



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

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, )

Plaintiffs,

v.

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

Defendants.

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

OCT 25 2018

RICK WARREN  
COURT CLERK

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Case No. CV-2016-1249

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE

RESPECTFULLY SUBMITTED THIS 25th DAY OF OCTOBER, 2018.

Plaintiffs present their reply in support of their Motion for Order to Show Cause. (Motion). The Court of Civil Appeals has entered an opinion, and the Oklahoma Supreme Court denied certiorari.

Defendants raise three arguments. None carry the day. First, the Court of Civil Appeals already determined that additional parties are not required to adjudicate this matter. Second, Oklahoma Tax Commission's ("OTC's") agreement that it misapplied the statute is unnecessary. COCA determined that OTC did misapply the statute. Finally, *Independent School District No. 54 v. Independent School District No. 67*, 2018 OK 34, ("*Stroud*") does not resolve the issue because *Stroud* concerned ad valorem taxes while this case concerns motor vehicle taxes. The state aid statute, 70 O.S. § 18-200.1, operated to correct the error in *Stroud* without court intervention, while OTC's \$22,797,481 error in the case at bar requires that the court intervene to correct the error.

**I. COCA determined that additional parties are not necessary and that OTC misapplied the statute; the settled law of the case must prevail.**

The settled-law-of-the-case doctrine operates to bar re-litigation of (a) issues in a case which are finally settled by an appellate opinion or of (b) those the aggrieved party failed to raise on appeal. *State ex rel. Pruitt v. Native Wholesale Supply*, 2014 OK 49, ¶ 18, 338 P.3d 613, 619.

OTC still asserts that OTC properly applied the statute, but this is no longer an issue. COCA concluded, "The Tax Commission has misinterpreted the effect of a 2015 amendment to section 1104 and consequently apportioned the wrong amount of motor vehicle collections to eligible school districts, including the plaintiffs." COCA Opinion, ¶ 36. It has been conclusively determined that OTC erred in its interpretation of § 1104.

OTC still argues it is necessary to give notice to and include additional parties despite the fact the OTC corrects its own errors without notice to anyone. Motion Undisputed Fact Paragraph 2. COCA first noted, "Professor Fraser stated that 'the joinder requirement is not mandatory in

spite of the use of the word “shall.” COCA Opinion, ¶ 7. COCA then held that “the non-plaintiff school districts were not required to be joined in this declaratory judgment action and affirm the district court’s denial of the Tax Commission’s motion to dismiss.” COCA Opinion, ¶ 11. OTC argues that the question of the necessity of joinder of additional parties is still open because the District Court is being asked to require that the OTC use the corrected apportionment to distribute funds to each district. While there will be adjustments to the sums distributed to the various school districts, the distributions do not constitute damages. Plaintiffs are still not asking for any money to be *paid out* by any school district. Plaintiffs simply ask for the recalculation of the amount that should have been apportioned and the basing of motor vehicle apportionment on the recalculated amounts as the OTC has previously done. This is precisely what COCA ordered. COCA clearly anticipated that this next step would be taken: “The Tax Commission shall recalculate the amount that should have been apportioned to the school districts pursuant to this method and base the apportionment of motor vehicle collections on the recalculated amounts for the July 1, 2016 to August 25, 2017 time period.” COCA Opinion, ¶ 36. There would be no point in going through the exercise of recalculating the amount apportioned, but for the step of adjusting future apportionments to make up for OTC’s erroneous application of the statute.

This Court must follow COCA’s directions and follow the settled law of the case, meaning that it is now fully settled and not subject to challenge that OTC misapplied the statute and that additional parties are not necessary for this Court to order OTC to distribute motor vehicle revenues in accordance with the corrected calculation.

## II. Plaintiffs are entitled to judgment as a matter of law.

OTC quibbles regarding whether the parties agree on “OTC’s erroneous interpretation” but does not dispute any of Plaintiffs’ material facts. It is now a matter of law that OTC did erroneously interpret the statute. The material facts are not disputed.

OTC then argues that *Stroud, supra*, stands for the proposition 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.” OTC’s Response, p. 5. However, *Stroud* does not aid OTC because it is distinguishable, especially since Plaintiffs seek no *repayment* from any district.

In the *Stroud* case, the Oklahoma Supreme Court noted as follows:

The court reviewed the actual distribution of the taxes, and the State Aid received by each of the school districts. The Court found that due to the additional State Aid, Stroud actually received 26 cents more than it otherwise would have if it had received the taxes from the erroneously apportioned taxable property. The Court concluded **that Stroud did not suffer any monetary loss to its general fund** as a result of the erroneous apportionment, and that no amount of restitution was due Stroud applicable to its general fund.

