



FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

MAY 31 2024

RICK WARREN  
COURT CLERK  
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(1) J. KEVIN SITTT, IN HIS CAPACITY )  
AS GOVERNOR OF THE STATE OF OKLAHOMA; )  
(2) BLAYNE ARTHUR, IN HER CAPACITY AS )  
SECRETARY OF AGRICULTURE, FOOD, AND OTHER )  
FORESTRY; )  
(3) SHELLEY ZUMWALT, IN HER CAPACITY AS )  
SECRETARY OF TOURISM, WILDLIFE AND HERITAGE )  
AND AS EXECUTIVE DIRECTOR OF THE TOURISM )  
AND RECREATION DEPARTMENT; )  
AND )  
(4) DR. DEBORHA SHROPSHIRE, M.D., IN HER )  
CAPACITY AS SECRETARY OF HUMAN SERVICES )  
AND AS DIRECTOR OF THE DEPARTMENT OF HUMAN )  
SERVICES, )  
Plaintiffs/Petitioner, )  
v. )  
GENTER DRUMMOND, IN HIS CAPAZITY AS )  
ATTORNEY GENERAL OF OKLAHOMA )  
Defendant/Respondent. )

Case No. CV-2024-606

**OPINION AND ORDER**

Now on the 9<sup>th</sup> day of May, 2024, the Petitioners' Motion for Partial Summary Judgment, the Attorney General's Response to the Petitioners Motion for Summary Judgment, the Petitioners' Reply in support of Motion for Partial Summary Judgment, the Defendant's Motion for Summary Judgment, and the Petitioners' Response to Respondent's Motion for Summary Judgment came on for hearing in regular order. The Plaintiffs appear by counsel of record for each Plaintiff remaining in this litigation. Trevor Pemberton, General Counsel to Governor Stitt, presented argument and spoke on behalf of all Plaintiffs. The Defendant appears by counsel of record. Gary

Gaskins, Solicitor General for Attorney General Drummond, presented argument and spoke on behalf of the Defendant. For purposes of the record, the parties are not using the same party name identifiers in their submissions. For purposes of the Order and Opinion, Plaintiffs are synonymous with Petitioners, and Defendant is synonymous with Respondent. The Court is using Plaintiffs and Defendant so that the party identifiers are consistent with the party identifiers on OSCN.

The Court having reviewed all the submissions of both parties and having heard argument from Counsel enters the following Opinion and Order.

### **I. PROCEDURAL HISTORY**

1. The Oklahoma Attorney General rendered Opinion 2024-5 on February 28<sup>th</sup>, 2024. The Opinion came as a result of the request of Oklahoma State Senator Mary D. Boren. Opinion 2024-5 found:

A. “Simultaneously serving as the Secretary of Transportation, Executive Director of ODOT, and executive Director of the OTA violates the dual office holding prohibition in title 51, section 6 (2021).”

B, “When an office holder accepts and enters upon the duties of a second office, acceptance of the second office operates to ipso facto vacate the first office.”

C. “Official actions involving the public interest and third persons, though made by officials who are not qualified to serve, but act as defacto officers under color of title, are valid, binding, and enforceable.”

2. The Plaintiffs filed a Petition for Declaratory Judgment on March 7<sup>th</sup>, 2024, asking this Court to declare that the Governor may appoint cabinet Secretaries from agency heads and that said person may simultaneously serve in each capacity, and that the Oklahoma Attorney General

Opinion 2024-5 is incongruent with the authority of the Governor to appoint cabinet Secretaries subject to the confirmation process of the Oklahoma State Senate.

3. Plaintiffs filed their Motion for Partial Summary Judgment on April 2<sup>nd</sup>, 2024, seeking summary adjudication on two points:

A. The Governor may appoint cabinet Secretaries from among all agency heads within the cabinet area, regardless of whether the posts are offices and

B. Secretaries Arthur, Zumwalt, and Shropshire may simultaneously serve as heads of their respective agencies, regardless of whether the posts are offices, without operating in violation of the dual office holding prohibition in 51 O.S. §6.

Subsequent to Plaintiffs' Motion for Partial Summary Judgment having been filed, Zumwalt dismissed her claims and is no longer a Plaintiff in the litigation.

4. The Defendant filed his Motion for Summary Judgment on April 12<sup>th</sup>, 2024, seeking summary adjudication on two points:

A. "The dual office holding prohibition applies to cabinet Secretaries."; and

B. "When an officer [*sic*] holder accepts and begins the duties of a second office, acceptance of the second office operates to vacate the first office."

