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,	)	FILED IN DISTRICT COURT OKLAHOMA COUNTY SEP 26 2016 RICK WARREN COURT CLERK 89
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.	)	

RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO JOIN INTERESTED PARTIES

Plaintiff independent school districts respectfully submit this as their Response to Defendant Tax Commissioners' (OTC or Tax Commission) Motion to Dismiss for Failure to Join Interested Parties, filed herein on September 8, 2016.

Statement of the Case.

Plaintiffs brought this action because, since July 1, 2015, the OTC has misapplied 47 O.S. § 1104(B)(2) in the way it apportions motor vehicle collections to Oklahoma school districts, including Plaintiffs. The statute provides 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).

47 O.S. § 1104(B)(2)(emphasis added). As Plaintiffs have demonstrated, and the OTC does not contest, 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).

The Tax Commission's explanation of its method of apportionment since July 1, 2015, completely ignores statutory Step 2. The OTC's explanation of its actions is also completely silent about its omission of Step 2, as if that portion of the law were written in invisible ink. Here is what the Tax Commission admits to doing: since July 1, 2015 in months in which motor vehicle collections were equal to or greater than the corresponding month of the previous fiscal year, the OTC apportioned money 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).

Motion to Dismiss, Ex. B, Enevoldsen affidavit of September 7, 2016, ¶ 4. Notice the Tax Commission has written Step 2 out of the statute. During the same period, in months in which the motor vehicle collections were less than the amount apportioned in the corresponding month of the previous fiscal year, the OTC apportioned available funds 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).

c.

Motion to Dismiss, Ex. B, Enevoldsen affidavit of September 7, 2016, ¶ 5. In this instance, the OTC admits that § 1104(B)(2)(a), which constitutes Step 1 of the statute and the primary

expression of legislative intent, exists, but admits giving it no effect. The OTC, in almost Orwellian fashion, simply ignores the very existence of Step 2, which is intended to make up shortfalls in the ***cumulative total of the monthly apportionments*** for which it [the affected district] is otherwise eligible under subparagraph a (Step 1).

The Tax Commission's only explanation of its conduct, as shown above, is that in months with less motor vehicle collections to apportion, "[n]o amounts" are apportioned under Step 1 "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..." The Tax Commission cites no legal authority for it to omit Step 1. It cites no case, no statute, and no administrative rule. It gives no reason why ignoring Step1 entirely is a better expression of legislative intent than would be giving each school district a proportionally reduced amount as urged by the plaintiffs. Similarly, because the Tax Commission is unable even to admit that Step 2 exists in the statute, it makes no attempt to provide legal authority for omitting it either. Once again, it cites no case, no statute, and no administrative rule. So the Tax Commission won't apportion the money under Step 1 because it doesn't have enough to go around, yet it won't apportion the money it *does have* under Step 2 toward making up the cumulative total of apportionments for which the district is eligible. Then, by pure bureaucratic caprice, the Tax Commission pours all the available money into the last-resort Average Daily Attendance method of Step 3. None of this is disputed, rather it is all freely admitted.

The Tax Commission also admits that in those months in which there was less money in motor vehicle collections, Plaintiffs received less money than in the corresponding month of the previous year, while other districts received more. Motion to Dismiss, Ex. B, Enevoldsen affidavit of September 7, 2016, ¶¶ 7-8. The table appended to this affidavit clearly shows that many districts

received much less while others received much more than the same month of the preceding year even though there was less money overall to apportion among them.

Thus, here is the state of this case. The Tax Commission by pure caprice has shortchanged the Plaintiff districts in their motor vehicle revenue apportionments. These Plaintiff districts have received less than they should have received to educate their students in what are, to say the least, lean financial times. Now, having created the problem by its deliberate misapplication of the law, thus shortchanging Plaintiffs, the Tax Commission suggests that, in order to correct that misapplication of the law in the future, these Plaintiff districts should be put to the expense of joining over 400 other districts as parties in this case. In effect, according to the Tax Commission, the only way for anyone to fix its bureaucratic caprice is to bring over 400 school districts into Court. Plaintiffs are not asking for money back from the Tax Commission or form any school district. They simply want the apportionments to be correct in the future.

For the following reasons the Court should deny the Tax Commission's motion to dismiss for failure to join interested parties.

1. The Tax Commission does not show any other district has or claims an interest in its misapplication of the law.

In its three page motion and brief the Tax Commission relies on 12 O.S. § 1653(A), part of the Declaratory Judgment Act that provides:

> A. When a declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

This provision is a two-prong statute that deals with joinder of persons who "claim" an affected interest, or persons who "have" an affected interest, although, as demonstrated below, exceptions to this requirement have long been recognized.

The Tax Commission's motion and brief are devoid of any suggestion that, as a matter of fact, any school district really *claims* an interest in money to be received in the future as a result of its misapplication of the law. The OTC merely hypothesizes that some district might receive marginally less in the future if the Plaintiff districts got the correct statutory apportionments going forward. The Tax Commission does not even hint that any district in the real world has made such a claim. Consequently, the Tax Commission's motion fails on the "claims an interest" prong of the statute because it does not show that any school district really claims such an interest.

The Tax Commission also fails on the "have any interest" prong. Once again, without citation of any authority, the OTC argues that proceeding without the joinder of over 400 school districts would be "prejudicing the *rights* of school districts who are not parties to this action." Motion to Dismiss, p. 2 (emphasis added). Moreover, the OTC argues that "no declaratory relief should be given until all non-Plaintiff school districts, whose *rights* would be directly affected by the declaration, are made parties to this proceeding." *Id.* But the OTC nowhere offers any legal justification for its obvious misapplication of the statute. Instead, the OTC just claims as a matter of pure *ipse dixit,* that other school districts somehow (unaccountably) have been conferred enforceable *rights* to money to be apportioned to them in the future and contrary to statute. This turns the notion of legal rights on its head. No school district can have a right to, or an interest in, public tax money apportioned contrary to law. Consequently, the Tax Commission fails on the "have an interest" prong, and fails in its joinder argument altogether.

