JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-02-06-003 / NOT PRECEDENTIAL**
ID: **JM020005**
DATE: **02-06-03**
DISPOSITION: **DISBARMENT OF HERBERT COLES**
TAX TYPE: **PRACTICE AND PROCEDURE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 8th day of January, 2003, the above styled and numbered cause comes on for decision pursuant to a hearing held in accordance with 68 O.S. 2001, Section 236 and *Oklahoma Administrative Code 710:1-5-200*, on December 11, 2002. Respondent, Herbert Coles, appears pro se. The Tax Commission is represented by AN Assistant General Counsel, Office of the General Counsel of the Tax Commission.

The Office of the General Counsel filed a *Petition for Disbarment* of Respondent on October 1, 2002, and notice of the hearing on the *Petition* was served. The notice, sent to Respondent at HIS LAST KNOWN ADDRESS, was returned marked "unclaimed". By memorandum dated November 1, 2002, the General Counsel's Office requested that the hearing be stricken, based on documents in their possession indicating a different last known address for Respondent.

A *Petition for Disbarment* of Respondent from further practice before the Tax Commission was filed by the Office of the General Counsel on November 4, 2002. The *Petition* duly set forth the particular allegations against Respondent and the requested relief should the burden of proof of the allegations be met.

Notice of the hearing, sent to Respondent at THE DIFFERENT LAST KNOWN ADDRESS, was returned marked "not deliverable as addressed - unable to forward". Notice of the hearing on the *Petition* was served on Respondent in accordance with 68 O.S. 2001, Sections 236 and 208. Respondent neither appeared at the hearing on December 11, 2002, nor responded to the notice.

At the hearing, the Office of the General Counsel made a brief opening statement which mirrored its *Petition for Disbarment*, including the particulars it intended to prove and its pray of relief. One witness, AN Administrator of the IRP/IFTA Section of the Motor Vehicle Division of the Tax Commission, was called. Exhibits were identified, offered and received into evidence. Upon conclusion of the hearing, the record was closed and the matter was submitted for decision.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. Respondent was an employee of the Oklahoma Tax Commission, Motor Vehicle Division, IRP/IFTA Section, for approximately three years. Pursuant to Respondent's employment, he dealt with companies applying to proportionally register vehicles under the International Registration Plan ("IRP"). Respondent's employment with the Oklahoma Tax Commission was terminated in April or May 2002.

2. At the same time Respondent was employed by the Motor Vehicle Division, Oklahoma Tax Commission, Respondent acted as a service agent under the name of ANONYMOUS Services.

3. The testimony of THE ADMINISTRATOR and the documents presented illustrate the Division's procedures for the issuance of cab cards, a form of registration, to trucking companies filing applications under the IRP. Upon receipt and processing of an IRP application, a billing invoice and cab cards are generated. The cab cards are kept in the tag room of the Tax Commission until payment is received. The tag room is only accessible by authorized employees of the Tax Commission.

4. Respondent acting as a service agent under the name of ANONYMOUS Services was in the business of assisting trucking companies in obtaining their licenses and registrations for purposes of the International Registration Plan and their interstate operations.

5. As a service agent of five different trucking companies, Respondent prepared and filed license and registration forms with the Tax Commission. The resulting registration fees were not paid.

6. The applications were processed by the Respondent and a billing invoice and cab cards were generated.

7. Respondent had access to the tag room where the cab cards are stored until payment is received.

8. Although the records of the Division do not show receipt of payment for these cab cards, the cab cards are missing.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this cause, 68 O.S. 2001, Section 236 and *Oklahoma Administrative Code 710:1-5-200*; that an agent, accountant, attorney or other person representing taxpayers before the Tax Commission may be disqualified from practice before the Commission for a stated period of time, or indefinitely, *Oklahoma Administrative Code 710:1-5-200(g)*; that the grounds for suspension or disbarment include incompetence or disreputableness, 68 O.S. 2001, Section 236; and that here the Office of the General Counsel has shown by a preponderance of the evidence that Respondent has violated the provisions of Section 236, in particular, Respondent acted as a service agent for trucking companies applying to proportionally register their vehicles, while employed by the IRP/IFTA Section, Motor Vehicle Division of the Oklahoma Tax Commission, and obtained cab cards without the required payment of fees due the State of Oklahoma.

DISPOSITION

THEREFORE, it is DETERMINED that Respondent, Herbert Coles, be indefinitely suspended and disbarred from further practice before the Tax Commission, and prohibited from the preparation or filing on behalf of or as an agent for any other person any report, return or application required or provided for under the provisions of the tax laws or motor vehicle registration laws of this state.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.