



# McAlester City Council

## NOTICE OF MEETING

### Special Meeting Agenda

Tuesday, December 2, 2008 – 6:00 pm  
McAlester City Hall – Council Chambers  
28 E. Washington

Kevin E. Priddle.....	Mayor
Chris B. Fielder .....	Ward One
Donnie Condit.....	Ward Two
John Browne .....	Ward Three
Haven Wilkinson .....	Ward Four
Buddy Garvin .....	Vice-Mayor, Ward Five
Sam Mason .....	Ward Six
Mark B. Roath.....	City Manager
William J. Ervin .....	City Attorney
Cora M. Middleton.....	City Clerk

*This agenda has been posted at the McAlester City Hall, distributed to the appropriate news media, and posted on the City website: [www.cityofmcalester.com](http://www.cityofmcalester.com) within the required time frame.*

*The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to respond to a page or to conduct a phone conversation.*

*The McAlester City Hall is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 918.423.9300, Extension 4956.*

#### CALL TO ORDER

*Announce the presence of a Quorum.*

#### ROLL CALL

#### SCHEDULED BUSINESS

1. Discussion, and possible action, on the City Attorney's legal opinion regarding the Use of Sales Tax Proceeds per Ordinance No. 2144. *(William J. Ervin, City Attorney)*
2. Discussion, and possible action, on the City Attorney's legal opinion regarding the findings in the BKD Audit. *(William J. Ervin, City Attorney)*

#### ADJOURNMENT

#### CERTIFICATION

*I certify that this Notice of Meeting was posted on this \_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_ a.m./ p.m. as required by law in accordance with Section 303 of the Oklahoma Statutes and that the appropriate news media was contacted. As a courtesy, this agenda is also posted on the City of McAlester website: [www.cityofmcalester.com](http://www.cityofmcalester.com).*

---

**Cora M. Middleton, City Clerk**

November 24, 2008

Mr. Mark B. Roath, City Manager  
City of McAlester, OK  
P.O. Box 578  
McAlester, OK 74502-0578

Dear Mr. Roath:

The City of McAlester, OK (the City) engaged Crawford and Associates, P. C. to assist in the preparation of a schedule of restricted sales tax receipts and debt service payments made from such receipts, in order to calculate any excess restricted sales tax receipts related to the Series 1992, 1995, 1999, and 2002 capital improvement bonds.

As noted in the attached schedule, restricted sales tax receipts from November 1992 through August 2008 totaled \$41,876,316.63, while transfers of these restricted sales tax receipts for debt service totaled \$27,466,570.85, leaving an excess of restricted sales tax receipts for these issues of \$14,409,745.78.

The restricted sales tax receipt amounts for this time frame were obtained from the Oklahoma Tax Commission; the transfers of these restricted sales tax receipt amounts for debt service were obtained from Trustee Bank statements maintained by the City, or from direct confirmation with various trustee banks.

We would like to express our appreciation for all the courtesy and assistance we received from the City of McAlester during the engagement above and hope that this report will be of benefit.

If we can be of further assistance, please do not hesitate to contact us.

*Crawford & Associates, P.C.*

Crawford & Associates, P.C.

<u>PWA</u>		Debt Service Transfers Made With Restricted Sales Tax Receipts				
Bond Series	FY Year End	Restricted Sales Tax Receipts	1999A	1999B	2002	
1992	1993	1,183,044.46	638,330.00			
	1994	1,919,921.29	1,070,250.00			
	1995	2,021,255.51	1,080,945.00			1992 refunded by 1995
1995	1996	2,100,227.58	2,228,050.00			
	1997	2,173,783.50	2,218,550.00			
	1998	2,253,475.27	540,000.00			
1999	1999	2,365,082.45	-	1,655,650.00	-	1995 refunded by 1999
	2000	2,487,039.49	630,994.54	46,542.45	-	
	2001	2,629,804.79	1,552,697.74	75,091.58	-	
	2002	2,738,827.30	1,525,849.40	103,640.68	-	
	2003	2,697,067.78	872,674.72	54,201.25	287,365.18	
	2004	2,783,139.62	698,239.30	61,936.56	561,896.31	
	2005	2,917,565.16	1,456,196.73	107,906.23	656,617.86	
	2006	3,241,236.05	1,653,764.61	199,046.85	792,082.70	
	2007	3,635,089.61	1,816,493.09	297,506.00	924,987.50	
	2008	3,984,193.52	1,810,571.51	373,614.74	946,385.40	
	2009	745,563.25	301,913.34	67,142.92	159,436.66	
		<b>41,876,316.63</b>	<b>20,095,519.98</b>	<b>3,042,279.26</b>	<b>4,328,771.61</b>	<b>14,409,745.78</b> Excess restricted sales tax receipts

