

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

INDEPENDENT SCHOOL DISTRICT No. 2, )  
TULSA COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT No. 52, )  
OKLAHOMA COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT No. 71, )  
KAY COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT No 20, )  
MUSKOGEE COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT No. 18, )  
JACKSON COUNTY, OKLAHOMA, )  
INDEPENDENT SCHOOL DISTRICT No. 14, )  
OTTAWA COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT No. 105, )  
BLAINE COUNTY, OKLAHOMA; and )  
INDEPENDENT SCHOOL DISTRICT NO. 2, )  
KIOWA COUNTY, OKLAHOMA, )

Plaintiffs, )

v. )

OKLAHOMA TAX COMMISSIONER, STEVE )  
BURRAGE; OKLAHOMA TAX )  
COMMISSIONER DAWN CASH; and )  
OKLAHOMA TAX COMMISSIONER, )  
THOMAS E. KEMP, JR., )

Defendants. )

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JUN 15 2016

RICK WARREN  
COURT CLERK

31  
**CV-2016 - 1249**

Case No.

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff independent school districts respectfully submit this as their Petition for Declaratory and Injunctive relief.

1. This is an action pursuant to 12 O.S. § 1651 et seq., to determine and declare the proper construction of the statutory apportionment of motor vehicle collections to the Plaintiff school districts, and for injunctive relief to require the Defendant Oklahoma Tax Commissioners to properly apply those statutes in the future. Defendants have misapplied the statutes described herein, resulting in shortages ranging from several thousand to over one million dollars for each

of the Plaintiff school districts. An actual controversy exists between Plaintiff school districts and Defendant Tax Commissioners regarding the construction and application of these statutes.

### **PARTIES**

2. Plaintiffs are Oklahoma independent school districts. They are Independent School District No. 2, Tulsa County, Oklahoma, (Sand Springs Public Schools), Independent School District No. 52, Oklahoma County, Oklahoma, (Mid-Del Public Schools), Independent School District No. 71, Kay County, Oklahoma, (Ponca City Public Schools), Independent School District No.20, Muskogee County, Oklahoma, (Muskogee Public Schools), Independent School District No. 18, Jackson County, Oklahoma, (Altus Public Schools), Independent School District No. 14, Ottawa County, Oklahoma, (Quapaw Public Schools), Independent School District No. 105, Blaine County, Oklahoma (Canton Public Schools), and Independent School District No. 2, Kiowa County, Oklahoma, (Lone Wolf Public Schools). The school board of each Plaintiff school district has authorized this action in an Open Meeting. All legal prerequisites to this action have been met by each Plaintiff school district.

3. Defendants are Oklahoma Tax Commissioners Steve Burrage, Dawn Cash, and Thomas E. Kemp, Jr. They are charged with the governance and administration of the Oklahoma Tax Commission (OTC). They are sued in their official capacities only. By law the OTC apportions certain motor vehicle collections to school districts as described herein. The OTC is headquartered in Oklahoma County and venue for this action is appropriate in this Court.

### **FACTS**

4. Pursuant to statute, the OTC apportions 36.20% of motor vehicle collections to school districts. Since July 1, 2015 the OTC has apportioned those collections as described in the affidavit of Janelle Enevoldsen, Director of the OTC Management Services Division (the Division),

attached hereto as Exhibit 1 and incorporated herein. As demonstrated below, since July 1, 2015 the OTC has misapplied the pertinent statutes, omitting two legally required steps in the allocation. As a result, Plaintiff school districts have not been apportioned motor vehicle collections as required by law. This illegality has deprived Plaintiff districts of funds to which they are entitled since July 1, 2015, and distorts apportionments they will receive in the future.

5. The statute governing the allocation of these motor vehicle collections is 47 O.S. § 1104(B)(2), the pertinent part of which is as follows:

a. except as otherwise provided in this subparagraph, each district shall receive the same amount of funds as such district received from the taxes and fees provided in this title in the corresponding month of the preceding year. Any district eligible for funds pursuant to the provisions of this section that was not eligible the preceding year shall receive an amount equal to the average daily attendance of the applicable year multiplied by the average daily attendance apportionment within such county for each appropriate month. For fiscal year 1995 and thereafter, any district which received less than twenty-five percent (25%) of the average apportionment of the monies made to school districts in this state based on average daily attendance in fiscal year 1995 shall receive an amount equal to the average daily attendance in the 1994-1995 school year multiplied by the average daily attendance apportionment within the county in which the district is located for each appropriate month, and

b. any funds *remaining unallocated* following the allocation provided in subparagraph a of this paragraph shall be apportioned to the various school districts so that each district shall *first* receive the *cumulative total of the monthly apportionments* for which it is otherwise eligible under subparagraph a of this paragraph and *then* an amount based upon the proportion that each district's average daily attendance bears to the total average daily attendance of those districts entitled to receive funds pursuant to this section as certified by the State Department of Education.

