

April 23, 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:

I serve as general counsel for the Sand Springs Public Schools. Soon I will transmit a request to Superintendent Hofmeister concerning motor vehicle collections chargeable amounts for the calculation of state aid in FY 2020 which will involve construction of the state aid statute at Title 70, Section 200.1(D). I have represented the Sand Springs, Mid-Del, Muskogee, Ponca City, Altus, Quapaw and Lone Wolf school districts since 2016 in litigation with the Oklahoma Tax Commission, Case No. CV-2016-1249, District Court of Oklahoma County. The superintendents for each of those districts join with me in making the request. With this letter I hope to facilitate your research in responding to questions the Superintendent will have.

The gist of the case is that when the 2015 legislature amended the motor vehicle collections statute at Title 47, Section 1104, to cap the amount of collections going to school districts and other local governments, it retained the basis of apportionments tied to the same amount each district received the same month the year before but failed to specify how to apportion in months when collections were less than the year before. Without consulting the State Department of Education or any school district the Tax Commission chose to wrongfully apportion in under collection months based on average daily attendance rather than proportionally based on the prior year amounts. That was the legal basis of the Oklahoma County litigation and it has been established by the Civil Court of Appeals, 2018 OK CIV APP 49, that the Commission's apportionments from August 2015 through August 2017 were wrong causing a distortion among 417 school districts of over \$22 million during that time. During the course of the litigation the 2017 legislature again amended Section 1104 of Title 47 converting the apportionment of motor vehicle collections to school districts on the basis of average daily attendance. The orders involved are dated December 9, 2016 in the district court and February 9, 2018 in the Court of Civil Appeals; the Supreme Court issued its mandate June 20, 2018.

Had the legislature not amended the law in 2017, the workings of the state aid formula would have mostly restored school districts to their original positions.

Because motor vehicle collections, like the other state dedicated revenues, are estimated (the chargeable amount) for the calculation of state aid based on the previous year's collections, there is always a one-time loss or gain that occurs when the current year collections do not equal the previous year's. Therefore, if a loss in one year is followed by a gain of the same amount in a later year, only in that way is the affected district "made whole". The Commission was required to recalculate the apportionments for all districts from August, 2015 through August, 2017 and to base apportionments going forward on those corrected amounts. The resulting adjustments would have approximately offset the earlier harm done by the Commission because the 146 school districts that had benefited from the wrongful apportionments would now receive less and conversely the 271 districts that had been harmed would receive more.

Due to the change to average daily attendance during the course of the litigation, the plaintiff districts sought, and were granted, additional relief. The district court's order of November 13, 2018 requires the Commission to make thirteen correcting payments going forward until the wrongful distortion of over \$22 million is corrected among the 417 affected school districts. Simply stated the Commission is required to first calculate the actual monthly collections apportioned to each school district based on the current law's average daily attendance standard. Then 1/13th of the gains experienced by the 146 over paid districts is withheld and used to make up 1/13th of the losses experienced by 271 under paid districts. The total gains and losses for each district, as calculated by the Tax Commission, are set forth in the Order and are for the period from August 2016 through August 2017 after we filed for declaratory and injunctive relief.

The first such correcting payment was made in February before ten overpaid districts obtained a stay from the Supreme Court. The Court lifted that stay on April 15 so the correcting payments will resume. We are filing a motion asking the district court judge to have the remaining twelve correcting payments made entirely in FY 2020. Regardless of when the correcting payments resume we know that the first such payment was made in February as part of fiscal year 2019. The request I will send to Superintendent Hofmeister will state what follows.

The District Court's Order sets forth the amount each district's apportionment is to be increased or decreased, in equal adjustments over the thirteen correcting payments. In implementing the Order, the Commission will first correctly calculate the amounts to "be apportioned to the various school districts so that each district shall receive 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." That calculation, clearly on a per student or "per capita basis as provided by current law", is the amount each

school district is to receive pursuant to the Title 47 apportionment statute. To those amounts, correctly calculated and collected by the Commission for each school district, for February, 2019, and likely all twelve months of FY 2020, the 1/13 adjustment amount, being a correction of amounts actually collected in earlier fiscal years, is then either added or subtracted. Those adjustment amounts are not calculated on a per capita basis or pursuant to the current apportionment law. Again, they are corrections for amounts wrongly paid in earlier fiscal years.

The State Department of Education is charged with the responsibility of administering the state aid formula as set forth in Title 70. The clear legislative intent is “State support should, to assure equal educational opportunity, provide for as large a measure of equalization as possible among districts. The taxing power of the state should be utilized to raise the level of educational opportunity in the financially weakest districts of the state.” In carrying out this important legislative purpose, each district is to receive the same funding per weighted average daily membership which is comprised of local property taxes, state dedicated revenues and state aid. In order to determine the amount of state aid each district is to receive, amounts for the other revenue sources are set forth in the statute, with property taxes being determined by current year assessment amounts and the state dedicated sources based on prior year revenues. These amounts are clearly intended to be a projection or prediction of how much school districts will actually receive during the ensuing school year. The closer those projections are to the actual collections the more fully the legislative intent for equalization of revenue per WADM is realized.

