



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2026-15

The Honorable Jordan Russell, Chairman
Oklahoma Workers' Compensation Commission
1915 N. Stiles Ave.
Oklahoma City, OK 73105

October 14, 2026

Dear Chairman Russell:

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

1. After the 2019 repeal of the Oklahoma Employee Injury Benefit Act ("Act"), 85A O.S.Supp.2014, §§ 201–213, are the monies that remain in the Act's Option Insured Guaranty and Option Self-insured Guaranty Funds ("Option Funds") held in trust?
2. If the answer to question 1 is yes, and all claims or potential claims against the Option Funds have been satisfied, how may the Legislature use the remaining monies in the Option Funds?

I.
SUMMARY

Following the Act's 2019 repeal, the monies that remained in the Option Funds ceased being held in trust. Because the office resolves your first question in the negative, it need not address your second question.

II.
BACKGROUND

Enacted in 2013 as a part of a sweeping overhaul of Oklahoma's workers' compensation system, the Act, 2013 Okla. Sess. Laws ch. 208, §§ 107–120 (repealed 2019), created an alternative system for administering workers' compensation claims outside of the state's new administrative system. This alternative system was better known as the "opt-out plan." For decades, Oklahoma workers' compensation claims were resolved in a case brought before the former Workers' Compensation Court. The Administrative Workers' Compensation Act created the current administrative system. The Act and the opt-out plan were designed to reduce costs and expedite resolutions for Oklahoma employees and employers.

To ensure that injured employees continued receiving compensation benefits if insurers or self-insured employers became insolvent, the Act created the Option Funds. 85A O.S.Supp.2014, § 205(A)(1)–(2) (repealed 2019). Insurers and self-insured employers were required to pay a fee to the Option Funds until each of them reached a minimum funded level. *Id.* § 205(D)(1)–(2). Based on information provided to this office, the fees collected from the insurers and self-insured employers were comingled within their respective Option Fund and cannot be traced to any one insurer or self-insured employer. By statute, monies held in the Option Funds were not subject to appropriation, and were to be used only

to compensate employees for eligible benefits for a compensable injury under this act, pay outstanding workers' compensation obligations of the impaired insurer, and for all claims for related administrative fees, operating costs, attorney fees, and other costs reasonably incurred by the Oklahoma Property and Casualty Guaranty Association in the performance of its duties under th[e] [Oklahoma Employee Injury Benefit] [A]ct.

Id. § 205(B) (repealed 2019).

In 2016, however, the Oklahoma Supreme Court struck down the Act as an impermissible special law. *Vasquez v. Dillard's*, 2016 OK 89, 381 P.3d 768. In short, the court concluded that the Act unconstitutionally curtailed an employee's workers' compensation rights under the opt-out plan. *Vasquez*, ¶ 36, 381 P.3d at 775. The Act accounted for this possibility, directing opt-out plan employers to transfer to the administrative system within 90 days if any part of the Act was declared unconstitutional. 85A O.S.Supp.2014, § 213(B)(4) (repealed 2019).

Three years later, the Legislature repealed the Act entirely, including the provisions creating the Option Funds. House Bill 2367, 2019 Okla. Sess. Laws ch. 476, § 66. However, the repealing legislation did not mention or provide for any disposition of the monies still in the Option Funds. Now, the Workers' Compensation Commission has asked this office what should happen to these monies after years of sitting in the two Option Funds.¹ In essence, this office must also determine the status of the Option Funds a decade after *Vasquez* and seven years after the Act's repeal.

III. DISCUSSION

Answers to two questions dictate this opinion's conclusion. The first is whether applying the Act's language together with the Oklahoma Supreme Court's holding in *Moran v. State ex rel. Derryberry*, 1975 OK 69, 534 P.2d 1282, resulted in the monies in the Option Funds being "funds held in trust." The second is how the 2019 repeal affected the Option Funds and the monies in the Option Funds. Each question will be addressed in turn.

¹ As of this date, the amount allocated to the Option Insurance Guaranty Fund is \$201,696.93, and the amount allocated to the Option Self-insured Guaranty Fund is \$277,722.53. OKLAHOMA STATE TREASURER, STATE OF OKLAHOMA – OK INVEST PROGRAM MONTHLY REP. at 9 (Sept. 2026), <https://oklahoma.gov/content/dam/ok/en/treasurer/documents/investments/ok-invest/fy26/09.30.26%20Monthly%20Report.pdf>.

