

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 16 2022

RICK WARREN
COURT CLERK

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INDEP. SCH. DIST. NO. 71, *et al.*,

Plaintiffs,

v.

Case No: CJ-2020-2392

OKLA. STATE DEP'T OF EDUC. &
OKLA. STATE BOARD OF EDUC.

Defendants.

**REPLY IN SUPPORT OF MOTION TO DISMISS PARTY AND ACTION FILED
ON BEHALF OF THE OKLAHOMA STATE BOARD OF EDUCATION**

Submitted by

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June 16, 2022

Plaintiffs' Response to the Motion to Dismiss makes one critical concession repeatedly: the Oklahoma Tax Commission ("OTC") adjustment payments are a "court-ordered correction" of a "loss of MVC revenue" "caused by the OTC's erroneous apportionments [of MVC] in FY2016-2018." Resp. at pp. 4-5; *see also id.* at p. 11 ("The Adjusting Payments were made to correct underpayments of MVC from FY 2016-2018 as the difference between what was actually paid . . . and what should have been paid"); p. 14 ("The Adjusting Payments made up for the underpayment of MVC resulting from the OTC's miscalculation"). In other words, for every Motor Vehicle Collections (MVC) **adjustment payment**, there is an equal and opposite MVC **underpayment**. Because Foundation Aid is reduced dollar for dollar by MVC, every MVC **underpayment** likewise causes an equal and opposite Foundation Aid **overpayment**. By conceding this point, as they must to justify the MVC adjustment payments in the first place, Plaintiffs concede they have not been shorted any Foundation Aid. Because Plaintiffs fail to state a viable claim, this suit should be dismissed.¹

This lawsuit involves a dispute over the proper treatment of MVC used in the calculation of Foundation Aid. *See* First Am. Pet. at ¶¶ 20, 26. As Plaintiffs' Petition concedes, Defendants have no role in that MVC calculation. *Id.* at ¶ 8(e) ("**Motor Vehicle Collections are calculated and apportioned to the school districts by the OTC.** OSDE merely notes the amount of that apportionment and utilizes that amount in its calculation of Foundation Aid.") (emphasis added); *see also id.* at ¶¶ 11-12, 16, 19, 24 (attributing MVC calculations to OTC, not Defendants); *compare* OKLA. STAT. tit. 70, § 18-200.1(D)(1)(b)(3) (instructing **OSDE** to calculate Foundation Aid using

¹ More accurately, summary judgment should be awarded in favor of the Board and against Plaintiffs unless this Court excludes the evidentiary materials attached by Plaintiffs in their Response. *See* OKLA. STAT. tit. 12, § 2012(B) ("If . . . matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment"); *see also Grayhorse Energy, LLC v. Crawley Petroleum Corp.*, 2010 OK CIV APP 145, ¶ 6 n.10, 245 P.3d 1249, 1253. Summary judgment would be proper because the facts are undisputed and the Board is entitled to judgment as a matter of law. *See* OKLA. STAT. tit. 12, § 2056.

“Motor Vehicle Collections.”) with OKLA. STAT. tit. 47, § 1104(A) (instructing OTC to apportion and distribute MVC). For this reason alone, Plaintiffs’ failure to allege any valid claim for relief against either Defendant, dismissal is proper.

Regardless, the most glaring flaw of Plaintiffs’ Response, and entire theory of relief, is their failure to consider the MVC underpayments that caused the court-ordered MVC adjustment payments.² It is undisputed that the OTC’s MVC adjustment payments in the fiscal years of 2018-19 and 2019-20 resulted from the OTC underpaying MVC for the fiscal years of 2015-16 and 2016-17. *See, e.g.*, Am. Pet. at ¶ 11 (“[T]he OTC had apportioned the wrong amount of Motor Vehicle Collections” to Plaintiffs “between July 1, 2015 and August 25, 2017.”). Not only do Plaintiffs concede this, but it is a judicial finding subject to full faith and credit. *See Indep. Sch. Dist. No. 2, Tulsa Cnty. v. Oklahoma Tax Comm’r*, 2018 OK CIV APP 49, ¶ 36, 419 P.3d 1281, 1291 (“The Tax Commission has . . . apportioned the wrong amount of motor vehicle collections to eligible school districts . . . [b]etween July 1, 2015, and August 25, 2017”); Order filed Nov. 13, 2018 in Okla. Cnty. Case No. CV-2016-1249 (“2016 Case”) p. 2.

