

Public Trusts Laws

(Title 60 of the Oklahoma Statutes, Sections 176-180.4)

PURPOSE

Public trusts may be created to issue obligations and provide funds for the furtherance of any public purpose of the municipality, which is the beneficiary of the trust.

ADVANTAGE,

Unlike a municipality, a public trust is not subject to the constitutional debt limitation and may issue revenue bonds.

LEGAL STATUS

The trust must be operated as a legal entity **separate** from the municipality rather than as a department of the municipality even when its board of trustees is identical to the governing body of the municipality. This requires separate meetings for conducting trust business, separate books and accounts and separate fiscal affairs. Funds of the trust must not be commingled with those of the municipality.

POWERS

The trust indenture is the main source for determining the purpose, powers and operating procedures of the trust. Some indentures provide that surplus funds of the trust may be transferred to the municipality but others direct that revenues will be retained by the trust. Also some trust indentures or bond indentures require specific rate structures or maintenance and capital improvements standards.

TORT LIABILITY

The public trust is liable for its own torts. The Governmental Tort Claims Act controls the limits and conditions of the liability. (Title 51, Section 152)

PURCHASING AND COMPETITIVE BIDDING

Public trusts are governed by two competitive bidding requirements. They are subject to the Public Competitive Bidding Act. (Title 61, Section 101). In addition, bids must be sought for all contracts for construction, labor, equipment, material or repairs in excess of \$7,500.00 in accordance with the procedure set out in Title 60, Section 1 76(h).

(h)

Contracts for construction, labor, equipment, material or repairs in excess of seven thousand five hundred dollars (\$7,500.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in the preceding section hereof [see Section 1 76(f)]; such advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered. Provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding seven thousand five hundred dollars (\$7,500.00) is necessary in order to avoid loss of life. Substantial damage to property, or damage to the public peace or safety, then such contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial trusts.

Other purchasing requirements may be provided in the trust instrument or by policies adopted by the trust's board of trustees.

MEETINGS AND RECORDS

In addition to the Open Meeting Law and the Open Records Act, public trusts must comply with the meeting, record keeping and reporting requirements of Title 60, Section 1 7XD.

- D.** Meetings of trustees of all public trusts shall be open to the public to the same extent as is required by law for other public boards and commissions. Such meetings shall also be open to the press and any such equipment deemed necessary by the press to record or reports the activities of the meetings. In such trusts wherein the State of Oklahoma is the beneficiary, a written notice of trustees' meetings shall be filed with the office of the Secretary of State at least three (3) days prior to the meeting date. Records of the trust and minutes of the trust meetings of any public trust shall be written and kept in a place, the location of which shall be recorded in the office of the county clerk of each county, wherein the trust instrument shall be recorded. Such records and minutes shall be available for inspection by any person during regular business hours. Every trust created under Sections 176 et seq. of this title shall file a monthly report of all expenditures of bond proceeds with the governing body of the beneficiary and with the Governor, the Speaker of the

House of Representatives and the President Pro Tempore of the Senate in the case of a public trust having the State of Oklahoma as beneficiary.

CONFLICTS OF INTEREST

The specific conflict of interest provisions for public trustees appear at in Title 60, Section 178.8.

- A.** Except with regard to residents of a facility for aged persons operated by a public trust, who are trustees of the public trust operating the facility and who comprise less than a majority of the trustees, a conflict of interest shall be deemed to exist in any contractual relationship in which a trustee of a public trust, or any for-profit firm or corporation in which such trustee or any member of his or her immediate family is an officer, partner, principal stockholder, shall directly or indirectly buy or sell goods or services to, or otherwise contract with such trust. Upon a showing thereof, such trustee shall be subject to removal and such contact shall be deemed unenforceable; as against such trust unless the records of such trust shall reflect that such trustee fully and publicly disclosed all such interest or interests, and unless such contractual relationship shall have been secured by competitive bidding following a public invitation to bid.

The following types of transactions are exempt from the aforementioned provisions of this section:

1. The making of any loan or advance of any funds to, or the purchase of any obligations issued by such public trust, in connection with the performance of any of its authorized purposes;
2. Any legal advertising required by law or indenture or determined necessary by the trustees of such public trust;
3. The performance by any bank, trust company or similar entity or any services as a depository; or
4. The sale of any public utility services to such public trust, in which the price of said services, is regulated by law.

It shall be the duty of each public trust to compile a list of all conflicts of it which its trustees have made disclosure, It shall also be the duty of each trust to compile a list of all dealings between its trustees and the trust which involve the exempted transactions listed above. Such lists shall be compiled semiannually for periods ending June 30 and December 31 of each year. Such lists shall be compiled on forms prescribed by the Oklahoma Tax Commission and shall be a matter of public record. Copies of such shall be filed with the Secretary of State by September 1 and March 1 of each year.

- B.** The provisions of this section shall be inapplicable to any public trust created and existing prior to July 1, 1988, if all bonds issued by such public trust are required to be issued under and pursuant to a single bond indenture by amendment or supplement thereto and if the incitement or will creating such public trust and the bond indenture under which such trust must issue all bonds shall have been held to be valid and binding agreements in an opinion of the Supreme Court of the State of Oklahoma, and nothing in this section shall impair or be deemed to impair the trust indenture, the bond indenture, or existing or future obligations of such public trust.

AUDITS

Title 60, Section 180.1:

The trustees of every trust created for the benefit and furtherance of any public function with the State of Oklahoma or any county or municipality as the beneficiary or beneficiaries thereof must cause an audit to be made: of, including, but not limited to, the funds, accounts, and fiscal affairs of such trust, such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust.

Title 60, Section 180.2:

- a. The audits herein required shall be certified with the opinion of a certified public accountant or a licensed public accountant notwithstanding any lesser requirement by any instrument under which the trust may have covenanted for an audit to be made or furnished. The required audit shall adhere to standards set by the State Auditor and Inspector. Once copy of the annual audit shall be filed with the State Auditor and Inspector one copy with each beneficiary of the trust, not later than six (6) months following the close of each fiscal year of the trust.
- b. Within thirty (30) days after the effective date hereof each trust mentioned in Section 180.1 of this title shall certify to the State Auditor and Inspector the date of the close of its fiscal year.
- c. In the event that copy of such audit as herein required shall not be filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector hereby is authorized to employ at the cost and expense of the trust, a certified public accountant or licensed public accountant to make the audit herein required.
- d. Prior to the delivery of and payment for any bonds, notes or other evidences of indebtedness by a public trust there shall be filed with the Secretary of State an executed original or certified copy of the written instrument or will creating such public trust and a notice of said filing with the Secretary of State shall be delivered to the State Auditor and Inspector.

Budget

Title 60, Section 176 (g):

Public trusts created pursuant to this section shall file annually, with their respective beneficiaries, copies of financial documents and reports sufficient to demonstrate the fiscal activity of such trust, including, but not limited to, budgets, financial reports, bond indentures and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust. Public trusts created pursuant to this section shall comply with annual budget provisions applicable to the beneficiary of such trust. A copy of such budget shall be submitted to the beneficiary.