The Act's purpose was to assure "continuation of benefits . . . for covered claims that are due and unpaid or interrupted due to the inability of the insurer or [self-insured employer] . . . to meet its compensation obligations" 85A O.S.Supp.2014, § 205(B) (repealed 2019). And, as mentioned above, monies in the Option Funds were "not subject to appropriation" Instead, the Act specified what the monies were to be expended for: (1) compensation of employees for eligible benefits for a compensable injury; (2) payment of outstanding workers' compensation obligations of the impaired insurer; and (3) all claims for related administrative fees, operating costs, attorney fees, and reasonable costs incurred in the administration of the Act. *Id.* In addition, no monies in the Option Funds were subject to deduction, tax, levy, or other type of assessment. *Id.* § 205(I) (repealed 2019).

"When . . . examin[ing] a statute, [the] primary goal is to determine legislative intent through the 'plain and ordinary meaning' of the statutory language." *Lunn v. Continental Motors, Inc.*, 2025 OK 29, ¶ 8, 568 P.3d 589, 592. The Act's language is plain and clear, thus it does not require the office to employ the rules of statutory interpretation. *Lawson v. LeFlore Cnty. Det. Ctr. Pub. Tr. Sec. Comm'n*, 2025 OK 87, ¶ 13, 584 P.3d 1162, 1167.

Specifically, the Act requires monies in the Option Funds to be collected from employers that opt out of the State's workers compensation system adopted in 2013 and paid only for claims for employees of those opt-out employers and for administrative costs and expenses to maintain the opt-out system. 85A O.S.Supp.2014, § 205(B) (repealed 2019). This limitation is further bolstered by the Act explicitly providing that monies in the Option Funds are **not** available for legislative appropriation. *Id.*

In *Moran*, the court held that the Legislature could not appropriate monies in the State Insurance Fund because the monies were being held in trust by the State "for . . . [w]orkmen's [c]ompensation purposes" and were, accordingly, not state funds.² *Moran*, 1975 OK 69, ¶ 6, 534 P.2d 1282, 1284. The court reasoned:

[T]he funds of the State Insurance Fund are not State funds and do not belong to the State, that such funds are trust funds for the benefit of employers and employees, and are not available for the general or other purposes of the State, nor are they subject to appropriation by the Legislature for purposes other than those contemplated by the State Insurance Fund Act.

Id. ¶ 34, 534 P.2d at 1288. Also, the court concluded that the State never expected to financially benefit from the State Insurance Fund because it was set up to be self-sustaining, not a revenue generator. *Id.* ¶ 25, 534 P.2d at 1286. Accordingly, under section 205 and *Moran*, the Option Funds were trust funds held for the opt-out plan employees' benefit.

Of course, monies held in trust for a specific legislative purpose would seem to retain their trust character. Evaluating Oklahoma case law, however, this is not always the case. Given that the monies in the Option Funds were once funds held in trust, the office must determine whether a

² While Oklahoma law authorized the State Insurance Fund to receive appropriations, the record before the Oklahoma Supreme Court revealed that the Fund never received any appropriation. *Moran*, ¶ 17, 534 P.2d at 1285. Consequently, the State Insurance Fund mostly consisted of insurance premiums.

constructive trust or a resulting trust may be applicable here to safeguard the Option Funds from potential misuse.

First, constructive trusts result from an act of fraud to prevent unjust enrichment. *See Cacy v. Cacy*, 1980 OK 138, ¶¶ 6–7, 619 P.2d 200, 202. Here, there is no fraud or risk of unjust enrichment. Still, a resulting trust must be ruled out. A resulting trust forms when:

the legal estate in property is disposed of or acquired, not fraudulently or in violation of any fiduciary duty, but the intent appears or is inferred from the terms of the disposition, or from accompanying facts and circumstances, ***that the beneficial interest is not to be go to or be enjoyed with the legal title.***

Id. at ¶ 9, 619 P.2d at 202 (emphasis added). But a resulting trust arises only when the evidence supporting its existence is “clear, unequivocal[,] and decisive beyond a reasonable doubt.” *Id.* at ¶ 5, 619 P.2d at 202. Further, “[i]ntention³ and consideration⁴ are essential elements of a resulting trust.” *Id.* at ¶ 9, 619 P.2d at 202. Here, the Legislature, when it repealed the Act, did not provide any directives on how to handle the Option Funds. The surrounding facts and circumstances do not support or thwart the beneficial interest of the Option Funds from being enjoyed with the legal title. Neither intention nor consideration exists. Above all, absent the necessary “clear, unequivocal[,] and decisive beyond a reasonable doubt” evidence to show that a resulting trust should emerge, the Option Funds are not subject to a resulting trust.

