



ORIGINAL

2023 OK 84

FILED
SUPREME COURT
STATE OF OKLAHOMA

AUG 1 2023

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JOHN D. HADDEN
CLERK

IN THE MATTER OF THE APPLICATION)
OF THE OKLAHOMA TURNPIKE)
AUTHORITY FOR APPROVAL OF NOT TO)
EXCEED \$500,000,000 OKLAHOMA)
TURNPIKE SYSTEM SECOND SENIOR)
LIEN REVENUE BONDS, SERIES 2022)

NO. 120,619

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ORIGINAL ACTION TO APPROVE STATE REVENUE BONDS

¶10 The Oklahoma Turnpike Authority brought this original proceeding pursuant to 69 O.S.2021, § 1718, requesting that this Court approve revenue bonds to finance the construction of three turnpike projects, update and repair turnpike facilities and infrastructure, refund prior revenue bonds and notes, and pay other costs. Protestants challenged the proposed bonds on several grounds, arguing that the Oklahoma Turnpike Authority lacks legislative authority to construct the three turnpikes. This Court previously assumed original jurisdiction. We approve the proposed bond issue.

**ORIGINAL JURISDICTION PREVIOUSLY ASSUMED;
PROPOSED BOND ISSUE APPROVED.**

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Andrew W. Lester and John E. Dorman, Spencer Fane LLP, Oklahoma City, Oklahoma, for Protestant—City of Norman.

Elaine M. Dowling, Oklahoma City, Oklahoma for Protestants—R. Jon McKay and Jo Deaton McKay.

Winchester, J.

¶1 Petitioner Oklahoma Turnpike Authority (OTA) asks this Court to approve \$500,000,000.00 in Oklahoma Turnpike System Second Senior Lien Revenue Bonds pursuant to 69 O.S.2021, § 1718. In determining the validity of the bonds, the two main issues raised by Protestants Pike Off OTA, City of Norman, R. Jon McKay, and Jo Deaton McKay (collectively Protestants) are (1) whether the OTA has the legislative authority to build the proposed route of the South Extension, and (2) whether the OTA has the legislative authority to issue additional bonds to finalize the Oklahoma City Outer Loop (Loop) with the Tri-City Connector and the East-West Connector.

¶2 Protestants first invite the Court to inject itself into the route-making process for a new turnpike location in the vicinity of Norman. Protestants ask that we disapprove an extension and thus deny the proposed route approved by the OTA. For over 30 years, the Legislature has given the OTA discretion to select turnpike routes within the locations authorized by the Legislature. The Court has consistently honored the discretion given to the OTA by the Legislature and allowed the OTA to exercise its judgment as the OTA has the engineering expertise and traffic data to make these complex far-reaching decisions regarding turnpike routes. We uphold the authority given to the OTA to decide routes for

turnpikes and conclude that the OTA has the legislative authority to construct the South Extension that conforms to the location generally described in 69 O.S.2021, § 1705(e)(28).

¶3 To hold otherwise would inject this Court into the OTA's decision-making process regarding proposed turnpike routes. The OTA contends the proposed components of the Loop and South Extension will meet the purposes of the OTA to better facilitate vehicular traffic and meet safety needs, as traffic counts have steadily increased for the last three decades. See 69 O.S.2021, § 1701.¹ For example, in 1987, the daily traffic count through the I-35/I-40 corridor was approximately 50,000 vehicles. In 2022, the traffic count had increased to 150,000, producing five accidents per day. It is projected that there will be 300,000 vehicles traversing this major economic corridor by 2050.