2. Joinder of interested persons is not always required under § 1653(A).

A pair of early Court of Civil Appeals opinions and an Oklahoma Supreme Court opinion that relied upon them stand for the proposition that joinder of all potentially affected parties is not always required by 12 O.S. § 1653(A). In *Reed v. City of Bartlesville,* 1973 OK CIV APP 2, ¶ 2,

510 P.2d 1013, 1014, a plaintiff landowner challenged an airport-area zoning ordinance, claiming that the ordinance decreased the value of his property, was adopted without notice and compliance with statutory procedures, and was unconstitutional and purportedly authorized by statutes that were also unconstitutional. After deciding other issues, the Court addressed defendants' theory that § 1653 required joinder of parties. *Id.* ¶ 10, 510 P.2d at 1016. The Court held that, in spite of the word "shall" in the statute, the joinder requirement is not mandatory in the sense that all parties who might be affected by a declaratory judgment must be joined, but only those necessarily and directly affected thereby. *Id.*, ¶ 11, 510 P.2d at 1016. The Court did not think that it was necessary for all other property owners in the zoned area to be joined as plaintiffs and noted the plaintiffs purported to bring a class action, so the amended petition was sufficient to withstand a demurrer.

The *Reed* Court, *Id.* ¶ 11, 510 P.2d at 1016 relied for its ruling on *Trammell v. Glenn Falls Indemnity Co.*, 66 So.2d 537 (1953) and Professor Fraser's article on the declaratory judgment act, 32 O.B.A.J. 1447, 1450 (1961). These authorities serve to explain and amplify the decision in *Reed.* The *Trammel* case was for a declaratory judgment interpreting an insurance policy in a case involving the death of a truck driver on the job. The joinder question was whether the minor children of the deceased had to be joined as parties under a declaratory judgment provision almost identical to the one at issue in this case:

> All persons shall be made parties who have or claim any interest which would be effected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

66 So.2d at 542. The *Trammell* Court held that it was not necessary to join the children because the statute did not render it mandatory that every interested person shall be made a party since it further provides that "no declaration shall prejudice the rights of persons not parties." *Id.* at 542.

Professor Fraser's article comes to a similar result, citing cases in his footnotes. The Professor writes:

> The same section provides that "all persons shall be made parties who have or claim any interest which would be affected by the declaration." Thus, a plaintiff may join persons as defendants when he is not sure which one is liable to him or to which one he is liable. . . However, as indicated by the subsequent clause, *an action may proceed without all parties who have an interest in the controversy*, but persons who are not joined are not affected by the declaration. Thus, *the joinder requirement is not mandatory in spite of the use of the word "shall."*
>
> Some courts distinguish between necessary and proper parties. Persons with a joint interest should be joined if possible. If they are outside of the state, the court may proceed without them, or it may dismiss the action depending on the need of the plaintiff for a determination of the possibility of injury to the absent party. Other persons who have an interest in the controversy should be joined. *If they are not joined, the action should not be dismissed, but they may be brought into the action in accordance with the provisions of Title 12, or they may intervene...*

32 O.B.A.J. 1447, 1450 (1961)(footnotes omitted), Exhibit 1 hereto.

Professor Fraser relies on a case in his footnote 32 for the proposition that "[o]bviously, when the validity of a statute is challenged, all interested person cannot be joined" citing *White House Milk Co. v. Thompson,* 81 N.W.2d 725 (Wis. 1957). In *White House Milk* the plaintiff sought a declaration that a criminal statute intended to outlaw price discrimination in the sale of dairy products was unconstitutional. *Id.,* 81 N.W.2d at 246. One of the parties argued for the joinder of all affected parties under a statute that provided: "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration." *Id.,* at 249. The court rejected this argument for the following reason:

> To place the interpretation on such subsection that is here urged by the cooperative would render the Uniform Declaratory Judgments Act unworkable as a procedural device for securing a determination of the validity of a statute or ordinance. This is because it would require joining as parties all persons who might be affected by the outcome, who in the instant case might be thousands of dairy farmers. *Such provision should be reasonably interpreted, keeping in mind the objectives of the act.* Therefore, *we construe such subsection as not requiring the joinder as parties,*

> *in a declaratory action to determine the validity of a statute or ordinance, of any persons other than the public officers charged with the enforcement of the challenged statute or ordinance. Such defendant public officers act in a representative capacity in behalf of all persons having an interest in upholding the validity of the statute or ordinance under attack.*

Id. (emphasis added). The same logic should apply to an action that, rather than challenging the validity of an act, seeks an authoritative court construction of the act. The declaratory judgments act must be liberally construed to obtain its objective, which is to expedite and simplify the ascertainment of uncertain rights. *State ex rel. Bd. of Examiners in Optometry, v. Lawton,* 1974 OK 69, ¶ 8, *523 P.2d 1064,* 1066. .Both types of actions are prosecuted in the public interest and the presence of public officials as defendant litigants serves to represent the interests of those who see things differently than the Plaintiff districts. The required liberal construction of the declaratory judgment act favors construing it in a way expedites and simplifies the ascertainment of rights, and not in a way that unnecessarily hampers that very purpose of the act.

In a similar vein back in Oklahoma, *Construction Resources Corp. v. Courts, Ltd.,* 1979 OK CIV APP 1, ¶ 1, 591P.2d 335, 336, was a complicated contract dispute arising from the construction and surfacing of an indoor tennis court. The general contractor joined the property owner as a third party defendant to its declaratory judgment counter claim. *Id.,* ¶ 3, 591 P.2d at 336. The Court noted that, while § 1653 says all persons "shall be" made parties, it provides for the result of a declaration where all interested parties are not joined, thus nonjoinder is not an automatic deficiency. *Id.,* ¶ 12, 591 P.2d at 338. Nor is the nonjoinder of over 400 school districts an "automatic deficiency" in the present case.

In *Oliver v. City of Tulsa,* 1982 OK 121, 654 P.2d 607, the Oklahoma Supreme Court relied on both *Reed v. City of Bartlesville* and *Construction Resources Corp. v. Courts, Ltd.,* as well as authorities from other states, to resolve a declaratory judgment joinder issue. In *Oliver* a plaintiff

firefighter sued the City of Tulsa for a declaratory judgment regarding whether a certain City Charter amendment took precedence over the Firefighters' and Policeman's Arbitration Law in determining whether longevity pay or allowances were negotiable between the City and the firefighter's Union. 1982 OK ¶¶ 4-5, 654 P.2d at 608. The suit was originally brought by the Union Local, but Oliver was substituted as plaintiff and was represented to have a common interest with over 500 of his coworkers. *Id.* at ¶ 33, 654 P.2d at 613-14. The City maintained that the case had become a class action that was defective because the statutory requirements for a class action were not followed. *Id.*, at ¶ 34, 654 P.2d at 614.

