



KLAHOMA } S.S.
CLAY COUNTY }
FILED

IN THE DISTRICT COURT FOR CLEVELAND COUNTY
STATE OF OKLAHOMA

DEC 01 2022

In the office of the
Court Clerk MARILYN WILLIAMS

TASSIE KATHERINE HIRSCHFELD,)
et al.,)
Plaintiffs,)
v.)
OKLAHOMA TURNPIKE AUTHORITY,)
an agency of the State of Oklahoma;)
E. GENE LOVE; JOHN D. JONES; DANA)
WEBER; TODD A. CONE; GUY L.)
BERRY, JOHN A. TITSWORTH; and)
TIMOTHY GATZ,)
Defendants.)

Case No. CV-2022-1905

COURT MINUTE - DECISION

NOW on the 21st day of November, 2022, this matter came on for hearing on Plaintiffs' Motion for Summary Judgment and Defendants' Motion for Summary Judgment. After hearing, reviewing the motions, briefs, court file and relevant authority the Court **FINDS** as follows:

I. INTRODUCTION OF THE CASE

1. Plaintiffs' Second Amended Petition filed August 17, 2022 makes claims against the Oklahoma Turnpike Authority ("OTA"), six (6) Board Members in their official capacity, and Timothy Gatz, the Executive Director of the Oklahoma Turnpike Authority. Plaintiffs allege violations of the Oklahoma Open Meeting Act ("OMA"). Plaintiffs seek Declaratory Relief and Injunctive Relief against the Defendants.
2. The Oklahoma Turnpike Authority is created by statute in order to construct, operate and maintain turnpike projects. **O.S. tit. 69, § 1703.** Section 1703 provides:
 - A. There is hereby created a body corporate and politic to be known as the "Oklahoma Turnpike Authority" and by that name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an instrumentality of the state, and the exercise by the Authority of the powers conferred by this act in the construction, operation, and maintenance of turnpike projects shall be deemed and held to be an essential governmental function of the state with all the attributes thereof.

3. “The Oklahoma Turnpike Authority shall consist of the Governor, who shall be a member ex officio, and six (6) members to be appointed by the Governor, by and with the consent of the Senate.” **O.S. tit. 69, § 1703**

4. The legislature has given the OTA authority to construct, maintain, repair and operate turnpikes in Oklahoma only at specified locations. **O.S. tit. 69, § 1705** sets forth the powers and duties of the OTA. The powers and relevant parts of § 1705 include:

(e) To construct, maintain, repair and operate turnpike projects and highways, with their access and connecting roads, at such locations and on such routes as it shall determine to be feasible and economically sound; provided, that until specifically authorized by the Legislature, the Authority shall be authorized to construct and operate toll turnpikes *only* at the following locations: (emphasis added) O.S. tit. 69, § 1705

(20) All or any part of an Oklahoma City Outer Loop expressway system beginning in the vicinity of I-35 and the Turner Turnpike and extending west into Canadian County and then south to I-40; and then south and east to I-35 in the vicinity of Moore and Norman; and then extending east and north to I-40 east of Tinker Field; and then extending north to the Turner Turnpike to complete the Outer Loop.

(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.

5. A majority of the members of the OTA shall constitute a quorum and *the vote of a majority of the members shall be necessary for any action taken by the Authority.* **(emphasis added) O.S. tit. 69, § 1703.** All meetings of the Authority shall be open public meetings, and all records shall be public records, except when considering personnel or litigation. **O.S. tit. 69, § 1705**

6. It is very clear that the OTA can only exercise its’ authority through a majority of the “*members*” and is subject to the requirements of Oklahoma’s Open Meeting Act.