(Emphasis added).

6. Thus, the statute 47 O.S. § 1104(B)(2) prescribes a three step allocation of motor vehicle collections to school districts. These steps are:

First, Subparagraph (a) requires an allocation of the same amount of funds as the district received from taxes and fees (motor vehicle collections) in the corresponding month of the previous year.

Second, Subparagraph (b) *first* requires an additional allocation if there remains additional funds unallocated by Subparagraph (a), sufficient to provide school districts with enough revenue so the districts receive the *cumulative total of the monthly apportionments* they should have received under Subparagraph (a).

Third, *then* only if there are still funds left unallocated after any cumulative shortfall has been made up, each district gets its proportional share of the remainder based upon the proportion its average daily attendance (ADA) bears to the total ADA of all districts entitled to receive funds, as certified by the State Department of Education (SDE).

The second statutory step that brings the districts up to the *cumulative total of monthly apportionments* they would have received under Subparagraph (a) clearly contemplates allocations under Subparagraph (a) may sometimes fall short, and then the shortage would be made up later by operation of the first part of Subparagraph (b). Even if no allocation were made for the first step, the second step found in 47 O.S. § 1104(B)(2)(b) requires available funding go *first* toward making up the cumulative total of apportionments that should have been received under Subparagraph (a), or as much of that shortfall as could be made up with existing funds, any remaining shortfall to be made up later. *Then* only after any such shortage is made up, may the OTC allocate any remainder according to the districts' proportional share of the total ADA in the third statutory step.

7. Since July 1, 2015 in every month except September and December, 2015 and March 2016, the monthly motor vehicle collections have been *less* than those of the corresponding month of the preceding year. In those under collection months, the OTC has improperly apportioned available motor vehicle collections to school districts by *completely skipping* the first two of the three required statutory steps explained above. Instead, all amounts have been apportioned to school districts using only the third step, based on the proportion that the district's ADA bears to

the total average ADA of all districts under the provisions of 47 O.S. § 1104(B)(2)(b). See Exhibit 1, Enevoldsen affidavit, ¶ 7. Further, in September and December 2015, and March, 2016, in which motor vehicle collections were *more* than the corresponding months of the preceding year, the OTC still skipped the second step in the statute, and distributed the excess funds according to the proportional ADA method, depriving Plaintiff districts the chance to make up the cumulative shortfall in monthly apportionments under Subparagraph (a). See, Exhibit 1, Enevoldsen affidavit, ¶ 6.

8. As a result of the OTC's misapplication of the statute, through May, 2016 the Plaintiff school districts were illegally deprived of allocations at least in the following amounts:

School district	Cumulative loss in allocation as of May, 2016
Sand Springs	\$300,000
Mid-Del	\$1,320,000
Ponca City	\$307,000
Muskogee	\$287,000
Altus	\$252,000
Quapaw	\$44,000
Canton	\$25,000
Lone Wolf	\$29,000

These shortfalls prevent the Plaintiffs from receiving the amount of Foundation Program income they are intended to receive from the State Department of Education pursuant to Title 70 Section 18-200.1 et seq. which reduces their ability to provide educational services to their students.

9. Pursuant to 12 O.S. § 1651, et seq., the Court should declare the proper construction of 47 O.S. § 1104(B)(2) to require the Defendants and the OTC to apportion motor vehicle collections in the three steps set forth herein and as required by the statute with respect to the Plaintiff districts.