The Supreme Court turned to the same declaratory judgment joinder statute, § 1653, at issue in the present case. *Id.* The Court recognized that the Court of Appeals had dealt construed the statute in *Reed* and in *Construction Resource Corp. Id.* The Supreme Court cited with approval the pronouncement from *Reed* that, in spite of the word "shall" the joinder requirement is not mandatory in the sense that all parties who might be affected by a declaration must be joined but only those necessarily and directly affected thereby. *Oliver,* 1982 OK 121, ¶ 35, 654 P.2d 615. The Supreme Court also cited with approval, *Id.*, the pronouncement in *Construction Resources Corp.*, that while § 1653 says all persons "shall be" made parties, it provides of the result of a declaration where all interested parties are not joined, so nonjoinder is not an automatic deficiency. After reviewing authority from several other states, the Supreme Court held that under the Declaratory Judgment Act, Oliver was a proper party to bring and maintain the action for declaratory relief, and that no other parties than those who were parties to the case were necessary parties. *Oliver,* ¶ 38, 654 P.2d at 615. This result obtained despite the obvious fact that some of Oliver's 500 coworkers might have disagreed with him regarding the negotiability of longevity pay and allowances between their union and the City.

Thus it is clear that joinder of all affected parties is not a hard and fast requirement in declaratory judgment actions. The word "shall" in § 1653 does not strictly require joinder of all parties who may claim or have an interest that could be affected by the declaration. What is more, a strict application of the joinder requirement would render the Declaratory Judgment Act powerless to ascertain uncertain rights, particularly of public law and statutory validity or construction. Because statutes potentially may affect large numbers of persons, and it is impossible or impractical to join all of them, courts may rely on the public officers to appear and defend with positions contrary to those of declaratory judgment plaintiffs. The Court should deny the OTC motion to dismiss.

3. Joinder is not required when litigating matters in the public interest.

Since at least since *National Licorice Co. v. NLRB,* 309 U.S. 350 (1940), discussed below, federal courts have recognized a "public interest" exception to joinder requirements when dealing with matters of public law and public interests, as opposed to merely private interests. In 1948 the federal declaratory judgment statute, 28 U.S.C. § 2201 was enacted, and with it Fed.R.Civ.P. 57, which provides "[t]hese rules [the Fed.R.Civ.P.] govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201." While the seminal *National Licorice* case was decided before the advent of Fed.R.Civ.P. 19, dealing with joinder, the later cases in this section applied Rule 19 and continued the "public interest" exception developed in *National Licorice.* The Oklahoma Supreme Court has recognized that the Oklahoma Pleading Code is based on the Federal Rules of Civil Procedure, and we rely on federal authority for guidance as to the construction of corresponding sections of our statutes. *Pan v. Bane,* 2006 OK 57, ¶ 7, 141 P.3d 555, ___. Though the Oklahoma Declaratory Judgment Act joinder law is not strictly part of the Pleading Code, we

believe that acceptance of the federal law of the "public interest" exception to Rule 19 joinder requirements is advised, if not outright required, in this context.

The U.S. Supreme Court confronted a joinder issue in *National Licorice Co. v. NLRB,* 309 U.S. 350 (1940). In *National Licorice* the NLRB found the employer had formed a Committee that induced or required employees to agree by contract that they would not bargain for a closed union shop and eliminated their union as a collective bargaining agent in violation of federal labor laws. *Id.,* 309 U.S. at 359-360. The NLRB issued an order that prevented the employer from recognizing its management-created Committee, from enforcing that contract and required it to post notices that the contract violated the law. *Id.,* 309 U.S. at 364-65. The question arose whether the NLRB could enforce its order against the employer without joining as parties all the employees who were parties to the contract. *Id.,* at 361.

The Supreme Court stated that in a proceeding narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights. *Id.,* at 363. Ordinarily where the rights involved in litigation arise upon a contract, courts refuse to adjudicate the rights of some of the parties to the contract if the others are not before it. *Id.* However, in *National Licorice* the right asserted by the NLRB was not one arising upon or derived from the contracts between employer and its employees. *Id.,* at 364. Instead, the NLRB asserted a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices. *Id.* The NLRB decree ran only against the employer and precluded it from taking any benefit of the contracts procured through violation of the law. *Id.,* at 364-65. The employees were still free to secure an adjudication upon the contracts and their rights under the contracts were not prejudged. *Id.,* at 365.

Because the federal labor law contemplated no more than the protection of the public rights which it created and defined, and the NLRB's order was directed solely to the employer and is ineffective to determine any private rights of the employees, the Court found the employees were not indispensable parties for purposes of the NLRB's order. *Id.* The statute did not require their presence as parties and there was no abuse of the NLRB's discretion in its failure to make them parties. *Id.*

The court in *Natural Resources Defense Council v. Berklund,* 458 F.Supp. 925, 933 (D.D.C. 1978) dealt with an environmental case in which at least 183 applicants for preference rights for coal leases could be affected. The defendants pressed for dismissal for failure to join these applicants as indispensable parties. The court recognized that to require dismissal of a case essentially asserting public rights based upon a failure to join indispensable parties would effectively preclude such litigation against the government. *Id.* Calling upon *National Licorice* the court noted the Supreme Court had long recognized the inapplicability of the term "indispensable parties" to adjudications of public, not private rights. *Id.* Because the plaintiffs sought to vindicate public rights under the National Environmental Policy Act, the non-party lease applicants were not indispensable parties, and the court had jurisdiction to proceed without them.

National Wildlife Federation v. Burford, 676 F.Supp. 271 (D.D.C. 1985) considered joinder issues in a case affecting the development of 170 million acres of public land. The case applied the "public rights" exception, in addition to other joinder principles, to relieve the plaintiff of the duty to join third parties who might have claims to the public lands at issue. The court recognized that its plaintiff, like the plaintiff in *National Licorice,* was asserting a claim grounded in public rather than private rights. *Id.,* 676 F.Supp. at 276. The court recognized an interest in the public participating in the management of public lands. *Id.* The court also recognized that

cases following *National Licorice* had extended the "public rights" exceptions to circumstances where disposition of the case could harm the absent parties. *Id.*, citing cases. Further, the court held that the policy behind the "public rights" exceptions emphasizes the need to permit a plaintiff to proceed without joining, in that case, many mining claimants and lessees. *Id.* The "public rights" exception removes joinder as an obstacle that might otherwise preclude litigation against the government. *Id.* Because, as here, a plaintiff may lack an alternative forum, requiring joinder of all parties could foreclose forever a legitimate cause of action against the government. *Id.* The court would not sanction such a Draconian result. *Id.*, at 276-77. Nor should this Court.

