

BOARD MEMBER GUIDE

The information and suggestions offered in this publication were assembled by the Oklahoma Rural Water Association to assist rural water districts in the planning for and conduct of board meetings. Every effort has been made to ensure that the information provided is correct. However, the Oklahoma Rural Water Association does not suggest that the information provided herein be construed as legal opinions.

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TABLE OF CONTENTS

INTRODUCTION	Page 2
PLANNING YOUR MEETINGS.....	Page 2
SCHEDULING YOUR MEETINGS	Page 2
THE AGENDA.....	Page 3
CONDUCT OF BOARD MEETING	Page 5
SUGGESTED PROCEDURES FOR THE CONDUCT OF A BOARD MEETING	Page 6
STATE AND EDUCATION EMPLOYEES GROUP HEALTH AND LIFE INSURANCE ELIGIBILITY	Page 9

REFERENCES:

Open Meeting Act.....	Tab 1
Questions About the Open Meeting Act.....	Tab 2
Open Records Act.....	Tab 3
Minutes	Tab 4
Rules of Conduct Public Meetings	Tab 5
Nepotism.....	Tab 6
Dual Office Holding	Tab 7
Public Competitive Bidding Act.....	Tab 8
Title 82.....	Tab 9
Underground Facilities Damages Prevention Act.....	Tab 9A
Tort Claims Act.....	Tab 9B
Meter Tampering Law	Tab 9C

EXAMPLES:

The Agenda.....	Tab 10
Nominations & Election	Tab 11
Bylaws.....	Tab 12
Rules and Regulations.....	Tab 13
Sample Forms	Tab 14

ADDENDUMS:

Water Rates.....	Tab 15
Introduction to Water System Operations & Maintenance.....	Tab 16
Water Audits	Tab 17

INTRODUCTION

Running the business of a rural water district can be a learning experience in public relations. How the citizens you serve view your board and the credibility you enjoy is often determined by the manner in which your board meetings are conducted.

Group leadership is an art that anyone can learn: first, by learning the rules for the conduct of a meeting and, second, by practicing those rules and procedures during the course of your meetings.

For a group to be of maximum effectiveness, it must have competent leadership and the determination to conduct its business in an orderly and professional manner. It requires critical examination of traditional ways, receptiveness to new ideas and a willingness to face controversy and criticism without causing further discontent.

What we attempt to offer in this publication are procedures to be used by a board for the orderly and professional conduct of its meetings and a quick reference to the rules, regulations or laws by which they are governed.

PLANNING YOUR MEETINGS

During the planning phase of your meetings, it is suggested that each governing body establish reasonable rules for the conduct of your public meetings. It is further suggested that these rules be put in writing and made a part of the organization's rules and regulations.

A SAMPLE SET of rules is illustrated in Tab #5. Before the meeting starts, have a printed copy of the rules of procedures distributed to each person in attendance that wants one.

SCHEDULING YOUR MEETINGS

All public bodies formed under Title 82 of the State of Oklahoma statutes are subject to compliance with the Oklahoma Open Meeting Act (Title 25 of the Oklahoma Statutes).

With the preceding paragraph in mind it is important that, during the initial planning phase for your meeting, you start with a logical foundation. The first step in that foundation is scheduling your meetings and giving public notice.

Notice of Regular Scheduled Meetings: (Reference Tab #1) (Oklahoma Open Meeting Act, Section 311, Paragraph 1-12)

Annual Notice: (Reference Tab #1, Paragraph 1 and 5)

1. All public bodies shall give notice in writing by December 15th of each calendar year of the schedule showing the date, time and place of the regularly scheduled meetings of such public bodies for the following calendar year.
2. All multi-county, regional, area-wide or district bodies, including, but not limited to, district boards of education shall give such notice to the county or counties served by such public body.
3. If any change is to be made of the date, time or place of regularly scheduled meetings of public bodies, then notice in writing shall be given to the county or counties served by such public body.
4. In the event any meeting is to be continued or reconvened, public notice of such action, including date, time and place of the continued meeting, shall be given by announcement at the original meeting. Only matters appearing on the agenda of the meeting, which is continued, may be discussed at the continued or reconvened meeting.
5. Special meetings of public bodies shall not be held without public notice being given in writing, in person or by telephonic means to the county clerk in the manner set forth in paragraphs two through six of the Oklahoma Open Meeting Act. (Reference Tab #1)
6. In the event of an emergency, an emergency meeting of a public body may be held without the public notice heretofore required. Should an emergency meeting of a public, body be necessary, the person calling such a meeting shall give as much advance public notice as is reasonable and possible under the circumstances existing in person or by telephonic or electronic means.

THE AGENDA

Just as important as having rules that govern the conduct of your meetings reasonable rules should also be established for the preparation, posting and use of your agenda. The procedures set out in the Oklahoma Open Meeting Act must be followed.

Suggested Procedures

1. Designate an individual to be responsible for the preparation of the agenda. A member of the board, manager, bookkeeper or some other person so designated by the governing body, may prepare the agenda. (However, that person does not have the authority to censor items.) Governing Body members must be allowed to place items on the agenda. If the rules established by the board allow it, other persons such as the manager or a citizen may request items.

2. Establish a lead-time to allow the final preparation and posting of the agenda and make that time the final cut off. After that time, allow no item to be added to the agenda.

Preparing the Agenda (Reference Example #1)

The Oklahoma Court of Appeals, Division No. 2, has said: "Agendas (should) be worded in plain language, directly stating the purpose of the meeting, in order to give the public actual notice. The language used should be simple, direct and comprehensible to a person of ordinary education and intelligence."

Thus the agenda items should clearly state what is the subject to be taken up and be detailed enough to give notice to a person interested in a particular item.

EXAMPLE: An agenda item, stating that the governing body intends to "discuss and interview applicants for a particular job, does not allow that governing body to employ a person at that meeting. If the governing body intends to employ a person at that particular meeting, then the agenda item should state: **"To consider, interview applicants and employ a person for that particular job."**

It is not sufficient for an agenda to contain a mere listing of topics or categories of business to be taken up. **For example, an agenda item simply stating Contracts or Purchases or the like is insufficient.** The information contained in the agenda excludes Saturdays and Sundays and holidays legally declared by the State of Oklahoma.

As part of the advanced preparation, set a guideline as to the order of appearance. It is suggested, when there are controversial items to be discussed, that they be listed at the first of the meeting **following the preliminary requirements.**

Posting the Agenda (Reference Tab #1, Paragraph 9, Oklahoma Open Meeting Act)

Display Notice of Meeting date, time, place and agenda at least 24 hours (excluding Saturday, Sunday and Holidays) prior to the meeting in a prominent public view at the principal office of the public body or at the location of said meeting if no office exists.

Presenting the Agenda

Even though an item is listed on the agenda, the governing body does not have to act at the meeting on the item. It can be postponed or deferred but must be listed on the agenda for the next meeting at which time the governing body expects to act. It is possible to remove it from the agenda if the governing body feels it is an item that should not be discussed.

Once the Agenda has been finalized and presented to the members, then the board should work through the agenda item by item in the order listed. The order should not be changed except for very pressing reasons.

Order of Business

It is suggested that each item appearing on your agenda be handled in the following order:

1. Announce the agenda item;
2. Ask for or give any report on the item;
3. Allow discussion on the item;
4. Ask for motion;
5. Ask for a second to the motion;
6. Ask if there is any further discussion;
7. Announce the motion and call for vote;
8. Announce motion, adoption or failure;
9. If the motion fails, call for a new motion and second (allow further discussion until new motion is made);
10. Repeat the above steps until the item is dealt with; and
11. Move to next item.

CONDUCT OF A BOARD MEETING

The Oklahoma Rural Water Association realizes that the men and women who serve on the Boards of Directors of our rural water districts may not be expert in the formalities and the standard rules of order for the conduct of meetings. Some often feel intimidated when dealing with controversial issues, particularly in front of a large audience.

Much of this intimidation comes from a lack of knowledge of the laws that govern public meetings and no adopted rules for the conduct of their meetings. We have addressed both of these issues by providing copies of the Oklahoma Open Meeting and Open Records Acts, along with a sample set of the rules of conduct for public meetings. Where necessary, we have made reference to these laws by paragraph and Tab number.

There is one other factor that often leaves board members feeling intimidated or inadequate. That is, how to deal with items on the agenda and the correct language for moving agenda items along in an orderly manner.

The following pages contain information, procedures and language used during the conduct of a typical board meeting.

SUGGESTED PROCEDURES FOR THE CONDUCT OF A BOARD MEETING

Note: It is suggested that each item of your agenda be handled as outlined on Page 5, Order of Business.

1. Chairman: Determines if a Quorum is present.

Note: Before the presiding officer calls a meeting to order, it is his duty to determine, although he need not announce, that a quorum is present.

Chairman: If a quorum cannot be reached:

- a. Calls the meeting to order;
- b. Announces that a quorum has not been obtained; and
- c. Entertains a motion to adjourn.

Note: The only action that can legally be taken in the absence of a quorum is to fix the time to adjourn, recess, or take measures to reach a quorum (to contact absent members would be such a measure).

2. Chairman: Announces in a clear voice. *"The regular scheduled meeting of the _____
_____ Rural Water District will come to order."*

Note: The call to order may be immediately followed by religious or patriotic exercise or other opening ceremonies.

EXAMPLE:

Chairman: (1) *"Would everyone please rise and join me in the pledge of allegiance to our flag."*
(2) *"Would everyone please rise for our invocation by _____?"*

3. Chairman: Ascertains from Secretary. *"Has public notice in writing for this meeting been properly posted with the county clerk?"* (See Tab 1, Paragraph 5)
4. Chairman: Ascertains from Secretary. *"Has public notice of meeting date, time, place, and the agenda been posted 24 hours (excluding Saturdays, Sundays and Holidays) prior to meeting in prominent public view at our office or normal meeting place?"* (See Tab 1, Paragraph 9)
5. Chairman: Directs Board Secretary to call the roll.

Note: The names of each board member are then called aloud by the secretary and recorded as present or absent in the minutes.

6. **Procedures when Using Consent Agenda** (Reference Example 1, Page 2)

Chairman: "The items on the consent agenda will not be discussed. Any member of the board desiring to discuss any item on the consent agenda may request it be removed from the consent agenda and placed in its proper order on the regular agenda. It will then be considered at that time.

"Are there any items to be considered for removal from the consent agenda?"

EXAMPLE:

Board Member: *"Mr. Chairman, I request that _____ be removed from the consent agenda for further discussion."*

Chairman: *"So noted."* (The Chairman should then make a pencil note on his copy of the agenda in proper order to discuss the item removed from the consent agenda.)

Chairman: Entertains motion for approval of the Consent Agenda.

7. Chairman: *"Would the Secretary read the minutes from our last meeting?"*

Note: The reading of the minutes can be dispensed with by a motion from a member of the board. The motion requires a second and a unanimous vote from the board.

8. Chairman: *"I will now entertain a motion for the approval of the minutes."*

Note: (1) Requires a motion from a member of the board;
(2) Requires a second; and
(3) Requires a majority vote.

Note: To rescind or expunge from the minutes. (Reference Tab 4)

9. Chairman: Call for a review of the purchase orders.

10. Chairman: *"You have reviewed the purchase orders. I will now entertain a motion for their approval."*

11. Chairman: Entertains motion for approval of contracts.

12. Chairman: Entertains motion for authorization to call for bids on the purchase of contracts.

13. Chairman: Entertains motion for approval of bonds or licenses.

14. Chairman: Calls for reports of officers, boards and standing committees. (That is permanently established)

15. Chairman: Calls for reports of special (Select or Ad Hoc) committees. (That is, committees

appointed to exist only until they have completed a special task.)

16. Chairman: Calls for appearances or petitions from the audience.

- Note:** (1) Action may be taken on such request if not known when the agenda was posted.
(Reference Tab 5 - RULES OF CONDUCT);
(2) Unless it is an emergency matter, the best policy may be to defer for further study.

17. Chairman: Advises board of any written communications pending action.

Note: Items cannot be considered alone but must list subjects to be considered in detail.

18. Chairman: Ask for consideration of unfinished business.

Note: That is, matters previously introduced which have come over from the preceding meeting.

19. Chairman: Ask for consideration of new business.

Note: New business may be brought up without being listed specifically as an agenda item only if it arose within twenty-four (24) hours of meeting time. In all other cases post an amended agenda.

20. **Executive Session** (Reference Tab 1, Section 307)

The fact that the governing body is going into executive session should be listed on the agenda if it is known that an executive session will be held at the time an agenda is prepared.

After starting its meeting in the open, the governing body, by a vote of the majority of the quorum present, may go into executive session.

If the governing body goes into executive session, it must be for consideration of an item listed on the agenda unless it falls under the new business provision of the Open Meeting Act.

At the conclusion of the executive session, the governing body returns to an open meeting. No action can be taken in executive session. Any vote taken on the subject discussed in the executive session must be done in open meeting with each members vote separately recorded in the minutes.

21. Chairman: Ask if there are any remarks or inquiries from the board.

22. Chairman: Ask for a motion to adjourn.

STATE AND EDUCATION EMPLOYEES GROUP HEALTH AND LIFE INSURANCE ELIGIBILITY

SECTION 1. AMENDATORY 74 O.S. 2001, Section 1315, as last amended by Section 1, Chapter 450, O.S.L. 2002 (74 O.S. Supp. 2002, Section 1315), is amended to read as follows:

Section 1315. A. Upon application in writing and subject to any underwriting criteria that may be established by the State and Education Employees Group Insurance Board, the Board may extend the benefits of the State and Education Employees Group Health and Life Insurance Plans to employees who are employed in positions requiring actual performance of duty during not less than one thousand (1,000) hours per year and to all full-time employees of:

1. Any of the following groups which participate in the Oklahoma Public Employees Retirement System:
 - a. County
 - b. City
 - c. Town
 - d. Public trust for which the state is the primary beneficiary or
 - e. Conservation districts and
 2. Any of the following groups:
 - a. County hospital
 - b. Rural water district, including employees and board members
 - c. Sewer district
 - d. Gas district
 - e. Solid waste management district
 - f. Non-profit water corporation employees and board members
 - g. Conservancy district or master conservancy district authorized by the provisions of Section 541 of Title 82 of the Oklahoma Statutes
 - h. Voluntary organization of Oklahoma local government jurisdictions listed in Section 2003 of Title 62 of the Oklahoma Statutes including any council created by the voluntary organizations
 - i. Voluntary association designated to administer the County Government Council as authorized in Section 7 of Title 19 of the Oklahoma Statutes
 - j. Statewide non-profit entities representing employees of the state or employees of local political subdivisions who are eligible for insurance benefits authorized by the provisions of the State and Education Employees Group Insurance Act or
 - k. Statewide non-profit entities receiving state funds to provide no cost legal services to low income and senior citizens.
- B. Applications to participate in the State and Education Employees Group Health and Life Insurance Plans shall be approved by majority action of the governing body of the groups listed in subsection A of this section.
- C. Groups listed in subsection A of this section participating in the Oklahoma State and Education Employees Group Health and Life Insurance Plans shall pay all costs attributable to their participation. The benefits of said plans for a participant provided coverage pursuant to this section shall be the same and shall include the same plan options as would be made

available to a state employee participating in the plan that resided at the same location. The premium for participating groups listed in subsection A of this section shall be the same as paid by state and education employees.

- D. Participating groups listed in subsection A of this section shall not be required to offer dental insurance as defined in paragraph (11) of Section 1303 of this title, or other insurance as defined in paragraph (12) of Section 1303 of this title. However, if dental insurance or any other insurance is offered, it must be provided to all eligible employees. If an employee retires and begins to receive benefits from the Oklahoma Public Employees Retirement System or terminates service and has a vested benefit with the Oklahoma Public Employees Retirement System, the employee may elect, in the manner provided in Section 1316.2 of this title, to participate in the dental insurance plan offered through the State and Education Employees Group Insurance Act. The employee shall pay the full cost of the dental insurance.
- E.
 - 1. Any employee of a group listed in subsection A of this section who retires or who has a vested benefit pursuant to the Oklahoma Public Employees Retirement System may begin the health insurance coverage if the employer of the employee is not a participant of the State and Education Employees Group Insurance Act and does not offer health insurance to its employees. Such election by the employee to begin coverage shall be made within thirty (30) days from the date of termination of service.
 - 2. Any employee of a group listed in subsection A of this section who retires or who has a vested benefit pursuant to the Oklahoma Public Employees retirement System may begin or continue the health insurance coverage if the employer of the employee is a participant of the State and Education Employees Group Insurance Act and the election to begin or continue coverage is made within thirty (30) days from the date of termination of service.
- F. Any county, city, town, county hospital, public trust, conservation district, or rural water, sewer, gas or solid waste management district, or nonprofit water corporation, any of which of the aforementioned groups is not a participating employer in the Oklahoma Public Employees Retirement System, but which has employees who are participating in the health, dental or life insurance plans offered by or through the State and Education Employees Group Insurance Act on July 1, 1997, may continue to allow its current and future employees to participate in such health, dental or life insurance plans. Participation of such employees may also continue following retirement or termination of employment if the employee has completed at least eight (8) years of service with a participating employer and such an election to continue in force is made within thirty (30) days following retirement or termination. Any retiree or terminated employee electing coverage pursuant to this section shall pay the full coast of the insurance.
- G. An employee of a group listed in paragraph 2 of subsection A of this section may continue in force health, dental and life insurance coverage following retirement or termination of employment if the employee who has retired or terminated employment has a minimum of eight (8) years of service with a participating employer and the election to continue in force is made within thirty (30) calendar days following retirement or termination.
- H. Notwithstanding other provisions in this section, an employer listed in subsection A of this section may cease to participate in the State and Education Employees Group Insurance Act but provide health insurance coverage for its current and former employees through another insurance carrier. The subsequent carrier shall be responsible for providing coverage to the entity's employees who terminated employment with a retirement benefit, with a vested benefit, or who have eight (8) or more years of service with a participating employer but did

not have a vested benefit through the Oklahoma Public Employees Retirement system, if the election to retain health insurance coverage was made within thirty (30) days of termination of employment. Coverage shall also be provided to the eligible dependents of the employees if an election to retain coverage is made within thirty (30) days of termination of employment. Employees who terminate employment from an employer covered by this paragraph before December 31, 2001, and elect coverage under the State and Education Employees Group Insurance Act, shall not be required to change insurance carriers in the event that the employer changes its insurance carrier to a subsequent carrier. The provisions of this subsection shall be come effective January 1, 2002.

- I. Any group that begins participation in the State and Education Employees Group Health and Life Insurance Plans after the effective date of this act and that is not composed of state or education employees must have one hundred percent (100%) participation in the health plan offered pursuant to the State and Education Employees Group Insurance Act.

SECTION 2. This act shall become effective July 1, 2003.

TAB #1
OPEN MEETING ACT

MEETINGS

OKLAHOMA OPEN MEETING ACT

Title 25 of the Oklahoma Statutes

Section

- 301 Title
- 302 Public Body
- 303 Times & Places – Advance Notice
- 304 Terms Defined
- 305 Public Votes
- 306 Informal or Electronic Communications Prohibited
- 307 Executive Sessions Limited; Public Votes
- 307.1 Teleconferences
- 308 Application to Meetings with Governor
- 309 Rules for Meetings of Legislature
- 310 Legislative Committee Members May Attend Executive Sessions
- 311 Public Notice Procedure; Special Meetings; Emergency Meetings
- 312 Written Minutes Required; Open to Public
- 313 Violation Makes Actions Invalid
- 314 Penalties; Misdemeanor; Fine

SECTION 301. TITLE

This act shall be known as the Oklahoma Open Meeting Act.

SECTION 302. PURPOSE

It is the public policy of the state of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems.

SECTION 303. MEETINGS TO BE OPEN; PREVIOUS PUBLIC NOTICE

All meetings of public bodies, as defined hereinafter, shall be held at specified times and places which are convenient to the public and shall be open to the public, except as hereinafter specifically provided. All meetings of such public bodies shall be preceded by advance public notice specifying the time and place of each such meeting to be convened as well as the subject matter or matters to be considered at such meeting, as hereinafter provided.

SECTION 304. TERMS DEFINED (See Court and Attorney General Interpretations)

As used in this act:

1. "Public Body" means the governing bodies of all municipalities located within the State of Oklahoma, boards of county commissioners of the counties in the State of Oklahoma, boards of public and higher education in the State of Oklahoma and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups in

the State of Oklahoma supported in whole or in part by public forces or study groups in the State of Oklahoma supported in whole or in part by public funds or entrusted with expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. It shall not include the state judiciary or the State Legislature or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education, when said staffs are not meeting with the public body.

2. “Meeting” means the conducting of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a videoconference. **Meeting shall not include informal gatherings of a majority of the members of the public body when no business of the public body is discussed;**
3. “Regularly scheduled meeting” means a meeting at which the regular business of the public body is conducted.
4. “Special meeting” means any meeting of a public body other than a regularly scheduled meeting or emergency meeting.
5. “Emergency meeting” means any meeting called for the purpose of dealing with an emergency. For purposes of the Oklahoma Open Meeting Act, an emergency is defined as a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage of immediate financial loss.
6. “Continued or reconvened meeting” means a meeting that is assembled for the purpose of finishing business appearing on an agenda of a previous meeting. For the purposes of the Oklahoma Open Meeting Act, only matters on the agenda of the previous meeting at which the announcement of the continuance is made may be discussed at a continued or reconvened meeting.
7. “Videoconference” means conference among members of a public body remote from one another who are linked by interactive telecommunication devices permitting both visual and auditory communication between and among members of the public body and members of the public. During any videoconference both the visual and auditory communications functions of the device shall be utilized. Whenever the term “teleconference” appears in any law in relation to a meeting of a public body, it shall be deemed to mean a videoconference as defined in this paragraph.

COURT AND ATTORNEY GENERAL INTERPRETATIONS

SECTION 304

A subordinate entity of a public body that has no decision-making authority is not subject to the open meeting law. *International Association of Firefighters, Local 2479 v. Thorpe* 632 P.2nd 408.

“Where a parent entity, coming within the purview of Section 201 as a matter of law, establishes a subordinate entity and such subordinate entity and subordinate entity’s authority is derived solely through its parent entity, the question of whether the subordinate entity may also come within the purview of Section 201 depends upon the purpose for which it was established and the responsibilities it

exercises. If the subordinate entity in the performance of its assigned duties and responsibilities exercises actual or de facto decision-making authority, it must comply with the open meeting law...

“In the absence of any exercise of actual or de facto decision-making authority by the subordinate entity, as for example in the performance of purely administrative or ministerial tasks, the provisions of Section 201 are not called into play.” Sanders v. Benton 579 P.2nd 815

A nonprofit corporation operating public property under contract is subject to the open meeting law when the matters to be considered involve the administration of the contract or the public property. A.G. Opinion 81-184

Cameras and tape recorders may not be barred from meetings subject to the open meeting law. A.G. Opinion 81-109

A member of a governing body may not lawfully meet separately with the other members to obtain signatures of a majority to take action that would otherwise require a consideration and vote at an open meeting. A.G. Opinion 81-69

Informal gatherings among a majority of the members of a public body to decide on a course of action or to vote on any matter is prohibited. Berry v. Board of Governors of Registered Dentists, 611 P.2nd 628

SECTION 305. PUBLIC VOTES

In all meetings of public bodies, the vote of each member must be publicly cast and recorded.

SECTION 306. INFORMAL OR ELECTRONIC COMMUNICATIONS PROHIBITED

fNo informal gatherings or any electronic or telephonic communications among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter.

SECTION 307. EXECUTIVE SESSIONS LIMITED; PUBLIC VOTES (See Court and Attorney General Interpretations)

- A. No public body shall hold executive sessions unless otherwise specifically provided in this section.
- B. Executive sessions of public bodies will be permitted only for the purpose of:
 - 1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;
 - 2. Discussing negotiations concerning employees and representatives of employee groups;
 - 3. Discussing the purchase or appraisal of real property;
 - 4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advise of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;
 - 5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or the student’s parent, attorney or legal guardian;
 - 6. Discussing matters involving a specific handicapped child;
 - 7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law; or
 - 8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act.

9. Discussing the following:
 - a. The investigation of a plan or scheme to commit an act of terrorism;
 - b. Assessments of the vulnerability of government facilities or public improvements to an act of terrorism;
 - c. Plans for deterrence or prevention of or protection from an act of terrorism;
 - d. Plans for response or remediation after an act of terrorism;
 - e. Information technology of the public body but only if the discussion specifically identifies:
 - (1.) Design or functional schematics that demonstrate the relationship or connections between devices or systems;
 - (2.) System configuration information;
 - (3.) Security monitoring and response equipment placement and configuration;
 - (4.) Specific location or placement of systems, components or devices;
 - (5.) System identification numbers, names, or connecting circuits;
 - (6.) Business continuity and disaster planning, or response plans; or
 - (7.) Investigation information directly related to security penetrations or denial of services; or
 - f. The investigation of an act of terrorism that has already been committed.

For the purposes of this subsection, the term “terrorism” means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

- C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:
 1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;
 2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;
 3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;
 3. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;
 4. The Oklahoma Savings and Loan Board, as provided for under subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;
 5. The Oklahoma Health Research Committee for purposes of conferring on matters pertaining to research and development of products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;
 6. A review committee, as provided for in Section 855 of Title 62 of the Oklahoma Statutes;
 7. The Child Death Review Board for purposes of receiving and conferring on matters pertaining to materials declared confidential by law;
 8. The domestic Violence Fatality Review Board as provided in Section 1601 of Title 82 of the Oklahoma Statutes;
 9. All nonprofit foundations, boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups supported in whole or part by public funds or entrusted with the expenditure of public funds for purposes of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to locate within their jurisdiction if public disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business; and
 10. The Oklahoma Indigent Defense system Board for purposes of discussing negotiating strategies in connection with making possible counter offers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense System

Act.

- C. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property that is under consideration may be present or participate in the executive session.
- D. No public body may go into an executive session unless the following procedures are strictly complied with:
 - 1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;
 - 2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and
 - 3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.
- E. A willful violation of the provisions of this section shall:
 - 1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and
 - 2. Cause the minutes and all other records of the executive session, including tape recording, to be immediately made public.

SECTION 2. THE FOLLOWING INFORMATION MAY BE KEPT CONFIDENTIAL:

- A. Investigative evidence of a plan or scheme to commit an act of terrorism;
- B. Assessments of the vulnerability of government facilities or public improvements to an act of terrorism and work papers directly related to preparing the assessment of vulnerability;
- C. Plans for deterrence or prevention of or protection from an act of terrorism;
- D. Plans for response or remediation after an act of terrorism;
- E. Information technology of a public body or public official but only if the information specifically identifies:
 - 1. Design or functional schematics that demonstrate the relationship or connections between devices or systems;
 - 2. System configuration information;
 - 3. Security monitoring and response equipment placement and configuration;
 - 4. Specific location or placement of systems, components or devices;
 - 5. System identification numbers, names, or connecting circuits;
 - 6. Business continuity and disaster planning, or response plans; or
 - 7. Investigative information directly related to security penetrations or denial of services; or
- F. Investigation evidence of an act of terrorism that has already been committed.

For the purposes of this section, the term “terrorism” means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COURT AND ATTORNEY GENERAL INTERPRETATIONS

SECTION 307

Allowed for lawyer-client relationship under certain conditions.

“Executive sessions may be held for confidential communications between a public body and its attorney, but only if the communications concern a pending investigation, claim, or action, and disclosure of the matters discussed would seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation or proceeding in the public interest. The public body, with the advice of its attorney, would determine whether it would be proper to hold executive sessions for the purposes above set forth.” Oklahoma Association of Municipal Attorneys v. State ex rel. Derryberry, 577 P.2nd 1310

Any vote or action taken in an executive session must be in public meeting with the vote of each member publicly cast and recorded. Berry v. Board of Governors of Registered Dentists, 611 P.2nd 628

A majority or quorum must vote to go into executive session. Berry v. Board of Governors of Registered Dentists. 611 P.2nd 628

If a city charter requires that meetings of a city council shall be open to the public, then the city council may not go into executive session unless the charter provides for executive sessions. A.G. Opinion 81-218

Executive Session – Inclusion on Agenda

1. All matters to be discussed by a public body at a meeting of the public body must be listed on the agenda for the meeting, including proposal for an executive session.
2. A proposal for an executive session carried on the agenda for a meeting of a public body must contain sufficient information to advise the public that an executive session will be proposed, what matters are proposed to be discussed in the executive session and what action, if any, is contemplated to be taken on matters proposed for discussion in an executive session.
3. A public body may go into executive session with its attorney to discuss ongoing litigation under the “new business” provisions of 25 O.S. Sup. 1977, Section 311(9), provided the matters to be discussed could not have been known about or reasonably foreseen prior to the time of posting the agenda. Whether or not matters involved in ongoing litigation qualify as “new business” is a question of fact. A.G. Opinion 82-144

A.G. Opin. 78-201 at 513-14

So stating, the Attorney General implicitly found that the only possibly applicable listed topic was the discussion of an employee’s “promotion.” The Attorney General thus apparently read the word “employment” to be synonymous with “hiring” and “appointment.” We do not so interpret the statute.

If we were to read “employment,” in the phrase, “discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee,”

to mean the hiring or appointment of an officer or employee, the term “employment” would be mere surplusage. Such a construction of the statute would require us to assume that the Legislature’s inclusion of “employment” in the list of discussion topics was a vain and useless thing. However, such a construction is not permitted under Oklahoma law. The Oklahoma Supreme Court has held on many occasions, that where possible, “statutes must be interpreted to render every word and sentence operative,” *State ex rel. Thompson v. Ekberg*, 613 P.2d 466, 467 (Okla.1980) (emphasis added), “and not so that part of statute is rendered superfluous,” *Anderson v. O’Donoghue*, 677 P.2d 648, 651 (Okla. 1983), or useless, *Board of Education of Oklahoma City v. Woodworth*, 214 P. 1077, 1081 (Okla. 1923).