7. The Second Amended Petition specifically contests the OTA’s agendas for its meetings on January 25 and February 22, 2022. It is alleged that in publishing inadequate agendas in advance of the meetings, the OTA “willfully violated the public policy of facilitating an informed citizenry regarding the Kickapoo Turnpike Extension

as required by the provisions of **25 O.S. § 302** in that the Agendas for the January 25, 2022 and February 22, 2022 Regular Meetings of Defendant OTA failed to inform these Plaintiffs and the public of the business Defendant OTA would be conducting as it related to an extension of the Kickapoo Turnpike.” It is further alleged the agendas were not stated in “simple, direct and comprehensible language to be understood by a person of ordinary education and intelligence.”

8. Plaintiffs claim that Defendants are in willful violation of Oklahoma’s Open Meeting Act because the two agendas did not identify all of the business which Defendant OTA actually intended to conduct with reference to what Defendants call SP-65 which, on its face, is deceptively vague and ambiguous. Further it is alleged that the agendas were intended to mislead the public about the intended taking of Plaintiffs’ property and the property of hundreds of others similarly situated in the path of this predetermined but unannounced Kickapoo Turnpike extension.

9. Plaintiffs seek declaratory relief finding that Defendants willfully violated the Open Meeting Act and that OTA’s actions are invalid pursuant to **O.S. tit. 25, § 313**. The Plaintiffs also seek injunctive relief enjoining Plaintiffs from exercising eminent domain against these Plaintiffs and directing the OTA to provide notice as required by the Open Meeting Act to the Plaintiffs and any person adversely impacted for the turnpike in question.

II. UNDISPUTED FACTS

10. The OTA had a regular board of directors meeting on December 7, 2021.

11. The OTA had a regular board meeting on January 25, 2022.

12. The OTA had a regular board meeting on February 22, 2022.

13. There is no reference to the ACCESS Oklahoma Program, nor to any “Kickapoo Extension” in any of the agendas for December 7, 2021, January 25, 2022 or February 22, 2022.

14. Items 884 and 885 set out in the January 25, 2022 agenda handout (*i.e.*, “packet”) materials and approved at said January 25th meeting did not identify the bond projects the proposed resolutions were referencing but rather merely described them as “‘*certain*’ turnpike projects.” (See January 25, 2022 Agenda)

15. Item 894 set out in the January 25, 2022 agenda “packet handout” and approved at the said January 25th regular board meeting did not identify “SP-65” or what the “Long-Range Turnpike Improvement and Expansion Plan” was. (See January 25, 2022 Agenda)
16. The only reference to the “South Extension Turnpike” was apparently contained in an embedded web “Banner” on the OTA’s home website page, not a part of the official agenda. (pg. 8 of the Defendants’ Response Brief @ ¶’s 10 and 14)
17. At the end of the February 22, 2022 OTA board meeting, Governor Kevin Stitt appeared and addressed those present as part of the “Director’s Report.” The agenda for the February 22, 2022 meeting, like all prior agendas, included an item simply called “Director’s Report,” which contained no explanation or any indication of what the Director would be “reporting.” Around the very time the Governor began speaking at the February 22, 2022 meeting, the OTA issued a press release outlining his remarks. The OTA’s website went live at 11:00, again after the meeting was in progress, with information about ACCESS Oklahoma.
18. The OTA does not dispute that the component projects and plans described and discussed as part of its’ long-range plan were “officially” unveiled under the “ACCESS Oklahoma” moniker at OTA’s regular meeting on February 22, 2022, along with corridor maps that provided preliminary locations and alignment for specific projects. (pg. 7 of the Defendants’ Response Brief @ ¶ 9).
19. As part of the “Director’s Report” Director Gatz, Mr. Joe Echelle and Governor Stitt outlined the ACCESS Oklahoma plan and identified the basic routes to be added by the plan in great detail. (see OTA minutes of February 22, 2022 meeting, Plaintiffs’ exhibit “E”). Absolutely nothing was on the formal Agenda notifying the public that this would be addressed or “officially” unveiled at the meeting.

