



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)
OF THE OKLAHOMA TURNPIKE)
AUTHORITY FOR APPROVAL OF NOT)
TO EXCEED \$500,000,000 OKLAHOMA)
TURNPIKE SYSTEM SECOND SENIOR)
LIEN REVENUE BONDS, SERIES 2022)

Case No. 120619

FILED
SUPREME COURT
STATE OF OKLAHOMA

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REPLY TO PETITIONER OKLAHOMA TURNPIKE AUTHORITY'S
RESPONSE TO COURT'S ORDER OF MAY 30, 2023

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**OTA lacks statutory authorization to construct the so-called
“South Extension,” Purcell-to-Norman turnpike.**

As this Court has stated, the question is whether “the Oklahoma Turnpike Authority[has] statutory authority to construct the South Extension.” *See* Order of May 30, 2023. As the City of Norman has argued, OTA lacks statutory authority to do so. “[U]ntil **specifically authorized by the Legislature**, the Authority shall be authorized to construct and operate toll turnpikes only at [certain specified] locations[.]” 69 O.S. § 1705(e) (emphasis added). Simply put, the so-called “South Extension,” running from Purcell to Norman, is not among the locations the Legislature has authorized.

OTA’s ever-changing attempts to circumvent the plain meaning of 69 O.S. § 1705(e)(28).

A plain reading of Section 1705(e)(28) does not authorize a turnpike from Purcell to Norman. OTA, however, repeatedly claims otherwise. Yet, because it is not at all apparent how a statute, which authorizes a turnpike from Mustang to Tuttle and then to Norman, could possibly authorize a Purcell to Tuttle roadway, OTA has repeatedly shifted its argument as to how that provision is supposed to authorize the “South Extension.” OTA keeps doing this because no logical reading of the statute comes close to specifically authorizing a Purcell-to-Norman turnpike.

In its original, August 10, 2022 brief, OTA claimed that the Purcell-to-Norman “South Extension” was authorized in Section 1705(e)(28). OTA’s August 10 Brief, at 3-4. OTA did not indicate where Section 1705(e)(28) authorizes the “South Extension,” but simply asserts, *ipse dixit*, that it was “the final segment to complete a southern loop extension from Mustang to the vicinity of Norman (the “South Extension”) authorized in 1993.” *Id.*

The City of Norman protested. In briefing and during argument before a Supreme Court Referee, the City of Norman challenged OTA’s claim, noting that “no express statutory authority exists for construction or operation of the ‘South Extension.’” *See* City of Norman’s September 6,

2022 Brief, at 4. A reading of Section 1705(e)(28) itself, and indeed of all of Article 17 of Title 69, shows that, although the projects OTA calls the “Tri-City Connector” and the “East-West Connector” – roadways running from Mustang to Tuttle and Tuttle to Norman – have gained express Legislative authorization in Sections 1705(e)(20) and 1705(e)(28), the Legislature has never authorized the Purcell-to-Norman “South Extension.”

In its November 18, 2022 Supplemental Brief and during the November 29 Oral Argument, OTA changed course. No longer does it merely assert that Section 1705(e)(28) contains express authorization of the “South Extension.” Instead, it decided to selectively quote Section 1705(e)(28), while omitting important words.

According to Section 1705(e)(28):

[U]ntil specifically authorized by the Legislature, the Authority shall be authorized to construct and operate toll turnpikes only at the following locations:
(28) A new turnpike and bridge or any parts thereof **from** a point in the vicinity of the city of **Mustang** southerly across the South Canadian River **to** the H.E. Bailey Turnpike in the vicinity of the city of **Tuttle**; **and then easterly across the South Canadian River to a point in the vicinity of the city of Norman.**

(Emphasis added.) In other words, OTA has been “specifically authorized by the Legislature” to “construct” a turnpike from Mustang to Tuttle (the “Tri-City Connector”), “and then easterly across the South Canadian River to a point in the vicinity of the city of Norman” (the “East-West Connector”). But nothing in Section 1705(e)(28) specifically, or even vaguely, authorizes or suggests a turnpike that starts in Purcell and ends in Norman.

OTA attempts to rewrite Section 1705(e)(28).