*Oklahoma State Department of Education staff, this summer, will go through the process of calculating state aid amounts for each district. As part of that process the meaning of this provision in Section 18-200.1(D) of Title 70 as it applies to the unique circumstances of motor vehicle collections received by school districts in FY 2019 will have to be determined: “The items listed in divisions (3), (4), (5), and (6) of this subparagraph shall consist of the amounts actually collected from such sources **during the preceding fiscal year calculated on a per capita basis on the unit provided for by law for the distribution of each such revenue.**” We submit that the correct way to apply this provision to the unique circumstances of the adjusted payment in February, 2019 and any other, is to distinguish within the payments between the amounts apportioned per average daily attendance under the apportionment statute effective during FY 2019, and the adjustment amounts that are corrections from FY2017 and FY2018. The corrections made are not “calculated on a per capita basis” nor are they based on collection amounts for FY2019. Rather they are court-ordered remedial adjustments, effective one-time, to correct the Commission’s wrongful apportionments in earlier fiscal years. The Order, referring to the \$22,797,480.81*

in wrongful payments made by the Commission from August, 2016 through August, 2017, states: “the Tax Commission Defendants are hereby ordered and enjoined monthly to withhold from motor vehicle revenues 1/13 of the amounts overpaid to each of the school districts on Exhibit 4-2, attached, and with the funds withheld, to pay 1/13 of the amount improperly withheld from each Plaintiff District and each of the other school districts on Exhibit 4-1 and 4-3, attached, each month for the next thirteen months.”

It is obvious that these thirteen adjustments, once completed, will not be repeated and are not part of the normal apportionment process “provided for by law for the distribution of ... such revenue.” Their one-time inclusion in the state aid formula calculations will move the state aid amounts further away from the equalization goal of the state aid statute. The term “actually collected from such sources during the preceding fiscal year” must be construed in light of the legislative intent that it is a predictor of the following year’s collections and with the additional qualification that it is “calculated on a per capita basis on the unit provided for by law for the distribution of ... such revenue.” Using the amounts paid to districts during the thirteen-month correction period distorts the legislative intent and ignores that the adjustment amounts are court-ordered, not per capita, and based on collections for years earlier than the preceding year.

The right calculation for the motor vehicle chargeable in the FY 2020 state aid formula should be based on the apportionment amounts before the court-ordered adjustments for February and any other made through June, 2019. These are the amounts “actually collected” by the Commission for each district in FY 2019. Similarly, the calculation of the motor vehicle chargeable amounts in the FY 2021 state aid formula, under current law, should be based on the apportionment amounts before the court-ordered adjustments for July, 2019 through June, 2020.

We trust that the Department’s determination of how to proceed will be based on a correct understanding of the state aid formula unlike the misunderstanding demonstrated by the ten overpaid school districts in their recent filings with the Supreme Court. Incredibly they tried to convince the Court that the subsequent year adjustment in state aid based on the prior year’s actual collections of a state dedicated revenue source fully offsets the prior year’s loss and makes an underpaid school district whole. This belief is based neither on the purpose of the state aid formula nor on its mathematical effect. A district is not “made whole” for a prior loss until there is a subsequent gain of the same amount. Fortunately, the Supreme Court did not succumb to this unsupportable claim. If Department staff have a similar misunderstanding, which is possible given the prevalence of this misunderstanding among school finance professionals in Oklahoma, before you respond to this request please permit us to demonstrate the actual impact the Tax Commission’s wrongful actions have had on school districts

statewide. As the state agency responsible for administering the state aid formula which effectively apportions over \$4 billion among school districts it is essential that its workings and effects be fully understood.

We ask that you review this request and affirm the Department's intent to use the preceding year apportionment amounts as determined by the Commission before the court-ordered adjustments are applied. Alternatively, we ask for the opportunity to discuss this matter with you and other Department staff at your earliest convenience. The harm done to 271 school districts by the Commission's wrongful actions is now being corrected. These one-time court-ordered adjustments are not current fiscal year collections and if included in the state aid calculation that will assure those districts will not collect the same revenue per WADM as is intended, causing again losses of the same magnitude. We look forward to your response.

I am certainly available to provide additional information or resources as you may request.

Sincerely,

Gary Watts
918 743 1410
gary.watts@sandites.org

Electronic mail copies to lori.murphy@sde.ok.gov and marley.widman@sde.ok.gov