¹ The purpose of the OTA is found 69 O.S.2021, § 1701, which provides:

In order to facilitate vehicular traffic throughout the state and remove the present handicaps and hazards on the congested highways in the state, and to provide for the construction of modern express highways embodying reasonable safety devices including ample shoulder widths, long sight distances, the bypassing of cities and towns, and grade separations at intersecting highways and railroads, the Oklahoma Turnpike Authority, as created in Section 1703 of this title, is hereby authorized and empowered to construct, maintain, repair, and operate turnpike projects as defined in Section 1704 of this title, at such locations as shall be approved by the Transportation Commission, and to issue turnpike revenue bonds of the Authority payable solely from revenues to pay the cost of such projects. The Authority is further authorized and empowered to develop and market alternative uses of the Oklahoma Turnpike Authority Electronic Toll Collection System, and construct, maintain, repair, and operate inter-modal transportation transfer facilities and infrastructure relating thereto, including, without limitation, warehouses and utility facilities and intercity rail transit projects as it shall determine to be feasible and economically sound.

¶4 The Court would not only be deciding the validity of the bonds but also substituting the OTA's discretion with its own in choosing a route, which the Court has consistently refused to do. The Court—without technical expertise—would be required to perform a turn-by-turn analysis of every proposed turnpike route to determine if it falls within the very general turnpike locations described by the Legislature in 69 O.S.2021, § 1705(e). In other words, the Court would be restricting OTA's authority by performing a more rigorous analysis of the OTA's proposed turnpikes routes than what the Legislature generally described in § 1705(e). Any other conclusion by the Court would further require the OTA to seek approval for every route modification that might be necessary when constructing the proposed turnpikes, leading to protracted litigation and creating uncertainty for Oklahoma bonds in the financial markets.

¶5 Striking down the proposed turnpikes would also affect the entire process of financing and constructing turnpike projects. Prior to the OTA seeking bond validation from this Court, the Legislature authorized the turnpike projects at issue, and the OTA hired engineering and design firms to determine the proposed routes. The OTA's Board of Directors approved these routes with the caveat that the proposed routes were still under design and subject to environmental studies. The OTA has been working with federal and state agencies and local governments in the development of the final design of the proposed turnpike routes. Striking the proposed routes at this juncture and not allowing the OTA to exercise its statutory discretion to determine routes that are feasible and economically sound would not

only waste resources already spent but would also lead to additional litigation. For these reasons, this Court stands by the last 30 years of precedence, allowing the OTA the broad authority to determine routes within the locations authorized by the Legislature. The OTA also has the legislative authority under 69 O.S.2021, §§ 1705(f) and 1709(A) to issue additional bonds to finalize the Loop. We therefore approve the proposed bond issue.

BACKGROUND AND PROCEDURAL HISTORY

¶6 To effectively address the issues before us, we must first look at the Oklahoma Turnpike System (System) as a whole. The System currently consists of 11 turnpikes and approximately 632 miles of roadways. Construction for the turnpike projects began in 1950, and since that time, our Court has never disallowed a bond issuance of the OTA.

¶7 The components of the System at issue are over thirty years in the making:

- Beginning in 1987, Governor Henry Bellmon and the Legislature aspired to construct new turnpike projects, including what is termed the Loop.
- In 1988, the OTA sought validation of its bonds to construct the proposed turnpikes, including components of the Loop, and the Court approved the bonds. *In re Application of Okla. Tpk. Auth.*, 1989 OK 21, 770 P.2d 16.
- In 1993, the Legislature authorized the South Extension. See 69 O.S. § 1705(e)(28).

- In 2016, the OTA sought validation of its bonds for the Kilpatrick and Kickapoo components of the Loop, and the Court approved the bonds. *In re Application of Okla. Tpk. Auth.*, 2016 OK 124, 389 P.3d 318.

Over the last 33 years, the OTA has completed four components of the Loop and two components of the South Extension.

¶8 In early 2022, the OTA announced a set of new turnpikes and other projects to improve current turnpikes and their infrastructure, titling the project ACCESS² Oklahoma. The three new proposed turnpikes are: 1) the Tri-City Connector, running around the west side of the Will Rogers World Airport to I-44; 2) the East-West Connector, connecting the H.E. Bailey Turnpike around Newcastle, heading east on Indian Hills Road to the south of Draper Lake, then heading northeast connecting to the Kickapoo Turnpike and completing the Loop; and 3) the South Extension, running from I-35 west of Slaughterville and north of Purcell, across the South Canadian River and north through Norman, west of Thunderbird Lake, connecting with the East-West Connector.

