

April 29, 2019

Joy Hofmeister  
State Superintendent of Public Instruction  
Oklahoma State Department of Education  
2500 North Lincoln Blvd.  
Oklahoma City, OK 73105  
And Via Electronic Mail to [joy.hofmeister@sde.ok.gov](mailto:joy.hofmeister@sde.ok.gov)

Re: Request Regarding Motor Vehicle Collections Chargeables

Dear Superintendent Hofmeister:

I serve as general counsel for the Sand Springs Public Schools and have also represented Sand Springs, Mid Del, Muskogee, Ponca City, Altus, Quapaw and Lone Wolf school districts since 2016 in the successful litigation with the Oklahoma Tax Commission challenging its wrongful apportionment of motor vehicle collections from August, 2015 through August, 2017. I am authorized to say that Superintendents Sherry Durkee, Rick Cobb, Jared Mendenhall, Shelley Arrott, Roe Worbes, David Carriger and James Sutherland join with me in making this request.

As you are probably aware the District Court of Oklahoma County has entered the attached order requiring the Oklahoma Tax Commission to make over-payments and under-payments of motor vehicle collections revenue to correct for its wrongful apportionment of these revenues to school districts in fiscal years 2016 and 2017 and the first month of the 2018 fiscal year. Pursuant to the order the first such monthly correcting payment, adjusted by 1/13<sup>th</sup> of the total wrongful apportionment amount, was made in February, 2019. A few overpaid school districts were granted a stay of the order pending their unsuccessful application to have the Oklahoma Supreme Court assume original jurisdiction to hear their complaints.

Upon rejecting that application on April 15, 2019, the Supreme Court lifted its stay and directed the District Court of Oklahoma County to determine the manner by which the future payments will occur. The eight underpaid plaintiff school districts in the district court case, are asking that the remaining twelve correcting payments be made entirely in fiscal year 2020 from July, 2019 through June, 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 correcting payment adjustments are calculated by the Tax Commission pursuant to the Order of the Oklahoma Court of Civil Appeals to determine the amounts by which payments were wrongfully made from August, 2016 through August, 2017

after the filing of the action for declaratory and injunctive relief by the eight plaintiff school districts in June, 2016.

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.

Our request is that you direct your staff to calculate the chargeable amounts for motor vehicle collections to be included in the state aid calculation sheets for FY 2020 to be the amounts apportioned to each school district pursuant to Title 47 before the court ordered adjustments are made. For example, Sand Springs' apportionment based on average daily attendance for February, 2019 was \$170,057.67 of the motor vehicle collections in January. To that amount the Commission added \$35,833.24 which is 1/13<sup>th</sup> of the court ordered correction for Sand Springs. The total paid to Sand Springs therefore was \$205,890.91. The correct amount that should be included as a chargeable for Sand Springs from the February, 2019 payment is \$170,057.67. In support of this request please consider the following argument.

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 ADA 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 resulting from current year actual collections being less than received the year before, fully offsets the current 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. 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 by those charged with its administration.

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 in the future will not collect the same revenue per WADM as is intended, causing again losses of the same magnitude. We look forward to your response.

Sincerely,

Gary Watts