

**FILED IN DISTRICT COURT**  
**OKLAHOMA COUNTY**  
IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

SEP 27 2018

**RICK WARREN**  
**COURT CLERK**

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INDEPENDENT SCHOOL DISTRICT NO. 2, )  
TULSA COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT NO. 52, )  
OKLAHOMA COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT NO. 71, )  
KAY COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT NO. 20, )  
MUSKOGEE COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT NO. 18, )  
JACKSON COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT NO. 14, )  
OTTAWA COUNTY, OKLAHOMA; )  
INDEPENDENT SCHOOL DISTRICT NO. 105, )  
BLAINE COUNTY, OKLAHOMA; )  
AND )  
INDEPENDENT SCHOOL DISTRICT NO. 2, )  
KIOWA COUNTY, OKLAHOMA; )

CASE NO. CV-16-1249

Plaintiffs, )

vs. )

OKLAHOMA TAX COMMISSIONER, STEVE )  
BURRAGE; OKLAHOMA TAX )  
COMMISSIONER DAWN CASH; and )  
OKLAHOMA TAX COMMISSIONER, )  
THOMAS E. KEMP, JR., )

Defendants. )

**RESPONSE TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY**  
**SUMMARY JUDGMENT SHOULD NOT BE GRANTED TO AWARD FURTHER**  
**RELIEF TO REDRESS ERRONEOUS PAYMENTS AND MOTION TO DISMISS**  
**REQUEST FOR FURTHER RELIEF**

Defendants, Oklahoma Tax Commissioner Steve Burrage, Oklahoma Tax Commissioner Dawn Cash, and Oklahoma Tax Commissioner Thomas E. Kemp, Jr. (collectively "OTC"), hereby respond to Plaintiffs' Motion for Order to Show Cause Why Summary Judgment Should

not be Granted to Award Further Relief to Redress Erroneous Payments (“Motion”). Defendants move the Court to deny Plaintiffs’ request for further relief.

**I. PLAINTIFFS ARE NOT ENTITLED TO FURTHER RELIEF BECAUSE NO REASONABLE NOTICE HAS BEEN PROVIDED TO PARTIES WHOSE RIGHTS HAVE BEEN DETERMINED.**

Regardless of whether material facts are in dispute, Plaintiffs are not entitled to further relief in this matter because necessary parties have not been notified. Title 12 O.S. § 1655, which Plaintiffs rely on as the authority for this action, states:

Further relief based upon a determination of rights, status, or other legal relations may be granted whenever such relief becomes necessary and proper after the determination has been made. Application may be made by petition to any court having jurisdiction for an order directed *to any party or parties whose rights have been determined* to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order.

12 O.S. 2011, § 1655 (emphasis added).

Oklahoma’s Declaratory Judgments Act is based on the Uniform Declaratory Judgments Act. *See Okla. Alcoholic Beverage Control Bd. v. Central Liquor Co.*, 1966 OK 243, ¶ 9, 421 P.2d 244, 247. With respect to “further relief,” Section 8 of the Uniform Declaratory Judgments Act states:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, **the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree,** to show cause why further relief should not be granted forthwith.

*L&I Exploration Corp. v. Chesapeake Orc, LLC*, 2008 OK CIV APP 34, ¶ 13, quoting the Uniform Declaratory Judgments Act, § 8 (emphasis added).

In the current case, Plaintiffs represent eight out of over 400 school districts which are currently receiving monthly apportionments from all the motor vehicle collections collected on a monthly basis. These apportionments are made from a finite amount, so any increase in the

amount of money apportioned to the Plaintiffs' school districts from this action would result in a corresponding decrease in the amount of money apportioned to the non-Plaintiff school districts. Therefore, the granting of further relief necessarily affects the rights of the other school districts who have not been notified of Plaintiffs' request for further relief.

The Court of Civil Appeals held that joinder of the non-Plaintiff school districts in the original proceedings was not mandatory because the only issue was whether the OTC's interpretation of § 1104 was correct, and Plaintiffs sought only "declaratory and injunctive relief," not monetary relief. Court of Civil Appeals Substitute Opinion After Rehearing, Case No. 115,678 ("Opinion"), ¶ 10. The Court went on to state that the "plaintiff school districts 'are not asking for any money back from the Tax Commission [or from] any school district.'" *Id.* In their Motion, Plaintiffs are now clearly requesting that funds be redistributed, asking the OTC to reduce future monthly payments to the 146 school districts that were overpaid, and redirecting the reduced amounts to the 271 school districts that were underpaid. Motion, p. 6.

While the OTC is the opposing party in this matter, it is not OTC's rights which are being impacted by Plaintiff's request for further relief. OTC is charged with the apportionment of taxes and fees collected or received pursuant to the Oklahoma Vehicle License and Registration Act, OKLA. STAT. tit. 47, §§ 1-101 *et seq.* The OTC is required to distribute all monies collected pursuant to the Oklahoma Vehicle License and Registration Act *monthly*. 68 O.S. Supp. 2015, § 1104(A). The funds for the period July 1, 2016 through August 25, 2017, have already been collected and distributed to the districts; no additional funds for those periods are available or awaiting distribution. It is undisputed that all motor vehicle collections that were received by OTC subsequent to July 1, 2015 were distributed the month following collection to the entities

delineated in the statute. The OTC has not withheld, and is not in possession of, any motor vehicle collections from which redistribution to school districts can be made.