¶9 The issues in this case involve these last segments to connect and finalize the Loop (the Tri-City Connector and the East-West Connector) and the final segment of the South Extension. These final segments total approximately 35 miles.

² ACCESS stands for Advancing and Connecting Communities and Economies Safely Statewide.

¶10 The entirety of the ACCESS Oklahoma plan will use approximately \$5 billion in bonds. During a special meeting on June 9, 2022, the OTA adopted a bond resolution, which authorized issuing the first phase of the ACCESS Oklahoma plan for turnpike revenue bonds, not to exceed \$1 billion, at 6% interest over 32 years and secured by turnpike revenues and revenues of the Turnpike Trust Fund. The OTA noted that the full faith and credit of the State of Oklahoma is not pledged, the bonds are self-liquidating, and the terms are well inside what is required by statute.³ See, e.g., *Application of Okla. Capital Improvement Auth.*, 1988 OK 25, 958 P.2d 759.

¶11 On July 11, 2022, the Oklahoma Transportation Commission approved the three proposed turnpike routes for the Tri-City Connector, East-West Connector, and South Extension. The OTA then submitted to the Court its application for the

³ The OTA then submitted its bond application to the Council on Bond Oversight (COBO), seeking provisional and final approval. The COBO granted provisional approval of the bond application, setting out the required conditions for final approval that include (1) the resolution or dismissal of the two actions pending in the District Court of Cleveland County relating to the ACCESS Oklahoma projects, and (2) the approval of the bonds by this Court. This Court has resolved the two actions that were pending in the District Court of Cleveland County. However, due to the time it took to resolve these cases, the provisional approval by the COBO expired on February 5, 2023. The expiration of the COBO's provisional approval has no bearing on the issues before this Court in this matter. The COBO's approval of the bond application is not required prior to the validation of the bonds by this Court. The Legislature has set up two separate approval processes to construct and finance turnpike projects. The Legislature confers upon this Court exclusive original jurisdiction to determine an application by this Court for bond validation to construct and operate turnpikes. 69 O.S.2021, § 1718. The Legislature also gives the COBO the authority to determine whether the purposes for which obligations proposed to be issued by the OTA are for "the furtherance and accomplishment of authorized and proper public functions or purposes of the state or of any county or municipality." 62 O.S.2021, § 695.8(A)(1). However, the COBO does not review the merits of the project. 62 O.S.2021, § 695.8(A)(3). Even with the Court's approval of the bonds in this matter, the OTA must comply with the separate requirements outlined in the Oklahoma Bond Oversight and Reform Act, 62 O.S.2021, §§ 695.1-695.11A, before the OTA can issue turnpike revenue bonds.

assumption of original jurisdiction and petition for validation of the turnpike bonds. Following this Court's order and 69 O.S.2021, § 1718, the OTA published notice of its application and for the statutorily required hearing. Several protestants filed written objections to the application and appeared at the hearing. On October 2, 2022, this Court assumed original jurisdiction, and on November 28, 2022, the Court held oral argument.

STANDARD OF REVIEW

¶12 The Court has long recognized that its obligation in reviewing bonds is to determine whether the bonds facially violate the law and to examine the legal authority presented by protestants. *In re Application of Okla. Tpk. Auth.*, 2018 OK 88, ¶ 5, 431 P.3d 59, 60-61.

ANALYSIS

¶13 The Legislature conferred upon the Court "exclusive original jurisdiction" to hear and determine the OTA's application. 69 O.S.2021, § 1718. The Court's exclusive original jurisdiction entails:

The Authority is authorized in its discretion to file an application with the Supreme Court of Oklahoma for the approval of any bonds to be issued hereunder, and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine each such application. . . . If the Court shall be satisfied that the bonds have been properly authorized in accordance with this article and that when issued, they will constitute valid obligations in accordance with their terms, the Court shall render its written opinion approving the bonds and shall fix the time within which a petition for rehearing may be filed. The decision of the Court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the Authority, its officers and agents, and thereafter the bonds so approved and the revenues

pledged to their payment shall be incontestable in any court in the State of Oklahoma.

