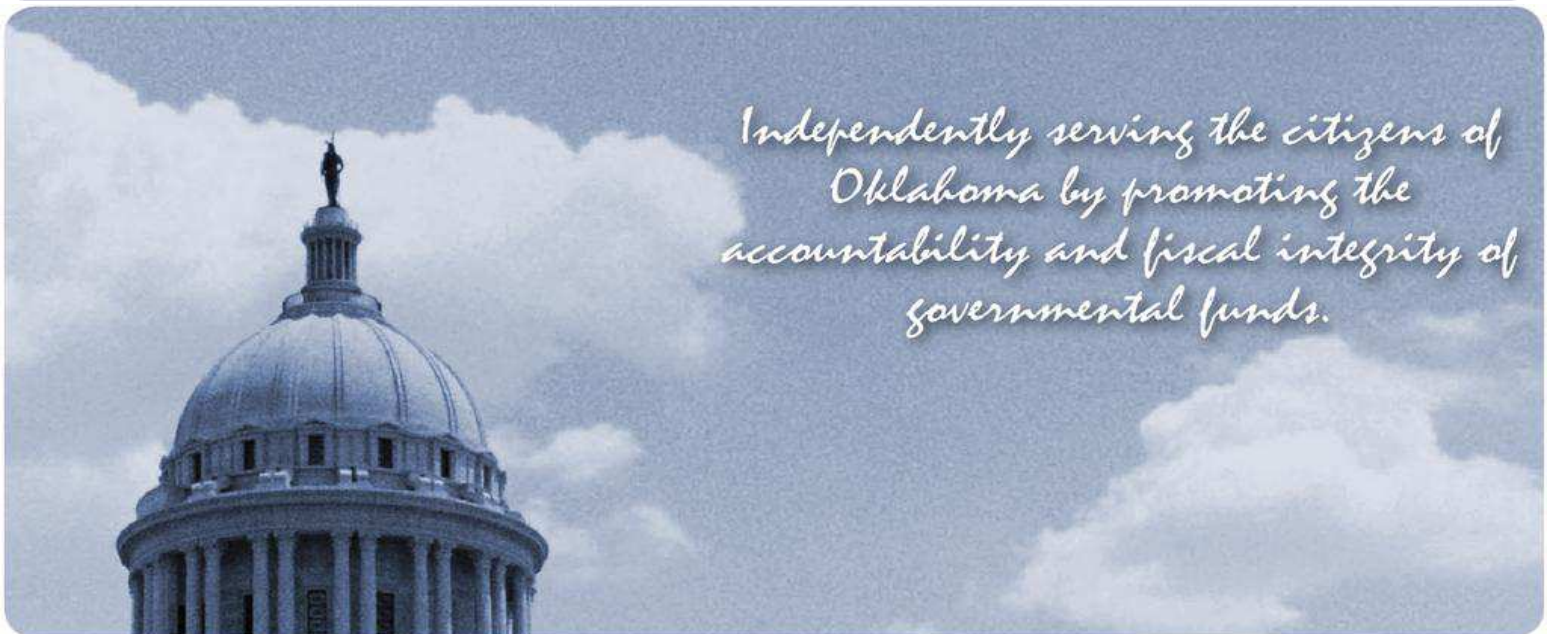


INVESTIGATIVE AUDIT

# CITY OF TAHLEQUAH

For the period July 1, 2012 through June 30, 2014



*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

**SPECIAL INVESTIGATIVE AUDIT REPORT**

**CITY OF TAHLEQUAH**

**TAHLEQUAH AREA CHAMBER OF COMMERCE**

**CHEROKEE COUNTY, OKLAHOMA**

**FEBRUARY 9, 2015**



# Oklahoma State Auditor & Inspector

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

February 9, 2015

City of Tahlequah  
201 East Delaware Street  
Tahlequah, OK 74464

## To the City Councilors of Tahlequah, Oklahoma:

Transmitted herewith is our Special Audit Report of the City of Tahlequah and the Tahlequah Area Chamber of Commerce:

Pursuant to your request and in accordance with the requirements of **74 O.S. § 227.8**, we performed a limited review with respect to the City of Tahlequah for the period July 1, 2012 through June 30, 2014 and the Tahlequah Area Chamber of Commerce for the period July 1, 2009 through June 30, 2014.

Because our procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City of Tahlequah or the Tahlequah Area Chamber of Commerce.

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 Tahlequah City Council as provided by statute. This report is also a public document pursuant to the Oklahoma Open Records Act, **51 O.S. § 24A.1, et seq.**

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

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

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## INTRODUCTION

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

The legislative branch of the city government consists of a city council and a mayor. The City Council consists of one councilor from each of the four wards in the city. The mayor is elected at large and serves as the presiding officer over the Council at its sessions. The mayor may take part in the discussions at the Council meetings but may not vote except in case of a tie, when the mayor may cast the deciding vote.

