

MAY 12 2022

RICK WARREN
COURT CLERK

IN THE DISTRICT COURT IN AND FOR THE COUNTY OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

IN THE MATTER OF THE OKLAHOMA COUNTY
GRAND JURY, STATE OF OKLAHOMA.

)
) Case No. GJ-2021-1

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FINAL REPORT OF THE OKLAHOMA COUNTY GRAND JURY

Since its original empanelment on October 18, 2021, the Oklahoma County Grand Jury has received evidence regarding various matters in its sessions held on November 2, 3 and 4, 2021, December 14, 15, and 17, 2021, January 18 and 19, 2022, February 22, 2022, March 8 and 9, 2022, April 26, 27, and 28, 2022, and May 10, 11, and 12, 2022. To aid its several investigations, the grand jury issued 65 subpoenas for testimony and records regarding these investigations. In its several sessions the grand jury received the testimony of numerous witnesses and received numerous exhibits upon several different investigative matters. It also received and considered lawful evidence gathered by the 18th Oklahoma Multicounty Grand Jury and relevant to this grand jury's investigations. On December 17, 2021, the grand jury returned one (1) indictment that was delivered to the grand jury's Presiding Judge in Open Court pursuant to law for disposition as provided by law. That matter is still pending before the District Court for Oklahoma County. In its final session terminating on May 12, 2022, the grand jury has delivered this *Final Report*¹ to the grand jury's Presiding Judge in Open Court for disposition as provided by law.

¹ This report is made pursuant to 22 O.S. 2012, § 346, that provides: "In addition to any indictments or accusations that may be returned, the grand jury, in their discretion, may make formal written reports as to the condition and operation of any public office or public institution investigated by them. No such report shall charge any public officer, or other person with willful misconduct or malfeasance, nor reflect on the management of any public office as being willful and corrupt misconduct. It being the intent of this section to preserve to every person the right to meet his accusers in a court of competent jurisdiction and be heard, in open court, in his defense."

Part I
Constitutional Duties of the Oklahoma Legislature and Its Members

A. Constitutional Barriers to Legislator Conflicts of Interest

This grand jury's investigation of the August 1, 2019 appointment of a Motor License Agent for Catoosa, Oklahoma, required it to examine not only the appointment process of the Oklahoma Tax Commission for Motor License Agents, but also the legislative process that led to this grand jury's *Indictment* of a sitting member of the Oklahoma Legislature, together with that legislator's wife.

The fundamental law governing the State of Oklahoma and its public officials is declared by the People of Oklahoma in the *Oklahoma Constitution*. The People of Oklahoma have the right to expect their State, county, and local governments to be governed by honest public officials, aspiring solely for the good of its citizens, not for corrupt personal profit. In accordance with this metric, the founders of this State wisely provided in the *Oklahoma Constitution* a duty for legislators to avoid personal conflicts of interest by requiring self-reporting of any personal or private interest by a legislator regarding any legislation pending before the Legislature to the legislator's colleagues, and abstaining from voting on any measure or bill in which the legislator had a personal or private interest:

A member of the Legislature, who has a personal or private interest in any measure or bill, proposed or pending before the Legislature, *shall disclose* the fact to the House of which he is a member, and *shall not* vote thereon.²

Our State's founders also wisely provided within the *Oklahoma Constitution* an absolute legal prohibition upon legislators becoming directly or indirectly interested in any contract with the

² *Okla. Const.* Art. V, § 24 (emphasis added by italic typeface). The word "shall" as used in a Constitutional provision declares a mandatory duty, not involving the exercise of discretion, *See, Smith ex rel. State v. State Bd. of Equalization*, 1981 OK 57, ¶ 5, 630 P2d 1264, 1266: "'Shall' is commonly understood to be a word of command which must be given a compulsory meaning."

State, county or legal subdivision authorized by them, not only for the period in the legislature for which they have served, but also for a period of two (2) years thereafter:

*No member of the Legislature shall, . . . during the term for which he shall have been elected, or within two years thereafter, be interested, directly or indirectly, in any contract with the State, or any county or other subdivision thereof, authorized by law passed during the term for which he shall have been elected.*³

In addition to these original Constitutional provisions, in 1968 the People of Oklahoma also placed a legal duty upon the entire legislative branch to enact legislation prohibiting conflicts of interest by legislators:

The Legislature *shall* enact laws to prohibit members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities.⁴

The *Oklahoma Constitution* provides one other barrier to legislator self-dealing by requiring every public officer to take the following Oath:

All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation:

"I, , do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law;

³ *Okla. Const.* Art. V, § 23 (emphasis added by italic typeface). The word "shall" as used in this provision also declares a mandatory duty, not involving the exercise of discretion. *Smith ex rel. State v. State Bd. of Equalization, supra*. The Oklahoma Supreme Court, in *Settles ex rel. State v. Bd. of Education*, 1964 OK 12, 389 P.2d 356, 359, after doubting that this provision required judicial construction, quoted with approval the following observation made by the South Dakota Supreme Court regarding a near identical provision in that State's Constitution: "A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state's money in payment of the lawful contractual obligations of the state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the time of the existence of such trust and confidential relationship. * * *" quoting with approval from *Norbeck and Nicholson Co. v. State*, 32 S.D. 189, 142 N.W. 847.

⁴ *Okla. Const.* Art. V., § 21(A) (emphasis added by italic typeface). The Legislature's duty now set forth in Section A was added to Section 21 by a referendum approved by the People on August 27, 1968, *See H.J.R. No. 557, Laws 1968*, p. 808, approved as State Question 724. The word "shall" as used in this provision also declares a mandatory duty, not involving the exercise of discretion. *Smith ex rel. State v. State Bd. of Equalization, supra*.

I further swear (or affirm) that I will faithfully discharge my duties as to the best of my ability."

The Legislature may prescribe further oaths or affirmations.⁵

B. Extra-constitutional Barriers to Legislator Conflicts of Interest

In addition to Constitutional barriers to legislator conflict of interest, in each legislative session each chamber of the Oklahoma Legislature adopts rules governing the conduct of its proceedings and its members. For example, the Oklahoma House of Representatives has over at least the past three sessions enacted the following rule which is a simple reiteration of Okla. Const. Art. V, § 24:

4.2 Disclosure of Personal or Private Interest

A member who has a personal or private interest in any bill or resolution, proposed, or pending before the House, shall disclose that fact to the House, and shall not vote on that bill or resolution, as required by Article V, Section 24 of the Oklahoma Constitution⁶

The Oklahoma Senate's rule merely exempts a conflicted non-voting member from having his/her vote counted "No" when the Senator is present on the floor of the Senate but does not cast a vote upon a pending item of legislation:

RULE 8-31. MANNER OF VOTING

B. Except as may be provided in subsection D of Rule 8-2, during any roll call, only a Senator present on the Senate floor may vote, and every Senator present shall vote, except when the President Pro Tempore is not present on the Senate floor but recorded as present to Rule 3-3 and physically present in the State Capitol, the President Pro Tempore may direct the Presiding Officer to activate the President Pro Tempore's roll call switch in the manner requested by the President Pro

⁵ Okla. Const. Art. XV, § 1 (emphasis added by italic typeface). *See also* 51 O.S. 2021, § 36.2A, prescribing a mandatory statutory Oath to be taken by all government officers and employees. It should be noted that though Okla. Const. Art. XV, § 2 provides: "any person who shall have been convicted of having sworn or affirmed falsely, or having violated said oath, or affirmation, shall be guilty of perjury, and shall be disqualified from holding any office of trust or profit within the State," such an Oath is excluded from the scope of the general *Perjury* prohibition, *see* 21 O.S. 2021, § 493, but a conviction based upon such conduct would provide a basis for forfeiture of retirement benefits, *see* 51 O.S. 2021, § 24.1(F).

⁶ Okla. H. Rules, § 4.2 (58th Leg.). *Compare*, Okla. H. Rules, § 4.2 (57th Leg.) and Okla. H. Rules, § 4.2 (56th Leg.).

Tempore on any question for which a roll call vote is required. During a roll call, the Presiding officer shall request every Senator in the chamber who has not voted to vote. If any Senator so requested fails to vote, the Presiding Officer shall, upon declaring the roll, order that said Senator be shown as voting “NO” on the question. Said order shall be printed in the Journal directly following the printing of the results of the roll call as reflected by the voting machine, and said “NO” vote shall be included in the determination of the passage or failure of the question. In all other cases, a Senator who fails to vote shall be shown as “excused” in the Journal, *except as provided in Section 24 of Article V of the Oklahoma Constitution.*⁷

C. Existing Barriers to Legislator Conflicts of Interest Were Ignored

Despite all of these barriers to legislator conflicts of interest, this grand jury has found and has alleged instances where a current member of the Oklahoma House of Representatives violated his Constitutional Oath of Office by repeatedly violating his Constitutional duty under Okla. Const. Art. V, § 24, by not only failing to disclose his private or personal interest in legislation pending before the Legislature and thereafter not voting thereon, but actually acting as formal author of such legislation and illegally voting thereon. We have also found and alleged that legislation enacted through the illegal efforts of that member then made it statutorily possible, with the aid of another current member of the legislature, to violate Okla. Const. Art. V, § 23, by affirmatively becoming directly or indirectly interested in a contract⁸ between a State Agency and the member’s spouse. We find that the substantial Constitutional barriers to legislator conflicts of interest are

⁷ Rule 8-31(B), Senate Rules (58th Okla. Leg.) (emphasis added by italic typeface). Note: The rules of the Oklahoma House of Representatives has a similar rule allowing the Presiding Officer to activate the Speaker’s roll call switch in the manner directed by the Speaker when the Speaker is not personally present on the floor, *see*, Okla. H. Rules, § 9.6(b). Other than the Speaker, no member of the House of Representatives may vote for another member, *see* Okla. H. Rules, § 9.6(f).

⁸ There is simply no doubt that the relationship between the State of Oklahoma through the Oklahoma Tax Commission and the Motor License Agent is contractual as a matter of both law and fact. The statute governing the appointment of Motor License Agents specifically declares such persons to be “self-employed, independent contractors,” 47 O.S.2021, § 1140(E). Additionally, written agreements entitled “Motor License Agent Contract” between the Oklahoma Tax Commission and the Motor License Agent are always approved by the Chairman of the Oklahoma Tax Commission and the Motor License Agent with the Motor License Agent specifically agreeing to seven (7) specific conditions “[i]n consideration of the foregoing appointment and he emoluments accruing to the office of Motor License Agent[.]” The officers and staff of the Oklahoma Tax Commission would never have even considered the legislator’s wife’s *Application for Motor License Agency* had the legislation the legislator authored, *i.e.*, HB 2098 (2019) not been enacted.

not subject to continual House or Senate scrutiny and enforcement, but apparently are left up to each individual legislative member to self-enforce.⁹

The instances cited above were further aggravated by the fact that the 2019 legislation, illegally authored and voted upon by a Constitutionally conflicted legislator, repealed a statutory restriction upon legislator conflicts of interest that had been enacted in 1987 in an apparent reaction to a 1987 Opinion of the Attorney General that had found that the wife of a legislator was not legally eligible for appointment by the Oklahoma Tax Commission as a Motor License Agent (commonly called a “Tag Agent”), stating in conclusion:

It is, therefore, the official opinion of the Attorney General that Article V, § 23 of the Oklahoma Constitution (which prohibits a legislator, during his term of office, and for two years thereafter, from having a direct or indirect interest in a contract with the State of Oklahoma, which was authorized by laws passed during the term for which he was elected), prohibits the spouse of a former State senator, whose term ended in November, 1986, from entering into a motor license agent contract with the Oklahoma Tax Commission in the spring of 1987, because such contracts were authorized by a legislative enactment passed during the last term of office for which her husband was elected, and two years have not elapsed since the end of that term.”¹⁰

Later the same year, the Oklahoma Legislature enacted an amendment to Section 1140 of Title 47 of the Oklahoma Statutes, which is the statute that defines the qualifications for Motor License Agents, to prevent such unconstitutional legislator conflicts of interest by providing as follows:

F. Beginning on the effective date of this act, no person shall be appointed as a motor license agent unless the person has attested under oath that the person is not related by affinity or consanguinity within the third degree to:

1. any member of the Oklahoma Legislature;
2. any person who has served as a member of the Oklahoma Legislature within the two-year period preceding the date of appointment as motor license agent; or

⁹ Okla. H. Rules, § 9.2(a) (58th Okla. Leg.) specifically prohibits “impugning the motive” of any other member, Rule 9.2(i) prohibits members from raising constitutional objections to legislation under consideration (The presiding officer shall not entertain points of order pertaining to the constitutionality of a measure itself[.]”).

¹⁰ See Okla. A.G. Op. 87-40, at p. 4 (April 24, 1987), 19 Okla. Op. Atty. Gen. 75, at 79.

3. any employee of the Oklahoma Tax Commission.¹¹

The same legislation also placed the same restrictions upon a Motor License Agency being located upon any real property owned by a person related within the third degree of consanguinity or affinity to a current or former legislator or employee of the Oklahoma Tax Commission.¹² The provisions added to Section 1140 of Title 47 in 1987 were plainly designed to provide prophylactic prevention of a legislator's direct or indirect involvement in State contracts as prohibited by the Okla. Const. Art. V, § 23. Accordingly, though the Legislature had plain general legislative authority in 1987 to enact such restrictions upon those who would apply to become Motor License Agents,¹³ it also at the same time fulfilled its Constitutional Duty under Okla. Const. Art. V, § 21(A) to "enact laws to prohibit members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities" by prophylactically excluding legislators from becoming directly or indirectly benefitting from contracts between Motor License Agents and the Oklahoma Tax Commission. It is unclear to this Grand Jury how the Legislature's action in 2019 amending Title 47 O.S. Supp. 2018, § 1140 to remove the prior, 1987 restrictions effectively preventing legislators from accruing direct or indirect benefit through contracts between the Oklahoma Tax Commission and Motor License Agents related within the third degree of a current or former legislator, would *not* violate the Oklahoma Legislature's collective duty under Okla. Const. Art. V, § 21(A) to protect State

¹¹ See HB 1341, § 1 (41st Okla. Leg.), *see also* Laws 1987, c. 158, § 1, amending 47 O.S. Supp. 1985, § 1140. This new law was signed into law on June 25, 1987 and became effective November 1, 1987. A relationship by "affinity" is through marriage, and a relationship by "consanguinity" is through a blood relationship.

¹² *Id.*

¹³ Okla. Const. Art. V, § 36 provides: "The authority of the Legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in this Constitution, upon any subject whatsoever, shall not work a restriction, limitation, or exclusion of such authority upon the same or any other subject or subjects whatsoever." It should be noted that Okla. Const. Art. V, § 21(A) is not a "specific grant of authority" to the Legislature but under its express terms is plainly instead a mandated duty enjoined by the People of Oklahoma upon the Legislature.

contracts from legislator involvement.¹⁴

We would also point out that these 1987 restrictions by the Legislature to the legal qualifications of a motor license agent had endured without change for more than 30 years until they were removed by the unlawfully enacted amendments to Section 1140 of Title 47 that were unlawfully posed, unlawfully personally advocated, and unlawfully voted upon by the personally interested legislator who authored this legislation. We would also observe that the change advocated through this legislation, *i.e.*, to expressly include Tax Commissioners of the Oklahoma Tax Commission in the place of legislators, was a distinction without a legal difference since the Tax Commissioners were already included within the context of the word “employee” under Oklahoma’s laws pertaining to its officers and employees¹⁵ and therefore the proponent of this legislation through his unlawful advocacy effectively succeeded in swindling his fellow legislators regarding some pretended need for this legislative change.

Whether or not the change enacted by the Legislature in 2019 unconstitutionally repealed a law plainly designed “to prohibit members of the Legislature from engaging in activities or

¹⁴ The Constitutionality of the 2019 amendment to Section 1140 of Title 47 is properly for a Court to determine.

