

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
IN THE DISTRICT COURT OF OKLAHOMA COUNTY

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
FEB 23 2005

IN THE MATTER OF THE MULTICOUNTY) Case No. SCAD-03-46
)
GRAND JURY, STATE OF OKLAHOMA) District Court No. CJ-03-5937

Deputy COURT CLERK
LUCIA PRESLEY

FINAL REPORT

We, the undersigned members of the State of Oklahoma's Ninth Multicounty Grand Jury, having been duly empaneled on the August 19, 2003, upon the verified application of the Attorney General of the State of Oklahoma and by order of the Supreme Court of the State of Oklahoma dated July 7, 2003, and pursuant to provisions of the Constitution and Statutes of the State of Oklahoma, OKLA. CONST. Art. II, § 18 and 22 O.S.1991 §§ 350 *et seq.*, have been charged with the responsibility of investigating in all seventy-seven (77) counties of the State, alleged public offenses against the State of Oklahoma, to include murder, rape, bribery, extortion, arson, perjury, fraud, embezzlement, violations of the Uniform Controlled Dangerous Substances Act, organized crime, public corruption, securities violations, and crimes involving the sale or purchase of goods or services by state and local subdivisions. We have met and faithfully investigated allegations of criminal conduct within these enumerated areas over the last eighteen (18) months.

The Multicounty Grand Jury, sitting in Oklahoma City, Oklahoma County, Oklahoma, at its principal meeting place, having met for forty-six (46) days over seventeen (17) sessions, and having issued one-thousand, six hundred twenty-three (1,623) subpoenas and having entertained two hundred twenty-nine (229) witness appearances, and having received six-hundred (600) exhibits from said witnesses, and having in a fair and impartial manner duly considered all such testimony and exhibits to the best of our ability and understanding, with due regard to the Court's instructions, and having heretofore, after due deliberation, voted according to law, submits to this Honorable Court its Final Report as follows:

I. BACKGROUND

During this term, the Multicounty Grand Jury has extensively used its statutory powers to investigate various types of alleged criminal activity throughout the State. Ever mindful of the protection of individual rights under the Constitutions of the United States of America and the State of Oklahoma, it has become very apparent to us that the power to subpoena documents, records and other evidence, compel the attendance and testimony of witnesses under oath, and investigate allegations unrestrained by county boundaries are extremely effective weapons to combat the far-reaching crimes for which the Multicounty Grand Jury was created. The power to compel testimony has enabled the Multicounty Grand Jury to obtain the testimony of reluctant witnesses whose vital information would not likely have been obtained in any other circumstance apart from the Multicounty Grand Jury process. The authority to subpoena records of bank accounts, telephone subscriber information and toll logs, and other financial data and business records has been pivotal in discovering and documenting criminal activity throughout the State without prematurely alerting those under investigation and giving them the opportunity to dispose of evidence, change their method of operation or otherwise hinder lawful investigations.

The grand jury process is critical to a free citizenry in a representative republic such as ours. The Multicounty Grand Jury is composed of ordinary citizens from our State. The grand jury process ensures that no government agency, power, or person should unjustly or unfairly accuse or incriminate another citizen or public official without due process. It is important that no person, either governing or governed, be subjected to unfair or unjust accusation without access to a court of competent jurisdiction in which to meet his or her accusers. The Multicounty Grand Jury does not decide guilt or innocence but rather, determines whether or not there is sufficient evidence

which, if unexplained or uncontradicted and presented in court to a jury of one's peers, would prove the defendant's guilt beyond a reasonable doubt and result in a conviction. When there is sufficient evidence of both type and quality, the grand jury's responsibility is to bring an indictment, or accusation of crime, so that the State may require the indicted to face his accusers and stand trial. We have worked diligently and believe we have fulfilled our responsibility to the best of our ability in this regard. The necessity and effectiveness of the Multicounty Grand Jury have been demonstrated by the assistance this body has rendered to the numerous federal, state, and local law enforcement agencies investigating crimes within this body's jurisdiction. Again, most law enforcement agencies, either by manpower, resources and/or authority, do not have the tools available to them that the Multicounty Grand Jury brings to the investigative table. It is this body's belief that the Multicounty Grand Jury made a difference in many investigations.

The Multicounty Grand Jury has employed its powers to investigate a variety of crimes. These include: Murder; Racketeering; Embezzlement by Public Officials; Embezzlement; Uttering of Forged Instruments; Perjury; Controlled Dangerous Substance violations; Conspiracy Against the State; Kidnapping; Rape; Fraud; Workers' Compensation Fraud; Medicaid Fraud; False, Fictitious or Fraudulent Claims Against the State; Child Stealing; Pandering; Adoption Fraud; Obstruction of Justice; Violation of the Computer Crimes Act; Larceny; Consumer Protection Fraud; Theft; Larceny of an Automobile; Official Misconduct; Prostitution; Child Molestation; Environmental Crimes; and Bribery. In the investigation of the above-referenced crimes, the Multicounty Grand Jury has assisted ninety-nine (99) local and state law enforcement agencies as set out in "Appendix I" marked and attached hereto.

II.

