



GENTNER DRUMMOND
ATTORNEY GENERAL

**ATTORNEY GENERAL OPINION
2025-3**

James V. Barwick, Chairman
Oklahoma Wildlife Conservation Commission
1801 N. Lincoln Blvd.
Oklahoma City, OK 73105

April 16, 2025

Dear Chairman Barwick:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following question:

Whether the Legislature may impose, consistent with the Oklahoma Constitution, an obligation on the Oklahoma Wildlife Conservation Commission (“OWCC”) requiring it to make annual payments to individual counties “in lieu of” ad valorem taxes on its property located within those counties?¹

**I.
SUMMARY**

No, the Legislature may not obligate the OWCC to make annual payments to individual counties “in lieu of” ad valorem taxes on its property located within those counties. The Oklahoma Constitution generally exempts state property from taxation. OKLA. CONST. art. X, § 6(A). Title 29, section 3-303(C) of the Oklahoma Statutes improperly skirts that constitutionally mandated exemption by fashioning a substitute for a tax that it could not impose directly. And even if the Legislature could permissibly exact such a tax, the statute also violates a separate and distinct constitutional requirement devoting the OWCC’s funds to the management and benefit of the state’s wildlife resources “and for no other purpose.” OKLA. CONST. art. XXVI, § 4. In short, title 29, section 3-303(C) is unconstitutional. The OWCC does not bear any “in lieu of” ad valorem tax obligations to individual counties arising under section 3-303(C). Finally, because the office concludes that section 3-303(C) violates the Oklahoma Constitution, this opinion is advisory only.

¹ The request consists of eight separate questions, but each of these revolves around the central issue of title 29, section 3-303(C)’s constitutionality.

II. BACKGROUND

The question presented tests the constitutional fitness of a legislative enactment imposing the functional equivalent of an annual tax on state lands belonging to the OWCC for the fiscal benefit of Oklahoma’s counties. In 1956, the people of Oklahoma adopted article XXVI of the Oklahoma Constitution, which created the Department of Wildlife Conservation and the OWCC.² OKLA. CONST. art. XXVI, § 1; *see also Okla. Wildlife Fed’n, Inc. v. Nigh*, 1972 OK 144, ¶ 6, 513 P.2d 310, 312 (recounting the history of article XXVI’s enactment). Relevant here, the Constitution empowers the OWCC to acquire “all property necessary, useful or convenient for its use in carrying out the objects and purposes of [article XXVI].” OKLA. CONST. art. XXVI, § 2; *see also* 29 O.S.2021, § 3-303(A) (codifying similar OWCC authority). The Constitution also describes both what those “objects and purposes” are and are not: the OWCC “shall” dedicate its funds to “the control, management, restoration, conservation and regulation of the bird, fish, game and wildlife resources of the State, including the purchase or other acquisition of property for said purposes, **and for no other purpose.**” OKLA. CONST. art. XXVI, § 4 (emphasis added); *see also* 29 O.S.2021, § 3-101(A) (same); 29 O.S.2021, § 3-302(A)–(B) (creating the “Wildlife Conservation Fund,” which “shall be under the control and supervision of the [OWCC]”).

In 1988, the Legislature amended title 29, section 3-303, a provision within the Oklahoma Wildlife Conservation Code, to include a new subsection containing the following language, in pertinent part:

On any land acquired by the Oklahoma Wildlife Conservation Commission pursuant to the provisions of the Oklahoma Wildlife Conservation Code, after the effective date of this act, the Commission shall annually make in lieu of tax payments equal to the average ad valorem tax per acre paid on similar land in that county. Said payments shall be made from any funds created in or pursuant to the authority granted by the Oklahoma Wildlife Conservation Code.³

1988 Okla. Sess. Laws ch. 120, § 3 (codified at 29 O.S.2021, § 3-303(C)). You seek the office’s opinion on the OWCC’s obligations arising under this subsection. You report that since section 3-303(C)’s enactment thirty-six years ago, the OWCC has remitted more than \$4,500,000 in the form of statutorily mandated “in lieu of tax payments” to various Oklahoma counties. Furthermore, you indicate that these payments have imperiled the OWCC’s ability to obtain federal grant funds, the terms of which typically require state wildlife agencies to dedicate the administration of their real property to the beneficial purposes contemplated by the grants. Since the date of its enactment, it appears that no Oklahoma court has considered any challenge to the validity of the statute in a published opinion.

² The statute at issue refers only to the OWCC. *See* 29 O.S.2021, § 3-303(C). As set forth in the Oklahoma Constitution, the “Department of Wildlife Conservation shall be governed by the Wildlife Conservation Director . . . under such rules, regulations and policies as may be prescribed from time to time by the Oklahoma Wildlife Conservation Commission.” OKLA. CONST. art. XXVI, § 1; *see also* 29 O.S.2021, § 3-101(A) (codifying the creation of the Department and Commission in the Oklahoma Statutes). The OWCC serves as the governing body of the Department, and references to the two entities are used interchangeably in this opinion.