III. ANALYSIS

20. The Open Meeting Act's stated public policy is to "encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems." 25 O.S.2011, § 302. In furtherance of this policy, at least twenty-four hours prior to such regularly scheduled meeting, a public body is required to display public notice of the meeting, setting forth thereon the date, time, place and agenda for the meeting. 25 O.S. Supp. 2020, § 311(A)(9).

21. The meaning of "Agenda" has been referenced by the Oklahoma Court of Criminal Appeals. "The word is not a legal term, and its clear meaning, taken from Webster's New Collegiate Dictionary, eighth edition, is "a list, outline, or plan of things to be considered or done." It is also defined as a memorandum "of things to be done, as items of business *or discussion* to be brought up at a meeting; a program consisting of such items," Black's Law Dictionary, fifth edition."(emphasis added) Hilliary v. State, 1981 OK CR 78, 630 P.2d 791, 793.

22. The OMA serves to inform the citizenry of the governmental problems and processes by informing them of the business the government will be conducting. Advance notice to the public, via agendas, must "be worded in plain language, directly stating the purpose of the meeting ... [and] the language used should be simple, direct and comprehensible to a person of ordinary education and intelligence." Andrews v. Independent School District No. 29 of Cleveland County, 1987 OK 40, 737 P.2d 929. Wilson v. City of Tecumseh, 2008 OK CIV APP 84, ¶ 10, 194 P.3d 140, 144. Haworth Bd. of Ed. of Independent School Dist. No. I-6, McCurtain County v. Havens, Okla.App., 637 P.2d 902 (1981).

23. The OTA clearly has the authority to construct, maintain, repair and operate turnpikes in Oklahoma at specified locations. O.S. tit. 69, § 1705. However, a majority of the members of the OTA shall constitute a quorum and *the vote of a majority of the members shall be necessary for any action taken by the Authority.* (emphasis added) O.S. tit. 69, § 1703. All meetings of the Authority shall be open public meetings. In other words, the OTA must follow the mandates of the Open Meeting Act when acting pursuant to section 1705, when the OTA is exercising its' authority. *See Cole*, 2019 OK 39, ¶ 3, 457 P.3d at 1009 and Fraternal Order of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman, 2021 OK 20, ¶ 15, 489 P.3d 20, 25.

24. The OTA argues first that Oklahoma law prohibits this court from deciding this case because there is no “definite and concrete” controversy and/or an “actual controversy” as required by the Declaratory Judgment Act. Specifically, OTA argues that the line of credit authorized by item 884’s resolution could not be used for the South Extension and was later terminated by the OTA. In addition, the OTA argues that the remarks made in the “Director’s Report” section of the February meeting cannot be a violation of the OMA because no action was taken.

25. OTA’s arguments are without merit. The OMA is not limited to Agenda items or business where official action is taken. As stated in Matter of Order Declaring Annexation Dated June 28, 1978, Issued by Frazier, 1981 OK CIV APP 57, 637 P.2d 1270, 1273 “To our minds, the notice and agenda provisions are at the very heart of the Sunshine Law. Without public notice, Sunshine legislation is ineffective.”

26. The OMA requires that All business to be transacted at the meeting must be contained in the required agenda. As stated in § 311 B. 1.

1. “All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act.”
O.S. tit. 25, § 311 (West)

27. Oklahoma case law supports the position that the OMA requires notice of all items to be discussed and presented, even if not on for approval or a vote. “The agenda notified the public that the Superintendent would be making his report and the topics to be covered. The Act does not require that the content of the report and recommendations be published in full prior to presenting the report to the Board. Furthermore, agenda of the four subsequent meetings clearly gave notice in plain language sufficient to be comprehended by a person of ordinary education and intelligence that the eligibility requirements for extracurricular activities would be presented and discussed at the board meetings” Andrews v. Indep. Sch. Dist. No. 29 of Cleveland Cnty., 1987 OK 40, 737 P.2d 929, 931.