68 O.S. 2021, § 1718. Protestants argue that the bonds are not valid because (1) the OTA lacks statutory authorization to construct the South Extension, and (2) the OTA has exceeded its statutory authorization by seeking an additional bond issue to complete the Loop. We address each argument in turn.

A. The OTA is statutorily authorized to construct the South Extension.

¶14 In analyzing the authority the Legislature has given the OTA to construct the proposed turnpikes, we must first look at the standard by which we review this authority. Title 69 O.S.2021, § 1901 states:

The provisions of this Code, being necessary for the welfare of the state and its inhabitants, shall be *liberally construed* to effect the purpose and objects hereof.

We are mandated to liberally construe the OTA's authority found in 69 O.S.2021, § 1705(e). The Legislature gave the OTA the authority:

To construct, maintain, repair, and operate turnpike projects and highways, **with their access and connecting roads, at such locations and on such routes as the OTA shall determine to be feasible and economically sound**; provided, that until specifically authorized by the Legislature, the Authority shall be authorized to construct and operate toll turnpikes only at the following locations

(20) All or any part of an Oklahoma City Outer Loop expressway system beginning in the vicinity of I-35 and the Turner Turnpike and extending west into Canadian County and then south to I-40; and then south and east to I-35 in the vicinity of Moore and Norman; and then extending east and north to I-40 east of Tinker Field; and then extending north to the Turner Turnpike to complete the Outer Loop.

. . . .

(28) A new turnpike and bridge or any parts thereof from a point in the vicinity of the city of Mustang southerly across the South Canadian River to the H.E. Bailey Turnpike in the vicinity of the city of Tuttle; and then easterly across the South Canadian River to a point in the vicinity of the city of Norman.

69 O.S.2021, § 1705(e) (emphasis added).

¶15 The locations listed by the Legislature in the subparts of § 1705(e) include the proposed locations for the Tri-City Connector and East-West Connector in § 1705(e)(20), and the South Extension in § 1705(e)(28). And we must liberally construe these subparts of § 1705(e) regarding the locations and routes of these specific turnpikes authorized by the Legislature.

¶16 The Legislature also gave the OTA broad discretion in determining access routes to the turnpikes. Subsection (j) states as follows:

(j) To designate, except as is provided for herein, the location, and establish, limit and control such points of **ingress to** and **egress from** each turnpike project as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated.

69 O.S.2021, § 1705(j).

¶17 These provisions demonstrate that the Legislature has given the OTA very broad authority to determine routes, including access and connecting roads, within the listed authorized locations. As previously held by this Court, we refuse to strictly construe these legislative authorizations and instead defer to the OTA's technical expertise in determining routes. *In re Application of Okla. Tpk. Auth.*, 1950 OK 208,

¶ 65, 221 P.2d 795, 811.

¶18 Turning to the first issue at hand, Protestants argue for a strict construction of 69 O.S.2021, § 1705(e)(28), concluding the OTA's proposed route for the South Extension is not consistent with or contemplated by subpart (28). The statute provides:

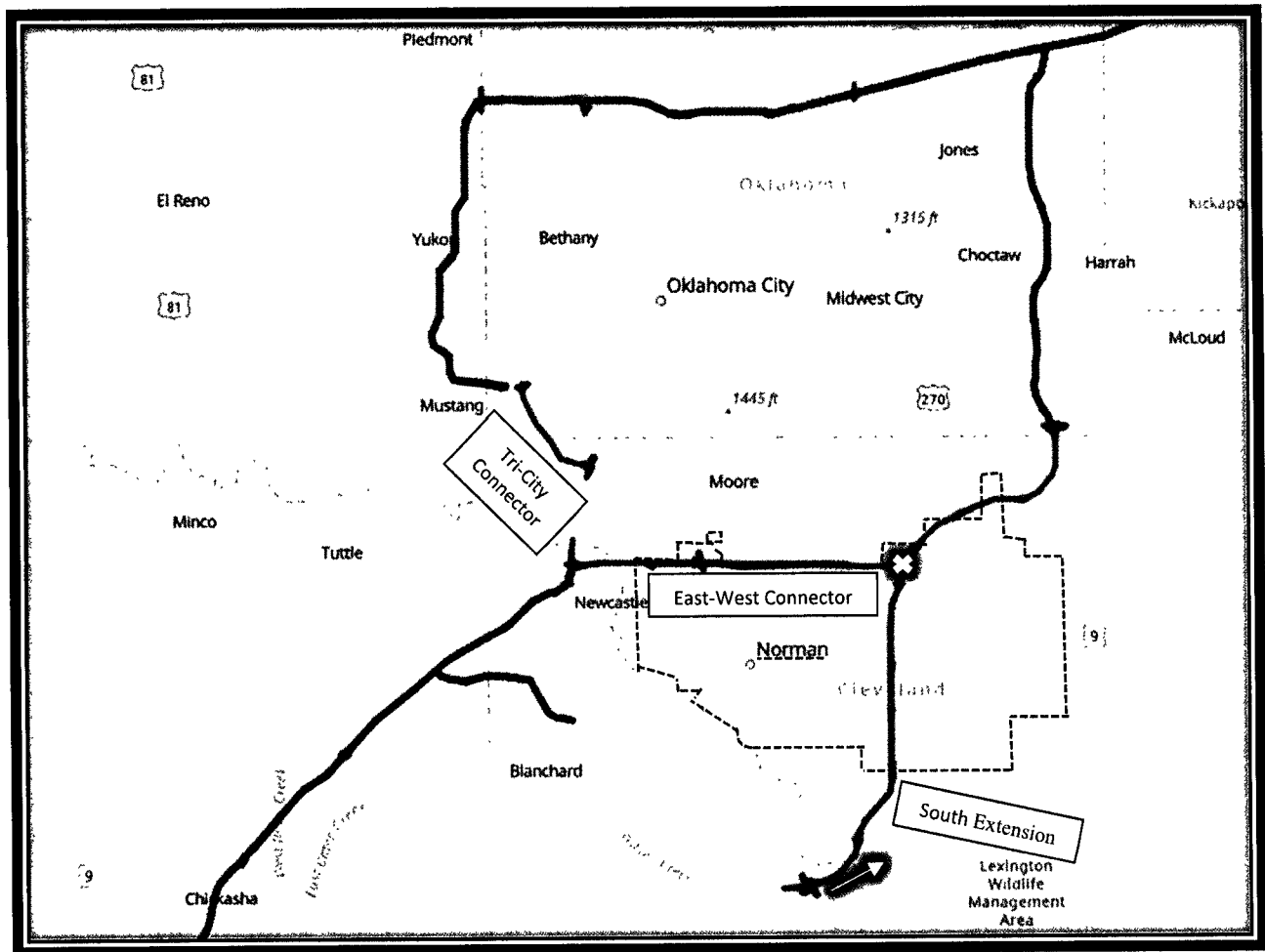
(28) A new turnpike and bridge or any parts thereof from a point in the vicinity of the city of Mustang southerly across the South Canadian River to the H.E. Bailey Turnpike in the vicinity of the city of Tuttle; and then easterly across the South Canadian River to a point in the vicinity of the city of Norman.

Subpart (28) contains *two* independent clauses. The second independent clause provides that the OTA should construct the South Extension to move easterly across the South Canadian River toward Norman.

¶19 If the Court is to construe this statute liberally and the OTA has the discretion to determine routes that are feasible and economically sound (like trying to avoid the densest parts of Norman), the Court must take a broader view of the proposed South Extension, rather than a turn-by-turn analysis of the proposed route. Looking at the entire route, from the H.E. Bailey Norman Spur to the end of the South Extension in Norman, the turnpike moves easterly from the Spur to Highway 9 and I-35, then easterly to the South Extension, where the turnpike then crosses the South Canadian River as required in second clause of subpart (28), and then north where it ends in the vicinity of Norman.

