

SPECIAL AUDIT

WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY

May 5, 2008 through June 30, 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

WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY

SPECIAL AUDIT REPORT

MAY 5, 2008 THROUGH JUNE 30, 2009

This publication is printed and issued by the State Auditor and Inspector as authorized by 74 O.S. § 212(H). Pursuant to 74 O.S. § 3105(B), 25 copies have been prepared and distributed at a cost of \$61.27. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.



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 15, 2011

Mr. James Hanning, Chairman
Wagoner County Board of Commissioners
Wagoner County Courthouse
307 East Cherokee Street
Wagoner, OK 74467

Transmitted herewith is the Special Audit Report of the Wagoner County Educational Facilities Authority, Wagoner, Oklahoma. We performed our special audit in accordance with the requirements of **74 O.S. 2001, § 212(I)**.

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,

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

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

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

TABLE OF CONTENTS

	Page
BOARD OF TRUSTEES	ii
STATE AUDITOR AND INSPECTOR’S REPORT	1
INTRODUCTION.....	2
TIMELINE & BACKGROUND	4
OBJECTIVES, FINDINGS, AND RECOMMENDATIONS	5

OBJECTIVES

I. OBJECTIVE: Determine compliance with the Open Meeting Act.	5
II. OBJECTIVE: Determine the public trust’s authority to finance a project for a school located in another county.	7
III. OBJECTIVE: Determine why the Bixby School District used a public trust to finance its construction projects	8
IV. OBJECTIVE: Determine how the financial arrangements of the construction projects benefited the Authority	10
V. OBJECTIVE: Determine the responsibility the Authority has regarding oversight of the Project (i.e. involvement in the bidding process, review process for payment and approvals, Open Records Act, other administrative issues, etc.).....	11
APPENDIX: CPA firm’s internal control comments from the first fiscal year audit for the Authority.	

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

**BOARD OF TRUSTEES
(As of May 5, 2008)**

Jerry Hefner Trustor
Jerry Hefner Chairman
Tom Vincent (*resigned from being trustee shortly after May 14th meeting*) Trustee
Jim Hargrove..... Trustee
Laura Miller Secretary

**BOARD OF TRUSTEES
(As of June 30, 2009)**

Vacant Trustee
Vacant Trustee
Jim Hargrove..... Trustee
Laura Miller Secretary



Oklahoma State Auditor & Inspector

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

Wagoner County Board of Commissioners
Wagoner County
307 East Cherokee Street
Wagoner, Oklahoma 74467

Dear Members:

Pursuant to the Board's request and in accordance with the requirements of **74 O.S. 2001, § 212(I)**, we performed a special audit with respect to the Wagoner County Educational Facilities Authority for the period May 5, 2008 through June 30, 2009.

The objectives of our special audit primarily included, but were not limited to, the areas noted in the Board's 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 Wagoner County Educational Facilities Authority for the period May 5, 2008 through June 30, 2009. Further, due to the test nature and other inherent limitations of a special audit report, together with the inherent limitations of any internal control structure, there is an unavoidable risk that some material misstatements may remain undiscovered. This report relates only to the accounts and items specified above and does not extend to any financial statements of the Wagoner County Educational Facilities Authority taken as a whole.

This report is intended solely for the information and use of the Board of County Commissioners, Wagoner County, and the Wagoner County Educational Facilities Authority, and should not be used for any other purpose. This report is also a public document pursuant to the **Oklahoma Open Records Act (51 O.S. 2001, § 24A.1 et seq.)**, and shall be open to any person for inspection and copying.

Sincerely,

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

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

January 31, 2011

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

INTRODUCTION

The Wagoner County Educational Facilities Authority (Authority) was created in accordance with **60 O.S. § 176 et.seq.**, and pursuant to a trust indenture dated May 5, 2008.