5. All parties to this matter stipulated in open court on the record that no material facts are in dispute in so far as the issues pertaining to summary judgment; therefore, the matters before the Court are ripe for the Court to rule as a matter of law.

6. During the hearing, Mr. Pemberton and Mr. Gaskins acknowledged that no party was challenging the third opinion in AG-2024-5 that being: "Official actions involving the public interest and third persons, though made by officials who are not qualified to serve, but act as

defacto officers under color of title, are valid, binding, and enforceable.” Also, during the hearing, Mr. Pemberton and Mr. Gaskins further narrowed the focus of summary judgment to just the question of whether or not the dual office holding prohibition applies to cabinet Secretaries. Mr. Gaskins stated in open court on the record that should this Court determine that the dual office holding applies to cabinet Secretaries, and should a cabinet Secretary fail to step aside, then the Attorney General or the challenged office holder would need to file a *quo warranto* action to try the title to the office. Therefore, the focus of this Opinion and Order now rests and addresses the remaining and central question; does the dual office holding prohibition of 51 O.S. § 6 apply to cabinet Secretaries?

## **II. LEGAL ANALYSIS**

The legal analysis must begin with the general rule as stated in 51 O.S. §6 which reads in relevant part “Except as may be otherwise provided, no person holding an office under the laws of the state...shall, during the person’s term of office, hold any other office...under the laws of this state.” The statute then goes on to identify thirty (30) positions to which 51 O.S. §6 shall not apply. The Court FINDS the statute to be clear and unambiguous and that the intent of 51 O.S. §6 prohibits dual office holding unless there is an exception.

The exceptions enumerated in 51 O.S. §6 are clear, and the exceptions are detailed. There is no ambiguity regarding the enumerated exceptions to the general rule prohibiting dual office holding as set out in 51 O.S. §6. The dispute between the Plaintiffs and Defendant in the briefing and in the argument focused on the meaning of the language in 74 O.S. §10.3 B. The specific language in dispute is as follows:

A cabinet Secretary may be appointed as a position funded by the Office of the Governor from funds available to that office, or appointed as a cabinet Secretary from among agency heads within the cabinet area.

The Plaintiffs argue that there is no ambiguity in the quoted language and that the only interpretation can be that the language provides for an exception to the general rule allowing the Governor to appoint a cabinet Secretary who is also an agency head. The Defendant argues that there is no ambiguity in the quoted language above and that the only interpretation can be that the language addresses funding of a cabinet Secretary and nothing more. The Plaintiffs and Defendant presented good arguments for each of their respective views.

### **III. THE PARTIES THEORIES AND ARGUMENTS**

#### **A. The Summary of the Plaintiffs' Theories and Arguments.**

The Plaintiffs argue that the language “or appointed as a cabinet Secretary from among the agency heads within the cabinet area” to be a clear and unambiguous exception to the general rule prohibiting dual office holding. The Plaintiffs argue that any other interpretation would necessarily require the Court to read language into the sentence that doesn't exist or to ignore the word “the” immediately preceding the term “agency head”. The Plaintiffs also argue that the following paragraph 10.3 C. informs how 10.3 B. should be interpreted in that if the Governor were to remove an agency head, then how could 10.3 B. not be intended by the Legislature to have been an exception to the general rule prohibiting dual office holding? The Plaintiffs make reference to a prior Oklahoma Attorney General's Opinion (which the Defendant relies upon for a juxtaposed position) 2002-29 to point out that Representative Kenneth Corn posed the question to the Attorney General in terms of a presumption that the Governor must appoint a cabinet Secretary

who an agency head. The Plaintiffs also suggest that the fact that earlier in the Second Session of the 59<sup>th</sup> Legislature, after the issuance of Oklahoma Attorney General Opinion 2024-5, House Majority Floor Leader Jon Echols inserted a floor amendment in SB-1196 to specifically amend 51 O.S. § 6 so as to except the Commissioner of Agriculture from the general rule prohibiting dual office holding. Plaintiffs point to the language in the Bill Summary called “Other Considerations” wherein Attorney General Opinion 2024-5 is specifically mentioned. Plaintiffs argue that House Majority Floor Leader Echols took this step and opportunity to express that SB-1196 should not be construed to suggest that the Legislature was agreeing with Attorney General Opinion 2024-5.