November 24, 2008

Mr. Mark B. Roath, City Manager  
City of McAlester, OK  
P.O. Box 578  
McAlester, OK 74502-0578

Dear Mr. Roath:

The City of McAlester, OK (the City) engaged Crawford and Associates, P. C. to perform certain professional services as identified in the Scope and Objectives of Our Services section below.

**Background, Scope and Objectives of Our Services**

The scope of our professional services was limited to performing certain tasks as outlined in our letter of engagement dated April 17, 2007 related to assisting the City in its analysis of bond proceeds usage for the McAlester Public Works Authority (MPWA) Series 1999A, 1999B, and 2002 Utility System Revenue Bonds and the Series 2004 Sales Tax Revenue Bonds (hereinafter collectively referred to as "the Bonds").

Our services were requested by management to assist them in responding to and developing corrective action for findings contained in a special audit report on the use of the Bond proceeds for the above-mentioned bond issues. In a report dated January 6<sup>th</sup>, 2006, the firm of BKD identified a total of \$3,291,826 of "total bond proceeds used for unknown purposes or used improperly for debt service". Management has asked for our assistance in responding to these findings, including identifying expenditures incurred by the City and MPWA in other funds that may be considered potentially allowable expenditures or uses of the bonds proceeds that could have been made directly from bond construction funds. The end result, of this allowable expenditures analysis, is to provide management with documentation as to assist in quantifying any amount that may need to be reimbursed by the City or MPWA to bond issue construction funds for future allowable uses.

The objectives of our services in this engagement were as follows:

1. Research the Bonds' indentures to define allowable uses or expenditures that could be paid with the Bonds' proceeds;
2. Identify expenditures that were made by the City or MPWA from sources other than the direct use of bond proceeds construction funds that could be considered potentially allowable uses of the bond proceeds based on the definition determined in task 1 above;
3. Develop recommendations on the resolution of the Bonds' proceeds use issues; and
4. Assist the City with preparation of a repayment schedule for any of the Bonds' proceeds used for any remaining unallowable expenditures identified that may require reimbursement to the MPWA bond construction funds.

## **CRAWFORD & ASSOCIATES, P.C.**

Mr. Mark B. Roath, City Manager

Page 2

November 24, 2008

The determination of allowable uses of the bond proceeds involves matters inherently dependant upon legal determinations. Our analysis of potential allowable expenditures or uses was performed based on our professional opinion and understanding of the definition of allowable expenditures and uses contained within the bond indenture language. Our determinations are not intended to be, and should not be, used as legal determinations.

This report summarizes the tasks we have performed to-date and our resulting conclusions.

### **Tasks Performed**

To accomplish the above stated objectives, to date, we have:

- Reviewed the various bond indentures and obtained an understanding of the definitions and identification of allowable expenditures and uses of the bond proceeds based on our professional judgment;
- Prepared two schedules, hereinafter referred to Option 1 and Option 2, (Option 1 excludes Airport Hanger costs from the 2004 Economic Development Bond Issue and includes the Airport Hanger costs as part of the Sinking Fund reserve transfer; Option 2 includes the Airport Hanger costs as part of the 2004 Economic Development Bond Issue) that detail the potentially allowable expenditures made by other funds that we have identified based on our understanding of the definition of allowable uses of the bond proceeds;
- Developed recommendations on the further resolution of the Bonds' proceeds use issues.

