

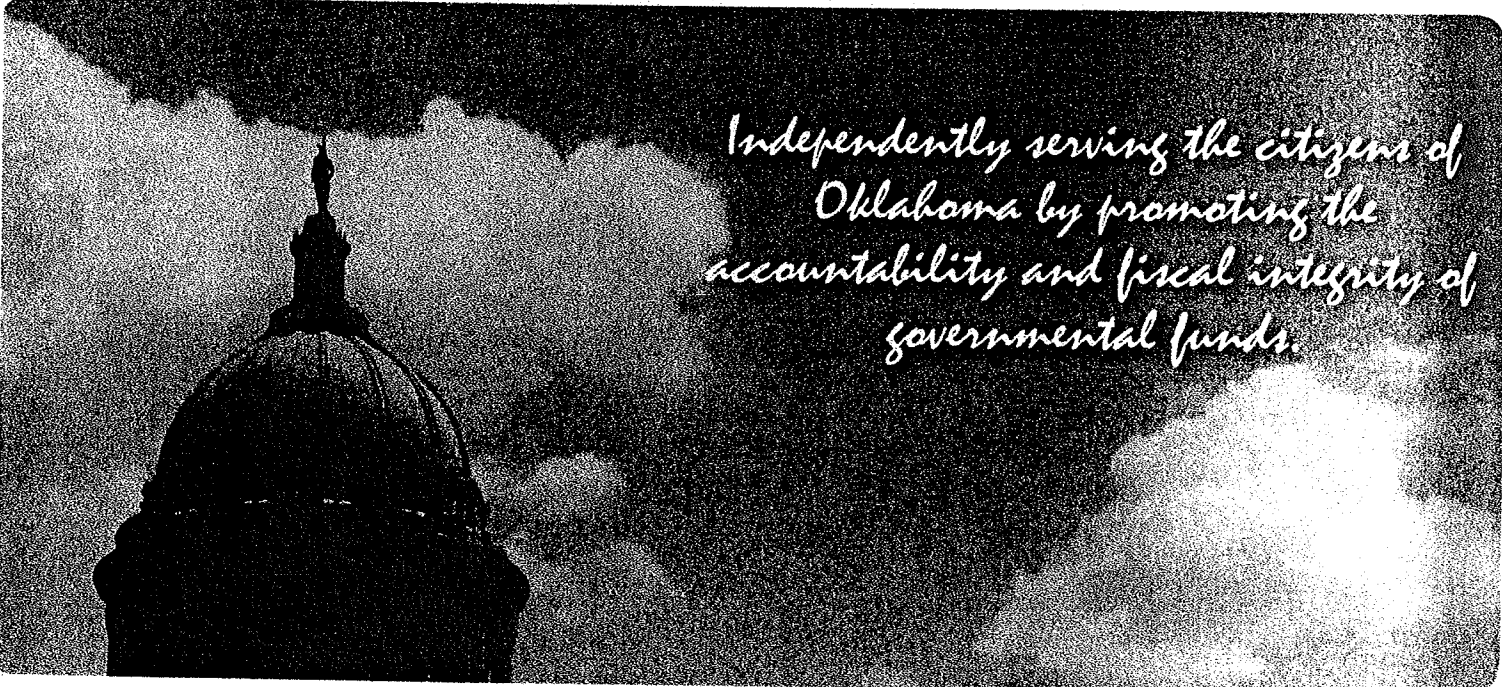
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SPECIAL AUDIT

BROKEN ARROW PUBLIC SCHOOL DISTRICT

(ATTORNEY GENERAL COPY)