The Option Funds, like the State Insurance Fund in *Moran*, had an explicit statutory purpose. And also similar to the State Insurance Fund, the Option Funds were not subject to appropriation and were designed to be self-sustaining. *See* 85A O.S.Supp.2014, § 205(B), (D) (repealed 2019). Unlike in *Moran*, the Legislature has not attempted to utilize these funds for general appropriations purposes—indicating that the Legislature understood that these funds were held in trust for specific purpose. The Act has been repealed in its entirety, including the provisions that created and governed the Option Funds. Such repeal thus eliminated the whole purpose for which the monies were being held.

So, the core question is what effect did the 2019 repeal have on the monies in the Option Funds, if any? The above analysis has established that the monies within the Option Funds were funds held in trust for the employees and qualified employers in accordance with the Act. To be sure, the 2019 repeal dissolved the legal authority for the Option Funds. Oklahoma law treats repealed statutes “as if [they] never existed.” *State v. Brester*, 2023 OK CR 10, ¶ 17, 531 P.3d 125, 133 (citing *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868)). The repeal also removed the Option Funds’ purpose from Oklahoma law. “When the purpose for which [a] . . . trust was created ceases, the estate of the trust[] also ceases.” 60 O.S.2021, § 175.49. In *Moran*,

³ The court explained that intent “can be actual, or implied from the nature of the transaction and the facts surrounding it.” *Cacy*, 1980 OK 138, ¶ 9, 619 P.2d at 202–03.

⁴ In *Boatright v. Perkins*, the Oklahoma Supreme Court observed that a child paying for the purchase price of a real property for his or her parent was consideration when he or she conveyed legal title of the property to the parent but held a beneficial interest by virtue of the payment of consideration. 1995 OK 34, ¶¶ 7, 9, 894 P.2d 1091, 1093–94.

the statute underpinning the State Insurance Fund and its purpose were not eliminated by the legislation authorizing the setting aside of excess funds and then appropriating the money away from the State Insurance Fund. 1975 OK 69, ¶¶ 7–11, 534 P.2d at 1284. But here, both the Options Funds and the purpose were eliminated—erased as if they never existed. House Bill 2367, 2019 Okla. Sess. Laws ch. 476, § 66. Consequently, the 2019 repeal of the Act resulted in the monies no longer being “funds held in trust.”⁵

* * *

Because the answer to your first question is that the monies remaining in the state treasury after the Option Funds’ repeal are no longer held in trust, the office need not answer your second question. The Legislature should exercise sound judgment in accordance with article V, sections 36 and 55 of the Oklahoma Constitution to determine the monies’ disposition. Considering that the opt-out plan employers transitioned to the administrative system after the court’s *Vasquez* decision, transferring the monies to a fund such as the Self-insurance Guaranty Fund established under title 85A, section 28 of the Oklahoma Statutes would be an equitable solution for those self-insured employers that initially participated in the opt-out plan.

Crucially, this opinion also rests on three other important facts and, as a result, should be limited in its scope and application. First, any statute of limitations for any claim to the monies by employees, insurers, or self-insured employers in the Option Funds expired years ago. *See* 12 O.S.2021, § 95. Second, nothing in the Act created any reasonable expectation of a refund to the insurers and self-insured employers. *See* 85A O.S.Supp.2014, § 205 (repealed 2019). The Option Funds were initially capitalized using fees, and subsequent fees were only charged when the Option Funds dipped below statutory minimums. *Id.* § 205(D)(1)–(2). Third and finally, based on information available to this office, the remaining monies in the Option Funds cannot be accurately traced to or reconciled with fees paid by insurers and self-insured employers.

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

The remaining comingled monies in the Oklahoma Option Insured Guaranty Fund and Option Self-insured Guaranty Fund created by the Act are no longer funds held in trust as a result of the 2019 repeal of the Oklahoma Employee Injury Benefit Act.



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⁵ For the purposes of this Opinion, the office presumes that all claims, including potential claims, against the Option Funds have either been disposed of or have expired.