The Plaintiffs argue that it is of no matter if cabinet Secretaries are “officers” as defined by the elements set out in *Oklahoma City v. Century Indem. Co.*, 178 Okla. 589 (1936). The Plaintiffs further argue that if this Court were to find that cabinet Secretaries are “officers”, 74 O.S. 10.3.B. provides the necessary exception to the general rule against dual office holding. The Plaintiffs address the Defendant’s argument that SB-913, which passed into law in 2021 and codified as 75 O.S. 2021 §303(A)(6), materially altered the advisory role of cabinet Secretaries from mere advisors to the Governor to “officers” of the State of Oklahoma with sovereign powers. The Plaintiffs argue that as far back as 2015 Governor Fallin by Executive Order granted the cabinet Secretaries sovereign powers just as the SB-913 in 2021.

The Plaintiff also argue there are ten (10) exceptions to the general rule against dual office holding found in statutes outside the confines of 51 O.S. § 6. The argument by the Plaintiffs is that 74 O.S. § 10.3 B. is just one more instance where the Legislature made an exception to the general rule against dual office holding outside of an amendment to 51 O.S. § 6. The Plaintiffs also place a good deal stock in 74 O.S. §1207 which creates the position of Oklahoma Native

American Liaison which also explicitly allows the Governor to appoint the Liaison to be a cabinet Secretary and without any reference to an exception to the general rule against dual office holding or any reference to 51 O.S. §6.

The Plaintiffs argue that the 2021 amendment to 75 O.S. § 303. 6. was no transformation of the position of Cabinet secretary. The Plaintiffs point to Governor Fallin's Executive Order in 2015 which empowered cabinet Secretaries with the same veto over agency rules as does the 2021 amendment to 75 O.S. § 303. 6., and the fact that no legislator or person challenged Governor Fallin's appointments as being in violation of 51 O.S. § 6.

B. A Summary of the Defendant's Theories and Arguments.

The Defendant argues that the full context of 74 O.S. § 10.3 B. is unambiguous and clear and that the language pertains only to the sources of funding for the appointment of a cabinet Secretary, and that 74 O.S. § 10.3 B. is not an exception to the general rule prohibiting dual office holding. In support of this position, the Defendant references and urges this Court to consider persuasive not only Attorney General Opinion 2024-5 but also Attorney General Opinions 2002-29 and 1995-26. The latter two Attorney General Opinions hold that the language of 74 O.S. § 10.3 B. dealt with the sources of funding for a cabinet Secretary and finding no exception to the general rule prohibiting dual office holding.

The Defendant argues that the Legislature clearly knows how to make an exception to the general rule prohibiting dual office holding, and cabinet Secretaries are not listed as exceptions in 51 O.S. § 6. The Defendant counts thirty-one (31) exceptions made within 51 O.S. § 6. The Defendant also argues that the ten (10) examples Plaintiffs suggest are exceptions to the general rule against dual office holding that in nine (9) of those examples specific reference is made to an

exception to the general rule or 51 O.S. § 6. Therefore, Defendant argues that the legislative intent to provide an exception is clear. Also, Defendant addresses the argument of Plaintiff regarding the Oklahoma Native American Liaison. The Defendant argues that the statute does not provide a similar contextual circumstance to 74 O.S. § 10.3 B. because there has been no determination that the Oklahoma Native American Liaison is an office holder with sovereign powers.

The Defendant argues that now, but not always in the past, all cabinet Secretaries are office holders as established by the elements set out in *Oklahoma City v. Century Indem. Co.* The Defendant's position is that when 75 O.S. § 303. 6. was amended in 2021, the position of cabinet Secretary transformed from being an advisor to the Governor to being an office holder with sovereign power due to the ability of the cabinet Secretary to veto proposed administrative rules just as the Governor may do so. The Defendant also points to a 2023 Executive Order that further empowers cabinet Secretaries with sovereign powers. The Defendant points out that when Oklahoma Attorney General Opinions 2000-54 and 2005-28 were issued that the only role of cabinet Secretaries were:

1. Advise the Governor of any policy changes or problems within the area they represent;
2. Advise the entities represented of any policy changes or problems as directed by the Governor; and
3. Coordinate information gathering for the Legislature as requested.