No procedures have been performed to date for the preparation of a repayment schedule for any of the Bonds' proceeds used for unallowable costs.

### **Results and Conclusions**

As previously noted, the final determination of allowable uses of the bond proceeds involves matters inherently dependant upon legal determinations. Our analysis of potential allowable expenditures or uses was performed based on our professional opinion and understanding of the definition of allowability as contained within the bond indenture language. Based on the uncertainty of pending legal determinations, the entire amount of questioned use of bond proceeds as outlined in the BKD report of \$3,291,826, is still technically in question.

However, based on our professional judgment in defining allowable uses of the bond proceeds, we have identified, as documented on the accompanying schedules (Option 1 or Option 2), \$2,346,054.50 in expenditures incurred by other funds that could potentially qualify as allowable expenditures or uses of the bond proceeds for management's consideration pending further legal determinations. If these identified expenditures are determined to be a legal use of the bond proceeds, it would leave a remaining balance of BKD questioned expenditures of \$945,771.50 for which no allowable uses incurred by other funds could be identified.

**CRAWFORD & ASSOCIATES, P.C.**

Mr. Mark B. Roath, City Manager

Page 3

November 24, 2008

For purposes of this analysis, the use of bond proceeds from one debt issue to pay debt service payments on another issue was not considered an allowable use. If, based upon legal determinations, debt service on another bond issue is considered an allowable use, the \$945,771.50 for which no allowable expenditures could be identified would be reduced by \$439,725.00 (from the 2002 Bond Issue), and \$182,000.00 (from the 2004 Economic Development Bond s) leaving a remaining balance of \$324,046.50 for which no allowable expenditures could be identified.

We recommend that the City pursue further legal determinations as to the appropriateness of the potential allowable expenditures as identified in Option 1 and Option 2 schedules attached, including the use of bond proceeds from one bond issue to pay debt service on another bond issue. Once the legal determinations are made and accepted by the City and MPWA governing body, an appropriate repayment schedule can be determined and developed for any remaining questioned expenditures.

We would like to express our appreciation for all the courtesy and assistance we received from the City of McAlester during the engagement above and hope that this report will be of benefit.

If we can be of further assistance, please do not hesitate to contact us.

*Crawford & Associates, P.C.*

Crawford & Associates, P.C.

**Bond Proceeds Used for Unknown Purposes: Option 1 (Inclusion of Airport Hangers as part of Sinking Fund reserve transfer)**