GENERAL DESCRIPTION OF ACTIONS TAKEN

The Multicounty Grand Jury, during the course of its investigation, issued twenty-one (21) indictments containing seventy-nine (79) separate counts with a total of fourteen (14) individuals or entities indicted by this Grand Jury. See "*Appendix II*" marked and attached hereto as Monthly Sessions. A significant amount of our time was spent investigating the Oklahoma Insurance Department, Former State Insurance Commissioner, Gordon Carroll Fisher, and related parties (OID or Fisher). Later in this report, we will more specifically address the issues surrounding our investigation of Carroll Fisher. Other areas of criminal activity were investigated and prosecuted or otherwise resolved. Some areas of investigation are not complete, and what we accomplished will serve only as the basis for further investigation by appropriate bodies or authorities in due time.

The Multicounty Grand Jury assisted District Attorney Wes Lane, District Attorney Tim Harris, District Attorney Richard Smotherman and District Attorney Gene Christian, among others, in the investigations of various criminal allegations. The Multicounty Grand Jury also worked closely with Assistant District Attorneys Bret Burns, Steve Duetch, Greg Stidham, and Doug Drummond, among others. Part of the assistance the Multicounty Grand Jury was able to provide was in the investigations of unresolved homicides. There was one (1) homicide in Jackson County and one (1) in Tulsa County – in which we were able to question numerous witnesses before the Multicounty Grand Jury. By obtaining testimony, the respective District Attorneys and local law enforcement agencies may eliminate several individuals as potential suspects, strengthen their investigation and further pursue leads resulting from testimony.

As previously noted, the Ninth Multicounty Grand Jury assisted many state agencies. For example, the Multicounty Grand Jury assisted the Oklahoma Department of Corrections (DOC) in its investigation of the use of counterfeit state vouchers. The total amount of money fraudulently obtained through use of counterfeit DOC vouchers was Seven Thousand, Two Hundred Ninety Dollars and Thirty-Seven Cents (\$7,290.37). We found that the act of the conspiracy committed by a certain individual and others occurred in Tulsa County. However, we also found that many of the overt acts associated with the conspiracy occurred in at least six (6) different Oklahoma counties. These counties include LeFlore, Muskogee, Payne, Pontotoc, Sequoyah and Tulsa. As a result of the testimony and exhibits presented to us in the DOC counterfeit voucher case, we issued one Indictment containing one count of Conspiracy. Additionally, another participant in the investigation will be charged by Information and prosecuted on four (4) felony counts of Uttering a Forged Instrument as a result of our investigation. This is only one example of assistance we provided to state agencies with the same resulting in prosecution of the culpable parties.

III.

PARTICULAR AREAS OF INVESTIGATION

We do not find it necessary to use this report to address each and every investigation covered by the Ninth Multicounty Grand Jury. However, some areas are worthy of specific mention and will be addressed in greater detail as follows:

**A. Investigation of Oklahoma Insurance Department/
Former State Insurance Commissioner Fisher and Related Parties**

As previously stated, this Grand Jury focused a large percentage of time and attention investigating allegations of wrongdoing within the Oklahoma Insurance Department (the

Department) throughout the administration of former Insurance Commissioner Carroll Fisher. In that regard, of the foregoing totals, the Grand Jury issued one hundred twenty-seven (127) subpoenas for the purpose of securing both witnesses and evidence. The Grand Jury has heard sixty (60) witnesses and examined one hundred forty-seven (147) exhibits, many of which were collective exhibits involving multiple documents. As a result of this investigation, the Grand Jury returned eight (8) indictments, against three (3) defendants – Gordon Carroll Fisher, Opal Ellis, former special assistant to Carroll Fisher (Ellis), and The Fisher Foundation, Inc. – in eleven (11) separate counts, including: Failure to Register a Non-Exempt Charitable Organization, 18 O.S.2001 §§ 552.3 and 552.18; Failure to Provide Receipts for Contributions in Excess of Two Dollars (\$2.00), 18 O.S. 2001, §§ 552.10 and 552.18; Failure to Report Contributions Received by Non-Exempt Charitable Organization, 18 O.S.2001 §§ 552.5 and 552.18; Embezzlement, 21 O.S.2001 §§ 341 and 1451; Failure to Pay Over to the State, 21 O.S.2001 § 341; False Claims Against the State, 21 O.S.2001 §§ 358 and 359; Bribery, 21 O.S.1991 § 382; Filing False Tax Return, 68 O.S. § 2376(B); and Perjury, 21 O.S.2001 § 491. The substantial amount of time we devoted to this investigation is but a portion of the man hours expended. The Office of the Attorney General (OAG), through its attorneys and investigators, spent countless hours in preparation before, during and after each of our sessions to ensure that our time was spent efficiently during each session.

This part of our investigation deservedly attracted much public attention because of the numerous acts in question carried out by Fisher while serving in his official capacity as a statewide elected official. Our examination required us to inquire into what, if any, conduct amounted to criminal conduct in violation of state statutes. Our examination revealed blatant disregard for state statutes as well as policies and procedures. Further, our investigation led us to reach general

observations such as: Fisher explicitly authorized and, at times, ignored instances of criminal wrongdoing by Ellis; Fisher neglected to address Ellis' oppression of others within the Department and the resulting chilling effect of Ellis' conduct on the work environment within the Department; Fisher demonstrated lack of regard for basic procedures which would otherwise provide public access into the inter-workings of a public official's conduct if followed. In other words, Fisher nurtured an environment ripe for Fisher to act unlawfully, both directly or through Ellis.