The central concerns of the "public interest" exception are clear: where what is at stake are essentially issues of public concern and the nature of the case would require joinder of a large number of persons, Fed.R.Civ.P. 19's joinder requirements need not be satisfied. *Sierra Club v. Watt,* 608 F.Supp. 305, 324 (E.D. Calif. 1985). When litigation seeks vindication of a public right, third persons who could be adversely affected by a decision favorable to plaintiff do not thereby become indispensable parties. *Id.* In public rights cases, what is at stake by definition are constitutional, statutory, or administrative issues that, by their nature affect large numbers of persons. *Id.*, at 324-25. To hold that such persons nevertheless must be joined or the case dismissed would effectively preclude such litigation against the government. *Id.*, at 325. Moreover, in federal court, Fed.R.Civ.P. 1 provides that the rules be "construed to secure the just, speedy, and inexpensive determination of every action." *Id.* Justice cannot be done if public interest litigation is precluded by virtue of the requirements of joinder. *Id.*

The Oklahoma Pleading Code is also to be construed to secure the "just, speedy, and inexpensive" determination of every action. 12 O.S. § 2001. While the Declaratory Judgment Act is not itself part of the Pleading Code, its liberal construction, *State ex rel. Bd. of Examiners in*

Optometry, v. Lawton, 1974 OK 69, ¶ 8, *523 P.2d 1064,* 1066, also argues for the "just, speedy, and inexpensive" determination of every action to "ascertain uncertain rights." Joinder requirements should not be used to defeat those beneficial purposes of the Act.

4. The law recognizes the special role of public interest issues beyond the realm of joinder.

Lawsuits involving public entities or public interests justifiably receive special treatment in the Courts. For example, statutes of limitation do not apply to a government entity, not just the sovereign state but a municipality as well, seeking in its sovereign capacity to vindicate public rights of all kinds. *Oklahoma City Municipal Improvement Authority v. HTB, Inc.,* 1988 OK 149, ¶ 5, 769 P.2d 131, 133. This rule applies even to *qui tam* plaintiffs suing on behalf of a town to recover property wrongfully taken, or for some illegality, fraud, or wrongful conduct, after making statutory demand of officials to act and their failing timely to do so. *State of Oklahoma, ex rel. Lewis v. Town of Canute,* 1993 OK 90, ¶13, 858 P.2d 436, 439-40. This is so because the statute of limitations would not bar suit by the proper town officers enforcing a public right and *if* the *qui tam* plaintiffs give legally require demand on the appropriate officers and the officers have failed to act *and* the plaintiff acts within his or her own statute of limitation following the officer's failure to act. *Id.,* ¶ 14-15, 858 P.2d at 440. In a different context, only the public interest in preventing harm to children authorizes use of the state Juvenile Code provisions to terminate the parent-child relationship. *Davis v. Davis,* 1985 OK 85, ¶ 17, 708 P.2d 1102, 1109. Resort to state-action remedies by private individuals would result in a gross distortion of the legal line historically separating purely private interspousal claims from the legislatively-sanctioned process governing state intrusion into the family. *Id.* So the Juvenile Code provisions are not invocable in a private suit by the custodial parent who seeks termination of the rights of the noncustodial parent. *Id.,* ¶ 27, 708 P.2d at 1112. In at least one instance, the Oklahoma Supreme Court has made a public

law pronouncement in a school collective bargaining case expressly applicable to school districts that were not parties to the action. The Court found that a local school board has an affirmative obligation to participate in the settlement of unresolved disputes between competing bargaining organization and a responsibility to resolve an apparent impasse based on a statute that, by its terms, applied only to districts with an average daily attendance of 35,000. *Maule v. Independent School District No. 9 of Tulsa County,* 1895 OK 110, ¶ 1, 714 P.2d 198, 199. The Court reached this conclusion because to permit the application of the special law to teachers in only two districts, while denying the benefits to all other school districts would be constitutionally unacceptable. *Id.* Though *Maule* could have presented an issue of the need to join all the affected school districts in the case, the Court did not require, or even address, joinder in its decision.

Conclusion: Joinder of all other school districts is not necessary to ascertain uncertain rights.

These eight school districts and their respective students have a public right and interest in proper funding which should not be allowed to fail for want of joining all other school districts. The OTC defendants themselves, as public officers, can represent those (if any really exist) whose reading of the statute differs from that of the Plaintiffs. Although clearly deprived of revenues to which they were entitled under the statute, these Plaintiffs do not seek recovery of funds from the Tax Commission or any from other school district. They only ask that they receive the corrected amounts going forward that were intended by the legislature. The Court should deny Defendants' motion to dismiss for failure to join parties.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on the 26th day of September, 2016, a true and correct copy of the foregoing instrument was mailed, postage paid, to:

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First Deputy General Counsel
Oklahoma Tax Commission
100 North Broadway Ave., Suite 1500
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Robert A. Nance

EXHIBIT 1

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Oklahoma's Declaratory Judgment Act

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Oklahoma has become the forty-ninth state to adopt a declaratory judgment act. The statute is the substantial equivalent of the Uniform Act which has been adopted in many states, although the arrangement of material differs somewhat, e.g. Section 1 of the Oklahoma act contains material that is found in the first six sections of the Uniform act. There are some differences, moreover, in phraseology and coverage so that cases from jurisdictions having the Uniform Act in its original form will not always be relevant.

Actions for declaratory relief constitute a valuable addition to our system of judicial remedies because they permit courts to determine the rights of the parties without having to award coercive relief. Whether or not coercive relief is available is unimportant. Section 1 of the act provides that a court may determine rights "whether or not other relief is or could be claimed" and further states that "The determination may emade either before or after there has been a breach of any legal duty or obligation."[1] Nevertheless, when a party can bring a coercive action, there is no reason for him to request declaratory relief. In fact, if he requests only declaratory relief, he may have waived his right to coercive relief because he has split his cause of action. A different problem is presented if one who could bring an action for coercive relief fails to sue. Since the other party has no coercive remedy available he may bring an action to have the court determine if he is liable to the claimant. However, declaratory judgment actions have proved to be most useful where no coercive remedy is available. Thus declaratory relief is valuable, even essential, where parties have a dispute as to the meaning of an agreement or an instrument before it has been breached.

