



# OKLAHOMA

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### Question Submitted by: The Honorable Tom Daxon, State Auditor and Inspector

1981 OK AG 188

Decided: 11/03/1981

Oklahoma Attorney General

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Cite as: 1981 OK AG 188, \_\_\_

¶0 The Attorney General has considered your request for an opinion in which you ask the following questions:

**"1. 'What detail is required to be placed in the notices which are published under the provisions of 19 O.S. 444 (1971)'?"**

**"2. Does the memorandum which I provided to county officials fairly state these requirements?"**

**"3. Are the names of persons receiving payroll warrants required to be published?"**

¶1 Title 19 O.S. 444 (1971), provides as follows:

"It shall be the mandatory duty of the board of county commissioners to cause to be published in a newspaper published in the county, a full and complete report of all their official proceedings at each regular and special meeting, within the time provided for in 19 O.S. 445 and 19 O.S. 446, Oklahoma Statutes 1951, as amended, and the board of county commissioners shall pay for the same from the appropriation hereinafter provided for: Provided, that the board of county commissioners may also order the publication of the official proceedings in a newspaper printed in any other than the English Language whenever they shall deem it necessary for the better information of the inhabitants.

"It shall also be the mandatory duty of the board of county commissioners, and of the county excise board, each fiscal year, to take such steps as may be necessary and proper under the statutes relating to estimates of needs and appropriations, to appropriate, in the General Government account within the general fund of the county, an amount sufficient to pay for the publication of all such proceedings during the fiscal year, at the legal rate therefor, but in no event less than the total of legal claims for publication of such proceedings during the immediately preceding fiscal year."

¶2 The provisions of 19 O.S. 444 have long prescribed certain duties of county commissioners. It was originally passed by the Territorial Legislature in 1890, Stat. 1890, 1842, readopted in 1893, Stat. 1893, 1811, and readopted again in 1903, Stat. 1903, 1431. See also *Board of Com'rs of Garfield Co. v. Daneley*, 17 Okl. 201, 83 P. 1053 (1906). The first State Legislature carried the law forward, Laws 1907-08, p. 219, and the statute has continuously been part of Oklahoma's statutory law since that time in substantially the same form; the statute being revised in 1910 in minor detail and again in 1953, in which, *inter alia*, the word "mandatory" was added to the first clause of the first grammatical paragraph.

¶3 The Supreme Court of Oklahoma, in the case of *Ingram v. Chappell*, 127 Okl. 135, 260 P. 20 (1927), after first quoting the first clause of the first grammatical paragraph of 5842, C.O.S. 1921, now codified as 19 O.S. 444 (1971), stated:

"This act gives the taxpayers in the various counties an opportunity to read the official proceedings of the board and then to protest against the squandering of public funds and the allowances of unjust claims and to appeal from its action in so doing. The taxpayers are entitled to know how and for what purposes their taxes are disbursed. With this in mind, the Legislature wisely provided in section 8595, C.O.S. 1921 62 O.S. 301 (1971), repealed by Laws, 1980, c. 126, 10 , for the filing of all claims against any county at least five days before the board meeting, which claim shall show in detail the amount due on each item and such other facts as are necessary to show the legality of such claims....

". . . .

"Section 5834, C.O.S. 1921 [19 O.S. 431 (1971)], provides for an appeal from the county commissioners to the district court. Accordingly, any one aggrieved at the decision of the county commissioners in allowing or rejecting the claim of the tax ferret may appeal the same to the district court and have the same there adjudicated." [Bracketed matter added] 127 Okl. at 136-37, 260 P. at 21.

¶4 The statute has been the subject of numerous opinions of the Attorney General. On April 10, 1931, in response to a question posed by Shilling, County Attorney, Attorney General King advised that the county commissioners had a duty under 19 O.S. 444 to publish a full and complete report of their official proceedings even though funds originally appropriated for that purpose become exhausted, and warned of the criminal sanctions available should the commissioners fail to cause said publication, citing 5846, C.O.S. of 1921 [now codified at 19 O.S. 448 (1971)]. On October 3, 1941, Attorney General Williamson adhered to that view in an opinion to Nance, State Senator.