The governing body of the City of Tahlequah as of June 30, 2014 consisted of:

- Jason Nichols, Mayor
- Diane Weston, Councilor, Ward 1
- Charles Carroll, Councilor, Ward 2
- Maurice Turney, Councilor, Ward 3
- Linda Spyres, Councilor, Ward 4

The State Auditor and Inspector's Office conducted a special investigative audit at the request of the City Council, in accordance with **74 O.S. § 227.8**. The results of this audit are contained in the following pages.

## OPERATIONS AND MANAGEMENT – City of Tahlequah

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### Background

Part of the objectives of this engagement was to review the operations and management of “the mayor’s office” and “the street commissioner’s department”. In the following section of our report, the duties and responsibilities of these positions are presented as defined in the City Charter and the City Code.

In evaluating the current operations and management of the mayor and the street commissioner, the auditors interviewed the mayor; the street commissioner; and numerous staff, department heads, and officials of the city.

In the course of these interviews, three issues emerged as the foremost concerns affecting city operations as it relates to the mayor’s office and the street commissioner’s department: poor planning, “micro-managing”, and the lack of clarity in duties for elected positions.

Most of the criteria to which city management is held in conducting its affairs are defined in the “*Charter of the City of Tahlequah*” and the “*Tahlequah, Oklahoma City Code*”. The issues and conflicts existing within the City have been evaluated against these criteria.

### *The Street Commissioner’s Office*

The Tahlequah Street Department is currently headed by Street Commissioner Mike Corn. Corn has served as the Street Commissioner since 1991 and has been with the Department for over 40 years. Although the street commissioner is an elected position, the Code and Charter places the commissioner under the supervision and control of the mayor and council.

**City Code § 14-101** defines the street commissioner’s responsibilities as the overseer of the streets, alleys, bridges, gutters, and public grounds of the city, and to see that all streets, avenues, alleys, bridges, and culverts are kept in a good state of repair and in good condition, and to perform such duties as may be imposed upon him by the **mayor** and **council** of the city.

**City Code § 14-102** states in part, “.....the street commissioner shall be under the supervision and control of the mayor and council as provided by section 41 of the city charter.”

**Section 41** of the charter states, “The city clerk, treasurer, chief of police, and street commissioner, in the discharge of their duties, shall be subject to the legal orders of the mayor and council.”

The street commissioner recognized that he has not consistently complied with the street specifications or bidding requirements of the City. In our review of selected transactions, we did note non-compliance with City Code as to bidding and price quotations and timely encumbering of funds. These issues are discussed in more detail in following sections of this report.

While the street commissioner’s employment cannot be terminated by the mayor or council, he still works under their authority and should operate his department under their direction and in full compliance with the City Charter and City Code.

### **The Mayor’s Office**

The current mayor of the City of Tahlequah is Jason Nichols. Under **Section 68** of the City Charter, the mayor is recognized as the chief administrative officer of the city and has charge and supervision of all branches of city services. The mayor is also charged with the faithful execution of all laws and ordinances of the city and the state along with the responsibility to direct the officers and departments of the City.

In discussions with the mayor, he acknowledged that the City may not always follow purchasing guidelines and that transactions had been conducted in violation of local ordinances.

We also noted that, in some instances, the mayor directed activities and completed transactions without advising the Council. The Charter and City Code require the mayor to keep the Council advised of all the needs of the City and to recommend measures for the City’s adoption, communicating to the Council such information that, in his opinion, may tend to the well-being of the City.

The mayor has the charge and supervision of all branches of city services, and that authority is combined with the responsibility of ensuring that the City is in compliance with laws and regulations.

More than half of city officials and staff said that the mayor’s communication with employees, department heads, and officials makes the operations of city business challenging and difficult.

**The City Council**

**Section 24** of the City Charter states in part, “The council shall have executive authority over all affairs of the city...”

The foundation for restoring and continuing sound financial practices for the City of Tahlequah rests with the Council, and the councilors’ oversight and understanding of the duties and responsibilities of the various departments, and their ability to lead those under their charge in compliance with applicable laws and standards, is of utmost importance.



## PURCHASING – City of Tahlequah

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### Background

Part of the audit engagement objective was to examine possible improper spending initiated by Mayor Jason Nichols and Street Commissioner Mike Corn. In an effort to clarify the purchasing practices of the City, we interviewed numerous city employees and the city councilors. Some specific purchasing issues brought to our attention and the results of our general purchasing test are noted below.

#### Painting of Sharrows

In the summer of 2012, Mayor Jason Nichols, along with the Tahlequah Main Street Association, expressed interest in painting sharrows, which are “share the lane” markings for bicycles, on the streets of Tahlequah.

According to Street Commissioner Mike Corn, he obtained a verbal price quote of \$40 per sharrow from one vendor. Work began on the sharrows sometime in January 2014; however, a purchase order was not created until February 19, 2014.

**Finding**      **In contracting for the painting of sharrows on city streets, the City appeared to violate 61 O.S. § 103(B) and City Code § 7-105 by not obtaining price quotations.**

Purchase order B2-215-14, dated February 19, 2014, was issued in the amount of \$9,080. It was supported by an invoice dated February 18, 2014, for the “painting of 227 sharrows” at a cost of \$40 each.