The Defendant's position to be clear is that all cabinet Secretaries are now office holders with sovereign power, but all agency heads may not be office holders. The Defendant submits that a legal analysis of the powers and duties of each agency head would require examination under the



elements of *Oklahoma City v. Century Indem. Co.* The Defendant's argument is that while in the past Governors may have appointed cabinet Secretaries who were also agency heads, after the 2021 amendment to 15 O.S. § 303. 6. Governors are now prohibited from doing so.

In terms of statutory construction of 74 O.S. §10.3 B., the Defendant points out that 74 O.S. §10.3 was enacted in 1987, and that the Legislature could not have intended for the language to create an exception to the general rule against dual office holding because cabinet Secretaries were not office holders. The Defendant also again points to the two prior Oklahoma Attorney General Opinions 1995-26 and 2002-29 to further enforce his position that the intent of the Legislature with regard to §10.3 B. addressed funding of the position and not the creation of an exception to 51 O.S. § 6. The Defendant argues that the Plaintiffs' position is that there is an implied exception to the general rule against dual office holding in 74 O.S. § 10.3 B., and importantly that an implied exception to a rule is disfavored by the Oklahoma Supreme Court as set forth in *Rice v. Rice*, 1988 OK 83 and *Oglesby v. Liberty Mut. Ins. Co.*, 1992 OK 61.

#### IV. THE COURT'S OPINION

##### A. Jurisdiction.

The Plaintiffs briefing suggested that there may be a challenge to the justiciability of the issue before this Court. The Court FINDS the request for a declaratory judgment is properly before this Court pursuant to *Conocoy, Inc. v. State Dept't of Health*, 1982 OK 94 and *Murray County v. Homesales, Inc.*, 2014 OK 52. The Defendant does not challenge the jurisdiction of this Court or the justiciability of the matters presented for summary adjudication; therefore, any objection as to the justiciability of the matters now presented is waived.

##### B. The Oklahoma Attorney General's Opinion does not circumvent the constitutional process of Appointment and Confirmation.

The Plaintiffs' Petition for Declaratory Judgment asserts that the Oklahoma Attorney General Opinion 2024-5 was being used as a mechanism to usurp the constitutional process of Gubernatorial appointment and Senate confirmation of cabinet Secretaries, or that the Opinion was a tool to circumvent the removal process of a cabinet Secretary set for in law. The latter seems to be moot as Defendant's counsel acknowledged in open court and on the record that a *quo warranto* action is the proper legal process to try title to an office. The Court FINDS that Oklahoma Attorney General Opinion 2024-5 to be a proper exercise of the Attorney General's duties pursuant to 74 O.S § 18b (A) (5).

##### C. The disputed language on 74 O.S. 10.3 B. is ambiguous.

To begin this analysis, the Court notes that both the Plaintiffs and the Defendant argue that the disputed language of 74 O.S. § 10.3 B. is unambiguous, but Plaintiffs and Defendant have

opposite interpretations. The disputed language again comes down to the interpretation of this sentence of 74 O.S. § 10.3 B. to wit:

A cabinet Secretary may be appointed as a position funded by the Office of the Governor from funds available to that office, or appointed as a cabinet Secretary from among agency heads within the cabinet area.

Also of note is that, not including the Oklahoma Attorney General's Opinion at the heart of this litigation, there have been four prior Oklahoma Attorney General Opinions addressing questions from members of the Oklahoma Legislature seeking an interpretation of the disputed language those being: 1995-26, 2000-54, 2002-29, and 2005-28. The Plaintiffs noted that in the Oklahoma Attorney General Opinion 2002-29 then Representative Kenneth Corn posed the question to the Attorney General as follows:

Does the appointment by the Governor of a cabinet secretary who is not the head of an agency violate 74 O.S. 2001. § 10.3(B), which provides that cabinet area secretaries are to be appointed from a "position funded by the Office of the Governor from funds available to that office, or appointed as a cabinet secretary from among the agency heads within the cabinet area"?

Representative Corn's question inherently presumes that a cabinet Secretary must be an agency head and the failure of the Governor to so appoint an agency head would violate the statute. However, Attorney General Drew Edmondson opined otherwise and found that the language of the statute was intended to address funding of the cabinet Secretary and nothing more. The point being here is that two elected leaders looking at the language of 74 O.S. § 10.3 B. saw things through entirely different lens.

