JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2015-03-19-04 / NON-PRECEDENTIAL**
ID: **SJ-14-015-H**
DATE: **MARCH 19, 2015**
DISPOSITION: **DENIED**
TAX TYPE: **PERSONALIZED LICENSE PLATE**
APPEAL: **NO APPEAL TAKEN**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 20th day of February, 2015, appended hereto, together herewith shall constitute the Order of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 20th day of February, 2015, the above-styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. APPLICANT, ("Applicant") appears pro se.[1] The Special Plates Section, Motor Vehicle Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On October 2, 2014, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] On October 3, 2014, the Court Clerk ("Clerk")[4] mailed the Introductory Letter to the Applicant that this matter had been assigned to ALJ, Administrative Law Judge ("ALJ"), and docketed as Case Number

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[1] "pro se" (proh say *or* see), *adv. & adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (9th ed. 2009), available at http://westlaw.com.

[2] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

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

[4] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 2009).

SJ-14-015-H. The letter also advised the Applicant that a Prehearing Teleconference Notice would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[5] On October 6, 2014, OTC ATTORNEY filed an Entry of Appearance as Division's Counsel of record. On October 6, 2014, the Clerk mailed the Prehearing Teleconference Notice to the last-known address of the Applicant, setting the teleconference for December 2, 2014, at 9:30 a.m.[6]

On December 2, 2014, at 9:30 a.m., the ALJ conducted the Prehearing Teleconference as scheduled. The Applicant appeared not. OTC ATTORNEY appeared by telephone on behalf of the Division. On December 4, 2014, the Clerk mailed the Notice to Show Cause ("Notice") to the Applicant by certified mail return receipt requested (###) advising the hearing was set for February 5, 2015, at 9:30 a.m. The Notice advised the Applicant could appear and show cause why the intent to deny the issuance of a personalized license plate should not be upheld.[7] On December 8, 2014, the Return Receipt (###) was filed with Clerk. The Return Receipt reflects the Applicant signed the "green card" on December 6, 2014.

On January 29, 2015, the Division filed its Memorandum Brief with the Clerk, with Exhibits A through E attached thereto. The Applicant did not file a position letter and/or memorandum brief. On January 30, 2015, the Division filed a Corrected Certificate of Mailing reflecting the Applicant's correct zip code.[8]

The ALJ conducted the show cause hearing as scheduled on February 5, 2015, at 9:30 a.m. The Applicant failed to appear at the hearing or respond to the Notice. The ALJ noted for the record that the Applicant had not contacted the Division's Counsel, or the Clerk concerning the show cause hearing. The Division waived Opening Statement. The Division called one witness, SUPERVISOR, Supervisor ("Supervisor"), Special Plates Section, Motor Vehicle Division, Oklahoma Tax Commission, who testified regarding the Division's decision not renew the Applicant's Motorcycle Personalized License Tag, and as custodian of the Division's records. The Division identified and offered Exhibits A through E, which the ALJ admitted into evidence. The Division waived Closing Statement. Upon conclusion of the hearing, the ALJ closed the record and submitted this case for decision on February 5, 2015.

FINDINGS OF FACT

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[5] *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

[6] OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed the notice to the Applicant at ADDRESS.

[7] *Id.* Attached thereto was a copy of the Division's August 28, 2014 letter. *See* Note 16, *infra.*

[8] At hearing, OTC ATTORNEY noted for the record that the Notice had been mailed to the Protestant with the correct zip code.

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

1. In the Division's review of the personalized license plate database, the Division discovered that it had issued a Motorcycle Personalized License Plate ("MPLP") to the Applicant bearing the letters "**MFIC**."[9]

[9] Supervisor's Testimony.

2. Division personnel performed an internet slang dictionary search for "**MFIC**," which revealed two (2) results, both indicating the letters "**MFIC**" signified "**Motherfucker in Charge**," slang for "**boss**" or "**leader**," as follows,[10] to-wit:

> MFIC
> The Motherfucker in Charge.
> Person 1: Alright, listen up, central intelligence put me in charge so I'm calling the shots now.
> Person 2: Not anymore you're not, I'm the MFIC now. You can all keep your jobs here but from now on you answer to me.
>
> MFIC
> Motherfucker in charge
> I'm the M.F.I.C. around here.