¶5 More recently, the Attorney General, in Opinion 80-174, 12 Okl. Op. A.G. 300, advised that it is the duty of the County Clerk, pursuant to 19 O.S. 445 (1971), to "make out" the report of the official proceedings and that the Board of County Commissioners has no power to correct the report prepared by the County Clerk prior to the report being published.

¶6 The earliest opinion of the Attorney General dealing with the subject of whether reports of the official proceedings could be summarized was issued by Attorney General King to Stewart, State Senator, September 15, 1931. This opinion, authored by then Assistant Attorney General Randall S. Cobb, and relying upon *Ingram v. Chapman*, supra, advised that it was not legally sufficient for a report of the official proceedings to merely refer to claims against the county passed upon by the Board of County Commissioners only by the claim number. The Attorney General then stated:

". . . [T]he report published should contain the number of the claim, the name of each claimant, and the assignee if the claim is assigned, the amount of the claim and the action taken thereon. The report of the proceedings of the Board of County commissioners should be full and complete so as to advise all interested what actually transpired at the meeting being reported."

¶7 Subsequent opinions of the Attorney General have adopted the same construction outlined above, except they clearly required that the nature of the claim also be identified. See, *To Drum*, March 28, 1941 (whether a claim based on grocery orders for indigent persons must name each individual receiving such orders or whether it must just name the claimant); *To Pickering*, County Attorney, March 7, 1951 (whether report must list name of indigent recipient of groceries); *To Garrison*, County Attorney, March 2, 1955 (whether it is sufficient that approved claims be published in summary showing total amounts by departments, accounts and funds and by Commissioners' districts for apportioned funds); *To Hodges*, County Attorney, November 22, 1957 (whether a short form summary-type publication of claims and expenditures would comply).

¶8 The reporting requirements imposed by 19 O.S. 444 (1971), are in addition to the duties imposed under the Open Meeting Act, 25 O.S. 301 et seq. (1977), particularly the specific requirement that public bodies keep minutes of the meetings of the public body. See 25 O.S. 312 (1977).

¶9 In view of the foregoing it is apparent that notices published pursuant to 19 O.S. 444 (1977), must include sufficient detail to advise the taxpaying public regarding what actually transpired at the meeting reported in order that the concerned public might protest against the squandering of public funds or allowance of unjust claims and, if necessary, exercise their right as taxpayers to appeal. 19 O.S. 431 (1971). In regard to action taken on claims submitted against the county, the report should at least include the name of each claimant, the name of any assignee if the claim is assigned, the amount and nature of the claim, and the action taken thereon.

¶10 At your request we have examined your Memorandum No. 79-3, addressed to all County Clerks. After paraphrasing the first clause of the first grammatical paragraph of 19 O.S. 444 (1971), and noting your opinion that not all counties were in compliance therewith, you gave the following advice:

"Each published notice should contain the following:

- "1. All motions made and voted upon, showing the vote of each commissioner.
- "2. All contracts awarded for services, leasing of equipment or sale of capital items.
- "3. The listing of claims should show the claim, purchase order or warrant number, payee, purpose and amount of the claim. Claims should not be 'lumped.'"

¶11 To the extent that the foregoing list is intended to be exhaustive of matters that should appear in a report of official proceedings of the Board of County Commissioners, said memorandum is incorrect. 19 O.S. 444 mandates "a full and complete report of *all* . . . official proceedings [of the Board of County Commissioners] at each regular and special meeting." (Emphasis added) For example, your list requires the reporting of motions made and voted upon but does not appear to require the reporting of motions made but tabled or otherwise not acted upon. Important public matters may be discussed by the Commissioners that would not culminate in a motion or contract or involve action on some claim. See, *cf.*, *State ex rel. Cartwright v. Oklahoma Industries Authority*, Okl., 629 P.2d 1244 (1981) (where the Supreme Court reversed the District Court's use of a list of records that must be open records rather than requiring the defendant to produce and make available to the public "all" records, to the extent that the list of records was not as comprehensive as the statutory requirement). Accordingly, the Attorney General is of the opinion that the list of items that should be in a published notice is not as comprehensive as the matters required to be reported by 19 O.S. 444; and, therefore, Memorandum 79-3 does not adequately state the reporting requirements.