Also of note is that Senator Nathan Dahm has since the filing of the Oklahoma Attorney General Opinion 2024-5 asked the Oklahoma Attorney General for an opinion as to dual office holding for the cabinet Secretaries who joined with the Governor in this litigation (noting that Director Zumwalt has dismissed her action). And of further observation is the interesting caveat that was placed in Bill Summary of SB-1196. The caveat in the Bill Summary, written by House Majority Floor Leader Echols, made clear that the Floor Substitute was not intended to lend credence one way or the other to Oklahoma Attorney General Opinion 2024-5.

While any reasonable legal analysis in determining if a statute is ambiguous might end here by this obvious antidotal evidence of clear ambiguity with regard to the disputed language, the Court must be guided by a plethora of authority and most recently *Stricklen v. Multiple Injury Trust Fund*, 2024 OK 1 at p. 7, which holds:

Language in a statute is ambiguous when it is susceptible to more than one reasonable interpretation. Whether a statute is susceptible to more than one reasonable interpretation presents an issue of law...

The Court must determine if the disputed language is contextually ambiguous, vague, or contains conflicting language. The Court FINDS the disputed language of 74 O.S. § 10.3 B, below:

A cabinet Secretary may be appointed as a position funded by the Office of the Governor from funds available to that office, or appointed as a cabinet Secretary from among the agency heads within the cabinet area.

to be ambiguous in that it is susceptible to more than one reasonable interpretation. The ambiguity exists because the second clause is a part of a full sentence and the first part of the full sentence

deals with “funding”. Therefore, the Court must resolve the ambiguity within the canons prescribed for statutory interpretation because the statutory language is not clear.

D. Interpretation and Construction of the disputed language in 74 O.S. § 10.3 B.

The Court is guided by *American Airlines, Inc. v. State ex rel. Oklahoma Tax Commission*, 2014 OK 95 at paragraph 33. Paragraph 33 includes a comprehensive list of authorities for the Court to follow regarding statutory construction. The Court considered all the authority listed in paragraph 33 in the following analysis and interpretation of the disputed language in 74 O.S. § 10.3 B.

The Court begins this analysis with 51 O.S. § 6 which sets forth the general rule which has been in place since 1910 that “Except as may be otherwise provided, no person holding an office under the laws of the state...shall, during the person’s term of office, hold any other office...under the laws of the state.” Cabinet Secretaries are not an enumerated exception in 51 O.S. § 6; although some thirty (30) other exceptions have been enumerated in 51 O.S. § 6 by Legislatures over the past one hundred and fourteen years since the enactment of 51 O.S. § 6.

At first blush, the failure of the Legislature to enumerate cabinet Secretaries in 51 O.S. § 6 would seem to indicate legislative intent that cabinet Secretaries would not be excepted from the general rule prohibiting dual office holding. But it has been made clear by two Oklahoma Attorney General Opinions, 2000-54 and 2005-28, the duties of a cabinet Secretary did not, at the time the Attorney General Opinions were issued, involve the exercise of sovereign power as a necessary element to be an office holder under *Oklahoma City v. Century Indem.Co.* Therefore, the failure of the Legislature, at least up until 2015 or perhaps until 2021, should not be interpreted as legislative intent. However, since 2015, 51 O.S. § 6 has been amended by the Legislature six (6)

times without adding an exception to the general rule for cabinet Secretaries. Therefore, since 2015 when Governor Fallin signed an Executive Order vesting in cabinet Secretaries veto power over proposed administrative rules and certainly since 2021 when 75 O.S. §303 A. was amended to add paragraph A.6. which by law vested the same veto power over proposed administrative rules, the failure of the Legislature to create an exception for cabinet Secretaries under the general rule prohibiting dual office holding in 51 O.S. § 6 does inform this Court of the lack of legislative intent to create an exception for cabinet Secretaries. Perhaps one could argue that the Legislature was unaware of Governor Fallin's Executive Order; therefore, the Legislature's failure to make an exception for cabinet Secretaries in 51 O.S. § 6 should bear no legislative intent. But, since 2021 when the Legislature itself took the action to vest cabinet Secretaries with veto power over proposed administrative rules, just as the Governor has, the failure of the Legislature to make an exception for cabinet Secretaries in 51 O.S. § 6 must and does inform this Court of the legislative intent to not except cabinet Secretaries from the general rule against dual office holding. However, the most clear indication of no legislative intent to categorically except cabinet Secretaries from the prohibition against dual office holding in 51 O.S. § 6 is the fact that even after the issuance of Oklahoma Attorney General Opinion 2004-5, SB-1196 which was passed by both the House and Senate, only excepted the 'Commissioner of Agriculture and any person who is a member of a governing board or body of an institution of higher education' from dual office holding and allowing those persons to as well be appointed to the Governor's Cabinet. The Legislature this very session could have easily in SB-1196 excepted all cabinet Secretaries from the general rule prohibiting dual office holding but categorically did not. The "Other Considerations" in the Bill Summary for SB-1196 is *obiter dictum* but more over *obiter dictum* only as to the Commissioner

