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FROM: John Michael Williams
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DATE: June 5, 2023

**OPINION REGARDING CITY CONTRACT WITH
MID-DEL TECHNOLOGY CENTER**

I. QUESTION AND INTRODUCTION.

You have requested the legal opinion of Williams, Box, Forshee & Bullard, P.C. as to the following questions:

Can the City enter into contracts with Mid-Del Technology Center since the Ward 3 City Council Person is also an employee with the Technology Center, especially considering the result found by the Attorney General in Attorney General Opinion 1977 OK AG 167? And, can the City enter into contracts with the Mid-Del School System, since the Technology Center is a part of the School System, based on the same reasoning in Attorney General Opinion 1977 OK AG 167? And, are there other implications to approval of such contracts?

The following defined terms are used in this Opinion:

“City” means the City of Midwest City.

“Mid-Del” means Mid-Del Technology Center, the Mid-Del School System and the Mid-Del School District.

“Contract” or “Contracts” means a contract or contracts between the City and Mid-Del.

“MWC Question” means the three questions asked above, which are dealt with as one question by the Opinion below.

“Opinion” means this opinion of John Michael Williams and Williams, Box, Forshee & Bullard, P.C.

For purposes of this Opinion, the Mid-Del Technology Center is considered to be the Mid-Del School System and the Mid-Del School District; and, it is assumed that (i) payments to Mid-Del will be made from public funds, and (ii) the Contract will be for services and not for the furnishing of any materials or supplies.

What follows is our Opinion answering the MWC Question and matters related thereto.

II. SHORT ANSWERS AND SUMMARY.

2.0. Short Answers.

2.1. Approval of the Contract will not violate 62 Oklahoma Statutes, Supp 2022, Section 371 (“Section 371” or “Title 62, Section 371”). For the reasons discussed below, Oklahoma Attorney General Opinion 1977 OK AG 167 interpreting Section 371 does not produce a contrary result.

2.2. Exceptions are provided to the Section 371, and to Title 21, Section 344, and Title 21, Section 355 of the Oklahoma Statutes, Supp 2022, each because City Council members are subject to Title 11, Section 8-113, which latter Section sets forth separate restrictions for City Council members, with its own statutory exceptions. Section 355 does, however, provide different exceptions.

2.3. Approval of the Contract will not violate Title 11, Section 8-113, nor will it violate Title 21, Section 344 and Title 21, Section 355.

2.4. Approval of the Contract may result in violation of Article X, Section 11 of the Oklahoma Constitution by the Ward 3 Council member, which is punishable as felony with disqualification to hold office.

2.5. Approval of the Contract may result in violation of the City Charter, Article VII, Sec. 12 (“Sec. 12”), which prohibits a council member from being interested, directly or indirectly in a City contract. If Sec. 12 is in fact violated, the Contract will be “absolutely void,” thereby exposing the City itself, other council members, and other City officials to liability, including personal liability, for payments made pursuant to the Contract. Such possible liability may arise in a lawsuit filed by taxpayers under *qui tam* laws. **Of the legal authorities examined by this Opinion, violation of Sec. 12 poses the greatest risk to the City and its officials.**

2.6. Approval of the Contract may result in violation of Sec. 2-17 of the City Code of Midwest City (“Sec. 2-17”), captioned “Elected Official Accountability Act and ethics policy,” which sets forth rules of conduct applicable to council members. It is our Opinion that violation of Sec. 2-17 by the Ward 3 Council member will occur if approval of the Contract results in violation of Article X, Section 11 of the Oklahoma Constitution and/or Article VII, Sec. 12 of the Midwest City Charter.

2.7. **General Summary.** The foregoing Short Answers are amplified and expanded by the following general summary which attempts to organize the authorities discussed by this Opinion, and to aid the reader in reviewing the Discussion and Legal Analysis. This general summary is subject to the more detailed treatments in the Discussion and Legal Analysis.

2.7.1. 62 Oklahoma Statutes, Supp 2022, Section 371.

a. Section 371 prohibits a city council from making contracts with its members, or in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void, and payment of public funds pursuant to such a void contract exposes members of the city council to serious financial liability for these unlawful payments.

b. Exceptions are provided to Section 371, which are applicable to the MWC Question, the most notable of which is that council members are not subject to Section 371 because they are subject to 11 Oklahoma Statutes, Supp 2022, Section 8-113.

2.7.2. Section 8-113 imposes its own requirements and provides that no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall contract with the City. Any person violating Section 8-113 is guilty of a misdemeanor, and a council member who approves a contract in violation of Section 8-113 shall be held personally liable for the amount of the transaction. However, the following exception is provided:

For purposes of this section, "proprietary interest" means ownership of more than twenty-five percent (25%) of the business...

2.7.3. Oklahoma Statutes, Supp 2022, Section 344 declares that every public officer who makes any contract in his or her official capacity, who voluntarily becomes interested individually in such contract, directly or indirectly, is guilty of a misdemeanor. However, Section 344 does not apply to Municipal officers who are subject to the provisions of Section 8-113 of Title 11 of the Oklahoma Statutes.

2.7.4. Oklahoma Statutes, Supp 2022, Section 355 prohibits a council member from furnishing for a consideration, any material or supplies for the use of the City. It is assumed that the Contract is not for the furnishing of any material or supplies.

2.7.5. Article X, Section 11, Oklahoma Constitution.

a. Article X, Section 11 prohibits a council member from receiving, directly or indirectly, any interest, profit, or perquisites arising from the use of City funds, which goes beyond holding an interest in a business or entity doing business with an Oklahoma government. For example, it is unlawful for a city officer to receive any profit or perquisites from a city contract, directly or indirectly.

b. Compliance with the exceptions of Sections 8-113, Section 371, Section 343 and Section 355, do not provide an exception to Article X, Section 11. The prohibition cannot be avoided by a council member not voting on a contract. Violation of Article X, Section 11 is a felony crime with disqualification to hold office.

c. The broad reach of Article X, Section 11 is discussed in detail in the Discussion and Legal Analysis below.