³ The Legislature provided an effective date of January 1, 1989.

III. DISCUSSION

A. The Legislature may not require an “in lieu of” payment from the OWCC as a substitute for an expressly exempted ad valorem tax obligation.

Although you have posed multiple questions about the application of section 3-303(C), your request essentially asks whether the Legislature acted within proper constitutional bounds when enacting section 3-303(C), thereby creating an “in lieu of” ad valorem tax obligation for lands belonging to the OWCC. “Ad valorem taxes are direct taxes on real and personal property based on the property’s value.” *Liddell v. Heavner*, 2008 OK 6, ¶ 8, 180 P.3d 1191, 1196. Toward that end, all property in Oklahoma, both real and personal, “is generally subject to ad valorem taxation at a percentage of its fair cash value, unless it is expressly exempted by law.” *Kingfisher Wind, LLC v. Wehmuller*, 2022 OK 83, ¶ 16, 521 P.3d 786, 789–90 (citing 68 O.S.2021, § 2804). But, of paramount importance here, the Oklahoma Constitution exempts the property of the state from taxes in general. OKLA. CONST. art. X, § 6(A) (“all property of this state . . . shall be exempt from taxation”). And this categorical exemption applies to ad valorem taxation as well. Oklahoma law has expressly exempted the “property of the state or a subdivision thereof . . . from the payment of ad valorem taxes.” *Cumberland Operating Co. v. Ogez*, 1988 OK 14, ¶ 13, 769 P.2d 105, 108–09. That is, “[a]ll property of this state” falls into the category of property that “shall be exempt from ad valorem taxation.” 68 O.S.Supp.2023, § 2887(2); *see also Cumberland Operating Co.*, 1988 OK 14, ¶ 13, 769 P.2d at 108 (explaining how “[p]roperty which is exempt from ad valorem taxation, in which the taxpayer is relieved of the duty of paying the tax, is expressly enumerated” by statute).

As a threshold matter, the OWCC is an agency of the State of Oklahoma. *See, e.g.*, 61 O.S.Supp.2022, § 102(5) (defining an “[p]ublic agency,” for purposes of the Public Competitive Bidding Act of 1974 as “the State of Oklahoma . . . and any department, agency, board, bureau, commission, committee or authority of any of the [State]”). Because the property of the OWCC is therefore state property, it is categorically exempt from ad valorem taxation within the plain meaning of article X, section 6 of the Oklahoma Constitution and title 68, section 2887(2) of the Oklahoma Statutes. This determination does not, in itself, end the analysis. To be sure, section 3-303(C) does not purport to apply a direct ad valorem tax at all. Rather, the Legislature took care to require that the OWCC “shall annually make in lieu of tax payments equal to the average ad valorem tax per acre paid on similar land in that county.” 29 O.S.2021, § 3-303(C).

Indisputably, the Legislature may employ “in lieu” language when drafting Oklahoma tax statutes. *See Cumberland Operating Co.*, 1988 OK 14, ¶ 13, 769 P.2d at 108 (property in Oklahoma “is subject to ad valorem taxation, unless specifically exempt by law or by reason of payment of an in lieu tax”); 68 O.S.2021, § 2804 (authorizing ad valorem taxation of all property “except that which is specifically exempt by law, and except that which is relieved of ad valorem taxation by reason of the payment of an in lieu tax”). “Where the language of a statute is plain and unambiguous, and its meaning clear . . . , the statute will be accorded the meaning as expressed by the language therein employed.” *Cave Springs Pub. Sch. Dist. I-30 v. Blair*, 1980 OK 103, ¶ 4, 613 P.2d 1046, 1048. The Oklahoma Supreme Court has specifically stated that the phrase “[i]n lieu of” means “in substitution for.” *Apache Gas Prods. Corp. v. Okla. Tax Comm’n*, 1973 OK 34, ¶ 18, 509 P.2d

109, 114; *see also* 1987 OK AG 150, ¶ 9 (“The meaning of ‘in lieu of,’ when that phrase is used in a statute, is well settled. Our State Supreme Court, as well as most other state courts, universally hold that the phrase means ‘instead of,’ ‘in place of,’ or ‘in substitution for.’”).

