not properly published, the Town is prohibited from levying fines over \$50 for any violations of the ordinances.¹⁷

The Town last codified its ordinances in 1987. On June 1, 2018, the Board requested that the clerk and the treasurer review each chapter of the Code of Ordinances and make suggestions or propose updates as needed. As of October 2022, the code book has not been codified and published as required.

¹³ 68 O.S. § 3002

¹⁴ 68 O.S. §§ 3007, 3014, & 3022

¹⁵ 68 O.S. § 3016

¹⁶ 11 O.S. §§ 14-109 and § 14-110

¹⁷ 11 O.S. § 14-111(E) and 2007 OK 57

DISCLAIMER

In this report, there may be references to statutes and other legal authorities that appear to be relevant to the issues that the Office of State Auditor & Inspector reviewed. However, the Office has no jurisdiction or authority to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law-enforcement, prosecutorial, and judicial authorities designated by law.

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



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