

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

SEP - 9 2016

RICK WARREN
COURT CLERK
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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,)
vs.)
OKLAHOMA TAX COMMISSIONER, STEVE)
BURRAGE; OKLAHOMA TAX)
COMMISSIONER DAWN CASH; and)
OKLAHOMA TAX COMMISSIONER,)
THOMAS E. KEMP, JR.,)
Defendants.)

RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendants, Oklahoma Tax Commissioner Steve Burrage, Oklahoma Tax Commissioner Dawn Cash, and Oklahoma Tax Commissioner Thomas E. Kemp, Jr. (collectively "OTC"), submit the following response to *Plaintiffs' Motion for Summary Judgment* filed August 25, 2016.

THE PARTIES AND IMPACT ON OTHERS

The Oklahoma Tax Commission (“OTC”) is created by statute, possessing such duties, powers, and authority conferred upon it by law. 68 O.S. 2011, § 102. As part of its duties, OTC is required to apportion and distribute all fees, taxes, and penalties collected or received pursuant to the Oklahoma Vehicle License and Registration Act (“motor vehicle collections”), 47 O.S. §§ 1-101 *et seq.*, in accordance with Section 1104 of Title 47 of the Oklahoma Statutes. It is undisputed all motor vehicle collections received by OTC were, and are, distributed on a monthly basis. Specifically, it is undisputed that 36.20% of motor vehicle collections was, and is, apportioned and distributed monthly to all school districts pursuant to 47 O.S. § 1104.

There are over 400 independent school districts receiving motor vehicle collections from OTC. Plaintiffs represent the interests of only eight. Plaintiffs advocate the Court change the manner motor vehicle collections are distributed only to the eight Plaintiff school districts. Plaintiffs acknowledge that the requested ruling will result in an increase of apportionment and distribution of motor vehicle collections to Plaintiffs. Since motor vehicle collections are a finite amount, an increase in apportionment and distributions to Plaintiffs will result in a corresponding decrease in apportionment and distribution to all of the non-Plaintiff school districts. See Affidavit of Jennelle Enevoldsen, ¶10, attached hereto as Exhibit A and made a part hereof.

This decrease in the amount of money apportioned to the non-Plaintiff school districts as a result of this action creates a substantial risk for the OTC to not only incur multiple and inconsistent obligations, but also multiple lawsuits. The relief sought by Plaintiffs would require the OTC to apportion motor vehicle collections using two separate and distinct methods, one method for Plaintiff school districts and another for the remaining over 400 school districts.

Plaintiffs have not sought to join, or even provide notice to, the other affected school districts though their interest in motor vehicle collections apportionment and distribution would be negatively affected, and their rights prejudiced, should this Court issue the declaration sought by Plaintiffs.

The OTC urges this Court, as a preliminary matter prior to ruling on *Plaintiffs' Motion for Summary Judgment*, to address the interest and rights of the non-Plaintiff school districts set forth in OTC's *Motion to Dismiss for Failure to Join Interested Parties* filed September 8, 2016 which is set for hearing on October 14, 2016 at 9:00 a.m.

STATEMENT OF MATERIAL UNDISPUTED FACTS

OTC admits Plaintiffs received less motor vehicle collections for the months of July, August, October and November 2015 and January, February, April, May and June 2016 than they received for the corresponding months in 2014 and 2015. However, as reflected in the schedule of the variance between fiscal year 2016 to fiscal year 2015 of motor vehicle collections apportions to all school districts attached to the affidavit of Jennelle Enevoldsen, Plaintiffs were not the only school districts that received less motor vehicle collections during those months. Over 2/3 of the school districts are similarly situated to Plaintiffs, in that they received less motor vehicle collections for the months of July, August, October and November 2015 and January, February, April, May and June 2016 than they received for the corresponding months in 2014 and 2015.

Plaintiffs accurately represent that, pursuant to 47 O.S. § 1104, the monthly amount of motor vehicle collections in fiscal year 2016 sets the benchmark for apportionment and distribution of motor vehicle collections for months in fiscal year 2017. OTC is without

sufficient knowledge and expertise to address components of the school funding formula other than motor vehicle collections.

HISTORY OF 47 O.S. § 1104

Prior to the passage of HB 2189 and the approval of State Question No. 691, Legis. Ref. 319 at the general election held August 22, 2000, 47 O.S. § 1104 contained direction for apportionment and distribution of motor vehicle collections in a situation where those collections were not sufficient for each school district to receive the same amount as received in the corresponding month of the preceding year. Subsection B(2) provided:

- 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 said 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, and
- c. *if, for any month, the funds available are insufficient to provide the total allocation required in subparagraph a of this paragraph, each district shall 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.*

47 O.S. Supp. 2000, § 1104 (emphasis added).

With the approval of the state question, the language of paragraph c was deleted and subsection M was added. 2000 Okla. Sess. Laws, ch. 250, § 2. Subsection M, which was later recodified as subsection N due to the addition of a subsection unrelated to the issue presented herein, the “hold harmless” provision, provided, “In no event shall the monies apportioned pursuant to subsections B, E, F, G, H, and I of this section be less than the monies apportioned in the previous fiscal year.”