28. The OMA's notice requirements apply even if there is no business actually to be acted on or voted on at the meeting. This issue is addressed by the Oklahoma Court of Criminal Appeals. Business is not required to actually be transacted (voted on) for there to be an OMA violation. The OMA does not specify that notice be given only when certain business is transacted or that the State needs to prove that a particular type of business was, in fact, transacted in order to prove a violation. Posting is required even for the most typical meeting. **Hilliary v. State, 1981 OK CR 78, 630 P.2d 791, 793**

29. The OMA provides for a private right of action, specifying the potential relief available. § 314 states:

B. Following a violation of this act, any person:

1. May bring a civil suit for declarative or injunctive relief, or both; **O.S. tit. 25, § 314 (West)**

30. The OMA further provides:

Any action taken in willful violation of this act shall be invalid. **O.S. tit. 25, § 313(West)**

31. Thus, a clear reading of the OMA makes clear that declaratory relief can be available even in situations where there is no action taken to declare invalid.

32. Further, the potential relief in private actions set forth in the OMA is not limited by violations being cured or becoming moot. As recognized by the Supreme Court in **Wilson v. City of Tecumseh, 2008 OK CIV APP 84, ¶ 21, 194 P.3d 140, 145–46** “In *Matter of Order Declaring Annexation, Etc., supra.*, the trial court denied a petition for nullification of a school annexation order on the ground the school board and superintendent violated the Act. The Court of Civil Appeals reversed and remanded, holding the election did not rectify the harm to the public because the harm did not lie in the annexation itself. *The harm lay in the lack of proper notice and agenda which are crucial to the Act. The election did not “cure” the Act's violations.* (emphasis added) Likewise, in the present case, whether there was a January 2007, vote to approve the bonus to Defendant is irrelevant. Even if the vote occurred, it did not cure the notice violations in the Act.”

33. The Agendas for the meetings in question clearly do not comply with the OMA. The Oklahoma legislature is specific as to what the routes are that the OTA can construct

new turnpikes. The potential legislative authority delegated to the OTA for the ACCESS Oklahoma expansion is contained in the following paragraphs of **O.S. tit. 69, § 1705**:

(20) All or any part of an Oklahoma City Outer Loop expressway system beginning in the vicinity of I-35 and the Turner Turnpike and extending west into Canadian County and then south to I-40; and then south and east to I-35 in the vicinity of Moore and Norman; and then extending east and north to I-40 east of Tinker Field; and then extending north to the Turner Turnpike to complete the Outer Loop.

(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.

34. The OTA knew the general routes of the turnpike plan for ACCESS Oklahoma before the February 22, 2022 meeting. The Agenda items were void of any description of the routes for which the business being transacted were necessary. The agenda items in question seem to be the opposite of what is required by the OMA. The Agendas failed the requirement of being specific enough to give notice to the public of what business would be transacted, discussed or even reported on at the January 25 and February 22 meetings. Neither agenda was worded in plain language, directly stating purpose of the meeting, in order to give the public actual notice, and language used should be simple, direct and comprehensible to a person of ordinary education and intelligence. The specific agenda items in question could have and should have at least referenced the routes described and authorized by the legislative.

35. No person of ordinary education and intelligence could know from the Agendas that ACCESS Oklahoma was to be rolled out at the meeting and/or even that new turnpikes were being planned. The term "Certain Turnpikes" is so vague that the use of the term in and of itself shows an intent to deceive the citizenry of Oklahoma. If you believe the 3 Members' deposition testimony that they were even unaware of the rolling out of ACCESS Oklahoma, that proves how insufficient the Agendas are.

36. The OTA obviously knew that the business of the ACCESS Oklahoma turnpike expansion was to be discussed at the February 22nd meeting, as it was disclosed as part of the "Director's Report" when announced by Governor Stitt. OTA admits that the component projects of Access Oklahoma were "officially" unveiled at the February 22

meeting. How can the OTA “officially” unveil such a project without it being referenced anywhere on the official agenda for the meeting? The short answer is that it can’t.