And yet, Plaintiffs fail to include the MVC underpayments³ in a single one of their many charts, exhibits, and calculations. Take Plaintiffs’ Chart A on page 4 of their Response, for instance, which shows historic MVC Apportionments for Ponca City. Plaintiffs include all the relevant fiscal years, and even a row labeled “correction.” And while Plaintiffs include the *positive* MVC “correction” (the adjustment payments), they omit the corresponding *negative* MVC “correction” (the underpayments). When all relevant data is included, the illusion of imbalance manufactured by Plaintiffs dissipates:⁴

² This dispute was the subject of Oklahoma County Case No. CV-2016-1249 (“2016 Case”).

³ The amount of these MVC underpayments was calculated by the OTC in the 2016 Case and included in the exhibits to the Nov. 13, 2018 Order. This recalculation was specifically approved “as a correct recalculation of the apportionments required” by Plaintiffs’ Counsel, Mr. Watts. *See* Mot. for Order to Show Cause, etc., filed Sept. 11, 2018 in 2016 Case, Ex. 4 at p. 1.

⁴ A full Corrected Chart A is attached as a Demonstrative Exhibit.

Plaintiffs' Chart A – Motor Vehicle Collections (Corrected by Defendants)

Ponca City	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	TOTAL
Apportioned	2,542,308	2,140,885	1,902,400	1,852,973	1,879,768	2,199,535	1,858,895	14,376,764
Correction		(432,445)	(27,602)		35,388	424,659		(0)
Corrected	2,542,308	2,573,330	1,930,002	1,852,973	1,844,380	1,774,875	1,858,895	14,376,764

With the historic **underpayments** of MVC included, Chart A shows the offset of each adjustment payment, as well as the perfect symmetry between the MVC amounts actually apportioned and that should have been apportioned by the OTC from 2015-2022.

Plaintiffs' omission of MVC underpayments continues into their Foundation Aid analysis, intensifying the highly misleading appearance of (non-existent) harm. Take Plaintiffs' Exhibit 4 at page 3, which shows Actual Revenue for Ponca City. Again, Plaintiffs include the relevant years and rows labeled "Correct MVC" and "Correct Foundation Aid", but only calculate these values for the years they care about: 2020 and 2021. When all relevant data is included, again, any artificial imbalance dissipates.⁵

Plaintiffs' Exhibit 4 (Corrected by Defendants)

Ponca City	Actual Revenue						Totals
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	
Actual Motor Vehicle (MVC)	2,140,885	1,902,400	1,852,973	1,879,768	2,199,535	1,858,895	11,834,456
Actual Foundation Aid	4,651,726	4,692,814	4,991,673	5,967,876	5,834,667	4,512,563	30,651,319
Actual Revenue	12,764,782	12,560,555	12,942,849	13,978,676	14,307,793	12,676,850	79,231,504
Correct MVC	2,573,330	1,930,002	1,852,973	1,844,380	1,774,875	1,858,895	11,834,456
Correct Foundation Aid	4,651,726	4,260,368	4,964,071	5,967,876	5,870,056	4,937,222	30,651,319
Correct Actual Revenue	13,197,228	12,155,712	12,915,247	13,943,287	13,918,522	13,101,509	79,231,504
MVC Gain/Loss ⁶	(432,445)	(27,602)	-	35,388	424,659	-	(0)
Foundation Aid Gain/Loss	-	432,445	27,602	-	(35,388)	(424,659)	(0)
Revenue Gain/Loss	432,445	(404,843)	(27,602)	(35,388)	(389,271)	424,659	(0)

With previous **underpayments** of MVC included, Exhibit 4 illustrates the same MVC self-correction shown in Corrected Chart A (underpayments in 2015-17 offset by adjustment payments

⁵ A full Corrected Exhibit 4 is attached as a Demonstrative Exhibit.

⁶ Plaintiffs' "Gain/Loss" and "Cumulative" Gain/Loss row took the difference between Foundation Program Aid and Actual Revenue. Since Foundation Program Aid does not use "Actual Revenue", a discrepancy between the two is quite unremarkable and quite irrelevant. Instead, Defendants' Corrected Exhibit 4 calculates *MVC* Gain/Loss, *Foundation Aid* Gain/Loss, and *Revenue* Gain/Loss.

in 2018-2020). But Corrected Exhibit 4 further establishes the accurate effect of the OTC's MVC error on Foundation Aid and Revenue. When OTC *underpaid* MVC in FY 2015-16, the Foundation Aid was *overpaid* in FY 2016-17 to make up the difference. In other words, while Plaintiffs received a net negative from the OTC's MVC apportionment, they received a net positive from the Foundation Aid apportionment. *Cf.* Resp. at p. 12 (“When OSDE subtracts the wrongly inflated [or deflated] [MVC] number . . . the Foundation Aid is reduced [or increased] dollar for dollar by the amount the MVC component was improperly inflated [or deflated].”).