In order to obtain declaratory relief, (1) there must be an actual controversy that affects the rights or legal relations of the parties, (2) the plaintiff must have an interest in the controversy which is adverse to the interest of the defendant, (3) the determination must settle the controversy or at least facilitate its settlement, and (4) the issues must be capable of judicial determination. Where there is an existing dispute, a court should decide the rights of the parties, although the determination is different from, and even opposite to, the one requested.[2]

Actual Controversy

The controversy must be based on existing and not on hypothetical facts.[3] Thus, a court cannot determine the rights of the parties on the basis of events that may happen in the future, but on the basis of existing facts, such as an actual agreement between the parties, a court can determine the right of one party to engage in certain activity in the future or the rights of the parties if certain proposed acts are performed.[4] Also, as indicated earlier, if there be a controversy as to the rights of the parties under existing facts, a court is not prevented from rendering declaratory relief merely because the facts which might entitle the plaintiff to coercive relief have not occurred.[5]

The validity or applicability of a statute may be determined in a declaratory judgment action before it has been violated by the plaintiff. In one case it was held that there was an actual dispute as to the validity of a statute,

although it had not become effective, because nothing further remained to be done before it took effect.[6] Where a plaintiff is challenging the validity of a statute he does not have to allege that it is being enforced because that will be presumed.[7] Where, however, the court is asked to determine if a statute applies to the plaintiff, as distinguished from determining its validity, the plaintiff must show that an official is threatening to apply it to him or that the plaintiff is being deprived of a license, a permit, or some other right, in order to show the existence of a controversy.

Discretion of the Court

A court should grant declaratory relief when the decision terminates the whole controversy; otherwise the court can refuse such relief. Section 1 provides that a court may refuse to decide the rights of the parties where the declaration "would not terminate the controversy or some part thereof."[8] Since the statute uses the word "may" rather than the word "must", this restriction on the power of the court to grant declaratory relief is not compulsory.

A declaration terminates the controversy when it establishes the rights of the parties on all issues regardless of the fact that further relief may be necessary to enforce those rights. Where a determination would settle less than all issues, a court may still grant relief if the declaration would be useful to one party and the failure to adjudicate all issues would not unduly prejudice the other party.[8a] Thus, if a declaration would leave some issues undecided, the court must decide if the need for a determination of part of a controversy outweighs the inconvenience that would result from deciding a dispute piecemeal. It would appear that courts should be very hesitant to decide part of a controversy because declaratory judgment actions are intended to expedite the settlement of disputes rather than to cause a multiplicity of actions.

Determination of Less Than All

Usually courts do not take jurisdiction of an action in which the plaintiff requests the court to determine that the defendant is liable to him where the plaintiff could bring an action for damages for a past breach of an obligation or a duty because the determination would not settle all issues. A subsequent proceeding to determine the amount of the past damages would be necessary.[9] However, relief would be denied not because a coercive remedy is available but because declaratory relief would result in a multiplicity of actions which could be avoided. Even if the plaintiff should ask the court to determine the amount of the defendant's liability, should the defendant be liable, the petition would still be defective unless the plaintiff stated the amount to which he supposed himself entitled.[10] If he does allege this, the plaintiff has, in effect, brought a coercive action for damages.

When a plaintiff requests the court to determine only that the defendant is liable to him, and the defendant does not object to the petition on the ground that the determination will not settle all issues, the court may dismiss the action, or the case may proceed to trial because jurisdiction is discretionary. If evidence relating to damages is introduced, the amount of damages should be determined as well as the issue of liability,[11] and the judgment should have the same effect as a judgment in a coercive action for damages. However, if there is no evidence of damages, the issue of liability may be determined, and the plaintiff may bring a subsequent proceeding to recover damages. The defendant could not object because he had failed to assert that the plaintiff was splitting his cause of action when the declaratory action was brought.

When a transaction involves several

persons so that a plaintiff is not sure who is liable to him, he may join them as defendants. Still, the plaintiff should state the amount to which he supposes himself entitled.[12] In complicated cases where the rights of the various parties are interrelated it may be desirable for the court to determine liability and then determine damages in a supplemental proceeding. Therefore, many courts take jurisdiction of such an action although there is no request for a determination of the damages which are owed to the plaintiff.[13]

Some courts have determined the rights of the parties under an instrument, and when the plaintiff was successful, have permitted him to recover damages in a subsequent proceeding.[14] Since the issues were independent, trying them separately seems desirable. However, this result should be achieved by having the plaintiff bring a coercive action which is tried in two stages rather than by bringing a declaratory judgment action.[15]

If an alleged breach of a duty is continuing, the plaintiff may ask for a determination of the rights of the parties without asking for any damages that may have already accrued. The court should take jurisdiction of the action because the determination will settle the future rights of the parties. However, the plaintiff should not be allowed to recover his past damages in a subsequent proceeding because this would result in a multiplicity of actions which is unnecessary in this type of case.[16]

Damages which accrue after the plaintiff brings his action can be recovered without splitting a cause of action because the plaintiff could not have requested them initially.[17]

A different problem is presented when a person asserts a claim against another, but he does not bring suit. The other person, the potential defendant, may bring an action for a determination that he is not liable to the claimant.[18] If the claim arises out of a contract, the plaintiff may ask for a determination that there is no contract, that the contract is unenforceable, or that he has not breached it.[19] The plaintiff may even admit liability to the defendant and ask the court to determine the amount of his liability.[20]

Where the plaintiff denies that he is liable to the defendant, he may join with his prayer for a determination of no liability a request that the court determine the amount of his liability, if he is liable, in order to avoid the need for a further proceeding, but the court has jurisdiction to determine the question of liability although the plaintiff does not request a determination of damages should he be liable.[21] The defendant can avoid the need for any further proceedings by counterclaiming for damages[22] although he does not waive the right to recover damages if he fails to assert a counterclaim.[23] Should the plaintiff be found liable, the defendant may recover damages in a supplemental proceeding[24] or in a new action. Although neither party raises the question of damages, this issue should be determined at the same time the question of liability is decided if evidence relating to damages is introduced.[25]