While many of Ellis' acts were undoubtedly inappropriate and criminal in nature, when the same were brought to Fisher's attention by other department personnel, Fisher neglected to correct or even address Ellis' behavior. In some instances, the evidence revealed Fisher demonstrated absolute disregard for the law and authorized Ellis to carry out the same type of conduct specifically regarding Ellis' irregular work attendance, handling of State funds, coordination and planning of *Continuing Education Day* (C.E. Day), an event sponsored by the Department, among other things.

In that regard, we have heard a great deal of testimony regarding Fisher and Ellis' receipt of funds from insurance agents and companies for their participation in C.E. Day events. As well, our legal advisors provided us with appropriate language from numerous state statutes, rules, regulations, and state policies and procedures regarding receipt, deposit and the handling of State funds by employees and officials.

The Oklahoma Statutes declare the State Treasurer to be the official depository for all funds received by every State officer or State agency by virtue or under color of office, 62 O.S.2001 § 74. Section 74 provides in relevant part as follows:

The State Treasurer is hereby designated and made the official depository for all monies, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures and public charges of every kind that may be received by any state officer, state board, state commission or by any employee of either of such officers, boards, or commissions by virtue or under color of office. [Emphasis added.]

Pursuant to Title 36 O.S.2001 § 304, the State Insurance Commissioner is under the positive legal duty to deposit not less often than “weekly” with the State Treasurer all funds collected for the use of the State:

The State Insurance Commissioner shall deposit weekly with the State Treasurer ***all funds in his hands collected for the use of the state.*** [Emphasis added.]

A more specific rule governing time for depositing funds received by or on behalf of the State is set forth in 62 O.S.2001 § 7.1(C) that provides for “daily” deposit of all receipts of funds over \$100.00, and for deposit within five (5) business days for receipts of funds under \$100.00. The same statute prohibits spending such funds until after they are deposited with the State Treasurer, 62 O.S.2001 § 7.1(C)(2)(b) and (E). Section 7.1 provides, in relevant portion, as follows:

A. There is hereby created in the official depository in the State Treasury an agency clearing account for each state officer, department, board, commission, institution or agency of the state, hereinafter referred to collectively as state agencies. An agency special account established under Section 7.2 of this title may be used for the purposes of an agency clearing account.

B. ***It shall be the duty of each state agency, officer or employee, to deposit in the agency clearing account, or agency special account, established under Section 7.2 of this title, all monies of every kind, including, but not limited to:***

1. Tax revenues;
2. Receipts from licenses, examinations, per diem and all other reimbursements, fees, permits, fines, forfeitures and penalties; and

3. *Income from money and property, grants and contracts, refunds, receipts, reimbursements, judgments, sales of materials and services of employees, and nonrevenue receipts, received by a state agency, officer or employee by reason of the existence of and/or operation of a state agency.*

C. *All such monies collected pursuant to this section shall be deposited as follows in the agency clearing account or agency special account established therefor:*

1. *Receipts of One Hundred Dollars (\$100.00) or more shall be deposited on the same banking day as received.*

2. *Receipts of less than One Hundred Dollars (\$100.00) may be held until accumulated receipts equal One Hundred Dollars (\$100.00) or for five (5) business days, whichever occurs first, and shall then be deposited no later than the next business day.*

a. Each state agency that has custody of receipts of less than One Hundred Dollars (\$100.00) shall provide adequate safekeeping of such receipts,

b. *No disbursements shall be made from such receipts prior to this deposit, and*

c. All checks received must be restrictively endorsed immediately upon receipt.

D. . . . Notwithstanding the provisions of subsection E of this section, state agencies are authorized to maintain sufficient balances in their agency clearing account to cover returned checks, credit card adjustments, credit card returns, and other debit items. Amounts of said balances shall be subject to approval by the State Treasurer. . . .

E. *At least once each month each state agency shall transfer monies deposited in agency clearing accounts to the various funds or accounts, subdivisions of the state, or functions as may be provided by statute and no money shall ever be disbursed from the agency clearing account for any other purpose, except in refund of erroneous or excessive collections and credits. . .*

[Emphasis added.]

Regarding C.E. Day, the Grand Jury fully understands and acknowledges the fact that insurance professionals licensed by the Office of State Insurance Commissioner are required to obtain certain amounts of Continuing Education credit in order to renew their licenses to do business in Oklahoma,

36 O.S.2001 § 1435.29(A). Such Continuing Education programs must be approved by the State Insurance Commissioner, 36 O.S.2001 § 1435.29(B). Providers of such courses must pay the State Insurance Commissioner an annual fee of \$200.00 in order to provide such courses, 36 O.S.2001 §1435.29(C). Such fees must be deposited to the *State Insurance Commissioner Revolving Fund* created and authorized by 36 O.S.2001 § 1435.23.

However, we also point out the statute creating and authorizing the *State Insurance Commissioner Revolving Fund*, 36 O.S.2001 § 1435.23, specifically provides that "any" funds received by the Office of State Insurance Commissioner and not otherwise dedicated by statute, "shall" also be credited to the *State Insurance Commissioner Revolving Fund* and shall only be disbursed upon claims approved by the Director of State Finance:

C. There is hereby created in the State Treasury the State Insurance Commissioner Revolving Fund which shall be a continuing fund not subject to fiscal year limitations. ***The revolving fund shall consist of fees and monies received by the Insurance Commissioner as required by law to be deposited in said fund and any other funds not dedicated in the Oklahoma Insurance Code.*** The revolving fund shall be used to fund the general operations of the Insurance Commissioner's Office for the purpose of fulfilling and accomplishing the conditions and purposes of the Oklahoma Producer Licensing Act. ***All expenditures from said revolving fund shall be on claims approved by the Insurance Commissioner and filed with the Director of State Finance for payment.*** [Emphasis added.]