of Agriculture and any person who is a member of a governing board or body of an institution of higher education and not the entire category of cabinet Secretaries. The Court's view is not distracted by the *obiter dictum* from the obvious. If the Legislature believed that cabinet Secretaries were already exempt from the prohibition against dual office holding by the language in 74 O.S. § 10.3 B., it would not have taken the unnecessary action of passing SB-1196 to exempt the Commissioner of Agriculture from the dual office holding prohibition so as to allow the Commissioner to serve in the Governor's Cabinet. SB-1196 did not become law due to the Governor's veto on March 12, 2024.

The next analysis focuses on the history of 74 O.S. § 10.3 B. When 74 O.S. § 10.3 B. was enacted, some thirty-five (35) years prior to the amendment to 75 O.S. § 303 A. which added paragraph 6 giving cabinet Secretaries the same veto power over proposed administrative rules as the Governor, the role and duties of a cabinet secretary were in an advisory nature only. Two Oklahoma Attorney General Opinions (2000-4 and 2005-28) since the enactment of 74 O.S. § 10.3 B., but before the amendment of 75 O.S. § 303 A. 6., answered questions of legislators about whether or not cabinet Secretaries were office holders and subject to the general rule prohibiting dual office holding. Both Opinions held cabinet Secretaries were only advisory position and not office holders subject to 51 O.S. § 6. The Legislature could not have intended for the second clause of the disputed sentence of 74 O.S. § 10.3 B. to be an exception for cabinet Secretaries from the dual office holding prohibition because cabinet Secretaries were not office holders at that time. For the same reasons, the Plaintiffs argument that 74 O.S. § 10.3 C. informs legislative intent as to 74 O.S. § 10.3 B. to be an exception for cabinet Secretaries from dual office holding is as well

hollow because again at the time 74 O.S. § 10.3 B. and C. were enacted no authority classified cabinet Secretaries as office holders subject to 51 O.S. §6.

The Plaintiffs argued that since the Governor Fallin's Executive Order in 2015, which vested veto power in cabinet Secretary, no challenge to the appointment power of the Governor was made until now. The Court noted the nine-year gap in time at the hearing. However, the nine years of no challenge to the Governor's appointment of a cabinet Secretary is reflective of the fact that no one asked for an Attorney General's Opinion during that period, and not reflective of any measure of legislative intent this Court should consider. Just because no one challenged the Governor's appointments of cabinet Secretaries who were also agency heads does not shed any light on the meaning of the disputed language.

Now the Court examines the argument of the Defendant that any exception to the general rule prohibiting dual office holding must be explicit and not implicit. The Defendant argues that the Plaintiffs' interpretation of the disputed language of 74 O.S. § 10.3 B. is implicit; and therefore, fails to meet the statutory construction canons for exceptions to general rules as set forth in *Rice v. Rice*, 1988 OK 83 at paragraph 9. Paragraph 9 includes a comprehensive list of authorities for the Court to follow regarding statutory construction of exceptions to a general rule. Also, the Court has considered the ruling in *Oglesby v. Liberty Mut. Ins. Co.*, 1992 OK 61 at paragraphs 8, 10, and 13. All of the thirty (30) enumerated exceptions in 51 O.S. § 6 to the general rule prohibiting dual office holding are explicit and the intent of the Legislature is clear. Also, all but one (the Oklahoma Native American Liaison which will be discussed below) of the ten examples of exceptions to the general rule prohibiting dual office holding not enumerated in 51 O.S. § 6 as identified in Plaintiffs' Motion for Summary Judgment specifically reference an exception being made to the general rule