HB 2244, effective July 1, 2015 (“2015 amendment”), deleted subsection N in its entirety, thereby removing the “hold harmless” provision, and added the provision limiting motor vehicle collections apportionment to school districts to the amount received by school districts in fiscal 2015, but did not remove the “hold harmless” provision in paragraph (a) of subsection B(2). Left unanswered was how motor vehicle collections should be apportioned to school districts if motor vehicle collections were less than the motor vehicle collections in the corresponding month of the previous year.

If the meaning of a statute is plain and unambiguous, it will not be subjected to rules of judicial construction, but will receive the effect its language dictates. *State ex rel. Okla Firefighters Pension and Ret. Sys. v. City of Spencer*, 2009 OK 73, ¶ 12, 237 P.3d 125, 132. The plain meaning of statutory language is conclusive, except in the rare case in which a literal construction would produce a result demonstrably at odds with the intention of the legislature. *City of Tulsa vs. State ex rel. Public Employees Relations Board*, 1998 OK 92, ¶ 14, 967 P.2d 1214, 1220. “Only where legislative intent cannot be ascertained from the language of a statute, as in cases of ambiguity, are rules of statutory construction employed. The determination of

legislative intent controls statutory interpretation by the judiciary.” *In the Matter of the Estate of Villines*, 2005 OK 63, ¶ 9, 122 P.3d 466, 470-71.

The duty of a court is to give effect to legislative acts, not to amend, repeal or circumvent the legislative acts. *Toxic Waste Impact Grp., Inc. vs. Leavitt*, 1988 OK 20, ¶ 10, 755 P.2d 626, 630. A court is not justified in ignoring the plain words of a statute. *Id.* A Court may not expand the plain wording of the statute by construction when the legislature has expressed its intention in the statute as enacted. *Id.*

75 O.S. § 22 provides, “If the provisions of any code, title, chapter or article conflict with or contravene the provisions of any former code, title, chapter or article, the provisions of the latter code, title, chapter or article must prevail as to all matter and questions arising thereunder out of the same subject matter.” If an amendment, by its language, is subject to two constructions, the construction which harmonizes with the act is preferred. If an amendment results in an irreconcilable conflict, amendatory language will control as being the latest expression of the legislature. *Poafpybitty v. Skelly Oil Co.*, 1964 OK 162, ¶ 13, 394 P.2d 515, 518. See also *City of Sand Springs v. Department of Public Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151.

Plaintiffs’ assert, without citing authority therefore, OTC’s apportionment and distribution of motor vehicle collections for months subsequent to July 2015 disregards the history of motor vehicle collections apportionment and is in opposition to the legislative intent. OTC submits its construction is in accord with the history of the apportionment statute and consistent with legislative intent.

OTC did not ignore its duty to apportion and distribute motor vehicle collections according to the statute. OTC reviewed the 2015 amendatory language and the history of the statute. The 2015 amendment deleted one “hold harmless” provision in subsection N, but did not change the “hold harmless” provision which has been included in paragraph (2)(a) of section B for a period of more than twenty (20) years. The amendment did not restore, or reinsert, language for proportional distribution to school districts if monies were less than the previous year. Language providing for proportional distribution was deleted from 47 O.S. § 1104 in 2000. The repeal of a statute does not automatically revive any statutes which were previously repealed by the now repealed statute unless expressly provided. *See* Okla. Const. art. V, § 54 and 25 O.S. 2011, § 32.

OTC read the amendment in the context of the statute as a whole and determined apportionment and distribution to each district in “the same amount of funds as such district received” in the corresponding month of the preceding year as required by paragraph (2)(a) of section B was an impossibility in cases when motor vehicle collections are less than the amount of motor vehicle collections apportioned in the corresponding month of the previous fiscal year. OTC further determined the statute provided OTC no authority to distribute any amount less than “the same amount of funds as such district received” in the corresponding month of the preceding year.

For months for which apportionment was impossible pursuant to paragraph (2)(a), OTC apportioned all motor vehicle collections as “monies remaining unallocated following the allocation provided in subparagraph a” pursuant to paragraph (2)(b) based upon the proportion

that each district's average daily attendance bore to the total average daily attendance of those districts entitled to receive funds as certified by the State Department of Education.

OTC, since its creation, has been statutorily charged with the responsibility for apportionment and distribution of a large number of tax types and fees to designated funds, state agencies, and others, including school districts. As a result, OTC has great expertise. The expertise of an administrative agency charged is afforded great weight. Exercise of an agency's expertise is presumed valid when reviewed by a court. *See Toxic Waste Impact Grp., Inc. v. Leavitt*, 1988 OK 20, ¶ 12, 755 P.2d at 630. *See also Schulte Oil Co., Inc. v. Okla Tax Com'n*, 1994 OK 103, ¶ 4, 882 P.2d 65 (providing administrative construction of a statute by an agency charged with its implementation and enforcement is given persuasive effect). To have at least some "persuasive value, the administrative construction must have been reasonable and not clearly wrong." *Keating v. Edmondson*, 2001 OK 110, ¶ 15, 37 P.3d 882, 889.

