JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-11-03-34 / NON-PRECEDENTIAL**
ID: **P-11-189-H**
DATE: **NOVEMBER 3, 2011**
DISPOSITION: **SUSTAINED**
TAX TYPE: **SALES TAX EXEMPTION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMPANY ("Applicant") appears pro se, through its President, PRESIDENT.[1] The Taxpayer Assistance Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY 1, First Deputy General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On March 15, 2011, the Court Clerk[2] received the letter of protest for filing, by facsimile.[3] On March 16, 2011, the Court Clerk sent a memorandum to the Division with a copy of the protest letter and requested the protest file. On March 17, 2011, a letter was mailed to the Applicant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-11-189-H. The letter also advised the Applicant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[4] On March 24, 2011, the protest file was received from the Division by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[5] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[6] On March 29, 2011, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division.

On April 28, 2011, the Notice of Prehearing Conference was mailed to the last-known address of PRESIDENT, setting the prehearing conference for May 10, 2011, at 9:00 a.m.[7]

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[1] PRESIDENT is also an attorney and the Applicant's Legal Advisor.

[2] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[3] On March 16, 2011, the hard copy of the protest letter was received for filing.

[4] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[5] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[6] *Id.*

[7] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2011). The notice was mailed to the Applicant c/o PRESIDENT, President at MAILING ADDRESS.

On May 10, 2011, at 9:00 a.m., the prehearing conference was held as scheduled via telephone. PRESIDENT appeared on behalf of the Applicant. OTC ATTORNEY 1 and OTC ATTORNEY 2 appeared on behalf of the Division. On May 13, 2011, a letter was mailed to the parties directing the filing of a proposed procedural schedule on or before June 9, 2011.

On June 7, 2011, the parties filed a Proposed Scheduling Order and Order Setting Hearing. On June 15, 2011, a Scheduling Order was issued setting the hearing for August 26, 2011, at 9:30 a.m., with pre-trial briefs or position letters to be filed on or before August 19, 2011. On June 22, 2011, the Applicant's Interrogatories and Requests for Production and Witness List and Evidence List were filed by facsimile with the Court Clerk,[8] along with the Applicant's Responses to the Division's First Set of Interrogatories of June 22, 2011. On June 23, 2011, the hard copies of the Applicant's "Interrogatories and Requests for Production" were received, along with the Applicant's Witness and Evidence List.

On July 25, 2011, the Applicant's Responses to Requests for Production were received by facsimile.[9]

On August 9, 2011, the Applicant's Final Witness and Evidence List were received by facsimile for filing.[10] On August 11, 2011, the Division's Final Witness and Exhibit List was received for filing. On August 19, 2011, the Division's Brief was filed, with Exhibits A through G attached thereto. On August 22, 2011, the Applicant's Brief was filed (out-of-time), with Exhibits A through H, attached thereto.

On August 26, 2011, at 9:30 a.m. a closed hearing[11] was held as scheduled. The parties stipulated to the admission into evidence to all of the exhibits as set forth herein. The Applicant called one (1) witness, PRESIDENT, Applicant's President, who testified concerning the Application for Sales Tax Exemption, the scope of the Applicant's operations, and the students served by the Applicant. The Applicant's Exhibits A through I, were identified, offered, and admitted into evidence by stipulation. The Division called one (1) witness, MANAGER, Revenue Unit Manager, Taxpayer Assistance Division, Oklahoma Tax Commission, who testified about processing the Application for Sales Tax Exemption and as custodian of the Division's records. The Division's Exhibits A through G, were identified, offered, and admitted into evidence by stipulation. At the conclusion of the hearing, the record in this matter was closed and this case was submitted for decision on August 26, 2011.

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[8] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[9] On July 26, 2011, the hard copies were received for filing.

[10] On August 11, 2011, the hard copies were received for filing.

[11] The Applicant, through PRESIDENT, invoked its right to a confidential hearing as provided by the provisions of OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2011).

FINDINGS OF FACTS

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Applicant's Brief, and the Division's Brief, the undersigned finds:

1. On April 3, 2009, COMPANY ("Applicant") received its Certificate of Incorporation from the Oklahoma Secretary of State as a domestic non-profit corporation.[12] On May 7, 2010, the Applicant received its Amended Not For Profit Certificate of Incorporation from the Oklahoma Secretary of State.[13]

2. The Applicant is located at BUSINESS ADDRESS.[14] In 2003 (prior to incorporation), "…FOUNDER,[15] established [Applicant], an after-school program aiming to reach at-risk youth in need of additional instruction in math and reading.[16] With many of its students living in a drug-ravaged[17] part of TOWN X, Okla., [FOUNDER] founded the school to provide a safe haven for its students. Much more than just a tutoring program,[18] [Applicant] offers students meals,[19] transportation, field trips[20] and incentives for attendance and effort,

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[12] Division's Exhibit A.