Far from proving the harm alleged in their Petition—Plaintiffs prove they *benefitted* from *more* Foundation Aid than they were otherwise entitled. Thus, when the OTC corrected its MVC error through the court-ordered adjustment payments in FY 2018-2020, the Foundation Aid corrected in FY 2019-2021. This self-correction effect⁷ is best illustrated by the “Totals” column, which shows no revenue gains or losses, but a cumulative MVC loss offset by a cumulative Foundation Aid gain. Removing the MVC adjustment payments from the Foundation Aid calculation, as Plaintiffs demand, would result in a cumulative gain in revenue in the amount of the extra Foundation Aid Plaintiffs would not have received had the OTC correctly apportioned MVC. For Ponca City, as illustrated above, that would result in a windfall to the tune of \$460,047.

Finally, Plaintiffs fail to plead, and cannot as a matter of law establish, that Defendants are improperly interpreting or applying OKLA. STAT. tit. 70, § 18-200.1. Plaintiffs stress that MVC consists of the “amounts actually collected from such sources during the preceding fiscal year[.]” which is calculated by the OTC as “provided for by law for the distribution of” said revenue. *Id.*; *see*

⁷ Plaintiffs acknowledge this self-correcting effect in the analogous scenario of an error occurring in the apportioned ad valorem taxes. *See* Resp. at pp. 7-9. The fact that MVC amount is based on the *preceding* year's apportionment only establishes that the same self-correcting effect will occur on a one-year delay—not that the formula does not self-correct. *Cf. id.* at pp. 8-9. That one-year delay applies uniformly to both the MVC underpayment error (which actually occurred in 2015-16 and 2016-17) and the MVC adjustment payments (which actually occurred in 2018-19 and 2019-20).

also Resp. at pp. 10-12. But these “amounts actually collected” refer to the MVC amounts collected **by the school district**, which is the subject of the statute—not the OTC. *See* OKLA. STAT. tit. 70, § 18-200.1(B). This interpretation is confirmed by other sub-sections of the same statute noting the receipt, collection, or levy “by the school district” So the critical inquiry is whether the adjustment payments are MVC “actually collected” **by the school district**, not by the OTC. Under this proper interpretation, the MVC adjustment payments could be nothing other than MVC revenue. It was actually collected by Plaintiffs in FY 2018-2020, as provided for by law (court order), and properly applied to the Foundation Aid Formula for FY 2019-2021.

Nor is the treatment of the payments as MVC open to dispute: it is yet another judicial finding subject to full faith and credit. The District Court in the 2016 case ordered: “OTC shall treat the revised amounts so arrived at constructively as the ‘taxes and fees provided for in [Title 47] in the corresponding month of the preceding year’ within the meaning of 47 O.S. § 1104(B)(2)(a) for future apportionments.” Order filed Dec. 9, 2016 p. 4; *see also* Agreed Order filed May 28, 2019 p. 2 (“In its order of November 13, 2018, . . . this Court . . . directed to the [OTC] Defendants to . . . apportion these sums to other underpaid districts to correct erroneous [MVC] apportionments”); *Indep. Sch. Dist. No. 2, Tulsa Cnty. v. Oklahoma Tax Comm’r*, 2018 OK CIV APP 49, ¶ 35, 419 P.3d 1281, 1291 (ordering OTC to “recalculate the amount that should have been apportioned” and “base the apportionment of [MVC] on the recalculated amounts”). Neither Plaintiffs nor this Court can disregard the clear commands of a final judicial order. Put simply, the adjustment payments are a delayed apportionment of MVC, and thus must be considered in the Foundation Aid Formula to correct the OTC’s error, as well as prevent Plaintiffs from receiving improper Foundation Aid gains.