No statute specifically authorizes or requires the Insurance Commissioner to create or promote the C. E. Day program offered by Fisher and coordinated by Ellis. Providing a time and place for insurance professionals to obtain Continuing Education credit is consistent with the policy established by the Legislature in 36 O.S.2001 § 1435.29, that requires insurance professionals regulated by the State Insurance Commissioner to obtain certain numbers of hours of Continuing Education within their respective fields by taking courses approved by the Insurance Commissioner. Even if the Insurance Commissioner was not effectively authorized by law to hold a C. E. Day program at which insurance

professionals could attend approved Continuing Education courses such that the referenced monies would have been collected by “virtue of office”, all such monies collected for such program would nevertheless have been collected under the “color of office” of the State Insurance Commissioner, and therefore should have been deposited with the State Treasurer, 62 O.S.2001 § 74. Absent deposit of the funds with the State Treasurer, all disbursements of such collected money was without authority of law, 62 O.S.2001 § 7.1 (C)(2)(b) and (E). The collection and use of such collected funds without depositing the monies as required by law violated the provisions of 21 O.S.2001 § 341(Fifth).

From our perspective, the legal requirements for handling state funds are fairly simple. However, Mr. Fisher did not find the law relevant or significant as to his handling of the C.E. Day funds which he received in his capacity as the State Insurance Commissioner. Instead of following the referenced deposit requirements, Fisher maintained C.E. Day Funds in a private banking account outside the State Treasury.

Our investigation revealed other examples of Fisher’s disregard for the law, including failure to properly register The Fisher Foundation, Inc., and failure to report and properly deposit a campaign contribution, among other things. In each of these examples, statutes, ethics rules or regulations place minimal requirements upon everyone within their purview to follow modest reporting or depositing procedures. In each instance, Fisher dismally failed to follow the law.

During our investigation, we had an opportunity to receive testimony from Fisher. It is our observation that Fisher’s response to this investigation was similar to his response to other public inquiries into his conduct while in state office (*i.e., State Ethics Commission and Special Investigative Committee of the House of Representatives Investigating the State Insurance Commissioner*). He responded to this body’s investigation as if his conduct is without charge and innocuous.

We understand preliminary consideration is being given to whether the office of Insurance Commissioner should remain a statewide elected office or become one of appointment to be made by the governor. It appears Fisher's blatant disregard for the law is such that he would have acted in the same manner regardless of whether he was appointed or elected.

There are other circumstances and third parties, the details of which are yet to be determined. The investigation of these other allegations is not complete, and the Grand Jury recommends that a future grand jury conclude the investigation of these matters.

B. Ongoing Problem of Filing False Claims by State Employees for Salary/Wages ("Ghost Employees")

We note that it is the third consecutive grand jury to deal with the problem within State government of officers and employees obtaining compensation for work days upon which they were actually absent without leave, *i.e.*, the problem of the so-called "ghost employee." Such fraud is a felony crime prosecuted as Making a False, Fictitious or Fraudulent Claim Against the State, 21 O.S. 2001 § 358. The crime is committed by both the officer/employee making and receiving such fraudulent compensation and also by the officer/employee who approves the claim with knowledge of its falsity. Claiming salary or wages for days when the officer or employee is actually absent without leave cause harm beyond the overpayment of salary and wages since accrual of annual leave benefits and sick leave benefits linked to working.

This Grand Jury returned an indictment and filed informations from two (2) separate investigations charging defendants with Filing False Claims With the State and/or Perjury. We have already discussed, in great detail, Opal Ellis who was charged with Filing False Claims With the State among other crimes.

In addition, we returned an Indictment charging Faye Worthen, an individual who was employed as an administrator with the Oklahoma Center for the Advancement of Science and Technology (OCAST). In both investigations involving Ellis and OCAST, the evidence supported allegations that the employee represented, through official documents, that they were conducting official business when they were not. The investigation revealed that often, instead of being on official state business, the "ghost employee" was performing duties unrelated to state business or taking care of personal business.

Also in both instances, the employees' supervisors facilitated the employees' ability to falsely claim hours worked. One problem that hampers proper investigation of "ghost employee" allegations is the lack of uniformity in the ways that agencies document the presence or absence of their officers and employees. Some agencies require all officers and employees, whether FLSA exempt or non-exempt, to report to their immediate supervisor each month the actual number of hours worked and/or leave hours taken each work day and require the immediate supervisor to certify the accuracy of the report to the payroll authorities. Other agencies require all such employees to document the actual time they arrive and leave their assigned work station each day by signing in and signing out on a daily time sheet. Other agencies only require employees to notify the personnel office of days they are not present for work and the form of leave to be charged. The problem of the "ghost employee" is more likely in State agencies that do not require at least a monthly report to the immediate supervisor by each officer/employee of the hours worked/leave taken for each work day.

The State would perhaps benefit from a uniform rule that requires all State officers or employees to report to their immediate supervisor on a monthly basis the number of hours worked

and/or hours of leave taken for each work day of the pay period and that the immediate supervisor certify the correctness of that report to the payroll authorities of the agency.