10. Further, the Court should temporarily and permanently enjoin the Defendants to establish and maintain the proper apportionment of motor vehicle collections in the future pursuant to 47 O.S. § 1104(B)(2) with respect to the Plaintiff districts. Specifically, first, with respect to the Plaintiff districts the Court should enjoin Defendants to allocate motor vehicle receipts to Plaintiff districts pursuant to 47 O.S. § 1104(B)(2)(a), even in any month in which the collections are *less* than in the corresponding month of the preceding year. If, for any month, the funds available are insufficient to provide the total allocation required in subparagraph a of paragraph 1104(B)(2), the Court should require each Plaintiff district to receive a proportionate share of the funds available based upon the proportion of the total revenues that such district received in the corresponding month of the preceding year (the proportional share). For all purposes, if such month of the preceding year was a month for which the OTC incorrectly (illegally) applied 47 O.S. § 1104(B)(2), i.e. since July 1, 2015, said “total revenues that such district received in the corresponding month of the preceding year” the court should require they be recalculated by the OTC to be the amount that such district would have received if the OTC had correctly applied 47 O.S. § 1104(B)(2)(a), as prayed for herein, in order to prevent future diminution of apportionments based its wrongful construction of the statute.

11. Second, the Court should order the Defendants to give effect to step 2 which is set forth in subparagraph (b). *First*, the Court should order Defendants to maintain a calculation of the cumulative total of the monthly apportionments (amounts due) less monthly allocations (amounts of payments made) under subparagraph a and this first part of subparagraph b for each

of the plaintiff districts. This difference would be the “cumulative total of the monthly apportionments for which it is otherwise eligible under subparagraph (a)...”(the cumulative total). Second, in months in which motor vehicle collections are *more* than those in the corresponding month of the previous year, the Court should enjoin Defendants to adhere to the second step in 47 O.S. § 1104(B)(2)(b) to apportion funds remaining unallocated under subparagraph a to satisfy a proportionate share of each Plaintiff District’s cumulative total to bring the Plaintiff Districts as close as possible to the cumulative total of monthly allocations they would have received under Subparagraph (a) as properly construed and applied. The Court should order this process to continue until Plaintiff districts have recovered the cumulative total of monthly apportionments for which they are otherwise eligible since July 1, 2015 as set forth in Paragraph 8 herein, or as the evidence may support at trial.

12. Third, the Court should prohibit Defendants from apportioning motor vehicle collections to the Plaintiff districts pursuant to the third step in 47 O.S. § 1104(B)(2)(b) by the proportional ADA method until any and all *cumulative total of monthly apportionments since July 1, 2015* has been made up by application of steps one and two.

#### PRAYER

Wherefore, premises considered, Plaintiff Districts pray for declaratory and injunctive relief, both temporary and permanent, as set forth herein, and for such other relief as the Court deems proper, and for their costs and attorney fees in this matter.

Respectfully submitted,



Robert A. Nance, OBA No. 6581  
RIGGS, ABNEY, NEAL, TURPEN,  
ORBISON & LEWIS

528 NW 12th Street  
Oklahoma City, OK 73103  
Phone: (405) 843-9909  
Fax: (405) 842-2913  
Email: [rnance@riggsabney.com](mailto:rnance@riggsabney.com)

-and-

Stephanie L. Theban, OBA No. 10362  
RIGGS, ABNEY, NEAL, TURPEN,  
ORBISON AND LEWIS  
502 West Sixth Street  
Tulsa, OK 74119  
Phone: (918) 587-3161  
Fax: (918) 587-9708  
Email: [stheban@riggsabney.com](mailto:stheban@riggsabney.com)

ATTORNEYS FOR PLAINTIFFS



**AFFIDAVIT OF JENNELLE ENEVOLDSEN**

State of Oklahoma )  
 ) ss  
County of Oklahoma )

Jennelle Enevoldsen, of legal age, being first duly sworn, states and deposes:

1. I am the Director, Management Services Division (“Division”), Oklahoma Tax Commission. I make this affidavit based upon my personal knowledge and information garnered from the records of the Oklahoma Tax Commission, as maintained in the ordinary course of the performance of its duties. The Management Services Division is charged with apportionment of all monies collected by the Oklahoma Tax Commission, including taxes and fees collected or received pursuant to the Oklahoma Vehicle License and Registration Act (“Motor Vehicle collection”), 47 O.S. §§ 1-101 *et seq.*

2. Prior to July 1, 2015, the statute which directs the apportionment of Motor Vehicle collections to school districts, among others, prohibited school districts from receiving less money than school districts received in the same month as the previous fiscal year. This is commonly referred to as “hold harmless”.