2.7.6. Midwest City Charter, Article VII, Sec. 12 states (“Sec. 12”), with emphasis added:

No officer or employee of the city, elective or appointive, shall be interested, directly or indirectly, in any contract for job, for work or for materials or supplies or the profits thereof or in any purchase made for or sales made by, to or with the city, or own stock in any corporation having and [any] contract or subcontract for doing any contract job or work, and all such contracts with such city officer or employee shall be absolutely void, and the violation of this provision shall be deemed a cause for the removal from office or employment of such officer or employee.

While we cannot determine if approval of the Contract will result in violation of Sec. 12 by the Ward 3 Council member, which is a question of fact, it is our Opinion that approval of the Contract while the Council member is employed by Mid-Del exposes the Council member to a claimed violation of Sec. 12, which is not without merit. Moreover, if Sec. 12 is in fact violated, the Contract will be “absolutely void,” thereby exposing the City itself, other council members, and other City officials to liability, including personal liability, for payments made pursuant to the Contract. Such possible liability may arise in a lawsuit filed by taxpayers under *qui tam* laws.

Of the legal authorities examined by this Opinion, violation of Sec. 12 poses the greatest risk to the City and its officials.

2.7.7. Sec. 2-17 of the City Code of Midwest City (“Sec. 2-17”), captioned “Elected Official Accountability Act and ethics policy,” sets forth rules of conduct applicable to council members. It is our Opinion that violation of Sec. 2-17 by the Ward 3 Council member will occur if approval of the Contract results in violation of Article X, Section 11 of the Oklahoma Constitution and/or Article VII, Sec. 12 of the Midwest City Charter (collectively, “Laws”). Whether these Laws will be violated by approval of the Contract is discussed in detail elsewhere in this Opinion, and ultimately is question of fact.

The requirement that Council members must comply with the spirit of these Laws, and must avoid even the appearance of impropriety, results in an increased likelihood that approval of the Contract will result in violation of Sec. 2-17 by the Ward 3 Council member. Violation of these Laws will occur, if at all, because of the mere approval of the Contract, and is not based on any action or non-action by the Ward 3 Council member, except remaining an employee of Mid-Del while serving as a Council member.

While not applicable to the forgoing, it is our Opinion that violation of certain other provisions of Sec. 2-17 can be prevented by actions of the Ward 3 Council member.

2.7.8. Implications of Approval of Contract. Because of the seriousness of the implications of possible violation of Article X, Section 11 of the Oklahoma Constitution, and especially Article VII, Sec. 12 of the Midwest City Charter, it is recommended that consideration and approval of the Contract be undertaken with caution, with knowledge and application of the principles provided by this Opinion.

III. DISCUSSION AND LEGAL ANALYSIS.

3.0. 62 Oklahoma Statutes, Supp 2022, Section 371 (“Section 371”).

3.1. Subsection A. of Section 371 states as follows:

Except as otherwise provided in this section, no board of county commissioners, nor city council, nor board of trustees of any town, nor any district board of any school district in this state, nor any board of any local subdivision of this state shall make any contract with any of its members, or in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void.

It is unlawful for the City to enter into a contract in violation of Section 371, and any such contract is wholly void.

3.2. Applicability of Exceptions to Section 371.

Section 371, which appears in its entirety in the Appendix below, provides the following exceptions applicable to the facts of the MWC Question.

a. Exception of Subsection B. 1. of Section 371, which states:

The provisions of this section shall not apply to:

1. Those municipal officers who are subject to Section 8-113 of Title 11 of the Oklahoma Statutes;

Council members are subject to Section 8-113 of Title 11, which states:

A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in [certain listed activities appearing in the Appendix below and later discussed by this Opinion].

Council members are not subject to Section 371 because they are subject to Section 8-113 of Title 11, which provides separate rules controlling the business relationships of council members. These rules are discussed below.

b. Exception of Subsection F. of Section 371, which states:

A member of a board of county commissioners, city council, board of trustees of any town, district board of any school district in this state, or of any board of any local subdivision of this state shall not be considered to be directly or indirectly interested in any contract with a person or entity that employs such member or the spouse of the member, if the member or the spouse of the member has an interest in the employing entity of five percent (5%) or less.

Mid-Del is a public entity, and it is not possible for its employees, or anyone, to hold any interest in Mid-Del itself.

c. Summary of applicable exceptions to Section 371. The Contract falls within exceptions provided by Section 371, specifically Subsections B, 1 and F, and approval of the Contract by the City will not violate Section 371.

3.3. Analysis of Oklahoma Attorney General Opinion 1977 OK AG 167 interpreting Section 371.

Attorney General Larry Derryberry issued opinion 1977 OK AG 167 dated July 13, 1977 (“1977 Opinion”), which concluded:

Under the provisions of 62 O.S. 371 (1971) and 70 O.S. 5-124 (1971), a board of education may not lawfully purchase water from a rural water district which employs a member of the board of education as a salaried manager of the water district. Under these sections, a board of education may not make occasional purchases of materials and supplies in the open market from a firm or company that employs one of the board members.

While this opinion dealt with a board of education and a rural water district, the concepts articulated are applicable to the City and Mid-Del for purposes of interpretation of Section 371.

The 1977 Opinion is broad reaching and would prohibit the City from entering into the Contract with Mid-Del while a council member is employed by Mid-Del. However, further legal research reveals that the version of Section 371 applicable in 1977 as interpreted by the 1977 Opinion did not contain the now applicable exceptions to Section 371 discussed above, and merely stated in its entirety as follows:

No board of county commissioners, nor city council, nor board of trustees of any town, nor any district board of any school district in this state, nor any board of any local subdivision of this state shall make any contract with any of its members, or in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void.

For purposes of this section, the depositing of any funds in a bank or other depository shall not be considered the making of a contract.

Accordingly, the 1977 Opinion does not render the Contract unlawful because of the exceptions contained in the now applicable language of Section 371 discussed above.

4.0. Title 11 Oklahoma Statutes, Section 8-113 (“Section 8-113”).

Section 8-113 provides an exception to the necessity of compliance with Section 371, as discussed above, but Section 8-113 sets forth its own requirements appearing in the Appendix below, which states in pertinent parts as follows:

A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in:

* * *

2. Contracting with the municipality;

F. For purposes of this section, "proprietary interest" means ownership of more than twenty-five percent (25%) of the business or of the stock therein or any percentage which constitutes a controlling interest but shall not include any interest held by a blind trust.

G. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor. Any transaction entered into in violation of the provisions of this section is void. Any member of a governing body who approves any transaction in violation of the provisions of this section shall be held personally liable for the amount of the transaction.

In summary, Section 8-113 as applied to the MWC Question, renders void a contract with a business when a council member holds a propriety interest in that business. Any person violating Section 8-113 is guilty of a misdemeanor, and a council member who approves a contract in violation of Section 8-113 shall be held personally liable for the amount of the transaction. However, “proprietary interest” means ownership of more than twenty-five percent (25%) of the business.

Whether a council member holds a “proprietary interest” as defined by Section 8-113 is a question of fact, but as applied to the MWC Question, a council member cannot hold a “proprietary interest” in Mid-Del itself.

Therefore, it is our Opinion that the approval of the Contract will not result in a violation of Section 8-113.

5.0. Title 21, Oklahoma Statutes, Supp 2022, Section 344 (“Section 344”).

Section 344, which appears in its entirety in the Appendix below, declares that every public officer who makes any contract in his or her official capacity, who voluntarily becomes interested individually in such contract, directly or indirectly, is guilty of a misdemeanor. However, Section 344 does not apply to Municipal officers who are subject to the provisions of Section 8-113 of Title 11 of the Oklahoma Statutes.

Therefore, because of the Section 8-113 exception, it is our Opinion that the approval of the Contract will not result in violation of Section 344.

6.0. Title 21 Oklahoma Statutes, Supp 2022, Section 355. (“Section 355”).

Section 355, which appears in its entirety in the Appendix below, prohibits a council member from furnishing for a consideration, any material or supplies for the use of the City, but provides an exception for contracts with a business that employs a council member if the employee has an interest in the business of five percent (5%) or less. Section 355 also does not apply to a municipal officer subject to Section 8-113, however this exception is limited to activity of not more than \$2,500 per year. Moreover, provided that the Contract is for services and not for the furnishing of any materials or supplies, Section 355 is not applicable.

Assuming the Contract is for services and not for the furnishing of any materials or supplies, and because the Council member cannot hold an interest in Mid-Del, it is our Opinion that the approval of the Contract will not result in violation of Section 355.

7.0. Article X, Section 11, Oklahoma Constitution (“Article X, Section 11”).

7.1 General Statement and Summary. Article X, Section 11 states:

The receiving, directly or indirectly, by any officer of the State, or of any county, city, or town, or member or officer of the Legislature, of any interest, profit, or perquisites, arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office.

For purposes of the MWC Question, Article X, Section 11 prohibits a council member from receiving, directly or indirectly, any interest, profit, or perquisites arising from the Contract; violation is a felony with disqualification to hold office. Its language is very broad and goes beyond holding an interest in an entity doing business with an Oklahoma government. There are no exceptions to compliance with Article X, Section 11. The exceptions of Sections 8-113, Section 371, Section 343 and Section 355, each discussed above, do not provide exceptions to Article X, Section 11.

7.2. Opinions of General Application of the Oklahoma Attorney General. The following Opinions of the Oklahoma Attorney General of general application provide guidance in resolution of the MWC Question for determination of compliance with Article X, Section 11:

a. There are no recognized exceptions to constitutional prohibitions against officers of state having interest in contracts between agency they represent and business entities with which they have relationship. 2004 OK AG 40.

b. If a conflict of interest exists, it cannot be avoided if the city official recuses himself or herself from any vote concerning payments of city funds to the private entity. 2001 OK AG 32.

c. Whether a public officer would be prosecuted for a conflict of interest violation under Article X, Section 11 rests in the sound discretion of the district attorney with jurisdiction over the matter. *See Gray v. State*, 650 P.2d 880, 882 (Okla. Crim.1982). Whether a particular offense is prosecuted as a crime under Article X, Section 11 is a matter of prosecutorial discretion. *See Isom v. State*, 646 P.2d 1288, 1292 (Okla. Crim. 1982); and

There are no “bright line” exceptions to the ban of Article X, Section 11 against conflicts of interest by State officers. Whether a particular situation would give rise to a violation of the constitutional provision would depend on its specific facts and circumstances, and thus cannot be addressed in an Attorney General's Opinion. 74 O.S. 2001, § 18b (A)(5). 2004 OK AG 40.

d. Since there are criminal penalties for violating the constitutional provision (felony with punishment including disqualification from office), the provision must be strictly construed against the State and in favor of the city official. 2021 OK AG 32.

7.3. Attorney General Mike Turpin issued 1985 OK AG 138, dated January 30, 1986 (“1985 Opinion”), which among other things stated as the official opinion of the Attorney General:

Whether an unlawful conflict of interest arises where a contract is entered into between a municipality and a bank where the president of the bank is the father-in-law of a member of the city council, pursuant to Okla. Const. Article X, Section 11, 21 O.S. 344 (1981) and 62 O.S. 371 (1981) depends on whether the city council member has a direct or indirect pecuniary interest in the transaction or direct or indirect profit in the transaction, the determination of which is a question of fact. The interest must be of a financial or pecuniary nature. Title 21 O.S. 355 (1981) would require a direct pecuniary interest in the transaction for a conflict to exist, the determination of which is also a question of fact.

The facts this 1985 Opinion dealt with was the father-in-law of a member of the city council, and with trustees of a public trust, the concepts advanced are equally applicable to a member of the city council.

The 1985 Opinion also states:

Article X, Section 11 prohibits such public officers from receiving a direct or indirect profit from the use of public funds. It also prohibits the officer from receiving pecuniary interests arising from the loan or use of public funds. It is the officer himself who must receive the direct or indirect profit or interest. The type of interest subject to the prohibition is a private or personal interest of a financial or pecuniary nature. A.G. Opin. No. 79-267 (September 28, 1979). *See also, Baskin v. State ex rel. Short*, 232 P.388 (Okla.1925); *Mackey v. Crump*, 153 P.1128 (Okla.1915).