Subject Matter of Declaration

Rights and controversies of all kinds may be the subjects of declaratory judgment actions. Section 1 of the Oklahoma act lists certain instruments which may be construed, but this list is not intended to be complete as indicated by the use of the phrase "including but not limited to." Thus, a court may interpret leases and mortgages, to name a few other types of instruments. Interpreting instruments before they have been breached is one of the main uses of declaratory judgment actions. Courts are not confined to interpreting written instruments, but the Oklahoma act also permits them to construe oral agreements. In addition, Section 1 provides that a court may determine status. This includes marital

status, legitimacy, paternity and the right to custody, to name a few possibilities. Even this varied list is not a complete catalogue of the subjects which may be determined in a declaratory judgment action. Section 1 provides that the court may determine other legal relations. As a result, it is easier to mention a few instances where a court should not take jurisdiction.

If an exclusive statutory remedy be provided, a court may not decide an issue in a declaratory judgment action. For this reason a declaratory judgment action may not be used to determine the validity of a prior judgment although, in determining the rights of the parties, a court may have to construe a judgment.[26] A declaratory judgment action may not be used to determine issues that are raised in a pending action.[27] In fact, a declaratory judgment action is subject to the objection of another action pending if there is a prior proceeding between the same parties which involves the same controversy.[28] In addition, certain specific exceptions to the power of a court to grant declaratory relief are found in Sections 1 and 8 of the Oklahoma act.[29] However, the limitation in regard to policies of insurance does not extend to all kinds of insurance. Also, the limitation in Section 8 does not embrace rules as distinguished from "orders, judgments or decrees."

Procedure

An action for declaratory relief is a civil action, and except where the act specifically provides otherwise, the usual rules of practice and procedure apply.[30]

Section 3 of the Oklahoma act provides that the existing venue statutes apply to actions for declaratory relief. There is one exception, however. When an action involves an individual and a corporation, the action should be brought where the individual resides or may be served. It would seem that this exception does not apply where a specific venue is indicated by the subject matter of the action, but it only applies where a plaintiff would otherwise have had a choice of counties because there are several defendants.

This same section provides that "all persons shall be made parties who have or claim any interest which would be affected by the declaration." Thus, a plaintiff may join persons as defendants when he is not sure which one is liable to him or to which one he is liable. This provision is similar to Section 231 of Title 12 which allows joinder in the alternative.[31] The main difference between these two provisions is that Section 231 uses the word "may" and Section 3 of the declaratory judgment act states that such persons "shall" be made parties. However, as indicated by the subsequent clause, an action may proceed without all parties who have an interest in the controversy, but persons who are not joined are not affected by the declaration. Thus, the joinder requirement is not mandatory in spite of the use of the word "shall."[32]

Some courts distinguish between necessary and proper parties. Persons with a joint interest should be joined if possible. I they are outside of the state, the court may proceed without them, or it may dismiss the action depending on the need of the plaintiff for a determination and the possibility of injury to an absent party. Other persons who have an interest in the controversy should be joined. If they are not joined, the action should not be dismissed, but they may be brought into the action in accordance with the provisions of Title 12,[33] or they may intervene. The problem of joinder of parties is made simpler by the fact that a declaratory judgment action may be brought as a class action.[34]

A party may join a prayer for declaratory relief with a prayer for coercive relief.[35] However, even though a party requests only coercive relief, a general demurrer should be overruled

if the pleading states a claim for declaratory relief.[36] Similarly, if a plaintiff asks for declaratory relief, a general demurrer should be overruled if the pleading states facts sufficient to show a cause of action for coercive relief. Since the prayer for relief is not part of the cause of action, a court may award the relief to which a party is entitled.[37] A demurrer should be sustained only if a pleading shows no right to either declaratory or coercive relief[38]

A defendant may seek coercive or declaratory relief in an answer, subject to the statutory sections relating to counterclaims and set offs,[39] regardless of which type of relief the plaintiff requests.

Actions for declaratory relief are neither legal nor equitable so that the method of trial, whether to a jury or to the court, depends on the kind of coercive action that is or would have become available to one of the parties.[40] Thus, if a coercive action is available to either party, the declaratory action should be tried in the same way that the coercive action would have been tried.[41] If no coercive action is available, the method of trial depends on the kind of coercive action that would subsequently accrue. Since one party may have a choice of coercive remedies, the court should consider the answer as well as the petition to see if it indicates which remedy he would have elected.[42] This same test should be used to determine other incidents of the trial and the scope of appellate review.

When a plaintiff seeks a declaration of nonliability, he should have the burden of proving that the case is appropriate for declaratory relief. He should even have the burden of proof as to other issues unless the defendant counterclaims for affirmative relief.[43]

Section 4 of the Oklahoma act provides that a determination in a declaratory judgment action shall have the force and effect on a final judgment.[44] Thus, the doctrine of res judicata applies to such actions the same as to other actions. Also, if a judgment should determine not only the liability of one of the parties but also the amount thereof, the successful party should be able to immediately enforce it by execution.

Further Relief

Ordinarily in declaratory judgment actions courts determine the rights of the parties and do not award coercive relief although in some cases where all issues have been determined courts have ordered coercive relief which was not requested.[45] A determination of the rights of the parties does not exhaust the power of a court to act in regard to that controversy. Either party may obtain further relief "should the declaration not be observed and coercion become necessary."[46] This supplemental relief is not limited to further declaratory relief, but it may be any kind of coercive relief that may be necessary to enforce future compliance with the declaration and to compensate a party for the failure of the other party to comply with it. Thus, a court may issue an injunction, order specific performance, cancellation, reformation on an accounting, or it may award damages for any injury that has occurred since the declaration was made, to name some possible remedies.

Section 5 of the Oklahoma act provides that "Further relief based upon a determination ... may be granted whenever such relief becomes necessary and proper after the determination has been made."[47] This section must be interpreted in connection with Section 1 to determine when further relief "becomes necssary and propr." If a court finds that it is desirable to determine part of a controversy, further relief to settle the remainder is necessary and proper. Thus, where it is appropriate for the court to determine the question of liability first, it may subsequently determine damages.

On the other hand, when a plaintiff fails to ask for accrued damages where it is not necessary or desirable for him to split his cause of action, further relief should not be awarded.