prohibiting dual office holding or specifically reference an exception to 51 O.S. § 6. The Court FINDS that the nine examples, excluding the Oklahoma Native American Liaison, to be explicit and the intent of the Legislature is clear. Addressing the Oklahoma Native American Liaison example provided by the Plaintiffs, the Court has read 74 O.S. § 1207 which created the position of Oklahoma Native American Liaison. Section “E.” of the statute identifies ten functions of the Oklahoma Native American Liaison. The Court FINDS that none of the ten functions of the Oklahoma Native American Liaison as presently in statute make the Oklahoma Native American Liaison an office holder as defined by the elements of *Oklahoma City v. Century Indem. Co.* The Court FINDS that the ten enumerated functions of the Oklahoma Native American Liaison in the current statute do not “involve the exercise of some portion of sovereign power”. The Court FINDS that the Oklahoma Native American Liaison is not an office holder. Therefore, this example provided by the Plaintiffs is not an example of the Legislature making an exception to the general rule against dual office holding by allowing the Oklahoma Native American Liaison to serve as member of the Governor’s Cabinet. The Plaintiffs’ interpretation of the disputed language of 74 O.S. § 10.3 B. would require the Court to make an implicit exception to the general rule against dual office holding. The Court FINDS no such legislative implication exists based on a full analysis. Rather after this full analysis, the Court FINDS that the ambiguity in the disputed language of 74 O.S. § 10.3 B. is the result of inartful and ill-phrased drafting.

The Court has also read and considered the two Oklahoma Attorney General Opinions interpreting the following language in 74 O.S. § 10.3 B:

A cabinet Secretary may be appointed as a position funded by the Office of the Governor from funds available to that office, or appointed as a cabinet Secretary from among the agency heads within the cabinet area.

Both Oklahoma Attorney General Opinions (1995-26 and 2002-29) interpreted the language to deal only with the source of funding for the cabinet Secretary; specifically, that the source of funding must come from the Office of the Governor or the agency. The Opinions found the language to be clear and unambiguous with which this Court disagrees on that point; otherwise, this Court FINDS the result of the Attorney Generals Opinions regarding the interpretation of the language to be correct.

The Court FINDS for all the reasons stated above that legislative intent of below quoted language of 74 O.S. § 10.3 B:

A cabinet Secretary may be appointed as a position funded by the Office of the Governor from funds available to that office, or appointed as a cabinet Secretary from among the agency heads within the cabinet area.

addresses the source of funds for a cabinet Secretary. The Court further FINDS that the above quoted language does not provide an exception to the general rule prohibiting dual office holding as established by 51 O.S. § 6. The Court FINDS that Oklahoma Attorney General Opinion 2024-5 to have accurately interpreted the above quoted language. This Court's FINDING that the above language only addresses the source of funding for cabinet Secretaries rests upon the canons of statutory construction as set out in *American Airlines, Inc. v. State ex rel. Oklahoma Tax Commission*, 2014 OK 95 at paragraph 33, *Rice v. Rice*, 1988 OK 83 at paragraph 9, and *Oglesby v. Liberty Mut. Ins. Co.*, 1992 OK 61 at paragraphs 8, 10, and 13.

E. Cabinet Secretaries are Office Holders.

Pursuant to 74 O.S. § 10.3. B. 1., 2., and 3. the duties of a cabinet Secretary were established in 1986. These enumerated duties are:

1. Advise the Governor of any policy changes or problems within the area they represent;
2. Advise the entities represented of any policy changes or problems as directed by the Governor; and
3. Coordinate information gathering for the Legislature as requested.

Two Oklahoma Attorney General Opinions (2000-54 and 2005-28) found that the enumerated duties in 74 O.S. § 10.3.B. were advisory functions only and did not rise to the level of an office holder as set forth in *Oklahoma City v. Century Indem. Co.*, specifically that cabinet Secretaries did not exercise any sovereign power. The Court FINDS Oklahoma Attorney General Opinions 2000-54 and 2005-28 to be correct in that at the time the opinions were issued, cabinet Secretaries were **categorically** advisory only. Oklahoma Attorney General Opinion 2000-54 was issued as a result of a question from Senator Angela Monson. A part of the Opinion dealt with the role of the Commerce Secretary. Because the Commerce Secretary had an additional statutory office separate and apart from the enumerated duties in 74 O.S. § 10.3 B. 1., 2., and 3., specifically the commerce secretary's *ex officio* membership of the Native American Cultural and Educational Authority of Oklahoma, the Commerce Secretary was excluded from just the advisory position of a cabinet Secretary. Because the Native American Cultural and Educational Authority of Oklahoma had the power to issue revenue bonds, the Attorney General's Opinion found that the Commerce Secretary was vested with sovereign power and the dual office holding prohibition.