3. On July 23, 2014, the Division mailed a letter to the Applicant, stating in pertinent parts,[11] as follows, to-wit:

> Please be advised that in the future we will be unable to renew you **Personalized** License plate "MFIC", as the lettering violates the provision of Oklahoma Tax Commission promulgated rule 710:60-3-151(c),[12] which establishes the following criteria for the approval of a special license plate request:
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> > *"The Commission shall review personalized license plate applications that are not automatically rejected when compared to a database of prohibited or previously issued personalized plates. The Commission shall deny a request if an objective, reasonable person would find that the proposed combination of letters and/or numbers listed on the application falls into at least one of the following categories:*
> >
> > *1) Carries a sexual connotation;*

[10] *Id.* Division's Exhibit A. The exhibit is a July 12, 2014 screen-print of the Urban Dictionary available http://www.urbandictionary.com. Supervisor testified that the search did not reveal any other meaning for the letter combination "**MFIC**."

[11] Division's Exhibit B.

[12] OKLA. ADMIN. CODE § 710:60-3-151(c) (July 11, 2010).

> *2) Expresses contempt, ridicule or superiority based on race, gender, politics, ethnic heritage or religion;*
> *3) Is vulgar, derogatory, profane or obscene;*
> *4) Refers to bodily functions, bodily fluids, or intimate body parts;*
> *5) Refers to alcohol, drugs or drug paraphernalia, illegal activities or gangs; or*
> *6) Would otherwise be inappropriate for display on a state-issued license plate."* (Emphasis original.)

4. On or about August 27, 2014, the Division received a letter from the Applicant, stating as follows,[13] to-wit:

> Regarding you letter about my personalized tag MFIC. These four letters are a reference to my wife Cheryl Hutcheson. I don't understand what the problem is, I've had this tag for years. The MFIC stands for My Friend is Cher. What is the problem with making a positive statement about my wife? Please reconsider your descision [sic] on this matter?

5. On August 28, 2014, the Division acknowledged receipt of the Applicant's August 27, 2014 letter, and stated that Applicant's explanation of the license plate's intended meaning did not lead it to change its decision.[14]

6. On October 2, 2014, the Applicant filed a protest letter with the Office of Administrative Law Judges requesting a hearing.[15]

7. On December 4, 2014, the Clerk mailed the Notice to the Applicant, by certified mail return receipt requested (###), advising the hearing was set for February 5, 2015, at 9:30 a.m., at which time the Applicant could appear and show cause why the intent to deny the issuance of a personalized license plate should not be upheld.[16]

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[13] Supervisor's Testimony. *See* Division's Exhibit C.

[14] *Id. See* Division's Exhibit D.

[15] Division's Exhibit E.

[16] *See* Procedural History herein.

8. On December 8, 2014, the Return Receipt (###) was filed with Clerk. The Return Receipt reflects the Applicant signed the "green card" on December 6, 2014.[17]

9. The front page of the Motorcycle Personalized License Plate Application ("Form 746") contains the following in bold type above an applicant's six (6) choices for a MPLP,[18] as follows, to-wit:

> "**Any special plate request deemed to be offensive to the general public will not be issued.**"

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[19]

2.

3. Section 1135.4 of Title 47 ("Statute") provides in pertinent parts as follows,[20] to-wit:

> A. The Oklahoma Tax Commission is hereby authorized to design and issue personalized license plates.…
>
> B. Such plates shall be designed and issued for the following:
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> …
>
> 3. Motorcycles in any combination of numbers or letters from one to a maximum of six;

4. The Tax Commission promulgated Tax Commission Rule 710:60-3-150 to implement and administer the Statute, which addresses the application process for ordering all "special" and "personalized" license plates, including MPLPs, as follows,[21] to-wit:

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[17] *Id.*

[18] The ALJ is taking judicial notice of the Oklahoma Tax Commission website at http://www.oktax.state.ok.us to complete the factual details of this matter. OKLA. ADMIN. CODE § 710:1-5-36 (July 11, 2013).

[19] OKLA. STAT. ANN. tit. 47, § 1135.4 (West 2008) and OKLA. ADMIN. CODE § 710:60-3-150 (July 11, 2010).

[20] *Id.* *See* OKLA. STAT. ANN. tit. 47, § 1113(A) (West 2008), which in pertinent part states:

> …The license plate and decal shall be of such size, color, design and numbering as the Tax Commission may direct…

> (a) **General provisions.** Applications for ordering all types of personalized and special license plates, authorized by statute, may be obtained from the Oklahoma Tax Commission or from any motor license agency.
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> …
>
> (d) **Non-offensive content policy.** No special license plate can be issued if the proposed message may be deemed offensive to the general public, in the context of display of the message on a state-issued license plate, under the guidelines in 710:60-3-151(c). (Emphasis original.)