The non-Plaintiff school districts from which Plaintiffs want OTC to withhold funds from future apportionments, however, do rely on those funds. At a minimum, those non-Plaintiff school districts, whose rights will be affected by granting the requested relief, must have an opportunity to appear and show cause why this relief should not be granted. They have not been afforded such an opportunity.

**II. THE REQUESTED ADDITIONAL RELIEF CANNOT BE GRANTED BECAUSE PLAINTIFFS ARE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

Plaintiffs' motion should be denied because the moving party may only prevail on a motion for summary judgment if there is no genuine issue regarding any material fact **and** if that party is entitled to judgment as a matter of law. Title 12 O.S. § 2056 states in relevant part:

**C. PROCEEDINGS.** The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that **there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.**

(Emphasis added).

The documentation submitted by Plaintiffs with their Motion is not sufficient to support their statement of material facts not in dispute. Plaintiffs' characterization of the "undisputed" facts is misleading; for instance, the contention that the parties agree on the "OTC's erroneous interpretation" has been contested throughout these proceedings. Additionally, Plaintiffs' statement of fact number 2 relates to a recalculation which is not comparable to, or at issue in, this matter. Even if the court were to find there is no dispute as to the material facts, Plaintiffs are not entitled to judgment as a matter of law.

In *Independent School District No. 54 v. Independent School District No. 67*, 2018 OK 34, ad valorem taxes were collected for property located in plaintiff's district, Stroud Public School District; however, the property was incorrectly identified as being in defendants' districts, Cushing and Wellston Public School Districts. The incorrect identification resulted in improper tax revenue distribution to the defendants. *Id.* at ¶ 1. As in the instant matter, the plaintiff sought judgment requiring the defendants to pay the disbursements to the plaintiff.

On appeal, the Oklahoma Court of Civil Appeals held that where a school district received funds that should have been paid to another district, the school district that did not receive the funds is not entitled to repayment. *Id.* at ¶ 18. In so finding, the Court relied on *Fall River Jt. Union High Sch. Dist. V. Shasta Union High Sch. Dist.*, 104 Cal. Ap. 444, 285 P. 1091 (1930). In *Fall River*, the issue before the court was whether tax revenue received by one district could be recovered by another district. *Indep. Sch. Dist. No. 54*, 2018 OK 34, ¶ 9, *citing Fall River*, 285 P. at 1092. The court in *Indep. Sch. Dist. No. 54*, in relying on the reasoning of the *Fall River* court, stated "the finances of the district ought not be disturbed by any judgment ordering a refund, and that to do so would be inequitable, as all parties herein acted in good faith." *Indep. Sch. Dist. No. 54*, 2018 OK 34, ¶ 10, *quoting Fall River*, 285 P. at 1095.

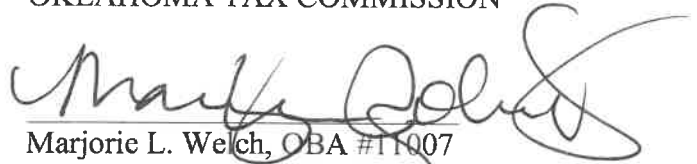
In the instant case, Plaintiffs ask the court to mandate that Defendant withhold future disbursements to schools which, through no fault of their own, received funds that should have been paid to Plaintiffs. In other words, Plaintiffs would have this court order that, in contravention to *Indep. Sch. Dist. No. 54*, the Oklahoma Tax Commission deprive school districts, without reasonable notice to those districts, of funds which they had every right to anticipate receiving. Additionally, Plaintiffs have made no showing that the additional funds received by non-Plaintiff school districts were in excess of what was necessary to support those

school districts. Further, Plaintiffs make no offer of proof that they were unable to fulfill their budget needs because of the incorrect distribution. Unlike the evidence presented in *Indep. Sch. Dist. No. 54*, there has been no evaluation by this Court, or the Court of Appeals, regarding additional funding received by the Plaintiffs, such as additional State Aid. In light of the court's decision in *Indep. Sch. Dist. No. 54*, Plaintiffs are not entitled, as a matter of law, to judgment in their favor.

### III. CONCLUSION

Plaintiffs are not entitled to further relief pursuant to 12 O.S. § 1655 because notice has not been provided to all affected parties. Further, Plaintiffs are not entitled to the relief sought as a matter of law. Defendants respectfully request that the Court deny Plaintiff's Motion.

OKLAHOMA TAX COMMISSION



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*BURRAGE, CASH AND KEMP*

**CERTIFICATE OF MAILING AND SERVICE**

This is to certify that on the 27<sup>th</sup> day of September, 2016, a true and correct copy of the foregoing Response and Motion was mailed by the undersigned, with proper postage prepaid, to the following:

Robert A. Nance  
Riggs, Abney, Neal, Turpen  
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A handwritten signature in black ink, appearing to read "Robert A. Nance", written over a horizontal line.