This purchase appears to have violated **61 O.S. § 103(B)** and **City Code § 7-105**, which require that public improvement projects costing between \$5,000 and \$10,000 be done through the solicitation of price quotations.

Per Commissioner Corn, only one vendor was asked for a price to paint sharrows. According to Commissioner Corn, the price provided by this vendor was “considered reasonable”, and he was hired to paint the sharrows.

Obtaining one undocumented, verbal price quotation did not satisfy the obligation of acquiring price quotations as required by state law and city ordinance.

Additionally, **City Code § 7-108(B)** requires that a purchase order be prepared and approved, in writing, prior to the time a purchase commitment is made. On February 19, 2014, there was an email exchange between city employees directing that a purchase order be prepared for the painting of sharrows. The painting of the sharrows had begun in the month of January 2014, prior to the preparation of the purchase order.

Terry Keys, the vendor awarded the contract, subcontracted the painting of the sharrows to James Thomas. Mayor Nichols provided an invoice from James Thomas and JT's Sealcoating, addressed to T&K Construction (Keys), totaling \$2,240, for the cost of painting 224 sharrows at \$10 each.

If the solicitation of price quotations would have been used in the contracting of services for the painting of the sharrows, the City could have possibly saved several thousand dollars.

### **Speed Humps**

Speed Humps were purchased in October 2013 for placement at citizen-requested locations across the City.

**Finding**      **The City did not obtain bids for, and the City Council did not approve the purchase of, speed humps acquired for installation on city streets, violating City Code §§ 7-105 and 7-108(C).**

Per **City Code § 7-105**, all purchases exceeding \$25,000 are to be made by competitive bidding. The speed humps were purchased from Traffic Logix, Inc., on September 30, 2013, through Purchase Order B2-133-14, for \$39,645. Although a price quote was obtained from the selected vendor, the City did not complete the competitive bid process, as required by City Code.

Additionally, the purchase was not approved in the minutes of a meeting of the City Council, a violation of **City Code § 7-108 (C)**, which requires that approval for purchases for goods, services, or capital over \$10,000 be reflected in Council meeting minutes.

### **Police Car Purchases**

During the course of our engagement, allegations surfaced that the Police Department may have purchased vehicles without following proper procedures. We reviewed documentation associated with four purchase transactions involving eight police vehicles purchased during FY 2013 and FY 2014.

**Finding      The City violated City Code §§ 7-105(C) and 7-108(C) in the acquisition of police vehicles.**

Per **City Code § 7-105(C)**, all purchases exceeding \$25,000 are to be made by competitive bidding unless such competitive bidding is waived by the City Council at a regular or special session. Six of the eight vehicles reviewed were not purchased in compliance with bidding ordinances.

Purchase Order #42284 - Three 2013 Ford Taurus Police Interceptor sedans were purchased from Stuteville Ford of Tahlequah on January 29, 2013 (and encumbered on November 19, 2012), totaling \$73,425, or \$24,475 per vehicle. These vehicles, all purchased in a single transaction, were not bid and were not purchased off of the Statewide Contract.

Purchase Order #44224 - One 2014 Chevrolet Tahoe Police Edition SUV canine unit was purchased from Yates Auto Mall of Tahlequah on October 18, 2013 (and encumbered on July 9, 2013), in the amount of \$29,297.80. This vehicle was not bid and was not purchased off of the Statewide Contract.

Purchase Order #44956 - Two 2014 Ford Police SUV's were purchased from Stuteville Ford of Tahlequah on December 4, 2013 (and encumbered on October 3, 2013), in the amount of \$53,596, or \$26,798 per vehicle. These vehicles were not bid and were not purchased off of the Statewide Contract.

Purchase Order #44969 - Two 2014 Ford Police Interceptor SUV's were purchased from Bob Hurley Ford of Tulsa on October 11, 2013 (encumbered October 4, 2013) in the amount of \$53,376 or \$26,688 per unit. These vehicles were purchased from the Statewide Contract.

City Council meeting minutes did not reflect approval for the purchase of any of these police vehicles, a violation of **City Code § 7-108(C)**, which requires that governing-body approval shall be obtained prior to the time a commitment is made for any purchase or contract for goods, services, or capital over \$10,000. A line item for "police vehicles" was included in the FY 2012, 2013, and 2014 budgets; however, the actual purchase transactions were not approved.

**Construction of North Cedar Avenue**

Street Commissioner Mike Corn originally planned for North Cedar Avenue to be completed as a minor residential street, at a width of 24 feet with an asphalt surface. According to Corn, there were only four city residents living on the road and asphalt would be more economical because city employees could use the City's asphalt machine in the surfacing project, while resurfacing with concrete would have to be contracted through outside vendors.

In a City Council meeting held July 16, 2012, the Council voted unanimously to enter into a cooperative agreement with Cherokee County to haul asphalt to North Cedar Avenue; Mayor Nichols was present at the meeting. At this point in time, it appears that all city officials were aware that North Cedar Avenue would be completed with an asphalt surface.

Sometime prior to the February 4, 2013, Council meeting, Mayor Nichols inspected the work being performed on North Cedar Avenue and determined that it was not being built to specifications.