¶12 Submission of county payroll claims is governed by 62 O.S. 304.1 (1980). Said statute provides as follows:

"A. The regular personnel of an agency of any county, city, town, school district or board of education may be certified to the governing board thereof for payment by a payroll purchase order in the manner herein provided. For the purpose of this section, such regular personnel is hereby defined as those persons whose appointment or employment or election, whether on full or part-time basis, together with the rate of pay unless the same be fixed by law, has been confirmed or otherwise fixed by the governing board, in each instance, and entered in its journal of proceedings or by separate contract of employment properly authenticated and filed of record.

"B. For each pay period, the duly elected or appointed head of any department, office, sub-office, district, station or school, may execute on behalf of himself and his subordinates, a payroll statement, itemizing in detail the names of such persons, nature of employment or service, rate of pay each, hours worked, and dates of service within the payroll period if less than a full payroll period. This statement shall be verified by affidavit as to:

- "1. Subordinate relationship of all persons named, other than himself, to the affiant;
- "2. Record of employment or contract relationship of all persons named; and
- "3. Services performed under direct supervision.

"The form of affidavit shall be prepared by the State Auditor and Inspector, and shall provide for entry therein by words, and figures, as to the number of persons certified to in such payroll statement and affidavit.

"The statement and affidavit shall be deemed to include the approval of departmental head and receipt acknowledging services of subordinate, where such is required by law; and no further statements for that purpose shall be required. The subordinate employees named therein shall not be required to sign the payroll statement and affidavit unless the governing board, by official order, so requires, in which event, each may sign opposite his own name. Affidavit to any payroll statement may be verified by any officer authorized to take acknowledgments, or by the clerk of the county, city, town, school district or board of education, as the case may be.

"C. The payroll statement and affidavit shall be forwarded to the clerk of the county, city, town, school district or board of education, and shall become a permanent part of the financial records of the agency. The total payroll amounts from the payroll statement and affidavit, and the amounts charged to each appropriation and fund of the agency, shall be listed or estimated on the payroll purchase order for consideration and payment by the governing board. The amount to be paid pursuant to a payroll purchase order may be encumbered as of the date the purchase order is considered by the governing board for payment or as of the date payroll payments are made.

"D. The encumbering officer or clerk of a municipality, county or school may authorize payment of the following taxes and invoices as they become due without a purchase order or further approval of the governing board:

- "1. Taxes, including, but not limited to, withholding, social security or unemployment compensation taxes;
- "2. Retirement or pension fund payments or contributions which are payable pursuant to a resolution, ordinance, contract or other appropriate agreement which has been approved by the governing board; and
- "3. Payments for insurance or related coverages, including, but not limited to, accident, health or life, workers' compensation, or any other property, vehicle, marine, surety, liability or casualty coverages, which are payable under a valid contract, policy or other appropriate agreement which has been approved by the governing board."