*Id.* at ¶ 3 (emphasis added). This is the distinction. In the *Stroud* case, Stroud did not suffer a loss because the State Aid formula took into account the amount which Stroud would receive in ad valorem taxes. Since Stroud received less in ad valorem taxes, Stroud received more in state aid.

This analysis requires a dive into the way in which State Aid is determined, which the OTC has not done. Under 70 O.S. § 18-200.1, the first step is to establish an amount for the Foundation Program. Then each school district is credited with certain sources of revenue, named Foundation Program Income in the statute, to determine the Foundation Aid that is needed so that the district will receive its Foundation Program amount. After these credits, called Chargeables by the State Department of Education, are determined, the amount of Foundation Aid is the difference between the amount of Chargeables and the Foundation Program amount for the district. (Exhibits 6 and 8

to the Motion for Summary Judgement filed 8/25/2016 demonstrate this.) Unlike in *Stroud*, the OTC has not factually established its error was harmless. Nor, as a matter of law, could it.

The ad valorem taxes included in the Chargeables are based upon the current school year: “For purposes of this subsection, the ‘adjusted assessed valuation of the current school year’ shall be the adjusted valuation on which tax revenues are collected during the current school year.” 70 O.S. § 18-200.1(D)(b)(1). However, the motor vehicle collections Chargeable is the amount “actually collected ... during the preceding fiscal year”. 70 OS 18-200.1(D)(b). So if the OTC wrongly distributes *less* motor vehicle taxes than are due, the formula does not self-correct.

In *Stroud*, the district received exactly what it should have received. “Stroud received the same amount for its general funds that it would have received had the ad valorem taxes been properly allocated.” *Stroud*, 2018 OK 24, ¶ 17. Because the state aid formula uses the current year’s assessed valuation, when property was wrongly included in Cushing and Wellston’s valuations instead of Stroud’s, the formula self-corrected the error. Stroud received more state aid, and Cushing and Wellston received less state aid, but all ended with the same amount they would have received had the ad valorem taxes been collected on the correct assessed valuations.

As OTC has acknowledged, some districts in the case at bar, “received funds that should have been paid to Plaintiffs.” OTC’s Response, p. 5. Because the amount of State Aid is determined based on the amount of motor vehicle revenues “actually collected during the *preceding* fiscal year” the statute does not adjust state aid when the OTC short-changes a district in the current year. There is no provision in the statute for changing the amount of State Aid to a district based upon a failure to receive the projected motor vehicle revenues. Once the State Aid amount, based upon the motor vehicle revenues collected the preceding year, is determined for the current year, it is set. When the OTC erred in apportioning motor vehicle revenues, the Plaintiff districts’ losses

were permanent. The error had consequences, to the tune of \$22,797,481. Simple examples are set forth below, using a hypothetical school district in the situation of Stroud for one example and of the Plaintiffs for the other to demonstrate, each experiencing a \$200,000 error:

District (AV taxes properly assessed)		District (AV taxes erroneously assessed)
Foundation Program	\$10,000,000	10,000,000
Less Ad Valorem	3,000,000	2,800,000
Other Chargeables	2,000,000	2,000,000
Foundation Aid	5,000,000	5,200,000
Total actually received		10,000,000

The school district still has available the total of \$10,000,000 for its general fund. The foundation aid calculation corrected for the error.

School district Foundation Aid Calculation		School district with OTC error
Foundation Program	\$10,000,000	10,000,000
Less Motor Vehicle Rev.	1,000,000 (prior year)	800,000 (received)
Other Chargeables	4,000,000	4,000,000
Foundation Aid	\$5,000,000	5,000,000
Total actually received		9,800,000

The school district has available a total of only \$9,800,000 for its general fund. The foundation aid calculation does not correct for this error.

OTC's proposed theory would result in the districts shortchanged by OTC receiving no remedy for their losses. The Oklahoma Constitution states that there is a remedy for every wrong. Art 2, § 6. This court cannot leave the shortchanged districts without a remedy. The proposed adjustment to future apportionments would allow for that remedy without requiring that OTC or any school district return money already received.

The Court should grant Plaintiffs' motion and direct OTC to make the apportionments to remedy the \$22,797,481 error committed by OTC, thus granting a remedy for the wrong which OTC has committed.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF MAILING**

I hereby certify that on the 25th day of October, 2018, a true and correct copy of the foregoing instrument was mailed, postage paid, to:

Marjorie Welch, First Deputy General Counsel  
Elizabeth Field, Deputy General Counsel  
Lee Pugh, General Counsel  
Oklahoma Tax Commission  
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