In sum, the OTC’s MVC error and adjustment payments did not cause any underpayment of Foundation Aid. Because Plaintiffs have not stated (and cannot state) a claim upon which relief can be granted, dismissal or summary judgment is proper and necessary.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This certifies that on this 16 day of June, 2022 a true and correct copy of the foregoing instrument was mailed, postage prepaid to the following:

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and

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Counsel for Plaintiffs

A. A. Weaver

Plaintiffs' Chart A – Motor Vehicle Collection (Corrected by Defendants)

	2015-16*	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	TOTAL
Ponca City								
Apportioned	2,542,308	2,140,885	1,902,400	1,852,973	1,879,768	2,199,535	1,858,895	14,376,764
Correction		(432,445)	(27,602)		35,388	424,659		(0)
Corrected	2,542,308	2,573,330	1,930,002	1,852,973	1,844,380	1,774,875	1,858,895	14,376,764
Lone Wolf								
Apportioned	82,392	49,538	45,472	44,784	44,702	64,423	41,118	372,429
Correction		(30,234)	(2,368)		2,508	30,094		(0)
Corrected	82,392	79,772	47,840	44,784	42,194	34,329	41,118	372,429
Muskogee								
Apportioned	2,882,632	2,490,595	2,237,841	2,212,989	2,226,236	2,517,727	2,089,327	16,657,346
Correction		(411,909)	(50,596)		35,577	426,928		(0)
Corrected	2,882,632	2,902,504	2,288,437	2,212,989	2,190,659	2,090,799	2,089,327	16,657,346
Quapaw								
Apportioned	320,955	264,991	236,662	238,197	242,920	279,979	226,702	1,810,406
Correction		(58,561)	(2,926)		4,730	56,757		(0)
Corrected	320,955	323,552	239,588	238,197	238,190	223,222	226,702	1,810,406

* The columns in Plaintiffs' Chart A represent the MVC used in the Foundation Aid Formula for the identified fiscal year, meaning the MVC data for 2015-16 was actually apportioned in 2014-15, and so on.

Plaintiffs' Exhibit 4 (Corrected by Defendants)

Actual Revenue*

Ponca City	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Totals
Chargeables (except MVC)**	5,972,171	5,965,341	6,098,203	6,131,032	6,273,591	6,305,391	36,745,729
Actual Motor Vehicle (MVC)	2,140,885	1,902,400	1,852,973	1,879,768	2,199,535	1,858,895	11,834,456
Actual Foundation Aid	4,651,726	4,692,814	4,991,673	5,967,876	5,834,667	4,512,563	30,651,319
Actual Revenue	12,764,782	12,560,555	12,942,849	13,978,676	14,307,793	12,676,850	79,231,504
Foundation Program	13,203,156	12,959,106	12,914,943	13,988,606	14,155,409	13,018,435	80,239,655
Correct MVC	2,573,330	1,930,002	1,852,973	1,844,380	1,774,875	1,858,895	11,834,456
MVC Gain/Loss	(432,445)	(27,602)	-	35,388	424,659	-	(0)
MVC Gain/Loss (cumulative)	(432,445)	(460,048)	(460,048)	(424,659)	(0)	(0)	(1,777,200)
Correct Foundation Aid	4,651,726	4,260,368	4,964,071	5,967,876	5,870,056	4,937,222	30,651,319
Foundation Aid Gain/Loss	-	432,445	27,602	-	(35,388)	(424,659)	(0)
Foundation Aid G/L (cumulative)	-	432,445	460,048	460,048	424,659	(0)	1,777,200
Correct Actual Revenue	13,197,228	12,155,712	12,915,247	13,943,287	13,918,522	13,101,509	79,231,504
Revenue Gain/Loss	432,445	(404,843)	(27,602)	(35,388)	(389,271)	424,659	(0)
Revenue G/L (cumulative)	432,445	27,602	0	(35,388)	(424,659)	(0)	(0)

*As Plaintiffs note at the bottom of their Exhibit 4, the "Actual Revenue" data plotted in Exhibit 4 differs from Foundation Aid Calculations (Plaintiffs' Exhibit 5), because Foundation Aid uses Chargeable Income (County 4 Mill, School Land, Gross Production, MVC, and REA Tax) from the previous year. Although Plaintiffs' choice to deviate from the Foundation Aid Formula here adds an unnecessary layer of confusion, the Board uses the same data for demonstrative purposes.

** The Rows for Ad Valorem, County 4 Mill, School Land, Gross Production, and REA Tax have been totaled in the "Chargeables (except MVC)" row. These values are not in dispute and only included to support total revenue calculations.