Without question a bank receives a profit from loaning out money and collecting interest. The bank stockholders and potentially the officers and employees of the bank itself may also profit directly or indirectly from such loans. While it is theoretically possible that an individual could profit or be interested in the financial gain of one's father-in-law, the existence of such a family relationship does not, in and of itself, establish such interest. The bank loan to the public trust as outlined in your opinion request would only be improper if a member of the Board of Trustees would directly or indirectly profit from said loan or if he or she had a direct or indirect interest in the loan transaction pursuant to Okla. Const. Article X, Section 11. Whether such profit or interest exists is a question of fact.

We interpret the 1985 Opinion to mean that violation of Article X, Section 11 by a council member depends on whether he or she has a direct or indirect pecuniary interest in or profit from the transaction, which is qualified by the following:

- a. The type of interest subject to the prohibition is a private or personal interest of a financial or pecuniary nature.
- b. The council member himself or herself must receive the direct or indirect profit or interest; benefit to an employer does not cause a violation of Article X, Section 11.

7.4. Attorney General Drew Edmondson issued 2001 OK AG 32 on July 18, 2001 (“2001 Opinion”) which among other things stated as the official opinion of the Attorney General:

Pursuant to Article 10, § 11 of the Oklahoma Constitution, it is a conflict of interest for an elected city official to have an interest that arises from the use of city funds by a private entity, even if the city official does not have a proprietary interest in the private entity, and even if the city official's compensation is not paid out of any funds received by the private entity from the city. Whether such an interest exists is a question of fact which is beyond the scope of an Attorney General Opinion. 74 O.S. Supp.2000, §18b(A)(5).

The 2001 Opinion notes that Article X, Section 11 is broader than Section 8-113 and further states:

The constitutional prohibition is plain and unconditional. No city official may receive, directly or indirectly, any interest, profit, or perquisite that arises from the use of public funds in his hands. A conflict of interest exists when a city official has any interest that arises from the use of city funds by a private entity even if the city official does not have a

proprietary interest in the private entity, and even if the city official's compensation is not paid out of any funds received by the private entity from the city.

In examining a statute where a public officer is prohibited from having an interest directly or indirectly in any contract, a New York court stated:

The interest need not, however, be one directly flowing from the contract itself. . . The general welfare and prosperity of the company of an officer may be an "interest" therein.

. . . .

Absence of financial return during the period of such public service is not a complete answer to the sweeping prohibition of the statute.

An interest "directly or indirectly" in a contract may include an interest the fruition of which is postponed or implicit as well as one which is immediate and in stated terms.

Yonkers Bus, Inc. v. Maltbie, 23 N.Y.S.2d 87, 90-91 (N.Y. Sup. Ct. 1940) (citations omitted).

It is our Opinion that the 2001 Opinion should be interpreted and applied to the MWC Question in accordance with the following:

- a. No city official may receive, directly or indirectly, any interest, profit, or perquisite that arises from the use of public funds in his hands.
- b. The constitutional prohibition is plain and unconditional.
- c. A violation can exist even though the Ward 3 Council member does not have a proprietary interest in the Mid-Del.
- d. The prohibited interest need not flow from the contract itself, but may be in the form of advancement of the general welfare and prosperity of Mid-Del which may implicitly benefit the Ward 3 Council member.

7.5. 1985 Opinion and 2001 Opinion Compared and Contrasted.

It is our Opinion that the 1985 Opinion and 2001 Opinion should be compared and contrasted for purposes of the MWC Question as follows:

- a. Both 1985 Opinion and the 2001 Opinion prohibit a council member from receiving a direct or indirect interest or profit from the Contract.

b. Applying the 1985 Opinion only, for there to be a violation of Article X, Section 11, the interest must be personal to the Council member and herself must receive the direct or indirect profit or interest, which must be of a financial or pecuniary nature; and, benefit to Mid-Del does not necessarily result in violation. However, the 1985 Opinion is qualified and limited by the more restrictive 2001 Opinion.

c. As we have interpreted the 2001 Opinion above, it provides additional circumstances by which the Council member may receive a prohibited interest arising from the Contract, specifically the advancement of the general welfare and prosperity of Mid-Del, which may implicitly benefit the Ward 3 Council member.

It is our Opinion that the less restrictive 1985 Opinion has been qualified and superseded by the more restrictive 2001 Opinion, which was issued after the 1985 Opinion. Among things, the 2001 Opinion provides for a new factor to be applied in determining whether approval of the Contract will result in violation of Article X, Section 11, which we have described as follows:

...the advancement of the general welfare and prosperity of Mid-Del, which may implicitly benefit the Ward 3 Council member.

We further note that the language of the 2001 Opinion is strong and broad, and we believe is intended to deter violations of Article X, Section 11 by setting a very high standard of conduct for public officials.

7.6. No “bright line” exceptions to Article X, Section 11 and determination of violation is a question of fact. As stated in 2004 OK AG 4, there are no “bright line” exceptions to the ban of Article X, Section 11. As was the case in the 1985 Opinion and the 2001 Opinion, whether the Council member will receive an interest, profit or perquisites prohibited by Article X, Section 11 arising from approval of the Contract is a question of fact which cannot be answered by this Opinion or by the City.

7.7. Criminal liability of Council member. Should the facts ultimately reveal that because of approval of the Contract the Council member has violated Article X, Section 11, it is the Council member who is subject to felony prosecution and disqualification to hold office. However, as recognized by the 2001 Opinion, because there are criminal penalties for violating Article X, Section 11, the provision must be strictly construed against the State and in favor of the Council member. A determination to prosecute an alleged violation will not be made by the City but will be made by the Oklahoma County District Attorney.

7.8. Opinion as to violation of Article X, Section 11. It is our Opinion that approval of the Contract *may* result in violation of Article X, Section 11, particularly because of the possible “advancement of the general welfare and prosperity of Mid-Del, which may implicitly benefit the Ward 3 Council member.” Whether a violation *will* occur is a question of fact which cannot be answered by this Opinion.

8.0. Midwest City Charter.

8.1. The Midwest City Charter provides as follows as to the MWC Question:

8.2.1. Article VII, Sec. 12 states (“Sec. 12”), with emphasis added:

No officer or employee of the city, elective or appointive, shall be interested, directly or indirectly, in any contract for job, for work or for materials or supplies or the profits thereof or in any purchase made for or sales made by, to or with the city, or own stock in any corporation having and [any] contract or subcontract for doing any contract job or work, and all such contracts with such city officer or employee shall be absolutely void, and the violation of this provision shall be deemed a cause for the removal from office or employment of such officer or employee.