¹⁵ Section 2 of Title 25 of the *Oklahoma Statutes* provides: “Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.” The *Oklahoma Personnel Act* already included Section 840-1-3 of Title 74 of the *Oklahoma Statutes* that provided a special definition to the word “employee” as it pertained to State officers and employees: “‘Employee’ or ‘state employee’ means an elected or appointed officer or employee of an agency unless otherwise indicated[.]” Tax Commissioners are expressly prohibited from any other employment, *see* 68 O.S. § 102, providing in part: “Each member of the Tax Commission shall, at the time of his appointment, be a resident and citizen of the State of Oklahoma, and shall devote all of his time to the administration of the affairs of the Tax Commission.” Since the *Oklahoma Personnel Act* included Tax Commissioners within its definition of “employee,” Tax Commissioners were precluded therein from receiving other things of value from the State, such as rental income from land leased to motor license agents and direct or indirect interests in contracts between the Oklahoma Tax Commission and Motor License Agents, other than the “compensation allowed by law” *See* 74 O.S. § 840-2.8 that provided: “Every state and county officer and state and county employee . . . [s]hall not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to his or her office, other than the compensation allowed by law.” Accordingly, since they were already within the legal meaning of “employees” under the provisions of Section 1140 of Title 47 of the Oklahoma Statutes, and as such, Tax Commissioners were already included within the prohibitions upon unlawful relationships found in Sections 1140(A)(9) and 1140(I) prior to the 2019 amendment of these provisions, the 2019 changes that were unlawfully promoted by the author of that legislation, such changes were unnecessary and fraudulently illusory.

having interests which conflict with the proper discharge of their duties and responsibilities,” contrary the Legislature’s duty to enact such restrictions under Okla. Const. Art. V, § 21(A), the prophylactic provisions of Section 1140 of Title 47 that existed prior to 2019 protected both legislators and the Public from legislators becoming unlawfully personally interested in State contracts contrary to Okla. Const. Art. V, § 23, **and we, the Oklahoma County Grand Jury, respectfully recommend that these important, Constitutionally-based restrictions upon legislator conflicts of interest be restored either by the Legislature or by the Courts.**¹⁶

D. Existing Rules of the State House of Representatives and State Senate Confound the Constitutional Duty of Legislators Under Okla. Const. Art. V, § 24 into a Legislator “Privilege” and Should be Changed

Both legislative chambers of the Oklahoma Legislature generally require members, other than the Speaker of the House and the Senate President Pro Tempore,¹⁷ unless otherwise excused from attendance¹⁸ to be physically present on the House or Senate floor when their legislative chambers are in session,¹⁹ and then and there to personally cast a vote either for or against legislation then under consideration in their chamber.²⁰ The exception to this general rule is that any legislator who is present in either chamber who is conflicted under Okla. Const. Art. V, § 24 and self-discloses his/her conflict, is excused from voting,²¹ and his/her vote is recorded as “Constitutional Privilege”²² that does not count either as a vote for nor a vote against the

¹⁶ This would require restoration of restrictions upon legislator direct or indirect involvement previously found in 47 O.S. Supp.2018, § 1140(A)(9) and § 1140(I).

¹⁷ The Speaker of the House and the President Pro Tempore of the Senate are privileged to vote when not present on the floor of their respective legislative chambers by informing the member acting as the Presiding Officer to cast a vote in the manner they request, *see* Okla. H. Rules, § 9.6(b) and Senate Rule 8-31(B).

¹⁸ *See*, Okla. H. Rules, § 4.3, and Senate Rule 3-3.

¹⁹ *Id.*

²⁰ Okla. H. Rules, § 9.6(a), Senate Rule 8-31(B).

²¹ *Id.*

²² It should be noted that the rules of neither chamber require the recording of the member’s abstention from voting on account of Okla. Const. Art. V, § 24 be denominated “Constitutional Privilege.” That such votes are recorded that way in the publicly-recorded tally of votes appears to be a matter of practice rather than rule.

proposition then under consideration.

The Oklahoma County Grand Jury submits that labeling the *Oklahoma Constitution's* mandatory duty of legislators to recuse from voting upon any legislation regarding which they are directly or indirectly interested under the provisions of Okla. Const. Art. V, § 24 a “privilege,” is itself both problematic and inherently misleading. It is problematic because willful disobedience to the Constitutional duty of every legislator to obey the command of Okla. Const. Art. V, § 24, is itself a criminal act, since the Constitutional duty set forth therein plainly “regulat[es the] official conduct” of the legislator, and willful failure of a legislative member to perform this Constitutional duty is correspondingly declared to be a criminal act under Oklahoma’s criminal code.²³ Calling this Constitutional duty a “privilege,” however, implies a matter of individual legislator discretion, rather than the actual command of a mandatory duty enjoined upon all legislators by the People of Oklahoma by their *Oklahoma Constitution*, and its denomination as some kind of “privilege” is therefore inherently misleading to both the legislator and to the public. Accordingly, for both chambers of the Legislature to denigrate the act of complying with the mandatory duty of legislators to disclose their “personal or private interest in any bill or resolution, proposed, or pending” before his/her legislative chamber and thereafter to not vote thereon as a “privilege” mislabeled what is not some matter of legislator discretion but is instead an unambiguous

²³ See 21 O.S. 2021, §§ 341 & 343. Section 343 provides: “Every officer or other person mentioned in the last section, who willfully disobeys *any provisions of law regulating his official conduct*, in cases other than those specified in that section, is guilty of a misdemeanor.” (emphasis added by italic typeface). Plainly, the provisions of the Constitution regulating the official conduct of legislators such as found in Okla. Const. Art. V, §§ 23 and 24, are “provisions of law regulating the conduct of legislators.” 21 O.S. 2021, § 343. The “last section” referred to in Section 343 on the date when Section 343 was enacted, refers back to what is now codified at 21 O.S. 2021, §341, which plainly identifies a “member of the legislature” as a person within the scope of “officer” governed by Section 343. It should be noted that under the *Oklahoma Criminal Code*: “The term ‘willfully’ when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. *It does not require any intent to violate law, or to injure another, or to acquire any advantage.*” 21 O.S. 2021, § 92 (emphasis added by italic typeface).

Constitutional command to the legislator from the People of Oklahoma to affirmatively disclose personal or private conflicts in legislation and to not vote thereon.

In order to eliminate the misleading and problematic labeling of the individual legislator's Constitutional Duty under Okla. Const. Art. V, § 24, to affirmatively declare any personal or private interest in legislation pending before them and thereafter not vote upon such legislation, **we, the Oklahoma County Grand Jury, respectfully recommend that the Rules of the House and the Senate Rules be amended to plainly state that it is the Constitutional duty of legislators to affirmatively declare to their colleagues any personal or private interest in pending legislation and to not vote thereon. The public recording of the tally of such votes should not be recorded as "Constitutional Privilege," but should instead be recorded as "Constitutional Duty."**

E. Legislation Conflict of Interest Impact Statements Should be Required

This grand jury has observed the salutary general practice of the Oklahoma Legislature to review the fiscal impact of such legislation of each item of legislation.²⁴ This wholesome legislative practice identifies and perhaps even protects the People of Oklahoma from unanticipated, and probably unintended fiscal costs of legislation. This practice is also consistent with the Constitutional general limitations upon the State and its local governments to not spend more in any fiscal year than the revenues available within the fiscal year without the approval of the People for such extra fiscal year indebtedness.²⁵ We believe that even a cursory review of the

²⁴ See Senate Rule 6-8 and Okla. H. Rules, § 7.11. The production of *Fiscal Impact Statements* is performed for the Legislature by the office of Director of Tax Policy of the Oklahoma Tax Commission. The fiscal impact of appropriations bills is considered self-evident and fiscal impact statements regarding such Bills are not required.

²⁵ See Okla. Const. Art. X, §§ 23 et seq. Oklahoma and its subdivisions generally operate under a "pay as you go plan" where the fiscal year expenses of government generally must be less or equal to the revenue available to pay for all such expenses in that fiscal year. See Boswell v. State, 1937 OK 727, 74 P.2d 940 (State); Board of Com'rs. v. Summers, 1937 OK 637, 73 P.2d 409 (County); Threadgill v. Board of Ed., 1922 OK 32, 204 P. 1100 (School District); Wilson v. Oklahoma City, 1926 OK 894, 251 Pac. 484 (municipality).

legislation proposed in Section 1 of HB 2098 (2019) would have revealed the blatant conflict between that legislation and Okla. Const. Art. V, § 21(A), and also the direct or indirect personal conflict of interest of its author in the legislation, as prescribed by Okla. Const. V, § 24. Unfortunately, no such review was required.

Given the express Constitutional limitations upon the conduct of legislators, the unreliability of self-policing by members of these limitations, and the potential for criminal charges flowing from violation of these limitations, **we, the Oklahoma County Grand Jury, respectfully recommend that the State House of Representatives and the State Senate adopt rules requiring the preparation of a *Legislation Conflict of Interest Impact Statement* regarding proposed legislation similar to those applicable to the requirements for a fiscal impact statement for legislation.²⁶ . We would also respectfully suggest that producing such impact statements be delegated to either the Office of Attorney General of Oklahoma or the Oklahoma Ethics Commission, together with staffing sufficient to provide the Legislature timely impact statement Bill analyses.**

Part II Motor License Agents

A. The Appointment of Motor License Agents in Oklahoma

The registration of motor vehicles in Oklahoma under current law is administered by the Oklahoma Tax Commission mostly through the Motor License Agents that it appoints pursuant to State statute.²⁷ The Oklahoma Tax Commission's statutory authority to appoint Motor License Agents has existed since the role of administration of motor vehicle registration was assigned to the Oklahoma Tax Commission, though the term "Motor License Agent" did not appear in the

²⁶ As elected public officials, legislators are obligated to comply with financial disclosure rules promulgated by the Oklahoma Ethics Commission. *See* Ethics Rule 3.16, Oklahoma Ethics Commission, 74 O.S., Ch. 62, App. I.

²⁷ *See* 47 O.S. 2021, § 1140.

Oklahoma Statutes until 1941,²⁸ when the Legislature formally established Motor License Agents, ratified prior Tax Commission agents' acts and their fees by providing:

The Tax Commission when it deems such to be necessary, shall appoint Motor License Agents in any county of the State, to assist in the enforcement and administration of this Act and acts amendatory thereof or akin thereto. Any such Agent upon being appointed, shall furnish and file with the Commission a bond in such amount as may be fixed by said Commission. Such Agent shall be removable at the will of the Commission. Such Agent shall perform all duties and do such things in the administration of the law of this State as shall be enjoined upon and required of him by the Commission. Provided that all appointments of tag agents heretofore made by the Oklahoma Tax Commission, and its predecessor, are hereby authorized and confirmed; and all notary fees and other charges made by such tag agents in connection with the registration of motor vehicles are hereby authorized and validated; and the withholding of such notary fees and other charges by such tag agents, as full compensation for their services in connection with the registration of motor vehicles, is hereby authorized, validated and confirmed.

When an application for license is made with the Commission or a Motor License Agent, a registration fee of fifty (\$.50) cents shall be collected. Such fee shall be in addition to the license fees on motor vehicles and shall be retained by the Motor License Agent as compensation for his services, or, when paid by a person making or filing his application directly with the Commission, said registration fee of fifty (\$.50) cents shall be apportioned in the same manner as are the license fees on motor vehicles.²⁹

Thereafter, in 1963, the Legislature expressly clarified the relationship between the Oklahoma Tax Commission and Motor License Agents as contractual, by adding the following language to the above-quoted statute:

Such agents shall be self-employed independent contractors, under the supervision of the Tax Commission.³⁰

The status of Motor License Agents as "self-employed independent contractor" continues to exist under present law,³¹ though the fees lawfully collectable by Motor License Agents for their

²⁸ Prior to 1941, the practice of the Oklahoma Tax Commission using "agents" to register motor vehicles was legislatively recognized, but the manner of the remuneration for such agents' was not legislatively addressed. *See e.g., Laws 1939, c. 50, art. 7, § 2.*

²⁹ *Laws 1941, c. 1a, § 23. See also 47 O.S.1941, § 22.22.* This statute is the forerunner of the current statute found at 47 O.S.2021, § 1140.

³⁰ *See Laws 1963, c. 217, § 1. See also 47 O.S. Supp. 1963, § 22.22.*

³¹ *See 47 O.S.2021, § 1140(F).*

services have since been broadly expanded³² and statutorily protected from imposters.³³

These contracts are extremely lucrative to most Motor License Agents. For example, in the case this grand jury investigated regarding the Catoosa Tag Agency, we found that though it was one of four Motor License Agencies located in Rogers County, the *Application for Motor License Agent* filed in 2019 anticipated annual expenses of the Motor License Agent of One Hundred Seventy-seven Thousand, Two Hundred Dollars (\$177,200.00) against the average gross collections of that Motor License Agency of Motor License Agent Fees over FY 2016, 2017 and 2018 of Two Hundred Eighty-seven Thousand, One Hundred Seventy-Five Dollars and Sixty-seven Cents (\$287,175.67) , and thus anticipated it would realize a net profit to the Motor License Agent of One Hundred Nine Thousand, Nine Hundred Seventy-five Dollars and Sixty-seven Cents (\$109,975.67). The actual gross revenues to that Motor License Agency during calendar year 2021 had grown to Three Hundred Thirty-two Thousand, Three Hundred Forty-three Dollars and Forty-one Cents (\$332,343.41).³⁴ This represents an astounding return upon an initial investment by the Applicant of One Hundred Dollars (\$100.00) paid by the Applicant to the Oklahoma Tax

³² See e.g., 47 O.S.2021, §§ 1140(G), 1141.1 and 1143.

³³ Only duly appointed Motor License Agents may hold themselves out to the public as “Motor License Agents,” see 47 O.S.2021, § 1141, providing: “It shall be unlawful for any person to display any sign or to advertise in any manner representing to the public that he or she is an official or authorized motor license agent of the state, or that he or she has authority to register motor vehicles and issue license plates therefor, unless such person is a duly appointed and qualified motor license agent under the provisions of Section 1140 of this title; and it shall be unlawful for any person to solicit, accept or receive any gratuity or compensation for acting as a messenger or for acting as the agent or representative of another person in applying for the registration of a motor vehicle and obtaining the license plate therefor from the Oklahoma Tax Commission or from any official and authorized motor license agent, or to advertise, solicit, or in any manner offer to render such services for hire or compensation unless the motor license agent has appointed, authorized and approved said person to perform such acts and said person shall furnish to the motor license agent of the county in which such service is performed a surety bond in such amount as said motor license agent shall determine to be commensurate with the amount of money which may be involved at any one time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not exceeding one (1) year, or both. Each day that any such person advertises or in any manner offers to render such services to the public or to any person shall constitute a separate offense. Nothing herein shall be construed as affecting or diminishing the responsibility and liability to the Commission of the official motor license agent or of his or her bond made to the Commission.”

³⁴ See MLA Collections Summary Report, Oklahoma Tax Commission, for the period of 01/01/2021 through 12/31/2021.

Commission for the privilege of operating a Motor License Agency in Catoosa. But the Motor License Agent Fee revenues available to operate the Catoosa Tag Agency are not unusual to Motor License Agents generally.

In calendar year 2021, the Oklahoma Tax Commission had 274 active Motor License Agents that in total reportedly collected and retained Motor License Agent Fees of Fifty-Nine Million, Four Hundred Seventy-seven Thousand, Seven Hundred Ninety-one Dollars (\$59,477,791.00) from their customers.³⁵ Collectively, these Motor License Agents collected Nine Hundred Forty-one Million, Seven Hundred Eighty-eight Thousand, Eighty Dollars and Thirty-four Cents (\$941,788,080.34) in taxes and fees that were deposited to the credit of the State of Oklahoma. Forty-three percent (43%) of the 274 Motor License Agents reported gross MLA Fees of Two Hundred Thousand Dollars or more.³⁶ The Oklahoma Tax Commission apparently does not track Motor License Agency expenses by agency, so net MLA Fees is difficult to discern to determine efficiency of such operations.

Because they are currently considered “independent contractors” and not regularly appointed State Officers and Employees, the appointment of applicants to become Motor License Agents is not included within statutes prohibiting invidious employment discrimination in State employment.³⁷ This grand jury has repeatedly heard witness after witness from the Oklahoma Tax

³⁵ *Id.* MLA Fees are retained by Motor License Agents to operate their private businesses. The excess of MLA Fees over expenses represents personal profit to the Motor License Agent.