¶13 62 O.S. 304.1 was originally enacted as House Bill 36 of the 19th Legislature, Laws 1943, p. 142, 1. Significantly, House Bill 36 was entitled as follows:

"An Act *intended to minimize the volume of work and records* required of Municipal Clerks, by authorizing a pay-roll claim for departmental and group personnel, patterned after authority granted by law to State departments; restricting the use thereof; prescribing method of verification; limiting assignments; and declaring an emergency." (Emphasis added)

¶14 The statute enacted was substantially identical to subsections A and B of the current law. The fundamental rule of statutory interpretation is to ascertain the intent of the Legislature in enacting the legislation and to give effect to that intent. *Riffe Petroleum Co. v. Great National Corp., Inc.*, Okl., 614 P.2d 576 (1980). It is clear from the title of H.B. 36 that it was the intention of the Legislature only to reduce the amount of paperwork required in processing employee payroll claims. Obviously, the aggregation of the several employee payroll claims into one payroll claim form would reduce the bulk of the paperwork required in processing the claims. However, nothing in Laws 1943, p. 142, 1, purported to affect the duty imposed by 19 O.S. 444 to inform the public of the various claims aggregated in the single payroll claim, nor did the act purport to transform the individual employee claims into the claim of some other person or entity. All that was apparently intended by the payroll claim legislation was to reduce the volume of paperwork.

¶15 This interpretation finds further support in the fact that the Legislature did not make the payroll procedure encompassed in 62 O.S. 304.1 mandatory but only authorized the use of such a procedure. For example, the text of the act states in part:

"By such pay-roll claim, the duly elected or appointed head of any department, office, sub-office, district, station, or school, *may* execute, on behalf of himself and his subordinates, a statement of earnings . . . such claims *shall* be verified by affidavit under oath as to....

"Where such affidavit is made it shall be deemed to include...." (Emphasis added)

¶16 The word "shall" in statutory language is ordinarily interpreted to require mandatory action. *Barnes v. Transok Pipeline Co.*, Okl., 549 P.2d 819 (1976). Use of the word "may" in statutory language ordinarily is interpreted to provide discretionary authorization to take the action. *Shea v. Shea*, Okl., 537 P.2d 417 (1975). It is, therefore, the opinion of the Attorney General that the Legislature in originally enacting 62 O.S. 304.1 did not intend to create an exception from the reporting requirements of 19 O.S. 444, but only intended to provide an optional procedure for more efficiently processing regular payroll claims against the county.

¶17 The remaining question is whether the 37th Legislature (2d reg. session), by amending 62 O.S. 304.1 through the passage of S.B. 488, Laws 1980, c. 126, 1, intended to affect the reporting requirements of 19 O.S. 444 (1971). The Legislature did not expressly purport to affect 19 O.S. 444 reporting requirements in enacting changes to 19 O.S. 304.1. Nor did the Legislature repeal or amend 19 O.S. 444 to exclude employee payroll claims from the requirement that official proceedings of the Boards of County Commissioners be published. Nor did the Legislature repeal or amend 19 O.S. 431 (1971), that authorizes the members of the public to protest and appeal the actions of the Boards of County Commissioners. Title 62 O.S. 304.1 (1980), is still a discretionary procedure; the Legislature did not, through the amendment, mandate the procedure but again only authorized the use of an optional procedure by stating that:

"The regular personnel of any agency of any county . . . *may* be certified to the governing board thereof for payment by a payroll purchase order..." 62 O.S. 304.1(A) (1980). (Emphasis added)

"For each pay period, the duly elected or appointed head of any department [etc.], *may* execute on behalf of himself and his subordinates, a payroll statement...." 62 O.S. 304.1(B) (1980). (Emphasis added)

¶18 The interest of the public in scrutinizing the payroll claims of county employees is no less valuable than that of the public in scrutinizing other claims against the county. As the Court noted in *Ingram v. Chappel*, supra:

"The commissioners are charged with the responsibility of allowing all claims against the county and expending large sums of money *belonging to the taxpayers*...." (Emphasis added) 127 Okl. at 236, 260 P. at 21.

¶19 19 O.S. 444 provides the taxpayers an opportunity to read the official proceedings of the board and thereafter protest or appeal the board's actions if it is believed that money is being squandered or unjust claims have been allowed. *Ingram v. Chappell*, supra. Such community scrutiny could immediately reveal the existence of nepotism and could more clearly inform the public of the various functions and services provided through county government.

