THE SPECIAL COUNSEL'S REPORT ON INCIDENTS OF GOVERNMENTAL CORRUPTION IN THE CITY OF FAIRVIEW

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INTRODUCTION

This report is the final product which sets forth principal findings regarding the matters that were the subject of our review. Section I is the Executive Summary of this report, and Section II discusses the mandate provided to the Special Counsel by the City of Fairview to accomplish its stated goals for this Report. Section III details the scope and methods used for the investigation, against the facts related to the incidents described to the fullest extent possible, with the voluminous record at our disposal.

I. EXECUTIVE SUMMARY

On February 2, 2021, the City Council approved a contract between the Fairview Utilities Authority, as grantor, and Andy Yang and Jayson Bartel, as grantees, to upgrade the electrical grid so that Yang could successfully grow marijuana at the Cimarron Acid building. The contract was allegedly signed by Yang and Bartel in a meeting with Jerry Eubanks on March 11, 2021; although no signed copy can be found. The same day Yang gave Eubanks $60,000 in cash that was not deposited in Fairview's bank account. The day Jerry Eubanks left office, April 16, 2021, he caused $60,000 in checks and money orders to be deposited in the City's accounts. The greater weight of evidence standard suggests that Eubanks, in coordination with Casie Johnson and others, converted the $60,000 cash.[1] The conversion of the $60,000 is described in Part I of this report.

Once the contract was in place, the City began construction on an electrical line capable of delivering three-phase power to the Cimarron Acid building. Shane Bode modified the route of the electrical line build from what was designated in the contract and directed Oklahoma Municipal Power Authority (OMPA) to work on the line. Even after his resignation from his position as City

[1] Conversion is the civil equivalent of common law theft.

Manager, Eubanks was listed as the employee who handled materials on the survey showing the original route of the electrical line. This survey also showed that the line was rerouted in May of 2021. The City Manager's authority was repeatedly influenced by Shane Bode. The OMPA workers were directed orally by Jerry Eubanks, and once Eubanks was removed as City Manager, the workers were directed by the interim City Manager, Sam Rauh. The line build is discussed in Part II of this report.

Bode later took possession of two transformers that were City property, after a sublease arrangement fell through at the Crescent Building. He was able to do so because of a multitude of factors, of which the most effective was employing intimidation of fellow council members and City employees, deliberately circumventing the City's internal control system in place, and disregarding governmental processes. The theft of the two transformers is described in Part III of this report.

This report is intended to inform the public about what occurred, where their tax dollars were spent, and how the City of Fairview can reassure its citizenry that through this Report's dissemination to the public, it has recommitted itself to trust, accountability, and transparency.

II. THE SPECIAL COUNSEL'S INVESTIGATION

The Honorable City Council of the City of Fairview has deemed it just and proper to employ the law firm of Jones, Otjen & Jewell, as Special Counsel, to prepare and submit this Report on certain incidents of alleged government corruption and mismanagement which occurred in the City of Fairview during the years 2019 to 2022. During this period, former City Manager Jerry Eubanks; former City Councilman Shane Bode; business partners Jayson Bartel, Jason White, and Andy Yang; Casie Johnson; and others attempted to turn the City of Fairview into a massive marijuana farm through a deliberate, concerted efforts. The evidentiary record supports the findings from this inquiry. Whether the intention was to grow marijuana legally or illegally, these actors maliciously, and with guile, broke local municipal ordinances and manipulated the functions of city government, without public comment, and expended taxpayer dollars to create the infrastructure to support their endeavors in the marijuana business.

III. METHODOLOGY AND SCOPE OF ENGAGEMENT

This Report sets out the findings of Special Counsel's investigation from three distinct incidents: (1) the alleged theft or loss of $60,000 from City offices; (2) the expansion of municipal electrical lines to a property commonly referred to as "Cimarron Acid"; (3) and the conversion, or theft, of transformers owned by the City of Fairview. Its scope is confined to these three incidents. It does not undertake a general audit of the City's finances or operations, and it reaches no conclusion about any matter outside the three incidents identified, except where context is required.

Because this is a civil and administrative inquiry and not a criminal prosecution, the standard applied throughout is the same used in civil lawsuits in the State of Oklahoma, the "greater weight of the evidence" standard. This standard is synonymous to the "preponderance of the evidence" standard. If a claim is shown to be proven by the greater weight of the evidence standard, it means the allegations are "more probably true than not true."[2] "The greater weight of the evidence does not mean the greater number of witnesses testifying to a fact, but means what seems...more convincing and more probably true."[3] That standard is materially lower than the criminal standard of proof beyond a reasonable doubt. Accordingly, the dismissal or non-prosecution of criminal charges arising from these events does not control the questions addressed here, which are whether the evidence establishes civil liability and what that liability is.

[2] Oklahoma Uniform Jury Instructions (OUJI) – Civil, Instruction No. 3.1.
[3] *Id.*

The analysis is merits-based. It evaluates each incident on the documentary and testimonial record against the governing statutes, ordinances, and case law, and asks what that record establishes. Where the record supports a conclusion of liability, the Report does so; where it does not, or where a question remains genuinely contested, the Report identifies the dispute rather than resolving it by assumption. Questions of available remedy and limitations are treated separately from questions of liability, so that a conclusion that conduct was wrongful is not confused with a conclusion that a particular recovery remains available.

The investigation relied chiefly on primary source and documentary evidence: that is, the pleadings and filings in the related civil litigation; the City's ordinances and the governing Oklahoma statutes; contracts, invoices, purchase orders, and account records; official correspondence among City personnel; the grand jury petition and the grand jury's final report; and the public record of the criminal proceedings. Where witness accounts are cited, they are drawn from sworn or recorded statements in the record and are weighed for corroboration against the documentary evidence.

These three incidents – though separated in this Report by section for ease of the reader – were all connected as a series of interwoven acts by public officials, employees, and outside actors that ultimately led to varied conclusions; which, should come to no surprise as the level of sophistication among the parties varied as much as did their acts. Many of those acts discussed in this Report were unlawful; some unethical; even more some were well-intentioned by some who had an understanding of the dire circumstances the City had found itself in – yet given the numerosity of each party's impetuses, all were the result of a series of individual factors for which the public body of Fairview had no meaningful governance mechanism to rely on or respond with until the damage had already been done.

PART TWO – THE MISSING CASH

I. THE FACTS

A. The Meeting and the Cash

On March 11, 2021, sixty thousand dollars in cash was brought to the City of Fairview's offices.[4] The purpose of this money was to pay the down payment on a contract entered into by the Fairview Utilities Authority and Yongfa Management, LLC, FPG, LLC, and Jayson Bartel.[5] Yongfa Management, LLC was controlled by Andy Yang.[6] Jayson Bartel is Yang's business partner and the contract at issue was entered into to begin the electrical line build to the Cimarron Acid building.[7] The contract at issue, described in more detail below, provides that "$60,000 [is due to the FUA] upon execution of this Agreement."[8] In addition $15,000 was to be "paid within five (5) days of the completion of the work by the" FUA.[9]

Present at the meeting were Andy Yang, Jayson Bartel, Jerry Eubanks, and Casie Johnson.[10] Johnson is the spouse of former Police Chief Joe Johnson and in March of 2021, she was a human resources specialist with the City.[11] The City Clerk, Melinda Gould, would have been present at that meeting but requested time of on March 11 to attend a track meet. Gould put in her request for time off on February 11, 2021, and her request was approved by Eubanks, so Eubanks knew in advance that Gould would not be present when the meeting he arranged took place.[12] Johnson's contemporaneous description of the transaction, as recounted by Gould, was that Chinese men "were taking cash out of their pockets," and that Eubanks told Johnson to take the

[4] Doc. 34 at 375; App. B, 1 at 4 (Teater Investigation Report).
[5] Doc. 1 at 1-2.
[6] Doc. 2 at 10, 12.
[7] Doc. 1 at 1; Doc. 2 at 13.
[8] Doc. 1 at 2.
[9] *Id.*
[10] App. B, 1 at 4 (Teater Investigation Report).
[11] *Id.* at 12.
[12] *Id.* at 4.

cash because Gould was not there to handle it, and that at Eubank's direction Johnson placed the cash in a money bag and the put the bag in the vault.[13] A handwritten petty cash receipt from a receipt book not used in the City's ordinary practice, noting "elec. line construction, sixty thousand dollars," was dated March 11, 2021 and bears signed initials that is ostensibly that of Eubanks.[14] The cash was given directly to Jerry Eubanks. The cash was placed in a bank bag and put into a locked safe.[15]

B. The Count, the Tape, and the Delayed Deposit

Ten to fifteen days later, Johnson told Gould about the cash that Eubanks had given her to place in the safe.[16] Gould located the bank bag in the safe where Johnson had stored it. The bag was then taken to Gould's office. The door to her office was then closed and Gould counted the cash while Johnson witnessed the count. The cash was in denominations of one-hundred-, fifty-, and twenty-dollar bills. Gould used an adding machine to document the amount and keep the count organized. Gould reported that she and Johnson initialed the adding machine tape. Gould then prepared a deposit slip, and Johnson left her office with the cash to the bank to deposit it during the early afternoon hours the same day.[17] These events occurred sometime between March 22, 2021, and March 26, 2021.[18] Gould, while certain the counted total was sixty thousand dollars, has allowed that the counted funds may not have been entirely cash but may have included money orders; the adding machine tape that would resolve the question has never been located.[19]

[13] App. B, 1 at 8 (Teater Investigation Report).
[14] Doc. 34 at 375.
[15] App. B, 1 at 4 (Teater Investigation Report).
[16] *Id.* at 4.
[17] *Id.*
[18] *Id.*
[19] *Id.* at 7.

Gould placed the adding machine tape and the note regarding the origin of the cash in her desk drawer beneath some office items for safekeeping.[20] Gould also recalled Johnson leaving the City offices for the bank and returning that day. Gould handled and counted the cash, but because it was important for someone other than the handler of the cash to make the deposit, Johnson was the employee who routinely handled bank deposits as a matter of safety.[21]

After Johnson returned to the office, the usual procedure would be for the money bag and deposit slip containing the bank teller's stamp to be returned to the front desk/reception area of the city offices. This was where the bank bag was usually kept so it could be used whenever other residents came into the city offices with payments.[22]

The usual accounting procedures that would have been followed for the $60,000 were as follows: The deposit would have been logged into the City's QuickBooks account by its accounts-payable clerk.[23] Johnson did not mention to Gould that the deposit had been made.[24] It is routine for the City offices to make deposits at the bank on a daily basis, or by the next business day at the latest.[25]

However, there were a few unusual things about this deposit. To begin with, it was for an unusually large amount. $60,000 in cash is more than the City would normally deposit each day.[26] Second, the $60,000 cash sat in the City's safe for ten to fifteen days before it was counted and deposited. It is atypical for an amount of money that large to sit in the City's safe for more than a day. In fact, Gould was shocked upon learning the cash had sat in the safe that long.[27] Third,

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[20] App. B, 1 at 9 (Teater Investigation Report).
[21] *Id.* at 4.
[22] *Id.* at 4-5; 12.
[22] *Id.*
[24] *Id.* at 4-5.
[25] *Id.* at 5, 12.
[26] *Id.* at 12-13.
[27] *Id.* at 4.

Eubanks had scheduled the meeting for the same day that he had approved for the City Clerk to take time off.[28]

Gould contacted then Mayor Dana Baldwin and told her about the late deposit of cash and that she was on leave when the $60,000 was brought into the city offices. Gould informed Baldwin that she handled the cash as soon as she was made aware of it, because it was not deposited within the time period required by statute.[29]

In September or October of 2021, Casie Johnson, her husband and then-Assistant Police Chief Joe Johnson, and Police Chief Dan Smith met with Gould. Casie told Gould that she had caught former City Manager Sam Rauh attempting to enter Gould and Casie's offices after hours. Joe Johnson and Smith would routinely change the combination to their offices for security purposes. Gould was then provided with a new combination for the electronic door lock to her office.[30] Gould thought it was an odd conversation and never believed Rauh would have tried to get into her office for any reason. Later, after her internal investigation and interview with Steve Tanio, Gould believed this meeting may have been a cover up for someone to retrieve the adding machine tape she prepared in the presence of Casie Johnson, which documented the receipt of the $60,000 cash in March of 2021.[31]

C. Casie Johnson's Changing Accounts

The missing $60,000 was investigated by the Major County District Attorney's Office through its investigator, Steve Tanio, in July of 2022.[32] Tanio interviewed Gould and Johnson on July 20, 2022, regarding the missing cash.[33] Gould told Tanio that the cash had been deposited in

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[28] App. B, 1 at 4 (Teater Investigation Report).
[29] *Id.* at 7 (Gould reciting to Baldwin the statutory requirements of either 62 O.S. § 335 or 11 O.S. § 17-101).
[30] *Id.* at 9.
[31] *Id.*
[32] *Id.* at 16; Doc. 64 at 705.
[33] App. B, 1 at 6-7, 16 (Teater Investigation Report); Doc. 64 at 705.

the bank in March 2021. She told him how Johnson had watched her count the money and that Johnson had taken the cash to be deposited to the bank. Gould showed him the safe where the cash had been stored until it was brought to her attention.[34] Tanio asked to see proof of the deposit and asked for the deposit slip. Gould could not find the deposit information for the $60,000 in the city's books. Gould did find a deposit that had been made for $60,000 on April 16, 2021. This deposit was listed as a deposit of "money orders."[35] She inquired about the deposit slip to Michelle Brown, the accounts payable clerk. Brown told Gould the money orders deposited on April 16 were made as payment to the City from an invoice submitted to Andy Yang pursuant to the contract for the electrical line to the Cimarron Acid grow.[36]

Gould then asked Johnson about the deposit and Johnson confirmed that a deposit had been made.[37] Gould then called Farmers & Merchants Nat'l Bank and asked if they could locate a deposit for the $60,000. The bank told Gould they could produce the records, and a short time later, they reported a deposit for $60,000 on April 16, 2021, which was the same deposit information located in the City's records made by Brown.[38] Gould then called the city's CPA, Meredith Meacham-Wilson. Gould was told how to query QuickBooks to locate a deposit, but Gould was unable to locate the initial deposit for the $60,000 in cash. She did locate a deposit for $60,000 in money orders entered April 16, 2021.[39] Gould then called Shane Bode and Jayson Bartel about the $60,000 deposit, because she recalled having a conversation with them around the time the deposit would have been made. Bode and Bartel had knowledge of the marijuana grow

[34] App. B, 1 at 6-7 (Teater Investigation Report).
[35] *Id.* at 7; Doc. 5 at 32; Doc. 6 at 61, 64.
[36] App. B, 1 at 7, 13-14 (Teater Investigation Report).
[37] *Id.* at 7.
[38] *Id.*; Doc. 6 at 68-70.
[39] App. B, 1 at 7, 13-14 (Teater Investigation Report).

business in Fairview and may have had information about the grower, Yang, and the cash he deposited. Both Bode and Bartel told Gould they did not know anything about it.[40]

It is unknown what Johnson said in her interview with Tanio.[41] Johnson was not at work the day after her interview with Tanio. She took an unscheduled half day of vacation and a half day of sick time.[42] The day she returned, Johnson told Gould there was not any cash and the deposit consisted of $60,000 in money orders, deposited April 16. Yet the deposit of the money orders was performed by Brown.[43] Gould remembered there was cash because when she counted it, she closed the door to her office, not wanting the people walking by her office to see that much cash.[44]

When Casie Johnson revised her statement and told Gould there was not $60,000 in cash following the interview with Tanio, Gould thought she was losing her mind. Gould knew Johnson's story was not right because Johnson was present in Gould's office when the money was counted.[45] Gould discussed Johnson's reversal of her position with Michelle Brown.[46]

Later, Johnson told Gould that the deposit was from a golf tournament and asked Gould if she did not remember that the cash came to the City's offices from the golf tournament. Gould answered that the City did not have a golf tournament in March and the golf season begins at the end of March. Johnson continued to try to convince Gould that the deposit was from a golf tournament. Gould told Johnson they had never had that much in proceeds from a golf tournament since the City purchased the golf course. In the past, the City had a two-day golf tournament which did not generate anywhere near $60,000 in cash.[47]

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[40] App. B, 1 at 7, 13-14 (Teater Investigation Report).
[41] *Id.* at 7.
[42] *Id.* at 16; Doc. 64 at 705.
[43] App. B, 1 at 7-8, 15-16 (Teater Investigation Report).
[44] *Id.* at 6-7.
[45] *Id.* at 7-8.
[46] *Id.* at 7-8, 16.
[47] *Id.* at 5-6 (Teater Investigation Report).

Eubanks was questioned about the $60,000 in cash by Steve Tanio and denied that he ever received cash from Andy Yang[48]. Eubanks had resigned from his position as City Manager on April 9, 2021, and effective April 19, 2021, yet continued to work and have access to City offices prior to his departure.[49] This is the same day that a number of money orders, described below, were deposited into the City's bank account to cover the missing $60,000 cash.[50]

In mid-September 2022, a City Councilman had a conversation with Casie Johnson and Joe Johnson. The Councilman's spouse was present. The conversation occurred on the patio of their home.[51] Joe Johnson discussed his feelings about another individual of the city government. He told the Councilman that the $60,000 cash came into the city offices and was counted by Gould with Johnson watching in Gould's office.[52] Johnson also told the Councilman that Gould used the adding machine to document the amount of cash counted. Following the count, the cash was bound and placed in the safe inside the City offices. Johnson claimed that was the last time she saw the cash. She did not mention a deposit slip being prepared for a deposit.[53]

Joe and Casie Johnson came back to the same residence a second time on May 23, 2023.[54] During this visit, Casie Johnson told the Councilman that she never saw the cash in the city offices in March of 2021, contradicting her statement made in September of 2022.[55]

D. The April 16 Invoices and Payment

On the morning of April 16, 2021, on his last day as City Manager, Eubanks requested Brown to prepare three invoices for Yongfa LLC Corp, of 256946 E. County Rd., Fairview, OK

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[48] App. B, 1 at 18 (Teater Investigation Report).
[49] Doc. 37 at 458-79; App. B. 1 at 14-15 (Teater Investigation Report).
[50] Doc. 5 at 32; Doc 6 at 68-70.
[51] App. B, 1 at 24 (Teater Investigation Report).
[52] *Id.*
[53] *Id.*
[54] *Id.* at 25.
[55] *Id.*

73737 for services rendered.[56] Invoice #1719, in the amount of $24,000, was listed for three transformers.[57] Invoice #1720, in the amount of $69,571.18, was for the electrical line build to the Cimarron Acid Building.[58] Invoice #1721, in the amount of $75,000, was prepared for the electrical line build to the Cimarron Acid Building.[59] Brown completed the invoices and handed them to Eubanks.[60] Eubanks took the invoices and personally delivered them to Yang.[61]

Several hours later, Melinda Gould called Brown into her office and requested that Brown make a deposit slip for the Fairview Utilities Authority (FUA).[62] Gould handed Brown check #3848 in the amount of $93,571.18, which paid for invoices #1719 and #1720.[63] Gould also handed Brown a stack of money orders and checks totaling $60,000, which was the initial payment for Invoice #1721 with a remaining balance of $15,000.[64] Brown made copies of all the checks and money orders which were filed with the appropriate invoices, as she thought the checks and money orders were an unusual form of payment.[65]

The following can be learned from reviewing the money orders deposited April 16, 2021.[66] There is a U.S. Postal Service money order dated March 4, 2021, in the amount of $1,000.[67] There are six Western Union money orders, each in the amount of $500.[68] There is a $6500 check from Lin Maoxing, through Associated Bank, of 1510 Iowa Pl., Sturgeon Bay, WI 54235.[69] There is a

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[56] App. B, 1 at 14 (Teater Investigation Report).
[57] Doc. 6 at 61.
[58] *Id.* at 64.
[59] Doc. 5 at 32.
[60] App. B, 1 at 14 (Teater Investigation Report).
[61] *Id.* at 14.
[62] *Id.* at 15.
[63] Doc. 6 at 63, 68-70.
[64] Doc. 5 at 32; App. B, 1 at 15 (Teater Investigation Report).
[65] *Id.*
[66] Doc. 5 at 32; Doc. 6 at 68-70
[67] Doc. 5 at 46.
[68] *Id.* at 33.
[69] *Id.* at 34.

$500 money order from Kroger store #361.[70] There is a USPS $500 money order dated Feb. 22, 2021, from post office 470250. There is a USPS $1000 money order dated March 4, 2021, from post office 542350. There is a USPS $1000 money order dated March 1, 2021, from post office 542350. There are seven more identical money orders.[71] Then, there are a series of 6 more USPS money orders dated in February and March 2021, each in the amount of $1,000.[72] Four $1,000 money orders from Kroger #361 are then provided.[73] Two $500 money orders from Western Union.[74] Six $1000 Western Union money order from Kroger #341.[75] Three USPS money orders from March 2021 each in the amount of $1,000.[76] Eight Western Union money orders each in the amount of $500.[77] One $500 international MoneyGram[78] dated March 4, 2021.[79] Four $1000 MoneyGram's dated 2/28/2021.[80] Two $500 money orders through Western Union.[81] One $500 MoneyGram dated March 3, 3021. One $500 MoneyGram dated March 2, 2021. Two $500 MoneyGram's dated March 3, 2021.[82] Three $500 Western Union money orders. Two $500 MoneyGram money orders dated March 4, 2021.[83] Two $1000 MoneyGram's dated February 28, 2021.[84] Finally, there is a $4000 Cashier's Check from Associated Bank issued by Xiang Z Lin.[85] Later, a check was received from Jian Hua Dong, of 31 Monroe St., Apt. 110, New York, NY

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[70] *Id.* at 35.
[71] *Id.* at 36-38.
[72] *Id.* at 38-40.
[73] *Id.* at 39-40.
[74] *Id.* at 41.
[75] *Id.* at 41-42.
[76] *Id.* 43-45
[77] *Id.* at 44-45.
[78] MoneyGram is a global money transfer and payment services company that enables individuals and businesses to send and receive money domestically and internationally.
[79] Doc. 5 at 46.
[80] *Id.* at 46-48.
[81] *Id.* at 48-50.
[82] *Id.* at 49-51.
[83] *Id.* at 50-51.
[84] *Id.* at 51-52.
[85] *Id.* at 52.

10002 in the amount of $93,571.18.[86] The money orders from Kroger originated in either Madison, Indiana or Northville, Michigan.[87] There is no indication where the MoneyGram's originated from.

From these interactions, several things can be learned. First, a meeting was held between Eubanks, Bartel, Yang, and possibly others at the City Offices on March 11, 2021, the day Eubanks had approved Gould to take leave.[88] Second, Johnson has stated that $60,000 cash was received that day as the initial down payment on the contract to build the electrical line.[89] Third, a petty cash receipt was generated, signed by Eubanks for $60,000 in cash.[90] Fourth, the cash remained in the safe at the city offices until sometime between March 21 to March 26. When Johnson brought the matter to Gould's attention, Gould counted it, bound it, put it into a money bag and gave it to Johnson to deposit at the bank.[91] Fifth, the cash was not deposited at the bank.[92] Sixth, on April 16, 2021, the last day Eubanks was City Manager, a number of money orders were deposited by Brown at Eubanks' direction, which she believed to be the initial payment on the contract.[93] Seventh, Johnson changed her story from personally viewing the $60,000 cash to having never seen the $60,000 cash.[94]

E. The Discovery of the Receipt

The petty cash receipt surfaced through the City's own internal investigation, which had its own antecedents: in a May 31, 2022 letter to the Mayor, Police Chief Smith had recommended a forensic audit of the City's finances and an inventory of its property, and in a November 2022 meeting with City officials, Investigator Tanio advised while conducting his own separate

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[86] Doc. 6 at 63.
[87] Doc. 5 at 35, 41-42.
[88] Doc. 1 at 1-2; Doc. 34 at 375; App. B, 1 at 4 (Teater Investigation Report).
[89] *Id.* at 4, 24.
[90] Doc. 34 at 375; App. B, 1 at 18 (Teater Investigation Report).
[91] *Id.* at 4, 9.
[92] App. B, 1 at 7, 18 (Teater Investigation Report); Doc. 5 at 32; Doc. 6 at 68-70.
[93] Doc. 5 at 32-52; Doc. 6 at 61, 63-64, 68-70; Doc. 37 at 478-79; App. B, 1 at 14-15 (Teater Investigation Report).
[94] App. B, 1 at 7-8, 24-25 (Teater Investigation Report).

investigation there were accumulating questions regarding instances of City mismanagement.[95] In late January 2023, Brown, conducting an internal review at the direction of City Manager Laverty, obtained permission of Police Chief Darin Reames to examine a Major County Sheriff's Office evidence box containing City documents that had previously been turned over at the request of the City to look into matters concerning Eubanks and Bode.[96] Inside, Brown found the handwritten petty cash receipt for sixty thousand dollars, noted for the electric line build and dated March 11, 2021, which she recognized as unlike any receipt used in the City's practice.[97] Brown additionally found a letter from former Chief Smith directing the end of a criminal investigation into Eubanks, and a letter over the name of former interim City Manager Rauh requesting the same, which Brown believed may have been forged.[98] Brown and Gould then located the receipt book itself at the bottom of a drawer in Karrie Querry's front-office desk and turned it over to Chief Reames, who entered it into evidence.[99]

Brown obtained the March and April 2021 bank statements, reflecting no sixty-thousand-dollar deposit other than the April 16 money orders, and Gould's time-off request corroborating her March 11 absence.[100] Gould's statement and the supporting documents, including the receipt, were provided to Oklahoma State Bureau of Investigation Agent Aimee Gates.[101] A subsequent reform to the City's practice states the normative procedure the handling of the $60,000 cash ultimately violated: Rauh, at a March 2023 meeting, recounted telling employees that the City was

[95] App. B, 1 at 14, 17 (Teater Investigation Report).
[96] *Id.* at 17-18.
[97] *Id.* at 18.
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.* at 19.

not a bank, and that he had instituted a procedure requiring any cash brought in by the grows was to be counted in the front office, in front of the cameras.[102]

II. ANALYSIS AND FINDINGS

Theft is referred to in the civil law as the tort of "conversion". "Conversion is any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein."[103] To prove the elements of conversion, the City will show: (1) it had the right to possession of the property in question; (2) bad actors intentionally interfered with the City's right of possession, without justification; (3) the bad actors excluded the City's exercise of ownership rights permanently; and (4) the City suffered damages.[104]

Based on the record, the following is established by the greater weight of evidence: the City received sixty thousand dollars in cash on March 11, 2021, intended for and owed to the Fairview Utilities Authority; that cash was placed in the City's custody and was not deposited through the ordinary channel notwithstanding Gould's and Johnson's count and Johnson's trip to the bank; no record of that March deposit exists in the City's books, its bank's records, or its accounting system; and the contract obligation the cash was meant to satisfy was instead satisfied more than a month later, on Eubank's final day, through a substitute set of small instruments collected weeks earlier.

As to Jerry Eubanks, the greater the weight of the evidence supports the finding that he received and exercised control over the cash and that the cash was diverted from the City while under his direction. Eubanks arranged the March 11 meeting for a day when he knew the City Clerk would be absent. At the meeting, the cash was handed over inside his office – and at his

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[102] Appx. B, 1 at 19 (Teater Investigation Report).
[103] *Steenbergen v. First Fed. S&L of Chickasha*, 1987 OK 122, 753 P.2d 1330, 1332 (citing *White v. Webber-Workman Co.*, 1979 OK CIV APP 6, 591 P.2d 348.
[104] *White v. Webber-Workman Co.*, 1979 OK CIV APP 6, ⁋4, 591 P.2d 348, 350.

direction – placed into the vault. Furthermore, a receipt from a book outside the City's ordinary practice, dated that day, bears a signature that is more likely than not his. When confronted with that evidence, Eubanks denied ever handling payments and even attributed receipt of the funds to the one employee documented as absent that day.[105] Even by his own account, Eubanks stated he had been holding money orders that he applied to the obligation the cash was to have satisfied. The Report finds that Eubanks converted the City's funds. The precise disposition of the cash is not established in the record, and the qualification on the receipt's signature would be maintained pending a handwriting comparison.

As to Casie Johnson, the greater the weight of the evidence supports the finding that she participated in the handling of the cash that was never deposited and thereafter gave knowingly false accounts concerning it. Johnson took possession of the cash at the March 11 meeting, held it in the City's safe, counted it with Gould, and by Gould's account, left for the bank with it. Yet no such deposit exists. She was the employee to whom the City's deposits were ordinarily entrusted, yet the one relevant deposit that does exist was made by someone else. Johnson's subsequent accounts: there was no cash, but then the funds were golf tournament proceeds; that there was sixty thousand dollars she counted and last saw in the safe, but then there was no cash at all, are irreconcilable with one another and with the contemporaneous description she, herself, provided. Moreover, the pattern of disclosures compounds the problem. The September 2022 and May 2023 statements were made in prearranged visits to a councilman, each opened by her husband on an unrelated subject before turning to the matter of the cash, and the final version was announced in the same breath as his assurance that he would not contest his firing. Whether Johnson's participation extended to the diversion itself or to its concealment after the fact, the record cannot

[105] App. C, 1 at 34 (Eubanks August 10, 2022, interview).

resolve. But in any case, Johnson's conduct was inconsistent with the City's rights in its funds and with her duties in their handling.

This Report's merit-based findings as to the missing cash matter are civil findings, under the preponderance standard, addressed to the disposition of public funds. They are *not* findings of criminal guilt, and nothing here purports to resolve questions committed to other processes, including the authenticity of the receipt's signature; the whereabouts of the adding machine tape, and the ultimate destination of the cash, which this record does not disclose.[106]

PART THREE – THE ELECTRIC LINE BUILD

The electric line incident concerns a city that had extended electric service beyond its corporate limits before, under a legal opinion obtained for that purpose, and that departed from that practice here. When a legitimate, job-creating business sought the City's partnership, the City turned it away.[107] Instead, when the demand came from a marijuana grow operating outside the City's limits, the City built a three-mile line whose cost grew well beyond the figure the parties has first contemplated, with the majority share passed to the taxpayers. How that came about, and who participated in it, is the subject of this section. The conclusion this Report reaches ultimately reflects both internal and external causes, resulting in institutional failure.

I. THE FACTS

A. The City's Own Template – the Red Bluff Matter

This was not the first time Fairview had been asked to extend its electric lines beyond its corporate limits; nor was it the first time a rural electric cooperative objected. In 2018, the City, through its City Attorney Bryce Kennedy, obtained a legal opinion from attorney Julia Rieman

[106] *See* Supp. App. (Correspondence was sent to District Attorney Boring from the Special Counsel requesting Investigator Tanio's investigative materials in reference to the missing cash incident. As of the date of this Report's submission to the City Council, no response has been received).
[107] Doc. 64 at 696-97, 704

who addressed whether Fairview could lawfully extend electric service outside its limits to serve the Red Bluff saltwater disposal project. This question was raised when Cimarron Electric's counsel, Jon Ihrig, protested the extension.[108]

The Rieman opinion did not treat the City's authority as unlimited. It located the affirmative power to extend pursuant to 11 O.S. § 35-101 and recognized the constraints of the Retail Electric Supplier Certified Territory Act and the Electric Restructuring Act of 1997. Under those statutes, an opted-in municipality may extend its lines to serve a new customer outside its limits but may not take a customer already served by the certified-territory supplier without that supplier's written consent.[109]

This distinction matters because the attorney who commissioned the opinion had reason to know it well. Kennedy appeared as City Attorney for the City of Tonkawa in *Central Rural Electric Cooperative*, the decision addressing how an opted-in municipality's extension authority interacts with a cooperative's certified territory.[110] Fairview, for its part, had opted into restructuring.[111] Kennedy was therefore familiar, from his own litigation experience, with the limits on a municipality's authority to extend service.

B. The Legitimate Project the City Turned Away – MCMM

While the City was simultaneously being asked to serve the Cimarron Acid building grow, it was already at the table with a lawful project of exactly the type a municipality would welcome. The Major County Meat Market was a four-million-dollar locker plant and meat market, with a small cattle feed lot, proposed by a group of Major County citizens to be built just north of the

[108] *See* App. D, 4 at 3 (Julia Rieman legal memorandum to City Attorney Bryce Kennedy).
[109] 11 O.S. § 35-101; 17 O.S. §§ 158.21 *et seq.*; App. D, 4; 17 O.S. § 190.7(A); *Cent. Rural Elec. Coop. v. City of Stillwater*, 2006 OK CIV APP 121, 146 P.3d 811.
[110] *See Cent. Rural Elec. Coop*, 2006 OK CIV APP 121, 146 P.3d 811 (Counsel of record).
[111] App. D, 4 at 1 (Fairview City Council Resolution No. 2018-8).

City's sewer lagoons on City property, and expected to employ twenty to thirty people.[112] In August 2020, the City Council met in executive session and voted four to one to sign a Letter of Intent with MCMM, which the City Manager and MCMM's managing partner executed on August 10, 2020.[113]

At first, the terms discussed were favorable to the project and unremarkable for economic development. The City would sell 120 acres, lease another 40 on a ninety-nine-year term at ten dollars a year, and extend municipal water, sewer, three-phase electric, irrigation, and treated effluent for the sum of one hundred dollars.[114] MCMM's investors proceeded in reliance on the Letter of Intent, assembling capital and commissioning engineering studies and architectural renderings. The Northwest Technology Center laid the foundation for a meat-cutting program to prepare a workforce. In all, the group invested more than two hundred thousand dollars, some of which was drawn from retirement accounts.[115]

Then the terms began to change. After the investors had committed, the City asked the group for an additional sum, and MCMM waited on a contract the City had said it did not have time to draft.[116] When the City's economic development proposal finally arrived on February 22, 2021, it had little resemblance to what had originally been discussed. The revised proposal reduced the acreage from 120 to 80 and cut the lease term from ninety-nine years to twenty-five, while raising the infrastructure charge from one hundred dollars to ninety thousand and the annual rate from ten dollars to four thousand.[117] MCMM responded within days. No negotiation followed, and after several months the group was told that the City had decided to go another way.[118]

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[112] Doc. 64 at 697, 704.
[113] Doc. 49 at 565, 576
[114] Doc. 51 at 579-86.
[115] Doc. 64 at 697.
[116] Doc. 53 at 589-606.
[117] Doc. 52 at 587-88.
[118] Doc. 64 at 697.

The significance of MCMM is not that a deal fell through., but rather that MCMM was a legitimate new customer, the kind of extension the City's own prior practice and legal opinion supported, and the City's own attorney later recited, in a letter responding to his termination, that he had advised against the project.[119] In Kennedy's response letter, he also reviewed the "major work" he had performed for the City of Fairview including "[a]dvis[ing] against the Major County Meat Market economic development transaction" and "[n]egotiat[ing] and/or prepar[ing] economic development agreements with Yongfa Management, LLC..."[120] The significance of MCMM lies less in the collapse of a particular deal than in the comparison it supplies. MCMM was a legitimate new customer, the kind of extension the City's prior practice and legal opinion supported, and the City's own attorney recited that he had advised against it, while on the same footing prepared the Yongfa agreements.

C. The External Backdrop: The Post-2018 Wave of Illegal Grows

The demand that produced the electric line did not occur in isolation. After Oklahoma voters approved medical marijuana in 2018 by State Question 788, the State became a national center for marijuana cultivation, and, because it placed no limit on the number of licenses or grow operations, an environment in which unlawful operations proliferated.[121] The ideal location for production is a sizable indoor building with access to ample amounts of water and electricity. This is because marijuana plants best thrive in an indoor environment with custom lighting, air conditioning, a hydroponic water system, and constant attention from the growers. To operate an

[119] Doc. 46 at 551.
[120] *Id.* at 551-52.
[121] Nat'l Strategic Analysis Initiative, HIDTA, Briefing Report. *Chinese Nationals and Marijuana in the United States* 1-3 (2025), quoted in *Invasion of the Homeland: How China is Using Illegal Marijuana to Build a Criminal Network Across America: Hearing Before the Subcomm. on Oversight, Investigations & Accountability of the H. Comm. on Homeland Security*, 119th Cong. (2025) (statement of Paul J. Larkin, The Heritage Foundation).

indoor grow, a considerable amount of electricity is needed to support the air conditioning equipment, lighting and other equipment.

The number of licensed grows in Oklahoma reached nearly 10,000 by the end of 2021, and authorities suspected many grows were diverting product to the illegal market.[122] Law enforcement and investigative reporting have tied a substantial share of these unlawful operations to organized criminal activity, characterized by fraudulent licensing, the use of Oklahoma residents as "straw owners" to obtain licenses, and the diversion of product to out-of-state black markets.[123] State investigators also reported connections between foreign criminal networks and more than 3,000 illegal grows, and the Oklahoma Bureau of Narcotics reported shutting down more than 800 farms over a two-year period.[124] The Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs stated that organized crime "has taken over marijuana in Oklahoma and the United States."[125]

Against this backdrop, the electric line which was built to serve the Cimarron Acid grow operation succinctly fits that description. The customer was Yongfa Management, LLC, and related entities, whose business was located outside the corporate limits of the City, and which contracted with the Fairview Utilities Authority for the electrical improvements at issue.[126] Andy Yang was the managing member associated with the Yonga operation.[127] The grow was unlawful,

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[122] Sebastion Rotella, Kirsten Berg, Clifton Adcock & Garrett Yalch, *Gangsters, Money and Murder: How Chinese Organized Crime is Dominating America's Illegal Marijuana Grow Market*, ProPublica (Mar. 14, 2024) (co-published with The Frontier, Mar. 22, 2024).
[123] Rotella et al., *supra* ₱1 n.2; *See also Invasion of the Homeland, supra* ₱1 n.1 (statement of Paul J. Larkin) (describing fraudulent licensing and straw owner schemes).
[124] Nat'l Strategic Analysis Initiative, HIDTA, *supra* ₱1, n.1 (over 3,000 illegal grows tied to foreign networks; more than 800 farms shut down by OBN).
[125] Donnie Anderson, Dir., Okla. Bureau of Narcotics and Dangerous Drugs, quoted in Rotella et al., *supra* ₱1 n.2.
[126] Doc. 1 at 1; Doc. 2 at 12.
[127] Doc. 1 at 4.

given it was the subject of a law enforcement seizure in 2021 and later in 2022, followed by Yang's conviction in the Major County District Court for unlawful cultivation.[128]

D. The Authorization and the Unsigned Contract

The grow-line project, like much of this period's business reflected in the record, came to the Council through executive session under the heading of economic development. On November 17, 2020, at 3:17 pm, JaNae Barnard, Executive Director of the Major County Economic Development Corporation, sent an email to certain recipients advising "Jerry asked me to please send the following zoom invite to each of you [in] regard [to] the Fairview Project…."[129] A zoom meeting was held on November 18, 2020. The participants of the Zoom meeting were Jayson Bartel, Jerry Eubanks, Andy Yang, Alex Dobson, JaNae Barnard and the owner of the email address Not_the_heisman@yahoo.com (Jason White is the owner of this email address).[130] The record indicates the purpose of this meeting was to discuss the building of an electrical line to run phase-three power to the Cimarron Acid grow.

On February 2, 2021, the Council convened in executive session from 6:18 to 7:37 p.m., then reconvened and took up "Economic Development agreement #2."[131] The motion was made by Councilmember Hubbard and seconded by Councilmember Medley, to move forward with the agreement and to allow the Mayor to execute the contract. It carried three to one: Baldwin, Hubbard, and Medley voting aye, Hargrove voting nay, and Vice Mayor Bode absent.[132] No public discussion or explanation of the project accompanied the vote.[133] A handwritten note in the City Council's minutes identified Economic Development #2 as "Grow Facilities". A notation on a

[128] Doc. 23 at 184.
[129] App. D, 7 at 1 (E-mail correspondence between Eubanks and Bartel).
[130] *Id.*
[131] Doc. 3 at 14-17.
[132] Doc. 3 at 15-16.
[133] Doc. 64 at 686.

plain piece of paper attached to the city council's notes was circled and read, "Cim Acid-need electric line upgrade will help the Meat Market" (Meat Market was underlined twice); presumably underlined to indicate the line was pitched to also serve the MCMM.

The contract itself followed on March 11, 2021. It is an agreement among the Fairview Utilities Authority, Yongfa Management, LLC, FPG, LLC, and Jayson Bartel, under which the Authority agreed to construct electrical improvements to serve Yongfa's business at 256946 East County Road 49 outside the corporate limits, and Yongfa agreed to purchase its power from the Authority.[134] The price for the work was seventy-five thousand dollar: sixty thousand on execution, and the fifteen-thousand-dollar balance within five days of completion.[135] The agreement was executed on March 11, 2021, by Yongfa, FPG, and Bartel.[136]

The agreement the Council had authorized the Mayor to execute does not contain the City's signature, and former Mayor Baldwin has stated it was never presented to her.[137] The sixty-thousand dollar execution payment arrived not as a check but as an accumulation of money orders and cashier's checks, most in small denominations and dated across a span of weeks, drawn from out-of-state sources; it was not deposited until April 16, 2021, the final day of City Manager Jerry Eubank's employment, and the same day invoices were generated billing Yongfa for materials, paid by a single check drawn from New York.[138]

E. The Reroute and the Cost

The line as originally planned had a certain rationale to it. The line would run east out of Fairview on Highway 8 to North Jefferson Road, then north to the intersection of Jefferson Road

[134] Doc. 1 at 1.
[135] *Id.* at 2.
[136] *Id.* at 4
[137] Doc. 64 at 685, *accord* Doc. 1 at 4, App. C, 5 at 37-39 (Baldwin transcript).
[138] Doc. 5 at 46-52; Doc. 6 at 53-54, 63; Doc. 9 at 881

and East County Road 49, then back east to the Cimarron Acid Building. As planned, the route served a second purpose: it ran past the City's sewer lagoons and would have delivered three-phase power capable of serving the Major County Meat Market along the way.[139]

On Aprill 22, 2021, six days after Eubanks left office, OMPA personnel met with interim City Manager Sam Rauh, Superintendent Chris Hoffman, and Andy Yang to reroute the line.[140] The justification given for abandoning the original route was that easements could not be obtained, of which was pressed by Councilman Bode, who is reported to have raised the prospect of litigation against the City if the line did not proceed.[141] The reroute was never discussed with or brought to a vote of the Council. Mayor Baldwin has stated she knew nothing of the reroute until it had already been started.[142] The record of the Board of County Commissioners, the body with authority over county easements, contains no agenda item or minute with reference to any easement for this project.[143]

The costs that followed bore little relation to the original contract. The record shows that no bids were taken for materials and that the supplier was not on the state bid list. OMPA performed the construction without any contract with the City, beginning on June 2, 2021 – one day after OBN and Major County Sheriff's Office first raid – and was carried out with the line energized because the grow it served was actively growing during the construction period.[144] By completion, Border States materials invoices alone totaled $273,787.68, of which $224,527.19 was paid by Yongfa, Siblings Investment, and Bartel, and $49,260.49 was paid by the City's taxpayers; OMPA's charges added a further $217,710.69.[145] Set against a seventy-five-thousand dollar

[139] Doc. 64 at 685-86, 704.
[140] Doc. 64 at 704.
[141] App. C, 4 at 39 (Rauh transcript).
[142] Doc. 64 at 709; App. C, 5 at 4 (Baldwin transcript).
[143] App. D, 1 (Major Cnty. BOCC agendas and minutes).
[144] Doc. 64 at 686-87.
[145] *Id.* at 687; Doc. 9 at 87-88.

contract the City never signed, the taxpayer exposure from materials and OMPA charges together approached $267,000.

F. The Scrap-Line Disposal

OMPA completed the three-mile line on September 17, 2021.[146] The same day, an OMPA crew's daily work log records a trip to Enid "to scrap old copper and ACSR[ ] for the city."[147] Two days later, on September 19, 2021, the City's scrap copper wire from the line was sold without the Council ever declaring it surplus.[148] The sale is reported to have been made to Enid Iron & Metal for $27,460, executed at the direction of Superintendent Hoffman.[149] As with the transformers addressed elsewhere in this Report, the disposal of City property proceeded without the surplus declaration the City's own ordinance requires, a subject to be taken up in the analysis.[150]

G. The Actors and Their Roles

Bode was the Vice Mayor and a sitting councilmember throughout the project. He was absent from the February 2, 2021, vote that authorized the agreement; pressed the easement rationale for the reroute; and signed jointly with OMPA personnel for materials deliveries made to OMPA's yard rather than the City's. Further, Bode never revealed that he was involved in the marijuana grow business during executive-session meetings.[151] That arrangement resulted in a situation where the City was billed for materials without knowing what was ordered and received.[152] For present purposes, the record establishes that Bode took part in carrying out the project although he had been absent from the vote that authorized it.

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[146] Doc. 64 at 695.
[147] Doc. 10 at 101.
[148] Doc. 63 at 681
[149] Doc. 10 at 103; Doc. 64 at 695.
[150] Fairview Mun. Code § 7-118.
[151] Doc. 64 at 689.
[152] Doc. 3 at 15, 17; App. C, 4 at 4 (Rauh transcript); Doc. 64 at 687.

The Oklahoma Municipal Power Authority planned and built the line, and its Lineman Superintendent, Anthony Hale, ran the technical execution from the earliest engineering.[153] A seventeen-page engineering plan and an eighteen-page "30 Circuit Rebuild" diagram set implemented the installation.[154] Hale signed for Border States deliveries jointly with Bode, and it was OMPA that completed the line and scrapped the old conductor wire.[155] After the project drew scrutiny, on December 21, 2022, Hale appeared at the Major County courthouse after house at former Mayor Baldwin's window, wanting to "refresh" her memory that the reroute decision had been hers, made over easement issues; Baldwin responded that she knew nothing of the reroute until it was underway; that it was never brought to the Council; and that the visit left her feeling very uncomfortable and almost threatened.[156]

Daryl Wichert was the District #2 County Commissioner, whose district encompassed the project area and whose office holds approval authority over county easements. County records show no easement for this project ever came before the Board for consideration.[157] Interview material located within the investigative file, from a source whose account must be weighed with care – Jerry Eubanks – places Wichert alongside Bode in seeking land in the area and describes discussions in which Yang would sublease land from Wichert for an outdoor grow.[158] The Report treats these matters according to their source. The certified absence of any easement item is a documented fact. The land discussions rest on the account of an interested witness. Whatever inference might connect the two is drawn in the analysis, and only as an inference.

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153 Doc. 64 at 687.
154 Doc. 11 at 106-123; Doc. 41 at 516-19.
155 Doc. 64 at 687; Doc. 11 at 103
156 App. C, 5 at 2-4, 192-94 (Baldwin transcript); Doc. 64 at 709.
157 *See* App. D, 1 (Major Cnty. BOCC agendas and minutes).
158 App. C, 1 at 119-27 (Eubanks August 10, 2022, interview); *Contra* Doc. 64 at 697 (The Reiger entry's stated explanation for the sublease not occurring is contradicted by other evidence and is not adopted). *See* App. D, 3 (June 1, 2021, photograph).

Andy Yang signed the March 11, 2021 agreement for Yongfa, and his operation was the customer the line was built, and then rerouted, to serve.[159] The operation was located outside the corporate limits, and its payments to the City arrived through the irregular channels described above: small money orders accumulated over weeks and out-of-state checks.[160] Its unlawfulness, and the law enforcement action against it, are addressed in Part 1(C) and in the analysis; in this Part, Yang's operation matters as the source of the demand the City acted on.

II. THE GOVERNING LAW

A. Authority to Extend Beyond the Limits

Fairview had genuine statutory authority to extend its electric lines beyond its corporate limits and to sell service outside them; this Report does not question that authority. The authority is limited however: it does not reach a facility already served by another supplier absent that supplier's written consent.[161] On these standards, the Major County Meat Market extension would have been lawful. Whether the Cimarron Acid extension was lawful turns on a contested service history, but the contest has narrow stakes: if the facilities were Cimarron's customers, the law permitted the extension only with Cimarron's written consent, and no such writing appears in this record.

The affirmative grant is 11 O.S. § 35-101. A municipality owning or operating its own system for distributing energy may extend its lines beyond the corporate limits, acquire the pole, wire, and rights-of-way necessary to do so, and sell such service to any person outside the

[159] Doc. 64 at 685; Doc. 1 at 4
[160] Doc. 1 at 1; Doc. 64 at 685-86.
[161] 11 O.S. § 35-101; 17 O.S. § 190.7(A).

municipal limits.[162] The Electric Restructuring Act of 1997 preserved the right for municipalities that elected to participate in restructuring.[163] The City of Fairview elected to do so.[164]

The Court of Civil Appeals considered the grant and its limits in *Central Rural Electric Coop.* The court held that the Restructuring Act's flat prohibition on extending a retail distribution primary feeder beyond corporate limits, found in § 190.7(B), applies only to municipalities that declined to participate in restructuring; a municipality that opted in retains its § 35-101 right to extend service beyond its boundaries, construed within the limits of § 190.7(A).[165] In that case it was undisputed that the customers served were new and had not previously been served by the certified-territory cooperatives. Here, that fact is contested.[166]

Because the City opted into restructuring, § 190.7(B)'s categorical bar does not govern, and the City's retained authority to build beyond its limits.[167] The question this incident presents is whether the City could lawfully extend a line to Jayson Bartel at the Cimarron Acid building, which depends on the constraint addressed next.

B. The Already-Served Constraint

Two statutes state the same prohibition from two directions: a municipal supplier may not furnish retail electric service to a facility that another supplier is already serving, or previously served with permanent facilities in place, unless the suppliers agree to the transfer by written mutual consent.[168]

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162 11 O.S. § 35-101.
163 17 O.S. § 190.1-190.20; *see* 17 O.S. § 190.7(B).
164 App. D, 4 at 1 (Fairview City Council Resolution 2018-8).
165 *Cent. Rural Elec. Coop.*, 2006 OK CIV APP ¶7, 146 P.3d at 813-14.
166 *Id.*
167 17 O.S. § 190.7(B); Appx. D-4 at 1 (Fairview City Council Resolution 2018-8).
168 17 O.S. § 190.7(A); 11 O.S. § 21-121 (quoted in *City of Stillwater v. Cent. Rural Elec. Coop.*, 1997 OK CIV APP 51, 945 P.2d 505.

17 O.S. § 190.7(A) prohibits an electric distribution provider, expressly including municipalities and their beneficial trusts, from furnishing retail electric service to a facility "which is currently being served, or which was being served and the permanent electric facilities are in place to render such service," by another supplier, "unless the entities involved have agreed by mutual consent, in writing, to such transaction."[169] 11 O.S. § 21-121 of the municipal code title states the mirror-image rule for facilities served by a rural electric cooperative, as the Court of Civil Appeals quoted it in the 1997 *Stillwater* litigation.[170] The two *Stillwater* decisions are distinct and should not be conflated: the 1997 decision construes § 21-121 in an annexation setting; the 2006 decision construes the Restructuring Act's interplay with § 35-101.[171]

Read together, the statutes form a clear structure. The affirmative authority of § 35-101 allows an opted-in municipality to compete for and serve new customers beyond its limits. The prohibition of § 190.7(A) and § 21-121 protects the settled service of every supplier, cooperative and municipal alike, from being taken by a competitor without agreement. The consent the statutes require is written mutual consent. Acquiescence is not sufficient, nor is the customer's preference for a different supplier.

Application of that standard turns on facts the record leaves in dispute. Cimarron's chief executive swore that the cooperative had served two consuming facilities at the site since March 19, 2002.[172] The City's answer denied that account and asserted that the Fairview Utilities Authority had served a portion of the facilities since at least 2009.[173] Interview accounts describe the Authority's prior line as running to the old water treatment plant, with the grow property across

[169] 17 O.S. § 190.7(A).
[170] *See City of Stillwater v. Cent. Rural Elec. Coop.*, 1997 OK CIV APP 51, ¶3, 945 P.2d 505, 507 (quoting 11 O.S. § 21-121).
[171] *Compare City of Stillwater v. Cent. Rural Elec. Coop.*, 1997 OK CIV APP 51, 945 P.2d 505, *with Cent. Rural Elec. Coop. v. City of Stillwater*, 2006 OK CIV APP 121, 146 P.3d 811.
[172] Doc. 14 at 139-40.
[173] *Id.* at 135-39.

the street, which may reconcile the two positions by assigning each supplier a different structure.[174] What the record does not contain is a written consent: no release appears, and Cimarron has stated it found no record of ever releasing the location.[175] Here, the Report accordingly states the standard only. If the facility the line served was Cimarron's customer within the meaning of the statutes, the extension required Cimarron's written consent, and none is found on the record.

III. APPLICATION OF THE LAW

A. The Cimarron Service History

The service history of the Cimarron Acid facilities is disputed, and the Report does not resolve it. Yet the dispute has narrow stakes. If the facilities the new line served were Cimarron Electric's customers, the law permitted the extension only with Cimarron's written consent, and no such writing appears in this record. What the record does establish, from the City's own contract, is that the arrangement required the property to take all of its power from Fairview, and Fairview was obligated to provide service solely to the property on the phase-three line.[176]

As previously noted, a municipal supplier may not furnish retail electric service to a facility that another supplier is serving, or previously served with permanent facilities in place, absent written mutual consent. Cimarron's account was detailed and specific. Its petition alleged the cooperative had provided retail electric service to consuming facilities in the SE/4 of Section 12, Township 21 North, Range 12 West of Major County, and its chief executive stated under sworn affidavit that Cimarron had served two electric consuming facilities at the site continuously since March 19, 2002.[177] When Cimarron learned in April 2022 that the City had built out poles and

[174] App. C, 4 at 39-43 (Rauh Transcript).
[175] App. D, 10 (Aaron Roark email dated Dec. 6, 2023).
[176] Doc. 1 at 1-2.
[177] Doc. 14 at 129-34 (The petition alleges five consuming facilities; the affidavit, two).

wire and begun serving the facilities, it sent a cease-and-desist letter on April 29, 2022, and then sued on July 22, 2022, pleading the three statutory provisions discussed here.[178]

The City's account was different, but not frivolous. Its answer, filed August 8, 2022, denied Cimarron's allegations and asserted that the Fairview Utilities Authority had provided electric service to a portion of the facilities since at least 2009.[179] The record supplies a plausible basis for that position: before the Yongfa contract, the City had supplied three-phase power to one building on the property under an informal gentleman's agreement, connected around 2007 to a single-phase line the City had run to its water infrastructure outside the corporate limits.[180] Interview accounts likewise describe the Authority's prior line as running to the old water treatment plant, with the grow property across the street.[181] The two differing accounts likely reconcile, with each supplier serving a different structure loosely termed the "facilities".

Certain effects of the contract, however, are not in dispute. The Yongfa agreement required the property to exclusively purchase all its power from Fairview; consequently, several other buildings on the property were disconnected from Cimarron Electric Service.[182] Buildings a cooperative is serving are facilities "currently being served" with the statutes. Taking over Cimarron's territory required its written consent. No consent appears on the record, and Cimarron has stated it found no record of ever releasing the location; it challenged Bartel's claimed letter and asked to see it. None has been produced in the materials reviewed.[183] OMPA's own engineering correspondence described the project as the rebuild of the line going north to the old Cimarron Acid grow operation, noting that it also feeds the city pumps.[184] Whatever bearing that

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[178] *Id.* at 128-29; 130-34.
[179] *Id.* at 135-38.
[180] Doc. 64 at 687.
[181] App. C, 4 at 42 (Rauh Transcript); Doc. 10 at 96.
[182] Doc. 1 at 1-2; Doc. 64 at 687.
[183] *See* App. D, 10 (Aaron Roark email dated Dec. 6, 2023).
[184] Doc. 41 at 516.

dual character may have on questions of remedy, it does not constitute the written consent the statutes require.

Substantively, the lawsuit resolved nothing. It ended not with an adjudication of the City's right to serve the property, but with the City's disconnection of all power to the facility, after which the case was dismissed on January 23, 2023.[185] This Report therefore finds only what the record supports. On Aaron Roark's affidavit, the extension took already served facilities without the written consent the statutes require. The contract's exclusivity term, and the resulting disconnections from Cimarron that followed, are consistent with that account. The City's contrary position on the service history dispute was never adjudicated. And under either statute the one dispositive fact – written mutual consent – is absent from the record.

B. Departures from the Required Process

Independent of the service history question, the project was executed outside the City's required process. The contract the Council authorized was never executed by the City; the route was changed without Council action; the costs were incurred without bids or any contract with the entity performing the work; and the old line was sold without the surplus declaration the City's ordinance requires.[186]

On February 2, 2021, the Council authorized the agreement and empowered the Mayor to execute the contract.[187] The contract was drawn and executed on March 11, 2021, by Yongfa, FPG, and Bartel; the City's signature does not appear on it.[188] Mayor Baldwin confirmed the contract

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185 Doc. 64 at 687.
186 Fairview Municipal Code § 7-118.
187 Doc. 3 at 14-17.
188 Doc. 1 at 1-4.

was never presented to her.[189] Nonetheless, performance proceeded: the sixty-thousand-dollar payment was deposited on April 16, 2021, and OMPA's work began June 2, 2021.[190]

On April 22, 2021, OMPA met with interim City Manager Sam Rauh, Superintendent Chris Hoffman, and Andy Yang to reroute the line in favor of OMPA, with work to be performed on Cimarron Electric's certified existing territory.[191] That change would prove to significantly increase the size and cost of the project.[192] There was no vote of the Council, and members stated later they had no idea the project had changed from the original contract and route; the former Mayor knew nothing of the reroute until it was underway.[193] The stated easement rationale is attributed to Councilman Bode, yet from county records examined, none contains any easement item for this project.[194] The City itself pleaded, in related litigation, that the interim City Manager's spending limit was five thousand dollars.[195]

No bids were taken for materials. Border States was not on the state bid list, and no contract was made with OMPA for the construction it performed.[196] Materials invoiced totaled $273,787.68, of which the City's taxpayers paid $49,260.49, and OMPA's labor charges totaled $217,710.69, of which $142,710.69 were ultimately passed to taxpayers. [197] And when the old conductor line came down, it was scrapped and sold within days of completion without the Council ever declaring it surplus, the same defect this Report addresses in the transformer matter. Under

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[189] App. C, 5 at 37-41 (Baldwin Transcript).
[190] Doc. 64 at 686-87.
[191] Doc. 10 at 92; App. C, 4 at 40 (Rauh transcript).
[192] Doc. 64 at 686, 704.
[193] *Id.* at 686, 709; App. C, 5 at 37-41 (Baldwin transcript).
[194] App. C, 4 at 39-41 (Rauh Transcript); App. D, 1 (Major Cnty. BOCC agendas and minutes).
[195] Doc. 25 at 226.
[196] Doc. 64 at 686-87; Doc. 10 at 89-105.
[197] Doc. 64 at 687; Doc. 9 at 85-88.

Fairview Municipal Code § 7-118, a Council surplus declaration is the legal predicate to any sale of City equipment.[198]

Given the internal turmoil within the City's governance at the time, any one of these departures could be attributed to haste or informality. Combined, they are harder to explain. The project proceeded on a contract the City never executed and a route the Council never approved. Its materials were bought without bids from a supplier not on the state list, its construction with which the City had no contract, and the old conductor was sold without the required surplus declaration. How these departures converged with the interest of individual actors is taken up in Section IV.

C. Conflict of Interest and Self-Dealing

A sitting councilmember with an undisclosed interest in the Yang's business participated in the execution of this project. Under the City's own code and state law, an officer's participation in a transaction in which he holds an interest is prohibited, and the prohibition contains no exemptions. [199]

The framework is set out in the transformer analysis and is not repeated here but briefly restated: Fairview Municipal Code § 7-103 prohibits a City officer, or a business in which the officer holds a proprietary interest, from transacting in the ways described, the transaction is voided, and personal liability attaches; 11. O.S. § 8-113 is the state analog specific to municipal officers, and the constitutional prohibition on interested self-dealing supplies the normative background. The Oklahoma Supreme Court has expressly held that the municipal-officer statute occupies this ground.[200]

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[198] Doc. 10 at 103.
[199] Fairview Mun. Code § 7-103; 11 O.S. § 8-113; Okla. Const. Art. X, § 11.
[200] Fairview Mun. Code § 7-103(A), (E)-(F); 11 O.S. § 8-113; Okla. Const. Art. X, § 11; *McCormack v. Town of Granite*, 1995 OK 105, ¶13, n.4, 913 P.2d 278, 281.

The interest is documented in the investigative record and became public only after the fact. While serving as a councilman, Bode was in a business relationship with Yang, leasing him property for marijuana cultivation and procuring more property to lease to him, with a grow license held in his wife's name; none of this was revealed to the Council during the executive sessions while the project was discussed.[201] His conduct placed him inside the project's execution despite his absence from the authorizing vote: he is reported to have pressed the easement rational for the reroute and signed jointly for materials deliveries made to OMPA's yard. In June 2021, OMPA crews also installed a 1500 KVA pad mount transformer at Bode's own grow property; work reflected in the same logs as this project.[202]

On these facts, the conflict analysis set out in the transformer section applies with equal force here: an officer with a proprietary interest in the benefited business participated in a City transaction, the officer specific provisos foreclose the exemptions he might otherwise have claimed, and the consequences the ordinances attaches – voidness and liability – are supported by the record. The weighing of the interested source material and the inferences that may be drawn from the convergence of these facts with those of the other actors are reserved for the succeeding segment.[203]

IV. THE CONVERGENCE OF INTERNAL AND EXTERNAL CAUSES

The compilation of governmental process breakdowns did not happen on their own. They happened because several individual actors, with differing motives, converged on the same project; because the controls that should have checked them did not function properly. This section presents those actors and their competing explanations of it. It also states each cause at the evidentiary level

[201] Doc. 64 at 687, 689.
[202] *Id.*; Doc. 8 at 84; Doc. 9 at 85-88; Doc. 10 at 89-105.
[203] Fairview Mun. Code § 7-103(F).

the record supports: some are documented, some rest on the accounts of interested witnesses and are weighed accordingly, and where inferences are drawn, they are explicitly stated as such.

A. The Inverted Standard

The starting point is the standard the City set for itself and then departed from. Fairview held its own template for a lawful extension: a City-commissioned legal opinion locating the authority, denoting its limits, and drawn by counsel who had litigated the very question.[204] The project that fit that template – a new and unserved customer promising twenty to thirty jobs – was advised against by the City's own attorney and allowed it to die after its investors had already committed.[205] On the other hand, demand from a facility that from Cimarron Electric's account was already served, was met with a three-mile build whose cost the taxpayers substantially absorbed.[206] Whatever the ultimate resolution of the service history dispute, the documented sequence is that the City declined the extension its own legal template supported and undertook the one the template would have placed in doubt.

B. Bode's Self-Dealing

Inside the City government, the project had an advocate whose interest the public record did not show. Bode took part in the project's execution while his interest in Yang went undisclosed. Bode's business relationship with Yang, leasing him grow property and procuring more, with a license held in his wife's name, was not revealed to the Council during the executive sessions at which the project was discussed and became public only months later.[207] He was conspicuously absent from the authorizing vote, yet pressed the easement rationale that justified the reroute, signed jointly for the materials deliveries the City could not verify, and had a transformer installed

[204] *See* App. D, 4 at 3 (Julia Rieman legal memorandum to City Attorney Bryce Kennedy (2018)).
[205] Doc. 64 at 696-97.
[206] Doc. 14 at 139-40; Doc. 64 at 687.
[207] *Id.* at 687, 689.

at his own grow property by the same crews in the same season.[208] As a matter of causation, his undisclosed interest gave the project momentum that the Council, unaware, had no occasion to examine.[209]

Moreover, at the end of March or beginning of April 2021, Shane Bode met with Jerry Eubanks at the city offices. There, the two engaged in a tense verbal altercation. It is reported that during this altercation, Bode told Eubanks to hook up to an unrelated grow or Bode would find a city manager who could do so.[210] This caused City officials to believe that "Shane was directing the work."[211]

C. Daryl Wichert's Role

Daryl Wichert was the District #2 County Commissioner, the office holding approval authority over county easements in the area of both projects. The documented fact about Daryl Wichert, while inferred, is nonetheless confirmed: a review of every Board of County Commissioners' agenda carrying easements as a line item for the period shows that no easements for this project, or MCMM for that matter, ever came before the BOCC. That absence bears directly on the stated justification for the reroute: the record of the body with authority to grant county easements contain no indication that an easement for this project was ever requested or considered.

An account given by the former City Manager, a witness whose own conduct is examined elsewhere in this Report and whose statements are weighed accordingly, describes Wichert viewing maps of the area with Bode at Bode's shop. Eubanks also stated Bode told him Bode and Wichert looked for land while others gathered cost figures and described a proposal where Wichert

[208] Doc. 3 at 14-17; App. C, 4 at 39-46 (Rauh transcript); Doc. 64 at 687.
[209] Doc. 64 at 689; Doc. 10 at 89-105.
[210] App. B, 2 (Silcott interview).
[211] App. C, 3 at 54-58 (OMPA transcript); App. C, 4 at 44 (Rauh transcript).

would purchase property near the grow and sublease it to Yang, with the remark that all involved would be taken care of.[212] The explanation for why no sublease occurred has been presented that despite the account given in reference to the meeting with Bode and Eubanks, Wichert was actually hospitalized at the time and it could not have occurred. But that account is contradicted by the production of a photograph, taken on June 1, 2021, placing Wichert at the District #2 yard that day, standing next to unprocessed marijuana prepped for disposal following its seizure from Yang.[213]

Therefore, it is more likely intervention from law enforcement that day undermined any future design on Wichert, Bode and Yang's part to expand Yang's illegal grow outdoors just to the north of the Cimarron Acid building. From the confirmed absence of any easement request, easement authority resting within Wichert's district, and the accounts given by interested sources, an inference is available that the easement rationale for the reroute was not the real one. This Report draws an inference only, not a conclusion of wrongdoing by Wichert, whose conduct as a county officer is beyond the scope of this Report's findings.

D. The Barnard/MCEDC Thread

JaNae Barnard of the Major County Economic Development Corporation initiated the MCMM discussions and appears at several points across the record's development and grant threads. Questions concerning the intersection of her role with the financing of the projects in this period remain the subject of open records requests, and the Report treats them as matters for further development. No finding is made, and none should be inferred from the thread's inclusion here; it

[212] App. C, 1 at 119-27 (Eubanks August 10, 2022, interview).
[213] App. D, 3 (Photograph exhibit, June 1, 2021).

is so noted only so that the account of causes is complete when the outstanding requests are answered.[214]

E. Yang and the External Pressure

Outside the City government, the demand itself exerted pressure, and the operation's unlawfulness bears causation. Yang's operation, placed within the post-2018 medical marijuana backdrop through its conduct, contracted for the line, paid through irregular channels – small money orders accumulated over weeks and out-of-state checks – and was the subject of the June 1, 2021, enforcement seizure at the grow.[215] An enterprise seeking service through ordinary channels proceeds by application and contract, subject to public votes. This project's path was different. It moved through executive sessions, on a contract the City never signed, along a route the Council never considered. Those safeguards exist in part to test such demands before public resources are committed. Here, they did not operate as designed.

F. OMPA and Anthony Hale

The line build required technical execution, and OMPA, who planned and constructed the line, was external entity that supplied it. Lineman Superintendent Anthony Hale supervised the effort, from the earliest engineering through the disposal of the old conductor. Deliveries were signed for and received at OMPA's yard, outside the City's verification, and the old conductor was scrapped without a surplus declaration; the entity executing the work took part in both practices.[216] A conversation between City officials and representatives from OMPA occurred December 21, 2022, which was transcribed. In the meeting, the OMPA representatives stated they were taking directions from the City Manager. Before April 16, 2021, OMPA took directions from Jerry

[214] Doc. 64 at 697; *See* App. D, 9 (Response pending).
[215] Doc. 1 at 1-4; Doc. 5 at 32-52; Doc. 6 at 53-58; Doc. 64 at 685-86.
[216] Doc. 11 at 106-123; Doc. 10 at 89-105; Doc. 41 at 516-19; Doc. 64 at 687.

Eubanks. Starting April 19, 2021, they took directions from Sam Rauh, and after his departure from the City Manager position, they took directions from Chris Hoffman.[217]

The same day the meeting was held, Hale appeared after hours at the courthouse window of the former Mayor, wanting, as the account stated, to refresh her memory that the reroute had been her decision; she said it was not, that she knew nothing until the work was underway, and that the visit left her feeling almost threatened.[218] The record establishes no private stake in Hale, and the Report infers none. The casual point is institutional: the City's verification and disposal controls did not reach OMPA's role in the project any more than they reached the conduct of the City's own officers.

V. FINDINGS

These causes did not operate separately and are not ranked in terms of significance. The inverted standard removed the measure against which the project would have been judged. The concealed interest gave it motion the process could not see. If the easement rationale was pretextual, which indeed it more likely than not was, the reroute proceeded on a justification nobody tested, while the demand itself arrived with money and urgency and the technical execution ran outside the City's purview. What kind of failure that convergence amounts to, and what it says about the institution rather than any single actor, is contemplated in the conclusion of this Report.

On the conflict of interest, the record supports a finding of individual liability. Shane Bode held an undisclosed interest in the enterprise the line was built to serve, and he participated in the project's execution by pressing the reroute and signing for its materials, while the interest went undisclosed to the Council. Under the framework set out in the transformer section of this Report, an officer who participates in a transaction in which he holds a proprietary interest violates

217 App. C, 3 at 54-55 (OMPA transcript).
218 App. C, 5 at 2-4, 192-94 (Baldwin Transcript); Doc. 64 at 705.

Fairview Municipal Code § 7-103 and 11 O.S. 8-113. That participation carries personal liability without regard to whether the transaction also served some public end. The Report finds that Bode's conduct in the electric line project meets that standard.

On the lawfulness of the extension itself, the Report states its conclusion but stops short of an individual finding, and the distinction is deliberate. The record establishes that the extension to an already-served customer was unlawful under 17 O.S. § 190.7(A) and 11 O.S. § 21-121 on the incumbent's sworn account, and that no written consent appears anywhere in it. But because the service history is genuinely contested, and the suit that would have resolved it was dismissed upon the City's disconnection rather than adjudicated with a final disposition, the Report therefore finds the extension unlawful as a matter of the City's conduct. The question of individual liability on that theory is reserved to a forum with the means to resolve the service-history dispute the record leaves open.

PART FOUR – THE TRANSFORMERS

I. THE FACTS

A. Background

As part of Bode's efforts to further capitalize on his business relationship with Andy Yang, Bode's company SLK Investments, LLC, entered into a commercial lease agreement with South Canadian Land Development, LLC, owned by Grant Irwin, for the property at 1700 N. Main Street in Fairview (the "Crescent building"), on May 10, 2021, and was signed on May 21, 2021.[219] The purpose of the lease with Grant Irwin was to then sublease the Crescent building to Andy Yang, so that Yang could continue to expand his grow operations in and around Fairview.

[219] Doc. 29 at 252.

In connection with electrical upgrades requested for that property so that Crescent had the requisite supply of electricity needed for a large-scale indoor marijuana grow, the City purchased two 750 KVA three-phase pad mount transformers, identified by manufacturer serial numbers #2173926 and #2173927, using public funds authorized on June 16, 2021 by Chris Hoffman, City Superintendent; Melinda Gould, City Clerk; and Sam Rauh, Interim City Manager, from FUA account FUA3400.[220] The purchase was made under Border States Electric Invoice 922272646, purchase order number CRESCENT, at a cost of $45,156.98.[221] Bode would later assert in civil proceedings that because Siblings Investment Group – the entity through which Andy Yang operated – paid the vendor invoice for the full Crescent Building materials order on June 22, 2021, the City never owned the transformers.[222]

Fairview Municipal Code §17-310 provides that all electrical installations purchased and/or installed by the City "shall remain the property of the city at all times."[223]; The FUA-Yongfa contract provisions governing the Cimarron Acid electrical project independently confirms this, expressly providing that "transformers shall always remain the property of the Authority."[224] The transformers were City property from the moment of purchase. What Bode did with them is addressed in the sections that follow.

B. Placement of the Transformers at the Crescent Building

After the City authorized the transformer purchase on June 16, 2021, and Siblings Investment Group paid the full Crescent Building materials invoice of $90,973.49 on June 22, 2021, the transformers were ultimately delivered to the Crescent Building.[225] But the sublease of

220 Doc. 29 at 252-53; Doc. 25 at 325.
221 Doc. 29 at 252-53.
222 Doc. 25 at 232.
223 Doc. 21 at 174–75
224 Doc. 1 at 1.
225 Doc. 8 at 75-83; Doc. 25 at 234.

the Crescent Building to Andy Yang's Siblings Investment Group for use as an indoor marijuana grow facility was never executed.[226] The transformers sat at the Crescent Building uninstalled. Neither the City nor the FUA initiated the electrical addition project that Siblings had paid for, and neither the City nor the FUA ever did.[227]

From the available record, OMPA liaison Anthony Hale performed in connection with the Crescent project by drawing the electrical blueprint and compiling the materials list, which he provided to Interim City Manager Sam Rauh.[228] The materials were ordered, delivered, and stored at the OMPA yard, where they remained for approximately a year and a half.[229] No OMPA crew ever performed installation work at the Crescent Building, a fact OMPA Alex Dobson independently confirmed when he told Michelle Brown on March 3, 2022 that he was "not familiar with the Crescent job" and could not find it in OMPA's work notes.[230]

Despite this, when a vandalism incident was reported at 1700 N. Main on March 7, 2022, the ownership narrative began to shift. Officer Joe Johnson responded to the scene and took a report. Bode, identified in the report as a lessee of the building, told Johnson that one of the transformers had been damaged and that the transformer was owned by Andy Yang. Johnson recorded Yang as the victim of the vandalism offense and listed SLK Investments as the victim of the associated burglary.[231] Neither the City nor the FUA were identified as the owner of the transformers in that report.

C. Bode Evicts Yang and Moves the Transformers

[226] Doc. 25 at 232-33.
[227] *Id.* at 234.
[228] App. C, 3 at 104-05 (OMPA transcript).
[229] *Id.* at 106
[230] Doc. 41 at 516.
[231] Doc. 22 at 176-83.

On March 24, 2022, Yang's grow operation at Cimarron Acid was shut down for a second time in as many years by OBN and the Major County Sheriff's Office [232] The subsequent raid at Cimarron Acid resulted in securing and padlocking the property from entry. Thus, Yang and his employees were displaced from the premises and moved to the only remaining facility available to them: Bode's property at 801 W. Oklahoma, commonly known as the Leviathan building. At the time, Yang held a sublease from Bode for the Leviathan building at 801 W. Oklahoma, where Yang had expanded his grow operations following the collapse of Bode's ACE Cannabis Group grow and the first raid on the Cimarron Acid facility in June 2021.[233]

Only one week later, Bode contacted the Fairview Police Department and reported that Yang's occupants had been "constant inhabitants" of 801 W. Oklahoma. With Fairview police present, Yang and his associates were told of an ordinance violation barring inhabitancy of commercial property and then were escorted from the building – without a thirty-day notice, nor Sheriff's Office involvement – despite Bode describing the event as an "eviction."[234]

Two days after Yang and his employees were kicked out, the two transformers were moved from the Crescent Building to Bode's Leviathan building on April 3, 2022.[235] Bode's stated reason for the move was that SLK had ended its lease for the Crescent Building.[236] The following day, Bode approached then City Manager Chris Gdanski, and requested that Gdanski consult with someone in the City's legal department because he intended to sell the transformers for payments Siblings Investment Group had failed to make under its lease with SLK.[237] Gdanski indicated he

[232] Doc. 25 at 233-34; Doc. 64 at 691, 705.
[233] Doc. 7 at 71; Doc. 19 at 163; Doc. 25 at 234; Doc. 26 at 239.
[234] Doc. 26 at 240; Doc. 64 at 691.
[235] Doc. 25 at 234; Doc. 64 at 705.
[236] Doc. 25 at 234.
[237] *Id.*

would look into it after another conversation with Bode took place on April 22, 2022, but explicitly recalled telling Bode the transformers were public infrastructure and Bode could not sell them.[238]

Bode, Jayson Bartel, and Gdanski met at City offices on May 10, 2022, ostensibly to discuss the remaining balance Bartel owed the City on Andy Yang's behalf.[239] During that meeting, Bode informed Gdanski that a buyer was coming at the end of the week to purchase the transformers. Unbeknownst to Gdanski, however, the sale had already been completed. Nonetheless, and raising no objection to the sale; asserting no City ownership; and offering no caution that the transaction might violate City ordinance, Gdanski's only response was whether Siblings Investment Group had paid sales tax on the transformers. Gdanski told Bode there was no known impediment to the sale because SIG had paid full value for the transformers, not the City or FUA.[240] That position would prove short-lived. When Gdanski later reported the transformer sale to DA Investigator Steve Tanio on July 29, 2022, he told Tanio that Bode had informed him Bode took possession of the transformers when he terminated the lease and later sold them to an entity in Kansas. Furthermore, Gdanski believed Bode had violated criminal law in doing so.[241] Gdanski directed Tanio to the FUA-Yongfa contract provision that transformers shall always remain the property of the FUA and to Municipal Code §17-310.[242]

Before Bode moved or sold the transformers, the City council took no action to dispose of the transformers as surplus; nor were any surplus procedures followed .[243] Likewise, Bode took no legal steps to transfer ownership, challenge the City's interest, or obtain any form of authorization before moving the transformers on April 3 and selling them on May 6.[244] No Council vote was

[238] Doc. 25 at 235; App. C, 7 at 42 (Gdanski Transcript).
[239] Doc. 25 at 234.
[240] *Id.* at 235; App. D, 8 at 1 (Email correspondence between Hammer and Boring).
[241] Doc. 24 at 190
[242] *Id.* at 190-91.
[243] Doc. 31 at 295-96; Doc. 21 at 174-75.
[244] Doc. 31 at 295-96.

taken; no authorization was sought or granted; and no documentation of any kind reflecting City approval of either the move or the sale existed.[245]

D. Bode's Account of Delivery and Ownership

When the dispute over the transformers would later reach civil litigation, Bode advanced his own account of how the transformers were delivered and possessed, and offered to support his contention that the City neither owned nor accepted them. Beyond the public-versus-private funds source argument set out above – that Siblings Investment Group's payment of the invoice left title with SIG rather than the City – Bode alleged a specific delivery sequence. According to Bode, the transformers were initially taken to City property, but the City rejected delivery and directed them instead to 801 W. Oklahoma, the Leviathan building Bode owned.[246] Bode refused delivery there, asserting the transformers were never intended for that location, and informed Interim City Manager Sam Rauh that Yang and SIG held no lease at the Crescent Building. Rauh, by Bode's account, insisted the transformers be delivered to the Crescent Building over that objection.[247]

Bode further contended that SIG never executed a sublease for the Crescent Building and never held any right, title, or interest in it, pointing out that on September 2, 2021, SLK instead subleased the building to an unrelated entity, Mach Energy Services, LLC, a company with no connection to Yang or SIG.[248] He also maintained that before the sale neither the City nor the FUA had taken any action to accept the transformers or to perform the electrical work, and that the City had instead caused him to bear the cost of storing the transformers rent-free for more than a year while raising no objection to their sale.[249] Based on those facts, Bode argued, that because the City

[245] Doc. 31 at 296.
[246] Doc. 31 at 277.
[247] *Id.*
[248] *Id.*
[249] *Id.* at 279.

did not pay for the transformers, did not accept delivery of them, lacked authority to contract with SIG for electrical work at a building SIG had no right to occupy, and never performed the contracted work, the City never owned the transformers.[250] He maintained in the alternative that any application of Fairview Code § 17-310 to vest ownership in the City was either inapplicable to the transformers or, if applied, would in effect be an unconstitutional taking of his property.[251] Separately, and in apparent tension with his contention that the City never owned the transformers, Bode also asserted that he took and sold the transformers as compensation for payments SIG had failed to make under its lease with SLK.[252]

E. The Sale to Ninnescah Rural Electric Cooperative

Border States Electric Supply is an electrical supply vendor based in Kansas that the City consistently used throughout the grow facility projects, having supplied materials for the OMPA phase-three installation to the Cimarron Acid building, the Leviathan building, and the Crescent building.[253] Ninnescah Rural Electric Cooperative ("NREC"), located in Pratt, KS, was also a regular Border States customer, and its Manager of Operations, Robert Lamatsch, had contacted the company – one of its primary sources for acquiring transformers – to inquire about its transformer stock and availability.[254]

Although Border States informed Lamatsch it was out of stock of transformers and even more, that current orders had been placed on backorder, they had been recently contacted by one of their customers – Shane Bode – who was seeking to sell two transformers for which Lamatsch needed.[255] Border States put Lamatsch in contact with Bode, and after verifying ownership of the

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250 Doc. 31 at 280.
251 *Id.*
252 *Id.* at 278.
253 Doc. 6 at 64; Doc. 8 at 76; Doc. 9 at 88; Doc. 29 at 252-53.
254 Doc. 25 at 212.
255 Doc. 31 at 284; Doc. 25 at 212.

transformers with both Bode *and* Border States, agreed to travel to Fairview to meet Bode for the purchase of the transformers and after the sale transport them back to Kansas.[256] The purchase price for both transformers was $60,000, and was made payable via Bode-owned company SLK Investments, LLC.[257]

At the time of the sale, Bode told Lamatsch that he owned the transformers but that "ownership [of the transformers] was being challenged by the City."[258] When Lamatsch asked why then-Police Chief Dan Smith was present at the sale, Bode replied "to make everything legal." and to "protect the cooperative's interests."[259] Lamatsch later stated he "was concerned when a police officer arrived at the scene."[260] On the very same day as the sale, Bode sent an email to Grant Irwin, formally terminating the Crescent building lease, attributing the end of the arrangement to the community "uproar" surrounding the marijuana grows, which he said had succeeded in running his future tenant out of town, and noted Yang had simultaneously ended his leases at both 801 W. Oklahoma and at Jayson Bartel's building.[261]

F. Discovery of the Missing Transformers

On July 8, 2022, City Manager Chris Gdanski sent an email to Troy Hubbard, copying City Attorney Andrea Chism, with the subject line "Missing Transformers." Gdanski wrote that Shane Bode had informed him the prior week that he had sold the transformers purchased for the grow development in the Mabar building, and that he felt "this is an issue" and wanted to discuss it before taking action.[262] In a second email the same day to Chism, Gdanski noted that Dan Smith had engaged in a side discussion with the Major County Assistant District Attorney regarding the

[256] Doc. 31 at 284.
[257] Doc. 24 at 188-91; Doc. 25 at 212.
[258] *Id.*
[259] *Id.*; Doc. 27 at 243.
[260] Doc. 27 at 243.
[261] Doc. 26 at 239.
[262] Doc. 28 at 249.

matter.[263] On September 14, 2022, Acting City Manager Chris Hoffman emailed Chism and identified the transformers location: Ninnescah Rural Electric Cooperative.[264]

Bode personally hand-delivered a packet of documents to the City offices on October 10, 2022.[265] The documents Bode provided included the April 5, 2022 council meeting minutes regarding the power line project, the March 7, 2022 Fairview Police Department incident report for the damaged transformer at the Crescent building, Gdanski's March 25, 2022 email to council regarding the transformer's condition, the South Canadian Land Development-SLK commercial lease agreement, and his May 6, 2022 lease termination email to Grant Irwin.[266] Among the documents previously provided to Bode by Gdanski in response to Bode's February 18, 2022 open records request – and thus returned to the City as part of the same packet – were a color-coded spreadsheet showing each grow facility's project material costs, a QuickBooks report from the FUA showing invoices and payments from April 19, 2021 through February 19, 2022, and packets labeled "Crescent," "Grow West," and "Cimarron" containing the underlying Border States invoices, Siblings Investment Group checks, FUA invoices, and requisition for supplies for each project.[267] The Crescent packet specifically contained Border States Invoice 922272646, dated June 16, 2021, for $45,156.98: $21,978.49 for each transformer, plus an additional $1,200 in shipping, under purchase order number CRESCENT, for the two 750 KVA transformers bearing serial numbers 2173926 and 2173927.[268] The documents Bode delivered and received from the City on October 10, 2022 were both purposeful and deliberate: by October, Bode had already been

[263] Doc. 28 at 251.
[264] *Id.* at 250.
[265] Doc. 29 at 252.
[266] *Id.*
[267] *Id.* at 252-53.
[268] *Id.* at 253.

formally charged by the District 26 District Attorney's Office for the theft of the transformers, among other related charges.

G. The Criminal Proceedings That Followed

The State of Oklahoma filed two separate cases against William Shane Bode in the Major County District Court on August 18, 2022. In Case No. CM-2022-45, Bode was charged by misdemeanor information with two counts: Count 1, Misconduct of Elected Official in violation of 21 O.S. § 343, alleging that contrary to proper conduct, Bode embezzled and sold property belonging to the City of Fairview. Count 2, Fraud in Corporate Affairs in violation of 21 O.S. § 1640, alleging that Bode, as registered agent and director of SLK Investments, willfully sold property embezzled from the City of Fairview.[269] Four felony counts were also filed the same day by felony information in Case No. CF-2022-40: Counts 1-2, Embezzlement in violation of 21 § 1451, and Counts 3-4, Concealing Stolen Property in violation of 21 O.S. § 1713.[270]

The criminal charges against Bode were buttressed by a probable cause affidavit after District 26 District Attorney's Office Investigator Steve Tanio was contacted by Chris Gdanski, former City Manager, on July 29, 2022. Gdanski reported he was aware of a criminal violation involving then City of Fairview Councilman Bode, and believed the transformers Bode sold to Ninnescah were in fact the property of the City.[271] Tanio's investigation culminated after collecting evidence of the City's ownership, and with the cooperation of the Pratt, Kansas Police Department obtained an interview of NREC's Lamatsch.[272] Tanio concluded that the two transformers – purchased with public funds, subject to Fairview Municipal Code § 17-310, and supported by the

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[269] Doc. 24 at 188.
[270] Doc. 24 at 194; Doc. 25 at 203.
[271] Doc. 24 at 189-91.
[272] *Id.* at 190-91.

FUA-Yongfa contractual language – were embezzled by Bode, along with other peripheral criminal violations.

Fairview Police Chief Dan Smith, who had also been informed on July 8, 2022, of then-City Manager Gdanski's concern the sale was legitimate as evidenced by email to Hubbard and Chism, resigned six days later.[273] Suspecting corroborative evidence might be stored on Smith's City-issued phone, City Manager Robert Laverty would turn that device over on October 27, 2022, to the Major County Sheriff's Office for a cellular data extraction.[274] From that examination, new information was gleaned that confirmed the results of Tanio's investigation, and ultimately resulted in Smith's subsequent felony case.

Former Fairview Police Chief Daniel Harry Smith was charged in Major County District Court with two felony counts of Conspiracy in violation of 21 O.S. § 421, in connection with the investigation that led to the charges against Bode. Specifically, the charges stemmed from Smith's presence at the transformer sale at the Leviathan building on May 16, 2022, during which Smith took photographs of the transformers and Bode assured Lamatsch that Smith's presence was to legitimize the sale.[275] Smith would be taken into custody in Van Wert, Ohio, on January 9, 2023, on a felony arrest warrant, and waived extradition the next day back to Oklahoma.[276]

Both cases against Bode were dismissed on April 18, 2023 by the State's Notice of Dismissal.[277] The dismissal followed the submission of three affidavits to the District Attorney.[278] In his May 2, 2023 email to Hoby Hammer explaining the dismissal, District Attorney Chris Boring stated that based on his understanding of the evidence he did not believe he could prove

[273] Doc. 27 at 243.
[274] *Id.* at 243-44.
[275] *Id.* at 242-43.
[276] Doc. 27 at 242, 245-46.
[277] Doc. 24 at 202; Doc. 25 at 203.
[278] App. D, 8 at 2 (Email correspondence between Hammer and Boring).

the *mens rea* element of the crimes as charged.[279] Boring pointed to the March 7, 2022 police report in which Yang, rather than the City, was identified as the owner of the transformers; City Attorney Andrea Chism's reported statement to the council and Bode that the City did not own the transformers; and Gdanski's failure to raise any impediment to the sale beyond the question of sales tax.[280] While Boring acknowledged that he personally believed Bode "probably knew what he was doing was illegal," he maintained that personal belief and proof beyond a reasonable doubt were two different things.[281]

The circumstances surrounding the affidavits used to obtain the dismissal were themselves disputed. On the date of the dismissal, City Attorney Katressa Riffel informed the City that three affidavits had been used to dismiss the charges against Bode.[282] According to George Eischen, the brother-in-law of former City Manager Chris Gdanski, Gdanski never signed anything. As of that date, Riffel was still attempting to obtain copies of the affidavits and supporting documentation from the District Attorney's Office.[283] With Bode's criminal cases dismissed, Smith's case dismissal soon followed, along with a Petition to Seal and Expunge Records for both prior defendants.[284] In what would later prove a prescient statement, Boring did suggest civil litigation might be a more appropriate avenue the City might explore, given the lower burden of proof required by the court.[285]

H. The Civil Proceedings

Having watched the criminal charges against Bode collapse, the City turned to a civil claim to reclaim the transformers. On April 4, 2023, just two weeks before the criminal dismissal, the

279 App. D, 8 at 2 (Email correspondence between Hammer and Boring).
280 *Id.*
281 *Id.*
282 Doc. 64 at 711.
283 *Id.*
284 Doc. 24 at 203-04; Doc. 27 at 247.
285 App. D, 8 at 2 (Email correspondence between Hammer and Boring).

City filed Case No. CJ-2023-8 in the Major County District Court, initially naming NREC as defendant.[286] The City soon recognized that the buyer was not the only party who should answer for the loss. On May 16, 2023, it filed an amended petition adding Bode and his company, SLK Investments, LLC, as defendants, and pleading claims for conversion, trespass to chattels, and unjust enrichment against the man who had taken and sold property that was never theirs to sell.[287] Bode, who had already been served on March 28, 2023, would spend the months that followed contesting the City's claims at every turn. [288]

Bode's response to the lawsuit was not to deny that he had taken and sold the transformers, but to insist he had every right to do so. On July 13, 2023, Bode and SLK Investments filed their answer and a set of counterclaims that questioned the City's theory of the case.[289] Rather than contest the underlying facts, Bode built his defense around ownership by arguing that the transformers never belonged to the City at all.

His first counterclaim sought a declaratory judgment that the City never owned the transformers, contending that because Siblings Investment Group had paid the vendor invoice, title vested with SIG and passed to Bode, and that Fairview Code § 17-310 either did not apply to the transformers or, if it did, amounted to an unconstitutional taking of his property.[290] His second counterclaim sought rescission of any contract between the City and SIG, asking the court to vest title in Bode and SLK as SIG's assignees.[291] His third counterclaim was the most aggressive: a claim for malicious prosecution and municipal liability under 42 U.S.C. § 1983, seeking judgment against the City in excess of $75,000 for the criminal charges that had just been dismissed.[292]

[286] Doc. 31 at 258.
[287] *Id.* at 262-69.
[288] *Id.*
[289] *Id.* at 272-82.
[290] Doc. 31 at 280.
[291] *Id.* at 281.
[292] *Id.* at 281-82.

Avoiding criminal conviction, Bode now sought to make the City pay *him* for having brought the case at all.

The City did not wait for trial to test Bode's position in the case. On August 2, 2023, it moved for default judgment against Bode and SLK or, in the alternative, for summary judgment, and to dismiss their counterclaims outright.[293] The City's argument was simple: by Bode's own admissions, the case was already over.[294] Bode had never disputed that he moved the transformers, that he sold them to NREC, or that he directed the $60,000 in proceeds to his own company. What he disputed was ownership. On that question, the City argued, there was no room for debate under the law. Fairview Code § 17-310 vested ownership of all electrical installations in the City at all times, the FUA contract independently confirmed that the transformers remained the property of the Authority, and the City's own funds had paid the $45,156.98 purchase price.[295] To that end, Bode had offered no affidavit, no verification, and no evidence otherwise of a disputed material fact. The City put the matter bluntly: Bode and SLK "simply took property they did not own and sold it."[296] What Bode did do was ask for more time. On August 21, 2023, he moved for an extension under 12 O.S. § 2056(f), and the briefing that followed stretched into the fall: the City replying, Bode replying in support of his extension, and the City filing a surreply on October 4, 2023, that characterized the extension request as another delay tactic by a defendant who had never sought to depose a single witness.[297] The court never ruled on the motion.

While the City postured its case against Bode, NREC charted a different course. Ninnescah, a rural electric cooperative whose only connection to Oklahoma was a single trip to Fairview to

[293] Doc. 31 at 294.
[294] *Id.* at 303.
[295] *Id.* at 295-96.
[296] *Id.* at 303.
[297] *Id.* at 336-38.

collect two transformers, entered the case on July 26, 2023, with a special entry of appearance and a motion to dismiss for lack of personal jurisdiction under 12 O.S. § 2012(B)(2).[298] Ninnescah argued that a Kansas cooperative could not be haled into an Oklahoma court on the strength of one purchase, particularly where it had taken steps to verify Bode's ownership of the transformers with both Bode and Border States before the sale occurred.[299] That motion was opposed by the City, and the court set it for hearing on September 20, 2023.[300]

Whatever the merits of the argument might have been, it never reached a ruling by the court. By October 10, 2023, Ninnescah had reversed course, and appeared generally, filing an answer, and asserting crossclaims of their own against Bode and SLK.[301] The cooperative that had paid Bode $60,000 for transformers he did not own now stood as a co-plaintiff against him, and was positioned to recover from the man who had sold it defective title. The case that began as the City against the buyer had become, in essence, everyone against Bode.

The case's disposition, when it came, came swiftly and on the City's terms. On December 5, 2023, the City filed two dismissals on the same day. As to Ninnescah, the City dismissed its claims with prejudice – the hallmark of a settlement reached and a matter closed for good, with the Kansas cooperative having resolved its exposure to the City.[302] As to Bode and SLK, the City dismissed its claims without prejudice – leaving the courthouse doors open to refile against the man at the center of the dispute.[303]

The distinction here was deliberate. Ninnescah, the good-faith purchaser, was released from all future claims. On the other hand, Bode, who had taken and sold the City's property, was

298 Doc. 31 at 283-93.
299 *Id.* at 284.
300 App. E, 3 (CJ-2023-8 Response to Defendant's Motion to Dismiss).
301 OSCN Docket, 10/10/2023 entry.
302 App. E, 2 (CJ-2023-8 Dismissal as to Ninnescah Rural Electric Cooperative).
303 *Id.*

let go only provisionally. Three days later, on December 8, 2023, Ninnescah dismissed its own crossclaims against Bode and SLK, having no further need to pursue him once its settlement with the City was agreed upon.[304] A final dismissal without prejudice was entered on December 20, 2023, bringing the civil case to a close.[305] No court ever ruled on whether Bode owned the transformers, and no judgment was entered against him. Therefore, neither did any court adjudicate his claim. The City recovered roughly $60,000 from the buyer and reserved the right to come back for Bode another day.

I. The Conduct of District Attorney Chris Boring

The day before the charges against him were formally dismissed, Bode took a step that revealed his understanding of his own conduct. On April 17, 2023, Shane and Lori Bode visited former Mayor Dana Baldwin at her OSU Extension office, where they remained for thirty to forty-five minutes.[306] The Bodes informed Baldwin that the charges against Shane had been dropped, and went on to explain that Yang had owed Bode money and had given Bode the transformers as partial payment for the debt.[307] Baldwin told the Bodes that the council had never voted on or discussed allowing Bode to sell the transformers.[308] She later reported that she was not comfortable with the visit or the discussion.[309]

As set out in the criminal proceedings above, District Attorney Chris Boring dismissed both cases against Bode on April 18, 2023, citing his inability to prove the *mens rea* element of the charged crimes, and relying on three affidavits: one purportedly from Gdanski, who his own brother-in-law maintained never signed.[310] Boring's stated rationale, however, did not rest on the

[304] OSCN Docket, 12/08/2023 entry.
[305] *Id.*
[306] Doc. 64 at 710.
[307] *Id.*
[308] *Id.*
[309] *Id.* at 710-11.
[310] Doc. 24 at 202; App. D, 8 at 2 (Email correspondence between Hammer and Boring); Doc. 64 at 711.

affidavits alone. Explaining his decision, he raised the existence of council discussion that established Bode's authority to sell the transformers for lack of want by the City.

That representation did not withstand an inquiry against the City's own records. On April 28, 2023, in a conversation with Jeff Carey, Boring referenced minutes from a council meeting indicating that Bode could sell the transformers, along with the affidavits he had received.[311] The City tested that claim directly. On May 16, 2023, City Manager Laverty, Hoby Hammer, Kris Ewbank, Assistant City Manager Eischen, Councilman Chuck Lipps, and AP Clerk Michelle Brown reviewed the council minutes spanning April 2022 through July 2022, which would have been the entire window during which the transformers were moved and sold. In no meeting during that period did the council discuss or vote on allowing Bode to sell the transformers.[312] The minutes Boring cited as the one of the bases for dismissal did not exist as he described them; rather, he was likely mistakenly referring to the conversation Bode had with Gdanski in his office with Bartel.

II. ANALYSIS AND FINDINGS

This section that follows rests on two propositions. First, the City owned the transformers as a matter of law under Municipal Code § 17-310. Second, only the City's governing body could authorize the disposition of that property. From these two propositions, supplementary questions naturally follow: whether Bode's sale was a conversion; whether he could pass title to a downstream buyer; whether the transfer triggers statutory penalties; and whether his position as a City councilmember independently barred the transaction. This Report addresses the competing positions advanced by Bode and by the grand jury, issues a definite, merit-based finding of civil liability where it lies, and concludes by briefly assessing a separate, distinct question concerning the posture of any lingering civil remedy available under the law.

[311] Doc. 64 at 711.
[312] *Id.*

A. The Standard of Review and the Significance of the Criminal Dismissal

Dismissal of the criminal charges against Bode for failure to prove criminal intent beyond a reasonable doubt neither determines nor extinguishes civil liability. Under Oklahoma law, a civil claim is established if greater weight of the evidence supports it. Put another way, a juror, in contemplating which party has proved all the elements in a civil lawsuit, "must be persuaded, considering all the evidence in the case, that the proposition on which such party has the burden of proof is more probably true than not true."[313] This threshold is significantly lower than proof beyond a reasonable doubt required for proving criminal certainty; conduct that cannot be proven in that respect may nonetheless be established by a preponderance.

That distinction drives on how both dismissals of Bode's criminal cases should be understood. A dismissal grounded in the State's inability to prove criminal intent beyond a reasonable doubt is not an adjudication that Bode owned the transformers, that the City consented to their sale, or that no wrong occurred. No court ever decided those questions. The criminal proceeding ended before any such determination was made, and it ended on the narrow ground that one element of a criminal offense – Bode's state of mind – could not be proven against the heightened proof standard.[314] The remaining civil questions, which are (1) whether the City actually owned the transformers; (2) whether Bode converted them; and (3) whether he is accountable for their value, have endured, and they are properly evaluated under the civil standard.

This report meticulously undertakes that evaluation. It applies the greater the weight standard to the record and to evidence developed through an independent investigation, and it asks not whether Bode committed a crime, but whether the greater the weight of the evidence establishes his civil liability. For the reasons set forth in this section that follow, it does.

[313] OUJI-Civ No. 3.1

[314] App. D, 8 at 2 (Email correspondence between Hammer and Boring).

B. The City Owned the Transformers

The transformers were the property of the City of Fairview from the moment they were purchased and never ceased to be anything to the contrary. Ownership did not depend on a contract, on installation, or on the source of the funds used to buy them. It arose by operation of the City's own ordinance to forevermore "remain the property of the [C]ity at all times."[315] This is the foundation on which the remainder of the analysis rests: because the City owned the transformers, Bode's sale of them was the disposition of property that was not his to sell.

1. *Section 17-310 vested title in the City upon purchase.*

Fairview Municipal Code § 17-310 governs the establishment and alteration of electric service and the equipment installed to provide it. It requires a customer requesting service to prepay "the estimated cost of the installation, alteration or addition of such service, including the cost of the meter, *transformer*, materials, equipment, appurtenances and all labor."[316] The ordinance then conditions ownership of that equipment in undisputed terms: "All electric installations so purchased and/or installed shall remain the property of the [C]ity at all times."[317]

Here, two features of this text are dispositive. First, the ordinance expressly enumerates the "transformer" among the items of equipment it governs.[318] The transformers at issue are not a category of property arguably outside the ordinance's reach; they are items the ordinance precisely names. Second, the language of the ordinance itself dictates ownership in the City "at all times," and leaves no ambiguity for temporary or conditional vesting. The instant the City purchased the transformers, title belonged to the City.

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315 Fairview Mun. Code § 17-310(A).
316 Doc. 21 at 174 (emphasis added)
317 Doc. 21 at 175.
318 *Id.*

The transformers were purchased with the City's funds. The two 750 KVA transformers, bearing serial numbers 2173926 and 2173927, were procured under Border States Electric Invoice 922272646, on a purchase order labeled "CRESCENT," at a cost of $45,156.98, drawn from Fairview Utilities Authority account FUA3400 and authorized by City officials.[319] § 17-310 operated automatically once the purchase was made and the transformers became – and remained – the property of the City.[320]

2. *The "and/or" language forecloses Bode's only statutory interpretation argument.*

Bode's position depends on reading § 17-310 not to apply to these transformers, either because they were never installed, or because, in his view, the ordinance did not reach them at all.[321] The ordinance's own text defeats that reading. It vests ownership of installations "purchased *and/or* installed." Under the City's own rules of construction, that phrase is not ambiguous. Fairview Municipal Code § 1-102(A)(3) provides that "'And/or' means 'or.'"[322] The same governing body that enacted § 17-310 thus directed how its language is to be read: title vests in the City as to equipment purchased *or* installed; either suffices under its disjunctive reading.

Even accepting the premise that the transformers were never installed and left to sit after delivery, they were unmistakably purchased, with City funds, and governed by an ordinance that names transformers among the categories of equipment it applies to. The absence of installation, on which Bode's reading implicitly relies, is immaterial, because the ordinance does not require both purchase and installation; it requires either. Pleading that the fact transformers were never

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[319] Doc. 9 at 86; Doc. 29 at 252-53

[320] *See also* Doc. 1 at 1 (The contractual language "The transformers shall always remain the property of the Authority" is corroborative, both as extrinsic evidence of a prior course of dealing with Yang and preempts the "selectively relied" finding contained in the grand jury's final report).

[321] Doc. 31 at 280.

[322] Fairview Mun. Code § 1-102(A)(3).

installed resolved the question of ownership matters not, considering § 17-310's unambiguous language and demonstrates otherwise.

3. *The private source of the funds does not make the property private.*

Bode contended that because Siblings Investment Group – one of many entities through which Andy Yang operated – paid the vendor invoice for the Crescent materials, title vested in SIG and passed to Bode, such that the City never owned the transformers.[323] The contention does not survive § 17-310, and it misapprehends the character of the property.

The ordinance conditions ownership on the equipment being "purchased and/or installed" by the City, not on the City being the definitive source of every dollar. The prepayment structure of § 17-310 anticipates that a customer will advance the cost of utility equipment; that is precisely what the ordinance's prepayment requirement is designed to do.[324] A customer who advances the funds does not divest the City of ownership in the same ordinance conferring it in the very next sentence. To interpret it otherwise would mean the ordinance gives ownership with one clause and then takes it away with another whenever a customer pays. That interpretation would render the ownership provision completely meaningless.

The transformers were acquired through the FUA, a public trust with the City as beneficiary; thus, they were held in a fiduciary capacity for the public, not as private inventory. A public trust exists "for the furtherance and accomplishment of any authorized and proper public function or purpose" of its municipal beneficiary and can exercise no greater power of disposal than the beneficiary itself could exercise.[325] Oklahoma law has long distinguished property a municipality holds for its own corporate purposes, which it may freely dispose of, from property

[323] Doc. 31 at 276-78.
[324] Fairview Mun. Code § 17-310.
[325] 60 O.S. § 176(A); *Id.* at § 176.1(B)(3); *See Immel v. Tulsa Pub. Facilities*, 2021 OK 39, ¶27, 490 P.3d 135, 144-45.

held for the public use and benefit of its citizens, which it may not dispose of absent abandonment or unsuitability.[326] The same principle that shields public property from private acquisition through use applies with equal force here: the transformers were public from the moment of acquisition, and no private contribution to their cost altered that character.[327]

4. *The City possessed authority to acquire the transformers.*

Oklahoma law independently empowers a municipality to acquire and hold personal property. A municipality may "purchase and hold real and personal property for the use of the municipality" and "sell and convey" the same,[328] and may "acquire, own, and maintain…facilities for generating or distributing energy"[329] and contract to furnish utility service.[330] That the cost was advanced by a private party does not strip the arrangement of its public character or place it outside the City's authority. A municipal economic or utility arrangement "does not lose its public purpose merely because it involves a private actor,"[331] and the same principle controls a private party's advance of funds toward a municipal utility installation.[332] Acquiring the transformers to provide electric service was an accordingly an ordinary exercise of the City's own statutory authority, and not an *ultra vires* act.[333] Even if Bode could show some defect in the City's authority to enter the arrangement with Yang/SIG, that would at most unravel the agreement; it would not vest title in him because § 17-310 fixes ownership in the City independent of the existence of any contract.

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326 *City Nat'l Bank of Fort Smith v. Inc. Town of Kiowa*, 1924 OK 898, ⁋9, 230 P. 894, 897.
327 *Cf. Waldrop v. Hennessey Utils. Auth.*, 2014 OK CIV APP, 348 P.3d 213 (property held for a valid public use by a public trust cannot be divested by private acquisition, whether by adverse possession or otherwise, absent an affirmative act or abandonment).
328 11 O.S. § 22-101(2)-(3)
329 *Id.* at § 22-104(2).
330 *Id.* at § 22-104(6).
331 *Burkhardt v. City of Enid*, 1989 OK 5, ⁋10, 771 P.2d 608, 611.
332 *See also State ex rel. Brown v. City of Warr Acres*, 1997 OK 117, ⁋15, 946 P.2d 1140, 1144-45 (upholding an economic development plan implemented through a private trust and private funding where the city retained adequate control and consideration).
333 Latin term meaning "beyond the powers." In legal usage, an act is *ultra vires* when a person or entity acts outside the authority granted to them by law.

Bode's recission claim thus fails because that theory depends on manufacturing an assignable ownership interest from Yang, contrary to what ordinance already provides.[334]

5. *Bode's own pleading conceded the ordinance that defeats him.*

Finally, Bode's own pleading confirms the ordinance's operation. He acknowledged that a City ordinance in effect at the time required a customer requesting electric service to prepay the cost of the installation.[335] That ordinance is § 17-310. Having invoked its prepayment requirement, Bode cannot escape the ownership provision in the same section, the sentence providing that the equipment purchased "shall remain the property of the city at all times."

The transformers were public property. They were bought with public funds; acquired through the City's utility authority; all under an ordinance that named them, governed them, and fixed their ownership to the City. Property a municipality holds to provide a public service is not a private inventory of any official.[336]

C. Bode is Liable for the Conversion of the Transformers

Bode is civilly liable for conversion. He exercised dominion over the City's transformers, arranging and completing their sale to a third party and retaining the proceeds, in a manner wholly inconsistent with the City's ownership. His belief that the property was his is no defense, and no person with authority to consent on the City's behalf ever did.

Conversion is "any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein."[337] The wrong lies in the interference with ownership; the converter's good faith, and whether he used the property himself, are immaterial.[338]

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[334] Doc. 31 at 281.
[335] Doc. 31 at 276.
[336] *Cf.* Okla. Const. Art. X, § 17 (public funds and property not to be appropriated to private benefit).
[337] *Steenbergen*, 1987 OK 122, ¶8, 753 P.2d at 1332.
[338] *Id.*

Only tangible personal property may be converted.[339] Nonconsent to the defendant's possession and disposition is an indispensable element the plaintiff must establish; an owner who authorizes or ratifies the taking cannot recover.[340] For a municipality, the authority to consent to or authorize the disposition of public property lies with the governing body; Fairview reserves the disposition of surplus equipment to its City Council.[341]

The good-faith principle is settled and forecloses Bode's central defense. Oklahoma courts have long held that even a good-faith exercise of dominion over property of another is a conversion; a defendant's honest but mistaken belief in his own right does not excuse the interference, however gratuitous.[342] That principle makes Bode's state of mind irrelevant to civil liability, the same reason the criminal proceeding's focus on intent does not control the civil question.

Nonconsent must also be scrutinized as a requisite component of an alleged conversion, with proof shown rather than assumed.[343] The decisive principle is that consent to dispose of public property cannot come from just any municipal actor. Fairview's Municipal Code makes a Council declaration of surplus the legal predicate to any sale of City equipment and vests disposal authority in the Council alone.[344] It follows that permission or silence of a city manager or other subordinate official is not the City's consent and cannot ratify the sale.

The transformers are tangible personal property, properly the subject of conversion. Bode exercised dominion inconsistent with the City's rights through arranging the sale of the City's transformers to a third party, of which the proceeds did not go to the City. As already established,

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[339] *Shebester v. Triple Crown Insurers, Inc.*, 1992 OK 20, ¶14, 826 P.2d 603,608.
[340] *See Am. Biomedical Grp., Inc. v. Techtrol, Inc.*, 2016 OK 55, 374 P.3d 820; *Okla. Farmers' Nat'l Grain Corp. v. Kirkendall*, 1938 OK 337, ¶8, 79 P.2d 570.
[341] Fairview Mun. Code § 7-118; *See also* 11 O.S. § 14-101 (2021).
[342] *See Stack v. Gudgel*, 60 Okla. 32, ¶33, 158 P. 1144, 1145-46.
[343] *See Am. Biomedical*, 2016 OK 55, ¶12, 374 P.3d at 825.
[344] Fairview Mun. Code § 7-118.

the City owned the transformers, so the sale denied the City's ownership in the most complete way possible, by purporting to transfer it away.

Bode's good-faith belief in ownership, however sincerely held, is no defense against the civil claim.[345] Nor can he establish consent. The City's governing body never declared the transformers surplus, never authorized their sale, and took no action approving the transaction.[346] Bode would likely contend implied consent or ratification, pointing to the absence of a City objection, to a city manager's indication that he saw no impediment, and to a City Attorney's advice regarding ownership.[347] That argument fails because none of those actors held the authority to consent. Under § 7-118, only the Council could declare the equipment surplus and authorize its disposal, and a Council declaration was the predicate to any sale. A subordinate official's silence is not the City's assent, and what the law vests in the governing body alone cannot be supplied by anyone else.

Based on the analysis above, the elements of conversion are satisfied: the City's tangible property, a wrongful act of dominion inconsistent with the City's rights, and the absence of authorized consent. Bode's good faith does not excuse the interference, and the ratification defense collapses because no actor with authority to consent ever did. Bode is liable for the common law tort of conversion.

D. No Good-Faith Purchaser Took Valid Title

Because Bode had no title to the transformers, it follows that the sale to NREC passed none either. This is describing the voidness branch of a titleship rule: where goods are not delivered under a transaction of purchase but are simply taken, the transferor has nothing to convey, and

[345] *Steenbergen*, 1987 OK 122, ¶9, 753 P.2d at 1332.
[346] Doc. 31 at 295-96.
[347] *Id.* at 279.

even a good-faith purchaser for value acquires nothing. NREC's status as a purchaser does not defeat the City's ownership.

Oklahoma's commercial code distinguishes void title from voidable title. A purchaser of goods acquires whatever title the transferor had power to transfer. One who holds *voidable* title, which is typically a transferor who obtained goods "under a transaction of purchase" tainted by fraud or a dishonored check, can pass good title to a good-faith purchaser for value.[348] But where there is no transaction of purchase; that is, where the goods are taken rather than bought, the transferor holds *void* title, and good-faith purchaser takes nothing.[349]

The line that decides this case is the "transaction of purchase" prerequisite. Operating when the goods are delivered under a transaction of purchase, the voidable title branch of 12 O.S. § 2-403 is the only path by which a good-faith purchaser can cut off a true owner. Where that predicate is absent, and a party has simply taken property he does not own; there is no voidable title to pass, only void title, and a purchaser from one without title takes nothing. The distinction protects the true owners from losing their property through transfers they never authorized and were never a party to.

There was no transaction of purchase between Bode and the City. The City did not sell, trade, or deliver the transformers to Bode under any transaction. As shown in Section B, the City owned them and never parted with title. Bode's control over the units did not arise from a purchase from the City but from his unilateral assumption of dominion over City property. Therefore, he held, at most, void title, not the voidable title that 12 O.S. § 2-403 requires before a good-faith purchaser can prevail.

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348 12A O.S. § 2-403(1).
349 *See State v. Skaggs*, 2006 OK CIV APP 89, ¶7, 140 P.3d 576, 578-79.

NREC asserted that it bought the transformers in good faith, for value, and without notice, and so took good title.[350] The answer is the transaction-of-purchase requirement. A good-faith purchaser takes good title only where the goods are rendered voidable by fraud or dishonored payment. Here, there was no purchase transaction between the City and Bode at all; the City's loss did not flow from a voidable sale it was a party to, but from a taking it never authorized. With no voidable title in the chain, § 2-403 has nothing to operate on, and NREC, however innocent, acquired no better title than Bode had, which was none.

Title to the transformers never left the City. Bode held void title, not voidable title, because there was no transaction of purchase between him and the City. 12 O.S. § 2-403's good-faith purchaser rule therefore does not apply, and the sale to NREC passed nothing. The City's ownership survived the sale, and its remedy for the wrongful disposition would be the conversion liability established in Section C.

E. Conflict of Interest and Improper Disposal of Public Property

This section adds an independent ground that does not depend on the conversion theory at all but rather rests on Bode's status as a sitting councilman which separately barred the transaction under two Fairview ordinances: the surplus disposal procedure and the conflict-of-interest prohibition, found in Fairview Municipal Code §§ 7-118 and 7-103, respectively.

The sale was independently unlawful on two grounds rooted in Fairview's own ordinances. The transformers were never declared surplus by the City Council and were sold without the required competitive bidding process, in violation of § 7-118; and the sale was a prohibited self-dealing transaction by a City officer under § 7-103. Either ground renders the transaction void; together they confirm that no lawful authority existed for the sale and expose personal liability.

[350] Doc. 25 at 208-09.

Fairview Municipal Code § 7-118 reserves the disposal of surplus equipment to the City Council. No surplus or obsolete equipment may be sold until the Council has declared it surplus, disposal is "as directed by the City Council," and any sale exceeding $25,000 must be made by sealed bids to the highest bidder.[351] Section 7-103, Fairview's conflict of interest ordinance, prohibits a City officer – or a business in which the officer holds a proprietary interest – from selling property to or from the municipality, and bars an officer from become interested in the transfer of surplus municipal property except by public sale after published notice. Where a violation occurs, it constitutes an offense, the transaction is void, and an approving member of the governing body is personally liable.[352] The State of Oklahoma analog is 11 O.S. § 8-113. The Oklahoma Supreme Court has confirmed that § 8-113 is the specific self-dealing statute governing municipal officers, carved out from the general-public officer statute.[353]

These provisions express a single principle: disposition of public property is a public act, reserved to the governing body and forbidden to the officer who would benefit from it. Section 7-118 make a Council declaration of surplus the legal requirement to any sale, so that no official below the Council may dispose of City equipment. Section 7-103 supplies the conflict-of-interest overlay, voiding transactions in which an officer is on both sides. Moreover, Fairview amended the standard exemptions: the small municipality and competitive bid exemptions in § 7-103 each carry a proviso that they do not apply to any officer of the City or a business in which the officer has an interest. Thus, an officer in Bode's position cannot invoke them at all, whatever the City's population.

351 Fairview Mun. Code § 7-118.
352 Fairview Mun. Code § 7-103(A), (F).
353 *McCormack*, 1995 OK 105, ¶13, n.4, 913 P.2d 278, 281 (quoting 21 O.S. § 344).

Section 7-118 was violated at least twice. The City Council never declared the transformers surplus, and the sale price exceeded $25,000.[354] So even a properly declared surplus sale required sealed competitive bids to the highest bidder, not a privately negotiated sale. Permission from a city manager or advice sought regarding ownership from a City Attorney could not supply the missing Council declaration. Likewise, Section 7-103 was also violated. Bode was a sitting councilman, and the purchaser side benefit ran to a business in which he held a proprietary interest; the transaction was therefore a self-dealing prohibited sale, made without the notice of a public sale procedure the ordinance requires for surplus property.[355] The officer-specific provisos foreclose any exemption Bode might have asserted. Under § 7-103(F), the transaction was void and personal liability attached.

With Fairview's own ordinances, the sale was void on two independent grounds: it disposed of equipment never declared surplus and nor competitively bid for, and it was a prohibited self-dealing transaction by a City officer. Neither ground depends on the conversion analysis, and each independently establishes that the sale was unlawful and that Bode was exposed to personal liability.

F. An Examination of Bode's Self-Help Defense

Bode's contention that he was owed money, and took the transformers in satisfaction, is no defense. Generally, a debt does not authorize self-help seizure of property, even more so when it is property belonging to the City rather than to the claimed debtor. Bode satisfied none of the legal predicates for a lawful repossession, and his remedy, if any, was an action against the party who owed him, not seizure of the City's transformers.

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[354] Doc. 31 at 295-96.

[355] Fairview Mun. Code § 7-103(A), (E).

A claimed debt owed to the defendant is not a defense against conversion; the existence of a debt does not entitle a creditor to seize property in satisfaction for it.[356] Lawful self-help repossession requires a security interest or comparable right in the property and may not breach the peace.[357] On the other hand, conversion does not lie merely to collect a debt; the tort protects ownership of identifiable property, not the payment of money owed.[358]

The debt and recovery theory conflates two different things: a contract claim for money and a property right in specific goods. Even a valid creditor must pursue the debtor through legal process, not by appropriating whatever property is at hand; the law permits self-help only where the creditor already holds a defined interest in the very property taken, such as a security agreement or lease, and even then, only without breach of peace. The theory also contains an internal contradiction supplied by the record: it presupposes that someone other than the City owned the transformers, which is incompatible with Bode's separate position that he owned them, and incompatible with the City's ownership established in Section B.

Bode held no security interest, lease, or other defined right in the transformers that would support self-help: he simply took and sold them.[359] Any debt he was owed flowed from Yang, not from the City, so seizing the City's property could not lawfully satisfy it. And Yang's own account of having transferred his interest conflicts with the grand jury's contrary transfer finding.[360] Yet the conflict need not be resolved: on either version, Bode's lawful recourse was a claim against his debtor, Yang, not conversion of the City's transformers.[361]

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[356] 1 Oklahoma Personal Injury § 2.19 (2026); *See Sisler v. Smith*, 1953 OK 303, ¶3, 267 P.2d 1081.
[357] 12A O.S. § 2A-525; *See Helfinstine v. Martin*, 1997 OK 42, ¶10, 561 P.2d 951, 958-59.
[358] *Welty v. Martinaire of Okla, Inc.*, 1994 OK 10, ¶7, 867 P.2d 1273, 1275 (Okla. 1994) (citing *Steenbergen*, 1987 OK 122, 753 P.2d at 1332).
[359] 12A O.S. § 2A-525.
[360] Doc. 64 at 708; *See* App. E, 1 at 5-8 (GJ Final Report).
[361] *See Welty*, 1994 OK 10, ¶7, 867 P.2d at 1275.

A debt is no defense against conversion and Bode met none of the predicates for lawful self-help. The debt and recovery theory fails when applied against the law and is also internally inconsistent with his position of ownership; his remedy lay against the party who owed him, not in the seizure and sale of the City's property.

G. Limitations Would Bar Future Recovery by the City

The conclusions of liability in the preceding sections are independent of any question of limitations. As a practical matter, however, a civil action commenced now would likely be time-barred. This Report states this plainly: the findings concern Bode's liability on the merits, not the present availability of seeking a money judgment.

A conversion claim is governed by the two-year statute of limitations period and accrues under the discovery rule of when the injury is discovered, or reasonably should have been discovered.[362] Where an action is commenced and then fails otherwise than on the merits, the savings statute allows refiling within one year.[363]

The discovery rule fixes accrual at the point the City knew or should have known of the wrongful disposition, and the savings statute can extend the window once after a non-merit's dismissal. These provisions govern the timing of a remedy; they say nothing about whether the underlying conduct was wrongful. A claim can be meritorious and time-barred at the same time, and the two questions should not be conflated.

On the record, the City's knowledge of the wrongful disposition dates July 8, 2022, placing the ordinary two-year conversion window in July 2024.[364] The proceeding civil action was dismissed without prejudice in late 2023 as to Bode, and the one-year savings period following

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[362] 12 O.S. § 95(3); *See also Calvert v. Swinford*, 2016 OK 10, ¶14, 382 P. 3d 1028, 1034 (reaffirming the discovery rule applies to conversion and recovery of property).
[363] 12 O.S. § 100.
[364] Doc. 28 at 249.

that dismissal has likewise run.[365] On these dates, a conversion action refiled now appears to be time-barred, and an analogous penalty period on the legal theory of a *qui tam*[366] action would be no more favorable. But this Report does not rest any conclusion on the continued availability of a remedy because these conclusions are based on the merits and are unaffected by any limitations. This Report only presents its findings as a determination of liability and a record for the public and the City Council.

PART FIVE – CONCLUSION AND RECOMMENDATIONS

I. INSTITUTIONAL FAILURE STATED

Taken together, the three incidents examined in this Report – the missing sixty thousand dollars in cash, the sale of the City's transformers, and the electric line build to the Cimarron Acid property – reflect not merely the misconduct of the individuals named in in it, but the failure of the City of Fairview as an institution. Institutional failure is a finding distinct from individual wrongdoing. It concerns the system: whether the ordinances, procedures, and offices that exist to constrain official conduct performed their function. Over the roughly two years these incidents span, the system experienced a catastrophic shock that compromised almost every facet of governmental function. Cash received by the City was never deposited and the record its counting disappeared. City property was sold by an officer without the surplus declaration the ordinance required. And a public utility project proceeded on a contract the City never signed, along a route no council approved, at a cost no process checked as it progressed.

365 *City of Fairview v. Ninnescah Rural Electric Cooperative et al.*, No. CJ-2023-8 (Okla. Dist. Ct. [Major County] Dec. 5, 2023) (Order of Dismissal Without Prejudice).
366 While not discussed in this Report, a proceeding in *qui tam* is an action brought by taxpayers who themselves "prosecute" a case involving any money or property belonging to the governing entity they represent that was wrongfully paid out or transferred by a public officer. *See* 62 O.S. § 373.