According to Article IV of the trust indenture, the purposes of the trust include, in part:

- to assist the Beneficiary (Wagoner County), the State of Oklahoma, its governmental agencies, municipalities, private entities, public school districts, technology center school districts, colleges and universities, agencies, and citizens in making the most efficient use of all their economic resources and powers, in accord with the needs and benefit of the State of Oklahoma and the Beneficiary...;
- to promote the safety, security and general well being of the residents of the Beneficiary and to finance any and all programs, facilities or resources promoting or intending to promote any of the foregoing, and...;
- to promote, develop and finance the acquisition, construction, rehabilitation and equipping of educational facilities located within or near the corporate boundaries of the Beneficiary...

The remaining “purposes” listed in Article IV included the common language found in most trust authorities that permit the Trust to carry out the necessary actions of acquiring and administering properties and assets of various kinds, entering into contracts, including contracts and agreements for financing and incurring various kinds of indebtedness, and expending the funds of the Trust in accomplishing its stated purposes.

The trustee board of the Authority initially consisted of the three (3) members of the Board of County Commissioners of Wagoner County (BOCC). Upon the expiration of any trustee’s term of office, a successor is to be appointed to a seven year term by a majority vote of the members of the BOCC for Wagoner County, the Beneficiary. Successor trustees must be citizens and residents of Wagoner County.

The Authority is required to be audited annually by private independent auditors, and the initial audit report for its first fiscal year (FYE March 31,

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

2009) was available for our review. No audit report has been filed with our (OSAI) office for FYE March 31, 2010.

The Office of the State Auditor and Inspector conducted a special audit of the records of the Wagoner County Educational Facilities Authority, primarily those records relating to concerns expressed by the Board of County Commissioners of Wagoner County (BOCC) in their request to our office, under provisions of **74 O.S. § 212(I)**. The results of the special audit are in the following report.

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

**TIMELINE &
BACKGROUND**

December 12, 2006: The voters of the Bixby School District No. I-4, Tulsa County, Oklahoma (District) passed a proposition authorizing the District to issue bonds in the sum of \$33,100,000 to provide funds for constructing, equipping, repairing and remodeling school buildings and facilities, acquiring furniture, etc. In July 2007, the school district began the initial phases of the 4 approved construction projects (Project).

April 1, 2008: The District passed a resolution authorizing the execution of a ground lease agreement and lease purchase agreement. The resolution also provided that the District will request a public trust to issue Lease Revenue Notes in the aggregate principle not to exceed \$26,000,000. No specific public trust authority was named in the resolution.

May 5, 2008: The Wagoner County Commissioners approved Resolution 2008-015 creating the Wagoner County Educational Facilities Authority (Authority), a Title 60 public trust.

May 14, 2008: Both the County Commissioners and the Trustees of the Authority, in their respective meetings, approved resolutions authorizing the financing between the Authority and the District. The resolutions authorized the Authority to issue Lease Revenue Notes, Series 2008 (Bixby Public Schools Project) in the aggregate principal not to exceed \$26,000,000.

May 22, 2008: The Authority issued \$23,578,000 in Lease Revenue Notes, Series 2008 (Bixby Public Schools Project) to “(i) finance the Project to serve the students of the School District; and (ii) pay certain costs of issuance.” According to the Note Indenture between the Authority and RCB Bank (the trustee bank), the Notes were secured by lease rental payments to be paid by the District. On the same day, \$23,282,889 in revenue note proceeds, net of the costs of issuance, were wire transferred into a Construction Fund account for the Project.

May 22, 2008: A Ground Lease Agreement (Dated May 1, 2008) and a Lease Purchase Agreement (Dated May 1, 2008) were signed and executed. Both agreements were between the Authority and the District.

In simple terms, under the Ground Lease Agreement, the District leases its school owned real property on which the Project is to be constructed to the

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

Authority for \$10.00 a year. In return, the Authority agrees to finance and construct the Project with the proceeds of its Lease Revenue Notes, Series 2008, and then lease the Project facilities back to the District.

Under the Lease Purchase Agreement, the District agrees to lease-purchase the Project facilities, making monthly “rental payments” to the Authority sufficient to allow the Authority to pay its revenue note obligations. After all of the Authority’s revenue note obligations (in relation to the Project) have been paid, both agreements will terminate, and full “right, title and interest” in the real property will revert to the District.