The City of Tahlequah Master Street Plan, as amended through City Ordinance 1150-2009, shows that North Cedar Avenue, as a residential collector street, should be 32 feet wide, but may be surfaced as either asphalt or concrete.

At the City Council meeting on February 4, 2013, Commissioner Corn presented a status report on the North Cedar Avenue project. The commissioner, the councilors, and Mayor Nichols discussed the necessity of making the street 32 feet wide as required by City Code, and they discussed whether or not it should be completed as concrete or asphalt and the costs involved. No consensus was reached in this meeting, and no votes were taken. We could find no documentation on how the final decision was made in completing North Cedar Avenue as concrete or asphalt; however, the project was completed as concrete.

**Finding      The North Cedar Avenue project was completed without following proper bid procedures.**

**Title 61 O.S. § 103** requires that all public construction projects exceeding \$50,000 be let and awarded to the lowest responsible bidder, by open competitive bidding, after solicitation of sealed bids. No work shall commence until a written contract is executed and all required bonds and insurance have been provided by the contractor. With the cost of the

project exceeding \$50,000, the construction of North Cedar Avenue should have been bid.

According to Commissioner Corn, once the decision was made that North Cedar Avenue would be completed at 32 feet wide with concrete; he had to tear out approximately \$8,000 of preparation work. The original budget for the project was \$155,000; with the change to 32 feet wide and concrete, the final completion cost was over \$360,000.

The City did not bid the completion of North Cedar Avenue through open competitive bidding and sealed bids. According to Corn, the street was completed as concrete, in sections, and was not bid as a "project." He utilized the City's term bids for supplies and utilized price quotations for labor.

On August 2, 2013, prior to completion of the North Cedar Avenue project, Assistant Administrator Kevin Smith sent a memo to Commissioner Corn, stating, "This memo is to inform you that Administration will not be approving any more labor requisitions for the installation of pavement on the North Cedar Avenue Project. It appears the City is in violation of Title 61." The remaining work to finish the North Cedar project was done by the City's Street Department. According to Commissioner Corn, the completion of the job was "very rough."

### **Property Purchases**

City officials requested, as part of this audit, a review of property purchases made by the City. They were concerned that the City was purchasing property at premium prices. They were also concerned about the manner in which the properties were being brought to the City for purchase and the promotion of the property purchases by Mayor Nichols.

Most of the properties were being purchased by the City for development of a greenbelt area along Tahlequah Creek. Mayor Nichols provided to us a 'Tahlequah Greenway Master Plan' pertaining to the use of the greenbelt area. This plan was developed in 1992 as part of a project by a graduate student at the University of Oklahoma. This planned development appears to focus mainly on the north end of the greenbelt area, north of Choctaw Street and east of Muskogee Avenue. All of the properties purchased in this area were located within the floodplain, according to FEMA floodplain maps.

City officials could not provide to us any type of updated development plan for the greenbelt area. Mayor Nichols provided a chart showing the

land that the City owns or is leasing, containing general conceptual ideas and generic pictorials. According to Mayor Nichols, almost all of the bond money would have been expended if everything in the Master Plan was completed, and that was something the City could not afford at this time.

Over the past three years, the City has spent \$343,747 purchasing property in the greenbelt area. The mayor has proposed spending nearly \$400,000 on additional properties in the City's basin area. Wright Real Estate is the current realtor for the properties in that area. Mayor Nichols is committed to purchasing these properties and stated at the May 5, 2014, City Council meeting that he does not see the need to have an appraisal obtained before making the purchases.

According to a representative of A-1 Appraisals, city officials asked his company to conduct an appraisal on the remaining basin properties. After a few months of working on the appraisal, the company declined to complete the process, recommending that the properties be condemned instead. We could not find where that recommendation was ever disclosed to the Council.

According to Mayor Nichols, the City paid a premium for some of the properties because they were not currently on the market for sale. However, in six of the property transactions reviewed, the properties were listed with realtors or the sellers approached the City and offered their properties for sale.

**Finding            The city may be paying a premium price on properties purchased.**

We reviewed eight properties acquired by the City over the past three years. Detailed information pertaining to each transaction is shown below:

**821 Guinn Avenue** – This property consisted of a lot and a house and was approved for purchase by the City Council on December 5, 2011. The total price for the purchase was \$57,500. The house was listed for sale on September 21, 2011, by Wright Real Estate.

**751 Guinn Avenue** – This property consisted of a 1.46-acre lot and was approved for purchase by the City Council on December 5, 2011. The total price for the purchase was \$124,368, of which \$74,621 was considered a donation to the City. Scott Wright, owner of Wright Real Estate, owned the property and initiated its sale. The City issued an official donation document to him to be used for tax purposes based on his valuation of the property. The donation or its value was not reflected in the minutes.

**603 S. Water Avenue** – This property consisted of a 1.92-acre lot with a structure and was approved for purchase by the City Council on December 19, 2011. The total price for the purchase was \$110,000, \$50,000 of which was considered a donation to the City. The City initiated the purchase. The purchase price and donation amount was not reflected in the minutes.