C. Kiamichi Technology Center

The Grand Jury returned two (2) indictments containing six (6) felony counts against an official employed by the Kiamichi Technology Center School District # 7, charging *Witness Intimidation*, 21 O.S.2001 § 455, and returned another indictment against another official of said school district alleging one (1) count of *Embezzlement of Public Property*, 21 O.S.2001 § 341. The Grand Jury has also investigated other allegations regarding the operation of the Kiamichi Technology Center School District # 7 and have been aided in this investigation by agents of the Oklahoma State Bureau of Investigation. The investigation of these other allegations is not complete, and the Grand Jury recommends that a future grand jury conclude the investigation of these matters. Without revealing any matter that might impair the ongoing investigation, this Grand Jury would make the following observations and recommendations regarding the Kiamichi Technology Center School District # 7.

Kiamichi Technology Center School District # 7 is a technology center school district organized and operated under the authority of Article 10, § 9B of the *Oklahoma Constitution* and Title 70 of the Oklahoma Statutes. It operates nine (9) school campuses located in Atoka, Durant, Hugo, McAlester, Idabel, Poteau, Stigler, Talihina and Spiro, Oklahoma, and has administrative offices in Wilburton, Oklahoma. The organized technology center school district expands over territory in thirteen (13) counties and encompasses most of southeast Oklahoma. The technology center school district has about two hundred (200) full-time employees and more than three hundred (300) part-time employees with an annual budget of about Twenty-Three Million Dollars (\$23,000,000.00). It

reportedly serves about two thousand, four hundred (2,400) day time students and another three thousand, five hundred (3,500) students in evening classes.

The governing body of the technology center school district is its Board of Education that possesses the same powers and conferred upon an independent school district's board of education, Article 10, § 9B(A), *Oklahoma Constitution*, and 70 O.S.2001 § 14-108(b). Some of those duties include employing and fixing the duties of school district personnel, exercising control over the real and personal property belonging to the school district, and performing other functions necessary for the administration of a school district in Oklahoma. See 70 O.S.2001 § 5-117(A). The Board of Education must act collectively in an open meeting. See 51 O.S.2001 §§ 24A.1 *et seq.*, since its individual members do not have statutory authority to individually perform Board duties.

The organized territory of the technology center school district is divided into seven (7) "zones" that each contains one (1) or more technology center school campuses. These seven (7) "zones" comprise the election districts from which the seven (7) members of the Board of Education of Kiamichi Technology Center School District # 7 are elected by voters registered within such "zones." Board of Education members serve terms of seven (7) years. To qualify to be elected to serve as a member of the Board of Education of Kiamichi Technology Center School District # 7, a candidate must be a registered voter at an address located within the "zone" for a period of six (6) months preceding the filing period for said office. In the event of a vacancy on the Board of Education of Kiamichi Technology Center School District # 7, said Board may appoint a successor who serves until "the next board election."

There is no limit upon the number of terms a member of the Board of Education of Kiamichi Technology Center School District # 7 may serve. We were informed that historically school Board

members often serve several terms of office but that Board members rarely choose to serve to the end of the Board member's term of office. By voluntarily resigning mid-term, the remaining members of the Board of Education may initially select the successor to the retiring Board member. One consequence of this practice is that at election-time all Board member offices are filled with incumbent members, who, being incumbents, are rarely opposed for "re-election." Another consequence of this practice is that opposing an incumbent at election automatically renders the challenging candidate an "outsider" to all of the other members of the Board of Education who initially selected the incumbent who is being opposed by the challenger. If the challenger is elected, the new Board member does not represent the *status quo* of the past activities of the Board of Education but remains an outsider to the other members of the Board of Education.

The effect upon a Board member becoming an "outsider" on the Board of Education runs from actions that may be viewed as simply petty and juvenile, to actions that we believe represent an actual detriment to the Public Interest. The only current member of the Board of Education of Kiamichi Technology Center School District # 7, who has won election against an incumbent member, referred to herein as the "outsider" Board member, illustrates this point.

Each month a Board "packet" is prepared for each Board of Education member containing information relevant to the upcoming meeting. These "packets" reportedly were personally delivered by the previous Superintendent of Schools to the individual Board members other than the "outsider" Board member, who had to either personally pick the packet up at the Wilburton administration office or have it mailed. In the meetings of the Board of Education, the "outsider" Board member was always called upon last for the Board member's input and was the last Board member to be called upon to cast a vote on any business. No explanation was offered for always placing the "outsider" Board member

last for input in Board of Education meetings. Reportedly, if this Board member asked questions in the Board of Education meetings about the operation of the technical center school district, the questions went unanswered and the Board member was made to feel that it would be better if the questions simply were not asked.

Such actions, while not illegal, are certainly beneath the honor and dignity one should reasonably expect from elected public officials. Every member of the Board of Education represents the People of the technical center school district, and intentional disrespect aimed at any Board member is also disrespect directed toward the voters who placed that Board member into office. Certainly, even if the individual Board members have no personal regard for a fellow Board member, simple respect for the Office and the People the Board member serves should require respectful treatment of the fellow Board member. A healthy dose of the *Golden Rule* absorbed and practiced by every member of the Board of Education would go a long way toward re-establishing the honor and dignity such proceedings deserve.