I. OBJECTIVE Determine compliance with the Open Meeting Act.

The Authority was unable to provide minutes for its meetings during the audit period. Based on documentation we reviewed, it appears the Authority held (or may have held) meetings on at least the following dates:

May 14, 2008 Documentation consists of a notification of special meeting, an agenda with three specified items, including the resolution to approve the issuance of up to \$26,000,000 in Lease Revenue Notes, Series 2008; discussion and possible action to hire an auditor for the Authority; and discussion and possible action to designate the Authority’s fiscal year to be April 1st through March 31st. There is an audio recording of the WCEFA meeting, following the regular Board of County Commissioners’ meeting. No written minutes were presented for review.

May 19, 2008 Documentation consists of a combined notice of special meeting and agenda, including discussion and possible action regarding the “Notice of Resignation from Trustee, Tom Vincent”; discussion and possible action regarding a surety bond; discussion and possible action regarding a general manager; discussion and possible action regarding a treasurer. No written minutes were presented for review.

Sept 25, 2008 Documentation consists of an agenda with two items,

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

including a resolution approving and authorizing an amendment to the Authority's trust indenture and a resolution authorizing lease revenue notes for a "Coweta Public Schools Project", not to exceed \$11,000,000. No minutes were presented for review.

June 1, 2009 The minutes of the Wagoner County Board of County Commissioners for this date record a discussion of an Authority meeting to follow after the BOCC meeting. No agenda or minutes could be found.

Mr. Hargrove indicated in an interview in January 2010, that only the first two meetings actually occurred, to the best of his recollection.

According to **25 O.S. § 311(A) (3)**:

Notwithstanding any other provisions of law, all regularly scheduled, continued or reconvened, special or emergency meetings of public bodies shall be preceded by public notice as follows:

3. All county public bodies, including, but not limited to public trusts and other bodies with the county as beneficiary, shall give notice to the county clerk of the county wherein they are principally located.

25 O.S. § 312 (A) states, in part:

A. The proceedings of a public body shall be kept by a person 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. (emphasis added)

We received meeting agendas for May 14, May 19, and September 25, 2008 meetings in the Authority records. The agendas received had been file stamped in the Wagoner County Clerk's office.

According to the Wagoner County Clerk, the Authority's secretary would come into the Clerk's Office and use the file stamp, but did not actually file the agendas with the County Clerk.

WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009

RECOMMENDATION In accordance with provisions of **25 O.S. § 311** and **25 O.S. § 312(A)**, OSAI recommends the Authority:

1. Only conduct business in meetings that have been properly posted;
2. File all notifications of meetings with the Wagoner County Clerk;
3. Adequately record and maintain written minutes of its meetings; and
4. Design and implement policies and procedures to adequately demonstrate full compliance with all applicable provisions of the Oklahoma Open Meeting Act.

POTENTIAL PENALTY Title **25 O.S. § 314** reads for failure to comply:

Any person or persons willfully violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year or by both such fine and imprisonment.

II. OBJECTIVE Determine the public trust's authority to finance a project for a school located in another county.

FINDING One of the concerns involved the question of what authority there may be for a public trust created in Wagoner County to finance a project for the Bixby Public School District located in Tulsa County.

An Attorney General opinion, requested by the Office of State Auditor and Inspector, **2007 OK AG 42**, addressed this issue by citing an earlier Attorney General opinion, **2000 OK AG 26**, which in turn cited a "test" known as the *Warram* standard. The *Warram* standard comes from a 1955 court case titled: **Board of County Commissioners v. Warram, 1955 OK 198, 285 P.2d 1034.**

Item #3 of Section 0 (the syllabus) for *Warram* states:

Trusts for the benefit of governmental entities are "charitable trusts"; and the common law recognizes that the purposes for which such trusts may be established include the broad field of objectives for the benefit

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

of a large class of the public or for lessening the burdens of government.