**819 Guinn Avenue** – This property consisted of a lot and a house and was approved for purchase by the City Council on April 2, 2012. The total price for the purchase was \$60,000. The house was listed for sale in February 2011 by Cochran & Associates for \$65,000. The tax assessed value of the property was \$27,600. The purchase amount was not reflected in the minutes.

**801 Guinn Avenue** – This property consisted of a lot and a house and was approved for purchase by the City Council on July 16, 2012. The total price for the purchase was \$62,500. No appraisal was obtained for the property. The owners, who offered to sell the property to the City, had purchased it in August 2011, for \$37,000.

**Lot 6 Block 2 Guinn Addition** – This property consisted of a residential lot without any structures and was not approved for purchase by the City Council since the selling price was less than \$10,000. The total price for the purchase was \$6,500. The seller initiated the sell.

**120 E. Morgan Street** – This property consisted of two lots with a structure and was approved for purchase by the City Council on December 3, 2012. The total price for the purchase was \$300,000, \$70,000 of which was considered a donation to the City. The seller initiated the transaction. The property was subsequently listed by Wright Real Estate after the City requested and received an appraisal on it. The City's ice-skating rink was built at this location. The donation value was not reflected in the minutes.

**805 Guinn Avenue** – This property consisted of a lot and a house and was approved for purchase by the City Council on April 7, 2014. The sellers accepted an "Offer Letter" from the City for \$48,500. An appraisal obtained by the City, dated December 10, 2013, indicates an appraised value of \$29,000. Tax records indicate the property was being taxed at a value of \$22,627.

In reviewing the Settlement Statements for these property transactions, we noted that, in five of the eight property purchases, Medearis Title & Closing handled the closing on the properties, receiving a total payout of \$900. Park Medearis, the owner Medearis Title & Closing, LLC,

currently serves as city attorney. He is considered a part-time employee of the City.

### **General Purchasing Test**

One objective of this audit was to review possible improper spending in the Street Department. To accomplish that, we reviewed a list of purchase orders prepared by the department for proper purchasing procedures.

**Finding**      **Of the purchase orders reviewed, eight did not include price quotations from vendors on file, and three were not requisitioned before the purchases were made with the vendors.**

Three purchase orders, #41856 (for asphalt), #43398 (for concrete), and #46566 (for concrete), were encumbered for \$5,000 or more, but we did not observe written bids or competitive quotes as required by the state Public Competitive Bidding Act, which governs “public construction contracts” and contracts for “public improvements” other than “the direct purchase of materials, equipment or supplies.” **Title 61 O.S. § 103** stipulates in part that contracts of \$5,000.00 - \$50,000.00 “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.”

One purchase order, #41855, was encumbered for the purchase of asphalt in the amount of \$10,767. We did not observe quotations from vendors or a written indication of mayoral approval as required by **City Code § 7-105**, which stipulates in part that purchases of \$10,000 - \$25,000 will be made by competitive bidding or by solicitation of price quotations, as directed by the City Council. **Section 7-105** further requires that asphalt price quotations be obtained from vendors supplying such products in the area. These quotations are to be accepted on bids by the purchasing agent upon approval of the mayor, and copies of the quotations supporting purchases are to be attached to the purchase orders.

Four purchase orders, #41390, #43024, #43044, and #44801, were encumbered for various repairs, parts, and supplies for more than \$5,000 and less than \$10,000, but we did not observe vendor quotes as required by **City Code § 7-105**, which requires that purchases of \$5,000 - \$10,000 be made by solicitation of price quotations upon the approval by the purchasing agent or assistant administrator.

Three of the previously noted purchase orders, #41390, #43044, and #44801, were requisitioned after the orders were placed with the vendors,



in violation of **City Code § 7-108**, which requires that all purchases of goods, services, or capital other than payroll and debt service, be prepared and approved, in writing, prior to the time the purchase commitments are made.

According to the city finance director, the Purchasing Department is responsible for obtaining quotations from vendors and does not forward copies to the Finance Department as a matter of procedure.

According to the city assistant administrator, the Purchasing Department sometimes obtains quotations via e-mail and sometimes verbally. At times, department heads obtain the quotations, and some vendors are found simply by conducting Internet searches.

#### **Overall Purchasing Recommendation**

We recommend that the City Council and all city officials and employees involved in the purchasing process review the City's purchasing policies and procedures and begin following established standards. We further recommend that department heads maintain written records of all vendor price quotations, including all unsuccessful attempts at obtaining quotations, and provide copies of those to the Purchasing and Finance Departments to keep as part of the purchases' permanent records.

## Hotel/Motel Room Tax-Tahlequah Area Tourism Council

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### Background

The City of Tahlequah Hotel/Motel Tax was established by City Ordinance 7-6-1987 as an excise tax of four percent (4%) on the gross rental receipts due from, or paid by, guests of hotels located within the City.

The Tahlequah Area Tourism Council was established by the Tahlequah Area Chamber of Commerce under the authority vested in the Chamber to fulfill its responsibilities in administering the Hotel/Motel Tax and for promoting, soliciting, and developing tourism within and for the city, as directed by Part 7, Chapter 5, of the Tahlequah City Code.