37. The February 22, 2022 Agenda did not state that one of the purposes or business to be discussed was the roll out of the ACCESS Oklahoma turnpike expansion. The Agenda should have informed the public that this was one of the purposes of the meeting and that Governor Stitt was going to make a presentation on the topic at the meeting.

38. Further, the Agendas should have notified the public of the general details to be discussed, such as the proposed routes.

39. Were the actions of the OTA willful for purposes of the OMA provision to have actions declared invalid? Under Oklahoma law, this court finds that the actions were willful. Willfulness does not require a showing of bad faith, malice, or wantonness, but, rather, encompasses conscious, purposeful violations of law or blatant or deliberate disregard of law by those who know, or should know requirements of the Act; notices of meetings of public bodies which are deceptively vague and likely to mislead constitute willful violations. *Rogers v. Excise Board of Greer County, 1984 OK 95, 701 P.2d 754.* The OTA agendas in this case are clearly deceptively vague and misleading.

40. This Court adopts the position set forth in **Matter of Order Declaring Annexation Dated June 28, 1978, Issued by Frazier, 1981 OK CIV APP 57, 637 P.2d 1270, 1275** in sum, OTA asks this Court to basically ignore these Open Meeting Act violations. This we will not do, for to ignore violations in one case is to invite them in another. The Oklahoma Legislature, elected voice of the people of this state, mandated open meetings, including observance of the notice and agenda provisions. We in the judiciary are bound to honor that mandate. Without vigorous enforcement in the courts, laudable legislation is reduced to “mere words.”

IV. CONCLUSION

Plaintiffs are granted the following declaratory relief:

- The OTA is subject to the Oklahoma Open Meeting Act.
- The OMA requires notice to the public informing them of the business the OTA will be conducting, via agendas, worded in plain language, directly stating the purpose of the meeting.
- The Agendas for the January 25 and February 22, 2022 OTA board meetings violate the OMA as a matter of law. There are no genuine issues of material facts.
- The undisputed facts show that the OMA knew the specifics of ACCESS Oklahoma in great detail, including the proposed routes to be constructed.
- The Agendas for the January 25 and February 22 meetings contained nothing referencing the plan, ACCESS Oklahoma, or the proposed routes, as required by OMA.
- Item #'s 884, 885 and 894 listed on the January 25 Agenda and acted on at the meeting were items related to the ACCESS Oklahoma turnpike plan/routes. Those items made no reference to the proposed routes, ACCESS Oklahoma, or the paragraphs in **O.S. tit. 69, § 1705** that contain the stated legislative authority for the proposed routes, as required by OMA.
- The Agenda for the February 22 meeting failed to give notice of discussion, rolling out, or “officially” unveiling ACCESS Oklahoma. In addition, there is not an agenda item on any agenda prior to or including the February 22 meeting for the OTA Board to consider, and/or approve the “official” unveiling of ACCESS Oklahoma, as required by OMA.
- Nothing on the February 22 agenda gives notice that the OTA Director, Governor of Oklahoma or anyone else was going to address the OTA Board and “officially” unveil ACCESS Oklahoma, as required by OMA.
- The OTA’s violations meet the definition of willful.

41. The Plaintiffs are granted summary judgment on their request for declaratory relief against the OTA for the OMA violations listed above.
42. Defendant OTA's Motion for Summary Judgment is Denied.
43. Any action taken at the January 25 and February 22 meetings related to ACCESS Oklahoma shall be invalid, including the actions requested in Proposition IX in Plaintiffs' Motion for Summary Judgment.
44. Counsel for the Plaintiffs is directed to prepare a journal entry within 10 days.

IT IS SO ORDERED.

Dated: 12/01/2022

Signed by Judge Olsen electronically
12/01/2022

Timothy L. Olsen

Timothy L. Olsen
District Judge, 22nd Judicial District

CERTIFICATE OF MAILING

I certify that on the 1st day of December, 2022, I e-mailed/mailed/delivered a true and correct copy by first-class mail, to the following:

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