2000 OK AG 26 also indicated:

The extent to which a public trust can operate within or without its jurisdictional boundaries is governed by the *Warram* standard. *Trust activities must be of some benefit to the citizens of the beneficiary, or lessen the burdens of government of the beneficiary.* (emphasis added)

2007 OK AG 42 added:

In other words, in a given factual situation, *a project outside a municipality or county that benefits the beneficiary in some way other than merely generating fees from furnishing the financing may properly be done under the Warram standard.* (emphasis added)

Information supplied by the Wagoner County Assessor, indicates a small area in the southwest corner of Wagoner County, which includes two small subdivisions and maybe a few dozen households, lies within the boundaries of the Bixby Public School District. According to information supplied by the Wagoner County Assessor, the portion of Wagoner County that is part of the Bixby Public School District amounts to approximately 150 acres.

Since a portion of the District is within Wagoner County (the beneficiary), and some citizens/residents of Wagoner County are being and/or will be educated in the District, it would appear the assistance provided to the District would meet the *Warram* standard, as described in **2000 OK AG 26** and **2007 OK AG 42** above. However, the “benefits” would accrue to only a small group of the beneficiary’s citizens.

RECOMMENDATION Nothing recommended.

III. OBJECTIVE Determine why the Bixby School District used a public trust to finance its construction projects.

FINDING There have been a number of rationales offered and/or promoted as to why a school district would use a municipal or county public trust to help finance its

WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009

construction projects. The short answer is that these public trust/revenue note/lease-purchase financial arrangements have been used for a number of years to bypass the debt limitations imposed by **Article 10, § 26(a) of the Oklahoma Constitution**.

According to *The Oklahoman* newspaper article, dated August 12, 2007, the likely first time this type of financial arrangement was used was in 1997 for the Tulsa Technology Center. Since then, there have been “dozens” of school districts that have utilized similar arrangements.

Article 10, § 26(a) limits a school district’s bonded indebtedness, including existing indebtedness, to “...not exceeding ten percent (10%) of the valuation of the taxable property therein...”

Prior to the creation of these public trust/revenue note/lease-purchase financial arrangements, a fast growing school district, such as the (Bixby) District, for example, would have to plan for and build new facilities in “phases”. The completion of each phase would be dependent on the amount of general obligation bonds the school district could issue up to the 10% of property valuation limitation.

Utilizing a municipal or county public trust effectively bypasses **Article 10, § 26(a)** by having *the public trust* issue “revenue” notes or bonds to borrow the funds for construction, then provide those funds to the school district through the ground lease and lease-purchase agreements. The arrangement provides the cash flow that allows the school district to complete its construction projects on a timetable that is independent of the 10% bonded indebtedness limitation.

In this instance, the \$33,100,000 proposition that was passed by the District voters in December 2006 greatly exceeded the 10% debt limitation of the taxable property value for the (Bixby) District. According to the District’s audit report for its fiscal year ended June 30, 2007, the “amounts to be provided for retirement of general long-term debt” *already stood at \$24,893,411, as of June 30, 2006*, six months before the new proposition was passed.

Annually, the District will pay off some of its earlier general obligation bonds through the property tax levied for its sinking fund, then issue new general obligation bonds to the extent it is able under the limitations of **Article 10, § 26(a)**. All or part of the proceeds of the new general obligation bonds are then

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

used to make the “lease rental payments” to the Authority, which in turn, pays the principal and interest due on its revenue notes.

In 2009, the Legislature passed House Bill 1592, which modified language in **70 O.S. § 5-117 (B.)**. The addition clarified the use of lease-purchase agreements by schools in regard to acquiring new facilities and paying for new construction. The language added to **70 O.S. § 5-117 (B.)** in effect recognizes what school districts have been doing with these public trust/revenue note/lease-purchase arrangements over the past decade.

RECOMMENDATION Nothing recommended.

IV. OBJECTIVE Determine how the financial arrangements of the construction projects benefit the Authority.

FINDING The lease purchase agreement between the Authority (Lessor) and the District (Lessee) included a provision that the Authority would be paid an annual administrative fee equal to one-sixteenth of one percent of the outstanding balance as of May 22nd of each year.

Article II, Section 2.01, paragraph (h) of the agreement states:

Administrative Payment: The Lessee agrees to pay the Lessor an annual administrative payment equal to one-sixteenth of one percent (0.0625%) of the outstanding balance of the Note(s) on May 22 of each year, commencing May 22, 2009 and continuing until the Note(s) are paid in full.