³⁶ Of the 274 active Motor License Agents, 181 (66%) of the Motor License Agents received One Hundred Thousand Dollars or more in MLA Fees, and of that number, 120 (43%) brought in Two Hundred Thousand Dollars or more, 65 (23%) brought in Three Hundred Thousand Dollars or more, 40 (14.6%) brought in Four Hundred Thousand Dollars or more, 27 (9.9%) brought in Five Hundred Thousand Dollars or more, 18 (6.6%) brought in Six Hundred Thousand Dollars or more, 15 (5.5%) brought in Seven Hundred Thousand Dollars or more, 5 (1.8%) brought in Eight Hundred Thousand Dollars or more, 3 (1.1%) brought in Nine Hundred Thousand Dollars or more, and 2 (.07%) brought in One Million Dollars or more in MLA Fees. 93 Motor License Agents (34%) brought in less than One Hundred Thousand Dollars in MLA Fees. Of those 93 Motor License Agents, 38 (13.8%) brought in Less than \$50,000 in MLA Fees, with 14 (5%) bringing in less than \$20,000.00 in MLA Fees. *Id.*

³⁷ *See* 74 O.S. 2021, § 954, that provides in relevant part: “It is hereby prohibited for any department or agency of the State of Oklahoma, or any official or employee of the same for and on behalf of the State of Oklahoma: to refuse to employ or to discharge any person, otherwise qualified, on account of race, color, creed, national origin,

Commission unable to state how applicants are openly and fairly recruited when existing Motor License Agents need to be replaced. Not only are such vacancies not regularly advertised, but a 2018 amendment to Section 1140 of Title 47 which governs the appointment of Motor License Agents statutorily restricts the discretion of the Oklahoma Tax Commission in appointing replacements for retiring Motor License Agents by providing:

If the applicant is assuming the location of an existing or operating agency, the current agent may submit a letter of resignation contingent upon the appointment of the applicant regardless of the population of the municipality in which the agency is located.³⁸

This sentence was added to Section 1140 of Title 47 in 2018 by HB 3278. The principal House author of that Bill has given sworn testimony that this provision was intended by him to “streamline” the process of Motor License Agent transfers so that there would not be a “gap” in operation causing the motor license agency to shut down while a replacement was approved, thereby inconveniencing the portion of the public normally served by that Motor License Agency. We would observe that evidence provided to us shows that of the fourteen (14) Motor License Agents replaced in calendar year 2019, ten (10) were replaced upon “contingent resignations.”³⁹

age, handicap, or ancestry; to discriminate for the same reasons in regard to tenure, terms, or conditions of employment; to deny promotion or increase in compensation solely for these reasons; to publish an offer of employment based on such discrimination; to adopt or enforce any rule or employment policy which so discriminates as to any employee; or to seek such information as to any applicant or employee or to discriminate in the selection of personnel for training solely on such basis. These provisions shall be cumulative and in addition to existing laws relating to discrimination in the classified service.” See also 74 O.S.2021, § 840-2.9(a), that provides: “A. No person in the state service, whether subject to the provisions of the Merit System or in unclassified service, shall be appointed to or demoted or dismissed from any position in the state service, or in any way favored or discriminated against with respect to employment in the state service because of political or religious opinions or affiliations, race, creed, gender, color or national origin or by reason of any physical handicap so long as the physical handicap does not render the employee unable to do the work for which he is employed. The hiring of special disabled veterans pursuant to Sections 401 through 404 of Title 72 of the Oklahoma Statutes shall not constitute favoritism as herein prohibited.”

³⁸ We would note that the enactment of the legislation that authorized this provision was tainted by the unlawful vote of the legislator who was charged by this grand jury by voting for the legislation rather than recusing as he was required under the plain requirements of Okla. Const. Art V, § 23. That legislator and his wife are also charged with thereafter corruptly seeking to employ this provision regarding the wife’s *Application for Motor License Agent*.

³⁹ Of the remaining four, two (2) resigned without naming a contingent replacement and two (2) died. One of the two who died had submitted a contingent resignation in favor of her daughter who was the wife of a member of the Oklahoma legislature and who has been indicted by this grand jury along with her legislator husband.

Accordingly, the overwhelming majority of Motor License Agent transfers in calendar year 2019 were controlled by “contingent resignations” that eliminated the possibility of allowing open and fair competition for such potentially lucrative contracts and any fair opportunity for recruitment of replacement Motor License Agents, even among persons currently employed by the retiring Motor License Agent. We also note that “contingent resignations” also violate the spirit if not the letter of existing State policies designed to encourage and effect participation of minority and diverse businesses in State contracts.⁴⁰ We would also note that the majority of capital expenditure of Motor License Agents is in supplying sufficient numbers of personal computers to the Motor License Agency to communicate with the Oklahoma Tax Commission Motor Vehicle Division regarding the business activities of the Motor License Agency. The inventory of the things Motor License Agents sell to the Public on behalf of the State of Oklahoma is supplied without cost to the Motor License Agent by the State of Oklahoma through the Oklahoma Tax Commission. To

⁴⁰ See e.g., 74 O.S. 2021, § 85.45a that declares: “It is recognized by this state that the preservation and expansion of the American economic system of private enterprise is through free competition, but it is also recognized that the security and well-being brought about by such competition cannot be realized unless the actual and potential capacity of minority business enterprises is encouraged and developed. Therefore, it is the intent of the Legislature that the state ensure that minority business enterprises are not underrepresented in the area of procurement of state contracts for construction, services, equipment and goods. It is further the intent that this state provide for the aggressive solicitation of minority business enterprises, provide a feasibility study on a Small Business Surety Bond Guaranty Program, provide other programs targeted for assisting minority business enterprises in qualifying for state bids, and establish a percentage preference bid program for minority business enterprises who desire to participate in such program.” The “contingent resignation” provision promotes neither “free competition” nor minority participation in this lucrative business. See also, 74 O.S.2021, § 85.45j.11, that declares in part: “A. There is hereby created the “Oklahoma Supplier Diversity Initiative”, which shall be a state-sponsored supplier diversity program to provide a resource for state agencies and private businesses to utilize diverse firms in procurement opportunities to encourage growth in the economy of the state. The program shall provide convenience for qualified and certified small business enterprises and minority business enterprises in contracting projects in underserved areas. B. The program shall allow diverse business enterprises to register with the Office of Management and Enterprise Services and allow registered vendors to be automatically notified of opportunities to do business with the state for specific commodities. The program shall provide for simplified vendor registration processes.” The program established under this law is intended to benefit the following categories: An Oklahoma Department of Transportation Disadvantaged Business Enterprise; any of the following entities certified by the United States Small Business Administration: Woman-Owned Small Business, Minority-Business Enterprise, Small Disadvantaged Business, Service-disabled Veteran-Owned Small Business, HUBZone Small Business Concern, and 8(a) Business Development Program; a Native American-owned Business; or a Veteran-owned Business, but is rendered impossible under the “contingent resignation” provision of 74 O.S. 2021, § 1140(A)(9).

the extent that a Motor License Agent qualifies to issue drivers licenses and State-issued photo identification cards, we would note that the Department of Public Safety furnishes the necessary equipment to produce drivers license photos.⁴¹ Furthermore, any “gap” between the resignation of a Motor License Agent and the appointment of a successor Motor License Agent may be obviated by the Oklahoma Tax Commission pursuant to other statutory authority.⁴² Such other statutory authority is actually superior for the purpose of preventing an inconvenience to the public caused by the replacement of a Motor License Agent since it also applies in the event there is a vacancy of Motor License Agent caused by death or removal in addition to resignation.

Accordingly, we, the Grand Jury of Oklahoma County respectfully recommend repeal of the “contingent resignation” authority of Motor License Agents currently found at 47 O.S.2021, § 1140(A)(9). We also recommend that the equal opportunity provisions already part of Oklahoma law encouraging fair and diverse participation by potential contractors in the

⁴¹ 47 O.S.2021, § 1140.1 provides: “A. Any motor license agent appointed on or after July 1, 2002, within a specific municipality *shall be furnished a camera* by the Department of Public Safety *without charge* if: 1. Based upon the number of driver licenses issued during the preceding year, the total number of licenses issued shall average not less than one thousand two hundred (1,200) per year per camera within the municipality and not less than one thousand two hundred (1,200) per year per camera within the county; or 2. The motor license agent is located in a municipality with a population greater than five hundred (500) and the municipality is located fifteen (15) miles or more from any other motor license agency. B. In addition to the provisions of subsection A of this section, each county shall have at least one motor license agent who shall be furnished a camera. C. For the purposes of this section, each motor license agent appointed after July 1, 2002, shall be considered a new agent, whether assets of another agency were inherited, purchased or otherwise acquired. D. The furnishing of any camera shall be subject to availability from the vendor and, if limited, shall be allocated according to this section.” (emphasis added by italic typeface).

⁴² 47 O.S.2021, § 1140(F) already provides: “F. In the event of a vacancy existing by reason of resignation, removal, death or otherwise, in the position of any motor license agent, *the Tax Commission is hereby empowered and authorized to take any and all actions it deems appropriate in order to provide for the orderly transition and for the maintenance of operations of the motor license agency including but not limited to the designation of one of its regular employees to serve as “acting agent” without bond, and to receive and expend all fees or charges authorized or provided by law and exercise the same powers and authority as a regularly appointed motor license agent.* An acting agent may be authorized by the Tax Commission equally as the preceding agent to make disbursements from any balances in the preceding motor license agent’s operating account and the agent’s operating funds for the payment of expenses of operations and salaries and other overhead. If such funds are insufficient, the Tax Commission is authorized to expend from funds appropriated for the operation of the Tax Commission such amounts as are necessary to maintain and continue the operation of any such motor license agency until a successor agent is appointed and qualified. The Tax Commission may require a blanket fiduciary bond of the agency employees.” If the concern bringing about the “contingent resignation” was “a gap” in operation, the Legislature could simply make this provision mandatory rather than discretionary.” (emphasis added by italic typeface).

awarding of State contracts should also be required to be followed in the selection of Motor License Agents and the awarding of Motor License Agent State contracts.

B. Background Investigations of Applicants for Motor License Agent.

Our investigation involving the applicant process for replacement of a Motor License Agent in Catoosa, Oklahoma, revealed that though the law established certain mandatory qualifications for Motor License Agent,⁴³ no effort at all was made by the staff of the Motor Vehicle Division of the Oklahoma Tax Commission to investigate many of such statutorily mandated qualifications beyond the facts supplied by the applicant on the face of his/her verified *Application for Motor License Agent*. In fact, the agency's investigation by way of a "background investigation" was limited to only determining 1) whether the applicant was currently delinquent in the payment of taxes to the State of Oklahoma, 2) whether the applicant had a criminal arrest or conviction history, and 3) the credit history of the applicant as revealed in a credit report purchased by the agency. No effort at all was expended by the agency to determine whether or not the applicant was unlawfully related within the third degree of consanguinity or affinity even to officers and employees of the Oklahoma Tax Commission, let alone to a member of the Legislature Constitutionally conflicted by Okla. Const. Art. V, § 23.⁴⁴ **Accordingly, we, the Oklahoma**

⁴³ See 47 O.S.2021, § 1140(A).

⁴⁴ In fact, we found that the mandatory relationship affidavit required under 47 O.S. Supp. 2019, § 1140(I) had been simply crossed out of the *Application for Motor License Agent* form by the 2019 applicant for Motor License Agent for Catoosa, Oklahoma, and no investigation at all was made by the agency regarding the facts required by law to be verified by the applicant's affidavit. While we were provided evidence that the crossing out of the *Application* form's relationship affidavit was a solitary event, we also were informed that no independent investigation of the facts set forth in the statutorily mandated affidavit was usually made regarding any applicant. Had the background of the 2019 applicant for Motor License Agency been properly investigated as mandated by statute, the unconstitutional interest of the applicant's husband in both the contract for Motor License Agency and in the real property upon which it was located might have been discovered. Additionally, no request was made by the Motor Licensing Division to its Legal Division to determine whether the removal of the statutory limitations through the unlawfully repealed statutory restrictions made their consideration of the legislator's wife's *Application* lawful, though it was not lawful under the *Oklahoma Constitution*. We anticipate that the Tax Commission's Legal Division would have easily discovered the 1987 advice of the Attorney General showing such an application violated the *Constitution of Oklahoma* and that the wife's *Application* could not be considered.

County Grand Jury, respectfully recommend that the Motor Vehicle Division of the Oklahoma Tax Commission broaden their active investigation of Applicants for Motor License Agents to include an independent investigation of all factors set forth under 47 O.S.2021, § 1140(A) and (H) and include a determination of whether any member of the Oklahoma Legislature would be directly or indirectly interested in any Motor License Agent contract awarded pursuant to 47 O.S.2021, § 1140, contrary to the provisions of Okla. Const. Art. V, § 23.

C. Proposed Legislation Transferring the Appointment and Supervision of Motor License Agents to a Newly Created Division of OMES.

This grand jury is aware of certain pending (essentially identical) Bills initiated this year in the Oklahoma House of Representative and also in the Oklahoma Senate that would transfer authority regarding the issuance and renewal of drivers licenses, the registration and renewal of registration of motor vehicles and certain other vehicles, the tagging and renewal of tagging of motor vehicles and other vehicles, and the regulation and supervision of what now are called Motor License Agents away from the Department of Public Safety (DPS) and the Oklahoma Tax Commission (OTC) to a new division to be created within the Office of Management and Enterprise Services (OMES) to be called “Service Oklahoma.”⁴⁵ As generally described by House

⁴⁵ See HB 3419 (2022) and SB 1605 (2022), which are essentially identical bills advancing through the Oklahoma House of Representatives and the Oklahoma State Senate. These Bills have the same principal House and Senate authors. Each Bill has been passed in its initiating legislative chamber. SB 1605, as amended by the House, has also been approved by the Oklahoma House but amendments approved in the House chamber have been rejected by the Senate and as of May 11, 2022, a conference committee has been named for this Bill. A House/Senate Conference Committee might create a Committee Substitute resolving the differences in the Bill. HB 3419 was passed by the Senate with amendments and on May 10, the House accepted the Senate amendments and passed the Bill which has been referred for enrollment prior to being forwarded to the Governor for his consideration. The differences addressed by each chamber through amending the other’s Bills are not essential to this discussion. Therefore, references herein to each Bill shall be to the engrossed versions of each chamber originally passed and sent to the other chamber. Each Bill is extremely long with HB 3419 currently divided into 242 sections consisting of 758 pages, and SB 1605 also divided into 242 sections consisting of 755 pages. The overwhelming number of separate sections of each Bill involve replacement of the Oklahoma Tax Commission and/or the Oklahoma Department of Public Safety in certain statutory provisions with a new “Safety Oklahoma” entity without much changing the substantive law set forth in said sections. The first 10 sections of each Bill enact new statutes to be codified as Sections 3-101 of Title 47

Research Staff regarding HB 3419 (2022):

The committee substitute to the measure would create the Services Oklahoma division within the Office of Management and Enterprise Services. The substitute would transfer the applicable powers, duties and responsibilities of the Driver License Services Division of the Department of Public Safety to Service Oklahoma. The substitute would transfer the applicable powers, duties and responsibilities of the Motor Services Division of the Tax Commission to Service Oklahoma.

This description would also generally describe the provisions of SB 1605 (2022). The principal powers of “Services Oklahoma” will reside in its “Director,”⁴⁶ who shall be appointed by the Governor of Oklahoma subject to the advice and consent of the Senate and serve at the Governor’s

of the Oklahoma Statutes, through and including Section 3-110, creating and empowering “Service Oklahoma,” its Director, the Director’s “advisory” board and the board’s “advisory” committee. Each bill radically changes the provisions of current Section 1140 of Title 47. According to its principal Senate author, the legislation was developed over 18 months by a “bipartisan bicameral working group” appointed by the House Speaker and Senate Pro Tempore together with a 15-member current Motor License Agent working group, along with input by the Department of Public Safety and the Oklahoma Tax Commission. According to this Senator, over 120 current Motor License Agents provided “direct” input regarding the legislation. The Senator asserted support of the legislation by the Tag Agents Association, the legislative working group, a Motor License Agents working group, the Tag Agents’ lobbyists and the “executive branch.” *See* video answers to questions about the Bill on the floor of the State Senate on March 9, 2022, by Senator Chuck Hall.