In 2021, 75 O.S. § 303 A.6. was amended and by law cabinet Secretaries were vested with the same powers as the Governor to veto any proposed administrative rules from the area in which the cabinet Secretary was appointed to serve. The pertinent language of 75 O.S. § 303 A .6. reads as follows:

...No agency may adopt any proposed rule, amendment or revocation if, within thirty (30) days from providing notice to the Governor and the appropriate cabinet secretary, the agency received express written disapproval from the Governor or the cabinet secretary. If the Governor or the cabinet secretary disapproves a rule, the affected agency shall be notified in writing of the reasons for disapproval...

The Court has thoroughly reviewed the case of *Oklahoma City v. Century Indem. Co.* In *Oklahoma City v. Century Indem. Co.*, the facts are important in analyzing the duties of cabinet Secretaries since the 2021 amendment to 75 O.S. § 303 A. 6. In *Oklahoma City v. Century Indem. Co.* the Oklahoma Supreme Court found that a deputy city clerk was an office holder because the deputy city clerk could issue a bond that would bind the City of Oklahoma City. The Supreme Court found that limited authority of a deputy city clerk rose to the level of sovereign power. In comparison, cabinet Secretaries in Oklahoma have the same veto power as the Governor of Oklahoma over proposed administrative rules. Certainly, the position of cabinet Secretary is much more prominent than a deputy city clerk; also, the ability to veto proposed administrative rules just as the Governor is substantially more power than approving a bond that binds the city. The Court FINDS that since the 2021 amendment of 75 O.S. § 303 A. 6., cabinet Secretaries **categorically** are office holders or officers of the state of Oklahoma as defined by the factors in *Oklahoma City v. Century Indem. Co.* and subject to the prohibition against dual office holding.

F. Oklahoma Attorney General Opinion 2024-5 is limited in its analysis to the dual or multiple office holding of the Secretary of Transportation.

This Court has found that all cabinet Secretaries are categorically office holders or officers of the state of Oklahoma, However, not every head of an agency or other such position may be office holders or officers of the state of Oklahoma. Plaintiffs Blayne Arthur, in her capacity as Secretary of Agriculture and Commissioner of the Department of Agriculture, Food, and Forestry, and Dr. Deborah Shropshire, M.D., in her capacity as Secretary of Human Services and as Director of the Department of Human Services sued the Attorney General for a declaratory judgment that the prohibition against dual office holding does not apply to them. The Defendant argued that an analysis of each agency head position would be necessary just as the Attorney General did with regard to the position of Executive Director of the ODOT and Executive Director of the OTA. However, the Defendant acknowledged that same reasoning would apply.

#### **V. THE COURT'S ORDERS**

1. The Plaintiffs' Motion for Partial Summary Judgment is DENIED.
2. The Defendant's Motion for Summary Judgment is SUSTAINED in part as follows:

Cabinet Secretaries are office holders or officers of the state of Oklahoma and are not excepted from the dual office holding prohibition by law under 51 O.S. § 6.

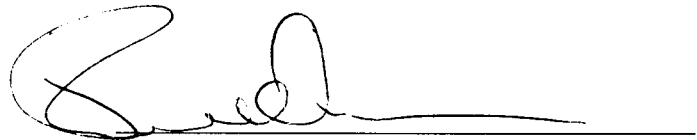
3. The Defendant's Motion for Summary Judgment is DENIED as follows:

When an office holder accepts or begins the duties of a second office, acceptance of the second office does not *ipso facto* result in the vacation of the first office. The parties during argument in open court acknowledge that should a cabinet Secretary fail to resign or step

aside voluntarily a *quo warranto* action would need to be pursued to try the title to the office.

**IT IS SO ORDERED.**

**DATED THIS 31<sup>st</sup> DAY OF May 2024.**

A handwritten signature in black ink, appearing to read "Richard C. Ogden", written over a horizontal line.

**RICHARD C. OGDEN  
JUDGE OF THE DISTRICT COURT**

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 3<sup>rd</sup> day of May 2024, I mailed a certified copy with postage thereon fully prepaid, to:

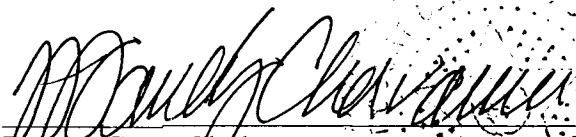
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Deputy Court Clerk