**Section 7-504** of the Code states, “All taxes collected pursuant to the provisions of the Chapter shall be set aside and used for the purpose of encouraging, promoting, fostering tourism and tourism development in the City....Ninety seven percent (97%) of the net proceeds collected pursuant to the provisions of this Chapter shall be used for the promoting, solicitation and development of tourism within and for the City. Three percent (3%) of the funds are to be retained by the City to meet necessary administrative expenses of enforcement.”

**Section 7-504** further states, “On August 5, 1987, and at the commencement of each fiscal year thereafter, the City will contract with the Tahlequah Area Chamber of Commerce whereby the Chamber of Commerce will act as the agent of the City, in the distribution and use of the funds to be appropriated by the City derived from the enactment of this Chapter and in such endeavor the Chamber of Commerce shall be considered a quasi-governmental agency of the City.”

### The Contract

As required by **Section 7-504**, as noted above, a contract between the Chamber and the City should be executed on an annual basis for the purpose of compliance with the Hotel/Motel Room Tax Ordinance. The last contract provided to us was dated November 3, 2003.

As part of that contract, the parties agreed that failure of the Chamber to comply with the agreement or to further the intended purposes of **Section 7-504** shall result in the City’s withholding of the tax funds until such time as full compliance has been established.

The “Rules of Operation” of the Tahlequah Area Tourism Council dated January 11, 2007, set forth the responsibilities of the Chamber and the Tourism Council in administering the Hotel/Motel Tax:

- The Chamber will provide to the City a detailed independent audit of all funds received and disbursed no later than six months after the end of the City’s fiscal year.
- The Tourism Council, with Chamber approval, shall submit to the City, not later than 60 days prior to the beginning of the City’s fiscal year, a proposed budget and plan of action conforming to the requirements of the Tax ordinance.
- An agent of the Chamber or a representative of the Tourism Council shall make periodic reports to the City Council of activities with respect to the development, promotion, and encouragement of tourism.
- The Contract between the City and the Chamber shall be renewable on an annual basis, provided that the requirements outlined in the Hotel/Motel Room Tax Ordinance are met.

**Findings**

**The Contract between the City and the Chamber had not been renewed since 2003.**

**Audited financial information, annual budgets, or plans of action had not been provided to the City for at least the past three years.**

**An agent of the Chamber or a representative of the Tourism Council had not provided consistent periodic reports to the City Council.**

If the City chooses to continue the management of the Hotel/Motel Tax through its contract with the Chamber, compliance with the above requirements should be established and documented. Accountability should be made a priority, and the contract should be reviewed and renewed on an annual basis.

**Tax Collection and Reimbursement Process**

As reflected in the City Code, 97% of the net proceeds collected through the Hotel/Motel Tax shall be used for the promoting, solicitation, and development of tourism within and for the City, and 3% of the funds are to be retained by the City to meet necessary administrative expenses.

Neither the City Code nor the contract between the Chamber and the City described the manner in which the City would distribute to the Chamber or the Tourism Council the Hotel/Motel Tax collected.

The City chose to establish a procedure to disburse the Hotel/Motel Tax through a reimbursement process. Items regularly invoiced to the City by the Chamber for the Tourism Council included overhead/building rent, the salary and benefits of the Tourism Council director, postage, printing, and advertising costs.

In the reimbursement process, the Chamber and Tourism Council would submit to the City a “Request for Hotel/Motel Funds” summarized by object code and supported by Chamber invoices and other vendor invoices. The City would then create a purchase order based on this request and issue payment to the Chamber.

Request for Hotel/Motel Funds Tahlequah Area Tourism Council July 18, 2013		
5400 Administration		5,285.70
5410 Boat Shows/Travel		
5420 Membership/Training/Travel		
6100 Postage		63.65

During the period July 2012 through July 2014, the City produced 27 purchase orders totaling \$183,833.46 for Hotel-Motel Fund reimbursements to the Chamber, for the benefit of the Tourism Council.

These purchase orders were reviewed for compliance with applicable policies and procedures and for proper supporting documentation. We found that the City was receiving documentation with the requests for reimbursement.

Although a Chamber invoice was presented with each request for reimbursement, we recommend that the City request from the Chamber a detailed analysis of the individual line item expenses paid. Specifically, the City should discuss with the Chamber the cost reimbursed for office space rental to help insure that the City’s Hotel/Motel tax is only being used for the portion of expense attributable to relevant cost. The City should also verify that reimbursement is only being made for the cost of the Tourism Council director’s salary and related benefits and not for any Chamber-only expenses.

## Tahlequah Area Chamber of Commerce

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### Background

Within a few days of beginning fieldwork on this audit engagement, a potential misappropriation of funds was discovered at the Tahlequah Area Chamber of Commerce. The relationship between the City and the Chamber, as discussed in the Hotel/Motel Tax section above, places the City in a fiduciary capacity over funds disbursed to, and spent by, the Chamber through the Tahlequah Area Tourism Council.

The Oklahoma State Bureau of Investigation (OSBI) and the Tahlequah Police Department were called in to investigate. The OSBI and city officials requested the assistance of the State Auditor & Inspector's Office in investigating the potential embezzlement.