Fiscal year July 1, 2006 through March 31, 2009



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

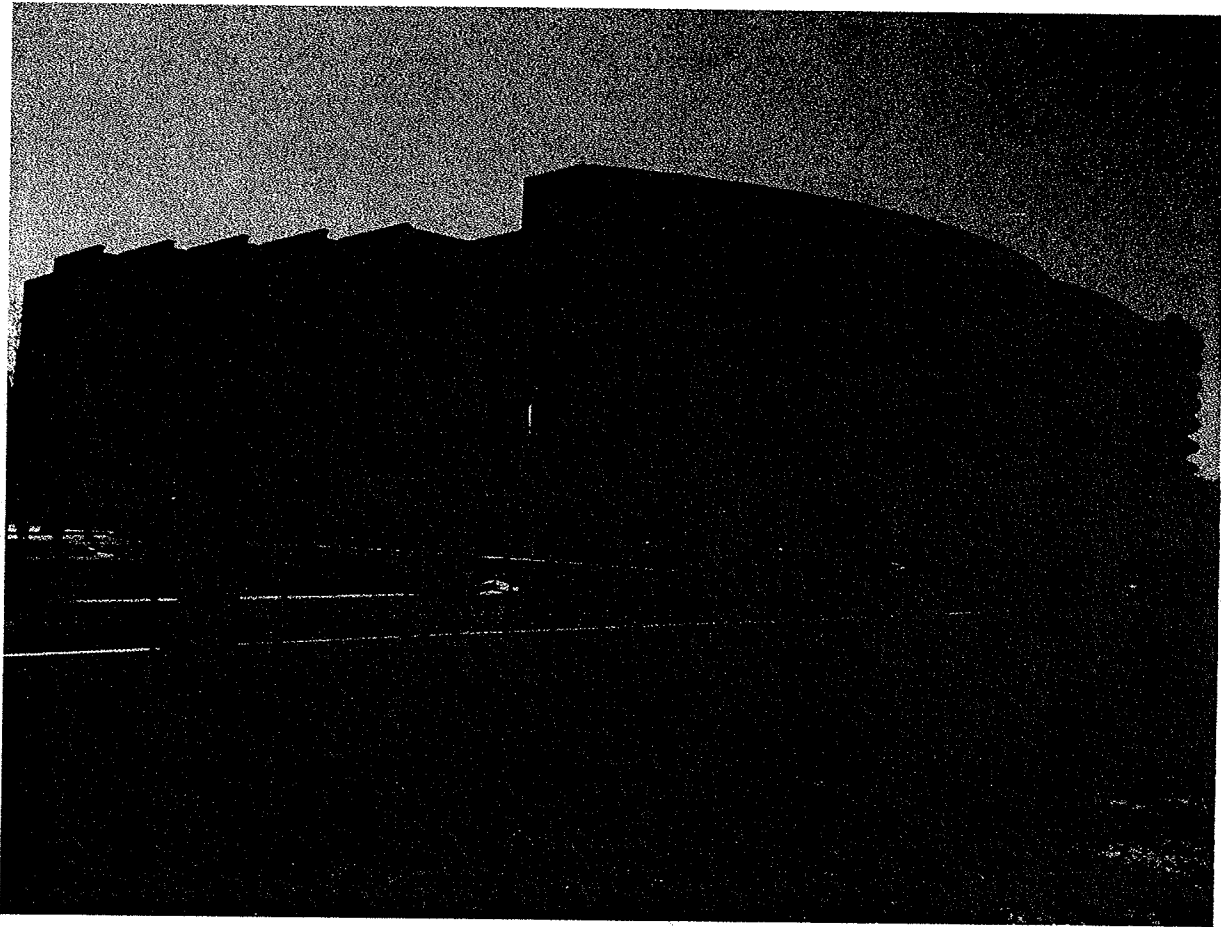


Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

BROKEN ARROW PUBLIC SCHOOL DISTRICT

SPECIAL AUDIT REPORT

JULY 1, 2006 THROUGH MARCH 31, 2009



Broken Arrow Public School District Administration Building

This report has been prepared at the request of the Attorney General of Oklahoma. Pursuant to 74 O.S. 2001, § 18f, the Attorney General may request audit services from the Oklahoma State Auditor and Inspector to assist in any cases to be tried or in any matters to be investigated. Consequently, this document is *not* a public document, but is part of the investigation and/or litigation files of the Attorney General and therefore may be kept confidential pursuant to the Oklahoma Open Records Act, in accordance with 51 O.S. 2001, § 24A.12.



Oklahoma State Auditor & Inspector

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June 7, 2011

Honorable E. Scott Pruitt
Oklahoma Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105

Transmitted herewith is the special audit report of the Broken Arrow Public School District.

Pursuant to the Attorney General request and in accordance with the requirements of **74 O.S. 2001, § 18f**, we performed a special audit with respect to the Broken Arrow Public School District for the period July 1, 2006 through March 31, 2009.