OTC submits that its apportionment and distribution of motor vehicle collections subsequent to July 1, 2015 should be afforded at least persuasive value as is reasonable, not clearly wrong, and in accord with the statute and amendments thereto.

CONCLUSION

Petitioner is requesting this Court, without legislative action, to restore proportional distribution of motor vehicle collections to **only** Plaintiff school districts for months in which motor vehicle collections were less than motor vehicle collections in the same month of the preceding year. The requested declaration would result in the OTC apportioning, pursuant to a single apportionment statute, motor vehicles collections using two different methodologies – one

method of apportionment for Plaintiffs and another for the remaining over 400 school districts. The result of the requested declaration would be an increase in apportionment and distribution of motor vehicle collections to Plaintiffs with a corresponding decrease in apportionment and distribution to all of the non-Plaintiff school districts, including school districts that are similarly situated to Plaintiffs in the respect that they received less motor vehicle collections for the same months in fiscal 2016 than Plaintiffs received less motor vehicle collections.

Wherefore, premises considered, Defendants, Oklahoma Tax Commissioner Steve Burrage, Oklahoma Tax Commissioner Dawn Cash, and Oklahoma Tax Commissioner Thomas E. Kemp, Jr., respectfully pray that this Honorable Court deny *Plaintiffs' Motion for Summary Judgment*. In the alternative, OTC prays that this Honorable Court withhold consideration of *Plaintiffs' Motion for Summary Judgment* until all non-Plaintiff school districts are made parties to this action and for such other and further relief in the premises as to which they may be entitled in which, to this Honorable Court, may seem just, equitable, and permissible.

OKLAHOMA TAX COMMISSION



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BURRAGE, CASH AND KEMP

CERTIFICATE OF MAILING AND SERVICE

This is to certify that on the 9th day of September, 2016, a true and correct copy of the *Response to Plaintiffs' Motion for Summary Judgment* was mailed by the undersigned, with proper postage prepaid, to the following:

Robert A, Nance
Riggs, Abney, Neal, Turpen
Orbison & Lewis
528 NW 12th Street
Oklahoma City, OK 73103

Stephanie L. Thenab
Riggs, Abney, Neal, Turpen
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119

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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 of the Management Services Division ("Division") for the Oklahoma Tax Commission. I made 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. HB 2244, effective July 1, 2015, deleted the hold harmless provision.

4. Subsequent to July 1, 2015, if 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 were 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).

5. Subsequent to July 1, 2015, if the amount of Motor Vehicle Collections to be apportioned was less than the amount apportioned in the corresponding month of the previous fiscal year, monies were 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).

6. For the months of September 2015 and December 2015, and March 2016, Division apportioned Motor Vehicle collections to school districts pursuant to paragraph 4 above. For all other months subsequent to July 1, 2015, Division has apportioned Motor Vehicle collections to school districts pursuant to paragraph 5 above.

7. I have reviewed the apportionment history for each of the Plaintiffs for the period beginning July 1, 2015 through June 30, 2016. For the months of September 2015, December 2015, and March 2016, Plaintiffs received more money than Plaintiffs received in the corresponding months of the previous year. For all of the other months, Plaintiffs received less money than Plaintiffs received in the corresponding months of the previous year.

8. I have also reviewed the apportionment history to school districts other than Plaintiffs. During the same months Plaintiffs received less money, some of the remaining school districts also received less but some received more money than received in the corresponding months of the previous years. A schedule of the variance between fiscal year 2016 to fiscal year 2015 of Motor Vehicle collections apportioned to all school districts is attached hereto and made a part hereof.

9. Plaintiffs' Petition seeks to have Motor Vehicle collections apportioned to Plaintiffs in a manner different to the apportionment procedures outlined above. If Plaintiffs are successful, Division would be required to use a method of apportionment for the only the eight Plaintiffs which is different from the method of apportionment established prior to July 1, 2015.

10. Based upon my experience and knowledge, I am of the opinion and belief that using the requested method of apportionment for Plaintiffs would result in an increase in the amount of Motor Vehicle collections apportioned to Plaintiffs and a corresponding decrease in Motor Vehicle collections apportioned to the remaining 418 school districts.

This completes my affidavit.

Jennelle Enevoldsen
Jennelle Enevoldsen

Subscribed and sworn before me
this 1st day of September, 2016.

Audrey Russell
Notary Public

[seal]



My commission expires: 10/05/19

771003	77 WOODWARD	1003	SHARON-MUTUAL
771005	77 WOODWARD	1005	PORT SUPPLY
419 DISTRICTS			

(1,088.95)	307.63	1,078.86	(1,243.92)	(2,561.70)	261.44	(748.68)	(300.36)	150.28	(1,403.89)	{622.05}	(545.70)
(1,645.64)	(875.32)	489.07	(1,420.25)	(1,858.27)	118.52	(1,437.65)	(1,106.31)	68.12	(1,662.23)	(1,424.50)	(2,076.66)