8.2.2. Contract may be void. If it is determined that by reason of her employment by Mid-Del the Ward 3 Council member is “interested, directly or indirectly” in the Contract, the Contract is “absolutely void.”

8.2.3 No exceptions to Sec. 12 exist in the Charter of the sort provided for the statutes discussed above, nor are any exceptions provided.

8.2.4. Liability under qui tam laws. Payments in violation of a void contract subjects the City itself, other council members, and other City officials to possible liability, including personal liability, for payments made pursuant to the Contract. Such liability may arise in a lawsuit filed by taxpayers and others under *qui tam* laws. See 62 Oklahoma Statutes Supp 2022, Sections 372 (“Section 372”), 373 (“Section 373”) and 374 (“Section 374”) provided in the Appendix.

Section 372 as relevant to the MWC Question is summarized as follows:

Every officer of any city who shall order or direct the payment of any money belonging to such city, in pursuance of any unlawful contract made for any such city by any officer thereof, known by such officer to be void, and every person, having notice of the facts, with whom such unlawful contract shall have been made, or to whom, or for whose benefit such money shall be paid, shall be jointly and severally liable to the city affected, for triple the amount of all such sums of money so paid, as a penalty, to be recovered at the suit of the proper officers of such city, or of any resident taxpayer thereof, pursuant to Section 373 of this title; provided, however, no action for personal liability shall lie against any such officer for a transaction approved in good-faith reliance on advice of legal counsel for the public entity authorizing the transaction or which has been submitted to a court of competent jurisdiction for determination of legality.

To apply Section 372 to the MWC Question, if it is determined that a violation of Sec. 12 has occurred, every officer of the City, including council members, the City Manager and others, who shall order or direct the payment to Mid-Del, if the Contract is known by such

officer to be void, shall be jointly and severally liable to the City for triple the amount of money paid to Mid-Del pursuant to the Contract. However, no action for personal liability shall lie against any such officer for a transaction approved in good-faith reliance on advice of legal counsel.

An order or direction of payment to Mid-Del may arise upon approval or processing of a claim for payment under the Contract to Mid-Del, or otherwise.

Mid-Del may also be jointly and severally liable to the City for triple the amount of money paid to Mid-Del.

Defenses exist to a *qui tam* lawsuit, which are beyond the scope of this Opinion.

8.2.4.1. Section 373 provides procedures for taxpayers filing *qui tam* lawsuits, and among other things, provides for the recovery of attorney fees against the City itself if, after notice by taxpayers, the City does not diligently prosecute a lawsuit for money unlawfully paid. Likewise, Section 373 provides for recovery of attorney fees by the City against taxpayers for filing a lawsuit if the taxpayer claims are determined by the court to be frivolous.

8.2.4.2. Section 374 provides that civil actions filed by taxpayers for the recovery of real or personal property can only be brought if the written demand is made within 2 years of the transfer of the property, and the civil suit is filed within six months following the refusal, failure, or neglect of the proper officers to act upon the written demand.

8.2.5. Rules of Interpretation. The rule to be applied for the interpretation of a city charter is stated by *Sallee v. City of Oklahoma City*, 2011 OK CIV APP 5, 247 P.3d 750 (2011), to wit:

We must look to the specific language found in the Charter in order to determine the intent of its framers. If that language is plain and unambiguous, we must enforce the interpretation and effect its language dictates.

8.2.5.1. Pursuant to *Sallee*, Sec. 12 “must be interpreted in accordance with the specific language found in the Charter.” The specific language to be applied to the Council member is whether she is “interested, directly or indirectly” in the Contract because of her employment by Mid-Del. Further applying *Sallee*, it is our Opinion that this Sec. 12 language is plain and unambiguous. Therefore, as stated in *Sallee*, the Charter language must be given the interpretation and effect its language dictates.

8.2.5.2. It is doubtful that above-discussed opinions of the Oklahoma Attorney General interpreting Article X, Section 11 can be applied to a city charter. In *Sallee* the court said:

According to the Attorney General, Art. 10, § 11 of the Oklahoma Constitution, unlike the Charter, is penal in nature and, therefore, is to be strictly construed against the State. Furthermore, the Charter is wholly distinguishable from Art. 10, § 11 of the Oklahoma Constitution. We must look to the specific language found in the Charter in order to

determine the intent of its framers. If that language is plain and unambiguous, we must enforce the interpretation and effect its language dictates.

Nonetheless, perhaps the reasoning of these opinions of the Attorney General offer arguments by analogy which can be applied to interpretation of Sec. 12. However, if these opinions of the Attorney General were to be utilized, the high standard of the 2001 Opinion, discussed in detail above, should be applied, which will result in a restrictive interpretation of Sec. 12.

8.2.5.3 Application of the above rules of interpretation does not answer the question of whether the employment of the Council member by Mid-Del causes her to be “interested, directly or indirectly” in the Contract in violation of Section 12. This a question of fact which cannot be answered by this Opinion. However, it is our Opinion that if it is determined that such employment does violate Sec. 12, the Contract will be “absolutely void,” and payments pursuant to the Contract will be unlawful.

8.2.6. It is our Opinion that approval of the Contract while the Council member is employed by Mid-Del exposes the Ward 3 Council member and other City officials to a claimed violation of Sec. 12, which is not without merit. If Sec. 12 is in fact violated, the Contract will be “absolutely void,” thereby exposing the City itself, other council members, and other City officials to liability, including personal liability, for payments made pursuant to the Contract. Such possible liability may arise in a lawsuit filed by taxpayers under *qui tam* laws.

8.3. Article II, Sec 18 (a) provides for an acknowledgement of the Code of Ethics and Conduct to be signed by each council member, and states the Code of Conduct shall include items addressed in City Ordinance and any other directives set out by Council and the City Manager. The possible impact of such acknowledgement has not been addressed by this Opinion.