The procedure in Section 5 may be used to recover damages that accrued between the time that the petition is filed and the determination is made. In this instance, no question of splitting a cause of action arises.

When questions of fact arise in a proceeding for further relief, the method of trial depends on the relief sought. Thus, if a party is seeking damages, he is entitled to a jury trial.[48]

Construction

The Uniform Act specifically provides that it shall be "liberally construed and administered."[49] This provision was not included in the Oklahoma act because our statutes already provide that all general statutes "shall be liberally construed to promote their object."[50]

Footnotes

1. Section 3 of the Uniform Act is similar, but it only applies to contracts.

2. Maguire v. Hibernia S. & L. Co., 23 Cal. 2d 719, 146 P. 2d 673 (1944). See Midwest Transfer Co. v. Preferred Acc. Ins. Co., 342 Ill. App. 231, 96 N.E.2d 228 (1st Dist. 1951).

3. Compare Meadville Theological School v. Hempstead, 290 Pa. 222, 138 Atl. 747 (1927), with Allegheny County v. Equitable Gas Co., 321 Pa. 127, 183 Atl. 916 (1936). In Progressive Party v. Flynn, 400 Ill. 102, 79 N.E.2d 516 (1948), the court held that requests for declaratory relief by both parties constituted an admission that there is an actual controversy.

4. Sigal v. Wise, 114 Conn. 297, 158 Atl. 891 (1932).

5. State v. Dammann, 215 Wis. 394, 254 N. W. 759 (1934).

6. Hoagland v. Bibb, 12 Ill. App. 2d 298, 139 N.E.2d 417 (3d Dist 1957).

7. *Ibid.*

8. The phrase "or some part thereof" is not used in the Uniform Declaratory Judgments Act §6.

8a. Aiuto v. Am. Cas. Co., 89 N.E.2d 313 (Ohio C.P. 1949).

9. E.g. Yellow Cab Co. v. City of Chicago, 186 F.2d 946 (7th Cir 1951); Allegheny County v. Equitable Gas Co., 321 Pa. 127, 183 Atl 916 (1936). Contra: Edward B. Marks Music Corp. v. Charles K. Harris M. P. Co., 255 F.2d 518 (2d Cir. 1958). Where the amount is liquidated declaratory relief should be available. Sheldon v. Powell, 99 Fla. 782, 128 So. 258 (1930).

10. 12 Okla. Stat. §264 (1951). Cf. 12 Okla. Stat. §153 (1951). Beatty v. Chicago, B. & Q. Rd., 49 Wyo. 22, 52 P.2d 404 (1935).

11. Parkford v. Union Drilling & Pet. Co., 118 Cal. App. 538, 5 P.2d 440 (1931). McNally v. Mosier, 210 Md. 127, 122 A.2d 555 (1950) (rent that became due during the trial); Goldring v. Kline, 71 Nev. 181, 284 P.2d 374 (1955). This determination should be made by the court or the jury depending on how the rest of the case is tried.

12. See Sweeney v. Am. Nat'l Bk., 62 Idaho 544, 115 P.2d 109 (1941).

13. E.g., Vokal v. United States, 177 F.2d 619 (9th Cir. 1949); Tolle v. Struve, 124 Cal. App. 263, 12 P.2d 61 (1932); Alfred E. Joy Co., Inc. v. New Amsterdam Casualty Co., 98 Conn. 794, 120 Atl. 684 (1923); Lawrence v. Am. Surety Co., 263 Mich. 586, 249 N.W.3 (1933); Webb-Boone Paving Co. v. State Highway Comm., 351 Mo. 922, 173 S.W.2d 580 (1943); Town Board v. Murray, 130 Misc. Rep. 55, 223 N.Y.S. 606 (1927). Contro: Porcelain Enamel & Mfg. Co. v. Jeffrey Mfg. Co., 177 Md. 677, 11 A.2d 451 (1940).

14. Thomas v. Cilbe, Inc., 104 So.2d 397 (Fla. App. 1958); Winborne v. Doyle, 190 Va. 867, 59 S.E.2d 90 (1950).

15. Miner, Court Congestion: A New Approach, 45 Am. Bar Ass'n Jour. 1265 (1959).

16. Lane v. Page, 126 Colo. 560, 251 P.2d 1078 (1952), noted 52 Mich. L. Rev. 141 (1953), 8 Okla. L. Rev. 98 (1955).

17. Condon Nat'l Bk. v. Krigel, 179 Kan. 274, 294 P.2d 241 (1956).

18. E.g., Peterson v. Cent. Ariz. L. & P. Co., 56 Ariz. 231, 107 P.2d 205 (1940).

19. See Ho Gat Wah v. Fong Wan, 118 Cal. App. 2d 159, 257 P.2d 674 (1953); Holly Sugar Corp. v. Fritzler, 42 Wyo. 446, 296 Pac. 206 (1931).

20. Carlton Hotel, Inc. v. Abrams, 322 Mass. 201, 76 N.E.2d 666 (1948). See Simler v. Conner 282 F.2d 382 (10th Cir. 1960); New Amsterdam Gas Co. v. Hyde, 148 Ore. 229, 34 P.2d 930 (1934). Contra: Stark v. Rodriquez 229 Minn. 1, 37 N.W.2d 812 (1949).

21. Philadelphia Manufacturers Mut. Fire Ins. Co. v. Rose, 364 Pa. 15, 70 A.2d 316 (1950). The plaintiff should avoid this issue since he should not have the burden of proving it.

22. Snyder v. Bock, 69 Idaho 165, 204 P.2d 1010 (1949); Utility Blade & Razor Co. v. Donovan, 111 A.2d 300 (N.J. Super. 1955).

23. 12 Okla. Stat. §275 (1951). Cooke v. Gaidry, 309 Ky. 727, 218 S.W.2d 960 (1949).

24. E. F. Prichard Co. v. Heidelberg Brewing Co., 314 Ky. 100, 234 S.W.2d 486 (1950); Petersime Incubator Co. v. Bundy Incubator Co., 135 F.2d 580 (6th Cir. 1943).