Date	Check #	Fund	Acct Number	Vendor	Description	Amount	Running Balance	Date Transaction Occurred	Note:
<b>1999 /2002 Morgan Stanley debt agreement fees</b>							<b>400,000.00</b>		
11/8/2004	26693	COF	07-5211505	Warren Cat	Backhoe for Streets and Landfill - Streets	48,000.00	352,000.00	May 6, 2003	\$270,000 for Streets and Drainage System (1999 Series)
7/11/2006	32647	MPWA	02-5874401	CDG Technology Inc	Chlorine Dioxide Generator - Cl	24,702.00	327,298.00		\$130,000 for Capital Improvement (2002 Series)
6/23/2004	Cap Lease	COF		Warren Cat	Warren Cat Motor Grader	167,900.00	159,398.00		Date of Issuance: 5-1-1999
8/21/2002	Cap Lease	COF		Bancfirst	Street Sweeper	112,713.00	46,685.00		
Total Potential Qualifying Expenses						353,315.00			
<b>Sinking Fund reserve transferred to City</b>							<b>1,652,101.00</b>		
6/22/2007	36333	MPWA	02-5874401	GE Analytical Instruments	TOC Analyzer - Inorganic Carbon Remover	18,638.08	1,633,462.92	June 10, 2003	2002 - Capital Improvement and MPWA
6/27/2006	32567	MPWA	02-5874481	Adamson RWD #8	Acquisition of RWD #8 Hereford Ln Acqu.	130,000.00	1,503,462.92		Date of Issuance: 7-1-2002
8/14/2007	36771	MPWA	02-5866401	Frontier International Trucks	Trash Truck (Roll Off Reeving)	101,529.94	1,401,932.98		
1/30/2004	Note Pay	MPWA		First National Bank	Water Upgrades	343,160.00	1,058,772.98		
9/12/2002	Cap Lease	COF		First National Bank	Expo Seating	834,750.00	224,022.98		
7/28/2003	Cap Lease	COF		First National Bank	Expo marquee sign, sound system, & BB goals	142,236.00	81,786.98		
6/30/2005	Note Pay	MAA		First National Bank	Airport Hangers	405,325.00	(323,538.02)		
11/8/2005	30273	MPWA	02-5866410	Warren Cat	Engine for Dump Truck 250	17,100.48	(340,638.50)		
Reclass Expenses to Transfer Below						(340,638.50)	-		
Total Potential Qualifying Expenses						1,652,101.00			
<b>2004 Economic Development Dated October 26, 2004</b>							<b>800,000.00</b>	October 25 & 26, 2004	2004 - Economic Development
Total Potential Qualifying Expenses						-			
<b>Transfer from 2002 Construction fund to 1999A sinking fund</b>							<b>439,725.00</b>		
Reclass Expenses from Sinking Fund Above						340,638.50	99,086.50		2002 - Capital Improvement and MPWA
Date of Issuance: 7-1-2002									
<b>Total Transactions Questioned</b>							<b>3,291,826.00</b>		
<b>Expenses Potentially Qualifying</b>							<b>2,346,054.50</b>		
<b>Amount remaining to fund</b>							<b>945,771.50</b>		
<b>Amount Related to 2002 Capital Improvements</b>							<b>145,771.50</b>		
<b>Amount Related to 2004 Economic Development</b>							<b>800,000.00</b>		
<b>Total Amount Remaining to Fund</b>							<b>945,771.50</b>		

Note: For purposes of this spreadsheet, the use of bond proceeds used to pay debt service is not considered to be an allowable cost.  
 2002 bond proceeds used for debt service = \$439,725.00  
 2004 ED bond proceeds used for debt service = \$182,000.00

**Bond Proceeds Used for Unknown Purposes: Option 2 (Inclusion of Airport Hangers as 2004 Economic Development)**

Date	Check #	Fund	Acct Number	Vendor	Description	Amount	Running Balance	Date Transaction Occurred	Note:	
							<b>400,000.00</b>			
<b>1999 /2002 Morgan Stanley debt agreement fees</b>									May 6, 2003	\$270,000 for Streets and Drainage System (1999 Series)
11/9/2004	26693	COF	07-5211505	Warren Cat	Backhoe for Streets and Landfill - Streets	48,000.00	352,000.00		\$130,000 for Capital Improvement (2002 Series)	
7/11/2006	32647	MPWA	02-5874401	CDG Technology Inc	Chlorine Dioxide Generator - Cl	24,702.00	327,298.00		Date of Issuance: 5-1-1999	
6/23/2004	Cap Lease	COF		Warren Cat	Warren Cat Motor Grader	167,900.00	159,398.00			
8/21/2002	Cap Lease	COF		Bankfirst	Street Sweeper	112,713.00	46,685.00			
Total Potential Qualifying Expenses						353,315.00				
<b>Sinking Fund reserve transferred to City</b>							<b>1,652,101.00</b>			
6/22/2007	36333	MPWA	02-5874401	GE Analytical Instruments	TOC Analyzer - Inorganic Carbon Remover	18,638.08	1,633,462.92	June 10, 2003	2002 - Capital Improvement and MPWA	
6/27/2006	32567	MPWA	02-5874481	Adamson RWD #8	Acquisition of RWD #8 Hereford Ln Acqui	130,000.00	1,503,462.92		Date of Issuance: 7-1-2002	
							1,401,932.98			
1/30/2004	Note Pay	MPWA		First National Bank	Water Upgrades	343,180.00	1,058,772.98			
9/12/2002	Cap Lease	COF		First National Bank	Expo Seating	834,750.00	224,022.98			
7/28/2003	Cap Lease	COF		First National Bank	Expo marquee sign, sound system, & BB goals	142,236.00	81,786.98			
11/8/2005	30273	MPWA	02-5866410	Warren Cat	Engine for Dump Truck 250	17,100.48	64,686.50			
Total Potential Qualifying Expenses						1,587,414.50				
<b>2004 Economic Development Dated October 26, 2004</b>							<b>800,000.00</b>			
8/30/2005	Note Pay	MAA		First National Bank	Airport Hangers	405,325.00	394,675.00	October 25 & 26, 2004	2004 - Economic Development	
Total Potential Qualifying Expenses						405,325.00				
<b>Transfer from 2002 Construction fund to 1999A sinking fund</b>							<b>439,725.00</b>			
									2002 - Capital Improvement and MPWA	
									Date of Issuance: 7-1-2002	
FY 05-06						<b>Total Transactions Questioned</b>	<b>3,291,826.00</b>			
FY 06-07						<b>Expenses Potentially Qualifying</b>	<b>2,346,054.50</b>			
FY 07-08						<b>Amount remaining to fund</b>	<b>945,771.50</b>			
						<b>Amount Related to 2002 Capital Improvements</b>	<b>551,096.50</b>			
						<b>Amount Related to 2004 Economic Development</b>	<b>394,675.00</b>			
						<b>Total Amount Remaining to Fund</b>	<b>945,771.50</b>			