However, as of the last day of fieldwork, the Authority had not yet received the administrative payment provided for in the agreement. According to an amortization schedule supplied by the District, the amount due to the Authority would be \$14,736.25, as of May 22, 2009, with additional fees of \$25,224.30 projected over the next 3 years.

WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009

Besides the administrative fee, there are those few dozen Wagoner County households, who are part of the Bixby School District, and who would “benefit” from the Authority’s participation in the District’s construction projects.

With those two situations being the only apparent perceived “benefit” to the Authority or its beneficiary county, it is not an unreasonable question to consider.

In addition, it should be reported that, in the Attorney General opinion, **2000 OK AG 26**, paragraph 11, it states:

However, a project which *merely uses a trust to generate fees* from providing a financial vehicle with no other economic benefit to the beneficiary county from the project itself does *not* provide sufficient benefit to the county or lessen the burden of county government as required by the *Warram* standard. (emphasis added)

RECOMMENDATION OSAI recommends the Authority:

1. Take the necessary steps to bill, collect and timely deposit the administrative fee(s) it is due under the provisions of the lease purchase agreement; and
2. Implement policies and procedures, including appropriate legal consultation, to assure itself and its beneficiary county that any future proposed projects meet the *Warram* test for legality.

V. OBJECTIVE Determine the responsibility the Authority has regarding oversight of the Project (i.e. involvement in the bidding process, review process for payment and approvals, Open Records Act, other administrative issues, etc.)

FINDING Section VI of the Ground Lease Agreement specifies “The Authority hereby agrees to complete construction of the Project in accordance with plans and specifications furnished by the School District.”

Despite the clear implication that the Authority would “complete construction”, our interviews with the District’s personnel, and our review of the Authority’s

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

records, indicated the whole construction process from plans to payment requisition was controlled by the District.

The bidding process, the selection of building contractors and other vendors, the documentation and administration of construction contracts, and the initiation of the "Payment Requisition" process was all handled by the District. The District retains the original bid documentation, contracts, and invoices from the contractors and vendors, and most other Project related records. The District board, not the Authority Board, approved all the above plans, bids, contracts, etc.

Once a "payment requisition" form was created, the following steps were taken:

1. The District faxed a cover sheet, the requisition form, and the invoices to the Stephen L. Smith Corporation. The cover sheet was signed by the Superintendent, the Chief Financial Officer, and the Treasurer (of the District) authorizing the payment for the attached payment request. The invoice was attached to the payment request. The invoice was also signed indicating goods and/or services were provided. Prior to the approvals from District officials, the contractor signed off that work was completed, and the architect signed that work was done correctly.
2. The Stephen L. Smith Corporation reviewed the documents and faxed them to the Authority. The secretary for the Authority signed the payment request and sent it back the Stephen L. Smith Corporation.
3. The Stephen L. Smith Corporation then faxed the documents to RCB Bank for payment.
4. Upon receiving the request from the Stephen L. Smith Corporation, the authorized officer of RCB Bank signed the request, dated when it was received and recorded the date the vendor was paid.
5. RCB Bank then provided an Evidence of Disbursement which shows the payment requests that were paid, the total disbursement amount, total accumulative disbursements, and the balance in the fund after the request. Copies of the invoices and the checks were attached.

The payment requests we reviewed showed approval by Laura Miller, the secretary to the Authority, and not by the Authority Board of Trustees. Article II of the Trust Indenture states:

The Trustees of this Trust shall conduct all business and execute or authorize the execution of all instruments in the name of this Trust, which shall be the "Wagoner County Educational Facilities Authority" and otherwise perform the duties and functions required in the

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

execution of the Trust, and hereby authorize the Chairman or Vice Chairman, Secretary or Assistant Secretary of the Trust to Execute instrument on behalf of the Trust as directed by duly enacted resolutions of the Trust.

From our review, the Authority Board apparently permitted payment requests to be processed by the Board's secretary, without any documented Board approval or oversight. A fair description, or assessment, of the Authority Board's involvement would include the terms "minimal" and/or "rubber-stamped".