To get around this glaring and obvious problem, OTA omits several important words from Section 1705(e)(28), pretends that other words mean something different than their plain meaning indicates, claims that the word “easterly” actually means “northeasterly,” all in an effort to show specific authorization where none exists. Here is OTA’s gambit.

First, OTA ignores that Section 1705(e)(28) describes a road that runs from Mustang to Tuttle **“and then”** to Norman. It simply cuts off the opening part of the sentence, and then omits the words, “and then,” in hopes of making the last part of the sentence a free-standing authorization to construct a turnpike virtually anywhere, so long as it somewhere crosses the South Canadian River and ends in Norman. To do this, OTA states: “The ‘South Extension’ authorization in §1705(e)(28) includes the second of the two distinct crossings of the South Canadian River: *“easterly across the South Canadian River to a point in the vicinity of the City of Norman.”* OTA’s November 18, 2022 Supplemental Brief, at 4. But Section 1705(e)(28) does not merely describe “two distinct crossings of the South Canadian River. It describes the two parts of the turnpike system as running first from Mustang to Tuttle **and then** to Norman.

By OTA’s November 2022 logic, the “second of the two distinct crossings of the South Canadian River” could take place hundreds of miles away, for example in far western Oklahoma at the Antelope Hills, so long as the turnpike were to end somewhere in the vicinity of Norman. Or the roadway could start in Hugo, run to Purcell, cross the South Canadian River there, and end in Norman. Of course, neither of those roadways is “specifically authorized by the Legislature” in Section 1705(e)(28). Nor does Section 1705(e)(28) authorize the Purcell-to-Norman “South Extension” that OTA proposes.

OTA’s unnatural, anything-but-plain understanding of Section 1705(e)(28)’s use of the word, “easterly.”

OTA then tries to recast Section 1705(e)(28)’s use of the word “easterly” as describing the bridge across the South Canadian River, and it alone, instead of the entire roadway. OTA must do this because its planned Purcell-to-Norman turnpike runs northerly, not easterly as Section 1705(e)(28) requires. But OTA’s reading of the statute is fatally flawed. A plain reading of Section 1705(e)(28) shows that the word “easterly” describes not just the bridge, but the entire “new

turnpike.” To be sure, that includes a bridge. But it does not include the so-called “South Extension,” which, running as it does from Purcell to Norman, simply does not run in an easterly direction.

Interestingly, the bridge itself does not cross the river in an easterly direction. OTA’s own map of its planned river crossing near Purcell (Figure 1) shows that the bridge runs not “easterly” but northeasterly, if not north-northeasterly.¹



Figure 1

And that is important, because the Legislature did not use the term “northeasterly” in Section 1705(e)(28). If the Legislature had meant to indicate that an authorized roadway or bridge should

¹ See <https://www.accessoklahoma.com/south-extension-turnpike> (last viewed on July 10, 2023, at 12:05 pm).

run in a northeasterly direction, it certainly knew how to say so, as it did in Sections 1705(e)(10) and (35). OTA's desperate attempt to recast the plain language of Section 1705(e)(28) cannot stand.

In the latest iteration of its argument, OTA claims absolute power to construct turnpikes wherever it desires, without regard to any Legislative authorization.

In its latest filing, OTA again emphasizes the last portion of Section 1705(e)(28) starting with the word “easterly,” and again ignores the rest of the sentence, including the immediately preceding words, “Tuttle; and then.” But then, OTA goes even further than it had previously. In its June 15 brief, OTA adds a new wrinkle to its already inventive arguments. Now it says that it and it alone has the power to determine where and when a turnpike will be built. Per OTA, “[p]ut simply,” OTA, and OTA alone, can decide all “matters relating to the precise route of the alignment, and any modifications thereto[.]” OTA’s June 15, 2023 Response to Court’s Order, at 7. In doing so, OTA has become like Frankenstein’s monster. It has declared its absolute independence, and asserts it is no longer subject to its creator’s mandates. OTA at least pays lip service to the Legislature, when it partially quotes Section 1705(e) to assert that OTA has the power to construct turnpikes “at such locations and on such routes as it shall determine.” *Id.* at 9. But it wholly ignores the rest of the same sentence of Section 1705(e) that says “provided, that **until specifically authorized by the Legislature, the Authority shall be authorized to construct and operate toll turnpikes only at the following locations.**”

Allowing the OTA to arrogate to itself the Legislature’s power to specify whether to authorize a turnpike and where to authorize a turnpike would be a major breach of the separation of powers. Our nation’s founders understood that the “separate and distinct exercise of the different powers of government ... [is] essential to the preservation of liberty[.]” *The Federalist*, No. 51.