Note: For purposes of this spreadsheet, the use of bond proceeds used to pay debt service is not considered to be an allowable cost.  
 2002 bond proceeds used for debt service = \$439,725.00  
 2004 ED bond proceeds used for debt service = \$182,000.00

**ERVIN & ERVIN**  
ATTORNEYS AT LAW, L.L.P.

215 EAST CHOCTAW, SUITE 104  
FIRST NATIONAL CENTER  
P. O. BOX 1449  
MCALESTER, OKLAHOMA 74502

WILLIAM J. ERVIN  
WILLIAM J. ERVIN, JR.

PHONE (918) 423-4242  
FAX (918) 423-4243

December 2, 2008

The City Counsel  
City of McAlester, Oklahoma

RE: Legal Opinion – Use of Sales Tax Revenue Generated by Ordinance No. 2144  
of the City of McAlester, Oklahoma.

Dear Sirs:

I have reviewed all available information relevant to the above referenced matter. The following constitutes the city attorney's legal opinion regarding the issues raised by the McAlester City Counsel.

I will attempt to address the specific legal question presented and to propose possible action the Counsel might take, in addition to the steps previously taken, regarding same. The legal question is:

- (1) Whether the funds generated by the Proposition contained in Resolution 02-02 and the sales tax levied pursuant to Ordinance No. 2144 of the City of McAlester, Oklahoma are to be used solely for the purpose of paying principal and interest or whether funds in excess of those required by debt maintenance may be used to fund additional capital improvements?

Answer: **The language of the proposal cannot be determined, as a matter of law, to meet the specificity required by the Constitution of the State of Oklahoma. As a result, the excess sales tax revenue should be used solely for the purpose of paying the principal and interest on indebtedness authorized in the proposal, until such time that it is either judicially determined that the existing language is sufficient to authorize funding capital improvements, or until the language is amended and approved by the voters.**

The Proposition contained in Resolution No. 02-02 reads as follows:

## PROPOSITION

Shall Ordinance No. 2144 of the City of McAlester, Oklahoma, being an ordinance amending Ordinance No. 1576, which will extend the levy of the existing excise tax of one percent (1%) upon the gross proceeds or gross receipts derived from all sales taxable under the Sales Tax Law of Oklahoma *for the sole purpose of paying the principal of and interest on indebtedness incurred on behalf of the City of McAlester by the McAlester Public Works Authority for the refinancing of indebtedness of said City and Authority and providing capital improvements of said City*; providing for the purpose thereof; approving the incurring of indebtedness by said Authority in the amount of not to exceed \$ 18,500,000.00 for said purposes; extending the existing one percent (1%) excise tax from November 30, 2029 to November 30, 2031, or when such debt will be paid, whichever shall be earlier, be approved? (Emphasis added)

The language in question is simply “and providing capital improvements of said City”. Article 10 § 19 of the Oklahoma Constitution states:

**“Every act enacted by the Legislature, and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body, levying a tax shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.”**

Please note that the key phrase is “specify distinctly” this phrase is subject to interpretation, and the relevant case law test the sufficiency of the language on a case by case basis. As a practical result, unless a published appellate case is found that addressed the exact language at issue in the above proposition, the issue becomes a question of fact and not law. Is the language, in fact, specific enough to advise the public as to how their taxes are to be spent, and to allow them to know if the subject revenue is being diverted.

