June 12, 2019

Brad Clark

General Counsel

Oklahoma State Department of Education

Via Electronic Mail to brad.clark@sde.ok.gov

Please Acknowledge Receipt

Dear Mr. Clark:

While I appreciate that your letter dated June 6, 2019 provided a definitive response to our request directed first to you on April 23, 2019 and then formally to Superintendent Hofmeister on April 29, 2019, it is disappointing that you did not engage the substance of our position. Instead you state "… the statutory language that you rely on merely sets forth the general legislative intent for the state aid formula. Stated otherwise, in no way does this language identify the specific calculation for any portion of the state aid formula, including but not limited to how the motor vehicle collection amounts are factored into said formula…" That is a puzzling assertion when about a third of my letter is devoted to quoting the applicable language from the same Title 70 section you set forth at length and pointing out the internal inconsistency that is at issue in construing the statute, namely that the "amounts actually collected", as you intend to apply those words, are not "calculated on a per capita basis on the unit provided for by law for the distribution of each such revenue."

Here are actual numbers to illustrate the inconsistency for the only apportionment month at issue, February, 2019. Motor vehicle collections available for apportionment to school districts collected in January, 2019 totaled $21,788,638.93. The OTC first applied The "law for the distribution of … such revenue", namely Section 1104 of Title 47, by calculating each district's per ADA share, or as "calculated on a per capita basis", which for Sand Springs 0.7804878% of the total is $170,057.67. Bixby's apportionment under the "law for the distribution of … such revenue" and "calculated on a per capita basis" is $214,715.75 because their share of ADA is 0.9854482%. Those are the respective amounts "actually collected" by the OTC for apportionment to Sand Springs and

Bixby in February of FY 2019 which is the "preceding year" amount to be used in calculating state aid for FY 2020.

However, the amounts reported to SDE by the OTC for February, 2019 are adjusted by the court ordered amounts, namely an increase of $35,833.24 for Sand Springs which is 1/13th of the underpayments that occurred in 2016 and 2017, and a decrease of $69,180.18 for Bixby being 1/13th of its overpayments in those earlier years. The actual payments, not collections, reported by OTC are $205,890.91 to Sand Springs and $145,535.57 to Bixby. Those amounts are not "calculated on a per capita basis", are not determined by Title 47, Section 1104 which is the "law for the distribution of … such revenue", and are not even the "amounts actually collected" for Sand Springs and Bixby "during the preceding fiscal year". Unlike the amounts paid to Sand Springs and Bixby for the other eleven months of FY 2019, the statute we both set forth in our letters does not address this circumstance and requires thoughtful construction to fulfill the stated legislative intent.

The principles of statutory construction that resolve this inconsistency are: that a statute should be construed 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; that in construing a statute we 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; and further, supporting construction that gives effect to "the general legislative intent" you want to ignore, is the doctrine of *in pari materia* which canon of construction provides for statutes that are about the same matter "…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.

Essential to following this guidance is an understanding of the actual financial impact the OTC's wrongful apportionments have had on the affected school districts. In this regard I find of interest your phrase concerning the state aid statute "… or how monies received (regardless of the mechanism) offset other sources of funding through the formula." I infer, I hope incorrectly, that you are reflecting your agency's belief that the 271 underpaid school districts were, subsequent to being shorted almost $23 million by the Oklahoma Tax

Commission, "made whole" through the state aid formula. If that is your understanding of the facts, then it makes sense you would construe the statutory scheme to avoid providing a windfall to the 271 underpaid districts at the expense of the 146 that were overpaid. Is my inference correct that Superintendent Hofmeister believes the losses in motor vehicle collections to my clients caused by the Tax Commission's wrongful apportionments have been offset by subsequent increases in state aid?

The proposition that these wrongful losses were corrected through the state aid formula, which was advocated by the nine overpaid districts to the Supreme Court, is demonstrably illogical and wrong. It is also pervasive among Oklahoma school administrators, even those in finance who should know better. I believe it comes from districts' actual or secondhand experience with the volatile gross production revenues which are treated the same as motor vehicle collections in the state aid formula. What school people have observed is that as energy revenues go up and down, affected districts experience their subsequent year state aid going down and then up. They conclude, sometimes correctly, that they are thereby made whole over the course of a pricing cycle.

But thoughtful analysis of what actually occurs, and that is simply demonstrated, reveals that receiving an amount, greater or lesser, of gross production revenue results in a one-time gain or loss, measured against the foundation program amount calculated for all districts by their WADM. The subsequent year adjustment in state aid, down or up, does not offset the one-time gain or loss. The adjustment in aid is the formula's way of getting to the correct foundation program amount in the subsequent year—if more gross production revenues are expected, then less state aid is required to fill the new year's revenue gap, and vice versa when reacting to a prior year shortfall in gross production revenues. Correction for the one-time gain or loss that has occurred from the increase or decrease in gross production revenues only results when those revenues go back down or back up. Then the one-time windfall or shortfall is reversed. That result is not caused by state aid changes, rather by the chargeable revenue source returning to the previous level.

Thinking this is so, for example that a subsequent year increase in state aid replaces the shortfall in prior year motor vehicle collections, requires believing that the same money (the subsequent year state aid increase) can be spent twice, first to make up for the prior year shortfall and also to offset the expected subsequent year's reduced motor vehicle collections. It is as simple as this, if you

underpay me I cannot be made whole till you overpay me. It cannot be shown in any year since August, 2015 that any of my seven client districts have been overpaid, except for the court-ordered correcting payments made in February.

If Superintendent Hofmeister is informed by a correct understanding that more than $22 million was wrongly apportioned among school districts and that the formula only works to mitigate future loss, not to correct the past wrongful under payments, then she could consider the equities involved. In resolving the statute's inconsistency I described earlier another principle of statutory construction would be applicable here, namely "… the courts have found that if no other remedy exists, equity will intervene." Walker v. Oak Cliff Volunteer Fire Protection Dist., 1990 OK 31.

Lastly, I am not only aware of HB 1991 I drafted it and asked Representative Jadine Nollan to sponsor it. For the state aid formula to work as it is intended, anytime one of the dedicated revenue sources is dramatically changed, as happened when SB 476 took effect in 2017, the related chargeable determination in Title 70, Section 18-200.1 should also be changed to avoid the one-time gains and losses like what has occurred. HB 1991 would conform the Title 70 chargeable calculation more closely to the amount actually apportioned under Title 47, and would further the equalization goal of the legislature. Because you state that "… it is illuminating in commanding that your request be denied," it seems you place great importance on your discovery. Yet you cite no case law that supports considering the introduction of related legislation as being relevant to the construction of a current statute, and I'm confident there is none.

I am available to discuss this matter with you any time and would appreciate knowing the Superintendent's position on whether or not my clients have had their losses offset through the state aid formula.

Sincerely,

Gary Watts

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