Another consequence of the practice of the school district's Board of Education being permitted to usually initially appoint Board members is more troubling. Dissent and "bad news" about the operation of the technical center school district has been actively discouraged. In order to avoid such things, an informal policy has apparently prevailed, and may still exist, that discourages Board members from one "zone" from becoming interested in, or looking into, problems occurring in another Board member's "zone." While the elected members of the Board of Education are responsible for overseeing all of the operations and mission of the technical center school district, the Board members are actually considered "visitors" on the campuses of the school district they serve; particularly this is true if the campus being visited by a Board member is within another Board member's "zone." As

campus “visitors,” Board members are expected to immediately report their presence on campus to the office of the campus’ Director [*i.e.*, the school’s principal] whenever they choose to come onto one of the school district’s campuses. Problems occurring within a Board member’s zone are expected to be reported only to the zone’s Board member and, if possible, dealt with informally. Information flowing to and from the members of the Board of Education regarding the school district’s campuses was carefully managed through the office of the former Superintendent. Contrary to policy officially adopted by the Board of Education of Kiamichi Technology Center School District # 7, even criminal misconduct, involving employees of the school district that was committed against the property and personnel of the school district, was never reported by the officials in the Office of Superintendent to responsible law enforcement authorities for investigation and possible prosecution.

We do not find any legal reason for the informal policies outlined above and believe that they are contrary to good government. We are aware that the current Superintendent was not the Superintendent of Kiamichi Technology Center School District # 7 during the time-frame of the matters we have investigated and hope that information to and from the Board of Education regarding matters occurring on the school district campuses is now complete and free flowing. A problem occurring within a particular “zone” of the technology center school district is not just a problem of that “zone,” but is school business that affects the entirety of the school district and should be handled by the Board of Education – not its individual members in informal discussions with the Superintendent. Members of the Board of Education should be encouraged to become informed about problems occurring on any of the campuses operated by the technology school district and not discouraged from being so informed. Members of the Board of Education should never be considered campus “visitors,” subject to the monitoring and supervision of the campus Directors, on any of the

campuses of the technology school district. Whether or not a person should be investigated and/or charged with criminal conduct committed against the property or personnel of the technology school district is not a legitimate decision for the members of the Board of Education or Superintendent of Schools to make – instead it is a matter that should be reported to and a question that properly should be decided by the District Attorney for the county in which the acts allegedly took place. *See* 19 O.S. 2001 § 215.4.

We therefore make the following recommendations:

- 1) The balkanization of any school business into “zones” for informal discussion and decision between the zone’s Board member and the Superintendent should immediately and permanently cease.
- 2) The Superintendent should inform all of the members of the Board of Education of problems affecting the operation of the technology center school district irrespective of the zone in which the particular problem has occurred to the extent such problems require Board member input or decision.
- 3) Every allegation of crime allegedly committed against the property and/or personnel of the technology center school district should be reported to the District Attorney for the county where such activity took place for such action deemed appropriate and necessary by the District Attorney.
- 4) The Legislature should act to require that a Board of Education for a technology center school district call a special election within ninety (90) days to fill any unexpired term of a member of the Board of Education that vacates office mid-term unless the remaining portion of the unexpired term is less than one (1) year in which case the Board of Education could continue to appoint a qualified replacement member.

5) The Legislature should act to restrict the number of consecutive terms of office that a person may serve as a member of a Board of Education of a technology center school district to two (2) terms.

D. Oklahoma Tax Commission Prorate Unit of the Motor Vehicle Division

This Grand Jury has followed up upon the investigations made by the Eighth Multicounty Grand Jury regarding allegations of criminal conduct pertaining to the registration by "service agents" of heavy motor vehicles in Oklahoma under the provisions of the International Registration Plan committed in concert with personnel of the Prorate Division of the Motor Vehicle Division of the Oklahoma Tax Commission. In this regard, this Grand Jury has charged two (2) persons with three (3) felony counts alleging Conspiracy Against the State, 21 O.S.2001 § 424, Falsification of Public Records, 21 O.S. 2001 § 461 and Bribery, 21 O.S.2001 §§ 381 and 382. Related to this investigation was a matter reported by the Oklahoma Tax Commission for which one (1) person was indicted with four (4) counts for felony Possession of a Counterfeited Instrument, 21 O.S.2001, §1579, pertaining to counterfeited motor vehicle registration certificates. Other charges resulting from this investigation were brought by Information charging one person with two (2) counts of Attempted Perjury, 68 O.S. 2001 § 248 and 21 O.S. 2001 § 42, in relation to a disbarred service agent's attempt to submit a falsified application for registration of certain motor vehicles. Another matter investigated by this Grand Jury was brought by Information charging one person with Embezzlement, 21 O.S. Supp. 2002 § 1451, pertaining to tax revenues withheld from a Tag Agency.

In the course of this phase of its investigation, the Grand Jury studied the manner in which tag agencies account to the Oklahoma Tax Commission for tax revenues collected by the tag agencies on behalf of the State of Oklahoma. Tag agents are required by statute to deposit such revenue into an

account from which only the Tax Commission may withdraw funds. If the tag agent is located in a town with a bank, the deposit must be made within one (1) business day, 47 O.S.2001 § 1142. If the tag agent is located in a town without a bank, the deposit must be made within three (3) business days, *Id.* Tag agencies are supposed to be audited at least annually by the Oklahoma Tax Commission. The scope of the tag agent records audited by the Oklahoma Tax Commission personnel in regard to revenue collection is limited to the daily and semi-monthly summary reports prepared by the tag agent regarding the business of the tag agency as compared to the depository account summaries available through the depository bank. Such records do not reveal the identity of the persons doing business with the tag agent nor do they reveal whether the customers tendered payment in currency or in some other mode of payment.