In the case at hand, if we were to read “employment” to simply mean “hiring or appointing,” its presence in the statute would be mere surplusage. This being the case, the term “employment” must be read in a broader sense—given a broader meaning. Accordingly, we construe the term “employment” as used in Sec 25 O.S. 307(B)(1) of Title 25, to include continued employment and conditions of employment such as place of employment, salary, duties to be performed and evaluations. As noted in Attorney General Opinion 72-233, the Open Meeting Act confers upon the public “a right to attend meetings of governmental agencies where public money and property is being administered, except at those times when the acts and qualifications of prospective and current public employees are being considered.” *Id.* at 233. “The purpose behind the personnel exception,” the Attorney General concluded, “is the protection of the reputation and dignity of the individual employee.” *Id.* Our construction of “employment” is consistent with the purpose. In reading “employment in its broader sense, we conclude that a public body, such as a board of education, may, under the provisions of 25 O.S. 307(B) (1)(1995), properly hold an executive session to discuss the salary of any individual salaried public officer or employee.

It is, therefore, the official Opinion of the Attorney General that:

1. Under the provisions of the 25 O.S. 307(B)(1)(1995) which permit the holding of an executive session for the purpose of “discussing the employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee,” a public body, such as a board of education, may go into executive session for the purpose of discussing the salary of an individual salaried public officer or employee.
2. Attorney General Opinion 78-201, which reached a contrary conclusion, is withdrawn.

An interesting article appeared in the *Hennessey Clipper* regarding executive session minutes. State Attorney General Susan B. Loving keynoted a meeting held for the benefit of public officials in the area.

Vic Bird, chief of general counsel, quoted a state Supreme Court case and then added, “*The Open Meeting Laws requires you to keep minutes of your meetings – there are no exceptions for executive sessions. If you do not comply, there are criminal sanctions or your minutes are immediately made public.*”

Bird said the Oklahoma Supreme Court is the law of the land in this state. So, if you are a public body, you must keep minutes of executive sessions.

David McCullough, president of Freedom of Information, said the executive sessions minutes should be kept separate from the regular open meeting minutes.

“They remain confidential until a judge orders you to give them up,” he said. It’s a bookkeeping requirement, and you’ve got to do it just in case there comes a time when you may need those executive session minutes.”

SECTION 307.1 VIDEOCONFERENCE

- A. A public body may hold meetings by videoconference where each member of the public body is visible and audible to each other and the public body through a video monitor, subject to the following:
1. No less than a quorum of the public body shall be present in person at the meeting site as posted on the meeting notice and agenda;
 2. The meeting notice and agenda prepared in advance of the meeting, as required by law, shall indicate the meeting will include video conferencing locations and shall state:
 - a. the location, address, and telephone number of each available videoconference site, and
 - b. the identity of each member of the public body and the specific site from which each member of the body shall be physically present and participating in the meeting;
 3. After the meeting notice and agenda are prepared and posted, as required by law, no member of the public body shall be allowed to participate in the meeting from any location other than the specific location posted on the agenda in advance of the meeting;
 4. In order to allow the public the maximum opportunity to attend and observe each public official carrying out the duties of the public official, a member or members of a public body desiring to participate in a meeting by videoconference shall participate in the videoconference from a site and room located within the district or political subdivision from which they are elected, appointed, or are sworn to represent;
 5. Each site and room where a member of the public body is present for a meeting by videoconference shall be open and accessible to the public, and the public shall be allowed into that site and room. Public bodies may provide additional videoconference sites as a convenience to the public, but additional sites shall not be used to exclude or discourage public attendance at any videoconference site;
 6. The public body shall be allowed to participate and speak, as allowed by rule or policy set by the public body, in a meeting at the videoconference site in the same manner and to the same extent as the public is allowed to participate or speak at the site of the meeting;
 7. Any materials shared electronically between members of the public body, before or during the videoconference, shall also be immediately available to the public in the same form and manner as shared with the members of the public body; and
 8. All votes occurring during any meeting conducted using videoconferencing shall occur and be recorded by roll call vote.

B. No public body shall conduct an executive session by videoconference.

SECTION 3. This act shall become effective November 1, 2007.

SECTION 308. APPLICATION TO MEETINGS WITH GOVERNOR

Any meeting between the Governor and a majority of members of any public body shall be open to the public and subject to all other provisions of this act.

SECTION 309. RULES FOR MEETINGS OF LEGISLATURE

The Legislature shall conduct open meetings in accordance with rules to be adopted by each house thereof.

SECTION 310. LEGISLATIVE COMMITTEE MEMBERS MAY ATTEND EXECUTIVE SESSION

Any member of the Legislature appointed as a member of a committee of either house of the Legislature or joint committee thereof shall be permitted to attend any executive session authorized by the Oklahoma Open Meeting Act of any state agency, board or commission whenever the jurisdiction of such committee includes the actions of the public body involved.

SECTION 311. PUBLIC NOTICE PROCEDURE; SPECIAL MEETINGS; EMERGENCY MEETINGS (See Court and Attorney General Interpretations)

- A. 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:
1. All public bodies shall give notice in writing by December 15 of each calendar year of the schedule showing the date, time and place of the regularly scheduled meetings of such public bodies for the following calendar year;
 2. All state public bodies, including, but not limited to, public trusts and other bodies with the state as beneficiary, shall give such notice to the Secretary of State;
 3. All county public bodies, including but not limited to, public trusts and any other bodies with the county as beneficiary, shall give such notice to the county clerk of the county wherein they are principally located;
 4. All municipal public bodies, including, but not limited to, public trusts and any other bodies with the municipality as beneficiary, shall give such notice to the municipal clerk of the municipality wherein they are principally located;
 5. All multi-county, regional, area-wide or district public bodies, including, but not limited to, district boards of education, shall give such notice to the county clerk of the county wherein they are principally located, or if no office exists, to the county clerk of the county or counties served by such public body;
 6. All governing boards of state institutions of higher education, and committees and subcommittees thereof, shall give such notice to the Secretary of State. All other public bodies covered by the provisions of this act which exist under the auspice of a state institution of higher education, but a majority of whose members are not members of the institution's governing board, shall give such notice to the county clerk of the county wherein the institution is principally located;
 7. The Secretary of State and each county clerk or municipal clerk shall keep a record of all notices

received in a register open to the public for inspection during regular office hours, and, in addition, shall make known upon any request of any person the contents of said register;

8. If any change is to be made of the date, time or place of regularly scheduled meetings of public bodies, then notice in writing shall be given to the Secretary of State or county clerk or municipal clerk, as required herein, not less than ten (10) days prior to the implementation of any such change;
9. In addition to the advance public notice in writing required to be filed for regularly scheduled meetings, all public bodies shall, at least twenty-four (24) hours prior to such meetings, display public notice of said meeting, setting forth thereon the date, time place and agenda for said meeting, such twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma; provided, however, the posting of an agenda shall not preclude a public body from considering at its regularly scheduled meeting any new business. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if no office exists. "New Business", as used herein, shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of posting;
10. In the event any meeting is to be continued or reconvened, public notice of such action, including date, time and place of the continued meeting, shall be given by announcement at the original meeting. Only matters appearing on the agenda of the meeting which is continued may be discussed at the continued or reconvened meeting;
11. Special meetings of public bodies shall not be held without public notice being given at least forty-eight (48) hours prior to said meetings. Such public notice of date, time and place shall be given in writing, in person, or by telephonic means to the Secretary of State or to the county clerk or to the municipal clerk by public bodies in the manner set forth in paragraphs 2, 3, 4, 5, and 6 of this section. The public body also shall cause written notice of the date, time and place of the meeting to be mailed or delivered to each person, newspaper, wire service, radio station, and television station that has filed a written request for notice of meetings of the public body with the clerk or secretary of the public body. Such written notice shall be mailed or delivered at least forty-eight (48) hours prior to the special meeting. The public body may charge a fee of up to Eighteen Dollars (\$18.00) per year to persons or entities filing a written request for notice of meetings, and may require such persons or entities to renew the request for notice annually. In addition, all public bodies shall, at least twenty-four (24) hours prior to such special meetings, display public notice of said meeting, setting forth thereon the date, time, place and agenda for said meeting. Only matters appearing on the posted agenda may be considered at said special meeting. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if not office exists. Twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma; and
12. In the event of an emergency, an emergency meeting of a public body may be held without the public notice heretofore required. Should an emergency meeting of a public body be necessary the person calling such a meeting shall give as much advance public notice as is reasonably and possible under the circumstances existing, in person or by telephonic or electronic means.

B.

1. All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting, including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act;
2. If a public body proposes to conduct an executive session, the agenda shall:

- a. Contain sufficient information for the public to ascertain that an executive session will be proposed;
- b. Identify the items of business and purposes of the executive session; and
- c. State specifically the provision of Section 307 of this title authorizing the executive session.

COURT AND ATTORNEY GENERAL INTERPRETATIONS

SECTION 311

An agenda should state in clear, direct and comprehensible language the action anticipated to be taken.

“We construe the statute to require agendas be worded in plain language, directly stating the purpose of the meeting, in order to give the public actual notice. The language used should be simple, direct and comprehensible to a person of ordinary education and intelligence. “A plain reading of the agendas shows School Board’s action materially exceeded its announced purpose and intention. We note in this case School Board has all the appearance of being a ‘lame duck’ board trying to arbitrarily impose its will over a newly elected board. In any event, we hold the defective notice as a willful violation of this Act and therefore the contract is invalid. In this regard, we define the term ‘willful’ to include any act or omission that has the effect of actually deceiving or misleading the public regarding the scope of action defined by the notice.

“In this case, the agendas specifically limited the business of the meeting to (1) hiring of principals, and (2) interviewing and discussing the hiring of an administrator. Use of the terms ‘interviewing’ and ‘discussing the hiring’ of an administrator in juxtaposition with ‘hiring’ of principals is misleading. It creates more than an inference that the two agenda items are distinct, the latter being limited to ‘discussion’ and interview.’

“The posted agendas further camouflaged the action taken by referring vaguely to the position in question as that of ‘administrator.’ To the public, this term generally defines several jobs but fails to direct attention to the specific position of ‘superintendent’. Court of Appeals, Division 2, Haworth Bd. Of Ed of Ind. School Dist. I-6, McCurtain County appellant v. Havens, appellee. 52 O.B.A. J 1978

“It is not sufficient for this notice, or ‘agenda’ to contain a mere listing of topics or categories of business to be taken up. For example, an agenda item simply stating ‘Contracts’ or ‘Purchases’, or the like, is insufficient. The information contained in the agenda should be reasonably calculated to inform the public of the business to be taken up at the meeting.

“One should be able to ascertain from the agenda description that a particular item of business will be considered. The agenda description must contain enough information to properly notify interested persons that items of specific interest to them will be taken up. To the extent that an agenda description is purely categorical, such as the examples used above, it cannot be said to satisfy these requirements.” Except from the Attorney General’s memorandum of March 1981.

SECTION 312. WRITTEN MINUTES REQUIRED; OPEN TO PUBLIC

The proceedings of a public body shall be kept by a person so 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. The minutes of each meeting shall be open to public inspection and shall reflect the manner and time of notice required by this act.

In the written minutes of an emergency meeting, the nature of the emergency and the proceedings occurring at such meeting, including reasons for declaring such emergency meeting, shall be included.

Any person attending a public meeting may record the proceedings of said meeting by videotape, audiotape or by any other method; providing, however, such recording shall not interfere with the conduct of the meeting.

SECTION 313 ACTIONS TAKEN IN WILLFUL VIOLATION OF ACT

Any action taken in willful violation of this act shall be invalid.

SECTION 314 VIOLATIONS – MISDEMEANOR – PENALTY

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.

TAB #2
QUESTIONS ABOUT THE OPEN MEETING ACT

QUESTIONS ABOUT THE OPEN MEETING ACT

All public bodies, as defined in the act, are subject to the Open Meeting Act.

1. Q: Are committees of the governing body, which are made *up* solely of council members, subject to the Open Meeting Act?

A: Yes, the definition of a public body in the Act specifically includes all committees or subcommittees of any public body.

2. Q: Are committees made up of council members and citizens subject to the Open Meeting Act?

A: These committees may be subject to the Open Meeting Act if they exercise actual or de facto decision-making authority. In most instances, such committees will have the authority to make recommendations only and so will not be subject to the Open Meeting Act.

3. Q: Are collective bargaining sessions subject to the Open Meeting Act?

A: No, unless a participant or participants in the negotiations have actual or de facto decision making authority. The Oklahoma Supreme Court has recognized that all agreements reached through negotiations must be approved and may be rejected by the municipal governing body, which retains formal decision-making authority. In as much as a governing body may not lawfully delegate its statutory and legislative duties, only under unusual circumstances could a collective bargaining session become subject to the Open Meeting Act.

All meetings of public bodies are subject to the Open Meeting Act.

1. Q: Are study sessions or workshops of the governing body considered meetings under the Open Meeting Act?

A: Yes, if a majority of the members of the governing body are present.

2. Q: What if we merely discuss an item of business but don't take a vote or make a decision?

A: It doesn't matter. Discussion of an item of business is part of the decision making process and so amounts to conducting the business of the public body. The Act specifically prohibits informal gatherings among the majority of the members of a public body.

3. Q: May all the governing body members be present at a social function?

A: Yes, the Act applies when a majority of the members of a public body are conducting official business. When such a majority is present at a social function or civic meeting, the members must be careful to avoid talking about the business of the municipality.

4. Q: May the governing body members get together before a meeting to discuss matter which will be taken up at the meeting?

A: No, any gathering to discuss matters appearing on an agenda is subject to the open meeting law and must be held in public.

5. Q: May the members of a governing body get together after a meeting to discuss what went on?

A: No, if such a gathering will include a discussion of matters still to be decided or to be done.

Executive Sessions May Be Held Only For the Limited Purposes Set Out In Either the Statute Or By The Oklahoma Supreme Court.

1. Q: How do we call an executive Session?

A: The governing body may go into executive session only from an open meeting and only after the majority of the quorum present votes in open meeting to go into executive session. Such vote must be reported in the manner provided for all other votes by the Act.

2. Q: Is it sufficient to put "executive session" as an agenda item?

A: No, the Open Meeting Act requires that the agenda state specifically what items will be discussed at a meeting. The agenda must contain an item of business which shows OD its face that it is a proper basis for an executive session.

3. Q: May we hold an executive session if we fail to put an executive session on the agenda?

A: Yes, executive sessions may be conducted under "new business" if the subject has legitimately arisen since the agenda was posted and is one of the permitted topics. But the "new business" exception should not be used either as a subterfuge or as an excuse to violate the Act.

4. Q: May we go into executive session to discuss a raise for an employee?

A: Yes. That is one of the items listed by the statute for an executive session. A.G. Opinion 78-201 at 513-14.

5. Q: May we go into executive session to discuss pending litigation without our attorney?

A: No. The basis of the Supreme Court's holding that a public body may go into executive session to discuss pending investigations, claims or actions was to preserve the attorney-client privilege.

TAB #3
OPEN RECORDS ACT

OKLAHOMA OPEN RECORDS ACT

Title 51 of the Oklahoma Statutes

24A.1 SHORT TITLE

Section 24A.1 et seq. of this title shall be known and may be cited as the “Oklahoma Open Records Act”.

24A.2 PUBLIC POLICY – PURPOSE OF ACT

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public’s right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes that authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

24A.3. DEFINITIONS

Definitions. As used in this act:

1. “Record” means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. “Record” does not mean computer software, nongovernmental personal effects or, unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Turnpike Authority obtained in connection with the Authority’s electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body. “Record” does not mean any personal information provided by a guest of any facility owned or operated by the Oklahoma Tourism and Recreation Department to obtain any service at such facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department.
2. “Public body” shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city,

village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A. 4 of this title, “public body” does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators.

3. “Public office” means the physical location where public bodies conduct business or keep records.
4. “Public official” means any official or employee of any public body as defined herein.
5. “Law enforcement agency” means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

24A.5 RECORD OF RECEIPTS AND EXPENDITURES

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 relating thereto, except that such records may be disposed of as provided by law.

24A.5 INSPECTION, COPYING AND/OR MECHANICAL REPRODUCTION OF RECORDS – EXEMPTIONS

All records of public bodies and public officials shall be open to any person for inspection, copying and/or mechanical reproduction during regular business hours, provided:

1. The Oklahoma Open Records Act, Section 24A.1 et. Seq. of this title, does not apply to records specifically required by law to be kept confidential including:
 - a. Records protected by state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges; or
 - b. Records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes; or
 - c. Personal information within driver records as defined by the Driver’s Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; or
 - d. Information in the files of the Board of Medico legal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information;
2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions, provided however, the Oklahoma Department of Public Safety shall not be required to assemble for the requesting person specific information requested from Oklahoma Department of Public Safety’s Driver License file relating to persons whose names and dates of birth or whose driver license numbers are not furnished by the requesting person. The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names and dates of birth are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons and the cost of copying, reproducing or certifying such individual record which is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of document copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall said document copying fee exceed twenty-five cents (\$0.25) per page for documents having the dimensions of eight and one-half (8 ½) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However if the request:
 - a. Is solely for commercial purpose; or
 - b. Would clearly cause excessive disruption of the public body's essential functions, then the public body may charge a reasonable fee to recover the direct cost of document search; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy.

Any public body establishing fees under this act shall post a written schedule of said fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, such index shall not be copied and/or mechanically reproduced for the purpose of sale of such information.
5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures, which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.
6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one such person shall be available at all times to release records during the regular business hours of the public body.

24A.6 PUBLIC BODY MAINTAINING LESS THAN 30 HOURS OF REGULAR BUSINESS PER WEEK – INSPECTION, COPYING OR MECHANICAL REPRODUCTION OF RECORDS

- A. If a public body or its office does not have regular business hours of at least thirty (30) hours a week, the public body shall post and maintain a written notice at its principal office and with the county clerk where the public body is located which notice shall:
 1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;
 2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and

3. Describe in detail the procedures for obtaining access to the records at least two days of the week excluding Sunday.
- B. The person requesting the record and the person authorized to release the records of the public body may agree to inspection, copying, or mechanical reproduction on a day and at a time other than that designated in the notice.

24A.7 PERSONNEL RECORDS – CONFIDENTIALITY – INSPECTION AND COPYING

- A. A public body may keep personnel records confidential:
 1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or
 2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum of the transcripts of certified public school employees.
- B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to records of:
 3. An employment application of a person who becomes a public official;
 4. The gross receipts of public funds;
 5. The dates of employment, title or position; and
 6. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.
- C. Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.
- D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

24A.8 LAW ENFORCEMENT RECORDS – DISCLOSURE

- A. Law enforcement agencies shall make available for public inspection, if kept, the following records:
 1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
 2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
 3. Conviction information, including the name of any person convicted of a criminal offense;
 4. Disposition of all warrants, including orders signed by a judge or any court commanding a law enforcement officer to arrest a particular person;
 5. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and brief summary of what occurred;
 6. A crime summary, including a departmental summary of crimes reported and public calls for service by classification or nature and number;
 7. Radio logs, including a chronological listing of the calls dispatched; and
 8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of his commitment, the authority committing the prisoner, whether committed for criminal offense, a description of the prisoner, and the date or manner of his discharge or escape.
- B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

- C. Nothing contained in this section imposes any new record keeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.
- D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department.
- E. The council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:
 - 1. To verify the current certification status of any peace officer;
 - 2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;
 - 3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;
 - 4. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and
 - 5. Pursuant to an order of the district court of the State of Oklahoma.

TRAFFIC COLLISION REPORTS

Traffic collision reports do not fall within the Open Records Act, and may be withheld. *Cummings & Associates, Inc. v. City of Oklahoma City ex rel. Oklahoma City Police Dept., Okla., 849 P.2d1087 (1993)*

24A.9 PERSONAL NOTES AND PERSONALLY CREATED MATERIAL – CONFIDENTIALITY

Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project.

24A.10 VOLUNTARILY SUPPLIED INFORMATION – BIDS, COMPUTER PROGRAMS, APPRAISALS AND PROSPECTIVE BUSINESS LOCATIONS – DEPARTMENT OF COMMERCE RECORDS – CONFIDENTIALITY – DISCLOSURES

- A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from the effective date of this act, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, any information voluntarily supplied shall be subject to full disclosure pursuant to this act.
- B. If disclosures would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:
 - 1. Bid specifications for competitive bidding prior to publication by the public body; or
 - 2. Contents of sealed bids prior to the opening of bids by a public body; or
 - 3. Computer programs or software but not data thereon; or data
 - 4. Appraisals relating to the sale or acquisition of real estate by a public body prior to aware of a contract; or

5. The prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses.
- C. Except as set forth hereafter, the Oklahoma Department of Commerce may keep confidential;
1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice from the Oklahoma Department of Commerce; and
 2. Information compiled by the Oklahoma Department of Commerce in response to those submissions.

The Oklahoma Department of Commerce may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.

- D. Although they must provide public access to their records, including records of the address, rate paid for services, charges, consumption rates, adjustments to the bill, reasons for adjustment, the name of the person that authorized the adjustment, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, social security numbers, bank account information for individual customers, and utility supply and utility equipment supply contracts for any industrial customer with a connected electric load in excess of two thousand five hundred (2,500) kilowatts if public access to such contracts would give an unfair advantage to competitors of the customer; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of this act. (Amended Effective 11/1/2009)

24A.10a OKLAHOMA MEDICAL CENTER – MARKET RESEARCH AND MARKETING PLANS – CONFIDENTIALITY

The Oklahoma Medical Center may keep confidential market research conducted by and marketing plans developed by the Oklahoma Medical Center if the Center determines that disclosure of such research or plans would give an unfair advantage to competitors of the Oklahoma Medical Center regarding marketing research and planning, public education, and advertising and promotion of special and general services provided by the Oklahoma Medical Center.

24A.11 LIBRARY, ARCHIVE OR MUSEUM MATERIALS – CONFIDENTIALITY

A. A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation and any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes.

B. If library, archive, or museum materials are donated to a public body and the donation may be claimed as a tax deduction, the public body may keep confidential any information required as a condition of the donation except the date of the donation, the appraised value claimed for the donation, and a general description of the materials donated and their quantity.

24A.12 LITIGATION FILES AND INVESTIGATORY FILES OF ATTORNEY GENERAL, DISTRICT OR MUNICIPAL ATTORNEY – CONFIDENTIALITY

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

24A.13 FEDERAL RECORDS – CONFIDENTIALITY

Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law.

24A.14 PERSONAL COMMUNICATIONS RELATING TO EXERCISE OF CONSTITUTIONAL RIGHTS - CONFIDENTIALITY

Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.

24A.15 CROP AND LIVESTOCK REPORTS – PUBLIC WAREHOUSE FINANCIAL STATEMENTS – CONFIDENTIALITY

- A. The Division of Agriculture Statistics, Oklahoma Department of Agriculture, also known as the Oklahoma Crop and Livestock Reporting Service, may keep confidential crop and livestock reports provided by farmers, ranchers, and agri-businesses to the extent the reports individually identify the providers.
- B. The State Board of Agriculture is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Commissioner of Agriculture.

Upon good cause shown, and at the discretion of the Commissioner of Agriculture, such financial statements may be released.

24A.16 EDUCATIONAL RECORDS AND MATERIALS – CONFIDENTIALITY

- A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:
 - 1. Individual student records;
 - 2. Teacher lesson plans, tests and other teaching material; and
 - 3. Personal communications concerning individual students.
- B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "Directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated

should not be released without the parent's or guardian's consent or the student's himself if he is eighteen (18) years of age or older.

24A.17. VIOLATIONS – PENALTIES – CIVIL LIABILITY

- A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, upon conviction, shall be guilty of a misdemeanor, and 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.
- B. Any person denied access to a record of a public body or public official may bring a civil suite for declarative and/or injunctive relief and, if successful, shall be entitled to reasonable attorney fees. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.
- C. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act.

24A.18 ADDITIONAL RECORDKEEPING NOT REQUIRED

Except as may be required in Section 4 of this act, this act does not impose any additional record keeping requirements on public bodies or public officials.

24A.19 RESEARCH RECORDS – CONFIDENTIALITY

In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:

- 1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and
- 2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology. However, institutions within The Oklahoma State System of Higher Education shall:
 - a. Report to the Oklahoma State Regents for Higher Education as requested on forms provided by the Regents, research activities funded by external entities or the institutions, the results of which have generated new intellectual property, and
 - b. Report to the Oklahoma State Regents for Higher Education annually on forms provided:
 - (1) Expenditures for research and development supported by the institution;
 - (2) Any financial relationships between the institution and private business entities;
 - (3) Any acquisition of any equity interest by the institution in private business;
 - (4) The receipt of royalty or other income related to the sale of products, processes, or ideas by the institution or a private business entity with which the institution has established a financial arrangement;
 - (5) The gains or losses upon the sale or other disposition of equity interests in private business entities; and

- (6) Any other information regarding technology transfer required by the Oklahoma State Regents for Higher Education.

The reports required in subparagraphs a and b of this paragraph shall not be deemed confidential and shall be subject to full disclosure pursuant to the Oklahoma Open Records Act.

24A.20 RECORDS IN LITIGATION OR INVESTIGATION FILE -- ACCESS

Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.

24A.21 INCREMENT DISTRICT REPORTS – EXEMPTION FROM COPYING FEES

The fees that may be charged by a public body pursuant to the provisions of paragraph 3 of Section 24A.5 of Title 51 of the Oklahoma Statutes shall not be charged when a state agency or taxing entity located within the boundaries of any district created pursuant to the provisions of the Local Development Act request a copy of the reports required by subsections A and B of Section 18 of this act.

24A.22 PUBLIC UTILITIES – CONFIDENTIAL BOOKS, RECORDS AND TRADE SECRETS

- A. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers that the Commission determines are confidential books and records or trade secrets.
- B. As used in this section, “public utility” means any entity regulated by the Corporation Commission, owning or operating for compensation in this state equipment or facilities for:
 - 1. Producing, generating, transmitting, distributing, selling or furnishing electricity;
 - 2. The conveyance, transmission, or reception of communication over a telephone system; or
 - 3. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public.

24A.23 DEPARTMENT OF WILDLIFE CONSERVATION – CONFIDENTIALITY OF INFORMATION RELATING TO HUNTING AND FISHING LICENSES

- A. The Department of Wildlife Conservation shall keep confidential the information provided by persons, including the name and address of the person, applying for or holding any permit or license issued by the Department, to the extent the information individually identifies the person. The Department may use the information for Department purposes or allow the United States Fish and Wildlife Services to use the information for survey purposes only. The Department shall allow any public body to have access to the information for purposes specifically related to the public bodies function.
- B. The provisions of subsection A of this section shall not apply to information provided by persons applying for or holding a commercial hunting or fishing license.

24A.24 OFFICE OF JUVENILE SYSTEM OVERSIGHT – CONFIDENTIALITY OF INVESTIGATORY RECORDS AND NOTES

Unless otherwise provided by law, the Office of Juvenile System Oversight may keep its investigatory records and notes confidential, unless ordered by a court of competent jurisdiction to disclose information.

24A.25 ORDER OF COURT FOR REMOVAL OF MATERIALS FROM PUBLIC RECORD

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

24A.26 INTERGOVERNMENTAL SELF-INSURANCE POOLS

An intergovernmental self-insurance pool may keep confidential proprietary information, such as actuarial reports, underwriting calculations, rating information and records that are created based on conclusions of such information that are developed through the operation of the intergovernmental self-insurance pool.

24A.27 VULNERABILITY ASSESSMENTS OF CRITICAL ASSETS

- A. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. State environmental agencies or public utilities may use the information for internal purposes or allow the information to be used for survey purposes only. The state environmental agencies or public utilities shall allow any public body to have access to the information for purposes specifically related to the public bodies function.
- B. For purposes of this section:
 - 1. “State environmental agencies” includes the:
 - a. Oklahoma Water Resources Board;
 - b. Oklahoma Corporation Commission;
 - c. State Department of Agriculture;
 - d. Oklahoma Conservation Commission;
 - e. Department of Wildlife Conservation;
 - f. Department of Mines; and
 - g. Department of Environmental Quality;
 - 2. “Public Utility” means any individual, firm, association, partnership, corporation or any combination thereof, municipal corporations or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:
 - a. Producing, generating, transmitting, distributing, selling, or furnishing electricity;
 - b. The conveyance, transmission, reception or communications over a telephone system;
 - c. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public; or
 - d. The transportation, delivery or furnishing of water for domestic purposes or for power.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect ad be in full force from and after its passage and approval.

36.1 PERSONS REQUIRED TO TAKE OATH OR AFFIRMATION

Every officer and employee of the state of Oklahoma, or of a county, school district, municipality, public agency, public authority, or public district thereof, who, on or after July 1, 1953, is appointed or elected to office, or who after said date is employed, for a continuous period of thirty (30) days or more, in order to qualify and enter upon the duties of his office or employment and/or receive compensation, if any, therefore, shall first take and subscribe to and file the same as herein after set forth. Provided, that a public employee who is employed or whose employment if extended on a fiscal year basis, and who has duly taken and filed the oath required by this act in order to qualify for and enter upon, or continue in, the duties of his employment, need not again take and file such an oath so long as his said employment, or reemployment is continuous or consecutive.

36.3 FORM OF LOYALTY OATH OR AFFIRMATION

The oath or affirmation required by this act, same being cumulative to the oath of office required by section 1 of Article XV of the Oklahoma Constitution, shall be as follows:

I do solemnly swear (or affirm) that I will support the Constitution and laws of the United States of America and the Constitution and the laws of the State of Oklahoma, and I will faithfully discharge, according to the best of my ability, the duties of my office or employment during such time as I am

(Here put name of office, or if an employee, insert "An Employee of _____"
_____ " followed by the complete designation of the employing officer, agency, authority,
commission, department or institution.

Affiant

Subscribed and sworn to me before this _____ day of _____, _____.

Notary Public, or other officer authorized to
Administer oaths or affirmations

36.3 FILING OATHS OR AFFIRMATIONS-BLANKS

- A. The oath or affirmation require by section 36.2A of this title and taken and subscribed to by:
 1. Every state officer shall be filed with the Secretary of State.
 2. Every state employee shall be filed with personnel office of the state entity employing the state employee;
 3. All other officers shall be filed with the office of the county clerk of the county of official residence of the officer.
 4. All other employees shall be filed with the office of the county clerk of the county in which the

entity employing the employee is located; and

5. Every notary public shall be filed with the office of the Secretary of State.

- B. No fee shall be charged for filings or for the administration of the oaths or affirmations.
- C. Blank oath forms will be furnished without charge, by the Secretary of State to such office and employees upon request.
- D. The provision of paragraphs 3, 4, and 5 of subsection A of this section shall not apply to municipal officers and employees or school district officers and employees. All oaths or affirmations of municipal or employees of school district officers or employees shall be filed in the office of the school clerk of the school district for which the officer or employee serves or by which the officer or employee is employed.

**TAB #4
MINUTES**

MINUTES

The Oklahoma Open Meeting Act requires that minutes be kept of all meetings of public bodies subject to the Act. The Oklahoma Municipal Code further states that clerk of a city or town shall keep a journal of the proceedings for the governing body.

The minutes are the official record of the proceedings of the governing body and should be in sufficient detail to record the actions or decision of the governing body.

As a minimum, the minutes should:

1. State whether the meeting is a regularly scheduled, special or emergency meeting of the governing body. If it is an emergency meeting, the minutes should state the nature of the emergency and the reasons for declaring the emergency meeting.
2. State the time and manner of notice given of the meeting.
3. List the names of the members present and the members absent.
4. List in chronological order:
 - a. The matters discussed by the governing body;
 - b. The action taken by the governing body;
 - c. How each member cast his or her vote on the action taken by the governing body in open meeting;
 - d. For example, the minutes on the adoption of an ordinance should contain:
 - (1) An indication that the ordinance was on the agenda for approval;
 - (2) A brief summary of the findings by the governing body that the ordinance was necessary (needed to mitigate anti-trust actions);
 - (3) The name of the person making the motion adopting the ordinance and the name of the person seconding the motion;
 - (4) The adopting motion (which should include the number and title of the ordinance adopted); and
 - (5) The vote of each member on the motion.

RESCIND AND EXPUNGE FROM THE MINUTES

On extremely rare occasions when it is desired not only to rescind action but also to express the strongest disapproval, a member may move to Rescind and Expunge from the Minutes (or the Record). Adoption of this motion requires an affirmative vote of a majority of the entire membership, and may be inadvisable unless the support is even greater. Even a unanimous vote at a meeting is insufficient if that vote is not a majority of the entire membership. If such a motion is adopted, the secretary, in the presence of the assembly, draws a single line through or around the offending words in the minutes, and writes across them the words, "Rescinded and Ordered Expunged," with the date and his signature. In the recorded minutes the words that are expunged must not be blotted or cut out so that they cannot be read, since this would make it impossible to verify whether more was expunged than ordered. If the minutes are published, the expunged material is omitted. Rather than expunging, it is usually better to rescind the previous action and then, if advisable, to adopt a resolution condemning the action which has been rescinded.

TAB #5
RULES OF CONDUCT
PUBLIC MEETINGS

A sample set of rules would be as Follows:

RULES OF CONDUCT FOR PUBLIC MEETING

I. Agenda.

- A. All reports, communications, ordinances, resolutions, contract documents, or other matters to be submitted to the governing body shall, at least seventy-two (72) hours prior to each scheduled meeting, be delivered to _____ whereupon he/she shall immediately arrange a list of such matters according to the order of business and furnish each member of the governing body and your city attorney with a copy of same prior to the meeting and as far in advance of the meeting as time for preparation will permit.
- B. Unless so submitted, none of the foregoing matters may be presented to the governing body except those of an urgent or emergency nature and the same shall be so presented only upon the approval of a majority of the governing body.

II. Minutes. Unless a reading of the minutes of a governing body meeting is requested by a member of the governing body, such minutes may be approved without reading aloud.

III. Order of Business.

- A. All meetings of the governing body shall be opened to the public pursuant to the Oklahoma Open Meeting Act or your city charter.
- B. Promptly at the hour set by law on the day of each regular meeting, the members of the governing body (can list other people required to attend) shall take their regular stations in the chambers and the business of the governing body shall be taken up for consideration and disposition in the following order, unless changed by the majority vote of the governing body:
 - 1. Roll Call;
 - 2. Approval of minutes from previous meeting;
 - 3. Approval of claims for payment;
 - 4. Public hearings;
 - 5. Public appearances, petitions, remonstrances, communications, and personal appearances;
 - 6. Awarding of contracts;
 - 7. Resolutions;
 - 8. Ordinances;
 - 9. Reports from officers and boards;
 - 10. Appointments; and
 - 11. Adjournment.

IV. Rules of Debate.

- A. When hearing remarks from citizens, the mayor/chairman may limit the time of their discussion, such as 3-5 minutes.
- B. The proponents and opponents can be required to select a spokesperson.
- C. If there is only one person per side speaking, they can be allowed a longer time limit.
- D. As part of the preplanning determine which will occur first, remarks from citizens or remarks from the governing body. Hearing from citizens first gives governing body members an opportunity to think through the issue.
- E. The decorum of a meeting can be improved by addressing all persons as Mr., Mrs., or Miss.
- F. Any citizen wanting to speak before the governing body must sign the appearance request before the meeting begins.

1. At the appropriate place on the agenda the mayor/chairman will recognize those persons wishing to speak.
 2. Once such citizen has been recognized, he should state his name and address.
- G. All of the citizens' comments must directly pertain to the item on the agenda being discussed. Should any citizens' comments and conversation not pertain to the item, such citizen shall be asked to wait to make their comments when the governing body gets to that particular item on the agenda, or if no such item appears on the agenda, then their remarks shall be made when the governing body considers new business.
- H. Every citizen's conversation and comments shall be limited to _____ minutes discussion unless such time is extended or shortened by the mayor/chairman.
- I. All questions and comments must be directed to the mayor/chairman and no citizen may address and/or question any individual governing body member or staff member except with the permission of the mayor/chairman.
- J. No gestures or activities intended to disturb the order and decorum of the governing body meeting shall be permitted.
- K. No citizen shall speak or comment so as to distract, disturb or interrupt any other speaker but shall only make comments after the mayor/chairmen has recognized him and after he has stated his name and address.
- L. Any citizen who shall wantonly disturb the lawful assembly of the governing body meeting shall be asked by the mayor/chairman to leave the meeting and in the event that such citizen will not leave the public assembly and continues to disturb and disrupt such assembly, such person may be subject from removal from the chamber for disturbing the peace.

TAB #6
NEPOTISM

NEPOTISM

OKLAHOMA STATUTES

Section 481-487 of Title 21 and Section 8-106 of Title 11 The offense is committed when any executive, legislative, ministerial or judicial officer or any other authority of the municipal government appoints or vote's to appoint any person related to any governing body member, or himself by consanguinity (blood) or affinity (marriage) within the third degree. Employees hired before the governing body members take office are not affected.

Although this rule seems simple enough, it is difficult to apply. For example, is it proper to appoint any of the following persons to municipal office: the mayor's great-uncle; a council member's cousin; the wife of the brother of the appointing officer's spouse; or the adopted son of the appointing officer's step-child?

To learn what constitutes nepotism-it is necessary to look in two titles of the Oklahoma Statutes, study three Oklahoma Supreme Court cases, and read almost 200 Attorney General opinions. The following guidelines may simplify the problem.

First, determine whether the position of the officeholder who is related to the applicant falls within the nepotism laws. Three questions will settle the matter: (1) is the appointing officer related to the applicant; (2) is any member of the governing body related to the applicant; (3) is the applicant's appointment pan of any agreement between the appointing officer and another officer to employ each other's relatives? If all three questions are answered in the negative, the applicant may be hired.

Second, determine whether the applicant is related to the officeholder within the third degree. This refers to parents, grandparents, great- grandparents, uncles, aunts, brothers, sisters, children, grandchildren, great-grandchildren, nephews and nieces of either the officer or the officer's spouse. The word "children" includes adopted children and stepchildren. Spouses of persons so related to the officer by consanguinity also are ineligible for employment. However, spouses of persons related to the officer by affinity are eligible because no relationship by affinity exists between the officer and his spouse's in-laws.

Third, determine whether the job that the relative seeks is continuous. Odd jobs not of a continuous nature and unconnected with the duties of the appointing officer or governing body do not constitute employment for purposes of the nepotism laws. Reliance on the exception should be used with caution because the Attorney General opinions on this point draw very fine distinctions.

Violations of the nepotism statutes have been found even when the "odd job" exception was used to justify hiring relatives for short-term emergency work.

Fourth, determine whether the officer assumed office before his relative was employed by the municipality. If the relative's appointment occurred first and if the officer has no subsequent requirement to vole for re-appointment of his relative, no violation of the nepotism statute occurred. If his relative's original employment was valid, the officeholder may properly approve the relative's compensation and promotion.

Fifth, if the citizens vote on persons to hold an office, the nepotism laws do not apply.

Persons Related to a Board Member by Blood Who are Ineligible for Employment	Persons Related to a Board Member's Spouse Who are and are Not Eligible for Employment	
INELIGIBLE	INELIGIBLE	ELIGIBLE
Parents	Parents	-
Grandparents	Grandparents	-
Great Grandparents	Great Grandparents	-
Uncles and Spouse	Uncles	Spouse
Aunts and Spouse	Aunts	Spouse
Brothers and Spouse	Brothers	Spouse
Sisters and Spouse	Sisters	Spouse
Children and Spouse	Children	Spouse
Grandchildren and Spouse	Grandchildren	Spouse
Nephews and spouse	Nephews	Spouse
Nieces and Spouse	Nieces	Spouse

NOTE: Children includes adopted and step children.

TAB #7
DUAL OFFICE HOLDING

DUAL OFFICE HOLDING

(Excerpts from the Oklahoma Statutes)

Title 11, Section 8-106

No elected or appointed official or other authority of the municipal government shall appoint or elect any person related by affinity or consanguinity within the third degree to any governing board member or to himself or, in the case of a plural authority, to any one of its members to any office or position of profit in the municipal government.

The provisions of this section shall not prohibit an officer or employee already in the service of the municipality from continuing in such service or from promotion therein. A person may hold more than one office or position in a municipal government as the governing body may ordain. A member of the governing body shall not receive compensation for service in any municipal office or position other than his elected office. (Amended, effective 11-1-84.)

Title 21, Section 481

It shall be unlawful for any executive, legislative, ministerial or Judicial officer to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree, to any clerkship, office position, employment or duty in any department of the State, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages, pay or compensation of such appointee is to be paid out of the public funds or fees of such office. Provided, however, that for the purposes of this chapter, a divorce of husband and wife shall terminate all relationship by affinity that existed by reason of the marriage, regardless of whether the marriage has resulted in issue who are still living.

Title 21, Section 482

It shall be unlawful for any such executive, legislative, ministerial or judicial officer mentioned in the preceding section, to draw or authorize the drawing of any warrant or authority for the payment out of any public fund, of the salary, wages, pay or compensation of any such ineligible person, and it shall be unlawful for any executive, legislative, ministerial or judicial officer to pay out of any public funds in his custody or under his control the salary, wages, pay or compensation of any such ineligible person.

Title 21, Section 483

It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint and furnish employment for any person whose services are to be rendered under his direction and control and paid for out of the public funds, and who is related by either blood or marriage within the third degree to any other executive, legislative, ministerial or judicial officer when such appointment is made in part consideration that such other officer shall appoint and furnish employment to any one so related to the officer making such appointment.

Title 21, Section 485

Any executive, legislative, ministerial or judicial officer who shall violate any provision of this Article, shall be deemed guilty of a misdemeanor involving official misconduct, and shall be punished by a fine of not less than One Hundred (\$100.00) or more than One Thousand Dollars (\$1,000.00), and shall forfeit his office.

Title 21, Section 486

Every person guilty of violating the provisions of this Article, shall, independently of, or in addition to any criminal prosecution that may be instituted, be removed from office according to the mode of trial and removal prescribed in the Constitution and laws of this state.

Title 21, Section 487

Under the designation executive, legislative, ministerial or judicial officer as mentioned herein are included the Governor, Lieutenant Governor, Speaker of the House of Representatives, Corporation Commissioners, all the heads of the departments of the state government, judges of all the courts of this state, mayors, clerks, councilmen, trustees, commissioners and other officers of all incorporated cities and towns, public school trustees, officers and boards of managers of the state university and its several branches, state normals, the penitentiaries and eleemosynary institutions, members of the commissioners court, and all other officials of the state, district, county, cities or other municipal subdivisions of the state.

Title 51, Section 6

Except as may be otherwise provided, no person holding an office under the laws of the state and no deputy of any officer so holding any office, shall during the persons term of office, hold any other office or be the deputy of any officer holding any office, under the laws of the state. The provisions of this section shall not apply to:

1. Notaries public;
2. Members of the State Textbook Committee;
3. County free fair board members;
4. Municipal and county law enforcement officers serving in positions as law enforcement officers of both such governmental entities upon such terms and conditions as are mutually approved by resolutions adopted by the board of county commissioners and governing body of the municipality employing such officers;
5. Any person holding a county or municipal office or position or membership on any public trust authority, who is appointed to a board or commission that relates to federal, state, county or municipal government and is created by the United States Government, the State of Oklahoma or a political subdivision of the state, except where the duties of the offices or positions conflict;

6. Any elected municipal officers and school board members who are appointed to a state board commission, or similar entity if there is no compensation for such services other than reimbursement for necessary travel expenses pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes;
7. Any trustee of a public trust, who is appointed as a trustee of a different public trust or any trustee of the Tulsa County Facilities Authority who may also be employed by the Department of Transportation;
8. Law enforcement officers employed by municipal or county law enforcement departments or agencies, other than those law enforcement officers elected or appointed as sheriff chief of police or some similar position in which they are the head of a county or municipal law enforcement agency, who are elected to local boards of education, provided, the provisions of this paragraph shall not prohibit any law enforcement officer employed by a municipality having a population often thousand (10,000) or fewer people from serving as a member of a local board of education;
9. Any member of the Oklahoma Highway Patrol Division of the Department of Public Safety who is elected to a local board of education;
10. Any District Supervisor, Assistant District Supervisor, Team Supervisor, Parole Officer 1 or Parole Officer 2 of the Department of Corrections who is elected or appointed to a city council;
11. Any trustee or director of a rural electric cooperative, or port authority who is appointed or elected to a state, county or municipal board commission or similar entity;
12. County employees who are elected as members of town or city councils;
13. Municipal, county, state or tribal law enforcement or peace officers operating under cross-deputization agreements with an Indian tribe or branch of the federal government;
14. Municipal or county law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by resolution adopted by the governing body of the municipality or county and the governing board of the institution of higher education;
15. State law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by written agreement between the Commissioner of Public Safety and the governing board of the institution of higher education;
16. Municipal and county law enforcement officers serving in positions as part-time rangers under the Oklahoma Tourism and Recreation Department;

17. The administrator of the Scenic Rivers Commission serving in the position of a park ranger under the Oklahoma Tourism and Recreation Department;
18. Members of the University Hospitals Authority;
19. Any person holding a state office or position who is a non-compensated reserve force deputy sheriff or a non-compensated reserve municipal police officer;
20. Any person holding a state office or position who serves as a special assistant district attorney without compensation;
21. Any elected or appointed member of a local school board who is a member of a municipal planning commission;
22. Any elected or appointed member of a local school board who is a member or an officer of a volunteer fire department; and
23. Directors or officers of a rural water district and chiefs of municipal fire departments or rural fire districts who are appointed or elected to an unsalaried office in a state, county, municipal, school, or vocational-technical school board, commission, or similar entity, except where the duties of the office would create a conflict of interest.

The provisions of this section shall not prohibit any person holding an office under the laws of the state or any deputy of any officer so holding any office from serving upon the board of Oklahoma Futures or upon the board of directors of the Oklahoma center for the Advancement of Science and Technology. The provisions of this section shall not prohibit a member of the board of directors of the Oklahoma Center for the Advancement of Science and Technology from serving upon the board of Oklahoma Futures.

Any salaries, emoluments or benefits that would otherwise be paid by the agency or political subdivision to a loaned employee or officer shall instead be paid to the regular employer of such employee. The loaned employee shall in turn be paid regular salary and benefits the same as if continuing regular employment with the permanent employer.

SECTION 2

This act shall become effective July 1, 1998.

SECTION 3

It is being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

TAB #8
PUBLIC COMPETITIVE BIDDING ACT

PUBLIC COMPETITIVE BIDDING ACT OF 1974

The Act require that all contracts exceeding **Fifty Thousand Dollars (\$50,000.00)** in amount awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs thereto shall be let and awarded to the lowest responsible bidder by free and open competitive bidding after solicitation for sealed bids in accordance with the Act. It further provides that no work shall be commenced until a written contract is signed and all required bonds and insurance have been provided by the contractor to the awarding agency. Contracts cannot be split to avoid the provisions of the Act.

Public improvements do not include the direct purchase of materials, equipment or supplies by the public agency.

I. Bid Notices

- A. Notice of the proposal to award a construction contract shall be made as follows:
 - 1. By mailing, at least 20 days prior to the time set for opening bids, to all prospective bidders who have made known, in writing to the public agency, their interest in bidding within the last 12 months;
 - 2. By publication, in a newspaper of general circulation in the county where the work is to be performed, for two (2) consecutive weekly issues, with the first publication to be at least 20 days prior to the date set for the opening bids; and
 - 3. If the contract exceeds Fifty Thousand Dollars (\$50,000.00), by publication in a trade or construction publication.
- B. The bid notices shall contain the following information:
 - 1. A description of the construction contract, either in the bid notice itself or by reference to the bidding documents;
 - 2. The name of the person from whom the complete set of bidding documents can be obtained;
 - 3. The date, time, and place for the opening of bids;
 - 4. The name and office location and address of the public agency to whom the sealed bids should be submitted; and
 - 5. Any additional information regarding the project deemed of interest by the awarding public agency.
- C. Bidding documents to be on file:
 - 1. At least one set of bidding documents must be on file in the main office of the awarding agency 20 days prior to the date set for opening bids; and
 - 2. The agency must have a sufficient number of complete sets to provide one to any prospective bidder upon request. (the agency may require a reasonable deposit, not to exceed the actual cost of duplicating and printing). All or part of the deposit may be retained by the agency, if so stated in the notice for bids.

II. Bids

- A. Bids must be submitted not more than 96 hours, excluding Saturday, Sundays, and holidays, before the time set for opening bids. Any bid received before that time or after the time set for opening bids shall not be considered by the public agency and shall be returned unopened to the bidder.
- B. All properly received bids shall be opened only at the time and place mentioned in the bid notice and shall be read aloud at such time. Such bid opening shall be open to the public and to all bidders.

- C. Each bid must be accompanied by a certified or cashiers check of bid bond equal to five percent (5 %) of the amount bid. This money shall be deposited with the awarding public agency as a guarantee in the event that the apparently successful bidder fails to execute the contract or fails to provide the required bonds and insurance to the awarding public agency.
- D. The bid shall also include a written statement under oath disclosing any relationship between the bidder and the architect, engineer, or other party to the project, or between the officers thereof.
- E. The bid shall also be accompanied with the non-collusion affidavit.
- F. All bids, both successful and unsuccessful, and all contracts and all required bonds shall be open for public inspection at the public agency for a period of five (5) years from the date of opening of the bids or for a period of three (3) years from the date of completion of the contract, which ever is longer.

III. Award of Contract.

- A. The public agency has the right to reject all bids.
- B. If awarded, the contract must be awarded to the lower bidder, except:
 - 1. Resident bidders are preferred over non-resident bidders, unless the non-resident bid is 5% less than the bid submitted by the resident bidder or the non-resident bidder is a resident of a state with which Oklahoma has a reciprocal bidding agreement; or
 - 2. The agency places on file a publicized statement setting for the reason for accepting a bid other than the lowest bid.
- C. The agency must award the bid within 30 days after the opening of the bids. This time may be extended, not to exceed 15 days where State and Local funds are involved, or 90 days where funds of any agency of the United States Government are involved.
- D. The contract must be signed within the time specified in the bid notice, which shall not be later than 60 days from the award of the contract.
- E. Prior to the execution of a contract in **excess of \$50,000.00** the following documents must be submitted by the contractor to the awarding public agency:
 - 1. Certified check or irrevocable letter of credit equal to 5% of the bid;
 - 2. A performance bond or irrevocable letter of credit equal to contract price;
 - 3. A maintenance bond or irrevocable letter of credit equal to contract price for period of one (1) year.
 - 4. Public liability and worker's compensation insurance.
- F. Insurance or bonds required by the Act must be obtained from companies licensed to do business in Oklahoma.

IV. Procedure During Construction.

- A. All statements or invoices submitted to the public agency for work performed must contain a sworn statement by the supervisory official of the agency that such work has actually been performed. No payment can be made by the agency until it has been provided with this statement.
- B. No public construction contract shall be assignable by the successful bidder without written consent of the governing body of the awarding public agency, evidenced by resolution. In no event shall such a contract be assigned to a bidder who was declared by the awarding public agency not to be a responsible bidder in the consideration of bids received for the particular contract.
- C. The contract shall provide for 10% retainage. When the project is 50% complete, the retainage shall be reduced to five percent (5%) if it is determined that satisfactory progress is being made and if the surety approves.
- D. Change orders.
 - 1. Change orders of an amount not to exceed 15% of the original contract price can be made for contracts of One Million Dollars (\$1,000,000.00) or more.

2. Change order of an amount not to exceed ten percent (10%) of the original contract price can be made for contracts of One Million dollars (\$1,000,000.00) or more.
3. If the contract is bid on unit basis or has alternatives or add items bid with the original bid and included in the contract as options then the amount of the change is not included in determining the above percentages.

V. **Inspection** The awarding public agency shall make provision for the inspection of projects prior to acceptance by the said agency and shall approve claims for payment only after proper inspection has been made as provided in the plans and specifications for said project.

VI. **No Bid Received** If no timely bid is received, the agency may negotiate a contract with a prospective contractor.

- A. The amount of contract awarded cannot exceed \$50,000.00.
- B. The contract shall be signed within six months of the bid opening date.
- C. The work to be performed shall be as specified in the initial bidding documents.
- D. Bonds shall be required as provided for in the Act.

VII. **Emergencies**

- A. The provisions of the Act requiring **public bidding** do not apply when the agency declares an emergency.
- B. An emergency may be declared by a 2/3 vote of all members of the agency or by an administrative officer designated by a vote of all the members.
- C. An emergency is limited to conditions resulting from a sudden unexpected happening wherein the public health or safety is endangered.
- D. The reasons for an emergency must be entered into the minutes of the agency.
- E. The contract cannot exceed Thirty-five Thousand Dollars (\$35,000.00).
- F. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall be notified within ten (10) days and sent copies of the minutes.
- G. All other provisions of the Act apply, e.g. bonds, insurance, etc.

VIII. **Violations Under the Act.**

- A. Of course, any contract awarded in violation of the Act is subject to being set aside.
 1. Action to enjoin enforcement of contract must be commenced within ten (10) days after the contract is signed.
 2. Action may be brought by an unsuccessful contractor or any taxpayer.
- B. It is unlawful for the chief administrative officer or any member of the agency or their relatives within the third degree, to have an economic interest in the contract.
- C. As previously noted, no contract may be split to avoid application of the Act.
- D. Neither the agency nor anyone connected therewith shall require or attempt to require the contractor to obtain insurance or bonds from a particular company.

VIII. **Penalties under the Act.**

Any person who knowingly violates the provisions of this act, shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

TAB # 9
TITLE 82

OKLAHOMA STATUTES
TITLE 82. WATERS AND WATER RIGHTS
CHAPTER 18

INDEX:

SECTION	TITLE	PAGE
1324.1	Short Title	1
1324.2	Definitions	1
1324.3	Purpose of Districts – Organization	2
1324.4	Petition for Incorporation of District – Contents	2
1324.5	Notice of Filing & Pendency of Petition – Public Hearing - Notice of Hearing	3
1324.6	Duties of Board of County Commissioners at Hearing - Declaration of Incorporation	4
1324.7	Board of Directors – Bylaws	4
1324.8	Filing of Water Purchase Contracts	5
1324.9	Board as Governing Body – Meetings – Vacancies – Rules & Regulations – Records	5
1324.10	Powers of District	5
1324.11	Revenues	7
1324.12	Benefit Units	8
1324.13	Annexation of Additional Territory – Petition	8
1324.14	Notice of Filing of Annexation Petition	8
1324.15	Hearing on Annexation Petition	9
1324.16	Term of Office – Annual Meeting – Election – Training Workshops – Nepotism	10
1324.17	Officers	10
1324.18	Chairman – Compensation for Services – District Audits, Reviews or Compilations	10
1324.19	Dissolution of District Prior to Acquisition of Assets	11
1324.20	Dissolution of District – Disposition of Facilities & Property	11
1324.21	Release of Lands From District – Petition – Notice	11
1324.22	Exemption From Taxes & Assessments	12
1324.23	Exemption From Jurisdiction & Control of Corporation Commission	12
1324.24	Validating Provisions	12
1324.25	Consolidation of Two or More Districts – Procedures	12
1324.26	Enlargement of Purposes & Powers – Procedure	14
1324.27	Definitions	14
1324.28	Organization of District	15
1324.29	Written Proposals – Approval or Disapproval – Petition For Establishment of District – Hearing – Orders	15
SECTION	TITLE	PAGE
1324.33	Dissolution of Corporation – Transfer of Assets, Property, Obligations & Benefits	16
1324.34	Order Constituting Rural Water District	17
1324.35	Continuation of Certain Services	17

ACQUISITION OF ASSETS

SECTION	TITLE	PAGE
1324.41	Definitions	17
1324.42	Prohibition of Acquisition of District Assets or Merger If Action Leads to Control of District Unless Approved By Board	18
1324.43	Statement & Information Provided by Acquiring Party -- Type of Acquiring Party – Amendment of Statement	18
1324.44	Board Approval of Acquisition – Conditions For Disapproval – Public Hearing	20
1324.45	Notice of Public Hearing – Payment of Expenses – Security	21
1324.46	Domestic Water Public Utility as Acquiring Party – Approval Procedures – Inapplicability of Certain Provisions	21
1324.47	Jurisdiction	21
1324.48	Board – Expenses of Analysis or Investigation - Payment	22
1324.49	Authority to Enjoin Violations & Enforce Compliance	22
1324.50	Willful & Knowing Violations – Penalties	22

OKLAHOMA STATUTES

TITLE 82. WATERS AND WATER RIGHTS

CHAPTER 18. RURAL WATER, SEWER, GAS AND SOLID WASTE MANAGEMENT DISTRICTS ACT

1324.1 SHORT TITLE

This act may be cited as the “RURAL WATER, Sewer, Gas and Solid Waste Management Districts Act.”

1324.2 DEFINITIONS

As used in this Act, unless the context clearly requires otherwise:

1. “District” means a public nonprofit water district, a nonprofit sewer district, a public nonprofit natural gas distribution district or a nonprofit solid waste management district or a district for the operation of all or a combination of waterworks, sewage facilities, natural gas distribution facilities and solid waste management systems, created pursuant to the act;
2. “Board” means the governing body of a district;
3. The terms “board of county commissioners” and “county clerk” shall mean, respectively, the board of county commissioners and county clerk of the county in which the greatest portion of the territory of any proposed rural water district, rural sewer district, rural natural gas

distribution district or rural solid waste management district is located;

4. "Corporation" means a not-for-profit corporation organized:
 - a. Pursuant to the provisions of the Oklahoma General Corporation Act for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly to its shareholders or members as such and having no capital stock; and
 - b. For the purpose of developing and providing rural water supplies to serve rural residents.
5. "Rural resident" means any natural person, firm, partnership, association, corporation, business trust, federal agency, state agency, state or political subdivision thereof, municipality of ten thousand (10,000) persons or less, or any other legal entity, owning or having an interest in lands within the rural area located within the boundaries of the district;
6. "Rural area" means any area lying outside the corporate limits of any municipal corporation and includes any areas of open country, unincorporated communities, and, with the consent of the governing body thereof by ordinance duly adopted, may include the area within the corporate limits of any municipality having a population of less than ten thousand (10,000) persons according to the last decennial census, when said municipality is one of the petitioners for creation of a district or for the annexation of additional territory as provided by Section 1324.13 of this title; provided, further, that when a water, sewer, natural gas or solid waste management district is totally within the municipal city limits of a city with ten thousand (10,000) population or less, the board of directors of the sewer, natural gas, water or solid waste management district shall be the governing body of the town. Provided, further, that when a city or town with a population of ten thousand (10,000) or less receives the majority of its water from a rural water, natural gas, sewer or solid waste management district, any resident of said city or town shall be eligible to serve on the board of directors. Provided, further, that areas lying within the corporate limits of any municipality having a population of more than ten thousand (10,000) persons according to the last decennial census may be included in a water, sewer, natural gas or solid waste management district with the consent of the governing body by ordinance duly adopted when such water, sewer, natural gas or solid waste services are not and cannot be provided in a reasonable time by other source;
7. "Benefit unit" means a legal right to one service connection to the district's facilities and to participate in the affairs of the district;
8. "Participating member" means any rural resident who has subscribed to one or more benefit units;
9. "Sewage facilities" means the necessary facilities of collection, transportation, storage, treatment or processing and disposal or release of sewage;
10. "Solid waste management system" means the entire process of collection, transportation, storage, processing and disposal of solid wastes;
11. "Water works" means the necessary facilities from the initial source of the place for consumer utilization, and includes supply, storage, treatment, transportation and distribution;

12. "Solid waste" means all putrescible and non-putrescible refuse in solid or semisolid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial wastes and hazardous wastes including explosives, pathological wastes, chemical wastes, herbicide and pesticide wastes; and
13. "Gas distribution facilities; means the necessary facilities from the initial source to the place for consumer utilization and includes supply, transportation and distribution.

1324.3. PURPOSE OF DISTRICTS - ORGANIZATION

Public nonprofit rural water districts, public nonprofit rural sewer districts, public nonprofit natural gas distribution districts and public nonprofit rural solid waste management districts may be organized under this act for the purpose of developing and providing an adequate rural water supply, gas distribution facilities, sewage disposal facilities and solid waste management system to serve and meet the needs of rural residents within the territory of the district. The board of county commissioners of each county in this state shall have the power and it shall be their duty, upon a proper petition being presented, to incorporate and order the creation of rural water, sewer, gas and solid waste management districts in the manner hereinafter provided

1324.4.PETITION FOR INCORPORATION OF DISTRICT – CONTENTS

Any two or more owners of lands may file with the county clerk a petition addressed to the board of county commissioners praying for the incorporation of a district under the provisions of this act. The petition shall give a legal description of the lands owned by the petitioners and other lands which the petitioners propose to be incorporated into the proposed district and shall state:

1. That the rural residents within such territory are without an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to meet their needs;
2. That the construction, installation, improvement, maintenance and operation of all or any combination of water works, sewage facilities, gas distribution facilities and solid waste management systems are necessary to provide an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to serve rural residents of the district;
3. That such improvements or works will be conducive to and will promote the public health, convenience and welfare; and
4. That there is sufficient water available for purchase or available for appropriation by the Oklahoma Water Resources Board to serve the needs of the district. Attached to said petition shall be an accurate map or plat of the proposed territory to be embraced within the district showing the location of said territory by reference to sections or portions thereof and the township and range wherein the same are located.

1324.5. NOTICE OF FILING AND PENDING OF PETITION – PUBLIC HEARING – NOTICE OF HEARING

Whenever a petition as provided in the preceding section is filed with the county clerk, he shall thereupon give notice to the county commissioners of the filing and pending of said petition, whereupon, if the petition proposes the creation of a water district, the county commissioners shall immediately determine from the Oklahoma Water Resources Board whether or not there is water available to adequately serve the proposed district, and the county commissioners shall forthwith enter their order setting a public hearing upon said petition for a day certain and directing the county clerk to give notice of said hearing by legal publication for two (2) consecutive weeks in a newspaper published in each county containing lands embraced within the boundaries of the proposed district. Said newspapers must have a general circulation in the county of publication. Provided, however, if there is a county in which there is no newspaper of general circulation published, notice of such hearing shall be given by posting in five public places within said county, one of which shall be the county courthouse. Such notice shall contain: a brief and concise statement describing the purpose of such hearing; a description of the territory to be embraced within said district; a notice to all persons residing or owning property and incorporated municipalities within the proposed district that they may appear upon the date and at the time and place of said hearing to show cause, if any there be, why said petition should not be granted; and a notice to all rural residents of the proposed district that if said district shall be ordered created, an organizational meeting to elect a board of directors and officers and to adopt bylaws will be held immediately following the entry of the order creating said district. In addition, the county clerk shall, at least ten (10) days before the date fixed for said hearing give or send by registered or certified mail notice thereof to each of the petitioners.

1324.6. DUTIES OF BOARD OF COUNTY COMMISSIONERS AT HEARING – DECLARATION OF INCORPORATION

At the time and place set for the hearing and consideration of the petition, it shall be the duty of the board of county commissioners to determine:

1. Whether proper notice of the hearing has been given as required by Section 1324.5 of this title;
2. Whether the rural residents of the area described in the petition are without an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to meet their needs;
3. Whether the construction, installation, improvement, maintenance and operation of all or combination of water works, sewage facilities and solid waste management systems are necessary to provide an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to serve rural residents of the district;
4. Whether such improvements or works will be conducive to and will tend to promote the public health, convenience and welfare;
5. The area which should be included in the district; and

6. Whether there is sufficient water available for purchase or available for appropriation by the Oklahoma Water Resources Board.

If, upon such consideration, it shall be found that petition is in conformity with the requirements of this act, and that such a district should be created the board of county commissioners shall thereupon immediately declare the land described in the petition or any part thereof to be incorporated as a district under the name of “Rural Water and/or Sewer and/or Gas and/or Solid Waste Management District No. ____, _____ County, Oklahoma” (inserting number in order of incorporation and name of county) and thereupon the district shall be a body politic and corporate and an agency and legally constituted authority of the State of Oklahoma for the public purposes set forth in this act. The board of county commissioners shall thereupon enter upon its records full minutes of such hearing, together with its order creating the rural district under said corporate name for the purposes of this act. Such districts shall not be political corporations or subdivisions of the state within the meaning of any constitutional debt limitations, nor shall said districts have any power or authority to levy any taxes whatsoever or make any assessments on property, real or personal.

1324.7.BOARD OF DIRECTORS – BYLAWS

Immediately following the incorporation of the district by the board of county commissioners, there shall be a special meeting of the owners of land within any such district to select from their number a board of directors and to adopt bylaws for governing and administering the affairs of the district. The number of members of said board, not to exceed nine (9), shall be determined by a majority vote of those owners of land present. Any original director who shall fail to subscribe to one or more benefit units and pay the established unit fee for each unit to which he subscribes within thirty (30) days after entry in the minutes of the board of a declaration of availability of such benefit units for subscription shall forfeit his office. Those owners of land present at such special meeting may adopt and amend any of such proposed bylaws and may propose or adopt additional or other bylaws. Such bylaws may be amended at any annual or special meeting of the participating members of the district.

1324.8.FILING OF WATER PURCHASE CONTRACTS

When a water purchase contract has been executed, the board of directors shall either file a copy of the water purchase contract with the Oklahoma Water Resources Board or file an application for appropriation of water with the board.

1324.9. BOARD AS GOVERNING BODY – MEETINGS – VACANCIES – RULES AND REGULATIONS --- RECORDS

The board shall be the governing body of the district and shall meet annually on a date prescribed by the bylaws and at such other times as may be determined by the board or upon call by the chairman or any two members of the board. Vacancies on the board shall be filled for the unexpired term, and until such appointee’s successor is elected and has qualified, by appointment by the remaining members of the board. The board shall adopt such rules and regulations in conformity with the provisions of this act and the bylaws of the district as are deemed necessary for the conduct of the business of the district. It shall be the duty of the secretary to cause an entry

to be made upon its records showing all of its minutes, decisions and orders made pursuant to the provisions of this act.

1324.10. POWERS OF DISTRICT

- A. Every district incorporated hereunder shall have perpetual existence, subject to dissolution as provided by the Rural Water, Sewer, Gas and Solid Waste Management Districts Act, and shall have power to:
1. Sue and be sued, complain and defend, in its corporate name;
 2. Adopt a seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;
 3. Acquire by purchase, lease, gift, or in any other manner, and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein; and to acquire and own water rights or rights to natural gas under the laws of this state, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, facilities, property rights and transportation and distribution lines, facilities, equipment or systems necessary to transport, distribute, sell furnish and dispose of water or gas, and either subsequent to, or in connection with, the installation of water distribution, sewage facilities, gas distribution facilities or solid waste management system, to construct, operate and maintain sewage disposal facilities or solid waste management system to serve the users of the district. Provided, all projects of the district shall be self-liquidating, and the costs of construction shall be payable solely from the income, revenues, and properties of the district, and all property, assets and revenues of the district shall constitute a special fund for the accomplishment of the purposes and objectives of the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;
 4. Borrow money and otherwise contract indebtedness for the purposes set forth in this act, and without limitation of the generality of the foregoing, to borrow money and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and, in connection with such loan or grant, to enter into such agreements as the United States of America or such corporation or agency may require; and to issue its notes or obligations therefore, and to secure the payment thereof by mortgage, pledge or deed of trust on all or any property, assets, franchises, rights, privileges, licenses, rights-of-way, easements, revenues, or income of the said district;
 5. Make bylaws for the management and regulation of its affairs;
 6. Appoint officers, agents and employees, to prescribe their duties and to fix their compensation; and to employ such common and skilled labor and professional and other services as may be necessary to the proper performance of such work or improvement as is proposed to be done within any such district, and the maintenance thereof;
 7. Sell or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest therein, which shall not be necessary to the carrying on of the business of the district;
 8. In connection with the acquisition, construction, improvement, operation or maintenance of its transportation and distribution lines, system equipment, facilities or apparatus, use any street, road, alley or highway which is owned or held by the state, or any political subdivision. The location of sewer, gas or water lines or other facilities connected with the water, sewer, gas or solid waste management district in such streets, roads, alleys or

highways, must be concurred in by the governing or appropriate bodies of the cities, counties or state, which have jurisdiction over said property. The district plans for locating lines shall comply with the written specifications for location of lines and facilities as set forth by the governing body of the county for property within their jurisdiction. If the governing body of the county does not have written specifications for location of lines and facilities for property within their jurisdiction, they shall concur with the district plans or provide the district with an alternative plan. The governing body of any such city, county or state agency may require that if a district attaches a gas line to any bridge, underpass or overpass, that such district furnish liability insurance in an amount to be determined by the governing body, covering damage which may be occasioned to such bridge, underpass or overpass, as a result of fire or explosion originating from said gas line. Provided that the relocation or rearrangement of any public utility's or common carrier's facilities of service required to be made to permit or accommodate installation or maintenance of a district's facilities on, across or under any such publicly owned or held real property or interest therein shall be performed at the sole cost of the district;

9. Make any and all contracts necessary or convenient for the exercise of the powers of the district;
 10. Fix, regulate and collect rates, fees, rents or other charges for water, gas and any other facilities, supplies, equipment or services furnished by the district. Said rates shall be just, reasonable and nondiscriminatory;
 11. Do and perform all acts and things, and to have and exercise any and all powers as may be necessary, convenient or appropriate to effectuate the purposes for which the district is created;
 12. Buy from or sell water or gas to any municipality, or to another district created under this act, or to any other legal entity engaged in the distribution and storage of water or gas, provided quantities of water sold do not exceed any vested right of appropriation granted by the Oklahoma Water Resources Board;
 13. Enter into contracts with the United States of America, or any agency thereof, or the state, or any political subdivision or agency thereof, for the construction, operation and maintenance of structures needed to provide water storage to meet present and future anticipated needs and demands of the district;
 14. Enter into contracts jointly with any other district, municipality, city or town, the state, the United States of America, or any governmental agency, for the purpose of purchasing water, constructing, acquiring, operating water facilities or purchasing or leasing reservoir space;
 15. Enter into contracts for fire protection and to construct, enlarge, extend or otherwise improve community facilities providing essential services to rural residents, including, but not limited to, fire protection, ambulance service, community centers and outdoor recreational facilities; and
 16. Have and exercise the right of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes, provided, that the use of said eminent domain provisions, shall be restricted to the purpose of developing and providing rural gas distribution, water works and sewage disposal facilities. Provided, however, no personal or real property, easement or right-of-way of any utility may be acquired by eminent domain.
- B. No district organized hereunder shall sell or export water or gas pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act outside of the state without consent of the Legislature.

- C. Appropriative rights to water held by the district shall not be alienated or encumbered apart from the alienation or encumbrance of the facilities of the district.
- D. The board of directors shall, on or before July 1 of each year, file with the county clerk of each county in which any part of said district is located, an annual report for the preceding calendar year. Such report shall list all monies collected and all monies disbursed during the calendar year. Said report shall also specify any and all indebtedness outstanding at the end of the calendar year.

1324.11. REVENUES

- A. Rural water, sewer, gas and solid waste management districts formed pursuant to this act shall be operated without profit, but the rates, fees, rents or other charges for water, gas and other facilities, supplies, equipment or services furnished by the district shall be sufficient at all times:
 - 1. To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its affairs and the principal of and interest on the obligations issued or assumed by the district in the performance of the purposes for which it was organized; and
 - 2. For the creation of adequate reserves for the retirement of indebtedness, maintenance and other purposes necessary and expedient to meeting all obligations of the district.
- B. The revenues of the district shall be devoted, first, to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and, thereafter, to such reserves for improvements, retirement of indebtedness, new construction, depreciation and contingencies as the board of directors may from time to time prescribe.
- C. Rates shall be reviewed and adjusted as deemed necessary by the board of directors to ensure that revenues will be adequate for, but not exceed, the amounts required for the purposes provided for in subsection B of this section.

1324.12. BENEFIT UNITS

Plans, specifications, proposed operating budget, schedules of unit fees and benefit units, rules and regulations, estimates of cost for any proposed improvement authorized by this act shall be filed with the secretary of the district. The total benefits of any such improvement shall be divided into a suitable number of benefit units. Upon determining a schedule of benefit units and unit fees, the board of directors shall cause a declaration of availability of such units for subscription to be entered in its minutes and except for residents of cities and towns as provided in paragraph 5 of Section 1324.2 of this title any individual who fails to become a participating member within thirty (30) days thereafter shall not be eligible to hold office as a director, nor shall any individual, firm, partnership, association, or corporation which fails to become a participating member within ninety (90) days after such declaration be qualified to participate in any meeting or vote at any election held thereafter unless such individual, firm, partnership, association, or corporation shall thereafter become a participating member. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners or tenants of land located within the district who are not participating members may subscribe to such units as the Board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members.

1324.13. ANNEXATION OF ADDITIONAL TERRITORY – PETITION

Lands outside the boundaries of any district, which can economically be served by the facilities of the district, may be annexed to such district. Any two or more owners of such lands shall file a petition for annexation with the county clerk addressed to the board of county commissioners, which shall give the legal descriptions of the lands owned by the petitioners and other lands which the petitioners propose to be annexed to such district, and shall state:

1. The name of the district to which annexation is desired;
2. That such lands are without an adequate water supply, sewage facilities, gas distribution system or solid waste management system;
3. That annexation to said district will be conducive to and will promote the public health, convenience and welfare of rural residents in the district; and
4. That adequate water is available to the district or has been appropriated to the district by the Oklahoma Water Resources Board.

1324.14. NOTICE OF FILING OF ANNEXATION PETITION

Notice shall be given, as provided in Section 5, of the filing of a petition for annexation fixing the time and place of hearing.

1324.15. HEARING ON ANNEXATION PETITION

At the time and place set for the hearing and consideration of the petition, the board of county commissioners shall ascertain whether proper notice has been given and whether the statements contained in the petition are true. If true, and if a majority of the members of the board of the district to which annexation is desired do not object to such statement, the board of county commissioners shall enter into its minutes such findings and shall set forth in said minutes a description of the new boundaries of such district. Thereafter, owners of land located within the annexed territory shall be entitled to subscribe to such benefit units upon such terms and conditions as the board in its discretion may provide. Any owner of land located within any territory annexed to a district who shall subscribe to one or more benefit units and comply with terms and conditions provided by the board, shall be entitled to the same rights as participating members.

1324.16. TERM OF OFFICE – ANNUAL MEETING – ELECTIONS – TRAINING WORKSHOPS -- NEPOTISM

- A. Except as otherwise provided by law:
 1. The term of office of every member elected to an original board shall be until the date of the annual meeting of the participating members of either the first, second or third year following the year of the incorporation of the district. Members shall serve until their successors are elected and have qualified. As nearly as possible, the terms of an equal number of directors on any such board shall expire on each of the dates;
 2. The bylaws of the district shall specify the length of the term of office of its directors,

which term shall not exceed six (6) years. At the annual meeting of each year after the year of the election of the original board members, elections shall be held to elect directors to fill any position on the board, the term of office of which has expired, and any director so elected shall hold office until a successor is elected and has qualified. A director may be elected to succeeding terms without limitation; and

3. For the purpose of election of board members and for such other purposes as the bylaws may prescribe, annual meetings of participating members shall be held by each district each year following the year of incorporation of such district. The board of directors shall cause notice of the time and place of each annual meeting and the purpose thereof to be given to each of its participating members. Each participating member shall be entitled to a single vote, regardless of the number of benefit units to which the member has subscribed.

B.

1. A requirement for qualification to serve as a board member for a rural water district or a non-profit rural water corporation shall be a written pledge that upon election such board member shall attend a minimum of six (6) hours of workshop training to be offered periodically on a regional basis within twelve (12) months following election of such board member, and to be organized by the Oklahoma Water Resources Board in cooperation with the Oklahoma Rural Water Association with the purpose of study and instruction in areas of district financing, law, and the ethics, duties and responsibilities of district board members. Beginning July 1, 2001, all new and existing board members shall be required to obtain continuing education by attending a minimum of six (6) hours of workshop training every three (3) years;
2. The district or corporation shall reimburse all reasonable expenses incurred by any board member for attending such training workshop;
3. To avoid members having to interfere with their jobs or employment, such training sessions may be divided into three-hour segments, and insofar as possible be scheduled for evening sessions. Technology center school facilities, college facilities or other public facilities may be utilized in all parts of the state for convenience of the members. Such workshops must be offered within seventy-five (75) miles of the members' residences.

- C. Should any pledging board member fail to attend the workshop training as required in subsection B of this section, he or she shall be deemed ineligible to serve as a board member commencing at the next regularly scheduled meeting of the board following the twelve-month period. The remaining board members shall select from the membership, as provided by the district or corporation bylaws, another qualified member to fill the vacancy and that person shall pledge to attend the workshop training provided for in this section. The appointed member shall only serve until the next regularly scheduled election of board members and an election shall be held to fill the unexpired term of the vacated position.

- D. Upon the election of a board member, the provisions of Sections 481 through 487 of Title 21 of the Oklahoma Statutes relating to nepotism shall not prohibit any employee already in the service of the district from continuing in such service or from promotion therein. Provided, however, the board member related to the employee shall be excused from the board meeting during any discussion of or action taken on any matter that could affect the employment or compensation for employment of such employee.

1324.17. OFFICERS

The board of directors shall annually elect a chairman, vice-chairman, secretary and treasurer for a term of one (1) year and until a successor is elected and has qualified.

1324.18. DUTY OF CHAIRMAN – COMPENSATION FOR SERVICES – DISTRICT AUDITS, REVIEWS OR COMPILATIONS

- A. It shall be the duty of the chairman of the board of directors to keep in repair such works as are constructed by the district and to operate such works, all as directed by said board. The chairman and all persons who may perform any service or labor as provided herein shall be paid such just and reasonable compensation as may be allowed by the board of directors and said board shall annually prepare an estimated budget for the coming year, adjust rates, if necessary to produce sufficient revenue required by such budget.
- B,
 - 1. The board of directors of each district with a gross operating revenue of Fifty Thousand Dollars (\$50,000.00) or more during a fiscal year shall cause to be prepared, by an independent licensed public accountant or a certified public accountant, an annual financial audit in accordance with generally accepted auditing standards as of the end of each fiscal year. Copies shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year;
 - 2. The board of directors of each district with a gross operating revenue of less than Fifty Thousand Dollars (\$50,000.00) during a fiscal year shall cause to be prepared an annual review or compilation in compliance with standards promulgated by the American Institute of Certified Public Accountants. Copies of the review or compilation shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year for which the review or compilation is done.
- C. Each annual review, compilation or audit prepared pursuant to this section shall be reported at the district’s annual meeting. Nothing in this section shall in any way alter or eliminate the auditor requirements of any state or federal lending institution.

1324.19. DISSOLUTION OF DISTRICT PRIOR TO ACQUISITION OF ASSETS

- A. The provisions of this section shall apply to dissolution of districts prior to acquisition of assets.
- B. Whenever a petition signed by three-fourths (3/4) of the landowners in any district organized under provisions of this act or a petition signed by all of the directors of such district is presented to the board of county commissioners and it shall appear from said petition that said district owns no property of any kind exclusive of records, maps, plans, and files; that all of its debts and obligations have been fully paid; that the district is not functioning, and will probably continue to be inoperative because the board of directors is unable to obtain the necessary financing or for any other reason, the board of county commissioners shall, after such finding, issue a certificate stating the allegations in said petition as true and declaring said district dissolved, and shall make full minutes of such hearing in its journal and deliver said certificate to the secretary of said district. The secretary of said district shall, within thirty (30) days thereafter, deliver all records, maps, plans and files to the county clerk, and thereupon said district shall be dissolved.

1324.20. DISSOLUTION OF DISTRICT – DISPOSITION OF FACILITIES AND PROPERTY

Whenever a district owning facilities and property desires to dispose of such facilities and property and become dissolved, the board of directors may adopt a resolution setting forth the proposed plan and, upon such plan being approved by three-fourths (3/4) of the participating members in a meeting called for that purpose, such resolution and plan may be submitted to the board of county commissioners. If approved by the commissioners, the commissioners shall thereupon authorize the board of directors to carry through said plan to dissolve and shall further authorize the board of directors to wind up the affairs of the district, pay all debts and expenses and to dispose of any property owned by the district and for the apportionment of the proceeds thereof together with any other monies belonging to the district to an adjoining rural water district or to any other political subdivision of the state. No money, property or the proceeds thereof shall be distributed to any private interests. Thereupon the district shall be dissolved as herein provided.

1324.21. RELEASE OF LANDS FROM DISTRICT – PETITION – NOTICE

In the event that landowners within a district desire to withdraw from such district, fifty-one percent (51%) of the affected landowners or the board of directors by resolution may petition the county commissioners to release those lands from the district. The petition shall describe by section or fraction thereof and by township and range the lands affected. After a finding that the granting of the petition is to the best interests of the affected landowners and the district, the board of county commissioners shall issue a certificate stating that the lands involved are released and separated from the district. Full minutes of the hearing shall be entered in the journal of the board of county commissioners and the certificate shall be delivered to the secretary of the district who shall, within thirty (30) days, cause the records of the district to be amended to exclude the lands affected. Notice shall be given, as provided in Section 1324.5 of this title, of the filing of a petition for release of lands as provided herein, fixing the time and place of hearing, and a copy of said notice shall be sent by certified mail to the chairman of the board of directors of the district in which the said lands are located.

1324.22. EXEMPTION FROM TAXES AND ASSESSMENTS

Districts formed hereunder shall be exempt from all excise taxes of whatsoever kind or nature, and further, shall be exempt from payment of assessments in any general or special taxing district levied upon the property of said district, whether real, personal or mixed; such exemption shall include, but not be limited to, franchise taxes or assessments or fees levied by a county or municipality for inspections of the facilities of the district which were not requested by the district. Any and all securities and evidences of indebtedness issued by a district created pursuant to this act and the income interest and capital gains thereon shall not be subject to the income tax laws of this state and persons owning or holding said securities and evidences of indebtedness or their heirs, devisees, successors, or assigns shall not be required to pay to the State of Oklahoma income tax upon the profits and capital gains upon said securities and evidences of indebtedness.

1324.23. EXEMPTION FROM JURISDICTION AND CONTROL OF CORPORATION COMMISSION

Rural water, sewer, gas and solid waste management districts, and corporations shall be exempt in any and all respects from the jurisdiction and control of the Corporation Commission of this state; provided, however, rural gas distribution systems shall be subject to jurisdiction for only the pipeline safety program administered by the Oklahoma Corporation Commission.

1324.24. VALIDATING PROVISIONS

The creation of all districts and all acts and proceedings taken in the creation thereof and all acts and things done by said districts, pursuant to the provisions of this act are hereby validated; and from and after the effective date of this act all such previously created districts shall be deemed to have been created, and all acts and things done by such previously created districts, henceforth shall be deemed to have been pursuant to and subject to the provisions of this act.

1324.25. CONSOLIDATION OF TWO OR MORE DISTRICTS – PROCEDURES

Two or more districts organized under this act may be consolidated into a single district by complying with the procedures prescribed in this section.

The proposal for consolidation shall be prepared in written form and shall set forth in detail the reasons for consolidation and the advantages that would accrue to each district from the proposal. The written proposal shall be considered and acted upon by the board of directors from each district affected by a duly called meeting. If the board of directors of each district approves the proposal by resolution, the proposal shall then be submitted to a vote of the membership of each district at a regular or special membership meeting. If the consolidation proposal is not approved by the membership of each district affected such districts may not be consolidated.

If the proposal is approved by the membership of each district, the boards of directors shall then submit it to the creditors of each district for approval or disapproval. In the event the creditors do not approve the consolidation proposal, the districts shall not be consolidated.

Upon approval of the proposal by the membership of each district and by all creditors, the board of directors of the districts desiring to be consolidated shall join in filing a petition, addressed to the board of county commissioners having jurisdiction as provided by this section, for a hearing to consolidate such districts into a single district. Said petition shall set forth the necessity for such consolidation of two or more districts, and that the consolidation of said districts shall be conducive to the public health, convenience, safety or welfare, and to the economical execution of the purposes for which the districts were organized. The consolidation proposal as approved by the membership and the boards of directors of each district and the approval of each of the creditors shall be attached to the petition as exhibits.

If the districts seeking consolidation are situated in one county, the petition shall be filed with the county clerk of said county, and the board of county commissioners of said county shall have jurisdiction to hear and determine the petition.

In the event the districts were organized in different counties the petition shall be filed with the county clerk of the county in which the greatest portion of the territory of the proposed consolidated district is located, and the board to determine the question of consolidation shall consist of the board of county commissioners from each of the counties, and a majority of the combined boards shall be necessary to render a decision.

Upon receipt of said petition, the county clerk shall thereupon give notice to the board of boards of county commissioners of the filing and pendency of said petition, whereupon the county commissioners of the county wherein the petition is filed shall enter its order setting hearing, and giving notice of the hearing, all in accordance with the provisions of this act for the creation of districts in the first instance. In addition to the notice as prescribed by the act for the creation of districts, the county clerk shall at least ten (10) days before the date fixed for said hearing give or send by registered mail or certified mail notice thereof to each creditor of each of the districts to be consolidated, addressed to the creditor's last-known address.

After the hearing, should the board find that the averments of the petition are true and that said districts, or any of them, should be consolidated, the board shall enter its order directing the consolidation of the districts. The order shall set forth the corporate name of the consolidated district under the name of "Consolidated Rural Water and/or Sewer District and/or Gas District and/or Solid Waste Management District No. _____, _____ County(s), Oklahoma." The order shall further provide that the consolidated district shall assume and become legally liable for all of the obligations of the districts consolidated into the single district.

Following the entry of said order, an organizational meeting of the combined membership of each of the districts shall be held for the purpose of electing directors and officers, and adopting bylaws. This organizational meeting shall be held in accordance with the provisions pertaining to the creation and organization of districts.

From any order of the board, an appeal may be taken in the manner as provided for appeals from decision of the board of county commissioners.

All legal proceedings already instituted by or against any district involved in a consolidation proceeding may be revived and continued by or against the consolidated district by an order of the court substituting the name of such consolidated district.

1324.26. ENLARGEMENT OF PURPOSES AND POWERS – PROCEDURE

Any district created for one of the authorized purposes of this act may enlarge its purposes and powers by following the procedure set forth herein:

The board of directors of the district shall adopt a resolution to enlarge the purposes and powers of the district and the resolution shall specifically state such additional purposes and powers. The district shall file a petition for enlargement of the purposes and powers of the district with the county clerk and a certified copy of the resolution for enlargement shall be attached to the petition. The county clerk shall thereupon give notice to the board of county commissioners of the filing of said petition and the board of county commissioners shall forthwith enter its order setting a public hearing upon said petition for a day certain and directing the county clerk to give notice of said

hearing by legal publication in the manner described by Section 1324.5 of this title. Such notice shall contain a brief and concise statement describing the purpose of the hearing and the time and place set for the hearing and consideration of the petition. It shall be the duty of the board of county commissioners to determine:

1. Whether proper notice of the hearing has been given; and
2. Whether the enlargement of the purposes and powers of the district is necessary to provide an adequate water supply, sewer facilities, gas distribution facilities or solid waste management system to serve rural residents of the district.

If, upon such consideration, it shall be found that the purposes and powers of the district should be enlarged, the board of county commissioners shall enter upon its records, full minutes of such hearing, together with its order enlarging the purposes and powers of the district. Such order shall also change the name of the district to disclose the purposes of the district, and the name of the district shall be indicated in the manner set forth in Section 1324.6 of this title.

1324.30. DEFINITIONS

As used in Sections 1 through 6 of this act:

1. "Corporation" means a not-for-profit corporation organized:
 - a. Pursuant to the provisions of the Oklahoma General Corporation Act for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such and having no capital stock, and
 - b. For the purpose of developing and providing rural water supplies to serve rural residents; and
2. "District" means a public nonprofit water district created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management District Act.

1324.31. ORGANIZATION OF DISTRICT

Pursuant to the provisions of this act, any corporation that was formed prior to December 1, 1988, may organize and constitute a district subject to the provisions of the Rural Water, Sewer, Gas, and Solid Waste Management Districts Act.

1324.32. WRITTEN PROPOSALS – APPROVAL OR DISAPPROVAL – PETITION FOR ESTABLISHMENT OF DISTRICT – HEARING -- ORDERS

- A. Prior to the organization of a district, the corporation shall have prepared a proposal in written form. The proposal shall include but not be limited to:
 1. The reasons for organizing and constituting a district;
 2. The advantages and disadvantages which would accrue from implementation of the proposal;
 3. A brief and concise description of the territory to be embraced within the proposed district;
 4. A statement that the territory described in paragraph 3 of this subsection does not include any territory that is presently within the boundaries of any other district or public water supply system;
 5. A statement that the proposed district is embracing only those lands within the proposed

boundaries described in paragraph 3 of this subsection which can reasonably and economically be served in the foreseeable future;

6. A statement that the organization of a district shall result in a voluntary dissolution of the corporation and upon passage of the proposal shall constitute the consent of the board of directors and the membership of the corporation to dissolve the corporation;
 7. A statement that upon the affirmative order of the board of county commissioners to organize the district, the current board of directors and officers for the corporation shall serve as the board of directors and officers of the district until the next designated meeting of the district; and
 8. A statement that upon the affirmative order of the board of county commissioners to organize the district, the bylaws of the corporation shall, as appropriate, constitute the bylaws of the district.
- B. The written proposal shall be considered and acted upon by the board of directors of such corporation at a duly called meeting. If the board of directors approves the proposal by resolution by a majority vote, the proposal shall then be submitted to a vote of the membership of the corporation at a regular or special membership meeting. A member of the corporation may cast his vote in person or by proxy. Prior to the meeting a copy of the approved resolution and a stamped return envelope shall be mailed to the membership of the corporation. The appointment of a proxy shall be in writing filed with the secretary of the corporation at or before the meeting. In all other matters the appointment and authority of a proxy shall be governed by the provisions of Section 1057 of Title 18 of the Oklahoma Statutes.

If the proposal is not approved by a majority vote of the membership of the corporation, the proposal shall not be implemented.

- C. Upon approval of the proposal by the membership of the corporation and by all secured creditors, the board of directors shall file a petition, addressed to the board of county commissioners having jurisdiction as provided by subsection D of this section, for the establishment of the district. The proposal as approved by the membership and the board of directors and a list of the names and addresses of each of the secured creditors of the corporation shall be attached to the petition as exhibits.
- D.
1. If the corporation is situated in one county, the petition shall be filed with the county clerk of said county, and the board of county commissioners of said county shall have jurisdiction to hear and determine the petition;
 2. If the corporation is situated in more than one (1) county, the petition shall be filed with the county clerk of the county in which the greatest membership of the corporation is located and the board of county commissioners of such county shall have jurisdiction to hear and determine the petition.
- E. Upon receipt of said petition, the county clerk shall thereupon give notice to the board of county commissioners of the filing and pendency of said petition, whereupon the county commissioners of the county wherein the petition is filed shall enter its order setting hearing and giving notice of the hearing, ten (10) days prior to the hearing. The board of county commissioners shall cause notice of such hearing to be published for at least one (1) day in a newspaper of general circulation published in the county or counties embraced within the proposed district. In addition to the notice as prescribed by this subsection, the county clerk shall at least ten (10) days before the date fixed for said hearing give or send by certified mail, return receipt requested, notice there of to:

1. Each secured creditor of the corporation, addressed to the secured creditor's last-known address as specified by the exhibit attached to the petition;
 2. Any other rural water district and other public water supplier in the county or counties in which the corporation has membership or serves; and
 3. Any city or municipality adjacent or contiguous to the proposed territory of the proposed district.
- F. After the hearing, if the board finds that the averments of the petition are true and that the corporation should be organized and constitute a district pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act, the board shall enter its order directing the organization of such district and shall declare the land described in the petition or any part thereof to be incorporated as a district under the name of "Rural Water and/or Sewer and/or Gas and/or Solid Waste Management District No. _____, _____ County, Oklahoma" (inserting number in order of incorporation and name of county). Thereupon the district shall be a legally constituted district pursuant to the Rural Water, Sewer, Gas, and Solid Waste Management Districts Act. The board of county commissioners shall enter upon its records full minutes of such hearing, together with its order creating the rural district under the corporate name specified by this subsection

1324.33. DISSOLUTION OF CORPORATION – TRANSFER OF ASSETS, PROPERTY, OBLIGATIONS AND BENEFITS

- A. Upon the affirmative order of the board of county commissioners to organize the district, the corporation shall be deemed dissolved. The board of directors of the corporation shall file notice of such dissolution with the Secretary of State.
- B. All debts, liabilities and obligations of the corporation shall be paid and discharged or transferred pursuant to subsection E of this section.
- C. Upon filing with the Secretary of State of notice of dissolution, the corporation shall cease to carry on its business except insofar as may be necessary for the winding up thereof.
- D. Upon receipt of notice of dissolution and compliance with the provisions of this section, the Secretary of State shall issue a certificate of dissolution for the corporation.
- E.
 1. Except as otherwise provided by subsection B of this section, any employee benefits, assets, easements, and titles to any real property or personal property held by the corporation shall be construed to be the benefits, assets, easements, property and obligation of the district;
 2. A single notice of the transfer shall be filed for such assets, easements or titles of record with the Secretary of State and in the office of the county clerk where such records are located;
 3. Unless otherwise discharged by law, all legal proceedings instituted by or against the corporation prior to the organization of a district pursuant to the provisions of this act shall upon petition be renewed and continued by or against the district by an order of the court constituting the name of such district.

1324.34. ORDER CONSTITUTING RURAL WATER DISTRICT

Upon the affirmative order of the board of county commissioners to organize a district, the district shall be deemed to constitute a rural water district and shall comply with the provisions of the Rural Water, Sewer, Gas and Solid Waste Management Districts Act.

1324.35. CONTINUATION OF CERTAIN SERVICES

In the event a corporation provides services within the boundaries of an incorporated city or town on the date of the organization as a rural water district, the district may continue to serve in that area as permitted by law.

ACQUISITION OF ASSETS

1324.41. DEFINITIONS

As used in this act:

1. “Acquiring party” means a person and all affiliates thereof by whom or on whose behalf an acquisition of control referred to in Section 6 of this act is to be effected;
2. “Affiliate” means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified, including any corporation created at the direction of the person specified, for purposes of corporate reorganization;
3. “Assets” in the case of a district or corporation means the physical plant, equipment, accounts receivable, accounts payable and all other assets of such district or corporation;
4. “Board” means the Oklahoma Water Resources Board;
5. “Control”, including the terms “controlling” or “controlled by”, and “under common control with”, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership, by contract, purchase of assets, or otherwise, unless such power is the result of an official position with, or corporate office held in, such person. Control shall be presumed to exist if any person, directly or indirectly, owns or controls the assets of such district or corporation. This presumption may be rebutted by showing that control does not exist in fact. The Board may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;
6. “Corporation” means a not-for-profit corporation organized:
 - a. Pursuant to the provisions of the Oklahoma General Corporation act, Section 1001 et seq. of Title 18 of the Oklahoma Statutes, for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such and having no capital stock, and
 - b. For the purpose of developing and providing rural water supplies to serve rural residents;

7. "District" means a public nonprofit water district created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act, Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes; and
8. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

1324.42. PROHIBITION OF ACQUISITION OF DISTRICT ASSETS OR MERGER IF ACTION LEADS TO CONTROL OF DISTRICT UNLESS APPROVED BY BOARD

No person shall make an offer for, or enter into any agreement to exchange, seek to acquire, or acquire, the assets of a district or corporation if, after the consummation of such action, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such district or corporation, and no person shall merge with or otherwise acquire control of a district or corporation, unless, at the time any such offer, request or invitation is made or prior to the acquisition of assets, such person has sent to the Oklahoma Water Resources Board a statement containing the information required by Section 7 of this act and such offer, request, invitation, or acquisition has been approved by the Board in the manner prescribed by Section 8 of this act.

1324.43. STATEMENT AND INFORMATION PROVIDED BY ACQUIRING PARTY- TYPE OF ACQUIRING PARTY- AMENDMENT OF STATEMENT

- A. The statement to be filed with the Oklahoma Water Resources Board as required by Section 6 of this act shall be made under oath or affirmation and shall contain the following information:
 1. The name and address of each acquiring party and all affiliates thereof:
 - a. If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or
 - b. If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, an informative description of the business intended to be done by such acquiring party and its subsidiaries, and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party or who perform or will perform functions appropriate or similar to such position. Such list shall include for each such individual the information required by subparagraph of this paragraph;
 2. The source, nature and amount of the consideration used or to be used in effecting the acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

3. Audited financial information in a form acceptable to the Board as to the financial condition of an acquiring party for the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the statement;
 4. Any plans or proposals which an acquiring party may have to liquidate such district or corporation, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the district or corporation are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the district or corporation;
 5. Copies of all offers for, exchange offers for, and agreements to acquire or exchange, any assets and, if distributed, additional soliciting material relating thereto;
 6. Documentation from any and all mortgagors which hold a mortgage on any plant or equipment of such district or corporation setting forth such mortgagors' approval of such proposed acquisition of control; and
 7. Such additional information as the Board may by rule prescribe as necessary or appropriate for the protection of ratepayers of the district or corporation or in the public interest.
- B. If a person required to file the statement referred to in Section 6 of this act is partnership, limited partnership, syndicate or other group, the Board may require that the information called for in paragraphs 1 through 7 of subsection A of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the statement referred to in Section 6 of this act is a corporation, the Board may require that the information called for by paragraphs 1 through 7 of subsection A of this section be given with respect to such corporation, to each officer and director of such corporation.
- C. If any material change occurs in the facts set forth in the statement filed with the Board and sent to such district or corporation pursuant to this act, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Board and sent by the person filing the statement to the district or corporation within two (2) business days after such person learns of such change.

1324.44. BOARD APPROVAL OF ACQUISITION – CONDITIONS FOR DISAPPROVAL – PUBLIC HEARING

- A. The Oklahoma Water Resources Board shall approve any acquisition of control referred to in Section 6 of this act unless, after a public hearing thereon, it finds that one or more of the following conditions will exist if such acquisition of control is consummated, in which event it shall disapprove such acquisition of control and the same shall not be consummated:
1. The acquisition of control would adversely affect the contractual obligations of the district or corporation or its ability or commitment to render the same level of service to its customers that the district or corporation is currently rendering;

2. The financial condition of any acquiring party is such as might jeopardize the financial stability of the district or corporation or otherwise prejudice the interest of the district or corporation customer;
 3. The plans or proposals which an acquiring party has to liquidate the district or corporation, sell its assets, or a substantial part thereof, or consolidate or merge it with any person, or to make any other material change in its investment policy, business or corporate structure or management, would be detrimental to the customers of the district or corporation and not in the public interest; or
 4. The competence, experience and integrity of the persons who would control the operation of the district or corporation are such that it would not be in the interest of its customers and the public to permit the acquisition of control.
- B. The public hearing referred to in subsection A of this section shall be commenced within thirty (30) days after the statement required by Section 6 of this act is filed. The place, date and time for such public hearing shall be set by the Board and notice thereof shall be given by the Board to the person filing the statement and to the district or corporation at least twenty (20) days prior to the date of the public hearing. Notice of the public hearing shall be given by the person filing the statement to such other persons and in such manner as may be directed by the Board at least fifteen (15) days prior to such public hearing. The district or corporation shall give notice to its customers as provided in Section 9 of this act. The public hearing referred to in subsection A of this section shall be concluded within thirty (30) days after the commencement of such hearing. The Board shall make a determination of the factors specified in subsection A of this section within thirty (30) days after the conclusion of such hearing, and any acquisition of control within the purview of this section shall be deemed approved unless the Board has, within sixty (60) days after the conclusion of such hearing, entered its order disapproving the acquisition of control.

1324.45. NOTICE OF PUBLIC HEARING – PAYMENT OF EXPENSES – SECURITY

Notice, in a form to be specified by the Oklahoma Water Resources Board, of the public hearing to be held pursuant to Section 8 of this act shall be mailed, or shall be given in such other manner as may be determined by the Board, by the district or corporation to its customers within ten (10) business days after it has received notice of the hearing from the Board. The expenses of preparation and mailing and giving of such notice shall be borne by the person filing the statement required by Section 6 of this act. As security for the payment of such expenses, the Board may require such person to file with the Board an acceptable bond or other deposit in an amount to be determined by the Board.

1324.46. DOMESTIC WATER PUBLIC UTILITY AS ACQUIRING PARTY – APPROVAL PROCEDURES- INAPPLICABILITY OF CERTAIN PROVISIONS

If the acquiring party is a domestic water public utility, and the district or corporation, control of which is sought to be acquired in a transaction described in Section 6 of this act which would require the filing of a statement pursuant to Section 6 of this act, is subject to the jurisdiction of the Oklahoma Water Resources Board, an application for approval containing such information as the Board may prescribe by rule promulgated pursuant to this act shall be filed with and heard by the

Board after such notice as the Board may prescribe, and the transaction shall be approved or disapproved based upon the factors enumerated in paragraphs 1 through 4 of subsection A of Section 8 of this act, subject to judicial review as provided in Section 13 of this act, but the other provisions of this act shall not apply to such transaction. This act shall not apply to consolidations of districts or corporations governed by Section 1324.25 of Title 82 of the Oklahoma Statutes.

1324.47. JURISDICTION

The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files or is required to file a statement with the Oklahoma Water Resources Board as required by Section 6 of this act, and over all actions involving such person arising out of violations of this act. Copies of all such lawful process shall be served on the Board and transmitted by certified or registered mail, with return receipt requested, by the Board to such person at his last-known address.

1324.48. POWER OF BOARD – EXPENSES OF ANALYSIS OR INVESTIGATION – PAYMENT

The Oklahoma Water Resources Board shall have power to perform any and all acts, and to prescribe, issue, make, amend and rescind such orders and rules as it may find necessary or appropriate to carry out the provisions of this act. The expense of conducting an analysis or investigation by the Board of the information required to be filed under Section 7 of this act shall be paid by the acquiring party within fifteen (15) days of the public hearing required by Section 8 of this act. Expenses of conducting this analysis or investigation may include, but not be limited to, the cost of acquiring expert witnesses, consultants and analytical services.

1324.49. AUTHORITY TO ENJOIN VIOLATIONS AND ENFORCE COMPLIANCE

Whenever it shall appear to the Oklahoma Water Resources Board, the Attorney General or a district or corporation which reasonably believes itself to be the object of an offer or attempt to obtain control as described in Section 6 of this act, that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this act, or of any rule, or order there under, the Board, Attorney General or the district or corporation may bring an action in the district court in and for Oklahoma County, State of Oklahoma, to enjoin such acts or practices and to enforce compliance with this or any rule, order temporary or permanent injunction shall be granted without bond. The Board the Attorney General and the district or corporation shall transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of this act to the district attorney for Oklahoma County, who, in his or her discretion, may institute appropriate criminal proceedings.

1324.50. WILLFUL AND KNOWING VIOLATIONS – PENALTIES

Any person who willfully and knowingly does or causes to be done any act, matter or thing prohibited or declared to be unlawful by this act, or who willfully and knowingly omits or fails to do any act, matter or thing required by this act to be done, or willfully and knowingly causes such omission or failure, shall upon conviction thereof, be punished by a fine of not more than Five

Thousand Dollars (\$5,000.00). In addition, such violation shall be punished upon conviction thereof by a fine not exceeding Five Hundred Dollars (\$500.00) for each day during which such offense occurs. Any person who willfully and knowingly violated any rule, restriction, condition or order made or imposed by the Board under authority of this act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine not exceeding Five Hundred Dollars (\$500.00) for each day during which such offense occurs.

TAB 9-A
OKLAHOMA UNDERGROUND FACILITIES DAMAGE PREVENTION ACT

Oklahoma Underground Facilities Damage Prevention Act

SECTION 1. AMENDATORY 63 O.S. 2001, Section 142.2, as amended by Section 1, Chapter 412, O.S.L. 2002 (63 O.S. Supp. 2002, Section 142.2.), is amended to read as follows:

Section 142.2 As used in the Oklahoma Underground Facilities Damage Prevention Act:

1. "Certified project" means a project where the public agency responsible for the public project, as part of its procedure, certifies that the project right-of-way is free and clear of underground facilities or wherein the public agency responsible for such project, as part of its procedure, notifies all persons determined by the public agency to have underground facilities located within the construction right-of-way and certifies that all known underground facilities are duly located or noted on the engineering drawings for the project;
2. "Damage" means any impact upon or removal of support from an underground facility as a result of explosion, excavation or demolition which according to the operating practices of the operator of the underground facilities would necessitate the repair thereof;
3. "Demolish" means to wreck, raze, render, move or remove a structure by means of any equipment or explosive;
4. "Demolition" means the act or operation of demolishing a structure;
5. "Excavate" means to dig, compress or remove earth, rock or other materials in or on the ground by use of mechanized equipment or blasting, including, but not necessarily limited to, auguring, boring, backfilling, drilling, grading, pile driving, plowing in, pulling in, trenching, tunneling and plowing; provided, however, that neither:
 - a. The moving of earth by tools manipulated only by human or animal power; nor
 - b. Any form of cultivation for agricultural purposes, nor any augering, dozing by noncommercial dozer operators or digging for postholes, farm ponds, land clearing or other normal agricultural purposes; nor
 - c. Routine maintenance; nor
 - d. Work by a public agency or its contractors on a pre-engineered project; nor
 - e. Work on a certified project; nor
 - f. Work on a permitted project; nor
 - g. The opening of a grave in a cemetery; nor
 - h. A solid waste disposal site which is a pre-engineered project; nor
 - i. Any individual excavating on his own property and who is not in the excavating business for hire;shall be deemed excavation;
6. "Excavation" means the act of operation of excavating;
7. "Excavator" means a person or public agency that intends to excavate or demolish within the State of Oklahoma;

8. "Notification center" means the statewide center currently known as the Oklahoma One-Call System, Inc., which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators, and to disseminate such notification of planned excavation or demolition to operators who are members and participants;
9. "Operator" shall mean and include any person or public agency owning or operating underground facilities;
10. "Permitted project" means a project where a permit for the work to be performed must be issued by a state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of any blasting and notify each owner of such underground facilities;
11. "Person" included any individual, partnership, corporation, association, cooperative, trust or other entity, including a person engaged as a contractor by a public agency, but not including a public agency;
12. "Pre-engineered project" means a public project wherein the public agency responsible for such project, as part of its engineering and contract procedures, hold a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known underground facilities are duly located or noted on the engineering drawing and specifications for the project;
13. "Public agency" means the state or any board, commission or agency of the state, and any city, town, county, subdivision thereof or other governmental entity;
14. "Routine maintenance" means the grading of roads and barrow or drainage ditches, the removal and replacement of pavement, including excavation relating thereto and the installation and maintenance of drainage and bridge facilities, signs, guardrails, and electrical and communications facilities in or on the public rights-of-way by a public agency; and
15. "Underground facility" means any underground line, cable, facility, system and appurtenances thereto, for producing, storing, conveying, transmitting or distributing communication (including voice, video, or data information), electricity, power, light, heat, refined petroleum products, water (including storm water), steam, sewage and other commodities. Underground facilities shall also mean oil and natural gas pipelines that are subject to the Hazardous Liquid Transportation System Safety Act and natural gas pipelines subject to the jurisdiction of the Oklahoma Corporation Commission Pipeline Safety Department, and any oil and gas pipeline located in a public right-of-way.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 142.3, is amended to read as follows:

Section 142.3

Except for a municipality, all operators of underground facilities shall participate in the statewide

one-call notification center and shall have on file with the notification center a notice that such operator has underground facilities, the county or counties where such facilities are located, and the address and telephone number of the person or persons from whom information about such underground facilities maybe obtained. A municipality may, at its discretion, participate in the statewide one-call notification center as provided for in this section or may provide information concerning the underground facilities of the municipality as provided for in Section 9 of this act.

SECTION 3. AMDENDATORY. 63 O.S. 2001, Section 142.4, is amended to read as follows:

Section 142.4

- A. As provided for in this section, the notification center shall charge and collect fees from operators filing notices pursuant to Section 142.3 of this title, except for rural water districts which have less than on thousand one hundred meters and municipalities which have a population of less than three thousand (3,000).
- B. Upon the initial filing of a notice or statement and annually thereafter, a fee shall be collected in a manner as provided for in Section 142.10 of this title. The fee shall be due and payable on January 1 of each year. Failure to pay such fee on or before February 1 of such year shall result in the filing being void and the notification center shall remove such operator from the list of operators having underground facilities in the county. Such operator may thereafter file again pursuant to this act, but only upon payment to the notification center of the above-specified initial filing fee and an additional late filing fee of Fifty Dollars (\$50.00).
- C. The notification center shall maintain a current list of all operators on file pursuant to this act and shall make copies of such list available upon payment of the appropriate fees.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 142.6, is amended to read as follows:

Section 142.6

- A. Before an excavator shall demolish a structure, discharge any explosive or commence to excavate in a highway, street, alley or other public ground or way, on or near the location of an operator's underground facilities, or a private easement, such excavator shall first notify all operators in the geographic area defined by the notification center who have on file with the notification center a notice pursuant to Section 142.3 of this title to determine whether any operators have underground facilities in or near the proposed area of excavation or demolition. When an excavator has knowledge that an operator does not have underground facilities within the area of the proposed excavation, the excavator need not notify the operator of the proposed excavation. However, an excavator shall be responsible for damage to the underground facilities of an operator if the notification center was not notified. Notice shall be given no more than ten (10) days nor less than forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, prior to the commencement of the excavation or demotion.
- B. Each operator served with notice in accordance with subsection A above either directly or by notice to the notification center shall, within forty-eight (48) hours after receipt of verification from the notification center that the notice has been accepted and acknowledged, excluding Saturdays, Sundays and legal holidays, unless otherwise agreed to between the excavator and

operator, locate and mark or otherwise provide the approximate location of the underground facilities of the operator in a manner as to enable the excavator to employ hand-dug test holes to determine the precise location of the underground facilities in advance of excavation. The operators of a municipally owned water, sewage, traffic control, communication facility or any other municipally owned facility need only notify the excavator within the prescribed period that they have facilities located in or near the proposed area of excavation or demolition, the type of facilities and their approximate location, if known. For the purpose of this act, the approximate location of the underground facilities shall be defined as a strip of land two (2) feet on either side of such underground facilities. Whenever an operator is served with notice of an excavation or demolition and determines that he does not have underground facilities located within the proposed area of excavation or demolition, the operator shall communicate this information to the excavator originating the notice prior to the commencement of such excavation or demolition.

- C. The only exception to subsection A of this section shall be when an emergency exists that endangers life, health or property. Under these conditions, excavation operations may begin immediately, providing reasonable precautions are taken to protect underground facilities. All operators of underground facilities within the area of the emergency must be notified promptly when an emergency requires excavation prior to the location of the underground facilities being marked.
- D. Every notice given by an excavator to an operator pursuant to this section or to the notification center pursuant to Section 142.3 of this title, shall contain at least the following information:
 - 1. The name of the individual serving such notice;
 - 2. The location of proposed area of excavation or demolition;
 - 3. The name, address and telephone number of the excavator or excavator's company;
 - 4. The excavator's field telephone number, if one is available;
 - 5. The type and the extent of the proposed work;
 - 6. Whether or not the discharging of explosives is anticipated; and
 - 7. The date and time when work is to begin.

E. In marking the approximate location of underground facilities, an operator shall follow the standard color coding described herein:

<u>OPERATOR AND TYPE OF PRODUCT</u>	<u>SPECIFIC GROUP IDENTIFYING COLOR</u>
Electric power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
Telephone and Telegraph Systems	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Systems	Safety Green

SECTION 5. AMENDATORY 63 O.S. 2001, section 142.8, is amended to read as follows:

Section 142.8

In addition to the notice required by Section 142.6 of this title, whenever the demolition of a structure is proposed, operators in the geographic area defined by the notification center who have a notice on file with the notification center pursuant to Section 142.3 of this title shall be given at least seven (7) business days' notice of the proposed demolition before the demolition work begins. Such notice shall be initiated by the notification center after the excavator has met local code requirements for a demolition permit. When an operator is served with notice and determines that underground facilities are within the proposed area of demolition and such facilities require additional protection, service removal or termination, the operator shall communicate this information to the excavator and by mutual agreement the operator and excavator shall determine a date to begin the demolition, which shall not exceed sixty (60) business days from the original demolition notice. If a public agency determines that the structure endanger the public health or safety, then the public agency may, in the manner provided by law, order the immediate demolition of the structure.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 142.9a, as amended by Section 2, Chapter 412, O.S.L. 2002 (63 O.S. Supp. 2002, Section 142.9a), is amended to read as follows:

Section 142.9a

- A. Any excavator, except for a public agency who fails to comply with the Oklahoma Underground Facilities Damage Prevention Act and who damages an underground facility owned or operated by a nonprofit rural water corporation organized pursuant to Section 863 of Title 18 of the Oklahoma Statutes or a rural water district organized pursuant to the Rural Water, Sewer, Gas, and Solid Waste Management Districts Act, shall be liable for the underground damage to and responsible for the repair of such facilities. Any new underground facilities installed on and after September 1, 1992, shall contain materials capable of being detected so that the facilities can be accurately located.
- B. Any excavator who damages or cuts an underground facility, as a result of negligently failing to comply with the provisions of the Oklahoma Underground Facilities Damage Prevention Act or as a result of failing to take measures for the protection of an underground facility shall be liable to the operator of the underground facility for the repair of the damaged underground facility.
- C. Except for public agencies, any excavator who by willful act or by reckless disregard of the rights of others, repeatedly violates the provisions of the Oklahoma Underground Facilities Damage Prevention Act and repeatedly damages underground facilities, thereby threatening the public health, safety, and welfare, may be enjoined by a court of competent jurisdiction from further excavation.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 142.10, is amended to read as follows:

Section 142.10

- A. This act recognizes the value of and authorizes the establishment of a statewide notification center.
- B. Upon establishment, the notification center shall operate twenty-four (24) hours a day, seven (7) days a week. Notification, as required by Section 142.6 of this title, to operators who are members of or participants in the notification center, shall be given by notifying the notification center by telephone or other acceptable means of communication, the content of such notification to conform to Section 142.6 of this title.
- C. All operators who have underground facilities within the defined geographical boundary of the notification center shall be afforded the opportunity to become a member of the notification center on the same terms as the original members. Others may participate as nonmembers on terms and conditions as the members deem appropriate.
- D. A suitable record shall be maintained by the notification center to document the receipt of the notices from excavators as required by this act.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 142.11, is amended to read as follows:

Section 142.11

Notwithstanding anything which may be contained in this act to the contrary, public agencies and their contractors engaged in work within the public right-of-way which work is a pre-engineered project, certified project or routine maintenance shall be exempt from the provisions of this act. Provided, a public agency contractor, prior to engaging in routine maintenance, shall take reasonable steps to determine the location of underground facilities in or near the proposed area of work. Reasonable steps may include utilization of the statewide one-call notification center procedures as provided for in Section 142.6 of this title.

SECTION 9. NEW LAW

A new section of law to be codified in the Oklahoma Statutes as Section 142.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

- A. A municipality that elects not to participate in the statewide one-call notification center, pursuant to Section 142.3 of Title 63 of the Oklahoma Statutes, shall designate one or more persons who are authorized to provide information concerning the underground facilities of the municipality. The name, address, and telephone number or numbers of the person or persons designated to provide information shall be made available at the main office of the municipality. The designated persons or persons shall be available to provide information twenty-four (24) hours a day, seven (7) days a week. After notification is received by the designated person the municipality shall, within forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, locate and mark or otherwise provide the approximate location of the underground facilities of the municipality.
- B. The information provided by the person designated by the municipality as provided for in subsection A of this section shall include the:
 - 1. Approximate location, if known, of any underground facilities of the municipality located

within the county and located in or near the proposed area of excavation or demolition; and
2. Type of underground facilities of the municipality located within the county and in or near the proposed area of excavation or demolition.

- C. For purposes of this section, the approximate location of the underground facilities shall be defined as a strip of land two (2) feet on either side of the underground facilities.
- D. A contractor for a municipality shall utilize the notification procedure, either the statewide one-call notification center or the procedure set forth in this section, that is utilized by the municipality. A contractor for a municipality that utilizes a designated person shall also comply with the provisions of this section.

SECTION 10. This act shall become effective November 1, 2003.

TAB 9-B
THE TORT CLAIMS ACT

THE TORT CLAIMS ACT

WHO IS COVERED?

Political subdivisions include any:

City or town

County

School district

Public trust when any of the above is a beneficiary, except certain hospitals

Housing authority

Rural water district and nonprofit water corporation

Fire protection district and rural fire association

And all agencies, advisory committees, departments, boards, commissions or other entity or instrumentality designated to act on behalf of any of these governments. This means the Act will cover not only all internal departments and services of the municipality, but also all advisory groups and local agencies created under the Interlocal Cooperation Act.

All employees and officers of political subdivisions are covered by the Act. This includes full or part-time, paid or volunteer, elected or appointed officers, governing body members, and any person designated to act for the governmental unit. Independent contractors which are performing services under contract with a municipality are excluded, meaning the municipality is not generally liable for their actions under this law.

After October 1, 1985, the Act also applies state and any entity or instrumentality designated to set on its behalf.

WHO MAY FILE A CLAIM? WHERE AND WHEN?

Any claimant may file a claim to recover losses resulting from a tort committed by the government or its officers or employees. Losses include death, any bodily or other injury to a person or his rights and damage to real or personal property.

Not everyone who suffers a loss is proper claimant who is entitled to file a claim. Only the following person may be a claimant:

A person holding an interest in real or personal property which suffers a loss;

The individual actually involved in the accident or occurrence who suffers a loss;

The representative of a person who dies.

A claim against the municipality or employee must be filed with the clerk of the governing body. (See Timetable) If the injured person is unable to file due to incapacity, extensions up to 90 days, or on year due to death, are provided in the law. The claim has to be in writing, stating the time, place and circumstances and the amount of compensation demanded. Before a claimant can sue in court, the claim must first be denied by the governing body. (See Timetable)

WHICH TYPES OF ACTIONS ARE INCLUDED UNDER THE ACT?

The new law sets out governmental liability and immunity for torts in state courts. The act does define a tort as a legal wrong involving violation of a duty resulting in a loss whether intentional or due to negligence.

If a claim involves a contract or breach of contract, such as purchase orders, construction contracts, interlocal agreements, it would not come under this act, but would be governed by the criminal laws. An officer's fidelity bond may also come into play in an alleged criminal violation.

Some civil rights violations are called torts. If these actions are brought under federal law, such as equal employment, constitutional or other grounds, this tort claims act does not generally apply. One example is false arrest. False arrests are torts, but a plaintiff may allege violation of civil rights and bring action in federal court, bypassing this Act. An officer or employee sued under federal law is entitled to defense and reimbursement under this net if the conduct was in the scope of duties and in good faith. The Act restricts indemnification of officers and employees to the limits of liability under the Act unless the municipality establishes higher limits by ordinance.

WHAT IS THE AMOUNT OF LIABILITY FOR CLAIMS OR JUDGMENTS?

The law sets a dollar limit on all tort claims within the scope of the act. These limits are:

\$25,000.00 for any claim or to any claimant who has more than one claim for property losses in a single accident.

\$100,000.00 to any claimant for his claims for any other loss in a single accident.

\$1,000,000.00 for all claims arising out of a single accident or occurrence.

A person may claim or sue for more money, but the law requires that the amount awarded by a court or settled cannot be more than these limits. If the jury award is more, the law provides for apportioning a reduced amount to each party to come within the limits. These dollar limits apply only to tort actions in state court and will not apply to federal suits, or criminal or contractual claims.

No punitive or exemplary damages are allowed on any claim which comes under the act. Punitive and exemplary damages are costs over and above the amount which actually compensates for the plaintiff's injury. They are often requested where there is ill will or malice by the person committing the tort. If punitive damages are awarded against any individual officer who is sued in a personal capacity for a tort outside the scope of duty, the municipality is barred from paying the punitive award. No punitive damages can be awarded against the political subdivision.

The governing body may settle or litigate any claim filed, but a payment or settlement over \$10,000.00 not made under an insurance policy must be approved by the district court and entered as a judgment which may be levied as a regular judgment on the sinking fund.

If an applicable contract or policy of insurance exists, its terms will govern the settlement or payment procedure. Although the existence of insurance is not allowed to be mentioned in any trial, a municipality is usually held to be liable up to the amount of insurance it has purchased

TAB 9-C
METER TAMPERING LAW

**METER TAMPERING LAW
TORTS**

**Ss 23. Public Utilities – Definitions – Fraud – Penalties – Civil
Liability - Exemptions**

IT SHALL BE UNLAWFUL FOR ANY PERSON, WITH INTENT TO DEFRAUD A UTILITY, TO:

1. Alter, tamper with, injure or knowingly allow the altering, tampering with or injuring of any pipeline, line, wire, conduit, conductor, meter, meter seal, transformer or other equipment used by a utility to deliver or register services;
2. Prevent any installed metering device from registering correctly the quality of service passing through such metering device;
3. Make or cause to be made any connection between any pipeline, lines, wires, conduits, conductors, meters, transformers or other equipment in such manner as to prevent the correct registration of service by any metering device, or to otherwise use electricity without the consent of the utility; or
4. Supply or cause to be supplied any utility service to any person without such service first passing through the metering device provided by the utility for measuring and registering the quantity of service.

Any person who is convicted of violating the provisions above shall be guilty of a misdemeanor punishable by payment of a fine of not more than One Thousand Dollars (\$1000.00), or by imprisonment in the county jail for a period not to exceed six (6) months, or by such fine and imprisonment.

If a civil action is brought by a utility against a person, said person may post a bond, cash or other security with the utility in an amount equal to the value of the service alleged to be unlawfully used or diverted. Upon posting of said bond or cash, and until final disposition of the case, the utility shall restore to said person any service which it may have terminated.

Nothing in this section shall be construed to apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards.

This section shall not be construed as repealing any laws of the state relating to the powers duties or jurisdiction of the Oklahoma Corporation Commission, but shall be held as auxiliary and supplementary thereto.

“Utility” means any person, firm, corporation, district or association, whether private, municipal, body politic or cooperative, which is engaged in the sale, generation, distribution or delivery of electricity, water, or gas

TAB # 10
THE AGENDA

THE AGENDA

The agenda may be prepared by the mayor, city manager or city clerk or some other person designated by the governing body. Any member of the governing body or a citizen may request that an item be placed on an agenda if the item is submitted in sufficient time to meet the requirements of the Oklahoma Open Meeting Act.

In the preparing, posting and use of an agenda, the procedures set out in the Oklahoma Open Meeting Act are to be followed.

The purpose of an agenda is to give notice to the public of the matters to be considered by the governing body and to expedite the work of the governing body.

The Oklahoma Court of Appeals, Division No. 2, has said: ". . . agendas (should) be worded in plain language, directly stating the purpose of the meeting, in order to give the public actual notice. The language "used should be simple, direct and comprehensible to a person of ordinary education and intelligence."

Thus, the agenda item should clearly state what is the item to be taken up and detailed enough to give notice to a person interested in a particular item.

For example, an agenda item stating that the governing body intends to "discuss and interview applicants for the position of street superintendent" prohibits the governing body from employing a person at that meeting. If the governing body intended to employ a person at that meeting, the agenda item should state: "To consider, interview applicant and employ a person for the position of street superintendent."

Even though an item is listed on the agenda, the governing body does not have to act at that meeting on the item. It can be postponed or deferred but must be listed on the agenda for the next meeting at which the governing body expects to act on the item.

The following sample agenda is one outline of what can be included.

Agenda for Day, Date

The (City Council/City Commissioner/Board of Trustees) of the (City/Town) of _____ will meet at (time) on (day), (date) at (address) for a (regularly scheduled/special emergency) meeting.

Order of Business

(Regularly Scheduled Meeting)

1. Call to order.
2. Roll call, declaration of a quorum being present.
3. Consideration of the Consent Agenda. (The use of a consent agenda is optional. It is intended to speed up the process for considering routine items. See sample.)
4. Consideration of items removed from the Consent Agenda.
5. Public hearings:
 - a. Hearing on the creation of special assessment district No. 12.
6. Authorizing the creation of special, assessment district No. 12.
7. Approval of ordinances:
 - a. Proposed ordinance No. 22, amending the zoning ordinance to change the designation of Lots 2 and 3, Hawthorne Addition, from R-1 to R-3 use.
 - b. Propose ordinance No. 23, relating to the confinement of certain animals, imposing penalties for allowing certain animals to run at large.
8. Approval of resolutions:
 - a. A resolution commending Troop 21, Boy Scouts of America, for its waste paper collection drive.
9. Appearance or petitions from the audience. (Action may be taken on such requests if not known when the agenda was posted. Unless it is an emergency matter, the best policy may be to defer for further study.)
10. Reports of Committees, Boards, etc. (List reports to be considered.)
11. Consideration of written communications. (List reports to be considered.)
12. Unfinished business. (List items to be considered.)
13. New business. (List items to be considered.)
14. Remarks and inquiries by governing body members.
15. Adjournment.

Executive Session

If the governing body goes into executive session, it must be for consideration of an item listed on the agenda unless it falls under the "new business" provision of the open meeting law.

The fact that the governing body is going into executive session should be listed on the agenda if it is known that an executive session will be held at the time an agenda is prepared.

After starting its meeting in the open, the governing body, by a vote of the majority of the quorum present, may go into executive session.

At the conclusion of the executive session, the governing body returns to an open meeting. No action can be taken in executive session. Any vote taken on the subject discussed in the executive session must be done in open meeting with the vote of each member cast and recorded in the minutes.

See further discussion under the Oklahoma Open Meeting Act.

Consent Agenda

Place on it all items that appear to be of a non-controversial nature.

Prior to consideration of the consent agenda, any member of the governing body may request that an item be removed from the consent agenda and placed on the regular agenda.

Approval of the items on the consent agenda is made by one motion.

(SAMPLE)

Consent Agenda Item No. _____

All items listed under the Consent Agenda are deemed to be non-controversial and routine in nature by the governing body. They will be approved by one motion of the governing body.

The items on the Consent Agenda will not be discussed. Any member of the governing body desiring to discuss an item on the Consent Agenda may request that it be removed from the Consent Agenda and placed in its proper order on the regular agenda. It will then be considered at that time.

1. Approval of the minutes of the meeting of the governing body held on _____.
2. Approval of payment of purchase orders numbered _____.
3. Approval of payroll purchase orders.
4. Approval of contract for _____.
5. Final acceptance of water line installed on Blocks 4 and 5 of New Town Addition.
6. Call for bids on the purchase of two police vehicles.
7. Approval of bonds or licenses.
8. Acceptance of reports.

TAB # 11
NOMINATIONS AND ELECTION

NOMINATIONS AND ELECTIONS

NOMINATIONS

One outstanding duty of the citizen is to help choose the leaders of his group. This is done by means of nominations and elections. In small groups nominations are usually made “from the floor,” that is, a member rises and addresses the Chair. When recognized by the Chair the member says, “I nominate Mr. John H. Smith for president.” A nomination by this method does not require a second, but other members may desire the “second” this nomination just to show that they support Mr. J. H. Smith for this office. When there are no other nominations to be made some member should move, “that nominations close.” If this motion is seconded and adopted by a two-thirds vote, nominations are closed and the group may then proceed with the final election.

Another form of nomination is to have a nominating committee make up a list of one or more nominees for each elective office and present these nominations to the group in the form of a committee report. Frequently this form of nomination is supplemented by “nominations from the floor.” A nominating committee has the advantage that it can consult each nominee in advance and be sure that the nominee will accept the nomination when it is made. Also, a nominating committee can make up “a slate” of nominees for the various offices who will work together harmoniously if all the members of this “slate” are elected. It is a misfortune for any group to have a chairman and a secretary who do not cooperate cordially in conducting the affairs of the group.

A third method of nomination for an elective office is to have a certain number of members (one or more) sign a petition placing Mr. J. H. Smith in nomination for the office of president. This method is too slow and cumbersome except for a very large group.

A PRACTICE NOMINATION

Chairman: “The meeting will come to order. The first item of business today is the nomination of candidates for the annual election to be held at the next regular meeting. All nominations are to be made from the floor. Nominations for the office of president are now in order.”

Mr. A: - “Mr. Chairman.”

Chairman: - “Mr. A.”

Mr. A: - “I nominate John Black.”

Chairman: - “John black is nominated.”

Mr. B: - “Mr. Chairman.”

Chairman: - “Mr. B.”

Mr. B: - “I nominate Mary Brown.”

Chairman: - "Mary Brown is nominated."

Miss C: - "Mr. Chairman."

Chairman: - "Miss C."

Miss C: - "I second the nomination of Mary Brown."

Mr. D: - "Mr. Chairman."

Chairman: - "Mr. D."

Mr. D: - "I second the nomination of Mary Brown."

Chairman: - "Are there further nominations?"

Miss E: - "Mr. Chairman."

Chairman: - "Miss E."

Miss E: - "I nominate Walter Jones."

Chairman: - "Walter Jones is nominated."

Miss C: - "Mr. Chairman."

Chairman: - "Miss C."

Miss C: - "I nominate Charles Bradford."

Chairman: - "Miss C has already seconded the nomination of one candidate and therefore cannot nominate another candidate. In some states there is a law against signing the petition of more than one candidate for the same office."

Mr. F: - "Mr. Chairman."

Chairman: - "Mr. F."

Mr. F: - "I nominate Charles Bradford."

Chairman: - "Charles Bradford is nominated."

Mr. A: - "Mr. Chairman."

Chairman: - "Mr. A."

Mr. A: - "I move that nominations close."

Mr. F: - *(without waiting for recognition)* “I second that motion.”

Chairman: - *(momentarily ignoring that motion)* “are there other nominations?” *(After a pause in which no further nominations are made.)* “If not, it is moved and seconded that nominations be closed. Those in favor of closing nominations say ‘aye’.” *(Pause)* “Those opposed say ‘no’.”

Chairman: - “The ‘ayes’ have it by a two-thirds vote, and the motions to close nominations for the office of president is carried. Nominations are now in order for the office of vice-president.”

Note: Nominations may be reopened by a simple majority vote when there is occasion for doing so.

NOMINATION BY NOMINATING COMMITTEE

Chairman: - “The meeting will come to order. The first item of business today is the report of the nominating committee. At the last meeting Mollie Black, Chester Bradley, and Frank Oakley were selected as the nominating committee. Is the nominating committee ready to report?”

Mollie Black: - “Mr. Chairman.”

Chairman: - “Mrs. Black.”

Mollie Black: - “ In accordance with the provisions of the constitution your nominating committee desires to place in nomination the following persons: for President, Mary brown; for Vice-President, Chester Winslow; for Secretary, Virginia Bradford; for Treasurer, Frank Ludlow; for Sergeant at Arms, Fred Britton.”

Chairman: - “You have heard the report of the nominating committee. Our constitution also provides for nominations from the floor. Are there other nominations for President? *(Pause. Hearing no nominations, he continues)* For Vice-President? *(Pause, hearing none)* Treasurer? *(Pause, hearing none)* For Sergeant at Arms?”

Chairman: - “If there are no other nominations will someone please move that nominations be closed and that the Secretary be instructed to cast a ballot for the ‘slate’ of nominees presented by the nominating committee.”

Note: This suggestion by the chairman that someone move that the secretary be instructed to cast a ballot for the nominees would be out of order at this meeting if the Constitution provided that nominations be made at one meeting and the election be held at the next meeting. Even a unanimous vote cannot suspend the Constitution unless the Constitution specifically provides for such suspension (which it usually does not).

Chester Bradley: - “I move that nominations close and that the Secretary be instructed to cast a ballot for the ‘slate’ of nominees.”

Frank Oakley: - *(without waiting to be recognized)* “I second the motion.”

Chairman: - “It is moved and seconded that nominations close and that the Secretary be instructed to

cast a ballot for the 'slate' of nominees presented by our nominating committee. Those in favor of this motion say 'aye.'" (*Pause. Many vote "Aye."*) "Those opposed say 'no.'" (*None vote "No."*)

Chairman: - "The 'ayes' have it unanimously, and the motion is carried. The Secretary will cast a ballot for each of the nominees. Is there any other business?"

Note: In case someone votes "No" on the above motion, the motion is lost because it requires a unanimous vote. When this motion is lost because of one or more negative votes, the chairman may ask those voting in the negative to make other nominations since they seem to be opposed to the present nominees. But whether other nominations are made or not, a separate vote must be taken for each office to be filled when the motion "to instruct the secretary to cast a ballot" has been defeated by one or more negative votes.

As a matter of fact, formal nominations are not necessary for an election. The members may proceed to "ballot" on the election of a "president" for instance, and each member may write on his ballot the name of the person he desires for president. Then the ballots are counted and all the names written on the ballots are listed as candidates with the number of ballots received by each candidate listed after the name of that candidate. If only a plurality vote is required for election the candidate with the largest vote on the first ballot is declared elected. If a majority vote is required for election then some rule must be followed for the succeeding balloting that will insure a majority vote for some one candidate after a reasonable number of votes have been taken. The usual rule in such cases is to drop the candidate with the smallest; vote after each balloting until a majority vote is secured. Sometimes the rule is adopted that after the first ballot all but the two candidates with the highest votes are dropped. This simple rule guarantees a majority vote at the end of two ballotings. However, this system offers clever politicians an easy opportunity to eliminate good candidates on the first ballot by nominating other candidates who will "split-the-vote" of the good candidates so that the two candidates who survive the first ballot may not be the two strongest candidates in the list of original nominees.

Note: The best method of preventing this political trickery is by using the single-transferable-vote system described in the section below on Elections.

ELECTIONS

When the candidates for an elective office have been nominated, the next step is to elect one of the nominees for the office to be filled. For this purpose two general systems are used, majority election and plurality election. In a plurality election the candidate having the largest number of votes is declared elected even though this candidate actually received only twenty-five per cent of the total vote. In fact, if there are ten nominees, one of them may be elected under this system by a vote of twelve per cent in each of the other nine candidates receives close to ten percent of the total vote.

However, the majority vote system is considered the better system because it guarantees that the leader elected represents the choice of a majority of the members. There is no system of choosing leaders that will *guarantee* successful leadership, but obviously a leader with a majority supporting him at the beginning of his term of office has a better chance to be a real leader of the group than a leader with the support of only twenty percent of the membership at the beginning of his term of office.

There are two systems of choosing officers by majority vote: one is the system of double elections, that is, a primary election to reduce the number of candidates to two, and a final election to choose between these two. This is the system in most common use in the United States. The other system is called the “single-transferable-vote system” because you mark your first, second, third and perhaps a fourth choice on the ballot and then your second choice vote is counted if your first choice candidate runs lowest in the count of the first choice votes. This system does away with two elections but it does take a little more time to count the ballots.

Under this single-transferable-vote system all the first choice votes are counted and placed in piles, one pile for each candidate. Then, if no candidate gets a majority of the total vote, the candidate having the smallest first choice vote is declared “out of the race” and his first choice ballots are all re-counted in accordance with the second choice indicated on each ballot. If the addition of these second choice ballots does not give any candidate a majority of the total vote, the candidate with the lowest total on this second count is declared out of the race and his ballots are re-counted according to the next choice on each ballot. This system of dropping off the lowest candidate continues either until one candidate does get a majority of the total vote, or, failing in that, until there is only one candidate remaining. Usually, one candidate will eventually secure a majority under this system if the voters will indicate their second, third and fourth choices as well as their first choice. Voters should mark a second, third and fourth choice under this system, because the second choice is not a vote against the first choice owing to the fact that the second choice is not counted until the first choice is declared “out of the race.”

In principle this single-transferable-vote system is the same as the double election system because in a primary election you vote your first choice and the, when you first choice candidate is eliminated in the primary, you go to the voting booth at the final election and vote your second choice. Under the single-transferable-vote system you indicate both your first and second choice at the one election so that when your first choice candidate turns out to be the “tail end” candidate, the election officials can go ahead and count your vote for your second choice because you have already indicated your second choice on the one and only ballot.

No illustration is necessary to explain the ordinary primary and secondary (or final) election. One ballot is taken and if no one gets a majority of all the votes cast, all but the two leading candidates are dropped from the contest and then a second vote is taken on the two remaining candidates.

The other majority vote system (the single-transferable-vote system) requires some illustration to make it clear. The voter indicates his first, second, third and fourth choice by the numbers 1, 2, 3 and 4. The voter marking the ballot below voted for Mary Brown as his first choice, Walter Jones as his second choice and John Black as his third choice:

<u>Ballot</u>	<u>Choice</u>
John Black	3
Mary Brown	1
Walter Jones	2
Charles Bradford	

He refused to give Charles Bradford his fourth choice because he did not want Charles Bradford as president under any circumstance.

When the ballots for this class of thirty members were counted according to the first choice votes the count was as indicated in the first count column below.

<i>Candidate</i>	<i>1st Count</i> <i>1st Choice Only</i>	<i>Jones' Ballots</i> <i>2nd Choice</i>	<i>2nd Count</i> <i>1st & 2nd Choice</i>	<i>Bradford's Ballots</i> <i>2nd Choice</i>	<i>3rd Count</i>
John Black	8	1	9	2	11
Mary Brown	10	3	13	5	18
Walter Jones	4	-	-	-	-
Charles Bradford	8	0	8	-	-
Exhausted Ballots	-	-	-	1	1
Total Ballots	30	4	30	8	30

The first choice ballots are arranged in piles by the “tellers” with all of the eight John Black 1st choice ballots in one pile, all of the ten Mary Brown 1st choice ballots in another pile, etc.

Since no candidate has a majority of all the votes cast the candidate with the smallest vote, Walter Jones, is declared “out of the race” and his four 1st choice ballots are re-distributed according to their 2nd choice indication. (See 2nd column above.) Adding these 1st and 2nd choices together gives the second count, which is 9, 13 and 8 respectively for the three remaining candidates. Still no candidate has a majority of all the votes cast, consequently, the candidate with the smallest vote in this 2nd count, Charles Bradford, must be dropped and his eight 1st choice ballots re-distributed according to their 2nd choice indication which is shown in column 4. One of the Charles Bradford 1st choice ballots had no 2nd choice indicated, therefore it was an “exhausted ballot” when Bradford was declared “out of the race.” These 2nd choice ballots for John Black and Mary Brown are added to their previous total of 9 and 13 respectively to make the 3rd count of 11 for John Black and 18 for Mary Brown. Mary Brown now has 18 ballots, which is 2 more than a majority of the total vote cast, therefore, Mary Brown is declared elected to the office of president for the next year.

By this system a group can select its officers by majority vote with one brief election no matter how many candidates are nominated. The counting of the ballots may take some time, but this need not delay the group as a whole. Three “tellers” can take the ballots to another room and do the counting (if desirable, under the supervision of the candidates or their representatives) while the group as a whole adjourns, or proceeds to take up other business.

Committees are usually appointed by the Chair. But where it is preferred that the members of a committee be elected, several methods of election are available. If it is a committee of five, each member may vote for any five candidates and the five candidates with the largest vote are declared elected. (This is called straight election-at-large.) This method has the disadvantage that a bare majority of fifty-five per cent of the members may elect all the members of this committee, leaving the forty-five percent minority of the club membership without any representation on this important committee.

A simple system that guarantees some representation for a strong minority is that known as limited voting. If a committee of five is to be elected, each voter is allowed only one vote (instead of five as above). Under this system it will usually work out that the fifty-five per cent majority will elect three members of the committee while the forty-five percent minority will elect two members.

The most accurate system of choosing a committee or a board of directors that accurately represents each group in the club in proportion to its numerical strength is known as the “Hare System of Proportional Representation,” but this system is too complicated to be explained here. (See description of this system in the Encyclopedia Britannica.) The ballot is the same as that used to elect a president by the single-transferable-vote system described above, but the counting of the ballots is much more complicated.

When there is a tie vote for two candidates, the tie is usually broken by flipping a coin. Since half the group favors each candidate, it does not matter which one is finally chosen, consequently, deciding it by chance is the simplest solution of the problem.

TAB # 12
BYLAWS

“SAMPLE” BY LAWS

**RURAL WATER, SEWER, AND SOLID WASTE MANAGEMENT
DISTRICT NO. _____
_____ COUNTY, OKLAHOMA**

Article 1

Name and Place of Business

Section 1. The name of this corporation shall be Rural Water, Sewer, and Solid Waste Management District No. _____, _____ County, Oklahoma.

Section 2. The principal office of this District shall be located in _____ County, Oklahoma

Article 2

Corporate Power

Section 1. The corporate powers of this District shall be vested in the Board of Directors, hereinafter referred to as the Board.

Article 3

Purposes and Objectives

Section 1. The purposes and objectives of this District are as follows:

- (a) To acquire water and water rights and to build and acquire pipelines and other facilities, to build, operate and maintain a sewage disposal system and to acquire, operate and maintain a solid waste management system and to operate the same for the purpose of furnishing water, sewerage collection and treatment and solid waste management to serve the needs of owners and occupants of land located within the District, and others as authorized by the By Laws.
- (b) To borrow money from any Federal or State agency, or from any other source, and to secure said loans by mortgaging or pledging all of the physical assets and revenue and income of the District, including easements and rights-of-way.
- (c) Any loan made or insured by the Rural Development will be authorized by a majority vote of all the members present at an annual meeting of members or at a special meeting of the members.
- (d) To hold such real and personal property as may come into its possession by will, gift, purchase, or otherwise, as authorized by law, and to acquire and dispose of such real and personal property, including rights-of-way and easements, wherever located, and as may be necessary and convenient for proper conduct and operation of the business of the District.

- (e) To establish rates and impose charges for water, sewer, and solid waste management services furnished to participating members and others.
- (f) To enter into contracts for the purpose of accomplishing the purposes of the District with any person or governmental agency.
- (g) To cooperate with any person or with any governmental agency in any undertaking designed to further the purpose of the District.
- (h) To do and perform any and all acts necessary or desirable for the accomplishment of the purposes of the District that may lawfully be done by such District under the laws of the State of Oklahoma.

Article 4

Users

Section 1. Water, sewer, and solid waste management service shall be supplied only to rural residents of land located within the District. Provided, however, that the Board may make water, sewer, and solid waste management services available to the public for purchase at such distribution points as it may establish.

Section 2. No owner of land located within the District shall be eligible to become a user of the facility unless he has first subscribed and paid for one or more Benefit Units. Tenants occupying land located within the District may become members provided the land owner grants permission by completing the necessary forms required by the District and the Benefit Unit(s) is subscribed and paid for in favor of the land or premises occupied by the tenant.

Article 5

Right to Vote

Section 1. Only participating members shall have the right to vote, and each participating member shall be entitled to a single vote, regardless of the number of Benefit Units to which he may have subscribed: Provided all owners of land located within the District shall be eligible to vote at meetings of landowners until ninety (90) days after a declaration of availability of Benefit Units and unit fees has been entered by the Board in its minutes. There shall be no proxy voting, and no dual ownership of Benefit Units for voting purposes. A participating member may be an individual, firm, partnership, association, or corporation.

Participating members shall be:

- (a) Owners of land located within the District who has subscribed to one or more Benefit Units: Provided, payments of charges are current on at least one of the Benefit Units.

Article 6

Benefit Units

Section 1. The Board shall at the proper time cause a declaration of Availability of Benefit Units for subscription to be entered in its minutes and shall establish a unit price for said subscriptions. The meter deposits of existing users who desire to continue to be users shall be

credited toward the price of a Benefit Unit. Each Benefit Unit shall carry with it the obligation of paying a minimum monthly meter charge and/or waste disposal charge from the time service is available. The Board in its discretion may from time to time, if the capacity of the District's facilities permit, make additional Benefit Units available. Subscriptions for Benefit Units shall be given preference and priority in the order in which received. The Board may refuse the subscription for a Benefit Unit in favor of a particular tract of land located within the District, or impose special conditions on granting the same IF in the judgment of the Board, the granting of said subscription and the furnishing of water and/or sewer and/or solid waste management services pursuant thereto would impair the service to other users in that locality or be uneconomical, unfeasible, and place an undue burden on the District. Any landowner who feels himself aggrieved by such denial, or imposition of special conditions, may appeal from the action of the Board to a vote of the members at the next regular meeting of the members, or special meeting of the members called for such purpose: Provided, the decision of the Board shall stand, unless three-fourths of all participating members (or landowners at meetings where only qualification to vote is ownership of land within the District) vote in favor of a motion to overrule the decision of the Board.

Section 2. Upon the purchase of a Benefit Unit, the owners of land shall designate the tract of land to which the Benefit Unit shall be assigned, and the Benefit Unit shall not be transferred from one tract of land to another within the District without the approval of the Board. The meter must be located on the property owned by the subscriber and serve the subscriber's property or the necessary easement provided to place the meter on land now owned by the participating member. Benefit Unit Certificates (applications) shall be signed by the Chairman.

Section 3. The consideration paid for Benefit Units shall be considered a donation to the District and may not be refunded without Board approval.

Section 4. Benefit Units shall follow the title of the land unless the participating member designates otherwise. Participating Members may transfer Benefit Units from one tract of land to another tract within the District, subject, however, to the approval of the Board. No transfer in ownership of Benefit Units shall be permitted without the approval of the Board. No transfer will be approved unless all charges against the Benefit Unit are paid and necessary transfer forms are completed by the seller, buyer, and property owner (if seller is a tenant). All transfers when approved shall be recorded in the books of the District.

Section 5. Each Benefit Unit shall entitle the owner not to exceed one line from the District's water system and/or one line from the District's sewage system and/or solid waste management service for one residence or business. Each line and waste disposal service shall serve not to exceed one residence or business establishment together with the necessary and usual outbuildings.

Section 6. Failure to pay the minimum monthly meter charge and/or sewer and solid waste management charge, or failure to pay for water used through a meter for a period of _____ days (*normally 180 days*) shall constitute a forfeiture of the Benefit Unit on behalf of which such failure occurs. Notice of such default shall be mailed by certified mail and by regular mail to the landowner and tenant if the tenant is the subscriber member when the account becomes _____ days (*normally 90 days*) delinquent. This notice shall include the date the Benefit Unit will revert and charges against the account to date and shall be mailed to the last

known address as shown on the books of the District.

Article 7

Election of Directors

Section 1. The Board of this District shall consist of _____ members, all of whom shall be participating members of the District: Provided, however, that the original Board shall consist of owners of land located in the District. The Directors elected at the time of the incorporation of the District shall be elected for staggered terms of one, two, and three years, and shall serve until the expiration of the term for which they were elected as shown by the minutes of the original meeting of the landowners and until the successors are elected and have qualified. At each annual meeting of the participating members, the participating members, shall elect for a term of _____ years (not to exceed 6 years) the number of Directors whose term of office have expired. When a city or town is a part of a Rural Water, Sewer, and Solid Waste Management District, the Board of Directors must be composed of residents of said city or town in direct proportion to the number of users in said city or town: Provided further than when a Rural Water, Sewer, and Solid Waste Management District is totally within the municipal city limits of a city or town, the Board of Directors of the District shall be the Governing Body of the town.

A. As a requirement for qualification to serve as a Board Member shall be a written pledge that upon election such as Board Member shall attend a minimum of six (6) hours of workshop training to be offered periodically on a regional basis within twelve (12) months following election of such Board Member, and to be organized by the Oklahoma Water Resources Board in cooperation with the Oklahoma Rural Water Association with the purpose of study and instruction in areas of district financing, law, ethics, duties and responsibilities of district Board Members. All new and existing Board Members are required to obtain continuing education by attending a minimum of six (6) hours of workshop training every three (3) years. The District shall reimburse all reasonable expenses incurred by any board member for attending such training workshop.

B. Should any pledging Board Member fail to attend the workshop training as required, he or she shall be deemed ineligible to serve as a Board Member commencing at the next regularly scheduled meeting of the Board following the 12 month period OR 3 year period (whichever is applicable). The remaining Board Members shall select from the membership another qualified member to fill the vacancy and that person shall pledge to attend the workshop training provided for in this section. The appointed member shall only serve until the next regularly scheduled election of Board Members. At that time, an election shall be held to fill the unexpired term of this vacated position.

Section 2. Immediately following the annual meeting of the participating members, the Board shall meet and shall elect a Chairman, Vice-Chairman, Secretary and Treasurer, from among themselves, each of whom shall hold office until the next annual meeting of participating members and until the election and qualification of his successor unless sooner removed by death, resignation or for cause. One person may hold the office of the secretary and treasurer.

Section 3. Any vacancy in the Board, other than from the expiration of a term of office, OR failure to attend shall be filled by appointment by the remaining members of the Board for the remainder of the unexpired term of this vacated position.

Section 4. A majority of the Board shall constitute a quorum at any meeting of the Board.

Section 5. Any Director of the District may be removed from office for cause by a vote of not less than three-fourths of the participating members of the District at any annual or special meeting called for that purpose. The Director shall be informed in writing of the charges preferred against him at least ten (10) days before such meeting, whether regular or special, and at the meeting shall have an opportunity to present witnesses and be heard in person to answer thereto. Officers of the Board may be removed for cause of vote of _____ of the members of the Board, and employees and agents discharged or removed for office or employment at any time by action of the Board. When the Board of Directors is the governing body of the city or town, they may not be removed except by due process of city government.

Article 8

Powers and Duties of Directors

Section 1. The Board, subject to the restrictions of law, and these bylaws, shall exercise all the powers of the District and without prejudice to or limitation upon their general powers, it is hereby expressly provided the Board shall have, and is hereby given full power and authority in respect to the matters as hereinafter set out:

- A. The select and appoint all agents and employees of the District or remove such agents and employees of the District for just cause, prescribe such duties and designate such powers as may not be consistent with these bylaws, and fix their compensation and pay for faithful services.
- B. To borrow from any source money, goods, or services and to make and issue notes, and other negotiable and transferable instruments, mortgages, deeds of trust and trust agreements, and to do every act and thing necessary to effectuate the same.
- C. To prescribe, adopt and amend, from time to time, such equitable and uniform rules and regulations, as in their discretion, may be deemed essential or convenient for the conduct of the business and affairs of the District, and the guidance and control of its agents and employees.
- D. To fix charges to be paid by each water, sewer, or solid waste management user for services rendered by the District to him, the time of payment, and the manner of collection, and to establish equal rates for farm members and non-farm members according to the amount of services furnished.
- E. To require all officers, agents, and employees, charged with the responsibility for the custody of any funds OR property of the District to give adequate bond, and cost thereof to be paid by the District, and it shall be mandatory upon the Directors to so require.
- F. To select one or more banks to act as depositaries of the funds of the District and to determine the manner of receiving, depositing and disbursing the funds of the District in the form of checks, and the person by whom the same shall be signed or behalf of the Chairman, with the power to change such bank or person signing such checks and the form thereof at will.
- G. Prepare annually an estimated budget for the coming year, adjust rates, if necessary to produce sufficient revenue required by such budget, cause an annual audit of the District records and accounts to be made by a licensed municipal public accountant or certified independent public accountant, and make a report on said matters at each annual meeting of participating members.

Article 9

Powers and Duties of Manager

Section 1. The Board may employ for the District a manager, who shall charge of the business of the Association under the general control, supervision and direction of the Board. No Director shall serve as manager. Subject to the approval of the Board, the manager shall employ, supervise, and dismiss all agents and employees of the District and fix their compensation. He shall also, so far as practical, conduct the business in such a way that all patrons receive equal service and treatment, deposit in a bank selected by the Board, all money belonging to the District which comes into his possession; maintain his records and accounts in such a manner that the true and correct condition of the business may be ascertained there from at any time; furnish the Board a current statement of the business and affairs of the District at each scheduled meeting of the Board and at the end of each fiscal year and at such other times and in such forms as the Board may direct; carefully preserve and turn over to his successor all books, records, documents, and correspondence pertaining to the business of the District which may come into his possession; and to perform such other duties as may be prescribed by the Board.

Article 10

Duties of Officers

Section 1. Chairman. The Chairman, who shall be a member of the Board, shall preside over all meetings of the District and the Board, call special meetings of the District and the Board, perform all acts and duties usually performed by an executive and presiding officer, and shall sign all Benefit Unit Certificates or Applications and such other papers of the District as he may be authorized or directed to sign by the Board, provided the Board may authorize any person to sign checks, on behalf of the District, provided that all checks must be countersigned Board Member or person authorized by the Board. The Chairman shall perform such other duties as may be prescribed by the Board.

Section 2. Vice-Chairman. The Vice-Chairman, who shall be a member of the Board, shall in the absence or disability of the Chairman, perform the duties of the Chairman.

Section 3. Secretary. It shall be the duties of the Secretary who shall be a member of the Board to see that a record of the proceedings of the meetings of the Board and the District is kept. He shall serve, or cause to be served, all notices required to be served by law or the bylaws of the District; and in case of his absence, inability, refusal or neglect to do so, then any member of the Board directed by the Chairman may serve such notices.

Section 4. Treasurer. The Treasurer, who shall be member of the Board, shall see that all funds of the District are accounted for, deposited in a bank designated by the Board as a depository, and cause payments to be made by check from these funds approved by the Board and signed by designated signers approved by the Board. At each Annual Meeting of the District, he shall submit a complete statement of accounts for the past year.

Article 11
Books and Records

Section 1. The books and records of the District, and such papers ad may be placed on file by vote of the District or Directors, shall during all reasonable business hours, be subject to inspection according to the Open Records Act.

Article 12
Annual Meeting of Participating Members

Section 1. The annual meeting of the participating members of the District shall be held at some suitable time at a location within the District, designated by the Board at a time and date designated by the Board *.(usually set at same date & time each year)*

Section 2. Special meetings of participating members may be called at any time by the Chairman or upon resolution of the Board, or upon written petition to the Chairman of the Board, signed by fifty-one percent (51%) of the participating members of the District. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat except such as is specified in the notice.

Section 3. Notice of meetings of participating members of the District shall be given by mail to each participating member of record directed to the address shown upon the books of the District at least ten (10) days prior to the meeting. Such notice shall state the nature, time, place, and purpose of the meeting, but no failure or irregularity of a notice of any annual meeting, regularly held, shall affect any proceeding taken thereat.

Section 4. The participating members present any meeting of participating members shall constitute a quorum for the purpose of transacting business.

Section 5. The order of business at the regular meeting and so far as possible, at all other meetings, shall be:

- A. Call to Order
- B. Proof of Notice of Meeting
- C. Reading and Approval of Minutes of Last Meeting
- D. Report of Officers and Committees
- E. Election of Directors
- F. Unfinished Business
- G. New Business
- H. Adjournment.

Article 13
Board Meetings

Section 1. The Board shall meet each year to adopt a budget for the following year. The Board shall meet annually to elect officers immediately following the time for election of any new director. The Board shall meet at such and other times as may be determined by the Board, or upon call by the Chairman or any two members of the Board. Notice of all meetings of the Board shall be by mailing a notice to the last known business or residence address of each Director, at least two (2) days before the holding of such meeting: Provided, however, that when all of the Directors are present at any meeting, however called, or consent in writing that such meeting may be held, the proceedings thereat shall be as valid as though the previous written notice aforesaid had been given.

Article 14
Manner of Election and Voting

Section 1. At all meetings of the District, each participating member, qualified as stated in these bylaws, shall be entitled to vote upon all propositions coming before said District. No cumulative voting shall be permitted and each participating member of the District shall have but one vote. At all meetings of the Board of Directors, only elected Board Members shall be entitled to vote upon propositions coming before said Board.

Article 15
Corporate Seal

Section 1. The District shall have a corporate seal, consisting of a circle having its circumference and face the words, "Rural Water, Sewer, and Solid Waste Management District No. _____, _____
_____ County, Oklahoma," which shall be in the custody of the Secretary.

Article 16
Fiscal Year

Section 1. The fiscal year of the District shall begin the first day of _____ each year.

Article 17
Amendment

Section 1. These bylaws may be repealed or amended by a vote of three-fourths (3/4) of the participating members present at any regular meeting of the District Membership, or any special meeting of the District Membership called for that purpose except that the participating members shall not have the power to change the purposes of the District so as to impair its rights and powers under the laws of the State of Oklahoma, or to waive any requirement of bond or other provision for the safety and security of the property and funds of the District or its participating members, or to deprive any participating member or landowner of rights and privileges then existing, or to so amend the bylaws as

to affect a fundamental change in the policies of the District. Notice of any amendment to be made at any regular or special meeting of the participating members must be given at least ten (10) days before such meeting and must set forth the amendments to be considered.

Article 18 **Basis of Operation**

Section 1. The District shall at all times be operated on a non-profit basis for the mutual benefit of its participating members.

Article 19 **Benefits and Duties of Members**

Section 1. The District shall install, maintain, and operate a main distribution pipe line or lines from the source of water supply, and lines from the main distribution pipe lines or lines, to the property line of each participating member of the District at which point designated as delivery points, meters to be purchased, installed, owned and maintained by the District shall be placed. The District shall also install, maintain, and operate a sewage disposal system with lines running from points designated by the Board of Directors as sewer delivery points for each participating member, to main sewage disposal lines and then to a sewage disposal facility. The District shall operate a solid waste disposal system including containers at designed pick up points and the sanitary landfill or other disposal facility. Cost of improvements or extensions deemed necessary to serve new applicants for membership shall be determined by the Board.

Section 2. Each participating member shall be entitled to purchase from the District, pursuant to such agreement as may from time to time be provided and required by the District and Board, such water, sewer, or solid waste management services for domestic and other such purposes as a participating member may desire, subject, however, to the provisions of these bylaws and such rules and regulations as may be prescribed by the Board. The water delivered to each participating member shall be metered.

Section 3. In the event the total water supply shall be insufficient to meet all the needs of the members and users, or in the event there is a shortage of water, the District may prorate the water available among the various members and users on such basis as in deemed equitable by the Board, and may also prescribe a schedule of hours, covering the use of water for garden purposes and require adherence thereto, or prohibit the use of water for garden purposes if at any time the total water supply shall be insufficient to meet all of the needs of the participating members for domestic livestock, garden and other purposes, and the District must first satisfy all needs of all the participating members for domestic and livestock purposes before supplying water for gardens and other purposes.

Article 20 **Printing**

Section 1. After adoption, these bylaws shall be prepared in pamphlet form, and a copy thereof shall be delivered to each participating member. Upon approval of amendment(s) of these bylaws by participating members of the District, a copy including the amendments shall be made available to participating members upon request. A copy of the current bylaws of the District shall be delivered to all new members of the District.

AFFIDAVIT

STATE OF OKLAHOMA
COUNTY OF _____ ss

_____ (*List the Board Members names*), being first duly sworn, depose and state each for himself, that he is a Director of Rural Water, Sewer, and Solid Waste Management District No_____, _____ County, Oklahoma, the foregoing bylaws were adopted at a meeting of the landowners of said District duly held on the _____ day of _____, _____, at _____ o'clock_____. That there were _____ landowners present in person and that the vote for the adoption of the bylaws was unanimous.

Subscribed and sworn to me before this _____ day of _____, _____.

Notary Public

My Commission expires: _____

TAB # 13
RULES AND REGULATIONS

RULES AND REGULATIONS

FOR PUBLIC TRUSTS, RURAL WATER, SEWER AND SOLID WASTE MANAGEMENT DISTRICTS AND CORPORATIONS

These rules are designed to govern the supplying and taking of water and waste disposal service in a uniform manner for the benefit of the Association and/or Organization and its members. They are subject to change from time to time. However, all such changes must be approved by the State Director of the Farmers Home Administration, until such time as the Association and/or Organization is no longer indebted to the United States of America, or until such time as the Association and/or Organization has completely retired all loans by or insured by the United States of America. If a provision of the rules conflict with a provision of the rate schedule, the provision of the rate schedule will prevail. If any portion of these rules shall be declared invalid by competent authority, such voidance shall not affect the validity of the remaining portions.

Definitions: The following expressions when used herein will have the meaning stated below.

Applicant: Any individual, firm, partnership, corporation, authority or other agency living or owning land located within the service area applying for water and waste disposal service who applies for membership.

Membership Certificate: A right entitling the holder to one water and waste disposal service connection.

Board: The Governing Body.

Consumer: Any individual, firm, partnership, corporation, authority or other agency receiving water and/or waste disposal service from the Association's and/or Organization's facilities.

Point of Delivery: In rural areas water transmission lines will be installed parallel to section lines and highways and on private property, where possible. Service lines to the meter will not extend across private property unless necessary to serve users whose property does not join the section lines or road.

Water will be delivered at the meter, which will be located five feet inside the user's property line. However, if the cost to serve the last user or users on any line segment exceeds the average cost per user of the entire system, the last user or users will be required to pay all costs which exceed the average cost per user of the entire system.

Sewer collection lines will normally be installed in the alley and the user required to connect to the sewer riser at the collection line. When the collection line must be installed on one side of a street, the Association and/or Organization will extend the line across the street to the user's property line where the user on the opposite side of the street will connect.

Service: The term service when used in connection with the supplying of water shall mean the availability for use by the consumers of water adequate to meet the consumer's requirements and adequate waste disposal collection and treatment facilities when the collection lines are installed. Service shall be considered as available when the Association and/or Organization maintains the water supply at normal pressure at the point of delivery, in readiness for the consumer's use, regardless of whether or not the consumer makes use of it and

when the Association and/or Organization has available to the member waste disposal collection and treatment facilities.

Users Agreement: The agreement or contract between the consumer and the Association and/or Organization, pursuant to which water and waste disposal service is supplied and accepted.

State Director: The State Director of the Farmers Home Administration.

Water and Waste Disposal Service: Water and waste disposal service shall consist of facilities for supplying water and waste disposal to one's residence or business establishment.

GENERAL RULES

1. The supplying and taking of water and use of waste disposal service will be in conformance with these rules and the applicable rate schedule attached hereto, provided, that such rate schedule is subject to change by action of the Governing Body with the approval of the State Director. Provided further, that if at any time the Governing Body determines the total amount derived from the collection of water and waste disposal charges is insufficient for the payment of operating costs, emergency repairs, or debt service, the Governing Body shall increase the minimum water and waste disposal rate for the first month thereafter in an amount sufficient to pay such operating costs, emergency repairs, or debt service.
2. Applicants for service shall make application to the Secretary of the Association and/or Organization. If the Governing Body approves the application for service, the applicant pays the required costs and signs the standard application for water and waste disposal service, he shall receive service.
3. Before installing a service extension and providing water available for use, the Governing Body may require the applicant to pipe his home and be in readiness to accept service.

Service is for Sole Use of the Consumer: A standard water and waste disposal service connection is for the sole use of the applicant or the consumer, and does not permit the extension of pipes to transfer water from one property to another, nor to share, resell, or sub-meter water to any other consumer or allow another user to connect to the applicant's sewer line. If an emergency or specific situation should make such an arrangement advisable, it shall be done only on specific written permission of the Governing Body for the duration of their emergency. Each residence or business establishment will pay the established waste collection fee for each residence or business establishment served.

Multiple Users:

- a. **Mobile Home Parks:** The classification, method of service, and minimum charge to be assessed each mobile home resident, whether located in a trailer park or located on an individual lot, will be the same as for any other residential user on the system. Each mobile home resident is expected to pay the same water charges as other users on the system. Normally, this would be accomplished by installing a water meter at each mobile home. If the residents of the mobile homes are not permanent residents, the Governing Body may elect to serve mobile homes located in a trailer park through a master meter, provided the owner of the trailer park agrees in writing that he will be responsible for collecting a minimum water bill each month for

each mobile home, plus water used through the master meter in accordance with the rate schedule used for other residential users. Owners of trailer parks serving non-resident users will be expected to contribute an amount equal to the cost of enlarging the Association's and/or Organization's water system as required to serve the trailers. The trailer park owners must also pay for constructing their own lines within the trailer park. Waste disposal service will be provided on the same basis as water.

- b. Subdivisions and Developers: Developers are expected to pay for essential utilities to new or developing areas, including subdivisions. Owners of subdivisions or developments will be expected to contribute an amount equal to the cost of enlarging the Association's and/or Organization's water or sewer system to serve the area being developed. The owner must also pay for constructing his or her own lines within the development or subdivision. If the Association's or Organization's consulting engineer and Board of Directors determines that the owner has installed service and main lines within the subdivision or development in accordance with approved plans and specifications, the Association or Organization may agree to accept ownership and overall operation and maintenance responsibility of the service lines within the subdivision or development. Also, if the Board of Directors determines adequate water is available, water service may be provided to the development or subdivision through a master meter.

Agreements with Governmental and Public Bodies: The Association and Organization through its Governing Body may make specific water and waste disposal service contracts with the Federal Government, the State of Oklahoma, or agencies thereof, school districts, municipal corporations and nonprofit corporations, differing from stipulations set out in the rate schedule and rules. Such contracts must receive approval by the State Director of the Farmers Home Administration.

Right of Access: Representatives of the Association and/or Organization shall have the right at all reasonable hours to enter upon consumer's premises to read and test meters, inspect piping and to perform other duties for the proper maintenance and operation of service, or to remove its meter and equipment upon discontinuance of service by consumers.

Continuity of Service: The Association and/or Organization will make all reasonable efforts to supply continuous, uninterrupted service. However, it shall have the right to interrupt service for the purpose of making repairs, connections, extensions, or for other necessary work. Efforts will be made to notify consumers who may be affected by such interruptions, but the Association and/or Organization will not accept responsibility for losses that might occur due to such necessary interruptions.

The Association and/or Organization does not accept responsibility for losses which might occur due to interruptions to service caused by storms, strikes, floods, or other causes beyond its control.

Bills: Bills will be rendered for service by the 5th day of the month following that in which the service was rendered as set forth in the rate schedule. Service bills not paid by the 16th of the month shall be subject to a ten percent (10%) late charge. Failure of the Association and/or Organization to submit a service bill shall not excuse the consumer of his obligation to pay for the water or waste disposal services used when the bill is submitted. Failure to pay a bill within 30 days from the due date shall result in the disconnection of the service.

Meters: Meters will be furnished, installed, owned, inspected, tested and kept in proper operating condition by the Association and/or Organization, without cost to the consumer. A complete record of tests and histories of meters will be kept. Meter tests will be made according to methods of the American Waterworks Association by the Association and/or Organization as often as deemed necessary by its Governing Body.

Meter Accuracy: Service meters whose errors do not exceed two percent (2%) fast or slow shall be considered as being within the allowable limits of accuracy for billing purposes. The percentage of error will be considered as that arrived at by taking the average of the error at full load and that at ten percent (10%) load, unless a consumer's rate of usage is known to be practically constant in which case the error at such constant use will be used.

Reconnection Charge: The reconnection charge for restoration of service, if reconnection is authorized and approved under the provisions of the Bylaws of the Association and/or Organization, after each suspension of service because of delinquent payment or for other infraction of these rules shall be the unpaid amount charged to date against the consumer's membership plus ten percent (10%) interest, and a sum to cover the reasonable cost of labor necessary to make such reconnection.

Requested Meter Tests: Meter tests requested by consumers will be performed without cost to the consumer if the meter is found to be in excess of two percent (2%) fast. Otherwise, the consumer for whom the requested test was made will be charged for the cost of making the test.

Consumer's Responsibility: The consumer shall be responsible for any damage to the meter installed for his service, on account of any cause other than normal wear and tear.

Change of Occupancy: It shall be the consumer's responsibility to anticipate changes of occupancy, and to have his membership certificate transferred to the new consumer as prescribed in the Bylaws. Until the certificate is formally transferred, the original holder shall be responsible for payment for service. The Governing Body may refuse to transfer a membership until all back bills have been paid. However, this would not preclude a new owner from purchasing a new membership in the Association and/or Organization.

Main Extensions:

1. In extending a water or sewer main to serve an applicant, the Governing Body may at its discretion exercise one of the following options:
 - a. If the cost of the extension is less than the average cost of the entire system to each member, and sufficient construction funds are available, the Governing Body may elect to make the extension upon the applicant's purchase of a membership or payment of the required fee.
 - b. If the cost of the extension is greater than the average cost of the entire system to each member, but funds are available to the extent of such average cost, the Governing Body may elect to contribute to the extension in the amount of such average cost, and require the applicant to deposit in cash the additional cost in addition to the price of the membership. If, and as additional consumers are connected to the extension, and as funds become available, all or part of the original consumer's deposit may be returned to him. Any portion of the original deposit remaining after the expiration of a five year period will become the property of the Association and/or Organization. In no case will interest be paid on such deposits.
 - c. In the event that the Association and/or Organization does not have funds available to pay for construction in the amount of the average cost per member of the entire system, it may require as a condition of extending service, that the applicant deposit in addition to the price of a membership, an

amount which may equal the entire cost of the extension. In such event the Governing Body may, as funds become available, return to the consumer tint portion of his deposit equal to the average cost of the system per member. No interest will be paid on such deposits.

2. However, the Governing Body shall not issue any bonds, notes, indentures, obligations, or other form of indebtedness in connection with the extension of lines hereunder, or mortgage or encumber the system in any manner.

Services: The Association and/or Organization will install all water service pipes (except for private fire protection) from its main to the meters. The service pipe shall not be less than three-fourths inch in size. The Association and/or Organization will also install the Association and/or Organization cock, meter and meter setting. The meter will be set in front of the premises to be served or at the closest point on the consumer's premises as designated by the Association and/or Organization. The Association and/or Organization will install the sewer collection lines that normally will be located in the alley. The user will be responsible for all piping from the dwelling to the collection lines and at the discretion of the Governing Body pay for all cost of extending.

Applicants Having Excessive Requirements: In the event an applicant whose water requirements are found to exceed the Association's and/or Organization's ability to supply it from existing plant without adversely affecting service to other consumers to a reasonable extent, the Association and/or Organization will not be obligated to render such service. unless and until suitable self-liquidating financing is arranged to cover necessary investment in additional plant.

Cross Connections: There shall be no cross connections made or maintained between the water system of the Association and/or Organization or any other system (private or otherwise) and that all new structures constructed within the Association and/or Organization shall, prior to service connections, comply with the plumbing standards of the State of Oklahoma. In addition, all sewage disposal systems shall comply with the standards contained in Oklahoma Department of Health Engineering Bulletin Nos. 600, 0587, and 0575.

Representatives of the Association and/or Organization, the state and local Health Department shall have the right at all reasonable hours to enter upon consumer's premises for the purpose of inspection and enforcement of this provision.

Violation of this provision shall constitute cause for disconnection of a consumer's service.

Unanimously adopted at a meeting of the Governing Body, held _____ at _____, with _____ members of the Governing Body present.

(Title)

ATTEST:

Secretary

TAB # 14
SAMPLE FORMS

ARE YOU CLEAR ON YOUR ROLE?

The following is a SAMPLE Board Member Job Description. Compare to those in your own organization.

TITLE: Member, RWD # ____Board of Directors

REPORTS TO: Board Chairperson

PURPOSE:

To serve the board as a voting member; to develop policies, procedures and regulations for the operation of RWD #____; to monitor finances of the organization, its programs and performance; to represent the members of the District.

TERM: Three years

EXPECTED MEETING ATTENDANCE:

Regularly attend meetings as scheduled (about 12 per year)
Attend standing committee meetings if a member (about 6 per year)
Participate as an ad hoc committee member if appointed
Attend board training, in-service workshops and other board development activities
Attend and participate in special events as needed

OBLIGATIONS OF THE BOARD:

Establish policies
Hire, supervise and evaluate the executive director (manager)
Secure adequate funds
Monitor finances
Maintain and update long-range plans

SPECIFIC DUTIES:

Attend meetings and show commitment to board activities
Be well informed on issues and agenda items in advance of meetings
Contribute skills, knowledge and experience when appropriate
Listen respectfully to other points of view
Participate in organizational decision-making
Support the organization
Assume leadership roles in all board activities
Educate yourself about the needs of the people served

WHO'S RESPONSIBLE – THE BOARD OR THE ADMINISTRATOR?

Below are recommendations for who should be responsible for the various activities and decisions to be made by your organization.

AREA	BOARD	ADMINISTRATOR_____
Long-term goals (more than 1 yr.)	Approves	Recommends & provides input
Short-term goals (less than 1 yr.)	Monitors	Establishes & carries out
Day-to-day operations	No role	Makes all management decisions
Budget	Approves	Develops and recommends
Capital purchases	Approves	Prepares requests
Decisions on building, Renovation, leasing, Expansion	Makes decisions, assumes responsi- bility	Recommends (could also sign contracts if given authority)
Supply purchases	Establishes policy & budget for supplies	Purchases according to board policy & maintains an adequate audit trail
Major repairs	Approves	Obtains estimates & prepares Recommendations
Minor repairs	No role	Authorizes repairs
Emergency repairs	Works with Administrator	Notifies board chairperson & acts with concurrence from chair
Cleaning & Maintenance	No role (oversight Only)	Sets up schedule
Fees	Adopts policy	Develops fee schedules
Bill, credit & collections	Adopts policy	Proposes policy & implements

BOARD MEMBER PLEDGE

I, _____, duly elected to serve as a board member of the _____ Rural Water District No. _____, on _____, _____ hereby pledge to attend a minimum of six (6) hours of approved workshop training within twelve (12) months following election to said board for the purpose of receiving instruction in the areas of district financing, law, and the ethics and duties and responsibilities of district board members pursuant to Title 82 of the Oklahoma Statutes Section 1324.16. I also agree to continue my education by attending a minimum of six (6) hours approved workshop training every three years thereafter, as long as I serve on this board.

Signed this _____ day of _____, _____

Board Member: _____

Witness: _____

MEETING EVALUATION

Directions: By evaluating our past meeting performance, we can discover ways to make meetings shorter and more productive. Mark each item with an “A” for adequate or an “N” for needs improvement. If you mark “Needs Improvement,” answer the second part of the item.

We were businesslike, results-oriented, and we functioned as a team. _____
We could improve our team spirit by...

Discussion was cordial and not dominated by just a few board members. _____
We could get more board members to speak up by...

We confined our discussion to agenda items only. _____
Where did we wander away from the agenda and why?

Our agenda included positive issues as well as problems. _____
What can we add to our agenda to make meetings more positive?

We discussed policy issues and not day-to-day management issues. _____
We shouldn't have discussed...

We followed parliamentary rules and consulted legal or other professional
counsel when needed. _____
What parliamentary procedures do we need to review?
(See the forms at the end of this chapter for a review.)

The chairperson controlled and guided the meeting. _____
/ wish the chairperson would...

We dealt successfully with-controversial items and attempted to
develop solutions acceptable to all board members. _____
We could better handle controversy by...

All board members were prepared to discuss material sent in advance. _____
We could be better prepared for board meetings by...

Reports were clear, well-prepared and provided adequate information. _____
We could have used more information about...

Our meeting room was comfortable and conducive to our work. _____
To make our meeting room more comfortable we should...

All board members were in attendance and on time. _____
More board members would attend if...

The meeting began and ended on time. _____
We could be more punctual by...

BOARD COMMITTEE REPORT

Date: _____

1. Committee: _____

2. Members attending: _____

3. Type of committee report: (check one)

Reporting/updating

Recommending board action

Recommending policy changes

4. Brief statement of committee issue/area reporting:

5. Brief background information and possible impact of issue/area (Examples: Why is it an issue? Will funding, staff utilization, services and/or facility changes be necessary?)

6. Recommendation for board action, if any (state in the form of a motion(s) to be acted upon by the full board):

* Please try to keep this report to one page.

* This report must be returned to the administrator three days before the next full board meeting.

(Note: You may photocopy this form and use it for every committee meeting!)

ADMINISTRATOR EVALUATION CHECKLIST

Directions: This evaluation tool is based on an Executive Director's job description. As you read through each section, check off the items he or she does well. Leave blank any items where improvement is needed.

Relationship with the board:

- Keeps board informed of organization activities, progress and problems
- Is receptive to board member ideas and suggestions
- Makes sound recommendations for board action
- Facilitates the decision-making process for the board
- Accepts board criticism as constructive suggestion for improvement
- Gives constructive criticism in a friendly, firm and positive way
- Follows up on all problems and issues brought to his or her attention

Comments:

Management skills and ability:

- Maintains a smooth-running administrative office
- Prepares all necessary reports and keeps accurate records
- Speaks and writes clearly
- Proposes organizational goals and objectives prior to each fiscal year
- Plans well in advance
- Is progressive in attitude and action
- Adequately follows through on set plans

Comments:

Services to people served:

- Understands and stays current with the needs of people served
- Focuses all activities on serving people's needs
- Accepts criticism from the people served and responds appropriately

Comments:

Fiscal management:

- _____ Prepares a balanced budget
- _____ Completes the year with a balanced budget
- _____ Displays common sense and good judgment in business transactions
- _____ Adequately monitors physical plant expenses

Comments:

Personal and professional attributes:

- _____ Projects professional demeanor
- _____ Participates in professional activities

Comments:

Community and public relations:

- _____ Represents the organization in a positive and professional manner
- _____ Actively promotes the organization to the public

Comments:

Effective leadership of staff:

- _____ Hires and maintains competent staff members
- _____ Encourages staff development
- _____ Follows personnel policies closely
- _____ Maintains high staff productivity

Comments:

Board Member's Signature: _____ Date: _____

DISCIPLINE DOCUMENTATION FORM

Employee information:

Employee Name: _____

Employee Job Title: _____

Incident Information:

Date/Time of Incident: _____

Location of Incident: _____

Description of Incident: _____

Witnesses to Incident: _____

Was this incident in violation of a company policy? **Yes** **No**

If yes, specify which policy and how the incident violated it: _____

Action Taken:

What action will be taken against the employee? _____

Has the impropriety of the employee's actions been explained to the employee? **Yes** **No**

Did the employee offer any explanation for the conduct? If so, what was it? _____

Signature of person preparing report: _____

Date: _____

SAMPLE

METER TEST AUTHORIZATION AND TEST REPORT

NAME: _____

ADDRESS: _____

DATE OF REQUEST: _____ PHONE NUMBER (DAY): _____

ACCOUNT NUMBER: _____ METER SERIAL NUMBER: _____

REASONS FOR REQUEST: _____

Members requesting a meter test may be present during the test, but if not, Member shall accept test results shown by the Water District. The test shall be conducted in accordance with the American Water Works Association standards and methods on a certified test bench. Member agrees to pay \$____.00 for the test if the results indicate an AWWA acceptable performance, plus any outstanding water utility service. In the event that the Member is required to pay for the test and for outstanding water utility service as set forth herein, said charges shall be applied to the next billing sent to the Member after the date of the test.

Member's Signature: _____

TEST RESULTS

Low Flow (1/4 GPM) _____ % AWWA Standard 97.0 - 103.0 %

Intermediate (2 GPM) _____ % AWWA Standard 98.5 - 101.5 %

High Flow (10 GPM) _____ % AWWA standard 98.5 - 101.5 %

Register test _____ minutes at _____ gallons per minute recorded per _____ gallons.

Meter tests accurately; no adjustments due.

Meter tests high; adjustment due on water charges by _____ %

Meter tests low; no adjustment due.

SAMPLE

REQUEST FOR SERVICE DISCONTINUANCE

I, _____, hereby request that my water meter (SSN# _____
_____) or account number _____ located on _____
_____ be disconnected from _____
_____ District service. I understand that if
I should ever want my service reinstated I may have to reapply for service as a new member and I may have to
pay all costs as indicated in a then current copy of District Policies and Rules. Future ability to provide service
will be dependent upon system capacity, which I understand may be limited and may require capital
improvements to deliver adequate service. I also understand that these improvements will be at my cost. I
further represent to the Corporation that my spouse joins me in this request and I am authorized to execute this
Request for Service Discontinuance on behalf of my spouse.

Signature: _____

Date: _____

SAMPLE

CUSTOMER NOTICE OF WATER RATIONING

DATE:

TO: Customers of _____ Rural Water District # _____

FROM: _____ Manager, _____

Due to extreme water usage during the past weeks our system is unable to meet the demand of all water needs. Therefore, under our Emergency Water Rationing Program, rationing will begin on _____ and will be in effect no later than _____ or until the situation improves.

The Board has authorized the installation of a flow restrictor in your line if you are found violating these rules. Subsequent violations may result in temporary termination of services. If you feel you have good cause for a variance from this rationing program please contact us in writing at the address above. A complete copy of our approved Rationing Program is available for review at our business office.

Thank you for your cooperation.

TAB # 15
WATER RATES

WATER RATES

1. INTRODUCTION: An important part of managing a water system and keeping it financially strong is to maintain accurate records. **On a regular basis**, decision makers should ask, "How much water did we produce or buy, and how much did we sell?" The answer to these questions affects your system's operation and income, including the rates you set.

Successful water systems operate according to sound business principles. Water system leaders must set rates which are sufficient to pay for the services their system provides and to meet their future needs. Good business practice involves paying attention to the smallest details involving operating costs.

2. WATER SYSTEMS NEED TO INCREASE INCOME: There are many factors that can affect water system finances. These include:
 - a. Increasing operating expenses;
 - b. System expansion or renovation;
 - c. Changes in the customer base;
 - d. Emergencies;
 - e. Water Shortage;
 - f. Water treatment requirements;
 - g. Loss of a source of financial support; and
 - h. System operating policies and procedures.

Like any business, water systems are subject to increasing expenses. When operating expenses go up, income must go up, too. Higher operating expenses can be caused by increases in inflation, interest rates, labor costs and power costs.

Some systems may need to expand their facilities to keep up with the needs of a growing community. Others may be faced with expanding or renovating their treatment facilities to meet federal or state requirements. Regardless of the cause, expansion and renovation can be some of the biggest costs a water system can have.

3. CHANGES IN THE CUSTOMER BASE: The customers on a water system form its customer base. If there is a change in the customer base, there is a change in the system's income.
4. EMERGENCIES: Eventually, most systems experience an emergency. Tornadoes, floods or other disasters can require immediate capital to cover the repair and rebuilding costs.

Some systems may have to raise rates to pay for expensive water treatment. This can be caused by new or stricter federal and state regulations, water contamination or the addition of new water sources.

5. SYSTEM OPERATING POLICIES AND PROCEDURES: In some cases, incorrectly set operating policies and procedures may actually be costing the system money. For example, overdue accounts, low water rates, inefficient operations or excessive water loss all cut into the system's money reserves.

Sometimes you can increase income without increasing rates:

- a. Conduct a water audit;
- b. Revise system policies; and
- c. Reduce expenses.

Some systems have sizeable cash reserves in non-interest bearing accounts or low yield certificates of deposit. Be sure your assets are earning the most for your system.

Your system might cut costs by conducting a water audit. A water audit helps you locate water that is unaccounted for within your system.

6. LEAK DETECTION: No system is leak free, but some have more than others. Successful leak detection surveys often pay for themselves by finding costly leaks.
7. WATER THEFT: Another cause of lost income is water theft. Periodically check your system for illegal taps, reversed water meters and other signs of theft.

In addition to providing water, systems provide customers with a range of services including installation and repairs. Make sure that your rates cover the cost of providing these services.

Deposits benefit the system by allowing it to use the money for system improvements and expenses as long as the customer remains on the service.

8. LATE PAYMENT CHARGE: Late and overdue payments cost your system money. They deprive you of the gross income for the water the customer used and the interest on the money if it were in the bank. Late payments are unfair to those customers who pay on time. You may also want to consider charging a fee for returned checks.

Another way to encourage customers to pay promptly is to establish a strict cut off policy.

You may also choose to charge a service fee to have their water service reconnected.

9. CHARGE FOR EXTRA SERVICES: Make certain all extra services, such as road bores, are fully paid for by the customer who receives the service.

Another way you may cut system expenses is to perform an energy audit. Check all electrical devices, such as pumps and motors, to make sure that they are operating at top efficiency.

Whenever possible, purchase items you will need for the year in bulk.

10. TIMING RATE ADJUSTMENTS: In some cases, water system decision makers must adjust water rates regardless of their efforts to increase income in other ways.

The timing of rate adjustments is important. Systems may meet with less resistance if decision makers time a rate hike wisely and explain why the increase was necessary.

If possible, avoid raising water rates during:

- a. Holidays;
- b. Back to school time;
- c. Legislative sessions or election time; and
- d. High water consumption months.

11. HOW OFTEN SHOULD A SYSTEM ADJUST RATES: Some systems adjust rates only when they are in debt.

A system's financial status usually dictates the cost of water.

Systems may want to consider adjusting rates annually based on projected revenue needed for the next year. Some systems review their rates during the annual budgeting process. Rate adjustments meet with less resistance if they are in small increments each year rather than a large adjustment every three years. Some systems use rate indexing, which is a set percentage of increase every year to keep up with inflation.

Regardless of the way your system chooses to adjust rates, keep your customers informed. Don't let them discover rate hikes with their next bill.

12. HOW MUCH DO WE CHARGE: The total cost of operation for your system and your projections for the future will dictate how much income your system needs. Rates should be set based on actual expenses of the system, depreciation and the anticipated expenses for the next fiscal year.

13. FOUR BASIC TYPES OF RATES: Each one will be evaluated according to how well it covers system needs, how well it encourages water conservation and how fair it is to customers. These four rates are:

- a. One-charge (blanket) rates;
- b. Descending (declining) rates;
- c. Ascending (increasing) rates; and
- d. Flat rates.

Before you decide which rate structure to use, you need to consider setting a base minimum. A base minimum is the first component of all rate structures except for the one-charge (blanket) rate. Base means the customer pays a minimum rate regardless of the amount of water used. This minimum covers a major portion of a system's costs. It generates enough income to cover the fixed expenses of a system, such as insurance, bond payments and other non-production costs.

A. **ONE-CHARGE (BLANKET) RATE:** The one-charge (blanket) rate is the most basic type of water rate. Systems with blanket rates charge every customer the same amount for their water each month regardless of how much they use. Blanket rates encourage waste.

Blanket rates are unfair to different customer categories. In a blanket rate structure, a single customer using only 100 gallons a day pays just as much as a local industry that uses thousands of gallons of water each day.

B. **DESCENDING (DECLINING) RATE STRUCTURE:** In a descending (declining) rate structure, each additional thousand gallons of water costs proportionally less than the previous thousand gallons the customer used.

A descending rate is somewhat better than a blanket rate when it comes to matching income to expenses. If organized carefully, a descending rate can adequately pay a system's expenses but it may not provide enough income to cover unexpected demands and future needs.

Descending rates may be unreasonable for small household customers. People who only use a few thousand gallons pay more per gallon than businesses and industries that use much more water. Descending rates reward heavy users with quantity discounts.

C. **ASCENDING (INCREASING) RATE STRUCTURE:** In an ascending (increasing) rate structure, each additional thousand gallons of water costs slightly more than the previous thousand gallons the customer used. A base minimum may also be used in the ascending rate structure.

If ascending rates are set correctly, they will usually provide income for system operation and future needs. Ascending rates are an excellent way to increase income for the system. This is because income increases as expenses on the system increase.

D. **FLAT RATES:** Flat rates are similar to gasoline rates. Regardless of the customer, everyone pays the same amount for each gallon they use. For example: Rate of \$4.00 per each 1,000 gallons.

If flat rates are set correctly, they will allow the system to keep up with customer demands and expenses. Even during peak demand periods, a system may expect to receive enough income to cover production costs and future needs.

Of all the rates covered, the flat rate is probably the most fair to all categories of customers, because all customers pay the same price per 1,000 gallons of water used.

14. **CUSTOMER ACCOUNT CATEGORIES:** Not all customers have the same needs. Because of this, it would not be fair to place all customers in the same broad category.

The four categories of customer accounts are:

1. Residential;
2. Public Service;
3. Commercial; and
4. Agricultural/Industrial.

Residential customers include homes and mobile home parks.

Public service customers are agencies and organizations that provide special community services. These include:

1. Fire departments;
2. Public golf courses;
3. Parks;
4. Fairgrounds; and
5. Other service organizations.

Commercial customers include small businesses, restaurants and mobile home parks on a single master meter.

Industrial/Agricultural customers may use more water than the other three categories combined.

15. **CLOSE:** Before deciding on a rate structure for your system, consider the following questions carefully:

1. Does the rate structure accommodate the current and anticipated expenses?
2. Does the rate structure promote water conservation?
3. Is the rate structure fair to every category of customer?
4. Does the rate structure generate enough income after the base minimum is set?

If you can answer "yes" to all of the above, you have chosen the best rate structure for your system.

INTRODUCTION TO WATER SYSTEM OPERATIONS AND MAINTENANCE

AN INTRODUCTION TO WATER SYSTEM OPERATIONS AND MAINTENANCE

- I. INTRODUCTION: This presentation is for water system decision-makers as a general introduction to the subject of small water system operation to the subject of small water system operations and maintenance. It is not intended to replace or supplement any local, state or federal regulations.
- II. FOCUS: The focus of this presentation will be system operations. We will review the basics of water system operations and maintenance and present information that board members need to know to participate effectively in decision-making as it applies to water system operations and maintenance. Finally, we will acquaint you with several guidelines that have served system and governing bodies well in the past. Knowledge of what has worked well before enables board members to make informed decisions when setting short- and long-range policies.

Meeting the challenges just mentioned involves:

1. Gathering information about the operation and maintenance of the system;
2. Setting policy for both the short-term and long-term operation and maintenance of the system;
3. Communicating policy and decisions to the public; and
4. Insuring that policy and decisions are carried out.

Board members may be asked a wide variety of questions regarding their water and the operations of their system such as:

1. Is the water supply tested regularly?
2. What will the system do in case of emergency?
3. Does the water have lead or radon in it?
4. How does the system pay for expansion or repair?

Even though board members may not have the technical expertise to answer these questions, they are ultimately responsible for the answers.

- III. SAFE DRINKING WATER ACT: Perhaps the most important legislation concerning drinking water is the Safe Drinking Water Act. The SDWA is something that affects all water system board members and the operation of every water system. This federal law was enacted in 1974 as a response to a need for national standards for drinking water.

In 1986 amendments to the SDWA were passed. These amendments required monitoring and testing for additional contaminants. The law also stipulates that there be public notification by the water system when standards for drinking water are not being met.

Another aspect of this law requires that all water systems notify their users of the potential hazard of lead in drinking water, regardless of whether any trace of lead has been detected.

- IV. SDWA MANDATORY TESTING: The Safe Drinking Water Act requires the U.S. Environmental Protection Agency to establish maximum contaminant levels for various substances that may have an adverse effect on public health if consumed. The SDWA requires all public water systems to test their water supply at regular intervals.

The frequency and number of samples needed for analysis depends on the size of the system and the source of the water supply.

- V. THE BOARD MEMBER'S ROLE: Who is the typical water system board member? It is impossible to say. A board member may have any occupation or live anywhere within the system's territory.
- A. Does a new board member have to know everything there is about water system operations when elected? NO. Typically, board members do not need to develop a hands-on knowledge of water system operations. This should be the responsibility of the professional hired to do that job.
 - B. Does a new board member need training? YES. The new board member should begin by reading the system's bylaws, plus any other documents that relate to the organization, such as the state statutes, Rules and Regulations, Policy and Procedures Manual and the minutes of past meetings. There are also schools, agencies and associations that regularly provide training or technical sessions on a variety of subjects for small water systems.
 - C. To participate effectively in decision-making, the board member should have certain privileges. One of the most important is open access to information about the system. This includes system records, reports and mail including correspondence with customers and agencies.
 - D. The board member has the right to be promptly notified about certain actions. This refers to any unusual or significant aspect of system operations, such as special meetings, violations of health standards, etc.
 - E. A board member has specific obligations. The first is to be a part of a decision-making team. No single board member makes decisions in the name of the system.

VI. KEY JOBS AND PERSONNEL: Board members should become familiar with all phases of water system operations in a general sense. This gives members the ability to ask questions, read reports, understand technical data and participate effectively in decisions about operations and maintenance.

There are three categories of work to be performed in the functioning of a water system;

1. Operation and Maintenance;
2. System Management; and
3. Office Management.

It is the responsibility of the system's operator and office manager to ensure that these duties are performed properly.

- A. THE OPERATOR: The operator is responsible for the technical function of the system. This person has the authority to work on the system and direct the work of contracted labor. The operator must be certified. The board is responsible for the actions of the operator.
 1. It is important that the operator have a basic mechanical aptitude and the ability to understand and direct all phases of operation and maintenance of the water system;
 2. Sufficient training to protect the public health;
 3. Know all aspects of the distribution system;
 4. Knowledge of water supply and pump operation;
 5. Know state and federal sampling routine;
 6. Understand emergency procedures; and

7. Knowledge of federal and state regulations.

Whenever possible board members should delegate responsibility and authority to a system operator/manager. It must be stressed, however, that this authority comes from the board members. All decision making in the form of procedures and policies continues to be the responsibility of the board.

B. **THE OFFICE MANAGER:** Most systems designate someone to perform the duties of office manager. The office manager serves the system in several ways. For instance, they may coordinate the financial management of the system, perform secretarial duties, etc. One of the most important duties of the office manager is in the area of public relations. Some of the functions of the office manager include:

1. Acting as the contact person in most routine system communications;
2. Greeting office visitors and answering phone calls;
3. Coordinating the start or reconnection of water service;
4. Answering customer's questions and explaining system policy;
5. Helping resolve customer complaints; and
6. Preparing business correspondence and coordinating and maintaining the financial business of the system (this includes billing, collections and bookkeeping.)

VII. **PROCEDURES AND EQUIPMENT:** It is important that board members have a general understanding of all procedures and equipment used by the water system. This knowledge is necessary in order to understand the advice of the operator or any special consultants the system might hire.

The board member who wants a better understanding of the system operations should begin with the system's source of water. In some instances, board members are faced with the responsibility of seeking alternative sources of water.

Board members should be familiar with the quality of water being supplied to the system and what type of treatment is being used, if any.

Water may be treated for reasons other than to correct potential health hazards. Treatment can improve water appearance, taste, or odor even in cases where the water is safe to drink.

Board members are often concerned with the water distribution system. Board members set all policy for system expansion, negotiate easements, determine minimum standards, authorize the purchase of equipment, and approve financing.

A typical distribution system includes:

1. Pumps;
2. Water mains and service lines;
3. Valves; and
4. Meters.

One key tool used in the operation of the distribution system that should not be neglected is maps. Maps are essential for planning system expansion, performing routine maintenance, leak detection and emergency situations.

- A. VALVES: Valves are essential in a distribution system for one main reason; they control the flow. Special types of valves perform specialized functions. Valves can fully stop or start the flow of water. They can also prevent backflow or keep a storage tank from overflowing.
- B. METERS: A meter is a device that measures and registers the amount of water that flows through a pipe.

Meters should be placed at each source and at every point of use throughout the system.

Meters are of extreme importance to a water system because of the valuable information they provide. Meters are the "cash register" for the system. By measuring all water taken from the source and metering all water at each point of use, the fair cost of water can be determined and billed for the full amount. Another benefit of metering is that it can indicate water loss.

- C. STORAGE TANKS: Water storage tanks are a key element in the distribution system. The main function of storage tanks is to ensure an adequate, protected supply of drinking water and to help provide pressure to the lines within a system. Storage tanks can also serve as public relations tools. Storage tanks that are neatly maintained and have a good coating of paint reflect favorably on the community and the district.

The life span of a storage tank depends in part upon the maintenance it receives. For this reason, tanks should be inspected for basic maintenance every month and at least every three years both inside and out.

A water system functions best when it is both equipped and operated properly. Board members need to be assured that routine maintenance is performed and that problems are corrected in a timely manner.

The operator must perform day-to-day maintenance and preventive maintenance. I would caution all board members to ensure that this aspect of system management is not neglected. Planning and budgeting must provide for periodic maintenance for all parts of the system.

- VIII. WATER LOSS: The sale of water is the principle source of income for a water system. Lost water results in lost revenue for the system. Board members should do everything possible to ensure that their water system has as low a percentage of water loss as possible.

There are two methods commonly used to indicate water loss. The first method uses the daily pumping record or a record of water purchased. If the master meter records indicate water usage above ten percent over the previous day, the operator should suspect a problem. If the usage increases beyond twenty-five percent, then the warning is clear. The system may have one or more serious leaks or a malfunction of a facility such as a tank control failure.

The second method uses pumping records and water billings. A monthly comparison of the amount of water pumped or purchased against the amount billed is one of the most important clues to leaks.

- IX. RECORDS AND REPORTS: The storage and maintenance of certain records is a matter of law. It is equally important that board members know the importance of each report and record because, ultimately, the board is responsible for them.

Good records also allow board members to react to potential problems and plan for future expansion. Accurate records allow boards to make more informed decisions regarding projections for system improvements.

- X. **BOARD MEMBER TIPS:** The job of small community council members and rural water system board members is always challenging. In accepting a position on a board, an individual agrees to ensure that the system is operated and maintained in a businesslike manner. In return the system gives the board the authority, responsibility and privilege to act on its behalf.

The following are some final thoughts and suggestions regarding the board member's role in the operation and maintenance of a small water system.

BOARD MEMBERS

1. Recognize that their responsibility is to set policy and not participate in daily operation and maintenance of the system;
2. Work through the properly appointed employee in accordance with the system's organizational plan;
3. Function as a part of a policy forming board rather than as part of an administrative board;
4. Refer all complaints and requests to the manager;
5. Become familiar in a broad and non-technical manner with the problems of system operation and maintenance;
6. Voice opinions frankly in board meetings and vote for what seems best for the short-term and long-term of the system;
7. Recognize that the operator, system manager or office manager is entirely responsible for carrying out policy in accordance with laws and regulations;
8. Help to frame policies and plans only after considering the recommendations of the staff and their reasons for making such recommendations;
9. Require oral and written reports for the purpose of keeping the board properly informed of operational matters and ensure that these reports and records are adequately maintained for future reference;
10. Give employees the authority to make decisions within their scope of responsibilities;
11. Establish criteria for evaluating the efficiency of employees under the direct supervision of the board;
12. Present personal criticism only to the appropriate person;
13. Support and protect employees and other board members in the performance of their duties; and
14. Give friendly counsel and advice to employees.

BOARD MEMBERS **DO NOT**...

1. Interfere with the day-to-day routine administration and supervision;
2. Refuse to support worthwhile officials in the programs because of personal reasons;
3. Show favoritism;
4. Make promises and commitments about system operation before the questions are fully discussed in the board meetings;
5. Indulge in petty criticism of the operation of the system; and
6. Assume authority in operational matters when the board is not in session.

TAB # 17
WATER AUDITS

WATER AUDITS

- I. **INTRODUCTION:** In this chapter we will discuss the first steps in performing a water audit, including records checks, meter testing and analyzing data. Remember, no two water audits are alike. Each water system presents its own special challenge.
- II. **CONTENT:** The records for most water systems show that more water enters a system than leaves it. The meters register more water *in* than water *out*. It seems that some water just disappears.
- A. **WHAT IS A WATER AUDIT?:** A water audit is a management tool that can tell you how efficiently your system is operating and where some of your losses may be occurring.
- B. **WHAT IS INVOLVED IN A WATER AUDIT?**
1. Collecting records;
 2. Calculating how much water entered a system;
 3. Calculating how much water left a system;
 4. Testing meters for accuracy;
 5. Estimating the amount and cost of unaccounted for water; and
 6. Analyzing the data.
- C. **WHAT IS *UNACCOUNTED FOR* WATER?** Unaccounted for water is the difference between water in and water out for a system. For example, a system's records may show 10 million gallons entering the system and only eight million gallons leaving the system. The difference of two million gallons is unaccounted for water.
- D. **WHAT CAUSES UNACCOUNTED FOR WATER?** Unaccounted for water is caused by two things. The first is errors in records. Errors include mistakes in reading meters, writing down the figures and adding them up. Inaccurate meters also cause record errors.

The second cause of unaccounted for water is water loss. This is water that actually leaves the system without passing through a meter. Lost water may have been stolen or given away. It could also have leaked out of the system. There are many questions you can ask about this:

1. Has this water leaked into the ground?
 2. Are the meters wrong?
 3. Is the water being stolen?
 4. Has there been an arithmetic mistake?
 5. Does the system have mistakes in records and problems with water loss?
- E. **WHAT ARE THE BENEFITS OF A WATER AUDIT?** There are many good reasons to perform a water audit. For example, a water audit can help you find errors in records and meters.

A water audit is also the first step in solving water loss problems. Water audits can tell you how serious your water loss is. By lowering your system's water loss, you can reduce wear on equipment. You can also lower electricity bills and other operating costs for treating, pumping and storing water. Lower operating costs mean lower rates for customers.

A successful water audit can even improve public relations by helping you lower rates and improve service.

Perhaps the most important benefit of a water audit is that it can help you save a precious resource. Because of pollution and increasing demands, saving water is becoming more important each year.

- F. **WHAT MAKES A SUCCESSFUL WATER AUDIT?** A successful water audit depends on the hard work and good judgment of a team. Decision makers, operators, managers, bookkeepers, secretaries and consultants must use their special skills together to make the audit work.

Look for the causes of unaccounted for water and try to determine if they result from record errors or water loss. Questions may include:

1. Does the system seem to have a problem with unaccounted for water? If so, when did it start?
2. Where does the problem seem to be?
3. Has there been an unusual use of water, such as for fighting fires?
4. Have there been customer complaints about low pressure?
5. Have there been cases of water theft?
6. How has the weather affected water use?

- G. **WHAT IS THE FIRST STEP OF A WATER AUDIT?:** Finding the answers to the previous questions begins in the system office.

Select a water audit review period, such as the past 12 months. The length of the water audit review period may be as short as six months, but this may not present a true picture of water use for your community. Many communities experience significant increases or decreases in water usage during the different seasons of the year. A six month review period will not take all these fluctuations into consideration.

Reviewing only the records from the past month will usually not result in an accurate audit. This is because of the lag time between reading the master meter and reading customer meters.

- H. **COLLECTING THE RECORDS FOR A WATER AUDIT:** Collect records about water use for the audit review period. Include all data about every master meter reading and every customer meter reading.

If your system is required to file monthly or quarterly reports about water use, collecting records can be fairly easy. Otherwise, record collecting can be difficult and time consuming, because hundreds of meter readings may be involved.

The next step is to begin totaling your records.

- I. **FIND THE AMOUNT OF WATER IN:** If your sources are metered, find out how much water entered your system during the water audit review period. Add all meter readings together to find the total water in. State law requires that source meters be installed on all water systems.
- J. **FIND THE METERED AMOUNT OF WATER OUT:** Next, find the total amount of water the customers have received. A customer is any metered user of your system's water, regardless of billing arrangements. Also include all free accounts, city facilities, community facilities, bulk sales, fire fighting and maintenance procedures such as hydrant or line flushing.

For filtered systems, water used for filter back washing should also be counted.

To find the amount of water that customers' meters registered, total all readings taken during the water audit review period.

Even if office records are accurate, meter readings may not be. Some water systems rely on customers to read their own meters. Many systems that sell bulk water also rely on customers to record the amount of water that they buy.

K. **METER ACCURACY:** Meters that do not work correctly either under-register or over-register water usage.

1. **METERS WHICH UNDER-REGISTER:** Water may seem to be lost if a meter under-registers. This means that the meter records less water than the actual amount flowing through it. If customer meters under-register, customers are actually receiving more water than they are being billed for.

2. **METER ERRORS AND WATER LOSS:** Under-registering master meters can hide water loss problems. Suppose a system has a serious leak, but the master meter under-registers. In this case, it would seem that there is no unaccounted for water. A meter error can actually compensate for a leak.

8. **METERS WHICH OVER-REGISTER:** Meters may also over-register. These record more water than the amount that actually passed through. For example, if a master meter over-registers, it appears that more water is entering the system than is actually being pumped. Also, if a system purchases water, a master meter that over-registers will cause the system to pay for more water than it is actually receiving.

9. **MASTER METERS:** A master meter is any meter that measures water entering a system. Make sure that all sources are metered. Master meters should also be checked routinely for accuracy.

10. **BACKWARD FLOW:** Be sure that water cannot flow backwards through the master meter. Some master meters may not accurately register water flow in both directions, in fact, some meters may not register backward flow at all if the flow is small. If a master meter doesn't register backward flow, a system purchasing water may be billed for the same water more than once. Install check valves to prevent backward flow through a master meter.

11. **CUSTOMER METERS:** It is important to test customer meters. Do this according to the age and use of the meter, as well as the quality of water passing through it. Typically, older meters and high use meters are more likely to be inaccurate. Many systems have ongoing customer meter testing and replacement programs. For example, some systems test and/or replace 10% of their meters per year.

L. **ANALYZING THE DATA:** The most important part of a water audit is the analysis of the data. If errors are found in meters, try to estimate what the true reading should be. For example, during meter testing you may discover debris in a master meter. Check your records to pinpoint when this happened. Look for large unexplained shifts in meter readings from one month to the next. Use readings taken before the blockage occurred to estimate more accurate figures.

You may discover a meter that wasn't working correctly during the entire water audit review period. In this case, estimate the percentage of errors and adjust your figures.

M. **FINDING THE AMOUNT OF UNACCOUNTED FOR WATER:** To find the amount of

unaccounted for water, subtract the total water out from the total water in.

- N. **ESTIMATING LOST REVENUE:** It is hard to say exactly how much revenue a system loses because of unaccounted for water. You may find it useful to estimate the lowest and highest possible amounts of lost revenue for your unaccounted for water.

The lowest estimate represents only what your system has spent in buying, pumping and treating water. Leaks, for example, are the least costly form of water loss because you lose only what you spent to put the water into the system.

The highest estimate represents what you could have sold the water for.

To estimate the maximum revenue loss for your system, multiply the amount of unaccounted for water by your customer billing rate.

- O. **WHAT ARE THE DIRECT BENEFITS OF A WATER AUDIT?** The most direct benefit of finding lost water is generally in terms of revenue to the system. In other words, can your system reasonably afford the loss considering the cost of production and other expenses?
- P. **WHAT ARE THE INDIRECT BENEFITS OF A WATER AUDIT?:** Think of this in terms of a range of benefits. These might include:
1. Reduced pumping and chemical costs;
 2. Increased profits;
 3. Reduced wear on equipment;
 4. No water rationing;
 5. Expanded service;
 6. No rate increases; and
 7. Improved public relations.

- III. **CLOSE:** As you search for the reasons for water loss, you will find leaks, illegal connections, or forgotten unmetered connections. Each discovery will allow you to revise your water audit. Each time you revise me figures, pay careful attention to the cost of the water loss compared to the cost and benefits of continuing the water audit.

If you need more information or help with water audits or leak detection, contact factory representatives, professional consultants or your state rural water association.