9.0 City Code of Midwest City, Sec. 2-17.

9.1. Sec 2-17 of the City Code of Midwest City (“Sec. 2-17”), captioned “Elected Official Accountability Act and ethics policy,” states in parts pertinent to the MWC Question:

(a) *Ethics.* The citizens and businesses of the City of Midwest City are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government;

* * *

Therefore, members of the city council and of all boards, committees and commissions shall conduct themselves in accordance with the following ethical standards:

* * *

(2) *Comply with both the spirit and the letter of the law and city policy.* Members shall comply with the laws of the nation, the State of Oklahoma and the City of Midwest City in the performance of their public duties.

(3) *Conduct of members.* The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct towards other members and the staff or public.

* * *

(8) *Conflict of interest.* In order to assure their independence and impartiality on behalf of the common good and compliance with conflict of interest laws, members shall use their best efforts to refrain from creating an appearance of impropriety in their actions and decisions. Members shall not use their official positions to influence government decisions in which they or a member of his/her immediate family (defined as any person related within the third degree by blood or marriage to the council member) have:

a. A material financial interest or on:

1. Any business entity in which the council member has a direct or indirect interest;
2. Any real property in which the council member has a direct or indirect interest;
or
3. Any business entity in which the council member is a director, officer, partner, trustee or employee, or holds any position of management.

b. An organizational responsibility or personal relationship which may give the appearance of a conflict of interest; or

* * *

A member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the city attorney and/or city manager and reasonably cooperate with the city attorney to analyze the potential conflict. If advised by the city attorney to seek advice from appropriate state agency, a member shall not participate in a decision unless and until he or she has requested and received advice allowing the member to participate. A member shall diligently pursue obtaining such advice. The member shall provide the city manager and the city attorney a copy of any written request or advice, and conform his or her participation to the advice given. In providing assistance to members, the city attorney represents the city and not individual members.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts to the city attorney and city manager; and if they have a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained,

participate in the decision and shall not discuss or comment on the matter in any way to any person including other members unless otherwise permitted by law, failure to comply may lead to conduct being reported to the district attorney.

* * *

(c) Violation.

Councilmembers: Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the council, lose seniority or committee assignments (both within the City of Midwest City and with intergovernmental agencies) or other privileges afforded by the council. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by the council.

Individual council members should point out to the offending councilmember perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the mayor in private. If the mayor is the individual whose actions are being questioned, then the matter should be referred to the vice mayor. It is the responsibility of the mayor (or vice mayor) to initiate action if a council member's behavior may warrant sanction. If no action is taken by the mayor (or vice mayor), then the alleged violation(s) can be brought up with the full council.

* * *

These sanctions are alternatives to any other remedy that might otherwise be available to remedy conduct that violates this code or state or federal law. In order to protect and preserve good government, any individual including the city manager and the city attorney after complying with Rule 1.13 of the State Bar Rules of Professional Conduct, who knows or reasonably believes a member acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, may report the violation to the appropriate governmental authorities.

A violation of any item listed in the Ethics Code, section A, shall be a misdemeanor punishable upon conviction by a fine, the amount of which shall be five hundred dollars (\$500.00). Any person convicted of a violation of this section shall immediately be removed from office and shall forever be disqualified from filing for or holding a city elective office.

9.2. The key elements of Sec. 2-17 for purposes of the MWC Question are summarized as follows:

- a. Council members shall comply with both the spirit and the letter of the law and city policy, and shall comply with the federal, state and City laws in the performance of their public duties.
- b. Council members shall avoid even the appearance of impropriety.
- c. Council members shall not use their official positions to influence government decisions in which they have a material financial interest, which includes employment by Mid-Del.

d. A council member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the city attorney and/or city manager, with subsequent procedures as provides by Sec. 2-12.

e. Once a conflict of interest is ascertained, the council member shall not participate in the decision related to such conflict.

f. Perceived infractions of the Code of Ethics and Conduct may be referred to the Mayor in private, and if no action is taken by the Mayor, may be referred to the full council.

g. Violation of the Sec. 2-12(a) may result in reprimand or formally censure by the council and other sanctions; and, shall be a misdemeanor punishable upon conviction by a \$500 fine and removal from office, with disqualification from filing for or holding a city elective office forever.

h. Any person who knows or reasonably believes a council member acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, may report the violation to the appropriate governmental authorities.

9.3. Application of Sec 2-17 to MWC Question.

Elements 9.2 a. and b. above require that council members comply with the spirit and the letter of State and City laws, and to avoid even the appearance of impropriety. As discussed in detail above, approval of the Contract may result in violation of Article X, Section 11 of the Oklahoma Constitution and Article VII, Sec. 12 of the Midwest City Charter. The requirement that council members must comply with the spirit of these laws and must avoid even the appearance of impropriety results in our Opinion that approval of the Contract will give rise to violation of Elements 9.2 a. and b.

Element 9.2 c. prohibits council members from using their official positions to influence government decisions in which they have a material financial interest, which includes employment by Mid-Del. There is no allegation that the Ward 3 Council member has done so, and assuming such is so, it is our Opinion that there is no violation of Element 9.2 c.

Element 9.2 d. provides that a council member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the city attorney and/or city manager. It is our Opinion that such disclosure should be made by the Ward 3 Council member.

Element 9.2 e. provides that once a conflict of interest is ascertained, a council member shall not participate in the decision related to such conflict. It is our Opinion that the Ward 3 Council member should not participate in the decisions regarding the Contract.

Elements 9.2 f. provides that perceived ethical infractions may be referred to the Mayor. Based on our Opinion above that approval of the Contract will give rise to violation of Elements 9.2 a. and b., and because of the implications discussed regarding Element 9.2 h. below, it is our further

Opinion that this matter should be referred to the Mayor, who may choose to be guided in his deliberations by the totality of this Opinion.

Element 9.2 g. provides for penalties for violation Sec. 2-12(a) which include possible sanctions and criminal prosecution of the Ward 3 Council member, with disqualification from holding a city elective office forever. In a criminal prosecution for violation of Sec. 2-12(a), this ordinance will be strictly construed against the City and in favor of the Council member because it is a penal ordinance.