Within the state’s Ad Valorem Tax Code, the Legislature has enumerated eleven distinct categories for which “fees or taxes levied by the provisions of the Oklahoma Statutes shall be in lieu of ad valorem tax.” 68 O.S.2021, § 2805. The statutory list is instructive. By way of example, it includes the “registration fees and taxes imposed upon aircraft,” *id.* § 2805(1), “[r]egistration fees for motor vehicles,” *id.* § 2805(2), and the “taxes levied upon the gross production of” minerals, *id.* § 2805(5); *see also* *Cumberland Operating Co.*, 1988 OK 14, ¶ 14, 769 P.2d at 109 (describing how the Legislature’s enactment of the gross production tax “imposed a special tax in lieu of and as a substitute for the general ad valorem tax on [] oil and gas”). The Oklahoma Supreme Court has long recognized “the right of the state, where the nature of the property rendered the assessing and levying of ad valorem taxes thereon difficult, to adopt a different method more suited, in the judgment of the legislature, to reach and assess such property.” *Magnolia Petroleum Co. v. Okla. Tax Comm’n*, 1940 OK 437, ¶ 5, 106 P.2d 829, 831; *see also* *Apache Gas Prods. Corp.*, 1973 OK 34, ¶ 19, 509 P.2d at 114 (Legislature may “value and classify such property by means and methods differing from that commonly employed in the assessment, levy, and collection of taxes by counties”) (quotation and citation omitted). Meanwhile, nothing resembling section 3-303(C)’s “in lieu of tax payments equal to the average ad valorem tax per acre paid on similar land in that county” is included among the categories found in title 68, section 2805 of the Oklahoma Statutes. Here, the Legislature has merely replaced an ad valorem tax on exempt real property with an essentially identical substitute tax *on the same exempt real property* under the label of a permissible “in lieu of” payment.⁴ This approach is improper; regardless of the framing, it is an unconstitutional tax.

Plainly, “[t]he Legislature may substitute one form of taxation for another” as a general matter. *Home-Stake Prod. Co. v. Bd. of Equalization*, 1966 OK 115, ¶ 16, 416 P.2d 917, 922; *see also* *In re Assessment of Chickasha Cotton Oil Co.*, 1920 OK 339, ¶ 5, 194 P. 215, 216 (“The Constitution does not require that property be taxed upon an ad valorem basis. The Legislature may substitute another form of taxation.”); *Save Ad Valorem Funding for Students v. Okla. Dep’t of Env’t Quality*, 2006 OK CIV APP 53, ¶ 7, 135 P.3d 823, 826 (noting that the Legislature “may withdraw a class of property from ad valorem taxation if it substitutes another form of taxation”). But the exercise of legislative judgment inherent in the act of substitution presumes the prior existence of a *valid* ad valorem tax obligation for which a new and equally valid mode of taxation is simply being exchanged. In other words, the taxpaying entity will have been “relieved of payment of ad valorem taxes by payment of the substitute” tax. *Cumberland Operating Co.*, 1988 OK 14, ¶ 14, 769 P.2d at 109. That is not the case here. Section 3-303(C) does not “relieve” the OWCC of anything. Instead, the statute burdens the OWCC by grafting an invalid recurring payment obligation onto an otherwise legitimate—and constitutionally authorized—exemption from ad valorem taxes.

Fundamentally, our state Constitution “grants to the Legislature the power to legislate on any ‘rightful subject.’” *Naifeh v. State ex rel. Okla. Tax Comm’n*, 2017 OK 63, ¶ 11, 400 P.3d 759, 763 (quoting OKLA. CONST. art. V, § 36). By a similar token, courts “do not look to the Constitution

⁴ “Real property, for the purpose of ad valorem taxation, shall be construed to mean the land itself, and all rights and privileges thereto belonging or in any wise appertaining” 68 O.S.2021, § 2806.

to determine whether the Legislature is authorized to do an act but rather to see whether it is prohibited.” *Draper v. State*, 1980 OK 117, ¶ 10, 621 P.2d 1142, 1146. “A mandatory provision in our constitution . . . is a limitation upon the power of the legislature.” *Lepak v. McClain*, 1992 OK 166, ¶ 8, 844 P.2d 852, 854. And the Oklahoma Constitution mandates that state property “shall be exempt from taxation.” OKLA. CONST. art. X, § 6. By using the words “in lieu of” in section 3-303(C), the Legislature conjured a costly substitute for a tax obligation that the OWCC did not owe to any county. “The principle applies that what may not be done directly should not be allowed to be done indirectly.” *Reherman v. Okla. Water Res. Bd.*, 1984 OK 12, ¶ 15, 679 P.2d 1296, 1301. Accordingly, the “in lieu of tax payments” imposed by section 3-303(C) do not comport with the requirements of the state constitution.

B. Section 3-303(C) further contravenes the Oklahoma Constitution by directing the use of OWCC funds for a purpose that does not benefit wildlife resources.