The only controls there were over the expenditure and accounting of the proceeds of the Authority's Revenue Notes, Series 2008, were those implemented by the Bixby School District. Although we did interview school personnel to gain an understanding of the overall processing of transactions, we were not engaged to review those controls, and we provide no assessment of those controls here.

However, the *District's internal control process* did not alleviate the Authority Board of *its responsibility* for oversight/review of the process, and/or the legitimacy, of the disbursements from the trustee bank's Construction account.

Open Records Act:

The Authority is required to maintain records under the provisions of **51 O.S. § 24A.4** which states:

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions related thereto, except that such records may be disposed of as provided by law.

As previously noted in this section, the original invoices, bids, contracts, (school) board approvals and other contractor/vendor records are all maintained by the school district. The Authority maintains copies of some payment requisition records at the Wagoner County District #3 maintenance barn.

RECOMMENDATIONS We recommend the Authority:

1. Adopt internal controls sufficient to assure that all payments are properly supported, properly approved, and authorized by law;

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

2. Implement procedures to ensure all payments require at least two signatures, one being that of a member of the Board of Trustees;
3. Periodically monitor these controls to ensure they are working properly.

The audit of the Authority's first fiscal year of operation was available for our review.

In the APPENDIX to this report, we have included the CPA firm's "report on internal control over financial reporting and other matters..." The CPA firm's comments are relevant to this objective.

SUBSEQUENT EVENT Statutory changes passed by the Legislature in 2009 created some other options for school districts, with regard to their construction financing. At the end of our fieldwork, the District was in the process of refinancing and satisfying the debt obligations issued by the Authority.

As of January 13, 2010, the District had completed refinancing, and the trustee bank has furnished our office with a "Release of Ground Lease Agreement". This release form indicates the Lease Revenue Notes, Series 2008 (Bixby Public Schools Project) have been paid or refunded in full, and the Authority has no further obligation and/or liability with regard to the District or its Project.

DISCLAIMER

Throughout this report there are numerous references to state statutes and legal authorities, which appear to be relevant to issues raised by the County Commissioners and 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 and such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.

The inclusion of cites to specific statutes or other authorities within this report does not, and is not intended to, constitute a determination or finding by the State Auditor and Inspector that the Wagoner County Educational Facilities Authority or any of the individuals named in this report or acting on behalf of the Authority have violated any statutory requirements or prohibitions imposed by law. All cites and/or references to specific legal provisions are included within this report for the sole purpose of enabling interested parties to review

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

and consider the cited provisions, independently ascertain whether or not the Authority's policies, procedures, or practices should be modified or discontinued, and to independently evaluate whether or not the recommendations made by this Office should be implemented.

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
WAGONER COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
MAY 5, 2008 THROUGH JUNE 30, 2009**

APPENDIX

KERRY JOHN PATTEN, C.P.A.

2101 N. Willow Ave.
Broken Arrow, OK 74012
Phone Number (918) 250-8838
FAX Number (918) 250-9853



INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

The Board of Trustees
Wagoner County Educational Facilities Authority
Wagoner, Oklahoma

I have audited the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of Wagoner County Educational Facilities Authority (the "Authority"), Wagoner, Oklahoma, as of March 31, 2009, and for the period from inception (May 5, 2008) to March 31, 2009, which collectively comprise Wagoner County Educational Facilities Authority's basic financial statements and have issued my report thereon dated June 30, 2009. I conducted my audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing my audit, I considered Wagoner County Educational Facilities Authority's internal control over financial reporting as a basis for designing my auditing procedures for the purpose of expressing my opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Wagoner County Educational Facilities Authority's internal control over financial reporting. Accordingly, I do not express an opinion on the effectiveness of the Authority's internal control over financial reporting.

A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control. I consider the deficiency (Comment VI) to be a significant deficiency in internal control over financial reporting.

A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control. I consider Conditions I, II, and III to be material weaknesses.

My consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Wagoner County Educational Facilities Authority's financial statements are free of material misstatement, I performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of my audit, and accordingly, I do not express such an opinion. The results of my tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and are described in the Schedule of Comments as Conditions IV, V, and VII.

