

**KAY CO. GRAND JURY
SUBMISSION OF QUESTION**

I, Greg DeFino, formally request the Kay Co. Grand Jury to consider the following question for review.

Did the Blackwell Municipal Authority violate 74 O.S. § 85.7 of the Oklahoma Central Purchasing Act, and 61 O.S. 103 of the Oklahoma Public Competitive Bidding Act by hiring the Municipal Finance Services, INC. from Edmond, Oklahoma without bidding for the services?

The Blackwell Municipal Authority hired the Municipal Finance Services to help with issuing of the Utility System and Sales Tax Revenue Note, Series 2006. They were paid for the bond, \$23,250 for there services. (See attached Series 2006 documents)

There were no bids requested or received by the Blackwell Municipal Authority.

In a Attorney General's Opinion, 1983 OK AG 198, it states "It is, therefore, the official opinion of the Attorney General that the provisions of 74 O.S. 85.7 (1981), which exclude contracts for architectural, engineering, legal or other professional services from the competitive bidding requirements of the Oklahoma Central Purchasing Act, do not exempt contracts for the services of investment counselors from the competitive bidding requirements of that Act." (See attached AG Opinion)

The Oklahoma Public Completeive Bidding Act states, "Except as provided in subsection D of this section, public construction contracts less than Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder by receipt of written bids. No work shall be commenced until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.

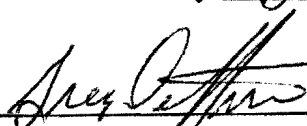
C. Except as provided in subsection D of this section, public construction contracts for less than Two Thousand Five Hundred Dollars (\$2,500.00) for minor maintenance or minor repair work may be negotiated with a qualified contractor. No work shall be commenced until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.

If these two laws do not apply to the Blackwell Municipal Authority, then does the Blackwell City Charter?

In the Oklahoma Attorney General opinion, 2002 OK AG 45, states, "The competitive bidding procedures of the Central Purchasing Act do not apply to municipalities. See 74 O.S. 2001, ' 85.7. 4. The purchase of insurance by a municipality may be subject to a municipal charter or city ordinance competitive bidding procedure."

The Blackwell City Charter Article 3 § 6, mandates bidding any contracts over \$5,000 have to bid.

Submitted this day December 1st, 2008.



Requesting Party



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Oklahoma Attorney General's Opinions

Question Submitted by: Lt. Don E. McCollum, President, Oklahoma Law Enforcement Retirement System

1983 OK AG 198

Decided: 07/27/1983

Oklahoma Attorney General

Cite as: 1983 OK AG 198, ___

¶0 The Attorney General has received your request for an official opinion asking, in effect: **Are the services of an investment counselor considered "professional services," as that term is used in the Oklahoma Central Purchasing Act, 74 O.S. 85.1 et seq. (1981)?**

¶1 The provisions of 74 O.S. 85.7 (1981), part of the Oklahoma Central Purchasing Act, require that acquisitions or contracts in excess of \$750 be submitted for competitive bids. Specifically exempt from this requirement are contracts for architectural, engineering, legal or other professional services. 74 O.S. 85.7 provides:

"No acquisition or contract shall be made in excess of Seven Hundred Fifty Dollars (\$750.00) without the submission of competitive bids by the State Purchasing Director, and such acquisition or contract shall be awarded to the lowest and best bidder *Provided, that such competitive bid requirement shall not apply to contracts for architectural, engineering, legal, or other professional services....*" (Emphasis added).

¶2 Your question to this office is whether the service of an investment counselor is a "professional service," as that term is used in the above-quoted statute, thus, exempting contracts for the services of an investment counselor from the competitive bidding requirements of the Central Purchasing Act.

¶3 In addressing this question, we observe that the term "professional services" is not defined in the Central Purchasing Act, but that the same is defined at 18 O.S. 803 (1981). Under the provisions of 25 O.S. 2 (1981), terms defined in one statute are to be given the same meaning in other statutes, unless a contrary intention plainly appears:

"Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears."

¶4 This rule of construction has been followed on several occasions by the Oklahoma Supreme Court. *E.g.*,

Dolese Bros. Co. v. Privett, 622 P.2d 1080 (Okl. 1981), in which the Court stated:

" . . . Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase whenever it occurs, except where a contrary intention plainly appears. 25 O.S. 2 (1971). *Stone v. Hodges*, Okl., 435 P.2d 165 (1967)." 622 P.2d at 1084.

¶5 As the Oklahoma Supreme Court recognized in the case of *Wimberly v. Deacon*, 144 P.2d 447 (Okl. 1944), the Legislature must be presumed to be familiar with settled rules of construction of statutory provisions, and the Legislature has a right to act upon such rules and to expect that the courts will follow them, stating:

"Those who frame statutes and constitutional provisions must always be presumed to be, and they generally are in fact, familiar with settled rules of statutory and constitutional construction, and they have a right to act on such rules and to expect the courts to follow them in construing and enforcing the same. And in order that there may be stability and certainty in the interpretation and enforcement of such provisions, as they are understood by those who frame them, the courts should scrupulously apply and follow such rules. To do otherwise is to run the risk of going contrary to the true meaning of such provisions, and to amend the statutes or constitution by judicial fiat." 144 P.2d at 450. (Emphasis added).

¶6 Accordingly, when the Legislature, in 1967, amended Title 74 O.S. 85.7, for the first time exempting "professional services," from bidding requirements, the Legislature was presumed to be aware of the rules of statutory construction requiring that words defined in one statute be given the same meaning unless a clear intent to the contrary was shown. 1967 Okla. Sess. Laws, c. 109, 1. The Legislature was further presumed to be aware of the definition of "professional services" in Title 18, first enacted in 1961. 1961 Okla. Sess. Laws, p. 204, 3.

¶7 Thus, the answer to your question is dependent upon whether the provisions of 74 O.S. 85.7 (1981), which exempts "professional services," from bidding requirements, contains language which plainly makes it appear that the Legislature intended that the term be given a meaning different than that contained in the definition in Title 18. We find no such contrary intent.

¶8 The provisions of 18 O.S. 803 (1981) define the term "professional services" to mean:

" . . . the personal service rendered by:

"a. A physician, surgeon or doctor of medicine . . .

"b. An osteopathic physician or surgeon . . .

"c. A chiropractor . . .

"d. A chiropodist-podiatrist . . .

"e. An optometrist . . .

"f. A veterinarian . . .

"g. *An architect* . . .

"h. *An attorney* . . .

"i. A dentist . . .

"j. A public accountant . . .

"k. A psychologist . . .

"l. A physical therapist . . .

"m. A registered nurse . . .

"n. A professional engineer . . .

"o. A land surveyor...." (Emphasis added).

¶9 The use of the term "professional services" in 74 O.S. 85.7 (1981) is consistent with this definition. The language used in the proviso reads:

". . . that such competitive bid requirement shall not apply to contracts for *architectural, engineering, legal, or other professional services.*" (Emphasis added).

¶10 Note that the enumerated services -- architectural, engineering and legal services -- are all included within the definition of "professional services" in Title 18. This enumeration, together with the use of the phrase "or other professional services," leads to but one conclusion, the Legislature was not, in enacting the provisions of Title 74, expressing an intent to use the term "professional services" in a manner different than that provided for in Title 18. Accordingly, under the statutory rules of construction, discussed above, the definition of "professional services" in Title 18 is applicable to the same term in Title 74. As the definition of "professional services" in Title 18 does not contain the services of an investment advisor, we conclude that the proviso in 74 O.S. 85.7 (1981), exempting architectural, engineering, legal or other professional services from the competitive bidding requirements of the Oklahoma Central Purchasing Act, does not exempt the services of investment counselors from such bidding requirements.

¶11 Nor could the requirement of competitive bidding be avoided by the expedient choice of one of the enumerated professionals, for example, a lawyer or accountant, to serve as an investment counselor. Such a contract would still be for investment counseling services rather than any defined professional service. The fact that someone engaged to perform nonexempt personal services may also be licensed to perform exempt professional services is immaterial.

¶12 **It is, therefore, the official opinion of the Attorney General that the provisions of 74 O.S. 85.7 (1981), which exclude contracts for architectural, engineering, legal or other professional services from the competitive bidding requirements of the Oklahoma Central Purchasing Act, do not exempt contracts for the services of investment counselors from the competitive bidding requirements of that Act.**

MICHAEL C. TURPEN
ATTORNEY GENERAL OF OKLAHOMA
NEAL LEADER
ASSISTANT ATTORNEY GENERAL
DEPUTY CHIEF, CIVIL DIVISION

Citationizer[®] Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
Title 18.	Corporations	

Cite	Name	Level
<u>18 O.S. 803,</u>	<u>Definitions</u>	Discussed
Title 25. Definitions and General Provisions		
<u>25 O.S. 2,</u>	<u>Application of Statutory Definitions</u>	Discussed
Title 74. State Government		
<u>74 O.S. 85.1,</u>	<u>Short Title</u>	Cited
<u>74 O.S. 85.7,</u>	<u>Competitive Bid Procedures.</u>	Discussed at Length

Blackwell Municipal Authority

Summary of Transaction

Par Amount: \$2,325,000

Issue Description: Utility System and Sales Tax Revenue Note, Series 2008

Type of Financing: Private Placement

Purchaser: Bank of America, N.A.

Purchaser Limitation: Accredited Investor pursuant to Regulation D

Date: Date of Delivery - January 10, 2008

Interest Rate: 4.08% (Fixed Rate)

Maturity Date: April 1, 2027

Principal and Interest Paid: Monthly by the 25th, commencing January 2008

Average Monthly Payment: \$14,896.19 \$178,754.28 (Annually)

Purpose: (i) Construct Phase I of Electric System Improvement
(ii) Construct west side water system improvements
(iii) Costs of issuance

Security: (i) 1 1/2% Sales Tax for Capital Improvements - Ordinance No. 2753
(ii) Electric, Water, Sewer and Sanitation Revenues

Ratings: None

Purchaser Fee: 1/4 of 1% (\$5,812.50)

Redemption Feature: None

Parity Debt Provision: Net Revenues must equal 1.25 times Average Annual Aggregate Debt Service

Bank Qualified: Yes (City does not issue more than \$10 million in tax-exempt obligations during calendar year 2008)

Rebate Requirements: Exempt from Rebate (City does not issue more than \$5 million in tax-exempt obligations during calendar year 2008)

Tax Status: Exempt from Federal Income Taxes
Exempt from Oklahoma Income Taxes

Bond Counsel: The Public Finance Law Group PLLC 23,250.00 fee
Oklahoma City, Oklahoma

Special Tax Counsel: Hawkins, Delafield & Wood 15,000.00 fee
New York New York

Financial Advisor: Municipal Finance Services, Inc. 23,250.00 fee
Edmond, Oklahoma

Authority Counsel: Mary Ann Kams 12,500 fee
Edmond, Oklahoma

Trustee Bank: Bank of Oklahoma
Oklahoma City, Oklahoma

Closing Date: January 10, 2008

Blackwell Municipal Authority

\$2,325,000

Sales Tax and Utility Revenue Note, Series 2008

Issuance Components

Phase I Electric System Improvements	1,406,000.00
Westside Water System Project	830,000.00
Bond Counsel Fee	23,250.00 -
Local Counsel Fee	12,500.00 -
Special Tax Counsel Fee	15,000.00 -
Financial Advisor Fee	23,250.00 -
Bank Acceptance Fee	5,812.50
Trustee Bank Fee	2,000.00
Bank Counsel Fee	2,500.00
Other Costs and Rounding	<u>4,687.50</u>
Total	2,325,000.00

AGENDA

Special Meeting of the
Board of Trustees of the Blackwell Municipal Authority
Thursday, June 15, 2006 at 12:00 o'clock p.m.
City Hall
Upstairs Conference Room
221 West Blackwell
Blackwell, Oklahoma

1. DETERMINATION OF QUORUM AND CALL TO ORDER.
2. CONSIDER AND TAKE ACTION WITH RESPECT TO A RESOLUTION AUTHORIZING THE BLACKWELL MUNICIPAL AUTHORITY (THE "AUTHORITY") TO ISSUE ITS UTILITY SYSTEM AND SALES TAX REVENUE NOTE, SERIES 2006 (THE "NOTE") IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,800,000.00, AND AUTHORIZING EXECUTION OF A CERTIFICATE OF DETERMINATION, IF NECESSARY; WAIVING COMPETITIVE BIDDING AND AUTHORIZING THE NOTE TO BE SOLD ON A NEGOTIATED BASIS; APPROVING AND AUTHORIZING EXECUTION OF A SALES TAX AGREEMENT BY AND BETWEEN THE CITY OF BLACKWELL, OKLAHOMA, AND THE AUTHORITY PERTAINING TO A YEAR-TO-YEAR PLEDGE OF CERTAIN SALES TAX REVENUE; APPROVING AND AUTHORIZING EXECUTION OF A BOND INDENTURE AUTHORIZING THE ISSUANCE AND SECURING THE PAYMENT OF THE NOTE; PROVIDING THAT THE ORGANIZATIONAL DOCUMENT CREATING THE AUTHORITY IS SUBJECT TO THE PROVISIONS OF THE BOND INDENTURE; RATIFYING, CONFIRMING, AND APPROVING A LEASE AGREEMENT AND/OR AUTHORIZING EXECUTION OF AN AMENDED LEASE AGREEMENT; ESTABLISHING THE AUTHORITY'S REASONABLE EXPECTATION WITH RESPECT TO THE ISSUANCE OF TAX-EXEMPT OBLIGATIONS BY THE AUTHORITY IN CALENDAR YEAR 2006, AND DESIGNATING THE NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION; AUTHORIZING AND DIRECTING THE EXECUTION OF THE NOTE AND OTHER DOCUMENTS RELATING TO THE TRANSACTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO.
3. ADJOURNMENT.

This Agenda was posted in prominent public view at the City Hall, in Blackwell, Oklahoma, prior to 12:00 p.m. on Tuesday, June 13, 2006.

By Debra Paige
Name: Debra Paige
Title: City Clerk

MINUTES OF SPECIAL MEETING OF THE
BOARD OF TRUSTEES
BLACKWELL MUNICIPAL AUTHORITY
THURSDAY, JUNE 15, 2006

Pursuant to the legal notice as is required by the Oklahoma Open Meeting Act, including the posting of notice and agenda on June 13, 2006, as is required by the terms thereof, the Board of Trustees of the Blackwell Municipal Authority met in a special meeting at 12:00 p.m. in the upstairs conference room of City Hall located at 221 West Blackwell, Blackwell, Oklahoma with Chairman Cordell presiding:

Present: Mark Cordell, Chairman
Max Wirtz, Trustee
Steve LeValley, Trustee
Brad Bechtel, Trustee
Sara Norris, Authority Manager
Debra Paige, Authority Secretary

Absent: Ruth Buesing, Trustee
Mary Ann Karns, Trust Attorney

Others present: John Wolf, Municipal Finance Service and Allen Brooks, representing Fagin Law Firm.

1. **MEETING CALLED TO ORDER:**

Chairman Cordell called the meeting to order at 1:15 p.m.

2. **BUSINESS:**

- A. **CONSIDER AND TAKE ACTION WITH RESPECT TO A RESOLUTION AUTHORIZING THE BLACKWELL MUNICIPAL AUTHORITY (THE "AUTHORITY") TO ISSUE ITS UTILITY SYSTEM AND SALES TAX REVENUE NOTE, SERIES 2006 (THE "NOTE") IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,800,000.00, AND AUTHORIZING EXECUTION OF A CERTIFICATE OF DETERMINATION, IF NECESSARY; WAIVING COMPETITIVE BIDDING AND AUTHORIZING THE NOTE TO BE SOLD ON A NEGOTIATED BASIS; APPROVING AND AUTHORIZING EXECUTION OF A SALES TAX AGREEMENT BY AND BETWEEN THE CITY OF BLACKWELL, OKLAHOMA, AND THE AUTHORITY PERTAINING TO A YEAR-TO-YEAR PLEDGE OF CERTAIN SALES TAX REVENUE; APPROVING AND AUTHORIZING EXECUTION OF A BOND INDENTURE AUTHORIZING THE ISSUANCE AND SECURING THE PAYMENT OF THE NOTE; PROVIDING THAT THE ORGANIZATIONAL DOCUMENT CREATING THE AUTHORITY IS SUBJECT TO THE PROVISIONS OF THE BOND INDENTURE; RATIFYING, CONFIRMING, AND APPROVING A LEASE AGREEMENT AND/OR AUTHORIZING EXECUTION OF AN AMENDED LEASE AGREEMENT; ESTABLISHING THE AUTHORITY'S REASONABLE EXPECTATION WITH RESPECT TO THE ISSUANCE OF TAX-EXEMPT OBLIGATIONS BY THE AUTHORITY IN CALENDAR YEAR 2006, AND DESIGNATING THE NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION; AUTHORIZING AND DIRECTING THE EXECUTION OF THE NOTE AND OTHER DOCUMENTS RELATING TO THE TRANSACTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO.**

John Wolf and Allen Brooks presented Resolution 6-15-06MA.
Motion made by LeValley, seconded by Bechtel to approve Resolution 6-15-06MA.
Roll, Yeas: Cordell, Wirtz, LeValley and Bechtel. Nays: None. Motion carried

4. ADJOURNMENT.

Chairman Cordell adjourned the meeting at 1:16 p.m.

Debra Paige, Trust Secretary