[13] Applicant's Exhibit A.

[14] Applicant's Exhibit B. *See* Division's Exhibit C. Testimony of PRESIDENT. The building which currently houses the Applicant was the result of TOWN X residents voting to build a better facility to house the Applicant. *See* Note 15, *infra.*

[15] *Id.* FOUNDER is also the Executive Director of the Applicant and a Fourth (4th) grade teacher. FOUNDER was honored as TOWN X "Teacher of Year" for 2004 and named a "Women of Worth" for 2009 by L'Oreal. The Administrative Law Judge is taking judicial notice of the L'Oreal "Women of Worth" website at http://www.womenofworth.com. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). *See* Division's Exhibit D.

[16] *Id.* The Executive Director screens the Applicant's students through a battery of tests to determine academic shortfalls, including, but not exclusive of the "San Diego Quick Reading Assessment Instructions." *See* Division's Exhibit H.

[17] Applicant's Exhibit E.

[18] During February, which coincides with Black History Month, the Applicant sponsors a history program. In 2011, the program consisted of opening remarks by the Executive Director, FOUNDER. SPEAKER with the Greenwood Cultural Center spoke about the Greenwood Business District, one of the most successful and wealthiest African American communities in the United States during the early 20th Century, it was popularly known as America's "Black Wall Street" until the Tulsa Race Riot of 1921. The riot was one of the most devastating race riots in history and it destroyed the once thriving Greenwood community. After SPEAKER'S presentation, there were student presentations, and a meal. *See* Greenwood Cultural Center website at http://www.greenwoodculturalcenter.com and the Wikipedia website at http://en.wikipedia.org. *See also* Note 15, *supra.*

[19] *Id.* The Applicant "offers one hot meal per day for its students. This is another service provided to students who are deficient in some area. This is the only source of nutrition that some of the [Applicant's] students receive during the evening. From around 2008-2010, [Applicant] was an Oklahoma Regional Foodbank Kids' Café site." *See* Applicant's Brief at 5. *See also* Applicant's Exhibit G.

along with love, guidance and discipline when needed!"[21] Many students of the Applicant live in the ADDITION of TOWN X, which is also known as "The Flats" or "Black Town." In many cases, these students come from a one (1) "guardian" home, where the student(s) are being raised by their grandmother because the parents are incarcerated, due to a variety of reasons, but most prominently for drug-related offenses.[22]

3. Effective April 3, 2009, the Applicant was classified by the Internal Revenue Service ("IRS") as a non-profit 501(c)(3) corporation and exempt from federal income tax.[23]

4. On March 14, 2011, the Division received by facsimile, an Application for Sales Tax Exemption ("Application")[24] as a "Cultural Organization for Disadvantaged Children" from the Applicant, with the following attachments thereto:

- Cover letter dated March 14, 2011.
- Copy of letter dated June 5, 2010, from the IRS to the Applicant confirming its exempt status as a 501(c)(3) corporation.
- Copy of Applicant's Brochure[25]
- Copy of Applicant's Corporate By-Laws.[26] Article II, Purposes, states as follows, to-wit:

  Section 1. Purposes. This Corporation is organized exclusively for charitable, benevolent, educational and scientific purposes.

  Included among the charitable, religious, educational and scientific purposes for which this Corporation is organized, as qualified and limited by the foregoing paragraph, are as follows:

  A. To provide after school and summer tutoring services to the youth of TOWN X, Oklahoma. Such services are provided in the hope that the youth of today become leaders of tomorrow.

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[20] Applicant's Exhibit I. "Students are encouraged to pursue their talents in creative outlets such as, sports, ballet, gymnastics, and even musical theatre. Interactive clubs like Eastside Gents and Ladies of Essence stand to remind the students of [Applicant] to uphold civic duty as well as academic standards. Here at [Applicant] all children are given the keys to their future and the knowledge to unlock the door that society may place in their way!" *See* Note 23, *infra.*

[21] Applicant's Exhibit B-6. *Id.* PRESIDENT testified that in the ADDITION, ninety percent (90%) of the residents are of African-American descent.

[22] *Id.*

[23] Applicant's Exhibit B. *See* Division's Exhibit B.

[24] *See* Note 14, *supra. See also* Applicant's Exhibit H.

[25] *Id.*

[26] Applicant's Exhibit D.