⁴⁶ The “Director” is defined as the “Chief Executive Officer of Service Oklahoma.” *See* Section 2 of each Bill. Section 3 of each Bill defines some of the vast powers and duties of the “Director,” *to-wit*: “B. The Director of Service Oklahoma shall be the chief executive officer of Service Oklahoma and shall act for Service Oklahoma in all matters except as may be otherwise provided by law. The powers and duties of the Director shall include, but not be limited to: 1. Organize Service Oklahoma in a manner to efficiently achieve the objectives of Service Oklahoma; 2. Supervise all activities of Service Oklahoma; 3. Administer programs and policies of Service Oklahoma; 4. Employ, discharge, appoint, contract, and fix duties and compensation of employees at the discretion of the Director; 5. Appoint assistants, deputies, officers, investigators, attorneys, and other employees as may be necessary to carry out functions of Service Oklahoma; 6. Prescribe rules and regulations for the operation of Service Oklahoma; 7. Provide input and recommendations to the Service Oklahoma Operator Board on all matters including branding and physical standardization requirements, customer service metrics, analysis, and improvement processes for licensed operators, and processes for termination of licensed operators for failure to comply with the customer service metrics; 8. Establish internal policies and procedures; 9. Prescribe and provide suitable forms deemed necessary to carry out the functions of Service Oklahoma and any other laws the enforcement and administration of which are vested in Service Oklahoma; 10. Establish such divisions, sections, committees, advisory committees, offices, boards, and positions in Service Oklahoma as the Director deems necessary to carry out the functions of Service Oklahoma; 11. Accept and disburse grants, allotments, gifts, devises, bequests, funds, appropriations, and other property made or offered to Service Oklahoma; and 12. Create the budget for Service Oklahoma to be submitted to the Legislature each year.” The “Director” is also empowered to “direct all purchases, hiring, procurement, and budget for Service Oklahoma of the Office of Management and Enterprise Services and establish, implement, and enforce policies and procedures related thereto, consistent with the Oklahoma Central Purchasing Act. Service Oklahoma and the Director shall be subject to the requirements of the Public Competitive Bidding Act of 1974, the Oklahoma Lighting Energy Conservation Act, and the Public Building Construction and Planning Act.” *Id.* The Director, either personally or through his delegate, may exercise all powers of the State Purchasing Director regarding his administration of “Service Oklahoma.” *Id.*

pleasure.⁴⁷ The two Bills would create two (2) “advisory” boards/committees: A nine (9) member “Service Oklahoma Operator Board”⁴⁸ to advise the Director, and a seven (7) member “Licensed Operator Advisory Committee” with duties to be defined by the “Service Oklahoma Operator Board.”⁴⁹

Under the legislation, Motor License Agents would be statutorily transformed into “Licensed Operators,” appointed by the “Service Oklahoma Operator Board,” since all current Motor License Agents would be grandfathered into being “Licensed Operators” under the legislation.⁵⁰ “Licensed Operators” would be required to provide a performance bond and, like current Motor License Agents, would be a State contractor.⁵¹ The costs of providing such services

⁴⁷ Under each Bill, the Director “may be removed or replaced without cause” by the Governor. *See* Section 3, paragraph A of each Bill. The Director may likewise “be removed from office by a two-thirds vote” of each chamber of the Legislature. *Id.* As a State officer not subject to Impeachment, the Director would also be removable for legal cause in an action for *Removal* brought by the Attorney General of Oklahoma, *see* 51 O.S.2021, §§ 91 *et seq.* or an action for *Removal* brought by a grand jury, *see* 22 O.S.2021, § 1181 *et seq.*

⁴⁸ Three members of the “Board” would be appointed by the Senate Pro Tempore with one such member being a current tag agent from a county exceeding 100,000 in population; three members would be appointed by the House Speaker with one such member being a current tag agent in good standing appointed from a county of less than 100,000 in population; two members would be appointed by the Governor together with the Director who is also appointed by the Governor. Each of the members of the Board would serve at the pleasure of the appointing authority and “may be removed or replaced without cause.” The Board’s general powers include: “1. Approve guidelines, objectives, and performance standards for licensed operators; 2. Establish branding and physical standardization requirements with the input and recommendation of the Director of Service Oklahoma; 3. Establish customer service metrics, analysis, and improvement processes for licensed operators, and processes for termination of licensed operators for failure to comply with the customer service metrics, with the input and recommendation of the Director of Service Oklahoma; 4. Make recommendations to the Director of Service Oklahoma on all matters related to licensed operators; 5. Assist Service Oklahoma in conducting periodic reviews related to the goals, objectives, priorities, and policies related to licensed operators; and 6. Establish rules and qualifications for members of the Licensed Operator Advisory Committee created in Section 5 of this act.” *See* Section 4 of each Bill. The Board also establishes minimum qualifications subject to certain statutory requirements for locating “Service Oklahoma” locations and for persons applying for a license to operate a designated “Service Oklahoma” location. Commencing January 1, 2023, the Board will appoint all applicants for “Licensed Operator” of an approved “Service Oklahoma” location. *See* Section 175 of SB 1605 (2022) and Section 174 of HB 3419 (2022), *amending* 47 O.S.2021, § 1140.

⁴⁹ Six members of this “Service Oklahoma” committee, all current tag agents in good standing, would be appointed by the Board along with one employee of “Service Oklahoma” designated by the Director. The members of the Committee would serve at the pleasure of their appointing authority, and “may be removed or replaced without cause.” The duties of the Committee would be set by the Board. *See* Section 5, subsection “F” of each Bill.

⁵⁰ *See*, Subsection “J” of Section 175 of SB 1605 (2022) and Subsection “J” of Section 174 of HB 3419 (2022), *amending* 47 O.S.2021, § 1140. Apart from these plain provisions of statute that require contracts between “Licensed Operators” and “Service Oklahoma,” the principal Senate author declared that such licensees would be “State contractors.” *See* video answers to questions about the Bill on the floor of the State Senate on March 9, 2022, by Senator Chuck Hall.

⁵¹ Such contracts by existing Motor License Agents would have to be approved by December 31, 2022.

to the State would essentially remain unchanged since the State agency personnel performing work under the current law would be transferred from the Oklahoma Tax Commission and the Department of Public Safety to perform their functions for the newly created “Service Oklahoma.”⁵² Essentially, the legislation transfers “old wine into new wineskins.”

From our review of this pending legislation, we, the Oklahoma County Grand Jury, find that the new legislation is subject to some of the same problems (if not more) addressed above⁵³ regarding the current Motor License Agent system administered by the Oklahoma Tax Commission regarding legislator conflicts of interest in legislation pertaining to “Licensed Operators.” The legislation does not mandate effective independent investigation of “Licensed Operators,” but may have merely delegated such authority to the “Service Oklahoma Operator Board.”⁵⁴ Additionally, though it would repeal the “contingent resignation” authority of Motor License Agents under present law, the pending legislation replaces it by transforming the public service provided by Motor License Agents on behalf of the Oklahoma Tax Commission into

Under the grandfathering provision, Motor License Agents could also elect to continue under their current contracts with the Oklahoma Tax Commission until December 31, 2025, which then, presumably, would terminate unless their contracts were transferred to someone willing to contract with “Service Oklahoma” as a “Licensed Operator” *Id.*

⁵² See, Section 1 of each Bill, each providing, among other things, as follows: “The applicable powers, duties, and responsibilities exercised by the Driver License Services Division of the Department of Public Safety shall be fully transferred to Service Oklahoma on November 1, 2022. All employees of the Department of Public Safety whose duties are transferred under this act shall be transferred to Service Oklahoma. The applicable powers, duties, and responsibilities exercised by the Motor Services Division of the Oklahoma Tax Commission shall be fully transferred to Service Oklahoma on January 1, 2023. All employees of the Oklahoma Tax Commission whose duties are transferred under this act shall be transferred to Service Oklahoma.” Additionally, all administrative rules and regulations adopted by the Oklahoma Tax Commission and the Department of Public Safety for such services would be transferred to and become the administrative rules and regulations of the newly created “Services Oklahoma.” See, Section 9 of each Bill.

⁵³ Since the pending legislation is not necessarily in its final form nor have its provisions been implemented by the new entities and offices it creates, it is impossible at this time to catalogue every possible problem that we may see in the proposed legislation.

⁵⁴ See Subsections “A” and “C” of Section 174, H.B. 3419 (2022) and Subsections “A” and “C” of Section 175 of SB 1605 (2022). These subsections establish certain statutory criteria for “Licensed Operators” and require the Board to “make a determination” whether the location and person meet such criteria and guidelines established by the Board. It may reasonably be inferred that a factual record would have to be developed in order for the Board to “make a determination.” The amended statutes do not prescribe the nature or quality of the investigation to be made by either “Service Oklahoma” nor the Board prior to awarding a license and contract to a “Licensed Operator.”

personal property of the “Licensed Operator” that may be sold and transferred to others without any regard for the equal opportunity provisions already part of Oklahoma law encouraging fair and diverse participation by potential contractors in the awarding of State contracts. The amendments to Section 1140 of Title 47 that would be enacted under the pending Bills would still ignore the total lack of statutory safeguards against legislator conflicts of interest in State contracts that were addressed in 1987, but improperly removed in 2019.⁵⁵ The legislation also ignores consideration of minority and diverse businesses in the appointment and State contracts of “Licensed Operators,” and apparently would simply perpetuate these problems as discussed above.⁵⁶

Historically, tag agents served at the pleasure of the Oklahoma Tax Commission and could be removed and closed at any time without cause. In this regard, the statute defining the qualifications of tag agents has provided since 1941 “[s]uch agent shall be removable at the will of the Oklahoma Tax Commission.”⁵⁷ The apparent purpose for this agency power, beyond being able to easily terminate non-performing tag agents, was to match the number of tag agents to the number adjudged necessary to “carry out the purposes of the Motor Vehicle License and Registration Act.”⁵⁸ In 2021, and without removing this phrase, the Legislature made tag agents removable only for specified “causes” now defined in the statute.⁵⁹ Now contained in the pending

⁵⁵ The provisions of the proposed amendment to 47 O.S.2021, § 1140(A)(6) simply substitute “Service Oklahoma Operator Board” for “Oklahoma Tax Commission” and its employees, while completely repealing the requirement that an applicant for “Licensed Operator” provide a relationship affidavit denying improper relationships within the third degree of affinity or consanguinity, *See* Section 173 of HB 3419 (2022), and Section 174 of SB 1605 (2022).

⁵⁶ *See* Part II “A,” of this report, *above*.

⁵⁷ *See* 47 O.S.2021, § 1140(E). *See also* footnote 30 above and its linked quote in the text above it.

⁵⁸ *Id.*, at § 1140(D), providing: “The Tax Commission shall appoint as many motor license agents as it deems necessary to carry out the provisions of the Motor Vehicle License and Registration Act. There shall be no less than one (1) motor license agent located in a county of this state.”

⁵⁹ *Id.*, now providing: “Any action taken by the Tax Commission to remove a motor license agent from his or her position shall be pursuant to and in accordance with the provisions of the Administrative Procedures Act. For the purposes of this section, “for cause” shall be defined as follows: 1. Repeated violations of written rules, regulations and statutes pertaining to motor license agents after written warning by the Tax Commission and an opportunity to

legislation for the first time in the history of this State, the operations of tag agents would become the property of the tag agent, and tag agents would be authorized to sell their operations to another person or sell it back to the State.⁶⁰ The probable value of the sales of such operations would vary widely due to the amount of business conducted by the tag agent which, as we have shown above, varies widely amongst the current Motor License Agents.⁶¹ Furthermore, unlike current law that prohibits tag agents from operating from more than one location,⁶² “Licensed Operators” could acquire other “Licensed Operator’s” locations. Consequently, in the event that some or all of “Licensed Operators” are adjudged by the new “Service Oklahoma” to no longer be necessary due

correct such violations; 2. Failure of the motor license agent to promptly remit funds owed to the Tax Commission upon written demand; 3. Being charged with a felony crime involving dishonesty or moral turpitude; 4. Failure to timely file state and federal income tax returns; or 5. Any act of official misconduct as set forth in Section 93 of Title 51 of the Oklahoma Statutes.” It is unclear under present law whether a tag agent would currently be removable if determined by the Oklahoma Tax Commission upon the sole reason as simply no longer being needed to meet the requirements of the Oklahoma Tax Commission and the Public.

⁶⁰ See Subsection (B) of Section 174 of HB 3419 (2022) and Subsection (B) of Section 175 of SB 1605 (2022), providing: 1. A licensed operator may be permitted, upon application, to sell or transfer an existing license to operate a designated Service Oklahoma location. Any sale or transfer of a license is subject to approval of the Service Oklahoma Operator Board. In order to sell or transfer an existing licensed operator license, the licensed operator shall meet the following guidelines and requirements: a. the licensed operator shall be in good standing with the Service Oklahoma Operator Board, b. the licensed operator shall have held a licensed operator license, issued by the Service Oklahoma Operator Board, for a minimum of five (5) years, and c. the licensed operator shall provide the Service Oklahoma Operator Board evidence that the proposed buyer or transferee of the licensed operator licensee meets the qualifications and requirements set forth in subsection A of this section, has the ability to meet all financial requirements and terms of any current existing contract between the licensed operator and Service Oklahoma, and agrees to the onboarding and training requirements of Service Oklahoma, as established by Service Oklahoma and the Service Oklahoma Operator Board. 2. The purchase price of a licensed operator license shall be agreed upon by the licensed operator and the individual purchasing the license to operate a designated Service Oklahoma location. However, the purchaser or transferee agrees to pay a transfer fee to Service Oklahoma in the amount of three percent (3%) of the last annual gross revenue from fees retained at the Service Oklahoma location to be purchased, not to exceed Fifteen Thousand Dollars (\$15,000.00). The transfer fee shall be deposited in the Service Oklahoma Revolving Fund. 3. Upon receipt of the application to sell or transfer an existing licensed operator license, the Service Oklahoma Operator Board will determine whether the licensed operator license may be sold or transferred on the condition that the existing location is in good standing and the new licensee meets the requirements outlined in Section 1140 et seq. of this title. 4. The Service Oklahoma Operator Board may, at its discretion, buy back a licensed operator license from a licensed operator who desires to sell or transfer its license operator license but has held a licensed operator license issued by Service Oklahoma for less than five (5) years. The purchase price for such a license will be one-half (1/2) times the most recent annual gross revenue from fees retained of that Service Oklahoma location, not to exceed Two Hundred Thousand Dollars (\$200,000.00).” The ability of current tag agents to sell their agency to another person subject to approval by the Commission through the 2018 device of the “contingent resignation” is not expressly currently recognized in the statutes.

⁶¹ See footnote 36 above.

⁶² See 47 O.S.2021, § 1140(D). The pending legislation would repeal this restriction, see Section 175, Subsection D, HB 3419 (2022) and Section 174, Subsection D, SB 1605 (2022).

to more and more of the business being automated and efficiently being made available to the Public through the world wide web,⁶³ the costs to the State of buying out literally hundreds of these unneeded “Licensed Operators” may prove more than substantial.⁶⁴

Accordingly, should the foregoing legislation identified above eventually be enacted by the Legislature and approved by the Governor, we, the members of the Oklahoma County Grand Jury respectfully recommend: modification of the “Licensed Operator” transfer provisions of the amendments to 47 O.S.2021, § 1140⁶⁵ to require the affirmative consideration of all applicants by the Service Oklahoma Operator Board under the existing provisions of the equal opportunity statutes already part of Oklahoma law⁶⁶ encouraging the fair and diverse participation by diverse contractors in the awarding of State contracts in the awarding of all new, replacement, or transferred licenses and related State contracts to “Licensed Operators” that are approved by said Board. We further respectfully recommend that every application of every potential “Licensed Operator” include an investigation regarding whether any current or former legislator would be directly or indirectly interested in the ensuing contract between such “Licensed Operator” and “Service Oklahoma,” contrary to Okla. Const. Art. V, § 23.

D. Modernizing Registration and Licensing

As we have observed above, the pending legislation regarding those who are currently called Motor License Agents or Tag Agents and what State agency that regulates them is largely

⁶³ See discussion in Part II(D) below regarding the probable effect of technology on regulation of this subject.

⁶⁴ Compare the amounts set forth in footnote 36 to the purchase and buy-out provisions more fully quoted above in footnote 59: “The purchase price for such a license [by “Service Oklahoma”] will be one-half (1/2) times the most recent annual gross revenue from fees retained of that Service Oklahoma location, not to exceed Two Hundred Thousand Dollars (\$200,000.00).” (bracketed matter added for clarity).

⁶⁵ See Section 175 of SB 1605 (2022), and Section 174 of HB 3419 (2022).