25. See Burgard v. Mascoutah Lumber Co., 6 Ill. App. 2d 210, 127 N.E.2d 464 (4th Dist. 1955).

26. See Annot. 154 A.L.R. 740 (1945).

27. E.g., Pugh v. City of Topeka, 151 Kan. 327, 99 P.2d 862 (1940). Also, filing an action for declaratory relief is not a ground for enjoining a pending action. E.g., Nichinson v. Limon, 312 Mass. 467, 45 N.E.2d 477 (1942).

28. E.g., Colson v. Pelgram, 259 N.Y. 370, 182 N.E. 19 (1932).

29. Except for these exclusions the coverage of the Oklahoma Act is similar to the coverage of the Uniform Act. Section 2 of the Uniform Act refers to written contracts although the Oklahoma Act is not so limited.

30. Section 13 of the Uniform Act construes the word "person". This section was not included in the Oklahoma act because the subject is covered by 25 Okla. Stat. §16 (1951). Also, the Uniform Act has a section relating to costs. This was not included in the Oklahoma act. Instead, our general statues are controlling.

31. Security Ins. Co. v. Choctaw Cotton Oil Co., 149 Okla. 140, 299 Pac. 882 (1931). For joinder of plaintiffs 12 Okla. Stat. §265 (Supp. 1959) controls.

32. The first sentence of Section 3 is taken from Section 11 of the Uniform Act. Cases from other states have interpreted this provision as not being mandatory. E.g., Trammell v. Glens Falls Indem. Co., 259 Ala. 430, 66 So.2d 537 (1953); State v. Brennan, 231 Ind. 492, 109 N.E.2d 409 (1953). Contra: Stanley v. Mueller, 211 Ore. 198, 315 P.2d 125 (1957). Obviously, when the validity of a statute is challanged, all interested persons cannot be joined. White House Milk Co. v. Thompson, 275 Wis. 243, 81 N.W.2d 725 (1957). The provision in regard to joining municipalities is mandatory.

33. 12 Okla. Stat. §236 (1951).

34. Kimes v. City of Gary, 224 Ind. 294, 66 N.E.2d 888 (1946).

35. Oklahoma Declaratory Judgement Act. §§1, 2.

36. Oklahoma Declaratory Judgment Act §2.

37. E.g., Zimmer v. Gorelnik, 42 Cal. App. 2d 440, 109 P.2d 34 (1941). See cases note 45. These rules are not unique to declaratory judgment actions. Fraser, One Form of Action, 14 Okla. L. Rev. 125, 133 (1961). In Allen v. Carsted Realty Corp., 133 Misc. Rep. 359, 231 N.Y.S. 585 (1928), the plaintiff asked for a determination of his rights under a lease. The lease expired before the time for trial, but the court kept the case for damages.

38. Reid v. Anderson, 116 Utah 455, 211 P.2d 206 (1949).

39. 12 Okla. Stat. §§273, 274 (1951). See Oklahoma Declaratory Judgment Act §2.

40. Section 6 of the Oklahoma act is the same as Section 9 of the Uniform Declaratory Judgments Act except that the Oklahoma act uses the word "must" whereas the Uniform act uses the word "may" The Uniform act has been interpreted as preserving the right to a jury trial. *E.g.*, Ohio Farmers Indemnity Co. v. Chance, 163 N.E.2d 367 (Ohio 1959). See Note, 6 U.C.L.A. Law Rev. 678 (1959).

41. Beacon Theaters, Inc. v. Westover, 359 U.S. 500 (1959).

42. See Ryan Distrib. Corp v. Caley, 51 F.S. 377 (E.D. Pa. 1943).

43. See Note, Developments in the Law —Declaratory Judgments—1941-1949, 62 Harv. L. Rev. 797, 837 (1949), Note 9 Okla. L. Rev. 180 (1956). A party who relies on certain issues, as illegality, must prove them. McNally v. Mosier, 210 Md. 127, 122 A.2d 555 (1956). In regard to the right to open and close see Note, 35 Texas L. Rev. 133 (1956).

44. The provisions in this section are found in Sections 1 and 7 of the Uniform Act.

45. Reese v. Levin, 98 Fla. 397, 123 So. 809 (1929); Merritt v. Sims, 78 Idaho 292, 301 P.2d 1108 (1956). See cases in note 11, supra. Contra: Nelson v. City of Rockford, 167 N.E.2d 219 (Ill. 1960). Since all rights have been determined, this saves the need for a subsquent proceeding. Also, a court may grant the relief to which a party is entitled. See note 37. Coercive relief should not be awarded where there is a choice of remedies, Kermott v. Montgomery Ward & Co., 80 N.W.2d 841 (N.D. 1957), or where all issues have not been settled. In several cases the court apparently ordered the plaintiff to pay money to the defendant. High Splint Coal Co. v. District No. 19, 300 Ky. 521, 189 S.W.2d 735 (1945) (not clear if amount determined); Renaker v. Thompson, 287 Ky. 241, 152 S.W.2d 575 (1941) (liquidated amount). Ordering the payment of money seems questionable. Contra: Police Pension and Relief Board v. Behnke, 136 Colo. 288, 316 P.2d 1025 (1957).

46. Borchard, Declaratory Judgments 439 (2d ed. 1941). A court may retain jurisdiction to give further relief, but this

is not necessary. Morris v. Ellis, 221 Wis. 307, 266 N.W. 921 (1936).

47. The phraseology is different from Section 8 of the Uniform Declaratory Judgments Act.

48. See Condon Nat'l Bk. v. Krigel, 179 Kan 274, 294 P.2d 241 (1956).

49. Uniform Declaratory Judgments Act §12.

50. 12 Okla. Stat. §2 (1951). Also see 25 Okla. Stat. §29 (1951).

TABLE SHOWING PROVISIONS OF UNIFORM ACT AND CORRESPONDING PROVISIONS IN OKLAHOMA ACT

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§12	Construction	Covered by 12 O.S. §2 and 25 O. S. § 29
§13	Definition of "person"	Covered by 25 O.S. §16
§14	Severability	§ 7
§15	Uniformity as aim of interpretation	Omitted
§16	Short Title	Omitted
§17	Effective date	Omitted, unnecessary

TABLE OF EXCEPTIONS IN OKLAHOMA ACT TO COVERAGE OF UNIFORM ACT

1. Liability for tortious injury to persons or property
2. Workmen's Compensation for injury to persons
3. Obligations under insurance policies covering liability or indemnity against liability for the above
4. Orders, judgments or decrees of State Industrial Court, Corporation Commission, "or any other administrative agency, board or commission"