The "audit" performed by the Oklahoma Tax Commission of tag agents is simply inadequate to counter the fraudulent use of state revenue by tag agents and/or their employees. Initially, the Grand Jury would note that the auditing function of tag agents is grossly understaffed by the Oklahoma Tax Commission. The one (1) field auditor assigned to this function was responsible for conducting annual audits on more than three hundred (300) tag agents in addition to a training function for tag agents the field auditor is also obligated to perform. The effect of the lack of staffing is reflected in a matter investigated by this Grand Jury. The annual audit on a tag agency investigated by this Grand Jury was six (6) months overdue. The field auditor made no notation of the fact that the tag agency, though located within a community that did have a local bank, was, contrary to statute, delaying deposits of collected revenue to the third business day instead of making such deposits within one (1) business day.

The lack of adequate staffing for performing field audits on tag agencies is worsened by a woeful lack of usual business records for the field auditor to examine. The field auditor did not have sufficient business records available to him to determine whether the amounts that were actually being deposited in the bank truly represented the proceeds of that day's business of the tag agency or were from some other source such as a subsequent day's business. Consequently, the field auditor was unable to learn from the business records available to him for the "audit" that Eleven Thousand, Two Hundred Forty-Nine Dollars and Thirty-Seven Cents (\$11,249.37) of the previous day's deposit of Eleven Thousand, Four Hundred Fifty-One Dollars and Seventy-Five Cents (\$11,451.75) was composed of items issued by an employee of the tag agent and/or the tag agent's relatives that do not appear to be germane to the actual business of the tag agency conducted that date. The field auditor was also unaware, even after performing a subsequent special field audit on the same tag agency only three (3) weeks later, that one of the items in the aforesaid deposit that was drawn on the tag agency employee's personal account for Six Thousand, Four Hundred Dollars and No Cents (\$6,400.00) was not paid upon presentation to the employee's bank upon grounds of insufficient funds. Such information in the hands of an adequately trained field auditor would send up clear warning that revenues belonging to the State of Oklahoma were being misused and a field auditor has no hope at all of discovering such probable defalcations without access to such records.

The Grand Jury does not understand any reason that justifies allowing tag agents one (1) to three (3) "banking business days" to deposit the daily receipts of tax revenues into the depository bank account considering the availability of automatic teller machines and night depositories at banking institutions, 47 O.S.2001 § 1142. If the purpose of allowing so much time is to permit the bank to stamp the "advice of deposit form" of the Oklahoma Tax Commission, the Grand Jury notes that the

form is of less value than a properly completed deposit slip for audit purposes that could be provided to the tag agency even if the deposit is made by ATM deposit or in a night depository.

We therefore make the following recommendations:

1) that the Oklahoma Tax Commission discontinue the use of "advice of deposit" forms by tag agents and require that the tag agent obtain and attach to the daily report a copy of a deposit slip from the depository bank that clearly identifies the source of every non-currency item included within the daily deposit.

2) that the Oklahoma Tax Commission require its field auditors to test a representative sample of the deposits of the tag agency to determine whether the items included within such deposits reflect the items collected as proceeds of the day's business.

3) that the Oklahoma Tax Commission sufficiently staff its field auditing function in order to provide meaningful audits of tag agency accounts.

4) that the Oklahoma Tax Commission promptly notify investigative law enforcement authorities whenever the amount of the business as reflected by the tag agent's daily report does not equal the amount of money deposited by the tag agent for that business day and/or whenever the tag agent does not deposit revenue collections within the time period provided by law.

5) that the Legislature amend Title 47 O.S.2001 § 1142 to require that tag agents deposit all proceeds in the depository account within one (1) banking business day.

The Grand Jury finds that its investigation of the Prorate Unit of the Motor Vehicle Division of the Oklahoma Tax Commission is now complete.

IV.

EXPRESSIONS OF APPRECIATION

The Multicounty Grand Jury wishes to express our **appreciation** to several individuals and agencies who have contributed to a successful term. In appreciation, we thank the Supreme Court of the State of Oklahoma for their Order convening the Grand Jury and for their appointment of retired Supreme Court Justice Robert D. Simms as Presiding Judge of the Multicounty Grand Jury. We express appreciation to Judge Simms for his patience and wise guidance throughout the term. We commend Attorney General Drew Edmondson and the members of his staff for their professionalism, support, legal advice and assistance. We would also like to thank Debra Garver and Freddy Leggett, Court Reporters. Also, to Oklahoma County Commissioners Jim Roth, Stan Inman, Brent Rhinehart and Former Commissioner Jack Cornett, and their staff, for their indulgence in having this body convene in their conference rooms; to the office of the Oklahoma County District Attorney Wes Lane, and his staff, for the use of his offices; to the office of the Oklahoma County Public Defender Bob Ravitz, and his staff, for the use of his offices and for providing counsel to indigent witnesses; to the Office of the Court Administrator, Howard Conyers, and his staff; to Myron Towers and Shelly Schmidt who served as bailiffs; to Oklahoma County Court Clerk Patricia Presley and her staff, specifically Chief Deputy Timothy Rhodes, Deputies Teresa Davis, Susan Keltch, and Damon Cantrell, and her Maintenance and Security staff.

We also wish to thank our families for their support, patience, and understanding. We also express our appreciation to our employers for their support and understanding over the past eighteen (18) months.

V.