5. The Tax Commission Rule for personalized license plates, states as follows,[22] to-wit:
   (a) No conflict policy. No personalized license plate that conflicts with the system of numbering for non-personalized plates set out in 47 O.S. § 1113[23] will be issued.

   (b) Fees. Remittance must accompany the application for the plate and is in addition to the annual license fee.

   (c) Non-offensive content policy. The Commission shall review personalized license plate applications that are not automatically rejected when compared to a database of prohibited or previously issued personalized plates. The Commission shall deny a request if an objective, reasonable person would find that the proposed combination of letters and/or numbers listed on the application falls into at least one of the following categories:

      (1) carries a sexual connotation;
      (2) expresses contempt, ridicule or superiority based on race, gender, politics, ethnic heritage, or religion;
      (3) is vulgar, derogatory, profane or obscene;
      (4) refers to bodily functions, bodily fluids, or intimate body parts;
      (5) refers to alcohol, drugs or drug paraphernalia, illegal activities or gangs; or

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[21] OKLA. ADMIN. CODE § 710:60-3-150 (July 11, 2010).

[22] OKLA. ADMIN. CODE § 710:60-3-151 (July 11, 2010).

[23] *See* Note 12, *supra.*

> (6) would otherwise be inappropriate for display on a state-issued license plate.
>
> (d) Other criteria. The criteria in this paragraph are not exhaustive. Dictionaries and compilation of offensive words, terms or letter/number combinations, in any language, gathered from the experience of Oklahoma and other states may also be used as a guide.

6. The rules promulgated pursuant to the Administrative Procedures Act[24] are presumed to be valid and binding on the persons they affect and have the force of law.[25]

7. Great weight is accorded an agency's construction of a statute when the administrative interpretation is made contemporaneously with the enactment of the statute and the construction is longstanding and continuous by the agency charged with its execution.[26]

8. Where the Legislature is made repeatedly aware of the operation of the statute according to the construction placed upon it by an agency and the Legislature has not expressed its disapproval with the agency's construction, the Legislature's silence may be regarded as acquiescence in the agency's construction,[27] and the agency's construction is given controlling weight and will not be disregarded except in cases of serious doubt.[28]

9. The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable.[29]

10. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute.[30] As a rule, it is presumed that

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[24] OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

[25] *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[26] *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65.
[27] *R.R. Tway, Inc. v Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972.

[28] *Cox v. Dawson*, 1996 OK 11, 911 P.2d 272.

[29] *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225. *See Boydston v. State*, 1954 OK 327, 277 P.2d 138.

[30] *Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission*, 2003 OK CIV APP 23, 65 P.3d 289.

administrative rules and regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence.[31]

11. In all proceedings before the Tax Commission, unless provided by law, the taxpayer has the burden of proof.[32] The Division's action is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[33]

DISCUSSION

The Applicant asserts that the letter combination "**MFIC**" is intended *by him* to mean, "My friend is Cher."[34] The only evidence submitted by the Applicant is that "**MFIC**" means, "My friend is Cher," and that "These four letters are a reference to my wife Cheryl Hutcheson."[35]

The Division responds, "…the materials consulted by the Division in its review clearly indicate that the phrase "**MFIC**" has firmly entrenched meaning in modern culture as "**Motherfucker in Charge**."[36]

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[31] *State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142.

[32] 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 Applicant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the Applicant 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 Applicant 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.

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

[34] *See* Note 13, *supra.*

[35] *Id.*

[36] Auditor's Testimony. *See* Division's Brief at 4. *See also* Notes 10 and 22, *supra.*

The Applicant has not presented any evidence that the letter combination "**MFIC**" carries any other meaning in the common parlance than that discovered by the Division. The Applicant has presented no evidence that an objective, reasonable person *would not* find the word "**fucker**" to be obscene, vulgar, and carry a sexual connotation. The standard, by rule, is *objective, not subjective*, as asserted by the Applicant. Based upon the evidence presented by the Division, an objective reasonable person would find "**MFIC**" to be obscene, vulgar, and carries a sexual connotation.

CONCLUSION

The Applicant has failed to meet his burden of proof, by preponderance of the evidence, that the Division's denial of the MPLP is incorrect and in what respects.

RECOMMENDATION

The ALJ recommends denial of the protest, based upon the facts and circumstances of this case, as more fully set forth herein.

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. 2014) 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."