Even if section 3-303(C)’s “in lieu of tax payments” could withstand constitutional scrutiny under article X, section 6 of the Oklahoma Constitution, the statute would also independently violate the separate constitutional provision governing how the OWCC must use and dispose of its funds in accordance with article XXVI, section 4. “A constitutional provision must be construed considering its purpose and given a practical interpretation so that the manifest purpose of the framers and the people who adopted it may be carried out.” *Fent v. Fallin*, 2014 OK 105, ¶ 17, 345 P.3d 1113, 1117. By vote of the people, article XXVI of the Oklahoma Constitution established the OWCC and delineated the means by which it would accomplish its mission and purpose. Significantly, our state constitution expressly permits the OWCC to acquire “all property necessary, useful or convenient for its use in carrying out the objects and purposes of [article 26].” OKLA. CONST. art. XXVI, § 2. For its part, the Oklahoma Wildlife Conservation Code provides the OWCC with an identical directive. *See* 29 O.S.2021, § 3-303(A) (the OWCC “may acquire . . . all property or money necessary, useful or convenient for its use in carrying out the objects and purposes of this Code”).

The Oklahoma Constitution has not left these objects and purposes to guesswork. The OWCC must exclusively dedicate its funds to “the control, management, restoration, conservation and regulation of the bird, fish, game and wildlife resources of the State, including the purchase or other acquisition of property for said purposes, **and for no other purpose.**” OKLA. CONST. art. XXVI, § 4 (emphasis added); *see also* 29 O.S.2021, § 3-302(C) (restricting the “fees, monies or funds” of the OWCC to “the control, management, restoration, conservation and regulation of the wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto and for no other purposes”). Bearing these constitutional imperatives in mind, the office concludes that section 3-303(C)’s continual diversion of OWCC funds to various counties has allowed “the obvious purposes of Article 26 [to] be defeated.” *Okla. Wildlife Fed’n*, 1972 OK 144, ¶ 20, 513 P.2d at 314; *see also* 1976 OK AG 287 (“[T]he intent of the people of the state, in adopting Section 4 of Article 26 of the Oklahoma Constitution was that no money arising from the operation and transactions of the Department of Wildlife Conservation was to be diverted from the Wildlife Conservation Fund.”); 1971 OK AG 163 (emphasizing that, in order for “any [OWCC] expenditure to be permissible, it must serve to further the ‘control, management, restoration, conservation and regulation’ of the State’s wildlife resources”).

“When reasonably possible, . . . statutes should be construed as to uphold their constitutionality.” *Williamson v. State*, 1969 OK CR 326, ¶ 8, 463 P.2d 1004, 1008. But article XXVI, section 4 of the Oklahoma Constitution unambiguously contains “an evident object and purpose” that is thwarted by the application of section 3-303(C) to the OWCC. *Lepak*, 1992 OK 166, ¶ 8, 844 P.2d at 854. Simply put, “[t]he Constitution is the bulwark to which all statutes must yield.” *EOG Res. Mktg., Inc. v. Okla. State Bd. of Equalization*, 2008 OK 95, ¶ 16, 196 P.3d 511, 520. In sum, section 3-303(C) imposes extraneous tax obligations on the OWCC that cannot be reconciled with the fulfillment of its clear constitutional duties under article XXVI as the steward of the state’s wildlife resources.

Although your request goes on to suggest additional grounds supporting section 3-303(C)’s invalidity, any remaining questions about the application and enforceability of the statute are resolved by the office’s conclusion that the statute independently violates articles X and XXVI of the Oklahoma Constitution. As a final matter, you ask whether the OWCC could seek reimbursement of its prior payments to individual counties following a legal determination that section 3-303(C) is unconstitutional. Answering that question would require this office to assess the availability of legal remedies and potential defenses in advance of anticipated litigation. Your final question must ultimately remain for determination “by an action in the District Court of this state.” *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 12, 681 P.2d 763, 767. As such, it falls beyond the scope of this opinion. *See* 74 O.S.2021, § 18b(A)(5); 2024 OK AG 7, ¶ 19 (“Unlike a court, an Attorney General Opinion does not consider or make rulings on factual issues . . .”).

It is, therefore, the official Opinion of the Attorney General that:

Title 29, section 3-303(C) of the Oklahoma Statutes imposes an unconstitutional “in lieu of” ad valorem tax obligation on the OWCC. Furthermore, section 3-303(C) impairs the constitutionally defined objects and purposes of the OWCC, in derogation of article XXVI, section 4 of the Oklahoma Constitution.⁵



GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA



CULLEN D. SWEENEY
ASSISTANT SOLICITOR GENERAL



⁵ By virtue of this opinion’s conclusion that title 29, section 3-303(C) of the Oklahoma Statutes violates the Oklahoma Constitution, it must be construed as advisory only. *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 12, 681 P.2d 763, 767.