Element 9.2 h. provides, in abbreviated form, that any person who reasonably believes a council member acts or intends to act in a manner may be a violation of law reasonably imputable to the organization, or which is likely to result in substantial injury to the organization (“Claimed Violation”), may report the violation to the appropriate governmental authorities. This can be applied to the MWC question as follows:

- a. The Ward 3 Council member may act or intend to act in a manner that may be a violation of law by remaining an employee of Mid-Del while serving as a Council member.
- b. As discussed in detail above, approval of the Contract may result in violation of Article X, Section 11 of the Oklahoma Constitution and Article VII, Sec. 12 of the Midwest City Charter. If violations occur, such will be imputed to the City.
- c. Violation of Sec. 12 of the Midwest City Charter may result in substantial injury to the City because of the *qui tam* laws discussed above.

A person may report a Claimed Violation to the “appropriate governmental authorities.” Practically speaking, while a Claimed Violation could be reported based on the intent of the Ward 3 Council member, a Claimed Violation is not likely to be reported until after the Contract is approved. “Appropriate governmental authorities” can be the District Attorney, Attorney General, or other law enforcement agencies. It is our belief that they will let other proceedings take their course, such as a *qui tam* lawsuit. Another appropriate governmental authority is the District Court, which can be accessed by filing a declaratory judgement action.

9.4. Opinions as to violations of Sec. 2-12.

a. It is our Opinion that violation of Element 9.2 a. and b. by the Ward 3 Council member will occur if approval of the Contract results in violation of Article X, Section 11 of the Oklahoma Constitution and/or Article VII, Sec. 12 of the Midwest City Charter (collectively, “Laws”). Whether these Laws will be violated by approval of the Contract is discussed in detail elsewhere in this Opinion, but ultimately is question of fact.

The requirement that Council members must comply with the spirit of these Laws, and must avoid even the appearance of impropriety, results in an increased likelihood that approval of the Contract will result in violation of Sec 2-17 by the Ward 3 Council member. Violation of these Laws will occur, if at all, because of the mere approval of the Contract, and is not based on any action or

non-action by the Ward 3 Council member, except remaining an employee of Mid-Del while serving as a Council member.

b. It is our Opinion that violation of Element 9.2 d. can be prevented by disclosure by the Ward 3 Council member to the city attorney and/or city manager.

c. It is our Opinion that violation of Element 9.2 e. can be prevented by the Ward 3 Council member not participating in any decision regarding the Contract.

Note: Application of the Code of Ethics and Conduct beyond the requirements of Sec. 2-12 has not been addressed by this Opinion.

APPENDIX

I. Title 62 Oklahoma Statutes, Supp 2022, Section 371.

Section 371, appearing in a portion of Chapter 2 of Title 62 called “Misappropriations of Public Funds,” states as follows:

A. Except as otherwise provided in this section, no board of county commissioners, nor city council, nor board of trustees of any town, nor any district board of any school district in this state, nor any board of any local subdivision of this state shall make any contract with any of its members, or in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void.

However, for the purposes of this section, the following shall not be considered the making of a contract:

1. The depositing of any funds in a bank or other depository;
2. Any contract with a qualified nonprofit Internal Revenue Code Section 501(c)(3) organization, except for contracts paying salaries or expenses or except a contract entered into by a school district involving the counseling or instruction of students or staff;
3. Monthly billings submitted to any county or local subdivision of the state for public utility companies, electric cooperatives or telephone companies, whose services are regulated by the Oklahoma Corporation Commission, or billings of the utility companies, electric cooperatives or telephone companies pertaining to installations or changes in service, where tariffs for the charges or billings by the companies are on file with the Oklahoma Corporation Commission.

In addition, the governing board of a technology center school district may enter into a contract for the technology center school district to provide training for a company, individual, or business concern by which a member of the board is employed. A board member shall abstain from voting

on any such contract between the technology center school district board and the company, individual, or business concern by which the member is employed.

B. The provisions of this section shall not apply to:

1. Those municipal officers who are subject to Section 8-113 of Title 11 of the Oklahoma Statutes; or

2. A member of any board of education of a school district or a director or member of any rural water, sewer, gas and solid waste management district organized pursuant to Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes in this state which does not include any part of a municipality with a population greater than two thousand five hundred (2,500) according to the latest Federal Decennial Census when the board member is the only person who owns or operates a business which is the only business of that type within ten (10) miles of the corporate limits of the municipality.

However, any activities permitted by this subsection shall not exceed Five Hundred Dollars (\$500.00) for any single activity and shall not exceed Ten Thousand Dollars (\$10,000.00) for all activities in any calendar year.

C. The provisions of this section shall not apply to conservation district board members participating in programs authorized by Section 3-2-106 of Title 27A of the Oklahoma Statutes.

D. Notwithstanding the provisions of this section, any officer, director or employee of a financial institution may serve on a board of a public body. Provided, the member shall abstain from voting on any matter relating to a transaction between or involving the financial institution in which the member is associated and the public body in which the member serves.

E. The provisions of this section shall not apply to any board of county commissioners purchasing motor fuel for exclusive use by the county from a cooperative agricultural association in which a member of the board of county commissioners has a financial or proprietary interest. The county commissioner having a financial or proprietary interest in the cooperative agricultural association shall abstain from voting on any such purchase or contract between the county and the cooperative agricultural association. Except as provided in this subsection, the purchasing procedures required by law for counties and county officers shall not otherwise be modified.

F. A member of a board of county commissioners, city council, board of trustees of any town, district board of any school district in this state, or of any board of any local subdivision of this state shall not be considered to be directly or indirectly interested in any contract with a person or entity that employs such member or the spouse of the member, if the member or the spouse of the member has an interest in the employing entity of five percent (5%) or less.

II. Title 11 Oklahoma Statutes, Supp 2022, Section 8-113.

A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in:

1. Selling, buying, or leasing property, real or personal, to or from the municipality;
2. Contracting with the municipality; or
3. Buying or bartering for or otherwise engaging in any manner in the acquisition of any bonds, warrants, or other evidence of indebtedness of the municipality.

B. The provisions of this section shall not apply to any officer or employee of any municipality of this state with a population of not more than five thousand (5,000) according to the latest Federal Decennial Census, who has a proprietary interest in a business which is the only business of that type within five (5) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for any single activity and shall not exceed Fifteen Thousand Dollars (\$15,000.00) for all activities in any calendar year. Provided, however, such activity may exceed Fifteen Thousand Dollars (\$15,000.00) per year if the municipality purchases items therefrom that are regularly sold to the general public in the normal course of business and the price charged to the municipality by the business does not exceed the price charged to the general public.