⁶⁶ See footnote 40, above.

just placing old wine into new wineskins. This does not mean that the old wine has not soured over time. Originally, tag agents were appointed by the Oklahoma Tax Commission for the purpose of the public conveniently registering motor vehicles, obtaining drivers licenses and paying fees and taxes assessed thereon. Over time, State services for the Public authorized to be performed by tag agents have expanded to include many other services on behalf of other State agencies. We find the use of “tag agents” (whether styled “Motor License Agents” or “Licensed Operators”) for the registration and titling of motor vehicles, boats and trailers and for the issuance and renewal of drivers licenses, a system only shared with the State of Louisiana, is antiquated, over costly to the Public, is Tag Agent centered and not focused on the current needs and wants of the Public, and should be abandoned.

The whole current system of using Motor License Agents to conveniently provide State services has become archaic and unnecessarily expensive. As described above, the current system was established in the 1940s, long before the proliferation of personal ownership and use by our State’s citizens of smart phones, digital tablets and personal computers all connected to on-line services through the world wide web. What was fanciful and even science fiction in the 1940s (or even in the 1990s) is now everyday practical reality. Internet commerce by the Public is now very common and openly expected. And the current (and proposed) system is overly costly to the Public. As shown above, in calendar year 2021, total mandatory fees collected from the Public and retained solely by the 274 Motor License Agents totaled just under Fifty-nine Million, Five Hundred Thousand Dollars (\$59,500,000.00). These Motor License Agent fee costs do not include the regulatory costs assumed by State agencies. This would not change under the legislation now pending in the Legislature.

Most of what is performed by Motor License Agents at their approved physical locations

and what is proposed to soon be performed by “Licensed Operators” at their approved physical locations is/will be performed on computers linked to the regulating agency, with the Motor License Agents/”Licensed Operators” serving only as data-inputting middlemen between the Public and the regulating State agencies such as the Oklahoma Tax Commission, the Department of Public Safety, the Oklahoma State Election Board, or “Service Oklahoma,” if it is ultimately created. Right now, without further legislation, a person wanting many common services now performed by tag agencies, need not physically go to the tag agency but may already obtain such services through available on-line portals provided by the Oklahoma Tax Commission and the Oklahoma Tag Agents Association, with the resulting title, tag or tag sticker being mailed to them.⁶⁷ Almost all of the remaining services not available through these on-line portals that currently are provided in person by tag agents could, through digital automation, be made available on-line with vast savings in personnel costs for providing such services to the Public without the need for costly private tag agents, and these savings could provide an opportunity for a reduction in fees charged the Public for the services.⁶⁸ Modernizing the delivery of these services might save Oklahomans \$290,000,000.00 in unnecessary costs for such services over the next 25 years.⁶⁹

⁶⁷ See 47 O.S. 2021, § 1132A, authorizing the Oklahoma Tax Commission to operate such a portal. Under current law, any member of the public using the Oklahoma Tax Commission portal selects a Motor License Agent to credit with the business undertaken through the State agency’s portal and then that Motor License Agent receives a fee for that State-automated service. The pending tag agent Bills discussed above require the establishment of a single portal for such on-line services, See Section 174, Subsection (A)(7) of HB 3419 (2022), and Section 175 of SB 1605 (2022), Subsection (A)(7), which both provide: “7. That a single website, designated by Service Oklahoma, will be used for the distribution of services provided by Service Oklahoma with motor vehicle services to be fulfilled by licensed operators;”

⁶⁸ Necessary in-person services could be delegated to an existing county office such as the County Court Clerks, see 12 O.S. 2021, § 35.1(A), providing “The duties of the court clerk may include processing of passports as permitted and prescribed by federal law and regulation if the court clerk files a written election with the Administrative Office of the Courts to process passports. Upon the filing of the election to process passports as an official duty and service, the court clerk shall execute all passports applications presented.” County Court Clerks are available in every County and are already authorized to take applications for U.S. Passports including photographing the applicant, *Id.* Such existing public officers and their staff could be authorized to process applications for drivers licenses, including supplying the digital photography and digital fingerprinting required for issuance of Real ID drivers licenses, obviating the need for processing such in-person services through Motor License Agents/”Licensed operators.”

⁶⁹ See Alvarez and Marsal, “Oklahoma Tax Commission – Motor Vehicle Services Assessment” (April 2020). We note that this report, commissioned by the Oklahoma Tax Commission costing the payment to its authors of

Digital self-serve kiosks which currently are used in other States could be made available by the State in communities in public places such as super markets, or post offices or at public buildings such as County courthouses or Post Offices or municipal buildings through which persons not having access to personal digital equipment could conveniently electronically address their needs for title registration and renewal.⁷⁰ Accordingly, **we, the Grand Jury of Oklahoma County respectfully recommend, as possible, the rapid digital automation or transfer of services now offered to the Public by Motor License Agents such that such services would be directly and conveniently available to the Public through the world wide web, and that the consequential reductions in cost overhead for personnel be reflected in the fees charged the Public for these services.** We additionally recommend as soon as possible, the complete abolishment of Motor License Agents as a means for delivery of these services to the Public. We also recommend that the Oklahoma Tax Commission make its consultants' valuable and informative report entitled "Oklahoma Tax Commission – Motor Vehicle Services Assessment" (April 2020) by Alvarez and Marsal be made available to the Public upon request as required by the *Oklahoma Open Records Act*, 51 O.S.2021, §§ 24A.1, et seq.

thousands of public tax dollars, is marked "Confidential – Not for Public Distribution." This Grand Jury obtained the report through the issuance of a *subpoena duces tecum* directing its production. Since this is a report paid for by tax dollars this valuable, informative report is by definition an Open Record which should be made available to the Public upon request, no subpoena required. See 51 O.S.2021, § 24A.5 and 51 O.S.2021, § 24A.3(1).

⁷⁰ According to the April 2020 report commissioned by the Oklahoma Tax Commission from the consultants Alvarez and Marsal entitled "Oklahoma Tax Commission – Motor Vehicle Services Assessment," the State of California currently provides on-line services to the Public such as vehicle registration renewal through self-serve digital kiosks located in high-traffic areas like supermarkets, convenience stores and community centers that print out a registration card and sticker and receipt at the kiosk after the completion of the transaction.

E. Consideration of Further Charges by the District Attorney

Oklahoma permits the initiation of criminal charges by either Grand Juries such as this one⁷¹ or by a District Attorney⁷² having jurisdiction over the venue for the crime. Criminal offenses may be prosecuted either upon an *Indictment* brought by a grand jury or upon an *Information* brought by a District Attorney since *Indictments* and *Informations* are considered “concurrent remedies” under Oklahoma law.⁷³

While at the time this Grand Jury brought the *Indictment* it returned in December 2021, it had received and fully considered all of the facts it required regarding the matter of whether charges set forth in that *Indictment* should be brought against the named defendants in that case, this Grand Jury did not then have sufficient time either then or since to fully consider whether other persons who also may be culpable under the facts alleged in that case should also be charged. In that regard, we were and are aware that some of the persons who may also be culpable of the offenses alleged therein freely and voluntarily testified before this Grand Jury or the Oklahoma Multicounty Grand Jury and have otherwise cooperated and assisted these grand juries in their several investigations of these crimes. Due to time that we have devoted to investigations of other matters that we have conducted, we have not deliberated further upon whether or not other persons should be charged in that matter. The District Attorney and his Assistants are responsible and fully capable of determining whether these cooperating witnesses should also be charged with some of the offenses charged in the December 2021 *Indictment*, or be charged with other offenses, or

⁷¹ County grand juries are Constitutionally empowered “to inquire into and return indictments for all character and grades of crime,” Okla. Const. Art. II, § 18. *See also*, 22 O.S. 2021, § 331: “The grand jury has power to inquire into all public offenses committed or triable in the county or subdivision, and to present them to the court, by indictment or accusation in writing.”

⁷² 19 O.S. 2021, §§ 215.4 & 215.16. *See also* 22 O.S. 2021, § 303.

⁷³ Okla. Const. Art. II, § 17: “No person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment or indictment or by information.” *See also*, In re McNaught, 1909 OK CR 10, 99 Pac. 241, 252: “[W]e are of the opinion that since the organization of the state (November 16, 1907) the prosecution of felonies by indictment and information have been and are now concurrent remedies.”

determine whether under the circumstances they should continue only as cooperating witnesses, and we respectfully defer to the District Attorney regarding whether additional persons should be charged.

Part III
The Operation of the Oklahoma Pardon and Parole Board
(hereinafter “Board”)

The Grand Jury heard from numerous witnesses, including but not limited to, former and current board members, former and current Executive Directors, legal counsel for the Board, and administrative personnel for the Board. This Grand Jury reviewed numerous documentary exhibits which included, in part, the law related to the Board’s functions, administrative rules related to the Board’s functions, and Board policies.

The Board has duties that originate from multiple sources, including the Oklahoma Constitution, Oklahoma statutes, administrative rules and regulations regarding the conduct of their business, and policies adopted by the Board. We place provisions that this Grand Jury find to be particularly relevant below.

A. CONSTITUTIONAL DUTIES OF THE PARDON AND PAROLE BOARD

At its core, the Board has constitutional duties related to its function. The *Oklahoma Constitution* specifically provides among other things:

It shall be the duty of the Board to *make an impartial investigation and study of applicants for commutations*, pardons or parole, and by a majority vote make its recommendations to the Governor of all persons deemed worthy of clemency⁷⁴.

The *Oklahoma Constitution* also protects the rights of all victims of crime in any case before any State Court or Board involving their case, including the Pardon and Parole Board. It specifically mandates:

A victim of crime shall have the following rights, which shall be protected by law

⁷⁴ Okla. Const. Art. VI, § 10. (emphasis added by italic typeface).

in a manner no less vigorous that the rights afforded to the accused; to be treated with fairness and respect for the victim's safety, dignity and privacy; ...to be given reasonable and timely notice and to be present at *all* ...proceedings; and ...to be heard in *any* proceeding involving release, ... parole and *any* proceeding during which a right of the victim is implicated".⁷⁵

The Oklahoma Constitution also impacts the authority of the Legislature and of the Board as it relates to recent commutations by the Board. The Legislature and Board have no authority to change the range of punishment for a crime after the crime is committed. The *Oklahoma Constitution* provides:

The repeal of a statute shall not revive a statute previously repealed by such statute, *nor shall such repeal affect any accrued right, or penalty incurred, or proceedings begun by virtue of such repealed statute.*⁷⁶

Thus, neither the Legislature nor the Board have any lawful authority to change the range of punishment for a crime that has already been committed by the repeal or amendment of a particular statute.

These constitutional directives are not mutually exclusive and are to be carried out, to the extent possible, in a manner that promotes harmony. Institute for Responsible Alcohol Policy v. State ex rel. Alcoholic Beverage Laws Enforcement Commission, 457 P.3d 1050, 1065, 2020 OK 5. (It is "our obligation as a court ... to give vitality to *all* provisions in the Constitution,"

⁷⁵ Okl. Const. Art. II, § 34. (emphasis added by italic typeface).

⁷⁶ Okl. Const. Art. V, § 54. (emphasis added by italic typeface). Accordingly, the range of punishment for the commission of any crime in Oklahoma *may not be altered* after the commission of a criminal offense as to any person who commits an offense before the law is changed and goes into effect. As very recently explained by the Court of Criminal Appeals in Witherow v. State, 2017 OK CR 17, 400 P.3d 902 & fn.2. "For purposes of Article V, section 54, there is no material difference between a statutory 'repeal' and an amendment, because an amendment, to a certain degree, operates as a repeal of prior law. One Chicago Coin's Play Marble Board v. State ex rel. Adams, 1949 OK 251, ¶ 21, 202 Okl246, 249, 212 P.2d 129, 133." The Court went on to state in the text of its Opinion: "Over a century ago in Penn v. State, 1917 OK CR 97, 13 Okl.Cr. 367, 164 P. 992, a defendant charged with statutory rape sought the benefit of an amendment that altered the definition of the rape, which became effective just one week *after* the charged acts occurred. Relying on Article V, section 54, the Court affirmed his conviction, and said: 'The very minute this crime was committed the defendant became amenable to the law *as it then existed*. He then and there by his own voluntary conduct *incurred the penalty of that law*, and [Article V, § 54] prevents the Legislature of this state from wiping out penalties for crimes committed prior to the taking effect of a repealing statute The fact that the Legislature afterwards saw fit to change the law cannot avail this defendant *so as to relieve him of the penalty he had already incurred.*'" *Id.*, 400 P.3d, at 904 (bracketed matter and emphasis by italic typeface added by the Court).

Okla. Auto. Dealers Assn. v. State ex rel. Okla. Tax Comm'n, 2017 OK 64, ¶ 25, 401 P.3d 1152 (footnote omitted) (emphasis in original), and to “measure legislation not merely against a single constitutional provision.... [T]he constitution must be construed as a consistent whole, in harmony with common sense and reason, with all pertinent portions of the constitution being construed together.” *St. Paul Fire & Marine Ins. Co. v. Getty Oil Co.*, 1989 OK 139, ¶ 12, 782 P.2d 915 (citations omitted).

As a matter of statutory construction, various provisions of statutes must also be construed as harmonious and whole if possible. *Gee v. All 4 Kids, Inc.*, 149 P.3d 1106, 1109, 2006 OK CIV APP 155. (citing *City of Tulsa v. Smittle*, 1985 OK 37, ¶ 12, 702 P.2d 367, 370).

Further, in the event of a conflict in constitutional provisions and legislative enactments, constitutional provisions prevail over conflicting statutes. *Institute for Responsible Alcohol Policy v. State ex rel. Alcoholic Beverage Laws Enforcement Commission*, *supra*, at 1057; *Marbury v. Madison*, 1 U.S. 137 (1803).

B. STATUTORY DUTIES OF THE PARDON AND PAROLE BOARD

The statutory obligations of the Board are found, for the most part, in Chapter 7 of Title 57 of the Oklahoma Statutes. Thus:

The Governor shall have power to grant, after conviction, reprieves, commutations, paroles and pardons for all offenses, except cases of impeachment, upon such conditions and such restrictions and limitations as may be deemed proper by the Governor, *subject, however, to the regulations prescribed by law and the provisions of Section 10 of Article VI of the Oklahoma Constitution.*⁷⁷

The Governor’s power to commute is Constitutionally limited:

The Pardon and Parole Board by majority vote shall have the power and authority to grant parole for nonviolent offenses after conviction, upon such conditions and with such restrictions and limitations as the majority of the Pardon and Parole Board may deem proper or as may be required by law. The Pardon and Parole Board shall

⁷⁷ 57 O.S.2021, § 332. (emphasis added by italic typeface).

have no authority to grant but may recommend parole for persons sentenced pursuant to Section 13.1 of Title 21 of the Oklahoma Statutes or the exceptions to nonviolent offenses as defined by Section 571 of Title 57 of the Oklahoma Statutes.

The Governor shall have the power to grant, *after conviction and after favorable recommendation by a majority vote of the Pardon and Parole Board, commutations*, pardons and paroles for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as the Governor may deem proper, subject to such regulations as may be prescribed by law. Provided, the Governor shall not have the power to grant paroles if a person has been sentenced to death or sentenced to life imprisonment without parole. . . .⁷⁸

Accordingly, *before* the Governor can grant a commutation for any offense, the Board must first make a favorable recommendation for commutation of a particular inmate's sentence.

The constitutional requirement for impartiality – clearly because of the importance of such impartiality - is also codified in statute at Section 332.2(H.) of Tit. 57, which requires that [a]pplications for commutation shall be given *impartial review* as required in Section 10 of Article VI of the Oklahoma Constitution”.⁷⁹

Adding to this requirement for impartiality is the statutory requirement of Board members that:

A member of the Pardon and Parole Board shall uphold and promote the independence, *impartiality*, fairness, and integrity of the Board, and should avoid impropriety, or the appearance of impropriety.⁸⁰

Per Oklahoma statutes, the Board is also required to give *notice* to the District Attorney, the victim or victim's representative, and the Attorney General within ten (10) days of receipt of an application for commutation by providing each of them a copy of the application.

Any consideration for commutation shall be made only after application is made to the Pardon and Parole Board pursuant to the procedures set forth in this section. The Pardon and Parole Board *shall provide a copy of the application* to the district attorney, the victim or representative of the victim and the Office of the Attorney General within ten (10) business days of receipt of such application.⁸¹

⁷⁸ Okla. Const. Art. VI, § 10 (emphasis added by italic typeface).