A report on our investigation into the Chamber embezzlement was provided to the OSBI on December 11, 2014. That report is included below in its entirety.



# Oklahoma State Auditor & Inspector

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

December 11, 2014

TO THE OKLAHOMA STATE BUREAU OF INVESTIGATION

The following is our report on the Tahlequah Area Chamber of Commerce. The objective of our investigation was solely the evaluation and summarization of funds potentially misappropriated from the accounts of the Tahlequah Area Chamber of Commerce during the period of July 1, 2009 through June 30, 2014.

Our examination did not include a review of the Chamber's financial condition as a whole and as such we do not express any opinion on the account balances or financial statements of the Chamber for the period reviewed.

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

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

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



## Report Highlights

### **Background**

At the request of the City of Tahlequah Council, the State Auditor & Inspector's Office performed a special investigative audit of selected areas of the City of Tahlequah. During the course of this engagement a potential embezzlement was detected by officials at the Tahlequah Area Chamber of Commerce, an organization acting as an agent of the City.

Upon detection of this potential embezzlement the Oklahoma State Bureau of Investigation and the City of Tahlequah police department were requested to investigate. The State Auditor's office was asked to assist in this investigation.

### **Objective and Scope**

The key objective for this investigation was to assist the Oklahoma State Bureau of Investigation in evaluating and summarizing what, if any, misappropriation of funds had occurred at the Tahlequah Area Chamber of Commerce.

The scope of the investigation included expenditures made from the Tahlequah Area Chamber of Commerce bank account for July 1, 2009 through June 30, 2014.

### **What We Found**

We found a misappropriation of funds at the Tahlequah Area Chamber of Commerce totaling almost \$440,000.

**INTRODUCTION** On June 17, 2014, State Auditor & Inspector (SA&I) investigators met with officials from the Oklahoma State Bureau of Investigation (OSBI) and the City of Tahlequah Police Department to discuss a potential embezzlement of funds from the Tahlequah Area Chamber of Commerce (the Chamber).

It was agreed that SA&I would assist the OSBI in evaluating and summarizing what, if any, financial loss had incurred at the Chamber.

We obtained copies of bank statements, receipts, board minutes, and bylaws from staff at the Chamber of Commerce and through the OSBI for the period July 1, 2009 through June 30, 2014.

Very little supporting documentation was available in support of disbursements made from the Chamber accounts. A significant amount of financial information and records were missing from the Chamber of Commerce and from the Chamber of Commerce Director David Moore's office, including the computer used by the Director.

**PROCEDURES** All disbursement transactions from the Chamber of Commerce bank statements were scheduled out with each transaction classified into one of the following categories:

#### **Questioned Expenditures**

- **ATM Withdrawals** – Automated Teller Machine (ATM) transactions for cash made with a Chamber of Commerce debit card. All transactions in this category were classified as misappropriated funds. Approximately 1021 ATM withdrawals for cash were made totaling \$268,089.75, with no supporting documentation available.
- **Casino/Gambling Transactions** – Purchases or ATM withdrawals made at casinos, racetracks, or through online gaming websites. All transactions in this category were classified as misappropriated funds. Approximately 348 transactions totaling \$123,612.60 were conducted at casinos, horse racing parks, and through various internet gambling websites. The majority of these transactions were at the Hardrock Casino in Tulsa, Oklahoma. The transactions were made with the Chamber debit card and included no supporting documentation.
- **Other Questioned Expenditures** – Purchases determined to not be officially authorized expenditures of the Chamber totaling \$47,958.27. Approximately 74 transactions totaling \$45,433.58 appeared to be for the personal benefit of David Moore. These transactions included extra payroll checks, checks payable to Moore without any documented



purpose, payments on unauthorized loans obtained by Moore, payments for Moore's personal residence utilities and expenses, cash back received on debit card purchases, and checks for cash. These transactions did not include proper supporting documentation.

Also included under 'Other Questioned Expenditures' were payments made by David Moore on the behalf of Kate Kelly, a Chamber employee. Eleven transactions totaling \$2,524.69 were written for the benefit of Kelly, including medical care and prescription purchases.

### **Other Expenditures**

- **Restaurant Purchases** – Purchases made at restaurants or food establishments. Of the approximate 254 transactions conducted with restaurants and food establishments totaling \$17,978.48, eight were paid for by check with the remaining 246 transactions paid with a debit/checkcard. Several restaurant purchases were supported with receipts; and although some of the purchases made in this category were possibly not for a business purpose, the minimal dollar amount of each individual transaction precluded the cost effectiveness of evaluating each transaction independently.
- **Checks/Transfers to Tourism** – Checks written or online transfers made from the Chamber of Commerce bank account to the Tahlequah Area Tourism Council bank account. Transfers of \$71,292.11 made from the Chamber to the Council bank account were not considered questioned expenditures.
- **Scheduled Payroll** – Regularly scheduled payroll or approved payroll bonuses made to the employees of the Chamber. Between July 1, 2009 and June 30, 2014, the Chamber paid out \$373,794.34 of documented payroll expenses. These disbursements appeared to be appropriate cost of the Chamber.
- **Receipted Payments** – Purchases from the Chamber bank account that a receipt was provided for; no further evaluation of the transaction was deemed necessary. We verified \$192,527.91 of disbursements that appeared to be for ongoing Chamber business purposes but did not fall into another disbursement category. These transactions were properly supported with a receipt or invoice and were not questioned expenditures.
- **Other Expenditures** – These \$225,422.17 in expenditures represent a wide variety of transaction types including recurring transactions where receipts existed for some months, but not for every month; or small