There is some guidance in the form of Attorney General Opinions more specifically Okl. A.G. Opin. No. 04-32, and Okl. A.G. Opin. No. 05-23, where there are lengthy discussions of the term “purpose” in the context of bond

indebtedness and tax revenue. While the Attorney General recognizes that such statements require a "reasonable measure of flexibility", both opinions deal with specific capital improvement projects and not a general authorization for any capital improvement of the entity.

The City, as a prophylactic step, has been segregating this excess sales tax revenue in both the current and immediate past fiscal years. It is my considered opinion that this course should continue until the sufficiency of the proposal's language be either judicially determined or be clarified and reapproved by the voters.

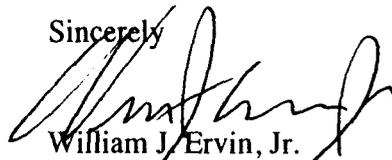
By following this conservative course of action the interests of the city are protected, the interests of the taxpayers are protected, and the subject tax revenue is going solely to an authorized purpose approved by the qualified electors of the City.

#### PROPOSED ADDITIONAL ACTION

- Option 1: Prepare a ballot proposition amending the proposal's stated purpose to clarify the language to expressly authorize the use of excess revenue to fund specific capital improvements, and ratifying such capital improvement expenditures in the past.
- Option 2: File a Declaratory Judgment Action in the District Court to obtain a judicial determination as to the nature and effect of the existing language, and the expenditures authorized.
- Option 3: Use all revenue generated by this proposition only for principal and interest payments of the related bond indebtedness.
- Option 4: Use the revenue generated by this proposal to make the required debt maintenance payments first, and then use the excess revenue only for specific capital improvements of the City, and wait for this practice to be challenged by third party litigation.

Each action option has both positive and negative aspects, which I will discuss further if necessary. If you need additional information or if I can be of further assistance please contact me.

Sincerely



William J. Ervin, Jr.

Ervin & Ervin, Attorneys at Law, LLP

**ERVIN & ERVIN**  
ATTORNEYS AT LAW, L.L.P.

215 EAST CHOCTAW, SUITE 104  
FIRST NATIONAL CENTER  
P. O. BOX 1449  
MCALESTER, OKLAHOMA 74502

WILLIAM J. ERVIN  
WILLIAM J. ERVIN, JR.

PHONE (918) 423-4242  
FAX (918) 423-4243

December 2, 2008

The City Counsel  
City of McAlester, Oklahoma

RE: Legal Opinion – Corrective Action indicated by the BKD Investigative Audit Findings and potential qualifying offsets.

Dear Sirs:

I have reviewed all available information relevant to the above referenced matter. The following constitutes the city attorney's legal opinion regarding the issues raised by the McAlester City Counsel.

I will attempt to address the specific legal question presented and to propose possible action the Counsel may take, in addition to the steps previously taken, regarding same. The legal question is:

- (1) May the potential qualifying expenditures identified by Crawford & Associates, P.C. be used to offset part of the questioned bond proceeds identified by the BKD Audit?

**Answer: No. The potential qualifying expenses identified have no correlation in time or amount to the bond proceeds distributed by or transferred from the Trustee. Once the proceeds were comingled with general revenue they lose their individual character, they become fungible. While the indentified expenditures might be considered allowable uses of the bond proceeds, there is no evidence that any of the bond proceeds at issue were used for any such expense. Since the bond proceeds cannot, with any degree of reasonable certainty, be tied to any potentially qualifying expense, there is no evidentiary or legal basis to claim such as an offset.**

Under Article 10 § 16 of the Oklahoma Constitution, money borrowed by municipality may be used only for purpose for which borrowed. In re Bliss, Okla., 285 P. 73 (Okla. 1929); Gulf, C. & S.F. Ry. Co. v. Excise Board of Love County, 283 P. 1003 (1930).