⁷⁹ 57 O.S.2021, § 332.22(H). (emphasis added by italic typeface).

⁸⁰ 57 O.S.2021, § 332.12(B). (emphasis added by italic typeface).

⁸¹ 57 O.S.2021, § 332.2(B). (emphasis added by italic typeface).

No consideration for commutation shall be made until these notices have been made. *Id.*

When a Board member determines that a reasonable person with knowledge of all the relevant facts might question his or her impartiality in a specific matter, or creates the appearance of impropriety, the member must disclose any potential conflict of interest and shall withdraw from participation in the matter.⁸²

C. STATE ETHICS RULES APPLICABLE TO THE BOARD

Laws regulating the conduct of State officers and employees are found at [www.ok.gov/ethics/Ethics Laws](http://www.ok.gov/ethics/Ethics%20Laws).⁸³ These rules govern all state officers and employees, unless noted otherwise in the rules. The Grand Jury finds the following Ethics rules to be relevant:

Rule 2.9 prohibits a State Officers and employees from engaging in activities that are designed to influence the results of ... a state question while wearing a uniform or wearing identification that identifies that person as a state officer or employee.

Rule 4.4 is designed to establish rules of ethical conduct for state officers and employees by prohibiting conflicts between their public duties and private economic interests, and provides in pertinent part that and employee should disqualify when the “circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter.

D. CURRENT ADMINISTRATIVE RULES AND REGULATIONS THAT ARE APPLICABLE TO THE BOARD

The Board’s administrative rules are found at ok.gov/ppb under the heading “agency and Board meeting information” and “Administrative Rules, Policies and procedures”. Chapter 15 is titled “Commutation Procedures [Authority: OKLA. CONST. art VI, § 10; 57 O.S.,

⁸² 57 O.S., 2021, § 332.15.

⁸³ These rules are formally codified at 74 O.S. 2021, Ch. 62, Appendix 1.

§ 332.2] [Source: Codified 9-14-18] SUBCHAPTER 1. GENERAL PROVISIONS 515:15-1-1”.

This is self-described by the Board as an attempt to “implement the provisions of Article 6, Section 10 of the Oklahoma Constitution and Title 57 O.S. § 332.2”. Chapter 15 rules include, but are not limited to, procedures to apply for commutation consideration and the procedures for the Board's review and hearing process for commutations. *Id.* This section allows the Board to “change any procedure for good cause”.

The Board’s policies governing employee conduct are also found at www.ok.gov/ppb under the same heading. The following policies are found by the Grand Jury to be pertinent:

1) Policy 104 requires the following of all employees:

- a) To conduct themselves in accordance with the PPB's core values of service, integrity, and quality and to comply with federal and state laws, rules and regulations, and all policies of the PPB”.
- b) to avoid actual breaches of ethics as well as the *perception of unethical behavior*. (emphasis added).
- c) To devote full time, attention, and effort to their assigned duties *during work hours*.
- d) To identify any personal conduct or interest that might possibly be criticized as a violation of the PPB's Code of Conduct and communicate such to the Executive Director, the Deputy Director, or the Staff Attorney, who will interpret the policy and advise the employee if such conduct violates the spirit of this policy. This version of Policy 104 has been in effect since August 13, 2018.

2) Policy 109 provides that employees must

- a) disclose outside employment to the Executive Director, and that outside employment is allowed to the extent it does not create a conflict of interest; and is determined to be inconsistent, incompatible, or in conflict with his or her duties at the PPB;
- b) not engage in activities that involve the use of state time, facilities, equipment, or supplies; or the prestige or influence of one's agency for private gain or advantage;

- c) not work during normal office hours on non-PPB related business, including sales, ordering, delivery of merchandise, or other similar activities.

The current version of Policy 109 has been in effect since November 5, 2018.

3) Policy 123 is an ethics policy designed to promote confidence, transparency, and accountability for the Board, and prescribes the core standards of conduct for the Board members (emphasis added). Board members are required to:

- a) Perform their official duties in a lawful, professional, and ethical manner befitting the state and the Board.
- b) Refrain from using state time, property, facilities, or equipment for any purpose other than official state business;
- c) Recuse themselves from a matter pending before the Board if the Board member has a personal interest in the case, its outcome, or is biased or prejudiced toward or against the offender or offender's attorney, where the Board member's impartiality *might reasonably be questioned*. (emphasis added)
- d) If a Board member is contacted via letter, text, email, or in person by an inmate, applicant, or interested person who may be in support of or protesting an inmate, who is, or will be, considered for a parole, pardon, commutation, or clemency, the *Board member shall direct such person to the administrative office of the Pardon and Parole Board or the website for instructions on how to request, protest, or provide support*. (emphasis added)
- e) Board members should make every attempt to redirect an interested party to the administrative office in order to avoid an actual or perceived conflict of interest ...

E. CONCLUSIONS REACHED BY THE GRAND JURY

The Grand Jury requested to hear from numerous witnesses. After hearing all of the evidence presented, the Grand Jury finds the following as it relates to the Board's condition or operation:⁸⁴

⁸⁴ At any time in this section of the report when the Grand Jury refers to an inmate being released, it is understood by the grand jury that ONLY the Board recommends commutation, and the Governor is the sole decision maker as to whether or not the inmate is released after the Board makes a recommendation for release.

1.
**THE BOARD LACKS TRANSPARENCY IN THE PROCESSES
UTILIZED IN COMMUTATION DECISIONS.**

The testimony clearly indicated that a lot of discussions among board members about board business occurs outside of the open meeting process. Although Board members were careful not to create a quorum when discussing Board business, it is clear from the testimony that individual Board members would speak to each other outside the meeting or speak to their appointing authority and receive or get guidance on how to vote, or to determine how a particular vote might go, or to give each other opinions about particular issues. At most meetings, there is and was little, if any, discussion about the items on the agenda.

Universally, the witnesses agreed that there was and is a general lack of transparency as to how the Board makes decisions on any particular issue. Universally, the witnesses also agreed that transparency in the decision-making process was a necessity, and a huge priority.

Under current procedures, although the public hears the names called, and the votes cast, the public hears little or no discussion from the Board about how any decision was reached. Although this process of discussing Board business in groups of two may not violate the red letter law of the *Open Meetings Act*, it appears to violate the spirit of the law which is to make sure the public is aware of how government business is being conducted.

The stated purpose of the *Open Meetings Act*, 25 O.S. Section 301 *et seq.* is to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems. The *Open Meetings Act*, because it is enacted for the public's benefit, is to be construed liberally in favor of the public. International Ass'n of Firefighters, Local 2479 v. Thorpe, 632 P.2d 4081981 OK 95 (citing Laman v. McCord, 245 Ark. 401, 432 S.W.2d 753 (1968); Board of Public Instruction v. Doran, 224 So.2d 693 (Fla.1969); Bagby v. School District

#1, Denver, 186 Colo. 428, 528 P.2d 1299 (1974); Wexford County Prosecuting Attorney v. Pranger, 83 Mich.App. 197, 268 N.W.2d 344 (1978)).

This Grand Jury finds that all discussions between Board members about Board business, other than scheduling issues, should be made in a public meeting so that the public can see and hear how the Board members analyze the information they receive in making their decisions.

2.

IN MAKING DECISIONS RELATED TO COMMUTATIONS, THE BOARD LACKS SUFFICIENT OBJECTIVE CRITERIA AND THAT LACK OF OBJECTIVITY CREATES PUBLIC DISTRUST IN THE BOARD'S DECISIONS

Another universal sentiment from the witnesses who testified was that there is a near complete lack of identifiable objective criteria that should guide Board members in making their decisions related to commutations. The testimony indicated that commutations are granted based on three separate criteria. However, the Board has no official or un-official definition of any of the three criteria. Alarming, each Board member can decide for him or herself what each of the three criteria means to them and base their decision on their own individual subjective definition. Just as alarming, each Board member can choose to ignore any or all of the three criteria listed on the application and use something completely outside of the listed criteria to base their decision on. More unfortunate is that the public has no way of knowing what each Board member has subjectively decided would impact the commutation vote.

As an example, one of the criteria used as grounds for requesting a commutation is that the "sentence for the range of punishment is excessive." Testimony indicated that to some Board members this means that the punishment given on conviction was outside of the statutory range, *i.e.*, an inmate got 25 years on a crime that only carried a range of 4 to 20 years. To other Board members this simply means that the Board member found the punishment to be too harsh.

For those members who thought this criterion covered sentences that the Board member

simply thought was too “harsh”, there were no criteria available to the Board members upon which to make a comparison against other crimes of the same nature. Board members were not provided with information that would indicate, for example, whether or not a person seeking commutation for *Distribution of a Controlled Dangerous Substance* had delivered 50 pounds of drugs to somebody, or whether they had delivered a single dose to somebody, so that a comparison of like crime to like crime might have some rational basis. It simply was a subjective belief by individual board members that a particular sentence was too “harsh”. Testimony indicated that Board members were counseled by administrative staff about the intended purpose of three criteria, but that this counseling was generally ignored.

Administrative staff felt strongly enough about the need for objective criteria that they attempted to develop some relevant objective criteria to be adopted and used by the Board in the commutation decision making process. However, due to outside political interference, the move to establish objective criteria was stopped.

The Grand Jury finds that the Board cannot fulfill their duties in a fair, impartial, and transparent manner if objective criteria are not adopted and utilized by the individual Board members. The Board owes this duty to the public so that those interested in the commutation process are able to discern the basis for decisions made by the Board. Therefore, this Grand Jury recommends that a panel of citizens be convened to discuss and promulgate objective criteria that should be considered in the commutation process. Further this Grand Jury recommends that equal numbers of stakeholders be appointed to fill this group. The group should be non-political, non-service providers, and should not receive any direction from outside political parties or bodies, nor from any branch of government. The group should review multiple sources from multiple viewpoints, and come to a common consensus about what criteria should be recommended to the

legislature.

3.

**FOR SEVERAL YEARS, PROCEDURES OF THE BOARD THAT WERE
DESIGNED AS SAFEGUARDS WERE DISREGARDED OR IGNORED IN
ORDER TO SPEED UP THE COMMUTATION PROCESS AND TO
INCREASE THE NUMBER OF COMMUTATIONS THAT WERE BEING
HEARD & RECOMMENDED**

The testimony indicated that prior to 2019, the Executive Director of the Board had established a checklist for employees to follow in screening and preparing cases to be heard on the commutation docket. These procedures were designed to make certain that individuals were “eligible” to be on the commutation docket, and that the Board had enough background information about the individual seeking commutation to make an informed decision that would take into account the factors listed in their mission statement, *to-wit*: public safety, offender accountability re-entry, and victim rights.

The evidence before us indicates that for a period beginning in 2019 and up until mid-2021, the procedures for checking information on each commutation request were ignored and an inmate was placed onto a commutation docket simply by asking for a commutation. The evidence also indicates that the overall push at the Board was “volume” over anything else, and “corners were cut” and “processes were ignored” in order to get the highest number of people onto the commutation dockets. The new process was described as “quantity over quality” by the witnesses involved in creating the dockets and completing safeguards. Witnesses described this lack of process as one designed to “get more people of prison.” At the time this was occurring, several members of the administrative staff voiced concerns that checks were not being done, but these concerns were ignored.

Since the hiring of the current Executive Director, the Board has returned to using the checklists and procedures utilized by the Board prior to 2019, and this seems to have resolved

many of the problems.

4.

**THE DISREGARD OF PREVIOUSLY ADOPTED PROCEDURAL SAFEGUARDS
RESULTED IN THE RELEASE OF AN INMATE WHO WAS NOT THEN ELIGIBLE
UNDER BOARD RULES FOR COMMUTATION CONSIDERATION, AND THIS
RELEASE LIKELY RESULTED IN MULTIPLE DEATHS**

The Grand Jury heard testimony about different persons who were docketed in error but would specifically comment on one specific individual who was placed onto a commutation docket in error. Lawrence Anderson (hereinafter “Anderson”) applied for commutation on January 17, 2019. He was denied. Board rules stated that an inmate must wait three (3) years after a denial of commutation recommendation before he or she is able to make another application for commutation.

However, Anderson re-applied on August 08, 2019. This was seven (7) months after his denial of commutation in January 2019. Contrary to Board rules, Anderson was re-docketed. An investigative report was done and clearly told the Board that Anderson was a high risk to re-offend. Despite being unlawfully re-docketed within the three-year period, which was clear from a cursory reading of the second application, Anderson was recommended for commutation. After his release, Anderson is alleged to have killed three people, cutting the heart out of one victim, as well as allegedly killing a small child.⁸⁵ It appears that these three deaths could have been avoided, had the Board rules and the applicable law been followed.

The Grand Jury has been unable to determine with absolute certainty who placed Anderson back onto the commutation docket. The Grand Jury has determined that if the checks and safeguards that had been put in place prior to 2019 had been followed, Anderson’s second

⁸⁵ At this point, the allegations against Lawrence Anderson have not been proven, and he has not been convicted. He is presumed innocent unless and until he is convicted, if ever.

application for commutation likely would not have been placed onto the docket for consideration a second time at that time.

There is one additional question related to Lawrence Anderson that is puzzling to the Grand Jury. Lawrence Anderson was denied a commutation recommendation when he went through the commutation process in January 2019. A short seven (7) months later, he submitted a much shorter application, is placed onto a commutation docket in January 2020, and is granted a recommendation for commutation. The Grand Jury is unable to find anything in the public records or from testimony that describes some change in Anderson's circumstances over those seven (7) months that would account for the change from an unfavorable to a favorable recommendation. This total turn-around in voting showcases the clear lack of objective criteria used by the Board, and any requirement that they use any criteria at all if they choose not to.

As citizens, this Grand Jury finds that this case alone demonstrates the need for discernable objective criteria to be used by the Board in making commutation recommendations. The records reviewed and testimony received is void of any evidence that can account for the change from an unfavorable commutation recommendation to a favorable commutation recommendation.

The testimony further revealed that at least one high level member of the administrative staff became aware of the Anderson case being docketed in error. The discovery was made at a time when it could have been easily corrected. However, a unilateral decision was made by one person not to bring the error to the attention of the Board or the Governor's office. This failure to immediately bring the error to the Board's attention prevented the Board from correcting the error before the case went to the Governor for approval. Failure to notify the Governor immediately of this error also prevented the Governor's office from denying the recommendation to commute Anderson's sentence. A tragedy may have been prevented.

Of all of the present and former Board employees and Board members who testified, not one person connected with the Board conducted any sort of internal investigation at any time to determine what happened in the Anderson case. Not one person was questioned by the Board at or near the time of the event.

In addition to the three (3) alleged murders committed by Lawrence Anderson, the Grand Jury heard evidence related to four (4) other murders allegedly committed by those inmates released in this commutation push. The failure of the Board to ensure that safeguards were followed has a huge impact on public safety, as shown by just the murders that are alleged to have been committed by some of those released.

Again, since the hiring of the current Executive Director, the safeguards utilized prior to 2019 are back in place, and problems such as this appear to have mostly resolved.

5.

ALTHOUGH THE BOARD PUBLICLY SELF-DESCRIBES COMMUTATIONS AS “RARE” AND NOT A “VEHICLE FOR EARLY RELEASE,” FOR A PERIOD OF TIME, THE BOARD DID UTILIZE COMMUTATIONS AS A MECHANISM FOR EARLY RELEASE

Any citizen can access the Board’s website at www.ok.gov/ppb. There the Board describes a commutation as:

a change of a sentence to one that is less severe, such as from life without the possibility of parole to life with parole, or the substitution of a lesser penalty from a greater penalty or punishment. Commutation is not intended to serve as an early release mechanism for an offender in prison. A commutation is intended to correct an unjust or excessive sentence. A commutation is a rare, separate, and distinct process...

This Grand Jury finds that beginning in 2019 until mid-2021, the commutation process was in fact used as an “early release mechanism” and was anything but “rare.” The testimony from Board employees indicates there was a rush to get more and more people out of prison. The releases went well beyond those persons who would arguably qualify for a commutation because the law

had changed to make drug possession a misdemeanor.⁸⁶

The Grand Jury recommends that the Board follow its own definition of commutations as being rare. The jury recommends that commutations not be used as an early release mechanism, nor as a method of changing sentences. As citizens, we are required to follow the law and rules, and the Board should be required to follow theirs as well.