¶20 In authorizing bonds for a turnpike between Tulsa and Oklahoma City, the Court held that it was not “concerned with the details of construction of the road or

any part thereof except the location of the ends” and approved a turnpike that terminated *six* miles outside of Tulsa and *15* miles outside the center of Oklahoma City. *In re Application of Okla. Tpk. Auth.*, 1950 OK 208, ¶¶ 64-65, 221 P.2d 795, 811. Here, Norman is only 11 miles north or an approximate eight-minute drive to where the South Extension begins, just north of Purcell.



¶21 Even more, the South Extension is an access point to the Kickapoo Turnpike, and the OTA has broad discretion to determine such points of ingress to and egress from each turnpike project. 69 O.S.2021, § 1705(j). We also recognize that the OTA may need to adjust the alignment of the South Extension as it has in

previous turnpike projects, including the two most recent bond validation proceedings in 2016 and 2018. For example, the U.S. Bureau of Reclamation denied the OTA's application to cross two sections of its property with the South Extension. However, the U.S. Bureau of Reclamation does not object to the OTA routing the South Extension across certain existing easements if the OTA's use does not interfere with or impact current operation on the easements. The OTA will continue discussions with the U.S. Bureau of Reclamation to adjust the alignment of the South Extension to use the existing easements. Regardless of any further design modifications to the proposed South Extension, we follow our precedent that all matters or questions as to the routes of the proposed turnpikes "will be settled in the future by the Oklahoma Turnpike Authority, within its discretion, or in some other manner, but no such question can affect the validity of this bond issue."

Application Okla. Tpk. Auth., 1952 OK 247, ¶ 33, 246 P.2d 327, 332.

¶22 The Legislature has given the OTA broad authority to determine the route for the South Extension that moves easterly from the beginning point at the H.E. Bailey Spur and crosses the North Canadian River to the terminus in the vicinity of Norman. We follow the last 30 years of this Court's precedent liberally construing the OTA's discretion in designating turnpike routes by "not inquir[ing] into the matter for the purpose of demanding why some other route was not chosen." *Owens v. Okla. Tpk. Auth.*, 1954 OK 345, ¶ 5, 283 P.2d 827, 831. We hold the OTA has properly exercised that authority here.

B. The OTA is authorized to issue additional bonds for the construction of the Tri-City Connector and the East-West Connector.

¶23 The next issue is whether the OTA has legislative authority to issue additional bonds to finalize the Loop with the Tri-City Connector and the East-West Connector. Title 69 O.S.2021, § 1710 authorizes a Trust Agreement with multiple bond issues for multiple projects but one source of revenue to pay the debt. The proposed bonds are being issued pursuant to a Trust Agreement dated February 1, 1989, supplemented and amended by a Twentieth Supplemental Trust Agreement.

¶24 Title 69 O.S.2021, § 1705(f) provides the OTA with the ability to issue turnpike revenue bonds and allows it to pay “all or any part of the cost of any one or more turnpike projects.” However, section (f) then limits that provision:

Provided that any bonds issued for the construction of the proposed turnpike referred to in subparagraphs (10), (20), (21) and (22) of paragraph (e) of this section shall be issued as one issue for all four of the proposed turnpikes and shall be financed, constructed and operated under one bond indenture.

69 O.S.2021, § 1705(f). The Legislature included section (f) in 1987, requiring the OTA to begin construction on the four proposed turnpikes at the same time—the Cherokee, Creek, Chickasaw, and Kilpatrick turnpikes. The “bonds” for the construction of the proposed turnpikes were to be “one issue” under “one bond indenture.” *Id.*

¶25 The Protestants ask the Court to strictly interpret § 1705(f) to conclude that the OTA was only allowed one bond issue for the entire construction of the four

turnpikes. Since the OTA did not construct the entire Loop from the first bond issue in 1989, the Protestants contend that the OTA is barred from issuing any more bonds to construct the Tri-City Connector and East-West Connector.