In 2005, the City of McAlester, commissioned BKD, L.L.P. to perform an investigative audit (The BKD Audit) with regard to the City's Leave Buyback Policies and the past usage of bond proceeds. On January 6, 2006, BKD submitted a Forensic Accounting Report addressing both issues.

The relevant part of that report pertains to the past use of bond proceeds. As part of the BKD audit the auditors reviewed five bond issues originated between 1999 and 2004, more specifically Series 1999 (capital improvements), Series 2002 (capital improvements), Series 2003A (educational facilities), Series 2003B (economic development), and 2004 (economic development).

In reviewing the disbursements made from the bond proceeds by the Trustee, the BKD audit identified a total of \$ 3,291,826.00 in bond proceeds that were either; (1) used for unknown purposes or purposes that were not properly documented, and (2) bond proceeds that were transferred improperly. The subtotals for each are set forth below:

Bond proceeds used for unknown purposes:	\$ 2,670,101.00
Improper Transfers:	\$ 621,725.00

On November 24, 2008 Crawford & Associates issued a letter outlining their attempts pursuant to a letter of engagement with the City of McAlester, Oklahoma to; (1) To research and define allowable uses or expenditures that could be paid with bond proceeds, (2) Identify expenditures that were made by the City or MPWA from sources other than the direct use of bond proceeds that could be allowable uses, (3) to develop recommendations on the resolution of the bond proceed use issues, and (4) Assist the City with the preparation of a repayment plan.

While there may be some question as to whether the potential qualifying expenses identified are in fact eligible for payment by bond proceeds, there is no evidence or documentation which supports that any such expense was actually paid for from such proceeds. There is no nexus between the disbursement of restricted bond proceeds and capital expenditures or economic development done during the same years. There is no correlation between the bond proceeds and any expenses that might qualify.

The theory then becomes that if bond proceeds were received, and any funds of the City were used, it offsets the bond proceeds. This is inconsistent with the Oklahoma Constitution Article 10 § 16. The proceeds of the bond indebtedness are to be used solely for the purposes for which they were approved, and this is true even when other monies of the City are used for such purposes.

Article 10 § 6 of the Oklahoma Constitution simply states;

**“All laws authorizing the borrowing of money by and on behalf of the State, county, or other political subdivision of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose.”**

It is important to note that while the scope of this opinion was limited to the offset question, it should not be read as an endorsement or condemnation of the findings contained in the BKD Audit. There does however seem to be an assumption that in quantifying an amount to be reimbursed, that bond proceeds used for purposes unknown to the auditors must be included, and must therefore be assumed to have been used for an impermissible purpose. The law makes no such assumption.

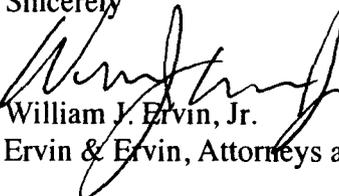
Without question the bond proceeds specifically identified as improper transfers should be part of any reimbursement plan. There remains a question for the Counsel as to whether bond proceeds that were used for unknown purposes, or had insufficient documentation to make a determination, should be included in the reimbursement plan.

#### PROPOSED ADDITIONAL ACTION

- (1) Quantify the amount of bond proceeds to be repaid under a formal reimbursement plan, identifying which sums need to be reimbursed to which issue, crediting the sums that the City has previously budgeted for reimbursement, and accounting for the funds that may be recovered from third parties through litigation.
- (2) Adopt a repayment schedule, in coordination with any committee of the City, necessary for such task.
- (3) Continue efforts to recover monies through litigation from responsible third parties.

If you need additional information or if I can be of further assistance please contact me.

Sincerely



William J. Ervin, Jr.

Ervin & Ervin, Attorneys at Law, LLP