6.
**BOARD MEMBERS SHOULD RECEIVE TRAINING ON BOARD
FUNCTIONS VIA THE OKLAHOMA CONSTITUTION, OKLAHOMA STATE
STATUTES, ADMINISTRATIVE RULES, AND THEIR OWN POLICIES
PRIOR TO TAKING THEIR SEAT ON THE BOARD**

Tit. 57, Section 332.1A requires each member of the Board to receive at least twelve (12) hours of training in their first year of service, and six (6) hours of training thereafter. The statute recommends training to cover guidance from organizations that provide training and technical assistance related to the probation and parole process; identifying, understanding and targeting criminogenic needs; the principles of effective intervention; core correctional practices and how to support and encourage offender behavior change.⁸⁷

Glaringly absent from these training requirements is any necessity that Board members be trained in the laws that regulate the Board's function. This Grand Jury finds that *this training is critical and should be required* before any new Board member takes a seat on the Board, and should include such training for new employees of the Board.

The testimony revealed that Board members were not provided with the Oklahoma Constitutional provisions that govern the Board's function. The testimony also revealed that Board members were not provided with statutory provisions that regulated the Board's function, nor

⁸⁶ This Grand Jury under a different heading questions the constitutionality of retroactively changing the punishment range for crimes or the classification from a felony to a misdemeanor. The constitutionality of statutes is a matter for Courts to determine.

⁸⁷ 57 O.S. § 332.1A.

provided with administrative rules regulating the Board's function, nor provided with Ethics Rules that regulate Board members conduct. In fact, some Board members sought to dispute that they were State employees subject to the Ethics Rules.

This Grand Jury recommends that the first training received by any new Board member or employee of the Board should cover his or her constitutional and statutory duties, as well as any administrative rules and procedures, and the State Ethics Rules for Officers and Employees. It is difficult to be critical when there is a possible breach of an Ethics Rule, when the employee has not been provided with the rule or trained on the meaning of the rule.

Additionally, records of when each Board member received this training, or any other training and the substance of the training provided should be made available to the general public.

7.
IMPROPER POLITICAL PRESSURE WAS PLACED UPON SOME BOARD MEMBERS

This Grand Jury heard testimony that what would eventually become an official quorum of Board members reportedly met as a group with the Governor of Oklahoma before their appointment and taking office, at which time decisions were made about upcoming votes of these Board members once these Board members took their seats on the Board, not only in regard to how they would handle their duties regarding deciding paroles, commutation recommendations, and pardon recommendations, but also regarding the dismissal of the then-Director of the agency. At the time of this conversation, the individuals had not taken their seats yet, nor had any yet taken the required Oath of Office. However, such a meeting clearly violates the spirit of the Open Meetings Act, and clearly rendered the future Board less than the independent authority contemplated by the *Oklahoma Constitution*. We, the Grand Jury, believe that such action by the

Governor of Oklahoma is grossly improper.⁸⁸ This Grand Jury states that the Governor of Oklahoma should studiously refrain from directing his Board appointees as to the manner in which they should vote as Board members once they are appointed or thereafter, or attempting to direct these appointees on how to make Board personnel decisions once the Board members are appointed or thereafter. Plainly under the *Oklahoma Constitution*, Board members are not subject to direction or control by the Governor of Oklahoma regarding their performance of their Official duties under the *Oklahoma Constitution* and laws of the State of Oklahoma, and such Board members should never permit such interference by the Governor of Oklahoma nor any other person regarding the lawful exercise of their Constitutional authority.

8.

**REPORTS WHICH BY LAW ARE REQUIRED TO BE COMMUNICATED TO THE
LEGISLATURE AND MADE AVAILABLE TO THE PUBLIC HAVE NOT BEEN
COMMUNICATED NOR PUBLICLY MADE AVAILABLE**

Tit. 57, Section 332.2 regulates “applications for commutation.” Subsection J. of this section requires the Board to “communicate to the Legislature, at each regular session... and provid[e] a summary of the activities of the Board, which should include “the approval or recommendation rates of the Board for both violent and nonviolent offenses,” and which shall be made available to the public through publication on the Board’s website.⁸⁹

⁸⁸ The Governor of Oklahoma’s action in this regard was not criminal. Grand Juries have no legal authority to accuse the Governor of Oklahoma with Official misconduct since Governors are State officers subject only to *Impeachment*, compare the legal authority of a grand jury to make accusations for *Removal of an Officer Not Subject to Impeachment*, see 22 O.S.2021, §§ 1181 *et seq.* Obviously, the Legislature is not so restrained.

⁸⁹ 57 O.S.2021, § 332.2(J) provides: “J. In accordance with Section 10 of Article VI of the Oklahoma Constitution, the Board *shall communicate* to the Legislature, at each regular session, by providing a summary of the activities of the Board. This summary *shall include*, but not be limited to, the following Board activity: 1. The approval or recommendation rates of the Board for both violent and nonviolent offenses; 2. The parole approval rates for each individual Board member for both violent and nonviolent offenses; and 3. The percentage of public comments to and personal appearances before the Board including victim protests and personal appearances, district attorney protests and personal appearances, and delegate recommendations and personal appearances on behalf of the offender. This summary *shall be* made available to the public through publication on the website of the Pardon and Parole Board.” (emphasis added by italic typeface).

It was clear from the testimony that no such report has been filed for the years 2019 to present. Testimony indicated that the reports were finished, but that an objection was raised by one Board member related to the form of the reports. Because of that one Board member's objection, these reports were never submitted to the whole Board for a vote to approve and to make the reports available to the Legislature and public.

This Grand Jury recommends that these reports should be immediately reviewed by the Board and filed so that the Legislature and the public is able to ascertain how the individual Board members voted and be informed about the unusual increase in commutation numbers. The Grand Jury recommends that any objections by any Board member as to the manner in which the reports are completed should be made a part of the public debate at a Board meeting, and not made outside of the meeting process in such a manner that the public is unaware of who is complaining about what portion of the report. The production of these annual reports is mandatory as shown by the use of the word "shall" in the statute's text.

9.

RECIDIVISM RATES FOR COMMUTATIONS SHOULD BE PUBLISHED AND THE LEGISLATURE SHOULD DEFINE THE TERM FOR THE BOARD

State statute requires the Board to publish recidivism rates for those granted parole in Oklahoma (testimony varied among witnesses about whether the law also required the recidivism rates for commutations to be published). This Grand Jury finds no logical reason why the same requirement should not apply to commutations that are granted. One problem that was discovered is that although Oklahoma statutes are replete with mentions of "recidivism", there is no official legal definition of what that word means.

Testimony indicated that certain individuals requested that the term "recidivate", that was to be used in publishing statistics about the recidivism rates in Oklahoma, should be limited to

those persons who were actually returned into the prison system . This definition is clearly out of step with the commonly understood meaning of recidivism.

The National Institute of Justice defines recidivism as one of the “most fundamental concepts in criminal justice. It refers to a person’s relapse into criminal behavior” and is measured by “criminal acts that resulted in rearrest, reconviction or return to prison.” [www. NIJ.ojp.gov](http://www.NIJ.ojp.gov).

This Grand Jury received evidentiary materials that document an alarming rate of recidivism for those released on the “mass commutation” docket. However, because of the preferred or requested definition for recidivism used by the Department of Corrections in compiling statistics, most of these individuals do not show up as recidivists. This would include Lawrence Anderson, even if he is convicted of three counts of murder, because the current definition used by Oklahoma requires that the inmate return into prison within three (3) years of the date of commutation.

This Grand Jury finds the currently used definition for recidivism in Oklahoma to be extremely misleading at best, and out of step with the general public’s understanding of that term. Therefore, this Grand Jury recommends that the legislature provide Oklahoma agencies with a statutory definition of recidivism that is more in step with the general public’s understanding of recidivism and in accord with the definition use by the National Institute of Justice. Based on the testimony received by the Grand Jury, the definition of recidivism as used by the Department of Corrections certainly paints a rosier picture of the commonly understood level of recidivism, and perhaps makes for better public or political relations, but it is not an accurate portrayal of the rates of criminal recidivism.

10.

**THE GRAND JURY QUESTIONS THE AUTHORITY OF THE
LEGISLATURE TO RETROACTIVELY CHANGE THE RANGE OF
PUNISHMENT FOR ANY CRIME**

This Grand Jury questions the Constitutionality of the legislature retroactively changing accrued criminal liability. As shown above, Okla. Const. Art. 5, § 54 restrains the authority of the Legislature and of the Board as it relates to changing the lawful range of punishment for an offense after the offense is committed.⁹⁰ The Legislature and Board have no legal authority to change the range of punishment for a crime after the crime is committed. As discussed earlier, the repeal of a statute does not revive a statute previously repealed by such statute, “*nor shall such repeal affect any accrued right, or penalty incurred, or proceedings begun by virtue of such repealed statute.*” *Id.* As shown above, the Constitutional limitation applies to amendments of statutes as well as repeals of statutes. Thus, neither the Legislature nor the Board have any lawful authority to change the range of punishment for a crime that has already been committed by the repeal of a statute or amendment of a statute.

This Grand Jury is disappointed that the attorney for the Board, together with every attorney for the State, failed to bring this to the attention of the Board in a timely manner.

11.

**THE BOARD LACKS SUFFICIENT FUNDING TO CARRY OUT THE DUTIES
OF INVESTIGATING CASES PROPERLY AND COMPLETELY**

The witnesses unanimously agreed that lack of funding for administrative staff and investigators for the Pardon and Parole Board was a major hurdle to the Pardon and Parole Board’s proper functioning. The Grand Jury therefore recommends that additional funding be made available to the Board for additional administrative and investigative staff so that each case is more fully and completely vetted before these important decisions are made by the Board.

⁹⁰ See above, at footnote 75 and its linked text.

12.

BETTER VETTING SHOULD BE UNDERTAKEN TO DETERMINE IF CONFLICTS OF INTEREST APPEAR TO EXIST BETWEEN BOARD DUTIES AND OUTSIDE EMPLOYMENT AND POLITICAL GOALS OF BOARD MEMBERS

During the testimony of one witness, the witness introduced the subject of prosecutors' attempts to disqualify certain Board members from hearing cases due to perceived conflicts between the Board members' duties to the Board, and their duties to their outside employment, or to their political beliefs.

As members of the public, we feel that we can speak for our community in recommending that the appointing authority for any Board member should better vet those they are considering for appointment. This Grand Jury finds that there has been an appearance of impropriety between some former Board members' outside employment and Board duties. There also appears to have been some conflict between some Board members political beliefs and their duty to remain impartial in their decision making as a Board member.

This Grand Jury submits without finding as a matter of fact, that when a conflict appears to exist as to either the outside employment or political beliefs, this creates an appearance of impropriety and as a result, public confidence in decisions made by those individuals is lessened.

In regard to personal conflict of interest, two (2) past Board members obviously possessed genuine, sincere, deeply-held personal beliefs regarding the imposition of the Death Penalty. The Grand Jury surely respects these persons for such beliefs. A judgment of Death as punishment for Capital Murder is a penalty authorized by Law to be imposed by Juries and Courts in appropriate cases involving *First Degree Murder*. Since the Death Penalty is one of three (3) lawful punishments prescribed by Law for *First Degree Murder*, persons who are unable to consider such a penalty in any case or under any circumstance are not required to serve on any trial jury (which is the sentencing authority for such Oklahoma cases) since to so serve would require them to either

violate their genuine, sincerely-held personal beliefs and therefore their conscience, or violate their Juror's Oath to enforce the Law by refusing to even consider a penalty permitted by Law.

Board members who cannot, due to their genuine, sincere, deeply held personal beliefs enforce the portion of the Law relating to imposition of the Death Penalty similarly would either violate their consciences or their Oaths of Office by partially nullifying the Law. The past Board members stated they were never vetted on their ability to permit the imposition of the Death Penalty in appropriate cases. In the view of this Grand Jury, these good people should have been so vetted if they were not. These good people should never have been placed in such a position to be required to either violate their consciences or their Oaths of Office.

It is also the view of this Grand Jury that any member of the Pardon and Parole Board should not hesitate to recuse from participation regarding any Board business that might require them to either violate their genuine, sincere, deeply held personal beliefs, and therefore their conscience, or violate their Oaths of Office to see that the laws of Oklahoma are enforced.

13.

THE POWER TO APPOINT BOARD MEMBERS SHOULD NOT ALLOW FOR ONE AUTHORITY TO APPOINT A MAJORITY OF THE BOARD MEMBERS

Based on the testimony heard by this Grand Jury, it appears that allowing the Governor to appoint three out of five Board members creates an automatic majority within the Board. This effectively allows the Board to be controlled by that single appointing authority.

This Grand Jury believes that the constitution should be amended to allow for only two members of the Board to be appointed by any single authority.

14.

THE DISTRICT ATTORNEY'S COUNCIL SHOULD HAVE A FULL TIME REPRESENTATIVE AT THE PARDON AND PAROLE BOARD OFFICES

This Grand Jury finds that it would be appropriate for the District Attorney's Council to

have a full time **staff** person on sight at the Pardon and Parole Board in order to provide information to the board regarding specifics of inmates' cases and/or criminal history. This will also assure that District Attorney's offices and victims are given notice of matters before the board.

15.

THE GOVERNOR'S OFFICE SHOULD HAVE A DEDICATED STAFF MEMBER TO DOUBLE CHECK THOSE PERSON'S BEING RECOMMENDED FOR RELEASE OF ANY KIND

Information provided to the Grand Jury verified that previous Governors vetted the recommendations of the Pardon and Parole Board before a final decision is made. The Grand Jury questions whether the current Governor has staff that researches and vets those cases that are recommended for Parole, Commutation or Pardon.

If the current Governor had staff review, research and vet recommended cases from the Pardon and Parole Board, cases like Lawrence Anderson likely would have been flagged for further inquiry and possibly denial. The Governor is a vital part of the Pardon and Parole process. Their duties are not merely perfunctory.

This Grand Jury strongly recommends that the Governor's office dedicate staff members to investigate and fully vet the inmates being recommended for release. Upon a denial of a favorable recommendation, the Governor should make public disclosure of the reasons for denial.

16.

THE BOARD SHOULD EXPLORE AND PURCHASE UPDATED SOFTWARE TO ALLOW FOR EASIER AND MORE COMPLETE INFORMATION TO BE AVAILABLE TO BOARD MEMBERS

The Grand Jury heard testimony that the software utilized by the Board was often times outdated and cumbersome. Therefore, this Grand Jury recommends that the Administrative staff should look at what kind of software would best suit the information they wish to give to

the Board for its review. This software should include the ability to input an applicants name and with one click, it should produce an eligibility verification. Once eligible, the program should also automatically generate notices to be delivered to those who are entitled by statute to be notified. This program should be run by and maintained by the Oklahoma Department of Corrections.

18.

THE PARDON AND PAROLE BOARD IS NOT QUALIFIED TO MAKE DETERMINATIONS RELATED TO “NEW EVIDENCE” AND THIS SECTION AS IT RELATES TO COMMUTATIONS SHOULD BE REMOVED AND NEVER CONSIDERED BY THE BOARD

This Grand Jury heard testimony related to commutation applications, part of which included a section that allowed the Board to commute sentences based on “new evidence”. Although some Board members are licensed attorneys, most are not, and common sense tells this Grand Jury that issues related to “new evidence” should be heard in a court of law. The testimony indicated that applications are not fact checked, nor checked for the legitimacy of the legal arguments made therein. Additionally, the Board gives each commutation application about 20 minutes for presentation. This is clearly not enough time to litigate the issue of “new evidence” and it is clear that members of the Pardon and Parole Board are not trained to determine what is or is not “new evidence” in the legal sense.

To make matters worse, the Board members are not even required to limit their consideration to what may be presented and can utilize evidence that may have been kept out at trial due to legal limitations on evidence.

Therefore this Grand Jury recommends that the section in the application that allows an inmate to raise “new evidence” issues should be removed, and those questions referred to a court of law for disposition.

19.

INMATES SHOULD BE REQUIRED TO ATTACH COPIES OF JUDGMENT AND SENTENCES FOR ALL OF THEIR CONVICTIONS TO THEIR APPLICATION

Testimony received indicated that if an inmate would simply attach copies of all of his or her Judgments and Sentences to his or her application, it would improve the way in which these applications are processed. Therefore, this Grand Jury recommends that the Board adopt a rule that requires the inmate to attach copies of all of his or her Judgment and Sentences to the application.

20.