ADMINISTRATIVE RECOMMENDATIONS

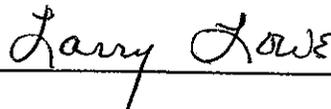
During our eighteen (18) month tenure, this Grand Jury has met in one (1) location for our grand jury sessions. However, when necessary to go into open court, the Court's bailiff routinely had to search for a location. Because the Multicounty Grand Jury does not have an assigned courtroom, we sometimes had a significant delay during the time a courtroom was being located for our temporary use. In many instances, our open court sessions were held in the public defender's conference room or in the commissioner's meeting room. While the accommodations have been manageable, we believe it to be in the best interest of future Multicounty Grand Juries to have a single, permanent meeting place and courtroom for its regular use when necessary.

VI.

CONCLUSION

We are unanimous in stating that we believe, based upon our experience, that the Multicounty Grand Jury is an essential and invaluable tool for law enforcement in the State of Oklahoma. Due to the use of the subpoena and investigatory powers of the Multicounty Grand Jury, information and evidence were obtained, and cases solved, that would likely not have been otherwise. We believe it is a process which should be continued, funded and fully supported by the citizens, Legislature, Governor, judiciary and law enforcement community of the State.


FOREMAN



Phyllis Berlanda

Nancy West

Paula Frickenschmidt

Tony Harper

Darvise Seil

Kenneth Gots

Hon Cable

Connie Rogers

Kathy Wilson

Carisa Goell

Jaye K. Henson

23rd This Final Report of the Oklahoma Multicounty Grand Jury is received and ordered filed this day of February, 2005.



**ROBERT D. SIMMS
PRESIDING JUDGE OF THE EIGHTH
MULTICOUNTY GRAND JURY**

**LOCAL AND STATE LAW ENFORCEMENT AGENCIES
USING THE 9TH MULTICOUNTY GRAND JURY
APPENDIX I**

1. Ada PD
2. AG/CPU
3. AG/MCGJ
4. AG/MFCU
5. AG/WCFU
6. Altus PD
7. Bartlesville FD
8. Bartlesville PD
9. Beaver County SO
10. Bethany PD
11. Bixby PD
12. Blanchard PD
13. Broken Arrow PD
14. Bryan County SO
15. Caddo County DA
16. Canadian County SO
17. Carter County SO
18. Choctaw PD
19. Claremore PD
20. Cleveland County DA
21. Clinton PD
22. Cushing PD
23. Custer County SO
24. Delaware County SO
25. Dewey PD
26. DHS/OIG Oklahoma City
27. DHS/OIG Tulsa
28. District 6 District Attorney
29. District 16 District Attorney
30. District 18 District Attorney
31. Duncan PD
32. Edmond FD
33. Edmond PD
34. El Reno PD
35. Enid PD
36. Garvin County District Attorney
37. Grove PD
38. Guymon PD
39. Harrah PD
40. HUD/OIG
41. Jenks PD

42. Kay County SO
43. Kiowa PD
44. Lawton Fire Marshal
45. Lawton PD
46. McAlester PD
47. McIntosh County DA
48. Midwest City PD
49. Moore PD
50. Muldrow PD
51. Muskogee PD
52. Newcastle PD
53. Noble PD
54. Norman PD
55. Nowata PD
56. OBN
57. OCPD
58. OCFD
59. OHP/Marietta
60. Okemah PD
61. Okfuskee County DA
62. Oklahoma County SO
63. Oklahoma Department of Corrections
64. Oklahoma Department of Environmental Quality
65. Osage County SO
66. OSBI/Ada
67. OSBI/Alva
68. OSBI/Cordell
69. OSBI/Enid
70. OSBI/Guymon
71. OSBI/Idabel
72. OSBI/Lawton
73. OSBI/McAlester
74. OSBI/Oklahoma City
75. OSBI/Shawnee
76. OSBI/Stillwater
77. OSBI/Tahlequah
78. OSBI/Tulsa
79. OSBI/Watonga
80. OSBI/Woodward
81. OSU PD Stillwater
82. OSU PD Tulsa
83. OU PD
84. OU PD/HSC
85. Ponca City PD
86. Poteau PD

87. Pottawatomie County District Attorney
88. Purcell PD
89. Sand Springs PD
90. Stillwater PD
91. Texas and Southwestern Cattle Raisers
92. Tulsa County District Attorney
93. Tulsa County SO
94. Tulsa PD
95. Tuttle PD
96. U.S. Marshal's Service/Metro Fugitive Squad
97. U.S. Secret Service
98. Weatherford PD
99. Woodward PD

MONTHLY SESSIONS
APPENDIX II

MONTH	# OF WITNESSES	EXHIBITS	INDICTMENTS
October 2003	8	19	0
November 2003	22	77	6 counts 2 indictments
December 2003	10	57	4 counts 3 indictments
January 2004	6	14	0
February 2004	9	37	6 counts 4 indictments
March 2004	14	87	0
April 2004	19	61	28 counts 4 indictments
May 2004	9	7	26 counts 2 indictments
June 2004	-	-	-
July 2004	21	33	1 count 1 indictment
August 2004	16	20	0
September 2004	13	48	0
October 2004	17	17	3 counts 2 indictments
November 2004	20	19	4 counts 2 indictments
December 2004	18	40	0
January 2005	21	58	1 count 1 indictment
February 2005	4	6	0
February 2005			
TOTALS	227	600	79 counts 21 indictments