The objectives of our special audit primarily included, but were not limited to, the areas noted in the Attorney General request. Our findings and recommendations related to these procedures are presented in the accompanying report.

Because the above 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 Broken Arrow Public School District for the period July 1, 2006 through March 31, 2009.

A report of this type tends to be critical in nature. Failure to report commendable features in the accounting and operating procedures of the entity should not be interpreted to mean that they do not exist.

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to insure a government, which is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our special audit.

Sincerely,

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

**BROKEN ARROW PUBLIC SCHOOL DISTRICT
SPECIAL AUDIT REPORT
JULY 1, 2006 THROUGH MARCH 31, 2009**

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**BOARD OF EDUCATION
AS OF MARCH 31, 2009**

Terry StoverPresident
Sharon Whelpley..... Vice-President
Stephanie Updike.....Clerk
Maryanne Flippo.....Deputy Clerk
Shari Wilkins Member

SUPERINTENDENTS

Dr. Jim Sisney
July 1, 2003 through October 23, 2008

Dr. Gary Gerber
October 23, 2008 through June 30, 2010

Dr. Jarod Mendenhall
July 1, 2010 to Current

EXECUTIVE SUMMARY

We performed a special audit pursuant to an Attorney General request and in accordance with the requirements of 74 O.S. 2001, § 18f. Except as otherwise specified, this report addresses issues in the Broken Arrow Public School District for the period July 1, 2006 through March 31, 2009. Some information, both prior and after the audit period, is presented as necessary to complete the information developed for certain objectives.

This report covers 18 objectives categorized as follows:

- *Objectives related to the Open Meeting Act.*
- *Objectives related to potential conflicts of interest.*
- *Objectives related to the Public Competitive Bidding Act.*
- *Objectives related to the District's long term HVAC contractor.*
- *Objectives related to three other matters.*

We determined the first objective to be a possible violation of the Open Meeting Act and referred the matter to the Attorney General for legal review and evaluation. We determined the second objective to *not* be an Open Meeting violation based on the information developed.

We determined the first conflict of interest objective to be a possible violation and conflict and referred the matter to the Attorney General for legal review and evaluation. The remaining alleged conflicts were determined to *not* be conflicts, based on the information developed.

We determined there were Public Competitive Bidding Act violations, which we report were the result of failures to timely update policies and procedures with legislative changes to the Act, and other factors including miscommunication, and misinterpretation and/or misapplication of the provisions of the Act. The violations did *not* appear to be intentional, based on the information developed during our audit.

Seven objectives in this report relate to the District's long-term heating, ventilation, and air conditioning (HVAC) contractor. The objectives in this section were included to address issues concerning various allegations, including allegations of criminal conduct, reported in a prior unsigned draft report and an unauthorized document leaked to the media by party or parties unknown. Information developed for this report refutes the allegations, particularly the allegations of criminal conduct.

Three additional objectives were reported under "other matters." The first was an allegation of a "false and fictitious" invoice or claim for the District's fleet insurance coverage that information developed for this report indicated was completely erroneous. The second matter was related to various stipends for certain administrative staff that had been approved by a former superintendent. The information developed for this matter led to a more generalized finding that there was documentation for Board approval for ONLY the annual teachers' agreement, but no other category of staff. The third objective involved allegations of a District official shredding documents, for which we determined the evidence to be inconclusive.

Recommendations were made for some of the above objectives, but not others.

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INTRODUCTION

The Broken Arrow Public School District ("District") is an independent school district as described in 70 O.S. § 1-101 *et seq.*, the Oklahoma School Code.

The Board of Education of the District (Board) is responsible for the supervision, management, and control of the District as provided by 70 O.S. § 5-117.

Both the Board and the District are subject to the provisions of the Oklahoma School Code, as well as other statutes found in various titles including, but not limited to, Title 25 (Definitions and General Provisions), Title 51 (Officers), Title 61 (Public Buildings and Public Works), Title 62 (Public Finance), and Title 68 (Revenue and Taxation).

The District is audited annually by private independent auditors and such audit reports were available for our review.

In April 2009, the Office of State Auditor and Inspector (OSAI) entered into an agreement with the District to conduct a special audit of the District. The OSAI conducted audit fieldwork, and a draft report of the audit was prepared, but no official report was ever issued. Subsequent to an August 18, 2010, "exit" conference at the District, an unauthorized document purporting to be a "draft report" was released to the public via the Internet.