Yet that failure had causes outside of the government as well, which the record shows them operating together simultaneously, rather than in precedent order. The internal causes are documented in the parts above: (1) business moved through executive session under general labels; (2) a contract the Council authorized was never executed by the City but was performed anyway; (3) property and funds left the City without the declarations, deposits, and records its own Municipal Code and practices required, and (4) officer took part in matters in which their interests went undisclosed. Similarly, external causes pressed on those weakened controls: (1) the sudden demand of a previously unregulated industry, arriving with what some would arguably consider windfall amounts of cash in hand that moved, in part, by artificially-created urgent conditions; (2) those actors outside municipal government successfully subverted legal process in furtherance of their interests; and (3) and a contractor whose execution of the work proceeded outside the City's verification. Neither set of causes alone accounts for what happened, but rather each internal lapse gave the pressure someplace to go.

The relationship between individual fault and institutional failure requires a precise statement, so that one may not absorb the other. Public administration has long distinguished two ways an official is held to duty. One is external: the officer is answerable to authority outside himself – the law, elected oversight, and correction by institutions than can call the officer to account and impose a consequence. The other is internal: the officer's own professional standards and sense of obligation, exercised in the moment of discretion where no outside monitor can reach.[367] A functioning system needs both: external accountability fails where conduct is hidden

[367] *Contrast* Herman Finer, *Administrative Responsibility in Democratic Government,* 1 Pub. Admin. Rev. 335 (1941) (external, answerable control), *with* Carl J. Friedrich, *Public Policy and the Nature of Administrative Responsibility, in* Public Policy 3 (Carl J. Friedrich & Edward S. Mason eds., 1940) (internal, professional responsibility), *and* Michael Jackson, *Responsibility Versus Accountability in the Friedrich-Finer Debate*, 15 J. Mgmt. 66 (2009) (distinguishing the two concepts and observing that each covers the other's blind spot).

from view, and internal responsibility fails where the officer lacks the requisite disposition to supply it. The record in Fairview shows both failing at the same time. The external controls – the surplus ordinance, the contract execution requirement, the public vote – were circumvented, and the internal responsibility of the officers who circumvented them supplied nothing in their place. Individuals breached specific duties, and those breaches are addressed in the sections above on their own terms. The institutional finding explains how the breaches persisted undetected and unchecked, until the citizens themselves acted; but it neither excuses them nor diminishes the individual findings.

II. FINDINGS RESTATED

The findings of this Report may be restated briefly. In the missing cash matter, sixty thousand dollars in cash received by the City on March 11, 2021, was never deposited, and the greater weight of the evidence supports findings that Jerry Eubanks converted the City's funds and that Casie Johnson participated in the handling of the never-deposited cash and thereafter gave knowingly false accounts concerning it.

In the transformers matter, the City owned the transformers, their sale by Councilman Bode was a conversion of City property, and the sale passed no title to the purchaser. These findings rest on the City's ordinance, the law of conversion, and are independent of the dismissal of the related criminal charges.

In the electric line matter, the City declined a lawful project that fit its own standard for extending service outside its corporate limits; instead, it pursued a line the same standard placed into question, executing it through a process that departed from the City's ordinary controls at every stage as the project progressed: an unsigned contract, a reroute the Council never approved, costs incurred without bids or a construction contract, and a disposal made without a surplus declaration.

III. THE PATTERN

What links the three is a pattern, and that pattern is what distinguishes an institutional failure from three unrelated lapses. The same features recur in each: decisions made in executive session and recorded in the public minutes only as a brief motion; property and funds leaving the City without the declarations, deposits, and records its ordinances required; and officers participating in transactions in which they held interests they did not disclose.

The recurrence is the point. These were not three isolated errors by unrelated hands. The same gaps in the same controls were exploited each time – by different actors, in different transactions, across a period of several years – bears the hallmark signature of a system that did not correct itself, rather than one consisting solely of individuals acting in concert.

That a small municipality would prove vulnerable in this way is neither surprising nor unique to Fairview. The literature on municipal integrity recognizes that small governments are structurally more exposed to this pattern. Their limited size, combined with a small workforce, cannot support the internal oversight mechanisms that larger cities, states, and the federal government maintain, and they cannot ordinarily count on state or federal oversight to proactively engage absent a complaint about conduct serious enough to draw outside resources.[368]

IV. THE FRAME – HARD AND SOFT FAILURES, AND THE GRAND JURY

The failures this Report describes can be sorted into two kinds, and the distinction matters for what should be done about them. The circumvented ordinances, the unexecuted instruments,

[368] *See* Ctr. for the Advancement of Pub. Integrity, Columbia Law Sch., *Fighting "Small Town" Corruption: How to Obtain Accountability, Oversight, and Transparency* (2016); Ctr. for the Advancement of Pub. Integrity, Columbia Law Sch., *An Overview of State and Local Anti-Corruption Oversight in the United States* (2016).

the disposals made without the required declaration are the first kind of hard failures of the formal framework. These are the failures of governance that permeated. The second kind of soft failures of the setting in which those rules operated were the local political culture, the close personal and business relationships, and the deference that allowed the formal controls to be bypassed without anyone inside the government challenging the bypass as it occurred. Rules can be rewritten, but the conditions that let sound, practicable rules go unenforced are harder to remediate – and are arguably the more important half of what this record reveals.

It is a measure of both failures that external scrutiny engaged only when the citizens of Fairview convened a county grand jury. The controls internal to the City did not surface these matters, and no county or state authority reached them until the residents themselves compelled the inquiry. Notably, this is the precise gap the prevailing literature associates with municipalities of this size. A citizen grand jury separately investigated these matters and issued its own findings. This Report intentionally neither adopts nor disputes them. The grand jury proceeded under the direction of the Oklahoma Attorney General's Office, and therefore on its own standard and on a different record. And although those records are sealed – excluding the petition and its final report – an inference can be drawn that the State of Oklahoma itself was more concerned with exonerating the actions of the local District Attorney's office than it was investigating allegations of mismanagement and corruption in local government.

Conversely, this Report proceeds under the preponderance of the evidence, with the sole function of evaluating civil liability and institutional conduct, and an ancillary aim of providing recommendations to the City to prevent the manner in which local governance was subverted from occurring in the future. That the two inquiries may reach different conclusions on overlapping facts illustrate, rather than complicate, the distinction this Report has maintained throughout. For a finding reached under one standard, for one purpose, does not resolve a question governed by another. Criminal charges may be dismissed, and a criminal or grand jury inquiry may decline to find fault, without adjudicating that the same conduct may or may not give rise to *civil liability*. After all, the dismissal of a criminal charge is not a discharge on the merits of every question the conduct may raise.

V. SCOPE, REMEDY, AND LIMTS

The findings of this Report are confined to the three incidents identified at the outset. The Report reaches no conclusion about any other matter, transaction, or person, and nothing in it should be read as a finding beyond the three incidents combined. Indeed, a review of the record made available to the Special Counsel for this Report did reveal additional matters, which, had it been afforded the opportunity, would have been given the same level of scrutiny and treatment as the three incidents discussed here. The City Council and public are encouraged to examine this Report and record in their totality to determine whether any further matters during the relevant period should be contemplated, and to what extent.

Liability and remedy are two distinct questions. That a course of conduct was wrongful does not establish that a legal remedy for it remains available today, and this Report does not represent that one does. The transformer section states candidly where the time for a particular claim may have run, and the same candor applies throughout. These are findings of what the record shows and should not be construed as assurances of what may still be recovered. Where a claim against a particular party has been disposed with prejudice – as the claim against Ninnescah Rural Electric Cooperative was in the transformer's litigation – this Report does not suggest that a live claim against that party remains. The findings describe conduct and responsibility; they do not reopen matters that have been concluded.

VI. RECOMMENDATIONS

It is not lost on the Special Counsel that the submission and release of this Report to the City Council and public may manifest a desire in the community to determine what enhancements, if any, in the administrative process may be made to prevent such overarching corruption from occurring in the future. The Special Counsel would submit that while history does not necessarily repeat, it does have a propensity to rhyme; that is, while no proposed recommendations to the City Council can prevent a future scandal with certainty, it may be yet possible to foster within the public body a culture of integrity, transparency, and oversight, which may lessen or mitigate future violations. The recommendations that follow address the systemic conditions this Report's findings reveal and are offered independent of, and not as a substitute for, the liability findings above.

Recommendation No. 1. Adopt a written code of ethics with a binding conflict-of-interest and recusal provision.

The City should adopt a written ethics code that goes beyond the existing prohibition in § 7-103 to impose an affirmative, standing disclosure obligation on every officer and require recusal from any matter in which the officer or a related business holds an interest. This Report's transformer and electric line findings share a common feature: an officer's financial interest in the matter before the City was not disclosed to the body voting on it. A standing disclosure requirement, rather than reliance on after-the-fact discovery, is a recommended starting point for small municipality ethics reform.[369]

Recommendation No. 2. Institute a written, enforced surplus declaration and competitive bid procedure for the disposal of City property.

[369] Center for the Advancement of Public Integrity, Columbia Law School, *Fighting "Small Town" Corruption: How to Obtain Accountability, Oversight, and Transparency* (2016).

Both the transformer sale and the disposal of the old electric line proceeded without the Council surplus declaration § 7-118 already requires. The recommendation is not a new rule but enforcement of the existing one: a standing checklist requiring a dated Council declaration of surplus; and, above the statutory requirement, sealed competitive bids, before any sale of the City equipment is finalized, with the City Clerk responsible for confirming the declaration exists before a sale is recorded.

Recommendation No. 3. Require full execution of contracts by all parties, before performance or payment begins.

The electric line project proceeded on a $75,000 contract the City never signed and ultimately ballooned to a cost of approximately $273,000. A written policy that no work commences and no funds are disbursed until a contract bears the signatures of every party, certified by the City Attorney before performance begins, would have interrupted this sequence at its outset.

Recommendation No. 4. Institute periodic ethics training for elected officials and department heads.

A standing agenda item at the start of each Council term, and for department heads, would give officers a working understanding of §§ 7-103 and 7-118, along with the disclosure obligations recommended above, rather than leaving those obligations to be learned only when a violation has already occurred.

Recommendation No. 5. Adopt a records retention policy covering electronic communications.

A considerable share of the evidence probative to this investigation consisted of email and informal correspondence that no records policy required the City to preserve. A written retention policy for electronic communications by officers and staff, consistent with the Oklahoma Records Management Act, would protect the City's own interests in any future inquiry and close a substantial gap this investigation had to work around using records that fortuitously happened to survive.[370]

Recommendation No. 6. Adopt a standing procurement policy extending competitive bid and conflict disclosure principles beyond property disposal to service contracts generally.

The electric line project proceeded with a materials supplier not on the state bid list and without any contract between the City and the utility performing the construction. Recommendation No. 2 addresses disposal; this recommendation extends the same discipline to procurement and service contracting, where this investigation shows the City had no comparable check in place.

VII. CLOSING

This Report, and the record supporting it, are formalized in the City's official records and made available to the Council and the public it serves. What the record shows is offered to the citizenry of Fairview and is the account owed to them. It is not a verdict. It is the evidence, and the standard by which it was weighed, set out so the Council and the public may judge these matters for themselves.

[370] *See* 67 O.S. §§ 201-318.

37	478-482	Fairview Republican and Blackwell Journal-Tribune articles re Eubanks, 2021-2022
38	483-493	Baldwin severance termination letters; Eubanks resume and job application
39	494-511	Eubanks Employment Agreements, 2018 and 2021
40	512-515	Fairview Republican articles re OMPA and Sheriff investigation, 2022
41	516-519	Dobson email to Brown re OMPA work scope, March 2022
42	520-522	OMPA General Manager email re rate assistance, September 2022 |
43	523-534	OMPA Distribution Service Maintenance Agreement and 2021 amendment
44	535-540	OMPA Power Sales Contract Amendment No. 1; Houk & Church opinion
45	541-549	Economic Development Authority QuickBooks transactions, 2015-2022
46	550-552	Baldwin letter terminating Kennedy; Kennedy response, July-August 2021
47	553-556	Blackwell Journal-Tribune re Kennedy resignation, August 2022
48	557-564	Blackwell Journal-Tribune re Greenfield plea and Blackwell corruption
49	565-566	Letter of Intent to Major County Meat Market LLC, August 2020
50	567-578	Council meeting agendas and minutes, August 2020 and February 2021
51	579-586	MCMM Real Estate Purchase and Lease Option Contract, January 2021
52	587-588	MCMM response to City counterproposal, February 2021
53	589-606	City/MCMM Economic Development Agreement draft, March 2021
54	607-617	Riffel legal opinion re FUA note expenditure authority, March 2023
55	618-629	AMI Meter Contract; 2008 bond fund expenditure breakdown and Offering Document
56	630-631	Fairview Republican re citywide camera system, April 2021
57	632-640	Drinking water coliform analysis reports, August and October 2021
58	641-650	Chlorine purchase invoices, April 2021-May 2022
59	651-653	OSU water quality reports, April 2022
60	654-660	City financial summaries, FY2018-2022
61	661-673	Arbitrage and Use of Proceeds Certificate, 2008 FUA Note
62	674-677	Capital Improvement/2012 Sales Tax Fund transaction detail, 2014-2022
63	678-684	Fairview Republican articles re council and personnel matters, September-December 2022
64	685-711	Regier, "City of Fairview Citizens' Concerns," narrative and timeline

APPENDIX B INDEX

Doc.	Pages	Description
1	1-26	Teater Investigation Report
2	1-2	Interview of Jennifer Silcott

APPENDIX C INDEX

Doc.	Pages	Description
1	1-11	Excerpts of Grand jury petitioners August 10, 2022, meeting with Jerry Eubanks
2	1-243	Grand jury petitioners August 11, 2022, meeting with Jerry Eubanks (Withhold)
3	1-8	Excerpts of City officials meeting with OMPA transcript
4	1-10	Excerpts of City officials meeting with Sam Rauh transcript
5	1-12	Excerpts of City officials meeting with Dana Baldwin transcript
6	1-47	City officials meeting with Andy Yang transcript (Withhold)
7	1-6	Excerpts of City officials meeting with Chris Gdanski transcript

APPENDIX D INDEX

Doc.	Pages	Description
1	1-51	Major County Board of Commissioners Agendas, November 1, 2020, to October 31, 2021
2	1-3	Selected Major County Board of Commissioners meeting minutes
3	1	June 1, 2021, Photograph of Daryl Wichert at Major County District #2 Barn
4	1-8	Fairview City Council Resolution 2018-8; Julia Rieman legal opinion (Red Bluff)
5	1-16	Melinda Gould statement, leave request; Farmers & Merchants Nat'l Bank deposit statements
6	1-23	Cimarron Electric Cooperative correspondence and pleadings
7	1-2	E-mail correspondence between Eubanks and Bartel
8	1-2	E-mail correspondence between Hoby Hammer and Chris Boring
9	1-2	FOIA Request correspondence to USDA regarding Major County Meat Market
10	1-7	E-mail correspondence between Cimarron Electric Cooperative Executive Aaron Roark and Robert Laverty

APPENDIX E INDEX

Doc.	Pages	Description
1	1-19	Final Report of the Grand Jury

2	1-2	CJ-2023-8 Dismissal as to Ninnescah Rural Electric Cooperative
3	1-15	CJ-2023-8 Response to Defendant's Motion to Dismiss

PRIVILEGED SUPPLEMENTARY APPENDIX

Doc.	Pages	Description
A, 1-64	1-711	Bates-stamped record of compiled documentary evidence
B, 1	1-26	Teater Investigation Report
B, 2	1-2	Interview of Jennifer Silcott
C, 1	1-11	Grand jury petitioners August 10, 2022, meeting with Jerry Eubanks
C, 3	1-8	City officials meeting with OMPA transcript
C, 4	1-10	City officials meeting with Sam Rauh transcript
C, 5	1-12	City officials meeting with Dana Baldwin transcript
C, 7	1-6	City officials meeting with Chris Gdanski transcript
D, 3	1	June 1, 2021, Photograph of Daryl Wichert at Major County District #2 Barn
D, 4	1-8	Fairview City Council Resolution 2018-8; Julia Rieman legal opinion (Red Bluff)
D, 5	1-16	Melinda Gould statement, leave request; Farmers & Merchants Nat'l Bank deposit statements
D, 8	1-2	E-mail correspondence between Hoby Hammer and Chris Boring
D, 10	1-7	E-mail correspondence between Cimarron Electric Cooperative Executive Aaron Roark and Robert Laverty
P. Supp.	1-2	Letter from Special Counsel to District Attorney Chris Boring

ATTESTATION

The undersigned submit this Report to the Honorable City Council of the City of Fairview, Oklahoma, in their respective capacities as Special Counsel of Jones, Otjen & Jewell, and attest, to wit:

This Report is the product of an independent investigation conducted at the engagement of the City of Fairview. The findings are made under the civil standard of the greater weight of the evidence. They are findings as to conduct and as to the performance of the institution, and they are not, nor do they purport to be, determinations of criminal guilt, which are measured against other standards and processes.

The Report is confined to the three matters it identifies at the outset. It reaches no conclusion as to any other person, transaction, or matter. Where the record supports a finding, it is stated as a finding; where the record permits only an inference, the inference is identified as such; and where a matter could not be resolved on the available record, the Report states as such.

Subject to the foregoing, and to the scope of engagement stated throughout the Report, the undersigned attest that the findings reached herein are in accordance with the above-stated standard and with the professional judgment the endeavor required.

____
Stephen Jones
Special Counsel to the City of Fairview
Jones, Otjen & Jewell

____
Date

____
William Jewell
Special Counsel to the City of Fairview
Jones, Otjen & Jewell

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Date