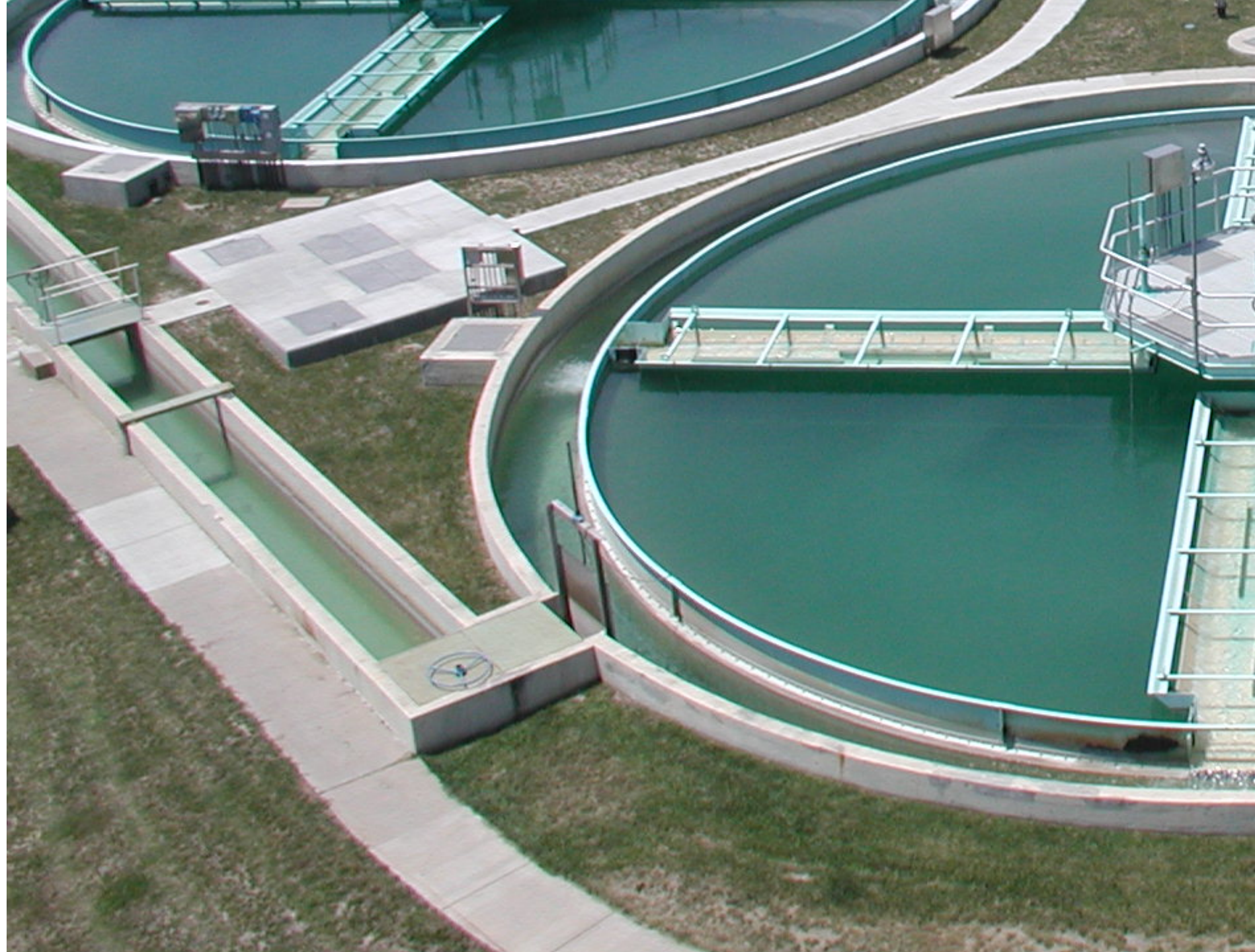




Municipal Wholesale Water Contracts

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Municipal rate review

- Okla. Stat. tit. 11, § 37-119(B) provides: “All such water sold and furnished to persons or public or private entities outside the corporate limits of the municipality shall be sold and furnished upon written contracts which shall provide for an annual review of the municipality's costs and contract modification of rates to permit rates to be increased or decreased to the purchasers as appropriate. Any modification shall be nondiscriminatorily allocated between the municipality's customers and the purchaser. Provided, however, that only those costs that are attributable to maintaining the ability of the municipality to provide water service to the purchaser shall be included in purchaser's rates.”

Enterprise Accounting

- Okla. Stat. tit. 11, § 37-119a provides that “[b]eginning July 1, 1996, if a municipality selling water to persons or public or private entities outside its corporate limits has not implemented an enterprise accounting system to account for the cost of water supply, treatment and delivery to the point of delivery to the purchaser's water system, it shall be liable to the purchaser for the reasonable expenses of such an accounting exceeding the expense which the purchaser would have incurred using an enterprise accounting system.”

Accountants Will Disagree

- Enterprise:
 - Is it cost to produce water?
 - Cost to produce excess water?
 - What city expenses can be lawfully programmed into water rates?

Common Definition of Enterprise Fund Accounting

- An enterprise fund establishes a separate accounting and financial reporting mechanism for municipal services for which a fee is charged in exchange for goods or services. **Under enterprise accounting, the revenues in expenditures of services are separated into separate funds with its own financial statements, rather than commingled with the revenues and expenses of all other government activities.**
- Enterprise funds may be established, "for a utility, health care, recreational transportation facility." Examples of which include the following.
- Public utilities - water, sewer, trash disposal

Area for Litigation

- **Direct costs** are those associative directly with the enterprise fund. Generally these include salaries and wages of the enterprise employees, other operating expenses and contractual payments. These expenditures will be appropriated in and incurred directly by the enterprise fund.
- **Indirect costs** are those costs that cannot be directly or exclusively assigned to one service. Enterprises often benefit from expenditures made by the general fund. For example, the collector, whose salaries paid by the general fund, make process enterprise user billed payments. **Indirect costs should be identified and allocated to the enterprise fund using clearly established formulas to prorate the expense among departments.**

Okfuskee RWD 2 v. Okemah

- FN8 - Crawford later testified that accountants use the term "enterprise fund accounting" and that he assumes the statute's use of "enterprise accounting system" is intended to mean "enterprise fund accounting." He distinguished enterprise fund accounting from government fund accounting to explain that a purchase in enterprise fund accounting is capitalized and depreciated on the books, while neither would be done for a purchase in a government fund accounting system. Additionally, he explained that borrowed funds are treated as a liability, with the interest as an expense, in enterprise fund accounting system, **while in a government fund accounting system, borrowed money is a resource and both principal and interest are considered expenditures.**

What Else Governs Water Contracts?

- The Uniform Commercial Code (Title 12A)
 - Implied Warranty of Merchantability/Usage of Trade
 - 12A O.S. 2-314
 - Implied Warranty of Fitness for a Particular Purpose
 - Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. 12A O.S. 2-315

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Open Meetings Act

- *Impact of Violations.* “Any action taken in willful violation of this act shall be invalid.” Okla. Stat. tit. 25, § 313.
 - In the context of the Oklahoma Open Meetings Act, “[w]ilfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses conscious, purposeful violations of the law or blatant or deliberate disregard of the law by those who know, or should know the requirements of the Act.” *Rogers v. Excise Board*, 1984 OK 95, ¶ 14, 701 P.2d 754, 761.



Questions?

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