Said document contained allegations against members of the Broken Arrow community and school district which, if true, constituted serious violations of state and federal law. However, if found to be incorrect or unsubstantiated, those same accusations could cause harm to those individuals and businesses. The Attorney General requested an audit authorized by 74 O.S. 2001, § 18f to either confirm or refute those allegations.

In the following report, there will be frequent references to the two documents described above. In order to distinguish between those two documents, the designation "early, unsigned draft report" refers to an April 2010 draft of the *Board requested audit report*. The designation "80-page unauthorized document" or "leaked, unauthorized document" refers to the document that was posted on the Internet.

All dollar amounts included in the report are rounded to the nearest dollar, unless otherwise specified.

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The District's fiscal year starts July 1 and ends June 30. In this report, fiscal years are abbreviated by using the ending calendar year. For example, the fiscal year of July 1, 2010 to June 30, 2011, will be identified as "FY11."

The results of the Attorney General special audit request are in the following report.

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OBJECTIVE #1: DETERMINE IF THE BOARD OF EDUCATION VIOLATED THE OPEN MEETING ACT.

BACKGROUND

One issue raised was whether or not the law firm of Rosenstein, Fist & Ringold ("RFR") had been authorized by the Board of Education to conduct an investigation of a District employee in an open meeting, or an executive session of an open meeting, in compliance with provisions of the Open Meeting Act.

FINDING

An "investigation" initiated by individual board members may be contrary to provisions of the state's 25 O.S. § 301 *et seq.* Open Meeting Act.

We obtained the meeting minutes for the Board of Education Special Meeting held on August 12, 2008. The meeting minutes reflect item II as follows:

Discussion, consideration and vote to approve or not approve hiring Rosenstein, Fist and Ringold as legal counsel for the Broken Arrow School District and to authorize the execution of an engagement letter/contract between the District and Rosenstein, Fist and Ringold.

The Board approved hiring Rosenstein, Fist and Ringold and the engagement letter/contract.

We obtained a copy of the engagement letter/contract between the Board and RFR. The engagement letter includes the following language:

Legal services rendered by this law firm will be on an "as needed" basis and will encompass work requested to be performed by the Superintendent, his designees and *any member* (singular) of the Board of Education. (emphasis added)

We contacted Attorney Doug Mann with the RFR law firm and inquired about the investigation the firm had conducted on Dr. Jim Sisney.

According to Mr. Mann, he was contacted by several board members and requested to conduct the investigation under the authority of the

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engagement letter approved by the Board of Education during the special meeting on August 12, 2008. The requests reportedly came from the Board Members *individually* and without the knowledge of the others.

We contacted Attorney Phyllis Walta, representing Board Members Flippo, Wilkins and Whelpley, and asked that she confirm if one or more of her clients requested RFR to conduct the investigation of former Superintendent Sisney. Attorney Walta stated all three of her clients made the request under the authority of the engagement letter approved by the Board of Education on August 12, 2008.

One of the guiding principles of the Oklahoma Open Meeting Act (OMA) is that the business of public bodies, as defined in the Act, should be conducted in "open" meetings. Provisions of the OMA require sufficient advance notice be given for the "...date, time, place and agenda for said meeting..." and sufficient detail being made available to "notify" the public concerning what governing actions may be considered and/or decided at the meeting.

Other provisions permit private "executive sessions" for certain specific exceptions to the OMA, including 25 O.S. § 307(B)(4) which states:

Confidential communications between *a public body* and its attorney *concerning a pending investigation*, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of *the public body* to process the claim *or conduct a pending investigation*, litigation, or proceeding in the public interest. (emphasis added)

Some public officials are tasked with *individual* duties and responsibilities, such as the Governor, the Attorney General, the local County Treasurer, etc. Other public officials have both individual and collective or group duties, such as County Commissioners, who may act individually for some duties and responsibilities, but must act collectively, when acting as the governing board of the county.

Yet other public officials, such as "boards of public and higher education," municipal "governing bodies," as well as other public entities defined in 25 O.S. § 304 (1) of the OMA, do NOT have *individual* duties or responsibilities and MUST function collectively as a group to carry out *Board* duties, responsibilities and to make governing decisions.