3. After the close of each month, Motor Vehicle collections are reduced by dedicated funds to determine the amount to be apportioned. By statute, school districts receive 36.20% of this amount.

4. The amount to be apportioned for the month is compared to the amount apportioned in the same month of the previous fiscal year. Prior to July 1, 2015, for any month in which the amount to be apportioned was less than the amount apportioned to school districts in the same month of the previous fiscal year, the hold harmless provision was applied resulting in



monies that would have otherwise gone to the general fund being used to ensure school districts received no less than received in the previous year.

5. HB 2244, effective July 1, 2015, deleted the hold harmless provision. However, §1104(B)(2)(a) which was not amended in HB 2244, directs that each district "shall receive the same amount of funds as such district received in the corresponding month of the preceding year.

The statute directs apportionment of Motor Vehicle collections to school districts as follows:

a. except as otherwise provided in this subparagraph, each district shall receive the same amount of funds as such district received from the taxes and fees provided in this title in the corresponding month of the preceding year. Any district eligible for funds pursuant to the provisions of this section that was not eligible the preceding year shall receive an amount equal to the average daily attendance of the applicable year multiplied by the average daily attendance apportionment within such county for each appropriate month. For fiscal year 1995 and thereafter, any district which received less than twenty-five percent (25%) of the average apportionment of the monies made to school districts in this state based on average daily attendance in fiscal year 1995 shall receive an amount equal to the average daily attendance in the 1994-1995 school year multiplied by the average daily attendance apportionment within the county in which the district is located for each appropriate month, and

b. any funds remaining unallocated following the allocation provided in subparagraph a of this paragraph shall be apportioned to the various school districts so that each district shall first receive the cumulative total of the monthly apportionments for which it is otherwise eligible under subparagraph a of this paragraph and then an amount based upon the proportion that each district's average daily attendance bears to the total average daily attendance of those districts entitled to receive funds pursuant to this section as certified by the State Department of Education.

6. Subsequent to July 1, 2015, if the amount of Motor Vehicle Collections to be apportioned is equal to or greater than the amount apportioned in the corresponding month of the previous fiscal year, monies are being apportioned to individual school districts as follows:

a. The same amount that was allocated to each school district in the corresponding month of the previous year under the provisions of §1104(B)(2)(a), and

- b. If any amounts remain, allocate the remaining to each school district based on the proportion that district's average daily attendance bears to the total average daily attendance of all districts under the provisions of §1104(B)(2)(b).

7. Subsequent to July 1, 2015, if the amount of Motor Vehicle Collections to be apportioned is less than the amount apportioned in the corresponding month of the previous fiscal year, monies are being apportioned to individual school districts as follows:

- a. No amounts under provisions of §1104(B)(2)(a) as insufficient monies exist for each school district to receive the same amount of funds as such district received in the corresponding month of the preceding year, and
- b. All amounts will be allocated to the school districts based on the proportion that district's average daily attendance bears to the total average daily attendance of all districts under the provisions of §1104(B)(2)(b).

8. For the months of September 2015 and December 2015, Division apportioned Motor Vehicle collections to school districts pursuant to paragraph 6 above. For all other months subsequent to July 1, 2015, Division has apportioned Motor Vehicle collections to school districts pursuant to paragraph 7 above.

9. For the months of September 2015 and December 2015, Petitioner received more money than Petitioner received in the corresponding months of the previous year. For all of the other months, Petitioner received less money than Petitioner received in the corresponding months of the previous year.

10. For the months Division apportioned Motor Vehicle collections to school districts pursuant to paragraph 7 above, some school districts, like Petitioner, received less money than

received in the corresponding months of the previous year and other school districts received more money than received in the corresponding months of the previous year.

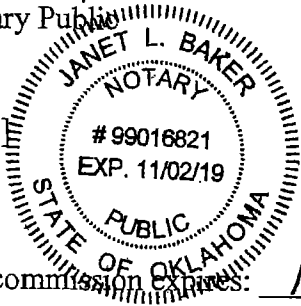
This completes my affidavit.

Jennelle Enevoldsen  
Jennelle Enevoldsen

Subscribed and sworn before me  
this 1<sup>st</sup> day of April, 2016.

Janet L. Baker  
Notary Public

[seal]



My commission expires: 11/2/19