This report is intended solely for the information and use of the audit committee, management and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Kerry John Patten, C.P.A.
June 30, 2009

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
SCHEDULE OF COMMENTS
MAY 5, 2008 TO MARCH 31, 2009**

Internal Control Comments

- I. **Condition:** We could not located evidence that Trust personnel had reconciled Trust records with Trust bank accounts. Bank reconciliations are one of the primary internal controls used in the detection of errors or irregularities. Therefore, their timely preparation is critical to an effective internal control structure.

Recommendation: The board of trustees should require that bank statements be reconciled monthly with Trust accounting records to ensure a strong internal control system.

- II. **Condition:** The governing board of the Trust assigned the responsibility for approving expenditures to the secretary of the Trust. We found no evidence of any oversight by the governing body in reviewing or approving expenditures. The Trust relied on the school district for approving goods and services were received and were legitimate bills that should be paid. This demonstrates a weakness in the internal control structure.

Recommendation: The Trust should take on a proactive role in maintaining control over the purposes for which it was created. Attorney General opinion 77-133 states in part, "requires that the Trust, be bound to the purchasers, and implies that the Trust has to maintain control over the use of the funds and perform the functions for which funds are dedicated." It also states in part, "that public trusts actively participate in specific endeavors, not just provide funds." The Trust should review all expenditures that are submitted for their approval and should make an independent verification that invoices submitted for payment are for goods and/or services that have been received. It is the responsibility of the Trust to make these determinations.

- III. **Condition:** The Trust did not provide us with all official minutes of board meetings.

Recommendation: Official board minutes should be made available for auditor review, as well as public inspection.

Compliance Comments

- IV. **Condition:** The responsibility of the Trust to comply with the Public Competitive Bidding Act of 1974 was transferred from the Trust to Bixby Public Schools. The purpose of the Trust is to construct and equip educational facilities, per the Trust Indenture. One definition in O.S. 61-102, defines public agency as a public trust. Therefore, this statute requires the Trust to comply with the Competitive Bidding Act of 1974. We are not aware of any authority for the Trust to transfer this responsibility to another party. However, we did find evidence that the competitive bidding process was followed by Bixby Public Schools.

Recommendation: The Trust should seek legal advice and clarification on the responsibility of complying with the Public Competitive Bidding Act of 1974.

- V. **Condition:** The lease purchase agreement entered into by the Trust and Bixby Public Schools requires the Lessee (Bixby Public Schools) to maintain casualty insurance insuring the leased facilities against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks required by the Lessor in an amount at least equal to the replacement value of the buildings and improvements, with a waiver of co-insurance. Also, the insurance shall name the Trustee, Lessee, and Lessor as insured and shall contain a provision to the effect that such insurance shall not be cancelled or modified materially without first giving written notice to the Lessor and Trustee at least 10 days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to the Trustee, Lessee, and Lessor as their respective interest may appear. We were provided with evidence of insurance, but we were not provided with evidence of all of the applicable items stated previously.

Recommendation: The Trust should require that Bixby Public Schools provide them insurance policies with the stated requirements in the lease purchase agreement.

**WAGONER COUNTY EDUCATIONAL FACILITIES AUTHORITY
SCHEDULE OF COMMENTS
MAY 5, 2008 TO MARCH 31, 2009**

VI. **Condition:** The Trust Indenture states in part, "the secretary shall maintain complete and accurate records of all financial transactions." We were only provided with bank statements and invoices.

Recommendation: The Trust should set up an accounting system whether computerized or manual. All transactions should be posted into a double entry accounting system. Accounts should be reconciled monthly, as well as monthly financial statements should be prepared and then approved by the governing board.

VII. **Condition:** During our review of Trust documents including the Trust Indenture, Note Indenture, Lease-Purchase agreement, and Ground Lease agreement; we noted that the Trust was created on May 5, 2008, but the other documents were dated May 1, 2008.

Recommendation: The Trust should consider consulting legal counsel to determine that all agreements are legal and enforceable.



OFFICE OF THE STATE AUDITOR AND INSPECTOR

2300 N. LINCOLN BOULEVARD, ROOM 100

OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV