IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

SET FOR HEARING BEFORE
JUDGE Parrish
THE 14 DAY OF Oct.
2016 AT 9:00am

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

AUG 25 2016

RICK WARREN
COURT CLERK
89

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.	)	Case No. CV-2016-1249
OKLAHOMA TAX COMMISSIONER, STEVE BURRAGE; OKLAHOMA TAX COMMISSIONER DAWN CASH; and OKLAHOMA TAX COMMISSIONER, THOMAS E. KEMP, JR.,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, eight independent school districts in Oklahoma, move for summary judgment because there is no genuine issue of material fact that the Oklahoma Tax Commission (OTC) Defendants have been misapplying the statute that governs apportionment of motor vehicle revenue to Plaintiff school districts. The affidavit of OTC official Jennelle Enevoldsen, Exhibit 3 hereto, is a signed admission to facts establishing that the OTC has misapplied the law. Admissions in the Answer reinforce that conclusion.

Plaintiff districts seek a judgment of the Court finding, based on the undisputed facts, that the OTC has apportioned motor vehicle tax revenues to Plaintiff school districts in a way which is contrary to the statute directing such apportionment, and prospectively directing the OTC to apportion motor vehicle tax revenues to Plaintiff districts in compliance with the statute. Additionally, the Court should order the OTC Defendants to recalculate the records of Plaintiff districts since July, 2015 so that prospectively Plaintiff districts will receive the proper apportionments under the statute.

STATEMENT OF MATERIAL UNDISPUTED FACTS

1. An actual controversy exists between the parties regarding the construction and application of the statute governing apportionment of motor vehicle collections to school districts, 47 O.S. § 1104(B)(2). Petition, Exhibit 1, ¶ 1 (hereafter simply Petition), Answer, Exhibit 2, ¶ 1 (hereafter simply Answer).

2. Plaintiff Districts have received less revenue in some months (August, September, November and December, 2015 and February, March, May, June, July, and August, 2016) since July 1, 2015 than they would have received had the OTC Defendants allocated them their proportional[1] share of reduced motor vehicle collection revenues. In months in which motor vehicle collections since July 1, 2015 were *less* than such collections in the corresponding month of the previous year Plaintiff districts received less than their proportional share while other districts were apportioned more motor vehicle collections. Enevoldsen Affidavit, Exhibit 3, ¶ 10. Affidavit of Medcalf, Exhibit 4 hereto. Exhibit 7.

---

[1] For corresponding months of last year and this year, by "proportional" Plaintiffs means the percentage of last year's total apportionment available this year for apportionment determined as follows: this year's funds divided by last year's funds expressed as a percentage.

3. Pursuant to statute, the OTC Defendants apportion 36.20% of motor vehicle collections to school districts. Petition ¶ 4, Exhibit 1, Enevoldsen Affidavit, Exhibit 3, ¶ 3, Answer, Exhibit 2, ¶ 4. Since July 1, 2015 the OTC Defendants have apportioned motor vehicle collections as described in the Affidavit of Jennelle Enevoldsen (Enevoldsen affidavit), Director, Management Services Division of the OTC) Petition, ¶ 4, Enevoldsen Affidavit, Exhibit 3, ¶¶6, 7, Answer, Exhibit 2, ¶ 4.

4. Since July 1, 2015, motor vehicle collections were *less* than motor vehicle collections of the corresponding month of the preceding year for all months except September 2015, December, 2015, and March 2016. Petition, Exhibit 1, ¶ 7, Enevoldsen Affidavit Exhibit 3, ¶ 8, Answer, Exhibit 2, ¶ 7, Medcalf Affidavit, Exhibit 4, ¶ 4. In those months since July 1, 2015 in which the amount of motor vehicle collections to be apportioned is *less* than the amount apportioned in the corresponding month of the preceding year, the OTC Defendants apportioned monies to individual school districts as follows:

> a. No amounts were allocated under provisions of § 1104(B)(2)(a) as insufficient monies existed 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 were 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).

Enevoldsen Affidavit, Exhibit 3, ¶¶ 7-8, Medcalf Affidavit, Exhibit 4, ¶ 2. Thus, no amounts were apportioned pursuant to statutory Steps 1 and 2 (as defined below) found in Subsection 47 O.S. § 1104 (B)(2)(a) and (b).

5. In the months since July 1, 2015 in which the amount of motor vehicle collections to be apportioned was *equal to or greater than* the amount apportioned in the corresponding month of

the previous fiscal year, monies to be apportioned to individual school districts were apportioned as follows:

> a. The same amount that was allocated to each school district in the corresponding month of the preceding year under the provisions of § 1104(B)(2)(a), and
>
> b. If any amounts remained, they were allocated 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).

Petition ¶ 7, Enevoldsen Affidavit,Exhibit 3, ¶¶ 6, 8, Answer, ¶ 7. Thus, no amounts were apportioned pursuant to statutory Step 2 found in Subsection (B)(2)(b).

6. The amount that each school district receives in any month of a particular year is to be the same as that month in the previous year. 47 O.S. § 1104(B)(2)(a). OTC's misapplication of the statute since July, 2015 caused Plaintiff districts to incorrectly receive diminished apportionments; therefore, that diminished amount will serve as the amount to be apportioned in the subsequent year. In each year, each school district is to be apportioned the same amount as it received in the corresponding month of the prior year. The diminished amount for the last year creates an incorrect and diminished benchmark for apportionment in the next year. 47 O.S. § 1104(B)(2)(a) (explained below), Affidavit of Medcalf, Exhibit 4, ¶ 8 & 12. This detriment will persist unless the Court requires the OTC Defendants to administratively correct the diminished allocation resulting from OTC's improper use of the proportional ADA method of allocation. Enevoldsen Affidavit, Exhibit 3, ¶¶ 7-8. If OTC uses as the "preceding year" figures the sums that OTC *would have* allocated to the Plaintiff districts had OTC properly allocated the Plaintiff Districts their proportional share of the motor vehicle collections available that month, the detriment will be remedied prospectively. Affidavit of Medcalf, Exhibit 4, ¶ 8 & 12.

8. By way of example and not limitation, motor vehicle collections for July, 2015, distributed in August, 2015, totaled $22,202,501.18 and were 98.9% of the total distributed in August, 2014, $22,459,699.55. Using the method described in the Enevoldsen affidavit, Exhibit 3, Plaintiff school districts received in August, 2015 amounts ranging from 42.2% to 86.0% of the amount received in August, 2014. Exhibit 7, which is based on calculations using data displayed in Exhibit 5 as described by the Medcalf Affidavit, demonstrates how the OTC error played out the first twelve months since July, 2015. Exhibit 4, ¶¶7-8.

SUMMARY JUDGMENT STANDARD

A party may move for judgment in his favor where the depositions, admissions, answers to interrogatories and affidavits on file show that there is no substantial controversy as to any material fact. The adverse party may file affidavits or other materials in opposition to the motion. The affidavits which are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein and shall set forth facts that would be admissible in evidence. The court shall render judgment if it appears that there is no substantial controversy as to any material fact and that any party is entitled to judgment as a matter of law. If the court finds that there is no substantial controversy as to certain facts or issues, it shall make an order specifying the facts or issues which are not in controversy and direct that the action proceed for a determination of the other facts or issues. 12 O.S. 1971, Ch. 2, App. Rule 13.

Summary adjudication is proper when there is no substantial controversy as to any material fact, and when those undisputed facts would lead reasonable minds to but a single conclusion which would entitle a party to judgment as a matter of law, *Chase v. Young*, 1992 OK CIV APP 63, 831 P.2d 1014, *Testerman v. First Family Life Insurance Co.*, 1990 OK CIV APP 108, 808 P.2d 703, *Mengel v. Rosen*, 1987 OK 23, 735 P.2d 560, and when it serves to eliminate a useless

trial. *In the Matter of the Assessment of Real Property of Integris Realty Corp.*, 2002 OK 85, at ¶ 5, 58 P.3d at 203.

I. THE OTC HAS IMPROPERLY APPLIED 47 O. S. §1104.

The Plaintiffs, eight independent school districts in Oklahoma, seek to have the Court declare that the OTC has been improperly applying the statute regarding the apportionment of motor vehicle revenues to Plaintiff school districts, resulting in the underpayment of revenues to the Plaintiffs since its apportionment in August, 2015 of July, 2015 collections. The Affidavit of Jennelle Enevoldsen, Exhibit 3, admits facts showing that the Tax Commission has been misapplying the law. Plaintiffs further seek injunctive relief ordering OTC to properly apply the statute moving forward and to mitigate and correct the harm caused by the already committed improper application by basing future apportionments only on apportionments which were proper as should have been made under the statute.

The statute at issue in this matter is 47 O. S. § 1104, which provides for the apportionment of revenues collected under the Oklahoma Vehicle License and Registration Act, Title 47 O. S. §1-101 et seq., to various political subdivisions and to the State. Since July 1, 2015, the OTC has misapplied the statute, omitting two legally required steps in the apportionment of motor vehicle collections among school districts. As a result, Plaintiff school districts have not received their share of these revenues as required by law. This illegal application of the statute has deprived Plaintiff districts of funds to which they are entitled since July 1, 2015, and distorts the allocations they will receive in the future.

The statute governing the monthly 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, <u>each district shall receive the same amount of funds as such district received from the taxes and fees provided in</u>

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).

Thus the statute prescribes a three step process for the monthly allocation of motor vehicle collections to school districts. **First**, Subparagraph (a) requires an allocation of the same amount of funds as the district received from motor vehicle collections in the corresponding month of the previous year (Step 1). **Second**, Subparagraph (b) ***first*** requires an additional allocation if there remain additional funds unallocated by Subparagraph (a), 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) (Step 2). **Third**, ***then,*** and only then, if there are still funds left unallocated after any cumulative shortfall has been made up, each district receives 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) (Step 3).

Step 2 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). In essence, for Step 2 there would be no shortfall in the cumulative total of monthly apportionments unless only a partial share of the total apportionment for the same month of the previous year had been apportioned in Step 1. It is not an all or nothing proposition as the OTC believes; it should proportionally apportion available revenue in Step 1 even if the amount is less than the same month of the previous year. Even if the OTC were right and it could not make a proportional apportionment in Step 1 of a shortfall month (and OTC is not correct in this), Step 2 found in 47 O.S. § 1104(B)(2)(b) requires available funding to go first toward making up the cumulative total of "apportionments" (plural, meaning more than one apportionment) 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. So in a shortfall month, a partial (and proportional) apportionment is required, whether in Steps 1 or 2. 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 Step 3.

Ms. Enevoldsen's affidavit, Exhibit 3, ¶ 5, sets forth this very provision as the statutory directive regarding Motor Vehicle Collections. Then, as shown below, the same affidavit demonstrates how the Tax Commission disobeys this statutory directive.

Since July 1, 2015 in every month except September and December, 2015 and March 2016 (from which allocations were made to districts in October, January and April respectively), the monthly motor vehicle collections have been *less* than those of the corresponding month of the preceding year. *See,* Statement of Undisputed Facts, ¶ 4. In these ten 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 ADA of all districts under the provision of 47 O.S. § 1104(B)(2)(b). *See* Statement of Undisputed Facts, ¶5 and Enevoldsen affidavit, Exhibit 3, ¶ 7.

The OTC's rationale for this construction has been the elimination of the "hold harmless" provision which previously allowed the use of general fund revenue to make up the shortfall if the amount of motor vehicle collections was less than the corresponding month in the previous year. Enevoldsen Affidavit, Exhibit. 3, ¶¶ 2-5. However, elimination of the previous "hold harmless" language in no way changed the directive for how to apportion motor vehicle revenues in 47 O.S. § 1104(B)(2), which remains as it was before. Unaccountably and unjustifiably, the OTC has decided that, in an under collection month, since it cannot distribute the *full amount* required by the first statutory step, the same amount received the preceding year, it will distribute *no funds whatsoever* under Steps 1 and 2 found in Subparagraph (B)(2)(a) and (b), giving them no effect at all, and skip on to Step 3 in Subparagraph (B)(2)(b). Enevoldsen Affidavit, Exhibit 3, ¶ 7.

Further, for collections in September and December 2015, and March, 2016, which were *more than* the corresponding months of the preceding year, the OTC still skipped Step 2 in the statute, and distributed the excess funds according to the proportional ADA method found in Step 3, depriving Plaintiff districts the chance to make up the cumulative shortfall in monthly apportionments under Subparagraph (B)(2)(a). See, Enevoldsen affidavit, Exhibit 3, ¶ 6. As demonstrated by Exhibit 7, only for September 2015 collections should Step 3 have been used.

As a result of the OTC's misapplication of the statue, for the fiscal year 2016 and July 2016 of fiscal year 2017 the Plaintiff school districts were illegally deprived of allocations at least the amounts as supported by Exhibit 7 in the total losses line and Affidavit of Medcalf, Exhibit 4, ¶ 11, which collectively exceed $2.9 million. While Plaintiff districts are not seeking to recoup these losses in this case, they want the situation remedied so they will get the proper amounts apportioned prospectively.

Moreover, these shortfalls prevent the Plaintiffs from receiving the amount of Foundation Program Income they are intended to receive from the Oklahoma State Department of Education (SDE) pursuant to Title 70 Section 18-200.1. This reduces their ability to provide educational services to their students and frustrates the legislative intent that the state's provision of Foundation Aid be allocated to districts in a manner that provides "as large a measure of equalization as possible among districts". 70 OS 18-101(9). Exhibit 6 and Affidavit of Medcalf, Exhibit 4, ¶ 6. Thus, the OTC's misapplication of the statute is not merely a dispute between the OTC and the Plaintiff districts, but harms the educational experience and prospects of children, creating a public interest injury as well.

Sound principles of statutory construction require that the Court determine that OTC has erred in its construction and determine that OTC should apportion motor vehicle revenues in the manner proposed by the Plaintiffs. The primary goal in reviewing a statute is to ascertain legislative intent, if possible, from a reading of the statutory language in its plain and ordinary meaning. *In re Initiative Petition No. 397, State Question No. 767,* 2014 OK 23, ¶ 14, 326 P.3d 496. This is so because the plain words of a statute are deemed to express legislative authorial intent in the absence of any ambiguity or conflict in language. *Id.* The plain and ordinary meaning of the only statute directly at issue in this case is that each district will receive each month in Step

1 a total amount that is close to the amount it received the same month of the preceding year and that any cumulative shortfall will be made up in Step 2 when funds are available. That result is consistent with the expressed intent of the Steps 1 and 2 set forth in subparagraph 1104(B)(2)(a) and (b) and with the expressed intent of 70 O.S. §18-200.1(D)(1)(b) that each school district is expected to receive close to the same amount of motor vehicle collections as "actually collected...during the preceding fiscal year".

Thus, two statutes command that apportionments of motor vehicle collections be made based upon the amount collected and apportioned in the "preceding fiscal year." These are 70 O.S. §18-200.1(D)(1)(b) in the school code with respect to the amount of motor vehicle collections (and other sources) that go into the Foundation Program Income for each district and 47 O.S. § 1104(B)(2), the subject of this lawsuit. What is more, in 70 OS 18-101(9) of the school code the Court will find the legislative intent that the state's provision of Foundation Aid (a major part of "state aid", the largest source of school funding) be allocated to districts in a manner that provides "as large a measure of equalization as possible among districts." Taken together, these statutes express a legislative intention to base motor vehicle apportionments on the amount apportioned in the corresponding month of the previous year so that available funding is largely equalized among school districts.

The doctrine of *in pari materia* supports Plaintiffs' reading of the law. "The Latin phrase "*in pari materia*" means 'upon the same matter.' This canon of construction allows statutes that are *in pari materia* to be construed together, so that inconsistencies in one may be resolved by examining another statute on the same subject matter." *Mustain v. Grand River Dam Authority*, 2003 OK 43, ¶ 23, n. 44, 68 P.3d 991, 999. While there is no inconsistency between them, subparagraph B(2)(a) and the opening phrase of subparagraph B(2)(b) must be read in concert with

70 O. S. 18-101 et seq, and especially 18-200.1, as an integral part of the state aid formula and the stated intent that "[t]he system of public school support should provide for an equitable system of state and local sharing in the foundation program. The degree of local sharing should be based, as nearly as possible, on the true ability of the local district, so that each may contribute uniformly to the foundation program." 70 O. S. 18-101. Simply stated, all of these statutes speaking to the same subject compel the conclusion that, as a part of equitable and equalized funding, the motor vehicle collections must be apportioned in the same amount apportioned in the corresponding month of the previous year, or as nearly so as possible. If there are insufficient collections in a particular month to fully fund subparagraph (B)(2)(a) then only the proportional method advocated by the Plaintiff districts gives effect to the intent expressed in both the statute at issue and the important provisions in Title 70 for Foundation Aid to school districts statewide.

Only when the intent of these first two steps are achieved should any motor vehicle revenue be apportioned by the Step 3 ADA method found in 47 O.S. § 1104(B)(2)(b). The only month since July 1, 2015 when Step 3 was necessary was when the September 2015 over collection, for distribution in October, exceeded the previous two months' cumulative under collections.

The elimination of the former "hold harmless" provisions did not change Subparagraph (B)(2). While the elimination of the "hold harmless" language may have limited the total revenues available for apportionment to school districts as a whole, that reduction in possible funds did not change the method of apportioning the available revenues **among** the various school districts. Since the Legislature did not change the language providing for the apportionment **among** school districts, the Legislature stated no intent to change the apportionment method in the manner the OTC has changed it. In making that change, the OTC ignored the clearly stated intent of paragraph (B)(2) that school districts should first be made whole relative to not only the same month of the

preceding year in Steps 1 and 2, but also as to any cumulative deficit over previous months. Distributing as much as is available proportionately to school districts would give effect to that intent and treat all districts equally in the process. Equality of hardship and equality of hope of making up for that hardship when revenues improve is the only sensible way to give effect to the legislative intent. All the Plaintiff districts seek is a simple application of the plain language of the statute to give them the resources the Legislature intended that they get.

Moreover, distributing nothing pursuant to Step 1 in subparagraph B(2)(a) and Step 2 in Subparagraph B(2)(b) gives no effect to the Legislature's clearly stated intent, violating the rule of statutory construction that the Court must interpret legislation so as to give effect to every word and sentence rather than rendering some provisions nugatory. *Globe Life and Accident Insur. Co., v. Oklahoma Tax Commission,* 1996 OK 39 ¶ 15, 913 P.2d 1322, 1328. The Court should ascertain the intent all the various portions of the legislative enactments upon the particular subject, construing them together and giving them effect as a whole. *Independent School Dist. No. 89 v. Oklahoma City Federation of Teachers, Local 2309 of the American Federation of Teachers.* 1980 OK 89, ¶ 11, 612 P.2d 719, 721.

Further, skipping Step 1 and Step 2 produces an absurd result completely divorced from the legislative intent of stability in funding through the motor vehicle collections. The Court should avoid this absurd consequence of substantially different allocations for the Plaintiff districts by honoring the statute's three steps as it was written. *See, TRW/Reda Pump, v. Brewington*, 1992 OK 31, ¶ 5, 829 P.2d 15, 20 (interpretations should avoid absurd consequences). The Legislature sought to provide stability in funding year to year. It did so by providing, as nearly as possible, the same amounts as were provided in the corresponding month of the previous year, and making up the shortfall when money becomes available. The OTC admits that in these under collection

months "...some school districts, like Petitioner [the Sand Springs district in this context] 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." Enevoldsen Affidavit, Exhibit 3, ¶ 10. Step 3, based on average daily attendance, was only to be employed in the rare instances that Steps 1 and 2 had been fully satisfied.

Defendants' privileging of Step 3 in Subparagraph B(2)(b) over Steps 1 and 2 makes no sense even in terms of that subparagraph's plain language. Subparagraph B(2)(b) begins with the requirement or condition "any funds remaining unallocated following the allocation provided in subparagraph a of this paragraph..." The plain meaning of this statement is that the only funds to be distributed by Step 3 in Subparagraph B(2)(b) are funds remaining unallocated after B(2)(a) is fully satisfied. Subparagraph B(2)(b) continues with the requirement that available funds "...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..." Again, the clear priority is satisfying Step 1 in Subparagraph B(2)(a) and Step 2 in Subparagraph B(2)(b) before any distribution is made pursuant to Step 3, the methodology set forth in B(2)(b), relying upon Average Daily Attendance to apportion the revenues. The Court must give effect to all three portions and steps of the statute, giving effect to the whole and not only a single part. *Independent School Dist. No. 89,*. 1980 OK 89, ¶ 11, 612 P.2d at 721.

In effect, the Step 3 distribution pursuant to Subsection B(2)(b) is "gravy," to be enjoyed by districts only after they have received the cumulative total due them based on the apportionments of the corresponding month of the previous year in Steps 1 and 2. If there is a month when all the districts are caught up, and every district has received the same funding it received to that point in the previous year, and there is money left over, OTC can distribute the

gravy. This provision requires that only after all districts are made whole for the current month OTC is then to look at "...the cumulative total of the monthly apportionments for which it is otherwise eligible under subparagraph a..." to use the excess to backfill for any "subparagraph a" deficiencies. The definition of "cumulative" in the Random House Dictionary of the English Language, 1979 is: "1. increasing or growing by accumulation or successive additions; 2. formed by or resulting from accumulation or the addition of successive parts or elements; 3. of or pertaining to interest or dividends which, if not paid when due, become a prior claim or payment in the future." Under the plain meaning of "cumulative," any shortfalls in the ***cumulative total of the monthly apportionments*** that have increased by accumulation over the year should be paid up **before** any apportionment is made by the Step 3 ADA method. Moreover, the Court should note that the statutes speak about "apportionments" in the plural, not just a particular single "apportionment." This means the Step 2 apportionment is intended to correct shortfalls in "apportionments" made over multiple months.

Prior to amendments enacted in 2000 the statute provided for proportional payment in months of shortfall, but that that provision was repealed when the now-repealed "hold harmless" language was first added. Exhibit 10. Defendants may suggest that the Legislature thus abandoned any provision for proportional payment when monthly motor vehicle revenues fall short of those revenues in the corresponding month of the previous year. However, when the "hold harmless" provision came into effect there was no longer any need to deal with shortfalls, because general revenue made up shortages. So the better suggestion is that the earlier provision is a clear statement of legislative intent the last time under collections were possible.

In any event, the law for apportionment of motor vehicle revenues to school districts, which has undisputedly remained unchanged since July, 2015, effectively, if implicitly, requires the

Plaintiff districts get their proportional share of the motor vehicle revenue in months in which such revenue is *less* than that in the corresponding month because the Steps 1 and 2 require shortages to be made up as well as possible, and proportional treatment among districts based on the previous year's revenue must be the rule in the first two steps of the statute. Such proportional treatment is a practical requirement of the Foundation Aid Program, under which equity is the Plaintiff districts' due.

II. THE PLAINTIFFS DEFER ADDRESSING DEFENDANTS' DEFENSE URGING JOINDER OF ALL SCHOOL DISTRICTS IN THIS SUIT.

The Plaintiff districts recognize the OTC defendants have raised as a defense a claim that under 12 O.S. § 1653(A) all school districts should be joined as parties to this action. Answer, Exhibit 2, ¶ 11. Plaintiffs understand from conversations with Defendant's counsel that Defendants will soon present that defense to the Court by motion. Because the Defendants carry the burden on this defense, Plaintiffs have not addressed it in the present motion, but will respond in the normal course once Defendants have presented their defense to the Court.

CONCLUSION: THE FACTS ARE UNDISPUTED, AND THE COURTS SHOULD GRANT JUDGMENT AS A MATTER OF LAW.

The Tax Commission has concisely laid out how it administers 47 O.S. § 1104(B)(2) in months in which motor vehicle collections are *less* than they were in the corresponding month of the previous year. The parties to this case can present no dispute of fact about how the OTC has applied the statute. In short-fall months, the OTC skips Steps 1 and 2 in the statute, and goes directly and exclusively to Step 3, the Average Daily Attendance (ADA) method. Even in months in which *more* motor vehicle revenue is received than in the corresponding month of the previous year, the OTC skips Step 2 in the statute after making the Step 1 apportionments, and pours the

excess money into Step 3, the method based on ADA. This misapplication of the statute has prejudiced the Plaintiff districts, and will continue to do so.

The Court should declare the proper application of 47 O.S. § 1104(B)(2) requires following the three steps in the statute and as explained above. The Court should issue an injunction to require the OTC to apply the statute correctly for the Plaintiff districts. The Court should also order the OTC to re-compute the monthly allocations of the Plaintiff districts since July, 2015 to be what they should have been under a proper application of 47 O.S. § 1104(B)(2). Such re-computing will remedy prospective apportionments of motor vehicle revenues to the Plaintiffs. Without re-computing, the OTC will apportion to the Plaintiffs based upon incorrect and artificially low prior year apportionments which were reached because OTC erroneously applied the statute.

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

-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
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of August, 2016, a true and correct copy of the foregoing instrument was mailed, postage paid, to:

Marjorie Welch
First Deputy General Counsel
Oklahoma Tax Commission
100 North Broadway Ave., Suite 1500
Oklahoma City, OK 73102-8601

Robert A. Nance