The Oklahoma Constitution agrees:

The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

Okla. Const. Art. IV, § 1.

The City of Norman agrees that OTA may determine that an unanticipated curve in a proposed turnpike might be necessary. Or it may determine that a roadway route should be adjusted slightly (as, for example, Interstate 40 through Oklahoma City was moved a few blocks to the south a few years ago). But making an adjustment, for example, to avoid a sacred site is different in kind from moving an east-west Tuttle to Norman roadway over 40 miles to the southeast and turning it into a north-south roadway from Purcell to Norman. This so-called “South Extension” is no more authorized by Section 1705(e)(28) than is a roadway from Beggs to Byng (which, by the way, also would cross the South Canadian River).

Unlike Humpty Dumpty, OTA cannot make the words of a statute mean what OTA wants them to mean.

OTA’s argument is identical to the reasoning employed by Humpty Dumpty. In Chapter 6 of Lewis Carroll’s *Through the Looking Glass*, after Alice protested that the word “glory” does not mean “a nice knock-down argument,” Humpty Dumpty responded: “‘When I use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean--neither more nor less.’” Only in that manner – the words of Section 1705(e)(28) mean whatever OTA chooses them to mean – can OTA twist the last phrase of the section, describing a roadway from Tuttle to Norman, into specific authorization of a roadway from Purcell to Norman.

No matter how OTA tweaks its argument, it cannot get around the fact that it lacks Legislative authorization to construct the Purcell-to-Norman “South Extension.” It cannot ignore

the words of the statute. It has specific authorization to construct a turnpike “from a point in the vicinity of the city of Mustang southerly across the South Canadian River to the H.E. Bailey Turnpike in the vicinity of the city of Tuttle; and then easterly across the South Canadian River to a point in the vicinity of the city of Norman.” It does not have specific authorization to construct a turnpike from Purcell to Norman.

The statute mentions Mustang. It mentions Tuttle. It mentions Norman. It even mentions the H.E. Bailey Turnpike. But it never mentions Purcell. And it never authorizes a Purcell-to-Norman turnpike, even if it is called the “South Extension.”

In Oklahoma, statutory words are accorded their plain ordinary meaning.

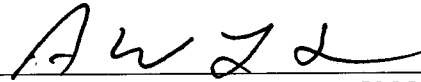
American jurisprudence has long recognized that the drafters of a law “must be understood to have employed words in the natural sense, and to have intended what they have said.” *Gibbons v. Ogden*, 22 U.S. 1, 188 (1824). Oklahoma has long agreed. “The general rule is that all legislative enactments must be interpreted in accordance with their plain ordinary meaning according to the import of the language used.” *Application of Okla. Tpk. Auth.*, 1954 OK 341, ¶ 21, 277 P.2d 176, 182. Courts do “not expand the plain meaning of words by construction. The Legislature has expressed its intention in the statute as enacted.” *Sisney v. Smalley*, 1984 OK 70, ¶ 17. 690 P.2d 1048, 1051.

Until the Legislature adopts a statute expressly authorizing a Purcell-to-Norman turnpike, no authorization exists to construct the so-called “South Extension.”

Unless and until the Legislature adopts a statute expressly authorizing construction and operation of a roadway from Purcell to Norman, all of OTA’s plans, concepts, and desires cannot serve as a basis for the funding authorization OTA seeks from this Court. OTA has no statutory or other authority to construct the Purcell-to-Norman “South Extension.”

The Court should uphold the City of Norman’s protest and deny OTA’s requested relief.

Respectfully submitted,



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I hereby certify that on this 12th day of July, 2023, a true and correct copy of the foregoing document was sent by U.S. Mail, postage prepaid, to the following persons:

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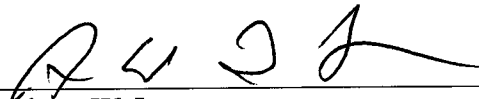
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