C. Provisions of this section shall not apply where competitive bids were obtained consistent with municipal ordinance or state law and two or more bids were submitted for the materials, supplies, or services to be procured by the municipality regardless of the population restrictions of subsection B of this section, provided the notice of bids was made public and open to all potential bidders.

D. All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained in the main office of the awarding municipality for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record.

E. For purposes of this section, "employee" means any person who is employed by a municipality more than ten (10) hours in a week for more than thirteen (13) consecutive weeks and who enters into, recommends or participates in the decision to enter into any transaction described in subsection A of this section. Any person who receives wages, reimbursement for expenses, or emoluments of any kind from a municipality, any spouse of the person, or any business in which the person or spouse has a proprietary interest shall not buy or otherwise become interested in the transfer of any surplus property of a municipality or a public trust of which the municipality is beneficiary unless the surplus property is offered for sale to the public after notice of the sale is published.

F. For purposes of this section, "proprietary interest" means ownership of more than twenty-five percent (25%) of the business or of the stock therein or any percentage which constitutes a controlling interest but shall not include any interest held by a blind trust.

G. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor. Any transaction entered into in violation of the provisions of this section is void. Any member of a governing body who approves any transaction in violation of the provisions of this section shall be held personally liable for the amount of the transaction.

H. Notwithstanding the provisions of this section, any officer, director or employee of a financial institution may serve on a board of a public body. Provided, the member shall abstain from voting on any matter relating to a transaction between or involving the financial institution in which they are associated and the public body in which they serve.

III. Title 21, Oklahoma Statutes, Supp 2022, Section 344.

A. Except as otherwise provided in this section, every public officer, being authorized to sell or lease any property, or make any contract in his or her official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

B. The provisions of this section shall not apply to:

1. Municipal officers who are subject to the provisions of Section 8-113 of Title 11 of the Oklahoma Statutes; and

2. Conservation district board members participating in programs authorized by Section 3-2-106 of Title 27A of the Oklahoma Statutes.

IV. Title 21 Oklahoma Statutes, Supp 2022, Section 355.

A. It shall be unlawful for any member of any board of county commissioners, city council or other governing body of any city, board of trustees of any town, board of directors of any township, board of education of any city or school district, to furnish, for a consideration any material or supplies for the use of the county, city, town, township, or school district.

B. The provisions of this section shall not apply to those municipal officers who are subject to Section 8-113 of Title 11 of the Oklahoma Statutes or to a member of any board of education of a school district in this state which does not include any part of a municipality with a population greater than two thousand five hundred (2,500) according to the latest Federal Decennial Census when the board member is the only person who furnishes the material or supplies within ten (10) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Five Hundred Dollars (\$500.00) for any single activity and shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for all activities in any calendar year.

C. It shall not be unlawful for any member of any board of county commissioners, city council or other governing body of any city, board of trustees of any town, board of directors of any township, or board of education of any school district to vote to purchase materials or supplies from a business that employs a member of the governing body or employs the spouse of a member if the member or the spouse of a member has an interest in the business of five percent (5%) or less.

V. Title 62 Oklahoma Statutes, Supp 2022, Section 372.

Every officer of the state and of any county, city, town or school district, who shall hereafter order or direct the payment of any money or transfer of any property belonging to the state or to such county, city, town or school district, in settlement of any claim or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made, for the state or any such county, city, town or school district, by any officer thereof, known to such officer to be fraudulent or void, and every person, having notice of the facts, with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money shall be paid or such transfer of property shall be made, shall be jointly and severally liable to the state, county, city, town or school district affected, for triple the amount of all such sums of money so paid, or triple the value of property so transferred, as a penalty, to be recovered at the suit of the proper officers of the state or such county, city, town or school district, or of any resident taxpayer thereof, pursuant to Section 373 of this title; provided, however, no action for personal liability shall lie against any such officer for a transaction approved in good-faith reliance on advice of legal counsel for the public entity authorizing the transaction or which has been submitted to a court of competent jurisdiction for determination of legality.

VI. Title 62 Oklahoma Statutes, Supp 2022, Section 373.

Upon the refusal, failure, or neglect of the proper officers of the state or of any county, city, town, or school district, after written demand signed, verified and served upon them by a number of registered voters of the state or such county, city, town, or school district equal to one hundred (100), or two and one-half percent (2 1/2%) of the registered voters living within the state or such county, city, town or school district, whichever is less, to institute or diligently prosecute proper proceedings at law or in equity for the recovery of any money or property belonging to the state, or such county, city, town, or school district, paid out or transferred by any officer thereof in pursuance of any unauthorized, unlawful, fraudulent, or void contract made, or attempted to be made, by any of its officers for the state or any such county, city, town, or school district, any resident taxpayer of the state or such county, city, town, or school district affected by such payment or transfer after serving the notice aforesaid and after giving security for cost, may in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action which the proper officers of the state, county, city, town, or school district might institute and maintain for the recovery of such property; and the state or such county, city, town or school district shall in such event be made defendant. If a court of competent jurisdiction determines the claims to be meritorious, the contract shall be deemed void and the money or property, if previously transferred, shall be returned to the state, county, city, town or school district. The state, county, city, town or school district shall be liable to the resident taxpayer or taxpayers for reasonable attorney fees and court costs incurred in the prosecution of the action. If all claims stated by the resident taxpayers in the written demand are determined in a court of competent jurisdiction to be frivolous, the

resident taxpayers who signed such demand and who are parties to the lawsuit in which such claims are determined to be frivolous shall be jointly and severally liable for all reasonable attorney fees and court costs incurred by any public officer or officers or any other person alleged in such demand to have paid out, transferred, or received any money or property belonging to the state, or such county, city, town or school district in pursuance of any alleged unauthorized, unlawful, fraudulent, or void claim paid or contract or conveyance made, or attempted to be made, by such officer or officers.

VII. Title 62 Oklahoma Statutes, Supp 2022, Section 374.

Civil actions filed by taxpayers for the recovery of real or personal property can only be brought if the written demand upon the proper officers is made by the required resident taxpayers within two (2) years of the transfer of the property, and the civil suit is filed within six (6) months following the refusal, failure, or neglect of the proper officers to act upon the written demand.