one-time payments that were not receipted but appeared to be for a Chamber business purpose. Examples include transactions with the U.S. Postal Service, advertising agencies, office supply vendors, marketing associations, etc.

While the majority of these transactions appeared valid some did not have any supporting documentation and were purchases that could possibly have been questioned expenditures. However, the volume of independent transactions and the minimal dollar amount of each individual purchase precluded the cost effectiveness of evaluating each transaction. As such, these transactions were given the “benefit of the doubt” and not included as questioned expenditures.

- **Fees** – Costs charged to the Chamber of Commerce directly from and through the bank or directly from credit card companies. Because of the consistent overdrawn status of the Chamber bank account, over a five year period the Chamber incurred 218 fee charges totaling \$15,559.01.

**SUMMARY**

Of \$1,336,234.64 of expenditures made from the Tahlequah Area Chamber of Commerce bank account, the total questioned expenditures and potential misappropriation of funds for the period of July 1, 2009 – June 30, 2014 was \$439,660.62.

Category of Expenditure	Questioned Expenditures	Other Expenditures	Total Expenditures
ATM Withdrawals	\$268,089.75		\$268,089.75
Casino or Gambling Transactions	\$123,612.60		\$123,612.60
Questioned Expenditures	\$47,958.27		\$47,958.27
Restaurant Purchases		\$17,978.48	\$17,978.48
Checks/Transfers to Tourism Council		\$71,292.11	\$71,292.11
Scheduled Payroll		\$373,794.34	\$373,794.34
Receipted Payments		\$192,527.91	\$192,527.91
Other Expenditures		\$225,422.17	\$225,422.17
Fees		\$15,559.01	\$15,559.01
<b>Totals</b>	<b>\$439,660.62</b>	<b>\$896,574.02</b>	<b>\$1,336,234.64</b>

Exhibit A

Tahlequah Area Chamber of Commerce  
Special Investigation  
Summary of Expenditures  
July 1, 2009 - June 30, 2014

Fiscal Year	ATM Withdrawals	Casinos/ Gambling	Questioned Expenditures	Restaurants	Checks/ Transfers to Tourism	Scheduled Payroll	Received Payments	Other Expenditures	Fees	Total Disbursements Per Fiscal Year Spreadsheet	Variance	Total Disbursements Per Bank Statements
<u>2010</u>	Amount	\$ 30,180.00	\$ 609.00	\$ 2,692.00	\$ 3,732.57	\$ 4,363.84	\$ 64,931.09	\$ 34,951.33	\$ 869.56	\$ 217,289.71	0	\$217,289.71
	Transactions	185	3	7	49	1	293	156	36			
<u>2011</u>	Amount	\$ 54,840.25	\$ 1,177.00	\$ 5,500.17	\$ 3,798.67	\$ 7,700.00	\$ 36,715.76	\$ 38,877.98	\$ 5,197.44	\$ 228,426.78	0	\$228,426.78
	Transactions	210	6	10	46	5	182	139	37			
<u>2012</u>	Amount	\$ 69,671.25	\$ 4,761.22	\$15,293.64	\$ 3,717.54	\$ 8,035.00	\$ 26,053.23	\$ 61,649.08	\$ 1,657.79	\$ 288,118.07	0	\$288,118.07
	Transactions	226	23	20	50	24	89	213	43			
<u>2013</u>	Amount	\$ 53,116.25	\$ 63,648.44	\$ 9,588.37	\$ 3,021.60	\$21,662.00	\$ 55,243.79	\$ 43,554.89	\$ 2,873.56	\$ 331,047.81	0	\$331,047.81
	Transactions	204	172	19	58	21	107	169	54			
<u>2014</u>	Amount	\$ 60,282.00	\$ 53,416.94	\$14,884.09	\$ 3,708.10	\$31,531.27	\$ 9,584.04	\$46,388.89	\$ 4,940.66	\$ 291,352.27	\$51,632.99**	\$342,985.26
	Transactions	196	144	29	51	31	31	227	48			
<b>TOTALS</b>	Amount	\$268,089.75	\$123,612.60	\$47,958.27	\$17,978.48	\$71,292.11	\$192,527.91	\$225,422.17	\$ 15,559.01	\$1,336,234.64	\$51,632.99**	\$1,387,867.63
	Transactions	1021	348	85	254	82	702	904	218			

\*\* insufficient funds resulted in ten transactions totaling \$51,632.99 not clearing the bank or "bouncing" between August 2013 - March 2014. These transactions were not included in disbursements.

**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 this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.



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