THE LEGISLATURE SHOULD ADOPT A MECHANISM THAT ALLOWS AN INTERESTED PARTY TO CHALLENGE THE IMPARTIALITY OF A PARTICULAR BOARD MEMBER AND ALTERNATE MEMBERS SHOULD BE APPOINTED SO THAT A MISSING MEMBER'S VOTE IS NOT COUNTED AS A "NO" VOTE

Testimony indicated that there currently is no mechanism by which an interested party appearing before the Board can challenge a Board Member's impartiality. Testimony indicated that judges may be challenged, so it seems only proper that because the Board, according to testimony, is quasi-judicial in its function, the parties ought to be entitled to get judicial review of the failure of a Board member to disqualify his or herself.

Further, because a member who is disqualified, by choice or by direction from a court, has his vote counted as a "no" vote, alternate Board members should be appointed to prevent an inmate from being denied because a missing member's vote is counted as a "no" vote.

21.

DOCKETS SHOULD BE LISTED BY COUNTY FROM WHICH THE CONVICTION OCCURRED AND THE DOCKETS SHOULD BE LIMITED TO A MANAGEABLE QUANTITY

The Grand Jury heard testimony that when notices were sent out by the Board to the interested parties, it was difficult and cumbersome to prosecutors to locate their individual cases on the docket. This Grand Jury recommends that the docket should be listed by county, when

possible to make it easier for prosecutors to locate their cases and to object if they choose to make an objection.

Additionally, the Board should limit the number of cases heard each setting to make certain that each case gets a full and complete consideration by the Board.

22.

THE BOARD SHOULD BE REQUIRED TO POST AUDIO OR VIDEO RECORDS OF EACH BOARD MEETING AND THESE RECORDS SHOULD REMAIN ON THE BOARD'S WEBSITE FOR A PERIOD OF FIVE (5) YEARS

Testimony was received by this Grand Jury that the website maintained by the Pardon and Parole Board did not have a complete and full archive of all previous agendas and minutes, nor were audio recordings of Board meetings available after just a short period of time.

This does not comport with Tit. 67, Section 209 which provides that"

All records made or received by or under the authority of or coming into the custody, control or possession of public officials of this state in the course of their public duties shall not be mutilated, destroyed, transferred, removed, altered or otherwise damaged or disposed of, in whole or in part, except as provided by law.

Section 206 of Tit. 67 further provides in pertinent part that:

A. The head of each agency shall:

1. Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency;
2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities;
3. Submit to the Administrator, in accordance with the standards established by the Administrator, schedules proposing the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been created or received by the agency. The head of each agency also shall submit lists of state records in the custody of the head of the agency that are not needed in the transaction of current business and that do not have

sufficient administrative, legal or fiscal value to warrant their further keeping for disposal in conformity with the requirements of Section 210 of this title;

4. Cooperate with the Administrator in the conduct of surveys made by the Administrator pursuant to the provisions of this act; and

5. Comply with the rules, regulations, standards and procedures issued by the Administrator.

Tit. 67, Section 306 provides that

Every state officer and the heads of all departments, boards, commissions, agencies and institutions of the State of Oklahoma who have in their custody public records and archives deemed by them to be unnecessary for the transaction of the business of their offices shall consult with the State Librarian for the purpose of determining if such records and archives are desired for deposit in the archives division of the Oklahoma State Library. Upon certification by the State Librarian that such records and archives are or are not desired for such purpose, then such custodian shall, in conformity with such determination, apply to the Commission for authorization to destroy or transfer such records and archives to the Oklahoma State Library as hereinafter provided

The evidence received by the Grand Jury indicated that audio records of board meetings were only kept for weeks and then were just gone. This is clearly a "record" made of the business of a public agency, and the audio recordings should have been preserved until found by the State archivist to be no longer necessary.

The Grand Jury recommends that the Executive Director of the Board make inquiry into the reason these audio recordings are no longer available, and to make certain that these statutory provisions are followed. This Grand Jury recommends that in order to maintain complete transparency, the Board should post all agendas, all minutes, and all recordings of meetings for a period of at least five years.

23.

THE BOARD SHOULD REQUIRE THE EXECUTIVE DIRECTOR TO DESIGNATE ONE OR MORE SPECIFIC PERSONS TO OVERSEE AND FACT CHECK EACH APPLICATION APPEARING ON ANY DOCKET HEARD BY THE BOARD

The testimony heard by the Grand Jury was confusing at best as it relates to whose responsibility it was to place inmates onto the commutation docket. This is because the testimony was conflicting as to who was responsible for placing Lawrence Anderson onto the docket and therefore no accountability to the person who did so.

This Grand Jury therefore recommends that the Board should have one person or a committee with specific duties to make sure that those who are not eligible do not appear on any docket. Doing so would make it easier to hold those responsible accountable.

24.

THE LEGISLATURE SHOULD ENACT SOME PENALTY THAT ATTACHES FOR WILLFUL FAILURE BY A PUBLIC BODY TO FOLLOW ITS OWN PUBLISHED RULES AND POLICIES

This Grand Jury is frustrated that the Board failed to follow its own published rules. It is even more frustrated that there is no civil or criminal penalty that attaches to those instances when a governmental agency breaks its own rules. Testimony indicated that the prior Director of the Board ignored administrative rules and board policies to increase the number of commutations being considered by the board and to expedite the overall process from application through recommendation. Clear from the testimony before this grand jury was the intent to ignore safeguards implemented by prior boards and directors that were intended to assure public safety in the process.

There is no doubt that governmental agencies can enforce their own rules and regulations against a participant in their processes. Citizens are required to follow the law, and if they don't, there are consequences enforced by the government. There is no logical reason for a citizen to be

required to comply with state rules and statutes, if the board or commission that adopted the rule is not required to do so.

Therefore, this Grand Jury recommends that the legislature attach civil or criminal penalty for those in state government who WILLFULLY violate administrative rules and agency policies and procedures. If citizens must follow the rules, the government should also be required to follow its own rules and consequences should follow for failure to do so.

25.

GOVERNMENT WORKERS SHOULD BE REQUIRED TO UTILIZE GOVERNMENT EMAIL SYSTEMS WHEN DISCUSSING GOVERNMENT BUSINESS

The testimony indicated that certain Board members utilized their private email accounts and phones to text message each other to discuss Board business. It is the recommendation that this practice of using private email accounts and private phone text messages to discuss Board business be expressly prohibited.

Part IV

The Condition and Operation of the Oklahoma County Jail

This grand jury is, among other things, statutorily obligated to inspect the operation and condition of the jails in Oklahoma County:

The grand jury must inquire:

* * *

2. Into the condition and management of the public prisons in the county or subdivision[.]⁹¹

More specifically:

The grand jury at each term of the district court, shall make personal inspection of the condition of the county prison, as to the sufficiency of the same for the safekeeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term, and the court shall give this duty in special charge to such grand jury, and lay before

⁹¹ 22 O.S. 2021, § 338(2). County jails are “public prisons” *See*, 57 O.S. 2022, § 42.

them all rules and regulations in force relating to county jails and prison discipline; and it shall be imperative upon the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

The District Attorney for Oklahoma County included allegations alleging the need to investigate the operations of the Oklahoma County Jail in his *Application* to the Honorable Ray C. Elliott, District Judge, for the summoning and empanelment of this grand jury. Judge Elliott, acting upon the discretion provided to a District Judge by the *Oklahoma Constitution*⁹² to call and cause the empanelment of a county grand jury, then exercised his lawful discretion and *Ordered* this grand jury to be summoned and empaneled. Subsequent to the empaneling of this grand jury a suggestion was made on behalf of some of those responsible for the operation of the Oklahoma County Jail that another legal advisor should advise such an investigation other than the District Attorney for Oklahoma County, and the legal advisor of this grand jury, the District Attorney for Oklahoma County, voluntarily recused himself and his staff from such an investigation. The Attorney General of Oklahoma then appointed a District Attorney from another district to act as legal advisor for such an investigation, and that officer has determined that this investigation should be conducted through the State Multicounty Grand Jury instead of this grand jury.⁹³ That District Attorney has never sought to present any evidence regarding the operation of Oklahoma County Jail to this grand jury, though he has always been welcome to do so. It is not inappropriate for him to pursue that matter before the Multicounty Grand Jury instead of this grand jury.

There is not sufficient time remaining for this grand jury to accomplish an adequate investigation of the Oklahoma County Jail.⁹⁴ Accordingly, we respectfully defer to the State

⁹² See Okla. Const. Art. II, § 18, providing in relevant part: "A grand jury shall be convened upon the order of a district judge upon his own motion[.]"

⁹³ A multicounty grand jury has independent authority from county grand juries to make investigations and to make accusations, see 22 O.S.2021, § 356.

⁹⁴ See 22 O.S.2021, § 345, that provides: "No grand jury shall be convened or remain in session during a

Multicounty Grand Jury and its special legal advisor to undertake and complete an investigation of the operations of the Oklahoma County Jail.

Part V Inquiry Regarding Uncharged Inmates

This grand jury is obligated to inquire into the status of persons confined in the county jail without charges and we have done so.⁹⁵ In this regard we are informed that all persons confined in the Oklahoma County Jail must either be charged by the District Attorney within ten (10) days of confinement therein or must be released from custody by the jailor.⁹⁶ The custody of every person held in the Oklahoma County Jail without formal charges is reviewed at a video detention hearing before a judge of the District Court with the detained person present within forty-eight (48) hours of the person being placed in jail exclusive of weekends and holidays⁹⁷ based upon *Affidavits of Probable Cause* filed with the Court supporting the continuance of such custody, and without such a showing the person is *Ordered* released. This comports with the right to Due Process of Law of such uncharged inmates. During the course of our proceedings as a grand jury,

period beginning thirty (30) days before any Primary, Runoff Primary, or General Election, for state or county offices, and ending ten (10) days after such Primary, Runoff Primary, or General Election. Any grand jury in session at the commencement of any such period shall be discharged forthwith. The provisions of this section shall not apply to a multicounty grand jury convened pursuant to the Multicounty Grand Jury Act, Section 350 *et seq.* of this title.” Primary elections for State and County offices are scheduled to take place this year on Tuesday, June 28, 2022, and according to this statute, this grand jury must adjourn *sine die* no later than Friday, May 27, 2022.

⁹⁵ See 22 O.S.2021, § 338(1), that provides in part: “The grand jury must inquire: 1. Into the case of every person imprisoned in the jail of the county or subdivision, on a criminal charge, and not indicted.” Since *Indictments* and *Informations* are “concurrent remedies,” and almost everyone held on formal charges today is charged by *Information*, we are advised that the gist of this statute’s requirements is for an inquiry to be made by the grand jury regarding all persons held in custody without formal charges, *i.e.*, neither charged by *Information* nor *Indictment*. This is the sense of this statute as it was applied by our Presiding Judge in Instruction 12 of the Court’s instructions provided to us in his *Charge to the Oklahoma County Grand Jury* given to us on October 18, 2021.

⁹⁶ See Administrative Order AO7-2019-21, dated June 24, 2019, providing in part: “The defendant shall be released from custody if the District Attorney does not file charges against the defendant within ten (10) calendar days of arrest or does not move to extend the time for filing of charges for good cause shown. The defendant shall be released from custody upon order of a judge if charges are not filed within the ten (10) day period.”

⁹⁷ See Administrative Order AO7-2019-21, dated June 24, 2019, providing in part: “A defendant arrested with or without a warrant prior to the charges being filed shall be taken without unnecessary delay before an arraignment judge and be advised by video of the probable cause upon which he/she is being held. The detention hearing shall occur within forty-eight (48) hours, exclusive of weekends, holidays and other days when the office of the court clerk does not remain open for public business until the regularly scheduled closing time.”

no person confined in the Oklahoma County Jail without charges has sought an inquiry by this grand jury upon that person's particular case. We are confident that there are no persons currently being held in the Oklahoma County Jail for more than ten (10) days without formal charges contrary to the Court's governing Administrative Order.

Part VI
Expressions of Appreciation

The Grand Jury is grateful for the service of our previously excused fellow jurors who also served during the course of these several sessions but who were excused by our Presiding Judge, from further service for good, legal, and sufficient reasons. We would also thank our Presiding Judge, the Honorable Don Andrews, District Judge, for his wise, patient, and careful supervision of our work. We commend the Honorable David Prater, District Attorney, and the members of his staff for their professionalism, support, legal advice, and assistance. We also thank the Honorable John O'Connor, Attorney General of Oklahoma, for supplying us the place for the holding our investigations, for the use of the Office's electronic equipment, and for the diligence, care, and capable assistance of his fine staff. We would like to thank our faithful Court Reporter, April Bloye, C.S.R., for her diligent, faithful service. We also commend Ginna Willard, who so capably and patiently served as our Bailiff, and the Oklahoma County Court Clerk, the Honorable Rick Warren and his staff, and especially his Deputies, Allen Pierce and Retha Chamberlain for their service. To all of you, our grateful thanks for a job well done.

We also wish to thank our families for their support, patience, and understanding. We also express our appreciation to each of our employers and co-workers for their support and understanding over the past seven (7) months.

And finally, we would like to thank all of the public servants who helped in our investigations. We would also like to thank all public servants within the State of Oklahoma. As

a Grand Jury, we feel that Melinda Romero, Assistant Director of the Oklahoma State Pardon and Parole Board, went above and beyond her “normal” job description to help maintain some sort of normalcy within the Pardon and Parole Board as an agency of the State during this trying time. We also feel that Ms. Romero & her staff helped to prevent greater disservice to the citizens of Oklahoma.

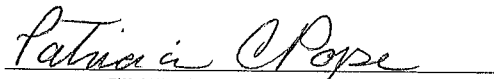
**Part VI
CONCLUSION**

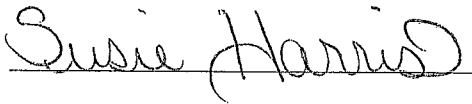
We are unanimous in stating that we believe, based upon our experience, that the Grand Jury, when called to service, is an essential and invaluable tool for law enforcement in the State of Oklahoma. Information and evidence were obtained, and cases solved, that would likely not have been otherwise due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

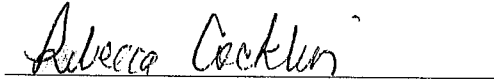
Respectfully submitted,

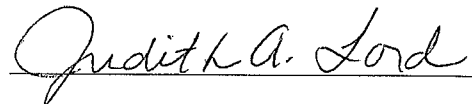
THE OKLAHOMA COUNTY GRAND JURY:

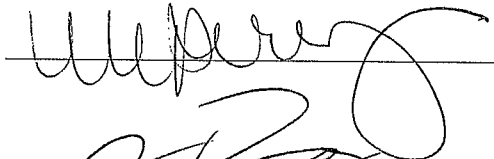

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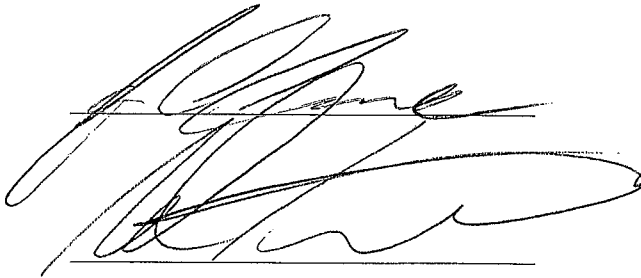

CLERK

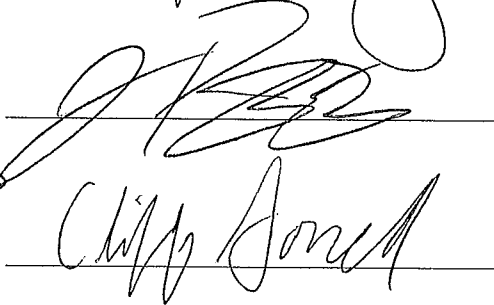


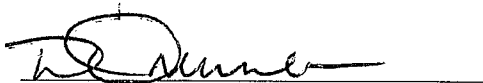










Cliff Jones



ORDER

This *Final Report* of the Oklahoma County Grand Jury is hereby received and *Ordered* to be filed herein *instanter*, and copies shall thereafter be made available by the Oklahoma County Court Clerk to members of the Public upon request this 12th day of May, 2022.



DON ANDREWS, DISTRICT JUDGE
PRESIDING JUDGE OF THE
OKLAHOMA COUNTY GRAND JURY