B. To do any and all lawful acts that may be necessary and proper for the attainment of the foregoing purposes.

- Copies of pages from the Applicant's website at http://www.COMPANY.org.

5. On March 15, 2011, the Division sent a letter denying the Application. The denial letter indicates in pertinent part "…You have applied as a Cultural organization established to sponsor and promote educational, charitable and cultural events for **disadvantage children.** The Bylaws you provided under Article II does not indicate that the primary purpose of your organization is to sponsor and promote educational, charitable and cultural events for **disadvantaged children.** Title 68 O.S.Supp.2009§1356(24) states in part…"a cultural organization established to sponsor and promote educational, charitable and cultural events for **disadvantaged** children…"[27] (Emphasis original.)

6. On March 15, 2011, the Office of Administrative Law Judges received a protest,[28] by facsimile, to the denial of the Application. The basis of the protest is stated in pertinent part:

> The Oklahoma Tax Commission denied the application based on one statement in the bylaws of the corporation without considering the other supporting documentation. The website for the Oklahoma Tax Commission is clear that all evidence will be considered in determining the primary purpose of an organization. Enclosed in our application was also a brochure, which clearly states that our founder's primary mission was to aid **at-risk youth in need of additional instruction in math and reading.** Our facility is located in an extremely poor area of TOWN X, Oklahoma that has been ravaged by drugs and poor academic performance in the past. The children who come through our doors are disadvantaged and deficient in many areas, including but not limited to academics and social standing. (Emphasis original.)

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[29]

2. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[30]

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[27] Applicant's Exhibit C. *See* Division's Exhibit E. Testimony of MANAGER. MANAGER testified that she consulted the Tax Policy Division concerning the Application and the subsequent decision to deny the Application.

[28] *Id. See* Division's Exhibit F.

[29] OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

[30] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

3. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code ("Sales Tax Code").[31] The Sales Tax Code[32] levies "upon all sales, not otherwise exempted . . . an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds[33] of each sale of . . . tangible personal property. . . ."[34] Oklahoma Statutes authorize incorporated cities, towns, and counties to levy taxes as the Legislature may levy and collect taxes for purposes of state government.[35]

4. The Oklahoma Sales Tax Code,[36] in pertinent part, provides exemptions[37] from sales tax on property or services purchased by nonprofit entities ("Exemption"), as follows, to-wit:

> The first Fifteen Thousand Dollars ($15,000.00) each year from sales of tangible personal property or services to or by a cultural organization established to sponsor and promote educational, charitable and cultural events for **disadvantaged children**, and which organization is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3); (Emphasis added.)

5. The Tax Commission Rule ("Rule")[38] states as follows, to-wit:

> (a) **Qualification for educational, charitable, and cultural events for disadvantaged children exemption.** The first $15,000.00 of each calendar year's sales, to or by, organizations which were established to sponsor or promote educational, charitable, or cultural events for disadvantaged children, are exempt from sales tax.

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[31] OKLA. STAT. ANN. tit. 68, § 1350 et seq. (West 2008).

[32] OKLA. STAT. ANN. tit. 68, § 1352(22)(a) (West 2008):

> "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:
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> a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property,
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> …

[33] OKLA. STAT. ANN. tit. 68, § 1352(12) (West 2008).

[34] OKLA. STAT. ANN. tit. 68, § 1354(A)(1) (West 2008).

[35] OKLA. STAT. ANN. tit. 68, § 1370 et seq. (West 2008) and OKLA. STAT. ANN. tit. 68, § 2701 (West Supp. 2011).

[36] *See* Note 31, *supra.*

[37] OKLA. STAT. ANN. tit. 68, § 1356(24) (West Supp. 2011).

[38] OKLA. ADMIN. CODE § 710:65-13-335 (July 11, 2010).

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov and the supporting documentation described in (c) of this Section.

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501 (c)(3); and

(2) Documentation showing that the organization was established to sponsor and provide educational, charitable, and cultural events for disadvantaged children, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only the first $15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this Section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

6. Goal of any inquiry into the meaning of a legislative act is to ascertain and give effect to the intent of the legislature. The law-making body is presumed to have expressed its intent in a statute's language and to have intended what the text expresses. Where a statute is plain and unambiguous, it will not be subject to judicial construction, but will be given the effect its

language dictates. Only where the intent cannot be ascertained from a statute's text, as occurs when ambiguity or conflict with other statutes is shown to exist, may rules of statutory construction be employed.[39]

7. Tax exemptions, deductions, and credits depend entirely on legislative grace and are strictly construed against the exemption, deduction, or credit. Section 1355 of Title 68 is an exemption statute, not a tax levying statute; and as such, it must be strictly construed unless authority for the exemption is clearly expressed.[40]

8. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[41] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[42]

APPLICANT'S POSITION

The Applicant states "[Applicant] services the disadvantaged youth of TOWN X. Such disadvantage is evidenced by economic, social, and academic factors. [Applicant] screens its students to determine academic shortfalls, as the executive director puts the students through a battery of tests to determine competency. According to the TOWN X, Oklahoma Chamber of Commerce website,[43] there are 14.6% of families in TOWN X living at or below the poverty line. This is 3 percentage points higher than the state average. This number increases sharply in the ADDITION, where the black population constitutes around 90% of the inhabitants. [Applicant] services this area."[44]

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[39] *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, 75 P.3d 883.

[40] *Id.*

[41] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

> …"preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[42] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[43] *See* website at TOWN X WEBSITE.

[44] Applicant's Brief at 6.

DIVISION'S POSITION

The Division responds in pertinent part, "To fall squarely within the exemption statute [Applicant] would have to limit its program to youth in TOWN X, Oklahoma who are 'disadvantaged' as defined by [Applicant's] by-laws. Additionally, [Applicant's] main reason d'etre [raison d'être][45] would have to be the sponsorship and promotion of educational, cultural and charitable 'events', not remedial education. Division's narrow and strict interpretation of the statute is correct and comports with the law of Oklahoma. Division's denial of the exemption application was proper."[46]

DISCUSSION

The Applicant points out that the term "disadvantaged" is not a defined term within Title 68 of the Oklahoma Statutes. The Applicant states in pertinent part, "It is a common notion to think that disadvantaged children are only so due to economic reasons. [Applicant] understands that a child who is deficient in math, reading, or another key subject is just as disadvantaged as [a] child who lives at or below the poverty level. It is clear that individuals applying for inclusion into [Applicant's] programs are deficient or disadvantaged in some or many areas. [Applicant] specifically targets those students who are deficient in reading and math, while not neglecting any subject area."[47]

The Division responds in pertinent part, "Here, there is no evidence in [Applicant's] by-laws, website or correspondence with Division regarding how [Applicant] defines 'disadvantaged.' [Applicant's] by-laws merely indicate that it is qualified and limited in its endeavors. Specifically, Section One of Article II of [Applicant's] by-laws state that it was organized 'exclusively' for the following purposes: 1. Charitable, 2. Benevolent, 3. Educational, 4. Scientific and 5. To provide after school and summer tutoring services to the youth of TOWN X, Oklahoma. Contrary to plain meaning rules for statutory interpretation and strict construction regarding exemption statutes, [Applicant] would have the Court interpret the statute to include any 501(c)(3) corporation who provides charitable, benevolent, scientific and tutoring (educational) services to all youth."[48]

As concluded by the Tax Commission,[49] "Section 1 of title 25 of the Oklahoma Statutes provides that 'words used in any statute are to be understood in their ordinary sense, except where a contrary intention plainly appears.' This principle has been endorsed by the Oklahoma

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[45] **"raison d'être"** (rā-zō^{n}-detrə), noun. [French] Reason or justification for existence. MERRIAM-WEBSTER DICTIONARY, available at *http://www.merriam-webster.com*.

[46] Division's Brief at 6.

[47] Applicant's Brief at 2-3.

[48] Division's Brief at 5.

[49] OTC Order No. 2011-07-12-05 (July 12, 2011).

Supreme Court. In *Curtis v. Board of Education of Sayre Public Schools*, 914 P.2d 656[50] the Court held 'In the absence of a contrary definition, words in a statute are to be given to be given the same meaning as that attributed to them by ordinary and common definitions.'"

"Disadvantaged" is defined by Merriam-Webster Dictionary as "lacking in the basic resources or conditions (as standard housing, medical and educational facilities, and civil rights) believed to be necessary for an equal position in society."[51] Under the ordinary meaning of "disadvantaged," Applicant is a "Cultural Organization for Disadvantaged Children," pursuant to the Exemption and the Rule.

In a hearing on the merits, the burden of proof shall be upon the Applicant to show in what respect the action or proposed action of the Tax Commission is incorrect by a "preponderance of the evidence," which means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.[52]

In this matter the Applicant has met its burden of proof, by "preponderance of the evidence," that the Division's denial of its Application was incorrect and in what respect.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest should be granted.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."

[50] Curtis v. Board of Educ. of Sayre Public Schools, 1995 OK 119, 914 P.2d 656.

[51] *See* Note 45, *supra.*

[52] *See* Notes 41 through 42, *supra.*