¶26 The OTA's position is that subsection (f) was only a restriction on the first bonds issued after the Legislature passed the requirement in 1987. The OTA contends that after the first bond issue in 1989 to begin construction of the four proposed turnpikes, subsection (f) also allows the OTA to pay "all or any part of the cost of any one or more turnpike projects." 69 O.S.2021, § 1705(f). And the OTA therefore could and has issued additional bonds to construct additional portions of these turnpike projects.

¶27 We have repeatedly held that the interpretation or construction of an undefined statute by the agency charged with its administration is entitled to the highest respect from the courts, especially when the administrative construction is settled and uniformly applied for several years. *Oral Roberts Univ. v. Okla. Tax Comm'n*, 1985 OK 97, ¶ 9, 714 P.2d 1013, 1014-15; *McCain v. State Election Bd.*, 1930 OK 323, ¶ 17, 289 P. 759, 762-63. In such cases, the administrative construction will not be disturbed except for very cogent reasons, provided that the construction so given was reasonable. *Id.* We have opined that an agency's own consistent administrative interpretation for a period of over 20 years must prevail over a contrary interpretation suggested for the first time. *Okla. Tax Comm'n v. Liberty Nat'l Bank and Trust Co.*, 1955 OK 208, ¶ 16, 289 P.2d 388, 392.

¶28 For the past 30 years, the Court has upheld the OTA's interpretation of 69 O.S.2021, § 1705(f) and validated more than one bond issue for the Loop under the Trust Agreement: (1) the OTA sought validation of its bonds (1989 bonds) to construct the first sections of the proposed turnpikes and to refund prior bonds, and (2) the OTA sought validation of its bonds (2016 bonds) under the Trust Agreement for the Kilpatrick Southwest Extension and Kickapoo components of the Loop.

¶29 The Court validated the 2016 bonds relying on § 1709(A) and *Application of Oklahoma Turnpike Authority*, 1966 OK 139, ¶ 81, 416 P.2d 860, 878, and holding the OTA "has the express legislative authority to issue bonds" and "to combine multiple projects for purposing of issuing bonds." *In re Application Okla. Tpk. Auth.*, 2016 OK 124, ¶¶ 11-12, 389 P.3d at 321; *see also* 69 O.S.2021, § 1709(A).⁴ The Court's ruling upheld the OTA's interpretation of § 1705(f) as only applying to the initial funding and construction of the four proposed turnpikes and allowed an additional bond issue for the turnpike projects. We will again not disturb the OTA's interpretation and the Court's broad construction of § 1705(f) and § 1709(A). We

⁴ Title 69 O.S.2021, § 1709(A) states in pertinent part:

A. The Authority may provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The Authority, when it finds that it would be economical and beneficial to do so, may combine two or more, or any part thereof, or all of its proposed projects into one unit and consider the same as one project to the same extent and with like effect as if the same were a single project.

hold both the Tri-City Connector and the East-West Connector are supported by valid legislative authorization.

CONCLUSION

¶30 Title 69 O.S.2021, § 1718 provides that if the Court is satisfied that the bonds have been properly authorized in accordance with Article 17 of the Oklahoma Highway Code of 1968, 69 O.S.2021, § 1701 *et seq.*, the Court shall render its written opinion approving the revenue bonds. The OTA has properly exercised its authority to determine the route for the South Extension. Further, the OTA has legislative authority pursuant to 69 O.S.2021, §§ 1705(f) and 1709(A) to issue additional bonds to finalize the Loop. Accordingly, we approve the revenue bonds. Any petition for rehearing regarding this matter shall be filed within twenty (20) days of the date of this opinion.

ORIGINAL JURISDICTION PREVIOUSLY ASSUMED; PROPOSED BOND ISSUE APPROVED.

CONCUR: KAUGER, WINCHESTER, EDMONDSON, GURICH, DARBY (BY SEPARATE WRITING), J.J., AND REIF, S.J.

DISSENT: ROWE, V.C.J. (BY SEPARATE WRITING), KUEHN, J. (BY SEPARATE WRITING), AND HIXON, S.J.

RECUSED: KANE, C.J.

DISQUALIFIED: COMBS, J.