¶20 Consequently, we conclude that the use of the permissive procedure by which county payroll claims may be handled does not relieve the Boards of County Commissioners from their statutory responsibility under 19 O.S. 444 (1971), to report to the public action they took on the claims of county employees. As with any other claim against the county, the report of the official proceedings at which payroll claims are approved should list at least (1) the name of the claimant, (2) the name of any assignee of said claim, if assigned, (3) the amount and nature of the claim and (4) the action taken thereon.

¶21 Furthermore, if the optional procedure provided by 62 O.S. 304.1 (1980), is not used it is apparent that in stating the nature of his claim the employee would be required to identify the work he performed for the county. Therefore, the nature of the claim reported when the claim is made through the alternate payroll claim procedure should also include some meaningful description of the job the claimant performed that gives rise to his claim.

**¶22 In summary, it is the official opinion of the Attorney General that your opinion request should be answered as follows:**

- 1. The report of the official proceedings of the Board of County Commissioners, as mandated by 19 O.S. 444 (1971), should be of sufficient detail so as to advise the taxpaying public regarding what actually transpired at the meeting being reported. Longstanding interpretation of 19 O.S. 444 has established that when action is taken on a claim against the county at least the following information should be reported: (1) the name of the claimant, (b) the name of the assignee, if the claim has been assigned, (c) the amount and nature of the claim and (d) the action taken on the claim.**
- 2. Your Memorandum 79-3 can be interpreted to require less information to be published in the report of the official proceedings than is required by 19 O.S. 444 (1971), to be included in the report.**
- 3. Adoption by the county government of the optional payroll claim authorization procedure, as set forth in 62 O.S. 304.1 (1980), does not relieve the Board of County Commissioners from reporting as required by 19 O.S. 444 (1971), (a) the name of each payroll claimant, (b) any assignee, if the claim has been assigned, (c) the nature and amount of the claim and (d) the action taken on the claim. In reporting the nature of the payroll claim, a meaningful description of the work performed by the individual claimant for the county giving rise to the claim should be set forth.**

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##### **Oklahoma Supreme Court Cases**

Cite	Name	Level
<u>1975 OK 90, 537 P.2d 417,</u>	<u>SHEA v. SHEA</u>	Cited
<u>1976 OK 27, 549 P.2d 819,</u>	<u>BARNES v. TRANSOK PIPELINE COMPANY</u>	Cited
<u>1980 OK 112, 614 P.2d 576,</u>	<u>Riffe Petroleum Co. v. Great Nat. Corp., Inc.</u>	Cited
<u>1981 OK 47, 629 P.2d 1244,</u>	<u>State ex rel. Cartwright v. Oklahoma Industries Authority</u>	Cited

##### **Title 19. Counties and County Officers**

Cite	Name	Level
<u>19 O.S. 431,</u>	<u>Rights of Appeal - Necessary Acts</u>	Discussed at Length
<u>19 O.S. 444,</u>	<u>Publication of Proceedings Mandatory - Appropriation to Cover Cost Mandatory</u>	Discussed at Length
<u>19 O.S. 445,</u>	<u>Clerk to Make Report of Proceedings for Publication</u>	Discussed
<u>19 O.S. 446,</u>	<u>Duty of Publisher - Time Limit for Publication</u>	Cited
<u>19 O.S. 448,</u>	<u>Penalty for Failure to Perform Duty</u>	Cited

##### **Title 25. Definitions and General Provisions**

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<u>25 O.S. 301,</u>	<u>Short Title</u>	Cited
<u>25 O.S. 312,</u>	<u>Written Minutes</u>	Cited

##### **Title 62. Public Finance**

Cite	Name	Level
<u>62 O.S. 301,</u>	<u>Repealed</u>	Cited
<u>62 O.S. 304.1,</u>	<u>Payment of Regular Personnel - Payroll Statements and Affidavits - Authorization for Payment of Certain Taxes and Invoices</u>	Discussed at Length

